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ANALYSIS OF JUDICIAL INTERVENTION IN ARBITRAL PROCESS VIS-A-VIS POST BALCO V. KAISER ALUMINIUM JUDGMENT

ABSTRACT

According to Halsbury, arbitration is the referral of a disagreement or difference between at least two parties for resolution by a person or individuals other than a court with competent jurisdiction, after hearing both sides in a judicial fashion.

Arbitration is the procedure by which parties to a dispute are able to settles their differences with the aid of an unbiased third party without resorting to a court of law. However, since the court could need to get involved or since parties might ask for it right away during the arbitration process. When two parties agree to resolve their differences through arbitration, they actually mean that the final decisionmaking power will reside with a neutral third party known as an arbitrator. The court might need to intervene to control the arbitration process or give the arbitrator's judgement legal standing.

The BALCO decision marked a turning point in international arbitral proceedings. It raises the question of whether the Arbitration and Conciliation Act,1996 applies to arbitration proceedings held outside India or to International Commercial Arbitration (ICA) with a seat of arbitration outside of India, where Indian parties seek the intervention of the Indian Court to invalidate foreign awards and render them ineffective in India, thereby meaningless the arbitration process as a whole. Can Indian Courts take part in International Arbitrations Held Outside of India?

The mode of this research paper is conducted upon doctrinal research. The main objective of the paper is to analyse the requirement of judicial intervention – before, during or after the arbitral proceedings but before the enforcement of arbitral award is mandatory in nature. It also highlights the Growth if arbitration and introductory content followed by the depiction in the Area of Conflict in the appointment

of arbitrators and judicial intervention into arbitration. The paper concludes with the researcher's opinion and suggestion regarding the issues.

INTRODUCTION

Arbitration is a process rooted in ancient Roman law, and it remains a valuable method for resolving disputes to this day. Back in antiquity, it was a crucial tool for conflict resolution, and its effectiveness hasn't waned with time. In contemporary times, arbitration is becoming increasingly popular and is often chosen as a way to resolve disputes peacefully and temporarily. There are some who argue that the actions of Arbitration Tribunals, which operate outside the traditional legal framework, pose a potential threat to the establishment of a new legal order that could challenge the established legal principles governing societies. While this concern is worth considering, it's important to note that arbitration doesn't occur in isolation. Unlike some administrative agency decisions, arbitration outcomes can be subject to judicial oversight at some point in the process. In essence, arbitration is a dynamic and evolving mechanism for resolving conflicts, drawing on historical roots while adapting to the needs of contemporary society. It's an effective means of amicably settling disputes and should be seen within the broader legal context, where checks and balances exist to ensure fairness and compliance with established legal norms.

The Indian judicial system has a rich history of using arbitration to resolve economic disputes. This tradition dates back to the days of village panchayats, where conflicts among community members were peacefully settled. In more recent times, the "Arbitration and Conciliation Act, 1996" was enacted with the primary aim of achieving three key objectives in the field of arbitration: reducing the courts' involvement in overseeing the arbitration process, ensuring that the final arbitral awards are enforceable just like court judgments, and upholding the core principle of the Act, which is the court's duty to refrain from interfering with the arbitration process. This legal framework reflects the Indian legal system's recognition of the value of arbitration in resolving economic disputes, drawing on a long-standing tradition of community-based conflict resolution. It seeks to empower parties to seek a fair resolution outside the courtroom and ensures that the outcomes of arbitration are treated with the same legal weight as decisions made by the courts. The Act embodies the principle that courts should respect and uphold the integrity of the arbitration process, providing a supportive environment for alternative dispute resolution. The power granted to courts to evaluate policies or rulings made by other governing bodies—whether they are from the executive branch, the legislature, an administrative agency, or a lower court—is known as judicial review.

STATEMENT OF THE PROBLEM

This research paper includes not only the meaning of Arbitration but also the judicial intervention in arbitral process in Post Balco V. Kaiser aluminium case, drawbacks of arbitration.

