A STUDY ON JUDICIAL INTERVENTION IN ARBITRATION

Lekshmi. S. Kumar, LL.M, Alliance School of Law, Alliance University, Bengaluru, Karnataka

ABSTRACT

The most important feature of arbitration as a type of alternative dispute resolution mechanism is that the parties agree to settle disputes without entering into the formalities and other technicalities of Courts. They are at the liberty to choose the arbitral procedures by which they are to be governed. In order to enable the parties to enjoy the fruits of arbitration, the fundamental condition is that there should be no interference by the regular Courts in the proceedings. Any such intervention would cause impediments in the flexible and efficient way of dispute resolution in arbitration. This does not mean that the arbitral process can work totally independent of the Courts. The Arbitration and Conciliation Act, 1996 aims to restrict judicial interference which would inhibit the speedy disposal of cases through arbitrations. Indian Legislature is always looking for robust measures to make India attractive to foreign investors as a seat of arbitration. In the list of cases to be noted, from the five-judge Bench decision in *Bhatia International* in the year 2002 to the *BALCO* in 2012, a lot has changed in the perception regarding judicial intervention in arbitral process. Even though the Act and the precedents point towards the minimizing of the role of Courts, the intervention does happen on a regular basis. In some circumstances, it acts as an aid to the arbitral process but in some others, it becomes a hindrance in the proceedings. The amendment of the Act in 2019 is also intended to limit the interference and make India, an arbitration-friendly jurisdiction. This project analyses the cases in which the Courts provided assistance and the ones where the intervention was totally unwanted creating delay and issues. It also looks into the changes in the arbitration regime brought out by the infamous *BALCO* case and the Arbitration and Conciliation (Amendment) Act, 2019.

Keywords: Arbitration, Judicial Intervention, BALCO Case, Arbitration and Conciliation Act

1. Introduction

1.1 Introduction

Judicial intervention in arbitral process is addressed by the Arbitration and Conciliation Act of 1996[1] in Section 5. It states that in the matters which are governed by the Part I of the Act, there shall be no interference by a judicial authority in accordance with the provisions of any other laws in force for the time being, except where it is provided for under this Part itself. It is analogous to the UNCITRAL Model Law. The intervention can happen before, during or after the arbitral proceedings. However, the parties are having autonomy over intervention for the delivery of economic and expedited justice. At the beginning, the intervention happens when the parties to a dispute gets referred to arbitration, when there is an arbitration agreement.[2] The term *'judicial authority'* is wide in its scope. It may include Company Law Boards,[3] National Commission or a State Commission under the Consumer Protection Act of 1986,[4] Competition Commission under the Competition Act of 2002, etc. During the proceedings, Court may intervene by virtue of the power conferred by Ss. 9, 17 and 34 of the Act. The losing party in the dispute can challenge the enforcement of the award. The legislature made recent developments in the arbitration law by the amendment of 2019 to ensure minimal intervention by the Courts. There are cases in which the judicial interference provided for assistance as well as where it became a hindrance in the arbitral proceedings. The *BALCO* case gave rise to a watershed decision which is an excellent first step in the right direction by the Supreme Court in changing the Indian markets to an alluring one for foreign investors by giving them the confidence and hope, by deciding against the unwanted interference of the Courts in the arbitral process. This project is a study on implications of the new decisions and amendments of law in changing the arbitration regime of India.

1.2 Research Problem

The Courts often use their expansive role in interfering with the arbitral proceedings. It has positive as well as negative impacts on the process. However, India is in the constant effort of building and shaping its markets in appealing foreign investors. This led to decisions by Courts which restricts the unwanted interference by judicial authorities. Various amendments are also

[1] Arbitration and Conciliation Act 1996
[2] Arbitration and Conciliation Act 1996, s 8
[3] *Canara Bank v Nuclear Power Corporation of India Ltd* (1995) Supp 3 SCC 81
[4] *Fair Air Engineers Pvt. Ltd. v N. K. Modi* AIR 1997 SC 533

made to cope up with the changing needs and demands of the arbitration regime. The extent and possibilities of these developments in arbitration requires study and analysis.

1.3 Existing Legal Situation

The Arbitration and Conciliation Act, 1996 aims to minimise judicial intervention in the arbitral process. The Ss. 2 to 34 are enacted almost similar to the UNCITRAL Model Law. But both of them are not identical. Therefore, the Model Law cannot be used as guide for interpretation of the Act.[5] The grounds on which an arbitral award can be challenged is kept minimum by the legislation. The Act had been amended in years of 2015, 2019 and most recently in 2021.

