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A COMPREHENSIVE STUDY OF GENEVA CONVENTION- Sonakshi Singh¹**Abstract**

Alternate Dispute Resolution is a new mechanism for dispute resolution. It has gained a world wide support of various nations as a mechanism for the settlement of disputes of commercial nature. This mechanism is used when the dispute arises during the course of trade, business, commerce etc. at both national and international level. The most reliable method is arbitration. There are various international treaties or Convention on the arbitration mechanism so that the award can be recognized, implemented or executed in the foreign lands and also for the administration of foreign awards in India. But the first ever formal document on the foreign arbitration award enforcement was the Geneva Convention of 1927 which was drafted and made by the League of Nation. It was signed at Geneva, Switzerland on 26 Sept 1927. The law on arbitration in India i.e., the Arbitration and conciliation Act, 1996 includes the guidelines for the implementation of Geneva Convention award under part 2, chapter 2.

The provisions of foreign arbitration award enforcement which are given under the Indian law of arbitration are same as those which are provided by the Geneva Convention on implementation of foreign arbitral award of 1927 because the Geneva Convention itself includes the procedure for implementation of foreign arbitral award which is given merely a statutory recognition through the enabling legislation of India called The Arbitration & Conciliation Act, 1996. Although the Geneva Convention of 1927 along with its Protocol of Arbitration clauses (GPAC) of 1923 was replaced by the New York Convention, 1958 but it still stands valid under the Indian law along with the New York Convention as there are many nations which are not the party to the modern Convention.

Introduction

Sir LJ Earl Warren once said that – “It is the spirit and not the form of law that keeps the justice

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alive².” Presently, the commercial transactions take place between almost every country. Every nation is engaged in some trade or business with the other nation. While doing these commercial businesses, dispute may arise between the parties. But as the dispute resolution through the court procedure takes time and is not cost-efficient, the international community came up with an alternate method called Arbitration. Any dispute of commercial nature, which arises between 2 different nations, was dealt by the method of arbitration. But the problem arose during the administration of the arbitral award in the other country due to the difference of laws. This made it difficult for the decree holder to get the fruit of his decree. To solve this administration problem of foreign arbitral award, the international community drafted some treaties.

During that time, the league of nation came up and drafted a Geneva protocol and convention on the implementation of the foreign arbitration award. It was then signed by many nations who were at that time also, the party to the League of Nations. It laid down the course of action for implementation of overseas arbitral award. This Convention made administration of the external arbitral award, easy & smooth. As India was party to that convention, and has signed it, the Convention applies to it also.

The current Indian law on arbitration proceedings i.e., the Arbitration and Conciliation Act, 1996 includes the provisions of Geneva Convention under Part 2, Chapter 2, under section 53 to 60. These sections include the procedure for implementation of the foreign arbitral award and the particulars which must be submitted in the court for the enforcement. This also lay down the grounds on which the court may ignore the enforcement. The arbitral award given under the submission to arbitration, made in accordance with the Geneva Convention may be administered in any of the countries which are a party to the Convention. The arbitral award can be easily administered in nations which are signatory to it. But there were several issues which arose during the award administration under this; therefore it was replaced by the New York Convention of 1958 which is the most successful treaty on foreign award administration till date.

Arbitration:

It is an alternative dispute resolution method. In this, parties are appointed by a mutual agreement, another neutral third party as their arbitrator. This 3rd neutral party is appointed for the settlement of any controversy which may emerge among the parties during the track of their

² <http://www.lawtimesjournal.in>

business or any commercial activities. This is an out of court settlement procedure. The final decision which the arbitrator gives is called an arbitral award which is irrevocable and conclusive on the parties unless otherwise agreed to under the agreement through which the arbitrator was appointed. This alternative legal mechanism for dispute resolution is much cheaper and faster as compared to the formal court proceedings. It is less time consuming, inexpensive and totally reliable. The award given in the arbitration proceedings is binding on both the parties and is enforceable by the courts of law. Also it is a formal process and it can follow the procedure of the court regarding the presentation of evidences and attendance of witnesses. In the arbitral proceedings, the arbitrator must give the reason for its decision or award. The determination by the arbitrator is conclusive and binding on the parties.

The disputes which are considered as an arbitral disputes under Indian laws are:

- Insurance disputes
- Contract related disputes (including employment contract).
- Property as well as Business and partnership disputes etc.

Some of the matters excluded from the sweep of arbitration are:

- Criminal offences and disputes relating to matrimonial relations.
- Matters regarding guardianship of a lunatic/ minor.
- Testamentary matters regarding viability of a will etc.

