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JUDICIAL INTERVENTION IN INTERNATIONAL ARBITRATION: A CRITICAL ANALYSIS POST-ARBITRATION AND CONCILIATION(AMENDMENT) ACT, 2015 AND ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019

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Abstract

India's arbitration landscape has changed significantly over the past decade. After years of courts expanding their reach into arbitration proceedings—often frustrating the core promise of arbitration as a swift and final alternative to litigation—Parliament intervened through the Arbitration and Conciliation (Amendment) Acts of 2015 and 2019. This article critically examines how these two amendments have reshaped the scope and nature of judicial intervention in international commercial arbitration in India. Beginning with the foundational principles of minimal judicial intervention that underpin modern arbitration law, the article traces the evolution of Indian courts' approach through landmark Supreme Court decisions. It then analyses the specific changes introduced by both Amendment Acts—covering jurisdiction, interim relief, appointment of arbitrators, challenge and setting aside of awards, and enforcement—against the backdrop of actual judicial practice. The article argues that while the amendments have brought Indian law closer to international standards, significant challenges persist. Courts continue to interpret broadly in areas such as public policy and arbitrability, and institutional gaps slow down intended reforms. The article concludes by recommending a more self-disciplined judicial approach, stronger institutional infrastructure, and legislative clarity to achieve India's goal of becoming a preferred seat for international arbitration.

Keywords: Judicial Intervention, International Arbitration, 2015 Amendment Act, 2019 Amendment Act, Public Policy, Seat of Arbitration, Arbitrability, Institutional Arbitration.

I. Introduction

Arbitration, as a method of resolving commercial disputes, draws its fundamental appeal from one simple idea: parties should be free to resolve their disputes privately, without unnecessary interference from state courts. This principle—often called the principle of minimal judicial intervention—forms the bedrock of international arbitration law worldwide.[1]

India adopted the Arbitration and Conciliation Act, 1996, modelling it largely on the UNCITRAL Model Law on International Commercial Arbitration.[2] The 1996 Act was a significant departure from the earlier Arbitration Act of 1940, which was widely criticised for facilitating extensive court involvement and delays. The legislative intent behind the 1996 Act was clear: reduce court interference, respect party autonomy, and make India a credible venue for international commercial arbitration.

However, judicial interpretation in the years following the enactment of the 1996 Act told a different story. A series of Supreme Court decisions effectively expanded court jurisdiction in ways that unsettled foreign

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arbitral parties and made India an unattractive seat for international arbitration. The decisions in Bhatia International v. Bulk Trading S.A.[3] and Venture Global Engineering v. Satyam Computer Services Ltd.[4] exemplified this trend, holding that Indian courts had supervisory jurisdiction even over foreign-seated arbitrations.

In response, the Law Commission of India in its 246th Report[5] recommended sweeping amendments to the 1996 Act. These recommendations led to the Arbitration and Conciliation (Amendment) Act, 2015,[6] which was itself followed by the Arbitration and Conciliation (Amendment) Act, 2019.[7] Together, these statutes represent India's most serious legislative effort to restrict excessive judicial intervention and align domestic law with global standards.

This article critically examines the impact of these two Amendment Acts on the question of judicial intervention in international arbitration. It considers whether the amendments have achieved their stated objectives, identifies areas where courts continue to expand their role beyond what the legislature intended, and suggests pathways for further reform.

II. The Principle of Minimal Judicial Intervention: A Theoretical Framework

Before analysing the specific provisions of the Amendment Acts, it is useful to understand what 'minimal judicial intervention' means and why it matters in international arbitration.

The idea is simple: when parties agree to resolve their disputes through arbitration, they are contracting out of the court system. Courts must respect that agreement. If courts routinely second- guess arbitral decisions or allow parallel litigation to proceed alongside arbitration, the very purpose of arbitration—speed, finality, and expertise—is defeated.

Article 5 of the UNCITRAL Model Law captures this principle clearly: courts shall not intervene in arbitration matters except as expressly provided by the law.[8] This provision was specifically designed to prevent courts from invoking general civil procedure powers to interfere with arbitration proceedings.

