

Judicial Intervention in Arbitral Enforcement

Sonu Meena¹ and Dr. Shweta Joshi²

¹ Advocate, Rajasthan High Court, Jaipur.

² Assistant Professor, Department of Law, Manipal University Jaipur, ORCID ID: 0000-0002-7482-1384,
Mail Id: Joshishweta794@gmail.com

Abstract

In view of the efficacy of the procedure, the independence of the parties involved, and the binding nature of the decisions made, Globally, arbitration has emerged as the favored method for resolving conflicts.³ Arbitration has proven to serve as a valuable alternative to traditional judicial processes in the highly globalized economic system in which we operate today, especially in the resolution of international disputes. Nonetheless, the courts have remained instrumental in their independence in the enforcement of arbitral decisions. At this juncture, the courts act as a buffer against procedural lapses and ensure that decisions made reflect the values of justice and law.⁴ At the same time, the very objectives of arbitration have the potential to be undermined by judicial intervention that is excessive and illogical.

The role of the Indian courts with regard to intervention during This essay will critically analyse the enforcement of arbitral awards. The essay will focus on the shift of the Indian judiciary from a supportive role to one of expansive interpretation of public order with considerable intervention by the Indian courts. rulings based on principles, like the ONGC case against Saw Pipes Ltd.,⁵ where scope of enforcement of legal control has been significantly expanded, are a clear manifestation of this shift.⁶ However, over the past few years, the Indian courts, headed by the Supreme Court, have adopted a more moderate role with regard to arbitration, bringing Indian customs in line with international practices.

The study also includes an analysis of the rules relating to the legal framework in which arbitration decisions are enforced, with special reference to the New York Convention's tenets are included in the Arbitration and Conciliation Act of 1996. It also includes an overview of the best practices in comparison with the Indian scenario with a comparative study of judicial systems in different countries, particularly in the US and UK, in terms of normalization.

it can be said that while judicial control is important in maintaining the integrity of arbitration decisions, it needs to be done in a very defined manner. To further solidify India's standing as a country that supports arbitration

¹ Advocate, Rajasthan High Court, Jaipur.

² Assistant Professor, Department of Law, Manipal University Jaipur, ORCID ID: 0000-0002-7482-1384, Mail Id: Joshishweta794@gmail.com

³ Gary B. Born, *International Commercial Arbitration* 45 (3d ed. 2021).

⁴ UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 34.

⁵ *Oil & Nat. Gas Corp. Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

⁶ *Id.* at 727.

and to build confidence among its own parties as well as foreign parties, a strategy needs to be adopted that includes minimal intervention.

1. Introduction

Arbitration has been acquiring increased significance as a substitute for the conventional “classical” proceedings in court,⁷ especially in business transactions and international conflicts. The objective of arbitration is to provide the parties involved in a conflict a quicker, smoother, more confidential, and less formal procedure than a judicial proceeding. The minimalization of intervention by the judiciary is one of the main purposes of arbitration, which respects the independence of the parties and the binding nature of the arbitral decision. However, the effectiveness of arbitration is measured at the enforcement stage, not at the sentencing stage. Also solid being the grounds on which an arbitral decision is grounded, it is not effective if it is not implemented.⁸

This is precisely the reason why the enforcement phase of arbitral awards is so important. National laws also have a decisive role to play in this phase, which requires both legal recognition and application at the same time. While in their role as guarantors of compliance with the essential legal rules such as the principles of fairness,⁹ respect for the rights of defense, and maintenance of public order, courts also play an important role in legalizing sentences. But at the same time, taking into account all the information provided about this matter above, and considering how crucial the role of laws is during the legislative process, there is little doubt that it will not take much time before the two converge.

It has no doubt been a major issue with regard to the determination of the extent of judicial intervention during the enforcement phase. A delicate balance has to be maintained between the integrity of arbitral proceedings and the integrity of the legal system. This balance has changed over time,¹⁰ reflecting the amendments made through the legislative process by court interpretations and the Arbitration and Conciliation Act of 1996. Recent trend has been towards a more arbitration-friendly policy of minimal judicial intervention, whereas earlier judicial trends indicated a more extensive judicial intervention.

The objective of this article is to critically assess the nature and degree to which Indian courts have intervened in the execution of arbitral awards. To achieve this objective, this article attempts to compare Indian judicial systems, including those of the US and UK, considering international standards, especially those under the “New York Convention”. It would help to assess what needs to be done to make India's legal system better.

2. Meaning and Scope of Judicial Intervention

The term “judicial intervention in arbitral proceedings, notably in The judicial power's involvement in arbitration is indicated by the reference to "recognition and enforcement of arbitral decisions." Although arbitration could be seen as a different approach to resolving disputes, that seeks to minimize judicial

⁷ Redfern & Hunter, *Law and Practice of International Commercial Arbitration* 3 (6th ed. 2015).

