

Resolving Disputes Through Arbitration In India: Issues & Challenges In International Commercial Arbitration

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ABSTRACT

Arbitration, as a form of Alternative Dispute Resolution (ADR), has witnessed a surge in popularity within India in recent years, particularly as trade barriers have been removed and the country's commerce has opened up. International Commercial Arbitration, in particular, has gained significant importance. In comparison to traditional litigation, arbitration is widely regarded as the preferred method for resolving disputes due to its numerous advantages and benefits for the parties involved. While there are certain drawbacks, the accessibility of arbitration and its ability to deliver timely justice are contributing to its growing appeal in the foreseeable future. In the realm of the financial industry, arbitration has become notably widespread. The establishment of guidelines and standards has been instrumental in promoting the use of arbitration within this sector. This study delves into the landscape of international commercial arbitration in India and modestly attempts to identify the challenges faced by the parties involved.

Keywords: Arbitration, Financial sector, arbitration guidelines, Commercial Arbitration, India

Introduction

Arbitration has surfaced relatively recently as a valuable method aimed at rectifying the deficiencies within conventional judicial processes. Particularly within the realm of corporate arbitration, it harnesses a range of distinctive legal mechanisms to construct a robust alternative to the local court system. One of its hallmark features is the establishment of a Balanced Dispute Resolution Forum, which serves as a neutral ground for resolving conflicts. Moreover, the selection of arbitrators with relevant business acumen imparts specialized judgment that often outshines the broader jurisdiction of traditional courts.

The necessity for arbitration in India became strikingly evident following the economic reforms of 1991. These reforms ushered in increased foreign investments and expanded global commercial interactions. With the surge in business connections, the likelihood of disagreements and disputes naturally escalated. Consequently, Indian courts were saddled with an overwhelming backlog of pending cases, rendering litigation an impractical option for foreign investors. The dilatory and congested judicial system necessitated the establishment of an Alternative Dispute Resolution (ADR) mechanism that could offer speed, cost-effectiveness, and independence from conventional litigation.

In response to this demand, the Indian government enacted the Arbitration and Conciliation Act, 1996. This act replaced archaic legislation, including The Arbitration Act, 1940, and The Foreign Awards Act, 1961. The primary goal of this legislation was to streamline the arbitration process, rendering it more rapid and efficient while minimizing court intervention. Drawing inspiration from the UNCITRAL Model Law on International Commercial Arbitration, the Act provided a comprehensive legal framework for arbitration proceedings in India. However, despite its intentions to promote arbitration as a cost-effective and expeditious means of resolving business disputes, the process has not been entirely devoid of judicial interference. Unnecessary court involvement has resulted in delays and added complexities, inadvertently making arbitration slower and more cumbersome than originally envisaged. This runs contrary to the intended non-litigious nature of arbitration, as the Indian arbitration system grapples with issues of delayed justice and mounting caseloads similar to traditional litigation. Another critical concern revolves around the enforcement of arbitral decisions, where the flexible concept of "public policy" is susceptible to varying interpretations by different courts. This ambiguity concerning public policy must be delicately balanced against the principles of limited judicial involvement and court oversight in arbitration.

Regrettably, the misinterpretation of the legislation by Indian courts has given rise to prolonged outcomes, establishing a discouraging pattern that may dissuade parties from exploring alternative conflict resolution methods. Furthermore, while arbitration is often viewed as cost-efficient when compared to litigation, it has been

shown to incur significant expenses of its own, potentially nullifying its advantages in this regard. These limitations within the arbitration process could have adverse repercussions on international trade and commercial arbitration. As more businesses establish themselves in India and engage in cross-border transactions, the effectiveness of the dispute resolution mechanism will significantly influence the country's economic landscape.

Consequently, while arbitration has indeed emerged as a promising alternative to traditional litigation in India, there remain considerable challenges and areas in need of improvement to fully realize its potential as a cost-effective, efficient, and preferred method for resolving business disputes¹.

Importance of Domestic ADR in India

i. Primary forms of Domestic ADR

Alternative Dispute Resolution (ADR) encompasses a diverse array of conflict resolution methods, including arbitration, conciliation, negotiation, mediation, and Lok Adalats, which have proven effective in many countries. In India, as in numerous other nations, the conventional judicial processes have grappled with mounting case backlogs, emphasizing the necessity of embracing ADR techniques as efficient and pragmatic alternatives. Notably, the Malimath Committee recommended that courts consider mandating the utilization of arbitration, conciliation, negotiation, Lok Adalats, and mediation to address the burgeoning caseload.

