CONSEQUENCES OF UNDUE DELAY IN PASSING ARBITRAL AWARDS AND IMPOSITION OF TIMELINES AS A SOLUTION

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Abstract

Arbitration is set apart from other forms of dispute resolution owing to the fact that it is a speedier and more expedient form of dispute resolution. However, this is not the case when the proceedings are drawn out due to a delayed award. Delays can be easily determined when the parties to the arbitration have agreed upon a fixed timeline in their agreement, but where the agreement is silent on a deadline, such delays have to be determined on a case to case basis. In most cases of delayed awards, Courts uphold the arbitrator's decision unless there is serious harm caused to the parties arising from the delay. Therefore, a delay can be grounds for parties to challenge an award or grounds to refuse recognition and enforcement of the award, but only if Courts find that such delay

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has caused grave harm to the interests of the party. A solution to mitigate a delay is to include a deadline within the arbitration agreement. Various national arbitration laws and institutional rules have provided for timelines within their provisions. Electing such laws or rules to govern the arbitration would de facto provide the parties with a deadline. However, while choosing a deadline, parties should keep in mind the nature of the dispute and fix a flexible and practical timeline which would suit the dispute. To a certain extent, the arbitrator must be empowered to extend the deadline if the matter calls for it. It may be concluded that a suitable timeline for arbitration could prevent unnecessary delays in the proceedings and expedite the process.

I. INTRODUCTION

Arbitration is often considered to be a faster mechanism than traditional litigation.[1] However, of late, a common criticism faced by arbitration is that arbitral tribunals take too long to render the awards. When there is such a delay, the purpose and intent of arbitration party-driven, expedient and cost-effective means of dispute resolution

[1]Herbert M. Kritzer & Jill K. Anderson, The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, And Cost in The American Arbitration Association and The Courts, 8 THE JUST. SYSTEM J., 6, 7 (1983), http://www.jstor.org.ezproxy.nujs.ac.in/stable/pdf/20877688.pdf.

- is defeated.[2] In practice, this expectation of a timely arbitral award is usually not met. There have been instances where the parties have had to wait up to four years for the award after closure of arbitration proceedings.[3] In most cases, however, the Courts are willing to defer to the arbitrator's decision unless, such an award creates actual or potential harm to the parties.[4]

Justice Brennan notes that, "an arbitration is a creature of contract."[5] An arbitrator's authority is derived from an agreement between two parties and therefore they are protectors of the integrity of the whole process. Even where the parties have not expressly agreed upon a set time limit, it is the arbitrator's duty to render the award without any undue delay.[6]

One solution adopted by various national arbitration laws and institutional rules to combat delays is, to institute a timeline within which arbitral proceedings are to be completed. This would ensure quick and efficient proceedings and prompt awards. However, such timelines may also be counterproductive. This will be further examined in the following sections of the paper. Part II of this paper analyses the meaning of a delay and its impact on the award. It discusses whether an undue delay is a legitimate ground to challenge the award and take recourse against it. The section also examines

[2]M.L. Adelson & J.D. Hogarth, An Arbitrator's Duty to be on Time, American Bar Association, http://apps.americanbar.org/litigation/committees/adr/articles/fall2015-1115-an-arbitrators-duty-to-be-on-time.html.
[3]Stephen Wilske, Legal Challenges to Delayed Arbitral Award, 6(2) CONTEMP. ASIA ARB. J., 153 (2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2372088.
[4]Sims v. Building Tomorrow's Talent, LLC, No. 07-12-00170-CV (Tex. App. Apr. 30, 2014).
[5]United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960).
[6]Supra note 2.

whether this delay can affect recognition and enforcement of award through reference to various case laws and by taking a look at the position of laws in different jurisdictions. Part III, will examine various National Arbitration Laws and Institutional Rules which provide for an express time frame within which the award should be rendered in order throw some light on the general trend of such provisions. Part IV then seeks to analyse whether time limits provide an adequate solution to delays and also looks at the potential drawbacks of such time limits.

II. THE CONSEQUENCES OF A DELAYED AWARD

The importance of time, in arbitral procedures was concisely laid down in Chartered Institute of Arbitrators v. John D. Campbell QC: "Delay undermines the raison d'être of arbitration, weakens public confidence in the arbitral process, and denies justice to the winning party during the period of delay."[7] The fundamental question is whether time is of such importance that it would serve as grounds to challenge the award and initiate setting aside proceedings or as a reason to refuse recognition and enforcement of the award.

