



INDIA AS A HUB FOR INTERNATIONAL COMMERCIAL ARBITRATION

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ABSTRACT

The amendment to the Arbitration and Conciliation Act, 1996 brings much required changes and was intended at transforming the arbitration system in India. Some major changes will have a noteworthy effect on the way of arbitrations which are conducted in India and will also bring a positive signal for India's reputation as a hub for International Commercial Arbitration (ICA). Even after major alteration the certain areas of Indian arbitration are still doubtful and need explanation. Singapore and the United Kingdom have well developed arbitration laws and procedures. They have become the most preferred place for arbitration proceedings. This paper makes a comparative study of the arbitration practices in three countries United Kingdom, India and Singapore. This paper examines the steps that are taken by the Indian Government in making India as the most preferred place for arbitration.

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INTRODUCTION

India has grown up and has speedily advancing economic power through which it acquired importance. It has secured its position and has become a significant player in international trade and commerce. Arbitration and Conciliation Act, 1996 was enacted with reference made from the model of United Nations Commission and International Trade Law (UNCITRAL model) which consists of internationally accepted arbitration processes. The arbitration proceedings differ from country to country. It is because arbitration nowadays is crossing beyond countries because of the commercial businesses between countries and is multijurisdictional because many countries together are involved in these commercial businesses. Singapore and the United Kingdom have well developed arbitration laws and procedures. They have become the most preferred place for arbitration proceedings. They have developed in such a way that they are sought even by the Indian users and also by foreign users who are in need to arbitrate with the Indian parties.

Study of the Arbitration and Conciliation (Amendment) Act, 2015

For a long period of time arbitration has become the first choice for the settlement of commercial disputes. This is true because in India the domestic disputes in trial courts take notably a longer time to settle because of huge pendency of cases.

In the last two decades the ad hoc domestic disputes looks like more traditional court proceedings combined with the high expenditure because of the presence of only few qualified arbitrators. Amendment was made to remedy some of these issues and the misinterpretation of the provisions. After the two attempts in 2005 and 2010 the law is successfully amended in the year of 2015. The law carries out the proposals which were made by the 246th Law commission Report. It also introduced some unique provisions which are seen the leading arbitration report. These provisions provide the way to solve the peculiar issues with the ad hoc domestic arbitration including the time limit for completing arbitration and the arbitration fees¹.

The provision prescribes that each and every arbitration seated in India must complete the arbitration and make an award within 12 months from the time in which the arbitration tribunal was constituted. The parties can by their mutual consent extend the time period by 6 months. If this does not happens the tribunal would cease to exist. It would exist only when the court extends it by certain conditions. The court can extension of the time period can penalize the arbitrators by ordering reduction of their fees. If the court considers necessary can substitute the arbitrators. The provisions also suggests other changes for a far reaching consequence some affecting a departure from the existing law and some clarifying certain controversies and other confirming the law as declared through interpretations received from the courts overtime.

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¹ <http://www.legalservicesindia.com/article/article/international-commercial-arbitration-2196-1.html>, last visited on 20/9/17 at 6:00 PM

The three changes of provisions are of great importance. Since this is a vast country the foreign parties are not required to litigate in lower courts in the corners. The High courts is now fixed to deal with all International arbitration. The provisions relating to the measures from courts and the seeking of assistance from courts in taking evidence has been extended that it can be sought from the foreign seated arbitrations. Patent illegality is removed for challenging awards arising from international arbitration seated in India².

Study of the 246th Law Commission's Report Recommendations

The amendments which were suggested by this 246th Law Commission was embraced. The suggestion classifies the position of the Supreme Court on account of TDM Infrastructure Pvt. Ltd versus UE Development India Pvt. Ltd. Also, attested the ensuing choices of the Supreme Court. It recommended that an open door was missed that is thinking about the topic of the contract whether it is considered as worldwide. He Act has precluded to take the word measure from the UNICITRAL show. In reference to the measure of work which the Indian organizations have been doing as of late and in reference to the position which is in Private International LAW which decides the topic to be applicable the Indian gatherings must be permitted to choose the outside law and seat if the topic of contract is not pertinent to Indian law. In the event that if such an arrangement is truant then a more extensive translation must be utilized to discover the gatherings opportunity to pick a seat for arbitration outside India. This has as of late occurred on account of Sassan Power Ltd versus North American Coal Corporation India Pvt. Ltd³.

Findings of Study of the Arbitration and Conciliation Act, 2015

The part 1 and 2 of the act which are made in reference to each other for the issues under the International business arbitration is obviously characterized.

Regardless of the possibility that the arbitration is situated outside India the amendment makes the arrangements, for example, 2,9,34,37 and 48 of the Act pertinent. The proposed amendment guarantees the fast transfer of cases which is guaranteed in area 9 of the act that the transfer of debate must be made inside 90 days. The proposed amendments expresses that not just the gatherings to the International business arbitration yet in addition the people asserting through any gathering of worldwide business arbitration can look for assurance under Indian arbitration laws. The definition of open approach which is made in area 34 and 48 might obviously apply to the instance of global business arbitration. Documenting of a protest under segment 32 would not ipso facto remain for the enforceability of remote honors from nation by recording a different application.