Arbitration, a prominent ADR method, serves as a preferred choice for dispute resolution. In arbitration, two or more disputing parties entrust their case to an impartial arbitrator or a panel of arbitrators selected through established procedures. These arbitrators undertake the task of evaluating the facts and evidence presented and subsequently issue a legally binding judgment that obliges both parties to adhere to the decision. Notably, arbitral awards typically offer limited options for review and appeal, thereby providing a conclusive and definitive resolution to the dispute.

Conciliation stands as another widely employed ADR approach. It involves the appointment of a conciliator who engages individually with each party to facilitate communication and explore potential solutions for settling their differences. The conciliation process is notably adaptable, allowing the involved parties to determine aspects such as the timing, framework, and substance of the proceedings. This flexibility renders conciliation suitable for resolving a diverse range of conflicts, including labor disputes, service matters, tax disputes, excise matters, business disputes, financial disputes, familial conflicts, real estate disputes, and bankruptcy matters.²

Lok Adalats, a significant component of ADR in India, provide a platform for the peaceful resolution of disputes without resorting to formal litigation. Besides arbitration and conciliation, Lok Adalats may also employ mediation, negotiation, and judicial resolution techniques. Unlike arbitration, negotiation, and mediation, the outcomes of these Lok Adalat processes are not legally binding. Both parties maintain influence over the process and its eventual outcome. Mediation, for instance, involves the assistance of a neutral third party in facilitating amicable discussions between the disputing parties.

The strength of these ADR systems lies in their procedural adaptability and impartiality. Lok Adalats, in particular, are specifically designed for the peaceful resolution of pre-litigation issues. These are often conducted by NALSA (National Legal Services Authority) and other legal assistance organizations, with their statutory recognition established under the Legal Services Authority Act of 1987. Decisions reached in Lok Adalats are regarded as civil court judgments, and they carry binding force on all parties involved, with no recourse for appeal in regular courts³.

Indian law also accommodates the resolution of commercial matters through international commercial arbitration. This mechanism is designed to settle business disputes between Indian and foreign companies in accordance with relevant Indian arbitration laws. Arbitration proceedings may be conducted under the rules of an arbitration organization or under court supervision, as stipulated in Clause 11 of the 1996 Arbitration Act. Parties voluntarily agree to submit their dispute to one or more arbitrators, who then issue a binding decision on the matter. This approach ensures a timely and accurate resolution of commercial disputes outside the confines of the traditional tribunal system.⁴

In sum, India has embraced a diverse range of ADR methods to provide efficient, cost-effective, and flexible alternatives to the congested traditional court system. These ADR mechanisms offer parties the opportunity to resolve their disputes with varying degrees of formality and legal enforceability, contributing to a more accessible

¹ Saville Lord. (2016). Some reflections on the making of international arbitration agreements for the resolution of commercial disputes (Part III: International Arbitration Agreements: Issues and Perspectives), 6.

² Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge Research in International Commercial Law, 1stedn.,2010)

³ Dr. Beata Gessel-Kalinowska vel Kalisz, *Arbitration E-Review No. (Graphic Design & Prepress, 3-4edn., (18-19)/2014)*

⁴ *Ibid*

and expedient justice system⁵.

ii. Governing Legislation

The regulation of domestic and international commercial arbitration in India falls under the purview of the 1996 Arbitration and Conciliation Act, which also governs the enforcement of international award decisions. This act serves as the cornerstone of India's arbitration landscape and plays a pivotal role in facilitating the resolution of disputes within the country. Let's delve into the nuances of this regulatory framework and explore the distinctions between domestic and international arbitration within the Indian context.

a) The 1996 Arbitration and Conciliation Act: A Comprehensive Framework

The 1996 Arbitration and Conciliation Act is a comprehensive legal framework that governs the conduct of both domestic and international commercial arbitration in India. It also addresses the recognition and enforcement of foreign arbitral awards, making it a vital instrument for facilitating cross-border trade and dispute resolution.

