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# A Case Study of International Commercial Arbitration Practice

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***Abstract – Today, international arbitration is the most widely used alternative dispute resolution method to resolve commercial disputes between parties. International commercial arbitration is considered a consequence of party agreement as it crucially depends on the parties' agreement to resolve disputes through private adjudication by a single arbitrator, or a tribunal consisting of more than one, appointed in accordance with rules of a specific arbitration institution that the parties themselves have agreed to adopt, usually by including an arbitration clause in their contract. The practice of international arbitration has thus developed in a manner to allow parties from different linguistic, legal and cultural backgrounds to resolve their disputes with minimum interference from the courts. In arbitration, parties or their representatives, often legal counsels, present a dispute to an impartial single arbitrator or an arbitration tribunal to issue an award, which is binding for the disputing parties. The award is generally non-appealable in a court of law. In arbitration, the parties at dispute have considerable input in the selection of the arbitration tribunal, and also in the choice of processes and procedures they would like the tribunal to follow, including the choice of language, the seat of arbitration, as well as the arbitration rules according to which the resolution is negotiated.***

***Keywords: International, Commercial Arbitration, Resolution, Commercial Disputes.***

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## INTRODUCTION

International commercial arbitration, as originally proposed by the United Nations Commission on International Trade Law (UNCITRAL), and established by the United Nations General Assembly by its Resolution 2205 (XXI) of 17 December 1966 was meant to promote the harmonization and unification of international trade law. The UNCITRAL also prepared a model law on international commercial arbitration, which was adopted by the United Nations General Assembly on 21 June 1985, and was recommended for adoption as the UNCITRAL Model Law on International Commercial Arbitration. Although the Model Law was not binding, the UN recommended its adoption and incorporation into the domestic law of individual member states. The main objective of promoting international arbitration was to provide an 'alternative' to litigation to resolve commercial disputes in cross-border contexts. Arbitration is thus one of the most appropriate alternative dispute resolution mechanisms when the disputing parties fail to resolve their dispute on their own, and want a third party to resolve their dispute. Their main objective is to avoid the time and expense of litigation where they have absolutely no control over the decision-making process. As mentioned earlier, the decision of the arbitration tribunal is enforceable, and cannot be challenged in a court of law, except on procedural grounds under a very restricted set of conditions. So the main advantage of arbitration is that it is like litigation in effect, in that it is decided by a neutral arbitrator or arbitration tribunal, but unlike litigation, it is informal, expedient, economical, private and confidential in nature, and at the same time, gives sufficient voice and freedom to disputing parties in the way it is actually conducted. However, it has been recently observed that arbitration as a non-legal practice is being increasingly influenced by litigation practice, a development which seems to be contrary to the spirit of arbitration to resolve disputes outside of the courts. In order to investigate the extent to which the 'integrity' of arbitration principles is maintained in international commercial arbitration practice, a group of discourse analysts in Hong Kong designed an international research initiative, drawing on discourse-based data (narrative, documentary and interactional) to explore the motivations for such an inter-discursive process which appears to be leading to increasing 'colonization' of arbitration practice by litigative

processes and procedures. This study has built on a previous international research project which investigated 'The generic integrity of legal discourse in international commercial arbitration in multilingual and multicultural contexts' by providing discourse- and genre-based analyses of arbitration laws from a number of countries and jurisdictions, by means of pooling research from a number of teams of specialists in discourse analysis drawn from more than 12 countries. This previous research project was based on the understanding that although most of the national arbitration laws followed the spirit of the UNCITRAL Model Law, they were nonetheless formulated and applied differently in different countries, and were often constrained by variations in the languages used, the specific legal systems they were grounded in, and, in addition, the socio-political factors that operated in specific contexts. The project established a network of collaboration from a multidisciplinary group consisting of more than 30 researchers from 13 different countries, which included Brazil, The People's Republic of China, The Czech Republic, Croatia, Denmark, Finland, France, Germany, India, Italy, Japan, and Malaysia. In terms of outcomes, the project has disseminated its findings through several edited volumes together with a special issue of an international journal, in addition to two international conferences organized by the project (see references below). Relying on the degree of interest created in the overall theme, the international collaboration, and the excellent research opportunities for interdisciplinary and international teamwork provided by this initial project, the research teams decided to carry this research forward by focusing on the actuality of arbitration practices in a grounded and contextualized manner across linguistic, socio-cultural, political, and legal boundaries.

