COMPARATIVE ANALYSIS OF THE ETHIOPIAN AND INDIAN LEGAL REGIMES GOVERNING RECOGNITION AND ENFORCEMENT OF FOREIGN COMMERCIAL ARBITRAL AWARDS

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To begin with, legal regimes governing recognition and enforcement of foreign arbitral awards are found at two levels. The first is at international level and includes international conventions and protocol, particularly the 1923 and 1927 two Geneva Treaties and the 1958 New York convention. The second is found at national level and it includes the national arbitration law framework of a particular State. Indeed, this national law framework may involve either only legislation or be the sum total of legislation and judicial precedents depending on the national jurisprudence adopted by that State. The aforementioned Conventions and the Protocol incorporated provisions with the aims to provide straightforward and effective procedures for the recognition and enforcement of foreign arbitral awards. It also aims to bring and promote uniformity in the basic principles applying to the recognition or recognition and enforcement process, irrespective of the country in which enforcement is sought. The place of enforcement should be chosen according to the location of recoverable assets, rather than the legal system of the State is the wish of particularly the New York convention. It is therefore important that the award be readily portable from State to State without legal or other complications. The need to bring uniform legal regime is even further attempted by United Nations Commission on International Trade Law (UNCITRAL) while the latter developed the Model Arbitration Law on 1985 and the General Assembly of UN recommend member States to adopt the Model Law while enacting their arbitration law framework. Besides this, the convention can't be exhaustive and comprehensive enough to govern each and everything of the process of recognition and enforcement. The details and what has not been covered by the convention need to be supplemented by the vehicle of the state's legal system, procedural rules of States, which constitute the national law framework. Yet, that should be and is in fact being done with the authorisation of the convention itself for States which are signatories to the convention. Hence, the procedural rules of States should be inconformity with the international principles contained under the convention. That is the explicit message of the 1958 New York Convention on the Recognition and Enforcement of Foreign Awards. Thus, the national arbitration laws or procedural rules come into play because of the authorisation of the convention and their validity and fairness have to be judged against the international standards set under the same convention. Yet, states use also their national law framework as a safety valve and checkpoint to protect their national public policy. That is why it has been said that the national law framework has a dual purpose; to provide national legal

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scheme thereby facilitate the recognition and enforcement of foreign arbitral awards and to serve as a safety valve and checkpoint for the public policy consideration of the enforcing State. In this regard, both Ethiopia and India have their own National law framework by which they facilitate and govern the recognition and enforcement of foreign arbitral awards and protect their own public policy consideration. In fact Ethiopia is not a member State to both the Geneva Treaties and the New York convention while India is.

4.1 The Ethiopian Legal Regime

Like other jurisdictions Alternative Dispute Resolution (ADR) mechanisms in general and arbitration in particular are not new inventions for Ethiopia and Ethiopians. They have not been unknown to the conventional Ethiopian humanity: different writers have tried to describe the diversified customary practices of different ethnic groups; Tesfaye Abate in *"Introduction to Law and Ethiopian Legal System"* course material has discussed in detail the Afar customary law including the devises employed there to settle different kinds of disputes among themselves and with their neighbours and Dr. *Aberra Jemberre* in his book entitled *"Legal History of Ethiopian – 1434 – 1974"*, which has been used as a text book for the course Legal History for years in Ethiopian law schools, has made a land mark discussion in revealing the customary laws of ten ethnic groups of Ethiopia[1]. For the major part of Ethiopian legal history, non-judicial dispute settlement methods played a significant role in resolving disputes in a traditional Ethiopian society and *[s]himguilina* is one of the many traditional Ethiopian dispute settlement devices which could be approximated to what is now known as arbitration[2]. The modern concept of arbitration in general and commercial arbitration in particular had however been alien to Ethiopia until at least mid-20th century, when Ethiopia developed most of its current Codes on private law[3]. Ethiopia has enacted its Civil and Civil Procedure Codes on 1960 and 1965 respectively. While the former is benchmarked from the French Civil Code, the latter *i.e.*, the Civil Procedure Code is grounded from the English Procedural Laws with a common law background. The two Codes, among other things, provide provisions regulating arbitration in general and recognition and enforcement of foreign arbitral awards in particular. The Civil Code, under its compass of *Book-5*, *Title-20, Chapter-2,* governs the contractual aspect of arbitration agreement, both clause and submission forms though the two are used confusingly[4], particularly the performance of arbitration agreement, appointment and replacement, disqualification, removal, competence and function of arbitrators along with effects of non-performance of arbitration agreement. The procedural aspect of arbitration has been incorporated under the Civil Procedure Code of 1965. While provisions from Articles (315-319) are allotted to govern the issue of arbitrability, appointment of arbitrators by the Court,

1. Customary Dispute Settlement of some specific Ethnic groups, Abyssinia Law, available at: http://www.abyssinialaw.com last visited on May 23, 2012 at 22:52 pm. See also Alternative Dispute Resolution Course Material of Ethiopia, prepared by Tefera Eshetu & Mulugeta Getu, 2009, P.89.

2. *Hailegabriel G. Feyissa, The Role of Ethiopian Courts in Commercial Arbitration,* vol. 4 No. 2, Mizan Law Review, P.300-301, (2010).

3. Supra Note, 2, P.301.

4. Even though the English version of the Civil Code confusingly and consistently employs the term 'arbitral submission' generally to refer arbitration agreements, there are authorities that the English term 'arbitral submission' is in fact a mistaken translation of the term "la convention d'arbitrage" from the initial French master text of the French Civil Code. Besides, some articles in Chapter Two, Title 20 of the Code expressly mention 'arbitration clauses', hence, affirming the Civil Code's difference from its traditional civil law counterparts including the French Civil Code which used to deny enforcement to arbitration agreements over future disputes, *i.e.*, arbitral clauses. See also, Supra Note, 2, P.306.

