

Court's intervention in arbitration proceedings: a maneuver between courts and arbitral tribunals

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Abstract- This research paper delves into the crucial aspect of judicial intervention in arbitration proceedings under the Arbitration and Conciliation Act of 1996 in India. The primary objective of this research paper is to explore the scope and principles of judicial intervention in arbitration by analyzing the relevant sections of the Act and examining related judicial pronouncements. The paper meticulously dissects each stage of judicial intervention during the arbitration process, shedding light on its implications and potential impact on party autonomy and efficiency in dispute resolution. The paper commences with an introduction that outlines the genesis and rationale behind the Act, emphasizing the importance of preserving party autonomy and the consent of the parties in choosing arbitration as the preferred method for dispute resolution. Subsequently, the paper critically analyzes the 2015 and 2019 Amendments to the Act, which shifted towards institutional arbitration and aimed to make India an arbitration-friendly jurisdiction. Moreover, the research paper explores the principle of judicial non-interference in international arbitration and the need to harmonize it with the functioning of national arbitration in India. In conclusion, the research paper emphasizes the importance of striking a balance between judicial intervention and party autonomy in arbitration proceedings. The insights and recommendations provided in this paper serve as valuable guidance to policymakers, arbitrators, and legal practitioners seeking to strengthen India's position as an arbitration-friendly jurisdiction.

Keywords: Arbitration, Judicial-Intervention, Kompetenz-Komptenece, Party Autonomy, Arbitral proceedings

I. INTRODUCTION

The Arbitration and Conciliation Act of 1996 (Hereinafter "the Act") came into force after passing the two ordinances after the New Economic Policy of 1991 was functioning. The main aim of the 1996 Act is to reduce the court's supervisory role in arbitration proceedings and arbitral awards. Generally, the court does not intervene in any arbitration proceedings or arbitration awards. The idea behind the non-intervention of court is based on the point that the parties have already given their consent to settle their dispute by way of some alternative dispute resolution method where the judiciary has no role in intervening in such proceedings. This research paper has tried to highlight the scope and principle of legal intervention in arbitration by analyzing various sections of the Act and its related judicial pronouncements.

Judicial intervention or Judicial scrutiny has gained a lot of importance in recent times. The major case involved in this aspect is the *S.B.P. & Co. v. Patel Engineering Ltd.*, where the SC ruled that the Section 11 powers granted were judicial and not administrative in spirit.¹ One of the most significant discussion points in the Indian arbitration process has been Section 11, which was amended in 2015 and 2019. When a new clause was added to Section 11(6)(a) of the Act, the scope of judicial interference was limited to the "existence of arbitration agreement," which also gave rise to the significance of the kompetenz-kompetenz principle.

One of the key goals of the 2015 & 2019 Amendment Act is to move toward institutional arbitration. India has evolved into a country that encourages arbitration; the most recent change concerns Section 11's authority to choose an arbitrator. However, the amendment makes no mention of the extent of judicial interference during arbitrator appointments.²

The 1996 Act sought to adapt India's arbitration environment to contemporary needs, and the present arbitration statute must be compatible with current international arbitration. It aimed to hasten the settlement of cases and lessen court interference in the arbitral procedure.

As part of India's strategy to become an arbitration-friendly jurisdiction, the Ministry of Law in India created a High-Level Committee to propose Some of the steps necessary for Making India the Center of International and Domestic Arbitration under the Chairmanship of the Retired Justice of SC Justice B. Sri Krishna. It was suggested, among other things, that actions be taken to encourage institutional arbitration in India, that the Act and other laws be amended to facilitate ICA, as well as a strategy to develop the law to promote quick arbitrations. These recommendations were made by the high-level committee, and the legislature included them in the 2019 Amendment.³

¹*S.B.P. & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618.

²Aniket Pandey, *Section 11 after 2019 Amendment Act – An Opportunity to Strengthen Institutional Arbitration in India*, SCC BLOG, (2020), <https://www.scconline.com/blog/post/2020/12/05/section-11-after-2019-amendment-act-an-opportunity-to-strengthen-institutional-arbitration-in-india/>.

³High Level Committee to review the institutionalization of arbitration mechanism in India. (2017), <https://legallaffairs.gov.in/sites/default/files/Report-HLC.pdf>.

