INDIA AS A HUB FOR INTERNATIONAL COMMERCIAL ARBITRATION: AN OVERVIEW IN REFERENCE TO THE AMENDMENTS IN INDIAN ARBITRATION LAW

Rajesh Bahuguna* &
Vijay Srivastava**

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. In this paper the authors mainly examine some major areas of concern viz. some opinions of stake holders of International Commercial Arbitration as well as the Indian Government's efforts for making India as a hub for ICA in the light of Foreign Direct Investment (FDI) policies. It may be noted that applicability of law and principles of lex arbitri under ICA and recourse against foreign award in India have also been discussed with the help of leading cases. The article also highlights the lacunas of ICA and prescribes some remarkable suggestions for improvement for making India as a hub for International Commercial Arbitration.

Key words

International Commercial Arbitration (ICA), Cross Border Commercial Issues, Foreign Direct Investment (FDI) and lex arbitri.

I. INTRODUCTION

The global trading community, has shown deep distrust due to the excessive judicial supervision even in the context of foreign arbitrations, has set alarm bells ringing in the government and judiciary. The International business community all across the globe has accepted international commercial arbitration[1] as an effective mechanism for resolving its commercial disputes. reluctance of parties to have matters decided by the national court of the other disputing party, with perhaps unknown law, language and culture, is treated as one of the major reasons for this preference. The history of arbitration as an informal mechanism of dispute settlement in the Asian continent can

* Ph.D., Professor, Principal & Dean, Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand.

**Research Scholar, Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand.

[1]The terms 'International Arbitration' and 'International Commercial Arbitration' are used as 'ICA' interchangeably.

be long back to ancient times.[2] The political and economic conditions that existed in various countries in the continent created major uncertain blocks for the growth of commerce and trade until the beginning of the 20th century.

The region has also clear aggression towards cross- border arbitration for the settlement of international commercial disputes. Asian countries felt, their concern especially for ICA, first time ever; Many countries in the region increased a noteworthy economic impetus after the Second World War and experienced an remarkable record of growth in the last few decades.

Over the past few years, the world trade communities has spectator an increasing number of cross-border disputes, especially investments; along with a simultaneous rise in international disputes. The commercial parties support ICA for the settlements of such disputes. There is a major doubt that the choice of arbitral seat is control inter alia by the arbitral set up and the intervention of judiciary in the place of arbitration. Asian countries have responded to these demands through effective development of their strong mechanism for ICA, together with noteworthy initiatives to bring up to date their domestic arbitration laws. Following this pitch in ICA, there has also been a lot of increase in the conflict of laws especially in legal systems of various countries, for example: India, Hong Kong, Singapore, Malaysia, Dubai etc.

Amendments to the Arbitration and Conciliation Act, 1996, have been very long awaited changes in arbitral world especially for ICA in India. It is much expected from The Arbitration and Conciliation Act, 1996, (Amendment) Act, that it will prove as effective tool for ICA. The Amendment is intended at bringing about a constructive change in the arbitration law by preventing ambiguity and irregularity in India's arbitration law. It is hoped that it will promote the use of arbitration in India, as well as promote India as a venue for international arbitration. However, despite the legislative intervention, the Amendment may not be able to resolve certain issues.

The Indian legislature introduced the Arbitration and Conciliation Act, 1996 as it was realized that the then existing arbitration law had become obsolete.[3] The authors discuss some issues, where judicial involvement is further necessary to determine the inconsistency and uncertainty that have mushroomed under arbitration law. The ambiguity adjoining the law leading the arbitration agreement in ICA is a major discussed issue in this paper. Along with this issue the problems relating, whether two Indian parties can select a foreign seated arbitration, and hence prohibit the Part I of the Arbitration and Conciliation Act, 1996.[4]

---

[2] Simon Greenberg, *et al., International Commercial Arbitration: An Asia Pacific Perspective,* (2011). for example, arbitration in china can be traced back to about 2100 – 1600 BC.

[3] Prior to the enactment of the Act, the arbitration regime in India was governed by multiple legislations, which were often criticized for the extensive judicial intervention permitted there under. Domestic arbitrations were governed by the Arbitration Act, 1940 and recognition and enforcement of foreign awards was provided for under two separate legislations, the Arbitration (Protocol and Convention) Act, 1937 (for awards under the 1927 Geneva Convention) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (for awards under the 1958 New York Convention).

