

A Study On Enforcement And Recognition Of International Arbitral Award In India

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Abstract

The execution of foreign arbitral awards in India in accordance with the necessary laws and regulations is the focus of this research study, which takes into account both local and global factors. The requirement for recognition and international arbitral awards is enforceable in India. In addition to providing a thorough analysis of the requirements and procedures for recognizing and enforcing foreign arbitral awards in India. In order to maintain equilibrium between the New York Convention and the Arbitration and Conciliation Act, 1966, the study also investigates whether specific and significant efforts in the field of arbitration with regard to international awards are required. This research paper tries to understand the

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working of the foreign arbitral awards.

Introduction

The ancient method of resolving conflicts has significantly helped in the resolution of interpersonal, social, and minor conflicts. In villages there was a system of panchayat where panchas used to solve disputes between the villagers and earlier it was believed that the words of the panchas were supreme and it had to be followed without any question.² But as time evolved there has been an expansion in global trade and a number of bilateral and multilateral trade agreements and conflicts have resulted from them.

With the introduction of the Lok Adalat, also known as the Arbitration Act of 1940, which was later altered by a more potent international trade system known as the Arbitration & Conciliation Act of 1996, court conflicts in India were first settled in 1982. When a prize is given to a nation other than the one where enforcement is required, a problem with the civil arbitration award's execution under Indian law occurs. Depending on the foreign policy, the state might not agree to pay a debt on awards given to one person or another.³ The main problem was that every country has its own laws and regulations and when there was a dispute between two countries then due to conflict between the laws, the enforcement of foreign awards was difficult.

² DR. Paranjape, Study on Alternative Dispute Resolution System (9th ed, 2020).

³ Kumar Sumit, Arbitral Award Its Challenge & Enforcement (March 2021).

When it comes to enforcement of domestic arbitral awards, it was easy because it was within the territory of India and enforcement can be done with the help of the Indian Judiciary. In the case of conflict with other countries, the Indian judiciary has no jurisdiction over issues resolved in other countries.

Research Objective

The objective of this research paper is to understand the enforcement and recognition of international arbitral awards in India. This paper tries to understand the working of the foreign arbitral awards. It also helps to understand who are the pertinent authorities who help in enforcement of the foreign awards. This research paper also gave emphasis on the steps that must be taken in order to enforce a foreign award and also talks about the limitations of enforcement of foreign awards.

Research Questions

1. Who are the pertinent authorities that are responsible for the enforcement of the foreign award?
2. What are the limitations regarding the enforcement of foreign awards?

History And Evolution Of Foreign Arbitral Award

With the establishment of the 1927 Geneva Convention on Execution of

Foreign Arbitral Awards and the 1923 Geneva Protocol on Arbitration Clause, the first strategy was established. The goal was to be included among the nations that ratified the aforementioned Protocol and Convention in order to make it possible for business disputes resulting from various underlying international agreements to be arbitrated.⁴ A new international convention on recognition for the recognition and enforcement of foreign arbitral awards emerged after multiple rounds of discussion. The New York Convention, created in 1958, is a convention of the United Nations on the recognition and enforcement of foreign arbitral awards. The Indian Legislature ratified the New York Convention in 1958 and passed the Foreign Awards (Recognition and Enforcement) Act in 1961 with the goal of establishing a reliable framework that would allow contracting nations to send their commercial disputes to arbitration.⁵

The Arbitration (Protocol and Convention) Act of 1937 and the Foreign Awards (Recognition and Enforcement) Act of 1961 were both repealed after the passage of the Arbitration and Conciliation Act of 1996. The UNCITRAL Model Law and Rules were followed in the enactment of the 1996 Arbitration Act. The main aim of this model was to establish common laws for alternative dispute resolution mechanisms so that if there is dispute between two countries then solving such dispute through ADRS and

⁴ Sahil and Ishit, Recent Development in Enforcement of New York Convention Award (2020).

⁵ Sahil Tagotra and Ishita Mishra, Recent Developments in Enforcement of New York Convention Awards in India (2020).

enforcing the award can be easily done.

Procedure For Enforcement And Recognition Of The International Award In India

India is a signatory to both the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927, and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention, 1958), (Geneva Convention, 1927). If a nation that is a party to one of the Conventions gets an award that needs to be enforced, that Convention's rules will apply to the recognition and enforcement of the award. The term "foreign judgment" is defined under Section 2(6) of the CPC as "foreign court judgment," which refers to a court outside of India that was not formed or run under the authority of the Central Government. India's ability to enforce international judgments depends on which nations are compliant and conciliatory.

