

One Step Forward Two Steps Backward : The Retrogressive Amendment in Indian Arbitration Jurisprudence

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Abstract : *In a significant step towards remediation of arbitration ecosystem in India, the Parliament of India passed the Arbitration and Conciliation (Amendment) Act, 2019 making various introductions and changes not only being noteworthy but also ameliorating some previous inclusions of the Amendment Act 2015. Now, that the Amendment Act has come into force, this article tries to critically analyze the provisions of the enactment in light of various developments, evaluating the Raison d'être and the road ahead to become a hub for arbitration in the international arena. In doing so the author broaches the 'Pandora's Box' of complications ought to be kept closed in pursuit of ensuring that the arbitration mechanism in India remains apace with the international standards; further taking into account the various efforts made to fill the lacunae existing in arbitration legislation and to instill values and trust in Indian arbitration community, endeavouring to make India an Arbitration-friendly jurisdiction. In the penultimate part of this piece of discourse, the author attempts delineate the implications of the amendment, the complexities likely to emerge the avenues ahead, closing out the article by pragmatically illustrating solutions to the issues which have emanated or were discounted by the amendment.*

Keywords: Arbitration Amendment 2019, India, Institutional Arbitration, Section 29A, Prospective applicability of Amendment Act 2015.

JEL Classification: K19, K39, K41, K49

Introduction : Arbitration is inexplicably considered to be a solution for unburdening the Courts, an elixir to revitalize the grim state of health of adjudication system, an avenue for speedier redressal of legal contestations and an exemplar of alternative dispute resolution. Further, India has been trying to improve its standing before international economic diaspora, which has reflected in its rankings in the 'World Bank Report on Doing Business.'¹

Indian Courts have been from distant times reputed as interventionist, and criticized for the gross delays, which has abysmally affected the country, and held it back from attaining a meteoric rise at globe stage, thus consistently shunned to be afforded as a prospective international seat of arbitration. Even the Tribunal at International Chamber of Commerce (ICC) in White Industries case² has trenchantly criticized Indian Government and Judicial system for failure to provide 'effective means' for asserting its claims and enforcing rights, bringing mortifies to the credit of Indian systems³.

A Report was published by Niti Aayog in 2016⁴, wherein it was assessed that an arbitration related to disputed in construction sector were disposed off in around five years, and further a period of two and a half year is misspend in litigations in courts related to challenging of award and interim relief, clearly showing the intrusion of the vices of Indian justice system in arbitration too.

The Backdrop of the Amendment Act: A Brief Genesis : The Arbitration and Conciliation Amendment Act 2019, was enacted after taking into consideration the recommendation made by the 'High Level Committee to Review the Institutionalization of Arbitration Mechanism in India'⁵ in its report issued on July 30, 2017, under the chairmanship of Justice B.N. Srikrishna.

As aforementioned the Government had made various terms of reference to the Srikrishna committee, such as:

- Reviewing of existing structure of arbitral institution in India, by analyzing their working and effectuality by means of performance analysis.
- Formulation of roadmap through which it is ensured that institution arbitration mechanism is encouraged and fostered.
- Recommendations of reforms in Arbitration and Conciliation Act 1996 and to develop structured and efficacious ecosystem⁶.

The committee was constituted by the Government with the objective of ascertaining the various issues affecting the arbitration landscape in India, the roadblocks to the progression of arbitration in India and establishing a robust ecosystem for the international arbitration and institutional arbitration mechanism.⁷

The aggrandizement in International and Cross-Border trade has led to an identifiable upsurge in related arbitration, resulting in spurt of interest, in institutional arbitrations as well as its centers; consequently the private parties have now been heading towards mandatory arbitrations, thus making way for a similar system in India too.

The Amendment Act is in line with the Srikrishna Committee Report which made few proposals:

- Formation of the Arbitration Promotion Council of India for the purpose of laying down guidelines for improvement and restructuring of arbitration jurisprudence in India.
- Appointment of Arbitrator by arbitral institution.
- International Commercial Arbitration be excluded from the purview of section 29A.
- Inclusion of confidentiality in Arbitration.
- Immunizing the arbitrators from legal proceedings which may be initiated against them for any act of omission in the course of arbitration.
- Applicability of the Arbitration & Conciliation (Amendment) Act, 2015⁸ to proceedings commencing after the respective Act came into effect.⁹

Sailent Features Of The Amendment Act, 2019 : The Act tries to incorporate various imperative aspects accepted and acclaimed in international practices including, but not limited to constitution of Tribunal, power of granting of interim reliefs, exclusion of international commercial arbitration from the encumbrances of time limits, changes in procedure of setting aside of award, inclusion of confidentiality and protection of arbitrators, and notably, creation of the Arbitration Council of India and entrusting it with the role of accreditation arbitration.