1.4 Literature Review

1. R. Gouri, 'Judicial Intervention in Arbitration Proceedings and Speedy Justice: An Analytical Study' (2014) <https://shodhganga.inflibnet.ac.in/handle/10603/201577#> accessed on 8 June 2021

The author discusses the nature and scope of the Indian Arbitration Law in the context of other international texts in the field. The different kinds of arbitration along with arbitration agreements are examined. The scope of arbitration before, during and after arbitral proceedings are analysed in detail. The extent of judicial intervention in arbitration carried out in all these three stages and suggestions for further diminishing the interference by the judiciary is given.

2. Loukas Mistelis, 'Seat of Arbitration and Indian Arbitration Law' [2016] IJAL 1

The article is about the practical consequences of the concept of *'seat of arbitration'* and it is analysed by referring to theoretical debates in the domain. The problems which are associated with the review of arbitral awards in India are also stated. The amendment of the Arbitration and Conciliation Act in the year 2015 is critically analysed by the author. The approach adopted by the Act and implications on the seat of arbitration are evaluated.

3. Divya Suwasini and Shreya Bose, 'Arbitration in India not for the Faint-Hearted: Enforcing Foreign Arbitral Awards' [2011] NALSARStuLawRw 2

The laws regarding arbitration in India are briefly discussed by the authors. The scope of *'international commercial arbitration'* is critically analysed in the light of different cases. The

[5] *Konkan Railway Corporation Limited v Rani Construction Pvt., Ltd.* 2002 Arb WLJ 287 (SC)

nature and scope of *'judicial intervention'* in the arbitral proceedings and the enforcement of foreign awards in India are examined in detail in the article. The authors raise the need to successful facilitation of enforcement of foreign awards in India with minimum judicial intervention. They emphasise the immediate necessity for India to overcome the existing hurdles and adopt suitable reforms.

4. Gourab Banerji, 'Judicial Intervention in Arbitral Awards: A Practitioner's Thoughts' [2009] NLSIR 39

The author mainly focusses on the judicial intervention in arbitration under the purview of S. 34 of the Arbitration and Conciliation Act, 1996. The article shows the contrast between the legislative intent and the working of the law in practice in India. The analysis is carried out in the light of the views of the judges, advocates and their clients. The *O. N. G. C.* case is critically evaluated in the context of the *'public policy'* of India. The article is concluded by giving notable insights into the interference by the judiciary in arbitral process.

1.5 Scope and Objectives

This project explores the role of judicial intervention in arbitration through different cases in the context of Indian Law. The main law regarding arbitration which is the Arbitration and Conciliation Act, 1996 is analysed with emphasis on its provisions which provides for judicial interference in arbitration. The landmark case of *BALCO* is examined in depth. The amendment of the Act in 2019 is also within the compass of the project in regard to its provisions which seeks to minimise the judicial intervention in arbitral proceedings.

The main objectives of the research done as part of the project are:

1. To analyse the cases in which the Courts intervened in the arbitral proceedings.
2. To determine the scope of the *BALCO* case in reducing judicial intervention in arbitration in India.
3. To examine the extent and possibilities of the amendment of the Act in 2019.
4. To find out the suggestions and a way forward in minimising judicial intervention in arbitral proceedings.

1.6 Research Questions

The questions which are set out to be answered through research as part of the project are:

1. What is the role of judicial intervention in arbitration: as an aid or as a hindrance?
2. How far does the amendment of the Act in 2019 help in reducing the judicial intervention in arbitration?

1.7 Hypothesis

The judicial intervention is an aid as well as a hindrance in accordance with the facts and circumstances of different cases. The decision in *BALCO* and the amendment of the Act in 2019 are great steps in minimising judicial intervention in arbitration.

1.8 Research Methodology

The research conducted for the project is purely doctrinal. It is done by the study of different primary as well as secondary sources including statutes, international conventions, books, journal articles and online resources. Different case laws are studied in detail to understand the context of interference by judicial authority in arbitration. The developments in the arbitration law in India as a whole is also taken into consideration.