At the same time, minimal intervention does not mean zero intervention. Courts play a legitimate and necessary role in several stages of arbitration: they assist in constituting the tribunal when parties fail to agree, they grant urgent interim relief, they enforce awards, and they set aside awards that violate due process or public policy. The question is always one of degree—how much intervention is too much?

International arbitration has developed a broad consensus on where courts legitimately intervene and where they must step back. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, which India ratified, also reflects this balance by limiting grounds of refusal to enforce foreign awards to narrowly defined public policy and procedural integrity concerns.

In this framework, India's pre-2015 judicial approach was clearly out of step with global norms. The next section traces that divergence and explains what prompted legislative reform.

III. Judicial Approach Before the 2015 Amendment: Expanding the Court's Role

The period from 1996 to 2015 saw Indian courts progressively expand their jurisdiction over arbitration matters in ways the legislature had not intended and international practice did not support.

3.1 The Bhatia-Venture Global Controversy

The most significant example of judicial overreach in this period was the Supreme

Court's decision in Bhatia International v. Bulk Trading S.A.[9] In that case, the Court held that Part I of the Arbitration and Conciliation Act—which governs domestic and international arbitrations seated in India—also applied to foreign-seated arbitrations unless parties expressly or impliedly excluded it. This interpretation created enormous uncertainty for foreign parties: even if they had chosen a seat outside India, they could still face Indian court proceedings under Part I.

Venture Global Engineering v. Satyam Computer Services Ltd.[10] took this further, holding that a foreign award could be set aside by an Indian court under Section 34 of the Act, which is a provision only meant to apply to awards made in India. This ruling was widely criticised by international arbitration practitioners as fundamentally inconsistent with the New York Convention and global practice.

3.2 The BALCO Correction

In 2012, a Constitution Bench of the Supreme Court in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)[11] overruled Bhatia International and Venture Global. The Court held that the territorial principle governs Indian arbitration law: Part I applies only to arbitrations seated in India, and Part II governs the recognition and enforcement of foreign awards.[12]

BALCO was a landmark correction that brought India's jurisprudence in line with international norms. However, the Court prospectively limited its ruling to arbitration agreements entered after September 6, 2012. This meant that thousands of pre-2012 agreements remained subject to the old regime, causing uncertainty for years after the judgment.

Beyond the seat question, courts also expanded their role in other areas: broadening the public policy exception for setting aside awards, exercising wide powers on arbitrator appointment, and granting interim relief even in cases where it arguably was not warranted. This background makes the 2015 Amendment's significance easier to appreciate.

IV. The 2015 Amendment: Restricting Judicial Reach

The Arbitration and Conciliation (Amendment) Act, 2015 introduced a series of targeted changes designed to reduce court involvement and accelerate arbitration proceedings. The key areas of reform are examined below.

4.1 Clarifying Territorial Jurisdiction: The Seat Principle

The 2015 Amendment codified the BALCO ruling by amending Section 2(2) of the 1996 Act.[13] Section 2(2), as amended, makes clear that Part I applies to arbitrations seated in India. A proviso was added to clarify that certain provisions—specifically Sections 9 (interim relief), 27 (court assistance in taking evidence), and 37(1)(a) and 37(3) (appeals)—would also apply to international commercial arbitrations seated outside India, unless the parties had agreed to exclude them.

This proviso was a carefully calibrated exception. While maintaining the territorial principle, it allowed Indian courts to grant interim relief to parties in foreign-seated arbitrations where Indian assets were at stake—a practical necessity that foreign arbitration law practitioners had highlighted.

4.2 Interim Relief Under Section 9: Restricting Post-Award Applications

Section 9 allows a party to approach courts for interim relief before, during, or after arbitral proceedings but before enforcement of the award.[14] The 2015 Amendment added an important restriction: once the arbitral tribunal has been constituted, courts must not entertain Section 9 applications unless they find that

the remedy under Section 17 (arbitral tribunal's power to grant interim relief) would be inefficacious.

