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Comparative Analysis of Arbitration Rules: Kenya, Eswatini, and India

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ABSTRACT

Arbitration has emerged as one of the most efficient forms of dispute especially in relation to international commercial and investment disputes. This is due to the large support it has received from international organization especially the UN which established the UNICITRAL rules and has been a basis for many convention such as the The Convention on the Recognition and Enforcement of Foreign Arbitral Awards also called the "New York Convention" which has over 172 signatory states. This paper is focused on analyzing the arbitration preference of three states Kenya, Eswatini and India and seeing their approach towards arbitration. Due to the countries each country have a different approach towards its judiciary an analysis of these three countries will provide a clear view on how countries have accepted arbitration as a means of international dispute.

This research will be focusing on four aspects of arbitration in each country legal framework, institutional arbitration , procedure and enforcement of award. By looking at how each country has worked on these aspects we can determine their openness to international arbitration. I conclusion to this research the challenges each country faces will be highlighted and possible future steps will be recommended.

***Keywords**: Arbitration, dispute resolution, international commercial disputes, investment disputes.*

I. INTRODUCTION

The main objective of the paper is to carry out a comparative analysis concerning arbitration rules and practices followed in Kenya, Eswatini, and India. By studying these three countries, this research would illustrate unique approaches to arbitration each takes, both similarities in the legal framework, institutional arrangement, procedures, and modes of enforcement. With all these in consideration, this research looks to illuminate aspects on how the countries balance these norms from the local and the international aspects of arbitration while highlighting their alignment with worldwide standards of dispute resolution.

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(A) Key Questions Addressed:

1. How do the legal frameworks for arbitration differ among Kenya, Eswatini, and India?
2. What are the institutional structures and mechanisms supporting arbitration in each country?
3. How do arbitration procedures and enforcement mechanisms compare?
4. What are the challenges and opportunities unique to each jurisdiction in promoting effective arbitration?

(B) Methodology

This study employs a **comparative legal analysis** methodology, allowing for a systematic examination of the differences and similarities across Kenya, Eswatini, and India. The research will draw on various sources, including:

1. **Legislative Frameworks:** National laws and statutes that govern arbitration practices in each country.
2. **Judicial Interpretations:** Court cases and precedents that clarify or interpret arbitration rules within each jurisdiction.
3. **International Conventions:** Documents such as the UNCITRAL Model Law and the New York Convention, assessing their influence and adoption in the three countries.
4. **Arbitration Institutions:** Rules and guidelines from key arbitration bodies and institutions within each country, which shape arbitration practices and procedural standards.

II. LEGAL FRAMEWORK OF ARBITRATION

(A) Arbitration Law in Kenya

a. Arbitration Act 1995 (Amended in 2009)

The arbitration regime of Kenya is mainly covered by the Arbitration Act, 1995. The Act was based on the UNCITRAL Model Law. In 2009, it was amended for greater efficiency and to clarify provisions of arbitration. Both domestic and international arbitration fall under this Act, and Kenya, as a venue, attracts arbitration in Africa[3].

[3] Gaker, J. K. (2011). Placing Kenya on the global platform: an evaluation of the legal framework on arbitration and ADR.

b. **International Commitments**

Kenya is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and to the ICSID Convention (International Centre for Settlement of Investment Disputes). That makes it a good venue to arbitrate since the awards can be enforced higher than which is the most crucial aspect to all arbitration proceesings.

(B) **Arbitration Law in Eswatini**

a. Arbitration Act, 1904

Arbitration in Eswatini is governed by the Arbitration Act, 1904. It act as the domestic and international arbitration law, although the act does need updating to align it with modern standards of arbitration. It still adequate enough to resolve disputes through arbitration proceeding. Eswatini is not a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which limits its ability to be integrated with global arbitration practices.

b. Influence of Roman-Dutch Common Law

Eswaini legal system is strongly influenced by Roman-Dutch Common Law, due to its colonail background being British. However, there are some areas where the Arbitration Act does not make a significant contribution, and that includes the issues of the recognition and enforcement of foreign arbitral awards for which the Roman-Dutch law makes an important contribution.

