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Enforcement of Indian Arbitration Awards in Foreign Jurisdictions: Navigating Compliance with International Conventions, Overcoming Challenges & Assessing the Need for Legal Reforms

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Abstract

The enforcement of arbitration awards in foreign jurisdictions is a critical aspect of international dispute resolution, ensuring that arbitral decisions are accepted and enforced across borders. This paper examines the complex landscape of enforcing arbitration awards globally, with a particular focus on navigating compliance with key international dispute resolution conventions on the Recognition and Enforcement of Foreign Arbitral Awards. While these conventions aim to provide a uniform framework for the recognition and enforcement of awards, their application often varies due to differences in national legal systems and judicial interpretations. Ultimately, national courts often prioritize domestic legal standards over foreign arbitral awards, thereby challenging uniform enforceability. This research explores the challenges faced by parties seeking enforcement, including issues related to public policy exceptions, national sovereignty, judicial discretion, and procedural delays. Additionally, the paper evaluates the effectiveness of existing legal frameworks, including the

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United Nations Convention on International Settlement Agreements, and assesses whether current international conventions adequately address emerging issues in cross-border enforcement. Through a critical analysis of conventions, agreements, and legal practice, the paper identifies key areas where legal reforms are needed by state members, with special reference to India's dual role—as both a signatory to international arbitration frameworks and a jurisdiction facing challenges in enforcement. It concludes by proposing potential reforms that could streamline enforcement procedures, strengthen the role of arbitration in global dispute resolution, and foster greater legal harmonization to ensure smoother cross-border arbitration award enforcement.

Keywords: arbitration awards, foreign jurisdictions, international conventions, cross-border enforcement, legal reforms, dispute resolution & arbitration

Introduction

Arbitration has emerged as one of the most preferred methods of dispute resolution for cross-border commercial transactions due to its efficiency, confidentiality, and enforceability. India's rapidly growing economy has led to a significant increase in cross-border commercial transactions, many of which are governed by contracts containing arbitration clauses.[1] This has resulted in a surge in international arbitration proceedings, making the enforcement of arbitration awards in foreign jurisdictions a critical aspect of maintaining investor confidence and upholding the sanctity of arbitral decisions. However, the enforcement process is not without its challenges. Variations in national laws, divergent judicial interpretations, and procedural hurdles often impede the smooth recognition and enforcement of arbitral awards.

This paper also seeks to explore the legal framework governing the enforcement of Indian arbitration awards in foreign jurisdictions, analyze the challenges associated with the enforcement process, and assess whether India's current enforcement regime is adequately aligned with international best practices, or if legal reforms are warranted.

[1] UNCITRAL (2021), Report of the United Nations Commission on International Trade Law: Fifty-fourth session (28 June–16 July 2021) Available at: https://uncitral.un.org/sites/uncitral.un.org/files/report_54th.pdf (Accessed: 9 March 2025)

Legal Framework & Enforcement

New York Convention (1958)

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958[2], is widely regarded as the cornerstone of international arbitration enforcement. India acceded to the Convention in 1960, and it was incorporated into Indian law through Part II of the Arbitration and Conciliation Act.[3]

The Convention mandates that contracting states recognize and enforce arbitral awards rendered in other contracting states, subject to limited grounds for refusal. Article V[4] provides the grounds for refusal, which include:

i) Incapacity of parties or invalidity of the arbitration agreement.
ii) Lack of proper notice or inability to present one's case.
iii) Excess of arbitral authority.
iv) Irregular composition of the arbitral tribunal.
v) Violation of public policy.

The Geneva Convention (1927)

The Geneva Convention on the Enforcement of Foreign Arbitral Awards (also known as the Geneva Protocol of 1927) was one of the first international treaties aimed at facilitating the enforcement of foreign arbitration awards. Its purpose was to establish a framework for the recognition and enforcement of arbitral awards across borders, promoting a more uniform approach to resolving international disputes[5]. Although largely supplanted by the New York Convention, the Geneva Convention of 1927 laid the groundwork for international cooperation in the enforcement of arbitral awards.

The Arbitration & Conciliation Act, 1996

[2] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.
[3] The Arbitration and Conciliation Act, No. 26 of 1996, pt. II, Acts of Parliament, 1996
[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38
[5] Geneva Convention on the Execution of Foreign Arbitral Awards, Sept. 26, 1927, 92 L.N.T.S. 302.

