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CHALLENGES IN INTERNATIONAL COMMERCIAL ARBITRATION: A CRITICAL STUDY OF CROSS- BORDER DISPUTES IN INDIA

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ABSTRACT

This paper looks at the problems that international commercial arbitration faces when it comes to -border mergers and acquisitions. The paper focuses on a few things like enforcement, public policy and how efficient the process is in India. International commercial arbitration is based on some ideas these ideas are that the parties involved have control the decisions made are final and the courts do not get involved too much. When you actually try to use these ideas in real life it does not always work out that way.

The paper checks out the rules for enforcing decisions made by arbitrators under the New York Convention and the Arbitration and Conciliation Act from 1996. It points out that there are some things about how to enforce decisions partially and how the courts interpret public policy. The paper also talks about some issues like how long things take, how much they cost if they are kept private and how different cultures affect the arbitration process.

The paper says that when public policy is used much and the courts get involved too much it makes the arbitration process less efficient and scares off investors. The paper ends by suggesting that India should have a consistent approach to arbitration that follows international rules this would help India become a major place, for international commercial arbitration.

KEYWORDS:- International Commercial Arbitration, Public Policy, Enforcement of Arbitral Awards, Cross-Border M&A Disputes, Judicial Intervention

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1. INTRODUCTION

International commercial arbitration is seen as key to solving disputes in -border business deals. It works on ideas like parties having control awards being final arbitrators having the power to decide on their jurisdiction and courts not interfering much. With help from agreements like the New York Convention and India's Arbitration and Conciliation Act, 1996 it aims to be neutral, efficient and enforceable. In reality this aim is often not met.

In India courts have broadly interpreted what is considered policy. This and frequent court interference have reduced the finality of arbitration decisions, The control parties have. Of being a limited protection public policy is often used to re-examine arbitration awards on their merits. This goes against standards that support enforcing arbitration awards. Also delays in procedures increasing costs and complicated jurisdictional issues in -border business disputes make arbitration less effective. The research work says that unless polycys scope is strictly limited and courts show restraint Indias goal of becoming a major hub, for arbitration will be fundamentally undermined.

1.1 KEY PRINCIPLES GOVERNING INTERNATIONAL ARBITRATION

International commercial arbitration is founded on core principles such as **party autonomy**, **finality of awards**, **Kompetenz-Kompetenz**, and **minimal judicial intervention**, which collectively ensure efficiency, neutrality, and enforceability of arbitral proceedings

A. Party Autonomy

Party autonomy, which allows parties to customize their dispute resolution process, including choosing the arbitrators, seat, language, and controlling legislation, is the cornerstone of international arbitration. In international commercial conflicts, it guarantees flexibility, confidentiality, and neutrality by enabling parties to choose not to appear in domestic courts. In *Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV)*³, a five-judge Supreme Court bench ruled on November 8, 2024, that arbitration clauses that require a party to unilaterally appoint the single arbitrator or, In a situation where a three-member panel is involved it is not fair to ask one party to pick its representative from a list of arbitrators chosen by the party. This goes against the idea of equality that's part of the Arbitration Act. The Court also said that when one party gets to choose the arbitrator without the other party having

³ 2024 INSC 857 (Civil Appeal Nos. 9486-9487 of 2019)

a say it is not equal and this is against the law. The Indian Constitution says that everyone should be treated equally and this is stated in Article 14 as well.

B. Kompetenz-Kompetenz

A fundamental tenet of contemporary arbitration law is embodied in the German jurisprudential doctrine of Kompetenz-Kompetenz, asserts that an arbitral tribunal has the authority to choose its own jurisdiction, including any disputes about the arbitration agreement's validity or existence. The idea is in *Article 16(1) of the UNCITRAL Model Law on International Commercial Arbitration*. This concept is very important for International Commercial Arbitration. It helps to keep the arbitration process honest. The concept does this by stopping courts from getting involved early in the International Commercial Arbitration process. This is good, for International Commercial Arbitration because it helps International Commercial Arbitration to work.

This doctrine is included under *Section 16 of India's Arbitration and Conciliation Act, 1996*, which is based almost exactly on the UNCITRAL definition. The clause purports to give arbitral tribunals the authority to decide cases within their own jurisdiction, including challenges to the arbitration agreement's existence or legality. However, this interpretive strategies used by Indian courts under Sections 8 and 11 of the 1996 Act have actually limited the apparent authority granted to arbitral tribunals.

