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Dedicated to legal research and education, Aakansha is committed to advancing legal scholarship and fostering a deeper understanding of complex legal issues. Her expertise and academic contributions make her a valuable member of our editorial board.

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Ms. Anuja Jalan, a lawyer-turned-academician, is passionate about legal research and education. With over three years of legal practice, she has expertise in taxation, corporate laws, criminal law, and intellectual property rights. She holds a Master's degree in Law from UPES, Dehradun, and a B.A.LL.B from Basanthali Vidyapith, Rajasthan.

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Her dedication to legal scholarship is reflected in her numerous certifications, including UNCITRAL International Commercial Arbitration, Mediation Framework, and Cyber Security Job Simulation (Clifford Chance). She also participated as a Judge in the 2024 IBA ICC Moot Court Competition and is an active member of INTA, the Mumbai Centre for International Arbitration, and MediateGuru.
As an evaluator for the IBA ICC Moot (India National Rounds), she mentors aspiring legal professionals. Her expertise and commitment to legal education make her an invaluable addition to the editorial board.

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His practical experience includes an internship with the District Legal Services Authority (DLSA), where he gained exposure to court procedures, judicial decorum, and visits to institutions such as the district jail, police headquarters, women empowerment department, and child welfare department.

In pursuit of continuous learning, Ayush has completed specialized courses on Drone Law and Pleading & Litigation. His hands-on experience expanded through internships at the Allahabad High Court and the Supreme Court of India, where he gained valuable insights into legal interpretation, case applications, and expert knowledge in drafting and pleading.

Ayush Chandra's strong academic background, practical legal training, and commitment to research make him a valuable contributor to the editorial board.

Can Writ Petitions under Article 226 and 227 Challenge Arbitration Decisions in India? Examining the Constitutional and Statutory Framework

-By Gopika Kalidas[1]

Abstract:

The interaction between arbitration and writ jurisdiction in India presents a complex legal landscape shaped by constitutional guarantees and statutory mandates. Arbitration, governed by the Arbitration and Conciliation Act, 1996, is designed to offer a swift, cost-effective alternative to traditional litigation, minimising judicial interference under Section 5. However, the High Courts' writ powers under Articles 226 and 227 of the Constitution remain intact and cannot be ousted by legislation. Judicial precedents have clarified that writ petitions in arbitration matters are to be entertained only in exceptional circumstances—such as jurisdictional errors, violations of natural justice, or breaches of fundamental rights. The Commercial Courts Act, 2015, further streamlines the adjudication of arbitration-related disputes, encouraging parties to utilize statutory remedies and minimizing reliance on constitutional writs. Despite this, misuse of writ jurisdiction remains a persistent challenge, resulting in delays, forum shopping, and erosion of arbitral finality. Courts are increasingly called upon to strike a balance between upholding constitutional rights and preserving the efficiency of arbitration. This article critically analyses judicial trends, statutory provisions, and the evolving tension between arbitration and writ jurisdiction. It argues for a disciplined, restrained approach to judicial intervention, reinforcing India's pro-arbitration stance and enhancing the credibility of its dispute resolution mechanisms.

Keywords: *Arbitration, Writ Jurisdiction, Articles 226 and 227, Arbitration and Conciliation Act 1996, Commercial Courts Act 2015*

[1] A distinguished graduate from Alliance Law School, Alliance University, Bangalore.

INTRODUCTION

Arbitration offers structured and collaborative approach to resolving disputes arising from contractual relationships, both domestic and international. Parties can voluntarily agree to arbitrate by including an "Arbitration Clause" within their contract. This clause outlines the process for resolving conflicts outside of traditional court systems. Arbitration offers several advantages over traditional litigation generally on the grounds of more efficiency and reliable due to its streamlined procedures and faster resolution times, often at a lower cost.

In India the concept of alternative dispute resolution is firmly established. The Arbitration and Conciliation Act 1996 (Arbitration Act) serves as the cornerstone of arbitration law in India, emphasising the principles of party autonomy and minimal judicial interference. The constitutional courts have consistently held that a writ petition (a legal action seeking a court order to address the violation of rights) is not maintainable if an alternative legal remedy, such as arbitration, is available. However a writ petition is an extraordinary remedy designed to protect citizens rights, and its use is generally restricted to exceptional circumstances and this constitutional power is granted to High Court under Articles 226 and 227 which brings up a potential conflict between the Arbitration Act and the scope of judicial oversight. This tension becomes particularly relevant when analyzing the interaction of these provisions with the Commercial Courts Act, 2015, which aims to streamline commercial dispute resolution.

