JUDICIAL INTERVENTION IN ARBITRATION: BALANCING AUTONOMY AND ACCOUNTABILITY IN INDIA

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"Arbitration: An Alternative to Courtroom Adjudication"

The ability to resolve conflicts in an effective, predictable, and business-friendly manner has become essential in a society that is becoming more globalized and commercialized. Despite being essential to the rule of law, traditional litigation has frequently shown itself to be inadequate for the demands of contemporary business actors. The goal of swift justice is seriously undermined by the courts' burden of complicated procedures, protracted deadlines, and growing backlogs of cases. With millions of cases languishing at various judicial levels in India, the issue of judicial delay has been widely recognized, making the investigation of alternate conflict resolution procedures necessary.[1]

In this context, arbitration has emerged as a preferred mechanism for dispute resolution, particularly in commercial matters, owing to its flexibility, confidentiality, and party-driven nature. Arbitration offers several structural advantages over conventional court-based adjudication. It allows parties to choose their own adjudicators, determine procedural rules, and ensure a degree of expertise in the resolution of technical or industry-specific disputes. More importantly, arbitration is premised on the principle of party autonomy, which enables disputing parties to design a dispute resolution mechanism best suited to their commercial interests.[2] This autonomy, coupled with the enforceability of arbitral awards across jurisdictions under frameworks such as the New York Convention, has made arbitration the cornerstone of international commercial dispute resolution.[3]

However, the theoretical advantages of arbitration are often undermined in practice, particularly in jurisdictions where judicial intervention remains pervasive. The tension between judicial oversight and arbitral independence lies at the heart of arbitration law. While a certain degree of court supervision is necessary to ensure fairness, legality, and adherence to public policy, excessive intervention can erode the very essence of arbitration as a swift and autonomous process.[4]

The Indian experience with arbitration vividly illustrates this tension. Historically, Indian courts have adopted an interventionist approach, frequently scrutinizing arbitral awards on expansive grounds such as "public policy." This approach not only led to delays in enforcement

[1] Law Commission of India, Arrears and Backlog: Creating Additional Judicial (Wo)manpower (Report No 245, 2014).
[2] Gary B Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014).
[3] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).
[4] Redfern and Hunter, Law and Practice of International Commercial Arbitration (6th edn, OUP 2015).

but also diminished India's credibility as an arbitration-friendly jurisdiction. Judicial pronouncements such as *ONGC v. Saw Pipes Ltd*. significantly broadened the scope of judicial interference by expanding the interpretation of public policy, thereby opening the floodgates for challenges against arbitral awards.[5]

Recognizing these shortcomings, the Indian legislature undertook substantial reforms through amendments to the *Arbitration and Conciliation Act, 1996*, particularly in 2015 and 2019. These reforms aimed to align Indian arbitration law with global best practices by limiting judicial intervention, promoting institutional arbitration, and expediting the enforcement process.[6]Subsequent judicial decisions, including *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* have attempted to recalibrate the balance by adopting a more restrained approach toward interference.[7]

Despite these developments, challenges persist. Courts continue to grapple with the boundaries of permissible intervention, especially in cases involving allegations of patent illegality or violations of public policy. Inconsistencies in judicial interpretation, coupled with procedural delays, continue to impede the realization of arbitration's full potential in India.[8]

Against this backdrop, India has articulated a clear ambition to position itself as a global arbitration hub, competing with established centres such as Singapore and London. Initiatives such as the establishment of institutional arbitration frameworks and the emphasis on minimizing judicial interference reflect a broader policy shift toward creating a pro-arbitration ecosystem.[9]

However, the judiciary's commitment to upholding the values of limited involvement and respect for arbitral autonomy will ultimately determine the effectiveness of these initiatives. In India, judicial scrutiny of arbitration, which was once seen to be a court-free conflict resolution process, is growing. The proper balance between judicial supervision and arbitral independence is called into question by this conundrum.