The Kompetenz-Kompetenz principle is really confusing. For instance the *Vidya Drolia v. Durga Trading*⁴ and *Ntpc Ltd. V. SPML Infra Ltd.*⁵ Cases have got scholars and judges talking about what the Kompetenz-Kompetenz principle means in India. There is a lot of confusion about the rules because the way courts supervise and arbitration work together is not clear. The Kompetenz-Kompetenz principle in India is still not understood by people. Cases like *Vidya Drolia v. Durga Trading Corporation* and *NTPC Ltd. V. SPML Infra Ltd.* Have made scholars and judges think again about the Kompetenz-Kompetenz principle and what it means for the Kompetenz-Kompetenz principle, in India.

C. Minimal Judicial Intervention

Traditionally, the tribunal itself plays a prominent role in arbitrations, with the courts playing a supplementary function. It is anticipated that the courts will only intervene in a few specific situations, such as enforcing an arbitration agreement, providing temporary relief, or overturning an arbitral ruling. According to *Section 34 of the*

⁴ (2021) 2 SCC 1.

⁵ 2023 SCC OnLine SC 389

Arbitration Act, the purpose of this restricted intervention is to support this quasi-judicial function while making sure that its efficacy and independence are not gravely jeopardized.

Extent of judicial intervention: No judicial authority may intervene in topics covered by this Part unless specifically permitted by this Part, regardless of what is stated in any other currently enacted legislation. The legislature intends to have a limited scope of judicial interference by making sure that there are few options for any party to dispute to knock on the doors of the courts in order to ensure the finality of arbitral awards, rather than to deny complete judicial intervention.

The Act of 1996 sought to ensure that disputes may be resolved quickly and efficiently through arbitration with the least amount of court involvement. Therefore, it is indisputable that judicial activity in the arbitration sphere is likewise necessary. However, judges should use caution when intervening in arbitral processes. Certain regions may have gaps that call for judicial action. *The Amendment Acts of 2015 and 2019* clearly demonstrate that the Act of 1996 was unable to keep up with India's rapidly evolving economy. The courts must act as administrators in order to facilitate the smooth operation of arbitral tribunals. However, it has been noted in recent years that courts often go beyond their authority in an attempt to close statutory gaps. This could turn out to be against the spirit of the Act. Courts must remember that their mission is to really assist and encourage alternative dispute resolution mechanisms so that disagreements are decided on a more user-friendly, cost-effective, and timely disposition of cases. This would significantly contribute to the development of the nation's legal system and establish India as a center for arbitration.

1.2 RESEARCH OBJECTIVES

- To evaluate the scope and evolution of the public policy exception in Indian arbitration law and its impact on arbitral finality.
- To examine the extent to which Indian judicial practice aligns with international arbitration standards, particularly those reflected in the UNCITRAL Model Law.
- To assess the tension between judicial intervention and core arbitration principles, including party autonomy, Kompetenz-Kompetenz, and minimal court interference.
- To identify and analyze practical challenges in cross-border M&A arbitration, including enforcement barriers, procedural inefficiencies, and jurisdictional complexities.

- To explore the balance between confidentiality and transparency in arbitration and its implications for legitimacy and accountability.
- To propose legal and policy reforms aimed at strengthening India's position as a pro-arbitration jurisdiction.

1.3 RESEARCH METHODOLOGY

The present research adopts a *doctrinal, analytical, and comparative methodology* to examine the challenges in international commercial arbitration. Doctrinal approach is used to analyse statutory provisions such as the Arbitration and Conciliation Act, 1996, relevant international frameworks, and key judicial decisions to understand the legal position on enforcement, public policy, and arbitral procedures. Alongside this, an analytical method is applied to critically evaluate judicial trends, practical challenges like delay, cost, and complexity, and the gap between theory and practice. A comparative approach is also incorporated to examine how jurisdictions such as the UK, USA, and other international systems deal with similar issues, thereby identifying best practices. The study mainly relies on secondary sources, including case laws, commentaries, and institutional reports, due to the confidential nature of arbitration proceedings.