This article explores whether writ petitions can challenge arbitration decisions in India, particularly considering the Arbitration Act, the Commercial Courts Act, and the constitutional framework provided by Articles 226 and 227.

THE ROLE OF WRIT PETITIONS UNDER ARTICLES 226 AND 227

Articles 226 and 227 of the Indian Constitution empower High Courts to issue writs, including Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto, to enforce fundamental rights and prevent injustice. These provisions have been broadly interpreted, expanding the scope of judicial review.

- Article 226: Enables High Courts to issue writs for the enforcement of fundamental rights and for any other purpose. The phrase "any other purpose" extends the scope of

writ jurisdiction to include legal violations, procedural irregularities, and broader issues of justice.

- Article 227: Grants High Courts supervisory jurisdiction over subordinate courts and tribunals within their territorial jurisdiction. High Courts can intervene to correct Jurisdictional errors, procedural irregularities or instances of manifest injustice.

While Article 226 empowers courts to protect and enforce fundamental as well legal rigts, Article 227 confers on them the power of superintendence over all courts and tribunals within their jurisdiction. [2]

ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration Act is a self-contained legislation designed to ensure autonomy efficiency and minimal judicial intervention in arbitration proceedings which is crafted for the Indian arbitration practices with international norms and expectations. Section 5 of the Arbitration Act enshrines a key principle that judicial interference in arbitral proceedings is strictly limited. Courts are prohibited from intervening unless expressly permitted by the Act itself. This legislative intent underscores the importance of preserving the autonomy of arbitration as a preferred dispute resolution method. By minimizing judicial intervention, the Act aims to empower Arbitral Tribunals to function independently, thereby fostering fair and impartial awards.

Section 34 of the Arbitration Act outlines grounds for challenging an arbitral award which also reflects a restrictive approach, with courts required to assess procedural and jurisdictional issues rather than merits. These grounds include:

(i) the invalidity of the arbitration agreement under applicable law;
(ii) violations of principles of natural justice, such as denial of a fair hearing;
(iii) the award being contrary to the public policy of India; and
(iv) the arbitral tribunal exceeding its powers.

Section 37 of the Arbitration Act outlines the appellate remedies available to parties dissatisfied with certain orders issued under the Act, notably orders refusing to set aside arbitral awards.

[2]https://images.assettype.com/barandbench/import/2018/10/Bombay-HC-challenge-to-Commercial-Courts-Act.pdf.

The appellate process, as defined in Section 37, further emphasizes the principle of limited judicial intervention in arbitral matters.

WRIT PRTITIONS vs. ARBITRATION

High Courts possess inherent writ jurisdiction under Articles 226 and 227 of the Indian Constitution, a fundamental aspect of the constitutional framework. This power cannot be diminished by legislative enactments, including the Arbitration Act. Nevertheless, courts advocate for judicious exercise of this power. Where efficacious alternative remedies exist, such as those provided under Sections 34 or 37 of the Arbitration Act, courts generally discourage the invocation of writ jurisdiction to prevent unnecessary interference with the arbitral process. Writ petitions in arbitration proceedings may be entertained in exceptional circumstances, such as when the arbitral tribunal lacks jurisdiction, fundamental rights or principles of natural justice are violated, or manifest injustice or procedural irregularities occur that cannot be corrected through the arbitration process itself.

CONDITIONS FOR CONSIDERING WRIT PETITIONS

While judicial precedents discourage routine interference in arbitration matters through writ petitions, certain exceptional circumstances justify the exercise of writ jurisdiction:

1. Lack of Jurisdiction: When the arbitral tribunal exceeds the scope of its authority as defined in the arbitration agreement, judicial review may be sought.
2. Violation of Natural Justice: Denial of due process, such as failure to provide adequate notice, an opportunity to be heard, or the right to present evidence, can justify judicial intervention.
3. Fundamental Rights Violation: Interference with constitutional rights by the arbitral tribunal may warrant judicial review.
4. Manifest Injustice: Cases of extreme and egregious injustice that cannot be adequately addressed within the framework of the Arbitration Act may necessitate judicial intervention.

However, the Supreme Court emphasized that, given the discretionary nature of writs under Article 226, High Courts should generally refrain from entertaining writ petitions that primarily

involve the adjudication of disputed questions of fact, necessitating the evaluation of evidence from witnesses.