The Arbitration and Conciliation Act, 1996, modeled on the UNCITRAL Model Law, governs arbitration proceedings in India. Part II of the Act deals specifically with the enforcement of foreign arbitral awards. Section 44 of the Act[6] defines a foreign award as one delivered in a convention country in accordance with the New York Convention or the Geneva Convention. Section 48[7] of the Act lays down the grounds for refusing the enforcement of a foreign award, mirroring the exceptions enumerated in Article V of the New York Convention. These grounds include procedural irregularities, lack of jurisdiction, violation of public policy, and incapacity of the parties.

Compliance with International Conventions

Recognition & Enforcement under the New York Convention

The New York Convention provides a robust framework for the recognition and enforcement of foreign arbitral awards. Indian courts have generally adhered to. The Convention is guided by a pro-enforcement bias, meaning courts are encouraged to recognize awards unless clear and specific exceptions apply. It is enshrined in the Convention, with minimal interference unless compelling grounds for refusal exist.

Procedural Requirements for Enforcement

To enforce a foreign arbitral award, the award holder must fulfill certain procedural requirements, including:

- Producing the original or a duly certified copy of the award.
- Providing a duly certified translation of the award if it is not in English.
- Filing an application of enforcement before the appropriate High Court, which must have territorial jurisdiction over the subject matter or assets.

Challenges in Enforcing Arbitral Awards

Public Policy Exception

[6] Arbitration and Conciliation Act, No. 26 of 1996, § 44, Acts of Parliament (1996).
[7] The Arbitration and Conciliation Act, No. 26 of 1996, § 48, Acts of Parliament, 1996

The public policy exception remains the most contentious ground for refusing enforcement of foreign arbitral awards. Indian jurisprudence has evolved to narrow the scope of public policy, emphasizing that it should be confined to the "most basic notions of morality and justice." However, the interpretation of public policy by foreign courts often varies, leading to inconsistent outcomes.

Jurisdictional Issues

Jurisdictional conflicts arise when multiple courts claim jurisdiction over a dispute, creating uncertainty in enforcement. Anti-suit injunctions and parallel proceedings further complicate the enforcement landscape.

Procedural Hurdles & Delays

Procedural complexities and delays in foreign jurisdictions often frustrate the enforcement process. Differences in evidentiary standards, translation requirements, and documentary formalities contribute to protracted enforcement timelines.

Nonetheless, despite numerous notable advancements in a pro-arbitration national stance, several practical challenges still persist. Despite India's pro-arbitration stance, procedural inefficiencies and interpretative inconsistencies in its courts continue to hinder effective enforcement of foreign arbitral awards. While India asserts its commitment to uphold the finest traditions of international arbitration, the enforcement process is hindered by unnecessary delays and inconsistencies in judicial interpretations.

There are two phases involved in enforcing a foreign award in India:

An application to enforce a foreign award can be submitted under either Section 48[8] (conditions for enforcement) or Section 59[9] (appealable orders) of the Act. If the award is found to be enforceable, the court may mandate its execution, similar to a decree established pursuant to the Civil Procedure Code of 1908[10], and grant the relief sought by the award holder in their enforcement application. The mechanism by which an arbitral ruling made in one

[8] The Arbitration and Conciliation Act, No. 26 of 1996, § 48, Acts of Parliament, 1996
[9] The Arbitration and Conciliation Act, No. 26 of 1996, § 59, Acts of Parliament, 1996
[10] The Code of Civil Procedure, No. 5 of 1908, Acts of Parliament, 1908 (India)

jurisdiction is recognized and enforced in another is referred to as the enforcement of foreign arbitral awards. A foreign award, by its inherent nature, does not constitute a decree executable under the Arbitration Act. The enforcement of a foreign award takes place only after the court has resolved its enforceability under Part II of the Arbitration Act. The party must submit the necessary documents and evidence to the court at the time of filing the execution application to commence the enforcement process of a foreign award. In instances of an award governed by the New York Convention, Section 47[11] of the Arbitration Act mandates that the party in possession of the award must present to the court:

Either the original award or an appropriate authentication of a copy in accordance with the laws of the country where the award was issued:

1. The arbitration agreement; and
2. If deemed necessary by the parties, any evidence to substantiate that the award rendered is foreign.