⁸ New York Convention, 1958, art. III.

⁹ UNCITRAL Model Law, *supra* note 2, art. 18.

¹⁰ Arbitration and Conciliation Act, No. 26 of 1996, § 34 (India)

intervention, it is neither practical nor desirable to totally eliminate judicial control.¹¹ This is because, by seeking to ensure that the process is conducted within the boundaries of fundamental principles of law such as fairness, lawfulness, and public order, the judicial role becomes essential to the promotion of arbitration. The issue becomes one of finding an adequate balance between judicial control and intervention that may lead to darkness to the effectiveness of arbitration.

Concept and Scope

Judicial intervention covers a range of activities undertaken by the judiciary under the arbitral system. In order to provide legal sanction to arbitral awards, judicial intervention mainly involves their enforcement. The rules in India on judicial intervention in arbitration are provided in the “Arbitration and Conciliation Act 1996”,¹² which includes international principles on the subject.

Judicial intervention also involves the evaluation of compliance with arbitral procedure. The judiciary has the power to evaluate whether the arbitral procedure has been in conformity with the principles of natural justice,¹³ in particular the principles of impartiality of the arbitral tribunal and equality of the parties, and the principle of a right to be heard. However, it is important to note that the evaluation does not cover the merits of the case. The weak enforceability of arbitral awards, based on certain legal grounds, is another important factor in judicial intervention. These grounds, which are narrowly defined, are particularly those relating to incompetence of parties,¹⁴ the voidability of the arbitration agreement, irregular notice/breach of public order. In order to prevent the courts from substituting for the appellate courts, their jurisdiction is deliberately limited.

Legitimate Role of Courts

The role of the courts in support of this process is that of non-interference. To make sure that the process of arbitral award is fair and legal, as facilitators. One of their most important roles is to zeal guard principles of natural justice. The right to refuse to enforce an arbitral award is reserved for cases where the defense's rights have been infringed, such as when one of the parties is denied the opportunity to present their case.

Thus, Role of courts is very important to public order. An arbitral award could be quashed or enforcement refused if it has violated fundamental principles of law, morality, or justice in India. This ensures that arbitrage is not used to justify illegal or unethical decisions.

Thus, judicial intervention is important to avoid the illegal or fraudulent execution of sentences. The judiciary ensures that judgments are not obtained by fraud, coercion, or corruption. In this way, judicial intervention enhances the legitimacy and Arbitration is credible as an alternative conflict resolution mechanism.

¹¹ Alan Redfern, *International Arbitration* 105 (2004).

¹² Arbitration and Conciliation Act, 1996, § 5 (India).

¹³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

¹⁴ New York Convention, *supra* note 6, art. V.

Supervision vs Interference

The difference between oversight and intervention is of critical importance to the comprehension of judicial involvement. In order to guarantee the regular conduct of arbitral proceedings and their conformity with law, arbitral tribunals practice limited and framed supervision. This is done without compromising the independence and definitiveness of arbitral awards; it is carried out through specific procedures.

Interference, as the term suggests, relates to any undue interference in the arbitral proceedings, especially in the re-examination of facts, evidence, or law. This is a breach of the fundamentals of arbitration proceedings; in essence, arbitral tribunals are being converted into appellate tribunals.

The New York Convention, as well as other modern arbitration rules, strongly promote the monitoring of interventions. The aim here is to maintain the viability of arbitration as an alternative to court proceedings, as well as to ensure that the effectiveness of it is not undermined by the courts that respect it.

3. Pro-Enforcement Bias under the New York Convention

The New York Convention is widely regarded as the cornerstone of modern international arbitration.¹⁵ The New York Convention gives states a legal foundation that makes it easier for them to accept and honor foreign arbitral awards. An important element of the “New York Convention” is that it focuses more on enforcement, which requires courts to recognize and respect arbitral awards with certain exceptions. This strategy helps to promote arbitration as of an effective tool to resolve international conflicts, particularly those involving international trade and investment.

Limited Grounds under Article 5

The exhaustive list of reasons for non-recognition or non-enforcement of an award is provided in “Article 5 of the Convention”.¹⁶ Among these reasons are the invalidity of arbitration agreement, the absence of jurisdiction of the parties involved, insufficient notification and unfair proceedings, overbearing arbitral tribunal jurisdiction, and breach of public order of the State enforcement. It is of critical importance to emphasize that these reasons should be interpreted restrictively.¹⁷

¹⁵ Albert Jan van den Berg, *The New York Arbitration Convention of 1958* 1 (1981).

