Critically Examining the Structural and Practical Concerns in The Draft Arbitration and Conciliation (Amendment) Bill, 2024

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***Abstract*—The Draft Arbitration and Conciliation (Amendment) Bill 2024[1] is aims at bolstering institutional arbitration, curbing judicial arbitration and ensuring timely conclusion of arbitration proceedings. The Bill introduces significant changes, including statutory recognition of emergency arbitrators, a clearer definition of "court" based on the seat of arbitration for domestic disputes, provisions enabling online and audio-video arbitration proceedings, stricter timelines for arbitral proceedings, and greater clarity regarding interim measures and the appointment of arbitrators. Even though the Bill was created with a view of making India an arbitration hub but there are few crucial aspects in the bill which hinders its growth as a global arbitration hub. In this research paper the researcher will be studying the 2024 Bill[2] and what are the drawbacks of this bill.**

I. KEY FEATURES OF THE BILL

One of the major changes introduced by the Bill[3] is the inclusion of Section 2A[4] which provides for the definition of "Court". In case of domestic arbitration, where the parties have agreed on the seat of arbitration, or the arbitral tribunal has determined the seat under Section 20[5], the court having territorial and pecuniary jurisdiction over that seat will have exclusive jurisdiction over all arbitration-related applications. However, if no seat has been agreed upon or determined, jurisdiction will lie with the court that would have been competent to hear the dispute had it been filed as an ordinary civil suit. This ensures that an appropriate court has jurisdiction even in the absence of a designated seat of arbitration. In International commercial arbitration, the jurisdiction is always vested with the High Court. The High Court which is having jurisdiction over the seat of arbitration shall have jurisdiction over all arbitration related matters, if the seat of arbitration is agreed upon or determined in accordance with Section 20. Where no seat is specified, the jurisdiction shall be that of the High Court having jurisdiction if the dispute had been filed before a court Another important feature of this bill is that seeks to define "seat". The bill proposes to replace the term "place" with that of the term "seat"[6]. Under Section 8(4)[7] of the Draft Bill, the proposal is to introduce a specific timeline. It states that "an application to the judicial authority which decides whether the parties are to be referred for arbitration, shall be disposed of by the court within 60 days from the date".

Other important measures to reduce delays include the proposed requirement that an arbitral tribunal decide any challenge to its jurisdiction or scope of authority within 30 days. The Draft Bill also prescribes a 60-day time limit for filing an appeal against an arbitral award, with the aim of ensuring a faster and more efficient arbitral process.

"[1] Draft Arbitration and Conciliation (Amendment) Bill, 2024,
[2] Ibid.
[3] Ibid.
[4] Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 2A (India).
[5] Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 20 (India).
[6] Muskan, The Arbitration and Conciliation (Draft) Bill, 2024: A Step Towards Modernizing India's Arbitration Regime? 5 Indian J. Integrated Rsch. L. 2148 (2025).
[7] Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 8(4)."

One of the prominent features of the Draft Bill is that it seeks to strengthen institutional arbitration in India by shifting powers away from courts and towards arbitral institutions. When we look at countries which are arbitration hub like Singapore institutional arbitration is more prevalent than ad hoc arbitration. In the Justice Sri Krishna Report[8] it is emphasized that institutional arbitration should be more prevalent than ad hoc to make India as an arbitration hub. The Draft Bill aims at enhancing the role of arbitral institutions to promote institutional arbitration and minimise the intervention of courts. It defines arbitral institution as a body administering arbitration under its own rules or rules agreed upon by the parties. Section 11 empowers recognised arbitral institutions to appoint arbitrators, provide administrative assistance, appoint emergency arbitrators, fix arbitral tribunal fees in accordance with institutional rules, consider applications for extension of time in accordance with Section 29A and keep records of arbitration even after the proceedings are over. The Bill also provides for recognition by the Arbitration Council of institutions performing statutory functions that will ensure greater efficiency, credibility and consistency in arbitration proceedings.

II. CRITICAL ANALYSIS

Even though the Draft Bill has the noble purpose of making India an arbitration hub and boosting the growth of arbitration in India, it has a few drawbacks that take us a step backwards and undo the positive jurisprudence established by the judiciary vis-à-vis arbitration.

First, including patent illegality as a ground for setting aside the award even for international commercial arbitration awards. The Draft Bill seeks to remove the limitation in Section 34(2A)[9], which presently restricts the ground of patent illegality to domestic awards and extend it to India-seated International Commercial Arbitrations (ICAs). This is a complete reversal of the legislative policy as passed through the 2015 Amendment, which consciously omitted ICAs. In the ONGC Ltd[10] the court added the concept of patent illegality and an award can be set aside if it violates the Indian law(s). This gave courts wider power to interfere. In the Phulchand Exports Ltd v. OOO Patriot[11] the court applied the ONGC case[12] and held that "patent illegality" will also apply to foreign awards. This made enforcement of foreign awards too strict and hindered India as position among global arbitration hubs. In "Shri Lal Mahal Ltd. v. Progetto Grano Spa"[13], the Supreme Court corrected the earlier approach by holding that the ground of "patent illegality" cannot be used to refuse enforcement of foreign arbitral awards under Section 48, and instead reaffirmed the narrow standard laid down in "Renusagar Power Co. Ltd. v. General Electric Co"[14], limiting public policy review to only fundamental policy of Indian law, interests of India, and justice or morality, thereby ensuring that foreign awards receive greater protection from judicial interference in India.