procedures the arbitral Tribunal to follow and making of the award, Articles (350-357) are prearranged to regulate appeal and setting aside procedures. Moreover, the national legal scheme governing recognition and enforcement of foreign arbitral awards be it commercial or non-commercial is incorporated from Articles (456-461) of the same CPC. Yet, since reciprocity is incorporated as one prerequisite[5], the Civil Procedure Code provisions governing recognition and enforcement of foreign arbitral awards are applicable for awards which are made in jurisdictions that recognised and enforced or ready to recognise and enforce arbitral awards made in Ethiopia. Awards made in none reciprocating States are not covered under the aforementioned provisions of the Civil Code. They need rather to pass through the Legal Ocean of Private International Law (PIL). Anyhow, while the main conditions for the recognition or recognition and enforcement of foreign arbitral awards are provided for under Article (461)(1). Article (461)(2) of the same CPC however makes a cross reference to the applicability of the provisions governing the recognition and enforcement of foreign judgments to the same of foreign arbitral awards. Therefore, the provisions governing the recognition and enforcement of foreign judgments are also made applicable by analogy when the recognition and enforcement of a foreign award is demanded. Hence, the role of Article (461)(2) is enormous in that it crafts a flyover between the enforcement of foreign judgments on the one hand and the enforcement of foreign arbitral awards on the other hand. Comparisons of these provisions with similar other provisions in other countries manifests that they are not detailed enough to accommodate as many legal situations as others do[6]. Moreover, though the 1958 New York Convention on the Recognition and Enforcement of Foreign Awards has been praised as: "the single most important pillar on which the edifice of international arbitration rests" and [t]he need for ratification of the Convention is long felt by the Ethiopian business community[7], Ethiopia is not yet a signatory State to the convention. Neither is it party both to the 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Execution of Arbitral Awards. On top of this, though Ethiopia signed the ICSID [International Centre for Settlement of Investment Dispute] Convention on September 21, 1967 yet, she has not ratified it[8]. As per Article 9(4) of the Federal Democratic Republic of Ethiopia (FDRE) Federal Constitution, international agreements become the integral part of the law of the land only when they are ratified[9]. The mere act of signature can't make international conventions part and parcel of Ethiopian laws, it has to be further ratified by the competent organ that is the House of Peoples' Representative. No exception to the ICSID Convention. Here, one may raise the query that if international commercial arbitration is the servant of international trade and commerce and if it is all about to facilitate international trade and investment why Ethiopia is not a party to these conventions? On this issue though I would have been luckier had he gotten a primary source, because of distance and inaccessibility, we have confined my discussion based on

5. Civil Procedure Code of the Empire of Ethiopia of 1965, Negarit Gazeta – Extraordinary issue No.3 of 1965. Art. (458)(a) cum (461)(2) . See also Art. (461)(1) (a) of same Code.

6. *Booz Allen Hamilton, Reinforcing Ethiopia's International Trade Law Framework for a Stronger Business Environment: A case for the ratification of the New York convention and CISG*, United States agency for International Development (USAID), P.12. (2008)

7. Tecle Hagos Bahta, *Recognition and Enforcement of Foreign Arbitral Awards in Civil and Commercial Matters in Ethiopia,* Mizan Law review, Vol.5. No.1. P. 137, Spring (2011)

8. Ibid

9. Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. (9)(4)

secondary sources. On this regard, the first issue should have been that why Ethiopia is not a signatory State both to the 1923 Geneva Protocol and the Consequent 1927 Geneva Convention? As everybody well knows the two Geneva treaties were signed at the time when the Europeans declared the motto 'Scramble for Africa'. As a result while the two treaties were signed most of African States were under colonial rules of the Westerners but Ethiopia and Liberia. Because of that while the 1923 Geneva protocol is signed it came up with a presumptive provision of a message that unless colonial powers limit the application of the protocol to the territorial limit of themselves only, the protocol's applicability will extend to the latter's colonies, overseas possessions or territories, protectorates or the territories over which colonial powers exercise a mandate. Thus, if for instance Great Britain sign the protocol and fail to declare the fact that the protocol applies to the territorial limit of Great Britain only the protocol will apply to its colonies, overseas possessions or territories, protectorates or the territories over which it exercises a mandate. Even once colonial powers made such reservation, they may subsequently declare separately on behalf of any territory thus excluded. For more clarity Article (8) of the protocol reads as follows:

> The Contracting States may declare that their acceptance of the present Protocol does present Protocol does not include any or all of the under-mentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate. The said States may subsequently adhere separately on behalf of any territory thus excluded.....[10].

Following such provision some colonial powers never made reservation thus by default the protocol made applicable to the then African colonies and some colonial powers adhere separately the protocol for their colonies after wards. Even after four years when the Geneva Convention was signed, though the presumption is shifted yet colonial powers are empowered to declare the convention to their respective colonies. On this regard *Amazu A. Asouzu* mentioned that:

> The 1927 Convention, unlike the 1923 Protocol, did not apply to colonies, protectorates or territories under the suzerainty or mandate of any High Contracting Party unless they were specifically mentioned. However, the application of the 1927 Convention to one or more of such colonies, protectorates or territories to which the 1923 Protocol applied could be effected at any time by a declaration by a High Contracting Party[11].

This was the way how the Geneva protocol and the Geneva Convention got application in Africa. On this point *Amazu A. Asouzu* further argued that, if the 1923 Protocol and the 1927 Convention are, or if any of them is or was, applicable or inapplicable to any African State, it was largely due to the action or inaction of the imperial powers. In furtherance of his argument he claimed that, Abyssinia (Ethiopia) and Liberia, although former members of the League of Nations, never became parties to the Geneva Treaties nor either of them colonised. Thus, Ethiopia and Liberia were not colonised by the westerners as a result both the Geneva protocol and convention are not signed as a result of this historical reason. That was fine, that is the time when economic liberalisation and globalization as well as privatization were at its conception

10. Geneva Protocol on Arbitration Clause, 1923, Art. (8)

11. *Amazu A. Asouzu*, International Commercial Arbitration and African States: Practice, Participation and Institutional Development, Cambridge University Press, P.182, 2001.

and infant stage. Now is the time which is claimed the world to have been shrunk in to a single economic unit and single village. Now is the time besides physical communication, the world is communicated online using the contemporary technological advancements. Now is the time the world business community is speaking the same business language and Foreign Direct Investment (FDI) is intensified than any other time ever. On top of this now is the time when Ethiopia has adopted free market economic system and trying its best to attract foreign investment as a result she went half a way to become a member State to WTO. Moreover, Ethiopia as a seat of Africa Union (AU) from the very establishment till now, she is an influential country in the continent both politically and economically. It is natural that all these economic integrations and relations inevitably followed by differences and dispute. Hence, is it not high time for Ethiopia to sign the New York convention? On this regard though it is regrettable for the writers for not having access to primary sources, a material prepared under the auspices of the United States agency. For International Development (USAID) revealed that:

> An attempt has already been made to contact the MOFA [Ministry of Foreign Affairs] to see if they could initiate the ratification process for this Convention. Although they seem to have a favourable opinion about it in general, they identified one possible setback- that ratifying to this Convention, as things stand now, would invite a possible surge of flimsy claims by Eritreans against Government-owned assets abroad. They expressed fear that any interim order that may be obtained against state assets could lead to an unnecessary exorbitant cost. Apart from such cost, the very likelihood of any harassment that may come with such claims is an unflattering risk the Government wishes to assume. Particular mention was made of any attachment that may, for instance, be ordered against the properties of Ethiopian Airlines[12].

