A CRITICAL ANALYSIS OF TAXATION CLAIMS IN COMMERCIAL ARBITRATION: JURISDICTIONAL LIMITS AND ENFORCEMENT CHALLENGES

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ABSTRACT

The interface between the commercial arbitration and the taxation law is one of the most complex and disputed areas in modern dispute resolution. With the increase of cross-border commercial transactions and the broad taxing authority of the sovereign states, the issue of arbitrability of tax claims and enforceability of the arbitral awards against the fiscal obligations have become vital. The paper critically assesses to what extent claims in taxation are amenable to arbitration taking into consideration the jurisdictional limitations which come about due to the public law nature of taxation as well as the practical enforcement limitations that come about when the arbitral awards come into conflict with the governments revenue interests. Using an Indian legal framework, the law on arbitration and conciliation, 1996 with amendments, constitutional clauses on fiscal federalism and important judicial precedents, as well as a comparative examination of international investment treaty arbitration, the research finds that there exist endemic gaps in the legal structure of this interface. With the world trying to liberalise dispute resolution mechanisms, tax disputes still fail to be fully arbitral-cognisant, which leaves commercial parties in an uncertain juridical situation. The present paper proposes a balanced regulatory approach that will uphold sovereignty of the states in fiscal affairs but will create a mechanism that commercially linked tax cases will get effective and prompt redress in the form of arbitration.

Keywords: Commercial Arbitration, Taxation Claims, Arbitrability, Jurisdictional Limits, Enforcement, Investment treaty arbitration, Public Policy.

I. INTRODUCTION

Increased trade, investment and commercial activity in the world has made the settlement of disputes by arbitration an even more desired process than the traditional litigation. The speed, secrecy, impartiality, and conclusiveness of commercial arbitration has expanded as a niche procedural alternative to a mainstream adjudicative process that forms the backbone of international trade. The amendments in the legislation of the Arbitration and Conciliation Act, 1996 expressed in the Amendment Acts of 2015, 2019, and 2021 in India are an indication of the State to make the country an arbitration-friendly destination that can attract foreign investment and decrease the courts load. Nevertheless, there are boundaries to the growing scope of arbitration. Some types of disputes, especially those of a public law nature, have traditionally been impervious to the application of a private dispute resolution process. Among them, there is a unique and controversial place taken by taxation disputes. One of the most basic characteristics of state sovereignty is the power to impose, assess and collect taxes. The nature of fiscal legislation is that it concerns itself with the exercise of governmental power over objects and transactions, and any such mechanism of the private kind which professes to displace or to judge of such power at all is subject to a forthright jurisdictional challenge. The issue of whether or not taxation claims may constitute the subject matter of arbitration is not just an academic issue. As multinational enterprises conduct business in various tax jurisdictions, transfer pricing controversies, indirect tax distributions entrenched in commercial agreements, tax indemnity provisions, and taxation promises constituting inseparable elements in the investment agreements, the real stakes are enormous. A party that faces an unwanted tax liability as a result of a commercial relationship can justifiably seek redress under arbitration to be faced with the statutory or constitutional prohibition of arbitrability of fiscal issues. In the current paper, a doctrinal study of the interface between the taxation claims and commercial arbitration in India is carried out, with comparative insights provided by the international investment arbitration. It looks at the jurisdictional boundaries that enclose the arbitrability of tax disputes, investigates the enforcement issues that follow when arbitral awards interact with tax obligations, and suggests a framework that would help reconcile the demands of effective dispute resolution with the sovereign prerogatives of fiscal administration. It is conducted by a systematic review of the existing legal frameworks, judicial decisions, and academic literature in an attempt to provide an in-depth insight into this new and under-researched field of law.