2. Judicial Intervention as an Aid

2.1 Arbitration Act and Judicial Intervention

The main purpose and intent of arbitration is speedy and cost-effective dispute resolution with no intervention of Courts. The Arbitration and Conciliation Act, 1996 provides for certain situations where the court can intervene in the arbitration. The Court shall intervene in three situations during the appointment of arbitrators,[6] when the mandate of an arbitrator gets terminated on becoming *'de facto'* or *'de jure'* unable to perform his/her functions, or failing to act without any delay due to other reasons,[7] and providing assistance in taking evidence.[8] The 246th Law Commission Report examined the decision in *SBP & Co. v. Patel Engineering Ltd.*[9] which diluted the *'kompetenz kompetenz'* principle and recommended that the Courts should consider appointment of arbitrators only when there is no arbitration agreement or, in case it exists, it being null and void. However, the Amendment Act of 2019 provides for the Supreme Court or the High Court to designate arbitral institutions. If such an institution is not available, then a High Court could maintain a panel of arbitrators within its jurisdiction. As

[6] ARBITRATION AND CONCILIATION ACT 1996, S 11
[7] ARBITRATION AND CONCILIATION ACT 1996, S 14(2)
[8] ARBITRATION AND CONCILIATION ACT 1996, S 27
[9] *SBP & CO. V PATEL ENGINEERING LTD.* (2005) 8 SCC 618

laid down in *Garware Wall Ropers Ltd.*[10] and *M/s. Uttarakhand Purv Sainik Kalyan Nigam Ltd.,*[11] *Courts have to restrict themselves to the examination of existence of an agreement.*

The Report also criticised the exhaustive list of grounds on which an arbitral award can be challenged under the S. 34 of the Act. The Court held that the judiciary should only act as a supervising agency in the review of arbitral awards in order to promote arbitration, in *McDermott International Inc.*[12] A time limit has also been provided in order to ensure speedy resolution of disputes. The application for setting aside can be made to the Court only within the three months from the date of receipt of the award. It can be extended to further thirty days and not more on the party satisfying the court on the sufficient cause. In *State of Maharashtra & Ors.,*[13] the Court held that the application should satisfy any of the grounds in S. 34 of the Act and it must be made within the period of limitation.

2.2 Role as an Aid

On the analysis of the trends in arbitral regime of India, it is clear that domestic arbitrations which are governed by the Part I of the Act are common. Mostly, while appointing arbitrators by the parties, there are chances of bias and leaning towards any one party in the process. The money and politics do play its maleficent role. The legal practitioners are not quite acquainted with the Arbitration Law and procedures. This causes discrepancies in the actual practice of arbitration in India. In *ITI Ltd.,*[14] the Court opined that the provisions of the Civil Procedure Code, 1908 lays down the rules for interim injunctions by the Court. Therefore, while deciding an application under Section 9 of the Act, a Judge have to take the Code into its consideration. The process of arbitration does require the support of the regular Courts and the laws which are governing them to serve its purpose.

In cases like **Hindustan Zinc**[15] **a**nd **Delhi Development Authority**,[16] the Supreme Court looked into the challenges against arbitral awards. In the first case, the arbitrators did the calculation for price escalation not in accordance with the contract. In the second case, the

[10] *GARWARE WALL ROPERS LTD. V COASTAL MARINE CONSTRUCTIONS AND ENGINEERING LTD.* [CIVIL APPEAL NO. 3631 OF 2019]
[11] *M/s. Uttarakhand Purv Sainik Kalyan Nigam Ltd. v Northern Coal Field Ltd.* [SLP (C) No. 11476 of 2018]
[12] *McDermott International Inc. v Burn Standards Co. Ltd.* (2006) 11 SCC 181
[13] *State of Maharashtra & Ors. v M/s. Ark Builders Pvt. Ltd.* (2011) 4 SCC 616
[14] *ITI Ltd v. Siemens Public Communications Network Ltd.* AIR 2002 SC 2308
[15] *HINDUSTAN ZINC LTD. V FRIENDS COAL CARBONISATION* [CIVIL APPEAL NO. 3134 OF 2002]
[16] *DELHI DEVELOPMENT AUTHORITY V. M/S. R.S. SHARMA AND CO.* [CIVIL APPEAL NO. 2424 OF 2002]

award given was for extra compensation contrary to a certain specific clause in the contract. The intervention by the Court was necessary in both these cases in the realisation of justice.