Part I v. Part II: Regulatory Distinctions

The Act is divided into two distinct parts, each with its specific focus:

1. **Part I:** This section of the Act applies to all arbitrations held within India, regardless of whether the parties involved are local or foreign. It sets out the foundational principles and procedures for arbitration proceedings conducted within the Indian territory.
2. **Part II:** Part II is entirely dedicated to the enforcement of foreign arbitral awards. It provides the legal framework for recognizing and enforcing awards rendered in international arbitrations, enhancing India's reputation as a pro-arbitration jurisdiction.⁶

b) Distinguishing Domestic from International Arbitration

In the realm of international commercial arbitration, a clear definition is provided. It is characterized as arbitration in which at least one of the parties appears to be:

- A national or customary citizen of a country other than India.
- A corporation fully integrated in a country other than India.
- An institution or association of such an individual for whom the decision for "central management and control" to operate in a country other than India is made.

However, it's important to note that the Indian Supreme Court, in the case of TDM Infrastructure Pvt. Ltd. v. UE Development Pvt. Ltd.⁷, ruled that if both parties maintain their Indian registrations despite the management and control being located outside India, the arbitration would be categorized as "domestic" rather than "international."

Key Distinctions Between Domestic and International Arbitration:

1. **Appointment of Arbitral Panel:** In domestic arbitration, if the parties' intended method for appointing an arbitral panel fails, nominations are made by the High Court. In contrast, for foreign arbitration, the Supreme Court of India takes charge of the appointment process.
2. **Controlling Laws:** International arbitration allows the arbitral tribunal to decide disputes based on the laws chosen by the parties as applicable to the content of the case. In the absence of such a choice, the tribunal must apply the laws and norms that the court is likely to apply. In domestic arbitration (arbitration between Indian parties), the panels must adhere to the Indian fundamental law in effect at the time of arbitration.
3. **Grounds for Annulment:** A significant difference arises from the 2015 amendment to the Act, which introduced a new basis for annulling domestic arbitration decisions based on "patent illegality." This ground is not available when it comes to foreign arbitral awards.

⁵ Rohit Bafna & Rhea Srivastava, *Alternative Dispute Resolution in India: Issues & Challenges in International Commercial Arbitration*, SSRN Electronic Journal (2012).

⁶ Ibid

⁷ (2008) 14 SCC 271.

4. **Time Limitations:** Section 29A of the Act sets time limits for issuing judgments in domestic arbitration. However, these time limitations do not apply to the execution of international arbitral decisions, allowing for greater flexibility in the resolution process⁸.

iii. **National Courts' Perspectives on the Enforcement of Arbitration Agreements**

Part 8 of the Act provides that a judicial authority may confirm the arbitration procedure prior to taking action on a matter covered by an arbitration agreement – with one exception: the party referencing the court proceedings must do so no later than his opening statement on the substance of the issue. On the other side, arbitration proceedings may commence and continue, and an award may be rendered.⁹

The Indian Supreme Court said in **Rashtriya Ispat Nigam Ltd v. Verma Transport Co.**¹⁰ Where the Sections' criteria are fulfilled, the judicial authority may be "statutorily forced" to refer the matter to arbitration. The fifth section supplements this by declaring, in a non-obstante manner, that no judicial authority may interfere in Act-regulated matters unless explicitly authorized. This position is reinforced by a 2015 Act amendment that struck down many precedent-setting Section 8 judgments. Currently, this section has a non-obstante provision that compels the court to refer the arbitration proceedings to arbitration unless the court finds that there was no apparent arbitration agreement. By contrast, Section 8 applies only to arbitrations with a seat in India. Overseas arbitration agreements have been regulated by Section 45 of the Act, which is somewhat distinct in wording. When a judicial body acquires jurisdiction over a matter including an arbitration clause, it is obligated to refer the parties to arbitration-"unless this finds that perhaps the declared accord is null and void, rendered inoperable, or incapable of being carried out." The latter part is based on Model Law Article 8. As a consequence, India has restricted its judicial participation in international arbitrations to the extent permitted under the Model Law.

