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**“CHALLENGES AND BEST PRACTICES IN
ENFORCEMENT OF FOREIGN ARBITRAL AWARD
UNDER NEW YORK CONVENTION:
AN INDIAN PERSPECTIVE”**

AUTHORED BY - DIVYA MAAN & AYUSH DADHICH

In today's globalization world arbitration plays a role, in resolving common conflicts that arise from international contracts. Its flexibility, speed and impartiality make it the preferred choice for addressing disputes over litigation which tends to be time consuming, expensive and offers limited remedies. In a country like India a developing nation with massive foreign direct investment in recent years, arbitration is encouraged as a means of resolving disputes. This is because there is always a need for a faster dispute resolution process when it comes to clashes arising from contracts. However, enforcing an arbitration award, in one country after it has been announced in another still poses challenges.

This research paper embarks on a journey to explore the intricate realm of enforcing “foreign arbitral awards” in India, with a focus on the New York Convention. India being a signatory to it has right and obligation we are going to have an overview on these rights and responsibilities through Indian legislative statutes and their amendments. The execution of foreign arbitration awards according to the Geneva and New York Convention is governed by the “Arbitration and Conciliation Act, 1996” (hereinafter referred to as "Act").

Paper will focus on meaning and enforcement of “foreign award” taking essence from the legislative act we will further examine the essentials for enforcement of foreign arbitral award, its registration and limitation period. This paper also discusses the procedure for the enforcement of the foreign award. This paper explores obstacles hindering the execution of foreign awards in India. It further highlights the influence of public policy doctrine on international awards, along with an analysis on the role of Indian judiciary their recent trends and guidelines by the apex court through various landmark judgments. Finally, it offers proposals for how to improve the arbitration system in general and solve the challenges by a comparative analysis of enforcement of arbitral award in India to the other “New York convention” signatory which will provide different perspective of enforcing foreign award with minimum friction.

Keywords- Arbitration, New York convention, Foreign Award, Enforcement, Judiciary

INTRODUCTION

Alternative Dispute Resolution (ADR) has been part of our country's history, aiming to make justice accessible and efficient. Over time, people have experimented with various procedures to simplify the process and resolve disputes, including family and group conflicts. In 1982, India introduced Lok Adalat, evolving into the Arbitration Act of 1940 and later transforming into the “Arbitration & Conciliation Act, 1996”, adapting to the dynamic global system. While domestic arbitration awards are well-regulated under Indian law, challenges arise when enforcing awards from foreign countries. The domestic courts have clear jurisdiction over domestic awards, but international commercial arbitration presents a different scenario. This report observes the enforcement trends in India, emphasizing the country's efforts to become a leading arbitral jurisdiction in South-East Asia. It discusses the general history of foreign arbitral awards, the competent authorities handling their enforcement, the procedures involved, and the limitations in the enforcement process. However, it points out that the enforcement procedure lacks certain safeguards needed for efficiency.

Enforcing foreign arbitral award demand collaboration on a national and international level, with the international sphere governed by the “New York Convention” and the domestic sphere by the “Arbitration & Conciliation Act, 1996”. Despite this, the enforcement procedure needs enhancements for greater efficiency. The conclusion suggests that India is on the path to a new era in international arbitration, backed by sincere efforts from the government and evolving approaches from national courts.

Alternative Dispute Resolution (ADR) has been a part of our country's experience for a long time, dating back to ancient times. Throughout legal history, people have tried various ways to make justice more accessible, affordable, and convenient. Ancient dispute resolution systems played a significant role in resolving family, group, and minor disputes.

In 1982, India introduced Lok Adalat, a form of dispute settlement court, which later evolved into the Arbitration Act of 1940. With the changing landscape of globalization, it transformed into the “Arbitration & Conciliation Act, 1996”. While domestic arbitration awards are well addressed under Indian law, challenges arise when enforcing awards from foreign countries. Some states

may hesitate to recognize awards from foreign legal proceedings.¹

In international commercial arbitration, the process of recognizing and enforcing awards differs from domestic arbitration. This paper concludes with analysis on the trends in enforcement in India, suggesting that the country is on its way to becoming a leading arbitral jurisdiction in South-East Asia. The efforts of the Indian Government and the evolving approach of courts toward arbitration matters indicate a positive shift.

