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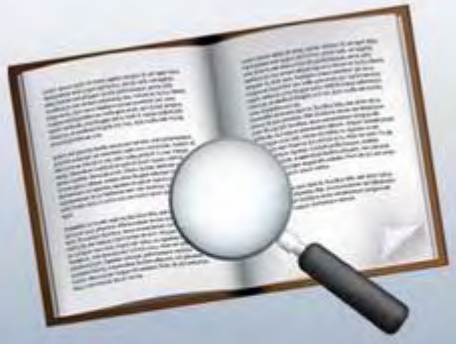

IN THIS ISSUE .....

View Point: 2

The New Era of Adjudication: International Commercial Arbitration

Article: 7

Enforcement of Annulled Arbitral Awards: A Dichotomy of Approaches

News & Events: 13

EDITOR'S NOTE

With the increase in global trade and commerce, the requirement of increased professionalism in arbitration and mediation is required. This also mandates making the law of arbitration and mediation more universal and efficient. This is precisely why the Law Commission of India has published the Report recommending amendment of the Arbitration & Conciliation Act. But has the Report addressed the entire issues governing the law, especially with relation to international arbitrations.

In this edition, we are concentrating on international arbitration. Looking forward to your views!

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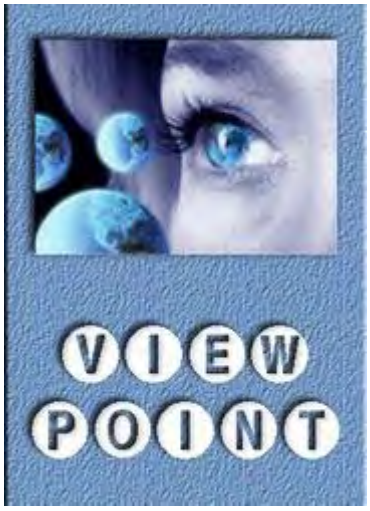
THE NEW ERA OF ADJUDICATION: INTERNATIONAL COMMERCIAL ARBITRATION

HARSHIT MALIK



The author present the proposition that Arbitration is not a forum of alternative dispute resolution, but forms the primary form of dispute resolution in cases of transborder commercial dispute. The article highlights the problems that occur in dispute resolution due to difference in legal cultures and traditions. It elaborates the difference between civil and common-law jurisdictions with a hypothetical case study and presents the argument in favour of arbitration and brings forth the inability of the judiciary to accommodate the diversity.

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INTRODUCTION

Trade is no longer an issue which is subject to domestic territories. Flip side of international trade is unavoidable international disputes. Dispute resolution has also seen substantial changes with the needs of time. International Commercial Arbitration especially has seen rising support over the past twenty years[1].

Arbitration poses a severe challenge to the litigation system or so called primary dispute resolution systems. It exposes the irrational nature of the litigation system by offering a much more affordable, viable and successful system.[2] The adversarial litigation system acts like a leach draining resources in the name of justice, while arbitration breaks through the judicial hoax. Arbitration is similar to a trial process in formal sense; however, its flexibility in procedure and ethics of problem solving makes access to justice, free from procedural problems.[3]

In the domain of international disputes, there exists a vast difference between various legal systems. It is essentially impossible for the litigation process to accommodate such differences.[4] Given these gaps, arbitration is the virtual necessity in transborder commercial transactions for bridging the gaps between different national legal systems.[5]

(Footnotes)

[1] Walter Mattli, *Private Justice in a Global Economy: From Litigation to Arbitration,* 55 Int'l Org.The Rational Design of Int'l Institutions (2001)

[2] Thomas E. Carbonneau, *Arguments in Favour of the Triumph of Arbitration,* 10 Cardozo J. of Conflict Resol. (2009)

[3] *Id*.

[4] Strong, S.I., *Why is Harmonization of Common Law and Civil Law Procedures Possible in Arbitration but Not Litigation?* (May 17, 2013). Book Chapter in Cultura y Proceso (MónicaMaría Bustamante Rúa ed., 2013, Forthcoming)

[5] See Carbonneau, *Supra* note 2.