At the very same time, the question about what to do in situations in which the court concludes that perhaps the arbitral agreement is null as well as invalid, rendered inoperable, or unable to be executed remains. Section 50 of the Act allows for an appeal of such a judgment. As a result, a decision based solely on a prima facie case would indeed be insufficient. One of the courts acknowledged this, stating that even if the court reached prima facie finding that perhaps the agreement was useless and invalid, it would have to proceed with a full trial and issue a definitive decision. As a result, in such a case, an international arbitration might come to a halt awaiting the ultimate judgment of an Indian court. Nevertheless, Section 45 procedures would have had no major effect on the advancement of an international arbitration. **Chloro Controls India Private. Ltd. v. Severn Trent Water Purification Inc.**¹¹ is a landmark case. In this case, the tribunal was presented with a scenario in which partners had signed into various relevant agreements - several with distinct companies within their group. The agreements included a variety of dispute settlement provisions, often including International Chamber of Commerce ("ICC") adjudication in London, others with no arbitral award, and one with an American Arbitration Association ("AAA") arbitral clause having Pennsylvania (USA) as one of its jurisdictions. The Supreme Court issued a significant pro-arbitration ruling, saying that perhaps the legislative purpose is in favor of arbitration and also that the Act "must be interpreted broadly to accomplish that goal." The Court ruled stated non-signatory entities may be submitted to arbitration if the agreements were within the same group of businesses as well as the parties clearly intended to compel non-signatories too. It ruled stated non-signatories should only be subjected to arbitration in extraordinary circumstances. It would be evaluated based on the non-direct signatory's relationship to the signatories, the issue matter's similarity, and whether numerous agreements constituted a composite transaction or otherwise. The problem should've been sufficiently complicated that carrying out the "mother agreement" would have been impossible even without help, implementation, and execution of supplemental or auxiliary agreements. Chloro Controls were referenced in **Ameet Lalchand Shah v. Rishabh Enterprises**¹² and **Cheran Properties v. Kasturi and Sons**¹³

The Supreme Court ruled in **PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion Pvt.**¹⁴ Ltd. because Indian parties may choose an international seat and can nevertheless seek equitable remedy from an Indian court. The Act does not require that the parties have a contractual relationship. As a consequence, tort (contract) disputes may also be arbitrated. "Generally, and historically, all issues involving rights in personam are considered arbitrable, while all disputes involving rights in rem must be handled by courts and public tribunals." **SBI Home**

⁸ Anil Chawla Law Associates LLP, Guide for Arbitration Clause in International Agreements in India (2nd edn., June 2021).

⁹ Ibid

¹⁰ (2006) 7 SCC 275.

¹¹ (2013) 1 SCC 641

¹² (2018) 15 SCC 678

¹³ (2018) 16 SCC 413.

¹⁴ (2021) SCC 226

Finance Ltd. v. Booz Allen & Hamilton Inc.¹⁵ non-arbitrable matters include those involving a criminal offense, marital difficulties, child custody, guardianship, bankruptcy, business closure, or testamentary procedures. In a recent decision, **Shri Vimal Kishor Shah & Ors v. Mr. Jayesh Dinesh Shah & Ors**¹⁶, the Supreme Court established a new category of non-arbitrable problems, such as those arising from trust deeds under the Trust Act, 1882. This is really an implied exclusion in view of the Trust Act's provisions for a complete framework for dispute settlement, which includes recourse to civilian courts.

If significant fraud is alleged and the dispute is determined to be arbitrable **N. Radhakrishnan v. Maestro Engineers**¹⁷ the courts refuse to refer the dispute to arbitration under Article 8 of the Act. Alongside **World Sport Group (Mauritius) Co Ltd v MSM Satellite (Singapore) Pte. Ltd.**, which was proclaimed on 24 January, 2014, the Supreme Court diverged from **N. Radhakrishnan** as well as managed to retain that, with in case of international arbitrations (as defined by Section 45 of an Act), the Court may indeed decline to make references to a conflict governed by the arbitral award only if it tends to arise.

Switzerland Timing Ltd v. Organising Committee, Commonwealth Games 2010, Delhi¹⁸ established that **N. Radhakrishnan** was only per incuriam and that serious fraud allegations are still subject to appeal in arbitration proceedings. However, the argument persists. In **Ayyasamy v. A. Paramasivan and Others**¹⁹, the Indian Supreme Court explained why **Swiss Timing** wouldn't even have invalidated **N. Radhakrishnan**. Additionally, because it was decided to hold that a straightforward allegation of scam cannot be used to nullify an arbitral award, there may be instances where this criminal act has been formed or the issue becomes so complicated which only a civil court can render a decision based on the assessment of the abundant proof required. Therefore, the decision resets the clock, at least in domestic-seated arbitrations, which allows for a civil action to be brought and pursued, circumventing the arbitration clause.