Where the agreement between parties makes a provision for the time limit, the parties are bound by the terms of the agreement. The Indian Supreme Court in *NBCC Ltd. v. J G Engineering Pvt. Ltd.* held that, where the agreement between parties stipulates the termination of arbitrators mandate due to passage of time, no extension of time would be possible by the unilateral act of one party.[8]

[7]Chartered Institute of Arbitrators v. John D. Campbell QC, Decision of the Tribunal, 8 (May 5, 2011).

[8]NBCC Ltd. v. J G Engineering Pvt. Ltd., (2010) 1 UJ SC 0310. See also Bharat Oman Refineries Ltd. v. M/s Mantech Consultants, Apr. 16, 2012 (Appeal No. 143 of 2012), Bombay High Court.

It is easy to determine delay when the parties have already agreed upon the time limit in the arbitration contract, but when there is no explicit mention of this in the agreement it becomes important to understand what constitutes delay. The UNCITRAL Model Law mentions that the arbitrator is to carry on the proceedings without any undue delay, however, there is no mention of any time limit or a definition of delay.[9] Time, however, cannot be infinite since the more time passes, the more the arbitrators' memories start to fade with respect to minor, yet, potentially important details. Subsequently, the delay would have a negative impact on the quality of the award.[10] This however varies from case to case as all arbitrations need not rely on facts and evidence alone, but for those which are merely legal in nature and addresses the law, memory impairment would not play as big a role. There have been plenty of Courts which have set aside awards due to efflux of time and an equal number which have enforced the award despite a challenge. Therefore, it is difficult to impose a uniform timeline for all arbitration cases and hence this question regarding how much time would actually constitute a delay must be answered on a case-to-case basis.[11]

A. Undue Delay As A Ground For Challenging The Award

The setting aside of an award is generally allowed in appropriate circumstances. Since there is no uniform law on this subject, Courts have adopted a case to case analysis of this issue.

[9]UNCITRAL Model Law, 1985, Article 14- If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination.
[10]Supra note 3.
[11]Id.

Prior to the 2016 Amendment Act, Indian Arbitration Law had no provisions stipulating time limits or their consequences. However, various cases in the Indian Courts have discussed the issue. The earliest judgment was *Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd*[12], however, *Harji Engineering Works v. Bharat Heavy Electricals Limited*[13] ("***Harji Engineering Works***") was the first judgment to comprehensively deal with it. The award in this case was challenged on the ground that there was a substantial gap of three years between the award and the final hearing. The reasons stated by the Court for setting aside the award were that, it was only natural that the arbitrator could forget contentions and pleas raised during the arguments if there is a huge gap between the hearing and the award. Since the 1996 Act provided only for limited grounds on which an award can be set aside, the arbitrator is additionally responsible for rendering a prompt award. Abnormal delays without any explanation from the arbitrator, as was the scenario in this case, cause prejudice and such an award would be unjust.[14]

In *Peak Chemical Corporation v. National Aluminium* ("***Peak Chemicals***"), however, the court held that, "it is not considered expedient to simply set aside the impugned Award on the sole ground of delay in the pronouncement of the Award."[15] Arriving at a different judgement, this case was followed by *Union of India v. NIKO Resources* where the rendering of the final award was delayed by four years.[16] The Court found that there was failure to deal with certain aspects that were raised and set aside the majority award since it suffered from patent illegality. While the delay alone did not lead to

[12]Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd AIR 2003 SC 2629.
[13]Harji Engineering Works v. Bharat Heavy Electricals Limited, 2008(4) Arb. LR. 199 (Delhi): MANU/DE/2531/2008.
[14]Id.
[15]Peak Chemical Corporation v. National Aluminium Co. Ltd., MANU/DE/0356/2012:2012 II A.D. (Delhi) 304.
[16]Union of India v. Niko Resources & Anr., MANU/DE/2914/2012.

the vitiating of the award, the illegality that arose from the delay caused it to be set aside.[17] The different conclusions arrived at by the Courts in *Peak Chemicals* and *NIKO Resources* ("***NIKO Resources***") turned on whether the delay caused an illegality in the award. While in *NIKO Resources* the party was affected by the adverse award caused by a delay, in *Peak Chemicals* the award was just and comprehensive despite the delay and therefore, the delay was an insufficient reason to set aside the award.

