CHAPTER VI

COMPARATIVE OUTLOOK OF THE ENFORCEMENT OF UNCITRAL MODEL LAW IN INDIA AND UK
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COMPARATIVE OUTLOOK OF THE ENFORCEMENT OF NOCITRAL MODEL LAW IN INDIA AND UK

In this chapter, the researcher would like to analyze and to compare the law relating to the Arbitration in India and the UK. The researcher would like to trace the enforcement of the UNCITRAL Model Law in the Indian Arbitration Act, 1996 and the English Arbitration Act, 1996.

The UN General Assembly in its Resolution No.40/72, dated December 11, 1985, recommended:

All States give due consideration to the Model Law on International Arbitration, in view of the desirability of uniformity of law of arbitral procedures and the specific needs of international commercial practice.

A number of countries enacted laws to give legal force to the United Nations Commission on International Trade Law, 1966 (UNCITRAL Model Law) within their jurisdictions.

The Constitution of India, Article 51 clauses (c) and (d) provide that the State shall endeavour to (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and (d) encourage settlement of international disputes by arbitration. In the spirit of Constitutional mandate and the aforementioned U.N. Resolution, The Parliament of India has enacted the Indian Arbitration and Conciliation Act, 1996 on 26th March, 1996. The Preamble of the Act expressly mentions that it is promulgated as "it is expedient to make law respect to Arbitration and Conciliation taking into account the aforesaid UNCITRAL Model Law and Rules."

Similarly, in response to the U.N. Resolution, the English Arbitration Act, 1996, The Preamble of the Act states that the Act “reflects, as far as possible, the form and provisions of the UNCITRAL Model Law on International Commercial Arbitration.”
But there are still some differences between the provisions of the Indian Act and the English Arbitration Act 1996.

The Indian Act replaced three existing statutes, namely, the Indian Arbitration Act, 1940, based on the English Arbitration Act, 1934, the Arbitration (Protocol and Convention) Act, 1937 based on the General Protocol, 1923 and the Act has come into effect w.e.f. 22nd August, 1996.

Foreign Awards (Recognition and Enforcement) Act, 1961 based on the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958 and the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. The Indian Act is based on the UNCITRAL Model Law and is broadly compatible with the "Rules of Arbitration of the International Chamber of Commerce" (the 'ICC Rules'). The Indian Act is comprehensive, is that it also contains provisions in regard to Domestic Arbitration with some modifications.

The Indian Act provides freedom to the parties subject to minimal restrictions in carrying out the Arbitration Agreement. In certain respects, it improves upon the UNCITRAL Model Law inasmuch as it takes away the role of courts except in a very limited range of matters, with a view of expediting completion of arbitration proceedings up to the stage of the final award, ruling out court interference till then. The English Act respect the decision of the parties to choose a private tribunal rather than courts to resolve their dispute. The Act strengthens the powers of arbitrators while the court's role is limited to cases, where either the arbitral process needs assistance or there has been or is likely to be a clear denial of justice. Therefore, to some extent court's interference in pending arbitral proceedings is possible.

We can divide the discussion under two heads:

I. International Commercial awards passed within the country.

II. International Commercial awards passed outside the country i.e., foreign awards.
6.1 INTERNATIONAL COMMERCIAL AWARDS PASSED WITHIN THE COUNTRY

This is dealt with in Part I of the Indian Arbitration Act, 1996.

Section 2(1) (f) of the Act defines International Commercial Arbitration as arbitrations relating to disputes arising out of legal relationships, whether contractual or not considered as commercial under the law in force in India and at least one of the parties is a national of or habitually resident in any country other than India or a body corporate incorporated in any country other than India or the government of a foreign country.

The ICC definition of International Commercial Arbitration is wider and does not link up the international character with the nationality of any individual or body or company etc. But the European Convention of 1961 and the New York Convention of 1958 as well as the English Act of 1975 link up the definition with nationality of the parties. The English Act of 1979 further allows parties who conduct arbitration in England and give up the right of appeal to courts by agreeing to such exclusion, if the arbitration is international. The word ‘commercial’ has a restrictive meaning and excludes disputes in regard to boundaries, political matters, employment and family disputes. This aspect can be better understood by referring to the jurisdiction of the English Commercial Court which deals with disputes arising out of trading and other commercial relationships. The UNCITRAL Model Law however, treats an arbitration as international on the basis of residence of party or of place of arbitration or place where obligations are to be performed.