The Arbitration Act does not prescribe a time limit for filing an application to enforce a foreign judgment. Nevertheless, Section 43 of the Arbitration Act further states that arbitrations are governed by the Limitation Act of 1963 or Limitation Act[12]. Additionally, the Limitation Act does not specify how foreign awards are to be enforced, and the Supreme Court noted that the residual provision in Article 137 and the Limitation Act sets the time limit for initiating proceedings for the enforcement of a foreign award. Therefore, the limitation period will commence for three years starting from the moment the right to apply arises.

Circumstances Under Which It Can Be Contested

Sections 48 and 57 of the Arbitration Act[13] provide reasons for contesting a New York Convention award and a Geneva Convention award respectively. Consequently, if any of the conditions referenced in sections 48 or 57 of the Arbitration Act are fulfilled, a party against whom a foreign award is rendered may challenge its enforcement. The statutory grounds for resisting enforcement are detailed in Sections 48 and 57 of the Arbitration Act, corresponding

[11] Arbitration and Conciliation Act, supra note 3, At 3
[12] The Limitation Act, No. 36 of 1963, art. 137, Acts of Parliament, 1963
[13] The Arbitration and Conciliation Act, No. 26 of 1996, §§ 48, 57, Acts of Parliament, 1996 (India)

to the New York and Geneva Conventions respectively. However, it should be noted that a court exercising discretion in enforcing the order retains the authority if one or more of the grounds specified under sections 48 or 57 of the Arbitration Act are present. The court will regard it as a decree of that court and implement the foreign award once it concludes that the foreign award is enforceable[14]. The court is not compelled to refuse enforcement even if a ground is established; it retains discretion based on the facts and equities of each case.

Annulment of a Foreign Award

While Indian courts may refuse enforcement of a foreign award, they do not possess the jurisdiction to annul it. Annulment powers rest solely with the courts in the arbitral seat, which have supervisory jurisdiction over the arbitration. Only the court in the jurisdiction of arbitration has the power to annul a foreign award because that court possesses supervisory or primary authority over that arbitration.

Key Provisions After the 2015 Amendment

The 2015 amendments to the Arbitration Act significantly curtailed judicial discretion to refuse enforcement on substantive grounds, aligning Indian law with international best practices.

Section 48(1)[15]: The five grounds for refusal have been considerably reduced in scope.

Section 48(2)[16]: Refusal on the basis of non-arbitrability or public policy. This amendment clarifies that the refusal cannot rely solely on the merits of the case.

Challenges

Challenges of International Arbitration

i) Ad-hoc arbitration in India & Indian Institutional Arbitration

In ad-hoc arbitration, there is no arbitration body to supervise the proceedings, trials, and prosecutions. Ad-hoc arbitration permits the disputing parties to create their own mutually

[14] Enforcing foreign arbitral awards in India challenges procedures (2024) Vaidat Legale Services. Available at: https://legale-services.com/enforcing-foreign-arbitral-awards-in-india/ (Accessed: 19 March 2025)
[15] The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 48(1), Acts of Parliament, 2015
[16] The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 48(2), Acts of Parliament, 2015

agreed-upon rules. These rules encompass the process for selecting arbitrators, the arbitration adjudication method, the specific award desired, the applicable law utilized during arbitration, and the arbitration venue. An organization does not impose any time constraints to expedite the process, and the fees are not regulated. Additionally, there is no dedicated panel available for selecting arbitrators. There are no provisions for dismissing arbitrators for non-compliance with agreed rules, raising concerns about transparency and ethical accountability. Moreover, there are no alternative arbitrators, and if necessary, the parties must agree on a newly appointed arbitrator during the arbitration process, which significantly increases the duration. Lastly, there is no oversight on pre-award activities. Thus, appeals are likely to occur.

Conversely, in institutional arbitrations, the chosen institution delineates the rules that will govern the arbitration process. The institution offers the parties a panel of arbitrators to select from (facilitating timely proceedings), as well as a hearing facility (more economical than securing a costly venue on an ad hoc basis). The fees are regulated, penalties for non-compliance are imposed, pre-award reviews (which lessen appeals and lengthy procedures) are conducted, and replacement arbitrators (providing cost and time-efficient service) are accessible.

ii) Major Challenges in Arbitration

Arbitration in India is recognized as a lengthy and drawn-out alternative to litigation. The existing backlog of cases in the Indian court system does not promote the practice of arbitration, given their "independence" as stipulated under Section 5 of the 1996 Arbitration and Conciliation Act. Judicial intervention prolongs the arbitration process, particularly as Indian courts often seek adjournments during proceedings. Enforcement of awards and disputes regarding an award are both extraordinarily time-intensive and lengthy procedures that dissuade parties from choosing arbitration.

