



OVERLAPPING JURISDICTIONS: EXAMINING THE INTERPLAY BETWEEN COURTS AND ARBITRATORS IN INDIA

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INTRODUCTION

Arbitration has transpired itself as a cornerstone of Alternative-Dispute Resolution(ADR) mechanisms globally, often offering a pathway to resolve dispute expeditiously and cost-effectively while alleviating the burden of conventional courts. In India, this mechanism of ADR has evolved significantly, buoyed by legislative amendments and judicial pronouncements aimed at relieving an overburdened judiciary . However, this shifting jurisdiction, interplay between arbitration and judicial intervention and overlapping of roles of courts and arbitrators, reflect a complex balance between the principle of party autonomy- a hallmark of arbitration and the imperative for judicial oversight to ensure fairness and legality.

The Indian legal framework, primarily governed by the **Arbitration and Conciliation Act, 1996**¹, has undergone multiple reforms to align with international arbitration standards. Despite these efforts, the relationship between judicial intervention and arbitral independence remains a contentious issue. Courts frequently intervene at various stages of arbitration, from the appointment of arbitrators and determining arbitrability to the enforcement of arbitral

¹ Arbitration and Conciliation Act, No. 26 of 1996, § 1, INDIA CODE (1996).

awards and invoking public policy exceptions. While such interventions seek to ensure justice and adherence to the law, they sometimes disrupt the autonomy and finality that arbitration is meant to embody.

This research explores the jurisdictional conflicts between courts and arbitral tribunals in India, analysing the scope and constraints of judicial intervention under the Arbitration and Conciliation Act, 1996. It examines the judiciary's role in appointing arbitrators, granting interim relief, and enforcing or setting aside awards, highlighting key precedents shaping arbitration jurisprudence. By comparing India's arbitration framework with international practices, the study identifies challenges and proposes reforms to balance arbitral autonomy with judicial monitoring for more effective dispute resolution.

BACKGROUND OF ARBITRATION IN INDIA

The origins of arbitration in India can be traced back to the informal and community led dispute resolution processes, like , village panchayats but the Modern arbitration framework began shaping during the British rule , particularly with the enactment of the **Arbitration Act of 1940** followed by **the act of 1899**^{2,3}. While this legislation provided a basic structure, it was often criticized for excessive judicial interference and procedural inefficiencies, which hindered arbitration's potential as an effective alternative to litigation.⁴

However, the framework saw a significant overhaul with the introduction of the **Arbitration and Conciliation Act, 1996**⁵, which aligned Indian arbitration laws with the **United Nations Commission on International Trade Law (UNCITRAL) Model Law**⁶. The 1996 Act emphasized minimal court intervention, fostering a pro-arbitration regime to attract both domestic and international business entities seeking efficient dispute resolution. Legislative amendments in 2015⁷ and 2019⁸ further sought to enhance the efficiency of arbitration proceedings, limit judicial interference, and establish India as a global arbitration hub. Despite these reforms, challenges persist in ensuring the balance between judicial oversight and arbitral independence.

GROWTH OF ARBITRATION AS A DISPUTE RESOLUTION MECHANISM

In recent decades, arbitration has witnessed remarkable growth in India as businesses increasingly favour it for its expediency, confidentiality, and flexibility. The recent Legislative amendments have further strengthened the arbitration framework by reducing judicial intervention and setting strict timelines for the resolution process. Initiatives like the establishment of specialized arbitration centres, such as the **Mumbai Centre for International Arbitration (MCIA)** and the **Delhi International Arbitration Centre (DIAC)**, underscore India's aspirations

² The Indian Arbitration Act, 1899, Act No. 9 of 1899 (India).

³ Bharat Bhushan Gupta, Arbitration Law in India: A Study of Historical Evolution, 3 Indian J. Arb. L. 1 (2019).

⁴ G.K. Kwatra, Evolution of Arbitration Law in India, 45 Ind. L. Rev. 115, 119 (2020).

⁵ Arbitration and Conciliation Act, supra note 3

⁶ United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, Annex I (1985)

⁷ Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 1, INDIA CODE (2016).

⁸ Arbitration and Conciliation (Amendment) Act, No. 33 of 2019, § 1, INDIA CODE (2019).

to become a global arbitration hub. However, the effectiveness of arbitration as a dispute resolution tool hinges on maintaining its core tenets of expediency, cost-effectiveness, and finality.

In recent decades, arbitration has emerged as a preferred method for resolving commercial disputes, both domestically and internationally. Its appeal lies in its flexibility, confidentiality, and the parties' ability to choose arbitrators with specialized expertise. Arbitration also offers procedural simplicity compared to litigation, with a promise of quicker resolution.

India's economic liberalization in the 1990s and its increasing integration into the global market further spurred the growth of arbitration. The rise in cross-border transactions and complex commercial arrangements necessitated an efficient dispute resolution mechanism that could transcend the limitations of traditional litigation.

