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International Commercial Arbitration: A Comprehensive Overview

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Abstract:

International commercial arbitration has emerged as a preferred method for resolving disputes arising in cross-border commercial transactions. This paper provides a comprehensive analysis of the key principles, procedures, and challenges associated with international commercial arbitration. Beginning with an examination of the legal framework governing arbitration agreements and proceedings, the paper explores the role of arbitration institutions, such as the ICC and UNCITRAL, in facilitating and administering international arbitrations. Furthermore, it delves into the intricacies of selecting arbitrators, conducting hearings, and enforcing arbitral awards across different jurisdictions. Additionally, the paper highlights the advantages of arbitration, including confidentiality, neutrality, and flexibility, while also addressing criticisms and areas for improvement within the arbitral process. By offering insights into both theoretical concepts and practical considerations, this paper serves as a valuable resource for practitioners, scholars, and policymakers navigating the complexities of international commercial arbitration.

Keywords: Arbitration Agreements, Arbitration Procedures, Arbitration Institutions, Arbitrator Selection, Enforcement of Awards, Cross-border Disputes, ICC Arbitration, Arbitration Challenges.

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INTRODUCTION

Arbitration though a form alternative dispute mechanism, is prevalent since time immemorial. It seems to be old as the court system, which has come to be known as the ordinary method of dispute resolution. In fact, when compare to the modern judicial system arbitration mat even be older. at the same time, the counters parameters and discipline of arbitration has seen the process of transformation on regular intervals.

In the first place, it is globalisation of the world economy, which has become the central and moving force in giving international arbitration a total new shape. Globalisation is well discussed word today notwithstanding a continuing debate over its pros and cons, today in the contemporary world treated as a global village. We now perceived as simple flat, it is a reality that the economic world is rapidly shrinking and geographical boundaries becoming porous even the nature of state[1] sovereignty causes increasing local speech.

There are investments in the form of capital or otherwise the people and multinational companies all over the world simultaneously, political boundaries of different countries remain intact and political sovereignty of countries still exists, which is eagerly guarded by each nation. In such a situation, though there is moment of capital as well as human resources across nations, it is still known as foreign direct investment (FDI).

Commercial arbitration is widespread in both international and domestic contexts, with equal problems and benefits. International arbitration is a type of method through which international disputes can be handled, in accordance with the parties' agreement, by independent, non-governmental decision makers. Firstly, arbitration is typically consensual since, in most cases, the parties must concur that their issues should be arbitrated. Secondly, arbitration is decided by non-governmental bodies; arbitrators are often private individuals chosen by the parties rather than acting as state courts or government agents. Thirdly, arbitration renders final judgements that are upheld by national courts. Finally, compared to other dispute resolution methods, arbitration is more adaptable in nature.

International arbitration is defined and accepted specifically to reassure parties from various jurisdictions that their dispute would end effectively and naturally. International commercial arbitration differs from domestic arbitration in a number of ways. The parties often look for an impartial and independent decision-maker. They also standardised contemplate the applicable

[1] Law Commission of India, 246 Report on Need for Justice –dispensation through Alternative Dispute Resolution etc.,2014 (August ,2023).

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substantive and procedural law rather than particular nation regime. Furthermore, international arbitration is the regularly use single exclusive dispute resolution mechanism free from uncertainties such as jurisdictional dispute, expensive parallel producing option or choice of pertaining law debates. Moreover, international arbitration awards are usually readily enforceable jurisdiction others then their place of origin[2].

Arbitration is one form of alternative dispute resolution (ADR) that can be utilized as a replacement for the standard court proceeding. A variety of alternative dispute resolution platforms are available, such as conciliation, negotiation, and mediation. Arbitration has supplanted other methods as the method of choice due to the more well-established benefits that come with using it. Because there is no other feasible alternative to judicial education, its great worth and popularity are related to the fact that this is the only option available. The function of courts and their interference in the process of arbitration has been reduced as much as possible.[3]

Due to the improvements in the country's infrastructure, international business deals are now more widespread than ever before. Although many attempts have been made to define the limits under the various conventions in order to evaluate what is fair, the meaning of the term "commercial" in the context of arbitration is already set in stone. When it comes to international arbitration, some pressing questions include: what exactly constitutes an international transaction or an international commercial transaction; what matters are covered by international commercial arbitration; and what exactly constitutes an international transaction or an international commercial transaction. The history of the word may be traced back to 1923, when the League of Nations and the International Chamber of Commerce took the initiative to establish a protocol that may permit the execution of the arbitration agreement. This is the point at which the word is considered to have entered the English language. In point of fact, it was known as the Geneva protocol on arbitration clauses of 1923 and the enforcement of the arbitral verdict, and it was restricted to being enforceable only within the territory of the respective state[4].

