CHAPTER 3

AN ANALYSIS OF INTERNATIONAL ARBITRATION LAWS

3.1 An Introduction to the Arbitration Regime in London and Singapore

With an exponential increase in international trade and commerce, a number of disputes that arise from cross-border transactions that involve international parties are being increasingly referred to alternative systems of dispute resolution, i.e. arbitration. Given the element of party autonomy in arbitration, and the freedom that the parties have to agree to the procedure that governs the arbitral proceedings, arbitration as an alternative dispute resolution mechanism has become a primary choice for foreign parties who wish to eliminate the delays and cost of litigation and exclude the purview of courts. As already discussed, arbitrations can be either ad-hoc or institutional arbitrations. There are a number of arbitral institutions but some of the most favoured[55] ones for conducting international commercial arbitrations are –

- London Court of International Arbitration (LCIA)
- The International Chamber of Commerce (ICC)
- Singapore International Arbitration Centre (SIAC)
- China International Economic and Trade Arbitration Commission (CIETAC)
- International Centre for Dispute Resolution (ICDR)
- Hong Kong International Arbitration Centre (HKIAC)

Despite the uncertainty and concern caused due to Brexit, London still continues to be a favoured hub for dispute resolution and one of the primary choices of foreign parties

[55] https://globalarbitrationnews.com/international-arbitration-statistics-2018-another-busy-year-for-arbitral-institutions/

for arbitration.[56] Because of this, courts in England are regularly faced with issues that are both central as well as supplementary to international arbitral proceedings. The courts in England are known for upholding and enforcing arbitral agreements and awards without modifications. England, and more particularly London, continues to be one of the leading international arbitration centres globally and is often chosen as the seat of arbitration in international commercial disputes.[57] Most of the respondents who voted for London as one of the most popular seats of arbitration worldwide, based their reasoning on the fact that the English legal system is neutral and impartial and that the legislation that governs arbitration in the UK will continue to be pro-arbitration and the courts in England shall continue to uphold their pro-arbitration stance.[58] Another factor was also that England continues to be a signatory to the New York Convention and these reasons took a dominant view over Brexit when it came to preferring London as a seat for international arbitration.

Meanwhile, Singapore is emerging as one of the most favourable arbitration destinations in the Asia-Pacific region. After almost 25 years of development, creating a pro-arbitration environment and enhancing infrastructure, Singapore is a primary choice for parties for international commercial arbitration. The ICC 2015 report[59] ranked Singapore as the most preferred ICC arbitration seat in Asia. And each year, Singapore confirms its status as Asia's leading dispute resolution destination. Singapore is not just a favourable arbitration destination in the Asia-Pacific region, but is also challenging well-established arbitration destinations like London, Paris and Hong Kong. Arbitration claims filed at the Singapore International Arbitration Centre have increased by more than 300% in the past 15 years.[60] The SIAC, in the year 2015, entertained 271 cases. In the year 2017, this number had increased to 452 and in 2018 it was 402. These numbers need to be observed in contrast to ICC handling 801

[56] An analysis of 2018 statistics from six major international arbitral bodies (ICC, LCIA, SIAC, SCC, KHIAC and the LMAA) and one ad hoc arbitrators' association, the LMAA, shows that only those based in London saw an increase in both new case numbers and appointments of arbitrators.

[57] In the 2018 International Arbitration Survey: The Evolution of international Arbitration prepared by the School of International Arbitration, Queen Mary, University of London, in partnership with White & Case, London was listed as the most preferred (64%, up from 47% in the 2015 survey) seat of arbitration. More than half of the respondents think that Brexit will have no impact on London being a seat of arbitration.

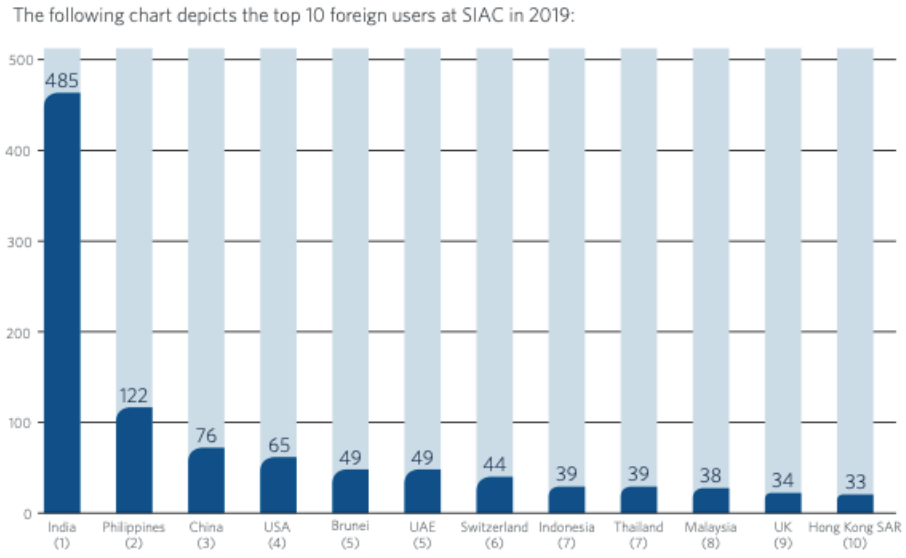
[58] http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF; See Page 11

[59] https://iccwbo.org/media-wall/news-speeches/icc-report-confirms-singapore-as-a-leading-asia-arbitration-hub/

[60] https://www.ft.com/content/704c5458-e79a-11e5-a09b-1f8b0d268c39

claims in 2015, and 842 claims in 2018. The LCIA handled 326 claims in 2015 and 317 claims in 2018.[61]

India being extremely close in proximity to Singapore, Indian clients are some of the major clients of the Singaporean model of international commercial arbitration. Another reason for choosing to compare the Indian arbitration regime with Singapore is also the fact that English is a widely spoken language in Singapore.[62] Though CIETAC would have more claims in number than the SIAC, one of the major languages in China is Chinese. It would not be easy to study the working of a Chinese arbitral institution and to assess foreign awards in the Chinese language. Also, an important factor that was considered in focusing on SIAC and Singaporean arbitral law, was that the SIAC Annual Report[63] shows that India is the top foreign user at SIAC. Below is a graph from their Annual Report -



[61] https://globalarbitrationnews.com/international-arbitration-statistics-2018-another-busy-year-for-arbitral-institutions/

[62] SIAC Press Release dated April 8, 2019, accessible at: https://www.siac.org.sg/images/stories/press_release/2020/[Press%20Release]%20SIAC%20Sets%20a%20New%20Record%20in%202019.pdf

[63] SIAC Annual Report 2019, accessible at: https://www.siac.org.sg/images/stories/articles/annual_report/SIAC%20Annual%20Report%202019%20(FINAL).pdf

For the purposes of this study, London and Singapore are chosen to be compared with the Indian arbitration regime, since Singapore is one of the leading and most favoured arbitration destinations, not only in the Asia-Pacific region but also in the world, and London is the most widely chosen global arbitration destination for foreign parties. More particularly, it is one of the objectives of the study to compare the English and Singapore arbitral practice and legislations with those of India. Thus it becomes imperative to compare not just the existing legislation in India but also the attitude of the arbitral community and the courts with those of London and Singapore in order to understand what it is that makes these countries more preferable destinations for foreign arbitration than India, which is one of the fastest developing countries and the world's largest democracy. In order to better understand the working and functioning of the arbitral systems of Singapore and London, it is not only their respective legislations that have been studied by the researcher but also their premier arbitral institutions and their rules that make these arbitral institutions a force to reckon with.

For this comparison, the seat of arbitration is of primary importance. The seat of arbitration usually provides the law that governs the contract between the parties. The seat also governs the court that will have supervisory jurisdiction over the arbitration by virtue of having territorial jurisdiction. For example, where the arbitration is seated in Singapore, the procedural law that will be applicable will be the arbitration law in Singapore, i.e. The International Arbitration Act, 1994 (which is based on the UNCITRAL Model Law) and the courts in Singapore shall have the supervisory jurisdiction over the arbitral proceedings. The seat dictates the grounds for challenge of an arbitral award. The failure to choose a seat for arbitration by the parties usually leads to disastrous consequences and might lead to unexpected costs and undesirable delays. Thus, it is all the more important to choose a seat that is arbitration-friendly and more cost-effective.

3.2 A comparison between India, Singapore and London on arbitration

3.2.1 Domestic Arbitration vs. International Arbitration

Singapore –

⇒ Singapore has two different Acts for domestic and international arbitrations respectively.

⇒ The Arbitration Act governs domestic arbitrations and the International Arbitration Act (IAA) governs international arbitrations. Interestingly, the first versions of the IAA came into being in 1994, whereas the first version of the Arbitration Act came into force in 2001.

⇒ The parties might choose the IAA even for domestic arbitrations by having agreed to it in writing.

England –

⇒ In England, the English Arbitration Act applies to both domestic as well as international commercial arbitrations. However, this is when the seat of arbitration is England, Wales or Northern Ireland. This Act came into force in 1996. However, in line with its pro-arbitration stance, certain provisions of the Act are applicable even when the seat of arbitration is not in England, Wales or Northern Ireland. Such provisions are provisions pertaining to grant of interim measures (section 9-11), issue of summons to a witness in an arbitration proceeding (section 43), court assistance (section 44), and of course, Section 66 which deals with enforcement of arbitral awards.

