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“Confluence of Arbitration and Courts: Diluting Judicial Intervention through Amendments”

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ABSTRACT

Arbitration is a process for resolving disputes through a procedure that, unlike court, takes place and is governed by an agreement between the parties. It is a cost-effective and alternative method of resolving disputes amongst disputants.[1] It is a legally binding method of resolving disputes which in India is regulated by the Arbitration and Conciliation Act, 1996 (hereinafter ‘Arbitration Act’). The prime objective of arbitration is to resolve disputes outside of the court system with minimum intervention of the Court[2]. The ideal of party autonomy and minimization of court involvement regulates the very principle of the Arbitration process, and substantial amendments have transpired in the years 2015, 2019, and 2021 to keep up with the same. There are provisions in the Arbitration Act that mandates the intervention of the court for a myriad of purposes; however, with each amendment, an effort has been made to minimize the same.

In this study, the author has examined some of the most crucial provisions that necessitate the involvement of the court, as well as the amendments that have taken place in relation to the same, emphasizing how such amendments have contributed to minimizing the involvement of the court under such provisions of the Arbitration Act.

***Keywords*:** Arbitration, Judicial Intervention, Arbitration proceedings.

INTRODUCTION

The Arbitration Act has always proceeded on the principle of party autonomy and minimization of judicial intervention while dealing with the arbitration process[3].

Nonetheless, it is widely known that for any legal system to work fluently, the court must interfere at a certain point[4]. The same is apparent for the Arbitration Act, where, on the one hand, every effort has been made to minimize court intervention, on the other hand, some

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[1] Law Commission of India. (2014, August). *Law commission of India Report No. 246, Amendments to the Arbitration and Conciliation Act, 1996*. Law Commission of India. (accessed Janaury 22, 2022), https://lawcommissionofindia.nic.in/reports/report246.pdf

[2] Edlira Aliaj, ‘Dispute resolution through ad hoc and institutional arbitration’, Academic Journal of Business, Administration, Law and Social Sciences, Vol. 2 No. 2 (2016), p.241–250, (accessed January 22, 2022) available at http://iipccl.org/wp-content/uploads/2016/07/241-250.pdf

[3] Myadvo Techserve Private Limited. (2019, August 1). Process of arbitration in India. MyAdvo.in. (accessed January 22, 2022), from https://www.myadvo.in/blog/steps-of-arbitration-in-india/

[4] Bibek Debroy and Suparna Jain, ‘Strengthening Arbitration and its Enforcement in India—Resolve in India’, Research Paper of the Niti Ayog (2016), p.15, (accessed January 23, 2022) available at http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf

provisions necessitate court intervention before, during, as well as after the arbitral process has concluded.

From referring the parties to arbitration to enforcing the arbitral award and from appointing the arbitrator to entertaining the appeal application under arbitration procedures, the Arbitration Act has made provisions that require courts to interfere, however the same has to be exercised by the court in a very restrictive manner as provided by the Arbitration Act.

It has been repeatedly remarked that the lesser the intervention of the court in the arbitration process, the better; yet, the Arbitration Act has been constructed in such a manner that it entails the intervention of the court at a certain level[5]. Nevertheless, efforts have been taken to ensure that the court has exercised its function only when it is extremely crucial, consequently restricting its intervention to a bare minimum.

Significant amendments have been made over time to the Arbitration Act of 1996, particularly in the years 2015 and 2019, but the objective has remained the same, namely to make India an arbitration-friendly country. Apart from that, the most recent amendment to the Arbitration Act was in the year 2021 through the Arbitration and Conciliation (Amendment) Act, 2021 (hereinafter '2021 Amendment Act'). In this research, the author discusses certain crucial provisions that involve court intervention along with the amendments made, if any, that attempted to curtail judicial intervention.