The report covers the general history and definition of foreign arbitral awards, the competent authority for enforcing these awards, the procedures involved, and the limitations in the enforcement process. It emphasizes the need for both national and international cooperation in enforcing foreign arbitral awards.

In conclusion, the paper suggests that with the right approach, India has the capacity to grow into a significant force in international arbitration, backed by government's efforts and the changing stance of national courts.

NEW YORK CONVENTION

The “New York Convention”, officially “The Convention on the Recognition and Enforcement of Foreign Arbitral Awards”, is a crucial international treaty adopted on June 10, 1958, and enforced from June 7, 1959. This treaty is a big deal in the world of international trade law, often seen as a cornerstone in the realm of global arbitration. The convention requires courts in its member countries to honour arbitration agreements when dealing with disputes covered by such agreements. Additionally, these courts are obligated to recognize and enforce awards granted in other countries, with only a few specific exceptions. Currently, 156 countries have signed up to be part of this convention.

Primarily, it aims to boost positive business relationships between countries and foster cooperation among states. Importantly, it helps ease the burden on states when deciding which laws to apply or which countries' procedures to follow in arbitration processes. Fairness and efficiency in international arbitration are greatly enhanced by the "New York Convention," which

¹ “Talat Chaudhary, Enforcement of Foreign Arbitral Awards in India, 4 International Journal of Law Management & Humanities, 1477–1500 (2021)”

establishes a minimal degree of control that member governments can exercise over arbitral rulings.

A convention for the recognition and enforcement of awards from international arbitration has been developed by the United Nations (UN). This agreement permits denunciation procedures, considerations for federal states, and extension declarations. On the ninetieth day after the third document of ratification or accession was deposited, it came into effect. Article I of the UN convention deals with the recognition and execution of arbitration awards made in a country other than the one where enforcement is sought. This covers disputes involving individuals or companies, whether they are formal or informal.

Every state engaged must recognize written agreements when parties agree to arbitrate disputes as per Article II of the UN convention. The requirements for acceptance and execution must not be more onerous than those governing domestic arbitration verdicts. The party requesting recognition and enforcement must present the court with the original agreement as stated in Article II as well as an original or certified replica of the award.²

If the party requesting the application of Article V of the UN convention can provide evidence of specific reasons, such as the parties' incapacity, the agreement's invalidity, inadequate notice, the arbitration's scope being exceeded, the arbitral authority's improper composition, the award's non-binding nature, or its suspension or revocation by a competent authority, the request may be denied.

KEY FEATURES OF NEW YORK CONVENTION

1. **Global Handshake for Business Harmony-** The Convention is like a worldwide friendship pact for countries involved in international trade. It's all about promoting healthy business relations and reducing the hassle of figuring out which rules to follow or whose procedures to use when dealing with cross-border disputes.
2. **Foundation Stone of International Arbitration-** Think of the Convention as the cornerstone of international arbitration. It sets the stage, laying down the rules that participating

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (June 10, 1958)

countries agree to follow when it is about recognizing and enforcing arbitral awards made outside their borders.

3. **Minimum Control, Maximum Cooperation-** It establishes a basic level of control that countries can exert over arbitral awards and agreements. It's not about imposing strict rules but ensuring a fair and cooperative environment where everyone plays by the same rules.
4. **Promoting Consistency and Order -** The Convention acts as a referee, making sure that when a country agrees to arbitration, it follows through. It helps avoid chaos and promotes consistency, making the enforcement of foreign awards a smoother process.
5. **Reducing Decision-Making Burden on States-** Instead of burdening countries with deciding which laws to enforce or which country's procedures to follow during arbitration, the Convention steps in. It's like a helpful guide, streamlining the decision-making process.
6. **Recognition and Enforcement-** One of the Convention's star features is its focus on making sure that if parties agree to arbitrate, the resulting award should be recognized and enforced. This ensures that the arbitration process isn't just a formality but a meaningful and binding resolution.
7. **Protecting Limited Exceptions -**While the Convention encourages enforcement, it's not a blind supporter. There are specific limited exceptions where a country can say, "Hey, we won't enforce this award." These exceptions provide a safety net, ensuring fairness and preventing misuse.