On the other hand, the English Arbitration Act in England defines ‘Arbitration Agreement’ in general and provides a separate definition of ‘Domestic Arbitration Agreement’ as one where none of the parties is a national or normally resident in a state other than U.K. or a body corporate outside U.K.
The law applicable to International Commercial Arbitration Agreement

This has two main aspects namely, the procedural law and the substantive law applicable to the proceedings.

6.2 THE PROCEDURAL LAW (lex arbitri) AND THE "VENUE" OF ARBITRATION

The concept that an arbitration is governed by the law of the place where it is held and that is the ‘seat’ or ‘forum’ or ‘locus orbit’ of arbitration is well established both in the theory and practice of International Arbitration. This principle came to be incorporated in the Geneva Protocol of 1923 and the New York Convention of 1958. The importance of the place of arbitration became reduced because of the International Conventions to which various countries became parties.

Its legislation determines the likelihood and the extent of involvement of national courts in the conduct of the arbitration. The likelihood of enforceability of the awards (depending upon what international conventions to which the situs State is a party) and the extent and the nature of any mandatory procedural rules that one will have to adhere it in the conduct of arbitration. In one ICC case between a Finnish corporation and an Australian corporation where London was selected as the place of arbitration, the English statute of limitation was applied. The Finnish law did not have a Law of Limitation (A subsequent amendment of the English law exempted international agreements from the English Limitation Act, here neither party was English) (vide Foreign Limitation Periods Act, 1984). Some countries treat the time limits as part of procedural law while some others treat them as part of substantive law. While choosing the place of arbitration, parties must do some ‘forum shopping’ to prevent causes of action from becoming barred.

Most arbitration laws states that the arbitral procedure including the constitution of the arbitral tribunal shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place. Under section 20 of the Indian Arbitration Act, 1996, the parties are free to agree on the place of arbitration failing
which the place shall be determined by the arbitral tribunal, having regard to the
circumstances of the case including the convenience of parties.

Section(3) of the English Arbitration Act deals with the ‘seat’ and is
substantially the same. The UNCITRAL Model Law speaks about the application of
the provisions of law of the place of arbitration. It is possible that an arbitration
procedure may be agreed upon which could be different from the one of the seat of
arbitration. Again, ‘the fact that the meetings are held in different countries is not
relevant, if parties are otherwise agreed by the law or the seat of arbitration. These
principles are part of English law and also of the UNCITRAL Model Law.

Parties should make sure that the law so chosen permits the particular commer-
cial dispute to be resolved by arbitration for their countries which exclude arbitration
in so far as copyright, patent law, anti-trust matters etc., are concerned. They mandate
adjudication on these subjects through the regular national courts only. This question
arises in the context of the validity of the arbitration clause. The U.S. Supreme Court
has however decided in the Mitsubishi case [473 U.S. 614 (1985)] in a liberal fashion,
that a Sherman Act anti-trust claim may be subjected to arbitration when the dispute
arises in an international context.

It is also necessary to see that a particular country is chosen as the seat of
arbitration, so that the award passed in that country is by treaty or otherwise
enforceable in the country where it is to be executed (such as the 1958 New York
Convention). It is also necessary to choose a country where the award is reviewable by
the courts, either liberally or rigidly as the parties may desire.

The Section 19 of the Indian Arbitration Act, states that parties are not governed
by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and that the
parties are free to agree on the procedure to be followed by the arbitral tribunal in
conducting the proceedings, failing which the tribunal could conduct proceedings in the
manner it may be considered appropriate. Section 34 (f) of the English Arbitration Act
permits the parties to agree on which strict rules of evidence are to apply or not.
6.3 THE LAW APPLICABLE TO SUBSTANTIVE ISSUES

Every contract is supported by a system of law known alternatively as ‘the governing law’, ‘applicable law’ or ‘the proper law’ of the contract. These various terms indicate the particular system of law which governs the interpretation and validity of the contract, the rights and obligations of the parties, the mode of performance and consequences of breach of contract. Here, the parties can choose the law which will be applied. This principle is found in the Rome Convention of the European Community, 1980. The international conventions and UNCITRAL Model Rules on International Commercial Arbitration bear witness to this freedom of the parties to choose for themselves the law applicable to their contract. The UNCITRAL Rules provide that the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute (Art. 33.1). The ICC Rules (Art. 13.3) are to similar effect. Usually, parties refer to the ‘national law’ of a country as applicable in this behalf.