LEGAL FRAMEWORK GOVERNING ARBITRATION IN INDIA

Arbitration in India is governed primarily by the **Arbitration and Conciliation Act, 1996**, replacing the earlier act of 1940, aiming to streamline arbitration in India. The Act has undergone significant amendments in **2015, 2019, and 2021** to make arbitration more efficient, transparent, and aligned with international standards, specifically the UNCITRAL. Additionally, relevant provisions of the **Civil Procedure Code, 1908 (CPC)** supplement arbitration law by guiding procedural aspects. This comprehensive discussion provides an in-depth analysis of these components, incorporating critical case law and statutory references.

Key Features of the Act:-

a. Definition and Scope - The Act defines "**arbitration**" under **Section 2(1)(a)** and recognizes both domestic and international arbitration. **Section 2(1)(f)** distinguishes international commercial arbitration by requiring at least one party to be a foreign entity.

b. Arbitration Agreement - **Section 7** mandates that an arbitration agreement must be in writing. This requirement ensures clarity and enforceability of the agreement.

In **K.K. Modi v. K.N. Modi, 1998⁹**, the Supreme Court emphasized that an arbitration agreement must reflect the intent to resolve disputes outside traditional courts.

c. Appointment of Arbitrators - Under **Section 11**, parties are given autonomy to appoint arbitrators. In case of disagreement, the Chief Justice of India or a designated institution can facilitate the appointment process.

Perkins Eastman Architects **DPC v. HSCC (India) Ltd., 2019 SCC**, clarified that a party with an interest in the dispute cannot unilaterally appoint an arbitrator.

d. Finality of Awards- Awards are binding under **Section 35**, and challenges are limited to grounds specified in **Section 34**, including procedural irregularities or contraventions of public policy.

⁹K.K. Modi v. K.N. Modi, (1998) 3 S.C.C. 573 (India)

In **ONGC Ltd. v. Saw Pipes Ltd., 2003¹⁰**, the Supreme Court expanded the definition of public policy to include awards violating statutory provisions.

e. Interim Measures and Enforcement - Under **Section 9**, courts can grant interim measures before or during arbitration proceedings. Additionally, Section 36 allows enforcement of arbitral awards as a decree of the court.

In **Sundaram Finance Ltd. v. NEPC India Ltd., 1999¹¹**, the court affirmed its power to grant interim relief to protect parties' rights during arbitration.

AMENDMENTS TO THE ACT (2015, 2019, AND 2021)

The **2015 Amendment Act** introduced significant reforms to improve arbitration's efficiency and minimize judicial intervention. **Section 29A** mandates that awards be delivered within 12 months, extendable by six months with party consent, with further extensions requiring court approval. **Section 29B** introduced an expedited process, allowing disputes to be resolved within six months with a sole arbitrator. Amendments to **Section 34** narrowed the grounds for challenging awards to procedural irregularities or violations of public policy, as reinforced in ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. 2011¹²***, which emphasized limiting such challenges, and ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi 2018¹³***, which stressed resolving objections swiftly.

The **2019 Amendment Act** institutionalized arbitration by establishing frameworks to enhance quality and professionalism. It introduced the **Arbitration Council of India (ACI)** under **Part IA**, tasked with grading arbitral institutions and accrediting arbitrators. **Section 42A** ensures the confidentiality of arbitration proceedings, while **Section 42B** grants immunity to arbitrators for actions taken in good faith. Additionally, amendments to **Section 11** empowered designated arbitral institutions to appoint arbitrators, streamlining the appointment process and reducing delays. ***Perkins Eastman Architects DPC v. HSCC (India) Ltd¹⁴***. Reinforced the requirement for impartial appointment mechanisms.

The **2021 Amendment Act** aimed to uphold the integrity of arbitration by addressing fraudulent practices and simplifying procedural requirements. **Section 36** was amended to permit an automatic stay on enforcement if the arbitration agreement or award is prima facie tainted by fraud or corruption. The omission of the Eighth Schedule introduced flexibility in arbitrator qualifications. In ***Hindustan Construction Company Ltd. v. Union of India (2020)***, the Supreme Court addressed the retrospective application of provisions related to the automatic stay, reinforcing these changes.

¹⁰ ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

¹¹ Sundaram Fin. Ltd. v. NEPC India Ltd., (1999) 2 S.C.C. 479 (India)

¹² Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2001) 6 S.C.C. 356 (India).

¹³ Emkay Glob. Fin. Servs. Ltd. v. Girdhar Sondhi, (2018) 9 S.C.C. 49 (India)

¹⁴ Perkins Eastman Architects DPC v. HSCC (India) Ltd., 2019 S.C.C. OnLine S.C. 1517 (India).

RELEVANT PROVISIONS OF THE CIVIL PROCEDURE CODE (CPC)

The CPC complements arbitration law by providing procedural clarity for courts dealing with arbitration-related matters.