2. JURISDICTIONAL AND GOVERNING LAW CONFLICTS

2.1 PARTY AUTONOMY

The fundamental tenet of arbitration is party autonomy, which permits parties to independently design their dispute resolution procedure, including selecting the relevant legislation, arbitrators, seat, and language. Bypassing strict national court regulations, it enables parties to customize processes to their need. Autonomy in choosing the tribunal and the controlling legislation are important factors. In Indian arbitration jurisprudence, party autonomy, impartiality, and independence in selecting arbitrators have always been contentious issues. The Indian court has alternated between two opposing schools of thought. On the one hand, parties are allowed to design their arbitration agreement under the principle of party autonomy, which is regarded as the cornerstone of arbitration. However, in order to reduce the possibility of bias and guarantee a fair tribunal, the 2015 modification to the Arbitration and Conciliation Act, 1996 introduced the principles of fairness, transparency, and impartiality in the appointment process.

2.2 PROVISIONAL FRAMEWORK

- A. Arbitration Agreement (Sections 7-9):** The arbitration agreement is a fundamental component that represents the parties' independence. In essence, an arbitration agreement allows the parties to avoid the court's authority. Additionally, this agreement is used to define how the arbitration process would be conducted. As a result, an arbitration agreement, whether it takes the shape of a submission agreement or an arbitration provision, expresses the parties' intentions and will throughout the arbitration process.
- B. Arbitration Tribunal (Sections 10–15):** The appointment and structure of an arbitral tribunal may be an exercise of party autonomy. The idea allows the parties to choose any arbitrators who possess the necessary skills. The parties' will is envisioned as an agreement that also specifies the number of arbitrators and the process for their appointment. Additionally, the principles of party autonomy in arbitration are the source of the arbitrators' authority and responsibility.
- C. Section 20:** The parties to an arbitration are free to select the arbitration's location. The arbitration procedure is impacted by judicial intervention, hearings, and interim measures. In order to reduce interference, parties are able to select a neutral location. For instance, in an arbitration held outside of India, Indian courts are not permitted to provide interim relief. Additionally, even if the hearing was conveniently held in India, Part I of the Indian Arbitration and Conciliation Act, 1996 will not apply in similar situations.

3. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Indian law says that people making agreements have the freedom to choose where they want to solve their disputes even if it is in a court or with a special group of arbitrators. When a decision is made in another country and needs to be enforced in India it becomes really important to think about whether it can actually be enforced. *The Arbitration and Conciliation Act from 1996* has a part, Part II that deals with enforcing decisions made by foreign arbitrators and it treats decisions made under *the New York Convention* differently than those made under *the Geneva Convention*. *The New York Convention* decisions are covered in sections 44, to 52 and the Geneva Convention decisions are covered in *sections 53 to 60 of the Arbitration and Conciliation Act from 1996*.

3.1 PARTIAL ENFORCEMENT OF FOREIGN AWARDS

The idea of enforcement is a big part of how courts make sure people follow the rules. The law says that courts can enforce part of an award that's separate and was decided through arbitration but they do not have to enforce the parts that are not valid. This is stated in Section 48(1)(c) of the Act, which's similar to *Article V(1)(c) of the New York Convention*.

However courts in India have understood this rule in a limited way. For example *Section 34(2)(a)(iv)* allows courts to partially set aside awards that were made in India. Section 48 does not have a clear rule for partially setting aside awards that were made in other countries.

In the case of *Gayatri Balasamy v. ISG Novasoft*⁶ the Supreme Court said that courts have the power to partially set aside awards that were made in India under *Section 34*.. This idea has not been applied to awards that were made in other countries because the rules, for these awards are different. The Delhi High Court has said that partial enforcement is only allowed when the award deals with issues that're not part of the arbitration as stated in Section 48(1)(c). This means that partial enforcement of awards is only permitted in certain situations.

3.2 GLOBAL POSITION

International law shows an open way of dealing with partial enforcement. Courts in places have said that an arbitration decision does not have to be completely rejected just because one part of it is not valid.

For example in the case of *IPCO (Nigeria) Ltd. V. Nigerian National Petroleum Corporation*⁷, the England and Wales Court of Appeal said it would not make sense to reject the decision when only a small part of it is bad. The Austrian Supreme Court did in the case of *Buyer v. Seller* where they allowed the main claim to go forward but said no to the extra interest because it went against public policy.

Experts, like **Gary Born**⁸ say that courts have the power to partially enforce arbitration decisions and this power is not limited to one part of the law. The UNCITRAL Secretariat Guide and the International Law Association also support this way of dealing with arbitration decisions saying that the main goal is to make sure they are enforced not to stop them from being enforced. International law and arbitration decisions and the New York Convention all work together to make sure arbitration decisions are enforced and partial enforcement is a part of that.