The cost-effectiveness can fluctuate based on the ongoing conflict and/or the type of arbitration (ad hoc or institutional) implemented. Substantial fees may be incurred by arbitrators and party representatives in both arbitration types, differing in extent. In ad-hoc arbitration, the parties may have to cover the expenses of expensive venues, frequently

costly hotels. In formal arbitration, legal costs for managing the arbitration process must also be addressed. While arbitration serves as a cost-effective alternative to litigation in numerous countries, in India, it is considered expensive due to the prolonged duration associated with arbitration.

The execution of foreign arbitral awards in India is predominantly directed by the 1958 New York Convention, integrated into Parts I and II of the 1996 Act. Domestic awards are regulated by Section. 36 of the 1996 Act, which indicates that 'an arbitral award shall be enforceable as a court order and may be imposed as a decision in a suit under the rules of the Code of Civil Procedure, 1908. In India, enforcing an award can take as long as eight years, whereas it typically requires six months at an international institution. Furthermore, "A New York Convention State may also refuse to recognize or enforce arbitral awards if the subject-matter of the dispute cannot be settled by arbitration under its own national law; Or where such recognition or compliance would be counter to the conceptions of public policy of the individual State. "Public policy" in Indian arbitration has evolved into a broad and continuously expanding notion, primarily observed in appeals. Delays in regulation are a significant barrier in Indian arbitration, discouraging foreign investors from placing their investments in Indian companies.

According to Article 34(2)(b)(ii) of the 1996 Act, a party to an arbitration may contest an award if: 1) the party is in a situation of incapacity, 2) the arbitration agreement is invalid, 3) the party is unable to present the case and is not given proper notice, 4) the award exceeds the terms of reference, and 5) the award is contrary to public policy. Indian courts have not yet clarified the term "public policy," which presents a subjective basis for arbitral appeals, determined on a case-by-case basis. This increases arbitration duration and cost, and it also diminishes the predictability of results, failing to offer a sense of security for foreign investors engaged in the Indian arbitration process.[17]

[17] Centre, V.M., International Arbitration Challenges in India | VIA Mediation Centre. Available at: https://viamediationcentre.org/readnews/Mzc1/International-Arbitration-Challenges-in-India (Accessed: 18 March 2025).

In Renusagar Power Co. v. General Electric Co.[18] the Court determined that an arbitral award would contradict India's public policy if it violated:

- A fundamental Indian law policy,
- India's interest, or
- Notions of justice or morality.

This ruling broadens the interpretation of the term 'public policy' and does not aid arbitrators and authorities in interpreting the law, creating space for unpredictability and conflicting precedents. The subjectivity of the term permits any party to seek an appeal on "public policy" grounds, contributing to the already clogged court system.

All these significant challenges in Indian arbitration have led the international community to see India as an unfavorable destination for international arbitration. Nevertheless, India persistently strives to overcome these obstacles and to adhere to legislation appropriately, without any loopholes and with reduced subjectivity.

iii) Challenges in Enforcement of Foreign Arbitral Awards in India

The Indian enforcement mechanism stipulates grounds under which a foreign award may be denied execution if any of the adequate criteria specified in Section 48(1) of the act are met by the party against whom the award is enforced. Section 48 outlines grounds such as: One of the parties being under some incapacity, meaning if any party to the arbitration proceedings is deemed incompetent under existing laws, the award may be nullified. Incapacity encompasses "involuntary incapacity, undue control, deception, duress, or misrepresentation. " An arbitral award exceeding the scope of arbitration implies that the Tribunal's authority is limited to what is submitted within its jurisdiction. The Tribunal can only address matters presented and cannot extend its discussion beyond that jurisdiction. An award that falls outside the bounds of arbitration is likely to be reversed by courts. The legality of an arbitration tribunal's procedure indicates that an arbitral award can be annulled if the Tribunal was not formed with the parties' consent or did not adhere to the agreement established by the parties. Additionally, if any party was not notified about the

[18] Renusagar Power Co. Ltd vs General Electric Co, 1994 AIR 860

appointment of the arbitrator or the conduct of arbitration proceedings, such an omission would violate principles of natural justice. Public policy, meaning an award given in breach of the country's public policy, will be unenforceable. Awards issued in violation of public policy may serve as a barrier to their compliance. Indian courts are mandated to refuse the enforcement of awards that contradict Indian public policy. If an award is annulled by the appropriate authority in the country where the arbitral award was rendered, that arbitral award shall not be binding on the parties and would not be enforceable within the Indian legal framework.