LEGAL TRADITIONS AND CULTURES

Legal cultures and legal traditions are distinguishable from each other.[6] While legal culture can be reverted back to social, political and economic background of the culture of the place[7], legal tradition is a narrow subset of legal culture. The impact of culture cannot be ignored when trying to understand a commercial dispute. Different cultures might approach a dispute in a completely different way. For eg, Japanese tradition of 'namawashi' believes in mutual support and the members are supposed to help their business partners not for expectation of future gain but merely for mutual support.[8] Whereas, the American approach would be more profit oriented and would view business in only profit/loss terms.

One of the popular recognized issues with dispute resolution is the distinction between common law and civil law.[9] Both the civil law and common law systems have completely different approaches of resolution of disputes. In international domain this distinction poses a major problem.

However, this recognized distinction couldn't be accurate to accommodate the diversity in legal cultures. The common law and civil law systems that exist in various societies are not same. The system is vastly affected by the legal cultures of the domestic bounds and has been nationalized.[10] Therefore, the legal system in a common law jurisdiction like India, for example, is very different from that of the United States.

Such diversity makes serving justice a particularly complex issue. Various complexities rise in the process of dispute resolution when cultures and traditions clash. An example of such clash of legal systems can be observed in the case study of Captain America v. Hydra.

(Footnotes)

[6] Alan Watson, *Legal Change: Sources of Law and Legal Culture,* 131 U. PA. L. REV. 1121 (1982)

[7] Leon E. Trakman, *"Legal Traditions" And International Commerical Arbitration,* 17 Am. Rev. Int'l Arb. 1 (2006)

[8] See Trakman, *supra* note 7

[9] Marc J. Goldstein, *Crossing the Common law- Civil Law Divide in International Arbitration: A Primer for the Perplexed Practitioner,* Hodgson Russ LLP (2006)

[10] Mathias Reimann, *Stepping out of the European Shadow: Why Comparative Law in the United States Must Develop its Own Agenda,* 40 AM. J. COMP. L. 637 (1998)

CAPTAIN AMERICA VS. HYDRA

The discussion revolves around a dispute between, Captain America (plaintiff), a party belonging to the United States and Hydra (the respondent), a party belonging to Germany. The merits to the dispute are irrelevant for our discussion; however, the matter has arisen out of a commercial transaction between these two private parties.

The dispute poses an additional problem since Captain America belongs to the common law system and Hydra belongs to Germany, which follows the civil law system. The approaches followed by both the parties differ on many contexts.

LEGAL PROCEEDINGS OF CASE

Advocates of Captain America would begin the case with notice of claims with merely outlines of the facts while expecting the details to be produced in the course of discovery. During the proceedings, the advocates would highlight the key authorities relying on statutes, codes and judicial precedents.

In absolute contrast, advocates of Hydra would expect a fully developed case from the beginning including the full statement of facts and the documents relied upon. In the proceedings the lawyer would cite codes and commentaries on codes rather than case laws.[11]

WITNESSES

Advocates of Captain America and Hydra would also have a dispute over how the witnesses be treated in the forum. The civil law lawyer would be alien to the thought of cross examining the witness, which a common law lawyer would support.[12] Further, the weightage given to the witness in a common law jurisdiction is much higher than that in a civil law system.[13] Hydra's advocate would probably be disturbed by the kind of weightage a common law judge might give to the witness. Further when expert witnesses are brought by parties in common law, they are appointed by the judges in civil law system.[14]

DOCUMENTS

Hydra's lawyer would admit the document in the preliminary stage and would consider the documents by self-authenticating and would not be comfortable with very liberal discovery of documents in latter stages of trial. Whereas, advocate of Captain America would be used to liberal discovery of documents and would vouch for documents to be authenticated by testimonies of witnesses.[15]

ARBITRATION OR LITIGATION?