EXTENT OF JUDICIAL INTERVENTION

Section 5 of the Arbitration Act specifies the scope of judicial interference, stating that *"notwithstanding anything contained in any other law for the time being in force, no judicial authority shall intervene in matters regulated by this Part except as so specified in this Part".*

The term "Part" as used in this Section refers to Part I of the Arbitration Act which applies where the arbitration takes place in India[6] and has no bearing on any other law currently in force that prohibits such disputes from being submitted to arbitration[7].

It establishes the scope of judicial intervention in arbitration. It explicitly outlines the objectives of the Arbitration Act, which is to minimize court interference and stimulate swift and cost-effective dispute resolution through the arbitration proceedings in circumstances where disputes are encompassed by an arbitration agreement.[8] The phrase "notwithstanding anything contained in any other law" implies that even though any other law in effect

[5] Moin Ghani, 'Court Assistance, Interim Measures, and Public Policy: India's Perspective on International Commercial Arbitration', The Arbitration Brief 2, no. 1: p. 16-29 (2012), (accessed Janauary 24, 2022) available at http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1026&context=ab
[6] § 2(2), Arbitration and Conciliation Act, 1996
[7] § 2(3), Arbitration and Conciliation Act, 1996
[8] Rastogi, A. (2021). The Scope of Judicial Intervention During Different Stages of Arbitral Proceedings: An Analysis in the light of the Emerging Regime of Judicial Minimalism. Asian Law and Public Policy Review, 6, p. 28–33. (accessed January 24, 2022), from https://thelawbrigade.com/wp-content/uploads/2021/06/Anushka-Rastogi-ALPPR.pdf.

contains provisions permitting a judicial authority to interfere, the said authority may not do so except if the intervention is authorized by one of the provisions of Part I of the Arbitration Act. As a result, judicial interference has been restricted and minimized. The judicial authority's intervention under the Arbitration Act is confined to the grounds specified in the Arbitration Act itself.

The author now would discuss crucial provisions that require the intervention of the court before, during, and after the arbitration proceedings, as per the Arbitration Act, along with any of the amendments that have been made to the same.

JUDICIAL INTERFERENCE BEFORE ARBITRATION PROCEEDINGS

Court to refer parties to Arbitration: SECTION 8

Section 8 allows any judicial authority to refer the parties to arbitration if there is a 'prima facie' belief that a legitimate agreement exists and the matter is arbitrable. Withal, there has been an amendment to the said section in the year 2015 under Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter '2015 Amendment Act'), which makes it mandatory for the judicial authority to refer the parties to arbitration when an application is made for the same and the dispute involves an arbitration agreement. If the arbitration agreement is deemed to be invalid, it may not refer the parties to the arbitration.[9]

Only when a binding arbitration agreement exists should the right to refer parties to arbitration arise.

The word MAY in Section 8 of the Arbitration Act provided the Courts some discretionary power prior to the 2015 Amendment Act. MAY was substituted with SHALL as a result of the amendment. As a result of this amendment, the judicial intervention has been curtailed since the courts no longer have any discretionary powers and are obligated to refer the parties to arbitration if all of the essential parameters for referring the parties to parties to the arbitration are satisfied.

Unlike before, the 2015 Amendment Act expands the realm of arbitration by specifying that, regardless of any judgment or decree of the Supreme Court of India or any other court, parties could be referred to arbitration if such court determines that the parties have a valid arbitration agreement. Section 8 of the Arbitration Act now appears in the form of a directive, asserting that the courts must send the party to arbitration if the conditions mentioned in section 8 are satisfied. If a dispute emanates from a contractual relationship that contains an arbitration agreement, judicial authority is required under the Arbitration Act to refer the dispute to arbitration.