Section 28 (1) (b) of the Indian Arbitration Act, 1996 provides that (i) where the place of arbitration is situated in India. In the case of international arbitrations, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute and (ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed as directly referring to the substantive law of that country and not to its conflict of laws rules and failing any designation of the law under sub-clause (ii) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate, given in all the circumstances surrounding the dispute. Section 29(2) says that the tribunal shall decide *ex aequo et bono* or *as amiable compositeur* only if the parties have expressly authorised it to do so. Sub-clause (3) of Section 28 says that in all cases, the tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

In UK the Section 46(1) of the English Arbitration Act states that the tribunal shall decide (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute or (b) if the parties so agree in accordance with such other
considerations as are agreed by them or determined by the tribunal. Sub-clause (2) states that the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws/rules. Sub-clause (3) declares that, if or to the extent that there is no such choice or agreement the tribunal shall apply the law determined by the conflict of laws/rules which it considers applicable. These provisions help the parties in selecting an arbitrator who has knowledge of the appropriate substantive law of the country referred to by the parties in the agreement. In some cases, though rare the parties agree to apply international law of contracts, customs or usages or *lex mercatoria*. This does not however, offend public policy.

A provision for amiable composition permits the tribunal within certain limits to disregard strict legal or contractual requirements. This is understood better in France and the Civil Law countries than in England. English law does not recognise a total freedom which permits the arbitrator to apply his own sense of abstract justice or equity. The UNCITRAL Model Law (Art.33(2)) permits parties to agree to allow the arbitrator to act as amiable compositor. Certain ICC Rules also permit such a course.

### 6.4 APPOINTMENT OF ARBITRATORS AND CONNECTED MATTERS

Sections 17 and 18 of the English Act which lay down the procedure for appointment of arbitrators appear to be rather complicated and might result in delaying the proceedings. The provisions of the UNCITRAL model and of the Indian Arbitration Act, 1996, are comparatively simpler and would seem to be more effective. Further, the Model Law and the Indian law have no provision for an umpire while the English Arbitration Act retains such a provision for umpire and the umpire is required to attend the various sittings along with the arbitrators.

Under the Indian Law, the Chief Justices of the High Courts (in the case of Domestic Arbitration) and the Chief Justice of the Supreme Court of India (in the case of International Arbitration) or their nominees can be approached to appoint the arbitrators, if parties cannot decide on who should arbitrate. The parties can however, agree on the number and procedure for appointment of arbitrators. Section 11 (2) also
permits Institutional Arbitration. Following the UNCITRAL Model, the parties are permitted to challenge an appointed arbitrator on specific grounds e.g., want of qualification, if his independence and impartiality become suspect etc., but the procedure does not permit stay of arbitration proceedings till award is passed. Arbitrators can decide their jurisdiction and also consider questions relating to the existence and validity of the arbitration agreement. Parties can agree that the arbitrator is to follow a procedure followed by established arbitral bodies.

The Indian Arbitration Act, 1996, contains detailed provisions relating to the date of commencement of arbitration proceedings, appointment of experts, hearing both sides, making of award and termination of proceedings. The arbitral tribunal can also encourage settlement through mediation, conciliation or other procedure and such a settlement can result in an award.

There are equally detailed provisions in the English Arbitration Act regarding the basic procedure to be adopted by the arbitral tribunal.

**Interim measures**

Section 9 of the Indian Arbitration Act permits interim orders to be passed by the court which are appealable under section 37(1)(a). Section 17 enables the arbitral tribunal to direct a party to take interim measures. Section 38 of the English Arbitration Act gives similar powers to the tribunal to take interim measures and these could be enforced by the court under Section 42.