This article delves into few of the changes which have been made by Amendment Act, 2019 particularly – the constitution of arbitral tribunal, time limit for making an award, confidentiality of proceedings, and the Arbitration Council of India and its viability.

A. Proliferation of Institutional Arbitration

Arbitration in India is quite flexible as it provides sufficient autonomy in relation to procedural matters¹⁰ and furthermore this facet has been a basis for the abstruse loyalty towards ad-hoc arbitration. But due to various drawbacks, owing to delays, procedural fallacies and ineffective adjudication, a new system undoubtedly is making headway in India, the Institutional Arbitration.

Perusal of the International Chamber of Commerce (hereinafter 'ICC') statistics for 2018 reflect that of the 235 appointments of sole arbitrators made, only 63 materialized through the nomination or agreement between the parties.¹¹ The crucial factor assigned to it as explicated by the report was the appointments made by ICC, which resulted in efficient arbitration, and having an institution which is specifically endowed with such function ensures cost saving and efficiency in a multitude of ways.

The Ministry of Commerce and Industry, Government of India, issued an office memorandum noting that, the ad-hoc arbitration have often been lacking the spirit of an 'ideal dispute resolution system' due to various legal and practical problems resulting in "unreasonably high costs and inordinate delays." The reason imputed to it was due to the non-existence of an institutional mechanism governed by comprehensive rules of an arbitral institution.¹²

Thus in order to ensure that India establishes its reputation globally as hub of institutional arbitration, the amendment introduced Arbitral Institution mechanism in India, further striving to ensure that preference conceivably be made in favour of arbitral institutions than ad-hoc arbitration.

The Arbitration and Conciliation (Amendment) Act, 2019 has specifically laid provisions for establishing Arbitration Council of India. This body is endowed with various functions¹³ for instance, taking expedient measures for promotion and encouraging mechanism for alternative dispute resolution, policy framing for uniform professional standards, gradation of arbitral institutions and various other functions envisaged to make India a prominent centre for International Arbitration.

B. Appointment of Arbitrator

The impetus given to establishment of arbitral institution has resulted in delegation of the crucial function of appointment of arbitration, which shall be performed by an arbitral institution to which such authority has been designated. Thus appointment application is to be filed before the arbitral institution, and is required to dispose of such application within 30 days from the service of notice.¹⁴

One of the distinguishing attribute of arbitration as a form of dispute resolution process is the party autonomy and volition to appoint arbitrator¹⁵ and devise a procedure which suffice their requirement. The power to choose an arbitrator as per the parties' choice has been cited as the 4th most remarkable characteristic of arbitration.¹⁶

This practice is akin to other international arbitration jurisdictions such as Singapore¹⁷ and Hong Kong,¹⁸ where they have their own designated institution, and the power to appoint reposes within their dominion. The Institutions generally make appointments upon taking into consideration the facts and the specifications of the dispute, thus ensuring that appropriate appointment be effected.¹⁹ This crucial function of appointment is a matter of concern associated with the reputation of the Institutions, and that the appointment being a sacrosanct function in International Arbitrations bespeaks its significance.

The Amendment empowers the Supreme Court and the High Courts (Apex Court in International Commercial Arbitration and High Court in other cases), to designate arbitral institution, which has been created by Arbitration Council of India for appointing arbitrators and where no such graded arbitral institution exists, the duty is imposed upon Chief Justice of the respective court to prepare panel of arbitrators. This encourages the streamlining of the arbitral process and unburdens the courts thus making efforts for eliminating the encumbrances which the arbitration faces. It is a change from a stance where appointment was considered a judicial function in nature,²⁰ moreso the courts have often been reluctant to part with its powers, though this was later redefined.

The procedure and the course of appointment has been a point of contestation and controversies, fundamentally the delegation of power to appoint and the efficacy of arbitral institutions, nonetheless it must be understood as a great stride in the process of development of the judicial mechanism, as well as its evolution as an appellate forum and delineating its juridical authority as a constitutional court.