JUDICIAL PRECEDENTS

In State of Uttar Pradesh v. Mohammad Nooh[3], the Court held that the availability of alternative remedies does not categorically preclude the issuance of a writ. When exercising its discretion, the Court may acknowledge the existence of other potential avenues for redress. If a lower court or tribunal acts ultra vires, exceeds its jurisdiction, or violates principles of natural justice, a superior court may issue a writ of certiorari to rectify the situation, regardless of the availability or utilization of an appeal to another inferior court or tribunal. In Maharashtra Chess Association v. Union of India & Ors [4] the Supreme Court, citing State of Uttar Pradesh v. Mohammad Nooh, held that the availability of alternative remedies does not automatically preclude the High Court from exercising its writ jurisdiction. The Court further emphasized that the existence of alternative dispute resolution mechanisms does not constitute an absolute bar to the exercise of the High Court's inherently discretionary writ jurisdiction.

In Union of India v. Tantia Construction Pvt Ltd[5], the Supreme Court rejected the petitioner's argument regarding the limitations on High Courts' powers under Article 226, despite the presence of an arbitration clause in the agreement between the parties. The Court recognized that the availability of an alternative remedy (arbitration) did not automatically bar the High Court from exercising its writ jurisdiction. This was particularly true in cases where the facts demonstrated a significant degree of injustice.

The Supreme Court, in Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd[6] examined the interplay between arbitration and judicial review. The Court underscored the Arbitration Act's intention to limit excessive judicial involvement in arbitral matters. Accordingly, courts are obligated to exercise restraint when intervening in arbitral proceedings. In Deep Industries Ltd. v. ONGC Ltd [7] the Supreme Court emphasized that writ jurisdiction should be exercised

[3] State of Uttar Pradesh v. Mohammad Nooh,1 SCR 595 (1958).
[4] Maharashtra Chess Association v. Union of India & Ors, 2019 SC 708.
[5] Union of India v. Tantia Construction Pvt Ltd , 2011 SC 530.
[6] Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd, 1 SCC 75 (2022).
[7] Deep Industries Ltd. v. ONGC Ltd, 15 SCC 706 (2020).

with caution, primarily in situations where the petitioner lacks alternative remedies or when evident bad faith is demonstrated by one party. Furthermore, the Court recognized a higher threshold for invoking writ powers in matters pertaining to arbitration, aligning with the legislative intent behind the Arbitration Act to minimize judicial intervention.

In Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation[8], the Supreme Court revisited these principles, reaffirming those established in ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd [9]. The Court acknowledged that, in specific instances, writ petitions under Article 226 or Article 227 can be filed to enforce contractual rights against the State or its entities. Furthermore, the Supreme Court recognized an exceptional circumstance where writ jurisdiction may be invoked, even when effective alternative remedies exist, specifically when a state entity contravenes the constitutional mandate of fairness enshrined in Article 14.

In Surendra Kumar Singhal v. Arun Kumar Bhalotia[10], the Delhi High Court examined several Supreme Court judgments to establish key principles governing judicial intervention in arbitration proceedings under Article 226 or Article 227 of the Constitution. The Court determined that, in exceptional circumstances, orders issued by an Arbitral Tribunal may be subject to a writ petition. However, the writ court's intervention would be limited to instances where the Tribunal's order is demonstrably flawed or exceeds its jurisdiction. Furthermore, the High Court clarified that Section 5 of the Arbitration Act does not restrict the inherent powers of writ courts under Article 227, which is a constitutional provision. Nevertheless, the Court emphasized the importance of preserving the integrity of the arbitral process.

In SBP & Co. v. Patel Engineering Ltd[11]., the Supreme Court strongly criticized excessive judicial interference in arbitral proceedings. The Court condemned the practice of High Courts entertaining writ petitions challenging orders of arbitral tribunals. It held that aggrieved parties must utilise the remedies provided under Sections 34 and 37 of the Arbitration Act to challenge final or interim orders, respectively. The Court emphasised that allowing frequent recourse to writ jurisdiction under Articles 227 and 226 of the Constitution would undermine the objective

[8] Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation, 16 SCC 35 (2021)
[9] ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd, 3 SCC 553 (2004)
[10] Surendra Kumar Singhal v. Arun Kumar Bhalotia, 2021 DEL 415.
[11] SBP & Co. v. Patel Engineering Ltd, 8 SCC 618 (2005).

of minimising judicial intervention during the arbitral process. The Court reasoned that Section 34 provides a mechanism for challenging not only the final award but also any interim orders issued before its rendition. Furthermore, the Court held that once arbitration proceedings commence, parties are generally expected to await the final award before seeking judicial intervention, unless the right to appeal arises under Section 37.[12]

The Court has repeatedly underscored that parties to an arbitration agreement must primarily rely on the Arbitration Act, adhering to the principle of minimal judicial intervention. It has clarified that other legislative remedies, such as writ petitions, should be pursued only in situations of helplessness or when bad faith is evident. While recognising the extensive and overarching powers conferred on it under Articles 226 and 227 of the Constitution, the Court has stressed that these powers should be exercised sparingly and only in exceptional cases.

