
JUDICIAL INTERVENTION IN INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA: A CRITICAL ANALYSIS IN THE POST-BALCO ERA

Ayush Shailani, LL.M., School of Law Justice & Governance, Gautam Buddha University,
Greater Noida, U.P.

Dr. Vikram Karuna, Assistant Professor, School of Law Justice & Governance, Gautam
Buddha University, Greater Noida, U.P.

ABSTRACT

International commercial arbitration has come to play a monumental role in international dispute resolution by providing a neutral, effortless and legally binding process of settling commercial disputes out across borders. Within this changing environment, jurisdictions are competing to see who can become the first to be known as an arbitration-friendly destination, through minimal judicial intervention, robust institutional backing and enforcement. The paper is a comparative study of the arbitration systems in India and Singapore, their reasons behind the various degrees of success in the international arbitration system.

The paper dwells on major features like legal frameworks, judicial practice, institutional arbitration, enforcing arbitral awards and general efficiency in conducting arbitration. Though the two jurisdictions have embraced the international standards of arbitration laws, with the first being UNCITRAL Model Law, their practical application indicates a lot of contradiction between the two jurisdictions. The steady non-interventionist judicial practice, the well-established institutional base, and effective enforcement practices have helped Singapore to become one of the most popular arbiters. On the contrary, India, even after its significant legislative remodeling and judicial evolution, still encounters numerous issues like delays in the court process, judicial inconsistency and insufficient institutional capacity.

The results of the research point to the fact that the effectiveness of arbitration regime relies not only in the legislative provisions but also in their efficient and smooth enforcement. The paper summarizes that India is still in its transitional stage and needs to reinforce its institutional structures, guarantee judicial coherence and efficiency in enforcement in order to increase its international competitiveness. The research also adds to the available literature by means of offering a systematic comparative view and practical suggestions on how to make India a viable international arbitration centre.

Introduction

International commercial arbitration has rapidly emerged as the method of choice when settling cross-border commercial disputes, especially through the emergence of the fast pace of globalization and international trade and investment. It has served as the backbone of contemporary dispute resolution systems thanks to its flexibility in procedure, the ability of the parties to control it, its impartiality, confidentiality, and binding nature of arbitral awards across national borders further reinforcing its attractiveness to international business players.

In India, arbitration within the legal system is mainly regulated through the Act of Arbitration and Conciliation, 1996 which was adopted with the aim of overhauling the arbitration law and making it to keep pace with the world standards especially the UNCITRAL Model Law. Nevertheless, irrespective of these liberal legislative intents, based on the experience of what arbitration has actually been doing in India, judicial interference has been historically a major aspect of arbitration in India.¹

Until 2012 Indian courts, especially, took an extensive supervisory jurisdiction over arbitral proceedings. This meddling often overshot into procedural supervision into the substantive review of arbitral awards, further compromising the finality of arbitration and undercutting party autonomy.

This trend of the intervention was revealed most conspicuously in *Bhatia International v. Bulk Trading s.a.* in which the Supreme Court broadened the application of Part I of the Act to foreign-seated arbitrations, thus allowing Indian courts to intervene even in international itself proceedings held outside of India.²

There was a major change in the doctrine with the landmark decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, the Supreme Court embraced the principle of territoriality, and ended that Part I of the Act would only be applicable to Indian arbitration. It was largely hailed as a measure to increase levels of certainty and predictability and investor confidence.³

¹ Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996); UNCITRAL Model Law on International Commercial Arbitration (1985).

² *Bhatia International v. Bulk Trading S.A.*, (2002) 4 S.C.C. 105 (India).

³ *Bharat Aluminium Co. Co. v. Kaiser Aluminium Technical Servs. Inc.*, (2012) 9 S.C.C. 552 (India)

Despite this trend in progressive development, there are still fears that Indian courts are still not embracing a non-interventionist approach. The post-BALCO judicial doctrines indicate that direct judicial intervention is limited but indirect types of intervention still occur, especially when it comes to appointment of arbitrators, granting of interim measures and interpretation of grounds of setting aside or refusal of enforcement of arbitral awards.