With an emphasis on whether recent legislative and judicial trends have effectively built a pro-arbitration system, this study aims to critically explore the changing role of judicial intervention in arbitration in India. It contends that even while India has made great progress toward reform, the country's ability to become a truly arbitration-friendly jurisdiction is nevertheless hampered by the continuation of doctrinal difficulties and inconsistent judicial methods.

[5] ONGC Ltd v Saw Pipes Ltd (2003) 5 SCC 705.
[6] Arbitration and Conciliation (Amendment) Act 2015; Arbitration and Conciliation (Amendment) Act 2019.
[7] Ssangyong Engineering & Construction Co Ltd v NHAI (2019) 15 SCC 131.
[8] Avtar Singh, Law of Arbitration and Conciliation (Eastern Book Company, latest edn).
[9] Ministry of Law and Justice, Government of India, Report on Institutional Arbitration in India (2017).

Conceptual Foundations and Principles of Arbitration

Through the voluntary, private procedure of arbitration, parties agree to have their disputes heard by an unbiased third party (the arbitrator), whose decision is final. Unlike litigation, arbitration is predicated on the consent of the parties rather than the sovereign authority of the state. Because of its contractual foundation, arbitration is a hybrid process that is both partially adjudicatory and somewhat contractual.[10]

India's formal acknowledgment of arbitration is represented by the Arbitration and Conciliation Act, 1996, which is based on the UNCITRAL Model Law and seeks to provide a comprehensive framework for both domestic and international commercial arbitration. A final, legally binding decision rendered by an arbitral tribunal that is enforceable in the same manner as a court order is referred to as a "arbitral award" under the Act. Because arbitration operates at the intersection of procedural law (adjudicatory process) and contract law (party agreement), it is a unique approach to conflict resolution.[11]

Foundational Principle: Party Autonomy

The cornerstone of arbitration is the principle of party autonomy, which grants parties the freedom to determine:

- the choice of arbitrator(s),
- the applicable law,
- procedural rules, and
- the seat and venue of arbitration.

This principle has been widely recognized as the “guiding spirit” of arbitration law.[12]It ensures that dispute resolution aligns with commercial expectations and minimizes external interference.

Indian courts have repeatedly upheld party autonomy, subject to limited restrictions such as public policy and statutory mandates. However, excessive judicial intervention can dilute this principle by substituting judicial discretion for party choice.[13]

UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006).

[10] Gary B Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014).
[11] Arbitration and Conciliation Act 1996, s 2(1)(c), s 35
[12] Redfern and Hunter, Law and Practice of International Commercial Arbitration (6th edn, OUP 2015).
[13] Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc (2012) 9 SCC 552

Principle of Minimal Judicial Intervention

A defining feature of modern arbitration regimes is the principle of minimal judicial intervention, which seeks to restrict court involvement to specific situations expressly provided by law.

This principle finds explicit statutory recognition under *Section 5* of the *Arbitration and Conciliation Act, 1996,* which states:

"No judicial authority shall intervene except where so provided in this Part."[14]

The rationale behind this principle is twofold:

1. To preserve the efficiency and speed of arbitration, and
2. To respect the autonomy of the arbitral process.

However, in practice, Indian courts historically adopted a more interventionist stance, often expanding the scope of review beyond legislative intent. This created a tension between statutory minimalism and judicial activism.[15]

Doctrine of Public Policy

The concept of public policy represents one of the most significant grounds for judicial intervention in arbitration. It allows courts to set aside arbitral awards that violate fundamental legal principles or societal interests.

In India, the interpretation of public policy has undergone significant evolution. In *ONGC v. Saw Pipes Ltd.,* the Supreme Court adopted an expansive interpretation, including "patent illegality" within its ambit.[16] This marked a shift toward greater judicial scrutiny and significantly widened the scope for challenging arbitral awards.

Subsequently, judicial trends have attempted to narrow this scope. In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* the Court restricted the interpretation of public policy, aligning it more closely with international standards.[17]

Thus, public policy serves as a double-edged sword., it safeguards legality but also risks undermining arbitral finality when interpreted broadly.