## REVIEW OF LITERATURE:

Vinod Apte (2010) valued the endeavors of the pioneers of the South Asian nations in setting up SAARC, in spite of such huge numbers of heterogenous qualities of the gathering. He additionally referenced that SAARC is the world's most youthful yet the most crowded provincial gathering, representing one-fifth of theworld populace. In his report, he has likewise expressed the goals with which the SAARC was framed.

V. Chandra Sekhara Rao's (2010) ponder focussed on India's exchange relations with the Organization of Petroleum Exporting Countries (0PEC). He broke down the patterns in OPEC's outside exchange, and concentrated India's exchange relations with 0PEC in general, and with chose critical nations. He has likewise dissected the auxiliary changes that have occurred in the ware arrangement of India's fares to and imports from OPEC.

Varshney and Rajkumar (2011) opine that political and financial participation among the SAARC part nations won't just make the South Asian Region a political and monetary power on the planet yet in addition help in bringing financial success to the part nations. It will likewise limit the odds of outfitted clashes among them. They repeated that monetary collaboration is the main methods not exclusively to convey enduring harmony and soundness to any district, yet in addition extensive scale thriving. They go to the degree of saying that financial participation is the way to political concordance and solidarity. They felt that monetary participation has enormous possibilities in this area, both in the fields of financial increases and political agreement and solidarity. This area satisfies all the financial pre-necessities for a beyond any doubt and huge achievement in monetary participation. Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka are just unique pieces of one single entire, i.e., the Indian subcontinent. Maldives is somewhat away in the Indian sea. In this manner the local affiliation offers most extreme closeness of the part countries to each other, an incredible positive angle for any territorial gathering for monetary collaboration.

S. D. Muni (2011) composes that for an assessment of SAARC'S accomplishments or something else, the two its authoritative angles and program of activity should be taken a gander at intently. Organisationally, SAARC has gained great ground. A three-level structure of yearly summits at the dimensions of Council of Ministers, standing panel of outside secretaries, and specialized advisory groups of authorities and specialists has been set down in the contract received at the Dhaka summit. This expound and sensibly very much characterized hierarchical structure contrasts positively and different associations in Asia like ASEAN which went before SAARC by just about two decades, and furthermore the GEQ which has been a contemporary of SAARC. The second part of SAARC's assessment identifies with its genuine execution in the field of propelling the expressed goals of advancing provincial participation and building shared trust and comprehension among its individuals. The obvious pointers of SAARC's advancement on solid issues appear to be extensively positive.

Hari Govind Singh (2011) investigations the principle issues of financial collaboration in south Asia. He says that the economies of the South Asian nations are essentially aggressive as opposed to corresponding. The most vital probleminvolved in the provincial exchange is the idea of size, populace, asset base, potential for financial development, military quality, and practicality of the constitution and political framework. Furthermore, nations of the district have intentionally embraced a prohibitive import

approach to advance import substitution as it is simpler to limit imports than to advance fares.

Kulkarni et al. (2011), utilizing relapse examination, find that conversion scale fluctuation influenced sends out adversely in India amid the period 1970-85. They recommended that unsteadiness of fares in Indian setting is because of movements in exogenous arrangement parameters, for example, charges, shares, expenses and endowments. They presume that the insecurity in India might be ascribed to some adhoc factors like changes in government strategies instead of the factors considered in the current universal investigations.

