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NAVIGATING INDIA'S STRATEGIC ASPIRATION FOR A GLOBAL ARBITRATION HUB, CHARTING A NEW COURSE BY DRAFT BILL 2024 A DEEP DIVE INTO INDIAN ARBITRATION LAW AND ITS ENABLERS IN THE FINANCIAL MARKET

AUTHORED BY - MANOJ V AMIRTHARAJ

I. INTRODUCTION

India's strategy is to develop into a Global Arbitration Hub next to Singapore, Hong Kong, Dubai, etc. India is currently in its developmental state making its first-of-its-kind legislative move to adapt to International Commerce and Industry's domestic operations facilitative in accordance with the International Standards reflected through its Draft Bill 2024 of the propounded Amendments for Arbitration and Conciliation Act 1996[1].

Bifurcations in Arbitrations:

1. Ad Hoc Arbitration, where the parties of a dispute themselves seek Arbitration for that one particular transaction alone.
2. Institutional Arbitration, where an institution supervises Arbitration like SEBI and governs with its professional help and well-established and clear-cut rules and directions.

High Independency and flexibility without judicial interventions:

The intention of arbitration is to limit the extent to which judicial participation. Section 5 of the Arbitration and Conciliation Act of 1996, is as follows:

Section 5: "Extent of judicial intervention. —Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

[1] Ministry of Legal Affairs, INVITING COMMENTS ON THE DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024, 03.11.2024

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International Commercial Arbitration:

To encourage international arbitration both inside and outside of India, the new arbitration statutes have been modified. This significantly broadens the purview of arbitration. Additionally, this demonstrates India's strengthening presence in the global economy as well as makes it easier for businesses to arbitrate despite being concerned about boundaries related to jurisdiction and geography. When it occurs overseas, the Indian judiciary's intervention is much less of a factor. The term "seat" refers to the jurisdictional boundaries of the courts if judicial action is required. In cases when the seat is outside of India, the Indian courts have no jurisdiction over the matter. This method offers freedom to parties that are entering into contracts across the world.

II. KEY REFORMATIONS:

A. Emergency Arbitration-Section 9A:

The new frontier in the Pre-Arbitral Stage was formed intending to grant interim relief, which may justifiably preserve the substance of the Arbitration Proceedings ahead. This Emergency Arbitration can only be appointed by the Arbitration Council of India or by Courts or by the Institution agreed by the parties.

There **grey spot** found between the invocation of Emergency Arbitration before Section 11 Application and the Gap between the Appointment under Section 15 of the Act, which is not specified. These gaps potentially attract a position of the parties outside an Arbitral proceeding raising a **Concurrent Jurisdiction for Relief** under both Section 9 and 9A.

B. Appellate Arbitrable Tribunal (AAT)-Section 34A:

The New Reform entrains an Appellate Arbitral Tribunal (AAT) creating a Concurrent Jurisdiction for Appealable Orders, Setting Aside Award and so on further disengagements in the previous stage. The AAT serves as an additional layer of support for potential resolutions with minimum Judicial Intervention preserving the facilitation of effective Private Adjudications by adding a layer of confidentiality with utmost party Autonomy.

C. Restructuring Arbitration Council of India:

The Draft Bill aims to enhance India's arbitration landscape by empowering the Arbitration Council of India (ACI). The ACI will now have the authority to formulate model procedural rules, recognize arbitral institutions, and maintain a depository of arbitration cases. This will standardize practices, improve arbitration quality, and promote transparency. Additionally,

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the ACI will be responsible for setting arbitrator qualifications and creating model arbitration agreements and procedural guidelines. This expanded role, coupled with a more balanced distribution of judicial and executive powers within the ACI, will elevate its authority and ensure a quasi-judicial approach to arbitration matters.

III. A MULTIFACETED APPROACH: UNPACKING THE REFORMS' IMPACT

A. Extend of Emergency Arbitrations:

India in its vow to create an Arbitral Hub next to a successful attempt made by Dubai as a Global Hub, created a very facilitative Host State system for the Investors and Domestic Business Developments. This extension of the reform not only preserves the Arbitration Triarchy of Party, Arbitrator and Court.

1. Statutory Recognition and the Call for Reform:

The 246th Report of the Law Commission of India (p. 37) and the Srikrishna Report (p. 76) – which significantly influenced the 2019 Amendment to the Arbitration and Conciliation Act, 1996 (A&C Act) – advocated for the incorporation of an emergency arbitration framework. However, neither the 2015 nor the 2019 amendments explicitly included such provisions. The Apex Court's Known decision on ***Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & CO***. functioned as a positive judicial affirmation, confirming the validity of emergency arbitration rulings in India. This prepares the path for the recommended legislation to offer necessary formal recognition to this practice.

