
JUDICIAL INTERVENTION IN ARBITRATION PROCEEDINGS: NEED OR HINDRANCE

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ABSTRACT

Alternative Dispute Resolution (ADR) encompasses various mechanisms, but one of the most significant is Arbitration. It has been framed to provide a faster, more flexible, and less formal method for resolving disputes outside the court system. The Arbitration and Conciliation Act, 1996, provides the framework that primarily governs arbitration in India, framed and implemented to warrant that it aligns domestic arbitration law with international provisions and encourages that there is minimal to no judicial intervention during proceedings. It ensures that the arbitration proceeding retains its independence and efficiency.

However, courts continue to intervene at different stages of arbitration, although such intervention is for checks and balances to ensure fairness and due process, but it can lead to unnecessary delay, undermining the fundamental objective of arbitration. This paper elaborates on the nature of judicial intervention in arbitration proceedings and analyses whether such intervention is a need for fairness or a hindrance to faster and more efficient dispute resolution. It delves into the statutory framework that maintains balance not only to govern arbitration independence but also states the courts' role in overseeing arbitral proceedings.

The research paper critically analyses the strengths and limitations of judicial intervention and suggests a broader system to make arbitration practices in India impactful, ensuring justice, fairness and transparency.

1. Introduction

In Arbitration, the parties in the dispute prefer to resolve the dispute outside traditional courts. The parties submit their statement of disagreements to a neutral third party, also called an arbitrator, who gives a decision that is legally binding on both parties. Arbitration is conducted with the mutual consent of the parties, as well as the procedures they agree to follow, granting them autonomy. Arbitration can also be referred to as a private adjudicatory process in which a dispute is resolved by an impartial and neutral arbitrator or arbitral tribunal after hearing, understanding and examining the stance of both parties. The final decision given by an arbitrator is known as an arbitral award, which has equal legally binding effect as a court judgment or decree.

Arbitration has shown its more pivotal role in disputes involving commercial contracts, both in domestic and international trade. Commercial transactions primarily entail parties from either the same or different jurisdictions; in such circumstances, litigation could be a complex and prolonged process for seeking fairness. Whereas, one of the important pros of arbitration is its speed, flexibility, effectiveness and efficiency, which provides independence in faster decision making. Unlike litigation, in arbitration, not only are proceedings conducted in a shorter time, but it also reduces litigation expenses and complications. Commercial contracts tend to involve sensitive business information, which could be financial data or trade strategies. Arbitration is a private proceeding that upholds confidentiality, protecting the interests and reputations of the parties.¹

Judicial intervention in the arbitration process is governed under the Arbitration and Conciliation Act of 1996 in Section 5, which states that there should be no intervention by judicial authority in arbitral proceedings unless specified in the provision.² The intervention can occur at any time, be it before, during or after the proceedings. The concept is parallel to the UNICITRAL Model Law. In the 2019 Amendment, the legislature has framed more provisions to ensure there are minimal interventions by the courts. Many more precedents and cases specify and help distinguish in what circumstances judicial interference is a necessity or when it becomes a hindrance to arbitral proceedings.

¹ ILMS Academy, 'The Basics of Arbitration and How It Works', October 24, 2025
<https://www.ilms.academy/blog/the-basics-of-arbitration-and-how-it-works>

² THE ARBITRATION AND CONCILIATION ACT, 1996-PDF

2. Statement of Problem

Arbitration is one of the significant mechanisms established to ensure faster, flexible, cost-efficient, and effective dispute resolution, which is comparable to litigation in providing a legally binding decision and ensuring fairness. The primary objective of designing this mechanism was to alleviate the traditional courts' burden; however, courts continue to frequently interfere in arbitration proceedings through arbitrator appointments, obtaining interim relief, or reviewing arbitral awards. The objective of such an intervention might be to ensure fairness, but this excessive unwanted interference undermines the principal objective of arbitration, leading to a hindrance in arbitration proceedings. Hence, the problem involves determining whether judicial interventions occur to safeguard justice or turn into an obstacle that defeats the aim of arbitration as an ADR mechanism.

