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Unravelling the Intricacies of Judicial Intervention in International Commercial Arbitration

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Abstract: International Commercial Arbitration is the most favoured method for resolving international commercial disputes across the globe. Parties to international commercial contracts choose arbitration due to fear of the judiciary involvement. However, Judicial Intervention may arise in various areas of international commercial arbitration. The paper covers analysis of Indian arbitration law, judicial trends and interpretation of law by the courts. This research paper deals with the intricacies of Judicial Intervention in international commercial arbitration. This paper examines the complicated dimensions of balancing Judicial Intervention with party autonomy. The analysis circumscribes the different approaches adopted by the Indian courts, considering the effect of varying interpretations in international commercial arbitration. The paper further examines various judgments in light of emerging trends in international commercial arbitration. The analysis concludes that judicial intervention may be necessary to ensure uniformity, fairness, and justice. Although Judicial Intervention has been significantly reduced in India over the past ten years, it remains a contentious feature of Indian arbitration law.

Keywords: Judicial Intervention. International Commercial Arbitration. Foreign Awards. Enforcement of Award.

Introduction

There is a nexus between Judicial Intervention and international commercial arbitration. It is important because the judiciary ensures the reliability of the arbitral process. International Commercial Arbitration is the preferred method for resolving international commercial disputes due to its emphasis on party autonomy and the arbitral tribunal's authority to determine its jurisdiction. Parties to international

commercial contracts often choose arbitration to resolve their disputes, primarily to avoid judicial involvement. However, Judicial Intervention may arise in various areas of international commercial arbitration, including enforcement of an arbitration agreement, arbitral proceedings and enforcement of the award.[1] Unnecessary intervention by national courts may defeat the whole objective of the international arbitral process. It can destroy the Sanctity and benefits of international commercial arbitration and lead to its disintegration in India. In many cases, unnecessary judicial intervention has resulted due to a lack of consensus on the meaning of the foreign award. Different types of judicial treatment to sovereign immunity are also an area of judicial intervention. Usually, courts get several opportunities for intervention in the arbitration proceedings from the date of execution of the arbitration agreement to the date of enforcement of awards. On several occasions, the Indian courts have misinterpreted legal provisions under the pretext of minimizing Judicial Intervention, leading to unreasonable consequences. The problem of Judicial Intervention can be avoided by focusing on the formal and substantive validity of the arbitration agreement. Judicial Intervention is anathema to international commercial arbitration, and therefore, parties should limit recourse to the judiciary to relatively narrow boundaries. However, the judiciary provides essential support to international commercial arbitration. International arbitration conventions and national laws on arbitration have adopted the basic principle of judicial non-interference in international commercial arbitration. It is well-recognized that the principle of judicial non-interference is fundamentally vital for the efficiency of international commercial arbitration. It ensures that arbitration proceeds according to the parties' agreement, avoiding delays and other issues typically associated with judicial review.[2]

Methodology

This article emphasizes the growing importance of understanding Judicial Intervention in international commercial arbitration. We employed the doctrinal research method to structure our analysis. Our study involved an extensive review of scholarly articles, legal frameworks, and case laws on Judicial Intervention in international commercial arbitration in India, aiming to highlight critical issues and emerging judicial trends.

1 Robert E Lutz, 'International Arbitration and Judicial Intervention' [1988] 10 Loyala of Los Angeles International & Comparative Law Review 621.

2 Gary Born, 'The Principle of Judicial Non-Interference in International Arbitral Proceedings' [2014] 30 University of Pennsylvania Journal of International Law 999.

