ProjectTitle: Executive Shackles to Pro-Arbitration Judiciary

Submitted By Prince kumar

Executive Shackles to the Pro-Arbitration Approach of Judiciary: Problems in Enforcement of Foreign Arbitral Awards due to the restrictive requirement of Gazetting the Reciprocating Nations

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

S.No.	Abbreviation	Full Form
1.	BALCO	*Bharat Aluminium v Kaiser Aluminium*
2.	Bhatia case	*Bhatia International Ltd v Bulk Trading SA[(2002)4 SCC 105].*
3.	CPC	Civil Procedure Code, 1908
4.	FAA	Federal Arbitration Act, 1926
5.	Geneva Convention	the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927
6.	ICA	International Commercial Arbitration
7.	New York Convention	The Convention on the Recognition and Enforcement of Arbitral Awards, 1958
8.	Panama Convention	The Inter-American Convention on International Commercial Arbitration, 1975
9.	PrIL	Private International Law
10.	The Act	Arbitration and Conciliation Act 1996
11.	The Bill	The Bill proposing Arbitration and Conciliation Act of 1996
12.	UN	United Nations Organisation
13.	UNCITRAL	United Nation Commission on International Trade Law

LIST OF CASES

i) Badat & Co. v. East Trading Co. [(1964) 4 SCR 19
ii) Bharat Aluminium v Kaiser Aluminium, [(2012) 9 SCC 552]
iii) Bhatia International Ltd v Bulk Trading SA, [(2002)4 SCC 105].
iv) Daum Global Holdings Corp. v Ybrant Dig. Ltd., No. 13 Civ. 03135 (AJN), 2014 WL 896716, at *2 (S.D.N.Y. Feb. 20, 2014)
v) Hilton v Guyot, [159 U.S. 113, 163-64, 16 S.Ct. 139, 143 (1895)]
vi) International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera, Industrial Y Comercial, [745 FSupp 172 at 177]
vii) M/s Centrotrade Minerals & Metal Inc v Hindustan Copper Ltd, [(2006) 11 SCC 245]
viii) Marine Geotechnics LLC v Coastal Marine Construction & Engineering Ltd.[2014 (2) Bom CR 769]
ix) Metallgesellschaft A.G. v M/V Capitan Constante, [790 F.2d 280, 283 (2d Cir. 1986)]
x) Michaels v Mariforum Shipping, S.A.,[624 F.2d 411, 414–415 (2d Cir. 1980)]
xi) Oil &Natural Gas Corporation Ltd v Saw Pipes Ltd, [(2003) 5 SCC 705]
xii) Renusagar Power Co Ltd v General Electric Co, [1994 Supp (1) SCC 644]

CHAPTER 1: INTRODUCTION

1.1) Significance of the Study

In order to strengthen its position as an economic giant India has to focus not only on inviting foreign investors but also to have a strong dispute resolution mechanism which is faster and less cumbersome than litigating in Indian Courts. International Commercial Arbitration is the most sought after alternative dispute resolution technique across the globe. Indian Judiciary and the legislation have been focusing on adopting a pro arbitration approach since the late 1990s but even after the amendment of 2015 and the proposed amendment of 2019, the status of enforcement of foreign awards has not gained the required attention of the law makers. The reciprocity requirement under the Act is more onerous and considerably more restrictive than what is contemplated by the New York Convention. These requirements increase the risks and uncertainties involved in enforcing of foreign awards especially if obtained in a non Gazetted territory. The findings of the current research will help avoiding these risks and uncertainties or at least reduce them while enforcing foreign arbitral awards in India, by introducing small changes in the definition of the term "Foreign Award".

1.2) Objectives of the Study

The study is aimed at:

- Firstly, to understand the procedure for enforcing an award passed in a foreign territory to form the basis to analyse the impact of the decisions taken by law makers and other stakeholders in arbitration process.
- Secondly, to analyse the criticisms met by the present system of enforcement of the awards which do not satisfy the definition of a "foreign award" as is purported by the Act to get a better perspective on the issues surrounding enforcement of foreign award from a non reciprocating country in a larger context.
- Finally, compare the Indian system with that of UK and USA and suggest modifications in the present system for achieving a better enforcement mechanism by reducing the intervention of the courts in the same.

All of these objectives are aimed to analyse the problem from the perspectives of the parties to International Commercial Arbitration.

1.3) Hypothesis

Omission of the gazetting requirement for terming an award as a "foreign award" for enforcement of an award obtained in foreign territory is necessary for making India an arbitration-friendly state and strengthening its position as an economic power in the world.

1.4) Research Questions

1. What is the difference between enforcement of a foreign award and a foreign judgement?
2. What is the procedure to enforce Arbitration Awards obtained in a foreign territory?
3. What is the difference in procedure for enforcement of an award passed by a gazetted reciprocating country, a non-gazetted reciprocating country and a non-reciprocating country? How does it affect the decision of the parties to choose India as their seat for arbitration?
4. How will changes to the current definition of "Foreign Awards" affect the parties to an international Commercial Arbitration while enforcing the awards passed in a foreign territory?

1.5) Scope and Limitation of the Study

Against the backdrop of the current enforcement mechanism, this paper seeks to address the questions identified in the previous section. The paper aims to bring out the issues surrounding enforcement of awards obtained in foreign territories and the problems faced by the parties during enforcement if the award is passed in a non-reciprocating or a non-gazetted country. However, the paper does not cover the role of enforcement courts in enforcement mechanism and focuses only on the problems faced by the parties and the solutions to it. Further, the discussion has been limited to India followed by a brief comparison with the mechanisms followed by UK and USA

and does not include any other country. This may amount to a geographical limitation. Furthermore, some of the views and opinions expressed in the paper may not have a settled position in law but were important in order to achieve the aims and objectives set forth in the paper. These limitations in the scope of study, aim to bring out the above mentioned research questions and objectives in sufficient detail in order to aid the reader in understanding the problems faced by the parties to International Commercial Arbitration while enforcing an award.

1.6) Research Methodology

The present study is doctrinal in nature. The study will employ historical, descriptive and analytical approaches. The author has used primary sources such as statues, conventions, Judgements of the Hon'ble Supreme Court of India as well as secondary sources such as various journal articles and books in order to arrive at the conclusion. The author has ruled out the empirical method of research due to its unsuitability to the present subject topic. The research involves analysis of present rules, regulations and precedents on the current subject. Thereafter, the author will review existing literature including commentaries, books, articles, judicial pronouncements and other real world and hypothetical examples.

