

A Comparative Analysis Of Indian Arbitration Provisions With That Of Singapore: Special Emphasis On Enforcement Provisions

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ABSTRACT : *This paper critically evaluates the legislative structure of Indian arbitration with that of Singapore with special focus on the enforcement provisions. The objective of the author is to find out whether the legislative improvements introduced through 2015 and 2019 amendments to Indian Arbitration and Conciliation Act, 1996 were sufficient to elevate the Indian legislation to global standard. This objective has been achieved through a comparative analysis of Indian Act with the provisions of Singapore's International Arbitration Act, 1994 and Arbitration Act, 2002 with their latest amendments. The two amendments to Indian Arbitration Act have been successful in removing many of the loopholes and lacunae associated with it. But there are some parts related to enforcement issues involving both domestic and foreign awards and equating the interim awards of the arbitration panel with that of final awards where the Indian legislation needs improvement. Equating interim measures/awards with that of final awards allows the courts to use the provisions of New York Convention and enforce it against the erring party. This gives legitimacy to the arbitration process and reposes the faith of parties in the arbitration regime of the country. Under Singapore provisions there is no right of appeal and appeal is the discretion of the High Court. Multiple appeal mechanisms in Indian system during enforcement proceedings lead to enormous delay in the whole arbitration process forcing foreign parties to refuse arbitration in India. These are very novel provisions and Indian law should incorporate similar provisions*

Keywords: *arbitration, awards, enforcement, interim awards, Singapore, India*

1. INTRODUCTION

India is aiming to become a global superpower. It has shaken herself from the slumber of regional power and started her march towards economic, political and strategic supremacy. The road ahead is filled with numerous challenges. One of the very important challenges or we can say a requirement is the timely and efficient settlement of disputes within its territory. There cannot be any economic prosperity without a predictable and efficient and rule based dispute settlement mechanism; and without economic supremacy, there can't be global supremacy. To address this issue, the recent India establishment has introduced numerous changes in various legislations and procedures to speed up dispute resolution mechanisms. One of the most noticeable changes is in the area of arbitration regime.

Since the last five years the Indian arbitration regime has witnessed multiple amendments in the Indian Arbitration Act which is the primary arbitration legislation of the country. The amendments of 2015 and 2019 are noteworthy in this regard. These amendments have brought welcome changes into the existing arbitration act which have long been demanded by global and local industry experts and also pointed out by various judgments of higher courts.

This article aims to analyse the current Indian arbitration legislation with that of Singapore to find out various improvement points for reference to future changes. It is a pertinent question why only the legislations of Singapore has been taken by the author for this analysis. The answer lies in the the success of SIAC - Singapore International Arbitration Centre. There are many ingredients responsible for its success and one of the most important is the strong legislative support given to the arbitral process.

Comparison Of International Arbitration Regulations Of India With That Of Singapore

Issues	International Arbitration Act, Singapore (Enforcement Mechanism)	Enforcement Provisions of Indian Arbitration Act	Remarks
Definition	Section 27(1) requires written agreement either expressly written in an arbitration clause or can be inferred in an electronically embedded form like exchange of letters, telegrams etc; “arbitration agreement” means an agreement in writing of the kind referred to in paragraph 1 of Article II of the Convention; “foreign award” means an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Singapore.	Similarly the Section 44 deals with written requirements of the arbitration clause of submission agreement either expressly or embedded in any electronic form. It also requires that the nature of a legal relationship must be contractual or considered as commercial.	Both Acts have the provisions which are similar in this regard and they have borrowed directly from the New York Convention, 1956.
Interim Measures/ Awards	Section 27(1) “arbitral award” has the same meaning as in the Convention, but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(c) to (i) (interim awards or interim measures by the tribunal).	Similar provisions are available for domestic proceeding through Section 17 of Indian Arbitration Act but no such provisions for Part II which is applicable to enforcement of foreign awards.	The Singapore provisions applicable to foreign awards has equated interim awards by the tribunal with that of final award giving strong power to the effectiveness of the tribunal.
Involvement of Higher	Section 27(1) “court” means the High Court in Singapore;	Explanation to Section 47 which was	Both Acts spell out similar