3. Literature Review

3.1. Neenu Anna Nenam, '*Judicial Intervention in Arbitration Proceedings: An Analytical Study*', Indian Journal of Law and Legal Research.³

The paper analyses different aspects relating to judicial intervention in arbitration proceedings. According to the author, arbitration evolved as a response to growing backlogs of cases in courts; the aim was to enable faster, efficient, and flexible dispute resolution. The study emphasises the court's intervention before, during and after the arbitral proceedings to ensure fairness and implementation. Such interference can threaten the independence and autonomy of arbitration.

3.2. Anushka Rastogi, '*The Scope of Judicial Intervention During Different Stages of Arbitral Proceedings*', Asian Law & Public Policy Review.⁴

The author evaluates the scope and nature of judicial intervention in arbitral proceedings within the framework of judicial minimalism. The author elaborates that under the Arbitration and Conciliation Act, 1996, arbitration should function with minimal to no judicial intervention, and judicial authority can only intervene when permitted by statute. However, it must be noted

³ Neenu Anna Nenam, '*Judicial Intervention in Arbitration Proceedings: An Analytical Study*', 22nd January 2023. <https://www.ijllr.com/post/judicial-intervention-in-arbitration-proceedings-an-analytical-study>

⁴ Anushka Rastogi, '*The Scope of Judicial Intervention During Different Stages of Arbitral Proceedings: An Analysis in the Light of the Emerging Regime of Judicial Minimalism*', <https://journal.thelawbrigade.com/alppr/article/view/75>

that despite this provision court still interferes due to procedural and implementation issues. Such intervention is not an obstacle, as it fills legislative gaps without defeating the purpose of arbitration.

3.3. Rishav Narwariya, 'Judicial intervention in Arbitral process', ILE Journal of ADR Law Review.⁵

The paper analyses the statutory provisions of the Act, which allow judicial intervention. The research identifies various provisions that grants judiciary full authority to intervene at different stages of arbitration proceedings, under Sections 5, 9, 11, 34, and 37. The paper highlights that the act is framed mainly to reduce intervention and promote party autonomy. There should be checks and balances conducted to ensure there is no unwanted judicial obstacle.

3.4. Rajat Solanki & Nidhi Chauhan, 'Unravelling the Intricacies of Judicial Intervention in International Commercial Arbitration', RBADR Journal.⁶

In this research paper, the authors explore the scope of judicial intervention in the context of International commercial arbitration. It highlights that international commercial contracts are likely to prefer arbitration over litigation to avoid delays and complexities. However, the study also argues that courts are crucial for the implementation and enforceability of arbitral awards; thus, judicial intervention cannot have absolute elimination. The research advises maintaining checks and balances to avoid excessive, unnecessary judicial intervention.

4. Research Questions

Questions that are going to be answered through the research are as follows:

- Whether intervention of judicial authority in an arbitration proceeding a genuine need or a hindrance to the autonomy of arbitration?
- How has the principle of minimal jurisdiction been interpreted by Indian Courts?
- How can balance be maintained and ensured between judicial oversight and arbitral

⁵ Rishav Narwariya, 'Judicial intervention in Arbitral process', 2023
<https://jadrlr.iledu.in/judicial-intervention-in-arbitral-process/>

⁶ Rajat Solanki & Nidhi Chauhan, 'Unravelling the Intricacies of Judicial Intervention in International Commercial Arbitration', Jan 2025, <https://rbadr.emnuvens.com.br/rbadr/article/view/207>

independence?

5. Research Methodology

The method adopted for conducting this research is entirely doctrinal in nature. The research was done by analysing various sources such as case laws, statutes, journals, blogs, articles, and international conventions, like the UNICITRAL Model Law, which are also examined. Both primary sources, like statutes and judicial decisions and secondary sources like books, articles and online data, were examined to understand the extent of judicial intervention required.