ASSOCHAM (2012) ponder entitled India and South Asian Association for Regional Cooperation expresses that the Government of India and the Indian business network should assume a noteworthy job in the monetary unification of the SAARC locale by animating exchange and speculation streams among part nations. India's exchange with the SAARC individuals, the examination calls attention to, isn't just insignificant yet additionally declining; India's interests in the neighboring nations are underneath the potential existing in the SAARC district. The examination has distinguished certain limitations that limit the extent of monetary participation among the SAARC nations. The examination proposes slow formation of a SAARC particular unhindered commerce zone, landing at appropriate courses of action like hazard protection, showcase sharing, provincial speculation reserves, and so forth., to decrease the dangers related with exchange and venture; creating legitimate institutional and credit offices to help evaluating and advertising procedures, making a SAARC information bank on the generation example of the locale, and distinguishing proof of tradable results of the regionDelis and Zilberfarb (1993) have contended that high unpredictability of trade rates may hypothetically apply either positive, negative, or no impacts upon exchange stream. They recommend that the effect relies on a few vital key elements including the general quality of pay and substitution impacts and the level of hazard avoidance of the broker.

Ch. Suravinda (2009) analyzed "India's Trade Relations with Major Countries of Arab League". The present research venture frets about the expost facto examination of Indo-Arab exchange relations. It stresses the requirement for co-task among India and the Arab nations. Such co-task ought to stay as a perfect case for aggregate endeavors for south-south co-activity in building up another International Economic Order (NIEO), and deserving of copying by other creating nations.

Uma Rani (2010) explores the effect of swapping scale unpredictability on exchange streams in India amid the period January 1975 to December 1988. The examination reasons that India's reciprocal imports and fares have, in the majority of the cases, been unfavorably influenced by the unpredictable idea of conversion scale.

Samanta (2011) looking at the long-run balance connection between conversion scale hazard and the volume of remote exchange the setting of the Indian economy amid the period 1953-1989, neglected to discover a measurably critical connection between the swapping scale instability and India's exchange amid 1960-86 Fanelli and Medhora (2012), uncover that the intensity of a nation depends both on the cost and non-value factors. For improving the value intensity, downgrading can demonstrate accommodating in the short run. Be that as it may, the value intensity can be prompted in enterprises by improving the dimension of efficiency. They clarify that in a situation of productive monetary markets; the money related mediators are in the situation of conferring the dimension of development by recognizing and directing assets to the most effective clients. The blemishes in the monetary market, then again, lessen the capacity of the money related division to proficiently channel assets from moneylenders to the borrowers; and that adversely impacts the efficiency development. Henceforth, larger amount of monetary advancement impacts near preferred standpoint of a nation by improving the dimension of efficiency by distinguishing business visionaries with the best odds of effectively executing creative generation forms.

Prusa and Skeath (2002) likewise called attention to that enemy of dumping activities might be retaliatory. Bown and Crowley (2003) proposed that enemy of dumping measures might be a protective reaction. They uncover that exchange diversion might be one of the pathways through which hostile to dumping obligations are duplicating.

Konings and Vandenbussche (2004) gave experimental proof that brief enemy of dumping security on a normal raises the profitability development of household import-contending firms, and that exchange strategy under specific conditions can prompt mechanical getting up to speed.

Vijaya Katti (2005) points out that for India to turn into a noteworthy player in world exchange, a widely inclusive and far reaching view should be taken for the overall advancement of the nation's remote exchange. The EXIM strategy was renamed as the new Foreign Trade Policy. The Foreign Trade Policy was worked around two noteworthy targets. These are to twofold our rate offer of worldwide stock exchange inside the following five years, and to go about as a viable instrument of monetary development by giving a push to business age. She was of the supposition

that the new exchange arrangement was of massive use to India's remote exchange.

**Public policy and states' intervention in arbitration proceedings**

The contention between two free lawful frameworks happens when a national court mediates in the discretion procedure to survey the legitimacy of an arbitral understanding, the decency of universal business intervention, of the likelihood of the infringement of a state's open strategy.

On one side, there is no genuine ground for states to meddle in a self-governing and autonomous lawful framework. The presence of a legitimate framework that administers one region keeps other lawful frameworks from interceding.

A practically equivalent to relationship can be found in universal connections and among states where the autonomy of a state's lawful framework is an entrenched rule and states dependent on the territoriality rule are precluded from meddling with others' legitimate issues. Correspondingly, the idea of the arbitral lawful framework requests that states adopt a non-impedance strategy or receive a free enterprise arrangement towards global business mediation.