It is in this regard that the current paper aims to critically study the question of whether India has truly shifted to a pro-arbitration jurisdiction in the post-BALCO period or judicial intervention remains dominant, albeit in more veiled yet noticeable forms. The research problem thus resides in examining the nature, scope and the consequences of judicial intervention in modern arbitral practice in India, and whether such intervention is consistent with the traditional principle of efficiency, finality, and the lack of judicial interference, which has been the ultimate tenet of international commercial arbitration.

Judicial intervention in India

Judicial intervention in arbitrating has been the subject of much scholarly interest, especially in jurisdictions in which historically judiciary oversight has been a very strong influence on the process of arbitrating, such as India. The early Indian arbitration law literature has shown a condemnatory view of over-judicial intervention on the basis that intrusion in such a way is inconsistent with the fundamental principle of arbitration, such as, the autonomy of the parties, economical arbitration, and finality of the awards.

In a classic piece on the arbitralization law, O.P. Malhotra and Indu Malhotra note that courts in India have in some way interfered with arbitration by applying an expansive interpretation of the statutory provisions, especially those touching upon the public policy, and arbitral award setting aside⁴. Equally, Avtar Singh points out that even though judicial supervision is required, to create fairness and legality, too much interference would nullify the fruits of the decision to conduct arbitration instead of litigation.⁵

In global terms, Gary Born emphasizes that the limited role of the courts is one of the primary principles of a contemporary arbitration system. According to Born, maximal court intervention is a key issue that not only slows down the settlement of disputes but also decreases

⁴ O.P. Malhotra & Indu Malhotra, *The Law and Practice of Arbitration And Conciliation* (3d Ed. 2014).

⁵ Avtar Singh, *Law of Arbitration and Conciliation* (2013).

predictability and investor confidence, especially in international deals⁶. This opinion finds a reflection in the works of Redfern and Hunter, who emphasize that the task of the national courts is to help in the process of arbitration and award enforcement, but not to reevaluate the merits of disputes.⁷

In recent scholarly writing, there has been a discussion on how the Indian arbitration law has changed as a result of judicial and legislative changes. According to the scholars, there has been a tendency to move towards pro-arbitration approach, especially with the BALCO decision, which reflects the possibilities of going in line with the international standards but in reality, still the international law has its challenges with lack of coherent judicial interpretation and delays in the processes. Certain critics claim that the process of maintaining a belief in the general and murky notions like public policy still lets the courts exercise or retain something of discretionary mandate, thus hampering the success of reforms.⁸

In addition, recent articles discussing the practice of post-reform arbitration in India indicate that, institutional arbitration and judicial restraint may serve as the key to making India a better arbitration venue, even though amendments to the laws have taken place to improve some of the structural aspects.

All in all, it is evident in the current literature that even though India has achieved a lot in terms of reforming the system of arbitration, there is no clear answer regarding the responsibilities that the judiciary and the arbitral establishments need to strike a balance between the two. The literature is therefore a critical basis of looking at whether the post BALCO legal regime has achieved success in cutting back on judicial intervention or there are covert structural and interpretational problems that pervade arbitration practice in India.

a. Pre-BALCO Extension of Judicial Intervention.

However, before the ruling of the *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* case, a strong level of judicial interference in the Indian arbitration regime exists and hindered the independence, effectiveness, and conclusiveness of arbitral exercises to a large extent. Despite the intention of the Arbitration and Conciliation Act, 1996 to reduce court

⁶ Gary B. Born, *International Commercial Arbitration* (2d Ed. 2014).