(C) **Arbitration Law in India**

a. Arbitration and Conciliation Act, 1996 (Amended in 2015, 2019, and 2021)

India's arbitration framework is governed by the Arbitration and Conciliation Act, 1996, that applies both domestic and international arbitration. The Act is based on the UNCITRAL Model Law and had undergone significant changes with amendments to update and bring India's arbitration regime in line with international standards. The key amendments introduced in 2015, 2019, and 2021 have enhanced the speed, efficiency, and independence of the arbitration process in India[4].

b. India's Commitment to International Arbitration Standards

India is a signatory to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, ensuring that foreign awards have been recognized by being

[4] Sharma, Garvit. (2024). Insight into the indian arbitration: comprehensive overview. Jus Corpus Law Journal, 4(3), 42-64.

recognized and implemented domestically. Apart from it, India is a signatory to the Geneva Convention of 1927 and not a signatory to ICSID Convention meaning any claim of enforcibility under this act can not be maid to enforce arbitral award.

III. INSTITUTIONAL ARBITRATION

(A) Institutional Arbitration in Kenya

a. Major Arbitration Institutions

Kenya has a growing institutional arbitration scene, with several key institutions:

The Chartered Institute of Arbitrators, Kenya Branch: It is one of the oldest organizations with a body of experienced individuals who provide training and certification in arbitration services.

The Nairobi Centre for International Arbitration (NCIA): Under the Nairobi Centre for International Arbitration Act, 2013, the NCIA offers an exclusive center for domestic as well as international arbitration and even investment arbitration.

Kenya Branch of ICC at times handles arbitration cases involving parties from Kenya but compliance with international standards.

This gives these institutions an important role in developing a structured, transparent arbitration framework in Kenya, facilitating international disputes, and reducing reliance on ad hoc arbitration[5].

(B) Institutional Arbitration in Eswatini

In Eswatini, institutional arbitration still faces considerable challenges mainly resulting from lack of an appropriate local institution for arbitration. Such has been left to allow a country mostly depend on various arbitration centers and mechanisms within South Africa, which result from conventions entered into with international nations.

a. Lack of a Formal Arbitration Institution and Reliance on South African Centers

Eswatini lacks an arbitration institution that means that both local parties and foreign investors, whenever they seek arbitration, use the well-known South African arbitration centers. These latter institutions offer extensive institutional framework such as rules of procedure, lists of panels and administrative support to the arbitrations which are lacking at the local Eswatini

[5] Torgbor, E. N. A. (2013). *A comparative study of law and practice of arbitration in Kenya, Nigeria and Zimbabwe, with particular reference to current problems in Kenya* (Doctoral dissertation, Stellenbosch: Stellenbosch University).

level. Through use of South Africa, Eswatini taps already established arbitration resources but forfeits some form of sovereignty and bears relatively higher cost in terms of logistics and procedures, making smaller-scale arbitrations economically less worthwhile.

b. Intersection with ICSID and the Role of Courts in Eswatini

Eswatini's accession to the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1971, which entered into force in the same year, provides another channel through which foreign investors may have their disputes with the Eswatini government resolved. Though no case has ever been filed before Eswatini at ICSID arbitration, this would serve to potentially resolve substantial investment disputes and thus partly balance the deficit in institutional support from local institutions[6].

In matters of domestic or smaller scale, the courts of Eswatini play an important role in filling in the institutional gap. The courts enforce arbitration agreements and awards, assist in making arbitrator appointments, and address procedural disputes that arise in the course of arbitration. The judiciary, thus plays a critical enabling role for arbitration in Eswatini by upholding principles and agreements of arbitration and thereby enhancing legal certainty for both local and foreign parties[7].

Eswatini does not have a domestic arbitration institution. But based on South African centers with supplementation by ICSID for international disputes and in a supporting role of the local courts, it still offers a patchwork structure through which arbitration can occur in the country but on a cost and convenience level less favorable to disputes domiciled in Eswatini.