⁶ (2025 INSC 605)

⁷ [2005] EWHC 726 (Comm)

⁸ American lawyer & chair of the International Arbitration

3.3 GROUNDS FOR REFUSAL OF ENFORCEMENT

The Act of 1996 has a section called Section 48. This section provides a list of reasons why a foreign ruling may not be enforced. *The New York Conventions Article V* says these reasons are:

1. **The people involved in the agreement or the agreement itself is not valid.** A foreign ruling may not be enforced if the people who made the agreement were not allowed to make agreements or if the agreement is not valid under the law that applies to it.
2. **Someone was not treated fairly.** If someone was not given notice of the arbitration or could not present their case then the ruling may not be enforced because it is not fair.
3. **The people making the decision went beyond their authority.** If the arbitral award deals with things that're not part of the agreement or if the people making the decision did things they were not allowed to do then the ruling may not be enforced.
4. **Something was not done correctly.** If the people making the decision were not chosen correctly. If the arbitration was not done correctly then the ruling may not be enforced.
5. **The decision is not final.** If the decision has not yet become final or if it has been stopped or changed by someone who has the authority to do so then it may not be enforced.
6. **The issue cannot be settled by arbitration.** If the issue cannot be settled by arbitration, under the law that applies, under Indian law then the ruling may not be enforced.
7. **The decision goes against what's considered right. If the decision goes against what is considered right or fair under Indian law then it may not be enforced.**

The courts do not have a lot of power to interfere with the enforcement of a ruling. In the case of *Shri Lal Mahal Ltd. V. Progetto Grano Spa*⁹ the Supreme Court said that the courts can only look at the reasons specified under Section 48 of the Act of 1996 and cannot review the decision itself.

4. PUBLIC POLICY AS A BARRIER TO ARBITRATION

The public policy exception is based on *Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996* which's similar to *Article 34(2)(b)(ii) of the UNCITRAL Model Law*. According to standards like those in the International Law Association Report from 2002 "public policy" is supposed to be interpreted narrowly to only include basic principles of justice and morality.

⁹ (2013) 4 SCC 353 or CIVIL APPEAL NO. 5085 OF 2013

However, in India the courts have historically interpreted it more broadly. For example in the case of *Oil & Natural Gas Corporation Ltd. V. Saw Pipes Ltd.*¹⁰ the Supreme Court said that an arbitration decision can be overturned if it is clearly illegal or wrong which allows the courts to review the decision and change it if they think it is wrong. This gives the courts a lot of power to interfere with arbitration decisions, which goes against the idea of interference.

Indian courts have a problem when it comes to arbitration. They are very strict about what kinds of disputes can be decided by arbitration. For example Indian courts do not like arbitration when someone says there was fraud. The Supreme Court made a decision about this in the case of *N. Radhakrishnan versus Maestro Engineers.*¹¹ The Supreme Court said that arbitration is not good for disputes that involve fraud and theft. Indian courts think these kinds of cases need to be looked at by the courts. The Supreme Court said that these cases are better for the courts to decide. This is a problem, for arbitration because people can say there was fraud to avoid arbitration. When people can say there was fraud to avoid arbitration it makes arbitration agreements not as important as they should be. Indian courts and arbitration agreements are affected by this.

When courts get involved before the arbitration starts it can be a problem. It creates uncertainty. For example look at the case of *S.B.P. & Co. Versus Patel Engineering Ltd.*¹² The Supreme Court made it clear that courts have the power to make decisions. They can decide if the arbitration agreement is valid. They can also decide if the dispute can even be solved by arbitration.. They can do all of this before the arbitration even begins. This can cause a lot of issues because the courts are getting involved early in the process of the arbitration. The early involvement of courts, in the arbitration can cause problems. The arbitration process is delayed when courts decide these issues. Arbitration agreements are affected when courts get involved early. This approach can interfere with the idea that the arbitration tribunal should be able to decide its jurisdiction.

Even though there have been some changes to the law and court decisions since 2015 that have tried to limit the scope of policy and reduce court interference there are still inconsistencies. The broad interpretation of policy and the cautious approach to what can be decided by arbitration are still big obstacles to making arbitration in India work efficiently and predictably. When it comes to -border mergers and acquisitions where disputes are complex and need to be resolved quickly these tendencies of the courts may discourage parties from choosing India as

¹⁰ AIR 2003 SUPREME COURT 2629, 2003 AIR SCW 3041

¹¹ (2010) 1 SCC 7.