⁷ Nigel Blackaby Et Al., *Redfern and Hunter on International Arbitration* (6th Ed. 2015)

⁸ Sumeet Kachwaha, *The Indian Arbitration Law: An Overview*, 10 INT'L ARB. L. REV. 45 (2016).

intervention and to streamline the Indian arbitration law according to the international standards, the role of the court during the initial years was enhanced not limited by the judicial interpretation. This led to the creation of a system in which arbitration was often shrouded in the realm of judicial control, as opposed to acting as a self-regulating dispute resolution system.

One of the key trends towards this growth was the ruling in *Bhatia International v. Bulk Trading S.A.*, that Part I of the Act does not have an express and implied territorial limitation in the text and, thus, the Court followed a wide and inclusive interpretation. This led to the Indian courts obtaining jurisdiction over international arbitrations that were conducted outside India, including having the authority to grant interim relief and hear challenges to arbitral awards.⁹

What this interpretation practically meant was an expansion of Indian judicial power over territories where it had no jurisdiction, which established a parallel jurisdiction system. Parties entering into international arbitration were also at risk of parallel litigation in Indian courts, despite the fact that they had, in the conscious realization of the seat, chosen a foreign seat. This did not only devalue the principle of territoriality, which is a pillar of the international law of arbitration, but also caused further complications in the procedures, procrastination and ambiguity in resolving the dispute.¹⁰

Moreover, the broad usage of Part I blended the boundary between domestic and international arbitration and undermined the predictability of the legal regime. Judicial intervention was not limited anymore by the supportive role but by many more that influenced the merits and the course of arbitral proceedings. Such a climate diminished the usefulness of arbitration as being a fast and cheap method to avoid costly litigation, because parties often used the courts at various points in the arbitral procedure.¹¹

The lack of proper boundaries between judicial supervision and arbitral autonomy at this time, aided Indian and state authority profoundly criticized judicial interventionist approach to dispute resolution and contributed to creation of an imbalance to the advantage of judicial control over party autonomy. Consequently, the pre-BALCO period is often seen as a period where arbitration in India was greatly affected, and at one point, even controlled by, the

⁹ *Bhatia International v. Bulk Trading S.A.*, (2002) 4 S.C.C. 105 (India).

¹⁰ *Bhatia International v. Bulk Trading S.A.*, (2002) 4 S.C.C. 105 (India).

¹¹ O.P. Malhotra & Indu Malhotra, *The Law and Practice of Arbitration and Conciliation* (3d ed. 2014).

courts.¹²

b. BALCO Judgment and the Shift to Territoriality

The case of the Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. marks a breakthrough in the development of Indian arbitration law because contrary to the interventionist model used in courts, the case was a breakthrough in that it essentially redefined the legal perspective based on the principle of territoriality. The Supreme Court on its part has strongly rejected the applicability of the Arbitration and Conciliation Act, 1996 to foreign-seated arbitration by categorically declaring that Part I of the law would apply only to arbitration seated in India and not foreign-seated arbitration.¹³

One important element of the reasoning of the Court was that it identified the seat of arbitration as the juridical seat of arbitral proceedings. The Court coincided the autonomy of parties in the choice of not only the procedure framework of arbitration, but also the jurisdiction under which the courts of which the parties were to have the presence would exert their judicial supervision and control, thus streamlining the Indian arbitration law to the principles of the Global Community. By so doing, the judgment reinstated sanity to the statutory scheme and removed any sense of confusion in the statutory scheme as a result of conflicting interpretations in prior decisions.¹⁴

The case of BALCO also made a clear separation in domestic and international arbitration thus averting the overlapping of jurisdiction, which had in the past created parallel proceedings and conflicting orders. Limiting judicial intervention to India-seated arbitral proceedings, the Court meant that foreign-seated arbitral proceedings would not be interfered with by Indian courts, unless in few situations specifically acknowledged by law. This greatly minimized the judicial overreach and promoted the effectiveness and finality of arbitral processes.¹⁵

Notably, the ruling represented a judicial evolving gesture towards a more pro-arbitration stance, as it acknowledged that a court can disrupt the entire point of arbitration in case it interferes too much. The Court attempted to facilitate the establishment of a believable international arbitration centre in India and in doing so, it hoped to instill confidence in foreign

¹² Avtar Singh, *Law of Arbitration and Conciliation* (2013).

