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ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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Abstract

Today, India is an important part of the global economy. The rise in globalization has led to more international commercial disputes. International arbitral awards become important in this fight because they have to be followed. The laws that regulate the enforcement of foreign awards will be examined in this study. The New York Convention and the Geneva Convention regulate overseas arbitration awards. The common law principles of justice, equality, and good conscience, which are included into awards, make non-conventional judgments enforceable in India as well. Many awards need to be done in the field of arbitration when a foreign court rules in favor of one party. The Act itself needs to be rethought, and the legal precedent set by the courts is hard to understand. Both the national and international levels of enforcement must collaborate in order to enforce foreign awards. There must be agreement between those who adhere to the New York Convention and the 1996 Arbitration Act.

Introduction

Alternative dispute resolution (ADR) is not a new concept to the people of this nation. It has existed from the beginning of time. According to legal history, throughout history, man has experimented with ways to make obtaining justice easy, affordable, and convenient. The old way of conflict resolution had a vital role in the resolution of family, group, and small conflicts. India started the Lok Adalat conflict resolution system in 1982 in response to the changing system of globalization¹. In 1940, the Arbitration Act was made official, and in 1996, it was changed to the Arbitration & Conciliation Act, which is now called the Arbitration Act. When an arbitration ruling is made in a country other than the one where it is to be enforced, things get more complicated. People from other countries or people who have used foreign legal processes may not be able to get awards in their home country. To enforce foreign arbitral rulings, both countries and the world need to work together. International arbitration is governed by the New York Convention, whereas domestic arbitration is governed by the Arbitration and Conciliation Act of 1996. Certain precautions are still missing from the enforcement mechanism, which are required to make it more efficient. The domestic court, which operates under national legislation that allow for domestic award enforcement, has undisputed authority to enforce domestic arbitral judgments. A nation's court system does not have inherent jurisdiction over cases determined in another country. Commercial arbitration rulings from other countries don't get the same treatment as those from domestic arbitration when it comes to recognition and enforcement.

The Foreign Awards

The ultimate form in which the Arbitration ruling is presented is the award. A "foreign award," as defined by the Arbitration and Conciliation Act, is an arbitration award made after October 11, 1960, on conflicts between individuals that were generated by legal ties, whether contractual or not, as defined by the Act.

As part of a signed arbitration agreement that says the First Schedule convention applies, and as part of that agreement, the arbitration will be done.

If the Central Government decides to apply this convention to one of the territories it has chosen, it will put it in the official Gazette. If it thinks that reciprocal arrangements have been made, the Central Government will do this².

¹ DESHPANDE V, 'Enforcement of Foreign Awards In India, U.K. And U.S.A.' (2022)

<<https://www.deepdyve.com/lp/kluwer-law-international/enforcement-of-foreign-awards-in-india-u-k-and-u-s-a-ixnXc56kWK>> accessed 12 April 2022

² Bose A, 'Recognition And Enforcement Of Foreign Arbitral Award In India: In Search Of A Formidable Shore | SCC Blog' (SCC Blog, 2022) <<https://www.sconline.com/blog/post/2021/07/28/foreign-arbitral-award-in-india/>> accessed 13 April 2022

When a "foreign award" is defined as "an arbitral award on disputes relating to things deemed commercial under Indian law that was made after July 28, 1924," it is included under Section 53 of the Arbitration and Conciliation Act of 1996.

As part of an arbitration agreement that follows the process in the second schedule, and as part of a settlement.

As a group, between people who are governed by the same thing, like the Central Government. There are a few of the six exceptions to the rules in Section 13 of the CPC 1908. The case of Vishwanath vs. Abdual Wajid from Air 1963 SC.

The Enforcement Of Foreign Awards

Both the Geneva Convention on Foreign Arbitral Awards (1927) and the New York Convention on Foreign Arbitral Awards (1958) have been signed by India. The Geneva Convention oversees international arbitration judgements' execution. If the award is made in a nation that has signed the Geneva Convention or the New York Convention, it will be recognized in India. Only 48 of the world's 196 countries have been certified as reciprocating countries with Mauritius by the federal government. This is the most recent addition to the collection. The filing of an execution petition is the first step in the two-step process of executing a foreign award in India. A competent court would first determine whether the award met the Act's conditions, and then the award would be enforced as a court decree in the second stage³. To slow down the process, the award debtor may raise silly objections such as presenting an original or authenticated copy of the award and the underlying agreement to the court. An award is "foreign" if it meets two criteria. It must first address issues arising from a legal connection that may be deemed commercial under Indian law. Indian courts have used the term "business partnership" in several different ways. As stated in RM Investments Trading Co. Pvt Ltd v Boeing Co. and Others, the Supreme Court believes "the word "commercial" should be given a broad connotation to include all concerns arising from all business ties, contractual or not."