The Act proposed the creation and incorporation of an autonomous and separate organization named the "Arbitration Council of India" and updated Section 11 of the Act, governing the arbitrator's appointment. The elimination of Section 11(6A) and the strengthening of India's arbitration system were the main goals of the modification. In section 11(6A) of the 1996 Act, it is stated that the arbitration institution shall appoint the arbitrators; however, the amendment has not made it clear what will be examined by the arbitration institution when it considers an application for the selection of an arbitrator. Because these unresolved difficulties in the amendment have the potential to undermine institutional arbitration in India, in response to this some specific norms must be formulated.⁴

To make sure that the institution does not impede the tribunal's authority, the legislature must define the boundaries of the institution's inquiry and involvement. We previously noted that the ambiguity surrounding the purview of the examination according to Section 11 had exacerbated judicial interference with the arbitral procedure as well as inconsistent court decisions. The legislative modification is a step in the right direction to lessen court intervention in this arbitration procedure, but the arbitral institution's expanded area of review may still ignore the *kompetence-kompetence* concept. The arbitrator's scope of inquiry must be carefully chosen to promote institutional arbitration and improve India's reputation as an arbitration-friendly jurisdiction.⁵

The arbitrability of dispute is yet another aspect that needs to be considered while discussing the aspect of *kompetence-kompetence*. Arbitrability means whether the dispute can be dealt with under the arbitral tribunal or not. The term 'Arbitrability' is not defined under the Act. This was first discussed in the case of *Booz Allen & Hamilton v. SBI Home Finance Ltd*⁶ where the apex court held that in cases where the arbitrability of the subject matter is concerned, the aspects must be decided by the national courts and shall not be left to the arbitral tribunal's discretion. However, the court noted in this outstanding decision that the term "arbitrability" has three aspects, namely; the nature of the dispute is fit to be adjudicated through a private platform or not, whether the dispute covers under the preview of the arbitration agreement or not, and finally whether the dispute is under the scope of the submission to arbitration. This case has laid down the test for determining the arbitrability of the subject matter. After this decision, the rule of *kompetence-kompetence* was ignored fully and the trend of judicial interference came in, even the apex court failed to define the extent of right in person and right in rem.⁷

II. PRINCIPLE OF JUDICIAL NON-INTERFERENCE

One of the most important reasons a party chooses international arbitration to settle their dispute is procedural conduct. Arbitration does not require the same formalities and procedures as a courtroom. Here, choices are made more efficiently and according to the needs of the parties. The foundation of arbitration procedures is a variety of international conventions, which talk about the party autonomy in the arbitration proceedings by granting the arbitrators broad discretionary powers. These agreements have made the "judicial non-interference principle" the cornerstone of international arbitration's procedural rules. This notion is commonly ignored in national arbitration. When the law allows for unfettered judicial review of the arbitral decision, there is a question of whether the concept should be disregarded. The principle of judicial intervention is the cornerstone for protecting the autonomy of the party and the arbitrator's discretion.⁸

If there is an arbitration agreement, the New York Convention of 1959 allows the national court to refer the parties to arbitration. The court should refrain from establishing rules that would allow for judicial intervention in arbitration procedures. The appointment of the arbitral panel or court intervention in the process of arbitration is not addressed in this treaty. Regarding reference and award enforcement under this convention, the court's authority is highly constrained. The convention's Article II prohibits the court from interfering with the arbitration process, upholding the norm of judicial non-interference. A court may only intervene in subjects covered by this law if expressly permitted to do so by the law, according to Article 5 of the UNCITRAL Model of 1985⁹. The Model Law restricts the court's ability to intervene during arbitration proceedings; the court may only do so in cases involving jurisdictional issues, the granting of temporary relief, the establishment of the tribunal, and other similar issues; court supervision of arbitration proceedings is expressly excluded.