Method of Citation and referencing: Oscola citation style.

1.7) Scheme of Chapterization

Chapter 1: Introduction

Chapter 2: Background of the study

The chapter talks about history of enforcement of foreign awards in India and adoption of the Model Law by UNCITRAL, followed by an explanation on the concept of reciprocity, India's obligations under Article 1 of New York Convention and the Principle of Comity in Private International law. It will also include the differences in the procedure to enforce a foreign decree vis-a-vis a foreign arbitration award.

Chapter 3: Procedure for Enforcement according to the statute

The chapter lays down the procedure as is laid down under the Arbitration and Conciliation Act, 1996 for enforcement of a foreign award.

Chapter 4: Judicial Interpretation

This chapter addresses the issue at hand and discusses the judicial interpretation adopted by the Supreme Court of India in Bhatia International Ltd v Bulk Trading SA. Wherein, the Hon'ble Court stepped in to fill the gaps in the statute and gave the procedure for enforcement of an award passed in a foreign non-reciprocating, or non-gazetted and reciprocating territory. The chapter also analyses the shortfalls of the procedure given by the Hon'ble Court in 2002.

Chapter 5: Comparative analysis

In this chapter the author will focus on the provisions for enforcement of foreign in other countries which would tentatively include UK and USA and then compare the same with the current Indian Mechanism.

Chapter 6: Conclusion

CHAPTER 2: BACKGROUND OF THE STUDY

2.1) History of enforcement of foreign awards in India

Enforcement of foreign decree or an award has been an unavoidably contentious issue through the history of the globe. From the beginning of the organised community system, the governments strive to maintain their sovereignty over their subjects but with increasing international trade, international disputes have become an indispensible part of the global economy. Further, with the rise of international disputes, International Commercial Arbitration has gained momentum as an alternative dispute resolution mechanism amongst investors. Before the late 90s, The Arbitration Act, 1940 only dealt with domestic arbitration and there was no substantive law on the subject of international arbitration. However, section 3 of both, The Arbitration (Protocol and Convention), Act, 1937 and the Foreign Awards (Recognition and Enforcement Act), 1961 provided for conditions for enforcement of foreign awards in India, a situation wherein if a party to any legal proceeding in any court in India is a party to an arbitration agreement, then the court unless is satisfied that the agreement is null or void or incapable of being performed or that the dispute at hand does not fall under the agreement, shall make an order to stay the proceedings on being so requested by any of the parties at any time after appearance and before filing a written statement or taking any other step in the proceeding. Then in 1985, UN General Assembly adopted the UNCITRAL Model Law on International Commercial Arbitration which suggested uniformity of arbitral procedures and international commercial arbitration practices. The Supreme Court of India in 1989 in *Food Corporation of India vs. Joginderpal Mohinderpal* [1] suggested simplification of arbitration law and releasing it from the shackles of strict technical rules of interpretation. Then in 1996 Indian legislature came up with Arbitration and Conciliation Act ("The Act") part II of which dealt with enforcement of foreign awards. The Act which is analogous to the UNCITRAL Model Law defines a foreign award under Section 44 for enforcement of an award under New York Convention and under section 53 for enforcement of an award under Geneva Convention, both these sections define a foreign award as an award on commercial differences between

[1] *Food Corporation of India vs. Joginderpal Mohinderpal* , [(1989) 2 SCC 347].

persons arising out of legal relationships in pursuance of a written agreement and passed in one of such territories as the Central Government may notify from time to time on being satisfied that they have reciprocal provisions. If an award does not satisfy the above conditions, it cannot be termed as a foreign award.[2]

Then how does one enforce an award from a non reciprocating country or a country which although is a convention state, has still not been notified by the Central Government? This confusion marred the arbitration procedure for a long time when in 2002 the Supreme Court of India in *Bhatia International Ltd v Bulk Trading SA*[3], ("Bhatia case") held that such award can be enforced as a domestic award; unless provisions of Part I of the Act have been excluded by agreement express or implied in which case it can be enforced as a foreign decree. This further points to the elephant in the room i.e. if such is the case then what would be the difference between litigating in Indian court or arbitrating in your home country and then enforcing it in India like a decree which has nothing but a mere evidentiary value. Bhatia case was overruled by the Supreme Court in *Bharat Aluminium v Kaiser Aluminium*[4] ("BALCO") in 2012, which again leaves this question unanswered.

From past decade Indian legislature and the Judiciary have been trying to adopt a pro-arbitration approach and the presence of such restrictive definition which is based not just on the concept of reciprocity but also notification of the Central Government, has forced India to remain one step behind the International Commercial Arbitration superpowers like Singapore. As of today, the Indian Government has gazetted 47 out of 142 countries which have signed the New York Convention, i.e. less than one-third of the total contracting states. The countries such as China, United Arab Emirates and New Zealand which are regular seat jurisdictions for international arbitrations have not been officially gazetted. The risks and uncertainties which the parties have to face while going for a foreign seated arbitration in India created by the aforementioned reasons outweigh the benefits of the same, thus crushing the pro-arbitration approach taken by the courts so far. The only resort left for answering this issue now, is to study the principles of Private International Law in the light of current mechanisms as are

[2] Arbitration and Conciliation Act 1996, s 44 & s 53
[3] *Bhatia International Ltd v Bulk Trading SA,* [(2002)4 SCC 105].
[4] *Bharat Aluminium v Kaiser Aluminium,* [(2012) 9 SCC 552]

prescribed by the UNCITRAL Model law and implemented by arbitration giants of the world.

2.2) Private International Law Principles

Existence of multiple separate legal units with their own municipal law systems which differ greatly, led to the formation of Private International Law ("PrIL"). In 1600s Ulrich H. Huber, a Dutch philosopher, in his treatise "De Conflictu Legum Diversarum in Diversis Imperiis" laid down the foundation of Private International Law and coined three maxims for the same. They are[5]:

1. The laws of each state have force within the limits of that government and bind all subjects to it but not beyond.
2. All persons within the limits of the government, whether they live there permanently or temporarily are citizens thereof.
3. Sovereigns will so act by way of Comity (*comitas*) that rights acquired within the limits of a government retain their force everywhere so far as they do not cause prejudice to the powers or rights of such government or of their subjects.