Consequently, the Civil and Civil Procedure Codes, both of which precede the modern international arbitration legislation represented by UNCITRAL Model Law, remain the major sources of arbitration law under the contemporary Ethiopian legal regime. In this regard, as aforementioned, the Civil Procedure Code provisions (Articles (456-461)) remain the only legal tenets governing recognition and enforcement of foreign arbitral awards. One more thing worth mentioning is that, the Ethiopian legal scheme besides being non-exhaustive and non-comprehensive and besides the inability of the country to come up with a separate legislation governing arbitration in general and the process of recognition and enforcement of foreign arbitral awards in particular, as I mentioned afore, provisions regarding the recognition and enforcement of foreign judgement are made applicable to the issue of recognition and enforcement of foreign arbitral awards. Moreover, the Ethiopian legal regime never made a distinction between commercial and non-commercial arbitration and the consequent awards as commercial or non-commercial as well, be the award may domestic or foreign. As a result, those provisions regulating arbitration apply for both commercial and non-commercial arbitration. And the Civil Procedure Code articles governing recognition and enforcement of foreign arbitral awards apply for both commercial and non commercial foreign arbitral awards indiscriminately. However, it is obvious that the international convention, Geneva and New York, are come into being out of necessity to the international commercial community with a commercial sentiment and intent. After all it is the International Chamber of Commerce (ICC) which initiated both conventions and drafted

12. Supra Note, 6, P.19.

the New York convention. Moreover, it has been said that some countries especially those adopted their arbitration law from the UNCITRAL Model Law has a separate arbitration law regime governing commercial arbitration and non commercial ones, for instance India. In light of this, the Ethiopian counterpart let alone to have a separate legal regime to govern the recognition and enforcement of foreign commercial arbitral awards, it set almost same yardsticks for the recognition and enforcement of foreign arbitral awards and foreign judgements. This is the reason why it has been said that Ethiopian arbitration laws fail to cope with the emerging modern laws and practices in international commercial arbitration[13].

4.1.2 The Indian Legal regime

Alternative Dispute Resolution (ADR) in India is by no means a recent phenomenon, though it has been organised on more scientific lines, expressed in more clear terms and employed more widely in dispute resolution in recent years than before[14]. Two Indian authors by the name, *Harsh Sethi* and *Arpan kr. Gupta* under their Book, *International Commercial Arbitration and Its Indian Perspective,* mentioned that: *In our opinion, Arbitration in India as an essential limb of the dispute resolution system has its genesis rooted in the ancient era, when during the Harappan civilization trade links were established with other parts of the then known world*[15]. This shows that arbitration has a long history in India. Though in ancient times, people often voluntarily submitted their disputes to a group of wise men of a community—called the *panchayat*—for a binding resolution, modern arbitration law in India was however created by the Bengal Regulations in 1772, during the British rule[16]. The Bengal Regulations provided for reference by a Court to arbitration, with the consent of the parties, in lawsuits for accounts, partnership deeds, and breach of contract, amongst others. With this background, until 1996 the arbitration law of India had been incorporated under three basic Acts. The first is the 1940 arbitration Act of India designed to regulate domestic arbitration. The second is The Arbitration (protocol and Convention) Act, 1937 which is enacted by India to enforce the 1923 Geneva Protocol on Arbitration clauses and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards as part of its international commitment which India owe as a signatory State for both Treaties. The Third is the 1961 Foreign Awards (Recognition and Enforcement) Act which is basically enacted to enforce the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as India is a signatory State to such a convention. India enacted the Arbitration and Conciliation Act, 1996 with a view of modernization of its arbitration law regime in general and as a result of liberalization of its economic policy in particular. Since its economic collapse in 1991, India strives to encourage foreign investment as a result India adopted a New Industrial Policy, 1991[17]. Following this new industrial Policy, India joined WTO on 1995 after four calendar years. After one year, as part of liberalization of its economic policy, India enacted the Arbitration and Conciliation Act, 1996 benchmarking the UNCITRAL Model Arbitration Law. The Act, *inter alia,* has two basic objectives;

13. Supra Note, 1, P.1.

14. *R.D. Rajan*, A premier on Alternative Dispute Resolution, P.493, Barathi Law Publications, New edition 2005.

15. *Harsh Sethi* & *Arpan Kr Gupta*, International Commercial Arbitration and Its Indian Perspective, P.1. Universal Law Publishing Co. Pvt. Ltd. 2011 edition.

16. *Krishna Sarma, Momota Oinam* & *Angshuman Kaushik*, *Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution,* Center on Democracy, Development, and The Rule of Law, P. 2, 2009.

17. Justice *A.K. Sikri*, *Recognition and enforcement of Awards in India*, NYAYA, P. 45, as cited from Tracy S. Work, India Satisfies Its Jones for arbitration: New Arbitration Law in India, 1997.

