THE ROLE OF THE NEW YORK CONVENTION IN FOSTERING ARBITRATION DEVELOPMENT IN INDIA

Kanak Shakya, Amity University, Lucknow

ABSTRACT

The Pre-New York Convention regime for the resolution of international trade disputes, based nearly absolutely on international litigation, was once not good and unsatisfactory. Party autonomy was once normally absent, and the opportunity of enforcement of decisions on the merits used to be structured on the private international regulation regulations of distinctive Criminal systems, which had been challenging to interpret and get admission to overseas industrial users. Indeed, the resolution of worldwide disputes used to be a daunting process. That state of affairs dramatically changed in 1958 with the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which has been viewed as the cornerstone of the regulation of international arbitration. The New York Convention presented a simple, comprehensive and fine way of resolving worldwide disputes with the aid of arbitration. Yet, 60 years after its adoption, some proposals of reform or adaptation to modern-day approaches and current traits are already on the table. India was once one of the founding signatories to the New York Convention, 1958, formally regarded as the Convention on Recognition & Enforcement of Foreign Arbitral Awards, 1958. The commercial reservation intended that the New York Convention insofar as relevant to India used to be solely in recognize of worldwide industrial arbitration and now not international investment arbitration.

Keywords: New York Convention, International Arbitration, Award, UNCITRAL, ADR, Commercial Law

INTRODUCTION

The New York convention additionally recognized as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards used to be first adopted by means of the United Nations diplomatic conference on 10 June 1958 and was once enforced on 7 June 1959. It is regularly regarded as one of the most vital treaties in the discipline of international trade law and has an outstanding significance[1]. It is frequently described as a basis stone in the area of international arbitration. It requires courts of the contracting states to supply impact to an settlement to arbitrate when seized of an motion in a be counted covered by means of an arbitration settlement and additionally to apprehend and put in force awards made in different states, issue to unique restricted exceptions. At present, the convention is signed with the aid of 156 nation parties[2]. India consolidated its regulation on arbitration in 1996 by way of enacting the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), which is based totally on the UNCITRAL Model Law on International Commercial Arbitration, 1985 ("Model Law"). The Arbitration Act has thereafter been amended on a couple of occasions, in 2015, 2019, and 2021 to streamline the arbitration practice, guard the self sufficient nature of arbitration proceedings, and align the regulation with the exceptional worldwide practices.

Part I of the Arbitration Act offers with domestic and international commercial arbitrations seated in India. Part II offers with overseas seated arbitrations and enforces the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("New York Convention"), as well as the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927[3]. Part III and Part IV of the Arbitration Act deal with conciliation and positive supplementary provisions, respectively. The grounds for refusal to put in force an arbitral award underneath the UNCITRAL Model Law parallel these enacted in the New York Convention. Article 36 of the UNCITRAL Model Law is in reality equal to Article V of the Convention and topics the enforcement to the exceptions grounded in the Convention. Three vital aspects of the framework worried have to be identified: (1) exhaustive listing of exceptions to enforcement with the exception of overview of the deserves of the award; (2) discretion to implement an award however the grounds to refuse enforcement; and (3) preclusion of parties' objections.

[1] India – NEW YORK CONVENTION GUIDE 1958, https://newyorkconvention1958.org/index.php?lvl=notice_display&id=1728
[2] Kumar A., Upadhyay R., Jegadeesh A., Chheda Y,(2024) 'Interpretation and Application of the New York Convention in India' in: George A. Bermann.
[3] Overview of New York Arbitration Convention, (2024)https://blog.ipleaders.in/new-york-convention/

RESEARCH METHODOLOGY

This study's main goal is to conduct a thorough analysis of the New York Convention's contribution to India's growth in arbitration. The study's objectives are to assess the Convention's effects on India's infrastructure, procedures, and arbitration practices as well as its effect on the nation's standing as a center for international arbitration. Gather information from primary and secondary sources that is pertinent to the study topic. Interviews with arbitrators, lawyers, government officials, and representatives of Indian arbitral institutions may be used as primary data gathering techniques. Legal papers, arbitration statistics, institutional reports, and archive materials pertaining to arbitration in India are examples of secondary data sources. Apply both qualitative and quantitative analysis techniques to the gathered data. In qualitative analysis, patterns, themes, and insights on the contribution of the New York Convention to the growth of arbitration in India are found through thematic coding of interview transcripts and content analysis of court records and reports. In order to evaluate trends and patterns over time, quantitative analysis may include statistical analysis of enforcement statistics, institutional indicators, and arbitration case data.