6. Judicial Intervention: A Need or Hindrance

6.1. Principle of minimal judicial intervention

Section 5 of the Arbitration and Conciliation Act, 1996 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.*”⁷ The section clearly specifies that no judicial authority is to interfere in arbitration proceedings unless the provision specifically allows it. It helps to retain the independence, efficiency and private autonomy of the arbitration without any unwanted delays in providing arbitral awards. The principle applies to matters of both domestic and international arbitration seated in India. The provision specifies that judicial authorities cannot intervene unless permitted, making sure there is minimal to no interference. However, this non-intervention is not absolute in nature and adopts certain exceptions in which courts are required to step in and engage in arbitration-related issues such as appointment of arbitrators before arbitration, interim measures before or during arbitration, assistance in taking evidence, reviewing and challenging implementation and regulation of arbitral award post-arbitration.

The principle of minimal judicial intervention originated from the need to preserve party autonomy by gaining the parties' consent to conduct arbitration. It limits judicial intervention to ensure faster justice delivery, promotes efficiency to build a system where arbitration is the first approach in resolving disputes. Section 5 highlights that India's arbitration laws are aligned with international standards, as its minimal intervention theory reflects the

⁷ THE ARBITRATION AND CONCILIATION ACT, 1996, S 5

UNICITRAL Model.⁸

6.2. Judicial Intervention: Pre- Arbitration Stage

The scope of judicial intervention is limited and only allows if specified and expressly stated under the provisions of the act. The subtopic highlights the role of courts before arbitration begins, providing judicial authority with an opportunity to intervene. It helps the court ensure that the procedure is being followed fairly with arbitration tribunals already constituted.

The court is allowed to intervene in three situations before the arbitration proceeding begins; if there is an existence of valid agreement exists, courts must refer the parties to arbitration.⁹ The Supreme Court has emphasised in its decisions that this referral is not discretionary in nature; it is wholly mandatory. Courts have the authority to grant relief if requested before or during arbitration to secure the current position and protect evidence from being tampered with, which upholds arbitral integrity.¹⁰ In *Arcelor Mittal Nippon Steel India Ltd. Vs. Essar Bulk Terminal Ltd. (2021)*¹¹, the court declared that judicial authorities have the power to grant interim relief even when an arbitral tribunal has been constituted, but such power should be exercised in restraint to avoid unnecessary judicial intervention. Arbitration provides the parties with the power to select the arbitrator with mutual consent; however, if the parties fail to appoint arbitrators as per procedure, courts have the authority to intervene and exercise their power in appointing an arbitrator or constituting an arbitration tribunal.¹² In the 2019 Amendment Act, the supreme courts and high courts have the power to designate an arbitration institution. The decision taken in *SBP &Co vs. Patel Engineering Ltd.*¹³ diluted the 'kompetenz kompetenz' doctrine and suggested that the courts are only permitted to consider appointing arbitrators when there is no arbitration agreement or, if the agreement exists but is null and void.

6.3. Judicial Intervention During the Arbitration Proceedings

Arbitration, a significant dispute resolution mechanism, is designed to work independently without any court's interference. However, there are situations when courts have to take the

⁸ Section 5: Minimum Judicial Intervention - The Law Codes

⁹ THE ARBITRATION AND CONCILIATION ACT, 1996, S 8

¹⁰THE ARBITRATION AND CONCILIATION ACT, 1996, S 9

¹¹ *Arcelor Mittal Nippon Steel India Ltd. vs Essar Bulk Terminal Ltd.* AIR 2021 SC 4350

¹² ARBITRATION AND CONCILIATION ACT 1996, S 11

¹³*SBP &Co vs. Patel Engineering Ltd.* (2005) 8 SCC 618

initiative to interfere in arbitration during the proceedings. Section 9 of the Act authorises courts to grant interim relief to the parties either before or during the arbitration proceedings. This provision recognises the actual reality that, at times need for interim relief could be necessary and urgent to preserve the assets and evidence of the dispute that could be tampered with or affected during the pendency of final resolution.