Therefore, the judicial intervention does act as an aid in the Indian scenario to a limited extent. For the attainment of substantial justice, it is sometimes a necessity. The lack of skilled and experienced arbitrators also calls for assistance of the Courts. But, during the interference, the Bench and the Bar, the arbitral institutions, arbitrators and clients should remain truthful to the purpose of prevention of banalisation of arbitration.[17]

As Earl Warren, the famous jurist said, "*it is the spirit and not the form of law that keeps the justice alive*", people do need a place to resort to when they are faced with injustice. The Courts should respect the aim and intent of the Arbitration Law during any intervention in the process.

3. Judicial Intervention as a Hindrance

3.1 Problems of Judicial Intervention

In the case of *Konkan Railway Corporation,*[18] it was held that the judicial intervention to the minimum as possible. But this was not the precedent which was followed by the subsequent cases which came up in India. In 2003, the Supreme Court itself made a controversial decision stating that the appointment of arbitrators under S. 11 of the Act should be based on a judicial order.[19] The *Bhatia International*[20] and *O. N. G. C. Ltd,*[21] were the other cases which were criticised for the express permission given for unwanted judicial interference in the arbitral process. In *Bhatia,* the Court laid down that the judicial authorities have the power to grant interim relief in arbitrations seated outside India. In the latter, *'patent illegality'* was also added as a ground for setting aside the arbitral award. It was opined that an award could be set aside if it is against the *fundamental policy of Indian law, or the interest of India, or justice or morality, or is patently illegal.* The Apex Court also relied upon its wrongful precedents.[22] But allowing for excessive judicial intervention in arbitration cannot be the norm for a long period.

[17] Varsha Rajora, 'Is Judicial Intervention in the Arbitration Justified?' (*SSRN, 9 February 2010) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550039> accessed on 10 June 2021*
[18] *Konkan Railway Corporation v Mehul Construction Co.* 2000 (7) SCC 201
[19] *S. B. P and Co. v Patel Engineering Ltd. and Anr.* (2005) 6 SCC 288
[20] *Bhatia International v Bulk Trading S. A. and Anr.* [Civil Appeal No. 6527 of 2001]
[21] *O. N. G. C. Ltd. v Saw Pipes Ltd.* [Civil Appeal No. 7419 of 2001]
[22] *Renusagar Power Co. Ltd. vs. General Electric Co.* (994 SCC supp. (1) 644

The Court corrected its error[23] and overruled its decision *Shri Lal Mahal Ltd.*[24] expanding the scope of 'public policy'.

The enlargement of scope of the grounds in S. 34 and the addition of new grounds will result in more intervention by the judiciary. The Supreme Court also agreed to this important point in *State of Maharashtra v. M/s. Hindustan Construction Company Ltd.,*[25] *that such a move would be contrary to the intent of the Act.*

3.2 Role as a Hindrance

The case *S. B. P and Co.* decided by the Supreme Court provided the Hon'ble Chief Justice of India also has the power to adjudicate on matters including validity of arbitration agreements, calling for evidence and act as arbitrator where the arbitrators appointed by the parties have failed to perform their duties. It was contrary to the *'kompetenz kompetenz'* principle. These rulings would lead to substantial delay in the arbitral proceedings which will destroy the aim and intent of the Act. Such an expansion of the role of the judiciary to intervene in the arbitration is against the spirit of use of alternative dispute resolution methods.

The adoption of the *'doctrine of separability'* which considers the arbitration clause as a separate and independent part from the main contract such that the clause survives even after the termination, breach and invalidity of the contract. This will prevent the unscrupulous respondents filing cases claiming the invalidity of the contract to make the clause inoperable. In India, this doctrine is mostly ignored. In 2006, the Court held that an arbitration agreement comes to an end, if the term of the contract expires.[26] In *India Household and Healthcare Ltd.,*[27] the Supreme Court laid down that if a contract is void, then the arbitration clause is also void. The judicial intervention in these instances are impediments in the course of the process of arbitration in India.