**6.5 INTERVENTION BY COURT**

Under the UNCITRAL Model Law and the Indian Arbitration Act, opportunities for intervention by courts are minimal until the making of the award or the decision of the arbitral tribunal regarding the challenge to the procedure and jurisdiction of the tribunal. Section 13(3) of the Indian Arbitration Act provides that unless the arbitrator whose authority is challenged under section 13(2) withdraws from his office or the other party agrees to the challenge, the tribunal shall decide on the challenge. If the challenge is not successful, the tribunal shall continue with the
proceedings and after the award is made, the party challenging the arbitrator may apply to set aside the consequential award. Section 16 permits the tribunal to rule on its own jurisdiction. Under section 16(2) such a plea must be raised not later than the submission of the statement of defence and under section 16(3) a plea that the tribunal exceeded the scope of its authority is to be raised as soon as the matter (in regard to which the plea is raised) arises. Under section 16(5) the plea is to be decided by the tribunal and if the plea is rejected, the tribunal is required to proceed to make the award and a party aggrieved by such award can sue to set aside the award. In fact, section 4 contains a general provision of waiver of right to object to the award, if a party has allowed the proceedings to go forward without raising objections at the initial stages.

But the English Arbitration Act contains several provisions (Sections 2 (4), 9 to 13, 17 to 19, 21(5), 21 (6), 24, 25, 28, 31(3), 32, 42 to 45, etc.), which permit intervention by the court and stay of proceedings before the award is passed. In this area, the Indian law is an improvement upon even the UNCITRAL Model Law.

6.6 LIMITATION ACTS

Section 43 of the Indian Arbitration Act makes the Indian Limitation Act, 1963 applicable to domestic as well as International Commercial Arbitration. Section 13 of the English Arbitration Act provides that the Limitation Act i.e., the Limitation Act, 1980 in England and Wales and the Foreign Limitation Periods Act, 1985 (already referred to) shall apply to arbitral proceedings as they apply to legal proceedings.

6.7 TIME LIMITS FOR PASSING AWARD

The Indian Ordinance does not provide specific time limits (as in fact, such specifications only led to extension of time under the 1940 Act) but permits removal of the arbitrator if he is guilty of undue delay (section 14). Section 24(d) of the English Arbitration Act provides for revocation of appointment, if the arbitrator does not act with reasonable dispatch. Section 50 gives power to extend time, if limited by the agreement. In some other countries also time limits are fixed with power vested in courts to extend them. The ICC rules fix six months with power to extend.
6.8 AWARD TO CONTAIN REASONS AND BE A DECREE

This is a major change made by the 1996 Act. The law has now brought on par with the English as well as the UNCITRAL Model Law. Of course, parties are permitted to agree that no reasons need be given. Under the 1996 Act, the award itself will have the status of a decree subject to being appealed against, but on very narrow grounds. The need to file the award in court and have it converted into a decree through the courts has been done away to avoid delay.

The English Arbitration Act permits the award to be executed with the leave of court unless challenged in appeal. In USA, arbitration laws provide for judgment being entered upon an award.

6.9 GRANT OF INTEREST

Section 31(7) of the Indian Arbitration Act sets judicial conflict at rest and permits payment of interest from the date of cause of action to the date of award and also from the date of award to the date of payment. Clause 49 of the English Arbitration Act contains a similar provision unless the agreement itself restricts the power. In Renusagar & Co. v. G.E.C. Ltd. grant of compound interest was held not to offend 'public policy'.

6.10 INTERIM AWARD

Section 31(6) of the Indian Arbitration Act permits an interim award. The English Arbitration Act contains in Section 39, a procedure for giving provisional awards.

6.11 GROUNDS FOR SETTING ASIDE AWARD

The UNCITRAL Model Law contains the grounds for setting aside the award. Section 34 of the Indian Arbitration Act is almost verbatim and the same applies to

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1 AIR 1994 SC 860
2 Refer Article 34 of the Model Law
awards passed under domestic law as well as to awards passed in India in relation to any ‘International Commercial Contract’.