Oil India Ltd. v. Essar Oil raised similar questions before the Delhi High Court where, the parties contended that since Harji Engineering and *Peak Chemicals* were contradictory to each other, the case had to be referred to a larger bench.[18] This contention was however rejected and the Court established that the two cases were not contradictory. The Court also observed that the outer limit for arbitration as per Rules of the Indian Council of Arbitration was two years and OIL participated in the proceedings with the knowledge that this provision had not been complied with.[19] However, no prayer was made to expedite the process and neither was there a request to terminate the tribunal mandate as provided for by Section 14 and hence OIL had waived its right to object to such non-compliance.[20] The Court also noted the inconsistency in OIL's plea, as they wanted to set aside only that portion of the award which was not in its favour but retain the part which was in their favour.[21] Consequently, it was held that there was no illegality arising due to the delay and that the award was a

[17]Id.
[18]Oil India Ltd. v. Essar Oil, O.M.P. 416 of 2004 & I.A. No. 10758 of 2012.
[19]Id
[20]Id.
[21]Badrinath Srinivasan, Undue Delay in passing Arbitral Award a ground for Challenge, 2 INT'L J. OF L. AND POL'Y REV. (2013), http://ssrn.com/abstract=2201338.

well-reasoned one passed after consideration of all the contentions raised.[22]

Therefore, the Courts in India are of the opinion that delay in itself is insufficient to set aside an award. The circumstances surrounding the delay and the consequences of it must be analysed to establish that the parties have suffered grievous harm that arose due to the delay. If the party that seeks to set aside the award has not objected to a delay they were aware of, then the party is deemed to have acquiesced and their right to challenge the award is waived.[23]

This has been the trend not just in India but other jurisdictions have also approached this matter on a case to case basis and established that delay is not a ground for challenge in its substance and can be a contributory factor only. This is also evidenced from UK Courts which have established that a mere delay would not constitute a serious irregularity as per Section 68 of the UK Arbitration Act, 1996.[24] The delay should have caused significant and substantial injustice which subsequently would constitute a "serious irregularity".[25] The "but for" test established in *Vee Networks v Econet Wireless International* can only be met if the arbitrator has failed to address all the issues put to it.[26] The test requires that the irregularity in the procedure caused the arbitrator to reach a certain conclusion but for which this unfavourable conclusion would never have been reached.[27] This is a high threshold that has been set to

[22]Id.
[23]Bharat Oman Refineries Ltd. v. M/s Mantech Consultants, Apr. 16, 2012 (Appeal No. 143 of 2012), Bombay High Court.
[24]B.V. Scheepswerf Damen Gorinchem v. Marine Institute sub nom The Celtic Explorer, (2015) EWHC 1810 (Comm).
[25]UK Arbitration Act, 1996, § 68.
[26]Vee Networks Ltd v. Econet Wireless International Ltd, (2004) EWHC 2909 (Comm)).
[27]Vee Networks Ltd v. Econet Wireless International Ltd, (2004) EWHC 2909 (Comm)).

eliminate any unmeritorious or frivolous claims that rely on minor technicalities that could render the entire process of arbitration redundant.

Similarly, Courts in the United States have also ruled that Courts have the discretion to enforce a late award if there has been no objection to the delay made prior to rendering of the award or if the party against whom the award went fails to prove the existence of a prejudice caused by the delayed award. Such prejudice must be evidenced by more than just poor faring under the terms of the award.[28] When such failure to prove prejudice is combined with lack of objection to the delay from the parties, such claims of late awards most often fail.[29] In *Hasbro Inc. v. Catalyst USA, Inc.*, the Court held that unless the parties had specifically in their contract agreed that time was of the essence, harsh penalties were not to be imposed for untimely performance of the contract.[30] Issuing a reasonable notice suggesting that time is of the essence to the arbitrators and all the parties involved, would be an example of a strict requirement to adhere to the agreed upon time limit.[31]

Therefore, across jurisdictions the Courts have adopted a similar approach towards delayed awards and one can conclude that a mere delay is not a sufficient ground to challenge the award and set it aside.