4. *BALCO* and Judicial Intervention

[23] *Phulchand Exports Ltd. v. Ooo Patriot* (2011 11 SCALE 475)
[24] *Shri Lal Mahal Ltd. v Progetto Grano Spa* (2014) 2 SCC 433
[25] *State of Maharashtra v. M/s. Hindustan Construction Company Ltd.* (2010) 4 SCC 518
[26] *Union of India and Anr. v Smt. Jagdish Kaur* (2006)
[27] *India Household and Healthcare Ltd. v LG Household and Healthcare Ltd.* [Arbitration Petition No. 18 of 2005]

4.1 Over-ruling Bad Precedents

The three-Judges Bench of the Supreme Court in *Bhatia International*[28] case held that the provisions of the Part I of the Arbitration and Conciliation Act, 1996 would apply to all arbitral proceedings in India and out of India, in the case of international commercial arbitrations unless the parties, expressly or impliedly agree to *"exclude all or any of its provisions"*. This decision was followed by the two-Judges Bench of the Apex Court in another case, *Venture Global*.[29] On account of giving importance to party autonomy, various other decisions were given in different stances which further complicated the application of Part I to arbitrations to be held in and out of India. The Supreme Court intervened in the *Indtel*[30] case to appoint arbitrators in foreign-seated arbitration, whereas in order to give weightage to party autonomy, the same Court restricted the application of Part I in cases, *Videocon Industries*[31] and *Yograj*.[32] In 2012, the *BALCO* judgement struck down the decision in *Bhatia International* by prospective over-ruling.

The words *'venue'* and *'seat'* were used interchangeably in the legal system. But the *'law of the seat'* or the *'lex arbitri'* is actually the *'curial law'* as well as the *'procedural law'* for the dispute in question. Hence, the physical venue of the hearings of the dispute does not have any effect on the arbitral proceedings. This means that the law of the seat is the law of the place of arbitration. However, the *'governing law'* or the *'applicable law'* is the *'proper law of the contract'* which is regarded as the *'substantive law'* in dispute. This means that the law governing the arbitration agreement between the parties is the one agreed to between them, expressly or impliedly. The *'party autonomy'* needs to be respected as the guiding principle for determining the law which governs the procedure to be followed in the case.[33]

4.2 Minimum Judicial Intervention

The Part I of the Arbitration and Conciliation Act, 1996 was held to be applicable to all domestic arbitral proceedings, including international commercial arbitral proceedings in India and Part II to enforcement of foreign awards in India. If a particular country is chosen as the

[28] Bhatia International v. Bulk Trading S. A. and Anr., [2002] 4 SCC 105
[29] Venture Global Engineering v. Satyam Computer Services Ltd. and Anr., [2008] 4 SCC 190
[30] M/S. Indtel Technical Service Pvt. Ltd. v. W. S. Atkins Rail Ltd., [2008] 10 SCC 308
[31] Videocon Industries Ltd. v. Union of India and Anr., [2011] 6 SCC
[32] Yograj Infrastructure Ltd. v. SSang Yong Engineering and Construction Co. Ltd., [2011] 9 SCC 735
[33] Prof J. Martin Hunter and Ranamit Banerjee, *Bhatia, Balco and Beyond: One Step Forward, Two Steps Back?*, 24 NLSIR 1, 2-4 (2013), http://docs.manupatra.in/newsline/articles/Upload/FB2433EA-E1934EAC-BE78-8F2CB06A2086.pdf.

seat of the arbitration by the parties, then the law of that country will be applicable to the arbitral proceedings. Sometimes, when parties are from different countries, the venue of the arbitration may change, but the seat of the arbitration shall remain the same as agreed to upon by the parties or arbitral tribunal. S. 2(7) of the Act distinguishes a domestic award from a foreign award. Interim relief by virtue of S. 9 of the Act is only available in the arbitrations seated in India. S. 48 of Part II of the Act does not confer any jurisdiction on Indian Courts to set aside a foreign award. It shall apply prospectively overruling *Bhatia* decision after 6th September, 2012.

The amendment of 2015 of the Act added a proviso to S. 2(2) such that interim relief shall be applicable to arbitrations taking outside India. The intervention of Indian Courts in the appointment of arbitrators and setting aside of award in respect of a foreign-seated arbitration is no longer entertained. The practice of expressly excluding the applicability of Part I of the Act in the arbitration agreement is not necessary. The Indian Courts will not have the jurisdiction to entertain an ordinary civil suit under the Code of Civil Procedure seeking interim relief in foreign-seated arbitrations. However, the supervisory jurisdiction exercised by the Indian Courts in arbitrations seated in India will enable them to supervise and support such arbitrations domestical as well as international, under Part I of the Act, including the power to set aside the award.