India –

⇒ The Indian Arbitration Act, 1996 contains two parts, i.e., Part 1, that governs domestic arbitration and Part 2, that pertains to enforcement of foreign awards. However, some provisions of Part 1 are made applicable to international commercial arbitrations if the parties expressly agree to the same.

⇒ An important thing to be noted is that both these parts are contained under the same act and there are no two different acts for domestic and international arbitration.

Comment –

Singapore has two different legislations for domestic and international arbitration whereas the UK just has one common law. The SIAC Report makes it evident that Singapore is a much preferred destination for international commercial arbitration and this probably could be because of two distinct legislations. India has one common legislation that is bifurcated in two parts. Initially this led to a lot of confusion as to the applicability of Part 1 over international arbitrations which led to judgements that did not convey a confidence-instilling sentiment amongst the global arbitration community. Maybe India could do well with two distinct legislations for domestic as well as international arbitration. Despite there being just one legislation in the UK, the main institution for arbitration is LCIA which was initially set up by the court but later on became a private not-for-profit body. This institution has been in existence as a private institution since 1986 and has its own set of rules. Being in existence for such a long time as compared to other arbitration institutions could be one of the reasons why despite the UK just having one common legislation, disputing parties would not mind approaching the LCIA for settlement of the disputes given that the LCIA will apply its own set of rules that have nothing to do with the Arbitration Act, 1996.

3.2.2 What Constitutes an Arbitration Agreement?

Singapore –

⇒ Oral arbitration agreements also constitute a valid arbitration agreement. Arbitration agreements by way of conduct are also recognised. Section 2A(4) of the IAA[64] gives effect to the same.

[64] *Section 2A(4) - An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.*

⇒ Another interesting fact in the Singapore arbitration laws is that, a party may assert the existence of an arbitration agreement either before an arbitrator or before a court, and if such existence is not denied, the existence of the arbitration agreement must be believed. This finds place in Section 2A (6) of the IAA.

England –

⇒ Section 6 of the English Arbitration Act mandates an arbitration agreement to be in written form.

⇒ An oral arbitration agreement would not attract the provisions of the Arbitration Act.[65] This is covered by Section 81 of the EAA.

⇒ As per Section 5(6), a written arbitration agreement could be recorded either in electronic form or communication.

India –

⇒ In India, the arbitration agreement can be in any form and there is no legal requirement on how it should be. The agreement may not be signed but it must be in writing.

⇒ Thus, it can even be in an exchange of letters or any other means of electronic communication that can provide a record of the agreement.[66]

These find place in Section 7 of the Indian Arbitration Act that defines an arbitration agreement.

Comment –

[65] Section 81(1)(b), English Arbitration Act, 1996; https://uk.practicallaw.thomsonreuters.com/4-502-1378?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1
[66] Section 7(4) of the amended Arbitration Act, 1996

The form and definition of an arbitration agreement has a more or less similar requirement in all three legislations. The UK legislation does not recognise oral arbitration agreements and does not make the Arbitration Act applicable to oral agreements. Despite this not being a flexible approach, it makes sure that there is no confusion regarding the existence of an arbitration agreement since it is recorded in either written or electronic form.

3.2.3 Adopting a Pro-arbitration Stance

Singapore –

⇒ The courts in Singapore generally give full effect to the arbitration agreement unless it is violative of the law of the land or is in breach of the basic tenets of law.

⇒ Courts in Singapore recognize defective arbitration agreements as well. The Singapore High Court, in *Insigma Technology Co. Ltd v. Alstom Technology Ltd*[67] recognised a pathological arbitration agreement. In this dispute, the SIAC was nominated as the body for conducting the arbitration whereas the arbitration agreement specifically stipulated the applicability of the ICC Rules of arbitration. It was held by the Singapore High Court that even though the SIAC was the institution to conduct arbitration and the arbitration agreement had specifically designated the use of ICC rules as the applicable rules, this would not make arbitration non-workable. This was because the selection of the rules was not and could not amount to a selection of the authority administering the arbitration. It was held that the parties had only intended for the arbitration to take place by reference to those rules. SIAC had no objection to conduct the arbitration and the Singapore High Court also observed that such clauses should be avoided that cause confusion.

England –

[67] [2009] 1 SLR 23

⇒ English courts endeavour to make arbitration agreements workable despite having flaws or defects and if the intention of the parties to arbitrate is clear, then the agreement will be enforced.

⇒ English courts will not enforce an agreement if it is deemed to be vague and unclear on the intent to arbitrate.

The Commercial Court in England (Queen's Bench Division), in the case of *Paul Smith Ltd. v. H & S International Holding Inc.*[68], was deciding the validity of the arbitration clause present in the agreement. There was a confusion in clause 13 and 14 of the agreement. Clause 13, that provided for settlement of disputes, stated that the disputes shall be adjudicated under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The ICC arbitration would, if it would, take place in Paris. However, clause 14 of the agreement stated that the agreement shall be interpreted according to English law. The arbitration agreement was challenged by the plaintiff on the ground that there is an inconsistency between the two clauses.

In a landmark decision, it was held by Justice Steyn that there was no inconsistency between the two clauses and that both the clauses were valid and binding.

<u>India</u> –

⇒ The courts in India are moving towards a pro-arbitration and less-interference approach.

⇒ The legislative amendments to the Indian Arbitration Act aim to rectify a slacking approach to arbitration and aim to instil confidence in foreign parties while they look upon India as a destination for international commercial arbitration.

[68] [1991] 2 Lloyd's L.Rep., 127

⇒ The 2015 amendment states that a reference to arbitration must be made "notwithstanding any judgment, decree or order of the Supreme Court or any Court,"[69] which cancels out earlier judgements that provided a loophole to parties who wanted to escape arbitration and delay proceedings.

⇒ The Hon'ble Supreme Court of India in a recent judgement in 2018, held that the award of an arbitrator cannot be scrutinised on facts in execution proceedings filed by the award creditor.[70]

⇒ The most famous example of courts in India making a defective arbitration agreement work was the case of *Pricol Limited v. Johnson Controls Enterprise Ltd*[71], where a reference was made to the 'Singapore Chamber of Commerce' which is a non-existent arbitration centre. However, courts interpreted it to mean the Singapore International Arbitration Centre and enforced the arbitration agreement making it workable.

Comment –

What is common between these judgements is that all the courts recognised the intent of the parties to arbitrate and thus upheld the arbitration despite seemingly unworkable arbitration clauses. However, what needs to be noticed is that the verdict

[69] Section 8 of the amended Arbitration Act, 19968. Power to refer parties to arbitration where there is an arbitration agreement.— [(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]
(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:
2[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]
(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.
[70] *Punjab State Civil Supplies Corporation Ltd. & Anr. v. M/s Atwal Rice & General Mills Rep. by its Partners*
[71] (2015) 4 SCC 177

of the UK court was delivered in 1991 whereas the judgement in the case of Pricol was delivered in 2014. The courts in UK since 1991 have been making arbitration clauses work despite having some flaws in them and have been adopting a pro-arbitration stance thus boosting the confidence of the global arbitration community.

3.2.4 What disputes are arbitrable?

Singapore –

⇒ In Singapore, as per Section 11 of the IAA, all disputes are arbitrable unless the arbitration itself would be contrary to the public policy of Singapore or not capable to be decided by arbitration. In fact, Section 11 further goes on to clarify that just because a law would confer jurisdiction about a specific subject matter on a particular court of law, wouldn't mean that the subject matter is incapable of being decided by arbitration.

⇒ There is no definitive list of disputes that are capable of being decided by arbitration. Issues having an element of public interest may not be capable of being settled by arbitration.[72]

⇒ Companies that are in liquidation or bankrupt would require leave of legal representatives as well as the court in order to arbitrate disputes.[73]

⇒ The Singapore Court of Appeals, in *Tomolugen Holdings*[74], held that minority oppression claims are arbitrable.

⇒ Disputes like environment matters, criminal cases and consumer protection matters amongst others, may also not be arbitrable since they have wide public implications.[75]

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[72] Bernard Hanotiau, *The Law Applicable to Arbitrability*, Singapore Academy of Law Journal, (2014) 26 SAcLJ at Page 879
[73] *Halsbury's Laws of Singapore, Arbitration, Building and Construction* vol II (Lexis Nexis, Butterworths, 2003 Reissue) at p 26, para 20.019
[74] *Tomolugen Holdings Ltd* v *Silica Investors Ltd* ; [2015] SGCA 57
[75] Hwang, Boo & Han, "National Report for Singapore" in *International Handbook on Commercial Arbitration* (Jan Paulsson ed) (Kluwer Law International, 1984) (May 2011 Supplement No 64) at p 7

England –

⇒ Section 81(1)(a) of the Act reads as, "nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to – (a) matters which are not capable of settlement by arbitration." This is along the lines of the New York Convention and goes on to imply that it is common law that will decide arbitrability and non-codification of issues that are arbitrable will not make them non-arbitrable.[76]

⇒ As per the arbitration law of England, certain disputes like criminal cases and laws that restrict the rights of land owners to develop their property cannot be referred to arbitration. This does not find place in the Act but has been evolved from the judgements by the courts of law in the UK over a period of time.

⇒ Cases relating to bankruptcy are treated the same way as in Singapore, where leave of the court is required. The Arbitration Acts, 1934 and 1950 had specific provisions pertaining to arbitration and bankruptcy.

⇒ Previously, family disputes could not be referred to arbitration but recent changes have been undertaken to allow certain issues in family law to be decided through arbitration.