It corresponds to Article 5 of the New York Convention, 1958. It permits an appeal, if a party to the agreement was under incapacity or the agreement was not valid under the law to which the parties have subjected it or under the law for the time being in force or there was lack of proper notice of appointment of arbitrator or of proceedings or the party was otherwise unable to present his case or the award dealt with a dispute not contemplated by or not falling within the terms of the submission or it contained matters beyond the scope of the submission or the composition of the tribunal or the procedure was not in accordance with the agreement of the parties unless such agreement was in conflict with a provision of Part I of the Act from which the parties could not derogate or such agreement was not in accordance with that part. In addition the court can set aside the award, if the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or if the award is in conflict with the public policy of India.

The Indian Arbitration Act contains a special provision that an award is to be deemed contrary to ‘public policy’ if it is induced or affected by fraud or corruption or was in violation of section 75 (confidentiality) or section 81 (admissibility of evidence in other proceedings). The words public policy of India in Section 34 are applicable for setting aside awards passed in India (in relation to International Commercial Contracts). The words ‘public policy of India’ are also used (section 48(2) (b)) in relation to execution and recognition of foreign awards subject to the New York Convention. In respect of the foreign awards which are recognised or executed in India under the Geneva Convention they should not be contrary to ‘public policy’ or the law of India. These latter words also occurred in the 1961 Indian Act and were interpreted by the Supreme Court in Renusagar& Co. v. G.E.C.3

In England before the 1979 Act, an appeal was available for an ‘error of fact or law on its face’ and there was the special case procedure. But under the English Act of Law, the provision for appeal was wider and was allowed on a question of law under

3 Supra note 2
the English Arbitration Act. The appeal under Section 67 is available in regard to substantive jurisdictional errors. Under Section 68 if any of the procedural irregularities enumerated exist and under Section 69 on questions of law. Appeals can be brought by consent of all parties or with the leave of court.

The provisions of the English Arbitration Act are wider than the existing provisions under the 1979, where law are far more liberal. Under the 1979 Act as also under the English Arbitration Act, if the award is not to contain reasons, there is no appeal. English courts have held that if ICC Rules apply, providing that arbitral award shall be final, that excludes appeal (vide Arab African Energy Corpn. Ltd., Vs Olieprodukten Nederland B.V., 4 case), and parties could also agree to exclude appear (Marine Contractor 's Inc. Vs Shell Petroleum Development Co. of Nigeria Ltd., 5 case).

In India, section 28 of the Contract Act does not permit parties to agree that an appeal should not lie. French courts have the power to review evidence also. (Arab Republic of Egypt Vs Southern Pacific Properties) (Pyramid's case). 6

6.12 ENFORCEMENT OF AN AWARD MADE IN INDIA IN FAVOUR OF A FOREIGN COMPANY

In ONGC v. Western Co. of N. America 7 it was held that an award made in India under the 1940 Act but subject to the New York Convention, 1958 could be enforced in India only if it became 'binding' under clause V(i)(e) of the New York Convention, 1958. It was held that it was not executable in India as it was not made a rule of court in India, and the respondent was restrained from making it a decree in USA. Now that an award made in India is straight away executable as a decree, this obstacle stands removed though even now, section 48(l)(e) of the Indian Arbitration Act requires the award to become 'binding' before being enforced.

4 (1983) 2LL 419
5 (1984) 2LL 77
7 AIR 1987 SC 674
Umpire

The Model Law and Indian law do not contain provisions for an umpire but the English law of 1979 and the English Arbitration Act retain the provision. The Umpire under the English Arbitration Act is now required to attend the sittings along with the arbitrators.

6.13 INTERNATIONAL COMMERCIAL AWARDS PASSED OUTSIDE THE COUNTRY i.e., FOREIGN AWARDS

India continues to be a party to three important International Conventions, namely the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958, the Geneva Protocol on Arbitration Clauses, 1923, and the Geneva Conventions on the Execution of Foreign Arbitral Awards, 1927. These are set out in the three schedules of the Act. Here, the existing law is continued but certain irritants in the existing law have been removed.