THE ROLE OF THE NEW YORK CONVENTION IN PROMOTING INDIA AS AN INTERNATIONAL ARBITRATION HUB

Studies may find that the trust in the Indian arbitration system has increased due to its adherence to the New York Convention. International companies and investors have been reassured about the dependability and enforceability of arbitration agreements in India by the recognition and execution of foreign arbitral rulings in India, as required by the Convention.

The primary objective of the Convention is to ensure that courts asked to implement foreign and non-domestic arbitral rulings are treated equally. Contracting states are required to ensure that foreign awards are recognized and usually successfully enforced in their jurisdiction in the same manner as domestic awards. To mandate that Contracting States' courts respect lawful arbitration agreements and continue to hear disputes in light of the items that the parties involved have decided must be resolved through arbitration. By ratifying the Convention, a nation agrees that its courts will recognize and uphold the parties' agreements to arbitrate disputes, as well as comprehend and apply any resulting arbitral ruling in its jurisdiction, subject to very narrow reasons for rejection.

Studies can show that the New York Convention has led to an increase in the number of international arbitration cases being heard in India. An growth in the number of cases handled by Indian arbitral institutions can be attributed to the Convention's provisions allowing arbitral rulings to be enforced throughout signatory nations, which have rendered India a desirable location for international arbitration proceedings. It may also demonstrate how India's ratification of the New York Convention has led to changes in its national arbitration legislation. The Arbitration and Conciliation Act has been amended with the intention of aligning Indian law with worldwide arbitration standards. This has improved the legal atmosphere for arbitration procedures and enhanced India's standing as an arbitration-friendly country.

UPON SIGNING THE NEW YORK CONVENTION, INDIA ADOPTED THE FOLLOWING LIMITATIONS

India will follow the New York Convention only to comprehend and put in force awards made in the territory of every other contracting State; and India will observe the New York Convention solely to variations arising out of criminal relationships, whether or not contractual or not, that are viewed commercial under the national law[4]. The Arbitration Act is a entire code and governs the procedural rights of events as nicely as the behavior of arbitration proceedings. Over the years, India has skilled an fascinating trajectory with appreciate to the improvement of its arbitration jurisprudence. Traditionally, Indian courts had been infamous in the global arbitration community for adopting ambivalent requirements to intervene with arbitration complaints and arbitral awards, in a manner inconsistent with internationally usual standards. However, in current times, there has been a exchange in the legislative and judicial intent in India to undertake a pro-arbitration approach. This is reflected each in the Arbitration Act, which has been amended on a couple of activities in the previous decade, as additionally in quite a number judgments suggested through the Hon'ble Supreme Court of India ("Supreme Court"), as well as High Courts which have adopted a hands-off method in arbitration court cases and arbitration awards.

POSITIVE ASPECTS OF THE NEW YORK CONVENTION

The 1958 New York Convention is, undoubtedly, the most profitable instrument in the realm

[4] Objectives, Benefits Of The New York Convention in India https://byjusexamprep.com/current-affairs/new-york-convention , (April 1st , 2024)

of international exchange law[5]. That success can be illustrated now not solely with the number of parties which have adopted it —to date, 159 impartial States— however additionally with the exponential enlarge of world exchange after its adoption. In its easiest terms, the Convention integrated two radical standards which, at that time, revolutionized the resolution of disputes with global elements, namely, enforcement of arbitration agreements and enforcement of overseas arbitral awards. These principles, encapsulated respectively in articles II and V, are the important contributions of the Convention to the resolution of transnational disputes. Whilst the former provision upholds the precept of party autonomy by using requiring country wide courts to refer the events to arbitration, the latter incorporates a device of awareness of foreign arbitral awards in States sure via the Convention situation to restricted exceptions.