The concept of party autonomy has facilitated enough scope of the parties to decide the pathways for the proceedings, it is the party’s choice of interest that whether they want to go with they going to adopt the ad hoc arbitration or the institutional arbitration form of settling dispute. There are differences in both form arbitration when it comes to adopt one of them, in the context when parties

[2] Available at https://businessjargons.com/arbitration.html (Last visited on August 10,2023)
[3] Available at https://www.wipo.int(Last visited on August 10,2023)
[4] Available at https://law.pepperdine.edu (Last visited on August 11,2023)

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choose the form of institutional form its imperative for them that the administration and rules in the favour of their convenience, such institution have specialised rules to conduct the proceedings and assists the parties

Human conflicts are an inherent element of civilization since there will always be three opposing viewpoints where there are two minds. There will also be disagreements if there isn't *consensus ad idem*. These human conflicts lead to disputes. Conflicts are occurring at an alarmingly higher rate as civilization develops. In a civilised society, disputes increase in complexity as human relations do. But these conflicts don't have to go unresolved, and the settlement must be wise; as a matter of fact, such a resolution of conflicts is necessary for society peace, amity, comity, and harmony as well as for easy access to justice. It is also vital for society's smooth functioning to resolve these inevitable disputes at the earliest. Nevertheless, a civilised and welfare society must find an effective dispute resolution mechanism. Since resolving these matters was vested on the judiciary alone, it caused an overburden on it. Another method of dispute resolution to supplement and supplant the traditional court system will definitely reduce the same. In addition, the years of litigation were both expensive and time-consuming, which contributed to the aggravation felt by the plaintiffs. As a consequence of these factors, individuals started searching for mutually agreeable substitutes for legal conflict[5].

HISTORY AND ORIGIN OF INTERNATIONAL COMMERICAL ARBITRATION

This Chapter traces the history and evolution of arbitration over the ages right from King Solomon, who is often considered to be the first instance of arbitrating a dispute, right to the present era, and the development that arbitration has seen over the years. This chapter first discusses and explores the history of arbitration throughout the world. The author then moves on to tracing the history of arbitration in the United Kingdom in particular as the various arbitration laws of the United Kingdom have provided to be the basis for arbitration laws of India over the years. Finally, the Author traces the history of arbitration in India focusing mainly upon the arbitration law as it existed priorto and during the British Rule on India and the Arbitration Law as it existed before the Arbitration Act of 1996 came into force.

History of Arbitration: A Global Perspective

As trade and commerce developed throughout time as a result of changes like the industrial revolution, parties began looking for alternatives to protracted litigation. As a result, arbitration became the primary method for resolving disputes. Initial proof of arbitration may date back to the

[5] Pruitt describes conflict as an episode in which one party tries to influence the other or an element of the common environment and the other resists..

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time of King Solomon, who resolved a dispute between two mothers who were disputing whether their child was a male or a girl by applying the biblical idea. Since trade conflicts were first settled by peers as early as the Babylonian era, arbitration owes its origins to commercial disagreements.[6] The "Sumerian Code of Hammurabi" was a code that was established in Babylon during the third century BC. Under the auspices of this law, it was the sovereign's responsibility to administer justice in a manner resembling arbitration.[7]

The practise of arbitrations was also widespread during the Middle Ages, from the fifth to the fifteenth centuries. During this time, the Empire served as the sole arbitrator and decided the majority of disputes. The sole arbitrator was frequently the Pope, the King, or an Emperor from another State. However, these arbitrations included different parties than the current States.[8]

Uncertainly, but occasionally, the history of international arbitration can be traced back to mythology. Early instances of the resolution of disputes among the Greek god involved disputes between Poseidon and Helios over ownership of Corinth (which was reportedly divided between them after an arbitration before a giant named Briareus), Athena and Poseidon over ownership of Aegina (which was granted to them jointly by Zeus)[9], and Hera and Poseidon over ownership of Argolis (which was entirely granted to Hera by Inachus, a mythical king of Argos).[10] Similar stories of heavenly adjudications can be found in Egyptian mythology, such as one in which Thot ("he who decides without partiality")[11] settles a conflict between Seth and Osiris.