[28]I Appel Corp. v. Katz No.02 Civ.8879, 2005 WL 2995387 (S.D.N.Y. Nov.9, 2005).
[29]Blank Rome LLP v. Vendel, 29 Del. J. Corp. L. 208, 216 (Del. Ch. Aug. 5, 2003).
[30]Hasboro Inc. v. Catalyst USA, Inc 367 F.3d 689 (7th Cir. 2004).
[31]Samuel Estreicher, Steven C. Bennett, Untimely Arbitration Awards, 235 (59) N.Y L. J. (2008), http://www.jonesday.com/files/publication/923342f0-3be4-469b-8b66-a0bc854e272c/presentation/publicationattachment/10018645-9959-43ca-b25e-4581dacde5f7/estreicherbennett032806nylj.pdf.

B. Delay As A Reason To Refuse Recognition And Enforcement Of Award

Whether a delay can affect the recognition and enforcement of award under New York Convention and what provision would apply has been subject to much academic debate.[32] Where the parties have agreed upon a stipulated time limit, and this has not been met, Courts have taken varying stances based on jurisdiction. In France, even a minor surpassing of the time limit can lead to the non-recognition and non-enforcement of the award on grounds of violation of public policy.[33] The Italian Arbitration Act specifically lays down expiry of time limit indicated in the Act as a ground for setting aside the award.[34] In contrast to this German Courts tend to not deny recognition and enforcement of awards on grounds of delay.[35] In a 2014 *Swiss Federal Court case X v. Z,* the Court annulled an award passed a day after the time limit agreed upon by the parties. This decision confirmed that an agreement between the arbitrator and the parties accepting that the arbitrator's mandate would terminate if the award is not passed before the deadline would have the effect of modifying the original agreement between parties and such an agreement would be binding on the arbitrator and the parties. Such an award can then be annulled on the grounds of lack of jurisdiction.[36]

Courts have made an effort to distinguish between those procedural defects which are essential and nonessential within the application of Article V(1)(d) of the New York Convention, although this distinction

[32]Supra note 3.
[33]Dubois & Vanderwalle v. Boots Frites, No. 29. Cour d'Appel, Paris, 22 September 1995.
[34]Italy - Arbitration (Title VIII of Book IV of the Italian Code of Civil Procedure), Article 829(6)- "…if the award has been rendered after the expiry of the time-limit indicated in Article 820, subject to the provisions of Article 821".
[35]Supra note 3.
[36]'X v Z' dated 28 January 2014 4A_490/2013.

is not foreseen within this provision.[37] The essential defects are those which would have led to a different decision by the Court. However, an earlier decision by the arbitrator would make no difference to the arbitrator's award and would not constitute an essential defect.[38] Therefore, the impact of surpassing a deadline and rendering an award must be analysed before setting aside the award and an examination of whether any material difference would have arisen in the award had it been passed earlier, should be carried out.

Where the contract between parties is silent on the time limits, often the application of the New York Convention is considered. Even though there are no explicit grounds to lawfully refuse recognition and enforcement of arbitral award even in case of a significant delay, this does not necessarily mean that a late award cannot qualify as one of the grounds enumerated under Article V.[39]

Article V(1)(b) of the New York Convention is the expression of due process. Arbitral tribunals have a duty to evaluate party submissions, give them due consideration and review them before rendering a final award.[40] Therefore, in the event of a considerable delay, the argument is that, the arbitrators will not be able to fulfil this duty as their recollection of submissions and proceedings would fade with time. When there is delay, there are chances that the judges' opinions are

[37]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V(1)(d) states "The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;".
[38]BayObLG, Decision of September 23, 2004, 4 Z Sch 005/04, 568 YEARBOOK COMMERCIAL ARBITRATION XXX 573 (2005).
[39]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V.
[40]Supra note 3.

reconstructed rather than reproduced.[41] Hence, parties have lost the guarantee of a proper consideration given to the case, thereby violating this article.