II. STATEMENT OF PROBLEM

Although commercial arbitration has become a popular dispute resolution tool, the areas of interplay between taxation and arbitration have been insufficiently integrated in the legislative tools as well as in judicial jurisprudence in India. Arbitration and Conciliation Act, 1996 does not specifically stipulate the list of non-arbitrable types of disputes, and thus, it is up to the judiciary to decide whether taxation claims cannot be addressed on the arbitral tribunal. It is this interpretative gap that creates a state of uncertainty to commercial parties who often include covenants, indemnities, and adjustment clauses that are taxation related to their contracts. This is worsened by the constitutional framework of Indian fiscal federalism that allocates taxing powers among the Union and the States. Article 265 of the Constitution of India prohibits the imposition and collection of tax without an authorization by law, a clause which has been understood to give a public law nature to tax duties that are hard to adjudicate privately. Where parties to a commercial contract seek to have taxation issues resolved by an arbitral tribunal they face the fundamental issue of whether or not an arbitral tribunal has the jurisdiction to hear and determine issues which would otherwise be settled by specialist statutory courts like Income Tax Appellate Tribunals or Goods and Services Tax Appellate Authorities. Moreover, despite the cases in which arbitral awards involving claims relating to tax are issued, they are also subject to separate enforcement issues. Among the reasons why recognition and enforcement under Section 48 of the Arbitration and Conciliation Act, 1996 should be refused are a general public policy exception which has been invoked by courts to refuse enforcement of awards that indirectly affect government revenue interests. The use of this exception has been uneven and unpredictable, making arbitral awards final less concrete and confidence in the process less reliable. The research gap reflecting the lack of a coherent, principled framework outlining the boundary between arbitrable and non-arbitrable tax-linked commercial disputes and pure tax disputes is identified in the present study, as well as the absence of a clear directive on how awards with tax aspects should be enforced.

III. LITERATURE REVIEW

3.1 Nigel Blackaby et al., Redfern and Hunter on International Arbitration (6th ed., 2015). Redfern and Hunter present a thorough discussion about the breadth of arbitrability in international commercial arbitration, and particular attention is given to the exclusion of matters that concern public policy and sovereign interests. The authors discuss the doctrine of non-arbitrability as applied to the civil and common law jurisdictions, observing that tax cases are subject to the same caution as arbitral tribunals no matter what jurisdiction, whether civil or common law, they pertain to due to their underpinning in the public law. They examine the New York Convention regime and its overlap with local fiscal law, emphasising that courts in enforcement countries will invariably use the public policy reservation to review arbitral awards that impact on tax revenues. Of particular significance is how they treat the seat theory and the significance of the lex arbitri in the determination of arbitrability. To illustrate the diverse approaches that are taken across the world, the authors use rulings of national courts in the United States, England, France, and Germany and also the major institutional arbitration rules. The authors find that although the trend in international commercial arbitration is to increase the arbitrability, fiscal and taxation issues are a thorny exception particularly where the dispute in question involves the direct exercise of state power as opposed to a contractual obligation with taxation consequences. Their arbitral jurisprudential survey of empirical evidence shows that tribunals have sought a pragmatic line between fiscal disputes and arbitral claims rooted in commercial transactions, the latter of which has come to be regarded as arbitrable. This article is specifically applicable to the current project since it gives the theoretical background of the study of the limitations of arbitrability, especially in cases related to public law conflicts. The difference between state-imposed tax authority and tax obligations that are commercially embedded introduced by the authors of this paper offers the conceptual prism through which the Indian legal framework is to be observed in this paper. Their dependency on the New York Convention to which India is a signatory also creates the international normative framework within which Indian courts are working.

3.2 M.P. Singh, V.N. Shukla's Constitution of India (13th ed., 2017) The commentary on the Constitution of India by Singh is an authoritative commentary on the provisions of the Constitution of India on taxation, which gives a detailed analysis of the provisions in Articles 265, Article 246 as well as the Seventh Schedule. The commentary gives the legislative history of these provisions, which dates back to the Government of India Act, 1935 and their subsequent evolution by constitutional amendment and judicial interpretation. Singh looks at the changing doctrine of the Supreme Court on the exclusive jurisdiction of the Parliament and the State Legislatures to consider taxation matters and how this constitutional exclusivity poses structural obstacles to the resolution of tax obligations privately. Another issue that is addressed in the commentary is the constitutional validity of alternative dispute resolution mechanisms in opposition to the right to review fiscal measures by the judiciary in Articles 226 and 32. Of particular interest is the observations of Singh on non-delegability of legislative power with regard to fiscal matters. He points out that the constitutional plan places plenary taxing power in the hands of elected legislatures, and that any effort to subject such power to arbitral scrutiny is subject to unconstitutional delegation of sovereign power. The commentary also cites landmark cases such as Commissioner of Income Tax v. B.C. Srinivasa Setty and State of West Bengal v. Kesoram Industries to demonstrate how the courts have always defended fiscal sovereignty. This observation is crucial to the current study in that it offers the constitutional foundation of explaining why taxation claims are facing an extraordinary jurisdictional challenge in the arbitration process. The constitutional framework described by Singh directly underpins the analysis of the question of arbitrability of the Indian law in this paper, and the surveyed case law provides the jurisprudential substantiation to the argument that a new legislative intervention is required to clarify the situation.