MAJOR CHANGES BROUGHT BY THE 2015 AMENDMENT

1. If the parties do not agree otherwise, the provisions of Sections 9, 27, and Sections 37, subsections (1) and (3) of the 1996 Act, are also applicable to international business arbitration.
2. Once the arbitration tribunal has been established, the court is no longer permitted to consider an application in order to reduce judicial intervention. The court may

[6] Grace Xavier, "Evolution of Arbitration as a Legal Institutional and the Inherent Powers of the Court: Putrajaya Holdings Sdn. Bhd. v. Digital Green Sdn. Bhd", P. 1, Working Paper Series no. 009, Asian Law Institute (February, 2010).
[7] The History of Arbitration", http://www.australianarbitration.com/historyarbitration.
[8] Douglas M. Johnston, The Historical Foundations of World Order: The Tower and The Arena 195 (Martinus Nijohff Publications, The Netherlands, 2008).
[9] J. Ralston, International Arbitration from Athens to Locarno 153 (The Lawbook Exchange, USA, 1929). See also C. Phillipson, II The International Law and Custom of Ancient Greece and Rome 129- 130 (MacMillan, London, 1911).
[10] C. Phillipson, II The International Law and Custom of Ancient Greece and Rome 129-130 (MacMillan, London, 1911).
[11] Supra Note 39.

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yet permit it if the situation calls for it.

3. Under Section 9 of the Act, tribunals were granted entire judicial authority.
4. Strict time limits for concluding an arbitral process were also included.
5. The grounds for overturning an arbitral award have been changed, and they now additionally include the following in addition to the ones already specified in the Act:
   - If the award is in disagreement with the fundamental principles of Indian law; or
   - If it is in conflict with the ideals of justice or morality[12].
6. The Supreme Court or the High Court was given the authority to choose an arbitrator.
7. An application to appoint an arbitrator should be disposed expediently within 60 days of such an application.
8. Sec 31 A was inserted which provided for a complete cost framework.

Various rulings were also made to further explain the altered clauses. Since it addressed certain significant issues that were at the forefront at the time, the 2015 Amendment Act marked a turning point in the development of the Indian arbitration system. However, the same did not take into account any gaps. In order to address these challenges, the Government of India established a "High-Level Committee to Review the Institutionalisations of Arbitration Mechanism in India" in 2017. It was established with Hon. (Ret.) Justice B N Sri Krishna as its chairman. The Arbitration and Conciliation (Amendment) Act, 2019 was passed based on the committee's suggestions. It was another watershed moment for the arbitration framework in India since it introduced the “institutional” arbitration system along with ad hoc arbitrations. Arbitration Council of India was established with an aim to promote the ADR mechanisms and to develop an institutional arbitration culture in India. Some major changes introduced by the 2019 Amendment Act are as follows[13]-

The Supreme Court and High Court have the authority to designate the arbitral institutions graded by the ACI, transfer the authority of appointment of arbitrators to the arbitral institutions rated by the ACI, and do so in accordance with Section 43. The High Court will take a similar

[12] Sec 17 of the Arbitration and Conciliation Act, 1996
[13] Proviso to Sec 2 (2) of the Arbitration and Conciliation Act, 1996.

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stance when dealing with domestic arbitrations. The same approach has been employed in Singapore and Hong Kong.