¹³ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc.*, (2012) 9 S.C.C. 552 (India).

¹⁴ UNCITRAL Model Law on International Commercial Arbitration (1985).

¹⁵ Gary B. Born, *International Commercial Arbitration* (2d ed. 2014).

investors and business organizations, fearing that they might shun the country because of poor jurisprudence in adjudicating cases. The judgement was generally well received both academically and professionally as a change that was much needed to put India on the global scale in an endeavor to correct the situation.¹⁶

Simultaneously, the Court embraced a prospective interpretation of its decision, thus, securing the validity of arbitration agreements and proceedings, which had been regulated under the previous legal stance. This method was judicial pragmatism because it strikes a balance between the necessity of doctrinal realignment and the requirements of a certainty and equity in the law.

However, although the BALCO ruling established a strong platform to reduce judicial intervention, whether it would be enduring has been subject to base on how consistently the judicial interpretation and legislative reinforcement in subsequent rulings. The ruling, however, is not only a turning point, but also the start of a changeover period, in the Indian arbitration law, whereby the issue at hand is to make sure that the principles stated in BALCO are also brought into a consistent application in practice.

c. Post-BALCO Judicial Trends and Continuing Intervention

Although the doctrinal clarity that is brought up by *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* may have changed the jurisprudence of the post-2012 Indian arbitration, judicial intervention, albeit of a less pronounced form, remains present in the post-2012 phase of judicial adjudication by less pronounced and indirect means. The courts have long since passed beyond an obviously more interventionist approach to a more supervisory and facilitative one, but the change has not done away with judicial participation in arbitral processes altogether. Rather, it has reformulated the way intervention of this kind is practiced.¹⁷

The other major aspect that can be seen in which judicial interference is still obvious is the selection of arbitrators in the case of the Section of Arbitration and Conciliation Act, 1996, as in the Section 11. Although the 2015 amendments were aimed at restricting the judicial scrutiny at that point up to a prima facie determination of the presence of an agreement with regard to

¹⁶ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc.*, (2012) 9 S.C.C. 552 (India).

¹⁷ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc.*, (2012) 9 S.C.C. 552 (India).

the existence of an arbitration agreement, the practicality of the principle has not been exactly consistent. In *S.A v. Gangavaram Port Ltd. v. Duro Felguera*¹⁸, the Supreme Court stated that the courts must be minimalistic and that they may not investigate any complex issues during the appointment stage. Despite that, later cases have sometimes raised to issues of the arbitrability, agreement validity and even to preliminarily review the merits. This means that judicial discretion still has its effects in the arbitral proceedings even when they are starting in the first place.

Another area of judicial involvement is the area of interim measures in Sections 9 and 17 of the Act. In spite of the fact that Arbitral tribunals are vested powers to provide interim relief, parties to these cases often resort to courts seeking immediate reliefs especially when the constitution of the tribunal and where relief that may be given by tribunal might not be effectively enforceable. Although these are judicial powers that should contribute to and protect the arbitral process, by working concurrently with tribunal power, they have, in some cases, caused duplication of proceedings and strategic litigation. Unless used with moderation, this dual framework may jeopardize the effectiveness and independence of arbitration.

Another important area where arbitration results are still influenced by judicial intervention to this day is the post-award stage. Nevertheless, although grounds to set aside awards have become narrow, courts retain the power to revisit awards on narrow grounds, including public policy ground and patent illegality. In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*¹⁹, the Supreme Court has attempted to limit the role of judicial review by stating that reappraisal of evidence and review on merit are not allowed. However, the fact that the judicial interpretation of these standards differs in different cases implies that the standard is not perfectly applied, thus creating a certain level of uncertainty.