[9] Kasthuri, V., Kluwer Arbitration Blog, Moreno, V., & Madrigal, G. (2021, April 14). *The anomalous case of sections 8 and 11 of India's arbitration and conciliation act, 1996*. Kluwer Arbitration Blog. (accessed Janaury 24, 2022) from http://arbitrationblog.kluwerarbitration.com/2021/04/15/the-anomalous-case-of-sections-8-and-11-of-indias-arbitration-and-conciliation-act-1996/

While discussing the arbitrability of a dispute, it is pertinent to mention the case of *Vidya Drolia vs Durga Trading Corporation*[10] (hereinafter 'Vidya Drolia'), it is a landmark in the process of determining whether or not a dispute should be arbitrable. In *Vidya Drolia*, the Supreme Court held that courts should forgo analyzing contentious facts underlying the dispute. However, courts must examine the following situations when deciding whether to refer an application to arbitration under Section 8, and stated that a dispute would not be arbitrable in India if the dispute:

(1) is concerned with acts in rem that are unrelated to subordinate rights in personam arising from rights in rem.
(2) has an erga omnes effect on third-party rights
(3) pertains to the State's inalienable sovereign and public-interest powers, making mutual adjudication invalid.
(4) When the dispute's subject matter is explicitly or implicitly non-arbitrable under statutory legislation (s).

The Supreme Court's explication on arbitrability in the *Vidya Drolia* is comprehensive and presents vital assistance on a myriad of problems that had been the subject of differing interpretations. The intervention of the courts is envisaged to be alleviated as a result of this decision.

It is also pertinent to mention here that there has been an amendment in the year 2019 through Arbitration and Conciliation (Amendment) Act, 2019 (hereinafter '2019 Amendment Act') which inserted section 87 in the Arbitration Act, the said section stated that the 2015 Amendment Act would only apply to arbitral proceedings that have been initiated on or after the enactment of the 2015 Amendment Act, as well as any judicial actions that originated from such arbitral processes.[11]

JUDICIAL INTERFERENCE DURING ARBITRATION PROCEEDINGS

Interim measures by the court: SECTION 9

Section 9 of the Arbitration Act allows for interim remedies, and the parties to an arbitration agreement can seek assistance from the court by filing an interim application before the arbitration proceedings begin or after the award is rendered but before it is enforced.

This section was significantly amended by the 2015 Amendment Act. The 2015 Amendment Act shrinked the power of the court to award interim relief once the arbitral tribunal has been established. Section 9(3) of the Arbitration Act as amended states that the court will not

[10] AIR2019SC3498
[11] Bhardwaj, P., Bhateja, N., Sharma, D., Indulia, B., & Editor. (2019, November 29). *Section 87 of the arbitration and conciliation act, 1996 struck down. here's why*. SCC Blog. (accessed January 23, 2022) from https://www.scconline.com/blog/post/2019/11/27/section-87-of-the-arbitration-and-conciliation-act-1996-struck-down-heres-why/

consider an application under section 9 unless it believes that the remedy sought from an arbitral tribunal pursuant to section 17 would be "inefficacious".[12]

The wording wielded by the legislature is "the Court shall not entertain," which makes it quite apparent that after the Arbitral Tribunal has been established, the court shall not entertain an application under Section 9 of the Arbitration Act. Nevertheless, an exception to this provision has been given which states that the court may hear an application under Section 9 after the formation of an arbitral tribunal only in exceptional situations, i.e., where the remedy available under Section 17 is declared to be ineffective. The same has been reiterated in the case of *Manbhupinder Singh Atwal Vs. Neeraj Kumarpal Shah*[13].

This would not only assure the speedy disposition of interim relief petitions but would also ensure minimum court involvement after the formation of the arbitral tribunal.

Appointment of Arbitrator: SECTION 11

Section 11 has been one of the most contentious provisions in the Arbitration process of India, with an emendation made in both the 2015 and 2019 Amendment Acts.

Section 11 of the Arbitration Act, as originally drafted, provided that if one of the parties failed to appoint an arbitrator in accordance with the parties' agreement (or within 30 days of receiving a request to do so from the other party, if there is no agreed procedure), the requesting party could approach the Chief Justice of India and request the Chief Justice to appoint the arbitrator. The appointment would thereafter be made by the Chief Justice himself, or by any person or organization authorized by him for such purpose.