¹² (2005) 8 SCC 618 (Civil Appeal No. 4168 of 2003)

the place for arbitration. Therefore it is essential to have a restrained and internationally aligned interpretation of public policy and to be more open to what can be decided by arbitration in order to make India a more attractive place for arbitration. International commercial arbitration in India needs to be effective and work well for cross-border mergers and acquisitions and this can only happen if the courts interpret public policy and arbitrability in a way that is consistent, with international standards.

Indian courts are much in favor of enforcing arbitration decisions as long as they follow the rules set by law. For example in the case of *Booz Allen & Hamilton versus SBI Home Finance Ltd.*¹³ the Supreme Court made it clear what kinds of disputes can be solved through arbitration. They said that disputes about property rights cannot be solved through arbitration.

The Supreme Court also made a decision in the case of the *Government of India versus Vedanta Limited*¹⁴. They figured out how long someone has to enforce a foreign arbitration decision. They said that according to S. 137 of the Limitation Act from 1963 people have three years from the date they are allowed to apply to enforce the decision.

In another case *Vijay Karia versus Prysmian Cavi E Sistemi SRL*¹⁵ the judges were very tough, on people who questioned arbitration decisions. They had to pay a lot of money for it. This shows that Indian courts really like arbitration and want to make sure arbitration works well. Indian courts still like arbitration and Indian jurisprudence still supports it. Indian courts want arbitration to work smoothly. They want to enforce arbitration decisions.

When the conditions under Section 48 are met a foreign award is treated like a court decree under *Section 49*. This means people can enforce an award. A foreign award is different from awards. Other awards are enforced as if they were decrees under *Section 36*. The main difference between awards and other awards is that foreign awards need to be recognized by a court before people can enforce a foreign award. This step is important, for awards.

Enforcing awards in countries is a thing. It is about finding a balance between giving parties what they want and keeping the country's laws safe. India has mostly been in favor of enforcing awards which's in line with what other countries do. The thing about India and awards is that India has mostly been in favor of enforcing awards. However there are still some problems with how to interpret the rules especially when it comes to enforcing part of an award. If we look at how other countries do things we can see that they are getting more and more relaxed about enforcing awards. The way other countries enforce awards is getting more relaxed. India

¹³ (2011) 5 SCC 532

¹⁴ 2020) 10 SCC 1

¹⁵ (2020) 11 SCC 1; AIR 2020 SC 1807

might start doing things this way which would make India a better place, for arbitration and arbitration is what India might become better at.

International commercial arbitration needs systems to make sure awards are enforced. This is really important for international commercial arbitration to work. We are talking about commercial arbitration where companies from different countries are involved. For example when one company buys another company from a country. International commercial arbitration has to be credible. It has to be successful. Foreign awards are a part of international commercial arbitration. So enforcing these awards is crucial for international commercial arbitration to work the way it should. International commercial arbitration is about making sure that companies, from different countries can work together and trust the system. Enforcing awards is a part of international commercial arbitration.

5. DELAY, COST, AND COMPLEXITY IN ARBITRATION

International commercial arbitration is known for being neutral and flexible. People criticize it because it takes a time costs a lot of money and the process is complicated. This is especially true for -border M&A disputes. These problems make people wonder if arbitration really helps resolve disputes compared to going to court.

One main reason arbitration takes a time is that the process is very flexible and the parties involved have a lot of control. This flexibility is based on laws like the *UNCITRAL Model Law and the Arbitration and Conciliation Act of 1996*. The flexibility can cause delays. disputes often involve documents, multiple arguments and a lot of testimony, from witnesses and experts. When there are claims of delays it is necessary to look at the facts and timelines which can be very time-consuming.

The cost of arbitration is a concern. People thought arbitration was a way to resolve disputes. Now with arbitration it can be very costly. This includes the fees of the arbitrators the costs of running the arbitration the cost of hiring a lawyer and the cost of expert witnesses. In arbitration disputes the cost is even higher because of the need for experts. The longer the arbitration takes, the more it costs. This makes it less accessible and efficient.