ENFORCEMENT AND RECOGNITION OF FOREIGN AWARD UNDER NEW YORK CONVENTION

The initial step in dealing with foreign arbitral awards involves recognizing them, as described in Article 1 of the convention. This recognition comes with the responsibility of enforcing these awards, as detailed in Article 3. To initiate the process, a state seeking enforcement must present specific documents to the court, and it's up to the court to ascertain whether it falls within the convention's scope.

Enforcing foreign awards under the "New York Convention" is governed by Sections 44 - 52 of the "Arbitration and Conciliation Act 2015".

To ascertain whether an award is subject to enforcement under this convention, two conditions must be met:

1. The country where the award originated must be a signatory to the “New York Convention”.
2. The award should be granted within the territorial jurisdiction of other contracting nation, which is officially recognized by the Central Government.

The process of enforcing a foreign award begins with filing an execution petition. The court then carefully examines whether the requirements outlined in the act are strictly followed. If the award is deemed to comply with the law, it can be enforced similarly to a court decree, as per Section 49 of the act.

However, parties involved should be cautious as challenges may arise at this stage, including objections from the opposing party. Certain prerequisites must be met, such as submitting the original or duplicate copy of the award and the underlying agreement to the court.

In the action of filing an execution petition, the opposing party may raise objections to the enforcement of an award, as per Section 48 of the act. This means the process involves a thorough evaluation by the court, ensuring that all necessary conditions are met before the award can be enforced. States signing this convention commit to recognizing written agreements for arbitration and ensuring their enforcement. The convention mandates that there should be no stricter conditions or higher fees for recognizing foreign arbitral awards compared to domestic ones.

To seek recognition and enforcement, the original award and the written agreement must be provided by the party making the application. Refusal may occur only under specific conditions, such as incapacity of parties, improper notice, or decisions beyond the arbitration's scope. Additionally, the subject matter must be capable of settlement through arbitration, and enforcement should not go against the country's public policy.

The convention allows for extension declarations, considerations for federal states, and a process for denunciation. On the "ninetieth day," following the deposit of the third document of ratification, it became operative. The United Nations Secretary-General is in charge of notifications, and the convention, available in multiple languages, is stored in the UN archives.

PROCEDURE FOR ENFORCING AN FOREIGN ARBITRAL AWARD

It's crucial to be familiar with the rules of procedure when enforcing foreign arbitral awards. The party that comes out victorious needs to navigate these provisions to succeed. This chapter delves into the significant aspects of the rules of procedure.

Firstly, it explores the provision that governs these rules — whether they are dictated by national law. Second, it looks at the procedures that need be followed by the victorious party in order to enforce a “foreign arbitral award”. Thirdly, it describes the steps an applicant must take in order to make such an award legally enforceable. The ultimate goal is to ascertain whether the current procedural regulation provisions are enough to guarantee the execution of all types of foreign arbitral verdicts in accordance with relevant treaties in India.

From a legal standpoint a "foreign judgment" is any judgment by a court outside the jurisdiction of India that was neither founded nor upheld by the union Government, according to Section 2(6) of the CPC. Whether or not the nation of origin is reciprocating determines whether or not foreign judgements may be enforced there. The execution process can be started in India with a decree from a reciprocating nation. A new lawsuit must be launched in the appropriate Indian court in order to get a decree from a nation that does not reciprocate.³

In a notable case, “Union of India v. Hardy Exploration and Production (India) Inc”, the court addressed the issue of determining the "seat" of arbitration when the agreement specifies "venue" but not the "seat." This raised questions about the basis and principle for determining the seat, crucial for applying the laws of a specific country in post-award arbitration proceedings. The court suggested a larger bench review due to conflicting decisions.