ARBITARTION

Arbitration according to its definition is an alternative dispute resolution outside the courts, where in the parties in dispute refer the dispute to one or more people called arbitrators to make the decision or pass an award, they are bound to follow what these arbitrators decide. This process allows the parties to avoid the formal court system to settle their disagreements. It is mostly used to resolve businessrelated conflicts and conflicts resulting from business transactions. Mediation and arbitration are not the same. In mediation, the goal is to find the compromise, while in arbitration, the arbitrator decides based on specific rules rather than trying to get both parties to agree.

Arbitration can be divided into 2 categories: ad hoc and permanent institution based. Ad hoc arbitration is when the people involved decide on the rules and don't involve any outside organizations. They pick their arbitrators for each case, usually by themselves. Sometimes, they might bring in an appointing authority to help select the arbitrators. And depending on what's needed, the arbitration panel can have one or multiple arbitrators. It's all about flexibility and tailoring the process to the specific situation.

When arbitration is institution-based, it means a permanent organization takes charge of the process. This organization takes charge of the process. this organization sets the rules and often appoints the arbitrators. A well-known example of such organization is the International Chamber of Commerce.

Now, when we compare arbitration to public litigation, there are pros and cons. One big advantage is that it's a confidential process, which is crucial in cases involving trade secrets. But, because of this confidentiality, the outcomes of arbitration cases don't get the same attention from the public as court cases do. Also, parties usually get a say in selecting the arbitrators, giving them some control over the process.

ADVANTAGES AND DISADVANTAGES

Arbitration is often a popular choice for resolving disputes, and there are good reasons why people prefer it over going to court. When businesses deal with their customers, they include the arbitration clause in contracts, but when they have conflicts with other businesses, they might opt for the formal court system.

- One significant benefit of arbitration is that parties can pick the tribunal, unlike in court where they cannot choose the judge. This is especially handy when the issue is highly technical, as you can select arbitrators with expertise in the specific subject matter. For example, in a maritime dispute, experts in ships and maritime law could be selected, or in real estate dispute, specialist in commercial property law.

- Another advantage is that arbitration typically takes less time than a court lawsuit. The awards and proceedings are usually private and can be kept in confidential nature.
- In courtroom, one must use the official and formal language of the court is located and maintain a decorum, but in arbitration, one can choose the language for the proceedings.
- Enforcing arbitration awards internationally is generally easier thanks to the 1958 New York Convention, which sets out the rules for recognition and enforcement clearly.
- On the downside, there are usually limited options for appealing an arbitral decision in most legal system. However, this can sometimes be an advantage because it shortens the time a case can drag on and reduces associated legal costs.

There are some disadvantages to arbitration that are worth considering:

- Arbitration clauses are often hidden in fine print and customers or employees may not even realize they've agreed to binding arbitration when they buy a product or accept a job.
- Parties give up their right to have a judge or jury decide their case when arbitration is required and binding.
- If the arbitrator or arbitration forum has a vested interest in ruling against the customer or employee (perhaps because they rely on the firm for future business), it can be challenging to reverse an incorrect decision.
- Although arbitration is typically faster, scheduling conflicts for hearing dates in lengthy cases with multiple arbitrators can lead to delays.
- While arbitration awards are enforced similarly to court judgements in the United States, they have fewer enforcement options in many legal systems.
- In arbitration, a party can take action to avoid enforcement without disclosing the unfavourable often can't enforce interim measures against a party.
- Discovery in arbitration may be either absent or limited.
- Lawyers may have fewer opportunities to get paid if the natter goes to trial instead of arbitration.
- Arbitration awards aren't immediately enforceable, unlike court proceedings. To enforce an arbitration award, a party typically needs to take legal action to "confirm" the award.

GROWTH OF ARBITRATION IN INDIA

In India, legal cases can be both expensive and incredibly time consuming. The civil courts in the country are often burdened with delays, which has eroded public confidence in the 'rule of law.' With an estimated 40 million cases and frequent filing delays, it's no wonder that arbitration is becoming increasingly popular in India as an alternative way to resolve disputes without relying on the traditional legal court system.