The Indian perspective on the judicial intervention concept tries to reduce court involvement in the arbitration process. According to the Act, the court only has the power to select the arbitrator, and only in cases where the party fails to do so. A non-Obstante clause is included in Section 5 of the Act of 1996, and Section 8 of the Act is analogous to Article 8 of the Model Law. However, the Section does not give the court the authority to consider challenges to determine whether an arbitration agreement is legal or void. As a result, this situation illustrates the court's desire to have minimal judicial action. In the case of *CDC Financial Services (Mauritius) Ltd v. BPL Communications*¹⁰, where one of the parties requested an Anti-arbitration injunction from the High Court

⁴ Aniket Pandey, *Section 11 after 2019 Amendment Act – An Opportunity to Strengthen Institutional Arbitration in India*, SCC BLOG,(2020),<https://www.sconline.com/blog/post/2020/12/05/section-11-after-2019-amendment-act-an-opportunity-to-strengthen-institutional-arbitration-in-india/>.

⁵ DUSHYANT DAVE, MARTIN HUNTER, FALI NARIMAN, MARIKE PAULSSON, *Arbitration in India*, (Wolters Kluwer 2021).

⁶ *Booz Allen & Hamilton v. SBI Home Finance Ltd*, (2011) 5 SCC 532.

⁷ Poonam Rawat & Rahul Kumar, *Scope of 'arbitrability' and 'public policy as a ground for setting aside an arbitral award under section 34 of the Indian Arbitration and Conciliation Act, 1996*, SAMBODHI INDOLOGICAL RESEARCH JOURNAL Of L.D.I.I Vol-45 No.-01(V) (2022).

⁸ Anushka Rastogi, *The Scope of judicial intervention during different stages of arbitral proceedings: An analysis in the light of the merging regime of judicial minimalism*, Asian Law & Public Policy Review Volume 6 (2021).

⁹ Anushka Rastogi, *The Scope of judicial intervention during different stages of arbitral proceedings: An analysis in the light of the merging regime of judicial minimalism*, Asian Law & Public Policy Review Volume 6 (2021).

¹⁰ *CDC Financial Services (Mauritius) Ltd v. BPL Communications*, 2003 (12) SCC 140.

because the subject matter was outside of its purview. The SC dismissed this argument because it lay under the purview of arbitrators, vacating the decision and barring the party from making any additional requests.

According to the Act of 1996, there are three phases to judicial intervention in arbitration:

- a) Before the commencement of arbitral proceedings: where the court can refer parties to arbitration (Section 8), appoint an arbitrator (Section 11), Challenge an arbitrator (Section 13(5)), and competence of an arbitral tribunal (Section 16(6))¹¹
- b) During the arbitration proceedings: the court can make interim orders (Section 9) and assist in taking evidence (Section 27).¹²
- c) After the arbitral awards are rendered: the court has the authority to enforce the award as a decree (section 36), to set aside the arbitral award (section 34), or hear an appeal on specific matters (section 37).¹³

By entering into an arbitration agreement, the parties have the freedom under the Act of 1996 to choose the arbitrator or arbitrators. Before getting involved in a disagreement, if there is one, the court will refer the parties to the arbitration panel or bench. The Judicial Intervention was only included in the Act to safeguard parties' rights, monitor arbitrators' behaviour, and ensure justice was administered fairly.¹⁴

In India, domestic arbitrations are the most frequent. In this arbitration, government agencies and similar organizations merely turn into antagonistic parties. Government employees who have been chosen as arbitrators by the center may have biases in favour of one party or the other for a variety of reasons. Justice can be obtained by politics, power, and money. It is also less complicated in arbitration processes since they are less formal and because arbitrators frequently lack experience with how to conduct them effectively. The concept of arbitration law is not consistent with the functioning of the legal system. As a result, it fails to accomplish its goal.¹⁵

The intent and purpose of the Act are frequently defeated because the representatives of the parties frequently lack familiarity with the arbitration procedure and similarly conduct them as that of litigation. Most arbitrators chosen by the courts under Section 11 of the Act are retired judges who rely on established procedures and arguments drawn from their experience sitting on the bench. As a result, the arbitration process can be lengthy and tedious much like court proceedings. Arbitration inevitably involves issues, oral and written evidence, chief and cross-examination, etc.

The common man will experience injustice when the goal and purpose of the Act are not upheld or followed by its adherents, at which point he will knock on the door of the Court in search of justice. As a result, court intervention to uphold a party's rights is justified in attaining justice and the purpose or goal of the Act.