⇒ It is usually left upon the arbitral tribunal to decide what dispute can be referred to arbitration but the courts also have the jurisdiction to decide under certain circumstances. Interestingly, the question of arbitrability can be raised at any stage of the arbitration proceedings.[77]

⇒ It was held by the Hon'ble Supreme Court of UK in *Clyde & Co LLP v Bates van Winkelhof*[78] that when an employee has rights bestowed by a statute for resolution of disputes through an employment tribunal, such rights cannot be

[76] Lord Mustill and S. C Boyd, *Commercial Arbitration, 2001 Companion Volume*, 2nd Edition (London: Butterworths, 2001) 371.
[77] Angeline Welsh, Arbitration Guide – IBA Arbitration Committee, England and Wales, January 2018 at Page 7
[78] [2011] EWHC 668

taken away. In such cases, arbitration cannot be the only means of dispute resolution and the defendant cannot take the defence that the presence of an arbitration clause ousts the jurisdiction of the employment tribunal.

India –

⇒ The principle of non-arbitrability is recognised by the Indian arbitration law and is one of the blanket grounds for challenging and setting aside an arbitral award. However the Act does not define what is considered to be non-arbitrable.

⇒ Before the 2015 amendment, a court could decide whether the dispute is arbitrable or not and at the very first stage decline reference to arbitration if it came to the conclusion that the dispute could not be the subject matter of an arbitration agreement.

⇒ This position had changed after the 2015 amendment came into force. Section 11 was amended and another section 11(6A) was inserted which does not confer so much power on the court to go into arbitrability at the reference stage. However, the Arbitration and Conciliation (Amendment) Act, 2019 has deleted Section 6A.

⇒ What is required to be seen by the court is only the existence of the arbitration agreement. The tribunal has the power to rule on arbitrability and decide jurisdiction as a preliminary issue.[79]

Comment –

Though there is no exhaustive list of disputes that are capable of being decided by arbitration in either of the three jurisdictions, it is because of caselaw that some clarity has been provided on what disputes are arbitrable. Arbitrability is mainly seen as an issue of jurisdiction. Either the tribunal will decide on its own jurisdiction instead of deciding on the subject matter on merits, or the court of law will decide on whether

[79] *Vidya Drolia & Ors. v. Durga Trading Corporation;* Civil Appeal No. 2402 of 2019

the dispute can be referred to arbitration. What is common is that issues that have greater public interest at large or issues that are against public policy are not capable of being decided by arbitration.

3.2.5 Rules of Arbitration

The Rules of Arbitration are rules that govern arbitral proceedings, whether they be before an institution or ad hoc. Usually arbitral institutions have their own set of rules. These rules go a long way in making arbitral proceedings before these institutions smooth and free of confusion and inconsistency.

Singapore –

⇒ The Singapore International Arbitration Centre is the main arbitration centre in Singapore. It has its own set of rules called SIAC rules.

⇒ These are usually the most preferred rules for conducting arbitration, followed by the International Chamber of Commerce (ICC) rules.[80]

⇒ However, for ad hoc arbitrations, it is the UNCITRAL Rules that find favour amongst parties.

England –

⇒ The same trend is followed in England as well with the LCIA rules being the most preferred rules for conducting arbitrations.

India –

⇒ Compared to England and Singapore, India does not see a massive growth in institutional arbitration.[81] This could be because while Singapore and London have one arbitral institution that is reputed around the world, India has

[80] https://www.siac.org.sg/our-rules/71-resources/frequently-asked-questions#faq12
[81]https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Arbcountryguides.aspx (India)

multiple centres for institutional arbitration, but none with global repute at par with SIAC or LCIA.

⇒ India has approximately 35 arbitration institutions.[82] However, these are relatively new and international parties are often advised against arbitrating in India and choosing SIAC, LCIA or ICC arbitrations over Indian centres.

⇒ Most of the arbitrations that are conducted in India are ad hoc arbitrations and thus institutional rules of arbitration are not so popular.

⇒ Mostly, in cases of international commercial arbitration in India, the UNCITRAL Rules are usually preferred for dispute resolution.

Comment –

Indian arbitration institutions are trying to come to par with global arbitration institutions. In fact, the costs at the Mumbai Centre for International Arbitration (MCIA) are considerably less than the costs incurred at SIAC or LCIA. However, SIAC, LCIA or ICC rules have been chosen as rules governing arbitration for such a long time now that MCIA Rules will take time to get to the same level of acceptance in the international arbitration community. The New Delhi International Arbitration Centre is a centre that is recognised and set up by an Act of Parliament. This could very well be the globally preferred centre for arbitration in India if the rules are party-friendly.

3.2.6 Power of the tribunal to rule on its own jurisdiction

Singapore –

[82] Abhishek Sharma, *The Future of Institutional Arbitration in India,* September 6, 2019
Retrieved from: https://www.mondaq.com/india/arbitration-dispute-resolution/843032/arbitration-newsletter-august-2019 on January 27, 2021

⇒ A party can raise a challenge to the jurisdiction of the arbitral tribunal and the tribunal has the power to pass an order on its own jurisdiction. However, this has to be done before the statement of defence is filed by the respondents.

⇒ The International Arbitration Act in Singapore recognises the principle of *kompetenz - kompetenz* and allows the tribunal to rule on its jurisdiction.

⇒ An order in this regard passed by the tribunal can be challenged before the High Court within a period of 30 days from the date on which the order is passed.

⇒ The decision of the High Court in this regard can also be the subject matter of appeal provided the previous sanction of the High Court is obtained. (Section 10, IAA)

Section 10(2) of the IAA is reproduced here for ready reference-

"10(2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings."

England –

⇒ As per English law, if a party approaches the court despite there being a valid arbitration agreement, the other party can apply for an injunction and can seek a stay on the proceedings.

⇒ A party who is the defendant must challenge the jurisdiction of the court on the ground that there is a valid arbitration agreement between the parties within a period of about 14 days.[83] The defendant does not need to reply on merits until the challenge to jurisdiction is decided. If the litigation is commenced by a party in breach of the arbitration agreement, and such

[83] Justin Williams, Hamish Lal, and Richard Hornshaw, Akin Gump LLP; *Arbitration procedures and practice in the UK (England and Wales): overview*
Accessible at: https://uk.practicallaw.thomsonreuters.com/4-502-1378?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1

litigation is initiated in another jurisdiction, the defendant can move the court in that jurisdiction for an anti-suit injunction.

⇒ However, if the seat of arbitration is not in England, the courts in England are reluctant to grant anti-suit injunctions.[84]

⇒ Section 30 of the UK Arbitration Act gives the power to the tribunal to rule on its own jurisdiction. Under section 30, the tribunal can rule on whether there is a valid arbitration agreement, whether the arbitral tribunal is properly constituted and whether the dispute that has been referred to arbitration is within the scope of the arbitration agreement.[85]

India –

⇒ In India, in domestic arbitrations, the courts will refer a party to arbitration if the issue is the subject matter of the arbitration agreement, unless the court comes to the conclusion that there is no valid arbitration agreement between the parties.

⇒ The Hon'ble Supreme Court in *M/s. MSP Infrastructure Ltd. v. Madhya Pradesh Road Development Corporation Ltd.*[86] was called upon to decide whether a party to an arbitration agreement can raise an objection under section 34 of the Act, and challenge the jurisdiction of the arbitrator after submission of the defence statement. The court looked into section 16(2) of the Act and came to the conclusion that the provisions intended to estop a party from raising such a plea after having submitted its reply.

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[84] Section 30 – 32 of the English Arbitration Act, 1996

[85] *Section 30 - Competence of tribunal to rule on its own jurisdiction.*
(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to—
(a) whether there is a valid arbitration agreement,
(b) whether the tribunal is properly constituted, and
(c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
(2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

[86] (2015) 13 SCC 713

⇒ In one of the cases, it was held that, even if the challenge to the jurisdiction of the arbitral tribunal is not taken under Section 16, the objection to jurisdiction can still be raised under Section 34 of the Act.[87]

⇒ Section 16 of the Act provides for competence of the arbitral tribunal to rule on its own jurisdiction. Under Section 16, even if the arbitral tribunal comes to the conclusion that the underlying contract is a null and void contract, the doctrine of separability shall apply and the arbitration agreement will be decided on its own merits.

Comment –

The power that is given to an arbitral tribunal to rule on its own jurisdiction is to minimise the role of courts in jurisdictional challenges. A little shift that is seen in the Indian legislation is that this becomes an additional ground for challenging the arbitral award under Section 34 and arbitral award so challenged will then be scrutinised on whether the tribunal had jurisdiction. While this is not available as a ground for refusing enforcement of a foreign award, only time will tell whether it would fall within the definition of 'public policy'.

3.2.7 Appointment of Arbitrator

Singapore –

⇒ In Singapore, the laws governing appointment of an arbitrator are quite different. Similar provisions find place under both their domestic and international arbitration Acts. If the parties are not able to agree upon an arbitrator, the arbitrator shall be appointed by the President of the Court of Arbitration of Singapore International Arbitration Centre.[88]

[87] *M/s Lion Engineering Consultants* v. *State Of M.P.*, Civil Appeal Nos. 8984-8985 of 2017
[88] Section 8; International Arbitration Act, Chapter 143A

⇒ An important thing to note is that no appeal lies against the order of appointment of the arbitrator by either the President or by the High Court of the Republic of Singapore.

England –

⇒ Even as per the English law, a similar mechanism is in place for when the parties are unable to decide upon an arbitrator and the procedure that is laid down if the arbitration agreement fails.[89] That is when the courts would step in.