Courts		inserted by the 2015 Amendments.	provisions which saves the time by limiting the appeal process to only one step.
Enforcement includes Recognition	Section 27(2) In this Part, where the context so admits, “enforcement”, in relation to a foreign award, includes the recognition of the award as binding for any purpose, and “enforce” and “enforced” have corresponding meanings.	Not present in exact words but Courts have interpreted in such ways.	Similar provisions are similar.
Establishing foreign identity of a party	As per sub-section (3) of Section 27 habitually resident meaning if a body corporate is incorporated in a country or has its principal place of business in that country.	Not present in the Arbitration Act but present in Indian Companies Act, 2013 and procedural principles of Private International Law of India.	It can bring clarity and remove confusion regarding foreign identity of a party.
Recognition and enforcement of foreign awards: Deemed Decree	Section 29.—(1) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19. Section 19: An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or an order to the same effect and, where leave is so given, judgment may be entered in terms of the award.	Section 49: Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court. The Indian provisions comes up with the concept of deemed decree which is automatically equating the award to the level of decree of the High Court once requirements of Section 44 satisfied	The Indian system is simpler and better.
Foreign Award & Res Judicata	Section 29(2) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defense, set-off or	Similar provisions in Section 46	These provisions are exactly modeled around the New York Convention.

	otherwise in any legal proceedings in Singapore.		
Evidence	Section 30 deals with the requirement of documents as evidence for enforcement of foreign awards. The first requirement is an authenticated original award or copy of the award which must have been legally verified. The second requirement is the original arbitration agreement through which arbitration proceeded or a verified copy. And the last requirement, in case the award is in foreign language than an English translation of the award which should be certified in English as a correct translation by an appropriate agent like a Notary or Diplomatic or Consular office of the country where the award was published.	Similar provisions are laid down in Section 47.	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Incapacity	Incapacity of a party under the law to which she is subjected at or during the time of when the arbitration agreement was agreed into. Section 31 (2)(a).	Section 48 (1)(a)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Arbitration agreement is not valid	Section 31(2)(b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;	Section 48 (1)(a)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Notice	Section 31(2)(c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;	Section 48 (1)(b)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Scope	Section 31(2)(d) states that the award has been transgressed into those areas which the parties have not contemplated to resolve through arbitration, which can be	Section 48 (1)(c)	These provisions are exactly modeled around the New York Convention.

	ascertained through arbitration agreement/clause, then the court can refuse enforcement. But this above provision is subject to limitation set forward in sub-section (3) of Section 31.		
Refusal of enforcement: Scope	Sub-section (3) of Section 31 states that a foreign award (coming under subsection (2)(d)) whose decisions which are beyond the scope of arbitration agreement can be separated from those which are matters submitted to arbitration, then those valid parts of the award can be recognised and enforced.	Proviso to Section 48 (1)(c)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Arbitral Proceedings	As per Section 31(2)(e) the appointment of arbitrators and constitution of an arbitral panel and the arbitral procedure is not as per the contemplation of the parties or the arbitration agreement then enforcement can be refused by the court.	Section 48 (1)(d)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Invalid Award	Section 31(2)(f) specifies that if the courts or any competent authority of the country of the juridical seat of arbitration have invalidated or set aside the award then the award is unenforceable.	Section 48 (1)(e)	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Arbitrability & Public Policy	Section 31(4) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court may refuse to enforce the award if it finds that (a) the subject-matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore; or (b) enforcement of the award would be contrary to the public policy of Singapore.	Section 48 (2)(a)(b) The Explanations 1 & 2 have brought some clarity from the confusing court judgments.	These provisions are exactly modeled around the New York Convention.
Refusal of enforcement: Security deposit & adjournment	Section 31(5) empowers the courts to order for appropriate security deposit or adjourn the enforcement proceeding, initiated by the party to the arbitration agreement who	Section 48(3)	These provisions are exactly modeled around the New York Convention.

of enforcement proceeding	seeks to enforce the award, when the foreign award in question is challenged in the courts under whose jurisdiction the arbitration proceeding was conducted.		
Appeal Provisions	As far as foreign award is concerned there is no appeal provision available to the opposing party. The decision of the High Court is final and binding.	Section 50 of the Act provides for appeal. Sub-section (2) of this section bars for a second appeal but again confirms the right of parties to file SLP in the Supreme Court.	The Singapore provisions are very clear and practical. India being a large and diverse country it is difficult to bring similar provisions in India.