¹⁶ Convention on Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10, 1958.

¹⁷ *Id.*

The burden of proof is on the opposing party, which strengthens the case for the enforcement of arbitral rulings. The courts have no power to re-assess the evidence presented to the arbitral tribunal,¹⁸ nor do they have the power to decide the merits of the case. The courts are only empowered to establish the validity of the grounds presented, thus eliminating judicial delay and guaranteeing the finality of arbitral awards.

International Trends

The judicial approach followed that of restraint and strictly adhered to the true meaning of the convention in all jurisdictions. The US and UK, being amongst the first nations to embrace the method of arbitration, amassed substantial case laws recognizing the independence of the arbitral tribunal and the irrevocable nature of its rulings. Save for an instance of flagrant breach of either of the two criteria listed in Article 5, the courts of the two nations scarcely ever declined to invoke the convention.

For instance, “public order” was construed narrowly to mean basic principles of justice and right, rather than vague concepts of equity. Moreover, to justify a refusal to Implement an arbitral award, procedural flaws have to be substantial and capable of affecting the outcome of the arbitration. This is a general trend that reflects a desire to uphold the legitimacy of arbitration and to achieve uniformity in our enforcement procedures.

Importance of Restrictive Interpretation

In order to maintain the Convention in force, restrictive interpretation must be given to the grounds of refusal provided in Article 5o. In order to minimize barriers to the execution of arbitral awards in various jurisdictions, legal certainty is maintained. This is particularly significant in international commercial transactions, wherein the parties rely on arbitration as a fair and effective dispute resolution procedure.

Therefore, a system that enforces arbitral awards will enhance trust between investors, hence limiting conflicts. Investors will be willing to invest in international trade if they are sure that arbitral awards will get implemented. This will help in harmonization of law of arbitral agreements.

In conclusion, it is evident that the pro-arbitration stance of The international arbitration system cannot be strengthened without the New York Convention. This is because it enforces arbitral awards, hence promoting “Arbitration” as the best dispute resolution mechanism . Judicial intervention will be limited to specific circumstances.

¹⁸ *Parsons & Whittemore Overseas Co. v. Société Générale*, 508 F.2d 969 (2d Cir. 1974).

4. Early Judicial Approach in India

At the outset, in the initial years of the Indian judicial history, a cautious approach, which may be termed as a policy of favour, Regarding the enforcement of arbitration decisions especially when it comes to international arbitration, may be noted. The influence of international jurisdictions and the obligation to abide by international arbitration procedures would be instrumental in this context. The decision in case of “Resurrect Power Limited v. General Electric” may be noted, which framed the context in which this case law may be understood.

Renusagar Power Co. Ltd. v. General Electric Co.¹⁹

The Supreme Court of India had to make a decision in the Renusagar case on the enforcement of a foreign arbitral award and the applicability of the "public order" exception.²⁰ According to the Supreme Court's narrow understanding of "public order," a foreign arbitral ruling would only be overturned if the following requirements were not met:

- The fundamental (core) principle of Indian law
- The interests of India
- Justice or morality

In order to prevent any subjective or exhaustive assessment of arbitral awards by arbitral tribunals, this interpretation was given a limited scope. Specifically, the Court states that the interpretation of ‘public order’ in international arbitration should be limited when compared to domestic arbitration.²¹ The reason being that it realizes the importance of being more cautious about international arbitration.

Further, it can be noted that 'in accordance with the judgment, it is impossible for the arbitrators to consider the case on its merits, since such consideration would undermine the very essence of the arbitral procedure.' This means that 'the powers of the courts shall be limited solely to what is specified by law.' This is a step towards harmonization of Indian arbitration law with its international counterparts.

Impact

The evolution of Indian arbitration law has been greatly influenced by the Renusagar decision. The Supreme Court has shown that India is committed to the independence of arbitral awards through a commitment to their enforcement, adopting a policy that is favorable to their enforcement with minimal judicial intervention. This has greatly contributed to the increased use of Arbitration is a successful and effective means of resolving conflicts.²²

¹⁹ *Renusagar Power Co. Ltd. v. Gen. Elec. Co.*, 1994 Supp (1) SCC 644 (India).

²⁰ *Id.* at 682.

²¹ *Id.* at 685.

²² Sumeet Kachwaha, *Arbitration in India*, 1 Indian J. Arb. L. 1 (2012).

Therefore, this decision performed a fundamental role in strengthening the confidence of international investors. The application of foreign arbitral awards with minimal judicial intervention made India more attractive to foreign investment and business at a time when there was increased integration into the global economy.