This change was directly aimed at the common practice of parties running parallel court proceedings while arbitration was ongoing. The amendment effectively tells parties: go to your tribunal first. This approach mirrors international best practice, where party-appointed tribunals are the primary source of interim relief.

The amendment has had real impact. Courts have generally followed the principle, though litigation has continued on the question of what makes a Section 17 remedy 'inefficacious.'[15] In Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.,[16] the Delhi High Court interpreted the provision narrowly, reinforcing the tribunal's primacy.

4.3 Appointment of Arbitrators: Section 11 and the 'Existence of Agreement' Test

One of the most litigated provisions in Indian arbitration has been Section 11, which allows parties to approach courts for the appointment of arbitrators when the agreed mechanism fails.[17] Before the 2015 Amendment, the Supreme Court's decision in SBP & Co. v. Patel Engineering Ltd.[18] had held that the Chief Justice or their designate, when acting under Section 11, exercised judicial power and could determine the existence and validity of the arbitration agreement in some depth. This created a huge front-loaded inquiry at the Section 11 stage, causing delays before arbitration had even begun.

The 2015 Amendment introduced Section 11(6A), which confined the court's inquiry at the Section 11 stage to one question: does the arbitration agreement exist?[19] All other questions—including disputes about the scope of the agreement, preliminary objections on merits, and questions of arbitrability in some cases—were to be left to the arbitral tribunal under the principle of Kompetenz-Kompetenz.

The Supreme Court in Duro Felguera, S.A. v. Gangavaram Port Ltd.[20] promptly gave effect to Section 11(6A), observing that the court's role at the appointment stage was now 'minimal.' This was a significant shift that reduced pre-arbitration litigation substantially.

4.4 Setting Aside Awards: Narrowing the Public Policy Ground

Section 34 of the 1996 Act allows courts to set aside arbitral awards on limited grounds, including conflict with the public policy of India.[21] The public policy exception had, over the years, been interpreted broadly by courts. In ONGC v. Saw Pipes Ltd.,[22] the Supreme Court held that 'patent illegality'—an error of law apparent on the face of the award—was a ground for setting aside, effectively allowing courts to re-examine the merits of arbitral decisions.

The 2015 Amendment took direct aim at this expansion. It inserted Explanation 1 to Section 34(2) (b), which defined public policy narrowly to mean: (i) the award was induced by fraud or corruption, (ii) it was in conflict with fundamental policy of Indian law, or (iii) it was in conflict with basic notions of morality or justice.[23] Explanation 2 clarified that a court reviewing an award for public policy purposes should not re-examine the merits by treating itself as a court of appeal.

Additionally, Section 34(2A) was inserted,[24] introducing 'patent illegality' as a separate and expressly limited ground to set aside domestic (not international) awards. This distinction was important: for international commercial arbitrations, the public policy ground was confined to the three categories in Explanation 1, with no room for patent illegality.

In Ssangyong Engineering & Construction Co. Ltd. v. NHAI,[25] the Supreme Court gave

effect to these restrictions and held that post-2015 Amendment, courts reviewing international awards under Section 34 must apply a more deferential standard. The judgment in Associate Builders v. Delhi Development Authority[26] had earlier attempted to reconcile the older and newer approaches, but Ssangyong effectively drew a clear line.

4.5 Automatic Stay and Enforcement: The Section 36 Change

Before 2015, filing an application to set aside an award under Section 34 automatically stayed enforcement of the award. This was a significant incentive for losing parties to file dilatory Section 34 challenges, knowing that enforcement would be frozen for the duration of the proceedings.

The 2015 Amendment substituted Section 36 entirely.[27] Under the new provision, filing a Section 34 application does not automatically stay the award. A party seeking a stay must make a separate application, and the court must be satisfied that a prima facie case exists and that the balance of convenience favours a stay—a much more demanding threshold. In cases of fraud or corruption, the court has discretion to refuse a stay entirely.

This change was one of the most practically significant in the 2015 Amendment. It reduced the incentive to file frivolous challenges and accelerated enforcement timelines considerably.