Given the kind of problems likely to arise, the choice for the two parties is fairly simple. Judiciary is bound by many restrictions. If the dispute were taken to any of the courts, they would be bound by the procedures of the system. It is hard for a common law judge to adapt or understand the procedure of civil law jurisdiction.

(Footnotes)

[11] Siegfried H. Elsing& John M. Townsend, *Bridging the Common Law Civil Law Divide in Arbitration,* [18 no. 1] Arb. Int'l (2002)
[12] See Goldstein, *supra* note 9
[13] See Elsing& Townsend, *supra* note 11
[14] *Id.*
[15] *Id.*

On the other hand, one of the key features of arbitration is its flexible nature.[16] In arbitration, a party may decide on the procedural aspects. While arbitration can be ad-hoc with parties having all the discretion to consent on procedure, they might also go under an existing institution with pre-existing rules that suit them.

In the present case for instance, the parties can agree to file a written statement in beginning, which might not include all detailed facts but will have to include details of the case. The arbitrator can listen to both the parties in the format they prefer and objectively decide on the issue. IBA (International Bar Association) Rules on evidence in international arbitration attempts to harmonize civil and common-law systems[17].

Hence, it is not a difficult question that Captain America and Hydra would be better off if they refer the matter to arbitration rather than courts.

(Footnotes)
[16] See Mattli, *supra* note 1
[17] See Goldstein, *supra* note 9

LOVE & RESPECT

John worked at a meat distribution factory. One day, when he finished with his work schedule, he went into the meat cold room (freezer) to inspect something but in a moment of bad luck, the door closed and he was locked inside with no help in sight. Although he screamed and knocked with all his might, his cries went unheard as no one could hear him. Most of the workers had already gone and outside the cold room it's impossible to hear what was going on inside.

Five hours later, whilst John was on the verge of death, the security guard of the factory eventually opened the door and saved him. John then asked the security guard why he came there as it wasn't part of his work routine.

He replied, "I've been working in this factory for 35 years. Hundreds of workers come in and out every day but you're one of the few who greets me in the morning and says goodbye to me every night when leaving after working hours. Many treat me as if I am invisible. Today also like every other day, you greeted me in the morning. But curiously after working hours today, I observed I've not heard your "Good bye see you tomorrow". I look forward to your greetings every day because to you, I am someone. By not hearing your farewell, I knew something had happened. Hence I decided to check around the factory and I found you!"

Be humble. Love and respect those around you because life is too short. Try to have an impact on people in ways we can't even imagine especially the people that cross our path daily.

ARBITRATION VS. ADVERSARIAL LITIGATION

Problems with the adversarial system with accommodation of national legal systems are not unrecognized. However, despite of attempts to bring about procedural changes for incorporation of both civil law and common law systems, there has been no success in the development of litigation.[18] This can be attributed to the basic nature of the adversarial system. In contrast to arbitration, litigation has a public nature i.e. it has the duty to enforce substantive law rather than personal dispute resolution. Further, the procedure of judicial system cannot be flexible as the interest of justice demands element of uniformity in the procedure.[19]

WHY ARBITRATION?

The features of Arbitration make it much more viable for transborder commercial disputes. Arbitration is party sensitive.[20] Arbitration process is completely voluntary and parties choose the way they want to go about it. They may choose to resort to any international forum or ad-hoc rules. The parties have complete flexibility to decide on the legal tradition or amalgamations of legal traditions they wish to follow.[21] When parties can choose their legal traditions, they do not need to worry about the proceedings that follow. For instance, if the party wishes to approach to a more common law approach it can choose the model of London Court of International Arbitration (LCIA), whereas it may follow ICC International Court of Arbitration, Paris rules if it wishes to be governed under civil law rules. Parties can also decide on the weightage of witnesses, nature of oral proceedings etc. The services provided by institutions would also depend on the needs of the parties resorting to arbitration.