C. Prospective or Retrospective: Conundrum Finally Put To Rest

There was a state of incertitude regarding the applicability of the amendment of 2015, whether or not it shall apply to the proceedings which had commenced before the Amendment Act 2015 came into effect.

To bring clarity (unsurprisingly it brought more confusion) and intending to settle the '*cause célèbre*', section 87 was inserted by 2019 Arbitration and Conciliation (Amendment) Act, 2019. Also, the Act provided for omission of section 26, thereby spelling it out precisely that the Amendment Act is applicable only to the arbitral proceedings which have commenced after October 23, 2015, and to such court proceedings ensuing such arbitral proceedings.

The prospective application of the Act was an issue upon which there was division of opinion among various High Courts. Whilst the Hon'ble Madras High Court²¹ ruled that literal interpretation of section 26 subsequent to the Amendment Act, 2015, due to omission of the terms "*in relation to,*" clearly refers to the arbitral proceedings and not the court proceedings (thus resulting in the non-application of the Amendment Act at the stage of post arbitral proceedings). This view was concurred by the Division Bench of the Hon'ble High Court of Calcutta.²²

The Division Bench of High Court of Delhi, took a divergent view (though not completely contrary to Madras/Calcutta High Court's decision), affirming that the amended provisions shall not be applicable to court proceedings which commenced post-amendment, except where they were merely '*procedural*' in nature and did not tantamount to '*accrual of rights*' or affected the '*accrued rights*', thus in a situation, where an application for challenging award or any order is filed after amendment, the court shall decide as per the unamended section 34.²³

Over and above, the Hon'ble Supreme Court in a catena of cases²⁴ made an effort to ensure the efficacy of the law governing arbitration, by giving its verdict regarding the issue of retrospectivity of the Amendment Act 2015. The Supreme Court clinched the issue holding that the amended law shall apply to both arbitral proceedings and related court proceedings and which had commenced on or after October 23, 2015. The court further opined that the amended section 34 of the Arbitration and Conciliation Act shall apply even in such matters where application for setting aside the award has been pending at the time of commencement of Amendment Act 2015, irrespective of the date of initiation of arbitral proceedings.

The critical repercussions of Highest Court's decision has been that formerly automatic stay for enforcement came into effect upon challenging of award, though now not only applications which have been decided, but also those matters wherein they are pending, a specific order is to be taken from the court to ensure that there is stay for enforcement, nevertheless this shall discourage the subversive and undermining practice of mechanically challenging arbitral award.

The Hon'ble Supreme Court of India had already conveyed it's disapprobation during the pendency of the 2019 Amendment Bill but the Parliament specifically brushed aside the Court's opinion. In a first-of-its-kind situation, the Apex Court while sternly fulminated the proposed amendment, directed that the a copy of the judgment be to placed before the Ministry of Law and Justice, Government of India and the Ld. Attorney General of India.²⁵

The Government of India issued a press release on 7th March 2018, and introduced the propose Arbitration and Conciliation Amendment Bill, 2018. The section 87 which was to be now included in the Act, had sought the application of the Amendment Act, 2015 to be prospective in regards to arbitral proceedings. Interestingly, the amendment of section 87 actually rendered Supreme Court's opinion redundant by explicitly stating that the Amendment Act shall not applicable upon proceedings which had commenced prior to the Amendment of 2015.

First and foremost, the ramifications of this Amendment would have had caused a number of execution petitions filed in relation to those awards, which were or have commenced prior to the Amendment Act 2015 or their petitions under section 34 haven't been decided as yet, be render redundant, and non-maintainable owing to the provisions of section 36.

This issue, as contemplated, led to further litigation resulting in prompt intervention whereby the Supreme Court in the case of *Hindustan Construction Company v. Union of India*,²⁶ struck down section 87 as being unconstitutional and arbitrary. The decision has reinstated the prospective application, rendering the BCCI case back into operation, thus ensuring speedier realization of proceeds of arbitral award, faster and efficacious enforcement of awards, while reaffirming that merely challenging the award shall not effect as automatic stay, which was causing hardship to decreeholders for the enforcement of the decree. Thus, it has been settled that the 2015 Amendments shall apply to all court proceedings

initiated after October 23, 2015, regardless of the fact that arbitration may have commenced prior to the Amendment Act 2015.²⁷

D. Imposing Confidentiality Obligations

It has constantly been a cause of concern for the parties²⁸ that confidential information, documents and trade secret secrets and price sensitive data which has been declared or submitted during the course of arbitration may end up being disclosed in public domain.²⁹

Parties require a dispute resolution process which is effective, result-oriented and commercially viable, at the same time, prevents divulging or revealing of information to press, public, business rivals and the like.³⁰ Despite the fact such apprehensions and fear of disclosure has been considered to be prevalent in litigations, but in practice it has crept in arbitration too.

