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What Ails the Indian Arbitration Regime: A Legislative Analysis with Singapore Regime

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ABSTRACT

The process or strategy with which we can resolve the dispute outside a Court can be stated as Arbitration. Specifically speaking about International Commercial Arbitration, it can be stated as the alternative dispute resolving method between private parties that are commercial in nature conducted in different nations which will help in avoiding legal action in the National Forum. With changing technology and rapid increase in economic status, India is establishing itself in the world of international commercial trade. Countries like China, USA, Singapore, United Kingdom has set astonishing examples in the world of Commercial Arbitration. The arbitration proceedings have been universally accepted with uniform standard norms by UNCITRAL Model Law which has been followed by countries practicing commercial trade. In this research work, the analysis of Singapore Law regarding its National Commercial arbitration would help us to analyze about why it has been accepted as the most preferred destinations as like London. This would help in visualizing what changes need to be accepted that would create the Indian Arbitration process stronger amid the flaws which will strengthen the practices. SIAC or Singapore International Arbitration Centre rules getting compared to Indian Arbitration and Conciliation Act, 1996 and its analysis will help us in knowing what has ailed the Indian Commercial Arbitration.

Keywords – International Commercial Arbitration, UNCITRAL Model Law, Arbitration and Conciliation Act, SIAC

I. INTRODUCTION

Arbitration is an alternate dispute resolution system where the dispute is resolved by one or more unbiased persons who are mutually decided by the parties to avoid the lengthy and complex proceedings in the court which flourished in India as an alternate only after the late nineteenth century. The initial law of arbitration was restricted only to domestic arbitration and did not deal with foreign awards. However, with the increase in transnational business

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transactions and globalisation, the legislature in India has been constantly developing the arbitration regime to attract more foreign investors and make India a major hub for International commercial arbitration. The Arbitration and Conciliation Act, 1996 being the present law for governing the arbitration system in India was legislated on the basis of the standard norms provided under the UNCITRAL Model Law which has also been followed by several other countries practicing transnational trades. This paper focuses on the problems arising in the arbitration regime that restricts the scope of the International Commercial Arbitration in India. It comparatively analyses the law of arbitration in Singapore with the legislation of India to throw light on the drawbacks and challenges faced and how it can be rectified in order to improve the arbitration proceedings.

II. RESEARCH METHODOLOGY

In this research paper, the author has researched upon several aspects of the Indian arbitral regime concerning jurisdiction and application, procedure with regards to appointment of arbitrators, duration and language, the confidentiality aspect of both the parties, and interim reliefs and provisional grants awarded.

These aspects are further distinguished with the corresponding issues regarding the Singaporean arbitral regime, and a parallel is drawn between the two legislation so as to highlight any differences.

Landmark cases are addressed and referred to, to offer an empirical advantage to the existing provisions in both the regimes, and indentify any practical implications.

This comparative method is then further subjected to analysis and a proposed model of the Indian arbitration regime is suggested which contrasts with the persisting regime.

This is considering the strengths so identified in the Singapore proceedings, and the flaws so highlighted in the Indian regime. Based on both of those factors, a practical model in line with the international standards is recommended, that can be adopted to increase the scope of ICA.

By following this process, the authors approach the paper in a narrow manner, focusing on certain key areas that need to be looked into, and forming a very specific model built especially keeping the key areas in mind.

III. LITERATURE REVIEW

- Indian Arbitration and Conciliation Act, 1996:

To acquire an understanding of the provisions relating to the substantial and procedural aspects of arbitral proceedings in India and determine their flaws and strengths.

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- Singapore International Arbitration Centre (SIAC) Rules, 2016:

To possess an in-depth understanding of Singapore's national policy regarding international commercial arbitration and how it is favoured over the corresponding Indian legislation.

- UNCITRAL Model Law of International Commercial Arbitration, 1985:

In order to adjudge the international standard procedure relating to International Commercial Arbitration and how it is adopted by Singapore and India in their respective arbitration regimes.

- The Adoption of The UNCITRAL Model Law on International Commercial Arbitration in Singapore, Hsu Locknie, Singapore Journal of Legal Studies:

It considers the issues which arise under the International Arbitration Act, and compares it with the existing provisions in the SIAC.

- www.indiacorplaw.in:

To analyse the public interest test applied in different jurisdictions pertaining to the exception to confidentiality.

- www.siac.org.sg, www.acerislaw.com,www.nishithdesai.com,singhania.in:

From the various sorces regarding the analysis and procedure followed in Singapore and how it varies that of arbitration in India.

- arbitrationblog.kluwerarbitration.com:

To analyse the early dismissal of defences and claims in the Singapore legislation and compare it with its Indian counterpart.

- Thadikkaran, Manu (2012). Judicial Intervention in ICA, Journal of International Arbitration; Goyal, Mitakshara (2016). Extent of Judicial Intervention in the Arbitral Regime: Contemporary Scenario, International Journal of Law:

To review and critically analyse any related cases associated with the judicial intervention in arbitral justice that has taken place in the recent years.

- Usman, Qazi Mohammed (2014). Jurisdiction of Indian Courts to Grant Interim Relief in ICA; Nishith Desai, "Interim Relief in Arbitral Proceedings":

To determine the history and current position of the Indian judiciary when it comes to granting of interim relief.

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IV. JURISDICTION

Rule 28 of SIAC firstly provides a means by which a party, can submit an early challenge to the existence or validity of an arbitration agreement or the competence of SIAC, which will be determined by the SIAC Court on a *prima facie* basis.[5]

Second, Rule 28 confirms the power of a SIAC tribunal, once constituted, to rule on its own jurisdiction. A power which rests on the twin principles of kompetenz-kompetenz and separability.[6]

In any case, having respect to the central standard in global discretion that the council has kompetenz-kompetenz to lead on its own purview, the better view is that the underlying choice by the arbitral organization to unite ought to be viewed as regulatory in nature, and ought not indicate to make the ward of the court of the solidified procedures. All things considered, the underlying choice to combine doesn't bear the signs of a jurisdictional decision or grant (for example containing reasons and subject to challenge). The council of the solidified procedures ought to hold the ability to administer on its own purview, remembering any test to its locale for the premise of the underlying choice to unite.[7]

This view may be viewed as procedurally wasteful in light of the fact that a gathering having a problem with the combination is successfully given a second chomp at the apple. In any case, it maintains the major rule in worldwide discretion that the council of the solidified procedures has ability to run on its own locale. It further recognizes the way that the underlying chief (establishment or court) might not have been in the best situation to settle on a choice on combination at a beginning phase of the procedures on the grounds that there may have been deficient data accessible around then.