[14] Arbitration and Conciliation Act 1996, s 5

[15] Fali S Nariman, 'Ten Steps to Salvage Arbitration in India' (2016) 29(3) National Law School of India Review.

[16] ONGC Ltd v Saw Pipes Ltd (2003) 5 SCC 705.

[17] Ssangyong Engineering & Construction Co Ltd v NHAI (2019) 15 SCC 131.

Finality and Binding Nature of Arbitral Awards

Ensuring the finality of conflicts is one of arbitration's main goals. Arbitral awards are meant to be legally binding and enforceable, with little room for appeal.An arbitral award is comparable to a civil court judgment under the Arbitration and Conciliation Act, 1996, and is therefore enforceable. The legislative purpose to preserve finality is reflected in the few grounds for annulling an award under Section 34.[18]
However, this finality has historically been weakened by frequent judicial intervention, especially through broad interpretations of statutory provisions, creating ambiguity and delays.[19]

Arbitration as an Alternative to Litigation

Arbitration is often conceptualized as part of the broader framework of Alternative Dispute Resolution (ADR) mechanisms. Its primary objective is to provide a faster, more efficient, and less formal alternative to traditional litigation.
Key advantages include:

- Speed and efficiency
- Confidentiality
- Flexibility in procedure
- Expertise of arbitrators

Despite these advantages, arbitration in India has sometimes mirrored the inefficiencies of litigation due to judicial intervention and procedural delays. This paradox raises questions about whether arbitration truly functions as an “alternative” or merely as an extension of the judicial process.[20]

Internationalization of Arbitration

Arbitration has evolved into a transnational dispute resolution mechanism, particularly in the context of international commercial transactions. The enforceability of arbitral awards across jurisdictions is facilitated by instruments such as the New York Convention.[21]

[18] Arbitration and Conciliation Act 1996, s 34..
[19] Avtar Singh, Law of Arbitration and Conciliation (Eastern Book Company, latest edn).
[20] Sumeet Kachwaha, ‘Arbitration in India: A Practitioner’s Guide’ (Kluwer Law International).
[21] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

India's arbitration framework is aligned with international standards through the incorporation of UNCITRAL Model Law principles. However, divergence in judicial interpretation has occasionally created uncertainty for foreign investors and commercial entities.[22]

Thus, the success of arbitration in India is closely linked to its ability to harmonize domestic practices with global norms. Guru Nanak Foundation v Rattan Singh (1981) 4 SCC 634.

HISTORICAL EVOLUTION OF ARBITRATION IN INDIA

From Court-Controlled Arbitration to Legislative Reform

The development of arbitration law in India shows a slow transition from a judicially controlled system to one that seeks to acknowledge arbitral autonomy. The Arbitration Act, 1940, which was heavily criticized for excessive court intervention, was the primary law governing arbitration prior to the passage of the Arbitration and Conciliation Act, 1996. At practically every stage of the arbitral procedure, including the selection of arbitrators, oversight of the proceedings, and enforcement of awards, courts were crucial. As a result, arbitration became cumbersome and slow, frequently undermining its goal of offering a practical substitute for litigation.

In Guru Nanak Foundation v. Rattan Singh, the Supreme Court recognized these flaws, pointing out that arbitration had become extremely complex and inefficient. In actuality, arbitration under the 1940 regime served as an extension of litigation rather than a substitute for it, lessening the strain on courts.[23]

A major change in legislation occurred with the passage of the Arbitration and Conciliation Act in 1996. The Act, which was based on the UNCITRAL Model Law, sought to modernize arbitration by encouraging party autonomy and minimizing judicial intrusion. Section 5 clearly intends to establish a pro-arbitration environment by restricting the function of courts. Despite this progressive legislative design, courts continued to intervene since early judicial interpretations did not entirely match with these goals[24].