2. ENFORCEMENT OF FOREIGN AWARDS

The Convention on Recognition and Enforcement of Arbitration Awards, popularly known as the New York Convention. Its provisions are well adopted by Singapore as one of its original signatories and foreign awards are recognised, enforced and executed on the basis of reciprocity. International Arbitration Act recognises and enforces the foreign arbitral awards (Section 29, IAA) and regulates any international arbitration having its seat in Singapore (Section 19, IAA) and similarly Arbitration Act deals with domestic awards. Similar provisions have been adopted under the Indian Arbitration Act.

Orders 69 and 69A of Singapore Registrar of Companies (ROC) regulates the process of recognition and enforcement of arbitral awards. In India similar provisions are laid down and a foreign award is deemed as a decree and executed under Order XXI Rule 29 C.P.C. The first step is to file an application for leave in the Singapore High Court for enforcement of the particular award. Normally, there is no discretion available to the High Court and the Court is rule bound to accept the request to recognise and enforce the arbitral awards coming under the preview of International Arbitration Act. But there are some particular exceptions to this rule. If the opposing party resist the enforcement with one of the grounds for refusing recognition and enforcement and establish sufficient proof then the High Court will set aside the award. Similar provisions has been laid down in the Indian Arbitration Act. There is a procedural requirement that the award creditor must file an application for leave to enforce an foreign award at first so that the Singapore Court gets the authority or jurisdiction over the award debtor. Singapore rules on procedure does not require the applicant, who files the application for leave to enforce an award, to identify assets associated with the respondent for the courts to assume jurisdiction.

As per the Singapore ROC, the award creditor or the party who wishes to enforce the foreign award can file an application for leave to enforce under Section 19 of the International Arbitration Act. The situation will be different in matters of *ex parte*, where the court grants leave to enforce, the opposing party or the award debtor, once served with an order, has a window of 14 days to set aside the order under the limited grounds available in the IAA. The court may grant longer period to respond if the order is served in a foreign jurisdiction. One of the strengths of the Singaporean courts is that they do not look beyond the arbitration agreement or award, because of

that their approach is strictly factual and limited to existence of valid arbitration agreement or award.

Section 19 of the IAA applies only to awards and its enforcement. The uniqueness of this provision of Singapore law is that it equates final awards with interim or provisional or similar awards. This provision describes an award as a decision of the arbitral tribunal on any issue or issues related to the substance of the dispute. This wide and liberal meaning given to arbitral award avoids any argument or confusion on the validity of an awards. Also, the provisions requires that any enforcement application to enforce foreign award must be affirmed by validated original award or validated copy of the original, and similar documents proving existence of arbitration agreement or related clauses in contract, and if the language is not English then it should be translated into English with the validation that it is an authentic translation of the original award or agreement. Both partial and interim awards are recognised and enforced under the IAA. The Singapore provisions applicable to foreign awards has equated interim awards by the tribunal with that of final award giving strong power to the effectiveness of the tribunal. Similar provisions are available for domestic proceeding through Section 17 of Indian Arbitration Act but no such provisions for Part II which is applicable to enforcement of foreign awards.

As in India, the Singaporean law does differentiate between available ground of recognition and enforcement. Enforcement signifies recognition and recognition signifies eligible for enforceability. But there is established procedures which must be followed by the party who is interested to enforce the award i.e. seeking leave through application to a Singapore court and serving of such order to the award debtor. The debtor gets a certain stipulated time period (14 days) to respond or to challenge such application and apply to resist the enforcement of the award. The award must not be enforced during that period or, if the debtor applies within that period to set aside the order, until after the debtor's application is finally disposed of. Subsequently, a judgment may be entered in terms of the award and the award can be enforced in the same manner as any judgment of the Singapore courts.