V. The 2019 Amendment: Institutionalisation and Further Reforms

While the 2015 Amendment focused primarily on curbing judicial overreach, the 2019 Amendment pursued a complementary goal: building institutional infrastructure to reduce court dependency altogether. The theory was that if parties had access to efficient arbitral institutions with qualified arbitrators, they would have less reason to run to courts.

5.1 Institutional Arbitration and the Reduced Role of Courts in Appointments

The 2019 Amendment amended Section 11 to provide that in international commercial arbitrations, the Supreme Court could designate arbitral institutions through which appointment requests would be processed.[28] This was intended to shift the appointment function away from courts altogether, vesting it in designated arbitration bodies. The idea was borrowed from successful models such as the Singapore International Arbitration Centre and the Hong Kong International Arbitration Centre, where court intervention in appointments is genuinely rare.

The amendment also created a framework for the Arbitration Council of India (ACI), a statutory body intended to grade arbitral institutions, maintain a panel of accredited arbitrators, and promote institutional arbitration in India.[29]

In practice, the implementation of this vision has been partial. The Supreme Court designated certain institutions, but the ACI had not become fully operational for some years after the 2019 Amendment.[30]

5.2 Qualifications and Independence of Arbitrators

The 2019 Amendment introduced the Eighth Schedule to the 1996 Act,[31] specifying qualifications required of arbitrators—covering experience, age requirements, and professional standing. It also reinforced obligations of independence and impartiality through the Fifth and Seventh Schedules (incorporated by the 2015 Amendment), which list circumstances triggering justified doubts about an arbitrator's independence.

However, the Eighth Schedule quickly became controversial. Critics argued it was too restrictive and effectively excluded foreign nationals from acting as arbitrators in India-seated international arbitrations.

The Arbitration and Conciliation (Amendment) Act, 2021 subsequently suspended the

Eighth Schedule, signalling that more thought was needed before imposing qualification mandates.[32]

5.3 Confidentiality and the 2019 Amendment

Section 42A, inserted by the 2019 Amendment, imposed a statutory duty of confidentiality on parties, arbitrators, and arbitral institutions.[33] This was a welcome development, bringing Indian law closer to practices in major arbitration centres where confidentiality is either presumed or expressly mandated. Confidentiality encourages parties to be candid in arbitral proceedings without fearing public disclosure, and it protects sensitive commercial information.

5.4 Fast-Track Procedure

The 2019 Amendment also introduced provisions for a fast-track arbitration procedure under Section 29B,[34] providing for an expedited timeline and simplified procedures for smaller disputes. While this provision existed before 2019 in limited form, the 2019 Amendment sought to give it greater operational structure.

5.5 The Problematic Section 87 and Its Striking Down

One notable misstep in the 2019 Amendment was the insertion of Section 87,[35] which sought to restore the automatic stay on enforcement pending a Section 34 challenge—in effect reversing one of the most significant reforms of the 2015 Amendment. The stated rationale was to provide clarity on the retrospective applicability of the 2015 Amendment's enforcement changes.

The Supreme Court in Hindustan Construction Co. Ltd. v. Union of India[36] struck down Section 87 as unconstitutional, holding that it was arbitrary and defeated the very purpose of the 2015 Amendment. The Court found that reintroducing automatic stays would unfairly prejudice award- holders, particularly in cases involving public sector entities that routinely filed Section 34 challenges to avoid paying up under arbitral awards.

VI. Critical Analysis: Unresolved Tensions and Continuing Challenges

While the 2015 and 2019 Amendments represent substantial progress, a candid assessment reveals that several tensions between judicial intervention and arbitral autonomy remain unresolved. This section critically examines the areas where courts have continued to expand their role despite legislative intent to the contrary.

6.1 Arbitrability: Expanding the Judicial Gatekeeping Function

Arbitrability—the question of which disputes can validly be referred to arbitration—has become a growing area of judicial intervention. In Vidya Drolia v. Durga Trading Corporation,[37] the Supreme Court undertook a comprehensive re-examination of arbitrability principles. While the decision was welcome in clarifying several categories of non-arbitrable disputes, it also indicated that courts retain a meaningful role in determining arbitrability at the Section 11 stage.