Another issue is that arbitration can be really complicated. When it comes to -border disputes there are many laws to consider. The law of the contract The law of the place where the arbitration takes place The law of the place where the decision will be enforced All these laws can create conflicts. It can be hard to understand them. There are also issues like delays, causation and damages that need to be analyzed.

This can lead to opinions and more work for the arbitral tribunal. Things get even more

complicated when there are parties and contracts involved which is common in M&A transactions. Issues like joining parties consolidating cases and objections to jurisdiction can delay the process. When courts get involved, like in the cases of *Shri Lal Mahal Ltd. V. Progetto Grano Spa*¹⁶ and *Vijay Karia v. Prysmian Cavi E Sistemi*¹⁷ it can create problems. To fix these issues arbitral institutions have introduced reforms like Expedited procedures Case management conferences Stricter timelines However it is still a challenge to balance flexibility and efficiency.

Thus, while international commercial arbitration is still the way to resolve cross-border M&A disputes we need to address the problems of delay, cost and complexity. This requires drafting of arbitration clauses Good case management Continued reforms to keep arbitration an effective way to resolve disputes. International commercial arbitration needs to be improved to remain an option, for commercial arbitration..

6. TRANSPARENCY VS CONFIDENTIALITY

The area of border arbitration is really complicated. Here the issue of transparency and confidentiality is a deal. For a time people thought that confidentiality was the most important thing in arbitration especially when it comes to business disputes, which involve sensitive financial information, business strategies and trade secrets.

We need to protect this information so that companies can stay competitive keep their reputation and make sure the market is stable. That is why the Indian government added *Section 42-A to the Arbitration and Conciliation Act in 2019*. This change made it a law that arbitration proceedings have to be confidential with some exceptions. The thing, about arbitration is that it needs to be confidential to work properly.

Nowadays people are starting to think that being open is very important in disputes that affect the public or the economy. Transparency helps make sure that the decisions made in -border arbitration are fair and accountable. This way people can trust that everything is done correctly. When it comes to disputes that involve companies or regulatory issues we need to be transparent. This helps people trust the market. It also prevents companies from hiding behind confidentiality. There are rules that try to balance being open and keeping some information private. For example, the UNCITRAL Rules on Transparency say that we should be open but protect information, like trade secrets. These rules have ways to keep information safe. This

¹⁶ (2014) 2 SCC 433

¹⁷ AIR 2020 SUPREME COURT 1807

includes editing documents to remove information having private hearings and controlling what information is shared. The goal is to be open while still protecting information.

Institutional regimes like *ICSID*¹⁸ are also looking for a balance. They think that how transparent things are depends on what the parties involved agree on what the law says or what the tribunal decides. The tribunal can make a framework that balances keeping things secret and being transparent long as it is fair and the Institutional regimes like *ICSID* treat everyone equally.

There have been cases that show how this balance works with regimes like *ICSID*. In some cases the tribunal has said that keeping things secret is more important while in cases they have said that being transparent is necessary to avoid conflicts of interest with Institutional regimes like *ICSID*. For example, in some cases tribunals have required companies to say who is giving them money so that everyone can see if there are any conflicts of interest with the companies and Institutional regimes, like *ICSID*.

In practice cross-border arbitral proceedings use things like confidentiality agreements redacted disclosures to manage information. The tribunal also makes sure that everyone involved keeps the information confidential so that the proceedings are fair.

So, the relationship between transparency and confidentiality, in -border arbitration is not simple. While confidentiality is still important we also need transparency to make sure that everything is fair and accountable. The best approach is to find a balance that works for each case depending on the context and the nature of the -border M&A dispute. We need to make sure that cross-border arbitration is fair, legitimate and transparent while also protecting information. Cross-border arbitration needs to find a way to balance these competing interests.

7. CULTURAL DIFFERENCES

Cultural differences play a role in cross-border commercial arbitration. When companies come from countries they bring their own ways of doing things, laws and languages with them to cross-border commercial arbitration. This can affect how they behave and resolve disputes during the -border commercial arbitration process. Different communication styles can cause a lot of problems in -border commercial arbitration.

Companies from some countries tend to be direct and straightforward when they communicate in -border commercial arbitration. On the hand companies from Asia or the Middle East may prefer to communicate in a more indirect way in cross-border commercial arbitration. This can

¹⁸ International Centre for Settlement of Investment Disputes

lead to misunderstandings especially when it comes to silence or concessions in -border commercial arbitration.