- a. In **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010)¹⁵**, the court encouraged the use of ADR mechanisms under Section 89 to reduce litigation.
- b. **Order XXI – Execution of Decrees** - Arbitral awards are enforceable as decrees under Section 36 of the Arbitration Act, using the procedures outlined in Order XXI of the CPC.
- c. **Interim Measures - Provisions under Order XXXIX** for injunctions align with **Section 9** of the Arbitration Act, empowering courts to grant interim relief.

Jurisdiction of Arbitrators in India

For arbitration, the jurisdiction stems from the **arbitration agreement** between the parties, statutory provisions (like the Arbitration and Conciliation Act, 1996), and any applicable international treaties or rules.

a. Arbitration Agreement

It defines the scope of disputes to be arbitrated, the procedural rules to be followed and the applicable substantive law. Under **Section 7 of the Arbitration and Conciliation Act, 1996**, a valid arbitration agreement must be in writing.

b. Competence-Competence Principle

Arbitrators have the authority to determine their own jurisdiction under **Section 16 of the 1996 Act**. This principle ensures that arbitrators can decide whether the arbitration agreement is valid and if the dispute falls within its scope.

c. Limitations of Jurisdiction

Arbitrators cannot decide matters prohibited by law (e.g., criminal cases, matrimonial disputes) as they are outside the arbitration agreement's scope.

d. Challenges to Jurisdiction

A party can challenge the arbitrator's jurisdiction under Section 16(2) of the 1996 Act. Challenges must be raised at the earliest possible stage.

Jurisdiction of Courts in Arbitration

Courts play a crucial role in supporting and supervising arbitration but are expected to follow the principle of minimal intervention as enshrined in **Section 5** of the Arbitration and Conciliation Act, 1996.

Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. (2001) emphasized minimal court interference in arbitration proceedings

¹⁵ Afcons Infrastructure Ltd. v. Cherian Varkey Constructions Co. (P) Ltd., (2010) 8 S.C.C. 24 (India).

- a. Court's jurisdiction can be understood in two broad phases:
- i. **Pre-Arbitration Jurisdiction** : Courts may intervene to: Appoint arbitrators under Section 11, Grant interim relief under Section 9, Decide on the validity of the arbitration agreement.
 - ii. **Post-Arbitration Jurisdiction**: Courts oversees setting aside an arbitral award under Section 34, Enforcing an arbitral award under Sections 35 and 36, appeals against certain arbitral and court orders under Section 37.

SUPERVISORY ROLE OF COURTS

Despite the statutory mandate for limited court involvement, judicial intervention in Indian arbitration is inevitable at various stages, including the appointment of arbitrators, determination of arbitrability, granting of interim measures, and enforcement of arbitral awards. Courts play a pivotal role as custodians of justice, ensuring that arbitral proceedings and outcomes adhere to principles of fairness, legality, and public policy. Landmark cases such as *Vidya Drolia v. Durga Trading Corporation*¹⁶ and *Perkins Eastman Architects DPC v. HSCC (India) Ltd*¹⁷ highlight the judiciary's endeavours to delineate the boundaries of intervention while safeguarding party autonomy.

- a. Courts play a dual role in arbitration: they act as facilitators to support the arbitration process while also serving as watchdogs to ensure fairness and legality. This duality, however, often leads to tension between the principles of arbitral autonomy and judicial oversight.
- b. The judiciary's involvement begins at the preliminary stage, such as the appointment of arbitrators under **Section 11** of the Arbitration and Conciliation Act. Courts also determine issues of arbitrability—whether a particular dispute can be resolved through arbitration—under **Section 8** and **Section 16** of the Act. Post-award, courts intervene to ensure the enforceability of awards while addressing challenges raised under **Section 34**, particularly on the grounds of public policy.

OVERLAPPING JURISDICTIONS: NATURE AND SCOPE

When Do Jurisdictions Overlap?

In the legal framework governing arbitration, overlapping jurisdictions occur when multiple forums or authorities exercise concurrent powers over certain aspects of arbitration. This interplay between arbitral tribunals, courts, and other institutions raises critical questions about efficiency, consistency, and the autonomy of parties. This overlap is rooted in the statutory framework of the Arbitration and Conciliation Act, 1996, which allows limited judicial intervention while granting significant autonomy to arbitrators. The overlap is particularly evident in hybrid arbitration systems, where domestic courts retain supervisory roles even in international arbitrations seated in India.

¹⁶ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1 (India).

¹⁷ *Perkins Eastman Architects DPC v. HSCC (India) Ltd*, (2019) 10 SCC 287 (India).

Key Areas of Overlap: Appointment of Arbitrators, Interim Relief, Setting Aside Awards, and Enforcement

a. Appointment of Arbitrators.