The interim measure has a broad scope, which comprises preservation orders, search and seizure of properties, receiver's appointment, detention of goods, etc. The courts exercise their power in a disciplined manner to avoid unnecessarily affecting the arbitral tribunal's final decision on the dispute. After the constitution of the arbitration tribunal, the tribunal itself has the power to grant interim relief; such interim relief is as legally binding as a court's grant of interim relief, thereby strengthening arbitrators' power.¹⁴ However, if parties mutually agree, then they can seek an interim measure grant from courts as well.

An arbitral tribunal has the power to request a court for judicial assistance in collecting evidence under the act.¹⁵ This grants the court the opportunity to intervene in arbitral proceedings when parties or witnesses are not cooperating in providing evidence voluntarily or when parties are unwilling to cooperate in the evidence collection procedure. It converts the court's role from supervisory to assisting in adjudication. Courts, before assisting, must consider all the facts and position of the parties, whether evidence gathering requires court intervention or not.¹⁶ Any individual who does not follow the court's order related to evidence collection is bound to face penalties parallel to those in regular court proceedings. This power exercised by the court emphasizes the need to strike a balance between the evidence gathering with the court's assistance, as well as ensuring minimal judicial interference.

6.4. Judicial Review of Arbitral Awards

This discusses about judicial intervention at the post-arbitration stage, when the arbitral award has already been granted. Courts do not re-examine the merits of the dispute, but have limited chances of intervention when there is a lack of proper justification, if all evidences have not been evaluated, there is procedural irregularity, violation of public policy, or the arbitral award

¹⁴ THE ARBITRATION AND CONCILIATION ACT, 1996, S 9

¹⁵ ARBITRATION AND CONCILIATION ACT 1996, S 27

¹⁶ Bhatt & Joshi Associates, '*Judicial Intervention in Arbitration Proceedings in India*', October 4, 2023 <https://bhattandjoshiassociates.com/chapter-3-judicial-role-and-intervention-in-arbitration-in-india/>

is either not enough or more than required.

Parties to the dispute have the right to challenge the arbitral awards in Indian courts under Section 34, which ensures that there is finality in providing arbitral awards and all the gaps and issues of arbitral awards if exists are addressed and resolved.¹⁷ If a party has challenged the arbitral award on reasonable and specific grounds, then the arbitral award must be set aside. The grounds can include the questions on the capacity of a party to the arbitration agreement, the validity of the arbitration agreement under the law, the lack of proper notice for the appointment of arbitrators, and whether the award granted is beyond the scope of submission to arbitration, if the subject matter of the dispute falls under the category of arbitrability. Even if there is any violation of the rights of the parties or any public policy in such situations, the award must be set aside.

In *McDermott International Inc*¹⁸, the court established that the judiciary has supervisory authority in reviewing an arbitral award to promote arbitration; any changes to a final arbitral award should be made by the arbitration tribunal only. The application for setting aside the arbitral award must be filed within the prescribed time limit from the date the award was granted. The court held that the application filed will only be considered if it satisfies the grounds specified under Section 34 of the Act, and must be filed within the time period, in the *State of Maharashtra & Ors.*¹⁹

6.5. Judicial Intervention as a Safeguard for Justice and Fairness

Often recognised as a contradiction to the principle of minimal intervention, judicial intervention is crucial for ensuring autonomous and effective arbitration proceedings. It is a supervisory authority that has a protective function to promote justice and fairness. Arbitration is a private dispute resolution system where risks are higher, ensuring that proceedings occur without compromising legality, fairness, or the parties' interests. Integrity and neutrality are crucial standpoints in arbitration; arbitrators are chosen on the mutual consent of the parties. There are still situations where there is unequal bargaining power, or the arbitrators could end up being biased individuals. That is where the Judiciary has the power to intervene and ensure