II Indian Arbitration Law & Judicial Intervention

The UNCITRAL Model Law on International Commercial Arbitration, 1985 (the Model Law) drafted by the United Nations Commission on International Trade Law contains most of the necessary and convenient provisions for the functioning of international commercial arbitration.[3] The Model Law and the regimes based on it attempt to reduce the level of judicial intervention in the process of arbitration. However, the Model Law allows judicial intervention in the arbitral process on restricted grounds.[4] The Indian Arbitration and Conciliation Act, 1996 (the Act), based upon the Model Law, was passed to meet the challenges of globalization, where judicial intervention acted as a disincentive for the international commerce community to do business in India. The Act incorporated provisions of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention), aiming to minimize judicial interference in international commercial arbitration.[5] However, several rulings by the Indian Supreme Court went against the intent and spirit of the Act, making arbitration less appealing as an efficient way to resolve disputes.[6] The courts were uneasy with the reduced scope for Judicial Intervention and often chose to interfere in international commercial arbitration cases. It led to higher costs, delays and uncertainty. Unwarranted Judicial Intervention has undermined India's claim to be an appropriate jurisdiction for international commercial arbitrations. The problems of judicial intervention arose due to the interpretation of Part I of the Act. There have been circumstances of excessive judicial interference while granting interim relief,[7] the appointment of arbitrators,[8] and public policy.[9]

Under the Act, the procedure for enforcing a foreign arbitral award must be followed. An application has to be made by the party seeking enforcement of the foreign arbitral award. If the court is convinced of the enforceability of the foreign arbitral award, it will convert the award into a court decree, which the civil court can then enforce. There is no provision to set aside a foreign arbitral award. Therefore, when a foreign arbitral award is involved, the courts in India may either enforce

3 Jair Gevaerd, 'Internationality and commerciality in the UNCITRAL Model Law: a functional and integrative analysis' [2019] 1 Revista Brasileira de Alternative Dispute Resolution – RBADR 19.

4 Alan S Reid, 'The UNCITRAL Model Law on International Commercial Arbitration and the English Arbitration Act: Are the Two Systems Poles Apart?' [2004] 21 Journal of International Arbitration 227.

5 Anirudh Wadhwa & Anirudh Krishnan, *Justice R S Bachawat's Law of Arbitration and Conciliation* (5thedn, LexisNexis Butterworths Wadhwa 2010) 596.

6 Promod Nair, 'Surveying a Decade of the 'New' Law of Arbitration in India' [2007] 23 Arbitration International 699.

7 *Sundaram Finance v NEPC* [1999] 2 SCC 479.

8 *Konkan Railways Corp Ltd v Rani Construction Pvt Ltd* [2002] 2 SCC 388.

9 *ONGC v Saw Pipes* [2003] 5 SCC 705.

or refuse to enforce it; however, Indian courts cannot set aside foreign arbitral awards.

The conditions set forth for enforcing a foreign arbitral award in India align with the New York Convention. The only addition is the explanation of section 48(2)(b) relating to the grounds of public policy.[10] Courts in India have narrowly interpreted the ground of public policy corresponding to foreign arbitral awards.[11] However, the Indian Supreme Court sought to plug this lacuna in *Venture Global*[12] the court held that a foreign arbitral award can be set aside in India under section 34 of the Act. While extending the law laid down in *Bhatia International*,[13] the court held that "even though there is no provision in Part II of the Act providing for the challenge to a foreign award, a petition to set aside the same would lie under section 34 of the Act".[14] The Supreme Court, further, held that "a challenge to a foreign arbitral award in India would have to meet the expanded scope of public policy as laid down in *SAW Pipes*".[15] The Supreme Court had created a new ground and procedure for challenging a foreign arbitral award. Under the new ground, the foreign arbitral award had to satisfy the widened public policy requirements under section 34 and meet the grounds provided in section 48 of the Act.[16] After *Venture Global*[17] a person seeking enforcement of a foreign arbitral award in India under section 48 had to meet the other party's application for setting aside the foreign arbitral award. Therefore, the process for enforcement of a foreign arbitral award under the Act was effectively rendered redundant until the application for setting it aside was decided under section 34. The narrow public policy ground for challenging the award under section 48 became pointless, as enforcing a foreign arbitral award required it to first meet the extended public policy test. The judgment, in *Venture Global*,[18] replaced the system for enforcement of foreign arbitral awards envisaged under the Act with judge-made law.

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10 Explanation 1.–For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, – (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2.–For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

11 *Renusagar Power Co Ltd v. General Electric Co* [1994] AIR 860 (SC).

12 *Venture Global Engineering v Satyam Computer Services* [2008] 4 SCC 190.

13 [2002] AIR 1432 (SC).