Another significant effect of the *Renusagar* decision is the reduction of judicial intervention that is not necessary during the enforcement phase. The Court, by clearly determining the scope of public order, prevents lower courts from making interpretations that may impede enforcement.

The law on arbitration in India is distinct based on the fact that it has a very long history. This is evident by the unusual approach taken when it came to handling the issues regarding the case *Renusagar* considering the few parties involved including two foreign parties.

5. Expansion of Judicial Intervention

The ONGC judgment in its case against *Saw Pipes Limited* was a drastic departure from more traditional and conservative Indian decisions that had followed international arbitration practices. By greatly expanding the scope Regarding court involvement in arbitration, especially in its broader definition of "public policy," this ONGC judgment was a watershed in Indian arbitration law. The ONGC judgment and its impact on arbitration in India is an issue that has sparked considerable debate.

ONGC v. Saw Pipes Ltd.²³

In the *Sawpipes* case, the “Supreme Court” considered an appeal regarding a national arbitral award made pursuant to the Arbitration and Conciliation Act of 1996.²⁴ The key issue was whether If an arbitral verdict was against public policy, it might be dismissed. The Court significantly expanded the concept of public policy. with the introduction of the concept of "manifest illegality"²⁵ as opposed to the restrictive interpretation of public policy as per the *Renusagar* case.

According to the Court, an arbitral award will be set aside if it is manifestly illegal, which includes:

- Violation of statutory provisions
- Errors of law apparent on the face of the record
- Decisions that were unreasonable or irrational

²³ *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

²⁴ *Id.* at 727.

²⁵ *Id.* at 744.

This interpretation provided for a substantial examination of the controversy, enabling the courts to examine the validity of the reasoning of the arbitral tribunal. It also provided for the courts to have more power to intervene in arbitral awards, making it more difficult to differentiate between errors of procedure and errors of law.

This decision is predicated upon the idea that arbitral awards must respect national law and cannot be invoked if they are flawed.²⁶ This strategy is seen to contravene international rules, especially those laid down in the New York Convention, which highlights the restrictions on judicial review of arbitral decisions.

Effects

The Indian concept of arbitration has been significantly influenced by the growing judicial intervention that has been a direct consequence of the Sawpips decision. This has led to a growing trend where arbitral awards are subject to examination on their merits. Such awards are being challenged by the parties on the basis of their apparent illegality. This has led to an examination of issues of fact and law that are within jurisdiction of Arbitral tribunals.

Indian concept of arbitration has come to be viewed as a process that is no longer swift or decisive, but rather as a traditional process that involves various layers of judicial review. The Indian process has come to be viewed as slow and uncertain. This has had a negative impact on the justification for choosing arbitration over judicial litigation.

The delay in enforcing arbitral awards had another significant effect. The widening of the scope of judicial review prompted losing parties to strategically use it to prolong the legal process. This, apart from overstressing the judicial system, deterred parties from resorting to arbitration.

In addition, the arbitral award in the Sau Pipes case reflected a clear departure from the international standards of arbitration. Indian strategy reflected an interventionist stance that was inconsistent, unlike that of the United States-United Kingdom, which pursued a consistent policy of limited intervention. This deterred international investors from considering the implementation of arbitral awards, as it reflected negatively on the Indian reputation as an arbitration-friendly country.

Thus, it can be said that the landmark judgment of “ONGC v. Saw Pipes Ltd”. has significantly altered the face of arbitration practice in India, with increased judicial intervention. Although the judgment was aimed at

²⁶ Fali S. Nariman, *Ten Steps to Salvage Arbitration in India*, (2016).

upholding the principles of legality and fairness, it has resulted in increased judicial intervention, an increase in litigation, and delays, thus undermining the basic purposes of arbitration.

6. Corrective Judicial Approach

The Indian judicial system finally acknowledged the impact of judicial intervention in arbitration proceedings in a negative manner. This was particularly so in an era where judicial intervention was at its peak in arbitration proceedings in India, as reflected in decisions in *ONGC v. Saw Pipes Limited*. The corrective phase was then initiated by the Supreme Court in an attempt to return to its position in favor of adjudication and minimal judicial intervention in arbitration proceedings, with a focus on bringing Indian law closer to international standards. This was largely driven by decisions in “*Vijay Karia v. Prysmian Cavi*” and “*Sistemi SRL and Shri Lal Mahal Limited v. Progetto Grano Spa*”.²⁷

Shri Lal Mahal Ltd. v. Progetto Grano Spa

The Supreme Court once more examined the relevance and scope of the "public policy" notion in the enforcement of foreign arbitration verdicts under the Arbitration and Conciliation Act 1996 in the *Shri Lal Mahal* case.²⁸ Whether the "public policy" idea in the execution of foreign awards would include the "manifest illegality" concept, as in the *Sue Pipes* case, was the main question the Court attempted to resolve in this case.

