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## AN ANALYSIS ON THE DISPUTED SCOPE OF JUDICIAL INTERFERENCE IN ARBITRATION

*The process of arbitration is in a developing state in India. Accordingly, there are many processes around the process of arbitration which contain contentions, i.e. it still needs rigorous interpretation of laws related to arbitration to attach clear meaning to the contentious processes. One of them is judiciary interfering in arbitration. This aspect is contentious as to when can judiciary interfere and on what grounds can it interfere. This aspect is contentious as arbitration is generally referred to be as an alternative form of dispute resolution method and is resorted so as to ease the burden of the judiciary, so if judiciary is interfering in the process of arbitration, then it in a way defeats the very purpose of arbitration. But contemporaneously, the legal framework according to which arbitration works in India suggests that in some special circumstances, judiciary can interfere in due process of arbitration. These circumstances are enshrined in the legal framework itself, but its implementation is a bone of contention ascribed to the very purpose arbitration process has been effectuated in India. Therefore, the scope of judicial interference in arbitration is questionable and needs to be interpreted in a way in which ends of justice are met.*

### **Arbitration and conciliation act, 1996 on the scope of judicial interference in arbitration**

According to the objectives laid down of this act in “Pursottam Das Chokhani v. Sarita Devi Nathani”, this act was brought into effect to minimize the supervisory role of courts in arbitral process.<sup>1</sup> Section 5 of the arbitration and conciliation act bolsters the above objective by stating “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”. Here part means only the part 1 of this act i.e. which is applicable only

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<sup>1</sup> Pursottam Das Chokhani v. Sarita Devi Nathani, A.I.R. 2006 Gau 160 (India).

in India.<sup>2</sup> But in this very act, some circumstances are enshrined in which judicial interference is allowed. These circumstances are mentioned in section 34 of arbitration and conciliation act, 1996, of which some of the major ones are, if the arbitration agreement is not valid according to due procedure of law, if the arbitral award is not in accordance with the arbitration agreement, if the arbitral award is not accordance with the public policy of India, etc.<sup>3</sup> In “Kamani Engg. Corpn. v. M.P. Electricity Board”, it was held that legal proceedings can be attracted if the validity of it has been given by the arbitration and conciliation act, 1996 itself, like relates to the appointment of arbitrator, sole arbitrator, etc., but if the legal proceedings are not allowed under this act, then judiciary cannot interfere in arbitration.<sup>4</sup>

Therefore along with the sections and the cases mentioned above which signify that judicial interference in arbitration is indispensable in some special circumstances. There are also some sections like section 29a,<sup>5</sup> which were brought into effect by arbitration and conciliation amendment act, 2015, which also signified that judiciary can interfere in arbitration proceedings.

### **Major reasons because of which the judiciary interferes in arbitration**

Now it is clear that due to arbitration and conciliation act, 1996 and its amendment act of 2015, judiciary can interfere in arbitration proceedings i.e. it gives legal validity to it. There are certain reasons because of which judiciary meddles, the most important of which is to “Meet the ends of justice” i.e. to resolve the dispute in the most appropriate way. In other words, the parties which are at dispute shall resolve it i.e. the resolve should not be delayed to stick to the procedure enshrined in arbitration and conciliation act, 1996. This was bolstered by *Great Offshore v. Iranian Offshore*, in which it was held that the court must achieve legislative intention of the arbitration act, so in pursuance of that, the courts shall interfere in the process of arbitration and do away with the formal technicalities like stamps, signatures, etc., to effectively resolve dispute.<sup>6</sup>

Another important reason is that the courts need to interfere so as to maintain the arbitration agreement between the disputed parties, so whenever any party does not act in accordance with the arbitration agreement, the courts interfere so that basic purpose of arbitration is

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<sup>2</sup> SANKALP JAIN, *Judicial Intervention in Arbitration*, SSRN, 29<sup>th</sup> June 2016, at 1, 2-3.

<sup>3</sup> *MCD v. Jasbir Singh*, 2003(1) Arb L.R. 336 (India).

<sup>4</sup> *Kamani Engg. Corpn. v. M.P. Electricity Board*, A.I.R. 1964 M.P. 268 (India).

<sup>5</sup> S.29(a), THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015, No.3, Acts of Parliament, 2016 (India).

<sup>6</sup> *Great Offshore v. Iranian Offshore*, (2008) 14 S.C.C. 240 (India).

maintained, otherwise the dispute resolution method might go haywire. There are multiple other reasons because of which the courts interfere which are, if the arbitral award passed by an arbitrary tribunal is not in consonance with due procedure of law or public policy of India, if the subject-matter of the dispute is such that cannot be resolved through arbitration, etc. All these are the reasons because of which court meddles but it can be meddle only through the procedure mentioned in section 34 of arbitration and conciliation which states that a court can be approached only to set aside an arbitral award.<sup>7</sup>

### **Landmark cases on the scope of judicial interference in arbitration**

This issue being contentious because of the reasons mentioned above, it has come up in various cases relating to arbitration. Hence, through the judgements of some of these landmark cases, the scope of judicial interference in arbitration can be gauged.