The first two doctrines embody the principle of territoriality whereas the third one talks about reciprocity i.e. the Principle of Comity and indicates that the sovereign may recognise the rights acquired by people under the laws of another state. The Concept of Reciprocity as is enshrined in Art 44 and 53 of the Act can be understood with the help of the Principle of Comity in PrIL. According to Black's Law Dictionary, the word comity comes from the Latin term 'Comitas' which means courtesy. It is a practice among political entities (as nations, states, or courts of different jurisdictions), involving especially mutual recognition of legislative, executive, and judicial acts.[6] In *Hilton v Guyot,* The Supreme Court of the United States held that, "'Comity' in the legal sense, is neither a matter of absolute obligation, on the other hand nor of mere courtesy and goodwill upon the other. But, it is the recognition which one nation allows within its territory to the legislative,

[5] Ernest G. Lorenzen, 'Huber 's De Conflictu Legum' (1919) 4563 Yale Law School Legal Scholarship Repository: Faculty Scholarship Series < http://digitalcommons.law.yale.edu/fss_papers/4563 > accessed 28 September 2019.
[6] Black's Law Dictionary (9th edn., 2009) page 303

executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws."[7]

According to Cheshire, as per the Principle of Territoriality, a judge cannot directly recognise or sanction foreign laws nor can he directly enforce foreign judgements, for it is his own territorial law which must exclusively govern all cases that require his decision. The administration of PrIL, however, raises no exception to the principle of territoriality, for what the judge does is to protect rights that have already been acquired by a claimant under a foreign law or a foreign judgement. It is the same Principle of Comity read with this Principle of acquired rights in PrIL which makes it obligatory for the states to recognise and enforce foreign judgements and awards delivered by foreign courts and arbitral tribunals.

2.3) Differences in the procedure to enforce a foreign decree vis-a-vis a foreign arbitration award

Recognition and Enforcement of both a foreign judgement as well as a foreign award has become a necessity for a growth in international commerce. Securing a favourable judgement or award is just half the work especially when they have to be enforced in Indian courts. It is pivotal to understand that although an award rendered in a foreign territory which is recognised as a foreign awards by the Indian courts according to the Act, is treated and enforced like a decree of a domestic court, it is not a decree in itself. A foreign judgement is a command of the government itself , it has to be implemented within the territorial limits of that government's jurisdiction and is accorded international recognition on the basis of principle of comity if it fulfils the requirements as are laid down under the law. Whereas, a foreign award on the other hand has its foundation in a contract between the parties and does not entail the same status as that of a judgement from a country where it is made because it is not an act of the government.[8] Explanation II of section 44A of CPC defines a foreign decree as

> *"any decree or judgment of a superior court under which a sum of money is payable, not being a sum payable in respect of taxes*

[7] Hilton v Guyot, [159 U.S. 113, 163-64, 16 S.Ct. 139, 143 (1895)]
[8] Amarchand Mangaldas, 'Enforcing a foreign non-convention country award in India' (In House Lawyer) < http://www.inhouselawyer.co.uk/legal-briefing/enforcing-a-foreign-non-convention-country-award-in-india/?share=email&pdf=2473 > accessed on 23 August 2019

> *or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitral award, even if such an award is enforceable as a decree or judgment."*[9]

The major difference is that, the procedure for enforcement and execution of a foreign decree is governed by the Civil Procedure Code, 1908 ("CPC") while that of a foreign arbitral award is governed by the Act along with the CPC.

Section 2(5) of CPC defines 'Foreign Court' as,

> "*A Court situated outside India and rot established or continued by the authority of the Central Government*"[10]

Further, section 2(6) defines 'Foreign judgement' as,

> "*The judgment of a foreign Court*"[11]

Foreign decree like a foreign award can be enforced in two ways. Firstly, according to section 44A, when a decree is passed by any superior court of reciprocating territory (as declared by the Central Government in the Official Gazette), it can be enforced like a decree passed by the Indian district court if it is conclusive as per section 13 of CPC. Section 49 read with section 44 of the Act is analogous to section 44A of CPC and states that an award obtained from a reciprocating territory can be enforced as a decree passed by the Indian court, which recognises the award as a foreign award. Secondly, when a decree is passed in a non-reciprocating country, in such cases a separate suit has to be filed in a competent court in India on that Cause of Action or foreign judgement or both and the resulting decree is then enforced.[12]

2.4) India's obligations under Article 1 of New York Convention and the concept of reciprocity

On 10th June 1958, India became a signatory to The Convention on the Recognition and Enforcement of Arbitral Awards, 1958 ("New York Convention") which was later ratified on 13th July 1960. Article I of The New York Convention states that,

> *"1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between*

[9] Civil Procedure Code 1908, s 44A
[10] Civil Procedure Code 1908, s 2(5)
[11] Civil Procedure Code 1908, s 2(6)
[12] *Marine Geotechnics LLC v Coastal Marine Construction & Engineering Ltd.*[2014 (2) Bom CR 769]

> *persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.*
>
> *2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.*
>
> *3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof,* ***any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State.*** *It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration."*[13]

Article I of the Convention allows member states to take reservations on the basis of reciprocity and The Indian Government made two such reservations at the time of signing the New York Convention; they read as:

> "*The Government of India declares that they will apply the Convention to the recognition and enforcement of awards made only in the territory of a State, party to this Convention. They further declare that they will apply the Convention only to the differences arising out of the legal relationships, whether contractual or not, which are considered as commercial under the law of India.*"[14]

Part II of the Act deals with Enforcement of foreign awards, wherein section 44-52 deal particularly with New York Convention Awards. According to the statement of objects and reasons of The Bill proposing Arbitration and Conciliation Act of 1996 ("The Bill") which received President's assent on 16th August 1996 and was

[13] The Convention on the Recognition and Enforcement of Arbitral Awards 1958, Art I
[14] UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")' (United Nations) <https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed on 28th September 2019

published in the Gazette of India on 19th August 1996, one of the main objective of the bill was, "to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award" along with minimising the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court.[15]

A plain reading of the above provisions along with the reservations made by India shows that the state of India is obligated to recognise and enforce all awards which are passed in a contracting state party of either the New York Convention or of the Geneva Convention.

This paper deals with the question that whether and how much has India delivered on its obligations under Article I.