In India, earlier, parties could opt for maintaining confidentiality by making such stipulation in rules with which the parties may wish to be governed, though such power was provided in conciliatory proceedings only.³¹

It could be realized from the fact that the rules have been laid down by various international arbitration centers, for instance Hong Kong International Arbitration Centre,³² Singapore International Arbitration Centre,³³ whereby the arbitrator appointed by such body is bound by such prerequisite regarding non-publication or disclosure, which in itself signifies the desirability and worthiness of confidentiality in arbitration.

The Arbitration and Conciliation (Amendment) Act, 2019 now ensures that the confidentiality of all the arbitral proceedings³⁴ is to be maintained by the arbitrator and institutions except the award; for the awards are subject to be challenged and therefore it would not be feasible to extend the provision which may frustrate the proper enforcement of the award.

E. Immunity

Another important feature introduced by the Arbitration and Conciliation (Amendment) Act, 2019 though not a highlighted aspect of this Act is the

safeguarding of arbitrators against any reckless legal action or proceedings for any act or omission performed during the arbitration in due course of law and in good faith or intended to be done under good faith.³⁵ This shall protect the arbitrators from frivolous court cases in context of the conducting of arbitration³⁶; yet it still has some shortcomings which may make it more susceptible thus triggering proceedings and legal actions against arbitrators in the garb of imputations of malafides. The Act further provides extension of the immunity to the arbitral tribunal secretaries as well.

F. Section 29A: Mitigating the Stringent Timelines

This section was introduced by the Amendment Act 2015 with the 'pretension' that Arbitration may not succumb to the same malady with which litigation is impaired at present times. It imposed a statutory obligation that the Tribunal shall render an award within the stipulated period of 12 months which shall be calculated from the date of constitution of Arbitral Tribunal. The extension in regard to this period may be made by the parties or the Court, but such extension, in case where consented upon by the parties, shall not exceed 6 months.³⁷

Priorly, this idea had been forthrightly excoriated in Justice Saraf Committee Report, while reviewing 176th Law Commission Report regarding the recommendation of imposing time limits, stating it to be contrary to practices and norms considered sacrosanct in International Arbitration landscape.³⁸

Thus ensuring that the provisions may not result in obtrusion and cause negative impact upon International Commercial Arbitration in India, the Parliament taking note of the recommendations of the Srikrishna Committee made an amendment in this regard, whereby it provided for exclusion of International Commercial Arbitration from the mandatory time limits. Moreover, in domestic arbitration the amendment made provision for elongation of the timeline, by adopting new method of reckoning from the date of completion of pleadings.

By inserting the provision in section 29A(4), though the amendment has improved upon the prior lacunae by continuation of the mandate until the application has been disposed off, ensuring smooth and unabated functioning without causing ungraceful protraction while awaiting the court's decision for extension. This provision should be read in conjunction with section 32. Further it shall be deemed to have been extended where the court doesn't dispose the application within 60 days.³⁹

A crucial change to ensure arbitration still isn't a court's affair, for computing the 12 months period, the timeline shall begin only from the date of completion of pleadings and not constitution of Arbitral Tribunal. The statement of defense and statement of claim must be concluded within 6 months from the notice of appointment, though strangely the time period consumed in filing of the joinder (both in counterclaims and non-counterclaims) shall not be included under section 23(4).

The Draftsmen have failed to clarify the ambiguity which has been introduced by the 2019 Amendment, which is left for the Supreme Court to be addressed and decide whether the completion of pleading to be effected within six months from notice be applicable on the International Commercial Arbitrations or not.⁴⁰

The interpretation of section 29A along with section 23 in relation to 6 months period for pleading seems to be clearly contrary to the intent behind the Amendment, though while interpreting the aforementioned sections collectively seems to inadvertently apply the 6 months timeline to International Commercial Arbitration also.⁴¹

The concept of completion of pleading for computation practically is another bone of contention which may perhaps be faced in future for the reason that pleadings may be amended substantially at various stages, thus defeating the object of this provision and also the purpose of setting a timeline.