III. JUDICIAL INTERVENTION BEFORE THE ARBITRAL PROCEEDINGS

The intervention of the court in the arbitration proceedings is given under Section 5 of the 1996 Act. The aim of this Act is Party Autonomy and the independence and power of arbitrators. The dominance of party autonomy over judicial intervention to accomplish the dual goals of speed and economy in conflict resolution. The non-obstante clause is the first clause in Section 5 of the Act, which seeks to preclude the prospect of court involvement and states that "*notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this part*".¹⁶

The phrase "Notwithstanding anything contained in any other law" means that, even if there are provisions in any other laws currently in force that allow judicial authorities to intervene, those authorities may not do so unless the intervention is allowed by one of the sections of Part I. The phrase "no judicial authority" is broad enough to include all judicial authorities insofar as the matter at hand is subject to Part I of this Act, in addition to the Court that has the authority to interfere in arbitration disputes or processes. The usage of the word "shall" in the phrase "shall intervene" implies that the judicial authority no longer has the discretion that is ordinarily accessible to it. The phrase "except where so provided in this part - exceptions" conjures up permitted judicial intervention. However, there are some circumstances where the arbitral process will find itself impotent due to a lack of requisite court support.¹⁷

In the case of *P Anand Gajapathi Raju v. PVG Raju*, where the court made it clear that "no judicial authority" was used to limit judicial intervention in areas involving non-judicial discretion and "shall intervene" was used where the legislature intended for the court to intervene.¹⁸

In another case of *Surya Dev Rai v. Ram Chander Rai*, where it is stated that the completion of the arbitration processes will be delayed if judicial interference is permitted, but it is not stated that there should be no interference because if there is no intervention, the mistake will occur and will not be fixed. Therefore, to the degree that the court believes it appropriate, the judge's discretion may be informed by "the dictates of judicial conscience enriched by the judicial experience and practical wisdom of the Judge."¹⁹

¹¹Anushka Rastogi, *The Scope of judicial intervention during different stages of arbitral proceedings: An analysis in the light of the merging regime of judicial minimalism*, Asian Law & Public Policy Review, Volume 6 (2021).

¹² *supra*

¹³ *supra*

¹⁴ DUSHYANT DAVE, MARTIN HUNTER, FALI NARIMAN, MARIKE PAULSSON, ARBITRATION IN INDIA, (Wolters Kluwer 2021)

¹⁵ *supra*

¹⁶ Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).

¹⁷ GOURI, JUDICIAL INTERVENTION IN ARBITRATION PROCEEDINGS AND SPEEDY JUSTICE AN ANALYTICAL STUDY, Tamil Nadu Dr. Ambedkar Law University (2014)

¹⁸ P Anand Gajapathi Raju v. PVG Raju, 2000 (4) SCC 539.

¹⁹ Surya Dev Rai v. Ram Chander Rai, AIR 2004 SC 3044.

The first step in the judicial authority's role is the application to halt court cases that have been filed in defiance of the arbitration agreement. The only way the court can indirectly force arbitration is by denying the claimant access to a court-based remedy, leaving him with no choice except to pursue his claim through arbitration.