The arbitration and conciliation act of 1996 was introduced to address these challenges and achieve several important goals:

1. Establish a fair and effective arbitration process tailored to meet the specific needs of different cases.
2. Ensure that the arbitral tribunal provides sound justifications for their decisions.
3. Keep the arbitral tribunal within the boundaries of their authority.
4. Reduce the level of court oversight in the arbitration process.
5. Make sure that all final arbitral awards are as enforceable as court judgements.[1]

The primary aim of this Act is to expedite the resolution of disputes. It's meant to avoid situations where cases linger in court for years before arbitration even begins. To achieve this goal, arbitration proceedings are designed to be resolved efficiently through the use of relevant documents and affidavits, without the need for lengthy oral testimony. However, there may be exceptional circumstances where presenting oral evidence becomes necessary. In any case, the emphasis is on resolving these disputes quickly within a defined timeframe, rather than treating them as regular civil suits.

[1] Purushottam Das Chokhani v. Sarita Devi Nathani; 2006(2) Srb LR 176 (Gau) (DB)

JUDICIAL INTERVENTION

Judicial review of arbitration isn't something that happens all the time. In fact, it has sometimes sparked criticism for either appearing as judicial interference or, on the flip side, efforts to bypass legal boundaries and push back against claims of unfairness. This discontent can typically be traced in three ways:

1. It involves looking at the fundamental nature of arbitration itself.
2. It's about figuring out the limits within which the arbitrator, chosen by the parties involved, can make decisions.
3. It also deals with how much freedom the arbitration process has to operate independently from the court without external interference.

Arbitration usually kicks off as soon as all the parties involved are ready and have chosen an arbitrator. There's no need to wait for it to follow the slow pace of a typical court case that often gets stuck in crowded court dockets. However, there have been issues arising from courts refusing to uphold agreements they view as invalid, which has left those who initially agreed to resolve their disputes through arbitration feeling confused and unhappy.

People who genuinely entered into an agreement in good faith may find themselves in a situation where the legal system doesn't recognize their intentions. This can lead to doubts about the extent to which judges uphold the principles of the rule of law in general.

"Judicial review" also extends to individuals, or a group of individuals known as arbitrators. Although it's a widely practiced concept in the legal system, it's not explicitly defined in major legal dictionaries, which can sometimes lead to varying interpretations. However, it's important to clarify this because users don't always understand it in the same way.

Certainly, the act outlines three specific situations in which the court can become involved in an arbitral process:

1. When there's a dispute over the selection of arbitrators, and the parties can't agree on the intended course of action.[2]
2. When the court needs to decide whether the arbitrator's authority should be terminated due to an inability to perform their duties or because the proceedings aren't progressing as they should.[3]
3. When assistance is required in gathering evidence.[4]

All three of these situations create a doorway for the courts (judiciary) to intervene in arbitral disputes. In the *Konkan Railway Corporation v. Mehul Construction Co*[2]. case, the court showed strong support for the 1996 Act, emphasizing that "the Act's provisions clearly indicate that the court's involvement in an arbitral process is kept to a minimum."

However, the actual practice has often strayed from these principles. Notable cases like *SBP & Co. v. Patel Engineering* [3]*and ONGC v. SAW Pipes* [4]have shown clear legislative efforts to promote arbitration in India.

In the SAW Pipes case, an arbitral award was challenges on the grounds that it was "in conflict with the public policy of India." Here, the court took a broad interpretation of "public policy" rather than a narrower one that would have kept it within the confines of Indian law.

The courts ruled that "any violation of Indian legislation would automatically render the award in violation of public policy," equating "patent illegality" with "error of law." This approach ended up allowing the kind of judicial review that the act was actually intended to prevent.

In the SBP & Co. case, the Supreme Court expanded its intervention by allowing the Chief Justice of Indian to make rulings on issues like the validity of arbitration agreements. The Chief Justice could also demand evidence to settle jurisdictional disputes while appointing an arbitrator in case where the parties couldn't agree. These rulings were deemed final and binding on the parties. This, however, undermined the "Principle of Kompetence," which empowers the Arbitration Tribunal to decide its own jurisdiction.