Comparison of Arbitration Proceeding and Practices of India with Singapore and United Kingdom

The arbitration proceedings and practices in United States is not in agreement with the arbitration practices and proceedings in India. But the arbitration proceedings of United Kingdom is more in harmony and agreement to Indian law. The Arbitration Act of 1996 of United Kingdom establishes a broader scope of

judicial review by correctly applying the English law. The appeal process in arbitration is similar to the US but the enforcement manner is not strict enough. The main basis of the United Kingdom of arbitration is to ensure the accuracy of arbitral awards by applying the English Law correctly. The recent judgment on Jivraj vs. Hashvani which was a appeal case in which appeal herein challenged the order passed by the Court of Appeal in which it was held that the parties to the arbitration are subjected to the same anti discrimination laws that are applicable to the employees in the UK. Any arbitration agreement which mandates an arbitrator in the particular region or belief was unenforceable. The Supreme Court reversed the decision upholding the validity of such arbitration agreements imposing faith on choice of arbitrators and thereby reinforcing the principle of party freedom.

With reference to the legal mediation there is a noteworthy distinction between United States and the United Kingdom. This perspective is putting aside the honor incase of blunder of law in the last mentioned. The arbitration law of United Kingdom enables three grounds to challenge an arbitral honor that is need of ward, genuine abnormality and mistake of law. It ought to be seen that in United Kingdom the legal is permitted to intercede in a more drawn out scope. It emphasizes to keep the arbitration procedure as a quick question component. It forces a strict time banish of 28 days from the date of the honor to provoke it and not offering leave to claim fir just difficult the honor on the purpose of law. The English framework is very like the Indian arbitration framework primarily regarding degree and standard of legal audit. India can however embrace the liberal approach of guaranteeing lack of bias of referees, party opportunity as gave under the Arbitration Act of 1996 to guarantee a rapid procedure. The corrections to the arbitration and Conciliation Act of 1996 are a stage in bearing.

Comparison of Arbitration Proceeding and Practices of Singapore with India

Singapore has made a divided mechanism for conducting arbitrations. The international arbitrations are subject to the International Arbitration Act the remaining non international arbitrations are in regard to the International Arbitration Act. Similar to India the Singapore's law follows the UNICITRAL Model law⁴. The international arbitration law gives the Model law the law in force in Singapore. Singapore consonance to the Model Law also is a similar course as revised by the Indian Law governing commercial arbitration both domestic and international. The significant difference between the Singapore and Indian arbitration proceeding is that parties autonomy which is available to parties to choose their preferred arbitration regime. Parties to the non international arbitration with its seat in Singapore are at liberty to opt in to the procedure where judicial intervention and oversight is limited. The parties can do so by stipulating in the arbitration agreement that it governed by the Arbitration Act would ensure a greater degree of court supervision. With the introduction of the Arbitration Act of Singapore the institutional arbitration in Singapore has become a popular mode of arbitrating disputes. The development of SIAC has occurred to parallel to Singapore emerging as a vital place of commercial and financial activities. The Indian's

²<https://www.researchgate.net/publication.com>, last visited at 6/9/17 at 3:00PM

³<http://pib.nic.in/newsite.com>, last visited at 14/9/17 at 10:43 AM

⁴IOSR Journal Of Humanities And Social Science (IOSR-JHSS): Challenges before International Commercial Arbitration in India by Prof. (Dr.) Rajesh Bahuguna

government's ambition to ease the ability of conducting business in India, a crucial leaf can be taken from Singapore's book especially with respect to revamping and modernizing of the arbitration regime⁵.

CONCLUSION

It is said that the gatherings are the experts of the arbitration yet in institutional arbitration, the establishments for all intents and purposes procure certain forces of the gatherings', for example, arrangement of judges, and so forth and are in a position to force their will upon the gatherings. This is by all accounts against the very soul of arbitration and one may state this is not arbitration in the genuine sense. With regards to universal business question, one may contend that institutional arbitration is more appropriate, despite the fact that clearly it is more costly, tedious and unbending than specially appointed arbitration, remembering the way that it gives set up and refreshed arbitration rules, bolster, supervision and checking of the arbitration, audit of honors and above all, reinforces the validity of the honors. The progressions fused in the Arbitration and Conciliation (Proposed Amendment) Act, won't just cure the illness yet in addition try to set up the phase for arbitration in India to accomplish a higher plane of development. The alterations will unquestionably bestow certainty to outside financial specialists and is a positive development to make India as a center for International business arbitration.

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⁵ International commercial arbitration law and recent developments in India (http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/International_Commercial_Arbitration.pdf), last visited at 18/9/17 at 4:09PM