Generally, an arbitration agreement is of 2 types:

- 1) Agreements which provides for resolution of disputes if they arises in future.
- 2) Agreements signed after arising of any controversy where parties agree that the controversy should be sort out by the method of arbitration.

Advantages of Arbitration: the following are the advantages of arbitration proceedings-

- Parties are free to choose their arbitrators also called the tribunal.
- It is much faster than the ordinary court proceedings.
- The arbitration proceedings and award are confidential in nature etc.

International Arbitration Conventions:

Arbitration at international level is governed by both, private agreement of parties as well as by international conventions on arbitrations which applies on the parties' agreement independently. The main goal of these international arbitration conventions is to encourage the arbitration

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internationally and to help the states and parties to enforce the arbitral awards given at such level. The key convention on the international arbitration was the Geneva protocol of 1923 followed by the Geneva Convention of 1927. This instrument, which was the Convention on the implementation of overseas Arbitral Awards played principle role in the promotion and development of the international standard for arbitration. This was the first ever formal treaty on global arbitration which set the standards for the administration of the arbitral awards given internationally.

This was subsequently followed by the New York Convention alias the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958. This is the most remarkable and noteworthy convention regarding the international commercial arbitration. Its goal is clearly declared in the title which is the administration of the foreign arbitral awards. It provides the administration to the international awards by the domestic courts. This Convention has been signed and rectified by many nations across the world. The convention of Geneva and New York was followed by a number of other international treaties like European Convention on International Commercial Arbitration of 1961 (regional instrument), Inter-American Convention on International Commercial Arbitration or “Panama Convention” of 1975 (between US and South American countries). Further, Washington Convention or International Centre for the settlement of Investment Disputes Convention was signed in 1965 for investment arbitration. This Convention deals with investment disputes which arise between foreign investor and host state. Thus, international arbitration is controlled by many multilateral and bilateral treaties.

Geneva Convention of 1927

It is also called Convention on the execution of Foreign Arbitral Awards and was signed at Geneva, Switzerland on 26 September 1927. It draws out the standard and policy for the implementation of arbitral award given by a foreign tribunal by domestic courts. It comprises of 11 articles. The convention is applicable only on the arbitral awards pronounced after coming into force of GPAC, 1923. This convention was adopted and accepted by the League of Nations. It came into force after 3 months from the date of its ratification by the 2 high contracting parties. The important articles of this convention are:

Article 1: it talks about the application of this convention on the parties. It says that any arbitral award made in performance of any agreement to which this convention applies and is covered by the GPAC, 1923, relating to present or future disputes will be irrevocable or conclusive on

both the high contracting parties and is recognized and enforceable in their territories (subject to the condition that the territories of those high contracting parties are signatory of this convention). To get such implementation, it will be further necessary that:

- a) The award is given in accordance with the submission to arbitration which is justifiable under the law pertinent thereto;
- b) The content of arbitral award can be sort out by arbitration under the country's law to which the award is sought to depend upon.
- c) The award is decided by the arbitral tribunal which has been constituted by the parties by following the procedure of arbitral law.
- d) The award is conclusive in the territory of the country in which it was made or if it is proved that any proceeding regarding the viability of that award is unsettled.
- e) The administration and recognition of award is not against the principles of law or the public order of the nation in which the award is sought to depend upon.

Article 2: this provides for the ground for ignorance of administration of the arbitral award. It says that even if the circumstances laid down in article 1 are completed, the court, if satisfied, may ignore the administration of the award on the following basis:

- a) That the arbitral award is annulled or has been annulled in the nation where it was made.
- b) That the opposite party, against whom the arbitral award is passed, was not given sufficient notice in sufficient time regarding the arbitration proceeding due to which he was not able to present his case or that due to some legal incapacity, he was not represented properly.
- c) That the arbitral award includes determinations which are far away the sweep of submission to arbitration or that the arbitral award does not catch up with the distinctions falling within or observed by the appellation of submission to agreement.

If the arbitral award does not cover all questions which are presented to the arbitral tribunal then the capable and qualified power or officials of the nation in which the administration of the award is sought may, if it think fit, delay such administration of award or admit it under some conditions or assurance as such authority may permit.

Article 3: the court may also either, ignore the administration of the arbitral award or may adjourn its deliberation, if the party against whom such award has been passed proves that under the laws dealing with the arbitration procedure, there exist some other grounds other

than those mentioned in Art. 1(a) and (c) and Art. 2(b) and (c), which entitles it to question the viability of that arbitral award in the court of law, giving him reasonable time in which the award may be annulled by capable and qualified power or officials.