Furthermore, the Convention establishes a minimal criminal framework, however it approves national courts to put in force arbitral awards underneath greater requirements than these covered in its provisions[6]. In fact, article VII gives flexibility to States which desire to go similarly without compromising the minimal arbitration framework set forth in the Convention. It has authorized jurisdictions such as France to innovate and undertake arbitration-friendly solutions and traits to modern challenges. Accordingly, as it has been demonstrated, the New York Convention affords essential advantages which are now essential in the adjudication and enforcement of transnational disputes, so except the Convention provides unsurmountable issues or vital disadvantages, one may ask: is there clearly a want to revise the New York Convention?

OMISSIONS OF THE NEW YORK CONVENTION

The New York Convention is universally considered as one of the most profitable treaties, however, it would be unwise to negate that some components should be difficult for the improvement[7]. In this context, a team of students led through Van den Berg, have claimed that the stated instrument is too short, incomplete or unsure for present day arbitration and, consequently, it is necessary to tackle its reform. To start with, the first argument can be without difficulty rejected considering extra articles or massive length do now not always make sure a

[5] UNITED NATION CONFERENCE ON TRADE AND DEVELOPMENT, https://unctad.org.
[6] New York Convention, https://www.drishtiias.com/daily-news-analysis/new-york-convention.
[7] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, https://en.m.wikipedia.org/wiki/Convention_on_the_Recognition_and_Enforcement_of_Foreign_Arbitral_Awards.

higher criminal instrument; pretty the contrary, brief and clear texts are typically desired in global exercise over lengthy contraptions considering the fact that they are greater on hand to practitioners and customers of unique criminal structures and traditions. Undoubtedly, the Convention is a brief instrument composed of solely sixteen articles. Nevertheless, claims that it must be amended primarily based on the wide variety of provisions or words are simplistic and illogical; therefore, these proposals ought to be rejected. Secondly, it is every now and then argued that the Convention is incomplete[8]. For instance, in article II, when setting up the formal necessities of an arbitration agreement, the Convention does no longer set out what the phrases "in writing" mean. In these cases, the pro-reform commentators suggest, first, to revisit current articles and second, to create new provisions in order to gain a complete and whole Convention which would give solutions to most of the present day challenges. However, a reform of an global instrument binding on 159 States can't be primarily based on conceivable lacunae if that instrument has average executed its purpose. The eagerness of protecting each and every thing requiring legal interpretation ought to satirically lead to a lengthy and rigid instrument which will elevate problems of applicability[9]. In fact, as a substitute than embarking upon a reform, these minor difficulties can be overcome with suitable and practical criminal interpretation. Thirdly, the pro-reform commentators argue that the Convention is unsure seeing that some concepts such as the public policy ground to withstand enforcement of arbitral awards, can be used with the aid of national courts as a way of circumventing the framework and targets of the Convention. In this context, the raison d' être of a reform of public coverage is to provide criminal sure bet to events in search of to put in force a overseas award. It is unclear, however, how a new convention would remedy the public coverage difficulty or, in general, the misapplications or cutting-edge problems. In fact, country wide courts of some States will be equipped to use pretexts different than the public coverage exception in order to undermine the Convention. On the face of it, a reform would now not gain the goal of stopping courts to shield their very own nationals and local interests in an illegal way.

ENFORCEMENT AND RECOGNITION OF FOREIGN ARBITRAL AWARD

The first motion is to understand the awards made in the overseas territory and is described

[8] New York Convention after 50 Years, https://digitalcommons.law.uga.edu
[9] Tupman, Michael Staying Enforcement of Arbitral Awards Under the New York Convention 3(3) Arbitration International 209 (1987)

below the Article 1 of the convention[10]. It is the responsibility of the states to understand such awards and put into effect them in accordance to the Article 3 of the convention. The country who needs to are searching for the overseas arbitral award wishes to post the following documents earlier than the court and it lies upon the interpretation of the court to figure out that it falls beneath the scope of the convention or not. A nation which wishes to are seeking the enforcement desires to submit the following files:

1. The arbitral award

2. The arbitral document according to the article 4 of the convention

The state in opposition to whom the convention is enforced can object to the enforcement through submitting the proof of even one grounds of refusal of the enforcement which are noted in the Article 5 of the constitution. Now it lies on the discretion of the courts to put into effect an award or now not based totally on the paragraph 2 of the article 5 of the enforcement[11].

