

movement based on religion language ethnicity has divided the nation and affected the welfare and development of the society to a greater extent. Absence of a clear concept of minority under constitution has given ample chances for the orthodox people and judiciary to narrow down its broader concept and limiting it only upto the religious and linguistic minorities while excluding several other minorities like minorities

based on economic, political, sexual vulnerabilities. They are still vulnerable and have a very limited sharing in community development.

Thus, India needs a system with a strong centre having equally strong political will to ensure that there is no discrimination in the rights of its citizens on the basis of majority and minority.

POWERS OF INDIAN COURTS TO SET ASIDE FOREIGN AWARD

By

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The convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958, is described as the most successful treaty in private international law. The main action contemplated by the New York Convention is the recognition and enforcement of foreign arbitral awards, *i.e.*, arbitral awards made in the territory of another State. It is recognized as principle that a party seeking enforcement of a foreign award needs to supply to the Court;

- (a) The arbitral award; and
- (b) The arbitration agreement.

According to the New York Convention, if a party seeking enforcement of the award prefers to base its request for enforcement on the Country's Domestic Law on enforcement of foreign awards or bilateral or other multilateral treaties in force in the country where it seeks enforcement, it is allowed to do so by virtue of the so-called more-favorable-right-provision of Article VII, Paragraph 1.

The recognition of foreign award in a third country can be enforced after the execution of the Arbitral Award in that particular country. Section 46 of the A&C Act, 1996 provides the criterion as to when such foreign award would be binding on

the parties. According to the said section, any foreign award which would be enforceable shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or any other purpose in any legal proceeding in India. Therefore, an Award may be recognized without being enforced, but if it is enforced, then it is necessarily recognized.

Since the recent century India has been holding sovereign judicial powers in the international arbitration circles due to its Courts' powers to set aside foreign seated awards, despite the New York convention. The Indian Supreme Court ruled in the *'Bharat Aluminium Co. v. Kaiser Aluminium'* case, that Part I of the Indian Arbitration Act does not apply to the international commercial arbitration awards issued outside India. Practically, this means that Indian Courts will no longer have power to set aside such awards. Until now, this power was applicable unless the arbitration agreement excluded it. This power is in continuance with regard to the awards issued in India.

This power has been used to set aside awards passed by authority of other countries that conflicted with the Indian law are contrary to public policy and thus unenforceable. With

this ruling the Supreme Court has endorsed the UNCITRAL model law principle that the law of the seat of the arbitration governs the conduct of the arbitration, and annulment actions are generally not brought outside the arbitral seat.

This ruling also means that other Part I powers such as to issue interim relief and interim injunctions to preserve assets will also no longer apply to foreign – seated arbitrations.

The doctrine of ‘Public policy of India’ regulates the applicability of the Indian Courts’ interference in the realm of foreign awards with respect to arbitration in the Indian jurisdiction.

The Supreme Court of India made a distinction between the ambit of expression “Public policy” when used in context of enforcement of a domestic award and a foreign award, holding that in case of a foreign award a restricted meaning must be applied.

In the case of *Renusagar Power Plant Co. Ltd. v. General Electrical Co.*, AIR 1994 SC 860, the Supreme Court had construed the term “Public Policy” in Section 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961, applying the principles of private international law and held that an award would be contrary to public policy if such enforcement would be contrary to:

- (i) Fundamental policy of Indian law; or
- (ii) The interests of India; or

- (iii) Justice or morality and cannot be set aside on merits.

The Supreme Court had expanded the concept of public policy, to add that the award would be contrary to public policy if it was “patently illegal”.

It is also observed by the Apex Court with reference to Section 7(1)(b)(ii) of the Foreign awards act must equally apply to the ambit and scope of Section 48(2)(b) of the Arbitration and Conciliation Act, 1996.

The Court further noted that the application of ‘Public Policy of India’ doctrine for the purposes of Section 44(2)(b) is more limited than the application of the same in respect of the domestic arbitral award.

The Supreme Court of India handed down a judgment recently that restates Indian position on the enforcement of foreign arbitral awards in consonance with the international standards. In the case of *Shri Lal Mahak Ltd. v. Progetto Grano Spa*, a three Judge Bench of the Apex Court held that review of a foreign arbitral award on its merits is untenable as it is not permitted under the New York Convention. The judgment clearly exposes the difference in the scope of inquiry during the annulment of a domestic award and the enforcement of a foreign award. It stated that the expression ‘Public Policy of India’ under Section 48 of the Arbitration and Conciliation Act, 1996, should be construed narrowly; whereas the same could be given a wider meaning under Section 34 of the A&C Act, 1996.

THE EXTRADITION LAW – POSITION IN INDIA

By

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Introduction:

The right to demand extradition and the duty to surrender an alleged criminal to the demanding State is created by a treaty. Each

State exercises complete jurisdiction over all the citizens within its territory, but a difficult problem arises when a person after committing crime steps out to another State and to punish the wrong doer the extradition bilateral