Parts of Section 11 of the Arbitration Act were altered by the 2015 Amendment Act. The 2015 Amendment Act explicitly handed the authority of appointing the arbitrator to the Supreme Court or, as the case may be, the High Court or any person or institution authorized by such Court. Sub-section 6-A was inserted by the 2015 Amendment Act and due to which the Court's authority was constrained to examine the existence of an arbitration agreement. Formerly, the courts had the authority to examine other issues as well. Further, the 2015 Amendment Act, provided arbitral tribunal the authority to deliberate on other preliminary questions if they are brought.[14]

However, the 2019 Amendment Act came into the picture which has profoundly amended Section 11 of the Act once again and one such amendment was the omission of sub-section 6-A which has been inserted by the 2015 Amendment Act. The amended Section 11 refers to

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[12] Shashank Garg, P. C. (2020, June 15). Interim relief by courts in an arbitration: The Battle of Section 9. Bar& Bench Indian Legal news. (accessed January 24, 2022), from https://www.barandbench.com/columns/interim-relief-by-courts-in-an-arbitration-the-battle-of-section-9

[13] 2019GLH(3)234

[14] Sharma, D., Editor, Bhardwaj, P., Bhateja, N., & Indulia, B. (2020, November 28). *Appointment of arbitrators under Section 11 by the Supreme Court: A time intensive phenomenon*. SCC Blog. (accessed January 24, 2022), from https://www.scconline.com/blog/post/2020/11/28/appointment-of-arbitrators-under-section-11-by-the-supreme-court-a-time-intensive-phenomenon/

the appointment of the arbitrator to the arbitral institutions which would be designated by the Supreme Court and the High Court. Whereas, Arbitration Council of India (hereinafter 'ACI') will grade these arbitral institutes[15].

"The appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be"[16].

Further, the 2019 Amendment Act requires the ACI to be formed as a body corporate. Clause 10 of the 2019 Amendment Act contemplates incorporating the ACI into the Arbitration Act by inserting new sections 43A to 43M.

The most significant change to Section 11 in the 2019 Amendment Act is that, if the parties fail to appoint an arbitrator, an arbitral institution is entrusted to do so, this would significantly streamline the process of appointing an Arbitrator.

The ACI, established by the 2019 Amendment Act, has been mandated to ensure that the whole arbitration process in India is expeditious and subject to the least amount of intervention by Indian courts. Additionally, the legislature has attempted to minimize the intervention of the court by requiring that arbitrators be appointed institutionally under the 2019 Amendment Act.

Termination of the mandate of Arbitrators: SECTION 14 & 15

Section 14 of the Arbitration Act regulates the case where the arbitrator's mandate is terminated due to his failure to act. Whereas Section 15 underlines the arbitrator's removal from office and subsequent replacement of his mandate.

Grounds for terminating the mandate of Arbitrator under section 14 (1) (a):

1. The arbitrator becomes de jure or de facto unable to execute his function: De Jure refers to an arbitrator's legal inability to execute his obligations under the law, and also refers to situations in which the arbitrator is prohibited from staying in office by law. The term "de facto" refers to a lack of ability to prove anything. It refers to an actual event that occurred during the arbitration procedure.
2. Failure to act without undue delay for some other reasons: This clause will apply in cases when the arbitrator takes an inordinate amount of time to decide the dispute. It is critical for the tribunal to pronounce the judgment in a reasonable timeframe,

[15] Government of India. (2017, July 30). *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India Chairman Justice B. N. Srikrishna Retired Judge, Supreme Court of India*. Legal Affairs, Government of India. (accessed January 25, 2022), from https://www.dom.edu/sites/default/files/pdfs/about/OIE/HLC%20Assurance%20Report%202019%20Update_4_12_19.pdf

[16] § 11, the Arbitration and Conciliation (Amendment) Act, 2019

especially in light of the 2015 Amendment Act which imposes stringent timeframes for rendering the award.[17]

Under section 14 (1) (b) the mandate of the arbitrator would terminate if he withdraws from the office.