[15] Law Commission of India, *The Arbitration and Conciliation Bill, 1996* (No. 26 of 1996, 16th August 1996) Para 4(v), 4(vii) and 4(ix) < http://lawcommissionofindia.nic.in/reports/Report246-II.pdf> accessed on 28th September 2019.

CHAPTER 3: PROCEDURE FOR ENFORCEMENT OF FOREIGN AWARDS ACCORDING TO THE ARBITRATION AND CONCILIATION ACT, 1996

The Procedure for enforcement of a foreign award in India is governed by Part II of the Act which accounts for enforcement of awards under both the New York Convention under sections 44-52 as well as the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 ("Geneva Convention") under sections 53-60 of the Act. In India, Enforcement of a foreign award is a two staged process. After filing of the execution petition by the parties, the court first looks at whether the award adheres to the requirements of the Act as are laid down under section 44 for an award under the New York Convention and section 53 for the Geneva Convention. Both these provisions are similar and section 44 defines a foreign award and state that,

> *""Foreign Award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—*
> *(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and*
> *(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies."*[16]

Therefore, the court has to satisfy itself that the award fulfils the following five conditions:

i) award must arise out of legal relationships (contractual or not)
ii) it must adjudicate upon a commercial dispute
iii) in pursuance of an agreement in writing
iv) the Convention set forth in First Schedule must apply
v) the territory has been notified in the official gazette by the Government of India after being satisfied that the reciprocal provisions have been made.

[16] Arbitration and Conciliation Act 1996, s 44

Similarly, section 53 of the act, which deals with the enforcement of awards passed under Geneva Convention, also lays down a similar definition of a foreign award wherein an award passed in commercial matters in a territory that the central government, on being satisfied that reciprocal provisions have been made, notifies in the Official Gazette can be termed as a foreign award. After satisfying itself about the same, the party must be ready to face the objections and challenges (which might turn out to be frivolous) put forth by the other party in order to stall the process and buy some more time. Section 48 talks about grounds for refusal to enforce a foreign award. Unlike section 34, which talks about setting aside of a domestic award, section 48 talks about refusal to enforce, which means that a foreign award cannot be set aside by Indian courts. Further, Indian courts can refuse to enforce a foreign award if the award has not yet become binding on the parties or has been set aside or superseded by a competent authority of the country in which, or under the laws of which, the award was made.[17] Once this stage is passed and all the objections are dismissed and rejected, the court passes an enforcement order and the award can then be executed as a decree of that court.

The above procedure is applicable when the award is passed in a territory which is a reciprocating nation under any of the two conventions and is in turn also notified by the government of India to be a reciprocating nation in the Official Gazette. In the current paper we are concerned with the first stage of the enforcement of the award wherein an award is decided and termed to be a foreign award as per the above requirements laid down under the Act.

Keeping in view the current commercial system existing globally, investors and other people associated with any business have a legitimate expectation that if an award is obtained from a signatory country then it must be enforceable in India as well. The reservation made by India at the time of signing the New York Convention also makes it an obligation on the part of India to recognise and enforce all the awards made in the territory of any State, which is party to the New York Convention. Thus, making the requirement under section 44 more onerous than is intended by the Convention or the reservation made by India while signing of the Convention.

[17] Sumeet Kachwaha, 'THE ARBITRATION LAW OF INDIA: A CRITICAL ANALYSIS'(Asia International Arbitrational Journal, Volume 1, Number 2, Pages 105-126) < http://www.kaplegal.com/upload/pdf/arbitration-law-india-critical-analysis.pdf > accessed on 27th September 2019

Further, this requirement is counterproductive to the object and purpose of the Act and Article I of the New York Convention because it creates an unnecessary ambiguity regarding enforcement of the awards passed in Convention States which are not yet notified by the Government of India.[18] It has to be kept in mind that till date only 49 out of 145 signatories of the New York Convention have been notified by the Central Government. They are:

Australia, Austria, Belgium, Botswana, Bulgaria, Canada, Central African Republic, Chile, Cuba, Czechoslovakia Socialist Republic, Denmark, Ecuador, The Arab Republic of Egypt, Finland, France, Germany, Ghana, Greece, Hungary, Italy, Republic of Ireland, Japan, Republic of Korea, Kuwait, Malagasy Republic (Republic of Madagascar), Malaysia, Mexico, Morocco, The Netherlands, Nigeria, Norway, People's Republic of China (including the Special Administrative Regions of Hong Kong and Macao), Philippines, Poland, Romania, San Marino, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, United Kingdom, United States of America and USSR.[19] These are even less than one-third of the total contracting states. Not only that, but no rules or regulations or legislations have been made till date which gives a definitive test as to what would amount to satisfaction of the central government or what should be the timeline within which the Central Government must notify a signatory in the official gazette or how to make an application to the government asking them to notify a territory which is a signatory, in the Official Gazette after carrying on the requisite inquiry about their reciprocal provisions.

The Act is silent about the enforcement of the awards passed by a Convention State which has not yet been notified by the government. The Act also does not refer to a situation where an award is passed by a Non-Convention state. So, the questions that now arise are, what happens when an award is passed by a Convention State which

[18] Subhiksh Vasudev, 'Has India Truly Delivered on Its Obligations Under Articles I and V of the New York Convention Over the Last 60 Years?' (Kluwer Arbitration Blog,29 November 2018) < http://arbitrationblog.kluwerarbitration.com/2018/11/29/has-india-truly-delivered-on-its-obligations-under-articles-i-and-v-of-the-new-york-convention-over-the-last-60-years/ > accessed on 23 August 2019

[19] Dharmendra Rautray, '*Enforcement of Foreign Awards in India*' (Asian International Arbitration Journal) (2013) Volume 9 Issue 2 Kluwer Law International) 79, 95 < http://elibrary.gnlu.ac.in:2078/document/kli-ka-aiaj-002-n?q=%22enforcement%20of%20foreign%20awards%20in%20India%22> accessed on 30th September 2019

has not yet been notified by the Government? Or an award passed by a Non-Convention State? Are such awards enforceable at all? What evidentiary value do they hold in the eyes of the enforcement courts?

