Educational Administration: Theory and Practice
2023, 29(4), 3878-3882
ISSN: 2148-2403
https://kuey.net/ **Research Article**

The Impact of Recent Legal Reforms on International Commercial Arbitration in India: A Case Study

Ms. Sunanda[1*], Dr. Omprakash D. Somkuwar[2]

[1*]Research Scholar, Faculty of Law, Sangam University, Bhilwara, Rajasthan
[2]Associate Professor, Faculty of law, Sangam University, Bhilwara, Rajasthan

Citation: Ms. Sunanda, et al. (2023) The Impact of Recent Legal Reforms on International Commercial Arbitration in India: A Case Study, *Educational Administration: Theory and Practice*, 29(4) 3878-3882
Doi: 10.53555/kuey.v29i4.8641

ARTICLE INFO

ABSTRACT

This article provides a comprehensive analysis of the impact of recent legal reforms on International Commercial Arbitration (ICA) in India, focusing on key legislative changes and their practical implications. With the Arbitration and Conciliation Act of 1996 as the foundation, significant amendments in 2015 and 2019 aimed to align India's arbitration framework with global standards. These reforms introduced time-bound arbitral proceedings, fast-track procedures, streamlined arbitrator appointments, effective interim measures, and established the Arbitration Council of India (ACI), among other changes. The article uses the case study of Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. to illustrate the practical application and benefits of these reforms. This case highlights improvements in efficiency, reduced judicial intervention, and the success of fast-track arbitration. While the reforms have brought notable advancements, challenges such as judicial intervention, inconsistent judicial decisions, and inadequate arbitration infrastructure remain. Comparative analysis with global arbitration hubs like Singapore, Hong Kong, and the United Kingdom provides insights into best practices that can further enhance ICA in India. The article concludes with recommendations for legislative refinements, judicial training, promoting institutional arbitration, strengthening infrastructure, and international collaboration to establish India as a leading destination for international arbitration. Keywords: International Commercial Arbitration, Legal Reforms, Judicial Intervention, Fast- track Arbitration, Interim Measures, UNCITRAL.

Introduction

As a result of its effectiveness, secrecy, and adaptability, international business Arbitration (ICA) has emerged as a favoured procedure for the resolution of business disputes that include international trade. In the context of globalization, where international business transactions are commonplace, having a robust and reliable arbitration framework is crucial. India, recognizing the importance of ICA, has undertaken significant legal reforms in recent years to align its the establishment of an arbitration structure that conforms to international standards and the promotion of the nation as a desirable location for international arbitration. This article explores the impact of these recent legal reforms on ICA in India, using a case study approach to highlight key developments, challenges, and opportunities.[1]

--Although it is now the fifth biggest economy in the world, India is on track to become the third largest by the year 2030. The enormous and rapidly expanding population, consumer market, and youthful labour force that India has continue to make it a top priority for investors from other countries. Numerous corporations, including financial sponsors, technological leaders, energy giants, and automotive manufacturers, have placed significant wagers on India. As a result of growing economic activity, the number of international issues involving India will rise their more often. Over the course of the last ten years, India has made tremendous progress in efforts to overhaul their system for alternative dispute resolution (ADR), with the objective of establishing

[1]Ahuja S. Arbitration Involving India: Recent Developments, 18(3) Asian Dispute Review (2016).

themselves as a worldwide centre for international arbitration. Additionally, the good benefits of these changes have been compounded because of the favourable posture that Indian courts have taken towards arbitration. In 2022, India ranked as the eighth-largest beneficiary of foreign direct investment (FDI) in the world, demonstrating that it continues to be an appealing location for global investment. An awareness of how to develop balanced contracts and build meaningful connections is becoming more important to the success of any firm, particularly considering the increasing number of international investors entering the Indian market. When it comes to avoiding, managing, and resolving problems, foreign enterprises need to take into consideration several different issues.[2]

Arbitration-friendly developments in India

As a result of India's growing interest in and utilisation of arbitration, the country is beginning to become more amenable to and stable for arbitration. Throughout the course of Indian history, Indian courts have been notorious for interfering in arbitral judgements, which often leads to outcomes that are unexpected and not in line with international standards. In the midst of a progressive transition, a number of pro-arbitration judgements have been handed down by India's Supreme Court and numerous important High Courts:

- The individual pushed for little involvement with arbitral rulings that were rendered by tribunals that were seated in India:
- Acknowledged the urgent need for the prompt implementation and execution of international arbitration awards;
- It in has been established that emergency arbitral awards in arbitrations that are situated India are enforceable within the local jurisdiction.
- The significance and validity of third-party financing in the arbitration process has been established.