The Supreme Court's decision in ONGC v. Saw Pipes Ltd., which expanded the concept of "public policy" under Section 34 to include "patent illegality," was a major development in Indian arbitration law. This significantly increased the scope of judicial review and allowed courts to intervene with arbitral rulings on a broader range of grounds. The position was

[22] Ministry of Law and Justice, Government of India, High Level Committee Report on Institutional Arbitration(2017).
[23] Guru Nanak Foundation v Rattan Singh (1981) 4 SCC 634.
[24] UNCITRAL Model Law on International Commercial Arbitration 1985.

reinforced in ONGC v. Western Geco International Ltd. by the addition of new standards such "judicial approach" and "reasonableness." These modifications increased challenges to arbitral decisions and undermined arbitration's finality.[25]The ruling in ONGC v. Saw Pipes Ltd., where the Supreme Court extended the definition of "public policy" under Section 34 to encompass "patent illegality," marked a significant turning point in Indian arbitration jurisprudence. This permitted courts to intervene with arbitral verdicts on a wider range of grounds and greatly expanded the scope of judicial review.

Another important development was the decision in *Bhatia International v. Bulk Trading S.A.*, where the Court held that Part I of the 1996 Act would apply even to foreign-seated arbitrations unless expressly excluded.[26] This expanded the jurisdiction of Indian courts and created uncertainty in international arbitration.

A corrective shift came with *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, where the Supreme Court overruled *Bhatia International* and restored the principle of territoriality by limiting the application of Part I to arbitrations seated in India.[6] This judgment marked an important step towards aligning Indian arbitration law with international standards.

Legislative reforms further strengthened this shift. The Arbitration and Conciliation (Amendment) Act, 2015 narrowed the scope of public policy and introduced “patent illegality” as a limited ground applicable only to domestic awards[27] The 2019 Amendment aimed to encourage institutional arbitration and lessen the use of ad hoc procedures

A shift toward constraint is evident in more recent court rulings. The Supreme Court made it clear in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI* that the scope of review under Section 34 must remain restricted and that courts should not interfere with arbitral verdicts on the merits.

All things considered, the development of arbitration legislation in India demonstrates a shift from overbearing judicial intervention to a more reasonable strategy. The effectiveness of arbitration in India is nevertheless impacted by issues including inconsistent interpretation and procedural delays, while this shift is still ongoing.

[25] *ONGC v Western Geco International Ltd* (2014) 9 SCC 263.
[26] *Associate Builders v DDA* (2015) 3 SCC 49.
[27] *Arbitration and Conciliation Act 1996, ss 9 and 17*

Judicial intervention: an Analysis

Judicial intervention in arbitration in India revolves primarily around the extent to which courts can review and interfere with arbitral awards. While the *Arbitration and Conciliation Act, 1996* is based on the principle of minimal judicial interference, in practice, courts have played a much more active role. The tension between finality of arbitral awards and judicial oversight lies at the heart of arbitration jurisprudence in India.

At a conceptual level, judicial intervention is not entirely undesirable. Courts play an important role in ensuring procedural fairness, preventing fraud, and safeguarding public policy. However, the problem arises when this supervisory role expands into a re-evaluation of the merits of the dispute, thereby undermining the very purpose of arbitration as a speedy and autonomous dispute resolution mechanism.

Scope of Intervention under Section 34 and Related Provisions

Section 34 of the Act, which allows for the annulment of arbitral tribunal awards, is the primary section that addresses judicial involvement. The list of grounds often includes: the parties' incompetence; the arbitration agreement's illegality; improper notice; an excess of jurisdiction; and a clash with public policy. Since *Section 34* is not an appeal section, its function is clear. Judges are not supposed to reconsider the case or reevaluate the evidence. Only in cases where there is a flaw in the arbitral procedure or the award itself is intervention allowed.[28]

Since *Section 34* is not an appeal section, its function is clear. Judges are not supposed to reconsider the case or reevaluate the evidence. Only in cases where there is a flaw in the arbitral procedure or the award itself is intervention allowed. [29] However, this distinction has often been muddled by court interpretation. The substantive examination of the arbitral verdicts was made possible by the extension of "public policy" in *ONGC v. Saw Pipes Ltd.,* which allowed the courts to intervene under the pretext of "patent illegality."[30]

The Supreme Court attempted to categorize the reasons for interference and emphasized that the courts should not function as appellate courts in *Associate Builders v. DDA, which partially addressed the position.*[31]

[28] Arbitration and Conciliation Act 1996, s 34(2).
[29] Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (6th edn, OUP 2015).
[30] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705.
[31] *Associate Builders v DDA* (2015) 3 SCC 49.