CHAPTER 4: JUDICIAL INTERPRETATION

As discussed in the previous chapter, getting a favourable award from a foreign arbitral tribunal is only the job half done and the real work starts when the parties have to get it enforced in India. The Act, as discussed, is silent on the subject of enforcement of the awards from Convention Countries which have not been notified by the government of India and the enforcement of awards of Non-Convention Countries. Even after going for arbitration, the parties have to go for litigation in order to get their awards enforced, which the parties wanted to refrain from in the very beginning itself. But it cannot be avoided as the Act provides for a structured process for scrutiny by the courts. The law of Arbitration is one of the most dynamic branches of law because it is still developing. In the past decade itself there have been two major amendments and multiple landmark judgements which intend to fill the loopholes in the legislation. But unfortunately, neither the 2015 amendment nor the 2019 amendment deal with this major problem of enforcement of award from a non-convention state or an award from such convention state which has not been notified yet by the government of India. There have been many judicial pronouncements which interpret the position of law as it existed at that point of time. Unfortunately, today there is no judgement which directly deals with the problem, but the Supreme Court at various occasions has touched upon the issue of enforcement of such awards.

In order to understand the various solutions given by the Supreme Court at various points of time we have to divide the discussion in three phases: Pre Bhatia, Post Bhatia and Post BALCO.

One of the first cases which discussed the issue of issue of enforcing a foreign award from a Non-Convention country was Badat & Co. V. East Trading Co.[20] In this case, the dispute arose between Badat & Co., formerly carrying on business in Bombay and the East India Company, a private ltd. company incorporated under the laws of State of New York, United States of America regarding an American Spice Trading Contract for supply of Allepey Turmeric Fingers. The matter was taken for arbitration, and award was passed by the arbitrator in New York. The award was later confirmed by the Supreme Court of New York. A suit was then filed in the Bombay High Court to recover the amount payable under the award. The Bombay High Court

[20] Badat & Co. V. East Trading Co. [(1964) 4 SCR 19]

rejected the suit on the ground that it did not have jurisdiction to entertain the suit. The claim was allowed in an appeal to the division bench. The appeal then went to the Supreme Court. The Hon'ble Court *interalia* held that,

> *"(54)...Before we do so, it would be desirable to examine the position regarding the enforcement of foreign awards and foreign judgments based upon awards. Under the Arbitration Protocol and convention Act, 1937 (6 of 1937), certain commercial awards made in foreign countries are enforceable in India as if they were made on reference to arbitration in India. The provisions of this Act, however, apply only to countries which are parties to the Protocol set forth in the First Schedule to the Act or to Awards between persons of whom one is subject to the jurisdiction of some one of such powers as the Central Government being satisfied that the reciprocal provisions have been made, may, by notification declare to be parties to the Convention, set forth in the Second Schedule to the Act. It is common ground that these provisions are not applicable to the awards in question. Apart from the provisions of the aforesaid statute, foreign awards and foreign judgments based upon awards are enforceable in India on the same grounds and in the same circumstances in which they are enforceable in England under the common law on grounds of justice, equity and good conscience.*
>
> *64. It will thus be seen that there is a conflict of opinion on a number of points concerning the enforcement of foreign awards or judgments, based upon foreign awards. However, certain propositions appear to be clear. One is that where the award is followed by a judgment in a proceeding which is not merely formal but which permits of objections being taken to the validity of the award by the party against whom judgment is sought, the judgment will be enforceable in England. Even in that case, however, the plaintiff will have the right to sue on the original cause of action. The second principle is that even a foreign award will be enforced in England provided it satisfies*

> *mutatis mutandis the tests applicable for the enforcement of foreign judgments on the ground that it creates a contractual obligation arising out of submission to arbitration... The third principle is that a foreign judgment or a foreign award may be sued upon in England as giving good cause of action provided certain conditions are fulfilled one of which is that it has become final."*[21]

The above judgement clearly stated that any award rendered in a state which is not a state party to the Protocol set forth under the Arbitration Protocol and Convention Act, 1937 could not be enforced in India as it were a decree of the court.

This issue was again later discussed by the Supreme Court in Bhatia International v Bulk Traders S A.[22] The court held that:

> *"(23) As is set out hereinabove the said Act applies to (a) arbitrations held in India between Indians and (b) international commercial arbitrations. As set out hereinabove international commercial arbitrations may take place in India or outside India. Outside India an international commercial arbitration may be held in a convention country or in a non-convention country. The said Act, however, only classifies awards as "domestic awards" or "foreign awards". Mr Sen admits that provisions of Part II make it clear that "foreign awards" are only those where the arbitration takes place in a convention country. Awards in arbitration proceedings, which take place in a non-convention country, are not considered to be "foreign awards" under the said Act. They would thus not be covered by Part II. An award passed in an arbitration, which takes place in India, would be a "domestic award". There would thus be no need to define an award as a "domestic award" unless the intention was to cover awards which would otherwise not be covered by this definition. Strictly speaking an award passed in an arbitration, which takes place in a non-convention country, would not be a "domestic award". Thus the necessity is to*

[21] ibid
[22] *Bhatia International Ltd v Bulk Trading SA,* [(2002)4 SCC 105].

> *define a "domestic award" as including all awards made under Part I. The definition indicates that an award made in an international commercial arbitration, held in a non-convention country, is also considered to be a "domestic award""*[23]

The Hon'ble Supreme Court in this case relied on section 2(f) of the 1996 Act, which defines International Commercial Arbitrations and held that the definition does not differentiate between International Commercial Arbitration taking place within or outside India. Further, the court opined that the awards under Part II are related to awards passed in a Convention state which has been notified by the Central Government in the Official Gazette and, therefore, Part I would not be applicable in such cases. Furthermore, other awards passed in non-convention countries or Convention countries not notified by the government of India, would be enforceable under Part I of the Act, unless, application of Part I is expressly excluded by way of contract. This further means that the grounds for setting aside such an award are those given under section 34 which have much wider connotation then those under section 48. However, in cases where the award is made in a Non-Convention state or a territory which has not been notified by the government yet, the award would be enforced by filing a suit on the award and the judgement obtained thereon from a Superior Court of that country.