14 [2008] 4 SCC 190.

15 [2003] 5 SCC 705.

16 Sumeet Kachwaha, 'Enforcement of Arbitration Awards in India' [2008] 4 Asian International Arbitration Journal 64.

17 [2008] 4 SCC 190.

18 [2008] 4 SCC 190.

Moreover, the judgment of the Supreme Court in *Venture Global*[19] fell foul of the *Renusagar*[20] case, where the larger bench of the Supreme Court held to the contrary. The court also overlooked the limitation in *SAW Pipes*[21] and the narrow interpretation of public policy in *Renusagar*.[22] Therefore, the judgment in *Venture Global*[23] applying the extended interpretation of the public policy to the foreign arbitral awards was *per incuriam*. It had unnecessarily made the situation regarding enforcement complicated and made the enforcement machinery for foreign arbitral awards inept, vague and unproductive. Later, the judgment in *Venture Global* was overruled.[24]

III Judicial Trend in India from 1996 to 2022

The principle of judicial non-interference in the arbitration proceedings forms part of the foundation of contemporary international commercial arbitration.[25] It plays an important role in ensuring the efficiency of international commercial arbitration as a mode of resolving international commercial disputes. Judicial interference would have far-reaching damaging consequences for international commercial arbitration. The Indian Supreme Court has given several conflicting judgments, which has resulted in frequent changes in the legal position regarding the enforcement of foreign awards in India. It has seriously jeopardized the certainty of law relating to international commercial arbitration in India. Lately, the judicial trend in India has been against the judicial review of foreign arbitral awards and support of the finality of foreign arbitral awards by the tribunals. Experts have recognized that it is difficult to balance the arbitral process's requirements and public interest through judicial control. However, judicial scrutiny by the national Court is relevant for ensuring justice.

After enacting the Arbitration and Conciliation Act of 1996, the first fifteen years were difficult for arbitration in India. Although there was a lack of institutional framework, the main problem was excessive Judicial Intervention in international commercial arbitration. The interventionist attitude of the judiciary towards international commercial arbitration mainly started from the judgment of the Indian Supreme Court in *Bhatia International*,[26] followed by the judgment in

19 [2008] 4 SCC 190.
20 [1994] Supp (1) SCC 644.
21 [2003] 5 SCC 705.
22 [1994] Supp (1) SCC 644.
23 [2008] 4 SCC 190.
24 *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc,* [2012] 9 SCC 552.
25 Gary Born, 'The Principle of Judicial Non-Interference in International Arbitral Proceedings' [2014] 30 University of Pennsylvania Journal of International Law 999.
26 [2002] AIR 1432 (SC).

Venture Global.[27] The decision in *Bhatia International*[28] has been widely criticized by authorities on international arbitration. It has caused many unforeseen potential problems for improper judicial intervention in the international arbitration process.

India is recognized worldwide as a destination for investment due to its varied markets, cheaper production costs and accessibility of raw materials. With the expansion in international trade, foreign investment has favoured legal systems with solid governance and adequate protection for the parties.[29] The parties making foreign investments rely heavily on arbitration to resolve disputes to save time and cost. In such a scenario, the judgments in *Bhatia International*[30] and *Venture Global*[31] highlight how the inefficacy of arbitral proceedings deterred foreign investors in India, ultimately harming the economy.

The judgments in *Bhatia International*[32] and *Venture Global*[33] were subjected to intense criticism for empowering the courts in India to use supervisory jurisdiction and for bringing extensive uncertainty in the arbitration seated outside India. They replaced the regime governing the enforcement of foreign arbitral awards[34] and frustrated the legislature's intention.[35] After these judgments, the scenario of international commercial arbitration in India became dismal. The foreign investors were hesitant to enter into an effective dispute resolution agreement because the award rendered was likely to face judicial interference at various stages. The propensity of the parties to challenge awards in India intensified because Indian courts could set aside awards and stay the enforcement of foreign arbitral awards while deciding the challenge.[36]

The decisions of Indian courts acted as a deterrent to the growth of international commercial arbitration. They had severe ramifications on international trade, and the international arbitration community severely criticized them.[37] These judgments confirmed the judiciary's inclination in India to exercise authority over international commercial arbitrations contrary to the expectations of the global