In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* the Court made it clearer that "patent illegality" should not be used to reappreciate evidence and limited the interpretation of public policy. With this ruling, Indian arbitration law is now one step closer to meeting international best practices.[32]

However, in spite of clear doctrinal positions being established in recent decisions, there has been no consistency in their application. The first major issue is that, in numerous instances, courts continue to engage in an in-depth evaluation of arbitral awards in the guise of ensuring legality.

Another area where significant intervention by courts can be noted is in interim orders under *Sections 9 and 17 of the Arbitration and Conciliation Act, 1996*.[33] Section 9 permits courts to grant interim orders, while Section 17 permits arbitral tribunals to grant interim orders as well. In a perfect world, Section 17 should be used after an arbitral tribunal is established. Similarly, the scope of judicial review is expanded by the appeals granted under Section 37 of the Code. Despite the fact that these appeals are limited, they add another level of litigation, which causes delays.

The meaning of "public policy" is another matter that has raised concerns. The term's meaning has been clarified, but it is still rather vague. "Thus, it can be said that the Indian arbitration system still faces the challenge of maintaining the line of distinction between supervisory jurisdiction and appellate review, even though recent developments show a shift towards a more restrained approach." The consistency with which the courts implement the principle of minimum intervention determines how effective arbitration is as a workable alternative for resolving disputes..

Expansion of Judicial Intervention

The trajectory of arbitration jurisprudence in India cannot be understood without closely examining the role played by the judiciary in interpreting the scope of intervention. One of the most significant decisions in this regard is *ONGC v. Saw Pipes Ltd.*.

In this case, the Supreme Court expanded the scope of "public policy" under *Section 34* of the *Arbitration and Conciliation Act, 1996* by including "patent illegality" as a ground for setting aside arbitral awards[34]. The Court held that an award could be interfered with if it was contrary to the substantive provisions of law or the terms of the contract.

[32] *Ssangyong Engineering & Construction Co Ltd v NHAI* (2019) 15 SCC 131.
[33] Arbitration and Conciliation Act 1996, ss 9 and 17
[34] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705.

While the intention was to prevent unjust or illegal awards, the effect of this judgment was far-reaching. It effectively allowed courts to re-examine the merits of arbitral decisions, thereby diluting the principle of finality. This marked the beginning of a more interventionist approach, where arbitration increasingly resembled litigation.

This position was further reinforced *in ONGC v. Western Geco International Ltd*., where the Court expanded the concept of public policy by introducing vague standards such as "judicial approach" and "reasonableness."[35] "These additions gave courts even wider discretion, making it easier to challenge arbitral awards and contributing to delays in enforcement.

Another important case during this phase is *Bhatia International v. Bulk Trading S.A.,* where the Supreme Court held that Part I of the Act would apply to foreign-seated arbitrations unless expressly excluded[36].This significantly expanded the jurisdiction of Indian courts and created uncertainty in international arbitration, as parties could approach Indian courts even when the seat of arbitration was outside India."

Taken together, these decisions reflect a phase where judicial intervention expanded beyond the intended limits, undermining the efficiency and autonomy of arbitration.

The Pro-Arbitration Shift

Subsequent rulings show a change toward a more moderate and arbitration-friendly stance. In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, the Supreme Court overturned Bhatia International and reinstated the territoriality principle, marking a significant turning point. By making it clear that Part I of the Act solely applies to arbitrations held in India, the Court limited judicial intervention in overseas arbitrations and brought Indian law into compliance with international norms.[37]

In *Associate Builders v. DDA,* the Court sought to systematize the idea of public policy by classifying the grounds of interference, providing additional clarification. It emphasized that courts shouldn't take on the role of appellate authorities and shouldn't become involved just because someone could have a different opinion. An crucial step toward limiting excessive judicial review was taken with this ruling.[38]

The most significant development in recent years is *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* where the Supreme Court revisited the scope of *Section 34* in light of the

[35] *ONGC v Western Geco International Ltd* (2014) 9 SCC 263.
[36] *Bhatia International v Bulk Trading SA* (2002) 4 SCC 105.
[37] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552
[38] *Associate Builders v DDA* (2015) 3 SCC 49.