(C) Institutional Arbitration in India

The Mumbai Centre for International Arbitration (MCIA), which has been established to handle both domestic and international commercial disputes, has placed itself as a credible alternative for parties seeking efficient and impartial resolution of commercial matters. It is an indicator of India's intent to establish a strong, independent arbitration framework within its borders and not be reliant on foreign institutions.

For instance, the Delhi International Arbitration Centre has committed itself to efficient and cost-effective arbitration procedures. DIAC's efforts at providing streamlined processes and

[6] Swaziland (Eswatini) Arbitration Lawyers Desk • Aceris Law. (2018). Aceris Law. https://www.acerislaw.com/swaziland-eswatini-arbitration-lawyers-desk/

[7] Dlamini, D. C. (2021). The Application of Public International Law in Eswatini: A Comparative Perspective (Order No. 28935297). Available from ProQuest One Academic. (2621671043). https://www.proquest.com/dissertations-theses/application-public-international-law-eswatini/docview/2621671043/se-2

comprehensive administrative support for arbitration made it a preferred option for parties seeking accessible and expedited dispute resolution[8].

Additionally, bodies like the Indian Council of Arbitration which was among the oldest in arbitration have continued to carry a much important role while being tasked with the problems placed within the richest spectrum; thereby adding more glories in arbitration to this great nation. Although international institutions like SIAC and LCIA are well established, with strong international profiles and attracting cases involving Indian parties, the MCIA, DIAC, and ICA systems are highly localized and structured. The structured framework is extremely beneficial in that it minimizes court intervention, which otherwise is a very common apprehension in ad hoc arbitration.

It has been the need of the hour for a formalized arbitration environment, and thus, the Indian government has undertaken various initiatives to popularize institutional arbitration over ad hoc approaches. The policy measures, legislative reforms, and infrastructural support that the government provides will make India a global arbitration hub. These constitute a very significant governmental push towards a self-sufficient arbitration framework, which not only promotes the attractiveness of India as a destination for foreign investors but also fosters predictability and a business-friendly environment within the country.

(D) Comparative Analysis of Institutional Arbitration

Institutional arbitration plays a significant role in establishing reliable frameworks for dispute resolution, particularly in countries with evolving commercial markets. While Kenya and India have actively moved towards institutionalizing arbitration, Eswatini remains comparatively dependent on foreign institutions. Each country's arbitration landscape reflects unique challenges and adaptations, highlighting the varied pathways nations take to integrate arbitration as a preferred means of settling disputes.

IV. ARBITRATION PROCEDURE

(A) Kenya arbitration procedure

Arbitration Process in Kenya

1. Ad Hoc vs. Institutional Arbitration

Kenya accommodates ad hoc arbitration as well as institutional arbitration.

[8] Rastogi, S., & Shahi, C. (n.d.). THE CONCEPT OF INSTITUTIONAL ARBITRATION – NEED FOR THE HOUR. PSYCHOLOGY AND EDUCATION, 58(2), 6601–6609. https://pdfs.semanticscholar.org/3a4e/1d4293e9022e009ca63782d6d6d0e8e9cd83.pdf

Ad Hoc Arbitration: Parties retain the flexibility to determine procedures, arbitrators, and conduct of proceedings. However, it often faces challenges like delays and increased chances of court interference.

Institutional Arbitration: NCIA and CIArb Kenya have given structured rules and processes so that the arbitration proceedings become more smooth, chances of court intervention decrease, and the result comes quicker.

2. Specific Features of the Arbitration Procedure

Arbitration Agreement Arbitration can only be given when the parties agree upon it either as a clause of the contract or outside it. Arbitration must always be agreed upon in writing.

Appointment of Arbitrators: The Arbitration Act, 1995 provides that parties can appoint arbitrators. If the parties are unable to agree, the courts or institutions such as the NCIA can step in and make appointments. The 2015 Arbitration Amendment Bill provided guidelines on transparency in the appointment of arbitrators.

Hearings: Arbitrations in Kenya can sit in private and may opt to conduct their hearings by video or audio conferencing. NCIA, one of the institutions, provide logistical support for the convenience of conducting hearings.