[4] Arbitration and Conciliation Act, no. 26 of 1996 (India), § 2(2) [Part I] shall apply where the place of arbitration is in India.

The prime objective of reform in Indian arbitration law to make it effective and responsive in terms of Economic reforms and it may completely successful if its dispute resolution provisions are in harmony with the international commercial administration. Part I of the Arbitration and Conciliation Act 1996, which governs Domestic arbitrations, is drafted on the basis of guidelines of UNCITRAL Model Law on International Commercial Arbitration, 1985. Under the Act, arbitration emerged as a frequently used method of alternate dispute resolution. However, it has become synonymous with high costs and delays, plagued by the same ills as litigation, which it had intended to replace.

As a consequence, foreign investors and corporate hoses which are doing business in India became anxious of the risks correlated with arbitration proceedings in India. Once again, the Government of India identifies the critical requirement to amend the Indian arbitration law. After two unsuccessful attempts to motivate alteration in 2001[5] and 2004[6] the Law Commission of India token up an initiatives to amend the Act in 2010 and submitted its report by August 2014.[7] These recommendations were recognize by the Parliament and received presidential assent on December 31, 2015.[8]

The Amendment has convey the extensive alteration to the arbitration set up in India, and has deal with various concerns concerning postponement and unnecessary interference by the courts. Most of the changes comprise the availability of interim relief in case of ICA located outside India, which will protect foreign parties by securing the assets of the Indian party, if necessary[9] The definition of Court' for ICA is now specifically mean the High Court.[10] The Amendment also incorporates provisions of the IBA Guidelines on Conflicts of Interests in ICA, which establish impartiality of arbitrators and guarantee autonomy and neutrality of arbitrators, introducing intelligibility in the whole arbitral process.[11] The explanation of public policy' has been justified and further bound in case of ICA , to help courts while shaping a challenge to a domestic award or enforcement of a foreign award.[12] The Act now permits arbitrators to award penalty based on whether, *inter alia,* the party made a frolicsome counter claim or that it decline any sensible offer to resolve the dispute.[13] These changes will have a noteworthy impact on the way arbitrations are conducted in India for ICA and it is expected that the Amendment will fetch a optimistic change to the method India is professed as a seat for ICA.

---

[5] Law Commission of India, Report no. 176 - the Arbitration and Conciliation (Amendment) Bill, 2001 (2001), available at: *http://lawcommissionofindia.nic.in/arb.pdf*

[6] Ministry of Law and Justice, Justice Saraf Committee Report on Implications of the recommendations of the Law Commission's 176th Report and Amendment Bill of 2003 (2005).

[7] Law Commission of India, Report no. 246 – amendments to the Arbitration and Conciliation Act, 1996, 25 (2014), available at: *http://lawcommissionofindia.nic.in/reports/report246.pdf*

[8] Arbitration and Conciliation (Amendment) Act, no. 3 of 2015 (India).

[9] Arbitration and Conciliation Act, no. 26 of 1996, § 2(2).

[10] *Id.* § 2(1)(e)(ii).

[11] This is provided in Section 12, read with fifth schedule and seventh schedule, Arbitration and Conciliation Act, 1996.

[12] The Arbitration and Conciliation Act, no. 26 of 1996, §34, §48.

[13] *Id.* § 31a (3).

II. CONFLICTING ISSUES IN INTERNATIONAL COMMERCIAL ARBITRATION:

The proper law of the arbitration

'*Lex Arbitri*' has been most significant issue in whole arbitration process in India , especially in ICA. It refers the law applied in the arbitration agreement, which is one of the areas which is vague and required imperative justifications. It also focuses on the applied law of the arbitration agreement' or *'lex arbitri'*[14] in ICA. Which is also known as the conflict of laws rules applicable to select each of the foregoing laws.[15] It is largely agreed that there are broadly three sets of laws which apply to arbitration:[16]

The principle of party autonomy allows parties to choose different laws, for all the above, in their contracts. preferably an arbitration clause would recognize all three kinds of law, however, parties often fail to specify the *lex arbitri* send-off it to the courts to determine what the parties intended to be the proper law of the arbitration agreement.