¹⁷ ARBITRATION AND CONCILIATION ACT 1996, S 34

¹⁸ *McDermott International Inc. v Burn Standards Co. Ltd.* (2006) 11 SCC 181

¹⁹ *State of Maharashtra & Ors. v M/s. Ark Builders Pvt. Ltd.* (2011) 4 SCC 616

that integrity and impartiality are upheld.²⁰

The court has justifiable authority to intervene in circumstances where there is a reasonable doubt regarding the independence and neutrality of an arbitrator. If arbitrators are found to be engaged in misconduct, it could be corruption, fraud, coercion or failure to follow the proceedings norms. If there is a violation of the rules of law or principles of natural justice, especially *nemo judex in causa sua*, i.e. no one should be the judge in their own case. Hence, judicial oversight is sometimes necessary to prevent arbitration from becoming a weapon of biased adjudication.

Arbitration should be conducted by adhering to procedural safeguards. Parties should have the right to be heard, i.e. *Audi alteram partem*. Parties should be treated equally and must have mutual consent in the appointment of arbitrators, be provided with proper notice and equal chance to present their evidence. However, judicial interference is necessary when one party is not allowed to be heard, proceedings are conducted unjustly or arbitrarily, or there is a violation of an individual's rights. According to Section 34²¹, an arbitral award can be set aside if the arbitration proceeding was not conducted in accordance with the agreement and the law prescribed.

The judiciary is a guardian of legality, to make sure that there is efficiency, not arbitrariness, autonomy respected, not abused, and that faster justice is not equal to unfair justice in arbitration. This judicial interference is necessary to make a balance between parties' independence and autonomy by retaining efficiency with limited interference, fair decision making by ensuring procedural and substantive regulation and alignment with the public's interest and legal standards.

6.6. Judicial Interference as a Hindrance to Arbitral Efficiency

Arbitration is a pillar standing on the foundations of fairness, flexibility, effectiveness, efficiency, independence, confidentiality and autonomy. Under the Arbitration and Conciliation Act, 1996, judicial intervention is limited unless specified by the provision to avoid undermining the primary aim of Arbitration. Arbitration is an alternative to litigation,

²⁰ Aishwarya Agrawal, 'Extent of Judicial Intervention in Arbitration', February 11, 2025 <https://lawbhoomi.com/extent-of-judicial-intervention-in-arbitration/>

²¹ ARBITRATION AND CONCILIATION ACT 1996, S 34

preferred to resolve disputes outside of traditional courts. It should not be an addition to litigation procedure by encouraging unnecessary judicial intervention. Once the judiciary decides to interfere, it obstructs the main aim of swift resolution, making the arbitration procedure more complex and might take months or years to settle. In addition to this, continuous court intervention defeats the purpose of faster dispute resolution to avoid backlogs of cases and overburdening courts.

With delayed and longer duration taken to settle dispute leads to an increase in costs, even when arbitration is preferred to minimise financial burden. Expenses start increasing when legal counsel is required in courts to represent with arbitral proceeding simultaneously, hence increase due to court fees and other procedural and substantive costs. Arbitration is mostly encouraged for its principle of party autonomy, granting parties control over the procedure, arbitrator options, venue, seat and governing rules. The party's autonomy emphasises independence and efficiency of the arbitration proceeding. However, repetitive unwanted judicial intervention can affect the independence of the parties as well as weaken the autonomy by giving judiciary authorities opportunity to analyse the agreements, affect the appointment process and review decisions even before finalized.²²

Hindrance in arbitral efficiency, judicial interference makes the streamlined process of arbitration into a multi-tiered process, negating the very rationale behind preferring arbitration over litigation. could be defined by stating that Judicial intervention could be seen as an excessive form of interference, which could reduce confidence in the enforceability of an arbitral award, discourage foreign investors to invest Indian market and weaken India's position as an arbitration hub. While judicial oversight is recognised and accepted for fairness and justice, it should be understood that the line between supervision and intervention is very thin and could be blurred if not understand how to segregate. Too much intervention or too little intervention can disturb efficiency and autonomy or lead to arbitral misconduct, respectively.