The Supreme Court held in **Himangni Enterprises v. Kamaljeet Singh Ahluwalia**²⁰ that said rental problems (in the context of eviction of a tenant) are not arbitrable. Nonetheless, in a subsequent case, **Vidya Drolia v. Durga Trading Company**,²¹ the Supreme Court determined that **Himangi Enterprises** overestimates the law by impacting leases that lack legal protection, and remanded the issue to a larger bench for consideration. The Indian Supreme court clarified the criteria for determining arbitrability of disputes in a landmark judgment on 14 Dec 2020, and ruled all tenant disputes under Transfer of Property Act, 1882 were appealable.

The Emaar MGF Land Limited v. Aftab Singh²² The Supreme Court decided that actions under the Consumer Protection Act constitute unique remedial procedures which are not prohibited by an arbitration clause. The disgruntled customer, on the other hand, has the option of opting for adjudication if he so desires.

High court decisions on arbitrability are pending clearance by the Supreme Court, including one from the Bombay High Court, which said that although copyright problems are appealable, shareholder "oppression and mismanagement" allegations are not. The Delhi High Court actually took a liberal approach, finding that debt relief petitions may be brought to arbitration even if a panel specifically constituted to handle such matters exists. Every arbitral tribunal has the authority to determine its very own competence. This is provided for in Article 16 of the concerned Act, which corresponds to Article 16 of the Model Law. Furthermore, a party may raise the question of jurisdiction before the courts by filing a petition under Article 10 (2) (a) justification of the arbitral tribunal's refusal of jurisdiction. However, if the tribunal determines this has authority, it may only be contested after the award is issued.

The subjective test for a tribunal's judgment on its own jurisdiction has yet to be established by the Indian judiciary. The probability would be that a claim to competence would be unhindered by otherwise specific grounds in Section 34, as long as it is not a veiled claim on merits.

Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc²³, a landmark Supreme Court decision, lays out the circumstances under which the arbitration court would have jurisdiction regarding non-signatories to the arbitral award. **Reckitt Benckiser (India) Pvt. Ltd. v. Reynders Label Printing India Pvt. Ltd**²⁴ as well as the Delhi High Court in **Magic Eye Developers Pvt. Ltd. v. Green Edge Infra Pvt. Ltd. & Ors**²⁵, both supported the **Chloro Controls** idea.

¹⁵ Civil Appeal No. 5440 of 2002

¹⁶ (2016) SCC 3889

¹⁷ (2010) 1 SCC 72

¹⁸ (2014) 6 SCC 677

¹⁹ (2016) 10 SCC 386

²⁰ (2017) 10 SCC 706

²¹ Civil Appeal No(s).2402/2019

²² Civil Appeal No.(s). 23512-23513 of 2017

²³ (2013) 1 SCC 641

²⁴ (2019) 7 SCC 62

²⁵ (2012) SCC 1866

Clause 8 of the Act (as amended) provides that anybody who asserts a claim "through or under" the parties to an arbitral award have the power to seek the termination of court hearings commenced in judgement as well as the reference of the matter to arbitration.

Indian courts have regarded the aggregation of arbitrations favorably. Along with **P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Investments (P) Ltd**²⁶, The Indian Supreme Court observed, hereby, that "if A had a claim against B and C, and if A had an arbitration agreement with B and a separate arbitration agreement with C, there is no reason why A should not arbitrate with B." The 1963 Limitation Act applies equally to arbitration proceedings as it does to court hearings (Section 43 of the Act). Arbitration proceedings are deemed to have started (unless such parties agree otherwise) on the same day the respondent receives a petition requesting that the dispute be referred to arbitration in a certain manner. The Limitation Act in 1963 provided that the party seeking arbitration had three years from the commencement of the arbitral procedure to obtain the formation of an arbitration panel. The courts see the time restriction as an integral part of the legal system.