If the arbitrator resigns from office for reasons acceptable to him, his mandate is automatically ended. This can happen for a variety of reasons, and the arbitrator is not required to provide a lengthy explanation. However, if one of the parties intends to have the arbitrator dismissed, they must petition the court. Nevertheless, if both parties agree to dismiss the arbitrator, they can do so by entering into an agreement under section 15(1)(b) and terminating the arbitrator's mandate. The authority of the court to dismiss an arbitrator is entirely discretionary. Every application to the court under section 14 is not expected to be approved.[18]

Pursuant to the 2015 Amendment Act, the mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, under Section 14 (1); originally, the clause merely referred to the termination of the arbitrator's mandate. It is evident to mention here that this is one of the most distinctive provisions in which courts have been granted the authority to exercise their discretion.

Assistance of court for procuring Evidence: SECTION 27

Section 27 of the Arbitration Act outlines a procedure by which the arbitral tribunal or a party to the dispute with the approval of the Arbitral Tribunal can request the assistance of the court for procuring the evidence. This is among the few provisions of the Arbitration Act that authorizes the court to intervene in an arbitration proceeding.

While affirming the discretion of the court to rule on an application under Section 27 of the Arbitration Act in Ennore Port Limited v. Hindustan Construction Co. Limited[19], the High Court of Madras asserted that any such exercise of discretion must not be automatic and that stability must always be struck between such discretion and the relevance of limited judicial intervention proclaimed in Section 5 of the Arbitration Act.

When assessing an application under Section 27 of the Arbitration Act, the discretion available to the court is circumscribed. The courts cannot intervene with an arbitral tribunal's ruling giving authorization to a party to make an application under Section 27 of the Arbitration Act since it is outside the scope of the court. When dealing with Section 27 applications, the courts should maintain a minimal judicial approach.

[17] Section 29-A- Time limit for arbitral award, Inserted by the Arbitration and Conciliation (Amendment) Act, 2015, further amended by the Arbitration and Conciliation (Amendment) Act, 2019.
[18] Centre, V. I. A. M. (n.d.). *Termination of Mandate of the Arbitrator*. Termination of Mandate of the Arbitrator | VIA Mediation Centre. (accessed January 25, 2022), from https://viamediationcentre.org/readnews/MTAxNw==/Termination-of-Mandate-of-the-Arbitrator
[19] 2008(2)ArbLR598(Madras)

In the case of *Thiess Iviinecs India vs. NTPC Limited and Ors.*[20], the Delhi High Court relied on section 5 of the Arbitration Act, which provides for minimum judicial intervention. The Court stated that power under section 27 is confined to carrying out the request of the tribunal and that there is nothing in section 27 that allows the court to decide the admissibility, relevance, substance, or weight of any evidence.

The Bombay High Court held in *M/s. National Insurance Company Limited v. M/s. S.A. Enterprises*[21] that it could not go through the authenticity and appropriateness of the order given by the arbitrator at the process of a section 27 application, and that "whether particular documents or the presence of a particular witness would be necessary for the proper adjudication of the dispute" was the domain of the arbitrator, not the court.

In light of these observations, it is reasonable to infer that the proceedings before the Court under Section 27 of the Arbitration Act are merely executory rather than adjudicatory in nature, with the Courts unable to inquire into the validity and correctness of the order passed by the Arbitral Tribunal.[22] Though the Court has been empowered to intervene under this section, the same has been very restricted and the aforementioned cases reiterate the same.

JUDICIAL INTERFERENCE IN ARBITRAL AWARDS

Power to set aside award: SECTION 34

Section **34(2) (a)** of the Arbitration Act enlists a number of grounds in which the Court will overturn an arbitral award if the party demonstrates that:

1. The party was under some incapacity,
2. The arbitration arrangement is invalid under the law to which the parties to the agreement have agreed to submit it.
3. It had not been given proper notice of the arbitrator's appointment or the proceeding.
4. The arbitral award deals with a dispute that does not fall under the provisions of the arbitration agreement, or the award involves a judgment that is beyond the reach of the arbitration agreement.
5. The composition of the tribunal was not in line with the parties' agreement.