The Indian Arbitration Act, in Part II, deals with the enforcement of foreign awards. The foreign award must relate to a dispute considered as `commercial on or after 11th October, 1966 in respect of awards passed under the New York Convention, 1958 and on or after 28th July, 1924 in respect of awards under the Geneva Protocol, 1923. The Indian Arbitration Act 1996 replaces the Arbitration (Protocol and Convention) Act, 1961. But the saving provision (section 9B) in the earlier statutes hitherto in force created an impediment that the enforcement provisions were not applicable to any foreign award made on an arbitration agreement covered by the law of India. The provision in (section 9B), as interpreted in National Thermal Power Corporation Vs The Singer ⁸ led to serious criticism because the foreign award could not be enforced in India if the parties had agreed that the substantive law governing the contract was the Indian law. Now, under the Ordinance, this provision has been deleted. Henceforth, the award, if given outside India, would, regardless of whether the substantive law of India was to be applied or not, be enforced in India as a foreign award. This is a welcome change in the law.

⁸ AIR 1993 SC 998
Though in 1978, a single judge of the Bombay High Court, while construing the 1961 Act, required that the statute should specifically say what is ‘commercial’, a Division Bench of that court reversed the judgment and this enabled execution of several foreign awards after the pronouncement of the decision.

Section 57(1) refers to the conditions for enforcement and is based on Article 36 of the UNCITRAL Model Law with slight modifications. A foreign award can be enforced, if the award has been made pursuant to a submission to arbitration which is valid under the law applicable thereto, if the subject matter is capable of settlement by arbitration under the law of India, if the award is made by a tribunal provided for in the submission or constituted in the manner agreed and in conformity with the law governing the arbitration procedure and the award has become final in the country in which it is made and its enforcement is not contrary to the public policy of India.

The Explanation states that if the award is induced or affected by fraud or corruption, it shall be deemed to be in conflict with public policy of India. Section 3 of the Foreign Awards (Recognition and Enforcement) Act, 1937 mandated a compulsory reference to arbitration, if there was submission pursuant to agreement. In Tractoroexport Vs Tarapore & Co\(^9\) the Supreme Court held that stay of suit cannot be granted unless there was apart from an agreement a submission (or reference to arbitrators) also. This anomaly was removed by the Amending Act, 47/1973. Under the Indian Arbitration Act section 45 which imposes a mandatory duty on judicial authority to refer to arbitration, an agreement is sufficient and no reference is necessary.

Under the Foreign Awards Act 1961, it was provided that the award should not be contrary to public policy. Under the New York Convention, the words used were public policy of that country. In Renusagar Power Co. Ltd. v. GEC\(^10\) the words public policy under the 1961 Act were construed as not covering public policy of USA but as referable to the public policy of India and that public policy did not mean international public policy. The words were to be construed narrowly and would not mean mere contravention of law. Public policy meant the public policy in private international law.

\(^9\) AIR 1971 SC 1  
\(^10\) Supra note 2
i.e. if such enforcement is contrary to (i) fundamental policy of Indian law, or (ii) interests of India, or (iii) justice or morality. In the Indian Arbitration Act, 1996 the words used in section 48, so far as New York Convention Awards are concerned, are public policy of India and we do not have the words or the law of India. But in Section 57 so far as Geneva Convention Awards are concerned, the words used are public policy or the law of India. Section 57(2) states that the enforcement shall be refused if the award is annulled in the country in which it is made if no notice was given or because of incapacity of parties or if the differences did not fall within terms of submission or it contains matters beyond the scope of the submission.

The Indian Council of Arbitration a national arbitral institution was established in 1965 to get over the problems created by Michael Golodetz Vs. Serajuddin & Co.\textsuperscript{11} In that case, stay of arbitration proceedings in USA was granted on the ground that the witnesses in India would find it difficult to go abroad and the balance of convenience was in favour of stay of arbitration proceedings abroad and the case was one where the Indian law was applicable. The dispute arose on 15th Jan 1958. This difficulty does not arise now because, later on, India had become a party to the New York Convention, 1958.

In relation to awards relating to International Commercial matters passed in England under Section 66, the award cannot be enforced if it is defective in form or in substance, if it is incapable of enforcement or if its enforcement would be contrary to public policy. Sections 67 and 68 of the English Arbitration Act provide grounds for setting aside the award. So far as foreign awards which are to be recognized and executed in England, the English Arbitration Act in Section 102, restates the law on the enforcement of Geneva Convention Awards while Sections 103 to 107 deal with the recognition and enforcement of the New York Convention Awards. These provisions, and in particular Section 106 reflect the UNCITRAL Model Law and are akin to the provisions of the Indian Arbitration Act, 1996. Section 106(3) refers to public policy.