The appointment of arbitrators is one of the most contentious areas of overlapping jurisdiction. Section 11 of the Arbitration Act provides for the appointment of arbitrators by courts if the parties cannot reach an agreement. However, many arbitration agreements designate arbitral institutions or other authorities to handle appointments, leading to conflicts over jurisdiction.

Courts have clarified that their role under Section 11 is limited to examining the existence of a valid arbitration agreement and not delving into the merits of the dispute. Nonetheless, in cases where one party disputes the agreement's validity or the arbitrator's impartiality, courts often find themselves adjudicating these preliminary issues.

In **TRF Ltd. v. Energo Engineering Projects Ltd., 2017¹⁸**, the Supreme Court held that a person ineligible to act as an arbitrator cannot appoint another arbitrator, emphasizing the need for impartiality. This decision highlighted the overlapping roles of courts and parties in ensuring fair appointments.

b. Interim Relief

The provision for interim relief under both Section 9 (courts) and Section 17 (arbitral tribunals) is another key area where jurisdictions overlap. Parties often approach courts under Section 9 for urgent relief even after the arbitral tribunal is constituted, arguing that the tribunal lacks the authority or capacity to enforce its orders.

This dual jurisdiction has been streamlined by the 2015 Amendment to the Arbitration Act, which mandates that post-constitution, parties should primarily seek interim relief from the tribunal under Section 17. Courts are only to be approached when the tribunal is incapable of granting effective relief.

The Delhi High Court in **Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., 2021¹⁹**, upheld an emergency arbitrator's order, affirming the tribunal's authority under Section 17 while also recognizing the court's jurisdiction under Section 9 to enforce such orders.

c. Setting Aside Awards:-

Overlapping jurisdiction is also evident in proceedings to set aside arbitral awards under Section 34. While tribunals have authority over the arbitral process, courts retain the power to annul awards on specific grounds, such as procedural irregularities, lack of jurisdiction, or violation of public policy.

The scope of public policy as a ground for setting aside awards has been a contentious issue, with courts often revisiting the merits of disputes under the guise of public interest. This undermines the principle of finality in arbitration and creates jurisdictional conflicts between arbitral tribunals and courts.

¹⁸ TRF Ltd. v. Energo Eng'g Projects Ltd., (2017) 8 S.C.C. 377 (India)

¹⁹ Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., 2021 S.C.C. OnLine Del 1163 (India).

In **ONGC Ltd. v. Saw Pipes Ltd., (2003)**, the Supreme Court expanded the definition of public policy to include awards that contravene statutory provisions or cause injustice. This broad interpretation has since been narrowed by subsequent rulings, such as **Renusagar Power Co. v. General Electric Co., (1994)**²⁰, which limited public policy to fundamental principles of law and morality.

d. **Enforcement of Awards:-**

The enforcement of arbitral awards under Section 36 involves another significant area of overlapping jurisdiction. While arbitral tribunals have the authority to render awards, their enforcement as court decrees necessitates judicial involvement. This interplay often leads to delays, particularly when parties challenge enforcement by invoking objections under Section 34.

The 2015 and 2021 amendments sought to address this issue by limiting automatic stays on awards during challenge proceedings. However, courts continue to exercise discretion in granting stays, leading to conflicts between the tribunal's authority and judicial oversight.

In **Hindustan Construction Company Ltd. v. Union of India, (2020)**²¹, the Supreme Court ruled that automatic stays on arbitral awards under Section 36 are impermissible, streamlining enforcement and reducing judicial interference.

IMPACT OF OVERLAPPING JURISDICTIONS ON PARTIES

Overlapping jurisdictions create significant challenges for parties involved in arbitration, including increased costs, delays, and uncertainty. The dual recourse to courts and arbitral tribunals often undermines the efficiency of arbitration, which is intended to be a faster and more flexible alternative to litigation.

For example, jurisdictional conflicts over interim relief may result in parties seeking parallel remedies, leading to contradictory orders and prolonged disputes. Similarly, overlapping authority in appointing arbitrators or setting aside awards can cause delays in initiating or concluding arbitration proceedings.

In **Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1**²², the Supreme Court emphasized the importance of judicial intervention in cases involving serious questions of fraud, recognizing that overlapping jurisdictions can serve to safeguard the integrity of arbitration.

JUDICIAL INTERVENTION IN ARBITRATION

Judicial intervention in arbitration is a critical aspect of the arbitration process, balancing the autonomy of arbitral tribunals and the need for oversight by the judiciary. **The Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act")**, based on the UNCITRAL Model Law, is designed to minimize court interference while ensuring procedural fairness and adherence to public policy.

²⁰ *Renusagar Power Co. v. Gen. Elec. Co.*, (1994) Supp. (1) S.C.C. 644 (India).

²¹ *Hindustan Constr. Co. Ltd. v. Union of India*, (2020) 17 S.C.C. 324 (India).