Section 16 of the Arbitration and Conciliation Act, 1996 lays down the standard of kompetenz-kompetenz i.e., it explicitly engages the Arbitral Tribunal to run on a test to its purview which might be brought before it by any of the gatherings to the debate.

In India, to the extent that (India situated) mediation are concerned, the Act expresses that if an activity brought before a legal authority is the topic of a discretion understanding, the legal authority will allude the gatherings to intervention, except if it finds that by all appearances

[5] Zulkifli Amin, Singapore International Arbitration Centre | SIAC Rules 2016 Siac.org.sg (2016), https://www.siac.org.sg/our-rules/rules/siac-rules-2016

[6] 10 Jurisdiction of the Tribunal: (SIAC RULE 28), Oxford Legal Research Library (2019), https://olrl.ouplaw.com/view/10.1093/law/9780198810650.001.0001/law-9780198810650-chapter-10

[7] Eunice En, Deyan Draguiev & Richard Power, Consolidation of Arbitral Proceedings and its Ramifications on a Party'sRight to Challenge the Jurisdiction of the Tribunal and the Arbitral Award - Kluwer Arbitration Blog Kluwer Arbitration Blog (2018), http://arbitrationblog.kluwerarbitration.com/2018/03/21/consolidation-arbitral-proceedings-ramifications-partys-right-challenge-jurisdiction-tribunal-arbitral-award/

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no legitimate assertion arrangement exists. In of M/s. MSP Infrastructure Ltd. v. Madhya Pradesh Road Development Corporation Ltd.[8], the Supreme Court of India was confronted with an impossible to miss issue of "whether involved with an intervention continuing might be allowed to mention criticisms under Section 34 of the Indian Arbitration Act, as to the purview of the Arbitral Tribunal after the phase of accommodation of the composed assertion."[9]

As of late, comparable issue came up for thought under the steady gaze of Supreme Court of India in M/s Lion Engineering Consultants v. State Of M.P[10]. The verifiable facts of the case was as per the following-

- Dispute alluded for assertion by Madhya Pradesh High Court
- Award was passed for Lion Engineering Consultants (LEC)
- State of MP tested the honor under Section 34 of the Arbitration Act, 1996
- State of MP additionally applied for revision of its protests following a pass of 3 years which was dismissed by the lower Court.
- State of MP went in High Court against this request and permitted such revision.
- LEC requested in Supreme Court against permitting such revision by High Court.

It is obvious that the request for High Court was against the previous decree of the Supreme Court of India in M/s. MSP Infrastructure Ltd. On the issue of revision, the Supreme Court in M/s Lion Engineering Consultants held that the correction being past restriction isn't to be permitted as the alteration isn't squeezed.

Apparently Supreme Court in M/s. MSP Infrastructure Ltd completely rejected out the chance of a circumstance which may fall in the underlined part of Section 16(2) above. A further cure accessible is authorized under Section 16(6) of the Act for example application under Section 34.[11]

In M/s. MSP Infrastructure Ltd., State of MP depended on Section 34(2)(b) while fighting that the honor is against the public arrangement of India since the council needed ward to choose the issue. According to the State of MP, "*except if the intervention was held under the State Law for example the M.P. Act that it would be an infringement of the public arrangement of India.*" The Court entomb alia held that the Public approach of India doesn't allude to a State law and alludes just to an All India law.

[8] MSP Infrastructure Ltd. v. Madhya Pradesh Road Development Corporation Ltd., 13 SCC 713 (2015).
[9](2018), https://arbitratorananya.wordpress.com/2018/05/10/comparison-of-arbitration-regime-in-india-singapore-and-england-and-wales-part-1/
[10]M/s Lion Engineering Consultants v. State Of M.P., 16 SCC 758 (2018).
[11] THE ARBITRATION AND CONCILIATION ACT, 34 (1996)

This contention was dismissed by the Supreme Court in M/s Lion Engineering Consultants expressing that "the public strategy of India alludes to law in power in India whether State law or Central law." On the issue of locale the Supreme Court properly held that "*there is no bar to supplication of purview being raised by method of a complaint under Section 34 of the Act regardless of whether no such protest was raised under Section 16.*"

As featured above, in Section 16(2) the enactment gives an alternative to the party for raising such (protest with respect to locale) a plea even if the judge hosts been named by the gathering or such gathering has taken an interest in its arrangement. Further Section 16(6) offers a chance to challenge an honor under Section 34 of the Arbitration Act which as its would like to think is delivered by a council which needs purview. As I would like to think, the Supreme Court in M/s. MSP Infrastructure Ltd neglected to think about such circumstance which was not even implausible. In M/s Lion Engineering Consultants the Court has adjusted its misstep.

For this situation the Court had examined the aim behind Section 16(2) of the Arbitration Act, 1996 and presumed that "*there is a disallowance on the gathering from raising a request that the Tribunal doesn't have ward after the gathering has presented its assertion of safeguard*." In an ongoing case of M/s Lion Engineering Consultants v. Territory Of M.P. there is no bar to supplication of purview being raised by method of a protest under Section 34 of the Indian Act regardless of whether no such complaint was raised under Section 16.