to consolidate the laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and enacting rules of conciliation (for the first time) on the one hand and amending and making them inconformity with the contemporary demands of the international commercial community which is represented by the UNCITRAL Model Law. When we come to our point, the Arbitration and Conciliation Act, among other things, incorporates provisions dealing with recognition and enforcement of foreign arbitral awards. However, before that let me remind that India is a member State to both the Geneva Protocol and Convention. Moreover, India is a signatory State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards with reciprocity and commercial reservation contemplated under the convention. India is also a contracting State to the ICSID Convention or Washington Convention, 1965 which is basically designed to facilitate the resolution of investment disputes between the host State and foreign investor. It is mentioned however that my country Ethiopia is a contracting State for neither of all. Thus, India as a member State to the aforementioned international conventions, its national law framework governing recognition and enforcement of foreign arbitral awards need to be, and in fact are, inconformity with that international commitment embodied under the conventions. Generally speaking, regarding recognition and enforcement of foreign arbitral awards, three cases are contemplated under Indian Act; When the award is awarded in India be the arbitration is national or international; When the award is made in a country which is signatory neither to the Geneva nor to the New York convention; Where the award is made in a country which is a member State either to the Geneva or new York convention or to both of them. Thus, in the first case, when the seat of arbitration is India whether the arbitration is international or national the award is domestic to India and. Consequently, the award will be enforced accordingly, *i.e.* since it is a domestic award it will be enforced as if it were a decree of the Court. So, it is out of the scope of our discussion. In the second scenario, when the award is rendered in the state which is signatory for neither of the conventions, the Act is not applicable as India has declared reciprocity reservation. Therefore, such awards are not covered under the Act nor can they be recognised and enforced with the same facility as in the case of foreign awards to which either or both of the convention applies/apply. Hence, what is going to govern this relation? It should not be left ungoverned. In fact, in the case of *Badat and Co v. East India Trading Co on 10 May, 1963* the Supreme Court of India has ruled that foreign arbitral awards made in a non-convention countries will be enforced in India under the common law on grounds of justice, equity and good conscience[18]. Yet the problem is that what is just for X may not be just for Y and what is equitable for Y may not be the same thing for X and *vice versa*. They are subjected to the subjective determination and appreciation of Judges. There is no an objective yardstick to measure justice and equity. Moreover, the subjective conscience of Judges is too different from one to another. This may frustrate the effort of India, as a sovereign country, to liberalise its laws and attract Foreign Direct Investment (FDI) by instilling confidence on the foreign

18. Supra Note, 17, P. 55. See also the case of, *Badat and Co. v. East India Trading Co.* available at http://www.plusnetwork.com/?q=historical+development+of+the+law+of+arbitration+in+india last visited on May 25, 2012. Though the position held in *Badat* Case was reversed with the judgment in *Bhatia International v. Bulk Trading*, (2002) by the Supreme Court by giving decision that Part I of Arbitration and Conciliation Act 1996 to applicable for foreign arbitration also, the Government is planning to amend the Act to make Part I will be applicable to only domestic arbitration only – this just bring back to the decision given in *Badat* Case.

investors and traders that they would recover their returns with proper remedies in case dispute arise. On the other hand it will be also a traffic jam for Investors and merchants who have Indian counterparts and best partners but unluckily and unfortunately their country never ratified both the Geneva and New York conventions. To date, for instance, India and Ethiopia are becoming the major economic partners. This has been confirmed while the Ethiopian Government inaugurate its Consular Office at Mumbai in addition to its Embassy at New Delhi. Moreover, their economic partnership is strengthening while the Ethiopian prime minister visited India in 2011 and his Indian counterpart do the same visit in the same year. Soon, the Ethiopian Government established the second Consular Office at Bangalore this year, 2012. To the best of our knowledge it is only India wherein the Ethiopian Government has two Consular Offices besides Embassy. Moreover, because of this favourable condition and Ethio-Indian economic friendly relation, not less in number Indian companies are investing in Ethiopia aggressively than any other time ever. Yet however the bad news is that Ethiopia remains non-signatory State both for the Geneva and New York conventions and a none member State to the Washington convention despite the hues and cries of the commercial community and academicians of the profession. Assume what would happen? In this regard India would better achieve its economic goal if it come up either with a new arbitration law framework governing recognition and enforcement of foreign arbitral awards made in a non-convention country or discard the reciprocity reservation. In the third scenario, when the award is made in the State which is signatory for either or both of the conventions, Part-2 of the Act is applicable. Part-2 of the Act in fact is crafted with two Chapters. While Chapter-1 gives coverage for New York convention awards, Chapter-2 governs Geneva Convention awards. Thus, if the forum State is signatory to the Geneva protocol and Convention, the award-creditor can file his petition under Part-2, Chapter-2 of the Arbitration and Conciliation Act fulfilling other procedural requirements stated therein. In the same vein, when the forum (seat) State is a member State to the New York convention, the award-creditor can avail of himself by instituting a petition of recognition or recognition and enforcement under Chapter-1 of the same Part and Act, satisfying procedural and formality prerequisites sated therein. One may still ask that what if the seat (forum) State where the arbitration is conducted and award made is a signatory State for both the Geneva and New York conventions like India. In this regard both the New York convention and its domestic equivalence of *Part-2, Chapter-1* of the Act made the New York convention to have a superseding effect[19].

4.1.3 Jurisdiction

After the award is made the arbitral Tribunal is *functus officio i.e,* the function of the Tribunal is over. It is the Courts of the State where recognition and enforcement is sought that gives the true meaning and effect due to the award. In fact, the award-creditor may need either recognition only or recognition and enforcement. Hence, the country where recognition or recognition and enforcement is sought has to be chosen based on the type of claim the petitioner has (recognition only or recognition and enforcement), the state's legal framework and other considerations[20]. Once the award-creditor located the specific country where s/he is going to satisfy his claim, his

19. See Article (7)(2) of the New York convention. See also Article (52) of the Arbitration and Conciliation Act of India, 1996.

20. Among other things, the fact that whether the award-debtor has any asset or not, whether the State is signatory for the New York convention or not, whether the national procedural rules are enforcement friendly or not, *etc.*