The foreign awards could be set aside by the Courts only under the substantive law of which it was rendered. This principle is provided for by the S. 48(1)(e) of the Act in analogy with the Article V(1)(e) of the New York Convention. But the Court held that the law of the seat of arbitration and the law under which the award is made do not have concurrent jurisdiction. It was also stated that the law under which the award is made is taken into consideration while setting aside the award only when the Court of the place of the arbitration does not have the power to do it under its local legislation. Even if the parties are not Indian, but the seat of arbitration is India, the award would be viewed as a domestic award. On the other hand, S. 2(7) of the Act which is essentially, a positive re-enactment of S. 9(b) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is placed in Part I of the Act to bring it in conformity with the Article V(1)(e) of the New York Convention. The Act retains the features of New York Convention but can be found to be significantly departing from the provisions of Model Law. Therefore, the Court fairly held that when a party selects a place outside India as the seat of arbitration, it is done with the intention to carry out the arbitral proceedings subject to the law of that place.

The *BALCO* is a refreshing take in the arbitration regime of India by the Supreme Court. Even though, the decision does not provide solutions to all the problems pertaining to international commercial arbitration, it does give confidence to foreign investors who wish to enter into business with India. It is absolutely a start for a better arbitration regime.

5. Amendment of 2019 and Judicial Intervention

5.1 Extent of Judicial Intervention

The Amendment of the Act in 2019 has reduced the judicial intervention by providing that the Supreme Court, in the case of international commercial arbitrations and the High Court in cases other than international commercial arbitrations designate Arbitral Institutions for the purpose of appointment of arbitrators.[34] It is provided that applications for seeking interim reliefs after the making of arbitral award shall be made only to the Courts. It is required that the parties should complete their pleadings within six months from the date of service of written notice to the arbitrator to avoid any delay in dispute resolution.[35] This is to ensure that no parties make an attempt to prolong the arbitration process. However, the arbitrators may allow the parties to file pleadings after the six months in view of natural justice according to merits of the case. The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.[36] The parties shall challenge the award only if the parties establish the case on the basis of the record of the arbitral tribunal.[37] It introduced the Arbitration Council of India[38] which will be empowered to grade arbitral institutions, promote institutional arbitrations, frame, and review and update norms to ensure satisfactory level of arbitration. However, the absence of specific regulations for the working of the Council will be causing irregularities in the proceedings. The *confidentiality of arbitration proceedings* is provided for by making the disclosure of the arbitral award only where it is necessary for implementing or enforcing the award. The introduction of time frame for completion of pleadings, importance to the role of arbitral institutions, institutional arbitrations as against ad hoc arbitration are all welcome changes in reducing judicial interventions.

[34] Arbitration and Conciliation Act, s11
[35] Arbitration and Conciliation Act, s 23
[36] Arbitration and Conciliation Act, s 29A
[37] Arbitration and Conciliation Act, s 34
[38] Arbitration and Conciliation Act, part IA, ss 43A to 43M

5.2 Restriction on Judicial Intervention

The Indian Judiciary is putting more and more emphasis on reducing judicial intervention in arbitral process. The doctrine of separability is gaining importance in India which can been in the case of *Vidya Drolia and Ors. v. Durga Trading Corporation.*[39] **The Supreme Court referred *Vidya Drolia* to** relook into *Himangni Enterprises v. Kamaljeet Singh Ahluwalia*.[40] In *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Ltd,*[41] *the court held that arbitration clause remains absolutely operative even if the contract is invalid.*

In 2019, in *State of Jharkhand v. M/s. HSS Integrated SDN and Anr.,*[42] it was laid down that when two views are possible in a case, the Court should not interfere with the reasonable view taken by an arbitral tribunal in a proceeding under S. 34 of the Act to minimise judicial intervention in arbitration.[43]

The S. 87 of the Act was introduced by the Amendment of 2019 was struck down by the Supreme Court in *Hindustan Construction Co. Ltd. and Anr. v. Union of India and Ors*.[44] This decision prevented the consequences like delay in dispute resolution and unwanted judicial intervention which could have happened, had it not been held arbitrary and contrary to the purpose intended to be served by the Act.