2. Complementary Institutional Rules: The Importance of Timelines:

The effectiveness of emergency arbitration hinges on a robust institutional framework. These frameworks must be designed to complement the legislation and ensure the expeditious resolution of urgent disputes. International best practices offer valuable guidance in this regard. Leading arbitral institutions, such as the Stockholm Chamber of Commerce (Appendix II, Article 4) and the Singapore International Arbitration Centre (Schedule I, Article 3 & 9), mandate the appointment of an emergency arbitrator within a day and require them to issue a decision within a specified timeframe (14 days for both institutions). Similarly, the International Chamber of Commerce (Appendix V, Article

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6(4)) imposes a 15-day deadline for the emergency arbitrator's decision.

3. **Indian Institutions: Embracing Efficiency:**

Indian arbitral institutions are demonstrably aligning with these international standards. The Mumbai Centre for International Arbitration (MCIA) Rules (Rule 14.2) mirror the one-day appointment timeline, while Rule 14.6 echoes the 14-day timeframe for a decision. The Delhi International Arbitration Centre (DIAC) Rules (Rule 14.4) prescribe a two-day window for appointment and a 14-day deadline for an order (Rule 14.10), with a non-payment of fees consequence for non-compliance. The success of this approach is evident in the MCIA Annual Report of 2022 (p. 1), which reports two instances of emergency arbitrator appointments within 24 hours and decisions rendered within the designated 14-day period. This serves as a compelling case study for other Indian institutions to adopt similar best practices

B. A Paradigm Shift to New Frontiers of AAT:

The New Paradigm Shift from formal Judicial Appellate Authority to AAT will boost the reliance of the ADR on Statuary enhancements to provide for Concurrent Adjudications making it an Optional method beneficial for parties. The advent of appellate arbitral tribunals marks a significant development in the realm of dispute resolution. Arbitral institutions are now empowered to establish these tribunals, offering parties an additional avenue for appeal before recourse to judicial intervention. [1] This innovation provides a mechanism for a more comprehensive review of arbitral awards, potentially leading to greater satisfaction and finality. However, it is imperative to note that the window for appeal is limited to 60 days from the issuance of the contested order. Parties must therefore exercise diligence in evaluating potential grounds for appeal and timely initiate the process to safeguard their rights.

C. New Era of Institutional Arbitration Ecosystem:

The Draft Bill underscores the imperative of transitioning from ad-hoc arbitration to institutionalized frameworks. By vesting recognized arbitral institutions with the authority to oversee appointments, fee determination, and procedural guidance, the legislation fosters a paradigm shift. These institutions, judicially sanctioned by the Supreme Court or High Courts, are poised to establish uniform standards for arbitral proceedings, particularly in the realm of international disputes, which is reflected in the Key Recognition of the **"Seat"** of

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the Arbitration.

IV. ANTICIPATING THE NEXT PHASE ARBITRATION REGIME OF INDIA

India's evolving legal landscape may soon **Mandate Pre-litigation Alternative Dispute Resolution (ADR)** for all commercial disputes. This shift could introduce a **Modular Approach**, allowing for parallel adjudication of distinct dispute elements. Such a development, inspired by international best practices, could significantly streamline the resolution of complex commercial disputes.

V. ENABLER FOR DISABLING CHALLENGES OF ARBITRATION IN THE INDIAN FINANCIAL SERVICES FRAMEWORK

1. **Legal justice and remedies rather than legal rights are used to determine arbitrability:** The Arbitration Act of 1996 has resulted in a broad range of opposing rulings from the judiciary that have attempted to evaluate the arbitrability of disputes based on the legal rights at issue. However, neither the New York Convention of 1959 nor the Arbitration Act of 1996 set down any restrictions to this range. The circumstances of the dispute provide the parties and the arbitrators with enough latitude to rely on and use arbitration. Rather than proclaiming any pre-existing rights, Section 23 of the Arbitration Act, 1996 instructs the dispute's claimant to provide the statement of a claim based on the relief sought. In any case, the court has jurisdiction to give relief under Section 9(3) of the Arbitration Act, 1996 where the arbitral panel absences the authority to do so. In fact, the Bombay High Court split itself from the rights-based standard established in the Booz Allen Case in the Rakesh Malhotra Case and argued that the oppression and mismanagement claim at issue cannot be arbitrated because the arbitral tribunal cannot grant the shareholders the relief they are requesting.

   So, rather than automatically dismissing a wide range of issues as unresolvable because one of the processes involved is of a public character, arbitration is used as a substitute dispute resolution tool. For instance, a court's finding of abuse of power or the insolvency of a business due to the presence of a right in rem does not exclude the arbitration of avoidable or personal injury claims cases. Offering adequate freedom to both arbitrators and the parties to trust and resort to arbitration, by permitting assessment of arbitrability based on unique facts and circumstances of the dispute.