6.7. Recent Reforms

The Arbitration and Conciliation Act has been amended over the years in 2015, 2019 and 2021. It highlights the efforts made to refine and restructure to maintain a balance between party

²² Versha Vahini, '*Intervention by Court in Arbitration Proceedings: Help or Hindrance*', ASCE Library <https://ascelibrary.org/doi/10.1061/JLADAH.LADR-1472>

autonomy and judicial supervision. The 2015 Amendment limited judicial intervention, restructured public policy grounds, strict time periods, interim relief, and strengthened enforceability. The arbitration council of India promoted institutional arbitration, emphasized arbitrator accreditation and aimed to improve transparency and credibility in arbitral proceedings through the 2019 Amendment. Automatic stay on arbitral awards was restricted, with stays only permitted in cases of fraud or corruption through the 2021 Amendment, thereby reducing misuse of proceedings in arbitration. In the case of *S.V. Sundaram v. State of Karnataka*²³, the Supreme Court restated the principle of minimal judicial interference under Sections 34 and 37²⁴ of the Arbitration and Conciliation Act, 1996. The judgment reinforced arbitral autonomy by emphasising that courts cannot modify awards but set them aside under specified statutory grounds.²⁵

7. Conclusions and Suggestions

Over the years, the Indian judiciary has made efforts to attempt to create a balance between minimal judicial intervention and arbitration autonomy through progressive interpretations, narrowed grounds for interference, and stronger enforceability of arbitral awards. However, due to over-judicial supervision, procedural misinterpretation, and a lack of mutual agreements, there is persistence in challenges.

Therefore, it should be acknowledged that judicial intervention is neither entirely a need nor entirely a hindrance. The need and its impact can only be decided in context to the subject matter and to what extent and manner it is exercised. Judicial intervention does not need to be eliminated, but court interference should be allowed and constructed in a certain way and on specific, narrowed grounds, where arbitration proceedings are not hampered, but justice and fairness are upheld.

Different approaches can be considered to minimise judicial intervention as well as ensure its enforcement are as follows:

²³ *S.V. Sundaram v. State of Karnataka* (2024) 3 SCC 623

²⁴ THE ARBITRATION AND CONCILIATION ACT, 1996, S 37

²⁵ Rishabh Gandhi, 'Indian Arbitration Laws in 2024: Key Reforms, Landmark Judgments, and Emerging Challenges', SCC Times

<https://www.sconline.com/blog/post/2025/01/14/indian-arbitration-laws-in-2024-key-reforms-landmark-judgments-and-emerging-challenges/>

1. The Supreme Court should strictly follow legislative compulsion of minimal interference. The judiciary should perform its role of procedural and jurisdictional evaluation rather than re-examination of the merits of the arbitral award. An approach that supports pro-arbitration should be encouraged to ensure confidence and efficiency in arbitration.
2. Under Section 34, the ground for public policy is interpreted broadly, allowing courts the opportunity to interfere in arbitral awards. This highlights the need to narrow down this judicial interpretation to avoid any misuse of the provision.
3. It is high time that India should shift from ad hoc arbitration to institutional arbitration by promoting and encouraging arbitration institutions like the Mumbai Centre for International Arbitration and the Delhi International Arbitration Centre. The framework provided by institutions is more structured, with a timeline and administrative assistance, preventing the court's intervention.
4. Judicial intervention defeats the purpose of outside traditional court settlement, i.e. Arbitration as it leads to a longer duration. Thus, special benches or a fast-track mechanism should be adopted to mandate time-bound disposal for arbitration-based cases.
5. Judicial authority intervening in arbitral matters should be trained to ensure they are experienced in dealing with judicial intervention in arbitration proceedings. Commercial courts and arbitration benches dedicated to the approach will emphasize consistency and prevent unnecessary intervention.