LATEST DEVELOPMENTS IN ENFORCING NEW YORK CONVENTION AWARDS IN INDIA

The "Enforcement of Certain Foreign Awards" section of the Arbitration and Conciliation Act, 1996 (the Act) is how the NYC is implemented in India. India's reservations under the NYC are detailed in Part II of the Act at Section 44, and the Act is largely based on the UNCITRAL Model Law.

In *Union of India v. Vodafone Group PLC United Kingdom & Anr*[12]. (2017) and *Union of India v. Khaitan Holdings (Mauritius) Limited & Ors*[13]. *(2019)*, The Union of India had filed lawsuits seeking anti-arbitration injunctions with the Delhi High Court. While declining to issue injunctions, the court in both of these cases observed that, because investment treaty awards

[10] Recent Developments in the Enforcement of New York Convention Awards in India, https://arbitrationblog.kluwerarbitration.com/2020/07/06/recent-developments-in-the-enforcement-of-new-york-convention-awards-in-india/.
[11] THE WTO CRISIS: EXPLORING INTERIM SOLUTIONS FOR INDIA'S TRADE DISPUTES, https://www.orfonline.org/research/the-wto-crisis-exploring-interim-solutions-for-india-s-trade-disputes.
[12] Union of India v. Vodafone Group PLC United Kingdom & Anr. (AIRONLINE 2018 DEL 1656) https://delhihighcourt.nic.in/.
[13] AIRONLINE 2019 DEL 147

were founded on state guarantees and assurances rather than commercial disputes, the NYC under Part II of the Act could not be used to enforce such awards.

In *R.M. Investment and Trading Co. (P) Ltd. v. Boeing Co. (1994),* The question was whether R.M. Investment's consulting agreement with Boeing, under which it had promised to help Boeing sell its aircraft in India, could be considered a "commercial" agreement. This case concerned the enforcement of a foreign award under the Foreign Awards (Recognition & Enforcement) Act, 1961 (1961 Act, the previous framework under which foreign arbitral awards were enforced in India prior to the enactment of the newer Act in 1996). R.M. Investment filed a lawsuit in the Calcutta High Court despite the arbitration clause in the underlying agreement. Boeing requested that the lawsuit be stayed in favor of the arbitration[14].

The Supreme Court maintained the stay of the lawsuit by citing the UNCITRAL Model Law and observing that "the expression 'commercial' must be construed broadly having regard to the manifold activities which are part of International trade today."

In *Richardson v. Mellish (1824),* Justice Burrough made the observation regarding public policy that "it is a very unruly horse, and once you get astride it you never know where it will carry you." Mr. Banerji cited this ruling. It might steer you away from good law[15].

High Court in *Union of India v. Owner & Parties interested in Motor Vehicle M/V Hoegh Orchid)* (*1983*).In this case, a London arbitration clause was included in the charter party contract; nevertheless, the Union of India brought an anti-arbitration suit under the NYC on the grounds that the parties' relationship was not commercial in character. The court denied the request for an injunction, ruling that the term "commercial" must be interpreted broadly[16].

INDIA'S POSITION IN THE GLOBAL ARBITRATION MARKET

Studies may indicate that the New York Convention has elevated India's standing in the global arbitration market. With its adherence to international arbitration standards and the Convention's principles, India has emerged as a competitive player in the international

[14] R.M. Investment and Trading Co. (P) Ltd. V. Boeing Co. ,(1994 SCC (4) 541), https://indiankanoon.org/doc/428220/,
[15] Richardson v. Mellish ,(1824) 2 Bing 229) Judgement, (Page no. 294)
[16] Union of India v. Owner & Parties interested in Motor Vehicle M/V Hoegh Orchid ,(AIR1983GUJ34, (1983)1GLR292), https://indiankanoon.org/doc/1174480/.

arbitration landscape, attracting a diverse range of arbitration cases and stakeholders from around the world[17].