THE IMPACT OF THE COMMERCIAL COURTS ACT

The Commercial Courts Act 2015 was enacted to improve the efficiency and quality of adjudication in commercial disputes, including arbitration-related matters. The main features of this act are:

- **Jurisdiction over Arbitration Matters**: Commercial Courts and Commercial Divisions of High Courts handle applications under sections 9, 34 and 37 of the Arbitration Act in commercial cases. The Act clarifies the jurisdiction of commercial courts over arbitration matters, particularly those of a commercial nature, thereby minimising jurisdictional conflicts. The Act also facilitates the transfer of arbitration applications pending in civil courts to the designated commercial courts, streamlining proceedings and ensuring that these matters are handled by courts with specialized expertise in commercial law.
- **Specialised Mechanism**: The Act streamlines commercial dispute resolution, including arbitration matters. This is achieved through expedited procedures to minimise delays

[12] In The High Court of Gujarat at Ahmedabad R/Special Civil Application No. 4524 of 2019, https://images.assettype.com/barandbench/202005/5538e565024d4e10a73e88be6e78cfb7/GTPL_Hathway_Ltd__v__Strategic_Markering_Pvt__Ltd.pdf.

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and by establishing specialised commercial courts and divisions within High Courts. These dedicated forums enhance efficiency and expertise in handling commercial cases.

- **Impact on Writ Jurisdiction**: The Availability of specialised forums under the Commercial Courts Act narrows the scope for invoking writ jurisdiction, as parties are encouraged to exhaust statutory remedies. It limits the scope for writ petitions to challenge arbitration decisions, effectively restricting them to exceptional circumstances.
- **Statutory Remedies**: The Act emphasises the use of statutory remedies, particularly Section 34 of the Arbitration and Conciliation Act, 1996, for challenging arbitral awards. Section 34 outlines specific grounds for setting aside awards, such as fraud or exceeding the tribunal's powers. By providing clear statutory avenues, the CC Act aims to discourage the reliance on writ petitions under Articles 226 and 227 of the Constitution.
- **Efficient Disposal of Cases**: The Act aims to ensure timely resolution of disputes, aligning with the Arbitration Act's objectives.

CHALLENGES AND CRITICISMS

1. **Overlapping Jurisdiction and Forum Shopping**- The coexistence of constitutional powers (Articles 226 & 227) and statutory remedies under the Arbitration Act creates overlapping jurisdictions, enabling parties to circumvent statutory mechanisms by invoking writ jurisdiction. This leads to forum shopping, inconsistent judicial decisions, and undermines the efficiency of the Arbitration Act by encouraging frivolous challenges to arbitral awards.
2. **Judicial Overreach and Lack of Restraint**- Despite the Supreme Court's emphasis on minimal judicial interference, courts sometimes overstep their bounds by entertaining writ petitions that effectively re-examine arbitral awards. This judicial overreach, including delving into factual and legal issues already addressed by the tribunal, undermines the legislative intent of the Arbitration Act. Such interventions dilute the autonomy of arbitration, erode the finality of awards, and create uncertainty, deterring parties from choosing arbitration as a preferred dispute resolution method.

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3. **Delay in Arbitration Process**- The frequent invocation of writ jurisdiction significantly delays the enforcement of arbitral awards and the resolution of disputes. This undermines the core advantage of arbitration: its speed and efficiency. Filing writ petitions, even those lacking merit, can halt award enforcement. Lengthy hearings in writ proceedings and subsequent appeals further exacerbate delays. These delays burden the judiciary, diverting resources from other pressing matters, and ultimately undermine the very purpose of arbitration.
4. **Misuse of Writ Jurisdiction**- Parties frequently misuse writ petitions as a tactical tool to obstruct arbitration proceedings or delay the enforcement of arbitral awards. This includes filing frivolous petitions challenging tribunal jurisdiction or alleging minor procedural irregularities. Moreover, some parties file writ petitions solely to delay the execution of awards or gain leverage in settlement negotiations. Such misuse undermines the credibility of arbitration as a reliable dispute resolution mechanism and significantly increases litigation costs, particularly for businesses that rely on arbitration for efficient commercial dispute resolution.