However, Court rejected this notion and reaffirmed the restricted interpretation of "public policy," which had already been held in case of *Renusagar Power Co. v. General Electric Co. Ltd.* The Court held - international arbitration awards would not be subject to the "manifest illegality" concept, and their enforcement would be restricted on the grounds:

“Fundamental policy of Indian law”

“Interests of India”

“Justice or morality”

²⁷ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433 (India).

²⁸ *Id.* at 447.

Thus, this ruling reaffirmed that foreign arbitral awards are subject to less stringent judicial review and was an important step in differentiating domestic and foreign judicial decisions. In so doing, the Court was able to align Indian law with the New York Convention more closely.

Vijay Karia v. Prysmian Cavi e Sistemi SRL

In Vijay Karya case, the Supreme Court stressed the need to limit judicial intervention in enforcing arbitral decisions, which further reinforces its positive stance in this matter.²⁹ In its ruling, the Supreme Court stated that “enforcement of foreign arbitral award must be the norm rather than an exception and refusal to enforce an award should only be in exceptional and urgent cases.”³⁰

The ruling further states that while assessing the objections to the enforcement of an award, “courts must not take an overly technical and critical approach but merely look to see to what extent the objections are based on the agreement and applicable law.” However, most importantly, “the parties must not take an overly technical approach with an intent to delay.”

The decision also clarifies that minor procedural errors should not bar the enforcement of the arbitral award if they do not result in substantial harm. This is also in line with the theory that the awards given by the arbitrators are binding and enforceable, and that the arbitral tribunal should respect the autonomy of the arbitral procedure.

Shift in Judicial Approach

These judgments highlight a major change in the way the Indian judiciary looks at arbitrations. There has been a change of paradigm towards ensuring a more balanced process that ensures stability and effective enforcement of arbitration awards. This stands in contrast to the prevailing trend elsewhere.

Moreover, the Indian court system is now paying proper attention to the principles of international arbitration that exist in other countries like America and England, where the main focus is on maintaining the impartiality and fairness of the arbitral award. In addition, the amendment in the law has played an important role in minimizing judicial interference when enforcing the arbitral award.

Last but not least, by creating an atmosphere that ensures enforcement of the arbitral award without judicial interference, the Indian courts have consciously tried to reinstate the credibility of the arbitration procedure.

7. Consequences of Judicial Intervention

If there is excessive judicial intervention in arbitration, this has a significant negative impact on The efficiency of arbitration in settling disputes. The fundamental objectives of arbitration—speed, efficiency, and decision—are all impacted in a negative way even if judicial intervention is necessary for ensuring the fair and legitimate

²⁹ *Vijay Karia v. Prysmian Cavi e Sistemi SRL*, (2020) 11 SCC 1 (India).

³⁰ *Id.* at 15.

resolution of disputes in arbitration. The emergence of judicial review in India has highlighted several negative aspects in this regard, particularly in the backdrop of the judgment in the matter of “ONGC v. Saw Pipes Ltd.”

Delay and Cost

The effect of protracted litigations on arbitration is the delay in dispute resolution. One of the advantages that arbitration has over traditional litigation is its speed. However, if the arbitral award faces opposition from any party, it will be subjected to the judiciary, leading to the protraction of the entire process.³¹

This delay defeats the very essence of arbitration as a process. Once the arbitral award has been made, the two parties can get stuck in a long process of litigation rather than arriving at a final agreement. The expenditure associated with this has increased. The cost involved in the judiciary process has made mediation costly, especially to small and medium-sized enterprises.

Investor Confidence

One of the vital factors that have been affected as a result of judicial interference is the confidence of investors. The predictability and efficacy of the dispute resolution process are of critical importance for both domestic and foreign investors. The ambiguity in the final outcome of disputes occurs when there is judicial intervention in the arbitration awards or when there are conflicting interpretations of the legal issues involved in the disputes, especially in matters involving public policy.³²

This ambiguity deters foreign investors from investing in India as there is a feeling that arbitration awards are not being consistently applied in India. Therefore, countries that provide a conducive environment for the rule of law and minimize judicial intervention are more likely to be attractive for businesses. Therefore, the attractiveness of India as an investment option is significantly impacted by judicial intervention.

Arbitration Reputation

Judicial intervention has a significant negative impact on reputation of Indian arbitration system. The difference between judicial intervention and arbitration is that judicial intervention is not usually associated with an efficient and independent process of dispute resolution.³³ Once judicial intervention occurs in periodic review

³¹ World Bank, *Ease of Doing Business Report* (2020).