second consideration must be determining the proper Court of that specific State having the power to entertain the issue of recognition or recognition and enforcement of foreign arbitral award. In fact, the issue which Court of the enforcing State has proper power among the hierarchy of Courts is nothing but the issue of jurisdiction. The question of jurisdiction is a subject-matter to be determined by the municipal law of that particular State. Indeed, contracting States as part of their international conventional commitment have to come up with a supportive procedural rules conferring jurisdiction on a proper Court system among the hierarchy of Courts which will properly interpret the convention, national rules and above all to give true meaning for the award. It is only when awards are given their due that arbitration gives sense and such can be true when States confer jurisdiction to Courts which are competent to analyse the convention and national laws and this is most likely when the jurisdiction is bestowed upon Courts on higher hierarchy which is most probably staffed with Judges with a better legal knowledge and experience. The assumption is that Courts in higher hierarchy are stuffed with Judges who have better legal skill and experience. In this regard the Arbitration and Conciliation Act of India, 1996 confer jurisdiction of recognition and enforcement of foreign arbitral awards on the principal Civil Court of original jurisdiction in a district which includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit[21]. The same Court/s has/ have jurisdiction with regard to domestic arbitration[22]. With regard to jurisdiction, the Act made no distinction between the process of enforcement of foreign and domestic awards. Thus, the award-creditor who wants the recognition and enforcement of an arbitral award in India has to first check whether the Court with a proper jurisdiction is the District Court or the High Court. And the Act made such a distinction based on the pecuniary value involved therein. In this regard, the High Court in the exercise of its ordinary original civil jurisdiction will assume jurisdiction if and only if the Court had jurisdiction to decide the case forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. In any other cases it is the District Court which has jurisdiction. Anyhow, though India is exerting its big effort in liberalising its arbitration law framework and for that matter she has been praised by different professionals of the discipline[23], yet we doubt it is proper and justifiable for India to bestow jurisdiction upon the District Courts the issue of recognition or recognition and enforcement of foreign arbitral awards. The premise being that the issue of recognition and enforcement of foreign arbitral awards, as a part of private international law, involves foreign element and most likely parties from different Countries with different language, legal and cultural background and so on. On top of this, international commercial arbitration as an emerging and contemporary mechanism of international commercial dispute settlement mechanism across frontiers and as recognised and legitimised by sovereign States out of its necessity because of the prevailing economic integration of world and the economic Liberalisation, Privatisation and Globalisation (LPG) process, the legal issues concerning it

21. The Arbitration and Conciliation Act of India. 1996, Art. (47)(2)

22. Supra note, 21, Art. (2)(e)

23. The manifestation being that, on 2011 India has been selected to host the annual international discussion on 'Online Dispute Resolution 'which is celebrated once a year. Accordingly India hosted the meeting successfully at Chennai. The very reason why India has been selected to host the meeting was its commitment to liberalise its arbitration law and its effort institutionalise arbitration proceeding.

in general and the process of recognition or recognition and enforcement in particular must be decided by Courts whose Judges well understood all these contemporary economic policy reasons in general and the rationale behind the coming in to existence of the new York convention and the Arbitration and Conciliation Act of India in particular. If so, I doubt the district Court is the proper forum. After all, a distinction should have been made in terms of jurisdiction for the enforcement process of domestic and foreign arbitral awards. Thus, India would have been better off if she had bestowed jurisdiction regarding the question of recognition and enforcement upon High Courts irrespective of pecuniary values. Or else, it would be best if India constitute a new Commercial Division in the High Court in that the primary function of it will be to entertain commercial matters including the issue of recognition and enforcement of foreign commercial arbitral awards. On this regard, the question of recognition and enforcement of foreign arbitral awards, in Ethiopia, is vested in the Federal High Court of first instance jurisdiction[24]. Though the Federal Courts Proclamation[25] on this point seems unclear, the issue of recognition or recognition and enforcement of foreign arbitral awards is made to be entertained by the Federal High Court as opposed to State[26] Courts and Federal First Instant Courts. The relevant provision of the Proclamation is Article (11)(2)(a) and (c) which reads as follows; *Notwithstanding the provisions of sub-article I(a) hereof, the Federal High Court shall have first instance jurisdiction over the following civil cases: (a) cases regarding private international law; (c) application regarding the enforcement of foreign judgments or decisions.* We said the Proclamation is unclear for the reason that, first, it is not clear why the provision made a distinction between private international law on the one hand and the enforcement of foreign judgment on the other hand unprecedentedly. The reason why the provision made the enforcement of foreign judgment outside of the scope and ambit of the general notion of private international law seems unjustified and, if at all, not water holding. Despite the presence of otherwise arguments in other jurisdictions, under the Ethiopian legal discourse (academic and judicial practice), private international law (PIL) rules comprise three major parts, *i.e.*, judicial jurisdiction, choice of law (conflict of law rules), and proceedings for the recognition and enforcement of foreign judgments and foreign arbitral awards[27]. It has been the tradition in the Ethiopian legal system that the recognition and enforcement of foreign arbitral awards can be subsumed under the umbrella of private international law[28]. One can easily steal a glance also at the Ethiopian Law Schools, 'Private International Law Course Material', which is made with the same mentality and sentiment, prepared by *Araya Kebede* and *Sultan Kassim*, under the Sponsorship of *Justice and Legal System Research Institute*. The second is that, no mention has specifically been made regarding recognition and enforcement of foreign arbitral awards. While sub-article (2) of (a) mentions ....*Private International Law*.... , the same sub article of (c) mentioned ....*foreign judgements or decisions*... . Thus, does the issue of recognition and enforcement of foreign arbitral award falls under the wider connotation of the phrase .... *private international law*.... under sub. (2)(a) or is that possible to argue that the word ...*decision*... under the same sub-article of sub (c)

24. Unlike India Ethiopia has a dual Court structure, Federal and State Courts. The FDRE constitution has established three levels of Courts both at the Federal and State levels. Thus, there existed the Federal First Instant Court, Federal High Court and Federal Supreme Court. Likewise each State has its own Regional equivalence.