⇒ Under Section 19 of the Act, the court shall also give consideration to the qualifications that are prescribed by the parties regarding the appointment of an arbitrator. This means that if the parties have chosen a person having a Master's Degree in biotechnology to be eligible for appointment of an arbitrator, the court shall give due consideration to the same.

India –

⇒ One of the new provisions that is introduced by the 2019 amendment is Section 11(3A), which gives the power to designate arbitral institutions, to the High Courts and the Supreme Court of India.

⇒ These designated institutions would be those institutions that have been graded by the Arbitration Council of India (ACI) under Section 43-I, which is another provision that is introduced by the 2019 amendment. The primary objective of these provisions was that instead of the court intervening under Section 11 for appointment of an arbitrator, in cases where the parties are not mutually able to decide upon an arbitrator, now the court would designate graded arbitral institutions, to do the needful and appoint an arbitrator as per Sections 11(4)(6).

[89] Sections 16 – 19 English Arbitration Act

⇒ This can curtail party autonomy in international commercial arbitration because of the interference of the executive and the judiciary.

⇒ Courts in India can appoint arbitrators in a dispute where an application is filed by the parties under Section 11 of the Act. While exercising powers under Section 11, the Court has to confine itself only to the existence of the arbitration agreement.

Comment -

Amongst all three jurisdictions, India is the only country that has an institutional body like the Arbitration Council of India which would grade and rate arbitral institutions. Time will tell whether the ACI will instil faith in arbitral institutions graded by it. Due to long processes, red-tapism and bureaucracy in the Indian government, grading and rating still remains a questionable subject but given the composition of the ACI, it seems that arbitral institutions graded by it shall be more favourable to disputing parties over non-graded institutions.

3.2.8 Judicial Review

One of the most important things to become a pro-arbitration destination is for the courts to exercise restraint when it comes to exercising jurisdiction in arbitration matters. Not interfering with an arbitral award greatly boosts the confidence of the arbitral community and gives confidence to parties that arbitration will be followed in letter and spirit and will not merely be reduced to a pre-litigation exercise.

Singapore –

⇒ Courts in Singapore exercise judicial restraint in arbitration matters and normally do not interfere with an arbitral award and never decide an arbitral award afresh on merits. There is no second- guessing of an arbitral award.

⇒ In Singapore Section 24 of the IAA lists out the grounds to set aside an arbitral award. These are more or less similar to the grounds provided under the UNCITRAL Model Law.

⇒ There is no provision to examine the merits of the award.

England –

⇒ In England, Sections 99 - 104 deal with challenge to a foreign arbitral award. These are contained in Part III of the Act.

⇒ For domestic awards, multiple grounds apart from the ones mentioned under Article 34 of the UNCITRAL Model Law, are set out in the Act.

⇒ Courts in the UK have observed that arbitration laws and the conventions for enforcement are intended to be in support of arbitration and in support of enforcement. In *Diag Human v. Czech Republic*[90], the court observed that the New York Convention on enforcement of foreign awards is a 'pro-enforcement' legislation and thus courts are very hesitant in setting aside foreign arbitral awards.

⇒ Even a part of an arbitration award can be enforced and such enforcement is not inconsistent with the law or with the New York Convention.[91]

India –

⇒ In India, the procedure for enforcement of foreign awards is enshrined under Part 2 of the Act that deals with foreign awards. However some of the provisions of Part I are also made applicable to international commercial arbitrations.

[90] [2014] EWHC 1639 (Comm)
[91] *Emirates Trading Agency v Sociedade de Fomento Industrial Private*; [2015] EWHC 1452 (Comm)

⇒ Sections 48 – 51 deal with enforcement. The provisions are mostly in line with the provisions of the New York Convention.

⇒ However, Indian courts regularly interpret 'public policy' differently. The Hon'ble Supreme Court of India in the judgement of *NAFED v. Alimenta S.A.*[92], delivered a verdict on 22nd April 2020. Despite earlier rulings on how a narrow view is to be taken when it comes to interpreting public policy, the Hon'ble Supreme Court refused enforcement to a foreign award on the ground that it was against the public policy of India.

Comment –

Despite a number of amendments, if such anti-arbitration views are taken by courts, it would seem as if brakes have been applied on enforcement of arbitral awards in India. This goes on to show that amendment in the legislation will only be useful if interpreted properly by the court. A number of pro-enforcement judgements had been already delivered by the Supreme Court but not considered while dealing with the issues in *NAFED v. Alimenta S.A.* in Civil Appeal No. 667 of 2012. Arbitration is intended to have finality and parties that refer disputes to arbitration are under the impression that it will save cost, time and energy as compared to litigation. However, the State might have other interests. Courts might fear that uniformity of law might be lost if there is no control that is exercised by them over arbitral awards and the merits of the award.[93] There could be broadly two kinds of judicial review. One is that there has been a breach of the principles of natural justice and hence the award needs to be reviewed by the court. The other is a much more sensitive kind of review and that is on the merits of the award. But the more important question is whether in transnational arbitrations, should any kind of review be permitted?[94]

[92] (2020) SCC Online SC 381
[93] Schmitthoff C.M. (1987) Finality of arbitral awards and judicial review. In: Lew J.D.M. (eds) Contemporary Problems in International Arbitration. Springer, Dordrecht. https://doi.org/10.1007/978-94-017-1156-2_21
[94] Sir Michael Mustill, 'Transnational Arbitration in English Law', (1984) Current Legal Problems, 133

3.2.9 Time and Cost of Arbitration

The time that is taken for arbitration proceedings mostly depends on the complexity of the issue before the arbitral tribunal, the agreement between the parties and the convenience of the arbitrators.

Singapore –

⇒ In October 2016, SIAC published its study showing the median costs and time consumed for arbitration proceedings.[95] 98 cases were considered in a time frame of 3 years from April 2013 to July 2016.

⇒ The average time consumed by the tribunal was 13.8 months whereas the average cost was USD 80,337.

⇒ SIAC offers parties options such as document-only hearings and an expedited procedure as is provided in the SIAC rules.[96]

⇒ In 2016, the SIAC rules were amended to provide for a procedure for early rejection of a claim or of a statement of defence.

⇒ However, the Act is silent on a fixed time limit for conduct of arbitration.

England –

⇒ In England, a complex international commercial arbitration is likely to take anywhere between one to two years before the award is passed.

[95] https://www.siac.org.sg/component/content/article/69-siac-news/499-siac-releases-costs-and-duration-study
[96] Rule 5.2 of the SIAC Rules; https://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-31-29/archive-2012/240-the-siac-expedited-procedure

⇒ However, the English Act doesn't mention about the time for conduct of arbitration proceedings. Despite this, it seems that arbitrations in the UK have largely managed to be resolved in reasonable time frames.

⇒ The LCIA published results from a study conducted to find out the average cost and duration of arbitrations in the LCIA.[97]

⇒ The average time consumed is 20 months whereas the average cost is USD 192,000.

The period consumed for arbitration is calculated as the period from the notice for arbitration till the date of the final award.

The results are shown in tabular form below for a better understanding -

	SIAC	**LCIA**
Duration of Arbitration		
All tribunals (mean)	13.8 months	20 months
Total Costs of Arbitration		
Mean	US$80,337	US$192,000

India –

⇒ There is a time limit that is prescribed in the Indian arbitration law that was amended in 2015 which aims to minimise and substantially reduce the time consumed in arbitration proceedings.

⇒ There is an upper limit of 12 months from when the tribunal is constituted for completion of all the proceedings and for passing an award.[98]

[97] https://www.lcia.org/News/lcia-releases-costs-and-duration-data.aspx
[98] Section 29A of the amended Arbitration Act, 1996

⇒ This period can be extended by a further period of six months, but only with the consent of all the parties.

⇒ After this period has elapsed, the parties can still extend the time for which an application for extension would have to be made to the court. Section 29A of the Act deals with timelines and there is also a fast track procedure that is provided for under Section 29B.

⇒ Also, if the award is made within a period of 6 months, the arbitral tribunal is entitled to receive additional fees as may be agreed by the parties.

Comment –

The costs incurred in arbitrations before SIAC and LCIA are by no means less when it is considered that the objective of arbitration was a more cost-effective method of dispute resolution. The time consumed is definitely less than the time consumed in litigation in a court of law, but it comes at a price. Meanwhile, the costs incurred in an arbitration at the MCIA for instance, are not so high. Even the initial fee is almost half of the initial fee of the SIAC arbitration. The question then arises as to why SIAC and LCIA are still preferred over arbitration in Indian institutions. The answer may lie in the duration of arbitrations. While the Arbitration Act in India needs to specify a time limit for arbitrations, the arbitrations administered by SIAC and LCIA adhere to this time limit even without a specific enforcing legislation. Another reason might be bulky records. This is evidenced from the results of a survey conducted, which is discussed in a subsequent chapter of the study. Bulky records consume immense time because the tribunal would have to go through each page and lawyers would reply to each averment. It could be because of these reasons that arbitrations in SIAC and LCIA consume less time than arbitrations in India, some of which have been going on for more than 5 years.

3.2.10 Non-signatories

It is settled law that arbitration agreements cannot bind a person who is not a party to the arbitration agreement unless there are exceptional circumstances like claiming through someone who is a party to the arbitration agreement or if there has been a merger or an acquisition.

Singapore –

⇒ Non-signatories may also be considered as parties to an arbitration agreement in some cases.

