THE DRAFT ARBITRATION AND CONCILIATION AMENDMENT BILL, 2024: A STEP TOWARDS REFORMING INDIA'S ARBITRATION FRAMEWORK?

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The Draft Arbitration and Conciliation (Amendment) Bill, 2024, aims to significantly transform India's arbitration landscape. This comprehensive draft seeks to align and modernize India's arbitration practices with those of the world and meet domestic challenges. The recommendations that stand out include the establishment of Appellate Arbitral Tribunals (AATs), statutory recognition of emergency arbitration and introduction of strict timelines. But the new government guidelines regarding arbitration in public procurement contracts only for disputes with monetary value below ₹10 crore cast a doubt on the government's faith in the arbitration framework.

Appellate Arbitral Tribunals

The proposal to introduce Appellate Arbitral Tribunals (AATs) in institutional arbitrations is one of the draft bill's most debated aspects. The AATs would offer an alternative to courts under Section 34.

The substitution of court challenges with proceedings before appellate tribunals established by arbitral institutions is unprecedented. There are two-tier arbitration models offered by certain arbitration institutions, e.g., the American Arbitration Association and the European Court of Arbitration. However, the second tier is only an intermediate step before a court challenge.

The introduction of AATs appears to be driven primarily by the aim to lessen the courts' burden and achieve quicker resolution of challenges to arbitration awards. However, the draft bill leaves the following critical questions relating to AATs unanswered:

1. Will AAT rulings be made publicly available like court judgments, or will they only be accessible through costly subscription-based databases? Ensuring free public access could be crucial for consistency and predictability in arbitration.
2. Will AAT decisions create binding precedents for other AATs, or will they merely serve as persuasive references? Additionally, whether AAT rulings will carry any weight in Section 34 petitions before the courts?

Extending the Patent Illegality Ground to Awards Arising Out of International Commercial Arbitrations (ICAs)

After the 2015 amendments, awards arising out of ICAs were no longer subject to challenge on the grounds of patent illegality. The draft bill reverses the position. This proposal has understandably drawn criticism. Foreign investors and multinational corporations might view this as excessive judicial interference and avoid choosing India as the seat of arbitration.

No Interim Relief under Section 9 upon constitution of the Tribunal

The draft Bill proposes that once a tribunal is constituted, parties must seek interim relief under Section 17, thereby eliminating recourse to courts under Section 9.

The primary objective is to minimize judicial interference in arbitration once the tribunal is established and also reduce the workload of the courts. However, this approach assumes that arbitrators would always be available to handle urgent matters. But what if they are not?

In some situations where for example, the performance bank guarantee of a party has been invoked, and arbitrator is on a holiday and therefore not available to conduct the Section 17 proceedings. In Section 9, allows the party to secure immediate relief from the court, avoiding significant financial harm to the party. Without the alternative of Section 9 being available, the party would have been left remediless.

The ouster of the courts' jurisdiction in such cases raises another interesting question: What if the appointment of an arbitrator is under challenge on grounds of bias, conflict of interest, or ineligibility? Would such an arbitrator be competent to decide applications under Section 17?

In order to cater to such situations, it is necessary to retain the flexibility to approach courts under Section 9 even though the Tribunal may have been constituted.

Statutory Recognition of Emergency Arbitration

Despite being widely used and acknowledged by prestigious arbitral institutes for many years, emergency arbitration is not statutorily recognized in India. In Amazon v. Future Retail, the Supreme Court held that an award by an emergency arbitrator in an arbitration seated in India is “enforceable” under Section 17(2). However, this decision also highlighted the absence of legislative recognition of emergency arbitrations.

The draft Bill proposes that the emergency arbitrator awards will be enforceable in India. This is likely to give both domestic and international parties greater confidence in opting for emergency arbitration. However, the success of this reform will depend upon efficient enforcement by Indian courts.

Further, while the order/award of an emergency arbitrator in a foreign seated arbitration would be enforceable in India (subject to a contrary agreement), the interim order of a properly constituted foreign seated Tribunal would not. This appears to be a glaring omission.

Stricter Timelines

The draft bill allows a period of 60 days for filing an application under Section 11 seeking the appointment of an arbitrator and for filing an appeal under Section 37.

In BSNL v. Nortel Networks (India) (P) Ltd., the Supreme Court stressed that arbitration should be initiated within a reasonable timeframe. In the said case, the Court held that Article 137 of the Limitation Act, 1963, should be applied to applications under Section 11. The said Article prescribes a three-year limitation period commencing from the date the cause of action arises.

The draft Bill's 60-day limit is far shorter and does not appear practical. Further, unlike Section 34(3), which explicitly allows a 30-day grace period for condonation of delay, the draft bill is silent on delay condonation for Sections 11 and 37, which raises the following questions:

Should the courts adopt a strict no-condonation approach, as seen with Section 34(3) (the most recent example being the Supreme Court's decision dated 10 January 2025 in My Preferred Transformation & Hospitality Pvt. Ltd. & Anr. v. Faridabad Implements Pvt. Ltd.); or Should they interpret it to mean that Section 5 of the Limitation Act applies and therefore allow condonation for sufficient cause?

Strict enforcement might hasten proceedings but will shut out parties who cannot avoid delays. A more lenient approach, on the other hand, might compromise the efficiency that the time limits intend to introduce.

The Guidelines of June 3, 2024 and Their Implications

On June 3, 2024, the Ministry of Finance issued guidelines on arbitration and mediation in domestic public procurement contracts. The said guidelines recommend limiting arbitration clauses in such contracts to disputes valued at less than Rs. 10 crore. Restricting arbitration to lower-value disputes may convey that the government considers it unsuitable for resolving significant or complex disputes. This contradicts the objectives of the Draft Bill and may jeopardize India's efforts to establish itself as a pro-arbitration jurisdiction.

The Draft Arbitration and Conciliation (Amendment) Bill, 2024, is an ambitious step towards modernizing India's arbitration landscape. With key reforms such as Appellate Arbitral Tribunals, formal recognition of emergency arbitration, and stricter timelines, the bill seeks to establish India as an arbitration hub. However, several significant concerns remain unaddressed.

The introduction of Appellate Arbitral Tribunals raises questions about transparency and consistency. Similarly, the decision to extend the patent illegality ground to international commercial arbitrations is a step that could discourage foreign investors. Most prefer arbitration precisely because it limits judicial intervention, and this amendment risks making India a less attractive arbitration destination. The push for stricter timelines, without clear provisions for delay condonation, could lead to unnecessary procedural hurdles. Additionally, restricting court intervention for interim relief under Section 9 may leave parties vulnerable in urgent situations. The government's June 3, 2024 guidelines further complicate matters by limiting arbitration in high-value public procurement disputes, sending mixed signals about its commitment to arbitration. Despite these concerns, the bill represents an important step in modernizing arbitration law in India. However, its success will depend on how well these issues are addressed.