27 [2008] 4 SCC 190.
28 [2002] AIR 1432 (SC).
29 Manu Thadikkaran, 'Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective' [2012] 29 Journal of International Arbitration 681.
30 [2002] AIR 1432 (SC).
31 [2008] 4 SCC 190.
32 [2002] AIR 1432 (SC).
33 [2008] 4 SCC 190.
34 Raghav Sharma, 'Sanctity of foreign awards: Recent developments in India' [2009] 75(2) Arbitration 148.
35 Dushyant Dave, 'Practical perspectives on recognition and enforcement in a modern world: A review of most common grounds for refusing enforcement including 'public policy''[2008] 2(1) Dispute Resolution International133.
36 Sulabh Rewari, 'From Bhatia to Kaiser: Testing the Indian Judiciary's Self-Restraint' [2013] 9 Asian International Arbitration Journal 97.
37 [2002] AIR 1432 (SC); [2008] 4 SCC 190; [2009] AIR 1132 (SC); [2009] 7 SCC 220.

business community. They also questioned the effectiveness and validity of international commercial arbitrations in India.

The interventionist approach continued till the judgment in *Bharat Aluminium,*[38] with certain notable exceptions in the form of judgments in *Dozco*,[39] *Videocon*[40] and *Yograj.*[41] These judgments showed the willingness of the judiciary to carry out favourable changes in the arbitration regime of the country. In *Bharat Aluminium*,[42] the Supreme Court prospectively overruled the applicability of the decision in *Bhatia International*.[43] It held that the decision in *Bhatia International*[44] would apply to arbitration agreements made before the date of judgment in *Bharat Aluminium*.[45] It implies that the judgment in *Bhatia International*[46] is still good law for many arbitration agreements, which may give rise to international commercial arbitrations. However, the Indian courts are applying the law laid down in *Bhatia International*[47] very cautiously.

The decision of the Supreme Court firmly pointed out that the courts in India will have to recognize and implement party autonomy and the effectiveness of the parties' choice of a foreign seat. However, the decision made it difficult for the parties involved in international commercial arbitrations seated outside India to obtain interim measures of protection from the courts in India. The international commercial arbitration community recognized it as a significant handicap in cases where there is a need to preserve assets in India awaiting the rendering of a foreign arbitral award.[48] The decision to apply judgment with prospective effect only to arbitration agreements executed after 6th September 2012 made the law stated in *Bhatia International*[49] applicable to the arbitration agreements executed before 6th September 2012. The Supreme Court's reasoning 'to do complete justice' was criticized on the grounds that such a decision would justify continued 'judicial interventionism' in cases involving arbitration agreements executed before September 6, 2012.

The judgment in *Bharat Aluminium*[50] significantly reduced the judicial intervention in the arbitrations seated outside India. The pro-arbitration attitude of

38 [2012] 9 SCC 552.
39 [2011] 6 SCC 179.
40 [2011] 6 SCC 161.
41 [2011] AIR 3517 (SC).
42 [2012] 9 SCC 552.
43 [2002] AIR 1432 (SC).
44 [2002] AIR 1432 (SC).
45 [2012] 9 SCC 552.
46 [2002] AIR 1432 (SC).
47 [2002] AIR 1432 (SC).
48 Promod Nair, 'Piloting a Much-Needed Course Correction: The Decision of the Supreme Court in BALCO v Kaiser Aluminium' [2013] Asian Dispute Review 98.
49 [2002] AIR 1432 (SC).
50 [2012] 9 SCC 552.

the Supreme Court was a step towards recognizing the importance of international commercial arbitration by the judiciary as a method of resolving international commercial disputes. It helped make India a preferred destination for both international commercial arbitration and foreign investments. The Supreme Court accepted the importance of party autonomy and the seat of arbitration. This judgment strengthened the reliability of the Indian legal regime in the international commercial arbitration community. One of the important consequences of the decision in *Bharat Aluminium*[51] was that it insulated the foreign seated arbitrations from undesirable interference by the courts in India. The scope for challenges by the award-debtor was reduced because Indian courts no longer considered challenges to foreign arbitral awards. Moreover, the judgment was expected to accelerate the enforcement timelines for foreign arbitral awards in India.