However, the main feature of arbitration that makes it most suitable for dispute resolution is that keeps on growing. As and when disputes arise, the arbitration process keeps developing to find a better accumulation of various legal cultures and traditions. Arbitration is not restricted by territorial bounds or by public duty. In contrast to courts, Arbitration can provide a much more personalized solution to the disputes.

It is therefore worth noticing that out of the two forums available, it would be incorrect to call the litigation as the appropriate or primary forum, whereas arbitration is referred to as alternative dispute resolution.

CONCLUSION

The cultural differences that exist in the international domain make the adversarial litigation system incompetent to deal with disputes. Along with difference in legal cultures, legal traditions differ too. The most popular distinction exists between the common law and the civil law system. Due to stark differences that exist between the common law and civil law system, dispute resolution on an international level requires a flexible forum, which can accommodate the principles of the system. Arbitration provides the most viable forum under which parties belonging to different legal cultures and traditions can raise their issues according to their convenience.

Thus it could be concluded that in certain matters, like transnational commercial disputes, Arbitration makes the primary form of dispute resolution, while litigation is merely an alternative forum. The rapid growth in support of arbitration may soon result in the superseding of litigation by arbitration.

(Footnotes)

[18] See Strong, *supra* note 4

[19] *Id.*

[20] *Id.*

[21] *Id.*; See also Mattli, *supra* note 1

ENFORCEMENT OF ANNULLED ARBITRAL AWARDS: A DICHOTOMY OF APPROACHES

WASIQ ABASS DAR

In international trade and commerce, parties belonging to different geographical jurisdictions with varied legal systems are involved. To avoid potential legal complications, international commercial arbitration is the favoured system of dispute resolution. One of the most important reasons for this is the universal enforcement of arbitral awards. There could also be circumstances where the award passed is flawed. The author analyses the norms or practices where an international arbitral award can be annulled and also looks at situations where an annulled award could also be enforced.

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INTRODUCTION

As a matter of fact, international trade and commerce involves parties belonging to different geographical jurisdictions where legal systems may vary as far as the laws and procedures involved are concerned, there by leading to complicated and conflicting situations. And to avoid these potential legal complications, international commercial arbitration comes into picture as the most sought after alternative dispute resolution (ADR) mechanism. It not only has the distinction of being less time consuming mechanism, but also permits a great degree of flexibility, which is more often than not denied in the traditional judicial settlement[1].

One of the most important features of international commercial arbitration is the universal enforcement of arbitral awards. It would hardly serve any purpose to have a mechanism like international commercial arbitration if the awards are not effectively enforced against the losing party, i.e. the award-debtor. Having said that, it is important at this juncture to appreciate and note that this universal enforceability of arbitral awards is not absolute as enforceability may be refused by the national court of the State where enforcement is sought. As Simon Greenberg states, "the challenge and enforcement of the awards highlights the delicate balance between the autonomy of the arbitral process and the control of the national courts."[2]

(Footnotes)

[1] Oscar Samour, 'Public policy Exception to Recognition and Enforcement of Arbitral Awards under the New York Convention'. <http://consortiumelsalvador.com/descargas/consortium261.pdf>

[2] Simon Greenberg & Others, *International Commercial Arbitration, An Asia-Pacific Perspective* (CUP, Cambridge 2011).

As soon as the arbitral tribunal renders its final award in a matter, the tribunal is believed to have turned *functus officio.* As a general understanding the award-debtors are to comply voluntarily with the awards made against them. "An arbitral tribunal, unlike a court of law, has neither coercive powers to enforce its award nor role to play in its enforcement. Neither an arbitral tribunal nor any arbitral institution, under whose auspices it may be operating, is directly concerned with recognition and enforcement of its award."[3] However the reality is that on most of the occasions the legal process does not come to end between the parties as far as that particular dispute is concerned. There may be circumstances where the award-debtor would conclude, for reasons that can be genuine or tactical, that the award made against it is flawed.[4] And in such cases the award- debtor may seek for annulment or setting aside of the award, the proceedings of which are initiated before the court of the State chosen as seat of arbitration in that particular case. As in all other jurisdictions, the losing party may only attempt to resist recognition and enforcement of the award.[5]

ANNULMENT OF ARBITRAL AWARDS

As far as annulment of the arbitral awards is concerned the New York Convention does not provide much on it, except for the fact that under Article V(1)(e) it provides that the court where enforcement of award is sought may refuse to recognise or enforce a foreign arbitral award if 'the award is set aside or suspended by a competent authority of the country where the award was rendered'.