⇒ The 'group of companies' doctrine is not recognised by Singapore. In simpler words, just like privity of contract, only the particular legal entity that has entered into an arbitration agreement will be bound by it, and the group of companies of which it is a part, will not be bound by it unless, from the arbitration agreement, it is evident that the parties had intended to bind the signatories as well as non-signatories.

⇒ A third party can also be treated as a party to the arbitration agreement.

The High Court of Singapore, in *Manuchar Steel Hong Kong Ltd. v. Star Pacific Line Pvt. Ltd.*[99], held as below –

"Apart from the conceptual difficulties I had with the doctrine as stated above, I was also not persuaded by the case law that the single economic entity concept was recognised under the common law, or at any rate under Singapore law."

Rule 7.1 [100] of the SIAC Rules lists down in detail, the Singapore position of additional parties to the arbitration agreements.

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[99] [2014] SGHC 181

[100] ***7. 1 Joinder of Additional Parties***

Prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for one or more additional parties to be joined in an arbitration pending

England –

⇒ Arbitration agreements in England also bind a person claiming through someone who is already a party to the arbitration agreement.

⇒ This would include an assignee as well as a third-party beneficiary under a contract.

⇒ In the case of *Peterson Farms Inc v C&M Farming Ltd*[101], it was held that the 'group of companies' doctrine is not recognised under English Law.

India –

⇒ The law in India is clarified by the Hon'ble Supreme Court in *Cheran Properties Limited v. Kasturi and Sons Limited and Ors*[102], wherein the court was dealing with the issue of whether the award that was passed by the arbitral tribunal could be enforced against a third party who was not a signatory to the arbitration agreement.

⇒ It was held that Section 35 of the Indian Arbitration Act[103] provided for enforcement of an award against a non-signatory third-party if the third party was claiming through a party to the arbitration agreement.

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under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

a. the additional party to be joined is prima facie bound by the arbitration agreement; or

b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

[101] [2004] EWHC 121 (Comm)
[102] (2018) 16 SCC 413
[103] *Finality of arbitral awards.—Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.*

⇒ In another matter, the Hon'ble Supreme Court of India reopened the question of whether the scope of arbitration agreements extended to non-signatory third parties. In *Ameet Lalchand Shah v. Rishabh Enterprise & Anr*[104], the court acknowledged that Section 8 as it was before the 2015 amendment, that was applicable to domestic arbitration, did not permit the integration of parties to a dispute if it was not agreed upon exclusively by the parties.

Section 8 as it stood before the amendment is as below –

"8. Power to refer parties to arbitration where there is an arbitration agreement.

1. *A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*

2. *The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*

3. *Notwithstanding that an application has been made under sub- section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

⇒ Post the 2015 amendment, Section 8 of part one is now in consonance[105] with Section 45 of part 2 to include within its ambit, "*if a party to the arbitration*

[104] (2018) 15 SCC 678

[105] *Section 8 - Power to refer parties to arbitration where there is an arbitration agreement.— (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

agreement or any person claiming through or under him". Thus, by way of the judgement in this case the Supreme Court managed to bring harmony to the law that was applicable to both domestic as well as international commercial arbitrations.

Comment –

While there was clarity regarding the 'group of companies' doctrine in Singapore and UK, the position in India was finally clarified in 2017 by virtue of the judgement in the case of *Cheran Properties Limited v. Kasturi and Sons Limited and Ors.* in Civil Appeal nos. 10025-10026 of 2017. As discussed earlier, it seems that while legislations are more or less similar, it is the courts that clarify the loopholes/lacunae in the legislation that make arbitration work despite having minor hiccups.

3.2.11 Multi-instance arbitration

A multiple instance arbitration is an arbitration agreement, that gives parties a second shot or another chance at arbitration.[106] For example, parties can decide to opt for the dispute being settled by either negotiation or mediation before arbitration. This mediation or negotiation would be a precondition, in absence of which the arbitral tribunal would not have jurisdiction. Another example of multi-instance arbitration could be instances where the award by a sole arbitrator is taken in appeal before another arbitral tribunal consisting of, say, three arbitrators. Multi-instance arbitration can either be in an institutional arbitration or in an ad hoc arbitration.[107]

Singapore –

⇒ Multi-tier arbitration clauses are enforceable and hence are common and are used frequently.

[106] Lakhawat, M. (2018, June 22). Multi-Tier Arbitration Clauses: Directory Or Mandatory? – Litigation, Mediation & Arbitration – India. Retrieved January 19, 2021, from https://www.mondaq.com/india/arbitration-dispute-resolution/712978/multi-tier-arbitration-clauses-directory-or-mandatory

[107] A. Redfern & M. Hunter, International Arbitration 586 (5th ed., 2009)

In *Ling Kong Henry v Tanglin Club*[108], the High Court of Singapore held that multi instance arbitration was permissible. In order to understand this, it is necessary to examine the arbitration clause between the parties.

Rule 45B of the agreement between the parties contained the arbitration clause. In simpler words, it was decided by the parties that the dispute, whenever it arises, shall be first referred to a conciliator. Subsequently, if the parties are aggrieved by the conciliator or the dispute is not resolved through conciliation, the dispute shall be referred to mediation. The parties further agreed that in case the dispute is not even resolved through mediation, then the parties shall resolve the dispute through arbitration.

In this case, it was held that the procedure that was decided by the parties would have to be followed since party autonomy was of primary importance in arbitration. Since one of the parties had approached the court directly instead of following the procedure as laid down in Rule 45, the court relegated the party to follow the procedure and thereafter approach the court in case there was a breach of the principles of natural justice.

The relevant part of the judgement is as below –

"Where the contract that governs has provided express terms to deal with such issues, recourse should first be had to the procedure provided. Otherwise, the court would not be upholding the parties' contractual bargain and intention to have the matter ventilated outside the court process. In any event, Rule 45B(vii), as well as s.48(1)(a)(vii) of the Arbitration Act, permit Mr Ling to challenge the arbitral award on the ground of a breach of natural justice. If, after compliance with Rule 45B, natural justice issues still need to be addressed, the court may still do so."

<u>England</u> –

⇒ In England also, the position is similar to that of Singapore.

[108] [2018] SGHC 153

⇒ Multi instance arbitration does not find place in the Arbitration Act, 1996. However, the position is clarified by the courts in various judgements. In one of the first landmark cases where the courts came across instances of multi-instance arbitration, the courts refused to enforce multi-tier arbitration agreements. This happened notably in 2012 in the case of *Sulamerica CIA Nacional de Seguros v. Enesa Engenharia*[109] where the High Court refused to recognise a multitier arbitration agreement. The Court of Appeal confirmed this decision.

⇒ Multi-instance arbitration was recognised within a short span of two years in 2014, and given effect to in the case of *Emirates Trading Agency LLC v. Prime Mineral Exports Pvt. Ltd*.[110] In this case the parties had mandated a four-week negotiation period before commencing arbitration. When one of the parties approached the courts arguing that there had been enough negotiations, the court said that the parties were bound by the four-week negotiation mandate and only then could the arbitral tribunal have jurisdiction.

India –

⇒ In India, this was seen in a recent Supreme Court judgement in the case of *Centrotrade Minerals v. Hindustan Copper*.[111] In this case the Hon'ble Supreme Court held that the Indian arbitration law did not prohibit second instance arbitration by way of an appeal.

⇒ Therefore, if the parties had agreed to have a second arbitrator sit in appeal over the award of the first arbitrator, it was permissible. However, this led to a number of unanswered questions as to whether it meddled with the finality of awards as envisaged under the Arbitration Act.

[109] [2012] EWCA Civ 638
[110] *Emirates Trading Agency LLC v. Prime Mineral Exports Pvt Ltd* [2014] EWHC 2014 (Comm)
[111] (2020) SCC OnLine SC 479

⇒ Another question that arose was whether in light of an alternative remedy in terms of Section 34, a second instance arbitration challenging the primary arbitration award would be considered valid.

Comment –

While multitier arbitration clauses are increasingly gaining popularity, in the opinion of the order it is advisable to have so owing to higher cost, more consumption of time as well as vulnerability before a court of law in case of an ambiguous agreement. Multitier arbitration agreements are often unclear and are susceptible to non-enforcement by a court of law.

3.2.12 Position on Foreign Lawyers and Foreign Arbitrators

Singapore –

⇒ Foreign nationals can also act as counsel in arbitrations seated in Singapore. In 2004, the Singapore Legal Profession Act, 1966 (Section 36) was amended to specifically permit foreign lawyers to appear for their clients in arbitrations in Singapore, and to give legal advice, even if the governing law of the contract was Singapore law.

⇒ However, if one of the parties needed to approach the court in an arbitration proceeding, the foreign counsel would not be able to represent the party in court and would need to engage a Singaporean lawyer.

⇒ The arbitration laws in Singapore do not provide for any restrictions on the appointment of arbitrators based on their nationality.

England –

⇒ In England there are no restrictions on arbitration lawyers or arbitrators being foreign nationals. [112]

⇒ This can be evidenced from the fact that there are a number of foreign law firms with offices in the UK.

⇒ In order to give boost to international commercial arbitration, it seems that there has not been a restriction placed on foreign councils or lawyers in the arbitration legislation in the UK.

⇒ In fact, the SRA Code of Conduct 2011 and the Code of Conduct of the Bar of England and Wales does not apply to foreign lawyers conducting arbitrations in the UK.[113]

India –

⇒ The Indian Arbitration Act permits a person of any nationality to become an arbitrator, unless the parties have agreed otherwise.