However, the judgment in *Bharat Aluminium*[52] caused a new set of problems. Due to this decision, the Indian courts did not have the authority to order interim measures for aiding arbitrations with seat outside India under the Act. To solve such problems, the Law Commission of India recommended an amendment to section 2(2) of the Act. The commission recommended amending Section 2(2) to codify the 'territorial principle' recognized by the Supreme Court in *Bharat Aluminium,*[53] specifying that Part I applies only when the arbitration seat is in India. However, this recommendation was not accepted. However, as per recommendation, a proviso was inserted in section 2(2) to make sure that the courts in India would be capable of aiding arbitral tribunals seated outside India in taking evidence[54] and granting interim measures for supporting such arbitrations,[55] if the ensuing foreign arbitral award is enforceable in India under the New York Convention. However, the amendment did not adopt the recommendation to allow parties to exclude the application of such provisions through an 'express' agreement, omitting the word 'express'.

The judgment of the Supreme Court in *Shri Lal Mahal*[56] is an essential landmark for reducing judicial intervention in enforcing foreign arbitral awards on the grounds of public policy. The Court narrowed the scope of public policy under section 48 of the Act. It held that the broader public policy applicable to domestic awards does not apply to foreign awards. The interventionist approach of Indian courts has come down after the two landmark judgments of the Supreme Court in *Bharat Aluminium*[57] and *Shri Lal Mahal.*[58] The decisions of the Supreme Court and

51 [2012] 9 SCC 552.
52 [2012] 9 SCC 552.
53 [2012] 9 SCC 552.
54 Arbitration and Conciliation Act 1996, s 27.
55 Arbitration and Conciliation Act 1996, s 9.
56 [2014] 2 SCC 433.
57 [2012] 9 SCC 552.
58 [2014] 2 SCC 433.

various High Courts in the last ten years have shown that the Indian courts would not intervene unnecessarily in the enforcement of foreign arbitral awards.

Several judgments of the Supreme Court[59] reflect that the court has adopted a "non-interventionist" approach in matters relating to enforcing foreign arbitral awards. The recent Supreme Court judgment in *Vijay Karia*[60] is a significant milestone for international commercial arbitration in India. It recognizes the development of Indian law on enforcement of foreign arbitral awards under the Act. The imposition of hefty costs to sanction an attempt to challenge the enforcement of a foreign arbitral award on the merits is a remarkable step. The Supreme Court said that "this Court's time has unnecessarily been taken by a case which has already been dealt with by four exhaustive awards on merits and also by the impugned judgment of the Bombay High Court, we dismiss these appeals with costs of INR 50 lakhs". The judgment promotes a minimal intervention approach to enforcing foreign arbitral awards in India and establishes pro-enforcement bias in Indian courts. These more recent decisions of Indian courts have shown a pro-arbitration approach and indicated the importance of enforcing foreign arbitral awards and not permitting judicial interference. With a robust statutory framework and supportive judiciary, India has established itself as an attractive jurisdiction for arbitration.

IV Courts and the Law

There were various propositions for interference by the Indian courts. One such proposition was the existence of anti-foreigner bias for increased interference by the Indian courts in international commercial arbitration. Several commentators have rejected this proposition,[61] and opined that there is no foreigner bias in India and statistics show that foreign parties in international commercial arbitration cases have succeeded in a majority of cases.[62] The other proposition was that the Indian courts are not prepared to forego substantive control over the foreign arbitral awards.[63] The courts may be required to intervene due to a lack of international standards in arbitration in India.

The role of the Indian Supreme Court as the interpreter of the law is of utmost importance because of the principle of binding precedent. The court has a significant responsibility to interpret the law in a manner that upholds the legislature's intent.

59 [2015] 10 SCC 213; [2018] 2 SCALE 368; [2019] 5 SCC 302.

60 [2020] 3 SCALE 494.

61 Nakul Dewan, 'Arbitration in India: An Unenjoyable Litigating Jamboree!' [2007] 3(1) Asian International Arbitration Journal 99.