³² UNCTAD, *World Investment Report* (2019).

³³ Gary Born, *supra* note 1, at 67.

of arbitral awards or on basis of process objections, arbitration resembles litigation in terms of its complexity and duration.

This negatively affects arbitration's legitimacy as a viable dispute resolution process. International firms might be apprehensive about choosing India as a venue for arbitration and might opt for countries like the United States or United Kingdom, as the courts in these countries are known to respect the finality of arbitral awards and follow a policy of minimal intervention.

Judicial Burden

Another significant effect of the increased pressure on the judicial system is the fact that the Indian judicial system is already overwhelmed with a backlogged docket of cases. The constant appeals against the arbitration awards only add to the judicial workload and delay the disposition of other cases, such as those that involve arbitration.³⁴

Aside from the negative effect on the judicial system's efficiency, the additional workload also takes the judicial system's attention away from cases that need effective judicial intervention. The limits on judicial interference in arbitration proceedings permits arbitration to be used effectively as an alternative conflict resolution procedure.

Thus, the speed, cost-effectiveness, credibility, and efficiency of arbitration in India are adversely impacted by judicial intervention. A moderate approach has to be maintained to sustain the integrity of arbitration.

8. Critical Analysis

The history of judicial intervention in arbitration in India is a classic example of the complex relationship between the requirement of independence on the one hand and judicial intervention on the other. The judiciary has been fundamental for the development of arbitration law in India, its approach has been wanting in several aspects. The major challenges associated with judicial intervention in arbitration in India are discussed in this section.

Inconsistency in Judicial Approach

The problem of inconsistencies in the interpretation of the law over time has also been a feature of arbitration in India. One of the major inconsistencies has been the transition from a restrictive policy-based approach *Renusagar Energy v. General Electric* led to a broader interpretation in *Oil and Natural Gas Corporation v. Su Pipes*. In *Renusagar Energy v. General Electric*, the Supreme Court took a modest interventionist approach, in

³⁴ Law Commission of India, 246th Report (2014).

line with international best practices.³⁵ However, the Saw Pipes case, with its wide interpretation of the scope of judicial review, marked a paradigm shift.³⁶

This inconsistency has made the enforcement of arbitral awards unpredictable. There might also arise situations where both the sides held different opinions regarding the interpretation of the public policy and the role of the judiciary in the process. This was causing certain issues regarding the legitimacy of the process of arbitration, and thus India was not considered for selection.

Over-Expansion of Public Policy

The issue with the misunderstanding of the idea of “public policy” was also very significant. The application of the concept “manifest violation of the law” within the framework of the Saw Pipes case had complicated matters in terms of enforcement and appeal proceedings. Due to procedural errors, the award was to be annulled, making it possible to proceed to arbitration proceedings anew.³⁷

However, the idea of “public policy” was at variance with the terms of the New York Convention, where only a few occasions were referred to when judicial intervention would be justified. In other words, the application of the idea “public policy” resulted in the frequent use of the expression “manifest violation of the law”.

With this in mind, several problems relating to the practice of arbitration have already been sorted out through the lens of legal process theory. Apart from being costly and slow, the superior nature of arbitration as a dispute resolution technique has also been besmirched.

Judicial Overreach

It should be observed that in the case of the question regarding increased judicial influence, there are instances in which the discretion power of judges may be abused. This is because, in many instances, the courts have started to play the role of appellate courts in addition to their role as supervisory courts. This has seen courts start to review facts, interpret contractual provisions, and review the legal conclusions of arbitral tribunals, as opposed to reviewing procedural or jurisdictional errors only.³⁸

This runs completely contrary to some of the core principles of arbitration, such as the independence of both sides involved. In arbitration, a conflict between two parties is resolved by an agreement to have a dispute resolved by an arbitral tribunal appointed to hear the dispute, which is legally binding. Excessive intervention

³⁵ *Renusagar*, supra note 17.

³⁶ *ONGC*, supra note 21.

³⁷ New York Convention, supra note 6.

³⁸ Born, supra note 1.

by courts results in a weakening of the power of arbitral tribunals, which makes arbitration a mere formality before litigation.

Furthermore, the excessive powers vested in the judiciary discourage the use of arbitration at the national, as well as international, level, and it also creates the impression that it is not an independent part of the Indian legal system.

Corrective Phase

In the face of these challenges, the Indian judicial system has recently taken a corrective approach to achieve greater balance. In the issue of foreign arbitral awards, decisions in the *Shri Lal Mahal Ltd. v. Progetto Grano SpA* and *Vijay Karya v. Prismian Cafe E Systeme SRL* cases confirmed a limiting approach to the concept of "public policy" and "minimum judicial intervention."