25. The Federal Courts Proclamation No.25/1996. Art. (11)(2)

26. Here I used the word State to refer regional States or federating units of the Federal State.

27. Supra Note, 7, P.110.

28. Ibid.

is most likely to encompass arbitral awards; otherwise it become superfluous as judicial judgment is specifically mentioned. After all, what the word ...*decision*.... is to refer and stand for while Court judgment is specifically mentioned. What sort of decisions we can have other than Court judgments and arbitral awards? Actually, the Civil Procedure Code provisions governing the recognition and enforcement of foreign arbitral awards are also found under the Chapter*, Chapter-2,* entitled with '*execution of foreign judgments*'. Thus, it is not new for Ethiopian legal drafters to cover up the issue of foreign arbitral award under the title of foreign judgment. But, it is a clear manifestation of low concern for the area. Anyhow, the good news is that in both cases the jurisdiction to entertain the case is vested in the Federal High Court under its First instance jurisdiction. But the law should have been clear and unambiguous particularly for outsiders, who are aliens for the Ethiopia and its legal rules, cultures and traditions, come to Ethiopia demanding recognition or recognition and enforcement of an award decided in their favour. It is not a well drafted provision in that first it made a distinction between private international law and foreign judgment unprecedentedly and second it didn't mention foreign arbitral award specifically. This also shows the inability of the Ethiopian legal frame work to come up with separate legal provisions governing foreign judgment on the one hand and foreign arbitral award on the other hand. This in turn shows how far Ethiopian arbitration law is classical and uncivilised. The law relating to recognition and enforcement of foreign arbitral awards are yet incorporated under the Ethiopian Civil Procedure Code. Besides, some criteria for the recognition and enforcement of foreign judgement are also made applicable for the process of recognition and enforcement of foreign arbitral awards[29]. Moreover, the Ethiopian arbitration law framework governing arbitration in general and the part which regulate recognition and enforcement of foreign arbitral award in particular never made a distinction between commercial and non-commercial matters and the governing law is crafted accordingly. But we strongly believe that the law governing commercial arbitration, be it national or international, has to be distinguished from the law governing other arbitration of civil matter. The reason being that the justification for the coming in to being of the two arbitration laws is too different. While laws governing commercial arbitration are developed over times with a view to make uniform laws across the globe for the commercial community thereby to encourage international trade and investment, the purpose of arbitration law of other civil disputes is to encourage diversity not to bring uniformity. For instance, if we take the law governing arbitration of family dispute, the goal is to allow each family to resolve its dispute taking in to consideration their cultural, religious, traditional,...values. Thus, the arbitration law governing the arbitration of a civil dispute other than commercial arbitration is to encourage and promote the culture, religion, tradition, value, ... of a particular country. It is an instrument of federalism and legal pluralism. But it is not the case in commercial arbitration. The very purpose of commercial arbitration law is to bring uniform arbitration law across frontiers; if absolute uniformity of arbitration laws is not possible, to make the international business community speak the same language and understand one another. Thus, both the genesis and the end of the two arbitration laws are different. If so, they have to be crafted differently and Ethiopia as a country of diversity should have crafted the two arbitration laws separately. However, yet there is no initiative on this regard[30].

29. Supra Note, 5, Art.(461)(2)

30. See the Draft Bill on Arbitration Law, on file with the writer.

4.1.4 Procedural Requirements

The party who demands the recognition or recognition and enforcement of an award, once located the appropriate Court with proper jurisdiction, has to file his application to that effect. Once a petition is filed, the Court will proceed as per the national procedural rules. These national Procedural rules for recognising or recognising and enforcing an arbitral award may differ from jurisdiction to jurisdiction. Though, contracting States will recognise and enforce a foreign award in accordance with their own domestic law framework yet however, they can't impose any higher fees or any more onerous conditions on the process than would be applicable in enforcing a domestic award[31]. In fact, the convention imposed specific requirements that the petitioner must present to the enforcing Court at the time of the application. The requirements to be supplied by the award-creditor are the authenticated original award or its certified copy and the original arbitration agreement or its certified copy, nothing more[32]. Besides, however if the arbitral award or the arbitration agreement is not in the same language used in the enforcing jurisdiction, the party must provide a certified translation of the documents as mentioned under Article (4)(2) of the New York convention. Here it seems fair to raise two points. The first is, the convention seems put a time frame when the aforementioned requirements to be supplied to the Court. In this regard, Article (4)(1) of the New York convention says..... *shall, at the time of the application* ..... Thus, the question is that what will be the effect if the petitioner submits an application which didn't fulfil either of the said documents? The issue may have practical importance specially when there is the issue of period of limitation and when the petitioner has at hand only one of the documents, say only the award, and promised the Court to submit the other, say the agreement, afterwards. And even the more likelihood is that though the applicant came up with the duly authenticated original award and the original arbitration agreement or with their duly certified copy, either the award or the agreement may not be translated in to an official language of the enforcing State; and even though sometimes they are translated and authenticated either of the two may have been claimed to have been not authenticated by the appropriate person or organ. Unless the Court or the concerned branch of the Court gives him permission his claim will be barred by period of limitation. Thus, is it at all the discretion for the Court? Can the other party, *i.e.*, the award-debtor opposes the grant of the Court in this respect as of right; if at all the Court gave the petitioner such permission? Anyhow, the message of the convention seems mandatory in that the applicant has to fulfil all the requirements at the time of application as it used the mandatory word ...*shall* ....as opposed to its permissive equivalence ...*may*.... The likelihood is that the registrar of the Court or the bench of the Court concerned may reject the application for the reason that conditions (documents) for application are not fulfilled. The second is who is going to translate the award or/ and agreement and certify such a translation of the agreement or/and an award when a need arises as provided under the New York convention. In this regard, the message of the convention seems clear in that as far as translation is concerned it can be made by anybody. The convention didn't put any limitation and restriction. The most likely is that there are Official Translators everywhere, so the award-creditor can approach them and get his award translated. But, after that such translation need to be certified. So who is going to do that stuff? On this point also the convention makes it clear in that it authorised the sworn translator, the

31. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Art. (3)

32. Supra Note, 31, Art.(4)(1)(a &b)

diplomatic or the consular agent of either of the countries competent to do so. So, the process of certification need not be made by Government official of either of the countries, it can be also made by sworn translators. Thus, the award creditor can get his award translated and certified from the same translator but the certification needs to be attested by the oath of the translator.

In this regard, Article (47) of the Arbitration and Conciliation Act of India come up with a stringent requirement deviating from the spirit of the convention. As provided under the same article of sub-article (1)(c) of the Act, the award creditor is further expected to produce evidences as may be necessary to prove that the award is a foreign award. Such evidences have to be produced at the time of application. However, the requirement under the convention is only the valid award and valid arbitration agreement and their certified translation when a need arises. In short, under the convention the award creditor is not expected to proof the fact that the award is foreign. Nowhere, under the convention, the petitioner is supposed to proof the fact that the award is foreign as opposed to domestic awards. It had been rather the requirement under the Geneva Convention and it is out of such deficiencies and limitations, *inter alia*, of the Geneva Convention that the New York convention came in to being. Thus, such a provision is against the spirit of the convention. Because, the convention never require the award creditor to prove that the award is foreign. So the Act would have been more pro-enforcement and international commercial arbitration friendly had it presumed the validity and the enforceability of the award and left the option to the award debtor to raise objection or not. On top of this, the definition given for the phrase... *foreign award*... under the Arbitration and Conciliation Act of India is not in accordance with the definition adopted by the New York convention. After all, the Convention has already set the criteria for an award to be considered as foreign. The issue whether an award is foreign or not is not left for the determination of convention States. It is defined under the convention itself. Hence, as the convention stands now, signatory States are not empowered to define foreign arbitral award as such is done under the convention itself and by signing the convention they are considered as they have accepted such a definition and will enforce it and frame their national arbitration law frame work accordingly. No exception to India. The worst of all is that India has adopted a very narrow definition of foreign arbitral award. Article (44) of the Act, misunderstanding the concept of reciprocity, discriminate between convention States. As a result, though to date the New York convention has more than 146 member States the application of Part-2, Chapter-1 of the Act is limited to 46 countries because of the double reciprocity requirement under Article (44) of the Act. Such double reciprocity requirement is not in line with the will of the convention. The message of the convention is that, as far as possible the signatory States should apply the convention for all foreign arbitral awards whether the seat State is convention State or not. Furthermore, the convention put the definition of foreign arbitral award therewith. Hence, the purpose of the convention was to promote the concept of *universality* as opposed to the traditional and classical concept of *reciprocity*. In this regard, the convention made a foreign award to be recognised and enforced without any need of reciprocity, whether the award is made in a convention or non-convention jurisdiction. This was the principle. However exceptionally, if countries are unable to adopt the liberal principle of universality and insist to hold on the traditional concept of reciprocity, they can limit the application of the convention to the extent of awards made only in convention countries and such