V. APPLICABILITY OF LAW

Section 28 of the Arbitration and Conciliation Act,1996 provides rules which are applicable to the substance of a dispute. It states the law or the rules of law according to which the arbitral tribunal shall decide the dispute submitted for arbitration.[12]

Before the 2015 amendment, the forces of the council to apply its own discretion were exceptionally restricted and it needed to carefully submit to the ambit that the agreement and utilization of exchange set for the gatherings. This made it hard to deliver justice as one of the gatherings was generally ready to abuse the circumstance and make the other party sign such terms which conflicted with the essential idea of chance or equivalent deal intensity of both the gatherings.

The framework contracts with the proviso 'as is the place where is' are the case of one such circumstance where a gathering is compelled to keep the terms which may place an obstruction on the reasonable business opportunity if there should arise an occurrence of the

[12]Ibid.

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temporary worker experienced impediments underneath the land. The liberation of equity was unrealistic in such circumstances under the unamended Act. For the situation, Oil and Natural Gas Corporation Ltd versus Saw Pipes Ltd the Hon'ble Supreme Court held that the honors passed by the council which conflicted with the particulars of the agreement were violative of Section 28(3) of the Act and this was a ground to put aside the honor under Section 34.[13]

In 2015 Section 28(3) was revised and the council was enabled to apply its prudence in passing the honors. This revision was exclusively passed to overrule the judgment for the situation, Oil and Natural Gas Corporation Ltd versus Saw Pipes Ltd.[14] Presently, the way that the honor passed by the council conflicts with the conditions of the agreement, can't be the sole premise of putting aside the honor. Accordingly, while settling on the substance of the question, the arbitral council doesn't need to restrict the honor inside the particulars of the agreement restricting the gathering, it is allowed to apply its own optional force given that such freedom is taken sensibly speaking with the sole target to serve equity. Presently, the council is enabled to decipher the terms by considering the expectation of the gatherings in question. The exchange use can likewise be investigated and can be understood in a judicious and sensible way. The move in the law from 'as per' to 'consider' has given a specific degree of adaptability to the council. Notwithstanding, the understanding of such aims and exchange utilizations must be a conceivable one which might be handily shown up at by a reasonable individual. This alteration has engaged the councils to be the ace of the reason and has, simultaneously, decreased the extent of court impedance.

Rules when the place of arbitration is India, the applicability of law is substantive law. In case the place of arbitration is India, Section 28(1) clause (a) of the Arbitration and Conciliation Act,1996 provides that the arbitral tribunal is to decide the dispute submitted in arbitration according to the substantive law in India.

The term *amiable compositeur* means an unbiased third party/perspective. This happens in cases where the parties expressly state that the arbitrator is not bound by the rules of law and may give effect to general considerations of justice, equity and fairness on an award to be decided upon him/her. This is stated in Sec 28(2). *Ex aequo et bono* is an out of law dispute settlement mechanism based on principles of justice and morality which are commercially acceptable. According to this principle, an arbitrator is allowed to disregard mandatory and non-mandatory provisions and rules as long as the decision is made within the general

[13]Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd, AIR 2629 (2003).
[14]Ibid

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framework of national and international policies.[15]This is authorised by the parties prior to or during the arbitration process. This is also envisaged in the UNCITRAL Model Law Art. 28(3), 33(2).[16]

In cases where the arbitration is outside of India, the rules vary. In cases where the parties have designated the rules of law, the parties can choose transnational laws, international law, or *lex marcatoria*, which is not based on a specific legal system and incorporates international commercial rules, general principles of law. It is also based on the principles of international commercial by the UNCITRAL. In cases where the parties have chosen a designated law of a given country, the tribunal shall directly apply the law specified by the parties without having to determine any applicable conflict of rules first. Besides choosing their own law, which applies to the substance of the dispute, they are also empowered to authorise the tribunal to act as *amiable compositeur.*

In cases where there is no nominated law, the tribunal has the power to apply the law it considers appropriate in that case. The tribunal can diverge from any strict laws or rules of law and decide on the basis of good faith where the parties expressly authorize it to do so. If the tribunal has not been authorized to act as *amiable compositeur*, then it has to designate rules of law to the substance of dispute which it finds most appropriate.

In case of Singapore, the SIAC Rules provides, the Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. If the parties fail to do so, the tribunal shall apply the law or rules which it deems to be appropriate. The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* if the parties have expressly authorized to do so. And in all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any applicable usage of trade.

VI. NUMBER AND APPOINTMENT OF ARBITRATORS

If we have an analysis of SIAC and Indian Act, we could first identify that section 9 altogether discusses about the number and appointment of arbitrators where as there are two different provisions in the Indian act i.e. Section 10 and 11. The importance of arbitrators is well known in arbitration but how to have the appropriate number of arbitrators and who would preside over the arbitration has to be taken care of.

As per SIAC, we get a clear idea that its provision states the parties could freely choose the

[15]Ayush Verma, Rules applicable to the Substance of Disputes in Arbitration Act - iPleaders iPleaders (2020), https://blog.ipleaders.in/rules-applicable-substance-disputes-arbitration-act/

[16] UNITED NATIONSUNCITRAL Model Law on International Commercial Arbitration, (1985), https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf

arbitrators as well as number of arbitrators for their particular matter as per the agreement. If there has been no appropriate condition deciding about the appointment, then there can be a single arbitrator i.e. sole arbitrator. We even get to know that if the conditions are satisfied then the SIAC arbitrator can appoint an arbitrator panel consisting of three arbitrators depending upon the situation. On the other aspect, when three members have to be selected, one must be selected from both the sides each and the remaining member appointed jointly by an agreement. If the party could not select one arbitrator, then that should be done by the President of Court of SIAC Arbitration and the same procedure is followed if the choice of third arbitrator is not jointly agreed upon. One advantage to adopting the SIAC Rules is that they have a feature of appointing more than one arbitrator in case there are more than one party for a particular case in one side and each party demands of having separate arbitrator.

As per Indian Act, "the number of appointment of arbitrators would be an odd number and if there is no such agreement between parties, sole arbitrator may be appointed. If the appointment of arbitrators has failed due to any condition than the Chief Justice or any person or institution designated should appoint the arbitrator. In case of International Commercial Arbitration, they should appoint an arbitrator other than the nationalities of the parties involved as per Section 11(9)"[17]. High Court have power in case of domestic arbitration.