In *Praveen Electrical Pvt. Ltd v. Galaxy Infra and Engineering Pvt. Ltd*²⁰ talks about the irregularity in Sections 8 and 11 of the 1996 Act the Hon'ble Supreme Court has already taken a stand in *Vidya Drolia v. Durga Trading Corporation*²¹ to describe how court intervention is limited in its ability to determine if an arbitration agreement exists. Subsections 4 to 6 discuss the court or High Court for the appointment of the arbitrator upon the request of the parties, and Section 11 plays a significant role in assisting the parties with the appointment of the arbitrator. Following the introduction of Section 11(6A) of the 2015 Amendment, which addresses whether the 'relevant court' should consider whether an arbitration agreement exists. During the pre-amendment in the case of *SPB and company v Patel Engineering Ltd*²² and *National Insurance Co. Ltd v Boghara Polyfab (P) Ltd*²³; in both instances, SC clarified the nature of Section 11, the appointment of arbitrator and judicial interference, when parties fail to agree on the appointment process. Before this decision some ambiguity about the role of the Chief justice or designated court in appointing an arbitrator. These cases held that Sec 11 of the Act is judicial in nature and Chief Justice or designated court has the authority to determine the existence of an arbitration agreement. In S.P.B Patel's Case, SC held that role of appointing an arbitrator is not just ministerial but judicial in nature. In the latter case, SC reiterated and clarified the position of the SPB Patel case, where the power conferred on the Chief Justice or designated court under Section 11 is not limited to just administrative function but includes the authority to decide on the existence and validity of arbitration agreement. Introduction of Sec 11(6A) and 11(6B) has been added after the 2015 Amendment Act, this amendment aimed to address the issue of judicial intervention in the appointment of an arbitrator. As per Section 11(6A) appointment of an arbitrator shall be made to the SC or the HC and not the Chief Justice. Section 11(6B) empowers SC or HC to designate arbitral institutions that parties can approach for the appointment of arbitrators, if the parties fail to do so they approach these institutions instead of the court. Later in the case of *Mayavati Trading (P) Ltd. v Pradyuat Deb Burman*,²⁴ it was held that if an arbitrator is appointed, he will handle all matters, with the court interfering only very minimally. The existence and legitimacy of an agreement for arbitration at the pre-arbitration phase are consequently intertwined because an unlawful or void agreement is not an agreement at all. To safeguard the temporal benefits that arbitration offers and to appropriately regulate the responsibilities of the court and the arbitral tribunal, it was decided that the scope of judicial review and the authority of the judiciary under Sections 8 and 11 of the Act are identical but extremely limited and restricted.

This position needs to be discussed because it directly contradicts the Law Commission of India's 246th report, which stated that no provision allows the party to appeal against the order denying the appointment of the arbitrator and explicitly mentioned the need for reflection on whether orders under Section 11 are appealable. The Commission has suggested the inclusion of clause 1(c), which ensures the parties' right to challenge a judicial authority's decision if the appointment of the arbitrator is denied. As a result, the 2015 modification only made the orders under Section 8, in line with the overall stance of the legislature toward the amendment that was suggested to Section 11. Therefore, the court in *Praveen Electrical*²⁵ was correct to reconsider the findings and assess and discuss the impact of the legislature's inaction. In *Vidya Drolia*²⁶ the court further highlighted that Section 8's prima facie standard does apply to Section 11. Sections 11 and 8 are regarded as the foundation of the 1996 Act even today, and the judiciary has done well to limit its role and scope of action. However, it additionally highlighted the parliament's unwillingness to follow the Commission's recommendations and pass a statute that adequately addressed the issues the party was facing. Therefore, it can be highlighted from the *Praveen Electrical*²⁷ that a change to this section that guarantees the right to appeal against the order is urgently needed because, in the opinion of the relevant judicial authority, When the two provisions fulfill the same function and have the same impact when applied, permitting the party to appeal the order under only one of them is unusual and arbitrary.

Neither Section 8 nor Section 11 explicitly mentions any appeal provision within the Act itself. However, this does not mean that parties do not have any recourse if they disagree with a court's decision under these sections. They may explore other legal remedies available under the general law and procedure. If a party is dissatisfied with a court's decision under Section 8 or Section 11, they might consider challenging the decision through appropriate legal channels. This could include filing an appeal under the applicable civil procedure laws, depending on the court in which the matter is being heard. Parties may also explore other avenues for review, depending on the jurisdiction and relevant laws.

The next Section regarding the court intervention before arbitration proceedings is Section 13(5), where the appointment of the arbitrator is being challenged. Here the party can raise objections about the independence, impartiality, or qualification of the arbitrator. The party can challenge the arbitrator in this regard. The objection needs to be raised within 15 days from the date of appointment.

²⁰ *Praveen Electrical Pvt. Ltd v. Galaxy Infra and Engineering Pvt. Ltd*, 2021 SCC OnLine SC 190.

²¹ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

²² *SPB and company v Patel Engineering Ltd*, (2005) 8 SCC 618.

²³ *National Insurance Co. Ltd v Boghara Polyfab (P) Ltd*, (2009) 1 SCC 267.

²⁴ *Mayavati Trading (P) Ltd. v Pradyuat Deb Burman*, (2019) 8 SCC 714

²⁵ *Praveen Electrical Pvt. Ltd v. Galaxy Infra and Engineering Pvt. Ltd*, 2021 SCC OnLine SC 190.