Alterations to the Indian Arbitration and Conciliation Act are a complementary development to this shift in the approach taken by the judicial authorities. An expert committee with a high degree of expertise was established by India in June 2023 with the purpose of investigating any loopholes in the regulation of arbitration in India. In the first quarter of 2024, it is anticipated that this committee will provide its report. It is expected that the group will address issues such as the need to clarify the jurisdiction of the courts to remand arbitral decisions or modify their damages components, as has been done in certain cases, as well as rules for third-party financing and arbitrator costs. It is anticipated that the committee will address these matters, despite its extensive mandate.

In India, the ecology for arbitration is being improved by local arbitral institutions, which are leading the charge. The Mumbai Centre for International Arbitration (MCIA), the Delhi International Arbitration Centre, and the Institution of Arbitration, Conciliation, Hyderabad (IAMC) are among the new institutions Mediation, and that are attempting to compete with more established international institutions for India-related disputes. Hyderabad is the location of all of these institutions. In 2022, the MCIA had a twenty per- -cent rise in the number of cases it took on, and it is currently managing conflicts with a total value of more than one billion dollars. It is anticipated that these Indian institutions will gain a stronger foothold in the years ahead, particularly in domestic India-seated arbitrations, which are currently characterised by ad hoc arrangements. Although the SIAC and the ICC will maintain their dominance in the near future, it is probable that these institutions will establish a more robust presence in the years ahead.[3]

Recent Legal Reforms in International Commercial Arbitration

1. The 2015 Amendment

In an effort to further modernize and streamline the arbitration process, the Arbitration and Conciliation (Amendment) Act, 2015, was enacted. Key features of this amendment include:

a) Time-bound Arbitral Proceedings: The amendment introduced a twelve-month timeline for the completion of arbitral proceedings, with a possible six-month extension. This aimed to expedite the arbitration process and reduce delays.

b) Fast-track Procedure: In accordance with the modification, a streamlined arbitration process was established, which made it possible for disagreements to be settled during a period of six months commencing on the day when the arbitral tribunal was created, the parties must arrive at a decision.[4]

c) Appointment of Arbitrators: The amendment streamlined the process for the appointment of arbitrators, empowering arbitral institutions to appoint arbitrators in certain cases, thereby reducing judicial delays.

---

[2]Canfield J. Growing Pains and Coming-of-Age: The State of International Arbitration in India, 14(3) Pepperdine Dispute Resolution Law Journal (2014).

[3] Mukherjee, A. Judicial Intervention in International Arbitration in India: An Analysis of Recent Trends National Law School of India Review, Volume 32, Issue 3, 2021, pp. 155-178. 4

[4] Rendeiro AC. Indian Arbitration and Public Policy, 89 Texas Law Review (2011).

d) Interim Measures: The amendment allowed parties are going to ask the courts for temporary remedies even before the beginning of the arbitration procedures, in order to provide a higher level of protection for the parties' interests.
e) Costs and Fees Regulation: The amendment introduced provisions for the regulation of arbitrator fees and the allocation of costs, promoting transparency and fairness.[5]

2. The 2019 Amendment

The Arbitration and Conciliation (Amendment) Act, 2019, brought further refinements to the arbitration framework. Key aspects include:
a) Arbitration Council of India (ACI): The amendment established the ACI to promote and regulate arbitration, providing accreditation to arbitrators and arbitral institutions.
b) Confidentiality and Immunity: The amendment introduced provisions to maintain the confidentiality of arbitral proceedings and granted immunity to arbitrators for acts done in good faith.
c) Timeline for the Statement of Claim and Defense: The amendment specified timelines for filing the statement of claim and defense to ensure timely proceedings.
d) Completion of Written Submissions: The amendment aimed to ensure the completion of written submissions within six months, enhancing the efficiency of the arbitration process.
e) Appointment of Arbitrators by Institutions: The amendment empowered designated arbitral institutions to appoint arbitrators in case of institutional arbitration, further reducing the burden on courts.[6]

3. India's evolving investment treaty regime

From 1991 to the present, India has signed 86 bilateral investment treaties (BITs) that are known to the public, when Indian markets were opened to foreign investment. Nevertheless, India has unilaterally terminated 76 BITs since 2016, and there are presently only eight BITs in force. India is not the sole country affected by this issue: Approximately 130 intra-EU BITs were terminated by European Union Member States in 2020. 2022 was the year when the European Parliament made a call for an immediate and coordinated withdrawal from the Energy Charter Treaty.
Nevertheless, a foreign company that has an investment that is safeguarded by a terminated BIT is likely to continue to reap the benefits of the terminated BITs due to the "sunset clause" in those treaties. The investor and its investment are granted treaty-based protections for a period of ten to 15 years by a sunset clause that survives the BIT.
Over the course of the last several years, India has signed into extensive economic partnership or cooperation agreements with Both the United Arab Emirates and Mauritius. However, none of these agreements include a language that addresses the settlement of disputes between investors and states. There is a perceptible tendency towards the settlement of disputes via consultation, mediation, and commission processes, which are modelled after the framework for dispute resolution that is used by the World Trade Organisation.[7]
On the other hand, to strengthen the resilience of its existing BIT system, India worked along with Bangladesh and Colombia to publish joint interpretive statements in the years 2017 and 2018, respectively. These statements are accompanied by detailed notes that clarify the most significant provisions of the BITs and eliminate the ambiguities that frequently arise from their interpretation. Having a full legal knowledge of these international agreements would be necessary for foreign investors who are attempting to organise their investments and reduce long-term risk exposure.[8]