6. Conclusion

"The obligation of the legal profession is to serve as healers of human conflicts, we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense, with the minimum stress on the participants. That is what justice is all about". - Warren. E. Burger

6.1 Findings

The judicial intervention is double-edged sword. If used in reasonable and restricted manner to promote and support arbitration, it is an aid or assistance, and if used in unwelcome cases in

[39] *Vidya Drolia and Ors. v Durga Trading Corporation [Civil Appeal No. 2402 of 2019]*
[40] *Himangni Enterprises v Kamaljeet Singh Ahluwalia [Civil Appeal No. 16850 of 2017]*
[41] *World Sport Group (Mauritius) Ltd. v MSM Satellite (Singapore) Ltd [Civil Appeal No. 895 of 2014]*
[42] *State of Jharkhand v M/s. HSS Integrated SDN and Anr.* [Special Leave Civil Appeal No. 13117 of 2019]
1. [43] *NATIONAL HIGHWAY AUTHORITY OF INDIA V PROGRESSIVEMVR (JV) [CIVIL APPEAL NO. 458 OF 2018]*
[44] *Hindustan Construction Co. Ltd. and Anr. v. Union of India and Ors.* [Writ Petition (Civil) No. 1074 of 2019]

excess, it is a hindrance in arbitration. The decision in the *BALCO* case and the Amendment of the Arbitration and Conciliation Act in 2019 are all good steps in the way to reduce the extent of judicial interference in the arbitral proceedings. The Supreme Court of India laid down that unwanted interference by judicial authority in arbitration would result in the delay in dispute resolution. It is also contrary to the aim and intent of the Act.[45] The amendment of 2019 makes the legislation more clear and less ambiguous along with limits the role of the Courts in domestic as well as foreign arbitral proceedings. It establishes that the Courts do have the power to intervene in domestic arbitrations and in some cases of foreign-seated arbitrations.[46] As Kachwaha said, the Courts cannot be leaned upon to salvage the perceived inadequacies of the arbitral system through greater intervention.[47] The party autonomy and restricted judicial intervention is the essence of arbitration.

6.2 Suggestions

Some suggestions to reduce judicial intervention are as follows:

1. The Supreme Court should lay down some clear guidelines for the High Courts and subordinate courts regarding the instances to intervene in arbitration under the purview of S. 34 of the Act.

2. The Courts should adopt a more hands-off policy unless there is a violation of natural justice or a strikingly wrong arbitral award.

3. The Courts should exercise summary jurisdiction as done under the Code of Civil Procedure, 1908

4. The Courts should take serious consideration of the time limits within which each proceeding happen during the intervention in arbitration.

[45] *Ssangyong Engineering & Construction Co. Ltd. v National Highway Authority of India Ltd.* [Civil Appeal No. 4779 of 2019]
[46] *Marriott International Inc. and Ors. v Ansal Hotels Ltd. & Anr.* (1999) DLT 137
[47] Sumeet Kachwaha, The Indian Arbitration Law: Towards a New Jurisprudence (2007) 10 INT. A. L. R. 17

REFERENCES

Primary Sources

Arbitration and Conciliation (Amendment) Act 2019

Arbitration and Conciliation Act 1996

Code of Civil Procedure 1908

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

Foreign Awards (Recognition and Enforcement) Act 1961

Uncitral Model Law on International Arbitration, 1985

Secondary Sources

Books

Rohith M. Subramoniam and Navya Jain, International Commercial Arbitration: An Introduction (1st edn, Eastern Book House 2019)

Avtar Singh, Law of Arbitration and Conciliation (11th edn, Eastern Book House 2018)

Articles

1. Prof J. Martin Hunter and Ranamit Banerjee, Bhatia, Balco and Beyond: One Step Forward, Two Steps Back? (2013) NLSIR 1 <http://docs.manupatra.in/newsline/articles/Upload/FB2433 EA-E1934EAC-BE78-8F2CB06A2086.pdf> accessed on 20 June 2021

2. Ashish Chugh, The Bharat Aluminium Case: The Indian Supreme Court Ushers In a New Era, KLUWER ARBITRATION BLOG (Sept. 26, 2012), <http://arbitrationblog.kluwerarbitration.com/2012/09/26/the-bharat-aluminium-case-the-indian-supreme-court-ushers-in-a-new-era/> accessed on 20 June 2021

3. Robert E. Lutz, International Arbitration and Judicial Intervention (1988) LLAICLR 621

4. Manu Thadikkaran, Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective (2012) JIA 681

Websites

www.indiankanoon.org

www.amtlegal.com.au

www.siac.org

www.mondaq.com