The Supreme Court reversed the earlier rulings in “BGS SGS SOMA JV v. NHPC Ltd”, a recent case. It made it clear that the arbitration venue is regarded as the arbitration's seat unless the arbitration agreement says otherwise. This emphasizes the importance of precision in arbitration agreements to avoid ambiguity in determining the seat.

³ Enforcement of Foreign Arbitral Award - A Critical Analysis of Public Policy of India

CONDITION FOR ENFORCING AN FOREIGN ARBITRAL AWARD

Enforcing a “foreign arbitral award” in India comes with specific conditions. As per Section 48(1), the award may face obstacles if the opposing party can prove that the parties were unable to fulfil the agreement due to legal reasons, or if the agreement itself was invalid under the relevant laws. Another condition is if the tribunal that issued the award did not conduct a fair trial. Furthermore, in the event that the award extends beyond the parameters of the initial arbitration agreement, that excess portion may be divided. Another obstacle is noncompliance with the provisions of the arbitration agreement or the relevant legislation for the nomination or composition of the arbitral authority. Moreover, enforcement may be contested if the judgment has been stopped, annulled, or is not yet legally binding in the nation where the arbitration was held.

Section 48(2) adds more criteria, stating that a foreign award may be denied enforcement if the court in India finds that the settlement of the award doesn't align with Indian arbitration law or if the enforcement contradicts the public policy of India, applying in cases of fraud, corruption, violation of the law, or contrary to fundamental legal policies.⁴

It's important to note that while Section 48 outlines grounds for refusal, it doesn't permit a detailed examination of errors through an appellate inquiry. In the event that an application is made to vacate or postpone the award, the court may decide to postpone the enforcement decision and, if required, may require the party requesting enforcement to furnish appropriate security. This ensures fair process that adheres to the principles laid out in the law.

CHALLENGES FOR ENFORCEMENT OF FOREIGN ARBITRAL AWARD IN INDIA-

Obtaining an arbitral ruling in your favour from an overseas tribunal is just half the battle won; the other half lies in seeing it through to implementation in India. Most arbitral awards are voluntarily complied with. The issue arises when one party contests the award and its enforcement becomes essential. In a number of instances, the opposite party was unsuccessful to get a

⁴ Praladh Choudhary, Recognition and Enforcement of Arbitral Awards in India, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022)

beneficial award enforced by an Indian court of competent jurisdiction, even after receiving it.⁵ Such failure in enforcement might be due to certain reasons such as award being challenged on grounds mentioned in section 34(2)(a) and (b) of the act, Public Policy Doctrine, jurisdictional issue and interpretational issue.

Public policy Argument

The most often exploited justification for contesting the implementation of a foreign arbitral ruling is public policy. A government may refuse to recognize and implement a foreign arbitral ruling under the legal theory of "public policy" if doing so would go against the core ideals and tenets of that nation's legal system. Have elements such as

- Fundamental principle of law
- protection of rights
- prohibition of illegal activities
- public morality
- safety and security

The committee's report attempted to restrict how public policy was applied, according to the NY convention. It is important to understand how art.V.2 of the Convention undermines the application of "public policy" in this context. Firstly, the word "may" in the opening sentence allows the court to refuse without having to, giving it discretion. Secondly, paragraph (b) makes it clear that the award, as well as its recognition and enforcement, would be unlawful.⁶

“Public policy” meaning shift from 1996 act to 2015 amendment act in India-

The "public policy" was not specified in the original 1996 Act. However, when it came to annulling or declining to uphold arbitral awards—a topic we will cover in more detail in a subsequent slide—Indian courts had a capricious understanding of public policy.