²² *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1

Extent and Limits of Judicial Intervention Under the Act

The extent of judicial intervention is carefully circumscribed under Section 5 of the Act, which states, "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part." This provision underscores the legislative intent to limit court interference in arbitration proceedings to specific instances expressly provided under the Act.

Judicial intervention is permissible in circumstances such as appointment of arbitrators (Section 11), interim measures (Section 9), and challenges to arbitral awards (Section 34). The courts have clarified the extent of their intervention in several landmark cases. In **K.K. Modi v. K.N. Modi, (1998) 3 SCC 573**²³, the Supreme Court emphasized the autonomy of arbitration as a dispute resolution mechanism, holding that courts should refrain from unnecessary interference to uphold the sanctity of the process.

However, judicial intervention is not unlimited. It is confined to circumstances where intervention is essential to address issues of procedural irregularity, adherence to public policy, or enforcement of arbitral awards. The judiciary has consistently interpreted the provisions of the Act in light of its objectives to promote arbitration and minimize interference, as reaffirmed in **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552**²⁴. This case significantly reduced the scope of judicial review in international commercial arbitration, thereby aligning Indian arbitration law with global standards.

Section 5: Minimizing Court Interference

Section 5 embodies the principle of minimal judicial intervention, which is the cornerstone of the Act. By explicitly stating that judicial authorities should not interfere except as provided under the Act, this section aims to uphold the autonomy of arbitration. The judiciary has interpreted this section in various judgments to maintain a balance between minimal interference and ensuring procedural fairness.

In **P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539**, the Supreme Court held that Section 5 should be interpreted strictly to ensure the smooth functioning of the arbitration process. The Court noted that judicial intervention should be confined to situations explicitly mentioned in the Act to avoid unnecessary delays and costs.

The application of Section 5 is also evident in **Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641**²⁵, where the Court reiterated the importance of limiting judicial intervention to enhance the efficiency of arbitration as a dispute resolution mechanism. The judgment highlighted the need for judicial restraint, particularly in cases involving international commercial arbitration, to bolster India's image as an arbitration-friendly jurisdiction.

²³ K.K. Modi v. K.N. Modi, (1998) 3 SCC 573

²⁴ Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552

²⁵ Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641

Section 9: Interim Measures by Courts

Section 9 allows courts to grant interim measures of protection before, during, or after arbitral proceedings but before the enforcement of the arbitral award. This provision serves as an essential safeguard to protect the rights of the parties and ensure the efficacy of the arbitration process.

The scope of Section 9 was elaborated in **Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479**²⁶, where the Supreme Court held that courts could grant interim relief even before the commencement of arbitration proceedings if the parties intend to proceed with arbitration. The judgment underscored the importance of Section 9 in preserving the subject matter of the dispute and preventing irreparable harm to the parties.

In **Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., (2021) SCC OnLine SC 940**²⁷, the Supreme Court clarified that while granting interim relief under Section 9, courts must ensure that the relief aligns with the principles governing interim measures in arbitration, such as urgency, necessity, and proportionality. This case emphasized that Section 9 should be used judiciously to support, not undermine, the arbitration process.

Section 11: Appointment of Arbitrators by Courts and empowers courts to appoint arbitrators when parties fail to agree on the appointment. This provision ensures the continuation of arbitration despite procedural deadlocks, thereby reinforcing the effectiveness of the arbitration mechanism.

The scope and procedure under Section 11 were clarified in **SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618**²⁸, where the Supreme Court held that the power of appointment under Section 11 is a judicial function, not an administrative one. This interpretation marked a significant departure from earlier judgments, emphasizing the need for judicial oversight to ensure that the arbitration agreement is valid and enforceable.

Subsequently, the Arbitration and Conciliation (Amendment) Act, 2015, introduced significant changes to Section 11, designating the Supreme Court and High Courts as the authorities for appointing arbitrators. In **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) SCC OnLine SC 32**, the Court held that a party interested in the outcome of the dispute cannot unilaterally appoint an arbitrator. This decision highlighted the principle of impartiality and independence in the appointment process, ensuring the fairness of arbitration proceedings.

Section 34: Challenges to Arbitral Awards

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²⁶ Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479

²⁷ Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., (2021) SCC OnLine SC 940

²⁸ SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618

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COMPARATIVE ANALYSIS

Jurisdictional Approaches in International Arbitration (UNCITRAL Model Law)

The UNCITRAL Model Law on International Commercial Arbitration, adopted in 1985 and amended in 2006, provides a standardized framework for arbitration laws to facilitate uniformity and predictability across jurisdictions. Its key principles include party autonomy, limited judicial intervention, and the promotion of procedural fairness. Designed as a flexible template, it allows jurisdictions to adopt or adapt its provisions based on their legal systems. Countries such as Singapore and Canada have incorporated the Model Law directly, while others, like the UK and USA, align their arbitration frameworks with its principles without formal adoption. The Model Law addresses vital aspects such as the definition and enforcement of arbitration agreements, the composition and powers of arbitral tribunals, and the recognition and enforcement of arbitral awards.