Awards: The arbitral tribunals are supposed to make an award that binds the parties. Remedies that are provided can include financial compensations, performance orders, or injunctive reliefs. Unless otherwise agreed by the parties, the award must be reasoned.

Court Intervention: The Kenyan legal system limits court intervention into arbitration proceedings. Courts can intervene in only a few specified instances, such as a case where parties fail to nominate arbitrators, during an appeal against the award or during the enforcement stage[9].

(B) Arbitration Procedure in Eswatini

- **Ad Hoc Arbitration**

Eswatini is mostly ad hoc arbitration since there are no formal standardized institutional rules. Usually, parties resort to their agreement to lay down procedures for arbitration thus holding the flexibility in the structuring of arbitration[10].

[9] Muigua, K. A. R. I. U. K. I. (2016). The Arbitration Acts: A Review Of Arbitration Act, 1995 Of Kenya Vis-A-Viz Arbitration Act 1996 Of United Kingdom. *lecture on Arbitration Act, 1995 and Arbitration Act 1996 of UK delivered at the Chartered Institute of Arbitrators-Kenya Branch Entry Course held at College of Insurance on 25-26th August 2008 (Revised on 2nd March 2010)*.

[10] The Scope of Conciliation Mediation and Arbitration in Swaziland - AfricanLII. (2024). Africanlii.org. https://africanlii.org/articles/2012-05-23/nathi-gumede/the-scope-of-conciliation-mediation-and-arbitration-in-swaziland

- **Commencement of Arbitration**

Arbitration commences by mutual consent of the parties involved. In the absence of formal procedural rules, parties or even arbitrators can opt on the way of proceeding.

- **Appointment of Arbitrators:** Parties may agree on the appointment of arbitrators, but the courts may intervene if parties fail to agree on such.
- **Arbitration Hearings:** In general, arbitration hearings tend to be informal because it is left to the discretion of the parties or even the arbitrator to structure the procedure.
- **Awards and Remedies:** The award of an arbitrator is binding; remedies can be monetary compensations or other actions agreed upon in the arbitration agreement.
- **Courts' intervention:** The courts interfere in cases of procedural disputes such as appointments of arbitrators, setting aside of awards on grounds violating public policy or other tenets of law, and the enforcement of awards.

(C) Arbitration Procedure in India

1. Ad Hoc vs. Institutional Arbitration

India's arbitration assumes two forms in the arbitral process.

2. Ad hoc and institutional Arbitration

Institutional arbitration differs from ad hoc arbitration that has less pre-established set of rules by institutions; thus it comes with its own share of risks where there may arise chances for court involvement. Some well-known arbitration institutes in Indian Arbitration include MCIA, DIAC, ICA[11].

3. Main Characteristics in Arbitral Process

Commencement of Arbitration in India, arbitration is said to begin with the parties' agreement to refer the dispute to arbitration, which serves a foundation that informs the elements present in the arbitration. It may be a contractual clause or an independent arbitration agreement. **Appointment of Arbitrators:** Parties may choose the arbitrators; if not, the High court or Supreme court under section 11 of the Arbitration Act can intervene to appoint the arbitrators. According to the 2021 Amendment, the arbitrator is supposed to declare independence and impartiality.

Conduct of Arbitration Hearings: Arbitration hearing have been made more flexible, hearings

[11] Moza, A., & Paul, V. K. (2016). Review of the Effectiveness of Arbitration. Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, 9(1). https://doi.org/10.1061/(asce)la.1943-4170.0000204

can be conducted in person or virtually (especially post-pandemic). The 2021 Amendment is centered on the use of technology and on efficiency.

Award and Remedies: A binding award is delivered by the arbitral tribunal that is enforceable as a court decree under Section 36 of the Arbitration Act. Remedies could include monetary compensation, specific performance, or other forms of relief.

Court Intervention: Minimal Court Intervention is brought about by the 2015 Amendment that promotes arbitral process independence. The amendment under this provision ensures that courts can only intervene in very few limited instances, such as appointments of arbitrators, filing challenges to awards, or in enforcement proceedings.