The Legislative Blunders : The premise upon which the Srikrishna Report was based were mere conjectures and surmises, indeed for implementation of government's rhetoric, having a myopic and improvident attitude towards the concrete and pressing issues, instead preferring to plump for the delusional concept of establishment of institutional arbitration without creating of an apt atmosphere.

The conception of arbitration institution is highly influenced from Singapore International Arbitration Act, though the legislature has failed to recognize the paradigm upon which the SIAA Rules rest that is, QUALITY. The prospects of designation of Supreme Court and High Court of the country as the appointing authority shall result in having far reaching ill-effects instead, further failing to restrict the number of institutional arbitration which may be designated.

Whatever may have been or would be the effects (favourable or adverse) of Arbitration and Conciliation (Amendment) Act, 2019 upon the arbitration landscape in India, undoubtedly it has been disputatious at least.

Irrespective of the fact that the Arbitration Council of India has been given sufficient powers and a governing body to function adequately, yet it cannot be denied that the constitution of Council is itself performed by the Government⁴² which would surely tarnish the image of its unbiasedness and stir up skepticism regarding its autonomous and independent approach. The Legal Affairs Department, under the Law Ministry, has issued a Draft with regards to Arbitration Council of India Rules calling for suggestion.⁴³ The authority to appointment in actual fact vests with the Central Government, along with intruded its bureaucracy, ensuring that it doesn't lose its predominance over the Institution.

The imminence of Council falling victim to government's listless attitude and lethargies cannot be completely brushed aside, especially where inclusion of proactive genuine experts is concerned.⁴⁴ This may perhaps be provisioned in the light of the Law Commission Report, 2009, in which it was found that the Union of India, the States and their instrumentalities were the biggest litigant in the country.⁴⁵

The Eighth Schedule was added by the Arbitration and Conciliation (Amendment) Act, 2019, providing for the norms on the basis of which accreditation of arbitrators are to be set out. It further consists of some statutory requirements and the qualifications to be eligible to become an arbitrator.

The norms for accreditation of arbitrators have been an epicenter of criticism for being exhaustive and excludes the person who are recognized as qualified arbitrators by any other arbitral institution or body of professionals(such as the well-known Chartered Institute of Arbitration (CI Arb)), thus presumably results in ruling out of qualified and experienced international arbitrators.

The legislature has sadly left the ambiguity again to be resolved at the behest of the Supreme Court, whereby the literal interpretation clearly signifies barring foreign legal professionals from practicing as arbitrators in India, a major setback in development as an International Hub. Non recognition of various important issues, reviewed and recommended by the "High Level Committee" under the chairmanship of Justice Srikrishna, for instance disregarding the concept of

emergency arbitration and emergency awards passed in India or outside shows the cold attitude towards expansion of New Horizons in Indian arbitration landscape.

Lastly, the Arbitration and Conciliation (Amendment) Act, 2019 has provided a blanket concept for the imposition of confidentiality, neither considering the necessities which may cause inconvenience, nor the requirements for establishing a better disputes resolution process.

Missing Out The Opportunity: The Logjam Left Clogged : There was inconsistency among the High Courts in India upon the issue of choice of a foreign seat when both the parties are Indian, some ruling that the choice of opting a foreign seat fundamentally being contrary to the "*Doctrine of Public Policy*"⁴⁶ while other High Courts have 'judiciously' asserted that parties have the freedom to opt for rules by which they wish to be regulated thus upholding party autonomy for choice of a preferred seat.⁴⁷

Through the Amendment Act, the government had the opportunity to set the record straight by addressing the divergence,⁴⁸ rather than keeping it in abeyance, and yet another ambiguity lay at the behest of the Supreme Court to be clarified.

⁴⁹ Parties to such contract which do not want to be in any precarious situation of award being set aside owing to an interpretation as being contrary to public policy should rather consider retention of seat in India only.⁵⁰

Irrespective of the growth of Emergency Arbitration in international arena, which has been appreciated in 246th Report of Law Commission,⁵¹ the 2019 Amendment fails to recognize Emergency Arbitration, thus an order/ award of the Emergency Arbitrator cannot be enforced, whether passed in India or outside.