Formerly, the Companies Act included the criteria for corporate liquidation. India's Ministry of Legal system published the Insolvency Code, 2016 in May 2016. The Code's purpose is to unify the laws regulating insolvency and insolvency for companies, limited companies, partnerships, individuals, and other organizations. The Code established the Insolvency and Bankruptcy Board ("Board").

When the creditors/company starts the insolvency procedure, the Code imposes a moratorium on any new or existing actions.

Just after a bankruptcy decision is made or a preliminary liquidation or maybe an authorized liquidator has already been appointed, no lawsuit or other civil proceedings may be initiated or prosecuted by or against the main debtor. Nonetheless, later Supreme Court as well as Delhi High Court decisions have cast some doubt on the prohibition of some legal activities even during the moratorium period under the Code.

The Supreme Court ruled in **Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.**²⁷ because no arbitral proceeding may well be initiated after the moratorium time prescribed in the Code starts. Despite, in **Power Grid Corporation of India Ltd. v. Jyoti Structures**²⁸, the High Court has held that perhaps the Code might very well simply prohibit the commencement of debt collection proceedings against such a corporate debtor, and that other deliberations supporting or enhancing the corporate debtor's economic condition may be initiated.

In arbitration proceedings, local parties might apply solely Indian law to a substance of the dispute. In certain other situations, either party may explicitly select a jurisdiction or the applicable law may be inferred from the agreement's terms and conditions. This was the law that was most directly connected to the agreement. Aspects such as the parties' nationality, the place of the agreement's execution, the site of the contract's entry, and the place of making business, among others, may be utilized to ascertain the parties' intent.

Generally, the arbitration treaty's applicable law is identical to the applicable law of contracts. Where there is no express preference for the legislation governing the contract in its entirety or for the arbitral award in its entirety, a presumption may very well emerge that perhaps the laws of the country wherein the arbitration has indeed been agreed to be held are the primary issue raised by the arbitration clause; however, this is a widely held presumption. (**NTPC v. Singer Co**²⁹.)

International Commercial Arbitration (ICA) in Indian Law

In the realm of Indian law, International Commercial Arbitration (ICA) pertains to legal and economic interactions where one of the parties involved is a foreign entity, national citizen, foreign corporation, business, institution, or a group of individuals with evident foreign central management. Under Indian law, arbitration involving a foreign party with its seat in India falls under the category of ICA within Part I of the Act.

- i. Applicability of UNCITRAL Model Law and Rules

²⁶ (2012) SCC 594

²⁷ **Civil Appeal No. 16929 of 2017**

²⁸ IA No.15241/2017

²⁹ (1992) 3 SCC 551

International arbitration in India is primarily governed by the UNCITRAL Model Law and the 1976 UNCITRAL Rules. However, there are certain exceptions designed to limit judicial intervention. For instance, Section 8 of the Act differs from the Model Law in that it precludes a court from examining an argument if an arbitration requirement is deemed "void and invalid, rendered inoperable, or incapable of being executed."

ii. Distinct Provisions in Indian Law

Section 16, which corresponds to Model Law Article 16, also exhibits some variations. Unlike the Model Law, Indian law does not permit challenges through an intermediate court if the court determines it has jurisdiction. An appeal is allowed only after the final judgment in such cases. It's important to note that international arbitrations conducted in India are subject to the same regulations as domestic proceedings.

iii. Initiation of International Commercial Arbitration

The commencement of international commercial arbitration in India typically starts with a notice of arbitration. This notice is submitted by one party to the other, indicating their desire to resolve the dispute through arbitration. Section 8 of the Arbitration and Conciliation Act (the Act) outlines the process, requiring a party to submit the arbitration agreement along with its first statement. The judicial body must accept the application when made on the mentioned date. Additionally, both Section 9 of the Act, which empowers the court to grant interim relief, and Section 17, which empowers the arbitral tribunal to do the same, provide a means for parties to seek relief while awaiting a final decision. These provisions offer assurance to parties seeking relief during the arbitration process.³⁰

International Arbitration Legislation

The UNCITRAL Proposed Legislation, initially introduced in 1985 and later revised in 2006, serves as a model legislative framework that comprehensively addresses various aspects of international arbitration. This model legislation has garnered adoption by more than 60 countries worldwide. It plays a pivotal role in ensuring the legality and enforceability of arbitration agreements, primarily by establishing guidelines for qualified arbitrators (Article 16) and safeguarding full judicial immunity (Articles 7-9).