On the opposite side, the globe is partitioned into states where each lawful movement happens inside a solitary state's domain and where the states would prefer not to surrender their power. Regardless of whether they perceive a private component to settle business question, the approval isn't unrestricted. States claim for themselves an authority to audit and manage intervention in light of their question of a private legitimate framework.

The business segments commonly are for the most part worried about their business exercises and benefits. In the field of business, the need is to create business and endure exceptional universal challenge. This won't occur without fixation on the requests of the market and organizations' benefits. Thus, the lawful request that rises up out of the universal mediation network, obviously, would adopt a utilitarian strategy and be reliable with the assurance of the fundamental target of the market. This offer ascend to worry over different elements of a legitimate framework, for example, assurance of open arrangement, human rights, long haul and key monetary measures, widespread good qualities, etc.

## FUNCTION OF ARBITRAL INSTITUTIONS IN THE CONTEMPORARY ARBITRATION SYSTEM

In perspective on the previous discourse on the weaknesses of the contemporary standard meanings of institutional intervention, the accompanying piece of this chapter presents the developing, open capacity of institutional discretion against the foundation of the conventional, business capacity of arbitral organizations, stemming from the arrangement of institutional assertion administrations. This book suggests that institutional discretion be treated as a half breed that at the same time accept double business and open capacities. The business work includes the elements of rivalry between assertion establishments, and to this degree it guarantees the upkeep by foundations of customary requests put on institutional mediation by business parties, comparing to the effectiveness of institutional routines. Interestingly, open capacity encapsulates the developing open job of arbitral organizations in overseeing the private assertion framework all in all, which, thusly, is stipulated by the requirement for lawfulness in discretion called for by both institutional intervention performing artists and open experts.

The double capacity investigation plans to show the advancing profile of the normal clients of specific institutional routines, together with its suggestions for the changing comprehension of productivity of institutional discretion, both between (that is, according to the assertion clients, institutional mediators, and arbitral foundations themselves) and remotely (as observed by agents of open forces). It will be demonstrated that the rise of the open capacity impacts the advancement of extra elements of rivalry between intervention focuses, which brings into inquiry the productivity of the conventional, business capacity of institutional mediation. These factors, involving the progressing connection among business and open capacities, will be of specific significance for the plate on the important enhancements in the advanced institutional obligation routines.

**Traditional Commercial Function**

As effectively saw, the business work includes an investigation of the elements of rivalry between mediation focuses. Arbitral foundations (alluded to as "assertion focuses" in this area) are accordingly introduced here as rehash showcase players that vie for their clients inside the market for institutional mediation administrations. The overwhelming worldview of the business work concerns the efficiency of mediation administrations from the point of view of business gatherings to institutional discretion procedures. The thought of proficiency with regards to institutional intervention does not completely fit in with the clarification of effectiveness by the law and financial aspects terminology. Or maybe, it mirrors the productivity of institutional benefits through the institutional reaction to the customary requests of discretion clients, for example, cost-viability of institutional administrations and expeditiousness of institutional mediation procedures. These requests are viewed as customary in light of the fact that they relate with the first objectives of arbitral establishments as

characterized in early institutional resolutions or constitutions. In this sense, the commercial capacity of institutional discretion is additionally considered as conventional to the degree that it tends to the slow development of business benefits by institutional mediation focuses.

## CHARACTERISTICS OF COMMERCIAL ARBITRATION:

Commercial arbitration is common in both international and domestic contexts. In each, it has several defining characteristics: -

First, arbitration is generally CONSENSUAL – in most cases, the parties must agree to arbitrate their differences.

Second, arbitrations are resolved by NON-GOVERNMENTAL DECISION-MAKERS – arbitrators do not act as state judges or government agents, but are private persons ordinarily selected by the parties.

Third, arbitration produces a BINDING AWARD, which is capable of enforcement through national courts – not a mediator's or conciliator's 'non-binding recommendation.'

Finally, arbitration is comparatively flexible, as contrasted to most court procedures.

(1) In many circumstances, national law permits parties to agree upon the arbitral procedures that will govern the resolution of their dispute. As a consequence, the procedural conduct of arbitrations can vary dramatically across industrial sectors.