²⁶ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

²⁷ *Praveen Electrical Pvt. Ltd v. Galaxy Infra and Engineering Pvt. Ltd*, 2021 SCC OnLine SC 190.

Then comes Section 16(6), the competence of the Arbitral Tribunal, which is based on the '*kompetence-kompetence*', where the arbitral tribunal has the authority to decide whether the arbitration agreement is valid or not, according to its jurisdiction. There are no specific changes that have been brought into Section 13(5) and Section 16(6) in these recent amendments.

IV. JUDICIAL INTERVENTION DURING THE ARBITRATION PROCEEDINGS

Interim relief: Section 9

Interim directions can be issued only "for" arbitration proceedings and not to frustrate the same.²⁸ The court is empowered to grant interim measures after considering various grounds i.e., whether a prima facie case is made or not, some economic loss is there, and whether any appropriate interim measure has been granted or not.²⁹ Although, the applicability of section 9 is followed by certain prerequisites which are as follows:

1. The interim relief can be granted to the parties belonging to the arbitration agreement only.³⁰ No third party can claim interim relief from the court using Section 9.

2. Principles followed by the court before granting interim relief under Order 39 and specific relief acts may also be followed before granting interim relief under section 9.³¹ Although it has been later contended that the court is bound to follow Rule 1 and Rule 2 Order 39 of CPC.³² In addition to the prima facie case, the balance of convenience, and irreparable harm, the court may take other circumstances into account. As the primary goal of providing the relief should be to preserve the parties' current situation, the court may instead take the actions of the parties into account when considering the need for interim relief.

Under Section 9 of the Arbitration and Conciliation (Amendment) Act, 2015, amendments were made by the recommendations of the 246th Report, titled "Amendments to the Act 1996." Due to the tribunal's lawful jurisdiction to award interim relief once the matter has been brought before it, this modification has limited the court's ability to grant intermediate measures. After the establishment of the arbitral tribunal, Section 9(3) was added, which states that the court "shall" not consider a request for interim relief "unless the court finds that circumstances exist which may not render the remedy provided" by the tribunal under Section 17 of the act "effective."³³

But soon the position was explained by the Delhi High Court whereby it applied the principle of Literal interpretation and stated that "*Section 9(3) does not operate as an ouster clause insofar as the court's powers are concerned. It is a well-known principle that whenever the Legislature intends an ouster, it makes it clear. We may also note that if the argument...were to be accepted that the moment an Arbitral Tribunal is constituted, the Court which is seized of a Section 9 application, becomes coram non-judice, would create a serious vacuum as there is no provision for dealing with pending matters.*"

V. JUDICIAL INTERVENTION AFTER THE ARBITRATION PROCEEDINGS

Principle of Public Policy: An Unruly Horse (Section 34)

Article V (2)(b) of the NY Convention indicates a determination on the definition of public policy to be made from the perspective of the jurisdiction where recognition or enforcement is sought. It relates to the public policy of that nation. Under Section 34 of the Arbitration and Conciliation Act, 1996 court may set aside an award if it conflicts with the public policy of India. In a broader view, the meaning of 'Public Policy' is like the 'Policy of Law'

The arbitral award may be set aside by the court. In some circumstances, such as those involving the parties' incapacity, the agreement's invalidity, the failure to provide adequate notice to the opposite party, and the fact that the dispute so decided does not belong inside the arbitration agreement's purview, the court may set aside the award under Section 34.³⁴

The Law Commission recommended limiting the grounds for an application to set aside an arbitral decision in its 246th Report. The reasons for public policy, by it, are applicable only when the award was influenced by, impacted by, or in breach of the core policy of Indian law or the most fundamental moral standards. Public policy has been called an *unruly horse*³⁵ by the supreme court. Public policy is a difficult notion to define. It has been called a fluctuating quantity, an uncertain quantity, and an uncertain one.³⁶

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The Arbitration and Conciliation Act of 1996 lists a few grounds for annulling an arbitral ruling. In line with Section 34(2)(b)(ii) of the 1996 Act, the arbitral award may be annulled if the court finds:

- (i) The dispute at hand cannot be arbitrated;
- (ii) The award conflicts with state public policy

²⁸ Jammu & Kashmir State Forest v. Abdul Karim Wani, 1989 SCR (2) 380.