V. ENFORCEMENT OF ARBITRAL AWARDS

1. Enforcement of Domestic Arbitral Award

Such Kenyan domestic arbitral awards will therefore be enforceable in form of court decree subject to Section 36 Arbitration Act, 1995. In general the Court of Kenya will annul an award under following only limited grounds and circumstances : if the tribunal manifested error on matters of its jurisdiction or violated a provision of public policy.

Challenges to Domestic Awards: Section 35 provides for a three-month time frame in which an application to set aside an arbitral award can be filed based on factors such as misconduct, incapacity of a party, or invalidity of the arbitration agreement. Courts generally exercise great restraint in the application of the grounds of review for setting aside domestic awards.

2. Enforcement of Foreign Arbitral Awards

Being a signatory to the New York Convention, Kenya has obligations to recognize and apply foreign arbitration awards in tandem with international arbitration norms. All foreign awards that other countries which are fellow parties to the convention have had enforced fall under part III of the Arbitration Act.

Foreign Awards: Recognition and Enforcement Under Section 36, foreign awards are recognized by the Kenyan courts before they can be enforced. The courts will refuse to enforce it only in very limited circumstances, such as breach of public policy or if there is no valid arbitration agreement. Recently, this process has been streamlined to be faster and more predictable[12].

[12] Kituku, J. K. (2018). *Facilitating International Arbitration in Kenya: a General Analysis of Arbitration in the Country and International Arbitration in Other Selected Countries* (Doctoral dissertation, University of Nairobi).

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3. Recent Judicial and Legislative Trends

a) Unimportant Judiciary Participation

The Kenyan courts have maintained the minimal judicial interference principle in arbitration. In Nyutu Agrovet Limited v. Airtel Networks Kenya Limited (2019), the Supreme Court ruled that appeals against arbitral awards should be limited to serious questions of law or public interest. This decision further cemented Kenya's arbitration regime by confirming the finality of arbitral awards.

b) Public Policy Considerations

In public policy, Kenyan courts have been cautious about interpretations. The Christ for All Nations v. Apollo Insurance Co. Ltd has laid down the judicial philosophy of construing public policy exceptions narrowly to avoid undue judicial intervention in arbitration proceedings, so as not to "clog the already overwhelmed arbitral machinery". For example, the Arbitration Amendment Bill of 2015 aimed to narrow or limit the scope of applying the public policy challenges or exception.

c) Privacy

The Arbitration Act, 1995, though silent on the issue of confidentiality, presumes arbitration proceedings to be private unless otherwise agreed to by the parties. Growing interest is being seen today in keeping arbitration proceedings confidential, with institutions like NCIA ensuring confidentiality in their procedures.

d) Electronic Arbitration

The COVID-19 pandemic has accelerated virtual arbitration adoption in Kenya. Institutions, such as NCIA and CIArb Kenya, introduced virtual hearing facilities and protocols that ensured that arbitration could continue despite physical restrictions. This improved access and efficiency in arbitration proceedings in Kenya.

e) Duration of arbitration Hearings

The Kenyan arbitration law does not provide a minimum timeframe for arbitration proceedings except by agreement of the parties involved. Courts and other institutions have encouraged arbitrators to produce their awards promptly, thus making arbitration fast and effective. The NCIA rules also provide a minimum time frame for producing an award, thus limiting the period of delay.

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4. Enforcement in Eswatini

a) **ICSID Arbitration**

The ICSID Convention awards are enforceable in Eswatini without the need for further local procedures, thus allowing streamlined enforcement of awards from investment disputes involving foreign investors.

b) **Reciprocal Enforcement of Judgments Act, 1922**

The Reciprocal Enforcement of Judgments Act, 1922 provides for the enforcement of foreign judgments upon certain conditions. This includes arbitration awards, and this act is applicable to its country of origin. However, this only applies primarily in Commonwealth countries, that is, to the UK and Ireland.

