

BIT ARBITRATION IN INDIA: EXPLORING APPLICABILITY OF THE 1996 ACT AND ENFORCEMENT OF RESULTANT ARBITRAL AWARDS

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ABSTRACT

In current academic literature India has been subject to much criticism for not being an arbitration friendly jurisdiction. Though most of such criticism falls in the domain of international commercial arbitration, this paper seeks to further the debate by making a similar proposition for cases involving India in investment treaty arbitration. Because of a particular fashioning of most BITs to which India is a Contracting State, allowing for initiation of host State claims there is an impression of vitality of such provisions created. This impression is misplaced because of the peculiar ordering of Indian jurisprudence on arbitration which excludes the application of the Arbitration and Conciliation Act 1996 thereby leading to the unenforceability of resultant awards in India. Further, it has been argued that even if the Act is presumed to apply, the arbitration resulting from a BIT to which India is a party would suffer excessive intervention from municipal courts of India, the seat of the proceedings notwithstanding. Lastly, it has been propositioned that even if the Act is made applicable, the award from such an arbitration proceeding would be refused

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enforcement in India on grounds of public policy, etc. This paper seeks to make a case for the changing of the design of BITs allowing for host state claims to which India is a party, accompanied with relevant amendments to the Act in order to align it with the rigors of investment treaty arbitration.

KEYWORDS: *Investment treaty arbitration, India, Enforcement of BIT awards*