Impact of Recent Legal Reforms: A Case Study

To understand the impact of these legal reforms on ICA in India, it is essential to examine specific cases that highlight the practical implications of these changes. The following case study illustrates how recent reforms have influenced the arbitration landscape in India.

❖ Case Study: Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co[9]

Vedanta Ltd., a major Indian multinational, entered into a contract with Shenzen Shandong Nuclear Power Construction Co. (SSNP) for the construction of a power plant in India. Disputes arose regarding the performance and payment terms under the contract, leading to Vedanta initiating arbitration proceedings under the Arbitration and Conciliation Act, 1996, as amended.

---

[5] Sutton D.S.J. et al. Russell on Arbitration (23rd ed., London: Sweet & Maxwell, 2007).
[6] Malhotra O.P. The Law and Practice of Arbitration and Conciliation (6th ed., Nagpur: LexisNexis Butterworths, 2013).
[7] Mistelis L.A. Seat of Arbitration and Indian Arbitration Law, 4(2) Indian Journal of Arbitration Law (2015).
[8] Moonka R., Mukherjee S. /Impact of the Recent Reforms on Indian Arbitration Law. BRICS Law Journal. 2017;4 (1):58-71. https://doi.org/10.21684/2412-2343-2017-4-1-58-71
[9] ATR 2019 SC (CIV) 145

Key Issues
1. Appointment of Arbitrators: The parties were unable to agree on the appointment of arbitrators. The case was referred to an arbitral institution designated under the 2019 amendment, which promptly appointed a panel of arbitrators, ensuring the swift commencement of the arbitration process.
2. Interim Measures: Vedanta sought interim measures from the court to preserve the assets involved in the dispute. The court, adhering to the provisions of the 2015 amendment, granted interim relief, providing Vedanta with the necessary protection while the arbitration was pending.
3. Fast-track Procedure: Given the urgent nature of the dispute, the parties opted for the fast-track procedure under the 2015 amendment. The arbitral tribunal conducted expedited proceedings, and the dispute was resolved within six months, showcasing the effectiveness of the fast-track mechanism.
4. Enforcement of Award: Upon conclusion of the arbitration, in the tribunal issued an award favor of Vedanta. SSNP challenged the award on grounds of public policy. However, the court, reflecting the pro-arbitration stance promoted by recent reforms, upheld the award, emphasizing minimal judicial intervention and the finality of arbitral awards.

Analysis of the Case Study

The Vedanta case demonstrates several positive impacts of recent legal reforms on ICA in India:
1. Efficiency in Arbitrator Appointments: The 2019 amendment's provision empowering arbitral institutions to appoint arbitrators ensured a swift and unbiased constitution of the arbitral tribunal, reducing delays and enhancing the credibility of the process.
2. Effective Interim Relief: The court's prompt grant of interim measures under the 2015 amendment provided necessary safeguards for Vedanta, showcasing the judiciary's supportive role in facilitating arbitration.
3.Success of Fast-track Arbitration: The successful resolution of the dispute within six months through the fast-track procedure highlighted the efficiency and effectiveness of the expedited arbitration mechanism introduced by the 2015 amendment.
4. Pro-arbitration Judicial Attitude: The court's decision to uphold the arbitral award, despite challenges on public policy grounds, reflected the judiciary's adherence to the principles of minimal interference and respect for the finality of arbitral awards, as emphasized by recent reforms.[10]