The essence of Section 13, or the Act's Challenge Procedure, was thus defeated, as courts asserted the authority to significantly interfere with arbitral proceedings. This happened either by raising unfounded

2 Section 11 of The Arbitration and Conciliation Act,1996
3 Section 14(2) of The Arbitration and Conciliation Act, 1996
4 Section 27 of The Arbitration and Conciliation Act,1996

objections to preliminary issues or by undermining the meeting process where the parties were supposed to resolve such disputes. It led to a conflict between "low principles," emphasizing ongoing litigation, and "high principles," stressing the need for justice, the court's increasing involvement in arbitration raised numerous concerns.

The expansive use of term "public policy" in the ONGC case, there have been several judgements allowing the judiciary to scrutinize arbitral awards could be set aside for reasons such as violating contractual terms, as seen in the case of Hindustan Zinc Lad vs. Friend Coal Carbonization. [5]This set a worrying precedent because the promotion of alternative dispute resolution aimed to avoid the

[2] 2000 (7) SCC 201
[3] 2003 (5) SCC 705
[4] 2005 (8) SCC 618
[5] 2006 (4) SCC 445

protracted legal process. While the court has the authority to set aside awards when arbitrators exceed their authority, it also demonstrates a lack of caution in curtailing the tribunal's decision.

RATIONALIZATION OF JUDICIAL INTERVENTION

In the majority of purely domestic arbitrations without any foreign involvement, the government or its agencies often participate as parties. The arbitrators selected by the government, or its agencies often participate as parties. The arbitrators selected by the government are usually government employees, which can create concerns about potential bias in numerous cases. Finding qualified arbitrators who can efficiently handle cases while maintaining a fair balance between both sides is a rare occurrence. Most arbitration tribunals are ad hoc rather than institutional, meaning they lack the structured support that established institutions can offer.

Sometimes, retired judges with extensive experience in court proceedings are appointed as arbitrators because they are well-versed in the rules governing evidence and procedures. However, this can lead to arbitration proceedings becoming more about legal wrangling and formalities, with each side trying to prolong the process to their advantage. There has been instance where arbitrators may be influenced to drag out the arbitration to earn extra "sitting fees." Furthermore, there are concerns that arbitrators may be influenced or manipulated, particularly by individuals with substantial resources, which can lead to unequal access to justice.

Many arbitrators may lack the necessary expertise in the art of arbitration and may not fully understand how to effectively conduct the arbitral process. In the midst of all these issues, it seems that some have lost sight of the original goal, the process, and the intention behind enacting the Arbitration and Conciliation Act.

In many cases, lawyers may lack expertise in both the legal aspects and the practicalities of arbitration. Unfortunately, this can lead to arbitration being needlessly prolonged, with requests for unnecessary

delays and attempts to fit arbitrations into their regular court appearances. These practices contribute to a lack of ethical conduct in arbitration proceedings in India.

As a result, many arbitrations end up resembling mini-trials, complete with formalities such as pleadings, issues, admissions, denials, oral and written testimony, and cross-examinations. This departure from the intended principles and practices of arbitration can create a situation where courts may feel compelled to intervene in cases involving perceived injustice. Consequently, people might naturally turn to the court system for resolution due to these challenges in the arbitration process.

LIMITATION OF JUDICIAL INTERVENTION

In most legal systems, a party typically has the right to a first appeal against a court judgement. The first appeal against a court judgement. The first appellate court is responsible for reviewing the case on its merit and making a fair decision. This is because, in court proceedings, parties don't have the authority to choose the judge or assess the judge's expertise, knowledge, or ability to understand complex business matters.

