

Judicial Intervention in Arbitration: The Role of Section 37

Introduction

Arbitration has lately emerged as one of the most powerful ADR mechanisms in India. Due to the growing complexity of commercial transactions and the need for a quick resolution of disputes, parties prefer arbitration over litigation. The [Arbitration and Conciliation Act, 1996](#), was enacted to establish an all-round legal framework for arbitration and conciliation in India.

One of the most important aspects of arbitration law is the extent of intervention by the judiciary. While arbitration seeks to minimize court intervention, some checks and balances are unavoidable. This can be seen in Section 37 of the Arbitration and Conciliation Act, 1996, dealing with appealable orders.

The purpose of Section 37 is to enumerate appealable orders, achieve finality of [arbitration proceedings](#), and make appellate forums clear. Section 37 thus aims to achieve a balance between judicial intervention and the independence of arbitration.

Orders Appealable Under Section 37

1. Orders of Court (Section 37(1))

- (a) Refusing to refer parties to arbitration (Section 8)
- (b) Orders under [Section 9](#)
- (c) Orders under Section 34 (setting aside arbitral award)

2. Orders of Arbitral Tribunal (Section 37(2))

- (a) Accepting plea under Section 16(2) or (3)

Section 16 embodies the principle of *Kompetenz-Kompetenz*, i.e., the arbitral tribunal's power to rule on its jurisdiction. If the tribunal accepts the plea that it has no jurisdiction, an appeal lies. However, if the tribunal rejects the plea, the party must wait until the final award to challenge it under Section 34.

- (b) Orders under Section 17 (interim measures by arbitral tribunal)

3. Bar on Second Appeals (Section 37(3))

Section 37(3) places a restriction: no second appeal lies from an appellate order. But the right to seek the [Supreme Court under Article 136](#) of the Constitution is unaffected. This is done so that there is efficiency, but a constitutional safety valve is retained.

The benefits of Section 37 are promoting finality of decision, curbing judicial backlog, and safeguarding party rights. Attorneys have to thoroughly determine if a certain order can be appealed under Section 37, since an appeal filed beyond its purview shall be rejected.

Criticism and Suggestions

Although Section 37 has worked well, there are some issues pending, such as delay in appeal disposal, uncertainty regarding the forum, and the ambit of interim measures. Appeals against interim orders tend to delay proceedings, negating the purpose of interim protection. Reforms could include specialized benches for arbitration, rigorous timelines for appeals, and more clarity on appellate forums.

Judicial Interpretation

The courts have played an important role in shaping Section 37. Some landmark decisions include-

1. *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001): The Supreme Court emphasized that the Arbitration Act is a self-contained code. Therefore, appeals are only permitted where expressly provided under Section 37, excluding application of the Civil Procedure Code for additional appeals.
2. *SBP & Co. v. Patel Engineering Ltd.* (2005): While dealing with the jurisdiction of courts under arbitration, the Supreme Court clarified that appeals under Section 37 are exhaustive and must be strictly followed.
3. *BGS SGS Soma JV v. NHPC Ltd.* (2020): The Court reiterated that Section 37 embodies a limited appellate structure consistent with the objective of speedy resolution.

Conclusion

Section 37 of the Arbitration and Conciliation Act, 1996, balances judicial supervision with freedom of arbitral process with great care. By restricting the appealable orders, it protects arbitration as a quick, final, and party-driven dispute resolution mechanism while preventing injustice in the rarest of rare cases. Judicial interpretation has upheld the legislative intention of avoiding court interference and expediting the adjudication of disputes, at the same time giving parties a safeguard protection of the courts as a backup.