3.3 Gary Born, International Commercial Arbitration (3rd ed., 2021) The most comprehensive academic work on the topic, Gary Born has written a monumental treatise on international commercial arbitration, which addresses the arbitrability of disputes in all major legal systems in an unparalleled depth. Born spends much of his discussion on the taxonomy of non-arbitrable disputes, such as regulatory, competition, securities, and taxation issues, examining the way that different legal systems have answered the question of which disputes should be privately adjudicated. He scans arbitral jurisprudence in the International Chamber of Commerce, London Court of International Arbitration and UNCITRAL forums to map the history of the doctrine of arbitrability. Born also analyzes the conflict between pro-arbitration presumptions and public law exclusions, proposing that the trend is of restricting the category of non-arbitrable disputes in favor of retaining residual judicial control over awards affecting the interests of the public. The results presented by Born indicate that taxation controversies are standing at a cross road: as in the past they were not subject to any form of arbitration due to the sovereignty considerations, the growing interconnection of tax covenants with commercial and investment agreements has generated an urge to broaden the scope of arbitral authority in cases involving tax-related claims. He reports an increasing number of arbitral awards in which tribunals have exercised jurisdiction over claims based on indemnified taxes, cases of tax apportionment, and taxation representations in agreements to purchase shares and have considered such to be commercial in character despite their fiscal aspects. The work by Born is essential to this study because it places the Indian debate in a global doctrinal framework, allowing one to compare how other jurisdictions have dealt with the conflict between arbitral autonomy and fiscal sovereignty. His review of pro-arbitration reforms in other countries can offer examples that can guide India in the development of its legislative and judicial reaction to challenges which are identified in the present paper.

IV. RESEARCH QUESTIONS

The following research questions will be addressed in the present study:

1. How arbitrable are taxation claims in the Indian legal system, and what are the constitutional and statutory grounds of any exceptions?

2. What is the difference between purely fiscal disputes and commercially embedded tax claims that the Indian courts and arbitral tribunals have made and is this distinction doctrinally sound?

3. What are the major enforcement issues that occur when arbitral awards are involved in or interpret tax obligations, especially in the light of the public policy exception of Section 48 of the Arbitration and Conciliation Act, 1996?

4. What do international investment treaty arbitration frameworks say about the interface between taxation action and arbitral jurisdiction and what can India learn about these frameworks?

5. What are the legislative or judicial changes needed to establish a consistent pattern that balances the autonomy of arbitral with the sovereignty of the fiscal in the Indian context?

V. RESEARCH METHODOLOGY

The paper will use the methodology of doctrinal research, which entails a methodological review of primary and secondary legal sources to determine, categorize and critically analyze the relevant legal principles, statutory and judicial pronouncements on the arbitrability of taxation claims and the enforcement of arbitral awards in tax-related disputes. The doctrinal method suits this study since the main goal is to comprehend, examine and critique the current legal system as opposed to doing empirical surveys or creating new data. The primary sources used are the Constitution of India, the Arbitration and Conciliation Act, 1996 and its amendments, the Income Tax Act, 1961, the Goods and Services Tax legislation, bilateral investment treaties that have been concluded between India and other countries, decisions of the Supreme Court of India, the High Courts and the international arbitral tribunals. Secondary sources consist of major academic treatises, law review articles, institutional reports, and policy documents published by such agencies as the Law Commission of India and the Ministry of Finance. The comparative aspect of the study will entail the analysis of the chosen foreign legal regimes, especially England, Singapore, and France, which have evolved subtle jurisprudence about arbitrability of tax-related commercial controversies. It is a comparative analysis with the aim of finding best practices and possible models on how the legislative reform in India can be made. It is analytical and prescriptive in nature, therefore, not only describing the current law but also assessing its sufficiency and suggesting solutions.