There is no clear cut definition which determines the matters covered under the *lex arbitri*. A distinction has to be drawn between substantive matters relating to the arbitration agreement, which are governed by the law of the arbitration agreement and, procedural matters relating to a reference, which are governed by the curial law *i.e.* law governing the conduct of the arbitration. Where the parties have not expressly chosen the *lex arbitri* in their dispute resolution clause, it falls on the courts to decide what the parties intended. The Supreme Court of India in *National Thermal Power Corporation v. Singer Company and Others* [NTPC], held that the *proper law of the arbitration agreement is normally the same as the proper law of the contract. It is only in exceptional cases that it is not so even where the proper law of the contract is expressly chosen by the parties. Where, however, there is no express choice of the law governing the contract as a whole, or the arbitration agreement as such, a presumption may arise that the law of the country where the arbitration is agreed to be held is the proper law of the arbitration agreement. But this is only a rebuttable presumption*.[17]In *Sumitomo Heavy Industries Ltd. v. ONGC Ltd. and Ors.* [Sumitomo], the Supreme Court upheld an early decision of an English court holding that the proper law of the contract was decisive of the *lex arbitri.*[18]

---

[14] It is noteworthy that the term *lex arbitri* is used differently by different authors. for eg. Russell uses *lex arbitri* while referring to the curial law; even the Indian Supreme Court uses it in different ways- in Enercon (India) Ltd. and ors.v. Enercon Gmbh and anr., (2014) 5 S.C.C. 1 (India), *lex arbitri* is used to describe the procedural law governing arbitration, whereas in Reliance Industries v. Union of India, (2014) 7 S.C.C. 603 (India), it is used to describe the proper law of the arbitration agreement. In this article, we have used *lex arbitri* to identify the proper law of the arbitration agreement.

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

[16] Lord Mustill and Stewart Boyd, *Applicable Law and Jurisdiction of Courts in Commercial Arbitration*, (2nd ed. 1989); Sumitomo Heavy Industries Ltd. v. ONGC Ltd. and others, (1998) 1 S.C.C. 305 (India); Reliance Industries Limited v. Union of India, (2014) 7 S.C.C. 603 (India).

[17] 16 (1992) 3 S.C.C.551, 21 (India).

[18] (1998) 1 S.C.C. 305 (India) (though this case reached the same decision as in NTPC, the court here did not refer to or discuss its own decision in NTPC).

The decisions of the Supreme Court in *NTPC/Sumitomo* are contrary to the stand taken by most English courts on international arbitration, which say that in the absence of an express choice by the parties, the *lex arbitri* will be held to be the law of the country in which the arbitration is held, *i.e.*, seat of arbitration.[19] This line of reasoning is supported by the Convention on the Recognition and Enforcement of Awards, 1958 the New York Convention. Therefore, the New York Convention envisaged that where the parties had not agreed to the *lex arbitri*, the proper law of the arbitration agreement would be the law of the seat of the arbitration.

A similar approach was taken by the Bombay High Court in *HSBC PI Holdings (Mauritius) Limited v. Avitel Post Studioz Limited* [HSBC],[20]where the court held that the agreement to arbitrate at Singapore; has a closer and real connection with the seat chosen by the parties, *i.e.* Singapore. Therefore, arbitration agreement would be governed by the law of Singapore. Therefore, even though the proper law of the contract was expressly chosen by the parties in *HSBC* to be Indian law, the Court chose to decide the *lex arbitri* based on the seat of arbitration rather than the proper law of the contract.These decisions of the Calcutta and Bombay High Courts try and carve out exceptions to the *NTPC* principle, but there is still uncertainty in recognizing the *lex arbitri* when the seat as well as the substantive law have been identified by the parties. Thus it may establish a problem in an ICA where, for example, the substantive law of the contract is Indian law, but the arbitration is managed by institutional rules and the seat is outside country . In such a condition, an international tribunal consisting of arbitrators from England and other jurisdictions with similar rules, would believe the law of the seat to be the *lex arbitri*. The Indian party may resist the enforcement of an award from such a tribunal on the grounds that the tribunal applied the wrong law and this is against the public policy of India.