The other notable aspect of continuing judicial influence is the interpretative possibility of the court in creating arbitration law. The judicial interpretation is critical in the practical application of statutory provisions even where an attempt to minimize intervention has been undertaken. The courts, by their ruling, can virtually draw the limits of the arbitral autonomy and judicial control. Although it is a critical role in advancing the law, this interpretative role may also lead to divergent methods especially when there is a vague idea like the one on public

¹⁸ *Duro Felguera, S.A. v. Gangavaram Port Ltd.*, (2017) 9 S.C.C. 729 (India).

¹⁹ *Ssangyong Eng'g & Constr. Co. v. National Highways Auth. of India*, (2019) 15 S.C.C. 131 (India).

policy.

Also, the arrears of procedural procrastination of court proceedings concerning arbitration reignite to water down the efficacy of arbitration as a swift dispute resolution procedure. Appointment, interim relief or enforcement applications are usually not settled in time, thus diminishing the benefits of arbitration which should come in practice. This brings out the fact that the willingness of the courts to be efficient is as critical as judicial restraint in achieving the success of arbitration.

A combination of these developments suggests that the post-BALCO era is still defined not by the total lack of judicial involvement, but rather by its alteration in a more delicate and context-specific way. The judicial branch has been increasingly aware of the importance of facilitating arbitration, as opposed to regulating it; but the lack of standardization, and the continued use of judicial discretion, points to the fact that the shift towards an entirely non-interventionist regime has still not been fully achieved. As a result, the Indian arbitration legislation is still on the level of slow development, as the compromise between the judicial control and the autonomy of the arbiter continues to be actively discussed.

d. Doctrinal Problem: Public Policy and Illegality of Patent.

The interpretation and application of the doctrines of the public policy and patent illegality as arguments to set aside or refuse to be enforced as an arbitral award, remains one of the most important areas in which judicial intervention in Indian arbitration law still exists. Even though the judicial pronouncements in the post-BALCO era have attempted to diminish the area of these doctrines, as broad and wide-ranging as they are by nature still so wide and flexible that they leave a lot of discretionary area with judges. Due to this, in most cases, such grounds have been used as conduits through which the courts have reentered arbitral proceedings and, as such, have impacted on the independence and finality of the arbitral awards.

Indian courts traditionally defined the notion of the public policy in a broad way, which most of the time included elements that were absent of the basic legal principles. This doctrine was used by courts in earlier jurisprudence to conduct a substantive review of the award of an arbiter, thus invalidating the restricted role of the judiciary under the law of arbitration. In *Shri Lal Mahal Ltd. v. Progetto Grano Spa*²⁰, the Supreme Court sought to reverse this trend, and

²⁰ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 S.C.C. 433 (India).

rule that the public policy exception, especially where foreign awards are enforced, could not be broadly interpreted, and must not allow a merits analysis.

This judicial effort notwithstanding, the exploration of the application of public policy still remains different across cases especially in domestic arbitration. The establishment and further evolution of the doctrine of the illegality of patents complicated even more the boundaries of judicial review. The Supreme Court in *Associate Builders v. Delhi Development Authority*, not only clarified the boundaries of public policy, but further widened the judicial review in that the illegality of patents would be examined by the courts notwithstanding that they are obvious on the face of the award.²¹

The case was revisited in *Ssangyong Engineering & Construction Co. Ltd. v. National Highway Authority of India (NHAI)* where the Supreme Court attempted to restrict the use of patent illegality with the idea that it should not proceed to the reappraisal of evidence, or the correction of miscellaneous errors of law. Nevertheless, the inconsistencies in judicial interpretation will always remain, even with such clarifications, and thus there is always uncertainty in the enforcement and finality of the arbitral awards.²²

Narrowly doctrinal intent in conjunction with widely applied practicalist denotes the inherent conflict of the Indian arbitration law. On the one hand, judicial and legislative intervention is minimized by a clear effort at the judicial and legislative level, whereas on the other hand, the pliable quality of these doctrines allows courts to maintain a level of control on arbitral results. This non-uniformity does not only render the predictability of arbitration vague but also the credibility of India as a credible arbiter jurisdiction.