c) **Common Law Enforcement**

In respect of those jurisdictions that fall outside the Reciprocal Enforcement of Judgments Act, foreign arbitral awards can be enforced through Roman-Dutch Common Law. The case of Improchem (Pty) Limited v. USA Distillers (Pty) Limited established that foreign arbitral awards could be enforced if they do not offend public policy or Eswatini's legal principles.

d) **Public Policy Considerations**

Eswatini courts generally only scrutinize the arbitral awards in order to determine whether they conform with the public policy. The merits of the arbitral award are typically not scrutinized; this positions Eswatini in the international jurisprudence that holds the belief that arbitral decisions must be final[13].

e) **Recent Judicial Clarifications**

Improchem case clearly interpreted important issues relating to the recognition and enforcement of foreign arbitral awards in Eswatini. High Court held that the foreign awards do not have to be recognized within the country of origin of these awards before their enforcement is effected in Eswatini, as long as the respondent has his assets within the country. In doing so, this makes it easier to effect enforcement for foreign arbitral awards.

5. Enforcement in India

a) **Enforcement of National Awards**

A domestic arbitral award is enforceable as is a court decree under the Arbitration Act Section

[13] How to Recognize and Enforce a Foreign Arbitral Award in the Kingdom of eSwatini? - Kluwer Arbitration Blog. (2020, June 18). Kluwer Arbitration Blog. https://arbitrationblog.kluwerarbitration.com/2020/06/18/how-to-recognize-and-enforce-a-foreign-arbitral-award-in-the-kingdom-of-eswatini/

36. Section 34 will allow challenge to an award only on some of specified grounds including that of fraud, or the arbitrator's gross misconduct or grounds of being in violation of public policy.

b) **Enforcement of Foreign Arbitral Awards**

India's being a signatory of to the New York Convention made the recognition and enforcement of foreign arbitral awards more efficient and convenience. Part II of the Arbitration Act permits the enforcement of foreign awards from any contracting state that has an written agreement with India. The grounds for refusing to enforce the award have also been laid down, such as when the award has been found to be violating Indian public policy or if there had been no proper arbitration agreement[14].

c) **Recognition and Enforcement of Foreign Awards:**

India recognizes foreign awards from countries that are a party to the New York Convention. Foreign awards must pass the public policy test and meet other criteria under the Arbitration Act before enforcement in Indian courts.

6. Recent Judicial Development

a) **Public Policy and Arbitration**

Indian courts, though have always resorted to public policy as a ground to set aside awards, the definition under the 2015 Amendment was heavily curtailed, and judicial intervention on too many grounds is restricted. The Supreme Court of India in Renusagar Power Co. Ltd. v. General Electric Co. and Shri Lal Mahal Ltd. v. Progetto Grano Spa cleared that only a few of the fundamental breaches in respect of law or morality come within the consideration for "public policy" on award setting aside.

b) **Time-Limit for Arbitration Proceedings**

The 2015 Amendment introduced time limits to improve efficiency. Arbitral tribunals must deliver an award within 12 months of the commencement of proceedings, which can be extended by six months with the parties' consent. Courts can intervene only after this period expires.

c) **Confidentiality and Neutrality**

The Amendment to the Arbitration Act 2019 brought confidentiality provisions of arbitral procedures that are not and cannot be disclosed, except as necessary for the enforcement of the

[14] Nariman, F. S. (2009). India and international arbitration. George Washington International Law Review, 41(2), 367-380.

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award. Additionally, neutrality of arbitrators was reinforced in requiring more stringent declarations of independence and impartiality from arbitrators.

d) **Recent Judicial Decisions**

In Vidya Drolia v. Durga Trading Corporation (2020), the Supreme Court solidified its stance of minimal judicial interference in arbitration proceedings, reassuring that disputes in arbitration are to be left in the hands of arbitrators unless there was a 'clear case for court's interference' under the law.