Problems in choosing Seat for arbitration outside India

In Indian arbitration law a most debating and arguing issue under ICA is , whether two Indian parties can prefer a foreign seat and keep out the provisions of Part I of the Act or not . No doubt it is very rare to have a situation where the Indian subsidiary of a foreign entity has entered into an arbitration agreement with another Indian party providing for a foreign seat. Would such arbitration be considered a domestic arbitration or an international commercial arbitration? Part I of the Act provides that it will only be applicable where the place of arbitration is India, therefore an arbitration seated abroad between two Indian parties would not be a domestic arbitration under Part I of the Act.[21] Section 2(f) of the Act defines ICA 'as arbitration relating to disputes that arise out of a legal relationship where one of the parties is not Indian.[22] Therefore, arbitration between

---

[19] Sulamerica v. Enesa, [2012] EWCA (Civ.) 638 (U.K.); Naviera Amazonica Naviera Amazonica Peruana S.A. v. Compania Internacional Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep. 116 (ca) (U.S.).

[20] Arb. p. 1062 of 2012 Jan. 22 2014 (Bombay High Court) (India) this judgment has been challenged in the Supreme Court of India.

[21] Arbitration and Conciliation Act, no. 26 of 1996. §2(2).

[22] Section 2(f), Arbitration and Conciliation Act, 1996 provides that- International Commercial Arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is (i) an individual

two Indian parties, seated outside India would not be considered an international commercial arbitration under the provisions of the Act. The Hon'ble Supreme Court of India has constantly declare that Part I of the Act does not apply to ICA seated outside India and if parties choose a foreign seat of arbitration and a foreign law as their law of arbitration, then the intention is to exclude Part I of the Act.[23] This has been unbreakable by the Amendment, whereby barring Sections 9, 27 and 37, Part I has specifically been made inappropriate to ICA seated outside India.[24] An award which results from such an arbitration will be considered a foreign award'under Part II of the Act.[25] Applicability of Part II is exclusively based on the seat of arbitration and whether the seat is located in a country which is a signatory to the New York Convention and been recommended by the Central Government in the Official Gazette. Once this standard is fulfilled, Part II would relate and the foreign award'from such an arbitration would be familiar and enforced in India.

The Act does not envision a condition where two Indian parties can decide a seat for their arbitration outside India. This irregularity could have been taking away by the Amendment by expansion the definition of ICA, to include arbitration seated abroad. The Indian judiciary has been focused with this quandary for some time and has been incapable to give a clear reply. This issue brought before the Hon'ble Supreme Court of India in *Atlas Exports Industries v. Kotak and Company.*[26] The argument raised was that the contract was complementary to public policy as it unreservedly barred the remedy available under Indian law and bound two Indian parties to have their disputes arbitrated by foreign arbitrators. Section 28 of the Indian Contract Act, 1872 provides that agreements in restraint of legal proceedings are void; The court went onto hold that, *merely because the arbitrators are situated in a foreign country cannot by itself be enough to nullify the arbitration agreement when the parties have with their eyes open willingly entered into the agreement*'.[27] Thus, the arbitral award arising out of a foreign-seated arbitration stuck between Indian parties was held to be not inoperative or opposed to public policy. Section 28 of the Act provides for the rules on which the Tribunal would decide a matter, if the arbitration is seated in India.[28] The Court added a

---

who is a national of, or habitually resident in, a country other than India; or (ii) a body corporate which is incorporated in any country other than India; or (iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or (iv) the government of a foreign country.

[23] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 S.C.C. 552 (India); Videocon Industries Ltd. v. Union of India and anr., (2011) 6 S.C.C. 161 (India).

[24] This is based on the proviso to section 2(2) of the Arbitration and Conciliation Act, 1996, added by the amendment.

[25] Section 44, of the arbitration and conciliation act, 1996 unless the context otherwise requires, -foreign award means an arbitral award on difference between person arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, [...] (a) in pursuance of an agreement in writing for arbitration to which the convention set forth in the first schedule applies, and (b) in one of such territories as the central government, being satisfied that reciprocal provisions have been made may, by notification in the official gazette, declare to be territories to which the said convention applies.

[26] (1999) 7 S.C.C. 61 (India).