As per the act, "we could notice some of the few changes i.e. appointment of arbitrators" is concerned, application for appointment of arbitrators within 60 days from the date of service of notice on the opposite party by Supreme Court.As per the new Act, the term 'Chief Justice of India' and 'Chief Justice of High Court' has been stated as Supreme Court or as High Court. The decision made by the Supreme Court or the High Court or person designated by them have been made final and only an appeal to Supreme Court by way of Special Leave Petition. The new law also attempts to fix limits on the fee payable to the arbitrator and empowers the high court to frame such rule as may be necessary considering the rates specified in Fourth Schedule".[18]

In the recent judgement of Aarka Sports Management Private Limited v. Kalsi Buildcon Private Limited: "It was concluded that as the agreement was initiated at Ranchi, signed by the parties in Lucknow and the place of completion of agreement was Patna, Bihar. Here the parties haven't even decided the seat of arbitration in terms of agreement so all of a sudden stating that Delhi High Court had the Jurisdiction could not be accepted as neither it was the seat nor the cause of action for arbitration. Therefore, the matter couldn't be decided by Delhi

[17]The Arbitration and Conciliation Act,1996
[18]The Arbitration and Conciliation (Amendment) Act,2015

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High Court."[19]

VII. DURATION

Duration has been a major concern in the arbitration regime in India. The situation pertaining to the duration of the arbitration proceedings before the amendments to the Arbitration and Conciliation Act, 1996 was a bit different. India has faced many problems as there were no statutory provisions providing for the time limit of the arbitration proceedings. The provision regarding the limitation on time period was first introduced by the Law Commission in its 246th Report. In pursuant to its recommendations, the concept was incorporated under section 29A of the Arbitration (Amendment) Act, 2015 as *"Time-limit for arbitral award"*. It provided that the arbitrators have to conclude an arbitration proceeding within a period of 12 months which can be extended upto 6 months subject to the consent from the parties. The period of 12 months was further extended upto a period of 18 months in the Arbitration (Amendment) Act, 2019 for the swift completion of the pleadings. However, in case the proceedings could not be completed within the stipulated time then the mandate of the arbitrator will terminate. The court, in situations where it finds that the reason for the delay was because of the arbitrators, has the power to pass an order for reduction of the arbitrators' fees and also to substitute and appoint arbitrators in place of the previous ones. However, the court has the power to grant an extension if proof of "sufficient cause" for the delay is provided. But the court can extend the period for passing an award only after the completion of the period of one year provided under section 29A (1) or the extended period under section 29A (3).

While in the Singaporean regime, the duration of the proceedings was introduced under the Rule 29 of the 2016 Rule SIAC as "*Early dismissal of defenses and claims*". It was adopted from the Rule 41(5) of the ICSID Rules[20]. The SIAC also provides that the proceedings should be completed within a period of 6 months and in situations where the defenses and claims are "manifestly without legal merit", it should be dismissed. Further, a standard of "exceptional circumstances" was also introduced as qualification for justification for extension of time for a period of 60 days within which the arbitrator is supposed to pass an award. However, both the standards have not been defined under the Rules of SIAC. The former has been interpreted as according to the Rule under the ICSID Rules from which it has been adopted while he latter one still lacks in clarity as to "what can be the exceptional

[19]Aarka Sports Management Pvt. Ltd. vs Kalsi Buildcon Pvt. Ltd, AIR 662 (2020).
[20]Anushka Shah et al., SIAC Rule 29 On Early Dismissal: How Early Is Early? - Kluwer Arbitration Blog Kluwer Arbitration Blog (2020), http://arbitrationblog.kluwerarbitration.com/2020/04/10/siac-rule-29-on-early-dismissal-how-early-is-early/

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circumstances that would justify an extension of the time for a tribunal to render an order or award in an early dismissal application."[21] Further, the Rule allows the application for the extension at any time during the proceedings. But this flexibility is implied from the language provided therein and needs more clarity in regards to the same[22].

It is evident that the Arbitration regime in India has taken a step forward in this area of arbitration. However, there are still some lacunas left unfilled. Even though the arbitration proceedings in India have become time bound due to the amendments, there is no such mention of the time limit within which the court can be approached for the extension of time which in turn may again result in delay of proceedings. Secondly, the parties still have to go to the court to apply for the extension of time period which is in itself defeating the object of setting up of arbitration as an alternate dispute resolution mechanism further increasing the burden of the courts. Thirdly, the arbitration institution and the parties, who have their own set of Rules, are also required to approach the court for the application for extension of time for completion of proceedings in case the award could not be passed within the stipulated time period[23]. This can compromise the party autonomy concept of the arbitration. The main intention of the legislature behind the introduction of this provision in the amendments was to avoid the delay in arbitration proceedings and a smooth completion of it.

VIII. LANGUAGE OF ARBITRATION

The most important part of an international arbitration would be the medium of language. It is not practically possible to have a common language all over the world. Different Nationalists include the use of their own language for they are comfortable in using it. We there understand how important is to have a language that won't create a problem for the people involved in it. The procedural language to be used in case of international commercial arbitration will be one of the aspects that would reflect in having a communication in between the parties and even with the arbitrators. Though this section is treated as not so important aspect to be looked on but we cannot ignore its value in terms of writing and communication that needs to be taken care of to initiate the matter.

Section 22 of Indian Act, 1996 and Article 22 of SIAC Rules states about its provision governing how the language needs to be applied. As per both the laws, the parties have a privilege to choose between themselves for the language they want to use in case of problem

[21] Ibid.
[22] Tania Iakovenko-Grässer, et al, *"New SIAC Rules: The Need for Refinement"*, Lexology, https://www.lexology.com/library/detail.aspx?g=77528e64-929a-4e33-9fe7-658db467ae91
[23] Lomesh K. Nidumuri, "*Critical Analysis Of The Arbitration And Conciliation (Amendment) Act, 2015*", Mondaq https://www.mondaq.com/india/arbitration-dispute-resolution/494184/critical-analysis-of-the-arbitration-and-conciliation-amendment-act-2015

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arising out of the contract. If there has been no agreement between the parties then thetribunal would consider the matter as well as the situation and would decide on what language to be used.