Different legal traditions also cause issues in -border commercial arbitration. In countries that follow Common Law, arguments and cross-examination are very important in -border commercial arbitration. In countries that follow Civil Law, written submissions and expert opinions are more important in -border commercial arbitration. If these differences are not managed well they can create a playing field in cross-border commercial arbitration.

Cultural attitudes towards time and deadlines also vary a lot in -border commercial arbitration. Some countries have deadlines while others are more flexible with their deadlines in cross-border commercial arbitration. This can affect how the cross-border commercial arbitration process moves. People from cultures also have different attitudes towards resolving disputes, in cross-border commercial arbitration. Some people prefer to fight it out in court while others prefer to settle things in -border commercial arbitration.

This affects how settlements are reached and how hearings are conducted in -border commercial arbitration. Arbitrators have a role in bridging these cultural gaps in cross-border commercial arbitration. They must manage the case effectively give instructions and understand cultural nuances in cross-border commercial arbitration. Using interpreters and precise language helps avoid misunderstandings in -border commercial arbitration. This makes international arbitration more effective and fair. The use of language and cultural awareness helps tribunals to ensure fairness and efficiency in -border commercial arbitration. Arbitrators must be sensitive to these differences to achieve a successful outcome, in cross-border commercial arbitration. Cultural differences impact the conduct and outcome of -border commercial arbitration. Arbitrators play a role in managing these differences. Effective case management and clear communication are essential, in arbitration.

8. CRITICAL ANALYSIS

International commercial arbitration is supposed to be based on principles like *party autonomy*, finality of awards *Kompetenz-Kompetenz* and *minimal judicial intervention*. When you look at how these principles are actually applied in these disputes, especially in India you see a lot of inconsistencies.

The biggest problem is that public policy is often used in a broad way, which goes against the idea that arbitration awards should be final. Of just being a safety net to protect basic legal values public policy is used to re-examine arbitration awards and change the outcome. This approach is not in line with *the New York Convention*, which is supposed to support the

enforcement of arbitration awards. It also makes investors unsure about the outcome, which can be bad for business.

Another issue is that Indian courts often get involved in arbitration cases early especially when there are claims of fraud or issues with public rights. This undermines the idea that arbitration should be an independent way of resolving disputes. When courts intervene much it can slow down the process and take away the power of the arbitration tribunals. This means that arbitration is not as predictable or neutral as it is supposed to be.

There is also a lot of confusion about how to enforce foreign arbitration awards in India especially when it comes to enforcement. In countries the approach is to enforce the parts of the award that are valid even if some parts are not. In India the law is not clear on this, which leads to inconsistent decisions from the courts. This creates work for the courts and makes it seem like enforcing arbitration awards in India is complicated and uncertain. The fact that there are different laws that can apply to cross-border disputes makes things even more complicated. Arbitration is also supposed to be a cheaper way of resolving disputes than going to court. In reality arbitration can be slow and expensive especially in complex cases involving multiple parties and a lot of evidence. The cost of arbitrators, institutional fees and legal representation can be very high which makes arbitration less appealing to businesses. When you have multiple parties involved it can be hard to manage the process and make sure everyone is treated fairly. Another problem with arbitration is that it can be too secretive. While it is important to protect business information too much secrecy can undermine trust and accountability especially in cases that involve regulatory or public interest issues. There needs to be a balance between confidentiality and transparency.

When you have arbitration cases that involve parties from countries and cultures it can be challenging to manage the process and make sure everyone is treated fairly. Different communication styles, legal traditions and approaches to dispute resolution can lead to misunderstandings and inefficiencies. If these differences are not managed well it can affect the outcome of the case. Make the arbitration process seem unfair.

Overall the problems with arbitration in India mean that it is not living up to its promise as an effective way of resolving disputes. The overuse of policy too much court intervention, confusion about enforcement and cultural and legal differences all contribute to this problem. Unless these issues are addressed arbitration in India may lose its appeal, to businesses and investors.

9. RECOMMENDATIONS

The difficulties found in this study clearly indicate that, although being intended to be effective and dependable, international commercial arbitration still needs significant practice changes, particularly in cross-border cases. Limiting and clearly defining the scope of public policy is one of the main recommendations. Currently, courts frequently re-examine arbitral awards on the basis of public policy, which lessens the finality of rulings and fosters ambiguity. Public policy should not be utilized as a means of evaluating the merits of a dispute; rather, it should only be applied in exceptional circumstances involving grave injustice. Building trust in arbitration will be facilitated by a restricted and consistent approach.