VI. A CONCEPTUAL FRAMEWORK OF TAXATION AND ARBITRATION

As a consensual process, which is based on the autonomy of the parties, arbitration derives its legitimacy in the agreement of the parties that they will submit their disputes to privately constituted tribunal instead of to the state organs. This is the basic assumption of consent-based adjudication which is facing its greatest obstacle in the case where one of the dispute parties is the state itself or where the subject matter of dispute is the exercise of the authority of the state. Taxation being an exercise of sovereign power is in this zone of tension. Arbitrability (meaning the ability of a dispute to be resolved by arbitration) exists at two levels, one subjective arbitrability (the ability of the parties to refer to arbitration) and objective arbitrability (that the subject of the dispute can be decided by arbitration). The latter is the dimension that is crucial in taxation disputes. The most important issue is whether the fiscal requirements, evaluations and debts, which are based on the legislative requirements but not the contractual agreement, could be subject to the determination of a person privately. The underlying difference which appears on comparative legal analysis is the one between disputes that occur in the exercise of sovereign taxing power and disputes that occur as a result of commercial contracts, which only include taxation as one of their components. The first type, which includes the issues with the evaluation of taxes, the disagreements regarding the constitutionality of taxes, or the interpretation of the fiscal laws, involves the fundamental aspect of the sovereign powers and is considered as non-arbitrable in general. The latter group, which concerns the issue of who will be contractually liable over a given tax, how tax indemnities are to be determined or whether tax warranties in a share purchase agreement have been violated, is commercial in nature, although taxation may be its subject matter. Gradually but desultorily Indian law has come to acknowledge this difference. The Supreme Court in Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.1 stated the principle that rights in rem, which may be exercised against the entire world, are non-arbitrable whereas rights in personam, as a result of particular contractual requirements, are usually arbitrable. A tax refund claim on statutory scheme would be a right against the state in rem, and thus would be non-arbitrable; whereas a contractual indemnity of tax liability paid in excess of a contractual cap would be a right in personam, and thus arbitrable.

VII. JURISDICTION LIMITATIONS.

7.1 The Arbitrability of Taxation Claims Fiscal Sovereignty and Constitutional Imperatives. The Indian Constitution provides a broad-based system of fiscal governance founded on the exclusive legislative authority in taxation. Article 265 also stipulates that no tax shall be imposed or paid without authorization of law and therefore, the whole apparatus of taxation is placed in the hands of legislative and executive power. List I (Union List) Entries 82 to 92C and List II (State List) Entries 45 to 63 of the Seventh Schedule contain specific heads of taxation solely charged on the Parliament and State Legislatures respectively. Such constitutional design means that taxes are a sovereign prerogative that cannot be contracted, transferred or adjudged in any other way beyond the system set up by Parliament and State Legislatures. Specific appellate courts, the Income Tax Appellate Tribunal, the Customs, Excise and Service Tax Appellate Tribunal, and more recently the Goods and Services Tax Appellate Authority have been created specifically because the legislature realised the necessity of expert adjudication of fiscal disputes, which was supervised in a constitutionally coherent way. The Supreme Court in the case of Commissioner of Income Tax v. Elegant Business Solutions Pvt. Ltd.2 confirmed that the statutory forums have all the jurisdiction to determine the tax payable and that any contractual agreement to waive or otherwise to change the amount of tax to be paid is invalid since it is against the public policy.