Suggestions for bringing reforms to the arbitration law in India

Suggestions for reforming the arbitration law in India through the amendment of the 1996 Act are summarised below:
1. Section (2) (2) of the 1996 Act may clarify that “international commercial arbitration” is not limited to the party-centric definition outlined in Section 2 (1) (f).
2. A to refusal to refer parties to arbitration under Section 8 may be appealed under Section 37 (1) (a). However, a comparable refusal under Section 11 is not subject judicial review through an appeal. To achieve parity, it may be necessary to align both provisions.
3. The parties may not be prevented from obtaining interim reliefs under Section 9 or arbitrator appointments under Section ih solely because the agreement is not stamped or is not stamped sufficiently if there is prima facie evidence of an arbitration agreement.
4.Unless the remedy through arbitration is ineffectual and court intervention is essential, parties should be prohibited from obtaining pre-arbitral interim relief from the courts if emergency arbitration is available through institutional rules. Furthermore, the potential for courts to exercise discretion judiciously or to prohibit unsuccessful parties from seeking post-award interim relief should be investigated.
5. Institutions should be responsible for appointing arbitrators. Notice should be 1 given of the modifications to Section 11 made by the Arbitration and Conciliation (Amendment) Act, 2019.
6.Provided that the demands of Section 42B are met, the parties should be allowed to recover the fees from an arbitrator where non-disclosure or inadequate disclosure results in either termination of his mandate or annulment of the award by the seat court.
7.It is recommended that interim orders that are the result of emergency arbitrations be granted statutory status by putting the appropriate adjustments to Section 17 into effect.
8. A subclause may be added to Section 29 that states that, unless the parties agree otherwise, a minority opinion shall be attached to the award if it is made available within fifteen days of the receipt of the decision of the majority. This is the case unless the parties agree differently.
9. It is possible that the court may order the parties to submit their case in 1 accordance with Sections 34, 36, and 48 within predetermined number of 1 hearings or time periods, which will be established on a case-by-case basis.
10. The "patent illegality" justification for overturning arbitral rulings need to be eliminated since it is not valid.

[10] Patkar A. Indian Arbitration Law: Legislating for Utopia, 4(2) Indian Journal of Arbitration Law (2015).

11. An appeal shall only be allowed in accordance with Section 37(1)(c) if a court suspends an award in accordance with Section 34(2), and not in any other circumstances.
12. Provided that the parties do not agree differently, Section 42A ought to extend the duty of secrecy to all arbitral participants and let the parties to opt out of the need to maintain confidentiality.[11]
International Arbitration?", Arbitration International, Volume 33, Issue 2, 2017, pp. 229-244.
13. The phrase "establishes on the basis of the record of the arbitral tribunal" should be substituted for the phrase "furnishes proof" in the first paragraph of Section 48.
14. It is recommended that a provision be included to guarantee that the secrecy of arbitration is respected even in relation to judicial proceedings that include arbitration.
15. It is recommended that a provision be included that acknowledges and allows for the participation of third parties in international business arbitrations that are held in India.[12]
16. It is recommended that a provision be included to the 1996 Act to execute interim and emergency orders that have been issued in arbitrations that are held in foreign-seated jurisdictions.
17. It is recommended that a provision be included to Part II of the Act of 1996 to make it clear that Indian parties have the ability to choose a foreign seat. If there is 1 a reasonable or substantial foreign link in the contract, it is possible that it should be mandatory for Indian parties to pick a foreign seat. This is something that might be considered.
18. A schedule may be inserted to the 1996 Act, listing all the reciprocating territories notified by the Central Government under Section 44(b) (and updated periodically).
19. The Act of 1996 may also be amended to include a schedule that includes a table that details all the different limitation periods that are applicable in accordance with its provisions. This table specifically includes Section 37.
20. It should not be permissible for parties to avoid their requirements to strive to reach a peaceful solution by treating these commitments as if they were only a formality.
21. Codification of the notion that the payment of stamp duty is not required for the enforcement of foreign awards is something that should be completed.

Conclusion

The recent legal reforms in India have significantly impacted the landscape of International Commercial Arbitration, promoting a more arbitration-friendly environment and aligning India's arbitration framework with global standards. The case study of Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. illustrates the practical implications of these reforms, highlighting their positive impact on efficiency, interim relief, fast-track procedures, and judicial attitudes. However, challenges such as judicial intervention, inconsistency in judicial decisions, lack of awareness and training, and inadequate infrastructure persist. By addressing these challenges and leveraging the opportunities presented by recent reforms, India can enhance the effectiveness of ICA and position itself as a premier destination for international arbitration. Drawing on lessons from global arbitration hubs and adopting the recommended measures can further strengthen India's arbitration framework, fostering a conducive environment for international trade and investment.[13]

[11] Dholakia, Rahil S., "The Indian Arbitration and Conciliation (Amendment) Act, 2015: A New Era in
[12] Bhushan, V.K., "The Impact of the Arbitration and Conciliation (Amendment) Act, 2019 on International Commercial Arbitration in India" , Indian Journal of Arbitration Law, Volume 8, Issue 1,2020, pp. 101-121.
[13] Rebello AP. Of Impossible Dreams and Recurring Nightmares: The Set Aside of Foreign Awards in India ,6 (1) Cambridge Student Law Review (2010).