Analysis

It can be assessed that the Indian judiciary, along with legislative efforts, has enhanced its standing concerning the enforcement mechanism of foreign awards. The Government has put forth innovative and effective policies to address the requirements of both corporations and society. It can be assessed that in light of the existing justice-delivery system, improvements in India's arbitration mechanism are necessary, and innovative policies need to be created to meet societal demands. The decisions in Vijay Karia and Vedanta represent crucial judgments regarding enforcement and have clarified for the parties the distinct procedures for execution. Moreover, the actions of litigating parties attempting to hinder the execution of foreign judgments will be significantly reduced, as determined in the Vijay Karia case where substantial costs were imposed on parties violating the procedures. Ultimately, the Supreme Court has reinforced India's image as an arbitration-friendly nation by ruling that courts possess the discretion to enforce a foreign arbitral judgment even when specific grounds for refusal are presented.

Nevertheless, India still has considerable progress to make to be recognized as the most welcoming nation for arbitration. Therefore, recent rulings indicate that Indian courts have adopted a pro-enforcement stance while firmly adhering to the principle of “non-interference with arbitral awards. Indian courts and legislators have been ensuring the formulation of robust initiatives to encourage swift enforcement of arbitral decisions in order to enhance India’s reputation as a jurisdiction favorable to arbitration.

Comparative Study on Enforcement of Arbitral Awards in Reference to Recent Developments in the Middle East & India

In recent times, the Middle East and India have progressed in arbitration law, becoming more aligned with international standards while addressing regional complexities.[19] This Post examines the latest developments and critical challenges and provides perspectives for effective implementation in these markets, assisting practitioners and stakeholders in predicting obstacles and planning for success.[20]

Legal Framework

Most Arab Middle Eastern nations operate under civil law. However, certain Gulf Cooperation Council[21] nations have adopted a dual legal structure where civil law courts, referred to as "on-shore" courts, coexist with common law courts known as "off-shore" courts. This scenario is evident in Dubai, Abu Dhabi, and Qatar, where the legal framework of the country is split into two sets of regulations. Common law courts, such as the Dubai Financial Center and International Arbitration Centre in Dubai, Abu Dhabi Global Market Courts etc., are currently considering the implementation of a similar system.

Arbitration Framework

In the effort of modernising and harmonising national arbitration regulations, many nations in the Middle East have adopted, to different extents, the UNCITRAL Model Law on International Commercial Arbitration ["UNCITRAL Model Law"] as a foundation for substantial reform aligned with leading international arbitration standards. This is further represented in the revisions to the arbitration regulations of KSA (2021), Qatar (2017), the

[19] Dr. Zeina Obeid, Mr. Tariq Khan (2024) Arbitral Award Enforcement: Recent Developments, challenges, and practical insights from the Arab Middle East and India, IJAL. Available at: https://www.ijal.in/post/arbitral-award-enforcement-recent-developments-challenges-and-practical-insights-from-the-arab-mi (Accessed: 19 March 2025).
[20] Madkour, M., Rizk, G., Ajami, S., & Karam, N. (2025). Arbitration Developments in the MENA Region. Daily Jus. Available at: https://dailyjus.com/legal-insights/arbitration-for-in-house-counsel/2025/04/arbitration-developments-in-the-mena-region (Accessed: 2 April2025)
[21] Gulf Cooperation Council, About Us, https://www.gcc-sg.org/en/AboutUs/Pages/default.aspx (last visited March 15, 2025)

United Arab Emirates ["UAE"] (2018 as revised in 2023), Bahrain (2015), and Jordan (2018).[22]

In Saudi Arabia, for example, Saudi Justice Minister Walid Al-Samaani indicated that: "the Saudi appellate courts and panels have dealt with more than 4000 arbitral awards rescission claims, and they have confirmed 90% of these awards."[23]

India has similarly based the Arbitration and Conciliation Act, 1996 on the UNCITRAL Model Law. Additionally, the Arbitration and Conciliation (Amendment) Bill, 2024[24], which is presently at the stage of gathering public feedback, is poised to revolutionise the arbitration landscape in India. Furthermore, both the Arab Middle Eastern countries and India are signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

India's increasing engagement in institutional arbitration and recent advancements, including the Amendment Bill, 2024, designed to lessen dependence on ad hoc arbitrations, have resulted in the formation of several arbitration centers such as the Mumbai Centre for International Arbitration, the Delhi International Arbitration Centre, and the International Arbitration and Mediation Centre, Hyderabad.