In a series of judgements in "Associate Builders v. Delhi Development Authority[15], Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India[16] and Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd[17].", the Supreme Court has curtailed the scope of patent illegality to cases of perversity or irrationality and held that the courts cannot re-appreciate evidence or correct mere errors of law. The Draft Bill extends this ground to India-seated ICAs, thereby departing from this settled jurisprudence. The framework of the "UNCITRAL Model Law" and the "NY Convention" too do not recognise patent illegality as an independent ground for setting aside an award. The amendment, therefore, may result in increased judicial interference,

"8 High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (Ministry of Law & Justice, Gov't of India 2017

9 Arbitration and Conciliation Act, 1996, § 34(2A), No. 26, Acts of Parliament, 1996 (India)."

"10 Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

11 Phulchand Exports Ltd v. OOO Patriot, (2011) 13 S.C.C. 300 (India).

12 Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

132014) 2 S.C.C. 433 (India).

14 1994 Supp (1) SCC 644.

15 Associate Builders v. Delhi Development Authority, (2015) 3 S.C.C. 49 (India).

16 Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India, (2019) 15 S.C.C. 131 (India).

17 Patel Eng'g Ltd. v. N. E. Elec. Power Corp. Ltd., 2020 SCC OnLine SC 466 (India)

reduced attractiveness of India as a potential seat sand legal uncertainty, unless the exclusion of ICAs is maintained or the narrow standard developed in cases such as "Associate Builders, Ssangyong and Patel Engineering" is expressly codified.

Second, no explicit guidelines or rules for ODR. The Act has incorporated the definitions of "audio-video electronic means" in the definitions provided in Section 2[18] of the Act, but has failed to include the definitions of "online dispute resolution (ODR)" and "ODR for service provider/ODR Platform". A standard definition and recognition of ODR platforms is important to ensure that they are effectively integrated into the infrastructure, rules, and practices of arbitration institutions. Furthermore, there needs to be a clause added under Section 43-D (2)[19] that would lay down the responsibility on the Council to keep a list of the ODR systems and also provide guidelines for the same. It is necessary to update the procedures, privacy policies, etc., of these ODR systems with the Council[20].

Third, the Draft Bill requires every arbitral award to be properly stamped before it can be enforced. Although this is intended to avoid problems during enforcement, it may create a new opportunity for the losing party to delay the process by arguing that the award has not been correctly stamped. If the Bill does not limit the court's power to examine such objections, parties may use stamping as a technical excuse to postpone enforcement. As a result, a provision meant to speed up enforcement could instead lead to further delays. To prevent misuse of the stamping requirement, the Draft Bill should clarify that defects relating to stamping of an arbitral award are curable procedural irregularities and should not, by themselves, prevent enforcement.

Finally, although the Draft Bill recognizes emergency arbitration through Section 2(1)(e)(a) and Section 9A, it does not prescribe a comprehensive procedural framework governing the appointment of emergency arbitrators, the scope of their powers, or the enforceability of their interim orders. The absence of such procedural safeguards creates uncertainty in the operation of emergency arbitration and may result in inconsistent judicial approaches towards the recognition and enforcement of emergency arbitral orders. It is suggested there should be explicit rules for emergency arbitration. Another issue with the Bill is that it allows emergency arbitration only for institution-based arbitration and does not provide for ad-hoc, it is suggested that emergency arbitration should be available even for ad-hoc arbitration and the ACI should be the authority which appoints emergency arbitrators for ad-hoc arbitration.

III. CONCLUSION

The Draft Arbitration and Conciliation (Amendment) Bill, 2024, is an important step towards modernising the arbitration framework in India by encouraging institutional arbitration, recognising emergency arbitration, enabling online proceedings, providing clearer jurisdictional rules based on the seat of arbitration and laying down strict timelines for speedy dispute resolution. These reforms are in consonance with the objective of reducing judicial interference and making India a global arbitration hub. However, some provisions are at odds with this goal. The extension of the ground of patent illegality to India-seated ICA reverses the pro-arbitration policy adopted through the 2015 Amendment and departs from the settled jurisprudence of the Supreme Court and thus increases scope for judicial interference.

Likewise, the lack of a comprehensive statutory framework governing Online Dispute Resolution creates uncertainty about the regulation of ODR platforms and procedural safeguards. The requirement that arbitral awards be stamped may also provide a technical basis for postponing enforcement, unless courts are barred from entertaining such broad objections. Further, although the Bill recognises the institution of emergency arbitration, it does not set out detailed procedures on the appointment, powers and

18 Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 2A (India).

19Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 43-D (India)."

"20 Akash Gupta & Mahi Agrawal, Promises and Pitfalls of the Draft Arbitration and Conciliation (Amendment) Bill, 2024, SCC Online Blog (Apr. 30, 2025), https://www.scconline.com/blog/post/2025/04/30/promises-and-pitfalls-of-the-draft-arbitration-and-conciliation-amendment-bill-2024/"

enforceability of emergency arbitrators. The Bill therefore proposes certain legislative changes to bring the law at par with international standards, ensure judicial restraint and make India a credible, efficient and arbitration-friendly jurisdiction.