⇒ Recently, the Supreme Court has held that foreign lawyers can advise on international commercial arbitrations in India.[114]

⇒ Schedule VIII of the Arbitration and Conciliation (Amendment) Act, 2015, has been deleted by way of the Arbitration and Conciliation Amendment Ordinance, 2020. Schedule VIII prescribed qualifications for arbitrators in India which were of a nature that they were prohibiting foreign lawyers and arbitrators to practice arbitration in India.

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[112] *Supra note 77*
[113] Hodges, Tevendale, Naish, Ambrose, *Arbitration in the United Kingdom*, June 11, 2019; Accessed at: https://s3.amazonaws.com/documents.lexology.com/e90fcbd0-d3a7-4fe1-9c56-026796740cb8.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1611087314&Signature=%2BvqtWMy69bmffn3A6S%2FpnAF6aCo%3D on January 19, 2021.
[114] Bar Council of India v A.K. Balaji And Ors; (2018) 5 SCC 379

Comment –

While jurisdictions like the UK and Singapore try to be arbitration friendly jurisdictions for even foreign counsels and arbitrators by non-limiting their practice, India was still grappling with the applicability of Schedule 8 till recently when it was scrapped. In order to invite foreign counsels and arbitrators to India, we need to have a specific provision that encourages foreign law firms to set up offices in India without worrying about restrictions that will be imposed on them by way of legislation, thus curtailing a major practice area.

3.2.13 Conflicts by Arbitrators and Challenges to Appointment

Singapore –

⇒ When it comes to challenges to the appointment of arbitrators the laws under both the Indian and Singaporean regimes are quite similar. This is probably because of the influence of the UNCITRAL Model Law.

Article 13 of the UNCITRAL Model Law provides for a 'Challenge Procedure'.

The main elements of this procedure are that an aggrieved person may, within 15 days of becoming aware of the constitution of the arbitral tribunal, challenge the appointment of the arbitrator by sending a written statement of reasons to the Tribunal. If the challenge is unsuccessful, the party may approach the court or any other authority specified in Article 6 to decide on the challenge.

⇒ The arbitrator is required to disclose, at the appointment stage itself, anything that might give rise to doubts as regards his impartiality or independence.

⇒ However, this obligation on the part of the arbitrator to make disclosures is a continuing obligation, i.e., if such circumstances might arise during the course

of the arbitral proceedings that might give rise to justifiable doubts as regards his independence, it is the duty of the arbitrator to disclose them to the parties or to the appointing authority.

England –

⇒ If the arbitrator has an interest in the subject matter that could give rise to a doubt regarding his independence and impartiality, it is his obligation to disclose that interest at the first opportunity.

⇒ A failure to do this is a ground to challenge the appointment of the arbitrator.

⇒ If the agreement between the parties provides for an institution or an authority that has been conferred jurisdiction to decide challenges to the appointment of an arbitrator, the parties are required to approach the same.

⇒ In case the parties have exhausted other agreed procedures for challenge, recourse to the courts is always available.[115]

India –

⇒ Section 12 of the Indian Arbitration Act requires a person who is likely to be appointed as an arbitrator to disclose in writing anything that is likely to give rise to a doubt as regards his impartiality or independence.

⇒ The appointment of an arbitrator can be challenged only if there is a doubt as regards his independence or impartiality or if he falls short of the minimum required qualifications as agreed to by the parties in the arbitration agreement.

⇒ Schedule 5 and Schedule 7 of the amended Act also provide for a list of items that could presumably give rise to doubts as to the independence and impartiality of the arbitrator.

[115] Section 67 – 68 of the English Arbitration Act, 1996

Comment –

The present day arbitral institutions incorporate ethical rules into their arbitral rules regarding the qualifications of an arbitrator and the way the hearings are conducted. It must be noted that very few arbitral institutions have a separate and an exclusive code of conduct for arbitrators. *'Uberrimae* fidei' should be the guiding principle for an arbitrator. In practice, however, a fact may be of a material interest in the subject matter for an arbitrator from one jurisdiction, but it may not necessarily be the same for another. How do you identify material interest? How do you identify facts that demand disclosure, non-disclosure of which may lead to a challenge by the aggrieved party? The main objective of arbitration, i.e., a speedy and effective means of justice, may be well-founded on wafer thin bases if international arbitrations turn into long lasting and expensive litigation concerning the finality of an arbitral award.

3.2.14 Code of Conduct for Arbitrators

Singapore –

⇒ The Singapore International Arbitration Centre has provided a code of ethics for arbitrators that SIAC–appointed arbitrators have to confirm to and abide by.

⇒ This code covers seven provisions ranging from appointment, disclosure, communication, bias, fees, confidentiality and conduct.

England –

⇒ Even the LCIA has its own code of conduct for arbitrators.

⇒ As per the English arbitration law, arbitrators are required to act impartially, fairly and without bias.

⇒ Arbitrators are expected to adopt a suitable procedure with regards to the case at hand, avoid unnecessary costs and expenses and avoid delays. As per common law there is another duty that is cast upon the arbitrator, i.e., the duty to pass an award that is enforceable.

Section 33(1) of the English Arbitration Act states that –

"33(1) The tribunal shall—
(a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent"

India –

⇒ The Indian arbitration legislation does not lay down any code of conduct or a code of ethics for arbitrators.

⇒ Just like there are basic legal principles that are applicable to judicial and quasi-judicial authorities, the standard is that justice should not only be done, but seen to be done.

⇒ The New Delhi International Arbitration Centre (NDIAC), has provisions on code of conduct and since it is a relatively newly established centre, has not gained much awareness yet.

⇒ For an arbitrator to be disqualified, actual bias is not required to be present. Even if there is a likelihood of bias, that is enough for the arbitrator to disclose to the parties and step down. This forms a part of administrative law in India.

Comment –

Arbitrator code of conduct is not a single piece of legislation that applies universally. Various Rules and Acts will incorporate provisions pertaining to ethics and code of conduct. Even Article 4 of the UNCITRAL Arbitration Rules and Transparency Rules, (2013) provides for giving due consideration to factors that might affect the

independence or impartiality of an arbitrator.[116] However, the definition of conflict is not provided anywhere and what constitutes a conflict for an arbitrator could vary.[117] One of the major concerns is whether arbitrators should be permitted to take up other roles while already conducting an arbitration. This is commonly known as double-hatting. It is when the arbitrator dons multiple hats as lawyer, counsel, adjudicator and advisor. while disposing of his duty as an arbitrator.[118] Another concern is the concern of issue-conflict. This would happen when an arbitrator has already decided an issue due to either a prior publication, statement, or award.[119]

A survey conducted by Schellenberg Wittmer indicates that 68% of the respondents have experienced some sort of ethical misconduct[120]. The absence of a common code of conduct or governing set of rules to lay down a framework within which to operate poses difficulties and may also ultimately question the integrity of arbitral institutions and arbitrators around the world. A good example to demonstrate this is the fact that *ex parte* communication with an arbitrator is mostly prohibited, but, in China, where the arbitrator may also mediate in the same dispute, it will not be seen as something that is objectionable and against prescribed standards[121]. It is necessary for arbitrators to decide disputes with an open mind and disclose any concerns that might be existing to the parties beforehand.

3.2.15 Interim measures by courts

Singapore –

⇒ The situation in Singapore is in contrast to the situation in India and England. Courts in Singapore are conferred with the jurisdiction to grant the same relief that the arbitral tribunal can grant under the domestic and international Arbitration Acts. In the IAA, court ordered interim measures provisions find

[116] UNCITRAL Arbitration Rules (United Nations Commission on Int'l Trade Law 2013)
[117] Hélène Ruiz Fabri, *Conflicts of Interests: Navigating in the Fog*, 113 AJIL UNBOUND 307 (2019)
[118] John Crook, *Dual Hats and Arbitrator Diversity: Goals in Tension*, 113 AJIL UNBOUND 284(2019)
[119] Judith Levine, *Dealing with Arbitrator "Issue Conflicts" in International Arbitration*, TDM 4 (2008)
[120] http://www.swlegal.ch/Publications/Newsletter.aspx
[121] Catherine Rogers, *Fit and Function in Legal Ethics: Developing a Code of Conduct for International Arbitration*, Michigan. J. Int'l. Law (Winter 2002) Vol. 23, No. 2, at p 363.

place in Section 12A. This would mean that the tribunal has extremely wide powers to grant interim relief and that ideally a party would not need to approach the court. However, the powers to call for discovery of documents or to grant security for costs, are not within the realm of the arbitral tribunal.

⇒ Courts in Singapore can grant interim relief either before or after the arbitral tribunal has been constituted. Under the international arbitration law in Singapore a court may grant interim relief to aid international commercial arbitration irrespective of the seat of arbitration.[122] This means that if in a particular case, even though the seat of arbitration is not Singapore, a court in Singapore might, if it comes to the conclusion that a party is entitled to such interim relief, grant the same.

⇒ However, this relief will be granted by the court only in exceptional cases where the tribunal is not able to grant relief or in cases of urgency and only if necessary for the preservation of assets and non-creation of third-party rights.

⇒ As per Singapore law, if there is no actual urgency then an application for interim relief cannot be filed before the court without the prior permission of the arbitral tribunal or if the parties have not expressly agreed to it in the arbitration agreement in writing.[123]

⇒ In an attempt to not encroach upon the jurisdiction of the arbitral tribunal, the moment the tribunal passes an award or makes an order that touches upon or relates to a part or whole of the court's order, the court ordered interim relief ceases to be in force.[124]

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[122] Wong, Ronald JJ, Interim Relief in Aid of International Commercial Arbitration -- A Critique on the International Arbitration Act (December 1, 2012). Singapore Academy of Law Journal, Vol. 24, pp. 501, 2012.