Significant modifications to the “1996 Act” were made by the “2015 Amendment Act”, one of which was a revision in the interpretation of "public policy." The Act's Section 34(2)(b)(ii)

⁵ Muskan Agarwal, “Challenges in the Enforcement of Foreign Arbitral Awards in India with Reference to Landmark Cases, 4 INDIAN” J.L. & LEGAL Rsch. 1 (2022-2023)

⁶ Komal & Neha Pallav, Enforceability of Foreign Awards in India: Issues and Challenges, 3 INT’L J.L. MGMT. & HUMAN . 2331 (2020).

addresses the setting aside of arbitral awards and makes it clear that an award is against Indian national policy only in the following situations:

- 1) The award was made in a way that violated section 75 or section 81, was influenced by fraud or corruption, or both;
- 2) it goes against the core principles of Indian law; or
- 3) It goes against the very fundamental ideas of justice or morality.

EVOLUTION OF PUBLIC POLICY DOCTRINE

“Public policy” doctrine had an interesting history before 1996 act after 1996 act and after 2015 amendment act, even today it is a much-disputed topic in Indian legal system.

1. Renusagar power co. ltd. V. General Electric co. 1994⁷

Held that the bar of public policy will be attracted only when there is a violation of something more than Indian Laws. The enforcement would be refused if the award is contrary to the fundamental policy of Indian law or justice or public morality it was a pro arbitration stand of judiciary even before 1996 act promote narrow interpretation of public policy.⁸

2. ONGC V. Saw pipes Ltd. 2003⁹

According to the ruling, any arbitral decision that deviates from Indian statutes is "patently illegal" and goes against "public policy." Contrary to the earlier Renusagar decision, the meaning was widened by linking "patent illegality" to a "error of law" and "public policy" to the unenforceability of "public policy of India." In the arbitration community, this division bench ruling expanding public policy was harshly and rightfully criticized in the international commercial arbitration world.¹⁰

This judgement was followed in many cases like Hindustan Zinc Ltd v. Friends Coal Carbonisation and many more.

⁷ Renusagar Power Co. Ltd vs General Electric Co 1994 AIR 860

⁸ Anirudh Hariani, 'Indian Arbitration and the Shifting Sands of Public Policy', in Lawrence Boo and Gary B. Born (eds), *Asian International Arbitration Journal*, (© Kluwer Law International; Kluwer Law International 2020, Volume 16 Issue 2) pp. 159 – 192

⁹ Oil and Natural Gas Ltd v. Saw Pipes Ltd AIR (2003) 5 SCC 705

¹⁰ Supra note 4

3. Shri Lal Mahal Ltd. V. Progetto Grano SpA ¹¹

This adopted a pro-arbitration stance. The court determined that the interpretation of section 48(2)(b) of the 1996 Act would be consistent with what had been said in *Renusagar* about section 7(1)(b)(ii) of the Foreign Awards Act. As a result, the court determined that section 48(2)(b) would only forbid the implementation of a foreign award if doing so would violate either

- 1) "The fundamental policy of Indian law"
- 2) "The interests of India."
- 3) "Justice or morality"; moreover, the broader meaning of the term "public policy of India" provided in section 34(2)(b)(ii), *Saw Pipes*, does not apply if an objection is raised to the foreign award's execution under section 48(2)(b).

4. The Law Commission's 246th Report and *Western Geco*

In 2014, the Law Commission of India issued the 246th Report, recommending crucial amendments to the "Arbitration and Conciliation Act, 1996", with the objective of harmonizing Indian arbitration practices with international standards. The recommendations included restricting grounds for an award annulment on public policy to violations of the "fundamental policy of Indian law or conflict with most basic notions of morality or justice." Furthermore, the report introduced a new ground for setting aside domestic arbitration awards based on patent illegality which was criticised as it should be era of pro arbitration not broadening the scope of grounds for challenging the foreign arbitral award. The proposed amendment to Section 28(3) aimed to replace 'in accordance with' with 'having regard to' to overturn certain precedents. The subsequent *Western Geco* case¹² in 2014 expanded court intervention, incorporating the *Wednesbury* principle into 'fundamental policy of Indian law.' Associate Builders in the same year affirmed *Western Geco*, emphasizing public policy grounds for setting aside awards. Responding to criticism, the Law Commission issued a supplementary report in 2015, condemning *Western Geco*'s allowance of award reviews on merits and recommending an additional explanation to prevent such reviews.¹³ This ultimately constitute to the pro arbitration amendment act of 2015.