7.2 The Non-Arbitrability Doctrine in Statutory Context. The Arbitration and Conciliation Act, 1996 does not contain an exhaustive list of non-arbitrable disputes. Section 2(3) of the Act preserves the operation of other enactments, and Section 34(2)(b)(i) permits courts to set aside awards that deal with disputes not capable of settlement by arbitration under

Indian law. The courts have, over time, judicially developed categories of non-arbitrable disputes, which include matrimonial disputes, insolvency matters, criminal proceedings, testamentary proceedings, and disputes under the Rent Control Acts. Taxation disputes have not been expressly included in this list, but the Supreme Court's decision in Vidya Drolia v. Durga Trading Corporation3 introduced a nuanced four-fold test for determining non-arbitrability: (i) the cause of action and subject matter of the dispute relates to actions in rem; (ii) the dispute affects third-party rights, has erga omnes effect, or requires centralised adjudication; (iii) the dispute relates to inalienable sovereign and public interest functions of the state; and (iv) the subject matter of the dispute is expressly or by necessary implication non-arbitrable under applicable law. Taxation disputes, particularly those involving direct assessments and statutory demands, would qualify under criteria (iii) and potentially (iv) of this test. The Law Commission of India in its 246th Report acknowledged the absence of a comprehensive enumeration of non-arbitrable disputes and recommended that the legislature introduce greater clarity. However, no amendment has thus far specifically addressed the position of taxation claims. This legislative gap continues to generate inconsistent jurisprudence, with some High Courts holding that contractual tax indemnity clauses are arbitrable4 while others have denied jurisdiction to tribunals on the basis that any dispute involving tax has a public law character.

7.3 Tax disputes in international investment arbitration. The overlap of taxation and arbitration in the case of international investment treaty arbitration takes on another dimension when states have agreed, by bilateral investment treaties (BITs) and multilateral instruments such as the Energy Charter Treaty, to have certain investment disputes, including those related to taxation measures, referred to international arbitral tribunals. The BITs of India, such as the 2016 Model BIT, have certain provisions on how the taxation measures should be treated. Article 2.4 of the 2016 Model BIT of India expressly excludes taxation measures as substantive protection measures of the treaty with a narrow exception that the measure amounts to expropriation. The Annex to the Model BIT goes further to clarify that a non-discriminatory measure of general application by a party to the treaty in good faith to deal with taxation will not amount to indirect expropriation unless the effect of the action is so extreme to deprive the investor of its investment in substance. This carve-out shows India intentionally pursuing a policy of protecting its fiscal sovereignty by not letting investment arbitration touch its fiscal policy, which has been fortified by the scandal of the Vodafone and Cairn Energy arbitrations where arbitration tribunals claim jurisdiction over Indian taxation under older BIT. In Vodafone international holdings B. V. Republic of India6 the award of the permanent court of arbitration concluded that India had violated the fair and equitable treatment requirement in the Netherlands-India BIT by enacting the Finance Act, 2012, which imposes retrospective capital gains tax. India appealed this award to the Hague District Court arguing that the tribunal should not have had jurisdiction over a sovereign tax measure. It is a dramatic case as to what is at stake when taxation claims are litigated in the context of investment arbitration, and has had profound implications to the India BIT policy reform. In the same vein, the Cairn Energy PLC v. Republic of India7 arbitration in which the Permanent Court of Arbitration ordered USD 1.2 billion to be paid by India in retrospective taxation resulted in a controversy over global enforcement. Cairn Energy aimed at enforcing the award by freezing Indian state properties in France, the United States and the Netherlands. India challenged the enforcement citing that the award infringed on its fiscal sovereignty and on the public policy of the enforcement states. The episode highlights the rate at which enforcement issues in taxation arbitration become more and more intense when sovereign assets are the focus of execution.