CONCLUSION

The Commercial Courts Act, 2015, has significantly impacted the role of writ jurisdiction about arbitration awards in India. By prioritising statutory remedies under the Arbitration and Conciliation Act, 1996, and establishing specialised commercial courts, the Act seeks to expedite the resolution of commercial disputes, including arbitration matters, while upholding the sanctity of arbitral awards. While writ jurisdiction remains available in exceptional circumstances, such as violations of fundamental rights or clear jurisdictional excesses by arbitral tribunals, the Act encourages parties to primarily utilise the statutory framework for challenging awards. This approach promotes the finality of arbitral awards and fosters a more efficient and predictable dispute resolution process within the commercial sphere.

It is important to acknowledge that the legal landscape surrounding writ jurisdiction and arbitration is constantly evolving. Continued judicial interpretation and refinement of the Act's provisions will further shape the interplay between these areas of law.

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- Book Reviews: Reviews of legal publications (1,000 – 2,500 words)
- Notes: Brief insights or observations on current legal developments (1,500 – 3,000 words)

1. **Research Articles or long article/papers:** Submissions in this category should provide a thorough exploration of the chosen topic, engaging deeply with its themes and relevant literature. Articles should critically assess current practices in the field, identify gaps, and present innovative reassessments alongside constructive recommendations. Theoretical contributions are also encouraged.
2. **Essays/Short Articles:** Essays and short articles are concise in scope, focusing on a specific issue while presenting fresh perspectives and critical insights. They should articulate clear, well-defined arguments and may propose alternative ways of understanding or conceptualizing the chosen topic.
3. **Case Comments & others:** This category focuses on analyzing contemporary judicial decisions, legislative actions, or policy proposals. Notes and Comments should examine the legal precedents leading to the decision and assess its impact on the development of that area of law. Likewise, legislative and policy analyses should outline the objectives and anticipated effects of the proposed action.

Submission Formatting Guidelines

I. General Guidelines

- Long articles and short articles must include an abstract.
- A maximum of three authors is permitted for all submission categories.
- All submissions must be original, unpublished, and not under review by any other journal. Any instance of plagiarism will lead to immediate disqualification from publication in LegalOnus.

II. Format:

- Submissions should be in Microsoft Word (.doc or .docx) format.
- Language: English only.
- Font & Spacing:
  - Main Text: Times New Roman, Size 12, 1.5 line spacing.
  - Footnotes: Times New Roman, Size 10, single-line spacing.
- Margins: 1-inch margins on all sides.
- Abstract: Each submission must include a 200–250 word abstract.
- Keywords: Provide 4-6 relevant keywords.

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- Cover Page: Include a separate cover page with the following details:

1. Title of the submission
2. Author(s) name(s) and affiliation(s)
3. Contact details
4. Acknowledgments (if any)

NOTE

- The authors shall bear sole responsibility for any disputes arising from their manuscript, including issues related to copyright, defamation, objectionable content, or contempt, and will be liable for any resulting losses due to rights violations.
- While adherence to word limits for each category is recommended, the journal may exercise flexibility based on the quality of the submission.

Citations and References

- Citation Style: Bluebook (21st Edition) format is mandatory.
- Footnotes: Use footnotes for all references, ensuring accuracy and completeness.

Submission Process

- Email Submission: Send manuscripts to journal@legalonus.com
- Subject Line: Mention "Submission for LegalOnus Law Journal" in the email subject.
- Review Timeline: Authors will receive confirmation upon submission and can expect a decision within 8–12 days.

Peer Review Process

- All submissions undergo a double-blind peer review to ensure academic integrity and impartiality.
- Authors may be asked to revise their work based on reviewer feedback.

Originality and Plagiarism Policy

- All submissions must be original and unpublished.
- Manuscripts should not be under consideration by any other journal.
- Authors must submit a **Plagiarism Declaration** Form via the *LLJ main page*.
- Submissions exceeding **15% plagiarism** will be rejected or sent for revision.
- *Use of AI-generated content is strictly prohibited.*

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- Authors retain copyright and may share their work with proper *acknowledgement of LLJ*.

Ethical Considerations

- Authors must disclose any conflicts of interest.
- Research involving human participants must comply with ethical approval guidelines.

Contact Information

For queries regarding submissions, contact us at:

- Email: journal@legalonus.com | info@legalonus.com

These guidelines provide a structured approach to submitting research papers and help maintain the quality and integrity of publications in the **LegalOnus Law Journal**. Feel free to adapt these rules according to specific editorial preferences or requirements.

-LLJ PUBLISHING TEAM