7. 1. The words "An appeal" in subsection (1) of section 37 were replaced with the phrase "Notwithstanding anything contained in any other law for the time being in force, an appeal."
8. 2. The term "or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36" was omitted.[14]
9. A new 8th Schedule was also inserted providing for the qualifications of an arbitrator. However, it does not apply to international commercial arbitrations.
10. 4. Section 87 made it abundantly obvious that the 2015 Amendment would be applicable even to those arbitral procedures that had been filed after the beginning of the same, and this was accomplished by introducing the new section. Therefore, the judgement reached by the Honorable Supreme Court of India in the case Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd. was directly contradicted by this action on every single level. After some time had passed, the Supreme Court resolved the aforementioned ambiguity by striking down the insertion of Section 87 into the 2019 Amendment Act on the grounds that it was obviously arbitrary. In spite of the fact that the 2015 Amendment brought about a number of substantial alterations to the 1996 Act, the 2019 Amendment Act had brought about a high level of clarity to these modifications.[15]

INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA: LEGISLATIVE APPROACH

The Arbitration and Conciliation Act, 1996

Concerns have been raised in regard to the shortcomings of the Act of 1940 in terms of the legislation and practice governing arbitration. In this regard, the secretary of the Department of Legal Affairs made a proposal on July 27, 1977, stating that the government was eager to review the provisions of the 1940 Arbitration Act in order to determine whether or not the drawn-out

[14] The Hon'ble Supreme Court had in the case Bharat Aluminium and Co. v. Kaiser Aluminium and Co., (2012) 9 SCC 552 held that Part I of the 1996 Act will not apply to Part II of the same Act.
[15] The Hon'ble Supreme Court ruled in Bhatia International v. Bulk Trading S.A. and Another (2002) 4 SCC 105 that Part I of the 1996 Act will also apply to arbitrations with seats outside of India. In Venture Global Engineering v. Satyam Computer Services td (2008) 4 SCC 190, the Court later upheld this ruling.

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arbitration proceedings and excessive costs incurred therein could be avoided in light of the criticism that the Public Accounts Committee had leveled against how the Act operated. The proposal was made in response to the criticism that the Public Accounts Committee had leveled against how the Act functioned. In 1977, the Indian Law Commission was asked to conduct an investigation into the circumstances surrounding the case. In light of this, the Law Commission of India finished compiling its 76th report in the month of November 1978.[16].

In case of **food *Corporation of India* v. *Joginderpa***[17], The supreme court ruled that the "law of arbitration" had to be uncomplicated, with a minimum amount of legal jargon, and sensitive to the norms of fairness and fair play. The highest court in the land issued this command, which resulted in the legislation Commission, legislators, and thinkers being compelled to seriously examine revising the legislation.

In 1985, the United Nations Commission on International Trade Law suggested that the UNICITRAL Model Law in respect of International Arbitration be adopted as a basis for national arbitration standards all over the world. This was done in an effort to achieve global uniformity in national arbitration standards.

The existing arbitration law absolutely needs to be reorganized at this point, and doing so is of the utmost importance. At this point, the issue of whether or not to make changes to the aforementioned 1940 Act or to pass whole new legislation was brought up. In addition to the recommendations made in the 76th Report, the Indian Council of Arbitration (ICA), the Indian Society of Arbitrators (ISA), the Confederation of Indian Industries (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI), and the Associated Chambers of Commerce and Industry (ACCI) all made suggestions to amend the 1940 Act.

Foreign Awards under Arbitration and Conciliation Act, 1996

Under the Arbitration and Conciliation Act of 1996, foreign arbitrational awards that were issued in nations that had ratified either the Geneva Convention of 1927 or the New York Convention of 1958 are recognized and endorsed by the law in the United States. In India, foreign judgments that have been issued in conformity with either the Geneva Convention or the New York Convention can be recognized and implemented.[18]

[16] Available at https://blog.ipleaders.in (Last visited on August 8,2023)
[17] AIR 1981 SC 2075.
[18] Available at http://pib.nic.in (Last visited on August 2, 2023)

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In the case of Bhatia International v. Bulk Trading, the Supreme Court issued a ruling in which it stated, "An arbitral award not made in a convention, the country will not be considered a foreign award and as such, a separate action will have to be filed based on the award." The New York Convention provides a set of criteria that can be used by the countries that have ratified it to review and uphold the agreements and awards that have been reached. The arbitral agreements and awards that originate from those nations will therefore be respected and enforced by the courts of the states where the enforcement is sought. This will give the parties confidence, which is important given that they may not be familiar with the varied laws in the numerous countries with which they are dealing.