The success of the Model Law lies in its global acceptance and its ability to harmonize domestic arbitration laws with international standards. For instance, the New York Convention of 1958 complements the Model Law by ensuring the enforcement of arbitral awards across signatory states. In *Commonwealth Development Corporation v. Montague*, the court emphasized the importance of adhering to the Model Law principles to maintain international arbitration standards.

ARBITRATION FRAMEWORKS IN THE UK, SINGAPORE, AND USA

The United Kingdom's Arbitration Act, 1996, embodies the principles of party autonomy and judicial non-intervention, resonating with the UNCITRAL Model Law. Although the UK has not formally adopted the Model Law, its legal framework aligns with international arbitration norms. Key sections include Section 1, emphasizing the overarching principles of arbitration, and Sections 30-32, which delineate the jurisdiction of arbitral tribunals. The UK courts have upheld these principles in cases like *Fiona Trust & Holding Corporation v. Privalov*, where the House of Lords affirmed the presumption of arbitrability in international disputes. Similarly, the UK's recognition of the New York Convention ensures the enforceability of foreign arbitral awards under Sections 99-104 of the Act, reinforcing its position as an arbitration-friendly jurisdiction.

Singapore, on the other hand, has emerged as a leading arbitration hub due to its adoption of the UNCITRAL Model Law in the International Arbitration Act (IAA). Provisions such as Section 6 of the IAA emphasize minimal court interference, while Section 24 reflects the principles of Articles 34 and 36 of the Model Law. Singapore courts have consistently supported arbitration, as seen in *PT First Media TBK v. Astro Nusantara International BV*,

²⁹ *DPC v. HSCC (India) Ltd., (2020) SCC OnLine SC 32*

where the Court of Appeal upheld the principle of finality of awards. In contrast, the USA operates under the Federal Arbitration Act (FAA), which predates the Model Law but reflects similar principles.

LESSONS FOR INDIA

India's arbitration regime, governed by the Arbitration and Conciliation Act, 1996, has undergone significant reforms inspired by global practices. The Act is based on the UNCITRAL Model Law but has faced criticism for excessive judicial intervention and procedural delays. Cases like *Bhatia International v. Bulk Trading SA* exposed ambiguities regarding the territorial scope of the Act, leading to its partial overruling in *BALCO*. Recent amendments, such as limiting judicial intervention under Sections 8 and 11 and promoting institutional arbitration, reflect efforts to align with international norms. However, India's judiciary has occasionally deviated from global best practices, as seen in *NTPC v. Singer*³⁰ Company, where the courts broadened the scope of judicial review under public policy.

The UK and Singapore provide valuable lessons for India in creating a more arbitration-friendly environment. While the UK's Arbitration Act emphasizes party autonomy and minimal court interference, Singapore's adoption of the Model Law showcases the benefits of a clear and consistent framework. India could strengthen its arbitration regime by streamlining procedural rules, encouraging institutional arbitration, and further limiting judicial intervention.

ADDRESSING THE OVERLAP

The interface between arbitration tribunals and national courts often creates overlaps, leading to delays and inefficiencies in arbitration proceedings. Arbitration is intended to offer an alternative to litigation, with limited judicial intervention. However, ambiguities in legislative provisions and judicial overreach often lead to conflicts regarding jurisdiction and authority. Addressing this overlap requires a multi-pronged approach involving legislative clarity, judicial discipline, and institutional reforms.

In India, the Arbitration and Conciliation Act, 1996, reflects the UNCITRAL Model Law principles, but its application has been inconsistent. For example, in *Bhatia International v. Bulk Trading S.A.*, the Supreme Court extended the application of Part I of the Act to foreign-seated arbitrations unless expressly excluded. This interpretation created uncertainty and allowed Indian courts to interfere in international arbitration. The judgment was later overruled in *BALCO*, which restored clarity by limiting Part I to arbitrations seated in India. This case highlights the need for precise legislative language to avoid jurisdictional overlaps.

Another significant area of overlap arises from the interplay between interim measures granted by courts and arbitral tribunals. Section 9 of the Arbitration Act allows parties to seek interim relief from Indian courts before or during arbitration. However, this provision has often been used to delay arbitration proceedings, as seen in *Hindustan Construction Co. Ltd. v. NHPC Ltd*³¹, where repeated court interventions undermined the arbitral tribunal's authority.

³⁰ *NTPC v. Singer*

³¹ *Hindustan Construction Co. Ltd. v. NHPC Ltd*

To address these overlaps, courts must adopt a pro-arbitration approach, respecting the autonomy of arbitration tribunals. The Supreme Court's decision in *Kishorilal Gupta v. Bank of India* emphasized the importance of minimal judicial interference and upholding the finality of arbitral awards.