can be done only at the time of signing, ratifying or/and acceding the convention not even after wards or not at any other time they need. Thus based on this, India made reciprocity reservation. That was fine. India could have applied the convention to awards made in the convention States only. As I have mentioned, now a day there are 146 States signatory to the convention. Hence, India should have applied the convention made within the territorial limits of these countries. However, by adopting the definition of foreign award unprecedentedly and in unauthorised manner, India limits the application of the convention to 46 countries only. When we come to the Ethiopian domestic law framework, procedural requirements for the recognition and enforcement of an arbitral award are provided under the Ethiopian CPC, from Articles (456-461). Like the New York convention, it is also the CPC requirement that the party who wants the recognition and enforcement of an award to file an application before the Federal High Court under its first instance jurisdiction. As to the type of application the CPC made it clear in that it says written application. Actually from the very word ...*application*... it was presumable even under the new work convention that the application has to be in written form. The very word application presupposes it to be in written form. Furthermore, the application must be accompanied by a certified copy of the judgment to be executed; and a certificate signed by the President or the Registrar of the Court having given judgment to the effect that such judgment is final and enforceable[33]. By virtue of Article 461(2), this requirement is made applicable for the recognition and enforcement of foreign arbitral awards. Here, the requirements are:

- Written Application
- Certified copy of the arbitral award
- A certificate signed by the ..... to the effect that the award is final and enforceable??

From this one may raise the following, we deem basic, questions. First, is it not a requirement to produce arbitration agreement which is a prerequisite under the New York convention, Model Arbitration Law and the Arbitration and Conciliation Act of India? If the answer is in the affirmative, what will be the rationale behind? Second, who is to issue the certificate? Is it the Court (the President or the Registrar of the Court as the case may be) or the arbitral Tribunal, the President of the arbitration Tribunal or the Registrar of the Tribunal in case of institutional arbitration as the case may be? Can the Tribunal after all certify the award to the effect that the latter is final and enforceable? What does mean by finality and enforceability? Third, is it not mandatory for the petitioner to submit the certified translation? Submission of certified translation of the award, when required, is not made a requirement under CPC. Here in under our discussion revolves around these queries.

Regarding the first issue, it is vivid from the reading of CPC, from Article 456-461, that the petitioner is not commanded to produce arbitration agreement. Therefore, one may argue that under Ethiopian arbitration law, arbitration agreement need not be in written form[34] hence, unless in some exceptional situations, the parties are free to agree either orally or in written form. If the parties are allowed to agree orally and agree accordingly, there is no more arbitration agreement to be submitted. Thus, on the one hand it seems that the framers

33. Supra Note, 5, Art. (456)

34. See the accontrario reading of Art. (3326)(2) of the Ethiopian Civil Code. The same argument has also been hold under the Ethiopian legal discourse. See Supra Note, 2, P. 307. See also, Bwzzawork Shimelash, *The formation, Content and Effect of an Arbitral Submission under Ethiopian Law,* Journal of Ethiopian Low, Vol XVII, 1994.

of the law are conscious of this fact. Yet however, though the prevailing legal argument and practice in Ethiopia is that, parties in principle can agree either orally or in written[35], I personally disagree with such a prevailing practice and hold on positions between and among Lawyers for the reason that Article (315)(1) of the CPC provided explicitly written requirement[36]. Thus, the justification seems take us nowhere. Moreover, pursuant to Article (461)(1)(b) of CPC the validity or otherwise of the arbitration agreement is made to be governed under the laws of the seat or forum State. If that is the case the forum State may need a written form of arbitration agreement. Thus, in this case also the possible reason that we posed *i.e.*, the policy reason behind Ethiopian domestic arbitration law in principle is oral agreement, doesn't have any help. Be it as it may on this point the Ethiopian law regarding recognition and enforcement of foreign arbitral award seems adopting less stringent criteria. That is fine. As far as the second point is concerned, the petitioner has to produce the certificate which shows that the award is final and enforceable. Thus, who has to certify and give such a certificate, the Court or the Tribunal? The law is silent in this respect. However, from the Ethiopian domestic law arbitration frame work it is clear that a domestic award which is awarded can't be automatically enforced. It has to pass through the process of homologation by Courts of law[37]. Moreover, Ethiopian law regarding recognition and enforcement of foreign arbitral awards needs finality as a requirement which is discarded under modern arbitration laws. One can see the New York convention and the Model arbitration law wherein finality is abolished as a ground of refusal of recognition and enforcement. Actually finality was one condition under the Geneva Convention. But while the Geneva Convention was condemned on this regard for it causes double - *exequatur* and almost superseded by the New York convention the Ethiopian CPC remain untouched and being classical. Anyhow, Finality refers to the situation when an arbitral award has acquired the force of *res judicata* in the sense that no ordinary appeal, set aside procedure, or other recourse (as may be provided for by the law of the forum or seat) against it is possible. Such can be done only by Courts of law not by the arbitral Tribunal. Finality is a requirement which have the potential to distort the whole effort of arbitration in the sense that the party who got an award in his favour has to pass through the Court system of the forum State to get certificate to the effect that the award is final and enforceable. It is to give guarantee to the effect that there is no more any possibility of recourse against the award by the award debtor within the territorial limit of the forum State. This can be true either when the award debtor tried the setting aside and appeal or any other available recourses but failed or after the expiry of the period of time within which the award debtor is entitled to use the recourse right, but failed to use it. Thus, sometimes the party to get the certificate may need to wait up until the expiration of the period of limitation of recourse. What if it is years? Is it not unfair for Ethiopia to have still such a dilatory requirement in between the contemporary fast and speedy and movable business community? So far as the third point is concerned *i.e.*, whether the petitioner need to submit the certified translation of the arbitral award along with application and the award itself, though the law is silent, indeed the practice voted to that effect. Mr. *Tecle Hagos Bahta*, also argues that,