However, in arbitration proceedings, the parties themselves choose the arbitrators based on their qualifications and experience. Consequently, there's no need for an additional assessment of the case's merits. This fundamental difference is the reason behind the limitations on the right to appeal against arbitral awards as stipulated in the Indian Arbitration and Conciliation Act, 1996 and the UNCITRAL model law. These restrictions are in place to prevent unnecessary delays caused by thorough reexaminations of the case's merits, re-evaluations of the evidence and to ensure the finality of the arbitral award.

In the case of TPI Ltd. V. Union of India, a writ petition was filed under Article 226 of the Indian Constitution to challenge the restrictions imposed by Section 34 of the Arbitration and Conciliation Act,1996. The primary argument against these restrictions was that parties should have the opportunity to contest an arbitral award on its merits. It was claimed that, without such a provision, Section 34 of the Arbitration and Conciliation Act, 1996, would be considered unconstitutional.

However, the High Court dismissed this Writ Petition, emphasizing that arbitration is a distinct method of dispute resolution, and the parties opt for it willingly and with their consent to the arbitrator's decision through a mutually agreed-upon agreement or contract. This serves as ab alternative to the regular court system that parties have the freedom to choose arbitration or other means to resolve their disputes.

Furthermore, the legislature has the authority to specify the grounds for challenging an arbitral award.

As a result, the restriction outlined in Section 34 of the 1996 Arbitration and Conciliation Act were deemed and legitimate and constitutional. Therefore, the court's jurisdiction is limited to Section 34, and they are not allowed to interfere with the merits of arbitral awards.

WHAT FINALLY HAPPENED IN BHARAT ALUMINIUM CO. ["BALCO"] V. KAISER TECHNICAL SERVICES?

The Supreme Court of India made a significant decision in this case,[9] which has had a substantial impact on India's arbitration laws. It's worth noting that this ruling primarily focused on resolving legal issues that arose during the discussions and did not address the specific details of the case. More recently, the Supreme Court of India addressed the subject matter of the appeal in this case [10]("JUDGMENT/BALCO II"). In BALCO I, the Court clarified that the judgment would only apply to future cases. Therefore, the current issue had to be settled following the guidelines established in this case [11]("Bhatia") ruling. Under

the Bhatia regime, all provisions of Part I of the Indian Arbitration & Conciliation Act, 1996 ("Act") were to be applicable to all arbitrations, whether they were conducted domestically or internationally, unless the parties had expressly or implicitly excluded some or all of the Act's provisions. This set the framework for how arbitration cases would be handled in India.

FACTS

The parties had entered into an agreement regarding the renovation and upgrading of industrial facilities and the delivery of equipment. Several issues arose during this process, and they were subsequently brought before an arbitration panel seated in England. In the end, the respondent emerged as the winner, securing the award in their favour. Following this, the appellant filed an application under Section 34 of the Arbitration and Conciliation Act (which falls under Part 1) to the Chhattisgarh High Court with the aim of having the award set aside.

RELEVANT CLAUSES OF THE AGREEMENT

Article 17- Arbitration

[9] Bharat Aluminium v. Kaiser Technical Services, Civ App 3678 of 2007 (6 September 2012)

[10] Bharat Aluminium v. Kaiser Technical Services, Civ App 3678 of 2007 (28 January 2016) [11] Bhatia International v. Bulk Trading (2002) 4 SCC 105

17.1 Any dispute or claim arising out of relating to this agreement shall be in the first instance endeavour to be settled amicably by negotiation between the parties hereto and failing which the same will be settled by arbitration pursuant to the English Arbitration Law and subsequent amendment thereto.

17.2 The arbitration proceedings shall be carried by two arbitrators, one appointed by the Petitioner and one by the Respondent chosen freely and without any bias. The Court of arbitration shall be wholly in London, England and shall use the English language in the proceedings. The finding and award of the Court of Arbitration shall be final and binding.

17.3 Before entering upon the arbitration, the two Arbitrators shall appoint an Umpire. If the two arbitrators are not able to reach an agreement on the selection of an Umpire, the Umpire shall be nominated by the International Chamber of Paris.

Article 22-Governing Law

This agreement will be governed by the prevailing law of India and in case of Arbitration, the English Law shall apply.