The grounds for annulment of award are basically decided by the domestic law of the forum were annulment is sought. The only guideline in this regard is provided by the UNCITRAL Model Law on International Commercial Arbitration under Section 34, where it provides for the grounds upon which an award may be annulled by the competent court at the seat of arbitration. These grounds are nothing but the replica of the grounds provided under Article V of the New York Convention for refusing recognition and enforcement of foreign arbitral award.

(Footnotes)

[3] K.L. Vibhuti, *Enforcement of Foreign Commercial Arbitral Awards: International and Indian Perspectives* (Tripathi Publications 1994) pp 3.

[4] Gary B. Born, *International Commercial Arbitration* (Kluwer Law International, 2009) Vol. II, 2552.

[5] Vladimir Pavic, 'Annulment of Arbitration Awards in International Commercial Arbitration' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1615333>

The Model Law contains a list of six exhaustive grounds for annulment of the award. Four grounds are such which are examined by the court only upon being invoked by the plaintiff. Those include:

- Parties were under some incapacity or the arbitral agreement was invalid.
- Party against whom the award is invoked wasn't given proper notice of the Arbitrator's appointment, arbitration proceedings or was unable to present his case.
- Award rendered by the tribunal falls outside the scope of the arbitration agreement.
- Procedure followed or the composition of the Arbitral Tribunal does not accord with the agreement of the parties.

The other two grounds are examined by the court *ex officio*, include:

- Subject matter of the dispute before the tribunal being non-arbitrable.
- Award to be recognised or enforced being contrary to the public policy of 'that' country.

Once a competent court is seized with the application to set aside an award, it may reach varying decisions. It may reject the challenge and uphold the award. It may annul the award in part or entirely. In some jurisdictions it may suspend the proceedings and allow arbitrators to reconsider certain issues and take actions which would eliminate the grounds for setting aside.[6]

If the challenge is rejected, this would mean that the award will most likely smoothly pass the test at the enforcement stage in the country where the challenge was attempted. Its enforcement prospects in other jurisdictions are also likely to become promising, especially if the award overcame a challenge brought in a Model Law jurisdiction. But the issue of debate arises in situation when the challenge is not rejected and the award is set-aside or annulled by the competent court. In other words what could be the consequences of the annulment of arbitral award remains a bone of contention as there is no commonly followed norm or practice in this regard across the globe. This is one such rare feature where we come across diversity in practice of international commercial arbitration.

DICHOTOMY OF APPROACHES

A number of national courts where enforcement is sought follow the understanding that annulment of arbitral awards at the seat renders the award non-existent, therefore preventing its recognition and enforcement. But on the other hand we also have a number of national courts that follow the practice of recognising and enforcing an arbitral award even if it is annulled at the seat.

Article V(1)(e) of the New York Convention provides that the recognition of an arbitral award "may be refused […] if it has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made."

Normally one would expect deference on behalf of the court where recognition and enforcement is sought as annulment would usually prove as an efficient way to prevent enforcement elsewhere. However, the wording of the

(Footnotes)
[6] 'Ibid'

New York Convention ('*may*' refuse instead of '*must*' refuse) coupled with its pro-enforcement attitude suggests otherwise. The court where recognition and enforcement of the award is sought, as is understood, is allowed a measure of discretion and as a result, annulment would not automatically mean that the award cannot be enforced in other jurisdictions.