The provisions of IAA is very clear about the basis through which the resisting party can apply to set aside an award. These grounds are comprehensive and there are no discretions available to courts. Also, courts cannot look into the merits of the disputes and review the award again to satisfy its own reasons or factual analysis. Similar provisions are there under section 48 of Indian Act.

In Singapore, the courts show marked reluctance in interfering in the awards/decisions of arbitral tribunal whether domestic or foreign. They recognise and uphold the sanctity of the arbitration and the awards thereof. The Court of Appeal, the apex Court of Singapore, portray the role of the court as promoter and facilitator of arbitration.

Not only that the Court of Appeal added an extra layer of protection to arbitration proceeding and arbitral award and held that the courts will refrain from blaming or finding faults in reasoning of the arbitrators in the award and will be supportive of the whole process.

Section 31(5) of the IAA which is derived from the provisions of the New York Convention, gives discretion to the Singapore courts to suspend or postpone an application to enforce an foreign award, if a suit is pending at the court of seat of arbitration challenging the legality of the foreign arbitration or the award. The provision also empowers the court to order the other party, i.e. the party resisting enforcement, to deposit appropriate security before allowing any adjournment or suspension proceedings. In the case of Man Diesel, the High Court reaffirmed the

discretionary of the courts available under Section 31(5) of IAA and declined adjournment request against an application of enforcement even if a suit to set aside the award was pending before a Danish court, having jurisdiction over the arbitration proceeding. The reason for refusal to adjourn proceeding to which the Singapore High Court subscribed is that there is very high chances of dissipation of assets and the delay which will cause to the award creditor would result in the defeat of whole arbitration process.

As stated earlier, one of the principal grounds of refusal to enforcement proceeding is when the courts of the seat of arbitration has set aside the award, Article V(1)(e) of the New York Convention, similarly reflected in Section 31(2)(f) of the IAA, as follows:

31(2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that

(f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

Further, the Singapore courts in *Fist Media* pointed out the difficulty and bewilderment of the court to uphold an award which has been invalidated at the seat by a competent court. Similar provisions in clause (e) of sub-section 48(1) of the Indian Act.

3. ENFORCEMENT OF DOMESTIC AWARDS

In Singapore the Arbitration Act, 2001 regulates and controls the domestic arbitration proceedings and lays down the rules related to enforcement of domestic awards. There are appeal provisions (Section 49, AA) available to parties on question of law associated with an award. Parties can give away their right of appeal through agreement. Also, through agreement parties can do away with reasons needed in the award which will signify as if the parties have excluded the right to appeal (Section 49(2), AA). Such provisions are lacking in Indian legislation. Parties are allowed one step appeal against decisions of the High Court but only when leave is granted by the High Court. However, if leave is denied by the High Court parties cannot approach to the Court of Appeal on the issue whether leave should be granted or not (Section 49(7) and (11), AA).

Indian Law does not have the restriction on such cases like questions of law, there can be appeal under various issues like interim measures by court or tribunal, referring parties to arbitration, setting aside proceedings, jurisdictions of the tribunal. Where as in India right to appeal through SLP is an independent right. While in Singapore law there is no right of appeal and court will grant leave only when it is satisfied of some accepted conditions like a question of law needs to be clarified. Along with these conditions, there is also restriction of limitation (28 days) within which the appeal must be filled. There is no automatic provision for appeal in Singapore and the court has absolute discretion on appeal. On the contrary there are multiple processes of appeal in India. and right to appeal is a constitutional right in India.

On appeal, the court may confirm, vary or remit the award to the tribunal, in whole or in part, for reconsideration in light of the court's determination, or set aside the award in whole or in part. However, the court will not exercise its power to set aside the award unless satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration. Similar provisions available under sub-section 34(4) of the Indian Arbitration Act.

4. CONCLUSION

The recent amendments without doubt have improved the legislative framework of Indian arbitration. However, through the above comparison it can be recognized that there are issues which need improvements and some of them are very important to improve the recognition and enforcement atmosphere of both domestic and foreign awards.