The Indian Journal for Research in Law and Management
Open Access Law Journal – Copyright © 2026
Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

Arbitration in India: From Reluctance to Reform

Anurag Tiwari

I. Introduction

According to the World Intellectual Property Organization (WIPO), arbitration is defined as" A procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.[1]"

In Alternative Dispute Resolution, Arbitration has long been celebrated for its promise of speed, neutrality, and finality in resolving commercial disputes outside the traditional court system. However, the promise remained largely unfulfilled for decades in India, neither due to ambiguous wordings in the statute nor because of any inherent flaw in the concept itself, but because of the judiciary that repeatedly extended its reach into arbitral proceedings, particularly those seated outside India. The story of arbitration in India is, in many ways, the story of a gradual and arduous process of rectification, culminating in one of the most significant and consequential judgments in the history of Indian commercial law: *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.* (2012), famously known as the BALCO judgment.

This article comprehensively analyses the evolution of arbitration law in India, by examining the judicial overreach that hindered the growth of International Commercial Arbitration, the pivotal role of the BALCO decision in making India from arbitration hostile to arbitration friendly, and the legislative reforms that followed in its wake.

II. The Arbitration and Conciliation Act, 1996: Promise and Purpose

[1] *What is Arbitration?*, WORLD INTELL. PROP. ORG., https://www.wipo.int/amc/en/arbitration/what-is-arb.html

India's current arbitration framework is governed by the Arbitration and Conciliation Act, 1996 (the "Act"), aimed to modernize dispute resolution process and incorporate the provisions of UNCITRAL Model Law on International Commercial Arbitration into Indian Law[2]. The Act was divided into two main parts: Part I (Section 2-43), governed the domestic arbitrations and international commercial arbitrations seated in India, and Part II, governed the enforcement of certain foreign awards under the New York convention (Section 44-52) and Geneva Conventions (Section 53-60).

Section 2(2) of the Act stated clearly that "this Part shall apply where the place of arbitration is in India."[3] The intent appeared straightforward — Part I was territorial in application, confined to arbitrations conducted within India's borders. Although the legislative intent may be clearly discerned from section 2(2) of the Act, the judiciary took a completely different turn, which not only hindered international trade for over a decade but also damaged India’s reputation as an arbitration-friendly country.

III. The Supreme Court's Earlier Stance: The Bhatia Era

The seeds of India's pro-intervention approach were sown in 2002, when the Supreme Court delivered its judgment in *Bhatia International v. Bulk Trading S.A.*[4] The dispute arose from an international commercial contract between Bhatia International (an Indian entity) and Bulk Trading S.A(a foreign company) on May 9,1997, with arbitration agreed to be conducted under ICC rules in Paris. When the foreign party sought interim relief from an Indian court to protect assets of Indian party’s property, to ensure it could recover its claim if the award went in its favour, the Indian party contested the jurisdiction of Indian courts on the ground that the arbitration was seated in Paris and Part I of the Act could not apply.

The central issue was: Whether Part I of 1996 Act applies to arbitrations seated outside India?

[2]UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006), U.N. Doc. A/40/17, annex I.
[3]Arbitration and Conciliation Act, 1996, § 2(2) (India).
[4]Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105 (India).

The Supreme Court rejected the argument and held: Section 2(2) does not say Part I "SHALL NOT APPLY" where arbitration is outside India, it only says that it SHALL apply where the arbitration is in India. The Court was also concerned that if Part I does not apply outside India, then Indian parties in foreign arbitration would have no way to get interim protection for their assets in India. The court also pointed out a potential anomaly with Jammu & Kashmir as: "If Part I only applied to India seated arbitration, then Part I would not apply to J&K as Section 1(2) states: "It extends to whole of India except the State of J&K", but Part II of the act would also not apply, since J&K was not a foreign country, which would create a legal vacuum and in order to avoid this anomaly, Part I must be read as applying beyond territorial restrictions."

The Court held that in cases of international commercial arbitrations held outside India, the provisions of Part I would apply unless the parties, by agreement express or implied, excluded all or any of its provisions.[5]

The effect of *Bhatia International V. Bulk Trading S.A* decision were drastic. The decision completely ignored the party autonomy. Any foreign party entering into contract with their Indian counterparts suddenly found themselves under the jurisdiction of Indian courts, irrespective of seat of arbitration they had agreed upon. The decision contradicted UNICTRAL Model Law's territorial principle and it also made India unpredictable for foreign commercial parties. The certainty and finality that arbitration was meant to provide was fundamentally undermined.

The Bhatia doctrine was reinforced even further in *Venture Global Engineering v. Satyam Computer Services Ltd.*[6] (2008), In this case, the Supreme Court took Part I even further, allowing Indian courts to invalidate and SET ASIDE foreign awards on the basis of Indian public policy, even where the parties had chosen a foreign jurisdiction and foreign governing law. Together, *Bhatia* and *Venture Global* created total uncertainty due to two parallel supervisory regimes (one at foreign seat and one in India) at crossroads with each other.

IV. The BALCO Judgment: A Watershed Moment

[5]Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105

[6]Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190

The Supreme Court pronounced its judgement in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.[7] on September 6, 2012, in a five-judge constitutional bench. Bharat Aluminium Company, an Indian company, had entered into an agreement with Kaiser Aluminium Technical Services Inc., a US-based company, for the procurement of specialized equipment and services. The agreement provided for an arbitration clause, where any disputes that may arise would have to go for arbitration in London, subject to English law.