In Egypt, the Cairo Court of Appeal, Circuit (7) in Case No. 44 of 143 dated 9 May 2019 determined that interim measures ordered by an arbitral tribunal and issued via a procedural order can be enforced based on the New York Convention, provided that:

(i) the interim order is final;

(ii) the interim order is issued pursuant to a valid arbitration agreement;

(iii) both parties had the chance to present their case in arbitration; and

[22] UNCITRAL (2021), Report of the United Nations Commission on International Trade Law: Fifty-fourth session (28 June–16 July 2021) Available at: https://uncitral.un.org/sites/uncitral.un.org/files/report_54th.pdf (Accessed: 9 March 2025)
[23] Ministry of Justice (Saudi Arabia), News Details, https://moj.gov.sa/english/MediaCenter/News/Pages/NewsDetails.aspx?itemId=1017 (last visited March 9, 2025)
[24] Arbitration and Conciliation (Amendment) Bill, 2024, Bill No. 123 of 2024, Ministry of Law and Justice, Government of India, https://www.scobserver.in/wp-content/uploads/2025/02/2024-Draft-Arbitration-Amendment-Bill.pdf (last visited March 15, 2025)

(iv) the interim order does not contravene Egyptian public policy.

Importantly, the enforcement of Indian awards in Dubai does not necessitate additional conditions, unlike the enforcement of UAE-based awards in India. With the modernization of the UAE Arbitration Law, parties can also seek enforcement directly before the Dubai-onshore courts. These proceedings mirror those in the Dubai courts and are typically straightforward.

In India, enforcement entails a two-step process beginning with the filing of an execution petition. Initially, the Court evaluates whether the arbitral award meets the criteria established under the Arbitration Act. If found enforceable, the award is recognized and executed as a court decree. This process at the institutional arbitration level is poised for significant transformation if appellate arbitral tribunals, as stipulated in the Amendment Bill, 2024, are implemented.

Objections to the enforcement of foreign awards in India must be examined in light of Section 48 of the Arbitration Act, which includes – the authority to annul an arbitral award rests exclusively with the courts at the arbitration seat, which maintain primary jurisdiction over the award; a ruling from the arbitration seat that dismisses a challenge to the award is not binding under Section 48 of the Arbitration Act but may be taken into account in enforcement proceedings; public policy arguments under Section 48(2) for opposing the enforcement of foreign awards are confined to narrowly defined, internationally accepted standards, unlike the more expansive grounds applicable to domestic awards under Section 34; only essential principles of morality or justice can serve as bases for bias claims; courts may also note if a challenge was not presented at the seat court; even if grounds under Section 48 are satisfied, the enforcement court retains the discretion regarding whether to deny enforcement or not.

Enforcement Challenges

1) In the Middle East

a. Jurisdictional Challenges

The Dubai Court of Cassation has denied enforcement due to the lack of domicile of the award debtor in the UAE. In the 2013 Canal de Jonglei case[25] (Dubai Court of Cassation

[25] Canal de Jonglei Case, Dubai Court of Cassation Petition No. 156 of 2013 (U.A.E.)

Petition No. 156 of 2013), the court utilized the provisions of the Civil Procedure Law instead of the New York Convention, refusing exequatur to three awards seated in Paris because the Sudanese government ministry involved was not domiciled in the Emirates. Another significant ruling is from 2022 (Dubai Court of Cassation Petition No. 790 of 2022), where the court reiterated that for a foreign judgment or award to be enforced, the domicile of the judgment debtor must fall within the territorial jurisdiction of the Dubai Courts.

b. Legal Cost Challenges in the UAE

Initially, under the 2007 DIAC Rules[26], awards were partially annulled if they addressed legal fees without the explicit consent of the parties. This issue was addressed by Article 36(1) of the 2022 DIAC rules. Despite this advancement, the Dubai Court of Cassation, Case No. 821 of 2023, dated 5 February 2024, partially annulled an award on the grounds that both Article 46(1) of the UAE Arbitration Law[27] and Article 38(1) of the 2021 ICC Rules[28] outline a limited list of "arbitration expenses" and "costs of the arbitration" respectively, which do not encompass legal fees. Fortunately, in a recent ruling delivered on 19 November 2024, the Dubai Court of Cassation in appeal no. 860/2024 overturned the earlier decision, stating that legal costs, which consist of the lawyers' fees paid by the parties to their legal representatives during the arbitration proceedings, are deemed reasonable costs. Consequently, these costs are recognized as part of the arbitration expenses, which the arbitral tribunal assesses and decides upon in accordance with Article 38 of the ICC Rules.