Although the Bhatia Judgement opened new gateways for enforcement of foreign awards from Non- Convention States and Convention states which have not been notified yet but it was also subjected to various criticisms. The most appalling of which was the increased scope to challenge the award under section 34 of the Act. Further, as was held by the Hon'ble Supreme Court in *Renusagar Power Co Ltd v General Electric Co*[24] and further clarified in the case of *Oil &Natural Gas Corporation Ltd v Saw Pipes Ltd* [25]term public Policy under section 34 includes patent illegality as a ground to set aside an award. Such ground cannot be made applicable to a foreign award under the principles of Private International Law. This was also held in the case of *International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera, Industrial Y Comercial*,[26] the United States District

[23] ibid
[24] *Renusagar Power Co Ltd v General Electric Co,* [1994 Supp (1) SCC 644]
[25] *Oil &Natural Gas Corporation Ltd v Saw Pipes Ltd,* [(2003) 5 SCC 705]
[26] *International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera, Industrial Y Comercial*, [745 FSupp 172 at 177]

Court, New York, opined that allowing a court to set aside a foreign award on the basis of its domestic substantive law would be contrary to the logic of the New York Convention and the nature of international arbitration. The court stated that if every enforcing court undertook a *de novo* review of a foreign award, it would result in chaos and that is not what the New York Convention contemplated.[27]

Before, BALCO, Bhatia was the most significant judgement in Arbitration law. After the Bhatia judgement, government defended its legislation in a Consultation Paper issued by the Ministry of Law. The paper categorically states that,

> *"...the awards rendered in countries with which India does not have reciprocal arrangements cannot be enforced in India as if it were a decree. Perhaps Badat's case was not brought to the notice of the court in Bhatia International v Bulk Traders S A case, which is why observations pertaining to non-convention countries came to be made. As stated above provisions of Part II which deals with enforcement of foreign award, is not and cannot be made applicable to an international commercial arbitration which takes place in non-convention country and where there is no reciprocal agreement between that country and Central Government. Not only this, foreign award must be given in one of those territories in respect of which reciprocal arrangement has been made. Section 44 of the Arbitration and Conciliation Act, 1996 defines the term 'foreign award". According to Section 44, an arbitral award is a foreign award if it is made in pursuance of an agreement to which New York Convention [reproduced in First Schedule to the Act] applies and made in a territory to which the New York convention applies on the basis of reciprocity"*[28]

The interesting observation which can be made here is that although the paper talks about enforcement of awards from non-convention countries, it conveniently does not speak about the convention countries which have not yet been notified by the government of India in the official gazette.

---

[27] Sulabh Rewari, 'From Bhatia to Kaiser: Testing the Indian Judiciary's Self-Restraint', Asian International Arbitration Journal (2013) Volume 9 Issue 2 Kluwer Law International 97, 146

[28] Ministry of Law and Justice Government of India, *Proposed amendments to the Arbitration and Conciliation Act, 1996: A Consultation Paper* (April 2010) < https://www.legallyindia.com/images/stories/docs/Arbitration-Act-LawMin-ConsultationPaper-on-Arb-Act-April2010-1.pdf > accessed on 23 September 2019

Bhatia judgement was first doubted in the case of *M/s Centrotrade Minerals &Metal Inc v Hindustan Copper Ltd*[29], wherein the Hon'ble Supreme Court held that the domestic and foreign awards have been put into two different and distinct compartments by the Arbitration and Conciliation Act with some overlapping provisions. After a series of anti-arbitral approach cases, the judgement in Bhatia was finally overruled in the celebrated judgement of the Supreme Court in the case of *Bharat Aluminium Co. Vs Kaiser Aluminium*[30]. The Court held that a plain reading of section 2(2) makes it clear that Part I is applicable only to domestic arbitrations i.e. arbitrations taking place in India. The Court further went on to hold that exclusion of the non-convention awards from the scope of the Act was the intention of the legislature and removal of any defect is the job of the Indian Parliament and not the judiciary.

Even in this case the court did not talk about enforcement of awards from convention states which have not yet been notified by the government of India in the official gazette. Even for non-convention states the ball is back to square one from where it started and such awards have a mere evidentiary value in the court of law which renders going for arbitration as ineffective and leaves no difference between going for litigation and first going for arbitration, obtaining an award, obtaining a favourable judgement from a Superior court in that country and then going for litigation in India and proving the worth of the award in order to enforce the same. The latter process becomes even more taxing than the former one and stalls the process of dispute resolution which in turn obstructs economic growth of the country.

[29] *M/s Centrotrade Minerals &Metal Inc v Hindustan Copper Ltd,* [(2006) 11 SCC 245]
[30] *Bharat Aluminium v Kaiser Aluminium,* [(2012) 9 SCC 552]

CHAPTER 5: COMPARATIVE ANALYSIS

India has gained a major place in Global arbitration regime but there are certain loopholes and lacunas which still mar the system. The successful party of any arbitration has a legitimate expectation for the award to be performed without delay. The risks and uncertainties which the parties have to face while going for a foreign seated arbitration in India do not help the cause at all. The gazetting requirement put under section 44 and 53make the matters more complex when it comes to enforcement of a foreign award because this requirement further places a more onerous caveat on the parties wherein they can enforce their awards from a convention state only if such convention state has been notified by the Central Government as having reciprocal provisions. In order to help us understand the global trends, one should look at the corresponding texts of other states which are state parties to the New York Convention and the Geneva Convention. For the purposes of this study, we will focus upon the United States of America and the United Kingdom.

5.1) United Kingdom

Indian Arbitration regime is largely borrowed from the British jurisprudence. As per a study conducted by University of London, in 2008, in UK most of the commercial awards are carried out voluntarily and only eleven percent of the cases reach the courts for enforcement and out of these only nineteen percent encountered difficulties when seeking to recognise and enforce foreign arbitral awards.[31] UK, like India is a party to the New York Convention and thus recognises and enforces all the awards made in the other contracting states provided that the award is final and binding. Section 101 of the British

Arbitration Act, 1996, talks about recognition and enforcement of awards. It states that,

> "***101. RECOGNITION AND ENFORCEMENT OF AWARDS***
> *(1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence,*

[31] Queen Mary: University of London & Price Waterhouse Coopers, 'International Arbitration: Corporate attitudes and practices'(2008) < http://www.pwc.co.uk/en_UK/uk/assets/pdf/pwc-international-arbitration-2008.pdf > accessed on 24th September 2019

> *set-off or otherwise in any legal proceedings in England and Wales or Northern Ireland.*
> *(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.*
> *As to the meaning of "the court" see section 105.*
> *(3) Where leave is so given, judgment may be entered in terms of the award.*"[32]