2015 Amendment[39].The Court narrowed the interpretation of public policy and clarified that "patent illegality" cannot be used as a ground to re-appreciate evidence or review the merits of the dispute.

This decision is particularly important because it signals a conscious move towards minimal judicial intervention and reinforces the idea that arbitral awards should be final and binding, subject only to limited review.

Overall, the judicial trend shows a gradual correction from an interventionist approach to a more balanced one. However, the effectiveness of this shift depends on consistent application by courts, which remains a challenge in practice.

COMPARATIVE ANALYSIS OF ARBITRATION FRAMEWORK

United Kingdom and Singapore: Models of Minimal Judicial Intervention

A useful way to understand the position of judicial intervention in India is to compare it with established arbitration jurisdictions such as the United Kingdom and Singapore. Both jurisdictions are widely regarded as pro-arbitration regimes, not merely because of their legislation but due to a consistent judicial philosophy that prioritises arbitral autonomy.

In the United Kingdom, arbitration is governed by the *Arbitration Act 1996*, which is built on the principle of non-intervention except where expressly provided.[40] The Act carefully limits the role of courts to specific situations such as challenges to jurisdiction, serious procedural irregularity, and (in limited cases) appeals on questions of law. Importantly, even where judicial review is permitted, it is subject to strict thresholds and often requires leave of the court or agreement of the parties. This ensures that arbitral awards retain their finality and are not easily reopened. The statutory framework, therefore, strikes a balance between fairness and autonomy while maintaining a clear boundary against excessive interference.

Similarly, Singapore has developed a strong reputation as an arbitration-friendly jurisdiction, largely due to its consistent policy of strict judicial restraint. Courts in Singapore intervene only in narrowly defined circumstances, such as jurisdictional defects or violations of natural justice, and they do not re-examine the merits of the dispute. This approach is reinforced by the functioning of institutions like the Singapore International

[39] Ssangyong Engineering & Construction Co Ltd v NHAI (2019) 15 SCC 131.
[40] Arbitration Act 1996 (UK).

Arbitration Centre (SIAC), which ensures procedural efficiency and reduces reliance on courts. Moreover, Singaporean courts have repeatedly emphasised that the role of the judiciary is supportive rather than supervisory, thereby reinforcing party autonomy and finality of awards. A key common feature of both jurisdictions is clarity and consistency. Courts follow a predictable approach, and legislative provisions clearly define the scope of intervention. As a result, arbitration in these jurisdictions functions as a genuinely independent dispute resolution mechanism rather than an extension of litigation.

At a formal level, India's arbitration framework under the Arbitration and Conciliation Act, 1996 is closely aligned with international standards, particularly after the 2015 and 2019 amendments. The Act incorporates the principle of minimal judicial intervention and limits court involvement to specific circumstances, similar to the UK model.

However, the difference lies not so much in the statutory framework as in its judicial application. Unlike the UK and Singapore, where courts consistently adopt a restrained approach, Indian courts have historically displayed a tendency towards broader intervention. This is evident in the expansive interpretation of "public policy" and the willingness of courts to scrutinise arbitral awards in greater detail[41].

Even in recent years, although there has been a clear shift towards a pro-arbitration stance, inconsistencies remain. Courts have sometimes adopted differing interpretations of the same provisions, particularly in relation to enforcement and the scope of review under Section 34[42].This creates a degree of unpredictability that is largely absent in jurisdictions like the UK and Singapore.

Another important distinction lies in the role of institutional arbitration. While Singapore and the UK rely heavily on well-established arbitral institutions, India has traditionally followed an ad hoc arbitration model, which often leads to procedural inefficiencies and greater court involvement. Although recent reforms aim to promote institutional arbitration, this transition is still in progress.