One of its key features is its emphasis on party autonomy, granting parties the liberty to make critical choices in the arbitration process. This includes the freedom to select the arbitration venue (Article 1(2), 20), appoint arbitrators (Article 10-15), and determine the interim measures to be employed (Article 10-15). Moreover, the model lays out a straightforward arbitration procedure (Articles 18–26) that encompasses the collection of evidence in accordance with the relevant substantive law (Article 27), all leading towards the issuance of a final arbitral decision (Art 29–33).

Of notable significance is the model's provision for the recognition and enforcement of foreign arbitral awards, with specific attention to criteria that might lead to non-recognition (Art 35–36). This comprehensive framework ensures that international arbitration operates within a well-defined legal structure, fostering confidence in the resolution of cross-border disputes.

Challenges against the growth of International Arbitration in India.

1. Judicial Intervention

One of most significant obstacles impeding the development of arbitrations is judicial involvement in arbitration tribunal. The Courts have indeed been given a restricted scope for involvement underneath the Arbitration and Conciliation Act, although they still allow for massive litigation. Despite legal provisions limiting court intervention, Indian courts have at times interfered in arbitration matters, issuing stay orders and making decisions that should be within the tribunal's jurisdiction. This often results in prolonged arbitration proceedings and uncertainty.

2. Slow interim protection

The parties may approach the Court under Sections 17 and for interim protection to be granted, however the scope of the interim protection in international agreement itself is also limited and may only be awarded in certain cases. Parties may require interim protection orders to preserve assets or prevent irreparable harm during arbitration. However, obtaining such relief can be slow and cumbersome, impacting the effectiveness of arbitration as a dispute resolution mechanism.

3. Delay in Arbitrator Appointments:

If neither party proposes their allocated arbitrator inside 30 days of filing their request, or if the two assigned arbitrators decline to suggest the third Presiding Arbitrator, the parties may file a Petition for Arbitrator Appointment. However, in the case of international arbitration, it takes longer time than expected. In cases where parties fail to nominate their arbitrators within the stipulated time, the process of appointing arbitrators becomes protracted. This can lead to further delays in initiating arbitration proceedings.

³⁰ Rahul Dev, International Commercial Arbitration in India (Mar. 26, 2020) available at <https://patentbusinesslawyer.com/international-commercial-arbitration-in-india/> (last visited on August 22, 2023).

4. Rash Procedure to Challenge Awards

The Arbitration and Conciliation Act provides for the challenge of an Arbitral Award on certain reasons. Aside from that, it also allows for the enforcement and implementation of judgments, which only serves to extend the time span of arbitration. Regardless of the fact that perhaps the objective of this act is to reduce the need for judicial intervention, frequent intervention and contradictory judgments have been a source of frustration for so many parties, resulting in a number of choices by parties not to conduct their arbitrations in India. The Courts have consistently recognized the concept of none of Courts, with the Supreme Court sometimes vacating a stay granted by a High Court on the grounds that the party seeking to invoke arbitration over certain shares would've been able to gain control of a telecommunications company, which is opposite to the system of Indian Law. The Supreme Court, from the other hand, decided that it was a significance appeal and also that the case should be resolved before the Arbitral Tribunal solely, and that the Jury will not be the appropriate place to do so. As a consequence, the High Court's injunction was lifted, and the parties immediately ordered to arbitrate, with the Supreme Court going so far as to bar the Respondents from submitting any further applications that may interfere with the arbitration process. Foreign attorneys' scope of practice is being limited. The Top Court established in the case of **Bar Council of India v. A.K. Balaji**³¹ on the problem of international lawyers and legal firms entering and practicing in India, as well as the formation of initiatives such as the Mumbai Centre for International Arbitration as well as the introduction of the NDIAC Bill, that this is essential to keep in perspective as well as evaluate the likeliness of India's success as the "successor."