In line with this, the continued dependence on expansively-constructed principles like the public policy and patent illegality is one primary hurdle towards the realization of an entirely non-interventionist arbitration regime. It is also necessary that there be more explicit statutory outlines and judicial application so that these reasons do not become instruments of undue interventions, but rather serve as restrained measures as opposed to primary procedural and legal offenses.

²¹ *Associate Builders v. Delhi Dev. Auth.*, (2015) 3 S.C.C. 49 (India).

²² *Ssangyong Eng'g & Constr. Co. v. National Highways Auth. of India*, (2019) 15 S.C.C. 131 (India).

Judicial Trends

The case of *Bhatia International v. Bulk Trading S.A.* was a turning point in the Indian arbitration jurisprudence as it broadened the judiciary role. The Supreme Court decided that Part I of the Arbitration and Conciliation Act, 1996 would also name foreign-seated arbitrations with the exception being expressly or impliedly taken out by the parties. This interpretation allowed Indian courts to have jurisdiction over international arbitral proceeding held outside India, such as granting interim relief and challenges to arbitral awards. Although the ruling was meant to have the parties access to judicial redress, it ended up having too much interference by courts and confusion of the domestic and international arbitrations, attracting a lot of criticism.²³

One significant corrective change was the landmark case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, the Supreme Court overturned *Bhatia International* and emphatically embraced the doctrine of territoriality. The Court decided that Part I of the Act has a limited scope to arbitration seats located in India which limits the ability of Indian courts to adjudicate on case involving foreign-seated arbitration. This case greatly limited judicial discretion and brought Indian arbitration law up to international standards. It also brought back certainty and predictability in the practice of arbitration, increasing India to a more arbitration friendly jurisdiction to the foreign investors.²⁴

The pro-arbitration standpoint in BALCO was once again boosted in *Shri Lal Mahal Ltd. v. Progetto Grano SP A*, where the Supreme Court dealt with the expanse of the exception of the public policy in the enforcement of foreign arbitral awards. The Court, made it clear that the interpretation of the public policy needs to be limited and should not allow to review the dispute merits. This ruling restricted arguments upon which a foreign award may be appealed in India and brought Indian law closer to international principles, especially those in the New York Convention.²⁵

Nonetheless, the relative standing was further clarified in *Associate Builders v. Delhi Development Authority* suggesting the introduction and explanation of the concept of patent illegality as a basis of quashing arbitral awards by the Supreme Court. Although the ruling

²³ *Bhatia International v. Bulk Trading S.A.*, (2002) 4 S.C.C. 105 (India).

²⁴ *BALCO v. Kaiser Aluminium Technical Servs. Inc.*, (2012) 9 S.C.C. 552 (India).

²⁵ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 S.C.C. 433 (India).

offered the much-needed clarity on the outlines of the public policy, it also caused some concerns about the possibility of judicial overreach, with the courts being able to consider the specifics of the arbitral award in a finer detail. This evolution signified that, even though the trend was to move towards minimum intervention in international arbitration, the relatively increased judicial intervention was still evident in domestic arbitration.²⁶

This shift towards a more limited method could be characterized by the case of *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, during which the Supreme Court reconsidered the ability to interfere in determining the case through the prism of the 2015 amendments to the Arbitration and Conciliation Act. The Court stressed that a ground of patent illegality should be interpreted very strictly and should not be employed as an excuse to reconsider the merits of the conflict. This decision reiterated the load of low judicial intervention and attempted to introduce increased uniformity in the implementation of arbitration law in India. It marked another court attempt to harmonize domestic arbitration activity with foreign²⁷ best practice and still retain a few means of protection against arbitral malpractice.