Article V(2)(b) of the New York Convention deals with the violation of public policy and this is closely interrelated with due process. Public policy standards are generally established based on national laws.[42] It is relevant to take note of the *Harji Engineering Works* case here as the Court stated that "*abnormal delay without satisfactory explanation is undue delay and causes prejudice. Each case has an element of public policy in it. Arbitration proceedings to be effective, just & fair, must be concluded expeditiously."*[43] Another recent judgement *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp (No 3)* the Court of Appeal found that, due to an extraordinary delay before the Nigerian courts for the setting aside proceedings, the stay on enforcement of award should be lifted subject to a determination by the High Court – for public policy reasons – on the fraud allegations raised by NNPC in Nigeria.[44]

There is, however, no definite conclusion or uniform law that is followed in this regard, and once again each case will have to be analysed on a case to case basis but it is of utmost importance that parties' conduct during arbitration should not show acquiescence to the delay.

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[41]Gemeinsamer Senat der Obersten Gerichtshöfe des Bundes [GemS-OGB] [Joint Senate of the Supreme Courts of the Federal Republic of Germany] Apr. 27, 1993, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2603, 2605, 1993 (Ger.)]

[42]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V(2)(b) states "The recognition or enforcement of the award would be contrary to the public policy of that country.".

[43]Harji Engineering Works v. Bharat Heavy Electricals Limited, 2008(4) Arb. LR. 199 (Delhi): MANU/DE/2531/2008.

[44]IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp (No 3), (2015) EWCA Civ. 1144, ¶170.

III. EXAMINING THE PROVISIONS FOR TIME LIMITS IN VARIOUS NATIONAL ARBITRATION LAWS AND INSTITUTIONAL RULES

The UNCITRAL Model Law, designed to assist States in harmonizing arbitration laws, is silent on delayed arbitral awards and its consequences and so are most national arbitration laws. It is generally up to the parties to decide whether they want to follow a set time limit in the arbitration contract. However, some jurisdictions like Turkey, Taiwan, Egypt, Syria, Sudan and of late, India, have incorporated time limits, within which an award must be rendered, into their national laws. Arbitral institutions also often provide for a time limit within their rules. This section will analyse some of these national arbitration laws and institutional laws that include a provision for time limits within which the publication of awards must be complete.

A. Stance Taken By Various National Arbitration Laws

Turkish International Arbitration Law, 2001 has been enacted based on the UNCITRAL Model Law and elements of Swiss Law. Article 10 (B) specifies a time frame within which the award must be made.[45] Article 10 (B) states that in the event of a sole arbitrator, the proceedings should be complete within one year from the appointment of the arbitrator. If there is more than one arbitrator, proceedings are expected to be completed one year from the date of issuance of first minutes of first hearing of the tribunal.[46] This provision applies when there has been no explicit agreement by

[45]Turkey, GLOBAL ARBITRATION REVIEW, http://globalarbitrationreview.com/jurisdiction/1000209/turkey.
[46]Turkish International Arbitration Law, 2001, Article 10 (B).

parties and therefore if there is a mutual agreement this time period can be extended. In the event an agreement cannot be reached by the parties; the Civil Court of First Instance can extend the deadline upon application by one of the parties.[47] This time limit is to be taken very seriously as Article 15 (A)1.c very explicitly states, *"Awards may be set aside . . . [if] the award was not rendered within the arbitration term."* [48] Therefore, any tribunal which has its seat in Turkey must seek a mutual agreement from parties for an extension of this time limit imposed as it may not be possible to conclude complex arbitration matters within the span of one year. This must be done in the earlier stages of arbitration as a consensual agreement may not be reached by the parties at a later stage if one party realizes that the award may not be in its favour.[49]

Taiwan also follows a rather strict timeline which has been provided for in Article 21 of The Republic of China Arbitration Law, 1998. The Article states that the tribunal is to render its award within six months from the commencement of the proceedings and if the tribunal sees the need for an extension of three months can be provided. [50] However, if the parties do not agree to the extension of this timeline then the arbitration agreement becomes void and jurisdiction to decide the dispute would then fall to the Taiwan courts.[51] There is a precedent by the Taipei District Court which has made adherence to the time limit mandatory. In that case, it was decided that although arbitrators were replaced, the tribunal failed to render a final award within the stipulated time and hence the party

[47]Id.
[48]Ziya Akinci, Arbitration Law Of Turkey: Practice And Procedure 161 (2011).
[49]Supra note 3.
[50]Republic of China Arbitration Law, 1998, Article 21.
[51]Ting Sun, Report on the 2011 Taipei International Conference on Arbitration and Mediation, THE CHINESE ARBITRATION ASSOCIATION, http://www.arbitration.org.tw/english/news_into.php?id=10.