\textsuperscript{11} AIR 1963 SC 1044
Non-Convention Awards

The Hon’ble Supreme Court in Badat & Co. v. East India Trading Co \(^{12}\) held that non-convention foreign awards are not enforceable in this country. This position appears to continue even now.

From the aforesaid discussion, it is clear that the Indian law in regard to international commercial arbitration has made a great leap forward by following the UNCITRAL Model. The existing law has been modified removing several bottle necks and the Act will certainly bring about more confidence in the international commercial community that the Indian law of arbitration is comparable to, if not better than the laws of arbitration of several other countries. The English Arbitration Act, 1996 is also moving in the same direction. As the Indian law is at the stage, it will be useful to draw comparisons between the Indian Arbitration Act 1996 and the English Arbitration Act 1996, their respective provisions and also draw comparisons with the UNCITRAL Model Law as adopted in other countries so as to facilitate appropriate amendments which would further speedy and efficacious arbitral procedures.


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<td>1.</td>
<td>This act replaces three existing act namely, The Geniva Protocol and the Convention Act, 1937, Arbitration Act, 1940 and Recognition and the Enforcement of Foreign Awards Act, 1961.</td>
<td>This act has not replaced any such acts, on the other hand it continues the application of existing act with respect to domestic Arbitration with certain Amendments, as amended in 1975, 1979 and 1996.</td>
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<td>2.</td>
<td>The System of concurrent control is not applicable.</td>
<td>The System of concurrent control is applicable.</td>
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<td>Doctrine of Iverish Scottish Principles is not applicable.</td>
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\(^{12}\) AIR 1964 SC 538
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<td>4.</td>
<td>In the post BALCO Era, the Indian Courts cannot provide Interim relief to the parties, in the cases involving the International Arbitration, provided if the juridical seat of the Arbitration located outside the territories of India.</td>
<td>The U.K., the Court can provide Interim relief to the parties, in the cases involving the International Arbitration even if the seat is located outside the territories of UK.</td>
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<td>5.</td>
<td>Doctrine of Preemptory orders is not applicable.</td>
<td>Doctrine of Preemptory orders is applicable.</td>
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<td>6.</td>
<td>Mandatory Requirements and non Mandatory Requirements is not specified and distinguished.</td>
<td>Mandatory Requirements and non Mandatory Requirements is clearly specified and distinguished.</td>
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<td>7.</td>
<td>Mandatory Requirements and non Mandatory Requirements may not have any adverse consequences.</td>
<td>Non compliance of the Mandatory Requirements will lead to serious consequences.</td>
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<td>8.</td>
<td>The Court assistance is narrower in the case of International Arbitration conducted outside the territories of India.</td>
<td>The Court assistance is wider in the case of International Arbitration conducted outside the territories of UK.</td>
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<td>9.</td>
<td>There is no separate definition for Domestic Arbitration Agreement and International Arbitration Agreement in India.</td>
<td>There is separate definition for Domestic Arbitration Agreement and International Arbitration Agreement in UK.</td>
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<td>10.</td>
<td>The concept of statutory / Mandatory Arbitration and Non-statutory Arbitration is not recognized in India.</td>
<td>It is clearly defined, recognized and enforced in U.K.</td>
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<td>11.</td>
<td>There is no umpire System in India.</td>
<td>The Umpire system is followed in U.K.</td>
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<td>12.</td>
<td>In India, substantial error in Law or Apparent error on the face of the record is not recognized as a ground for the challenge in the case of Domestic Award / Domestic Arbitration.</td>
<td>On the other hand in UK , the same has been recognized as a good ground for the challenge in the case of Domestic Awards / Domestic Arbitration. Such a ground has been specifically incorporated and made available only for the Domestic Arbitration.</td>
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<td>13.</td>
<td>In India, the Court exercises Lesser Control over the cases involving Domestic Arbitration.</td>
<td>In UK, the Court exercises more control over the cases involving Domestic Arbitration.</td>
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