Certainly! Here's a research-based study on "India's Position in the Global Arbitration Market" in four paragraphs:

Introduction to India's Arbitration Landscape

India has experienced significant growth in its arbitration landscape in recent years, positioning itself as a key player in the global arbitration market. The country's legal framework for arbitration, governed primarily by the Arbitration and Conciliation Act, has undergone substantial reforms to align with international standards and promote arbitration as a preferred method for resolving commercial disputes. These reforms have contributed to the establishment of specialized arbitral institutions, such as the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC), aimed at providing efficient and effective dispute resolution services to domestic and international parties.

Contributing to India's Growth in Arbitration

Several factors have contributed to India's growing prominence in the global arbitration market. First and foremost, India's adherence to international arbitration conventions, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, has enhanced the enforceability of arbitral awards and bolstered confidence in the Indian arbitration system among international businesses and investors. Furthermore, the Indian government's proactive approach to promoting arbitration, coupled with judicial support for arbitration-friendly decisions, has created a conducive environment for arbitration proceedings in the country[18].

Despite its progress, India still faces challenges in solidifying its position in the global arbitration market. Issues such as delays in arbitration proceedings, lack of clarity in procedural rules, and occasional judicial interference in arbitration awards have been cited as obstacles to India's arbitration growth. However, these challenges also present opportunities for further

[17] ICCI, New Trends in the Development of International Commercial Arbitration, ICCA Congress Series No.1, Hamburg, P. Sanders ed., Kluwer Law International, 1983.
[18] Fouchard, Philippe, Gaillard, Emmanuel,Goldman, Gaillard Goldman On International Commercial Arbitration Part III – The Arbitral Tribunal, Chapter III – International Conventions, Section I. The 1958 New York Convention, Kluwer Law International, 1999, at 966.

reforms and improvements in India's arbitration framework. Efforts to streamline arbitration procedures, enhance institutional capacity, and promote arbitration education and training can help address these challenges and strengthen India's competitiveness in the global arbitration arena.

TIMELINE OF EVOLUTION OF PROVISIONS FOR ADR IN INDIA

Both before and after India gained its independence from British rule, ADR saw significant development. With the aid of some guidance, let's comprehend this kind of progress. The Bengal Regulation Act 1781 and Bengal Resolution Act 1771 were the initial pieces of law that allowed alternative dispute resolution (ADR) in India. These actions included particular and Nevertheless, the Civil Procedure Code of 1908 superseded both of these statutes and is still in effect today.Since alternative dispute resolution has shown to be so successful in other nations, India should continue to include similar laws in its legal system in order to grow as a legal power. Following this, the Indian Arbitration Act of 1899 was introduced, drawing inspiration and ideas from its British equivalents[19].

This statute provided an excellent description of "submission," which essentially meant signing a formal agreement to send any conflicts, past or present, to an impartial third party known as an arbitrator, even if it isn't clear who will serve as the arbitrator. The Arbitration Act of 1937 followed, essentially aiding in the implementation of the Geneva Protocol's Arbitration Clauses 1923. Moving forward, the Arbitration and Conciliation Act, 1996 is the current ADR legislation in India and it oversees the methods for ADR in the present. This act of 1996 was also amended in 2015 to streamline the methods of arbitration, mediation and conciliation. This amendment enhanced the enforceability of arbitral awards and also dealt with the problem of burgeoning burden on Indian Courts to deal with tons of cases. It also sought to enhance the time taken to resolve the disputes taken to arbitration.

NEW YORK CONVENTION AND UNCITRAL MODEL LAW

Therefore according to my research and learnings the main goal of the New York Convention is to make it easier for foreign arbitral awards to be enforced by imposing a few restrictions on

[19] Tupman, Michael Staying Enforcement of Arbitral Awards under the New York Convention 3(3) Arbitration International 209.

their enforcement[20]. A limited number of flaws affecting the arbitral process or the award may be grounds for refusing to enforce an arbitral award under Article V of the Convention. These flaws must be of a significant kind and include anomalies such the arbitration agreement's invalidity, a lack of due process, or a breach of the enforcing state's public policy, as discussed in detail in the next two sections.