Later on, if the language prescribed has not been used then the parties have to translate into the language as decided i.e. all the evidence and documents need to be on the language determined.

The tribunal uses the power of kompetenz-kompetenz and setting about justified reasons as to why that particular language has been accepted. For the proper continuation of the arbitration, it is very necessary to have the correct language as otherwise the process gets affected when it is translated and analyzed. Language cannot be ignored or cannot be treated as a secondary matter as it is very essential to communicate when there is a legal proceeding as language can affect it to a greater extent. On the other part, we see that both the laws of the country have uniformly agreed and have accepted the rule of language as laid down by the UNICTRAL Model. This would be on a fair chance to give equal opportunity to the parties in stating their problems and it ultimately results in a proper arbitral award.

There is another probability that there can be parties involved of two countries and they both would want to be arbitrated by another country other than that two even. We can specifically see that there can be involvement of three languages in this particular situation. In this scenario it is even possible to have the seat of arbitration in another country where the lex arbitri of that country would be following another language for its arbitration procedure.

A very vital question arises here that whether SIAC administer arbitrators can apply languages other than English? Well then, the answer is, Yes as SIAC has a fluency of Bahasa Indonesia, Chinese, French, Hindi, Korean, Lithunian, Malay, Russian and Tagalog. Wherever necessary and required, the documents can even be translated. This feature of SIAC makes it convenient for the parties to refer their arbitration to Singapore.

The Supreme Court in BGS Soma JV v. NHPC recently held that: “Seat and Venue can not be regarded as two different places and as the venue has been decided,than that taking into account should be accepted and that language specifically used must be followed and be accepted for the communication purposes and in the arbitration proceeding.”[24]

IX. CONFIDENTIALITY

Confidentiality in arbitration proceedings is an important feature for those companies who are

[24] CIVIL APPEAL NO. 9307 OF 2019

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parties to arbitration agreement and want to keep the dispute involved confidential so as to save it from media, competitors etc. and further protecting their positions in the market. Previously, the Arbitration Act was silent about the principle, but the need for it was eventually highlighted by the High Level Committee Report which observed that in contrary to the Indian scenario, the principle has been followed by several other countries in some or the other manner.[25]

The High-Level Committee (HLC) with Justice B. N. Srikrishna as the chairperson was established in 2017 with an objective of reviewing institutionalization of arbitration in India. It submitted a report with recommendations regarding several amendments which included the principle of confidentiality in arbitration proceedings.

Prior to the 2019 amendment, confidentiality was present under section 75 of the Arbitration and Conciliation Act but only in relation to the conciliation proceedings and not as to arbitration. HLC while pointing out the lacuna, recommended for introduction of this provision in the Indian regime after going through the laws pertaining to this principle under different jurisdiction. Further, the committee also provided three basic exceptions to this principle of confidentiality which includes disclosure of information when it is necessary due to "legal duty, protection and enforcement of a legal right or to enforce or challenge an award before a Court or judicial authority."[26] While accommodating the recommendations of the committee, the arbitration act was amended with the enforcement of the Arbitration and Conciliation (Amendment) Act, 2019 where the principle was provided under Section 42 A.

Section 42A is provided as, *"42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award."*

According to the said provision, confidentiality as an obligation shall be imposed on the parties to the arbitration, the arbitrator and the arbitral institution and the only exception provided under it is the disclosure of the for the purpose of its implementation and enforcement. Further, it starting with a non-obstante clause means that it shall prevail over any other law for the time being in force and is mandatory for the parties to abide by it, thereby having a negative effect on the party autonomy.

[25]Abhinav Agnihotri & Dipan Sethi, *Principle of Confidentiality in Arbitration Proceedings: Explained*, Latest Laws.com , https://www.latestlaws.com/articles/principle-of-confidentiality-in-arbitration-proceedings-explained/
[26]Ibid.

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Now considering the international scenario, UNCITRAL model law, being the foundation law for many countries, has no express provision as to the principle of confidentiality except under article 32(v) where it provides in respect to awards which can be produced to the public only with the consent of the parties, thereby giving utmost importance to party autonomy. Even though, the model law does not accommodate express provision in relation to confidentiality there are countries which have incorporated the principle in their legislation, such as Singapore. It has been expressly provided under Rule 39 of the SIAC Rule 2016.

In the courts of Singapore, the "public interest" test has been adopted for deciding in the matters regarding to confidentiality in arbitration proceedings.[27] In the case of *AAY v. AZV*[28], the Singapore High Court held that the court proceedings arising out of Arbitration should be held in a closed chamber instead of an open court. It was observed by the court that open court proceedings may result in the disclosure of documents relating to the arbitration that were of public interest. Further, the inherent power of the high court orders for limiting the public access to the documents pertaining to the court proceedings which arose out of arbitration was upheld in the case of *BBW v. BBX and others*[29].

In the Indian context, the "public interest" test has been accommodated through the exception in the new introduced provision of Section 42A. The intention of the legislature is to balance this legitimate interest of the Decree holder is clear from the perusal of the provision[30].

Section 42A has been criticised over many points. From a bare perusal it is clear that the obligation to confidentiality is only limited to the arbitrator, the arbitral institution and the parties to arbitration agreement ignoring the other persons such as witnesses, stenographers, transcribers, etc who are present during the proceedings and have the knowledge about the information disclosed in the course of proceeding.[31] Since they are not included in the said provision, the obligation would not be applicable on them. Further, the exception provided under 42A is the only exception for the obligation of confidentiality which is clearly not in align with the recommendations of the HLC Report. Further, the strict interpretation of the provision due to its non-obstante clause may lead to inconsistency of the provision with the other laws. Lastly, it can be inferred that there is high probability that issues related to section 42A may rise and the need for reconsideration as to the scope and exception may arise.