[123] Alvin Leo, Lim Wei Lee; Arbitration Guide – IBA Arbitration Committee Singapore, January 2018

[124] Singapore International Arbitration Act, 2012, S. 12A(7) ["An order made by the High Court or a Judge thereof under subsection (2) shall cease to have effect in whole or in part (as the case may be) if the arbitral tribunal, or any such arbitral or other institution or person having power to act in relation to the subject-matter of the order, makes an order which expressly relates to the whole or part of the order under subsection (2)."]

England –

⇒ In English law, courts in England may grant interim relief if it comes to the conclusion that the tribunal is unable to grant such a relief or that it is unable to act effectively.

⇒ As per Section 44 of the Act, the court might make an order so as to preserve assets that are at a risk of being disposed of.

⇒ Preservation of evidence, assets, property or the granting of an interim injunction as well as appointment of a receiver are some of the powers under Section 44 given to the court.

⇒ In a recent judgement of a court in England, it was held that when a party had sufficient time to approach the arbitral tribunal or an emergency arbitrator and seek interim relief from the arbitral tribunal, the court would not have the jurisdiction to grant such urgent relief.[125]

India –

⇒ Prior to the 2015 Amendment, Section 9 of the Indian Arbitration Act conferred on courts in India extremely wide powers to grant interim measures before, during or even after arbitral proceedings.[126]

⇒ After the 2015 amendment, courts in India can entertain an application under Section 9 for grant of interim relief only after the constitution of the arbitral tribunal, if it is satisfied that the arbitral tribunal would not have within its jurisdiction, the power to grant such a relief or if the facts of the case make it

[125] *ZCCM Investments Holdings v Kanasanshi Holdings Plc and another* [2019] 1285 (EWHC Comm), 40.

[126] https://www.barandbench.com/columns/interim-relief-by-courts-in-an-arbitration-the-battle-of-section-9

meaningless and a futile exercise for the party to approach the tribunal for interim relief.[127]

⇒ While a court of law may or may not grant interim relief during the pendency of the arbitral proceedings, the arbitral tribunal is at liberty to pass the final award which may or may not be in consonance with the findings of the court.

⇒ However, Indian courts reserve with them the power to grant anti-arbitration injunctions, when the arbitral proceedings are inequitable or an abuse of process.

⇒ While dealing with international commercial arbitrations, courts have to be even more careful since anti-arbitration injunctions might potentially impact relations between countries.[128]

⇒ The courts are also duty bound to respect the principles of comity of nations and to respect bilateral investment treaties.

Comment –

The UK legislation seems to have incorporated wide powers to be given to the courts in order to secure protection to the party that has an apprehension that assets/evidence may be disposed of. However, what is also noticeable in both the Singapore as well as the UK legislation is that the tribunal has extremely wide powers to pass such orders and parties would normally not need to approach the court for interim measures or for securing the presence of a witness. This is a little different from the situation in India where the arbitrator did not, until recently, have wider powers under Section 17, and therefore, multiple applications were filed under Section 9 to the court, which would often result in arbitrations being delayed or stayed altogether.

[127] *Ibid*
[128] Hamurabi and Solomon, *Anti-arbitration Injunctions,* August 8, 2017, accessible at-https://www.mondaq.com/india/arbitration-dispute-resolution/617480/anti-arbitration-injunction

3.2.16 Disclosure of evidence

The legal position concerning disclosure of evidence is similar in Singapore and England.

Singapore –

⇒ The arbitral tribunal has wide powers and discretion to determine the relevance and admissibility of all evidence.

⇒ The arbitrators in Singapore usually rely upon the IBA Rules on Evidence while dealing with requests for documents. The IBA Rules of Evidence is a resource by the International Bar Association for taking evidence in international arbitrations.

England –

⇒ The party is not required by law to disclose any documents in an arbitration proceeding, and thus, in most of the proceedings, disclosure can be entirely done away with.

⇒ English arbitration law grants wide discretion to the arbitral tribunal which can decide upon the extent of disclosure on a case to case basis.

India –

⇒ As per the Indian Arbitration Act, Section 27 lays down the procedure for taking the assistance of the court in taking evidence.

⇒ Discovery of documents is only through the order of a court and the court permits it only in cases where it is considered to be relevant.

⇒ Discovery of documents is not usually ordered as a matter of routine.

⇒ The documents that are referred to in pleadings and sought to be relied upon, are generally allowed and permitted to be produced.

Comment –

While the Singapore and UK arbitration law seems flexible on admissibility of evidence, the Indian legislation has a detailed procedure under Section 27 on court assistance in taking evidence. This might be required because the arbitral tribunal has not been given explicit power to decide over the admissibility and relevancy of evidence.

3.2.17 Court assistance in taking evidence

Singapore –

⇒ Courts in Singapore, upon an application by a party to the arbitration agreement, can call for a witness to testify and to produce documents before an arbitral tribunal if such witness is within the territorial limits of Singapore.

⇒ However, a key difference between the law in Singapore and India concerning court assistance in taking evidence, is that under Singapore law, the court will not compel a party to produce those documents that such a party could not have been compelled to produce in regular litigation, i.e. privileged documents.[129]

England –

⇒ Courts in England have powers to summon witnesses, direct production of documents, pass asset-freezing orders and pass orders for appointment of a court receiver.

[129] Rachel Reiser, *Applying Privilege in International Arbitration: The Case For a Uniform Rule*, Cardozo J. Conflict Resol., 653, 659 (2012)

⇒ These powers are not intended to be exercised unless the arbitral tribunal is unable to act and exercise these powers effectively. This implies that the courts powers are to encourage and support arbitration and not to supersede the authority of the arbitral tribunal and exercise powers usurping the jurisdiction of the arbitral tribunal.

India –

⇒ As per Indian law either the arbitral tribunal or a party with the prior permission of the tribunal can apply to the court having jurisdiction for assistance in taking evidence. The provisions of Section 27 govern court assistance in taking evidence.

⇒ This provision is not confined only to taking evidence but is also extended to documents that are required to be produced or property that is to be inspected.

⇒ This provision is also applicable to offshore arbitrations unless the parties have specified otherwise.

Comment –

The Indian law deviates from the UNCITRAL model law in one aspect. As per the Indian Arbitration Act, any person who fails to comply with the direction of the court in this regard and refrains from giving evidence, or is guilty of contempt of an order passed by the arbitral tribunal, is subject to the penalties and punishments as prescribed by law.

3.2.18 Digital Evidence

Singapore –

⇒ Singapore isn't yet witnessing a lot of electronic evidence but it is gaining impetus. There are no official guidelines that are available under the

Singapore arbitration regime for electronic discovery of documents and handling data and inspection.

⇒ While it is usually the parties who imbibe it in their agreements, Singapore arbitrators might on occasion, draw inference from the practice of the courts on electronic disclosure.

England –

⇒ Under English law, there are no specific and exclusive rules for electronic information in arbitration proceedings.

⇒ The rules that are applicable to courts may be adopted, and usually the best litigation practices may be considered on a case to case basis.

⇒ Typically, arbitral tribunals avoid comprehensive electronic disclosures.[130]

India –

⇒ The Indian Evidence Act prescribes detailed rules on electronic information. However, in India, the strict rules of Civil Procedure, Criminal Procedure and the Evidence Act are not applicable to arbitration proceedings.[131]

[130] David J. Howell, *Electronic Disclosure in International Arbitration,* Juris Publishing, Inc., 2008; Page 14

[131] Section 19 of the Indian Arbitration Act,1996; [19. Determination of rules of procedure.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.]

Comment –

With e-commerce and the pandemic in 2020, the world is witnessing a shift from paper to digital in almost all facets of business. In the coming years, codified rules on digital evidence might be required in order to avoid ambiguity in disputes.

3.2.19 The Concept of Confidentiality

The concept of confidentiality in arbitral proceedings is recognised widely in Singapore, India and England.

Singapore –

⇒ In all Singapore-seated arbitrations, a general obligation of confidentiality is implied by the law.

⇒ There is an implied undertaking on behalf of the parties not to use the evidence, or any other documents disclosed, other than for the arbitral proceedings for which they were obtained.

⇒ If at all the disclosure of such documents is necessary, it cannot take place without the consent of the other party or by a judicial order from the court.[132]

⇒ The courts do not grant disclosure unless it is in the interest of justice. Both the domestic and international arbitration laws in Singapore uphold confidentiality in court proceedings that are related to arbitration.

⇒ Whenever there are court proceedings being conducted that are related to parties to an arbitration, the parties can choose for the proceedings to be in camera and for the proceedings to be closed from public approach.[133]

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[132] Alastair Henderson, Tomas Furlong and Gerald Leong, Herbert Smith Freehills LLP, *Arbitration procedures and practice in Singapore: Overview;* Retrieved on April 1, 2020 at https://uk.practicallaw.thomsonreuters.com/3-381-2028? transitionType=Default&contextData=(sc. Default)&firstPage=true&bhcp=1

[133] *Ibid*

England –

⇒ The concept of confidentiality is not explicitly mentioned in the English Arbitration Act.

⇒ The courts in England imply an obligation of confidentiality on the parties to an arbitration agreement and on the tribunal to uphold the confidentiality of the arbitral proceedings and the award.

⇒ Just like in Singapore, confidentiality can be waived off with the permission of the court in England if certain conditions are met. It goes without saying that these conditions have to be in the interest of justice.