VIII. THE ISSUES OF ENFORCEMENT IN TAX-RELATED ARBITRAL AWARDS.

8.1 Public Policy Exception and Its Applicability. The Part II of the Arbitration and Conciliation Act, 1996, which contains the New York Convention and the Geneva Convention, controls the enforcement of the arbitral awards in India. Section 48 of the Act gives reasons why an award of a foreign country should not be enforced such as the award would be against the public policy of India. Section 34(2)(b)(ii) gives a similar basis upon which domestic awards should be set aside. In ONGC v. Saw Pipes Ltd.8, the Supreme Court expanded the public policy exception to encompass the awards which infringed the basic policy of Indian law, interests of India, justice, or morality. Although later cases such as Ssangyong Engineering & Construction Co. Ltd. v. NHAI9 and Vijay Karia v. Prysmian Cavi E Sistemi SRL10 have limited this expansion by limiting judicial intervention to patent illegality and fundamentals of morality and justice, the public policy exception remains quite broad in its application to awards that infringe fiscal obligations. Courts have used the public policy ground to deny enforcement against awards purporting to put out tax liabilities, change the statutory foundation of assessment, or command a party to repay taxes lawfully raised by the state. The rationale is that such awards usurp the exclusive role of the sovereign state, and go against the very basis of policy embodied in the constitutional mandate of Article 265. Enforcement can be opposed even in situations where an award contains no more than an apportionment of contract taxation between private parties on the basis that it indirectly imposes fiscal liabilities in a manner which is inconsistent with statutory schemes..

8.2 Structural Problems with Cross-Border Enforcement. In addition to the public policy exception, the implementation of taxation-related arbitral awards faces structural problems that are specific to the fiscal field. To begin with, the priority of tax claims in the insolvency thus poses a unique challenge: although in a case where a commercial creditor has been an arbiter holder in regard to a contractual tax indemnity, the preference of the tax authorities in the Income Tax Act, 1961 and the Insolvency and Bankruptcy Code, 2016 may effectively render the award ineffective in reality. Second, the doctrine of state immunity, although significantly undermined in the commercial sphere by the restrictive theory of sovereign immunity, still has its leftover use in fiscal cases. Attachment of sovereign assets associated with the tax administration revenue accounts, tax collection apparatus or state fiscal reserves may be effectively defended by immunity arguments in both domestic and foreign courts where enforcement of an award is required. Third, the timeframes provided by taxation laws can contradict arbitral timeframes. An arbitral award instructing one party to claim excess tax deducted at source might not have any practical use whereby the statutory time limit in claiming refunds under the Income Tax Act has expired in the course of arbitration. Such time lag between the contractual resolution of disputes and the fiscal timelines in statutes is a major practical obstacle to successful enforcement. Fourth, the lis pendens concept and its overlap with parallel jurisdiction in tax tribunals poses the danger of judgment dissonance. In cases where an arbitral tribunal makes an award on a contractual tax indemnity and the income tax authority at the same time is reassessing the underlying determination, legal terrain of the parties involved is full of uncertainty. The Indian courts are yet to devise a clear doctrine of handling such parallel proceedings.

8.3 Comparative Dynamics of Enforcement. Comparative analysis demonstrates the existence of different strategies to the enforcement of arbitral awards, related to taxation. In Micula v. Romania11, the Supreme Court of England upheld the enforceability of an ICSID arbitral award on Romania even though the European Commission argued that enforcement would amount to state aid and was against European Union law. Although this determination has been made within the environment of an investment treaty, it demonstrates how the courts are strong on the principle of finality of arbitral awards despite the involvement of sovereign fiscal interests. France, which has traditionally been generous in its enforcement policy, has come up with the doctrine of ordre public international to restrict the public policy exception to arbitration enforcement. The French courts have always maintained that an award is inconsistent with international public policy, and such recognition will only be made manifest and concrete, where the violation of principles of which the violation of the French legal order is intolerable. The existence of such a high standard of refusal makes it hard to oppose a refusal to enforce awards on tax-related grounds of public policy. Singapore, a major global arbiter, has taken an equally pro-enforcement position. In PT First Media TBK v. Astro Nusantara International BV12, the Singapore Court of Appeal upheld that the reasons behind the refusal to enforce should be interpreted in a limited manner. The International Arbitration Act of Singapore does not consider taxation as a categorically non-arbitrable issue and contractual tax issues are habitually arbitrated at the Singapore International Arbitration Centre. These parallel examples imply that the judicial methodology in India, although not lagging behind the international tendencies, could use more clarity and uniformity.

