

Arbitration Act Reforms: Push for Limited Judicial Interference

Introduction

Arbitration has been touted over the years as an ideal mechanism for the resolution of **commercial disputes** on account of its efficiency, flexibility, and definiteness. In India, however, the arbitration process has traditionally been faulted for undue court interference, which negates its very purpose of offering an alternative to protracted litigation. It has been the policy direction over the years to streamline reforms to the **Arbitration and Conciliation Act, 1996** ("the Act"), with a view to minimizing judicial intervention while promoting fairness, transparency, and enforceability of awards. The latest drive towards reforms in arbitration underscores a strong policy direction to align India with international best practices and turn it into an arbitration hub of the world. Evolution of Judicial Intervention in Arbitration

When the Arbitration and Conciliation Act was passed in 1996, it was formulated on the pattern of the UNCITRAL Model Law on **International Commercial Arbitration**. The intention was to restrict judicial intervention and promote party autonomy. Section 5 of the Act clearly states that no judicial authority shall intervene except as so provided. In spite of this, Indian courts often took liberal interpretations of sections like Section 34 (setting aside arbitral awards) and Section 48 (refusal to enforce foreign awards).

For example, parties would attack arbitral awards on broad bases, leading to delayed proceedings and delays in enforcement. This judicial inclination critically impaired faith in India as an arbitration-friendly forum.

Reforms through Amendments

Acknowledging these issues, the legislature conducted several rounds of amendments to the Arbitration Act, each with the intent of limiting judicial interference:

1. 2015 Amendment

The amendment of 2015 was a turning point. It reduced the ambit of "public policy" in Section 34 by making it clear that an award could be set aside only if it was contrary to the public policy of India, or to the interest of India, or was patently illegal. Notably, "patent illegality" was exempted in the case of international commercial arbitrations, bringing India at par with international best practices. This was a deliberate effort to refrain from courts reviewing the merits of arbitral awards.

2. 2019 Amendment

The 2019 amendment prioritized institutional arbitration by advocating for the formation of the **Arbitration Council of India** (ACI). It aimed to professionalise the environment of arbitration and extend minimal judicial intervention even further. ACI implementation is, however, still ongoing.

3. 2021 Amendment

The 2021 amendment added a provision for the courts to suspend enforcement of awards in instances where the contract was prima facie induced by corruption or fraud. Though perceived as a protection, critics are of the opinion that this could possibly reopen the doors for judicial interference, but on a limited scale.

The Judiciary's Changing Approach

In addition to legislative change, Indian courts have also adjusted their attitude towards arbitration. The Supreme Court has, in several landmark judgments, reaffirmed that judicial intervention has to be minimal:

- In *Associate Builders v. DDA* (2014), the Court defined the limits of "public policy," emphasizing that an arbitral award cannot be challenged because another perspective exists.
- In *Ssangyong Engineering v. NHAI* (2019), the Court reaffirmed that courts should not reappreciate evidence or get involved in findings of fact, thereby affirming the pro-arbitration approach.
- In *Perkins Eastman Architects v. HSCC* (2019), the Court again highlighted the autonomy and impartiality of arbitrators, a critical consideration for international acceptability.

These decisions reflect a judicial acknowledgment that arbitration flourishes only when courts refrain from interference.

The Policy Push for Limited Interference

The uniform policy message has been to minimize judicial intervention, enhance party autonomy, and strengthen investor confidence. India's desire to be a global arbitration hub—and especially with the setting up of institutions such as the Mumbai Centre for International Arbitration (MCIA) hinges on guaranteeing predictability and efficiency in arbitral procedures.

Excessive judicial interference discourages overseas investors, who prefer neutral places such as Singapore or London for arbitration. Restricting intervention not only brings India in line with international arbitration practices but also is in the interests of the government's wider "Ease of Doing Business" agenda.

Criticisms and Concerns

Although judicial intervention has to be curbed, it has generated controversies regarding achieving the right balance. Detractors claim that Indian arbitration continues to face problems of unbalanced bargaining power, poor institutional infrastructure, and doubts over arbitrator impartiality. Under such scenarios, courts have an important role to play in ensuring fairness.

Furthermore, concerns persist regarding the enforcement of awards. Even with narrowed grounds under Section 34, parties often approach courts with creative arguments, leading to delays. Unless supported by a strong institutional framework and a professional arbitrator pool, limiting judicial review alone may not suffice.

The Way Forward

For arbitration reforms to succeed, the following steps are essential:

1. **Institutionalizing Institutions:** Institution-building and empowerment of institutions such as the ACI and MCIA are crucial. Institutional arbitration minimizes dependence on courts and facilitates efficiency.
2. **Training Judges:** Specialized benches and judges' training in the law of arbitration can provide assured, disciplined, and judicious judicial supervision.

3. **Timely Proceedings:** Timely compliance with deadlines for the disposal of Section 34 petitions and enforcement applications would eliminate delays.
4. **Technology Integration:** Virtual hearings, e-filings, and AI-assisted case management can enhance access and lower procedural barriers.
5. **Cultural Shift:** Apart from legislation, a change of mind-set among judges, lawyers, and litigants toward giving due respect to arbitral autonomy is essential. The parties should recognize arbitration as an end solution, and not as a gateway to litigation.

Conclusion

Indian reforms in arbitration see an even approach towards restricting judicial interference while ensuring fairness. Even legislative changes and judicial statements speak of a deliberate policy change to make India an arbitration-friendly jurisdiction. But the journey is not yet complete. A complete approach involving legislative clarity, judicial restraint, strength in institutions, and cultural change is required to make arbitration completely effective.

If they succeed, these reforms will not only ease the pressure on courts but also raise India's standing in the world of dispute resolution. Arbitration will then live up to its promise of being a speedy, economical, and final means of justice, one that coexists alongside, not copies, traditional litigation.