[27] ATLAS Exports, (1999) 7 S.C.C. 61

[28] Section 28, Arbitration and Conciliation Act, 1996 provides as follows- rules applicable to substance of

corrigendum in *TDM* to the effect that, *any findings/observations made hereinbefore were only for the purpose of determining the jurisdiction of this Court as envisaged under Section 11 of the 1996 Act and not for any other purpose*. The Court followed the decision in *Atlas Exports* and allowable the Indian parties to arbitrate outside India, and held that if the seat is in a country which is a signatory to the New York Convention, then Part II of the Act would be appropriate. The agreement cannot be held to be null and void because the parties had chosen for a foreign-seated arbitration. The High Court further held that where two Indian parties had freely entered into an agreement in relation to arbitration, the argument that a foreign-seated arbitration would be opposed to public policy was untenable. The court logically explained, that where parties, by joint agreement, had decided to resolve their dispute by arbitration and chosen a seat of arbitration outside India then in view of the provisions of section 2(2) read with Section 44 of the Act, Part II of the Act would govern the proceeding rather than Part I. The High Court of Bombay in *M/s. Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Pvt. Ltd.* has taken conflicting opinions on the same issue.[29] [30] The argument that two Indian parties choosing a foreign seat is contrary to Section 28 of the Act is indefensible, as Section 28 becomes applicable only when the arbitration is seated in India. The question is not whether two Indian parties may choose a foreign law as their substantive law, but whether they can prefer a seat of arbitration outside India and whether this choice would not be against the public policy of India.

In view of these changes in the institutional rules, the Law Commission in its report had suggested an amendment to the Act to give statutory recognition to the concept of emergency arbitrators.[31] This amendment was planned to be introduced in Part I of the Act, which defines arbitral tribunal to be a sole arbitrator or a panel of arbitrators.[32] The arbitral tribunal would be as appointed according to the procedure agreed between the parties or under Part I, if the parties are unable to appoint the tribunal.[33] The change that the Law Commission sought to bring about was to broaden the definition of arbitral tribunal' to include an emergency arbitrator appointed under any institutional rules. In the present scenario, in an arbitration seated in India, conducted under the institutional rules, which allow parties to ask for appointment for emergency arbitrators, the decision of an emergency arbitrator will not be enforceable, as emergency arbitrators are not

---

dispute – (1)where the place of arbitration is situate in India – (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India; (b) in international commercial arbitration, - (i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

[29] Arb. app. no. 197 of 2014 and Arb. pet. 910 of 2013jun.12, 2015 (Bombay High Court) (India).

[30] 2014 (4) arb. l.r. 273 (Delhi).

[31] Law Commission of India, report no. 246 – amendments to the Arbitration and Conciliation Act, 1996 37 (2014), available at: *http://lawcommissionofindia.nic.in/reports/report246.pdf*

[32] Arbitration and Conciliation Act, no. 26 of 1996, § 2(1)(d).

[33] Arbitration and Conciliation Act, no. 26 of 1996, § 11.

[34] In the case of an ad-hoc arbitration, Indian Arbitration Act does not include any provision for appointment of an emergency arbitrator. Therefore, such a situation can only arise if the arbitration is conducted under institutional rules.

familiar under the Act.[34] In case of ICA seated outside India, the question is whether the decision of the emergency arbitrator qualifies as a foreign award to be enforceable under Part II of the Act.

The term arbitral 'award' is described in the New York Convention as *not only awards made by arbitrators appointed for each case but also made by permanent arbitral bodies to which parties have submitted*.[35] Even though this definition of an award is unclear, the opinion amongst experts of ICA is that the New York Convention only envisages enforcement of final awards.[36] Therefore, it will be very difficult to enforce the decisions of emergency arbitrators in India even under Part II of the Act. One way to conquer this obstacle of unenforceability would be set up further changes to incorporate specific provisions for the enforcement of an award passed by an emergency arbitrators. In Hong Kong, a specific provision has been introduced in their arbitration ordinance for the enforcement of reliefs granted by an emergency arbitrator.[37] As explained above, the Law Commission had intended to do something similar, which unluckily, did not see the light of the day. Parties in India have had to find an answer to fill the slit created by the lack of emergency interim relief. The High Court of Bombay was faced with a situation where an emergency arbitrator appointed under SIAC Rules, had granted emergency relief, which the respondent failed to comply with.[38] Since this decision was not enforceable *per say* in the Indian courts, the claimant for relief under Section 9 of the Act for grant of interim relief pending the constitution of the tribunal.