Apart from the wording of the Article V(1)(e), enforcement of an annulled award is also understood to draw support from Article VII of the New York Convention, which allows for application of more favourable provisions of local law or other international treaties in order to further strengthen the binding nature of arbitral awards. Therefore, if the local law does not view annulment of the foreign arbitral award at the seat of arbitration as a sufficient reason to refuse recognition and enforcement, setting aside of such an award will not in itself have adverse consequences.[7]

The advocates of delocalisation theory support enforcement of annulled awards. As Jan Paulsson states, "The main purpose of delocalising arbitral procedure is to promote awards that are not subject to review under any national law except the applicable law in the country where the enforcement is sought."[8]

He further goes on to state that Article V(1)(e) plainly establishes the right of enforcement courts to allow enforcement of a foreign award complying with their domestic law, despite its annulment by the court of origin, where that annulment is not a ground under the domestic law for refusal of recognition of the award.[9]

(Footnotes)

[7] 'Ibid'

[8] Jie Li, 'The Application of the Delocalisation Theory in Current International Commercial Arbitration'(2011) 22(12) International Company and Commercial Law Review.

[9] Goode, 'The Role of the Lex Loci Arbitri in International Commercial Arbitration'(2001) 17(1) Arbitration International.

The Taylor's were proud of their family tradition.

Their ancestors had traveled to America with the Pilgrim Fathers on the Mayflower. They had included Congressmen, successful entrepreneurs, famous sports people and television stars.

They decided to research and write a family history, something for their children and grandchildren. They found a specialist genealogist and writer to help them. Only one problem arose - how to handle Great Uncle Jefferson Taylor who was executed in the electric chair.

The writer said she could handle the story tactfully. When the book appeared the section about Jefferson read:

Great Uncle Jefferson Taylor occupied a chair of applied electronics at an important government institution, he was attached to his position by the strongest of ties, and his
death came as a great shock.

As a matter of practice there are quite a few countries that have started allowing parties to "escape" from seat law in this regard.[10] France is one such example where no grounds similar to those in Article V(1)(e) of the New York Convention are provided for national courts to refuse enforcement of the foreign arbitral awards. Therefore, irrespective of the fact that other countries have annulled or set-aside an award, the decision of the French national courts would not get affected as far recognition and enforcement of that arbitral award is concerned.

This kind of approach is based on the idea that an international arbitral award is a decision binding on the parties, through a jurisdiction that was agreed upon, not made with the authority of the courts at the place of arbitration.[11]

In the *Norsolor case*[12], the Cour de Cassation agreed to enforce an award annulled by the Vienna Court of Appeal on the grounds that recognition and enforcement of an annulled award was not prohibited by the provisions of the New York Convention.

The same approach was repeated in the *Hilmarton case*[13], where the Cour de Cassation held that award rendered in Switzerland was an international in nature and was not an integral part of the legal order of that State, so its existence remained very much valid despite its annulment.

French courts, therefore, follow the practice of disregarding the opinion of the courts at the arbitral seat and agree to recognise and enforce arbitral awards that have been annulled, provided they are not contrary to the French law public policy.

Netherlands is another such State that is seemingly following the footsteps of the France as far as its willingness to enforce awards that have been annulled at the seat is concerned. In its decision rendered in the well-known *Yukos case*[14], the Court of Appeal of Amsterdam recognised four arbitral awards annulled by the Russian courts. The judges went on to indicate the importance of fair process and stated that where a fair process had not been respected, recognition of the annulment decision would "lead to a conflict with Dutch public order".

US courts have also at times shown some tendency of falling in line with the approach followed by courts in France, i.e. to recognise awards annulled at the arbitral seat. For example, in the *Chromalloy case*[15], the Court of Appeal of the District of Columbia ordered the enforcement of an arbitral award set aside by the Court of Appeal of Cairo. On the other hand, the decision of the same Court of Appeal at a later stage appears to have preferred a contrary approach, as the Court refused to order the enforcement of an ICC award annulled in Bogota in *Termorio case*[16], by virtue of it being non-arbitrable under a Columbian law relating to public persons.