Requirements For The Enforcement Of Foreign Awards

- It must be in its original form or a copy that has been legally validated.
- The original agreement, or a fully documented copy of it that is the same.
- There must be proof of the existence of a foreign reward.
- In order to be enforced, foreign arbitral awards must fulfil specific criteria.

³ Releases P, 'Tribunal Rules For Bechtel And GE In Dabhol Power Project Arbitration' (Bechtel Corporate, 2022) <<https://www.bechtel.com/newsroom/releases/2003/09/tribunal-rules-dabhol-power-project-arbitration/>> accessed 13 April 2022

- A party may appeal a decision on the reasons listed below. If the opposing party could establish that the award was invalid, it would be declared null and void.
- There was some inability among the law-abiding members in the arrangement.
- The contested agreement did not conform to the terms of the parties' agreement or to the laws of the country in which the award was issued (especially in case of foreign awards).
- The appointment of the arbitrator, as well as the arbitral procedures, were not adequately publicised. Either side was either unable to argue for himself in front of the arbitral tribunal or was unaware of the existence of the tribunal.
- When a disagreement arises that is not addressed by the provisions of the agreement, an award is given to resolve the situation.
- There are additional determinations in the award that were made concerning issues that were not considered during the hearing.
- It was determined that either the arbitral authority or the arbitral process did not comply with the conditions of the agreement.
- The arbitration did not adhere to the laws of the nation in which it took place, as was intended. The arbitral authority did not adhere to the laws of the nation in question (in case of foreign awards).
- People in the country where the award was made could not make it binding on the parties, or the law of that country didn't make it binding on them.

As long as the dispute is based on Indian law, it cannot be arbitrated. To give the award would be against Indian national policy, as well as morals and justice.

Foreign Awards: Emergency Execution

The enforcement of a foreign judgement takes time since it must be done in the same way as any other litigation, and emergency arbitration only provides temporary relief for a limited time. In the same way that an ad hoc tribunal only lasts for a short time, this one does the same thing. For soft law enforcement of international arbitral judgements, New York's Convention is a good first step in the correct way. It serves as a wonderful example. An emergency arbitration decision is not recognized by the New York convention since it has not yet reached a conclusion⁴. However, despite the inclusion of emergency arbitration verdicts in many arbitrations' jurisdiction legislation, a number of U.S. courts must recognize and enforce a number of court judgments in the U.S. as emergency arbitral awards

⁴ Mala F, 'Recognition And Enforcement Of A Foreign Arbitral Award In The Philippines' (Academia.edu, 2022) <https://www.academia.edu/es/6244096/Recognition_and_Enforcement_of_a_Foreign_Arbitral_Award_in_the_Philippines> accessed 13 April 2022

and such awards must be recognized and enforced⁵. This implies that if both parties have the power to seek interim relief via an emergency arbitration session under the London Court of International Rules, the High Court in England will be unable to issue a judgement.

During emergencies, people in India can get help from a court at any time before the arbitral rulings come into effect thanks to Section 9 of the Arbitration & Conciliation Act, 1996, which makes this possible. Indian courts can only apply the law to final awards. This is because the Arbitration Act has a section called Part II, which deals with the enforcement of foreign arbitral judgments from outside the country, so only final awards can be used. Temporary awards are not valid in an emergency arbitration, so they don't stand. As part of its 246th report, the Law Commission said that the term "arbitrator" should be expanded to include "emergency arbitrators," so that arbitration rules that allow for an emergency arbitrator can be legally recognized in India, like they are in the US and UK. If you were in the case of Raffles Design International India Private Limited & Other People, the idea of "emergency arbitration" was talked about all the time, which is what happened in the case. Indian courts were hearing an application under the Arbitration Act, which asked for temporary relief based on a decision by an emergency arbitrator from the SIAC. The application asked for that relief. The Delhi High Court was hearing the case, and it was going on. People can ask a judge to give them some time to think about their case, even if they don't agree with an emergency arbitrator. Section 9 of the Arbitration Act says this can happen even if the judge doesn't agree with the emergency arbitrator⁶.

It is clear that Indian law doesn't allow an emergency arbitrator's ruling to be put into place. In many ways, going to an emergency arbitrator instead of going to court is better. A lot of times, the parties have agreed to give up their impartial jurisdiction so that both sides are happy with the tribunal's judicial seat. In addition, the time frame for getting interim relief isn't clear, but an emergency arbitrator has to make a decision in a certain amount of time.