was entitled to set aside the arbitral award leading to the annulment of the award.[52]

The Egyptian Arbitration Law 1994, in Article 45 lays down that in the absence of an agreement between two parties, the final arbitral award is to be rendered within twelve months of the date of commencement of proceedings. Any extension decided by the tribunal cannot exceed six months unless agreed upon by the parties.[53] If the time limit has not been adhered to, the parties may request either an extension of the time period or termination of proceedings. In case of termination, the parties may bring the case to the court having initial jurisdiction to hear the case.[54] There is some controversy surrounding the number of extensions parties may request and some argue that the text of the article limits it, whereas some practically argue that unless repeated extensions are permitted, arbitration proceedings could have tragic endings.[55] This proposition was adjudicated upon in an Egyptian case in which the Egyptian Arbitration Law was *lex arbitri* and reference was made to ICC 1998 Rules. In this case, even after eighteen months the award had not been rendered.[56] The case finally reached the Cairo Court of Appeal which held that ICC Rules governing this issue under Egyptian Law did not make such a time limit mandatory but parties may otherwise agree to set one.[57]

[52]Supra note 3.
[53]Egyptian Arbitration Law, 1994, Article 45(1).
[54]Egyptian Arbitration Law, 1994, Article 45(2).
[55]Mostafa A Hagras, The Egyptian Arbitration Law and Anti-Arbitration Injunctions Due to Expiry the Time Limit for the Final Award – Case Study, YOUNG ICCA BLOG, http://www.youngicca-blog.com/the-egyptian-arbitration-law-and-anti-arbitration-injunctions-due-to-expiry-the-time-limit-for-the-final-award-case-study/.
[56]ICC Arbitration Case No. 14695/EC/ND.
[57]Id.

Both Saudi Arabia and Jordan have similar texts in their Arbitration Laws but Article 37 of Jordanian Laws permits parties to repeatedly extend the deadline.[58] The Syrian Law does not provide for termination of proceedings but on expiry of the time limit, parties can submit the dispute to the Court of original jurisdiction. It also entitles parties to sue for damages caused by this delay by arbitrators.[59]

The 2016 Arbitration Amendment Act introduced similar provisions in India intended to reduce delays, introduce timelines and minimize court interference. Section 29A stipulates that arbitral tribunal must render an award within twelve months from the date on which tribunal entered a reference.[60] With mutual consent of parties, this can be further extended up to another six months.[61] For any further extension, the parties would have to apply to Indian Courts which may or may not grant it based on whether it finds sufficient cause.[62] If such extension is denied, the arbitral tribunal is terminated and a new one is constituted to continue arbitration. However, if the extension has been granted but the Court finds that the tribunal's actions delayed the proceedings, the Court can order a reduction in arbitrator's fees by up to 5% for each month of such delay.[63]

Section 29B provides for fast track arbitration which expedites the process to an extent such that, the arbitration would be complete in six months from the date the arbitral tribunal enters a reference. The parties should agree to this in writing and the procedure takes place

[58]The Arbitration Law No. 31 of 2001, Article 37 states "…In all cases, the tribunal may extend such period provided that the extension shall not exceed six months unless the two parties have agreed on a period of time exceeding that period.".
[59]Syrian Arbitration Act, 2008, Article 37 states "…If the arbitration terms have expired and the arbitration board did not settle the dispute without an acceptable excuse, the arbitration party which suffered damage is entitled to refer to the competent court to demand an indemnity from the board.".
[60]Arbitration (Amendment) Act, 2016, § 29A (1).
[61]Arbitration (Amendment) Act, 2016, § 29A (3).
[62]Arbitration (Amendment) Act, 2016, § 29A (5).
[63]Arbitration (Amendment) Act, 2016, § 29A (4).

on the basis of written submissions without any oral hearings, unless the parties request for it or the arbitral tribunal considers it necessary.[64] The efficiency and application of these provisions of the Indian Arbitration Act and whether they will have their desired effect are yet to be seen.

B. Institutional Laws Governing Fixed Time Lines

Some arbitration institutions like ICC, KLRCA, CCA and AAA have included such a provision in their arbitration rules in order to expedite the process.

