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Arbitration is a legally accepted method of settling disputes that ensures speedy justice, with party autonomy, to the aggrieved and reduces the innumerable, interminable court proceedings that often last for years. Consequently, the law of limitation needs to be read along with the Arbitration and Conciliation Act, 1996, to ensure that the deliberate misuse of its provisions does not occur. This Article is probing the critical concerns as to the period of limitations applicable in setting aside of Arbitral award (Domestic) in comparison to other important jurisdictions.

Arbitration is a legally binding process by which a dispute or difference between two or more parties is referred to an arbitral tribunal for the judicial determination of their legal rights and liabilities, in accordance with the existing laws. This referral may arise out of a prior agreement between the parties, from a subsequent mutual agreement (private arbitration), or by statute. The decision of the arbitral tribunal is usually referred to as an 'award'.<sup>[1]</sup> Arbitration is a consensual process to redress disputes, in a judicial manner, whereby a neutral third party, called the arbitrator, resolves the dispute.<sup>[2]</sup>

ARBITRAL AWARD

In *GC Kanunga vs State of Orissa*,<sup>[3]</sup> the Supreme Court observed that reasoned awards are regarded as those rendered by the arbitration tribunals in exercise of the judicial power of the State conferred upon them under the legislative enactment.

Section 34 of the A&C Act states that an arbitration award can be set aside by the court only. Also, the High Court of Kerala in *P. Mulji & Sons vs KP Exporting Company*[4] held that *suo motu* powers could be exercised to set

aside an award when there is patent illegality or voidness or if the award directs a party to do something prohibited by the law.

In *S. Harcharan Singh vs Union of India*[5], the Supreme Court held that if the arbitrator assumes or claims a jurisdiction not possessed inherently, the award is deemed invalid and is liable to be set aside. However, consequently, the award is avoided and the matter becomes open for decision again.[6]

In 2015, the A&C Act was amended to state that an arbitral award would not automatically stay merely because an application is made to a court to set aside the arbitral award. Additionally, the A&C Act, as amended in 2021 allows automatic stay on awards in convinced cases where the court has prima facie confirmation that the contract on which award is based was la-di-da by 'fraud' and 'corruption'.

#### LAW OF LIMITATION ON SETTING ASIDE OF ARBITRAL AWARD

Section 34(3) of the A&C Act mandates that the aggrieved party must apply for setting aside of arbitral award within a period of three months from the date of the award. The proviso to subsection (3) empowers the court to condone the period to another 30 days, provided sufficient cause for the delay is provided.

In *Union of India v. Tecco Trichy Engineers and Contractors*[7], the court held that the period of three months has to be taken from the date on which the party making the application for setting aside had received the award.

The Supreme Court in *M/s. Consolidated Engineering Enterprises vs Principal Secretary, Irrigation Department*[8] held that the Arbitration and Conciliation Act, 1996 is special legislation and that the special law prevails over general law or *generalia specialibus non derogant* (the special prevails over the general).

In *Dakshin Haryana v. M/s Navigant Technology*[9], a Division Judge Bench of Supreme Court comprising Justice Indu Malhotra and Justice Ajay Rastogi held that,

*"the period of limitation can only commence from the date on which the award was received by the concerned party in the manner prescribed by law."*

In two latest Supreme Court judgments of the year 2020, the SC in '*Varindera Constructions Ltd*'[10] and '*NV International*'[11] took the view that the period of limitation for filing an appeal under Section 37 should be the same as under Section 34 of the Arbitration and Conciliation Act, that is 120 days.

Section 43 of the Limitation Act, 1963 and Section 21 of the A&C, are to be read together for commencement of arbitration proceedings. The Supreme Court in the case of *M/s Simplex Infrastructure Ltd. v. Union of India*[12], stated: *"It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period .... for setting aside an arbitral award."*

In *Union of India vs Popular Construction Company*[13], the court described the A&C as a special law and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act, 1963.

In the recent case of *Dakshin Haryana Bijli Vitran Nigam Ltd. vs M/S Navigant Technologies Pvt. Ltd*[14], the Supreme Court held that the period of limitation for filing the petition under Section 34 of the A&C would commence from the date on which the signed copy of the award was made available to the parties.