It is important to highlight at this point that the trend of recognition and enforcement of annulled awards is not a common practice across all the jurisdictions, therefore has not gone unopposed. Scholars like Professor Van den Berg have been very critical of this approach, as he writes "this incongruous result is highly undesirable and certainly does not deserve to be imitated in other jurisdictions."[17] He further goes on to state, "When an award has been annulled in the country of origin, it has become non-existent in that country. The fact that the award has been

(Footnotes)

[10] Jie Li, 'The Application of the Delocalisation Theory in Current International Commercial Arbitration'(2011) 22(12) International Company and Commercial Law Review.

[11] Thomas Kendra, 'The International Reach of Arbitration Awards Set Aside In Their Country of Origin: A Turning Point?'(2012) 1 International Business Law Journal

[12] *Société Pablak Ticaret Limited Sirketi v Norsolor S.A.* (1984) Cour de cassation 83-11.355

[13] *Société Hilmarton Ltd v Société Omnium de traitement et de valorisation (OTV)* (1994) Cour de cassation 92-15.137

[14] *Yukos Capital SARL v. OJSC Rosnef Oil Co* (2009) Amsterdam Court of Appeal 200.005.269/01

[15] *Chromalloy Aeroservices v. Arab Republic of Egypt* (1996) U.S. District Court of Columbia 94-2339

[16] *TermoRio S.A. E.S.P. v. Electranta S.P.* (2007) U.S. District Court of Columbia 06-7058

[17] Thomas Kendra, 'The International Reach of Arbitration Awards Set Aside In Their Country of Origin: A Turning Point?'(2012) 1 International Business Law Journal

annulled implies that the award was legally rooted in the arbitration law of the country of origin. How then is it possible that courts in another country can consider the same award as still valid?"[18] It is argued that the practice of recognition and enforcement of annulled awards can lead to chaotic contradictions in the present system and can also run the risk of "interminable tennis matches from one jurisdiction to another."[19] A party which succeeds in getting an award annulled in the national court of the seat of arbitration on questionable grounds will no longer remain confident of the international protection that such annulment will afford. Another argument put forth to question the practice of enforcing annulled arbitral awards is that the New York Convention constitutes a framework aimed at overcoming conflicting differences between various legal systems which otherwise serve to discourage commercial parties wishing to deal and settle their disputes internationally. There is an apprehension that result of this selective approach of enforcing annulled awards followed by few countries would not only lead to forum shopping but would also turn out as a major stumbling block to the development of a uniform system of law in international commercial arbitration.[20]

CONCLUSION

None can question the fact that that the New York Convention was drafted with an aim to give more teeth to the international commercial arbitration regime by strengthening the binding nature of the foreign arbitral awards. The Convention attempts at introducing uniformity in the enforcement mechanism across various geographical jurisdictions.

It is this feature of the Convention that not only makes the arbitral award meaningful but also presents arbitration as a truly viable alternative to litigation. At this juncture it needs to be appreciated that although the Convention inherently and essentially favours a pro-enforcement policy, however, at the same time this must not be confused with pro-enforcement bias. Convention does also provide for various safeguard mechanisms that holds good in the larger interest of justice, which by all means is more important than blindly following a pro-enforcement policy.

The ground reality, as of now, remains that there is no global consensus over this issue. And the existing system of law and practice which tends towards de-coherence, represents a real challenge in international commercial arbitration. The only correct way out in such a situation can be to interpret the Convention in a manner which fulfils its ambitious objectives of reciprocity, uniformity and comity.