²⁹ DR S.C TRIPATHI, ARBITRATION AND CONCILIATION, (Central Law Publication).

³⁰ SREI Infrastructure Finance Ltd v. Bhagheeratha Engineering Ltd, 2009 Gau110.

³¹ Adhunik Steels Ltd v Orissa Manganese and Minerals, 2007 SC 2563.

³² Samit Kevadia & others etc. v. M/s. Aerens Gold Souk International Ltd, A.I.R 2007 (NOC) 1027 Raj.

³³ Arbitration and Conciliation Act 1996, No, 26, Acts of Parliament, 1996 (India).

³⁴ Arbitration and Conciliation Act, 1996, § 34, No, 26, Acts of Parliament, 1996 (India).

³⁵ Gherulal Parakh v. Mahadeodas Maiya and Others, 1959, AIR 781, 1959 SCR Supl. (2) 406.

³⁶ *supra*

In *Renusagar Power Co. Ltd v. General Electric Co.*,³⁷ a case involving international commercial arbitration, the Court gave the term "public policy" a narrower definition, stating that an award may only be rejected when it was against (1) India's fundamental policy, (2) India's interests, (3) justice, or morality.

Following this judgment came the *Oil & Natural Gas Corporation Ltd v. SAW Pipes Ltd*³⁸, the bench expanded the definition of public policy. If an award was set aside, the judiciary was the appellate revision court. Public interest and public good are both included in this case's public policy. The *Renusagar* Case's grounds for setting aside the award have been supplemented by the annexation of "Patent Illegality" by the judiciary.

In *MMTC v. M/s Vedanta Ltd*³⁹, the court determined that Section 34 of the 1996 Act forbade it from hearing appeals involving arbitral decisions, although it did allow merits-based intervention on the grounds listed in Section 34(2)(b) (ii). This stance has altered with the 2015 amendment when it was declared that the constraints outlined in Section 34 could not be exceeded by any intervention under Section 37.

These judgments demonstrate the recent trend of courts refusing to review arbitral awards on the merits in accordance with the legislative goal of "minimal intervention of the Courts in the arbitral process," which is reflected in the amendments made by the Arbitration and Conciliation (Amendment) Act, 2015.

Enforcement of the Arbitral Award (Section 36)

Section 36 is not modeled according to the UNCITRAL Model Law. This provision is providing teeth to the arbitral awards. A domestic arbitral award must be upheld in the same way as if it were a court order, according to Section 36 of the Act. Order 21 of the CPC states that enforcement must be carried out in line with this order and that the executing court will be in complete control throughout this time.

Appeal to the court: (Section 37)

The court is empowered to entertain the appeal against the arbitration award if any of the conditions present under section 32(2) is satisfied. A reference application has been accepted under section 16(2) or section 16(3), and interim relief has been granted or denied under section 17 of the Act, respectively. Section 32(2) lists these grounds. These sections give the court the right to challenge the tribunal's rulings. The parties may bring up the issues of jurisdiction and authority scope in a plea under Sections 16(2) and 16(3) of the Act, respectively. The "*Kompetenz-Kompetenz*" principle and Article 16 of the UNCITRAL Model Law deal with the arbitral tribunal's jurisdiction in the limited sense of deciding on challenges to the existence or legality of that jurisdiction, while Section 37 deals with that jurisdiction where the court is empowered to decide it⁴⁰.