Despite ruling in favor of the "fly-in, fly-out" concept, the Supreme Court added the condition that the visit has to be "casual" and not amount to "practice," and the decision would be made on a specific instance basis. The Court also decided that foreign attorneys did not have a "absolute right" to undertake international commercial arbitration procedures. This decision significantly narrowed the scope of International Commercial Arbitration, particularly for companies seeking to invest in India but hampered by court challenges such as this one. The provision allowing challenges to arbitral awards provides opportunities for parties to dispute awards on various grounds, even if their intention is to prolong the process. Frequent challenges and contradictory court decisions contribute to arbitration delays.

5. Restrictions on Foreign Lawyers

Another issue with foreign attorneys is that, owing to a statutory contradiction, the Eighth Schedule may be construed to imply that a foreign lawyer may not serve as an arbitrator in India. All of these discrepancies must be resolved as soon as possible by the government or the courts if India is now to be designated as a Global Arbitration Hub. While the "fly-in, fly-out" concept was recognized by Indian courts, there are still uncertainties and limitations regarding the practice of foreign lawyers in India. This hampers the ability to access international legal expertise in arbitration cases.

6. Reduced Flexibility Due to Amendments

While many view the establishment of the Arbitration Council of India as a positive development, it has also sparked concerns. These concerns arise from the fact that the council, composed of numerous members, is either affiliated with the Central Government or appointed by it. As a result, the government wields significant influence over the council, potentially compromising the independence of arbitrators.

Another issue with the 2019 Amendment Act pertains to confidentiality. While the Act emphasizes the importance of maintaining confidentiality, it lacks essential provisions outlining exceptions to this requirement. These exceptions could be crucial in situations where the involvement of a third-party expert or other circumstances necessitates disclosure. Without such provisions, unintentional breaches of confidentiality might be exploited as a delaying tactic by either party.

Lastly, the Amendment Act suffers from inconsistencies in the statute, particularly concerning the Eighth Schedule. This ambiguity could be interpreted as a prohibition on foreign lawyers practicing as arbitrators in India. Such an interpretation could undermine India's aspiration to become a prominent Global Arbitration Hub, hindering its progress in this regard.

The 2019 amendments aimed to enhance arbitration procedures but have raised concerns regarding the role and independence of arbitrators. The establishment of the Arbitration Council of India and other changes could impact the autonomy of arbitration proceedings.

Addressing these challenges is crucial to promote India as a favorable destination for international arbitration. Implementing reforms, clarifying rules, and ensuring the timely resolution of disputes will contribute to the growth of international arbitration in India.

Conclusion

In summary, the Indian Arbitration Act currently affords a substantial degree of Sovereign Immunity. This is

³¹ Civil Appeal Nos.7875-7879 of 2015

evident from Article I of the Act, which stipulates that parties can mutually choose the rules and laws governing their dispute. In cases where parties fail to specify these details, the arbitral tribunal is granted the authority to make such determinations. Notably, this empowers parties not only to select the arbitration venue but also to designate the chair of the arbitration, effectively determining the legal framework for their disagreement. This represents a departure from litigation, where court jurisdiction is clearly defined by statutory laws.

Furthermore, the Act permits parties to handpick their arbitral tribunal, which must consist of an odd number of members, granting them control over the individuals responsible for adjudicating their dispute. Additionally, parties enjoy the freedom to shape the procedure and manner in which the arbitration proceedings unfold.

From the author's perspective, the current framework of the Indian Arbitration Scheme offers a significant level of party autonomy. Parties can determine the arbitration venue, the governing law, the arbitrators—who essentially serve as the judges of the dispute—and the

This level of autonomy is a departure from traditional litigation, where the rules and jurisdiction of the courts are strictly defined by statutory laws. Arbitration, under the Indian Arbitration Act, empowers parties to tailor the procedure and conduct of the arbitration to best suit their needs and preferences.

In the author's perspective, the existing Indian Arbitration Scheme strikes a balance between flexibility and structure. It provides parties with the essential tools to customize their arbitration experience while maintaining the necessary legal framework for fair and efficient dispute resolution. Any attempt to further modify these procedures should be undertaken with caution, as it may risk undermining the very autonomy and flexibility that make arbitration an attractive choice for resolving disputes in India.

The resolution of disputes through international commercial arbitration in India holds immense potential for attracting foreign investment, decongesting the judicial system, and enhancing India's reputation as a business-friendly destination. However, several issues and challenges need to be addressed to realize this potential fully.

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