62 Fali S Nariman, 'India and International Arbitration' [2009] 41 George Washington International Law Review 367.

63 TT Arvind, 'The 'transplant effect' in harmonization' [2010] 59(1) International &Comparative Law Quarterly 65.

Despite inconsistencies in judicial approach, the Indian Supreme Court has made significant efforts to adopt a 'non-interventionist' stance, demonstrating a pro-enforcement bias toward foreign arbitral awards. The Supreme Court must strike a reasonable balance between the conflicting interests of the parties involved. To facilitate arbitration, the court must intervene whenever necessary and essential. Judicial intervention may expedite arbitral proceedings in some cases while preserving the foundational principles of international commercial arbitration. However, in other cases, it may hinder arbitration, undermining the intent behind the enactment of the Act. Judicial intervention is vital and indispensable, and its importance cannot be undermined. However, a delicate balance must be struck to retain the efficiency of arbitration.

The Act adopts a different approach from the UNCITRAL Model Law regarding judicial intervention in both international and domestic arbitration. However, the pre-arbitration remedy in Part II of the Act is consistent with the design and spirit of the UNCITRAL Model Law.[64] Nevertheless, the judicial intervention during the arbitral proceedings is not ruled out. The Indian Courts have believed that the Act was not a well-drafted legislation. It began with the Supreme Court's judgment in *Bhatia International,*[65] where the Court held that the Act did not provide for interim relief in cases of arbitrations held outside India, identifying this as a lacuna in the Act. The Court then embarked on an interpretative exercise to fill this gap, which ultimately led to greater confusion regarding the interpretation of the law. However, the courts should not be solely blamed for the state of arbitration in India. Legislative reforms were introduced without the establishment of an adequate institutional framework for arbitration in the country.

Since the enactment of the Act, there have been demands for amendments concerning domestic and international commercial arbitration.[66] A wide-ranging review of the functioning of the Act was undertaken by the Law Commission of India in 2001 based on the reference made by the Central Government.[67] The Commission noted that the Act was intended as a model for 'international commercial arbitration', but its application to purely domestic arbitration has led to issues with effective implementation. Later, in 2010, the Ministry of Law and Justice released a Consultation Paper noting that the interpretations given by the Supreme Court and various High Courts had defeated the primary objective of the

64 C R Dutta, *Law relating to Commercial and Domestic Arbitration* (1st end, LexisNexis 2008) 1159.

65 [2002] AIR 1432 (SC).

66 Law Commission of India, *Consultation Paper on Review of Working of the Arbitration and Conciliation Act* (Rep No 176, 2001) Annexure II, para 1.2.

67 Law Commission of India, *The Arbitration and Conciliation (Amendment) Bill, 2001*, (Rep No 176, 2001) Introduction.

legislation.[68] However, the Law Commission and the Consultation Paper report failed to bring any amendments to the Act. Subsequently, the 246th Report of the Law Commission of India recommended significant changes in the Act, which were subsequently incorporated by the Arbitration and Conciliation (Amendment) Act, 2015. The amendments made in 2015 and 2019 addressed some of the significant problems with the Act. The Act draws inspiration from the UNCITRAL Model Law on International Commercial Arbitration, incorporating key pro-arbitration changes to ensure speed and efficiency in arbitration.

The Arbitration and Conciliation (Amendment) Act of 2015 aimed to limit and restrict judicial intervention in international commercial arbitration. It has also addressed the concerns relating to delays in arbitration. The amendment considers the Supreme Court's judgment in *Bharat Aluminium*[69] and acknowledges that parties to foreign arbitral proceedings can seek assistance from Indian courts for interim measures unless they have expressly excluded the jurisdiction of Indian courts. However, the Act imposes reciprocity requirements, mandating Indian courts to support arbitration conducted in countries recognized by India. In addition to this, the Act has made it clear that the courts in India cannot review and set aside foreign awards. The amendment has attempted to realign the arbitration law with the Model Law. The amendment aims to limit the role of national courts in foreign arbitral proceedings, enhancing the efficiency of the arbitration process.[70] However, courts may intervene when a departure from the agreed method results in a real injustice. Judicial intervention should not disrupt the momentum of the arbitral process. The amended law demonstrates that efficient arbitration has the support of the Indian legislature. However, issues persist due to creative judicial reasoning and increased court intervention. While the Supreme Court has made significant progress, reforms will be effective only if the underlying causes of excessive judicial intervention are properly addressed.