¹¹ *Shri Lal Mahal Ltd. v. Progetto Grano SPA* 5 AIR (2003) 3 SCR 691

¹² *Oil & Natural Gas Corpn.Ltd vs Western Geco International Ltd* CIVIL APPEAL NO.3415 OF 2007

¹³ *Supra* note 4

5. Vijay Karia & Ors v. Prysmian Cavi E Sistemi SRL & Ors (2020)¹⁴

Held that it would not be against the fundamental policy of Indian law to enforce a foreign award that violates a mandatory provision of the “Foreign Exchange Management Act, 1999” (which Act replaced and repealed the Foreign Exchange Regulation Act, 1973). This was a very pro-arbitration stance on the part of the government.

Jurisdictional Issue in enforcement of foreign arbitral award in India

The jurisdictional challenges in the acceptance of foreign arbitral awards in India have undergone significant scrutiny, marked by legislative amendments and pivotal judicial decisions. This part of paper delves into the evolving landscape shaped by key judgments and statutory modifications, focusing on the interplay between “the Arbitration and Conciliation Act, 1996”, and international practices.

The study begins by examining landmark judgments that have set the tone for jurisdictional debates. Notable cases, including *Union of India v Reliance Industries Ltd*, delineate the exclusion of Part I of the Arbitration Act 1996 when the juridical seat is outside India or when non-Indian law governs the arbitration agreement. The implications of these decisions on agreements predating September 6, 2012, are explored, drawing insights from *Balco II* judgment, which clarified the application of Part I to foreign-seated arbitrations entered before the specified date that part 1 of the act will be applicable to the parties involved in foreign seated cases unless parties themselves expressly or impliedly excludes it.¹⁵

There were the conflicting decisions in the *Addhar* judgment versus the *Sasan* judgment, wherein the Supreme Court grapples with determining whether Indian parties can select a seat of arbitration outside territorial jurisdiction of India without violating public policy. The Madhya Pradesh High Court's departure from *TDM Infrastructure*¹⁶ and *Addhar Mercantile* in favour of *Atlas Export Industries*¹⁷ adds layers to the discussion, emphasizing that the mere foreign seat

¹⁴ Vijay karia v. Prysmian Cavi E Sistemi (2020) SCC Online 177

¹⁵ Sheila Ahuja, 'Arbitration Involving India: Recent Developments', *Asian Dispute Review*, (© Hong Kong International Arbitration Centre (HKIAC); Hong Kong International Arbitration Centre (HKIAC) 2016, Volume 18 Issue 3) pp. 132 - 139

¹⁶ *TDM Infrastructure Pte Ltd v UE Development India Pte Ltd* (2008) 14 SCC 271

¹⁷ *Atlas Exports Industries v Kotak & Company* (1997) 7 SCC 61.

selection does not automatically nullify the arbitration agreement.¹⁸

In wake of “Sasan Power Ltd. v. North American Coal Corporation India Pvt. Ltd”,¹⁹ this paper elucidates the SC’s approach to the doctrine of public policy concerning Indian parties opting for foreign seats. It examines the Court’s reluctance to conclusively decide on the issue, emphasizing the nature of the agreement rather than directly addressing whether two nationals can participate in foreign-seated arbitrations. The analysis extends to the Delhi HC’s stance in “GMR Energy Limited v. Doosan Power Systems India Private Limited”, reinforcing the autonomy of arbitration agreements and their independence from the underlying substantive contracts.