35. Ibid

36. Art. (315)(1) of the CPC reads as: Where arbitration is required by law or persons have entered into a written agreement to submit present or future differences to arbitration the provisions of this Chapter shall apply

37. Supra note, 5, Art. (319)(2)

> The practice has, however, evolved in tune with what the New York Convention has set forth. Amharic is the working language of the Federal Courts. Thus, an application for the enforcement of foreign judgments submitted to the Federal Courts is required to be translated into Amharic. Moreover, the current judicial practice requires foreign judgment (that is submitted to an Ethiopian Court for recognition and enforcement) to be authenticated by the Ethiopian consulate in the country in which the judgment was pronounced. These requirements equally apply in cases of foreign arbitral awards[38].

Therefore, though the law is silent the judicial practice is that an award which is going to be recognised or recognised and enforced needs to be translated in to Amharic language[39] and such has to be authenticated by the Ethiopian Consulate in the forum or seat State. It seems that taking in to account the prevailing practice and the standard set under the New York convention, the Draft Arbitration Bill of Ethiopia come up with a requirement equivalent with modern arbitration law[40]. An Ethiopian Court, the federal High Court, to which an application for recognition or recognition and enforcement of a foreign judgment is petitioned, is required to enable the party against whom the award is going to be recognised or recognised or enforced to present his observation within such time as the Court shall fix. The Court is empowered to decide whether or not pleadings may be submitted. Where it believes that there are doubts as to certain points, the Court may suspend its decision, pending the certification of the doubtful points. In principle, the Court decided on the basis of the application submitted to it. However, in case of special reasons which the Court records, as, for example, when the award debtor objects to the recognition or recognition and enforcement of the award, the Court may order that a hearing attended by both parties be held. Where the application is allowed and the application to have it enforced is granted, the foreign award is enforced as though it were given by the Ethiopian Court and a decision on costs in Ethiopia may also be rendered.

38. Supra Note, 7, P.112.

39. As per Art. (5)(2) of the FDRE constitution, Amharic is the working language of the Federal Government.

40. Supra Note, 30, Art. (42)

Concluding Remarks

Finally it is obvious that the role of International Commercial Arbitration is enormous particularly at the age of the 21st century when the world is claimed to have been a single village and single economic unit as a result of economic integration and interdependence which has been more strengthen than any time ever because of the contemporary technological advancements across frontiers. In due course of economic interaction and relation dispute among and between the international business communities is naturally inevitable. Thus, the general consensus is that arbitration is the proper mechanism as opposed to Court litigation, which would demand the parties to pass through the '*big ocean of Private International Law'*, to resolve this commercial dispute particularly for international commercial disputes. That is the reason why both the two Geneva treaties and the later New York convention come in to being to facilitate the recognition or recognition and enforcement process of international commercial arbitration out of the hues and cries of the international business community represented by the International Chamber of Commerce (ICC). More than 146 countries are to date signatory and member to the New York convention including India. However, my country Ethiopia is yet to ratify the convention. Moreover, Ethiopia's domestic law framework governing arbitration in general and the process of recognition and

enforcement of foreign arbitral awards in particular is not inconformity with the modern arbitration law framework which is represented by the UNCITRAL Model Law. Currently however, there is an initiation to come up with a new law. I doubt however the success of this new draft bill without Ethiopia signing the New York convention and made its domestic law framework in line with the Model UNCITRAL Arbitration Law. Hence, Ethiopia has to first ratify the New York Convention then frame its domestic arbitration law consulting the convention and the Model Law. On top of that the Ethiopian arbitration law framework never makes a distinction between commercial and other civil dispute arbitration. But I strongly believe that the law governing commercial arbitration, be it national or international, has to be distinguished from the law governing other arbitration of civil matter. The reason being that the justification for the coming in to being of the two arbitration laws is too different. While laws governing commercial arbitration are developed over times with a view to make uniform laws across the globe for the commercial community thereby to encourage international trade and investment, the purpose of arbitration law of other civil disputes is to encourage diversity not to bring uniformity. From the Indian arbitration law perspective, India is a party both for the two Geneva Treaties and the New York Convention and made its arbitration law inconformity with the UNCITRAL Model Arbitration Law. Yet however, the concept of reciprocity has been wrongly perceived under Article (44) of the Indian Act. Consequently though India has 146 reciprocating territories as per reciprocity defined under the convention, because of the misunderstanding and double reciprocity requirement under the Act, India is recognising and enforcing practically foreign arbitral awards from only 46 countries. It is a big legal mess and has to be corrected. On top of this, The Act confer jurisdiction of recognition and enforcement of foreign arbitral awards on the principal Civil Court of original jurisdiction in a district which includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit. It is obvious that international commercial arbitration as an emerging and contemporary mechanism of international commercial dispute settlement mechanism across frontiers and as recognised and legitimised by sovereign States out of its necessity because of the prevailing economic integration of world and the economic Liberalisation, Privatisation and Globalisation (LPG) process, the legal issues concerning it in general and the process of recognition or recognition and enforcement in particular must be decided by Courts whose Judges well understood all these contemporary economic policy reasons in general and the rationale behind the coming in to existence of the new York convention and the Arbitration and Conciliation Act of India in particular. If so, I doubt the district Court is the proper forum. After all, a distinction should have been made in terms of jurisdiction for the enforcement process of domestic and foreign arbitral awards. Thus, India would have been better off if she had bestowed jurisdiction regarding the question of recognition and enforcement upon High Courts irrespective of pecuniary values. Or else, it would be best if India constitute a new Commercial Division in the High Court in that the primary function of it will be to entertain commercial matters including the issue of recognition and enforcement of foreign commercial arbitral awards.

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