India –

⇒ Section 42A is introduced by the 2019 Amendment and provides for maintaining the confidentiality of arbitral proceedings except the award where the disclosure of the award is necessary for enforcement.

Comment –

The provision that is introduced by the amendment in the arbitration law seems to be a toothless provision. It is silent on a number of issues that might arise while considering what constitutes breach of confidentiality and to whom the duty of maintaining confidentiality applies. This is dealt with in detail in Chapter 5 of the study.

3.2.20 Rules of Privilege

Singapore –

⇒ The IAA has a specific provision on arbitral immunity under Section 25.

⇒ Tribunals in Singapore commonly refer to the IBA Rules on Evidence, that encompass rules on privilege.

England –

⇒ Under English law, a similar clause exists under Section 29(1).

⇒ The documents that the parties should ideally disclose are determined by the tribunal after applying legal professional privilege.

India –

⇒ There is no comprehensive research that addresses the obligations of various countries to recognise the immunity of an arbitrator from civil liability.

⇒ The 2019 amendment to the arbitration law in India incorporates arbitral immunity by way of the insertion of section 42B in the Act. Section 42B reads as under:

"No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."[134]

⇒ Arbitral immunity in India is a welcome step in the right direction towards making the Indian arbitration regime be in harmony with the rest of the world.

⇒ The Chartered Institute of Arbitrators, in the year 2015, drafted the London Principles[135], which was a framework for evaluating the best seats of arbitration. It assessed the safest seats for conducting arbitral proceedings. One of the principles stated grant of immunity to arbitrators from civil liability

[134] Section 42B of the amended Indian Arbitration Act, 1996; [42B. No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.]
[135]https://www.ciarb.org/resources/features/a-framework-for-evaluating-the-best-arbitral-seats/

for anything that was done or omitted to be done in good faith by the arbitrator.

⇒ This was considered to be one of the most important elements of the London Principles. Justice B.N. Srikrishna, who was the chairman of the High-Level Committee, recommended that a new provision be inserted in the Indian Arbitration Act that provided for arbitral immunity for any act or omission that was done by the arbitrator in good faith.[136]

Comment –

One of the drawbacks is that the term 'good faith' has not been defined anywhere in Indian law. Thus it is unclear as to what constitutes good faith. Even the report of the high-level committee was silent on the definition of good faith. Only little clarity that can be obtained is from the General Clauses Act, 1897 that gives a brief description of good faith.

3.2.21 Arbitral Secretaries

The use of arbitral secretaries has been gaining popularity over time. Arbitral secretaries usually involve themselves with administrative tasks like organising meetings, scheduling hearings, communication and transmission of documents. Their primary job is to aid the arbitral tribunal.

Singapore –

⇒ As regards arbitrations in Singapore, the use of arbitral secretaries is still not common practice.

⇒ A Practice Note[137] has been issued by the SIAC that governs the appointment of administrative secretaries by arbitral tribunals, which makes it mandatory

[136] Report of the High Level Committee - http://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf
[137] https://www.siac.org.sg/images/stories/articles/rules/Practice_Note_for_Tribunal_Secretaries_PN-01-15-January-2015_Final.pdf

for administrative secretaries that may be appointed for administrative assistance, to obtain the consent of all the parties to the arbitration proceedings.

England –

⇒ English law does not lay down any specific requirements or rules concerning secretaries for arbitrators.

⇒ However, it is important that the arbitral tribunal does not delegate the power to pass awards or to make other orders to a secretary in absence of the consent of the parties.

⇒ As far as the LCIA is concerned, it limits the scope of arbitral secretaries by mentioning on its website that secretaries should "confine their activities to such matters as organising papers for the tribunal, highlighting relevant legal authorities, maintaining factual chronologies, keeping the tribunal's time sheets and so forth".[138]

India –

⇒ Section 6 of the Indian Arbitration Act provides for administrative assistance. Section 6 reads as below:

"In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person."

⇒ There are no other rules or regulations concerning administrative assistance by arbitral tribunals.

[138] Kabir Singh, Shobna Chandran, Siddhartha Premkumar and Andrew Foo, *Tribunal secretaries: a tale of dependence and independence,* December 11, 2016.
Accessible at: http://arbitrationblog.kluwerarbitration.com/2016/12/11/tribunal-secretaries-a-tale-of-dependence-and-independence/

⇒ Despite this, secretaries being appointed by tribunals is a common feature in Indian arbitrations.[139]

Comment –

The law on arbitral secretaries is not clear. There is no clear provision that lays down the exact duties or role of an arbitral secretary. It might so happen that an arbitrator might delegate his or her decision making power to the arbitral secretary, which would then make the award vulnerable to challenge. Some arbitral institutions have provisions on the appointment of arbitral secretaries and their roles but there is no specific legislation governing arbitral secretaries. In fact, the Russian Federation challenged an arbitral award on the ground that an arbitral secretary had devoted more time to an arbitration than the arbitral tribunal and that the arbitral secretary was substantially involved in the making of the award.[140]

3.3 Conclusion

From an analysis of the laws of Singapore, the UK and India, it becomes clear that there are a few provisions that are distinct in nature and find place in their respective jurisdictions. After the amendment in 2015, the Indian legislature has tried to clarify and plug multiple loopholes that existed prior to the amendment. It is also seen from an analysis of the IAA that it might be a good idea to have two separate legislations for domestic and international arbitration. While the Singapore legislation is quite detailed and comprehensive, covering most issues that might arise in an international commercial arbitration, the Arbitration Act in the UK is not seemingly as comprehensive. However, because of certain judgements by the Court of Appeals in the UK, there is clarity on the interpretation of the legislation and it is not left to interpretation by lower courts or county courts. The Indian legislation is also trying to catch up but conflicting judgements by various High Courts as well as the Hon'ble Supreme Court seem to be a roadblock in India's quest to be a hub for international

[139] *Ibid*
[140] The petition filed on behalf of the Russian Federation; Accessible at: https://www.italaw.com/sites/default/files/case-documents/italaw4158_0.pdf

commercial arbitration. The absence of clarity in legislation and how it poses a challenge to making India a favourable destination for international arbitration is dealt with in the subsequent chapter. Judgements might, to some extent, clarify legal position, but they are always susceptible to be overruled or not considered in a subsequent judgement. Therefore, it is best to have a robust legislation that can encompass all issues that might arise at all stages of the arbitration. Such a legislation might also do well to minimise the role of courts as much as possible and to not leave anything to the wisdom of the judges, since the primary objective of arbitration is to uphold party autonomy and to have the disputes decided by the wisdom of the arbitral tribunal.

Of late, Singapore has caught up with other global leaders such as New York, London, Paris, China and Hong Kong when it comes to being a preferred destination for international commercial arbitrations. A considerable increase in the number of claims filed at the SIAC has been witnessed despite a huge number of those cases not being filed by local Singaporean parties.[141] It becomes apparent that it is not just Singaporeans but also foreign parties that prefer the Singaporean arbitration regime, for resolution of disputes. Minimal intervention by courts, speedy dispute resolution, cost effective mechanism, arbitration friendly laws and an aggressive and effective marketing strategy alongside the strategic location of the country in the Asian continent, have led to Singapore being one of the top choices for dispute resolution in the world. While comparing the Singaporean arbitration laws and set up with those of London, it is imperative to mention and highlight two leading London sets of barristers' chambers, Essex Court Chambers and 20 Essex Street, who are one of the first ones to acquire office space at the Maxwell Chambers. Maxwell Chambers in Singapore is a world-class seat for arbitration proceedings that was launched in the year 2010. Most of the spaces were acquired when the building was still under construction.[142]

It is undoubtedly clear that Singapore is way ahead in terms of equipping its arbitration system with the latest hardware. It comes as no surprise that Singapore

[141] Wei Ming Tan, "*The SIAC Annual Report 2019: Findings and Takeaways in the light of COVID-19*" (15 April 2020); Available at https://singaporeinternationalarbitration.com
[142] https://www.inhousecommunity.com/article/maxwell-chambers/

does not lag behind in terms of software either. Recently, the SIAC introduced a new expedited system for claims up to a sum of 5 million SGD. New rules for the appointment of emergency arbitrators before the constitution of the tribunal for deciding applications of the parties for interim relief, were also framed.[143]

Interestingly, India is the country from which maximum cases have been filed at the SIAC.[144] SIAC established its first overseas representative office in Mumbai in 2013. A second representative office in India was opened in GIFT, Gujarat, in 2017. The offices indicate SIAC's firm commitment and close relationship with India.[145]

Some might argue that this is probably because of India's close physical proximity with Singapore. However, a robust legal framework, an impartial judiciary, a world-class arbitration set up, an ease in restrictions on foreign lawyers practising in Singapore, a welcome approach on foreign law firms being set up in Singapore, hefty tax breaks for the law firms on the income from arbitration disputes and the will to make Singapore the most preferred destination for arbitration for many years to come, have a major role to play in attracting foreign parties for arbitration. This can be an opportunity for India to learn from the Singapore system of effective arbitration, and to recoup from the failure of the Indian government and the judiciary to instill confidence and faith in foreign parties that India too is a favourable arbitration destination. Even Indian parties cannot be inspired to 'Make in India' without providing them an effective framework to 'Arbitrate in India'.

[143] https://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/420-the-emergency-arbitrator-and-expedited-procedure-in-siac-a-new-direction-for-arbitration-in-asia
[144] https://www.siac.org.sg/2014-11-03-13-33-43/about-us/siac-india-representative-offices
[145] *Ibid*