According to section 47 of the Arbitration and Conciliation Act of 1996, the agreement from which the dispute had arisen must be submitted along with any proof that may be required to demonstrate that the award is a "foreign award." The seat of the arbitrator should be decided in the agreement, because 'seat' has the effect of determining the application of the laws of a particular country in making a decision after being awarded the arbitration

process.⁶ With regard to the stamping of the awards, the Supreme Court, ruled explicitly that it was not a requirement.⁷ Additionally, in the same case the Supreme Court also ruled that there isn't any need for registration and that the award can be enforced as a court order.⁸

Pertinent Authorities That Are Responsible For The Enforcement Of The Foreign Award

Judiciary or governmental offices are examples of major authorities with enforcement powers. Under India, the term "court" is defined as having jurisdiction over the award case in section 47 of the statute, which deals with the execution of a specific foreign award. This specifically refers to a court whose jurisdiction includes the assets or the party being served with the international arbitration award. When it comes to awards, the subject matter is defined differently under section 47 than it is under section 2(e) of the Act. The party must start a proceeding as described in section 47 in order to enforce and reward an award.⁹ When an international award was accepted in an Indian court, the Supreme Court set the precedent in this regard. The ruling itself raises a number of concerns about the external judgment and the external awards. the basis for the lawsuit and the court's ruling with respect to outside awards. Section 47 makes it clear that one

⁶ Union Of India Vs. Hardy Exploration and Production Inc, 7 SCC 374, (2018).

⁷ Shriram EPC Ltd. Vs. Rioglass solar, SA 18 SCC 313, (2018).

⁸ Id.

⁹ The Arbitration and Conciliation Act, 1996. § 47.

must approach the Supreme Court or the High Court to request the execution of foreign awards. However, Article V of the Convention on Recognition and Enforcement of Foreign Arbitral Awards states that national courts may choose not to enforce an arbitral judgment after it has been rendered.¹⁰ Since mediation is a private procedure, great care must be taken to preserve the essential principles of justice and impartiality.

Procedure For Enforcement Of Foreign Awards

The general national procedural norms that govern the enforcement of foreign judgments are divided into one of the following categories

1. specific laws controlling the implementation of norms of the imposition of uniform rules of procedure relating to the enforcement of an external judgment;
2. the application of the same general principle to all external rewards;
3. the imposition of application of standard procedural guidelines for enforcing domestic judgments.

At this point, the procedures that must be followed are carefully examined. In an international commercial arbitration when the award is passed in the favor of the one party, they will try to execute that award as soon as possible. The party against the award has an option to challenge this award

¹⁰ Vijay Karia vs. Prysmian Cavi, SCC ONLINE, SC 177, (2020).

with the hope that this award will be set aside.¹¹

The state is not permitted to consent to paying a debt on awards made by a foreign arbitration court or in accordance with a specific external legal procedure. When a party against whom such an award is made, if it fails to execute such an award then penalty can be imposed on such party. This penalty which is imposed is different and varies according to the rules and regulations set by different countries regarding execution of international arbitration awards.¹² The Geneva Convention of 1927 and the New York Convention of 1958, which established the provisions of the Arbitration (Protocol & Enforcement) Act of 1937 and the Recognition & Enforcement Act 1961, may make the foreign prize mandatory. Enforcement of the foreign award is to be executed in similar circumstances as if enforcement happens and is compelled under the general law on the ground of justice, equality and good conscience.¹³

Conditions For Enforcement Of Foreign Awards

1. Section 48 (1) provides that foreign prize is not compulsory in India if proven by the party to whom it is enforced;

a) the parties to the agreement are incapable of acting under any law

¹¹ Union of India vs. Hardy Exploration and Production, 7 SCC 377, (2018).

¹² BGS SGS Soma JV vs. NHPC LTD, SCC ONLINE, SC 1585 (2019).

¹³ Kumar Sumit and Avni, Recognition and Enforcement of Foreign Arbitral Award (2021).

imposed on them and the law of the country in which the award was awarded, i.e., the venue of the mediation, cannot be stated;

b) the agreement was invalid under the law provided by the parties to us and there is no provision for such legislation or the law of the country in which the award is made;

c) the flight test was not conducted by the award-winning court.¹⁴

2. Transfers were in part or entirely in excess of a mediation agreement in the event that a portion of the prize exceeding the size of the partnership could be divided into another prize.

3. The composition of the arbitral award, the jurisdiction or the procedure for its appointment was not in accordance with the terms of the arbitration agreement or there was no uniformity in the agreement or was not in accordance with the legal arbitration. The money has never been made binding on the parties or set aside or suspended by the appropriate jurisdiction which may be the residence of the arbitration tribunal may request the party applying under section 48 (1) to provide evidence to prove any existence or reasons for refusing compulsory compulsion

4. Pursuant to section 48 (2) of the Act, a foreign award may not be enforced in India if a court in India finds that.

¹⁴ Talat, Enforcement of Foreign Arbitral Award (2022).

Limitations On Enforcement Of Foreign Awards

In certain circumstances there might be certain limitations when it comes to the enforcement of the foreign awards. This circumstance usually arises when the court interferes with the enforcement of the foreign awards. Various limitations along with its reasons and what is the effect of such limitations on the enforcement of foreign awards is explained below.