The Court acknowledged the prima facie standard under Section 11(6A) but added that courts should refuse to refer cases that are manifestly non-arbitrable. Critics have pointed out that the line between 'prima facie examination' and substantive review can be difficult to maintain in practice, and that this formulation risks recreating the pre-2015 problem of extensive pre-arbitration judicial inquiry.[38]

6.2 Emergency Arbitration and Judicial Recognition

Emergency arbitration—where a specially appointed emergency arbitrator grants urgent interim relief before the main tribunal is constituted—has become a standard feature of major institutional arbitration rules. Indian law has been slow to expressly recognise emergency arbitrators' orders.

The Supreme Court addressed this in Amazon.com NV Investment Holdings LLC v. Future Coupons Pvt. Ltd.,[39] where it enforced an Emergency Arbitrator's order through Section 17(2), treating it as an order of the arbitral tribunal. While this was a pragmatic solution, it rested on a somewhat strained reading of the statute. A clear legislative amendment expressly recognising emergency arbitration would bring greater certainty.

6.3 The 'Group of Companies' Doctrine

The Group of Companies doctrine allows arbitration agreements to be extended to non-signatories who are part of the same corporate group and were intended to be bound by the agreement. Indian

courts have been receptive to this doctrine since Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.[40]

The Supreme Court's Constitution Bench decision in Cox and Kings Ltd. v. SAP India Pvt. Ltd.[41] gave the doctrine a firm constitutional footing, holding that it was rooted in the intention of the parties and not merely in group membership. While the doctrine serves genuine commercial purposes, its expansive application by courts carries the risk of drawing non-consenting parties into arbitration and creating uncertainty about who is bound by an arbitration clause.

6.4 Public Policy: Is the Narrowing Effective in Practice?

Despite the legislative narrowing of the public policy exception under Section 34 by the 2015 Amendment, courts have not uniformly applied a restrained standard. Some High Court decisions have continued to interpret 'fundamental policy of Indian law' broadly, encompassing statutory violations that go beyond the intended scope of the exception.

In Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.,[42] courts were called upon to determine whether a contractual breach amounted to a 'fundamental policy' violation. While the Supreme Court has attempted to provide guidance, the lack of a precise definition of 'fundamental policy of Indian law' leaves room for inconsistent application by lower courts—a concern that persists and merits further legislative precision.

6.5 Section 9 Jurisdiction After Tribunal Constitution

Although the 2015 Amendment restricted Section 9 applications after tribunal constitution, courts have dealt with recurring questions about what makes Section 17 relief 'inefficacious.' Some courts have applied this exception generously, allowing extensive Section 9 litigation to continue even after tribunals have been constituted. This undermines the amendment's intent and pushes parties back toward court dependency.

6.6 The Seat Versus Venue Debate

Even after BALCO and the 2015 Amendment, courts have continued to grapple with the distinction between the 'seat' and 'venue' of arbitration. In BGS SGS SOMA JV v. NHPC Ltd.,[43] the Supreme Court held that where parties designate a place as the seat of arbitration, that choice confers exclusive supervisory jurisdiction on courts of that place. However, many arbitration

agreements in India loosely use the word 'venue' when they arguably intend the seat, and this ambiguity has generated

continued litigation about which court has jurisdiction to supervise the arbitration.

VII. India's Arbitration Framework in Comparative Perspective

A comparative perspective reveals how far India has come—and how far it still needs to travel—in aligning with the leading arbitration-friendly jurisdictions.

Singapore, the United Kingdom, and France represent three distinct but equally effective models of minimal court intervention. In Singapore, the International Arbitration Act and the courts' well- established culture of deference to arbitral tribunals have made it Asia's premier arbitration hub. The Singapore courts' review of awards is genuinely narrow, and emergency arbitration is expressly recognised by statute.