Judicial involvement is another crucial area. Indian courts occasionally get involved in arbitration early on, particularly when it comes to issues of jurisdiction and arbitrability. Arbitral tribunals' power is weakened and the procedure is delayed as a result. Except in obvious situations where assistance is required, courts should support tribunals and let them determine their own jurisdiction. Arbitration will be quicker and more efficient if needless court involvement is reduced.

Reform is also required for the execution of foreign arbitral rulings. Indian law is unclear, especially when it comes to the partial enforcement of awards. Courts now lack a precise methodology, which results in uneven rulings. Even if some sections of an award are unenforceable, it is advised that Indian law explicitly permit the execution of its lawful portions. This will improve enforcement efficiency and bring India into line with global standards.

The main disadvantages that lessen arbitration's value are delay, high expense, and procedural complexity. Despite the fact that arbitration is supposed to be faster than court processes, it frequently becomes costly and sluggish, particularly in complicated cases involving numerous parties and expert testimony. Arbitration agreements should be carefully drafted with precise deadlines and procedures in order to improve this. In order to save time and money, arbitral institutions should keep using quicker processes and improved case management.

A balanced strategy is also required for the secrecy and transparency issues. Complete secrecy can lower accountability, even yet confidentiality is crucial for safeguarding company secrets. Sensitive data should be preserved within a balanced framework that preserves some degree of openness when it comes to matters of public interest. This will boost arbitration's credibility.

Finally, cultural and legal disparities in cross-border conflicts lead to misconceptions and communication issues. Arbitrators ought to be cognizant of these distinctions and exercise caution when conducting hearings. Fairness can be ensured by using straightforward

procedures, clear communication, and cultural sensitivity. To sum up, enhancing arbitration calls for less judicial intervention, unambiguous legislation, improved processes, and conformity to global norms. These actions will contribute to arbitration's increased efficacy, dependability, and appeal in international business conflicts.

10. CONCLUSION

In summary, this study demonstrates that, although being widely acknowledged as a successful means of settling cross-border disputes, international commercial arbitration has a number of real-world obstacles that limit its effectiveness, particularly when it comes to cross-border M&A transactions. Strong tenets like party autonomy, finality of rulings, and minimal judicial intervention form the foundation of arbitration, but in practice, these tenets are not always appropriately adhered to. In the Indian setting, where procedural concerns and judicial approach lead to ambiguity and delays, the discrepancy between theory and practice is evident. The wide application of public policy by courts, which permits them to review arbitral verdicts on grounds other than those specified, is one of the main obstacles. As a result, arbitration loses some of its finality and becomes less trustworthy. Public policy frequently serves as an excuse for meddling rather than serving as a safeguard. In a similar vein, excessive court intervention diminishes arbitral tribunals' independence and slows down the dispute resolution process, particularly in the early stages. This contradicts the fundamental notion that arbitration ought to be a quicker and more effective substitute for the legal system.

The ambiguity surrounding the enforcement of international arbitral rulings, especially with regard to partial enforcement, is another significant problem. Indian law is still ambiguous, resulting in uneven rulings, even though international practice favors upholding valid portions of an award. Foreign parties become confused and lose trust as a result. Arbitration is also more complicated and challenging to administer due to jurisdictional disputes and the involvement of several legal systems.

Arbitration's utility is further impacted by issues with procedural complexity, high costs, and delays. Particularly in significant M&A conflicts involving numerous parties and expert testimony, what should be a swift and economical procedure frequently turns into a drawn-out and costly one. As a result, businesses find arbitration less appealing and less accessible. Confidentiality and openness are other challenges. Confidentiality is necessary to safeguard company data, but excessive secrecy can erode accountability and confidence. However, if cultural differences between parties from different nations are not well addressed, they can lead to communication issues and compromise the fairness of proceedings.

All things considered, these difficulties demonstrate that arbitration in its current form does not always accomplish its intended objectives. Its efficacy is undermined by the abuse of public policy, excessive court participation, problems with enforcement, and practical challenges including expense and time. Therefore, it is crucial to maintain a balanced approach with little court intervention, unambiguous legislation, and improved procedural management if arbitration is to continue to be a trustworthy method of resolving disputes. Then and only then will arbitration be able to effectively and fairly settle cross-border business conflicts.

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