Furthermore, under section **34 (2) (b)** of the Arbitration Act, the court can set aside the award if:

a) the dispute cannot be resolved by arbitration; and
b) the arbitral award is contrary to Indian public policy.

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[20] 2016 IV AD (Delhi) 512
[21] MANU/MH/2831/2015
[22] Bench, B. &. (2018, April 30). *Section 27 of the arbitration and conciliation act – reading between the lines*. Bar and Bench - Indian Legal news. (accessed January 25, 2022), from https://www.barandbench.com/columns/section-27-arbitration-conciliation-act

The 2015 Amendment Act outlined when an award would be considered to be in conflict with Indian public policy, such as when:

i. the award was persuaded or influenced by fraud or corruption;
ii. it is against the fundamental policy of Indian law; or
iii. it violates the most fundamental notions of morality or justice.

It is pertinent to mention here that Section 34 of the Arbitration Act is based on the UNCITRAL Model Law, which states that when considering a challenge to an arbitral award, the courts have no authority to amend it.[23]

Section 34 of the Arbitration Act is one of the most important provisions.[24] This section establishes the permissible grounds for challenging an arbitral award.This section is also a testament to the statutorily restricted extent of judicial interference as stated in the case of *P.R. Shah, Shres and Stock Broker (P) Ltd., V.B.H.H. Securities (P) Ltd*[25]

It is settled law that when an arbitral award is challenged under Section 34 of the Arbitration Act, no challenge can be made on the merits of the arbitral award. The Supreme Court in the case of *MMTC Ltd. v. Vedanta Ltd*. wherein the Court had held that "*the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*."[26] Further in the case of *Ssangyong Engg. & Construction Co. Ltd. v. NHAI* [27] as well as *Renusagar Power Co. Ltd. v. General Electric Co*.,[28] the Court made observations holding that there could be no challenge on the merits of an arbitral award.

The Supreme Court reiterated and emphasized on the principle of limited judicial interference in arbitration[29].

Further, in the case of *McDermott International Inc. v. Burn Standard Co. Ltd.*[30]*,* the Supreme Court held that the Arbitration Act only established a supervisory role for the courts to evaluate an arbitral award for the limited purpose of ensuring fairness, such as in cases of arbitrator being fraud or bias, natural justice violations, and so on. Furthermore, the Supreme Court declared unequivocally in this case that the court cannot rectify the arbitrators' errors

[23] Section 34, UNCITRAL Model Law on International Commercial Arbitration, 1985
[24] Sharma, D., Editor, Bhardwaj, P., Bhateja, N., & Indulia, B. (2021, July 23). *Can courts modify arbitral awards under s. 34 of arbitration act or is Power Limited? SC decides*. SCC Blog. (accessed January 26, 2022), from https://www.scconline.com/blog/post/2021/07/22/arbitral-award-3/
[25] AIR 2012 SC 1866
[26] (2019) 4 SCC 163
[27] (2019) 15 SCC 131
[28] 1994 Supp (1) SCC 644
[29] Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC OnLine SC 157
[30] (2006) 11 SCC 181

and may only set aside the decision, limiting the court's supervisory role to the bare minimum.[31]

The 2015 Amendment Act narrowed the extent of judicial intervention by defining and constraining the ambit of public policy and has addressed several concerns to a considerable extent while minimizing judicial intervention, as the same has clarified the term "public policy of India," which was not detailed before the amendment, apart from that, the amendment has also added patent illegality as a ground to set aside an arbitral award. The addition of subsection 6 to section 34 through the 2015 Amendment Act, which establishes a one-year timeline for courts to dispose of an application under section 34, is another measure for minimizing judicial intervention as Courts are bound to dispose of an application under the said timeframe, which leaves the Court with no discretion of doing so as per their convenience.