JUDGMENT (BALCO II)

The court made a clear determination that Article 22 specified Indian law as the applicable law for the transaction. Furthermore, they pointed out that Article 171 explicitly stated that English law would govern the arbitration agreement. Hence, it would be impractical and inconvenient to interpret Article 22 to suggest that Indian law would be the substantive law governing the contract while English law would apply in case of arbitration. Therefore, the court concluded that English law applied to the arbitration agreement.

Considering this perspective, the court upheld the High Court's decision to dismiss the Section 34 applications, effectively confirming the legal stance on the matter.

ANALYSIS

The court approached the interpretation of the arbitration clause with a focus on "party autonomy" as the guiding principle of international commercial arbitration. They recognized that parties would likely intend to avoid complex and unmanageable processes and procedures when crafting such an agreement. Consequently, the court determined that Indian law was the applicable law for the main contract, with English law only governing the arbitration agreement.

This ruling holds significant implications, particularly for how arbitration terms in contracts signed before September 6, 2012, during the Bhatia regime, should be understood. The key question revolved around whether Part I of the Act had been implicitly excluded in such agreements. The court referenced this case[6], in which the Indian Supreme Court clarified that in cases where the governing law of the arbitration agreement is foreign or the seat of arbitration is outside of India, Part I of the Act would be considered implicitly excluded.

Based on this interpretation, the court rejected the Section 34 applications to set aside the arbitral awards that had been brought before the High Court, reinforcing the legal principles at play.

THE DECISION IN BHATIA INTERNATIONAL

The Supreme Court's ruling in Bhatia International allowed Indian courts to exercise authority under Part I of the Act even when the arbitration's seat was outside of India. This was exemplified when a

[6] Union of India v. Reliance Industries, 2015 (10) SCALE 149

party sought interim relief related to an arbitration conducted by the International Chamber of Commerce (ICC) with a Paris seat and turned to Indian courts for jurisdiction. Although Section 9 of the 1996 Act grants Indian courts the power to award interim relief, this provision is only found in Part I of the Act, which was initially intended for arbitrations taking place within India.

Given the arbitration's Paris seat provision, the Supreme Court faced a dilemma where it appeared unable to grant interim relief orders. To overcome this legal hurdle, the Court took a pragmatic approach and ruled that, unless the parties explicitly or implicitly excluded the Act's applicability, offshore arbitrations would be subject to the broad provisions of Part I of the 1996 Act. It was decided that, in international commercial arbitrations held outside of India, parties would not be able to seek interim relief in India, even if their assets were within the country. The Court held that Section 9 and Part I of the 1996 Act would also apply to arbitrations seated outside of India.

THE UNFAVOURABLE EFFECTS OF BHATIA INTERNATIONAL

The practical and equitable considerations behind this decision were aimed at ensuring that Indian courts could grant interim measures to facilitate offshore arbitration. Without this authority, parties might be at a disadvantage, especially when Indian courts have the strongest jurisdictional connection to the dispute's subject matter and are best equipped to issue timely interim measures. However, it's important to note that the ruling in Bhatia International was a form of judicial legislation, as it deviated

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from the original legislative framework of the 1996 Act, which excluded arbitrations held outside of India from the scope of Part I.

While the Supreme Court's decision in Bhatia International was well-intentioned, it led to unintended consequences and raised more issues than it resolved. It significantly expanded the scope of cases in which Indian courts could intervene in arbitrations conducted outside of India. It also raised questions about arbitrations involving Indian parties held in foreign jurisdictions, as Indian courts and the courts of the arbitration seat now shared supervisory authority.

The Bhatia International ruling was subsequently extended in the Venture Global Engineering LLC v. Satyam Computer Services Ltd. case, allowing Indian courts to set aside awards in arbitrations seated outside of India. This controversial decision further expanded the reach of Bhatia International and generated criticism within and outside India.

In response to these developments, the Supreme Court and several high courts in India attempted to limit the impact of Bhatia International and showed a greater willingness to infer implied exclusions in the 1996 Act regarding arbitrations held outside of India.