VI. CHALLENGES AND FUTURE DEVELOPMENTS

The comparative analysis of arbitration frameworks in Kenya, Eswatini, and India reveals a range of challenges and opportunities for development, particularly in aligning with international standards. While Kenya and India have made significant strides in adopting practices consistent with the **UNCITRAL Model Law** and the **New York Convention**, Eswatini's outdated legal framework presents obstacles to its integration into the global arbitration landscape. This analysis explores the specific challenges faced by each jurisdiction and potential avenues for future development.

(A) Challenges in Kenya and India

Despite their alignment with international arbitration norms, both Kenya and India face challenges related to the implementation of these standards. In Kenya, although the **Arbitration Act, 1995** facilitates the enforcement of domestic and foreign arbitral awards, the judiciary's interpretation can sometimes lead to inconsistencies in application. The limited grounds for setting aside awards may lead to appeals that can delay the enforcement process, affecting the overall efficiency of the arbitration system. Additionally, while institutional arbitration is on the rise, the country must continually improve its institutional capacities to handle increased arbitration caseloads effectively[15].

In India, the challenge lies in balancing judicial oversight with the need for efficiency. While the 2015 and 2021 amendments to the **Arbitration and Conciliation Act** have strengthened the arbitration framework by minimizing judicial interference, the courts still occasionally face criticism for overly scrutinizing awards under the public policy doctrine. This scrutiny can create uncertainty for parties involved in arbitration, particularly in complex cases where the interpretation of public policy can vary widely. Furthermore, despite the growth of institutional

[15] Sai, Boddu Harshith. (2022-2023). History and Evolution of the Arbitration Law in India with Comparison to Singapore. Indian Journal of Law and Legal Research, 4, 1-7.

arbitration, parties may still prefer ad hoc arrangements, which can lead to procedural inconsistencies and delays.

(B) Challenges in Eswatini

Eswatini's arbitration framework faces significant hurdles due to its reliance on outdated laws and predominantly ad hoc arbitration. The **Reciprocal Enforcement of Judgments Act, 1922** restricts the enforcement of foreign awards primarily to Commonwealth countries, limiting Eswatini's appeal to international investors. The absence of a robust institutional framework means that parties often must navigate informal processes, which can lead to inconsistent outcomes and slow resolutions. Furthermore, the lack of integration with international standards like the New York Convention makes it challenging for Eswatini to attract cross-border investments, as foreign investors typically seek jurisdictions with predictable enforcement mechanisms.

(C) Future Developments

For Kenya and India, ongoing development focuses on enhancing their arbitration frameworks to remain competitive in the global market. In Kenya, efforts could include strengthening institutional arbitration bodies, increasing their capacity to handle disputes, and providing training to practitioners on best practices in arbitration. Furthermore, fostering collaboration with international arbitration institutions can help improve the country's visibility and reputation as an arbitration hub in Africa.

India's future development may involve further refining the public policy doctrine to reduce uncertainty in enforcement. Continued judicial training and the establishment of clear guidelines for what constitutes public policy could help streamline the enforcement process. Additionally, promoting institutional arbitration over ad hoc arrangements can provide a more structured approach to dispute resolution, enhancing efficiency and consistency.

Eswatini has significant opportunities for modernization. By revisiting and updating its legal framework, particularly concerning the enforcement of foreign arbitral awards, Eswatini could align itself more closely with international standards. Joining the New York Convention would be a transformative step, allowing for the recognition and enforcement of awards from diverse jurisdictions. This move could enhance Eswatini's attractiveness as a destination for foreign investment and facilitate cross-border arbitration. Moreover, establishing dedicated arbitration institutions and training local practitioners can help build a sustainable arbitration culture within the country.

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VII. CONCLUSION

The comparative analysis of arbitration frameworks in Kenya, Eswatini, and India highlights the importance of alignment with international standards in fostering effective dispute resolution mechanisms. While Kenya and India are on a positive trajectory, they must address existing challenges to further strengthen their arbitration systems. Conversely, Eswatini's need for modernization is critical for its integration into the global arbitration community. By embracing necessary reforms and improvements, these jurisdictions can enhance their arbitration frameworks and provide reliable and efficient dispute resolution services, thereby attracting greater international investment and fostering economic growth.

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