Thus, it becomes mandatory for the parties to enlist the assistance of the Court of the state where the award is passed. Further, although recognition of a foreign award from a convention country is mandatory in UK the court may refuse its enforcements if it satisfies any one of the eight criteria specified under section 103 of the Arbitration Act, 1996. According to Redfern and Hunter on International Arbitration, there are four ways in which a national legal system might provide for the enforcement of arbitral awards. The first arises when the award is deposited, or registered, with a court or other authority, following which it may be enforced as if it is a judgment of that court. The second arises when the laws of the country of enforcement provide that, with the leave of the court, the award of an arbitral tribunal may be enforced *directly* without any need for deposit or registration. The third arises when it is necessary to apply to the court for some form of recognition, or *exequatur*, as a preliminary step to enforcement. The fourth is to sue on the award as evidence of a debt, on the basis that the arbitration agreement constitutes a contractual obligation to perform the award. This last method is cumbersome and frequently leaves it open to the losing party to reopen, by way of defence, the issues already determined by the arbitral tribunal. It is therefore to be avoided, unless no other method is available.[33]

A plain reading of the above provisions and methods shows that, unlike India, England has no such Gazetting requirement which makes the already sluggish process of enforcement of foreign awards through courts even more cumbersome, challenging and ambiguous for a foreign party.

[32] Arbitration Act 1996, s 101
[33] Blackaby Nigel, Constantine Partasides, Alan Redfern & Martin Hunter, *International Arbitration* (6th edition, Oxford University Press 2015) 609

5.2) The United States of America

When it comes to the United States, it is the place where the New York Convention took birth. The recognition and enforcement of International Awards in the US is governed by two multilateral treaties, i.e. the New York Convention, 1958 and the 1975 Inter-American Convention on International Commercial Arbitration (the Panama Convention). Both of these have been implemented by the Federal Arbitration Act, 1926 ("FAA"). FAA talks only about the most basic provisions related to arbitration. Therefore, it has been supplemented by various laws to include necessary new provisions into the act. Uniform Arbitration Act, 2000 deals with more contemporary issues related to arbitration and brought new provisions in addition to the old act. FAA was amended in 1970 to include the New York Convention sections 201 to 208 talk about the New York Convention and in 1990 to insert provisions for Panama Conventions and section 301 to 307 talk about the Panama Convention. Section 207 of the 1926 Act, talks about, Award of arbitrators; confirmation; jurisdiction; proceeding. It states that,

> *"Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention."*[34]

The above section makes it mandatory for the US courts to recognise and enforce an award which is passed in a foreign Contracting state or at a minimum deals with a subject matter which is not entirely domestic on a commercial dispute. Further, it also states that the award must be final and binding on the parties. Although not expressly required by the Conventions, New York case law interpreting their provisions has developed a "finality" requirement for an arbitrator's decision to be deemed enforceable. In the case of *Daum Global Holdings Corp. v. Ybrant Dig. Ltd,* the court held that, "The Court lacks authority to confirm an award that is interim, not final."[35] This requirement separates arbitrators' actual "awards" from decisions that are more

[34] Federal Arbitration Act 1926, s 207
[35] *Daum Global Holdings Corp. v. Ybrant Dig. Ltd.*, No. 13 Civ. 03135 (AJN), 2014 WL 896716, at *2 (S.D.N.Y. Feb. 20, 2014)

appropriately considered as procedural or those which concern other interlocutory matters. In *Michaels v. Mariforum Shipping, S.A,* the court held that, "concluding that allowing a court to "review preliminary rulings of arbitrators" would "disjoint and unduly delay" arbitration and undercut the pro-arbitration public policy in the United States."[36] Finality does not require, however, that the award disposes of every issue in dispute between the parties. In *Metallgesellschaft A.G. v. M/V Capitan Constante*, the court stated that, "a prior case law that "endorse[s] the proposition that an award which finally and definitely disposes of a separate independent claim may be confirmed although it does not dispose of all the claims that were submitted to arbitration"[37] Rather, courts in New York will consider an award "final" and therefore subject to confirmation under the Conventions if it "finally and definitely dispose[d] of a discrete and independent claim."[38]

Thus the formerly laid down provision shows that the US like The UK has a strong federal policy in favour of enforcement and is not weighed down by an unnecessary and onerous provision of notifying the reciprocating nations even though a state is a member to the Convention.

[36] *Michaels v. Mariforum Shipping, S.A.*,[624 F.2d 411, 414–415 (2d Cir. 1980)]
[37] *Metallgesellschaft A.G. v. M/V Capitan Constante*, [790 F.2d 280, 283 (2d Cir. 1986)]
[38] Yasmine Lahlou, Andrew Poplinger & Gretta L. Walters, *Enforcement of Foreign Arbitral Awards and Judgments in New York* (Kluwer Law International 2018) 106, 107.

Chapter 6: Conclusion

Recently, India has been trying to gain economic power and leave a mark on the world map as one of the Economic superpowers of the world. Increasing international trade and investment is accompanied by a growth in cross border commercial disputes, given the need of an alternative dispute resolution mechanism, International Commercial Arbitration has emerged as the preferred option for preserving business relationships. Although, India has a systemized regime for arbitration in place which prima facie adheres to the current international regime also, one can find various problems, risks and challenges which mar the international arbitration process.

When it comes to international arbitration, enforcement of a foreign award plays a major role and it is piece of cake if the award is passed in a country which is a signatory of New York Convention or the Geneva Convention and has been notified by the central government in the official gazette after being satisfied that they have reciprocal provisions. The problem arises when the award is passed in a country which is either a non-convention state or when it is a convention but has not yet been notified by the government.

The legislature disguises this provision as a requirement made under the reservation taken by Government at the time of signing the Conventions. The Judiciary of India took it in its hands to address the situation in Bhatia case but to no avail, the case was overruled by BALCO case wherein the Hon'ble Supreme Court categorically stated that it was the job of the Legislature to fill in the gaps of the law and Judiciary cannot overstep and do the same. The provision as stated under section 44 and 53 of the Act is evidently more onerous and considerably more restrictive than what is contemplated by the New York Convention. These requirements increase the risks and uncertainties involved in enforcing of foreign awards especially if obtained in a non Gazetted territory by increasing the ambiguity about enforcement in such cases.

India has borrowed most of its jurisprudence in arbitration from the British laws and although both the UK and the USA made the same reservation of recognising and enforcing foreign arbitral awards from other convention states only, none of the two countries has such a provision for notifying the territories with reciprocating provisions. It has been 61 years since the New York Convention was signed and India

has notified only 47 out of 152 member states of the Convention, which shows the attitude of the executive towards the seriousness of the matter.