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2. **Increasing the requirement for statutory arbitrations:** Frequently, prior to a conflict, parties fail to include arbitration as one of the forums for dispute resolution in the main contract, or after a dispute, the defaulting party restrains to sign a produced agreement. By neglecting the necessity of signing an arbitration agreement as required by Section 7 of the Arbitration Act, 1996, statutory arbitration can play a crucial role in making such conflicts arbitrable. By authorizing arbitrations under prior laws while they are still in enforcement, Section 2(4) of the Arbitration Act, 1996 acknowledges such a presumed establishment of law. Statutory arbitrations have the benefit of allowing the parties to bring arbitration claims in cases where the parent statute or the delegated legislation clearly authorizes so. For example, parties may commence institutional arbitration under Section 18(3) of the Micro, Small & Medium Enterprises Development Act, 2006, even if they have not signed an arbitration or submission agreement. The inclusion of such clauses in the parent statutes of businesses operating in the financial sector can support the obligatory arbitration of financial disputes and provide for traditional legal remedies if such processes are unsuccessful.

3. **Allowing for the relaxed application of stringent procedural rules to businesses in the financial sector:** Because financial sector organizations operate in a unique commercial environment, they essentially want a swift resolution that does not interfere with daily company operations because any delay might result in significant financial losses for investors and stakeholders. As a result, most business laws offer an exemption from or application of specific restrictions to these companies. For instance, banks and financial institutions are excused from alerting the CCI of an anti-competitive restructuring pursuant to any financing instrument under Section 6(4) of the Competition Act, 2002. Similarly, IBBI (Financial Service Providers) Rules, 2019 demand a unique resolution procedure for financial firms under Section 227 of the IBC. Similar omissions or special provisions can be made available to these businesses under the Arbitration Act of 1996 to encourage the arbitration of financial services disputes. The Arbitration Act of 1996 might proposal emergency arbitrator services for quick dispute resolution since speedy settlement is crucial for financial service organisations. Although the Supreme Court accepted international emergency arbitrator services in the Future Retail Case, there are still questions concerning the beginning of domestic foreign arbitration procedures in the absence of a specific provision to this extent. Additionally, most insurance policies and loan agreements are

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standard-form contracts with clauses allowing for the unilateral nomination of arbitrators to guarantee that the arbitrators are suitably competent. The UK Arbitration Act, 1996's Section 17(2) permits unilateral appointments, and as a result, most multinational financial companies favour English law for resolving disputes. However, even in cases whereby the parties have explicitly agreed to be obligated by it, Indian law does not permit unilateral selection of arbitrators based on apparent bias. To encourage party autonomy, the Arbitration Act of 1996 may be changed to let financial sector organisations to unilaterally designate arbitrators.

4. **Greater reliance on arbitration by self-regulatory professional institutes and financial sector regulators:** The use-case for arbitration in the nation can be expanded with the aid of financial services self-regulatory professional and sector regulators and institutes, even though arbitral institutions are essential to the professionalization of institutional arbitration. Asking the relevant regulatory and self-regulatory authorities to refer disputes to arbitration, particularly in the absence of any legal requirement, is the only way to promote institutional arbitration mechanisms on a wide scale and make them more useful. As an illustration, the Hong Kong Securities & Futures Commission frequently recommends clients to FDRC arbitration for the resolution of disputes. The US Securities & Exchange Commission also requests that obligatory arbitration clauses be included in the business charter papers of securities issuers. Similarly, to this, in the context of India, federal institutions like SEBI, IRDA, RBI, and IFSCA can be requested to submit issuers, insurers, banks, etc. to institutional arbitration. In contrast, self-regulatory organizations such as the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India, and the Institute of Company Secretaries of India can request that their members refer clients to intuitional arbitration to expand the use cases for arbitration

VI. CONCLUSION

The Draft Bill 2024 represents a multi-pronged attack on India's quest to become a leading global arbitration hub. By introducing emergency arbitration, appellate arbitral tribunals (AATs), and a strengthened Arbitration Council of India (ACI), the legislation aims to enhance efficiency, minimize judicial intervention, and cultivate a robust institutional framework.

Emergency arbitration fills a critical gap by allowing parties to swiftly secure interim relief, preserving the integrity of the arbitral process. However, concerns remain regarding potential

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jurisdictional conflicts and the need for stricter timelines. Addressing these issues will be crucial to maximizing the effectiveness of this reform.

The establishment of **AATs** signifies a paradigm shift towards a more layered dispute resolution ecosystem. This innovation offers parties the opportunity for a comprehensive review of arbitral awards within a limited timeframe. Nevertheless, ensuring effective utilization necessitates clear guidelines and a streamlined process for initiating appeals.

The **empowerment of the ACI** as a central regulatory body signifies a commitment towards standardised practices and quality control. By overseeing arbitral institutions, formulating procedural rules, and maintaining a case depository, the ACI will play a pivotal role in fostering transparency and elevating India's arbitration landscape.

Looking ahead, potential developments such as mandatory pre-litigation ADR and a modular approach to dispute resolution could further streamline the system. By drawing upon international best practices and proactively addressing existing challenges, India can solidify its position as a preferred destination for international commercial arbitration.