Article 4: it provides for the particulars which the party must provide for award's administration. It says that the party, which is claiming the administration of the arbitral award or is relying upon it, must provide the following particulars:

- a) Actual award or authenticated copy of such award, as per the essentials of the laws of the nation in which it was made.
- b) Such documentary or other evidences so as to prove that the award has become conclusive in the nation where it was made.
- c) When required, such documentary or other evidences to prove that the essentials of Article 1 has been fulfilled.

The nation where award is sought to depend upon may ask for the elucidation of the arbitral award or of other documents in its own official language. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to depend upon³.

Article 5: it says that the rules of article 1, 2, 3 and 4 will not deprive any party interested in litigation of his right of utilizing an arbitral award for himself to the extent and in the manner permitted by law of the nation where such award is sought to depend upon.

Thus, above mentioned are main article which focuses clearly and directly only on the implementation of the arbitral award given globally under the GC. It is worth noting here that this convention was later replaced by the NYC of 1958. This convention was established as an effect of disappointment with the GPAC, 1923 and Convention on implementation of foreign arbitral award, 1927. This action to replace the Geneva treaties was taken by the International Chamber of Commerce (ICC), which was later taken over by the UN Economic and Social Council (ECOSOC). But as India is a signatory to both the Geneva as well as the New York Convention, the former remain still as applicable under the Indian law.

Enforcement of Geneva Convention awards in India

Any arbitral award passed by any foreign tribunal is administered by the Arbitration and

³ <http://www.arbitrationindia.com>

Conciliation Act, 1996 which is the prime legislation in India for such awards. One of the main objectives of this act is the enforcement of the arbitral award determined by any foreign court in the same mode as a decree or award determined by any Indian court. It has 2 parts; Part 1 deals with the administration of the arbitral awards not shielded by the New York Convention or Geneva Convention while part 2 contains the provisions of the New York Convention. But this part 2, under chapter 2 contains the provisions for the administration of the awards under the Geneva Convention in the same manner as in the New York Convention. Part 2 of the act is applicable only for the implementation of those arbitral awards which are passed in the accordance with an arbitration agreement under the New York or Geneva Convention.

Sections 53 to 60 of the act deals with the provisions regarding the foreign awards passed under the Geneva Convention of 1927. According to the Convention, an arbitral award is considered as a foreign award if it is made on the distinctions relating to the matters which are considered as commercial under the law in force in India made after 28 July, 1924-

- a) In pursuance of an agreement for arbitration to which the protocol set forth in the second schedule applies, and
- b) Between persons of whom one is subject to the jurisdiction of some one of such powers as the central government, being satisfied that reciprocal provisions have been made, may, by notification in the official gazette, declare to be the parties to the convention set forth in the 3rd schedule, and of whom the other is subject to the jurisdiction of some other of the powers aforesaid, and
- c) In one of such territories as the central government, being satisfied that reciprocal provisions have been made May by like notification, declare to be territories to which the said convention applies.

And for the purpose of this chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the viability of the award are pending in the country in which it was made⁴.

In the case of *R.M. Investment & Trading vs. Boeing*⁵, SC held that the term “commercial” should be explicated liberally as its manifold activities, which arises from that relationship form an inherent part of international trade.

Section 55 of the act says that the award which is administrable under this chapter shall be

⁴ Section 53 of the Arbitration and Conciliation (Amendment) Act, 2015

⁵ (1994) 4 SCC 541

irrevocable on the part of the parties of arbitration and can be used by them as defence, set off or otherwise in any of the legal proceedings in India.

Section 56 talks about evidence which are to be given to court by the party asking the implementation of foreign arbitral award. This section says that the party which is requesting for implementation of any foreign arbitral award shall produce before court, at the time of presentation of application, the following particulars:-

- a) Actual award or its aptly certified or validated copy
- b) Evidences to prove that the award has become irrevocable and
- c) Evidences proving that the arbitral award is constructed in accordance with the submission to arbitration, which is reasonable as per the law relevant on such submissions and that the award is made by that arbitral tribunal which is constituted by the mutual agreement of parties or under the submission to arbitration and is in accordance with law dealing with arbitration procedure.

According to the new act, the enforcement application of foreign arbitral award shall only be made to the High Court.