⁵ Ozimir I, 'Some Issues In The Enforcement Of Foreign Arbitral Awards' (Academia.edu, 2022) <https://www.academia.edu/es/24785810/Some_Issues_in_the_Enforcement_of_Foreign_Arbitral_Awards> accessed 13 April 2022

⁶ Bansal C, and Aggarwal S, 'Public Policy Paradox In Enforcement Of Foreign Arbitral Awards In BRICS Countries: A Comparative Analysis Of Legislative And Judicial Approach' (2022) <https://www.researchgate.net/publication/320638142_Public_policy_paradox_in_enforcement_of_Foreign_Arbitral_Awards_in_BRICS_countries_A_comparative_analysis_of_legislative_and_judicial_approach> accessed 13 April 2022

The Way That Awards Are Enforced Is As Follows:

The losing party must object to the arbitral award right away and file a lawsuit to get it changed. In some cases, a court order can be made if the objections to the award are not upheld or if no objections are filed in time.

Only Section 36 of the Act can be used to fight and overturn an award, and only if there are certain conditions. Three months after the applicant gets the award, they can ask to put it away. If there is good reason, they can get an extra 30 days. Any application that comes in after the deadline will be late, and no more delays will be allowed. The party can ask a court of law to have the arbitral award put into effect after the time for changing the arbitral decision has passed. It's possible to get money, injunctions that include money, and declaratory awards that say what you can and can't do.

Jurisdiction

This means that "court" refers to the main civil court in the country. This court has first dibs on any issue that comes up during an arbitration, just like a lawsuit would. So, the person who isn't happy with the award can try to get it changed in the court that has jurisdiction over that person, where the person who won is based, where the cause of action started, and where the arbitration took place.

The following is the format of the application that is filed with the court:

An application for the award's enforceability and execution is sent to a court of law. It is important to include all relevant facts and issues, as well as the arbitral tribunal's conclusions, in the application. It's important to show how the claim was made in its original form, as well as how far the enforcement award was pursued. The court must receive authenticated copies of both the arbitration award and the arbitration agreement.

Time Limit For Enforcing Awards

When an award is given, Section 34 of the Act says that anyone who wants it to be overturned has three months to do so. It can be extended for another 30 days if there is a good reason, but not more than that. As long as there is a good reason why you didn't show up for your hearing, the court usually doesn't care how long it took you to show up.⁷

Several High Courts have different ideas about how long a party has to follow a judge's ruling before it

⁷ Izadi D, 'Enforcement Of Foreign Arbitral Awards Among Silk Road Countries: China, Indonesia, And Iran' (Academia.edu, 2022)

<https://www.academia.edu/es/39516208/Enforcement_of_Foreign_Arbitral_Awards_among_Silk_Road_Countries_China_Indonesia_and_Iran> accessed 13 April 2022

can be enforced. Unlike decrees, foreign awards must be declared by a court to be binding on the parties, according to the Bombay High Court. The application for enforcement of a foreign award comes under the residuary provision of the Schedule to Limitation Act. So, the restriction period would be three years. Twelve years after a competent court recognizes the award as a decree, the statute of limitations for enforcing the decree is extended to that amount of time. Foreign awards are already "decrees," the Madras High Court said. "The foreign award can be enforced right away, and the person who owns a foreign award has the same 12 years as someone who owns a decree." Foreign awards are presumptive decrees, which means that if they are recognized as such, the limitation period is twelve years. As for the Act, it says that certain things must be done before a foreign award can be enforced, and that the award can only be called a decree of that court if the court is sure the foreign judgement is valid. According to the Bombay High Court, the petitioner has the right to apply when they get the award. When it comes to executing a foreign judgement, the Act doesn't say how long it should take. Supreme Court: "There may be many steps in a single process⁸." First, the Court may have to decide whether or not the award can be enforced, taking into account the rules above. An extra step may be taken by the court after it has found out that a foreign award can be used. "It can no longer be made part of the law if it comes from outside the country." That's what the Supreme Court said. Under the Act, a foreign award that was made outside of the country is already a decree because it was made outside of the United States.

Conclusion

Despite the fact that there is a system in India for enforcing foreign arbitral awards, it isn't very smooth or efficient. It has been widely criticized for not being easy or quick. One of the primary concerns is that it is impossible to implement the judgement quickly and efficiently since the Act states that the award may only be enforced after the time limit for the Court to strike it down has gone. This is cumbersome, and it causes excessive delays in the execution of arbitration agreements involving Indian parties. Furthermore, many people are unhappy with the Courts' prominent engagement in what is basically an alternative to the regular court system. To sum up, the Indian legal system does actually have a well-defined and well-established framework for the execution of foreign awards in India. However, there is an increasing need to change it to make it more business-friendly and reduce the strain on our already overburdened court.

⁸ V L, 'Accession By The United States To The United Nations Convention On The Recognition And Enforcement Of Foreign Arbitral Awards' (Scholarlycommons.law.cwsl.edu, 2022)
<<https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1822&context=cwilj>> accessed 13 April 2022

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