In a first in “McDermott International Inc v. Burn Standards Co. Ltd.<sup>8</sup>”, the Supreme Court of India held on the scope of judicial interference in India that arbitration and conciliation act, 1996 has provisions for interference of judiciary only to ensure fairness or equity and this interference can only be effectuated if there is a case of fraud, bias, violation of natural justice, etc., because in these cases only fairness of arbitral proceedings is questioned. One more important point of law was established in this case that courts cannot interfere in arbitration by changing the subject matter of the arbitral award, they can only quash it and order for arbitration proceedings again but cannot change it.

In “TPI Ltd v. Union of India.<sup>9</sup>”, one of the most significant points of law was established, which to a great extent determined the scope of judicial interference in India. It was held in this case that section 34 is constitutionally valid and henceforth, the court shall not interfere in arbitration on the basis of merits or circumstances of the case, it can only interfere on the grounds enshrined in section 34 of arbitration and conciliation act i.e. when there is an issue of fairness. The reasoning behind this judgement was that arbitration is selected by the parties themselves, so merits of the case need not be reviewed again as not reviewing them would not be in contravention of natural justice.

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<sup>7</sup> S.34, THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015, No.3, Acts of Parliament, 2016 (India).

<sup>8</sup> McDermott International Inc. v. Burn Standards Co. Ltd, (2006) 11 S.C.C. 181(India).

<sup>9</sup> TPI Ltd v. Union of India, (2001) 2 A.D. (Del) 21 (India).

The judgement of this case was further reiterated in “Delhi Development Authority v. M/s Bharadwaj brothers FAO.<sup>10</sup>” which was held recently by the Delhi high court in 2014 in which it was stated “*A Section 34 proceeding, which in essence is the remedy of annulment, cannot be used by one party to convert the same into a remedy of appeal. In our view, mere erroneous/wrong finding of fact by the arbitral tribunal or even erroneous interpretation of documents/evidence is non-inferable under S.34 and if such interference is done by the Court, the same will set at naught the whole purpose of amendment of the Arbitration Act.*” which basically means that courts cannot interfere in arbitration proceedings even were passed by arbitration tribunals are based on incorrect interpretation of documents or are based on wrong facts. Therefore, according to the judgement of this case it can be said that the scope of judicial interference is limited i.e. cannot exceed beyond the scope enshrined in section 34 and 37 of arbitration and conciliation act, 1996.

Therefore, the scope was very limited till recent times, so to avoid unfairness because of the procedure, in “ONGC v. SAW pipes<sup>11</sup>” one of the circumstances in which courts could interfere was defined correctly, which is if arbitral award is against the public policy, so public policy was defined, which in turn extended the scope of judicial interference in arbitration.

Therefore, these are the landmark cases which have substantially determined the scope of judicial interference in arbitration.

## **Conclusion**

Scope of judicial interference in arbitration is an aspect of arbitration which has been widely discussed among the arbitration fraternity and rightly so, as this is a contentious issue, because the legal framework which governs arbitration in India suggests something different on this issue than the underlying purpose because of which arbitration has been formed in India. The legal framework i.e. section 34 of arbitration and conciliation act, 1996 suggests that judicial interference is allowed in arbitration in certain cases and more so is indispensable in some cases, whereas the underlying purpose of the arbitration suggests that it is an alternative form of dispute Redressal and has been formed to ease the burden of judiciary, so if judicial interference is indispensable in certain case, then in that scenario the burden is not levied off the judiciary which defeats the purpose. Therefore, a middle ground

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<sup>10</sup> Delhi Development Authority v. M/s Bharadwaj brothers FAO, 2014 (3) Arb L.R. 333 (India).

<sup>11</sup> ONGC v. SAW pipes, (2003) 5 S.C.C. 705.

is necessary to be formed where the purpose is not defeated as well as the legal validity is also sanctioned. In other words, the scope of judicial interference is necessary to be determined. To do that, the understanding of the reasons/causes of judicial interference is important to be gauged because then accordingly the scope could be determined with due consideration of the reasons. This middle ground to a great extent was formed by the landmark cases on this issue i.e. the scope was determined by these cases. So following the trajectory of these cases, in today's times it can be said that judiciary can be interfered only when there is an issue of fairness in matter i.e. if there is case of fraud, bias or violation of natural justice resulted from an arbitration proceedings, then only attributable to section 34 of arbitration and conciliation act, 1996 courts can interfere in arbitration proceedings. It can be further said that an arbitral award on the basis of erroneous fact, lack of review of documents, etc., cannot be challenged under a court because the parties themselves opted for the arbitration, so that cannot be challenged on the basis of merits.

### **Way forward**

The scope of judicial interference in arbitration has been to a fair extent determined by the ratio propounded in the landmark cases on this issue. But a solution for a long term cannot be based on the precedents set by these cases, which means that apart from section 34 and 37 of the arbitration and conciliation act, 1996, the legal framework dealing with courts' interference in arbitration shall cultivate in it direct provisions which directly discusses the scope of judicial interference in arbitration in detail. Therefore, there should be an amendment like arbitration and conciliation act, 2015 through which provisions could be added and altered which could directly determine the scope or directly discuss all the circumstances in which courts could interfere in arbitration. Along with this amendment act signifying all those circumstances, a regulatory can be set up by the government that could govern that whether the arbitration proceedings is in consonance with arbitration agreement or not, by this the meddle of judiciary could be waned i.e. the burden could be lessened of judiciary, as by that only the legal validity aspect would be taken care of by the courts and other than that regulatory body could take care of. Ergo, these are some of the steps which if resorted to then the scope of judicial interference in arbitration could be skewed perfectly.