(2) Arbitral institutions, geographic regions, and categories of disputes. In particular fields or individual cases parties may agree upon procedural rules they are tailor-made for their individual needs.

Aside from specialized fields, commercial arbitration often bears broad resemblances to commercial litigation in national courts; arbitration will frequently involve the submission of written pleadings and legal argument (often by lawyers), the presentation of documentary evidence and oral testimony, the application 'law' (in the form of judicial precedents and statutes) and the rendition of a reasoned, binding award. Nevertheless, in practice, arbitral procedures are usually less formal than litigation, particularly in issues such as pleadings and evidence. Arbitration often lacks various characteristics that are common in national court litigation, including broad discovery, summary disposition procedures, and appellate review. In smaller matters, domestic arbitrations are frequently conducted without the participation of legal advisers, before a lay-arbitrator, according to highly informal procedures.

**The Role of State Courts in relation to arbitration:**

International Arbitrations do not occur within a legal vacuum. Every Arbitration has a legal foundation or juridical "seat in one country. Arbitration must be conducted in accordance with the arbitration law of that state. However, most modern state arbitration laws, particularly those which follow the Model Law, recognize and apply two basic principles. First that the parties should be free to agree how their disputes are resolved, subject only to certain basic safeguards. Second, which the state courts should intervene in the arbitral process as little as possible. Although the state courts should not intervene in the arbitral process, such courts have an important role in supporting arbitration and are frequently called upon to do so. For example, the courts of most states with modern arbitration laws will.

(a) Recognize a valid arbitration agreement and will stay (i.e. prevent from going forward) any state court proceedings brought in contravention of that arbitration agreement (indeed, the New York Convention requires states to recognize arbitration agreements and to refer, at the request of one of the parties, a dispute to arbitration unless the court concludes that the arbitration agreement is null and void, inoperative or incapable of being performed);

(b) Assist in the appointment or removal of an arbitrator;

(c) Issue interim orders to protect the subject matter of the dispute;

(d) Assist in the enforcement of an arbitral award.

In none of these examples does the state court make a final decision on the merits of the dispute. However, courts do have powers to review or set aside the award or to refuse enforcement of the award. An unsuccessful party may challenge an award (i.e. attack its validity or effect) in the courts of the juridical seat of the arbitration or in the courts of the state where enforcement is sought. The extent to which a state court may review or set aside an award will depend on the law of the state in question. The arbitration laws of either the juridical seat of the arbitration or the state in which enforcement of an award is sought will permit the state courts to set aside an award or refuse enforcement on limited grounds.

The arbitration laws of states whose arbitration laws adopt the UNCITRAL Model Law on

arbitration will limit the grounds on which the courts of the juridical seat can set aside an award to the same grounds as are specified in the New York Convention for resisting enforcement of an award. Some states' arbitration laws give the courts of the juridical seat wider powers to review awards. Some arbitration laws even permit the unsuccessful party to challenge the award on points of law. In such cases, it is often permissible for the parties to agree to exclude the right to appeal to the courts.

## CONCLUSION:

The present study is meant to showcase some of the findings from international arbitration practitioners from law as well as from arbitration and academic scholars from discourse analysis based on their research during the last few years. Each of the papers in the volume contains a specific aspect of international commercial arbitration practice. The volume opens with the identification of some of the general issues and challenges, and gradually moves on to issues specific to certain contexts and jurisdictions. Some of the main issues addressed in the volume include ambivalence of international arbitration, witness-examination, evidence, enforcement of awards across jurisdictions and territorial boundaries, language and power in arbitration proceedings, analysis of concurring and dissenting opinions, accountability and voices in arbitration awards, cross-national comparisons of arbitration with other forms of alternative dispute resolution mechanisms, arbitrators' neutrality in arbitration process, confidentiality and publicity in arbitration in the public sphere, and the general issue of 'colonization' of arbitration by litigation, a theme which runs right through most of the papers. The final concluding chapter then identifies and offers a concluding perspective on the general issue of 'contested identities' in international commercial arbitration practice, seen primarily through the viewing glass of inter discursive exploitation of disciplinary and professional space.

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