In the case of Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., the Supreme Court reviewed whether or not the award might be overturned if the arbitral tribunal had not followed to the appropriate procedure outlined in Sections 28, as well as how this may have affected the interests of the parties involved. As stated in Clause (a) of Subsection (1) of Section 28, the Arbitral Tribunal is required to resolve the conflict in conformity with the substantive law of India that is now in effect. Statutes of this type that are currently in effect, such as the Transfer of Property Act and the Indian Contract Act, would unquestionably be considered to be examples of substantive law. If, for example, either the Transfer of Property Act or the Indian Contract Act were violated, the subject of whether or not an award of this kind may be overturned would be brought up. Accordingly, in line with the terms and conditions of the contract, as well as after taking into account the relevant industrial customs, the Arbitral Tribunal is obligated to reach a decision regarding the dispute in accordance with the provisions of subsection (3). If the arbitral tribunal disobeys the terms of the contract or the trade customs that are in effect, is it possible that the award that was previously announced could be changed? The Supreme Court observed that based on its interpretation of Section 34 in conjunction with the other provisions of the Act, it does not appear that the legislative purpose could have been that even if the award violated the requirements of the Act, a court could not overturn it nevertheless. This was expressed in the context of the court's reading of other provisions of the Act. If it were decided that such an award could not be contested in any way, this would run counter to the very concept of justice that we hold dear. The Supreme Court of the United States found that the award is manifestly unlawful and could be overturned under Section 34 of the Act if it interferes with the provisions of the Act, the substantive laws of the Act, or the

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conditions of the contract. In addition, the court stated that this ruling applies even if the award is not in violation of the Act.[19]

In the event that the court is persuaded that the foreign award is legally enforceable, then the court will treat the foreign award as if it were a decree issued by that court. Under Section 48, the order that refuses to enforce a foreign award can be reviewed by the court that has been designated by statute to hear appeals from orders of this kind. If the foreign award is upheld, then there is no way to challenge the decision, but there is no way to appeal a decision made by the appeals court. This in no way restricts or eliminates any ability to appeal the decision to the Supreme Court.[20]

JUDICIAL APPROACH TOWARDS INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA

Challenges to the Foreign Awards:

The autonomy of the parties involved in the arbitration and the irrevocability of the decision are the two fundamental principles of arbitration law. The core of arbitration law would be lost if these two plinths were to be misunderstood by judicial involvement and fail to reach their ultimate objectivity. The Colonial Act and the law that followed it in 1961, which brought unequal court interventions, were replaced by a more modern Act that was based on the Model Law. This is evidence of how vital it is to have less judicial meddling, as shown by the fact that the Colonial Act was replaced. It is difficult to establish public policy in such a way that it may be used as a rationale for overturning a decision reached by an arbitrator. A fatal blow is dealt to international business arbitration by judicial decisions on the application of public policy that provide nearly unrestricted judicial review of arbitral awards.

Intervention by Courts

The Act of 1996 is stated to have had as its primary goals the expeditious resolution of disputes through arbitration and the reduction of the intervention of the courts. In addition, participation from the judicial authority is specifically prohibited by Section 5 of the Act. This essential clause can be found in the legal systems of all other countries that have adopted the UNCITRAL Model as their legal framework. The Statement of Objects and Reasons for the Act of 1996 has two primary goals, the first of which is to "minimize the supervisory role of courts in the arbitral process," and the second of which is to "ensure that every final arbitral award is enforced in the same manner

[19] Gas Authority of India Ltd. v. SPIE CAPAG, S.A. AIR 1994 Del. 7.
[20] (2003) 5 SCC 705.

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equalling to decree of a civil court." Both of these goals are intended to be accomplished by the Act of 1996. According to Section 5 of the Act, the court is prohibited from taking any action in disputes that involve arbitration provisions. In comparison to the Act from 1940, the current Arbitration Act severely restricts the court's capacity to interfere with any component of the arbitration procedure, the arbitrator's decision, or the award. This is due to the fact that the court's authority to do so was significantly expanded during the 1940s.