[27]Jaideep Khanna & Abhishek Nevatia, *Data Confidentiality under the Indian Arbitration Regime: Challenges and Opportunities*, India Corp Law , https://indiacorplaw.in/2020/07/data-confidentiality-under-the-indian-arbitration-regime-challenges-and-opportunities.html
[28]AZT and others v AZV, SGHC 116 (2012).
[29]BBW v. BBX and other , SGHC 190 (2016)
[30] Supra note. 26
[31] Supra note. 24

X. GRANT OF PROVISIONAL RELIEF BY COURTS IN SUPPORT OF ARBITRATION

Provisional relief by Courts refers to the power of judiciary bodies to issue interim relief or authorize interim measures in support of the arbitration process. The Indian Arbitration and Conciliation Act, 1996 had minimized the interference of any judicial institution or Court in arbitral proceedings as enumerated under Section 5 of the Act, guaranteeing that no judicial authority shall be allowed to intervene except where it was so expressly provided in the Act. The term "judicial authority" was used, instead of Courts, to indicate a wider expanse of judicial bodies than just Courts, which were not permitted to meddle into the arbitral proceeding unless it was necessary. These provisions were held to be in consonance with what was laid down by UNCITRAL[32] Model Law, both being implemented with the objective of promoting "party autonomy", and thereby, retaining the sanctity of arbitral proceedings. However, in spite of these provisions, exceptions were provided in the Act for judicial authority intervention in case the same has been mentioned in Part I of the Act during the proceedings, to ensure that no party is deprived of justice, and retains their right to approach the Court in case of a dispute that is difficult or impossible to settle by amicable means. Under this context, similar to the UNCITRAL Model Law, the Arbitration and Conciliation Act, 1996 conferred on domestic Courts or arbitral tribunals, the ability to grant provisional relief under Section 9 (2) and Section 17 (3) of the Act. These provisions were heavily criticized and were said to hamper "principles of party autonomy".[33]

Exercise of this concurrent authority that was being conferred on the judiciary, both on domestic Courts and arbitral tribunals, was confirmed by such landmark cases such as Bhatia International v. Bulk Trading and Venture Global v. Satyam Computer Services Ltd., which highlighted the interventionist approach of the Indian judiciary. Under Section 9 (9) of the Act, domestic Courts were permitted to grant provisional relief in support of arbitration whenever a party requested them to do so. They could issue interim relief "before, during and even after the making of the arbitral award but before such award was enforced"[34]. These wide powers that were being allowed to be exercised by the Courts through the Act, led to a growing belief among the common populace that arbitrators and arbitral tribunals were not bestowed with any power to grant interim measures, since parties that wanted to seek relief were obliged to approach the Courts. Section 17 of the Act that granted power to arbitral tribunals to issue interim measures, was believed to be not wide enough in comparison to the

[32]The United Nations Commission on International Trade Law (**UNCITRAL**)
[33]Manu Thadikkaran, 'Judicial Intervention In International Commercial Arbitration' (2012) 29 Journal of International Arbitration.
[34] Indian Arbitration and Conciliation Act 1996, 9.

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authority exercised by domestic Courts, and were held to be limited in their power as was concluded in a leading case law of the time, M.D. Army Welfare Housing Org. v. Sumangal Services Pvt. Ltd[35]. The Court further asserted in the case, that Section 17 did not confer on the tribunal, any power that was evident from a reading of its provisions, that would ensure enforcement of its order, and thus rendered the orders made by the tribunal null. Hence, parties were compelled to approach the Courts for any interim relief.

"Section 17 of the Indian Arbitration Act was considered as nothing more than a toothless tiger because the powers granted to the arbitral tribunal under the legislation was very limited. The tribunal was also not competent to enforce its own order, cannot issue orders against third parties, cannot entertain ex-parte applications and as provided under the provision, such power can also be excluded through agreement between the parties. These limitations on their powers always allowed possible forms of judicial intervention, where the parties were obligated to approach the domestic courts for issuance of interim measures under Section 9 of the Indian Arbitration Act. This defeated the whole purpose of the process of arbitration because the parties never intended to go to the courts while choosing the arbitration process and it was also against the principles of party autonomy."[36]

These ailments led to amendments in 2015. Need for an amendment was felt in the landmark case of Bhatia International v. Bulk Trading[37] and rendered the BALCO judgement[38] which restricted the jurisdiction of the Indian Courts over the foreign seated arbitration in 2012. Futhermore, a report[39] was drawn up by the Law Commission of India that called for substantial amendments and asked the Ministry of Law to reduce judicial interference and preserve sanctity of arbitral regime. By way of these proposed amendments, the "Arbitration and Conciliation (Amendment) Ordinance, 2015" came into force. The government promulgated this ordinance to restrict the wide powers on the part of judiciary in matters associated with arbitral proceedings and brought about significant changes with regards to interim measures. Courts and Tribunals now held coincident authorities to grant provisional relief. Section 17 recognized independence of arbitral tribunals and equated it with Section 9 to grant equal authority to both Courts and tribunals.[40]

[35]M.D. Army Welfare Housing Org. v. Sumangal Services Pvt. Ltd 619 (2004) SCC
[36]Shivam Jasra, Power of Courts and Arbitral Tribunals to issue Interim Measures in India: A Critical Analysis of 2015 Amendment (2019), https://www.latestlaws.com/articles/power-of-courts-and-arbitral-tribunals-to-issue-interim-measures-in-india-a-critical-analysis-of-2015-amendment-by-shivam-jasra/
[37]Supra note 3.
[38]Bharat Aluminium Company vs Kaiser Aluminium Technical Service, Inc, 8 SCC 660 (2012).
[39]Law Commission of India, Report No. 246
[40] Mitakshara Goyal, 'Extent Of Judicial Intervention In The Arbitral Regime: Contemporary Scenario' (2016) 2 International Journal of Law