Suggestions

Based on the results of the current work it becomes crucial to enhance the legal and institutional framework of arbitration in India to enable little judicial intervention and to make it more efficient. The major suggestion is the limitation of the concept of the public policy as a reason to suspend or deny enforcement of arbitral awards. Despite judicial utterances which have tried to limit its scope, the term remains open wide and open to interpretation uncertainty and too much discretion exist. A more legislative definition with a stable judicial interpretation would assist in curbing abuse as well as making the finality of the arbitral awards more final.

The other most vital reform is in the strict restraint of judicial review on arbitration issues²⁸. Courts should only act in the capacity of watchdogs and not interfere with resolution of any dispute. The principle that awards in arbitration cases are final and binding, with limited exceptions, should be supported with clear guidelines, which could be either statutory amendments or some judicial authority. This would enhance party independence and minimize

²⁶ *Associate Builders v. Delhi Dev. Auth.*, (2015) 3 S.C.C. 49 (India).

²⁷ *Ssangyong Eng'g & Constr. Co. v. National Highways Auth. of India*, (2019) 15 S.C.C. 131 (India).

²⁸ Section 34, Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).

the unnecessary litigation.

Institutional arbitration also needs to be promoted to enhance the credibility and efficiency of arbitration in India. Enhancement of arbitration institutions, promoting parties to adhere to institutional rules and establishing strong administration support systems may assist in standardizing the process, lessening delays and improving transparency. There is also the possibility of institutional arbitration reducing the number of courts by cutting down on the requirement of a court in terms of procedures.

Moreover, the training in arbitration law in the specialized courts is acutely needed. The judges that deal with matters involving arbitration should be enhanced with a more profound knowledge of the principles and best practices in international arbitration. A disparity in judicial rulings can be discouraged through constant training and capacity-building courses and consistency in applying the principle of minimal intervention.

Moreover, it is imperative to employ the speedy process of arbitration-related court cases to maintain arbitration as an effective method of dispute resolution. Arbitration courts or benches that are dedicated to arbitration cases can be set up to guarantee timely disposition of arbitration cases involving appointment of arbitrators, interim relief and enforcement of awards. Lessening procedural delays will go a long way in making India an attractive arbitration-friendly seat.

On the whole, successful execution of the recommendations would help reinforce the arbitration system of India, decrease the role of judiciary, and make the country one of the promising and stable arbitration centers in the world of international commerce.

Conclusion

The development of the field of international commercial arbitration in India can be considered a slow though meaningful change in the interventionist judicial approach, towards a regime that is more amenable to arbitration. A turning point was made with the landmark case *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* that coined the principle of territoriality and constrained the relevance of domestic arbitration clauses to arbitrations based in India. This ruling and others that followed thereafter that have been amended by legislatures and interpreted by the courts has helped in improving certainty, minimizing too much court intrusions, and harmonizing the law of Indian arbitrations with the internationally established

standards.

Nevertheless, the change is not totally final. Through indirect means of intervention in arbitration, as the study shows, even though the direct judicial intervention is dwindling; the intervention by the court remains evident in other forms like interpretation in law especially within the context of policy formulation²⁹, patent illegality as well as the enforcement of awards. Such remnant interventionist propensities together with procedural latencies and failures to remain consistent in judicial practice, still persist in influencing the effectiveness and quality of arbitration in India.

India is currently at a transitional stage, slowly transforming towards a pro-arbitration system, but still has some way to go before developing the identical degree of uniformity and predictability, characteristic of the leading arbitration regimes. Today there is a requirement to balance careworn autonomy over arbitral and judicial by having a supportive role of courts³⁰ instead of a supervisory role. It will be important to strike this balance through strengthening institutional arbitration, refinement of legal standards and encouragement of judicial discipline.

Finally, arbitration in India can only be successful when the judiciary embraces pro-arbitration principles consistently and partners with legislators to do the same. This will require a long-term dedication to reducing judicial intervention at the expense of protecting fairness and legality to be able to place India as a credible and competitive international commercial arbitration venue in the global market.

²⁹ *Renusagar Power Co. Ltd. v. General Electric Co.*, (1994) 1 S.C.C. 644 (India).

³⁰ Section-5, Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).