Section 57 of the act provides for the conditions for implementation of any foreign arbitral award given under the Geneva Convention. Any foreign arbitral award made under the convention may be implemented in India if the given requisites are fulfilled:

- a) Arbitral award is made after following the submission to arbitration which is reasonable as per the law relevant to it;
- b) The content on which the award is built is of such nature that it can be settled under the law of arbitration of India;
- c) The arbitral award is made by that arbitral tribunal which is constituted by the mutual agreement of the parties or under the submission to arbitration and is in accordance with the law dealing with the arbitration policy.
- d) The award which has been made by the tribunal is final in the nation where it was made in the way that no appeal or opposition can be considered against it or if it is proved that any legal proceeding regarding the viability of such award is awaiting;
- e) The administration of that arbitral award is not against the public order or the law of India.

For international commercial arbitration, the ambit of violation of public policy has been

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restricted to include only those awards which are:

- i. Impacted by fraud or coercion;
- ii. Is against the foundational policy of Indian law;
- iii. Is in contravention with the principles of justice and morality.

In the case of *Khardah Company vs. Raymon & Co (India)*⁶, it was held by the SC that an arbitration clause, which forms an inherent part of an agreement, cannot be enforced when that agreement is declared illegal.

However, the section also provides that even if the above conditions are fulfilled, the court, if satisfied, may ignore the implementation of the arbitral award on the following grounds:

- a) The arbitral award is annulled or has been annulled in the nation where it was made.
- b) The opposite party, against whom the arbitral award is passed, was not given sufficient notice in sufficient time regarding the arbitration proceeding due to which he was not able to represent his case or that due to some legal incapacity, he was not represented appropriately.
- c) The arbitral award includes determinations which are far away from the sweep of submission to arbitration or that the arbitral award does not catch up with the distinctions falling within or observed by the points of submission to agreement. Provided that if the arbitral award does not cover every point which are submitted to the tribunal then the capable and qualified power or officials of the nation in which the recognition or enforcement of the award is sought may, if it thinks fit, hold up such administration of award or allow it under some conditions or assurance as such authority may decide.

Section 58 talks about the implementation of the foreign awards. It says that if the court is convinced regarding the enforceability of the foreign award under this chapter, the award shall be viewed as a decree of court.

Section 59 is about the appealable orders. It says that an appeal from an order refusing the implementation of the foreign arbitral award u/s 57 shall lie to the court which is authorized to hear the appeals from that order by the law and that no 2nd appeal shall be entertained from an order given in appeal under this section.

The procedural essentials for administration of an overseas award in the act are same as

⁶ 1962 AIR 1810, 1963 SCR (3) 183

those given under the Geneva Convention and there is no qualitative difference between them. This is because the Geneva Convention itself provides for the enforcement procedure which is merely given statutory recognition through enabling legislation and this same thing is embodied in the new act.

Conclusion

The Geneva Convention on implementation of foreign award was the first ever formal document on the administration of foreign arbitration award which was drafted by the League of Nations. The Convention gives the procedure and conditions for the administration of overseas arbitral award in nation to which the decree holder lives or carries business. But the Geneva Protocol on Arbitration Clauses, 1923 and the Convention on implementation of foreign arbitral award of 1927 was replaced, as a result of dissatisfaction, by the New York Convention of 1958. The action to replace these Geneva Convention treaties was taken up by the ICC which was taken over by the United Nations ECOSOC. The reason for the criticism of Geneva Convention was that it was difficult for the party asking for the administration of award in 1 nation to prove that the tribunal was formed following the law of the other nation and that in that nation, the award has become final. Also the grounds which were provided for questioning the viability of the award made it easy for the defendant to avoid its enforcement. This made the ICC to come up with a proposal for its replacement with a convention which recognizes as well as enforces the award given by a foreign tribunal. The New York Convention has become the most successful treaty for arbitration award and has been signed by more than 140 nations. But the Arbitration act of India still hold the provisions regarding the Geneva Convention because India was a signatory to the it also, besides the New York Convention of 1958. The provisions of the Geneva and New York Conventions are almost same because the New York convention has taken some of its provisions from the Geneva Convention only. But the latest Convention contains more clear and specific provisions and is signed by almost every country of the world. It's the New York Convention only under which, presently all the agreements are made and awards are given. All the arbitral awards are administered either under New York Convention or under UNCITRAL model law.

Currently, all the arbitral disputes in India in relation with any matter in which Indian parties or Indian laws and tribunal are involved are solved by the New York Convention and not Geneva Convention but it is important to note here that we cannot remove the later from the Indian law

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of arbitration until and unless it is repealed or removed by all its signatories as there are nations who still work by this and has not ratified or signed the New York Convention.



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