Post Bhatia Case Mystery

After it was ruled in the Bhatia case that an Indian court could issue interim orders prior to the beginning of arbitral proceedings, numerous Section 9 applications for interim relief were made in courts throughout the nation relating to arbitrations. These applications could have been made in courts sitting in India or elsewhere.

The only exception that the court allowed for was an exclusion of a section that was either explicitly stated or inferred by the parties.

I. There was no advice offered regarding the nature of what constituted an implied exclusion of Part I. This only served to make matters more confusing because Part I also had major clauses regulating the appointment of arbitrators and the setting aside of awards, among other things. Indian courts began to appoint arbitrators in arbitrations held outside of India, such as in National Agricultural (2007) and Indtel (2008), and they began to allow the setting aside of foreign awards, such as in Venture Global (2008)[21], in cases where it was unclear whether or not Part I had been impliedly excluded. For example, in cases where it was unclear whether or not Part I had been impliedly excluded, Indian courts began to appoint arbitrators in arbitrations held outside of India.

BALCO & White Industries

The decision in the case of BALCO v. Kaiser Technical Services Inc[22] was handed down on September 6, 2012, by a Constitution Bench of five judges of the Indian Supreme Court. Prior to this, a two-judge bench of the court had referred a number of cases that were connected to it because it was unable to agree on the legality of the Bhatia decision. The well-known White Industries Case, which many people will remember ended up resulting in the first-ever BIT verdict against India, is a comparable case that ended up being heard by the Court concurrently with

[21] Supra Note 25, Para 4 (v) and (vii) of the Statement of Objects and Reasons.
[22] 2012 (9) SCC 552

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BALCO and addressed the same legal concerns as BALCO. The court's decision in the White Industries Case was the first-ever BIT judgement against India.

The court decided in BALCO that the provisions of the 1996 Act did not empower them with the competence to provide interim measures in reference to arbitrations with foreign seats or to oversee appeals to foreign awards. The court stated that the decisions in Bhatia and Venture Global were incorrect and that they disagreed with those decisions. The Court arrived at the judgment that the contents of the 1996 Act did not adequately support Bhatia's "board" interpretation, which asserted that Part I's totality applied to arbitrations with seats located outside of India. This decision was reached after the Court reviewed the Act and its provisions.

One of the most significant inferences that may be drawn from the decision is that the Court strongly endorsed the arbitration venue as the "centre of gravity" of an arbitration, specifically for the purpose of establishing court jurisdiction with respect to that arbitration. Another advantage is that it makes clear the previously hazy distinction between the law that regulates an arbitration clause in a contract and the law that rules the substantive law of the contract in India. This distinction was previously a source of confusion. Its ability to offer a definition for the phrase "of the country in which, or under the rules of the New York Convention" is maybe its single most significant contribution. The court came to the judgment that only the court in the location where the arbitration is being held has the authority to exercise the jurisdiction necessary to handle a challenge. This is true despite the fact that the phrase has sparked dispute all over the world. According to the Court, there cannot be concurrent jurisdiction of two different courts in the jurisdiction and seat where the law that governs the arbitrations is in effect because this would be contrary to the rules of natural justice. Additionally, the court asked anybody who had an interest to share their comments on the problems that were brought up prior to the beginning of the BALCO hearings. The Singapore International Arbitration Commission (SIAC), which was one of these interveners, presented the Singapore position on these issues by citing Singapore decisions that addressed them, such as Swift Fortune (2007), Sui Southern Gas (2010), and PT Asuransi Jasa (2007). They also presented the legislative changes that were made to the Singapore International Arbitration Act in 2009, particularly with regard to the ability of courts to grant interim measures of protection in respect of arbitrators.

For the SIAC, India has been an important jurisdiction throughout its history. Over the course of the past three years, the number of cases that involve Indian parties has increased to an almost unprecedented degree. In these instances, businesses from a wide range of industries, including

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international trade, construction, joint ventures, energy and natural resources, shipping and maritime, and general commercial conflicts, have been represented. In spite of the fact that there are fewer occurrences, it is noteworthy that the amount of money at stake in disputes involving at least one Indian party has increased by more than 140% during the same time period as the increase in the number of incidents.[23]

This has been seen to be the case in actual practice, as Prime Minister Narendra Modi made clear in his farewell address at the Niti Aayog conference on "National Initiative towards Strengthening Arbitration and Enforcement in India" the objective of the Indian government in relation to arbitration. At a major international conference in 2016, the BRICS summit, the minister of law and justice for the union reiterated the same point.