This, however, is not a feasible method of enforcing the decisions of an emergency arbitrator as it increases the load upon the courts and upon the parties. Therefore, it would be advisable to make suitable amendments in the Act to remove this loophole.

Statistical Status and Government's Efforts towards Making India as an International Hub for International Commercial Arbitration

With the speedy growth in international commercial activities, cross border issues became more inevitable challenge before world communities. Especially in India it has been experienced that cross border commercial disputes are mushroomed since last few years rapidly. Even after major amendments in arbitration law in India especially for the settlement of International disputes, there are still so many challenging issues which are untouched and unsolved. For the purpose of making more and more effective International commercial arbitration mechanisms in India and converting India as a hub for International commercial arbitration for world trade communities a personal survey has been done by the author for discussing the special features, factors and

---

[35] Article i(2), New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, June 10, 1958,

[36] Jean-Paul Beraudo, recognition and enforcement of interim measures of protection ordered by arbitral tribunals, 22 j. international arb. 245, (2005); see also David A.R. Williams QC, Interim Measures, 225, the asian leading arbitrators' guide to international arbitration 244, (2007) (the prevailing view is that such orders are not enforceable as award under the New York Convention).

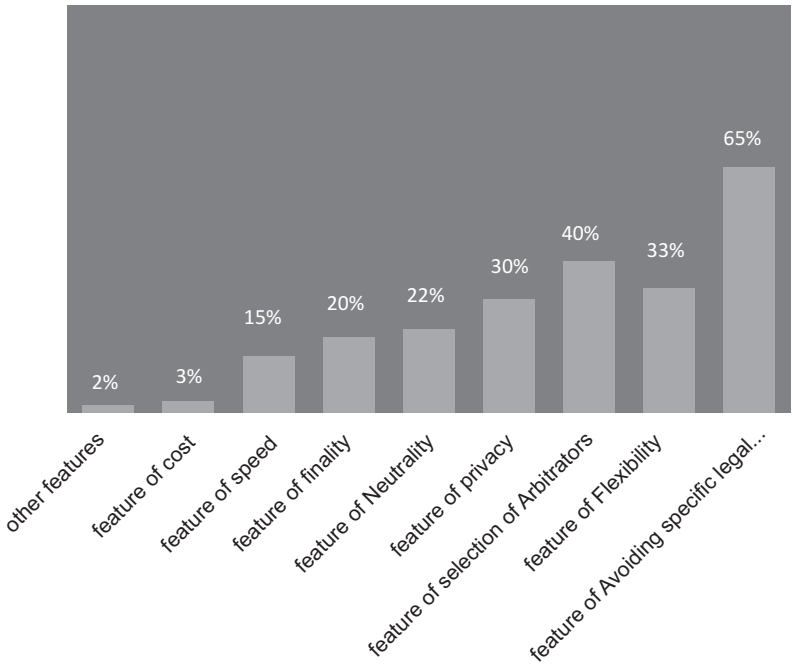
[37] Hong Kong Arbitration (Amendment) Bill, (2013) cap. 609, § 22b (Hong Kong).

[38] Avitel Post Studioz Limited and Others v. HSBCPI Holdings (Mauritius) Limited Arb. p. 1062 of 2012 Jan. 22, 2014(Bombay High Court) (India); Sumitomo Heavy Industries Ltd. v. ONGC Ltd. and Others, (1998) 1 S.C.C. 305(India).

III. SPECIAL FEATURES OF INTERNATIONAL COMMERCIAL ARBITRATION

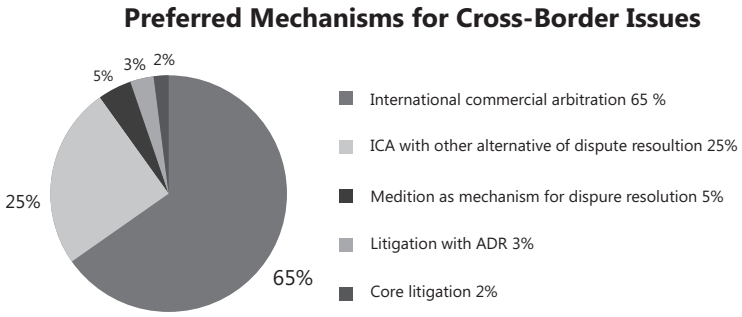
The recognition of arbitration may be justified by coding the special features of International Arbitration which considered as unique features of resolution of cross border disputes. In general predictably, features of arbitral procedure like enforceability and resolution without specific legal systems/national courts were most commonly preferred features for choosing arbitration as a mode for resolution of disputes , subsequently flexibility, selection procedures relating to arbitrators, other conventional aspect to international commercial arbitration, such as "finality" and "neutrality", were less preferred.