The UNCITRAL Model Law's reasons for declining to enforce an arbitral award are similar to those found in the New York Convention. Virtually identical to Article V of the Convention, UNCITRAL Model Law Article 36 relates enforcement to the exceptions based on the Convention. Three key components of the concerned framework need to be recognized: (1) a comprehensive list of enforcement exceptions that does not include an evaluation of the merits of the award; (2) the authority to enforce an award regardless of the reasons for not doing so; and (3) the preclusion of parties' objections.

Regarding the aspect mentioned in point (1) above, the UNCITRAL Model Law's Article 36 (which is a replication of Article V of the New York Convention) contains a comprehensive list of objections to enforcement. This structure allows for the award to be refused recognition and enforcement "only if" one of the exceptions holds true. As a result, a party opposing enforcement cannot successfully raise a defense that is not based on the New York Convention's provisions[21]. In particular, national law cannot serve as the foundation for any such defense to enforcement, nor is a reconsideration of the award's merits permitted.

Only the most egregious inconsistencies may serve as the foundation for a party's defense under the limited list of reasons on which the party may oppose enforcement[22]. Article V of the New York Convention must be read narrowly due to the exclusive nature of the exceptions to enforcement.

The second characteristic is that, rather than being mandatory, Article V of the New York Convention and Article 36 of the UNCITRAL Model Law are written permissively. According to the aforementioned regulations, refusal of enforcement "may be" (as opposed to "must be") granted for any of the above reasons. Nothing in the statute forces a contracting state to refuse

[20] SSRNelibrary , DEVELOPMENT OF ARBITRATION LAW IN INDIA, https://papers.ssrn.com.
[21] Do we need to rethink the New York Convention in view of New Arbitration Technologies? https://www.legalserviceindia.com.
[22] In brief: NEW YORK CONVENTION, https://www.newyorkconvention.org/in

enforcement of the award, in accordance with the pro-enforcement attitude of the New York Convention. Alternatively, even in cases where one of the objections listed in Article V of the New York Convention has been shown, the court may reject the defense to enforcement and uphold the award. There are extensive ramifications to this idea of the enforcing court's authority. In appropriate cases, it enables the enforcing court to independently evaluate any potential flaws in the arbitral result and procedure and to enforce even awards that were revoked at the seat[23].

Precluding objections to the enforcement of the award is the third aspect of the enforcement framework under consideration. This concept states that if a party fails to raise the pertinent objection during arbitration or before the courts of the arbitral seat, it will not be permitted to raise Article V defenses in the enforcement court. Despite not being specifically mentioned in the New York Convention's language, the preclusion principles are generally accepted in national arbitration legislation and are thought to be consistent with the Convention's goals.

Nearly all of the grounds listed in Article V of the Convention are impacted by the preclusion rules; most significantly, jurisdiction objections must normally be made from the beginning of the arbitral process. Preclusion generally can cover objections that ought to have been brought up in arbitration as well as those that need to be brought up in the foreign state's court proceedings initially (for example, to set aside the award). Nonetheless, different jurisdictions have differing opinions on this matter. In Dallah Real Estate and Tourism Holding Company v. The Ministry of Religious Affairs, Government of Pakistan2, the English authority held that a party may rely on a certain defense in the enforcement proceedings even if it was not raised in an action.

In some countries, the courts have come to a different decision, holding that a party may not rely on the same faults in the enforcement procedure if they neglected to bring particular defects in an action to set aside an award[24].

New York Convention Article V(1)

[23] CONVENTION ON RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS IN INDIA, https://viamediationcentre.org/readnews/Mjk3/CONVENTION-ON-RECOGNITION-AND-ENFORCEMENT-OF-FOREIGN-AWARDS-IN-INDIA.

[24] Recognition and Enforcement of Foreign Arbitral Award in India: In Search of a Formidable Shore, https://www.scconline.com/blog/post/2021/07/28/foreign-arbitral-award-in-india/ .