Amendments made to Section 9 authorized Court to provide measures only before the arbitral proceeding commences and prior to the constitution of arbitral tribunal, and once this measure was granted, proceedings needed to commence within 90 days of the order or as the Court deems fit. This restricted the power of Courts to deal with applications for 'interim measures'. The Court was only consulted in the extreme cases where relief granted by the tribunal was inefficacious. Amendments made to Section 17 were consistent with Model law, and wordings were framed similar to the provisions of Section 9 so as to provide both concurrent authority and reduce ambiguity and vagueness. Tribunals were now allowed to pass interim measure order "during the ongoing arbitral proceedings", and "after the making of the arbitral award but prior to its enforcement". This specified scope of reliefs was enumerated in order to bring the arbitral tribunals' power on parity with that of the Courts. Tribunals possessed similar authority as that of Courts to order any other measures of an interim nature which may appear "just and convenient" to the tribunal, and it was instructed for parties to approach the arbitral tribunal by default for interim relief. It was also clarified that the orders passed by the tribunals were as enforceable as that of the Courts, and the parties need not apply to the domestic Courts for enforcement, unlike previously[41].

Hence, although the main objective behind bringing forth the amendments was to minimize the judicial interference in an arbitration proceeding, and thereby, also relieve the burden that Indian Courts have to shoulder for the time being because of their excessive workload, it is still very much evident that by Courts having the final say in proceedings where a clarification is sought by the concerned parties, judicial intervention continues to be very prevalent in day to day ICA proceedings that take place in India. Therefore, thought the amendment brought forth very far reaching consequences promoting party autonomy in some aspect, there is still work that needs to be done in order to minimize judicial partaking in arbitration even more so. The concluding lines in the provisions that dealt with the power to issue provisional remedy to leave the discretion in the hands of the Courts to decide if the order passed by a tribunal is "inefficaciaous", or if the tribunal is incapable of passing an order, lead to the obvious conclusion that Indian arbitral regime still continues to tilt significantly towards judicial intervention.

XI. AWARDS RULE 32 OF SIAC

Rule 32 of SIAC (Singapore International Arbitration Centre Rules, 2007) deals with the applicability, enforcement of awards and their legally binding consequences on the parties,

[41] "Jurisdiction of Indian Courts to grant the Interim Relief in International Commercial Arbitration", Qazi Md. Usman (2014)

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with regard to arbitral proceedings.

The Singapore courts are bestowed with the same power as arbitral tribunals to issue interim orders, under the IAA[42] and AA[43]; note, however, this specifically excludes the powers to grant security for costs and discovery of documents. The court has the authority to offer such provisional relief before and after the constitution of the tribunal.[44]

Under the IAA, the Singapore courts may grant interim relief in aid of arbitration, regardless of the seat of the arbitration[45]. This is in stark contrast to the practice followed by Indian Courts that was held by the BALCO[46] and Yograj[47] Judgments. Additionally, Singapore Courts only have the power to issue an Interim order where the arbitral tribunal cannot do so, to the extent of necessity. Hence, the reason for the adjudication of a Court on the matter should be one of utmost urgency, and if it is not so, then the explicit permission of the tribunal is due, or the written consent of the parties. Here again, it can be determined that unlike Courts getting to have the final say in the Indian context, regardless of implementing minimal judicial interference, Singapore Courts bow down to the overruling authority of arbitral tribunals, which seeks to uphold the ideas of party autonomy. In the provisions laid down by the IAA and the AA, any interim measure granted by the Courts ceases to be once an order is passed by the arbitral tribunal specifically referring to the provisional relief that was so granted by the Court.

In the landmark case of Yograj Infrastructure Ltd. v. Ssangyong Engineering and Construction Co. Ltd.[48], the issue of jurisdictional authority of Indian Courts when it comes to setting aside of any provisional relief order with respect to an ongoing arbitration proceeding that followed SIAC Rules was discussed extensively. In the case, it was concluded that the Indian Courts lacked jurisdiction to determine the same, because the parties involved in the matter had submitted themselves in the arbitration proceeding, to the curial law of Singapore. Now, since, under this law, which involved the SIAC rules and the IA Act, there was a limit to the jurisdictional authority of the Indian Courts with regards to setting aside of an interim award, the Court held that the rule laid down in Bhatia International v Bulk Trading[49] regarding the applicability of Part - I of the Arbitration and

[42]International Arbitration Act, 1974
[43]Arbitration Act, 1940
[44]"Comparison of Arbitration Regime in India, Singapore and England and Wales", Ananya Pratap Singh (2018).
[45]Ibid.
[46] Supra note 9.
[47] Yograj Infrastructure Ltd. v. Ssangyong Engineering and Construction Co. Ltd. 4 Arb. LR 82 (2011)
[48] Ibid
[49](2002) SCC 105

Conciliation Act, 1996 did not hold. [50].

The principle that was held in the landmark case of Bhatia International, that paved the way for future international commercial arbitration proceedings, was that Part I of the Act would apply to any proceeding concerning Indian parties regardless of the seat of arbitration, unless the parties had specifically asked in their arbitration agreement on the contrary. However, this principle was ultimately rejected and overruled in the case of Bharat Aluminium Company v Kaiser Aluminium Technical Services[51] which stressed on the territorial extent of the application of Part I of the Act, and restricted its applicability to only within India with regards to the seat of arbitration.