The resurgence of jurisdictional challenges in the Venture Global case, previously set aside by BALCO. The dissenting views within the Supreme Court and the subsequent referral to a larger bench underscore the complexity of issues surrounding enforcement and jurisdiction, calling for a nuanced examination. It was examined if the seat is outside India, Indian courts have limited jurisdiction in reviewing foreign arbitral awards. This case clarified that Indian courts cannot review the merits of an award made in a foreign-seated arbitration.

Procedural issue in enforcement of foreign arbitral award in India

The procedural issue in the enforcement of foreign arbitral awards in India revolves around stages of enforcement and the computation of the limitation period for filing applications for enforcement. The conflicting decisions by Indian courts have created uncertainty regarding whether a “foreign arbitral award” ought to be seen as a decree right away or wait until the court is convinced that it can be implemented.

Three phases make up the "Arbitration and Conciliation Act, 1996" process for enforcing a foreign award. Initially, the party whose favour the award is delivered must file an application under Section 47 of the "Arbitration and Conciliation Act," together with all necessary supporting paperwork. Second, in order to raise a defense in line with Section 48 of the legislation, the party receiving the award must provide all pertinent evidence. Lastly, if the court is convinced that the award is enforceable in light of all the facts put out by the parties, it will carry out its

¹⁸“Alabh Anant lal & Soham banerjee, The Public Policy Doctrine in Arbitration: A Primer on its Effect on Challenges and Enforcement of Awards, 60 Indian Arbitration Law Review (IALR) (2019)”

¹⁹ Sasan Power Limited v. North American Coal Corporation India PVT. LTD. (2016) 10 SCC 813

implementation under Section 49 of the act. Which is a lengthy when we compare it to arbitration hub Singapore

Sec. 49 of the “arbitration and conciliation act” states that a foreign award, upon court satisfaction, shall be deemed a decree here neither the” arbitration and conciliation act, 1996” nor the “limitation act, 1963” has expressly provided the limitation period for enforcement applications for determining the limitation Articles 136 and 137 of the “Limitation Act,1963” have been referred. Art.136 stipulates a 12-year statute of limitations for the implementation of a decree, while Art. 137 establishes a 3-year statute of limitations for any application that lacks a restriction clause. Whether a foreign award should be regarded as a decree right away determines whether a three-year or twelve-year time bar applies to an enforcement application.

In “Noy Vallesina Engineering Spa v. Jindal Drugs”, the Bombay High Court²⁰ adopted a two-stage approach to enforcement, using Article 137 of limitations act during the first three years and Article 136 if the award is taken to be a decree. Same Bombay HC after taking into account the cases of Thyssen Stahlunion GMBH case²¹ and Fuerst Day Lawson case²², the court in “Imax Corporation v. E-City Entertainment”²³ adopted a different stance and that an enforcement petition falls under Article 136 (12 years). The Foreign Awards Act, 1961 was repealed, and its provisions were compared with those of the Act, which succeeded it, by the apex Court of India in the Thyssen case. The Foreign Awards Act required that a decree come first, but the new Act branded a foreign award as a decree first, the Supreme Court observed that awards are already enforceable decrees that can be carried out in a single action. As a result, the Bombay High Court in Imax determined that in order to further the Act's goals, the word "stamped" must be interpreted as "regarded," and a foreign arbitral award must be treated as a decree which was a pro arbitration move by the HC.²⁴

The Supreme Court recently held in “Bank of Baroda v. Kotak Mahindra Bank” that the statute of limitations for carrying out a foreign decree under Section 44A of the Civil Procedure Code

²⁰ Noy Vallesina Engineering Spa v. Jindal Drugs, the Bombay High Court 2020 SCC Online SC 957