From the foregoing illustrations, it becomes clear that there have been steps that have been taken in order to bring the arbitration law of India in tandem with other states. However, notwithstanding the huge achievements made by the Supreme Court, there are disparities within the lower courts owing to their holistic approach.

What may be deduced from the above discussion is that while the correction process plays an extremely vital role in ensuring fairness during arbitration, the aspect which requires the maintenance of these principles in the judiciary is by far the most difficult one.

9. Comparative Perspective (India, UK & USA)

The analysis of the intervention by judges in arbitration cases from other jurisdictions reveals that the arbitration process in India requires modification. The United States and the United Kingdom are recognized as two of the most arbitration-friendly nations globally. This is due to their high respect for the independence of arbitral tribunals, They have a clear commitment to enforcing arbitral rulings and require minimal court interference in the arbitration process. Although India has made significant progress in the field, there are challenges to be met in comparison to these two countries.

India vs United Kingdom

The UK has traditionally been recognized as a particularly favorable jurisdiction for arbitration. especially after the implementation of the Arbitration Act 1996.³⁹ The most important provision of this act is the limitation of judicial intervention, which clearly stipulates that judicial intervention in arbitral proceedings is only allowed when provided for under the law.

³⁹ Arbitration Act 1996, c. 23 (UK).

Judicial intervention in arbitral proceedings in the United Kingdom is restricted to procedural and jurisdictional issues, and the finality of arbitral awards is strongly stressed, with courts not going into the merits of the awards at all. Not even the doctrine “Public policy” is interpreted broadly, and is limited to the fundamental principles of “morality and justice” itself.

On the other hand, India was a pioneer in creating an analogous system under international norms through the introduction of the Arbitration and Conciliation Act of 1996. However, judicial interpretation has led to increased judicial involvement and an expansion in the scope of the Act, as seen in decisions such as *ONGC v. Saw Pipes Ltd.* Although there has been a move towards a more restricted approach in decisions such as *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, consistency in the approach is marred by the residual effects of earlier interventionist practices.

The strength of the UK model lies in the emphasis on efficiency and certainty. In the UK, parties engaging in arbitration are guaranteed that the procedures will be followed and that the award will be enforced quickly. This is the key to the UK's success as an international center for arbitration.

India vs United States

The U.S.’ Federal Arbitration Act takes a similar pro-arbitration approach as well. The judicial review is restricted to specific instances of fraud, bribery, manifest bias, or abuse of authority on the part of the arbitrators. It also includes a strong presumption of the application of arbitral awards.⁴⁰

In past, U.S. courts have been quite deferential to arbitral tribunals as well. Even if an arbitral award seems to be incorrect in some way, the courts do not re-examine the award’s findings of fact or law. This is a strict limitation that ensures that the process of arbitration is final and binding in a legal sense.⁴¹

The Indian approach has also been marred by a lack of reliability. The interpretation has led to an extension of the scope of the control, even when the rules are in line with international standards and incorporate similar ideas to those of the New York Convention. However, with the latest decisions, such as the case of *Vijay Karya v. Prysmian Cafe E Systeme SRL*, there is a trend towards the American approach with the strict application of the grounds for rejection and minimal intervention.

The key learning point is the importance that the American system places on the finality of the decisions. The United States instills a sense of trust among the commercial agents and encourages the use of arbitration with a sense of reliability and security that the decisions will not be set aside.

⁴⁰ Federal Arbitration Act, 9 U.S.C. §§ 1–16.

⁴¹ *Hall Street Assocs. v. Mattel Inc.*, 552 U.S. 576 (2008).

Comparative Table

Aspect	India	United Kingdom	United States
Judicial Intervention	Historically high, now reducing	Minimal	Minimal
Public Policy	Previously broad, now narrowing	Narrow	Narrow
Merits Review	Earlier allowed (limited now)	Not allowed	Not allowed
Efficiency	Improving	High	High

The above comparison illustrates that despite the significant progress that has been made in recent times, the consistent application of principles of arbitration at all judicial levels is important in India. Minimizing judicial interference, complying with the doctrine of merit review, and interpreting public policies in a balanced manner, as witnessed in the United States and the United Kingdom, are some of the critical factors that need to be considered for the development of an effective and efficient arbitration system.

It is thus critical that arbitration is followed by strict compliance with the rules of arbitration in order to ensure that these laws have greater effectiveness in India. This, in turn, would make it more conducive for investments from abroad.⁴²

10. Suggestions and Way Forward

On the other hand, if the process that is devised through mediation becomes flawless without entering into the sphere of courts, and it does not lack any element, mediation can work miracles as a means for resolving disputes. Although there have been a number of achievements within the context of the judiciary, much still needs to be accomplished in order to make India comply with international arbitration.⁴³

The fact must not be overlooked that certain restrictions have been imposed on the role of the judiciary with regard to the Arbitration and Conciliation Act, 1996, and thus, the doctrine of judicial minimalism should be applied in India.