It became common practice in India-related international business transactions to exclude the application of Part I of the Act to offshore arbitrations to reduce the risk of excessive court interference. The Indian Ministry of Law and Justice released a consultation paper in 2009, expressing concerns about how the Bhatia International decision had altered the scheme of the 1996 Act. The primary aim of proposed modifications was to reverse the effects of Bhatia International.

THE ARBITRAL DECISION IN WHITE INDUSTRIES

The widely reported ruling of a UNCITRAL arbitration panel in the case of White Industries Australia Ltd. v. Republic of India brought into focus the extensive and adverse consequences of the Bhatia International and Venture Global decisions. White Industries, the claimant in the arbitration, had obtained a favourable ICC award against Coal India, a state-owned mining company, concerning a contract related to the development and supply of equipment for a coal mine. As the arbitration took place in Paris, the Indian courts should not have had the authority to review a challenge to the award, as this jurisdiction is reserved exclusively for the courts of the arbitration seat. However, Coal India used the Venture Global decision as a basis to challenge the award in India. In response, White Industries initiated enforcement proceedings in India.

The Indian courts, frustrated by the legal challenge to the ICC award and the resulting delay in its enforcement, decided to suspend the enforcement actions while awaiting a decision on the set-aside procedure. Annoyed by the ICC award's legal challenge and the subsequent suspension of its enforcement, White Industries filed a claim under the Australia-India Bilateral Investment Treaty (BIT) against India. Ultimately, White Industries succeeded in that arbitration. The UNCITRAL tribunal held India responsible for failing to provide investors with an efficient means to assert their claims and enforce their rights, primarily due to the prolonged delays in the enforcement processes. These delays were a consequence of the position established by the Venture Global decision, underscoring the detrimental effects and wide-reaching consequences of the Bhatia International ruling.

REINSTATEMENT OF THE TERRITORIALITY PRINCIPLE

The Supreme Court made the decision to review and overturn its earlier ruling in Bhatia International during this dispute. The Court concluded that the courts in the arbitration seat had the unique authority to regulate arbitration procedures, including award review, after carefully examining the legislative intent, history, and structure of the 1996 Act. Additionally, the Court made it apparent which courts had jurisdiction over proceedings involving arbitrations that are held both overseas and in India. In the first instance. Indian courts have the authority to oversee and assist the arbitral process, as well as to review arbitral verdicts, by utilizing all the authorities granted to them under Part I of the 1996 Act. However,

in the latter instance, the Indian courts' authority is essentially limited to upholding the arbitration agreement and handling disputes pertaining to the acceptance and/or execution of an award. In its ruling, the Supreme Court established the following fundamental guidelines.

(1) The arbitrator acts under the guiding principle of territoriality. Consequently, the court's jurisdiction is determined by the arbitration's seat. Only in cases where the arbitration has an Indian seat may Indian courts oversee the arbitration procedure. It is unable to oversee or intervene in arbitrations held offshore.

(2) Only arbitrations with Indian venues are covered by Part 1 of the 1996 Act. Therefore, challenges to awards issued in arbitrations with seats outside of India are no longer admissible in Indian courts. The Act's Part II gives Indian courts the exclusive authority to handle cases involving overseas arbitration. These are (i) to enforce foreign arbitral awards in India in compliance with the terms of the New York or Geneva Conventions, and (ii) to give effect in India to an agreement referring disputes to arbitration in another nation, in conformity with the New York Convention.

(3) The 1996 Act does not give Indian courts the authority to mandate temporary funding for arbitrator.