c. Witness & Experts to take Oath

A crucial matter that practitioners in the region must recognize is the necessity for witnesses and experts to take an oath, which, if not adhered to, could result in the award being annulled or its enforcement being denied. This is applicable in Jordan, UAE, and Syria. For instance, in Case No. 96/2022 (Civil) dated 2 June 2022, the Dubai Court of Cassation invalidated an

[26] Dubai International Arbitration Centre, DIAC Arbitration Rules (2022), https://www.diac.ae (last visited March 10, 2025)
[27] Federal Law No. 6 of 2018 on Arbitration, art. 46(1) (U.A.E.)
[28] International Chamber of Commerce, ICC Rules of Arbitration, art. 38(1) (2021)

award issued under the 2007 DIAC Rules due to the witnesses not having taken an oath. Recently, the Dubai courts seem to be moving away from requiring Tribunal-appointed experts to take an oath. This transition arises from the Dubai Court of Cassation's ruling in Case No. 1406 of 2023, dated 28 November 2023, which determined that Tribunal-appointed experts are not required to take an oath. Nevertheless, concerning party-appointed experts, the Court upheld its stance, and the mandate to take an oath persists.[29]

2) In India

a. Public Policy Challenges

Both Section 34 and Section 48 of the Arbitration Act state that an arbitral award may be annulled if it violates the public policy of India. The Arbitration and Conciliation (Amendment) Act, 2015, introduced Explanation 1 to Section 34 and Section 48 with the intention of clarifying the scope of public policy and restricting its application to,[30]

- awards induced or influenced by fraud or corruption or in breach of section 75 or section 81 of the Act,
- in opposition to the fundamental policy of Indian law, or
- in contradiction with the most basic principles of morality or justice.

From Renusagar Power Co. v. Gen. Elec Co.[31] to Vijay Karia v. Prysmian Cavi E Sistemi SRL[32], the enforcement framework in India has progressed, becoming more pro-arbitration as the definition of public policy has become more confined. With the Amendment Bill, 2024, Section 34(2-A) is proposed to be added, which permits partial annulment of the award on the basis of public policy or patent illegality. Under the suggested Section, the

[29] Mohamed ElGhatit, Enforcement of Local Arbitration Awards in the Arab World and Overseas, Hogan Lovells (Sept. 2013), https://www.hoganlovells.com/~/media/hogan-lovells/pdf/publication/dublib0193514v1clientnoteenforcementoflocalarbitrationawards_pdf.pdf.
[30] Nishith Desai Associates, Public Policy and Arbitrability Challenges to the Enforcement of Foreign Awards in India, https://www.nishithdesai.com/Content/document/pdf/Articles/Public_Policy_and_Arbitrability_Challenges_to_the_Enforcement_of_Foreign_Awards_in_India.pdf (last visited March 15, 2025)
[31] Renusagar Power Co. Ltd. v. Gen. Elec. Co., AIR 1994 SC 860
[32] Vijay Karia v. Prysmian Cavi E Sistemi SRL, AIR 2020 SC 1807

basis of patent illegality, which used to apply solely to the annulment of domestic awards, will now also extend to foreign awards.

b. Emergency Arbitration

In India, the legal status of emergency arbitration is still somewhat ambiguous, but may be clarified with the proposed Section 2(1)(ea) to the Arbitration Act, which gives a formal definition of an emergency arbitrator under the newly proposed Section 9-A. Moreover, the Supreme Court in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.[33] clarified that interim orders made by emergency arbitrators are enforceable in India just like those issued by arbitral tribunals. Therefore, the Supreme Court's current position on the enforcement of emergency arbitration decisions in arbitrations seated in India is that an emergency arbitrator qualifies as an arbitral tribunal under Section 2(1)(d)[34] of the Arbitration Act. With the introduction of the proposed Section 9-A, an arbitral institution may appoint an emergency arbitrator prior to the establishment of the Arbitral Tribunal, specifically for the purpose of granting interim measures as outlined in Section 9 of the Arbitration Act, and an order made by an emergency arbitrator shall be enforced in the same manner as an order issued by the Arbitral Tribunal under Section 17(2) of the Act.

c. Automatic Stay on Awards

Initially, according to Section 36 of the Arbitration Act, an arbitral award could not be enforced while a petition to annul it under Section 34 was pending. This resulted in an automatic stay upon filing a challenge. However, the 2015 Amendment Act abolished the automatic stay provision and instead mandated the award debtor to seek a stay.