The United Kingdom's Arbitration Act, 1996 allows appeals on points of law under Section 69, but only where the court finds that a decision of the arbitrators is obviously wrong or the point is of general public importance. This is a carefully calibrated form of judicial oversight that ensures accountability without undermining finality.

France takes the most permissive approach, essentially treating international awards as independent of national legal orders in terms of enforcement. French courts' review of public policy is genuinely narrow and rarely results in annulment.

India is moving toward a model closer to Singapore, where institutional arbitration, minimal court intervention, and a supportive judiciary combine to create a credible arbitration ecosystem. The 2015 and 2019 Amendments, combined with decisions like BALCO, PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.,[44] and Vidya Drolia, suggest that the Supreme Court broadly supports this direction. The challenge lies in ensuring that the High Courts and arbitral tribunals are equally aligned.

VIII. The Way Forward: Recommendations

Based on the preceding analysis, this article makes the following recommendations for further reform in India's arbitration regime:

First, the legislature should provide a precise statutory definition of 'fundamental policy of Indian law' in the context of Section 34. The current ambiguity is the single largest remaining source of judicial unpredictability in post-award review. A defined list of categories—such as violation of principles of natural justice, breach of specific constitutional rights, or non-compliance with statutory requirements of a fundamental nature—would bring clarity.

Second, emergency arbitration should be expressly recognised in the statute. The Amazon judgment was a constructive judicial solution, but a legislative provision specifically enabling and enforcing emergency arbitrator orders would provide greater certainty and bring India into line with Singapore, Hong Kong, and France.

Third, the Arbitration Council of India must be made fully operational. Institutional arbitration reduces court dependency structurally. When parties have access to well-run institutions with accredited arbitrators, they have less reason to seek court assistance at every stage. The delay in ACI operationalisation has been one of the 2019 Amendment's main implementation failures.

Fourth, Indian courts should adopt a more rigorous version of the 'group of companies' doctrine, requiring clear evidence of mutual intention to be bound rather than mere group membership or commercial involvement in the underlying contract. This would protect the integrity of the consent requirement in arbitration.

Fifth, training and sensitisation programmes

for judges hearing arbitration matters—particularly at the High Court level—should be institutionalised. Judicial culture matters as much as statutory text. Many of the inconsistencies identified in this article arise not from ambiguous law but from differing judicial attitudes toward arbitration.

Sixth, the seat versus venue ambiguity should be resolved through legislative guidance requiring that arbitration agreements clearly specify whether a named place is the seat or merely the venue, and providing a statutory presumption that a named place is the seat unless the agreement expressly provides otherwise.

IX. Conclusion

The Arbitration and Conciliation (Amendment) Act, 2015 and the Arbitration and Conciliation (Amendment) Act, 2019 together represent a genuine and largely successful effort to reorient India's arbitration framework toward international standards. The legislative changes—particularly the narrowing of the public policy exception, the restriction on automatic stays, the prima facie test for Section 11 appointments, and the promotion of institutional arbitration—have reduced excessive judicial intervention and improved the commercial attractiveness of India as an arbitral seat.

However, the analysis in this article shows that the work is not complete. Judicial interpretation continues to push against legislative boundaries in areas such as arbitrability, the public policy exception, emergency arbitration, and the group of companies doctrine. Some of these expansions are commercially sensible adaptations; others represent a residual reluctance to let go of supervisory jurisdiction.

The Supreme Court's overall trajectory since BALCO has been broadly supportive of minimal intervention, and decisions like Vidya Drolia, Ssangyong, PASL, and BGS SGS SOMA JV suggest a court increasingly comfortable with leaving disputes to arbitral tribunals. The challenge is to ensure that this approach permeates the entire judicial hierarchy and that legislative gaps are closed through targeted amendments.

India has the legal architecture, the judicial talent, and the commercial need to become a leading international arbitration hub. Whether that potential is realised depends on whether courts, legislators, and arbitral institutions can commit, consistently and persistently, to the principle that parties who choose arbitration deserve exactly that—and nothing less.

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