Enforcement of Arbitral Award: SECTION 36

The enforcement of the Arbitral Award is dealt with under Section 36 of the Arbitration Act. It states that where the period for filing an application to set aside an arbitral award has elapsed or such an application has been denied, the award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (hereinafter 'CPC'), in the same manner as if it were a decree of the court. Further, this provision stated that after filing a setting aside application under Section 34, the arbitral award would only be implemented once the Section 34 petition was dismissed. As a result, any challenge to an arbitral tribunal award rendered it unenforceable.

In 2015, an amendment was introduced that completely amended section 36 of the Arbitration Act, and the automatic stay of awards was repealed because the courts used to take a long time to deal with matters involving the setting aside of arbitral awards, rendering the procedure inefficient[32]. The aggrieved party must make a separate application to seek a stay of the arbitral award, and the court must record its grounds for granting a stay, according to the 2015 Amendment Act. Furthermore, the provision of CPC for the issuance of a money decree will apply if the court is required to examine stay applications for arbitral awards involving money. As a result, the 2015 Amendment Act eliminated the concept of an automatic stay, resulting in a more business-friendly arbitration regime.[33]

However, the 2021 Amendment Act further amended the provision under Section 36 of the Arbitration Act that governs the enforcement of arbitral awards.[34] It stated that when a

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[31] *Supra* note 24.
[32] *Supra* note 15.
[33] Handa, H. Enforcement of Domestic and Foreign Arbitral Awards in India. International Journal for Research in Law, 4(2), p. 204–207. (accessed January 26, 2022), from https://www.ukca.in/wp-content/uploads/2019/08/Social-Media-Crimes-A-Comprehensive-Analysis-pages-202-212.pdf.
[34] India Corp Law. (2021, April 6). *Section 36 of the Arbitration and Conciliation Act, 1996, as recently amended*. IndiaCorpLaw. (accessed January 26, 2022, from https://indiacorplaw.in/2021/04/section-36-of-the-arbitration-and-conciliation-act-1996-as-recently-

challenge to an arbitral award is pending, the court must impose an unconditional stay on the award's enforcement if it appears to the court that the award was comprised of either an arbitration agreement or a parent contract induced by fraud or corruption. The aforesaid amendment was formulated to overcome and combat the issue of corrupt practices and frauds that may exist in the underlying arbitration agreements or during the issuing of the arbitral award.

The 2021 Amendment Act has opened the floodgates for challenges to arbitral awards based on fraud and corruption, as well as revitalized the Court's ability to order an unconditional stay of the arbitral award when a prima facie case of fraud and corruption has been proven. Consequently, the 2021 Amendment Act has received a great deal of condemnation and has been characterized as a step backward for the Indian Arbitration regime.

Appeal: SECTION 37

Section 37 provides that an appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:

a) refusing to refer the parties to arbitration under section 8;
b) granting or refusing to grant any measure under section 9;
c) setting aside or refusing to set aside an arbitral award under section 34.

There has been an amendment in the year 2015 which has inserted that an appeal can be filed if a party has been refused to be referred to arbitration under section 8 of the Arbitration Act, prior to the amendment, an appeal was allowed to be filed only under rest of the two grounds aforementioned.

Further, section 37 (2) provides that an appeal shall also lie to a court from an order of the arbitral tribunal—

a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
b) granting or refusing to grant an interim measure under section 17

Section 37 (3) provides that no second appeal shall lie from an order made in an appeal under this provision, although nothing in this section affects or limits the right to appeal to the Supreme Court.

Section 37 of the Arbitration Act comprehensively outlines orders against which an appeal can be brought only by parties under the Arbitration Act, and hence restricts judicial intervention by permitting them to accept only those appeal applications that fall within the ambit of section 37.