Indian courts have demonstrated a pro-arbitration bias, consistently favoring the enforcement of foreign arbitral awards by upholding and enforcing them in all but rare cases. The Indian courts have rejected the objections to the enforcement of foreign arbitral awards in most cases for enforcement of foreign arbitral awards and allowed the challenges in several instances. However, Indian courts have refused to enforce foreign arbitral awards in India only in rare cases. Over the past decade, the Indian courts, irrespective of the expanded scope of judicial

[68] Ministry of Law & Justice (Government of India), *Proposed Amendments to the Arbitration and Conciliation Act, 1996* (A Consultation Paper) 2.

[69] [2012] 9 SCC 552.

[70] Loukas A Mistelis, 'Seat of Arbitration and Indian Arbitration Law' [2015] 4 Indian Journal of Arbitration Law 1.

review, have restrained themselves from intervening with foreign arbitral awards. This attitude of Indian courts has led to the recognition of India as an arbitration-friendly jurisdiction.

V Conclusion

The judicial intervention in international commercial arbitration mainly depends upon the judge's approach towards arbitration. Since judges may lack confidence in the arbitration process, they may be more inclined to interfere, undermining the arbitration agreement's finality. Judicial intervention is the antithesis of arbitration; therefore, the arbitral tribunal is expected to make better decisions. The professionalism of arbitrators is the key to improving the arbitral decisions. It will reduce judicial intervention, thereby increasing the likelihood of India being chosen as a preferred destination for international arbitration. Courts are more likely to respect the finality of a well-reasoned award. The Indian Arbitration & Conciliation Act of 1996 has successfully achieved its objective of modernizing and rationalizing arbitration law. Judicial Intervention may be deemed necessary for ensuring uniformity, fairness and justice. Although judicial intervention in international commercial arbitration remains a contentious feature of Indian law of arbitration, it has reduced to a great extent in India over time. Despite the interventionist attitude and extended judicial review, the Indian courts have become more restrained in interfering with foreign seated arbitrations. Now, India qualifies as an arbitration-friendly jurisdiction. In the last ten years, the decisions of Indian courts have inclined in favour of international commercial arbitration, and the courts have enforced most of the foreign arbitral awards in India. The judiciary and the legislature have actively strengthened India's pro-enforcement regime by limiting the courts' supervisory role in the arbitral process. The credibility of any nation to be called an arbitration-friendly nation depends on efficiency and effectiveness in enforcing foreign awards.

Resumo: A arbitragem comercial internacional é o método mais favorável para a resolução de disputas comerciais internacionais em todo o mundo. As partes em contratos comerciais internacionais optam pela arbitragem devido ao receio da intervenção do Judiciário. No entanto, a intervenção judicial pode surgir em diversas áreas da arbitragem comercial internacional. Este artigo analisa a legislação indiana sobre arbitragem, as tendências judiciais e a interpretação das normas pelos tribunais. A pesquisa trata das complexidades da intervenção judicial na arbitragem comercial internacional, examinando as difíceis dimensões do equilíbrio entre essa intervenção e a autonomia das partes. A análise abrange as diferentes abordagens adotadas pelos tribunais indianos, considerando os efeitos das distintas interpretações na arbitragem internacional. O artigo também examina diversas decisões judiciais à luz das tendências emergentes na arbitragem comercial internacional. Conclui-se que a intervenção judicial pode ser necessária para garantir uniformidade, equidade e justiça. Embora a intervenção judicial tenha sido significativamente reduzida na Índia nos últimos dez anos, ela continua sendo um aspecto controverso da legislação indiana sobre arbitragem.

Palavras-chave: Intervenção Judicial. Arbitragem Comercial Internacional. Sentenças Estrangeiras. Execução de Sentenças.

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