Alternatively, the parties may directly make application for similar interim relief before the municipal courts in India.⁵² The courts have given respite to the petitioners, yet have persisted upon filing of specific suit for enforcement of awards of emergency arbitrator.⁵³ Having said that, there does not exist any statutory provision which mandates the courts to grant any relief on the basis of emergency arbitration, let alone granting of the same relief or modified in that context.

The Way Forward : Proposition which is likely to be raised in future in order to understand the nature of the amendment, would be the disputes to which this

amendment is to apply, whether the amendment is '*substantive*,' '*procedural*,' or merely '*clarificatory*' in nature, and the interpretation by the Courts would be called for to provide some clarity. Want of explicitness has unarguably protracted effectuality of the amendment.⁵⁴

Further, it would be important to consider the fact that Arbitration and Conciliation (Amendment) Act, 2019 would affect obtaining of anti-arbitration injunctions (seeking interim injunctions), as the courts have now been given an important role in this regard. The Amendment Act, 2019 now restricts the authority of the arbitral tribunal to make interim measures only during arbitral proceedings.⁵⁵

The requirement of sharing of information with experts, third parties funders, would too require another view, either by legislation or by judiciary in order to ensure that the new horizons which have recently burgeoned may not be distanced owing to the technicalities of law.

While it has been some time now that Supreme Court demystified the issue regarding practicing law by foreign nationals in India⁵⁶, but the observation upon foreign lawyers not being debarred from conducting arbitration in disputes seems to be in diametric contradiction to norms laid down for eligibility of arbitrators. Determination and clarity regarding the eligibility may be an opportunity before the Supreme Court to make an attempt to mend ways for a pro-arbitration regime.

Conclusion : As it has been echoed throughout this article, the intent behind the Amendment was fundamentally the importunateness of making India a "Global Arbitration Hub." This in itself is for all intents a flawed premise to begin with. The felicitous roadmap should have comprised of improvement of business environment and making India an investor friendly economy, accompanied with a blueprint incorporating a feasible approach towards the aspiration of making India a Hub.

Further, all the existing Hubs have attained eminence by improving their domestic arbitration ecosystem, followed by establishing their reputation as a financially beneficial and viable option (which includes being a speedier dispute resolution system).

The reposing of excessive powers upon the Arbitration Council of India and entrusting it with the pre-eminent role of a regulatory body is rather a retrogressive step, which would in all probabilities eclipse the party autonomy.

Indisputably, the Amendment is an audacious step for projecting India as an aspiring international arbitration jurisdiction; nonetheless the arbitral regime in India is still fraught with glaring anomalies and incongruities. Without a shadow of doubt, the creases which may crumple the Indian arbitration jurisprudence in India will be ironed out by the judicial pronouncements.

All said and done, the favourable outcomes of the Amendment and eventually making progress towards establishing India as a viable and preferable arbitration destination shall hinge upon India's reputability as an economy having a dispute resolution mechanism which facilitates financial and economic development and the practical implementation of the Amendment complemented with the pro-arbitration approach of judiciary in its decisions.

Since arbitration is growing in complexities and is likely to become efficient by passage of time, India has been striving to keep pace with the rapid development in international arbitration by taking progressive steps, and these signs of growth in the Indian arbitration landscape are surely encouraging and propitious.

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³¹ The Arbitration and Conciliation Act, 1996, No.26 of 1996(India) [*hereinafter* "Arbitration Act, 1996"] at § 70

³² HK Ordinance, *supra* note 18, at § 16,17,18

³³Singapore Act, *supra* note 17, at § 22, 23 read with Arbitration Rules of the Singapore International Arbitration Centre (6th Ed., 2016), r. 39

³⁴Amendment Act, 2019, *supra* note 7, at § 42A

³⁵Amendment Act, 2019, *supra* note 7, at § 42B

³⁶ See generally, Singapore Act, *supra* note 17, at § 25 and HK Ordinance, *supra* note 18, s104

³⁷Arbitration Act, 1996, *supra* note 31, Explanation to § 29A(1)

³⁸ Government of India, Ministry of Law and Justice, *Proposed Amendments to the Arbitration Conciliation Act, 1996*, Consultation Paper, 127 ; available at

<https://www.legallyindia.com/images/stories/docs/Arbitration-Act-LawMin-ConsultationPaper-on-Arb-Act-April2010-1.pdf>

(accessed March 7, 2020)

³⁹ Amendment Act, 2015, *supra* note 7, at § 29A(9)