The Indian economy is expanding at a rapid rate, and in order for the country to establish itself as a hub for international arbitration, it requires a robust arbitration legislation. It is very necessary, in order to accomplish this objective, to strike a balance between modernizing the arbitration law and establishing arbitration centres that are geared up to handle and resolve commercial conflicts in an efficient manner. The implementation of best practices will be of increasing significance in the not-too-distant future given the backing of arbitration by the courts and lawmakers, as well as the presence of the Amendment Act.

A conflict of laws unavoidably develops in international commercial arbitration when the parties have different legal systems, and it is important to select which substantive law will be employed in order to resolve a particular issue. This decision must be made before the arbitration can begin. When parties to an original contract agree to have a dispute resolved by arbitration, they typically identify the substantive law that will apply. When the parties to a dispute are unable to reach a consensus regarding the applicable law for the resolution of their disagreement, identifying the law that should be applied can be a difficult task.

The agreement reached between the parties, rather than the mandate issued by the state, will serve as the basis for the international arbitral tribunal's power. The paragraph in the arbitration agreement stipulates, in addition, the appropriate legislation that will be employed. The increased autonomy of arbitrators brings with it an increased demand for explanations of the ruling. In addition to ensuring that the arbitration process is transparent, it also serves as an inherent check on the arbitrators and provides the party with information regarding the basis for the award as well as

[23] G. Born, International Commercial Arbitration 409-561, 1310-47, 2105-2248 (2009).

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the reasoning behind the decision made by the arbitrators. The existence of reasons is another factor that determines how much judicial monitoring is exercised. The following recommendations are provided in order to make the most of the current circumstances:

(i) The diverse national laws on international arbitration is a major source of controversy and serious disagreement among the parties to a commercial transaction. Hence, with a view to minimize these difficulties, it is suggested that priority should be given to the task of international harmonization of domestic laws on international commercial arbitration.

(ii) The number of arbitration centers in India should be increased in order to facilitate the orderly and effective implementation of arbitral decisions. Government participation is very important for the development of international commercial arbitration. Government should pass a separate statute for international commercial arbitration law.

(iii) Since arbitration is now the primary venue for resolving international business disputes, this presents a significant potential for large cities in India, such as Mumbai, New Delhi, and Bangalore, to establish themselves as important centers for the resolution of major commercial disputes. In this context, it becomes incumbent on our part to have a robust and sound domestic law which is in line with international arbitration law through adoption of the cutting age of legal rules.

(iv) There is lack of adequate participation of the developing nations in the conduct of institution arbitration. Therefore, they should be given sufficient support to make their laws in line with the UNCITRAL Rules.

(v) There is a pressing need to update and reform the Indian Arbitration Act, based on experience gained over the years so as to make it more user's friendly and to meet the needs of the contemporary commerce and finance. Needless to say, if India is to emerge as a major centre for international commercial arbitration it has to deal with the issues related to efficiency infrastructure and cost.

(vi) Serious consideration should be given to give greater autonomy to international arbitration and the court's interference is avoided save in exceptional cases.

(vii) We should promote the institutional arbitration as it has obvious advantage over ad-hoc arbitration.

(viii) Serious thought should be given in removing the distinction between the domestic as well as the foreign awards. It is advisable that the arbitration act is to modified to

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provide similar procedures for the domestic and non-domestic arbitration to make the countries an attractive model law on distinction as it is a major problem in harmonizing the law.

(ix) Some of the provisions of the international commercial arbitration that are connected to the interpretation of the word "commercial" need to be updated or reformed.

(x) Parties and the tribunal should be suggested to go for new technology as it could save time and money both.

(xi) There should be mechanism for regulating arbitral fee. (xi**i**) Ground to challenge award should be limited.

(xii) Granting of stay on awards should not be norms.

(xiii) Robust training programs should be organized.

(xiv) Technical knowledge of arbitrator should be given due importance.

(xv) Autonomy of parties to be respected.

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