²¹ Thyssen Stahlunion GMBH v. Steel Authority of India AIR 2002 Del 255

²² Fuerst Day Lawson v. Jindal Exports 2012 SCC OnLine Del 5647

²³ Imax Corporation v. E-City Entertainment Civil Appeal No. 3885 of 2017

²⁴“The ambiguous time-bar for enforcement of foreign awards in India Kluwer Arbitration Blog, <https://arbitrationblog.kluwerarbitration.com/2020/07/28/the-ambiguous-time-bar-for-enforcement-of-foreign-awards-in-india/> (last visited Sep 19, 2023)”

1908 ("CPC") is controlled by the reciprocating country's limitation law, even though the court has not directly addressed the issue. It was noted that Article 136 of the Limitation Act is not relevant because it is limited to court orders in India. For three reasons, however, this judgement is not applicable to arbitral verdicts made abroad. First off, even though an arbitration decision is enforced as a decree, the CPC clarifies that it is not included in a foreign decree due to the several legal realms in which arbitration operates lastly, the reciprocity principle—which cannot be used in the event of arbitral awards—was employed by the Supreme Court. Lastly, a foreign award is not considered a "foreign" decree, but rather one that has already been labeled as such.²⁵ Hence required a strong framework by legislation with specified limitation period which shall comply with the Article III of New York Convention and achieve the object of speedy foreign arbitral enforcement and reduce supervisory jurisdiction of court.

Suggestion and Conclusion

In summary, India's experience with international arbitration, especially with regard to the execution of judgments made by foreign arbitral, illustrates a complicated situation. A deliberate attempt was made to expedite domestic arbitration with the transition from Lok Adalat to the current "Arbitration & Conciliation Act, 1996". The enforcement of international awards is impeded by intricate procedural details, jurisdictional complications, and varying interpretations of "public policy."

The regulatory framework is framed by the convergence of national and international cooperation, which is controlled by the "New York Convention" and the "Arbitration and Conciliation Act, 1996". While admitting progress, India also recognizes inefficiencies in the enforcement process and hopes to become a prominent arbitral jurisdiction in South-East Asia. The enforcement of foreign arbitral awards in India presents significant challenges, requiring a nuanced examination of legal principles and evolving jurisprudence. Public policy challenges have evolved over time, with the 2015 Amendment Act attempting to provide a more specific definition of "public policy" to limit its application and reduce abuse. However, lingering debate and conflicting judgments indicate the need for a more unified and clearer interpretation.

Jurisdictional complexities in enforcing foreign arbitral awards have been scrutinized, marked by

²⁵ Ibid

legislative amendments and pivotal judicial decisions. The “Arbitration and Conciliation Act, 1996”, and international practices, especially regarding the exclusion of Part I when the juridical seat is outside India, add layers of complexity. Conflicting decisions in cases like *Addhar versus Sasan* highlight the need for more clarity and consistency in determining if two Indian parties are allowed to choose an arbitral seat beyond India without violating public policy.

Procedural hurdles in the implementation of foreign arbitral awards in India revolve around the stages of enforcement and the determination of the limitation period. The need for a streamlined and efficient procedure, akin to arbitration hubs like Singapore, becomes apparent.

Suggestions for improvement include adopting a uniform enforcement system with better clarity, aligning with municipal laws, and fostering a 'volksgeist' or common consciousness among signatory member countries. An effort was made, however it was futile where The International Law Association (ILA) made a number of suggestions about public policy concerns related to the recognition and implementation of foreign awards in a report that was given at its seventeenth conference, which was held in April 2002 in New Delhi. But none of the contracting governments agreed on these proposals, thus they were dismissed as unimportant²⁶. Hence such reform and proposal should be appreciated at Global level. Legislative reforms should be considered to provide clearer guidelines, and provisions or precedents that limit court interference in the enforcement process are needed.

In conclusion, addressing these challenges requires a concerted effort from legislators, legal practitioners, and international organizations to foster an atmosphere that would allow foreign arbitral rulings to be enforced in India.

26 “Suryansh singh khushwa et al., Foreign Awards in International Commercial Arbitration: Recognition, Enforcement and Challenges to an Award, 60 IJLIA (2017)”