⁴⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, , 330 U.N.T.S. 38 (Jun. 10, 1958), [hereinafter “New York Convention”], Art. V, available at

http://www.uncitral.org/pdf/1958_NYConvention.pdf

(accessed March 7, 2020)

⁴¹ Gary B. Born, *International Commercial Arbitration* (2nd ed. Kluwer Law International, 2014) 2239 , [“Any impediment upon International Arbitration by imposition of mandatory, statutory time restrictions are challengeable under Art V.(1)d of New York Convention”]

⁴² Amendment Act, 2019, *supra* note 7, at § 43C(1)

⁴³ The Arbitration Council of India (the Qualifications, Appointment and other terms and Conditions of the services of the CEO) Rules 2020,

available at

<http://legallaffairs.gov.in/sites/default/files/ACI%20the%20Number%20of%20Officers%20and%20Employees%20of%20the%20Secretariat%20of%20the%20Council%20and%20the%20qualifications%2C%20appointment%20and%20other%20terms%20and%20conditions%20%29.pdf>

(accessed March 8, 2020)

⁴⁴ Bhavana Sunder, Ashish Kabra & Vyapak Desai, *The Indian Arbitration and Conciliation (Amendment) Act 2019 – A Reflection*

available at

<https://www.lexisnexis.com/uk/lexispsl/arbitration/document/412012/8WBY-0082-D6MY-P2MR-00000-00/The-Indian-Arbitration-and-Conciliation-%28Amendment%29-Act-2019%E2%80%94a-reflection/97028>

(accessed March 3, 2020)

⁴⁵Law Commission of India, *Report No. 230 Reforms In The Judiciary – Some Suggestions* (2009), at ¶ 1.25

<http://lawcommissionofindia.nic.in/reports/report230.pdf>

(accessed Feb. 26, 2020); See also *Government Litigation – An Introduction*, Vidhi Centre for Legal Policy available at

<https://vidhilegalpolicy.in/2018/02/16/2018-2-16-wbjjj7oyo5weitshift69rmzedy5t8/> (accessed Feb. 26, 2020)

⁴⁶ M/s Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Pvt. Ltd.; 2015 SCC Online Bom 7752

⁴⁷GMR Energy Limited v. Doosan Power Systems India Private Limited & Ors.; 2017 SCC Online Del 11625; Sasan Power v. North American Coal Corporation, 2015 SCC Online MP 7414

⁴⁸ See generally Naresh Thacker and Mihika Jalan, *India, The Asia-Pacific Arbitration Review* 2020, 76, available at

<https://globalarbitrationreview.com/edition/1001336/the-asia-pacific-arbitration-review-2020>

⁴⁹ The issue was dealt by Supreme Court in *Atlas Export Industries v. Kotak & Co.* (1999) 7 SCC 61, but later stance upon the issue got muddled up after *TDM Infrastructure Private Limited v. UE Development India Private Limited* (2008) 14 SCC 271

⁵⁰Shaneen Parikh, Shalaka Patil, Nimitt Dixit, Anand Mohan, *Arbitration In India – A Story Of Growth And Opportunity*, Cyril Amarchand Mangaldas, available at

<http://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-%E2%80%93-A-Story-of-Growth-and-Opportunity.pdf>

(accessed Feb. 26, 2020)

⁵¹ Law Commission of India, *Amendments to the Arbitration And Conciliation Act*, 1996 [hereinafter – “246th Report”] 10, 37 (2014); available at

<http://lawcommissionofindia.nic.in/reports/Report246.pdf>

(accessed Feb. 27, 2020)

⁵²*HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studios Ltd. & Ors.*, 2014 SCC Online Bom 102, at ¶ 80,89

⁵³*Raffles Design International India Pvt Ltd v. Educomp Professional Education Ltd*, 2016 SCC Online Del 5521, at ¶ 99. Seemingly, even the courts by default don't recognize emergency arbitrations, unless a suit for enforcement of award from such emergency arbitration is filed.

⁵⁴International Commercial Arbitration, Law and Recent Developments in India (May 2019), Nishith Desai, *available at*

http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/International_Commercial_Arbitration.pdf

(accessed Feb. 15, 2020)

⁵⁵Arbitration Act, 1996, *supra* note 31, at § 17; The Act previously provided the power to pass interim order even after award was made, though now such power has been taken away after tribunal becomes functus officio.

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