Foreign Investors coming to India and doing business here have a legitimate expectation that if an award is obtained from a convention state then it will be recognised and enforced in India, but, that is not the case, and more often than not, they have to face heavy and time consuming litigations is order to enforce such awards in India.

In order to tackle this situation and further the pro-arbitration approach of the judiciary and the legislature, this paper suggests that the requirement of gazetting as is enumerated in the definition of foreign award under section 44 and 53 of the Act must be omitted and India should mandatorily recognise and enforce all the final awards passed in a convention state. However, if the provision continues then the legislature should come up with rules for the Central Government determining the time line within which a country has to be notified along with definitive and objective tests to determine whether a country has reciprocal provisions or not, because the current provision wherein, it is based on satisfaction of the government is very subjective and gives unchecked power to the Central Government. Further, a procedure must be added under which parties can file applications to the government or to the court through which the procedure to find whether a country has reciprocal provisions or not, can be started.

Application of one of these alternatives is the need of the hour if India wants to transgress from its current position which contains many risks and uncertainties.

BIBLIOGRAPHY

BOOKS

1. Black's Law Dictionary (9th edn., 2009) page 303
2. Blackaby Nigel, Constantine Partasides, Alan Redfern & Martin Hunter, International Arbitration (6th edition, Oxford University Press 2015) 609
3. Yasmine Lahlou, Andrew Poplinger & Gretta L. Walters, Enforcement of Foreign Arbitral Awards and Judgments in New York (Kluwer Law International 2018) 106, 107.

ARTICLES

1. Dharmendra Rautray, 'Enforcement of Foreign Awards in India' (Asian International Arbitration Journal) (2013) Volume 9 Issue 2 Kluwer Law International) 79, 95 < http://elibrary.gnlu.ac.in:2078/document/kli-ka-aiaj-002-n?q=%22enforcement%20of%20foreign%20awards%20in%20India%22> accessed on 30th September 2019
2. Ernest G. Lorenzen, 'Huber 's De Conflictu Legum' (1919) 4563 Yale Law School Legal Scholarship Repository: Faculty Scholarship Series < http://digitalcommons.law.yale.edu/fss_papers/4563 > accessed 28 September 2019.
3. Sulabh Rewari, 'From Bhatia to Kaiser: Testing the Indian Judiciary's Self-Restraint', Asian International Arbitration Journal (2013) Volume 9 Issue 2 Kluwer Law International 97, 146
4. Sumeet Kachwaha, 'THE ARBITRATION LAW OF INDIA: A CRITICAL ANALYSIS'(Asia International Arbitrational Journal, Volume 1, Number 2, Pages 105-126) < http://www.kaplegal.com/upload/pdf/arbitration-law-india-critical-analysis.pdf > accessed on 27th September 2019

CASES

1. Badat & Co. V. East Trading Co. [(1964) 4 SCR 19]
2. Bharat Aluminium v Kaiser Aluminium, [(2012) 9 SCC 552]
3. Bhatia International Ltd v Bulk Trading SA, [(2002)4 SCC 105]
4. Daum Global Holdings Corp. v. Ybrant Dig. Ltd., No. 13 Civ. 03135 (AJN), 2014 WL 896716, at *2 (S.D.N.Y. Feb. 20, 2014)
5. Food Corporation of India vs. Joginderpal Mohinderpal , [(1989) 2 SCC 347].
6. Hilton v Guyot, [159 U.S. 113, 163-64, 16 S.Ct. 139, 143 (1895)]
7. International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera, Industrial Y Comercial, [745 FSupp 172 at 177]
8. M/s Centrotrade Minerals &Metal Inc v Hindustan Copper Ltd, [(2006) 11 SCC 245]
9. Marine Geotechnics LLC v Coastal Marine Construction & Engineering Ltd.[2014 (2) Bom CR 769]
10. Metallgesellschaft A.G. v. M/V Capitan Constante, [790 F.2d 280, 283 (2d Cir. 1986)]
11. Michaels v. Mariforum Shipping, S.A.,[624 F.2d 411, 414–415 (2d Cir. 1980)]
12. Oil &Natural Gas Corporation Ltd v Saw Pipes Ltd, [(2003) 5 SCC 705]
13. Renusagar Power Co Ltd v General Electric Co, [1994 Supp (1) SCC 644]

STATUTES AND CONVENTIONS

1. Arbitration Act 1996
2. Arbitration and Conciliation Act, 1996
3. Civil Procedure Code, 1908
4. Federal Arbitration Act 1926
5. The Convention on the Recognition and Enforcement of Arbitral Awards 1958 (New York Convention)

OTHER SOURCES

1. Amarchand Mangaldas, 'Enforcing a foreign non-convention country award in India' (In House Lawyer) < http://www.inhouselawyer.co.uk/legal-briefing/enforcing-a-foreign-non-convention-country-award-in-india/?share=email&pdf=2473 > accessed on 23 August 2019
2. Law Commission of India, The Arbitration and Conciliation Bill, 1996 (No. 26 of 1996, 16th August 1996) Para 4(v), 4(vii) and 4(ix) < http://lawcommissionofindia.nic.in/reports/Report246-II.pdf> accessed on 28th September 2019
3. Ministry of Law and Justice Government of India, Proposed amendments to the Arbitration and Conciliation Act, 1996: A Consultation Paper (April 2010) < https://www.legallyindia.com/images/stories/docs/Arbitration-Act-LawMin-ConsultationPaper-on-Arb-Act-April2010-1.pdf > accessed on 23 September 2019
4. Queen Mary: University of London & Price Waterhouse Coopers, 'International Arbitration: Corporate attitudes and practices'(2008) < http://www.pwc.co.uk/en_UK/uk/assets/pdf/pwc-international-arbitration-2008.pdf > accessed on 24th September 2019
5. Subhiksh Vasudev, 'Has India Truly Delivered on Its Obligations Under Articles I and V of the New York Convention Over the Last 60 Years?' (Kluwer Arbitration Blog,29 November 2018) < http://arbitrationblog.kluwerarbitration.com/2018/11/29/has-india-truly-delivered-on-its-obligations-under-articles-i-and-v-of-the-new-york-convention-over-the-last-60-years/ > accessed on 23 August 2019
6. UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")' (United Nations) <https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed on 28th September 2019