In essence, while India has moved closer to global standards in terms of legislation, it continues to diverge in practice due to:

- inconsistent judicial interpretation,
- relatively higher court involvement in enforcement and interim measures, and
- a weaker institutional arbitration framework.

[41] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer 2014).
[42] *Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48.

Therefore, it can be argued that India is currently in a transitional phase, it has adopted the language and structure of a pro-arbitration regime, but has not yet achieved the same level of judicial restraint as seen in the UK and Singapore. The success of India's ambition to become a global arbitration hub will ultimately depend on whether courts can consistently adhere to the principle of minimal intervention in practice, rather than merely in theory.[43]

KEY CHALLENGES IN INDIAN ARBITRATION

Doctrinal Ambiguity in "Public Policy"

One of the most debated issues in Indian arbitration law is the uncertain scope of "public policy" under *Section 34 of the Arbitration and Conciliation Act, 1996.* Although the provision was intended to provide limited grounds for judicial review, its interpretation has fluctuated over time.[44]

The expansion introduced in *ONGC v. Saw Pipes Ltd*. allowed courts to set aside awards on the ground of "patent illegality," thereby widening judicial scrutiny.[1] While later decisions such as *Ssangyong Engineering & Construction Co. Ltd. v. NHAI* attempted to restrict this expansion, the doctrine still lacks precise boundaries.[2]

The result is a continuing uncertainty courts have discretion to interpret public policy broadly, and parties often exploit this ambiguity to challenge awards. This weakens the finality of arbitration and increases litigation around arbitral outcomes.

Blurring of Supervisory and Appellate Functions

A second issue lies in the tendency of courts to move beyond supervisory jurisdiction and engage in what is effectively an appellate review. Even though the Arbitration and Conciliation Act, 1996 clearly limits intervention, judicial reasoning in several cases reveals a closer examination of facts, evidence, and contractual interpretation than is formally permitted.

This trend can be traced back to decisions *like ONGC v. Western Geco International Ltd*., where the introduction of concepts such as "judicial approach" and "reasonableness" expanded the scope of review[45]. Although subsequent rulings have cautioned against such practices, their influence persists in practice.

[43] Singapore International Arbitration Act (Cap 143A).
[44] Arbitration and Conciliation Act 1996, s 34.
[45] *ONGC v Western Geco International Ltd* (2014) 9 SCC 263.

The blurring of these roles creates a situation where arbitration begins to resemble a first stage of litigation, followed by extensive judicial scrutiny, thereby defeating its core objective of finality.

Procedural Delays and Multi-Layered Challenges

Another major concern is that arbitration in India often fails to deliver the speed it promises. While arbitral proceedings themselves may be relatively efficient, delays arise at the stage of court intervention particularly during challenges and enforcement.

Under *Sections 34 and 37 of the Arbitration and Conciliation Act, 1996*, parties can challenge awards and subsequently file appeals[46]. This creates a multi-layered process that can significantly prolong dispute resolution. In practice, enforcement of awards is frequently stayed or delayed due to prolonged litigation.

This problem is compounded by judicial backlog and inconsistent timelines across courts. As a result, arbitration sometimes loses its comparative advantage over traditional litigation, especially in high-value commercial disputes.

Weak Institutional Framework and Continued Court Dependence

A structural issue underlying many of these problems is the relatively weak development of institutional arbitration in India. Unlike jurisdictions such as Singapore or the UK, India has historically relied on ad hoc arbitration, where parties manage proceedings themselves without institutional support.

In such a system, courts inevitably play a larger role—whether in appointing arbitrators, granting interim relief, or resolving procedural disputes. Even though the *Arbitration and Conciliation Act, 1996* (especially after amendments) encourages tribunal autonomy, parties continue to approach courts *under Sections 9 and 11*[47].

This dependence on courts increases judicial workload and undermines the autonomy of the arbitral process. It also reflects a broader issue: the transition towards a fully institutionalised arbitration ecosystem in India is still incomplete.