1. INTERVENTION BY THE COURT:-

Being a borderless process is one of the major advantages of international commercial arbitration operation. A prize awarded in one country may be considered for free and must be enforced. The 1958 New York Convention on Recognition is the main source for this coercive case and Enforcement Foreign Arbitration Award, with 145 jurisdictions.¹⁵ Although there are limits on the enforcement of international arbitral rulings especially in India. In many circumstances it is seen that sometimes the award which is passed by the court is not in line with the laws of the country where the execution of the award is to be taken in place. In such circumstances the court has the power to intervene and set aside such awards. It is always suggested the proposal should be made in line with the law that has been established under the Article V of the New York Convention and the UNCITRAL model.¹⁶ The courts in India can interfere only in certain circumstances. Some of the

¹⁵ Oil and Natural Gas Corporation LTD vs. Saw Pipes LTD, 234 SC, (2003).

¹⁶ Renuagar Power vs. General Electric Car, AIR 860 (1994).

circumstances included when the international award is void, illegal or is against the law or the public policy.

2. PUBLIC POLICY OPPOSITION-:

It is governed by the rule of law and by conditions of justice such as bribery and corruption. In 2002, the International Law Association's International Commercial Arbitration Committee convened a public policy conference and adopted a public resolution that public policy should address International Social Policy and include¹⁷ -

1. The basic principles, related to justice or ethics that the Government wishes to protect even if it is not directly affected;
2. Laws designed to meet important political, social or economic needs of the State are termed as “lois de police” or “public policy laws”; and the Government's duty is to honor its obligations abroad.

Indian courts have shown great inclination to disrupt International Arbitration. Legal intervention in the field of compulsory award for public policy reasons is highly controversial. It is guaranteed that the position is only in exceptional cases where national courts may invalidate arbitral awards for public policy reasons. The law and the principles of international recognition of legal intervention can be considered that the courts do not

¹⁷ S. Sattar, National Courts and International Arbitration: A Two- edged Sword (2010).

have the power to enter into any arbitration dispute. It can lead you to sound law. Public policy is one of the most important weapons in the hands of national courts that allows it to refuse the enforcement of an alternative mediation award.¹⁸

3. ISSUES IN THE USAGE OF EXTERNAL ARBITRAL AWARDS:-

The main reason for all the delay in enforcing the law is the increase in the power of the court to review awards. Excessive legal interference leading to the adoption of a large number. of cases that should not be enjoyed in the first place by other evils that interfere with the resolution of trade disputes and impede economic growth and development.¹⁹ Sometimes a situation arises where the courts in India interpret the award according to their own desire which defeats the purpose of the award. This misinterpretation of the award by the courts has a huge impact on the arbitral award and its execution. This also sometimes leads to injustice. Since the courts do such acts in order to get the desired result, the parties become frustrated and disappointed. It also decrees the trust of the people on the alternative dispute resolution system.

Conclusion And Suggestions

¹⁸ Vijay karia vs. Prysman Cavi, SCC SC 177 (2020).

¹⁹ Bharat Aluminium CO. vs. Kaiser Aluminium Technical Service INC, 9 SCC 552, (2012).

It is important that an award should be made in a manner that is in line with the conventions and the international public policy. Award should not be in conflict with the laws of the country and it should give equal chance to the winning party to invoke the jurisdiction and exercise the local laws for the execution of the foreign award.

This research paper also studies the limitation to the enforcement and execution of the foreign arbitral award. These limitations delay the execution of the award. This becomes a major problem as it creates frustration in the parties leading to disappointment and loss of their trust in alternative dispute mechanisms. The New York convention also fails to mention what are the arbitral awards that can be applied and executed. The enforcement of foreign awards in India should be governed by new, distinct provisions. Foreign awards can be enforced in circumstances where there is no agreement or agreement in place, and this is equivalent to controlling the execution of foreign judgements. It is found that these guidelines provide a list of grounds for rejection, indicating that these grounds are conditional and that the national courts in India have never been authorized to compel the issuance of international awards under the national laws of other states.

The payment and receipt of international rewards shall not be subject to harsher restrictions or higher fees than those imposed on domestic arbitration awards. This can be done by eliminating the exclusions from India's procedural rules that apply to both local and international mediation

awards. If international arbitration becomes cost effective then this can benefit the alternative mechanism and people will opt for such alternative dispute methods.

To prevent abuse of enforcement, the three-year time limit for requesting enforcement of awards from external arbitrators must be acknowledged. The legislation should make a framework for controlling and should state how persuasive mediation submissions must be. The desire of the parties to express or recommend that a disagreement be submitted should not be left out of the dispute that should be resolved by the state in which it is sought to be enforced.

Another suggestion would be that the concept of less evidence should be introduced for the applicant for foreign awards. An arrangement should be made to understand domestic and international public policy for international arbitral awards. Lastly, public policy should not be formulated in a manner that violates the law of a country. The award should be made in such a manner that the court should have no reason to reject the foreign award.