A party must establish certain grounds in accordance with Article V(1) of the New York Convention in order to effectively challenge the implementation of the award. It stipulates that refusals to enforce the award may occur if:

Incapacity of the party

An award may be refused enforcement under Article V(1)(a) of the New York Convention if the award debtor was incapable of entering into a legally enforceable arbitration agreement. Second, the New York Convention's Article V(1)(a) is limited to the inability to join into the agreement at the time it was established. It doesn't address issues like inadequate representation during the arbitral processes or incapacity to enter into the underlying contract.

Lack of valid arbitration agreement

According to Article V(1)(a) of the New York Convention, execution of an award may be denied if the arbitration agreement was invalid under the laws of the nation where the award was made, or under the law of the jurisdiction to which the parties have submitted it, if there is no indication of such a law[25]. This clause expresses the consensual nature of arbitration and is one of the frequently cited justifications for the enforcement being refused due to lack of jurisdiction.

Procedural unfairness

If the party against whom the award is invoked was not properly notified of the arbitrator's appointment or of the arbitration procedures, or was otherwise unable to submit his or her case, Article V(1)(b) provides a basis for refusing enforcement of the award.

Excess of authority

Article V(1) of the New York Convention addresses judgments that resolve disputes that do not fall under the purview of the arbitration agreement or that comprise rulings on subjects not covered by the agreement[26]. In situations where the arbitrators have gone beyond their

[25] Dispute Resolution International (DRI), https://www.ibanet.org/Publications/publications_dispute_resolution_international.
[26] COMMERCIAL DISPUTES LITIGATION, https://www.curtis.com/glossary/commercial-disputes-litigation/international-dispute-settlement.

authority, Article V(1)© addresses jurisdictional deficiencies (pure lack of jurisdiction is covered by Article V(1)(a).

Non-New York Convention enforcement

There are currently 159 contracting states, and the New York Convention regulates the execution and recognition of arbitral awards within these states. Owing to the nearly worldwide scope of the Convention, it is inevitable that situations where arbitral rulings are subject to an enforcement regime outside of the New York Convention are uncommon[27]. Article VII of the Convention stipulates that the more advantageous convention for enforcement should take precedence when a party wishing to execute an arbitral award has access to a more favorable, alternative enforcement regime. The same holds true for domestic laws that are more favorable.

CONCLUSION

Finally, I would want to draw the conclusion that the New York Convention has been essential to the growth and development of arbitration in India, acting as a catalyst for changes and expansion in the nation's arbitration environment. The Convention has enhanced worldwide trust in the Indian arbitration system by providing procedures for the acceptance and enforcement of foreign arbitral rulings. This has drawn a wide spectrum of business conflicts to India. India's status as a developing center for international proceedings has been cemented as a result of the rise in the number of international arbitration cases that are being handled there. *Kandla Export Corporation & anr. Vs. M/s. OCI Corporation & anr.*,[28] the Indian Supreme Court stated that expeditious enforcement of foreign awards is imperative to ensure India’s continued status as an equal player in international commerce. This is in line with the increasing necessity to align Indian practice with its obligations under Article V of the Convention. As this site has previously highlighted, India’s arbitration framework after 2015 is a step in the right direction toward a pro-enforcement regime, but there is still a long way to go before the country can genuinely say that its practices and processes adhere to the norms of the Convention[29].

[27] INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, https://www.icdr.org/.
[28] 2018GLH(1)221, (2018)2GLR1690
[29] GLOBAL DISPUTE SETTLEMENT, INDIA AND APPELLATE REVIEW, https://www.civilsdaily.com/news/india-and-appellate-review/#:~:text=Quest%20for%20a%20Rule%2DBased,way%20to%20achieve%20this%20goal.

The use of arbitration to resolve disputes involving international trade has grown thanks in part to the New York Convention. Even though there are a few small errors or omissions, a proper legal interpretation will drawbacks. Without a doubt, there are compelling reasons to reject potential suggestions for change given that amending the Convention would cause more harm than benefit to International arbitration philosophy and practice. In situations where there is entrenched in the global legal system, it's critical to emphasize the qualities, the importance, adaptability, and success of the New York Convention. In other words, if something is effective, it shouldn't be altered.