IX. POLICY GAPS AND THE NECESSITY OF REFORMATION OF THE LEGISLATION.

The above analysis demonstrates that the Indian legal system has a number of policy gaps that are critical in arbitrability and enforcement of taxation claims. First, the lack of a statutory definition or list of non-arbitrable disputes provides an interpretive indeterminacy that presents transaction costs on commercial actors and encourages opportunistic litigation. This would be predictable by a clear statement in the legislature akin to the German Code of Civil Procedure, Section 1030(1) that states that any claim that relates to an economic interest is arbitral. Second, the non-arbitrability of tax covenants in commercial contracts such as tax warranties, indemnities, gross-up clauses and withholding tax adjustment clauses undermines the consistency of commercial dispute resolution. These terms pervade merger/acquisitions, joint venture and project finance deals and exposing them to the exclusive jurisdiction of the statute interferes with the bona fide expectations of the parties when entering into the contract. Third, an example of how the provisions of the Income Tax Act regarding the use of Advance Pricing Agreements and Mutual Agreement Procedures in tax treaties interact demonstrates that even the state has some quasi-arbitral mechanisms to help settle international taxation disputes. The presence of such mechanisms indicates that it is not premised on a principled constitutional basis that tax disputes cannot be resolved by non-judicial processes; it is rather an institutional design and legitimacy objection. Fourth, the enforcement framework must have a clear guideline on how to handle the conflict between the arbitral awards and statutory tax proceedings running simultaneously. It is through the courts that the doctrine of judicial coordination should be formulated either via the judicial proclamation or via the legislative prescriptions which should be applied to ensure that the identical proceedings are avoided and that there should be no conflicting determination made. An example of such a protocol can be obtained in the ruling of the Supreme Court of Canada, in Dell Computer Corporation v. Union des Consommateurs,13 which formulated strategies of aligning arbitral and administrative procedures. Fifth, India ought to contemplate a more granular carve-out clause in their BITs that differentiates bona fide general taxation measures, which should not be the subject of investment arbitration, and targeted measures that can in effect expropriate certain investments in the name of taxation, which should be the subject of investor-state dispute settlement. The current blunt carve-out in the existing Model BIT can unintentionally protect fiscal only but expropriatory in nature measures, which results in additional international scandals.

X. CONCLUSION AND SUGGESTIONS.

As seen in this paper, arbitrability of taxation claims and application of arbitral awards in tax disputes is one of the most complicated and least theorized in Indian arbitration law. The constitutional structure of fiscal sovereignty, the legislative framework of the taxation law, and the judicial elaboration of the non-arbitrability doctrine all combine to make the pure tax cases effectively non-arbitrable, with the commercially-embedded tax cases falling in an uncertain intermediate zone. The main conclusions of this paper can be as follows: first, the constitutional requirement of Article 265 and exclusive legislative power to taxation vested in the Seventh Schedule of the Arbitration and Conciliation Act amount to substantive obstacles to arbitral jurisdiction over primary taxation liabilities; secondly, the Vidya Drol Based on the findings, the following recommendations can be proposed on legislative and policy reform: First, the Parliament should make changes to the Arbitration and Conciliation Act, 1996 to provide a clear and comprehensive list of non-arbitrable disputes that explicitly covers the status of taxation claims and the difference between primary fiscal disputes and tax covenants embedded in commercial. Second, the Ministry of Finance and the Ministry of Law and Justice must also publish joint statements explaining how contractual tax indemnity clauses and tax warranties are to be treated as arbitrable commercial matters, limiting the opportunity to bring opportunistic challenges to jurisdiction. Third, in a suitable case, the Supreme Court must develop a comprehensive doctrine of co-ordination of parallel arbitral and tax tribunal proceeding, based on international best practice. Fourth, India needs to revise the taxation carve-out in its 2016 ModelBIT to reflect a more refined differentiation between general fiscal action and specific fiscal expropriation, which would retain the actual fiscal sovereignty without violating the international law on investment. Fifth, law schools and even those with specialised ADR programmes, must include the taxation-arbitration interface as a specific course in their curricula, educating future practitioners on the management of such complicated disputes. The dilemma between taxation sovereignty and arbitral autonomy is not a technical matter of law; it is an issue of institutional design and has far reaching consequences on the attractiveness of India as an investment destination and its position in the international rule of law system. An equitable, practical and accountable attitude towards this interface will not only respond to the demands of proper commercial dispute resolution, but also to the constitutional prerogative of fiscal management.

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