STRENGTHENING ARBITRATION TRIBUNALS

Arbitration tribunals are the cornerstone of alternative dispute resolution mechanisms. Their efficiency and credibility depend on their ability to act independently, decisively, and effectively. Strengthening tribunals involves enhancing their powers, ensuring procedural fairness, and promoting institutional arbitration.

In India, the amendments to the Arbitration Act in 2015 and 2019 introduced several measures to empower tribunals. Section 17 was revised to grant tribunals the authority to issue interim orders with the same enforceability as court orders. This change aligns with international practices, such as Article 17 of the UNCITRAL Model Law, which emphasizes the tribunal's role in granting interim measures. However, the implementation of this provision remains inconsistent, with parties often circumventing tribunals and approaching courts under Section 9.

The rise of institutional arbitration in jurisdictions like Singapore and the UK offers valuable lessons. Institutions such as the Singapore International Arbitration Centre (SIAC) and the London Court of International Arbitration (LCIA) provide comprehensive procedural rules and administrative support, enhancing the efficiency of tribunals. In India, the establishment of the New Delhi International Arbitration Centre (NDIAC) is a step toward promoting institutional arbitration.

The independence of arbitrators is another critical aspect of strengthening tribunals. Provisions such as the Fifth and Seventh Schedules of the Arbitration Act, introduced in 2015, address issues of conflict of interest and impartiality.

CLARIFYING JURISDICTIONAL BOUNDARIES THROUGH LEGISLATION

In India, the jurisdictional boundaries between courts and tribunals are governed by Sections 8, 9, 11, and 34 of the Arbitration Act. While these provisions aim to balance judicial oversight with the autonomy of arbitral tribunals, their interpretation has often led to overlaps. For instance, Section 8 mandates that courts refer disputes to arbitration if a valid arbitration agreement exists. However, in *Vidya Drolia v. Durga*³² Trading Corporation, the Supreme Court clarified that courts must conduct a prima facie examination of the arbitration agreement before referring the matter, thereby limiting their intervention.

Similarly, the scope of judicial review under Section 34, which deals with setting aside arbitral awards, has been a contentious issue. The judgment in *ONGC v. Western Geco International Ltd.* expanded the interpretation of "public policy," allowing courts to review the merits of awards. This approach was curtailed in the 2015 amendment, which restricted the grounds for challenging awards to fundamental procedural violations and public policy concerns. However, further legislative clarity is needed to prevent misuse of these provisions.

³² *Vidya Drolia v. Durga*

Jurisdictions like Singapore and the UK offer models for legislative clarity. The Singapore International Arbitration Act explicitly delineates the scope of judicial intervention, ensuring minimal interference. In the UK, the Arbitration Act, 1996, adopts a tiered approach to court intervention, limiting it to specific instances such as challenges to jurisdiction or procedural irregularities.

By amending the Arbitration Act to clearly define the jurisdictional boundaries between courts and tribunals, India can reduce conflicts and promote a more arbitration-friendly environment.

REDUCING JUDICIAL OVERREACH: RECOMMENDATIONS

The principle of minimal judicial intervention, enshrined in Section 5 of the Arbitration Act, reflects the Model Law's emphasis on respecting the autonomy of arbitral tribunals. However, Indian courts have often expanded their role, as seen in **Bhatia International v. Bulk Trading S.A**³³, where the Supreme Court extended the applicability of Part I of the Act to foreign-seated arbitrations. While this decision was overruled in BALCO, similar instances of overreach continue to hinder arbitration proceedings.

To address this issue, courts must adopt a pro-arbitration approach that prioritizes the enforcement of arbitration agreements and awards. The Supreme Court's judgment in **Centrotrade Minerals v. Hindustan Copper Ltd**³⁴ demonstrated this approach by upholding the validity of two-tier arbitration agreements and emphasizing the importance of finality. Similarly, in **Bhatia International v. Bulk Trading S.A**³⁵, the court emphasized the principle of kompetenz-kompetenz, allowing arbitral tribunals to determine their jurisdiction without undue court interference.

Legislative reforms can further reduce judicial overreach by streamlining procedural rules and limiting the scope of judicial review. For instance, amending Section 34 to explicitly exclude the merits of an award from judicial scrutiny can prevent courts from re-evaluating arbitration decisions.

Educating stakeholders, including judges, lawyers, and arbitrators, about the principles of arbitration is also essential.

ROLE OF ARBITRATION INSTITUTIONS

Arbitration institutions play a crucial role in the administration and facilitation of arbitration proceedings. These institutions provide structured frameworks that ensure procedural fairness, transparency, and adherence to timelines, enhancing the credibility and efficiency of arbitration.

INDIAN ARBITRATION INSTITUTIONS

1. **Mumbai Centre for International Arbitration (MCIA):** The MCIA was established with the aim of promoting international arbitration in India and making Mumbai a global arbitration hub. It is designed to offer a platform for the resolution of international commercial disputes. The MCIA provides efficient

³³ Bhatia International v. Bulk Trading S.A

³⁴ Bhatia International v. Bulk Trading S.A

³⁵ Bhatia International v. Bulk Trading S.A

administrative support, experienced arbitrators, and a conducive environment for resolving complex international disputes.