Disputes arose between BALCO and Kaiser and arbitration proceedings were initiated in London and Awards were passed in favour of Kaiser. BALCO approached Indian courts to set aside the award under Part I (Section 34) of the Act, which raised a pivotal legal question: 1. Does Part I apply to foreign seated arbitration? And 2. Can Indian courts grant interim relief or set aside foreign awards? The Constitution Bench differed from the view taken in Bhatia and Global ventures and held that Part I of the Arbitration and Conciliation Act, 1996, applies only to arbitrations whose seat is in India.[8] Both *Bhatia International* and *Venture Global* were expressly overruled.

The Court's reasoning revolved around the concept of the juridical seat of arbitration. The Court clarified that the seat of an arbitration is not just its physical location; it’s a legal concept that establishes which courts have authority over an arbitration. By choosing London as the seat of arbitration, the parties had opted to be governed by English law on arbitration, thereby excluding the applicability of the Part I provisions of the Act. The court held that Indian courts cannot grant interim relief under Section 9, can’t make default appointments under Section 11 and cannot set aside a foreign award under Section 34, thereby reinforcing Party autonomy over judicial overreach.

The Court also applied the doctrine of prospective overruling, meaning that the BALCO ruling would apply only to arbitration agreements executed after September 6, 2012 which meant all contracts entered before Sep 6, 2012 would continue to be governed by Bhatia/venture global ruling.

[7]Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552
[8]Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552

In fact, the BALCO ruling was correct and necessary. It aimed to secure the future against past incorrect decisions, which were not in the spirit of the New York Convention or the UNCITRAL Model Law. It pushed Indian courts to be more arbitration-friendly with minimal intervention in the process.

V. Post-BALCO Reforms: Building on the Foundation

The BALCO judgment was not simply an adjudicatory decision; rather, it was a catalyst for the broader legislative and institutional overhaul of arbitration in India. The Arbitration and Conciliation (Amendment) Act, 2015[9], was enacted with substantive amendments with the aim of making arbitration in India more in line with international best practices. For instance, the 2015 amendments added a proviso to Section 2(2) of the Act, which provided that the provisions of Section 9 (interim measures), Section 27 (court assistance in taking evidence), and Sections 37(1)(a) and 37(3) (appeals against certain orders) shall apply to foreign seated international commercial arbitration unless the parties had agreed to the contrary. The aim of the amendments was to provide Indian courts with access in international commercial arbitrations while avoiding a return of the excessive interventionist approach of the Bhatia judgment.

The Arbitration and Conciliation (Amendment) Act, 2019[10], has further built upon this basic framework by creating the Arbitration Council of India (ACI), an autonomous body that would grade arbitral institutions, accredit arbitrators, and promote institutional arbitration in India. It has also vested the Supreme Court and High Courts with the power to specify arbitral institutions for the appointment of arbitrators, thereby reducing the need for the court appointment process, which has historically led to delays. All of these developments point to India's intent to grow as an international arbitration centre.

VI. Conclusion

An analysis of the development of arbitration law in India, from the Bhatia period to the BALCO case, provides a fascinating case study in how the law can limit or liberate a wide range of commercial activity. For over a decade, the **expansive interpretation of Part I** put India at odds

[9] Arbitration and Conciliation (Amendment) Act, 2015, No. 3, Acts of Parliament, 2016 (India).
[10] Arbitration and Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India)

with the rest of the global arbitration community, discouraging investment and causing disputing parties to look to neutral venues such as Singapore and London to resolve disputes involving India.

By limiting the intervention of the judiciary, certainty was promoted, and India was able to move in line with best practices around the globe. It established a seat-centric framework that respects party autonomy and is consistent with the UNCITRAL Model Law. The legislative changes introduced in 2015 and 2019 significantly build on this foundation.

However, the way forward also paves significant challenges. "**The Supreme court reliance on the doctrine of prospective overruling in BALCO case, however pragmatic, gives rise to a dichotomy of considerable jurisprudential importance. By pronouncing the judgement in Bhatia International to be incorrect, yet simultaneously requiring its continued application to contracts entered into prior to 2012, the Court created a bifurcated reality in which the valid and the invalid law operate as equally operative norms, distinguishable only by the morally and legally arbitrary standard of the date of the contract which is against Dworkinian Integrity, which demands that law must speak in one coherent voice**". Further the development of institutional arbitration lags behind international norms and India has a long way to go to compete with Singapore (SIAC) and London (LCIA) as preferred seats, and the full operationalization of institutions such as the Arbitration Council of India (ACI) has yet to be achieved.

The evolution of Indian arbitration law represents a jurisdiction that, though belatedly, is engaged in a process of conscious evolution. The judicial overreach of the pre-BALCO era, as exemplified by Bhatia's extraterritorial presumption, placed a generational burden on the legitimacy of arbitration in India. BALCO's prospective overruling, though a welcome step, introduced a jurisprudential dichotomy that amendments have yet to retrospectively resolve. Yet, the post-2015 legislative path, as represented by a narrowing public policy, codification of the seat, empowering institutions, and facilitating emergency arbitration, represents a significant normative shift. If the current legislative path is fully implemented and the judicial evolution continues its incremental journey, India may transition from being a jurisdiction that permits arbitration to a jurisdiction that celebrates arbitration.