The reasoning that led to the adjudication of this case was inspired and principally derived from a 2011 dispute that had taken place between the same parties, which had held that the principle laid down in the Bhatia International case could not be relied on as the parties had submitted to the agreement that the arbitration proceedings would be held in accordance with the Singapore procedure, which is in consonance with the SIAC rules, and hence, did not permit applicability of Part I of the Act for setting aside an award. [52]

Hence, we can adjudge from the aforementioned observations that the Singapore rules allow for greater power to be bestowed on arbitral tribunals, so as to retain the sanctity of an arbitral proceeding and maintain party autonomy, in distinction to the Indian practice of allowing Courts to be approached in case dispute settlement turns sour, and cannot be resolved through amicable means. However, by doing the latter, a greater burden is imposed on the Courts that are already occupied with excessive workload. It was also determined through the illustration of several case laws, that unlike the Indian practice of disallowing court interference based on jurisdiction, Singapore Courts are free to pass interim relief orders regardless of the seat of the arbitration. However, since the Indian practice relies on the UNCITRAL model law for the same provision, and follows the principle of judicial interference so limited by territorial applicability, it can be concluded that the same should be preferred in comparison to the Singapore practice. In essence, though the Indian arbitration regime has improved its stance on provisional relief and judicial interference over the years, it still needs to modify its provisions when it comes to certain other aspects, and take a page or two out of the Singapore arbitral practice book.

[50] "INDIAN COURTS HELD TO LACK JURISDICTION FOR SETTING ASIDE OF INTERIM AWARDS PASSED UNDER SIAC RULES", Nishith Desai Associates (2013).
[51] AIR 2012 SC
[52] Supra note 22.

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XII. COMPARISON IN TABULAR FORM

PROVISIONS	INDIAN ACT	SINGAPORE ACT	ANALYSIS
RULES APPLICABLE TO SUBSTANCE OF DISPUTE	If the place of arbitration is India, then the substantive law in India is applied. In case of International arbitration, the parties can choose their own substantive law of a given country or expressly authorize the tribunal to act as *amiable compositeur* or *ex aequo et bono*. The arbitral tribunal while making an award, shall take into consideration the terms of contract applicable to the transaction.	Apart from establishing substantive law if the place of arbitration is Singapore, SIAC has the same provisions as India.	When it comes to the applicability of law to the substance of dispute, India and Singapore are more or less the same.
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION AND ITS INTERIM MEASURES ORDERED	Establishes the principle of kompetenz-kompetenz i.e it gives power to the arbitral tribunal to rule on a challenge to its jurisdiction which may be bought by	If any party objects the competence of the tribunal before its seated, then the court shall decide upon the issue. This does not have any affect on the tribunal to decide its own jurisdiction.	When it comes to jurisdiction, both SIAC and India follow the principle of kompetenz-kompetenz, so any can be preferred when it comes to this aspect.

	either parties during a dispute. The adjudication though, must be preliminary in nature and shall be completed before the case goes to trial.	Here, the adjudication must be preliminary as well.	
NUMBER AND APPOINTMENT OF ARBITRATORS	As per agreement, or sole arbitrator or three panel arbitrators.	As per agreement or sole arbitrator or three panel arbitrators	SIAC gives advance facilities by additional feature of allowing multiparty appointment of arbitrators
LANGUAGE	English or otherwise translated	Bahasa Indonesia, Chinese, French, Hindi, Korean, Lithunian, Malay, Russian and Tagalog	SIAC provides use of many languages other than English which makes it more preferable.
DURATION	Duration of an arbitration proceeding should be completed within a period of 18 months from the constitution of the tribunal and an extension can be granted subject to the parties consent.	Provides for Early dismissal of proceedings in case of unmeritorious defenses and claims. SIAC also provides for expeditious proceeding.	Indian provision for duration an inviolable time limit for the completion of the arbitration proceedings.
CONFIDENTIALITY	It puts an obligation on the arbitrator, arbitration institution and the parties to the	Principle of confidentiality is expressly provided under Rule 39 of the	Both the regimes have a similar standing regarding to the principle of

	arbitration agreement for confidentiality regarding the concerned arbitration proceedings subject to an exception of disclosure when necessary for the implementation and enforcement of award.	SIAC Rules.	confidentiality.
GRANT OF PROVISIONAL RELIEF	Post amendments, provisional relief can be granted both by Courts and arbitral tribunals. Both exercise concurrent authority, however in case of conflict, Courts have the final say	Arbitral Tribunals and Courts have almost coincidental authority, except in specific cases where tribunals are bestowed with greater power	The Singapore practice allows for far greater chance at retaining party autonomy and reducing the burden on Courts.
AWARDS	Setting aside of interim awards subject to jurisdiction and territorial applicability. Hence, would not apply to a seat of arbitration outside India	SIAC Rule 32 allows interim aid to be granted regardless of the seat of arbitration	Indian practice based on UNCITRAL model law, and also follows the essential rule of limiting universal jurisdiction to unburden Courts, the same should be preferred.

XIII. CONCLUSION

Based on the findings of this research paper, it can be established that the Indian arbitral procedure and the Singapore one are fairly in parity with one another, and basically confer

the same powers on their corresponding authorities and agencies in consonance with UNCITRAL Model law. However, it is very evident that the Singapore regime allows parties greater flexibility and convenience in day to day proceedings by introducing new aspects aimed at maximum possible level of party autonomy and ease in setting up of an international commercial arbitration. The SIAC Rules along with the IAA and IA aim to increase technical ease by providing additional features through multiparty appointment of its arbitrators, and allowing far more languages for communication in an arbitration proceeding than the Indian regime. These certain nuances increase the universality of the Singapore regime, and make it a more preferred seat for arbitration. In addition, by minimizing judicial interference, and bestowing power and exercise of authority on arbitral tribunals, SIAC seeks to solidify the sanctity of an arbitration proceeding, and emphasize on the independence and will of the parties so involved in the transaction. It cements its position as a seat of arbitration that offers the highest possible favour available to any two parties that seek to alternately resolve a dispute through an international commercial arbitration. However, in spite of an overall superiority that is felt through this entire paper of the Singapore procedure, the Indian regime is still slowly and steadily moving towards becoming an equally great hot spot for ICA, while still retaining the primary principle of affording to the parties an opportunity to turn to Courts in case the situation doesn't allow for an amicable resolution. The Indian regime should certainly look to its Singapore counterpart to improve its stance when it comes to regulating ICA, however, it should not forget the backdrop in which it is set, the peculiar manner in which international trade takes place in India, and the still budding stage of arbitral tribunals all over the country, that require a certain amount of judicial interference to render to the parties just means of resolving any conflict.

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