Consequently, the necessity arises to make a complete prohibition on reconsideration of substance. Appeal regarding the reasons for which the decision was made by the arbitration tribunal, reconsideration of facts, and

⁴² Redfern & Hunter, *supra* note 5.

⁴³ Law Commission of India, *supra* note 32.

interpretation of the contractual obligations is out of place. Indeed, it is because of this reason that the core of arbitration, which is independence, becomes jeopardized when appellate jurisdiction is assumed by arbitration tribunals.

Lastly, the formation of special chambers in the field of arbitration is an important modification. Judges familiar with international practice and arbitration law are better placed to deal with complex arbitration proceedings in an effective manner.

The creation of specialized chambers for dealing with judicial decisions has the potential to ensure greater uniformity in judicial decisions, fewer inconsistencies, and a quicker resolution of cases related to the enforcement of arbitral awards.

It is therefore necessary to ensure the speedy enforcement of arbitral awards. Failure to effect such speedy enforcement will significantly impede the efficacy of arbitration. Moreover, such delays may dissuade parties from resorting to arbitration. To avoid delays in litigation, courts should set very stringent time frames within which to resolve all issues related to arbitration.

Furthermore, a clear understanding of public policy in law is necessary. This legal concept remains unclear, particularly in courts of first instance, despite jurisprudence's attempts to define its scope. A clear legal definition of public policy will reduce ambiguity in interpreting legal provisions. Moreover, such a definition will prevent an abuse of public policy as a tool to impugn arbitral awards.⁴⁴

Finally, India needs to continue with the process of harmonization of arbitration laws with international best practices, with special focus on the NYC. The adoption of best practices from countries like the US and the UK is expected to improve the robustness and conduciveness of the legal environment for arbitration.⁴⁵

Therefore, there needs to be judicial restraint, strict conditions in law, an institutional foundation, and methods so that the role of arbitration can be realized to its full potential in India swiftly and effectively.

11. Conclusion

In terms of judicial intervention in arbitrations, it seems as though the objectives of maintaining the independence and impartiality of the arbitral procedure are clashing with each other. While on the one hand, the role of the judiciary cannot be overruled in ensuring procedural justice and public order, on the other hand, there is the risk of interference by the judiciary being a major danger to arbitration itself.

The development in the Indian approach to judicial intervention in arbitration can be seen from a pro-law stance in the case of “Renusagar Power Company Limited v. General Electric”, through an interventionist approach in the aftermath of “Oil and Natural Gas Corporation v. Su Pipes Limited”, to a corrective approach in the cases

⁴⁴ *Shri Lal Mahal*, supra note 25.

⁴⁵ UNCITRAL Model Law, supra note 2.

of “Shri Lal Mahal Limited v. Progetto Grano SpA” and “Vijay Karya v. Prysmian Cafe E Systeme SRL”. This pattern reflects an increasing awareness on the part of Indian judges to align Indian arbitration law with worldwide best practices and restore the arbitral process's credibility.⁴⁶

The recent shift towards a more flexible enforcement of arbitration awards undoubtedly signifies a step in the right direction. It is a welcome change to see a greater focus on ensuring respect for the finality of arbitration awards, a proper understanding of public policy, and a restriction on judicial intervention. However, the greatest challenge still lies in ensuring a consistent application of all of these principles by all courts of jurisdiction, both domestic and international, with a certain level of hesitation from parties, especially in relation to their enforcement in India, especially by trial courts.

Nevertheless, after reviewing the arbitration systems established in states such as the US and the UK, it becomes evident that there are several important aspects that must be taken into consideration in creating an effective arbitration system, including predictability, control, and efficiency. It is these factors that may be referred to as arbitration seats as they allow minimizing judicial interference and enforcing arbitral decisions.

Therefore, it becomes vital for the Indian government to adopt the same steps and create its own arbitration system so as to become an arbitration seat. Some of the aspects that need to be improved include arbitration procedure efficiency, fast implementation of arbitral decisions, and differentiation between control and interference.⁴⁷

To conclude, it is imperative that there should be a proper analysis of the whole process of arbitration for the process to be effectively implemented. It is pertinent to emphasize that arbitration could be the most significant aspect of international arbitration when all its advantages are taken into account.⁴⁸

⁴⁶ *Vijay Karia*, supra note 27.

⁴⁷ *ONGC*, supra note 21.

⁴⁸ *Born*, supra note 1.