[46] Arbitration and Conciliation Act 1996, ss 34 and 37.
[47] Arbitration and Conciliation Act 1996, ss 9 and 11

REFORMS AND SUGGESTIONS

Strengthening the Framework of Judicial Restraint

A primary reform that emerges from the existing challenges is the need to impose stricter and more consistent limits on judicial intervention, particularly under *Section 34 of the Arbitration and Conciliation Act, 1996*. While legislative amendments have attempted to narrow the scope of review, their effectiveness ultimately depends on judicial interpretation. Courts must adopt a more disciplined approach by confining themselves strictly to procedural irregularities and jurisdictional errors, rather than engaging with the merits of the dispute.

In this regard, the principles laid down in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI* should be consistently followed, particularly the restriction on re-appreciation of evidence[48] A possible reform could involve clearer statutory language or authoritative judicial guidelines that further define the contours of "public policy," thereby reducing interpretative discretion and ensuring uniform application across courts.

Promotion of Institutional Arbitration

Another crucial reform lies in strengthening institutional arbitration in India. The continued reliance on ad hoc arbitration has resulted in procedural inefficiencies and greater dependence on courts. Developing robust arbitral institutions with clear procedural rules can significantly reduce the need for judicial intervention at various stages of the arbitral process.

The establishment of bodies like the Arbitration Council of India is a step in the right direction, but its effectiveness depends on active implementation and credibility-building[49]. Encouraging parties, especially in commercial contracts to adopt institutional arbitration clauses can enhance efficiency, ensure procedural consistency, and align India with global best practices seen in jurisdictions like Singapore.

Judicial Training and Specialisation

A less discussed but equally important reform is the need for specialised judicial training in arbitration law. Given the technical and commercial nature of arbitral disputes, inconsistent judicial approaches often stem from varying levels of familiarity with arbitration principles.

Institutionalised training programmes, along with the creation of dedicated commercial or arbitration benches, can help develop expertise and promote consistency in decision-making.

[48] *Ssangyong Engineering & Construction Co Ltd v NHAI* (2019) 15 SCC 131.
[49] Arbitration and Conciliation (Amendment) Act 2019.

This would also reinforce a pro-arbitration judicial mindset, ensuring that courts act as facilitators rather than interveners in the arbitral process[50].

Ensuring Time-Bound Disposal and Procedural Efficiency

Finally, the issue of delay must be addressed through strict adherence to timelines, particularly in proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. Although the statute envisages expeditious disposal, implementation remains uneven in practice.

Introducing enforceable timelines for disposal of arbitration-related court proceedings, along with limiting adjournments, can significantly improve efficiency. Additionally, greater reliance on digital processes and streamlined procedural rules can reduce delays at the enforcement stage[51].

If arbitration is to serve as a genuine alternative to litigation, it must deliver not only on autonomy but also on speed and certainty, two aspects that are currently compromised due to procedural delays.

CONCLUSION

Arbitration in India has undergone a significant transformation over the past few decades, evolving from a court-dominated mechanism to a more structured and internationally aligned dispute resolution system. Legislative reforms and progressive judicial decisions have undoubtedly contributed to strengthening the framework. However, the journey towards establishing India as a preferred seat of arbitration remains incomplete.

The central challenge lies not in the absence of a robust legal framework, but in its consistent and disciplined application. The persistence of doctrinal ambiguities, procedural delays, and structural inefficiencies continues to dilute the effectiveness of arbitration. While recent trends indicate a shift towards minimal judicial intervention, the gap between principle and practice still remains noticeable.

India stands at a critical juncture where its aspiration to become a global arbitration hub depends not merely on legislative reform, but on consistent judicial restraint and institutional maturity.

Only through a balanced approach. where courts support but do not overshadow the arbitral process, Can arbitration truly fulfil its promise as a swift, efficient, and autonomous mechanism for dispute resolution.

[50] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer 2014).
[51] Arbitration and Conciliation Act 1996, ss 34 and 37.