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AMENDMENTS TO THE ARBITRATION ACT, 1996: AN ATTEMPT TO CURB JUDICIAL INTERVENTIONS

The Arbitration Act of 1996 was enacted with the objective of curtailing the burden on courts by enabling the quick and efficient settlement of disputes through arbitration or conciliation. India has made significant amendments to the Arbitration Act in order to make its legal system more conducive to domestic as well as international arbitration.

Let us take a quick perusal of all the aforementioned amendments and their implications vis minimization of judicial intervention in arbitration:

Section 8 of the Arbitration Act was amended in 2015, limiting judicial intervention since the courts no longer have discretionary powers and are required to refer the parties to arbitration if all of the fundamental requirements for referring the parties to the arbitration are satisfied. Furthermore, the 2015 Amendment Act significantly altered Section 9 of the Arbitration Act, limiting the court's ability to grant interim relief once the arbitral tribunal has been established. The court will not consider an application under section 9 unless it believes the remedy sought from an arbitral tribunal pursuant to section 17 would be "inefficacious."

The 2015 Amendment Act further curtailed court interference by defining and confining the scope of public policy and it also altered section 36 of the Arbitration Act, eliminating the notion of an automatic stay and creating a more business-friendly arbitration process. However, the 2021 Amendment Act further amended Section 36 and stated that when a challenge to an arbitral award is pending, the court must impose an unconditional stay on the award's enforcement if it appears to the court that the award was comprised of either an arbitration agreement or a parent contract induced by fraud or corruption. It is vital to mention here that the 2021 Amendment Act under Section 36 is the only one provision that has expanded the interference of the court in the arbitration process, and as a result has attracted widespread condemnation.

Incontestably the 2015 Amendment Act made fundamental changes in order to ensure minimal judicial interference, but the Arbitration Act has amended anew in the year 2019 in order to make certain changes, one of the most prominent of which is the establishment of the Arbitral Institution[35]. The Central Government established a High-Level Committee under the Chairmanship of Justice B.N. Srikrishna to identify measures to promote institutional arbitration in our country in order to make India a robust centre for institutional arbitration for domestic as well as international arbitration[36]. It is envisioned that institutionalizing

[35] Press Information Bureau Press Release, ‘Constitution of High-Level Committee to review Institutionalization of Arbitration Mechanism in India’, 29.12.2016, (accessed January 27, 2022), available at http://pib.nic.in/newsite/PrintRelease.aspx?relid=155959.
[36] *Supra* note 15.

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arbitration would make India a hub for International Commercial Arbitration and make India a Pro-Arbitration Regime[37].

Except the 2021 amendment, all the aforementioned amendments are melioration that has been commended for giving the Indian arbitration regime a much-needed amplification. These amendments undoubtedly ventured for minimizing the intervention of the courts in arbitration procedures, which has been a persistent legislative endeavour since the enactment of the Arbitration Act of 1996.

CONCLUSION

The amendments that have eventuated in the past years have profoundly reshaped the arbitration regime in India and have, to some degree, accomplished the objectives of the Arbitration Act, which is to minimize judicial intervention in arbitration as the unscathed objective of enduring to arbitration is to circumvent dealing with the courts. The 2021 Amendment Act was enacted with noble intentions, as it was anticipated that the amended provision under Section 36 of the Arbitration Act would mitigate cases of arbitral awards attributed to fraud and corruption. However, the amendment seemed to have irreconcilable reverberation, and it was observed that this amendment had increased the scope of judicial intervention comprehensively.

Therefore, it can fairly be concluded that except for the 2021 Amendment Act, each amendment has contributed to combating the interference of the court in the arbitral procedure. The arbitration will gain enormous prominence in the Indian scenario if we continued to make changes with time in order to keep up the objective of the Arbitration Act with foresighted judicial assistance. Lastly, with amendments made time and again, it has been ascertained that all the attempts are being made for making India a Pro-Arbitration regime that involves minimum judicial intervention.

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