Special Features of International Arbitration



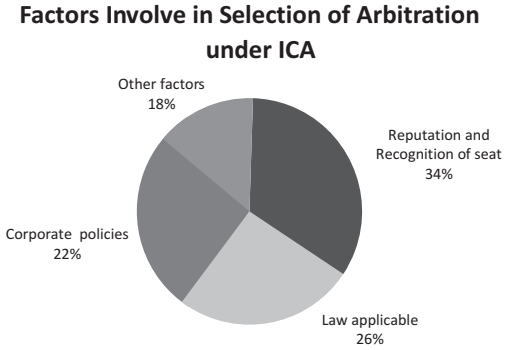
International Commercial Arbitration as Most Preferred Mechanism for Cross - Border Bisputes

Under a wider field observation respondents showed an effective preference for international commercial arbitration over other options such as cross-border litigation or arbitration. Almost ninety percent of respondents said that international commercial arbitration is their preferred dispute resolution mechanism, either through Independently International commercial arbitration which is approx 65% and together with other mechanisms of alternative dispute mechanisms which is approx 25%.



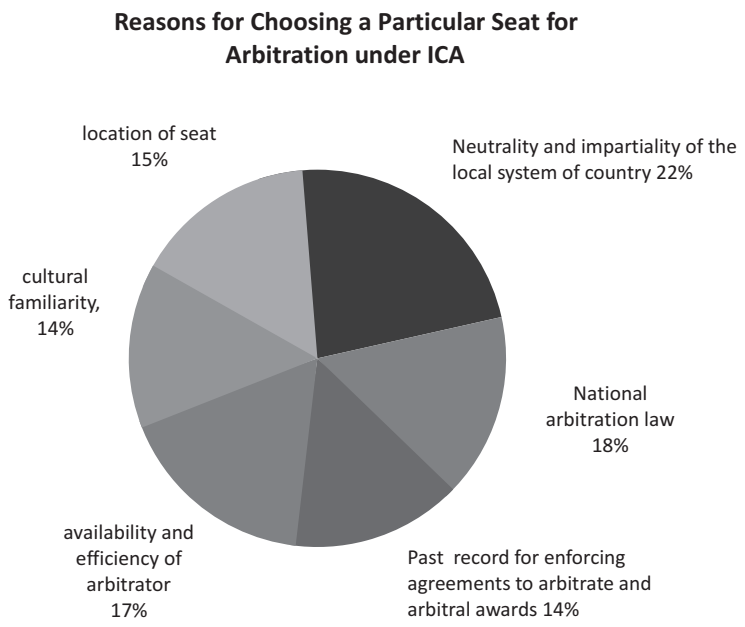
Factors for Selecting Seats for Arbitration under ICA

Under a opinion based survey for examine the factors for choosing particular seat for International commercial arbitration, it has been observed that the factors involves in giving preference to them. Most of the Respondents were in opinion that the reputation and recognitions of the arbitral seats are the major factors in selection of arbitral seats under ICA along with the said factors, law applicable to the particular dispute, corporate policy of the country, personal connections, counter party effects, recommendations are the factors, which effects the selection procedure of seat for arbitration under ICA.



Reasons for Choosing a Particular Seats of Arbitration under ICA

The reason for selecting a particular seats of arbitration under ICA, were also an centre for discussion under whole research project. In the light of amendments in Indian arbitration law in 2016 and on the basis of certain recommendation of Law commission report of 246th and 260th, which is an remarkable effort to make India as a place/ hub for International Commercial Arbitration (ICA), the three dominant factors relates to the 'formal legal infrastructure' of a seat for arbitration under ICA are : (I) Neutrality and impartiality of the local legal system of country; (II) National arbitration law; and (III) Past record for enforcing agreements to arbitrate and arbitral awards. Along with the above factors which attracts the respondents in selection of a seat for arbitration, of particular country are availability and efficiency of arbitrator, cultural familiarity, location of seat are as intrinsic legal features of an arbitration seat and were arguably justified by most of the respondents as the attractive and intrinsic features of seat for arbitration under ICA.