2. **Delhi International Arbitration Centre (DIAC):** DIAC is another leading arbitration institution based in India, serving as a neutral venue for domestic and international arbitration. It is known for its administrative efficiency and emphasis on transparency. DIAC focuses on reducing delays and promoting a cost-effective resolution process. DIAC also conducts various programs to promote awareness about arbitration and increase the expertise of arbitrators and practitioners in India.
3. **Indian Council of Arbitration (ICA):** The ICA is a premier institution that promotes arbitration as a viable dispute resolution mechanism. Established in 1965, the ICA offers arbitration and conciliation services for both domestic and international commercial disputes. It aims to provide efficient, fair, and expeditious solutions by appointing qualified arbitrators and ensuring the enforcement of awards.

INTERNATIONAL ARBITRATION INSTITUTIONS

1. **International Chamber of Commerce (ICC):** The ICC is one of the most prominent international arbitration institutions. Based in Paris, the ICC facilitates arbitration across various jurisdictions and industries. The ICC's International Court of Arbitration (ICA) provides world-class support, ensuring that arbitrations are conducted according to internationally recognized standards. The ICC's rules are frequently used in cross-border disputes due to their flexibility and global reach.
2. **London Court of International Arbitration (LCIA):** The LCIA, based in London, is another leading institution for international arbitration. It is known for its institutional support and its rules, which provide a structured process for resolving disputes efficiently. The LCIA offers expert administrative services, appoints arbitrators, and enforces arbitration agreements and awards across different jurisdictions.
3. **Singapore International Arbitration Centre (SIAC):** The SIAC has established itself as one of Asia's leading arbitration institutions. It provides arbitration services under a set of rules that are well-regarded for their clarity, flexibility, and efficiency. SIAC's reputation has grown significantly due to Singapore's status as a global financial hub, making it an attractive forum for international commercial arbitration.

INSTITUTIONAL ARBITRATION VS. AD HOC ARBITRATION IN RESOLVING JURISDICTIONAL CONFLICTS

Primary differentiation lies in terms of administrative support, rules, and the appointment of arbitrators.

1. Institutional Arbitration:

In institutional arbitration, an institution (e.g., MICA, ICC, LCIA) administers the process, providing pre-established rules, appointing arbitrators, and overseeing the proceedings. In jurisdictional conflicts, the institution's rules clarify the resolution process, addressing issues such as the validity of the arbitration

agreement, arbitrator impartiality, and whether a dispute is arbitrable. Institutions have the authority and expertise to resolve these conflicts efficiently.

2. Ad Hoc Arbitration:

Ad hoc arbitration is not administered by any institution, with parties agreeing on procedural rules, arbitrator selection, and other aspects. While more flexible and cost-effective, it poses challenges in resolving jurisdictional conflicts. In ad hoc arbitration, parties must address jurisdictional issues independently, often relying on national courts, which can delay proceedings.

RECENT TRENDS AND DEVELOPMENTS

Recent trends in arbitration in India highlight a significant rise in institutional arbitration, with institutions like the Mumbai Centre for **International Arbitration (MCIA)**, **Delhi International Arbitration Centre (DIAC)**, and **Indian Council of Arbitration (ICA)** playing key roles in providing structured and efficient dispute resolution frameworks. This shift has been further bolstered by reforms such as the Arbitration and Conciliation (Amendment) Act, 2015, aligning India with global practices and enhancing its appeal as an international arbitration hub. Technology has also transformed the arbitration landscape, with virtual hearings, online document submissions, and the use of AI for case management and decision-making improving accessibility and efficiency. However, this digital evolution presents challenges like data security and ensuring fair access for all parties. The role of Indian courts in arbitration has evolved post-amendments, with a focus on reducing judicial intervention. The 2015 and 2021 amendments emphasized greater autonomy for arbitral tribunals, particularly with Section 17 enabling tribunals to handle interim relief, and the 2021 amendment limiting automatic stays on awards under Section 36, ensuring faster enforcement.

CONCLUSION

Achieving a harmonious balance between judicial oversight and arbitral autonomy is crucial for the effective functioning of arbitration in India. While judicial oversight ensures fairness and safeguards against misuse, arbitral independence is vital for maintaining efficiency and party autonomy. To address this, there is a pressing need for clearer legislative provisions, judicial restraint, and robust institutional mechanisms to mitigate jurisdictional conflicts. As India positions itself as a global arbitration hub, these elements will foster a legal environment that aligns with international best practices, promotes efficiency, and enhances stakeholder trust. By striking this balance, India can strengthen its arbitration ecosystem, ensuring a seamless, effective, and reliable dispute resolution process.