VI. SUGGESTIONS AND RECOMMENDATIONS

1. The court should adopt a pro-enforcement approach towards these arbitration agreements and the judicial authority should act promptly in deciding application under Section 8. The court should also ensure that they are not looking into the merits of the dispute. i.e., they should uphold the validity and enforceability of arbitration clauses, unless there are clear and specific grounds for not doing so.
2. Regarding Section 11, the appointment should be within a reasonable time. The establishment of a specialist Panel by the court or arbitration institution could expedite the appointment process.
3. Regarding Section 13(5), courts should adhere to the time limit to avoid delays. The process for deciding challenges to the arbitrators should be transparent and fair. In case an arbitrator is successfully challenged, the court should expedite the appointment of a replacement to avoid further delays in the arbitration proceedings.
4. Regarding Section 16(6), the court should perform only a limited review of the tribunal's jurisdictional decision. The review should also ensure that the decision of the tribunal is not arbitrary. Courts should respect the parties' choice to submit their disputes to arbitration and should be hesitant to interfere with that choice unless there are compelling reasons to do so.
5. Regarding Section 9, the court should promptly consider an application for interim measures to avoid delays and it is to preserve evidence or assets and timely considerations. While granting interim measures the courts should strike a balance between the interest of the parties. The decision on the tribunal should not be based on the merits of the dispute.
6. Regarding Section 27 of the Act, Courts and arbitral tribunals should cooperate closely to ensure efficient and effective evidence-taking procedures. This includes sharing information, coordinating schedules, and promptly addressing any challenges that may arise. Courts should avoid becoming overly involved in the actual examination of witnesses or conducting evidentiary hearings unless necessary. The court should use its expertise and resources to assist the arbitral tribunal in evidence-taking, ensuring that the process is conducted in a manner that saves time and resources.
7. Regarding Section 34, the Act provides specific grounds for setting aside arbitral awards, Courts should adhere strictly to these grounds and not expand their scope to review the merits of the award. Courts should treat setting-aside applications as priority cases and conduct the proceedings expeditiously.
8. Regarding Section 36, Courts should adopt a simplified and streamlined process for the enforcement of arbitral awards. Courts should prioritize the enforcement of arbitral awards to ensure that successful parties can realize their rights without unnecessary delays.

³⁷ *Renusagar Power Co. Ltd v. General Electric Co.*, 1994 SCC Supl. (1) 644.

³⁸ *Oil & Natural Gas Corporation Ltd v. SAW Pipes Ltd.*, (2003) 5 SCC 705.

³⁹ *MMTC v. M/s Vedanta Ltd.*, (2019) 4 SCC 163.

⁴⁰ *Indian Farmers Fertilizers Cooperative Limited v. Bhadra Products* (2018) 2 SCC 534.

9. Regarding Section 37, the Act restricts appeals from orders under Section 37 to questions of law only. Courts should adhere strictly to this limitation and not entertain appeals on factual matters. Appeals under Section 37 should not automatically stay in enforcement unless specific conditions are met.

VII. CONCLUSION

The Act of 1996 aimed to establish an effective and efficient alternative dispute resolution mechanism in India by reducing judicial intervention in arbitration proceedings. The Act's foundation was the idea of party autonomy, which gave the parties the option to select the arbitrators they wanted to use and to arbitrate their differences. The Act has been modified throughout time to improve institutional arbitration and encourage India as a jurisdiction that welcomes arbitration.

By the Act, the research paper examined the various phases of judicial intervention in arbitration proceedings. The court's involvement in sending parties to the arbitration and selecting arbitrators was examined before the start of the arbitral proceedings. The 2015 Amendment brought about a significant change, limiting the court's intervention in appointing arbitrators and emphasizing the principle of *kompetenz-kompetenz*.

During the arbitration proceedings, the court's intervention was discussed, particularly in granting interim relief under Section 9. The paper highlighted the importance of preserving the status quo and the need for timely decisions to maintain the efficacy of the arbitral process. Concerns were expressed about the 2015 Amendment's limitation on the court's ability to hear cases after the arbitral tribunal was established, and the court's view of the issue varied. The study paper examined the court's authority to annul awards under Section 34 after the decisions of arbitrators were made, concentrating on the issue of public policy, which gives the court a great deal of discretion. The need for a consistent and defined interpretation of public policy in this context was emphasized.

Throughout the paper, suggestions and recommendations were provided to enhance the arbitration process and minimize judicial intervention. These included adopting a pro-enforcement approach, expediting the appointment process, limiting the scope of judicial review, and promoting cooperation between courts and arbitral tribunals.

In summary, while the Act has sought to reduce court intervention and promote arbitration as a preferred method of dispute resolution, there remain certain areas of ambiguity and inconsistent application. A clear and harmonious approach is essential to achieve the Act's objectives and enhance India's standing as a favorable arbitration jurisdiction. By embracing these recommendations and working collaboratively between legislative and judicial bodies, India can bolster its position as a hub for international and domestic arbitration, providing an efficient and reliable avenue for resolving disputes and upholding the sanctity of arbitration agreements.