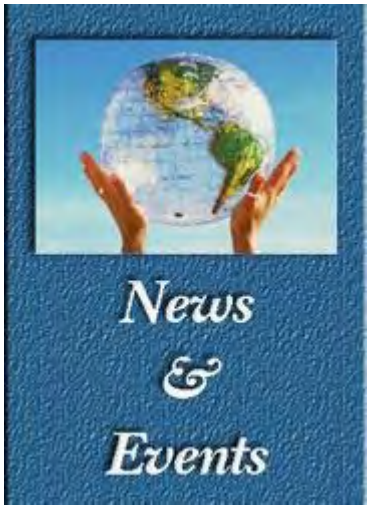
(Footnotes)

[1] Albert Jan Van den Berg, 'Enforcement of Annulled Awards' (1998) 9 ICC Int'l Ct. Arb. Bull.

[2] Thomas Kendra, 'The International Reach of Arbitration Awards Set Aside In Their Country of Origin: A Turning Point?'(2012) 1 International Business Law Journal

[3] M.B. Holmes, 'Enforcement of Annulled Arbitral Awards: Logical Fallacies and Fictional Systems'(2013) 79(3) Arbitration

NEWS & EVENTS



RECOMMENDATIONS TO AMEND THE INDIAN ARBITRATION LAW

The Law Commission of India has brought out Report No. 246 in August 2014, recommending various amendments to the Arbitration & Conciliation Act, 1996. The recommendations are made after extensive deliberations and study and after inviting suggestions/ comments from eminent lawyers, judges, industry members, institutions and various other sections of the government and other stakeholders. Chapter III of the Report contains the proposed amendments. For the full report log on to http://www.arbitrationindia.org/htm/laws_rules.html

CHANGES IN THE DISPUTE RESOLUTION LAWS IN KENYA

The government of Kenya is in the process of implementing and reforming arbitration and dispute resolution laws, so as to make the country more attractive to investors. The current prospects for oil and gas mining in the country have in particular necessitated the review of arbitration laws.

CONFERENCE ON CORPORATE LEGAL EXCELLENCE AT MALAYSIA

Corporate Legal Excellence event will be held on the 24th to 26th November 2014 in Kuala Lumpur, Malaysia. This conference is designed for legal counsels and senior level professionals from the legal, compliance, risk and compliance divisions with practical insights from industry practitioners and the impact of duties and remedies in the increasing regulation of the profession. IIAM is an endorser of this conference. For more information of the event, log on to http://corporatelegalexcellence-lse.marcusevans.com/ or contact Stefanie Gee at +603-27236721 or StefanieG@marcusevanskl.com

"You cannot shake hands with a clenched fist"
~ Indira Gandhi ~

Upcoming Training Programs from

INDIAN INSTITUTE OF ARBITRATION & MEDIATION
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MEDIATION TRAINING PROGRAM

IIAM will be conducting a Mediation Training Program at Cochin, India from 27-31 October 2014. The program is designed for 5 days – 40 hours.

It is now manifestly clear to both entrepreneurs and practitioners that a comprehensive professional exposure to negotiation and mediation is necessary to engage in cutting edge and high quality practice for effectively making deals and resolving conflicts. Effective conflict resolution skills is the key to prevent destructive conflict, enabling lawyers and consultants to better assist their clients in business deals and disputes. Mediation has become a truly global profession, earning international recognition.

The training program combines the theory of ADR through highly interactive, skill-based courses in negotiation and mediation. The program will enhance the understanding and ability to negotiate and resolve conflicts, as well as provide a solid foundation in ADR processes and to serve as ADR practitioners and neutrals. Through discussion, simulations, exercises and role-plays, the program will focus on the structure and goals of the mediation process and the skills and techniques mediators use to aid parties in overcoming barriers to dispute resolution. The training also gives emphasis on the code and ethical standards of mediation. As per IIAM Mediator Accreditation System, based on the International Mediation Institute, The Hague (IMI) standards, a candidate having successfully completed Mediation Training Program will be categorized as Grade B Mediator and eligible for empanelment with IIAM.

For further details about the training program, please see the link: http://www.arbitrationindia.org/htm/events.html.

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

CDM is an ongoing distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment. You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded. For more details mail to training@arbitrationindia.com

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