## ARBITRATION IN FRANCE, SINGAPORE, UK, NORTHERN IRELAND AND JAPAN

France has not adopted the UNCITRAL Model Law. The Code of Civil Procedure (CCP) and the Civil Code (CC) regulate domestic and international arbitration. Articles 2059 to 2061 of the CC provide for the scope of arbitration under French Law. Under French law, the law of limitation applies in arbitration. Five years after the facts giving rise to the dispute were or should have been known by the party initiating the arbitration is the limitation period<sup>[15]</sup>.

Singapore is a country that follows the UNCITRAL model law for arbitration, and Article 34 of the model law provides for the remedy of setting aside an award.

In England and Wales or Northern Ireland, the Arbitration Act 1996 applies to both domestic and international arbitrations. The common law is used for interpretation of the Arbitration Act, 1996 and it is vital in placing additional obligations on parties and arbitrators. The United Kingdom is also a signatory to the New York Convention, 1975. But, the UK has not adopted the UNCITRAL model law.

Pursuant to the provisions of the Limitation Act 1980 and Arbitration Act 1996, there is no time limit preventing a party from seeking recognition of an arbitral award as the basis of defense, set-off or otherwise in any legal proceedings in England and Wales or Northern Ireland.<sup>[16]</sup>

Arbitration Law No. 138 of 2003 governs civil and commercial arbitration in Japan. The Arbitration Law is based on the UNCITRAL Model Law on International Commercial Arbitration 1985. The Arbitration Law does not incorporate 2006 UNCITRAL Model Law amendments.

The conditions to set aside an arbitral award are found in Chapter VII of the Arbitration Law. A party attempting to set aside an arbitral award needs to apply to a court within three months following the date on which the party had received the notice of the arbitral award.<sup>[17]</sup> The law relating to setting aside an award is the same as those provided under Article 34 of the UNCITRAL Model Law or Article 5 of the New York Convention.<sup>[18]</sup>

## CONCLUSION

Matters of limitation on arbitration and setting aside of award are key ingredients in ensuring that justice prevails along with party autonomy. In terms of the time limit for setting aside an arbitral award, India adopted the UNCITRAL Model law provision. English Law, on the other hand, stipulates no time limit in preventing a party from seeking recognition of an arbitral award as the basis of defense, set-off or otherwise in any legal proceedings. Considering the dichotomy as to the time limit in enforcement and challenging the arbitration award in India, English Law tries to harmonize the period of limitation for enforcement and set-off stand out from UNCITRAL Model Law. Thus, bearing in mind natural justice and fairness to the parties in arbitration, the English Law is superior in milieu, especially from the backdrop of the A&C Act, as amended in 2021, which additionally allow automatic stay on awards in convinced cases where the court has prima facie confirmation that the contract on which award is based was la-di-da by 'fraud' and 'corruption'.

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- <sup>[1]</sup> Halsbury's Laws of England (4th Edn., Re-issue Vol. 2 at para601).
  - <sup>[2]</sup> BERNARDO M. CREMADES, THE LEADING ARBITRATORS' GUIDE TO INTERNATIONAL ARBITRATION (2<sup>nd</sup> ed. 2008).
  - <sup>[3]</sup> G. C. Kanunga v. State of Orissa, (1995), AIR 1995 SC 1655.

- [4] P. Mulji and Sons V. K. P. Exporting Company, AIR 1976 Ker.3.
- [5] S. Harcharan Singh V. Union of India, (1990) 4 SCC 647.
- [6] State of U.P. V. Harish Chandra & Co, (1999) 1 SCC 693.
- [7] Union of India V. Tecco Trichy Engineers and Contractors, (2005) 4 SCC 239.
- [8] M/s. Consolidated Engineering Enterprises V. The Principal Secretary (Irrigation Department) & Ors., (2008) 7 SCC 169.
- [9] Civil Appeal No. 791 of 2021
- [10] Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111
- [11] N.V. International v. State of Assam, (2020) 2 SCC 109
- [12] M/s Simplex Infrastructure Ltd. v. Union of India, (2019) 2 SCC 455.
- [13] Union of India V. Popular Construction Company, AIR 2001 SC 4010.
- [14] Dakshin Haryana Bijli Vitran Nigam Ltd. V. M/S Navigant Technologies Pvt. Ltd., Civil Appeal No. 791 Of 2021.
- [15] Article 2224, CC
- [16] Arbitration Act 1996, s. 101(1); Limitation Act 1980, ss. 7, 8
- [17] Arbitration Law No. 138, Article 44.
- [18] Article 44(1) of the Arbitration Law
- [19] Setting Aside Of Arbitral Award

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