IV. INDIAN GOVERNMENTS EFFORTS FOR MAKING INDIA AS A HUB FOR INTERNATIONAL COMMERCIAL ARBITRATION

The Government of India's transformed focus to make India as the Global hub for International Commercial Arbitration for the settlement of cross border commercial issues.. Focusing the government's persistent assurance to provide a friendly the cross-border business environment, a three-day global arbitration conference was organized recently in Delhi by the government think tank NITI Aayog at the helm of affairs. Under this Global Conference a national initiative has been taken to make stronger arbitration law and its enforcement in India specially for cross border disputes.

The Judges of the Supreme Court of India, top government officials, luminaries, legal experts and corporate heads took part in the panel discussions. The interactive sessions focused on all processes involved in creating a robust and cost effective arbitration ecosystem.

Under the auspicious presence of Prime Minister of India a number of enlighten views has been discussed by the legal lumaniries. According to the Prime Minister, Mr. Narendra Modi, "A robust legal system with a vibrant arbitration culture is essential for businesses to grow and "the creation of a vibrant eco-system for institutional arbitration is one of the foremost priorities of this government." The Chief Justice of India, Justice T.S. Thakur endorse the views on the need to move forward Alternative Dispute Resolution (ADR), remarked that "The avalanche of cases constantly puts the judiciary under great stress" and articulated his concerns over the unnecessary judicial involvement in arbitral awards.

In order to attain the objectives of making India a regional hub and global hub for domestic and international arbitration, the conference tinted the need to develop world

class arbitral infrastructure in India. Senior advocate Dr. Abhishek Manu Singhvi said, "The Mantra of making arbitration more effective and popular can be achieved by getting the 'A, B, C, D of Arbitration right i.e., (Universal) Access, (Reducing) Backlog, (Lowering) Cost and (Removing) Delay,". He also acknowledged that one of the reasons of arbitration not receiving the full focus, is the excessive judicial supervision and intervention in the arbitral proceedings.

The requirement for expert arbitrators working at the plebs was highlighted by Justice R C Lahoti who advocated for the best human resource and physical infrastructure to provide the ideal atmosphere for qualitative arbitration in India. He also focused the lack of transparency in appointment of arbitrators especially by the Courts is also a major problems for ineffective arbitration mechanisms in India.

Judges of the Supreme Court of India, including Justice A.K Sikri, Justice D.Y Chandrachud, former judge, Justice R.V Raveendran together highlighted the role of court sustain in discomforting widespread challenge to stand arbitration at various stages. They also emphasizes on the need for a coordination that courts must attain with respect to their participation in the arbitral process.

Although the practice of arbitration is far from unfamiliar to India, the conference played a vital role in meeting competency of the best practices in arbitration and the way ahead from the world-class arbitration institutions such as ICC, SIAC, LCIA, KLRCA, HKIAC and PCA.

In an effort to contribute an all-around standpoint in constructing an effective arbitration policy, the conference brought together members of the user community also who have been in the suffer of high level disputes such as BALCO, Airtel, J.K Tyres, IndiGo Airlines, NHAI, BHEL and FICCI.

V. CONCLUSION

No doubt requirements Arbitration trend and practice in India is changing with the growth of international trade and its. From the above analysis, it is clear that there still there are some ambiguities in Indian arbitration law, which require judicial explanation and practically which need some major changes to solve the cross border issues through the arbitration. It is much expected from The Arbitration and Conciliation Act, 1996,(Amendment) Act, that it will prove as effective tool for ICA. The Amendment is intended at bringing about a constructive change in the arbitration law by preventing ambiguity and irregularity in India's arbitration law. It is hoped that it will promote the use of arbitration in India, as well as promote India as a venue for international arbitration. Indeed the legislative efforts to amend the Arbitration and Conciliation Act, which no doubt inactive the loopholes in the country's arbitration law, especially in ICA, goes a long way in scatching India as an arbitration friendly jurisdiction as a hub for International Commercial Arbitration.