Key Takeaways

Middle Eastern courts have embraced a non-intrusive approach, minimizing interference in arbitral awards by avoiding reviews of their merits. This practice strengthens judicial respect for arbitral autonomy, consistent with the global arbitration standard. India could gain from a

[33] Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., AIR 2021 SC 3723
[34] The Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d), Acts of Parliament, 1996 (India)

similar commitment to limited judicial scrutiny, particularly regarding merit-based reviews, to enhance its pro-arbitration position and promote international investment.

The Amendment Bill, 2024 does to some extent tackle this concern by introducing expedited timelines under Section 8, 9, 11, 16, and 37. Additionally, the proposed Section 7(6) empowers the Council to formulate a model arbitration agreement that parties can incorporate in their contracts. When successfully implemented, this provision has the capacity to significantly reduce interpretational disputes.

India's restricted public policy scope following the 2015 Amendment Act represents progress in this direction, but ongoing refinement and consistent application of these standards could aid in preventing arbitrary enforcement barriers and enhance India's arbitration-friendliness.

Case Law Analysis

Indian jurisprudence has witnessed a progressive shift towards minimizing judicial intervention in arbitral awards. Landmark cases include:

1. Bharat Aluminium Co. v. Kaiser Aluminium (BALCO) [2012][35]

The dispute in the BALCO case arose from an agreement between Bharat Aluminium Company, an Indian entity, and Kaiser Aluminium Technical Services Inc., a U.S.-based company, which included an arbitration clause.

The Supreme Court clarified that Part I of the Arbitration Act does not apply to foreign-seated arbitrations, enhancing India's credibility as an arbitration-friendly jurisdiction. The BALCO judgment restricts Indian courts from interfering in foreign-seated international arbitrations, promoting party autonomy and respecting the chosen arbitration seat.

2. Vijay Karia v. Prysmian Cavi E Sistemi Srl [2020][36]

In recent years, Indian courts have taken a more pro-enforcement posture concerning international arbitral decisions. The Supreme Court's recent decision in this case is not only a

[35] Bharat Aluminium Co. v. Kaiser Aluminium (2012) 9 SCC 522
[36] Vijay Karia v. Prysmian Cavi E Sistemi Srl [2020] 11 SCC 1

reaffirmation of this stance, but it can also be interpreted as an attempt to dissuade litigious parties from exhausting all available avenues of a challenge to foreign arbitral awards.

The Court reiterated the limited scope of judicial review while enforcing foreign arbitral awards and emphasized the narrow construction of public policy.

3. Renusagar Power Co. Ltd. v. General Electric Co. [1994][37]

The parties had agreed to ICC arbitration in Paris. When a dispute arose, Renusagar contested its arbitrability, but the Supreme Court rejected this claim. An award was rendered in favour of General Electric which it sought to enforce before the High Court of Bombay. The High Court enforced the award and Renusagar appealed to the Supreme Court.

The Supreme Court clarified that under Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961, enforcement of an award would violate public policy only if it contravenes fundamental legal principles, national interest, or morality. Finding no such violation, the Court upheld enforcement.

Conclusion

The enforcement of Indian arbitral awards abroad is critical to supporting cross-border trade and attracting foreign investment. While India's legal framework- grounded in the Arbitration and Conciliation Act, 1996 and aligned with the UNCITRAL Model Law- offers a solid foundation, enforcement challenges remain. Inconsistencies in applying the public policy exception, procedural delays, and occasional judicial overreach continue to hinder predictability and efficiency.

To enhance India's arbitration reputation, reforms must focus on narrowing the public policy exception, reducing enforcement timelines, and strengthening cross-border judicial cooperation. With these measures, India can improve confidence in its arbitral regime and solidity its position as a credible seat and enforcement venue for international arbitration.

[37] Power Co. Ltd. v. General Electric Co. (1994) SCC Supl. (1) 644