CONSEQUENCES OF THE BALCO DECISION

The Supreme Court's decision not to set aside arbitral decisions made in or otherwise intervene in arbitrations seated outside India signifies a strong commitment to party autonomy and the parties' choice of a foreign seat. However, there are two significant implications that contracting parties should be aware of:

Difficulty Obtaining Interim Measures: In the case of arbitrations held outside of India, obtaining interim measures of protection from Indian courts will be challenging due to the legal framework established by the Supreme Court. This may pose a major disadvantage, especially when there's a need to protect assets or maintain the status quo in India during the arbitration process. The Court acknowledged the deficiency in the arbitration regime regarding interim measures but stated that Parliament, not the courts, should address this legal gap. While parties can request interim measures from the arbitral tribunal or the courts of the arbitral seat, enforcing such orders in India may be challenging without an international agreement or the application of the UNCITRAL Model Law from 2006. Legislative changes are expected to address this issue, but in the meantime, contracting parties should consider this factor when choosing an arbitration venue.

Prospective Application of the Judgment: In the BALCO case, the Supreme Court decided that its ruling would be prospective, affecting only arbitration agreements signed after September 6, 2012. Consequently, arbitration agreements signed before that date would still fall under the legal framework established by Bhatia International. The Court provided a somewhat cryptic rationale that it was

necessary "to do complete justice" in supporting this approach. It may seem puzzling that the Court acknowledged the unfavourable consequences of its earlier ruling in Bhatia International, which allowed for court intervention in arbitrations held outside of India under the terms of the 1996 Act, while still permitting this framework to continue for contracts signed before September 6, 2012.

Overall, these implications suggest that contracting parties need to be mindful of the specific rules and regulations that may apply to their arbitration agreements based on the date of the agreement and the arbitration's seat.

CONCLUSION

It is evident that arbitration has grown throughout time to become the best dispute settlement process that spares the court's time and is largely effective in enabling the parties to take prompt corrective action. Every arbitration is founded on the clever application of the law, and its development demonstrates the significance of the law in the real processes. As a result, arbitration has become the preferred forum for quickly resolving conflicts. Laws must be executed to determine their effectiveness, just as the evidence of the pudding is found in the mouthful. Regretfully, as far as the 1996 Act is concerned, reality has become divorced from the values that informed the law. Without a doubt, the current practise differs greatly from what the Act's objective intended. A sign of party self-sufficiency is arbitration. The procedure is concordant, as the agreement's central topic suggests. In situations where two parties have convened and agreed to resolve their disagreement without resorting to the legal system, it is imperative that courts refrain from interfering with these amicable agreements. A third person elected by sanction after two parties have consented to do so should make an award that is final, binding, and unchallengeable unless there are exceptional circumstances. If the current state of affairs in India is considered, judicial action is actually justified.

Consequently, it is important to indicate unequivocally that judicial participation in the arbitration procedures is appropriate. However, the judiciary's intrusion weakens arbitration's fundamental goal and objective, making it necessary to support a middle ground approach. This is then made possible by having enough accessible professional, qualified, and sincere arbitrators in addition to well-functioning arbitral institutions. These are important to the continued success of arbitration in India. If there is a nascent notion that the parties have significantly reduced their chances of receiving high-quality justice by choosing arbitration over litigation. It seems to portend badly for arbitration's future. It is imperative that the major players in arbitration—the bar, the bench, the arbitrators, the arbitral institutions, and the consumers of arbitration—adopt a tradition of arbitration and show a sincere commitment to preventing the outlawing of arbitration. It is necessary to let go of the past in order for India to provide a compelling arbitration structure.

BIBLIOGRAPHY

STATUES

1. Arbitration and Conciliation Act, 1996

BOOKS

1. Alternative Dispute Resolution – P.C Rao & Willam Sheffield 1st edition
2. Law of Arbitration and Conciliation, Avtar Singh
3. Textbook on Arbitration & Conciliation with Alternative Dispute Resolution, by Madhusudan Saharay

WEBLIOGRAPHY

1. https://www.slideshare.net/RandeepPoddar/arbitration-notes
2. https://www.lawoctopus.com/academike/arbitration-adr-in-india
3. https://www.legallyindia.com/Blogs/seat-of-arbitration
4. https://blog.ipleader.in/issues-indian-judicial-system/
5. http://jurip.org/wp-content/uploads/2017/05/Vidula-Mehrorta/