Article 30 of the International Chamber of Commerce rules (**ICC**) provides the tribunal with six months from the date of last signature to render its final award. The Court can extend this deadline based on a reasonable request from the tribunal.[65] The Court also has the option of fixing a different time limit based upon the procedural timetable established pursuant to Article 24(2).[66] This time limit established by the ICC is merely an administrative one as it is recognized that very few ICC awards that end in a final award could actually be rendered in a short span of six months. In practice, an arbitral timetable is submitted which gives a considerable amount of time. The Court also provides for extensions taking into account any new estimate provided by the tribunal.[67] In a 1988 decision by the *German Federal Supreme Court of Justice* such an extension was approved of when

[64]Arbitration (Amendment) Act, 2016, § 29 B.
[65]International Chamber of Commerce Rules, Article 30.
[66]International Chamber of Commerce Rules, Article 24(2) states "During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.".
[67]Supra note 3.

the ICC Court granted an extension to a Belgian sole arbitrator.[68] According to ICC's 2016 guidelines, arbitrator fees may be reduced by 5% to 20% depending on the delay and based on whether the delay is justified.[69] For example, some delays that arise like when parties request a pause on proceedings as they are attempting a settlement, would be a justified delay. However, merely stating that the issues which arose in the arbitration were of complex nature as a reason for delay would not justify a late award and the arbitrator's fee is likely to reduce.[70]

The Kuala Lumpur Regional Centre for Arbitration Rules (**KLRCA**) in Article 8 stipulates three months from the date of delivery of the closing oral submissions or written statements to the arbitral tribunal. An extension can be provided either by the consent of the parties or by the Director of KLRCA.[71]

The Chinese Arbitration Association Rules (**CAA**) deals with delays in Article 41. Article 41 gives 10 days after the closure of hearings and if the time limit set forth under Article 21 of the Arbitration Act has not expired, arbitrators would be reminded to make the award.[72] However, any delay would lead to the publishing of the arbitrators'

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[68]Bundesgerichtshof [BGH] [Federal Court of Justice], Apr. 4, 1988, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 3090, 1988 (Ger.). See also Appellationsgericht [AG] [Appellate Court of Basel-Stadt], Jan. 2, 1984, PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS 44, 1985 (Ger.)., Oberlandesgericht Karlsruhe [OLG] [Higher Regional Court of Karlsruhe], Jan. 4, 2012, SCHIEDSVZ 101, 106, 2012 (Ger.).

[69]Cynthia Tang et al., HKIAC and ICC Take Steps to Tackle Costs and Delay in International Arbitration, GLOBAL ARBITRATION NEWS (Mar. 14, 2016), https://globalarbitrationnews.com/hkiac-and-icc-take-steps-to-tackle-costs-and-delay-in-international-arbitration-2016-03-14/.

[70]Michael Mcllwrath, ICC To Name Sitting Arbitrators And Penalize Delay In Issuing Awards, KLUWER ARBITRATION BLOG (Jan. 6, 2016), http://kluwerarbitrationblog.com/2016/01/06/icc-to-name-sitting-arbitrators-and-penalize-delay-in-issuing-awards/.

[71]Kaula Lampur Regional Center for Arbitration Rules, art. 8.

[72]Chinese Arbitration Association Rules, art. 41.

names in the Association's Publications, therefore ensuring that any arbitrator who cares about their reputation would ensure a prompt rendering of the final award.[73]

Rule 41 of the Commercial Arbitration Rules of the American Arbitration Association (**AAA rules**) also provides a similar provision and requires a prompt award to be made by the arbitrator no later than thirty days from the date of closing of the hearing or the AAA's submission of final statements and proofs to the arbitrator.[74] Despite the straightforward wording of the provision, the question regarding what constituted a prompt award remains vague.[75] In *Koch Oil S.A. v. Transocean Gulf Oil Co.,* the Court held that even though the award was received by parties more than thirty days after the close of hearings, due to the fact that the award was signed (but not issued) within the thirty-day deadline, the challenge to the timeliness of the award was rejected.[76] Therefore, the AAA holds the power to interpret their own rules and the award cannot be vitiated on the grounds of mere technicalities that may arise.

[73]Supra note 3.
[74]American Arbitration Association, Rule 45 states "The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.".
[75]Supra note 31.
[76]Koch Oil S.A. v. Transocean Gulf Oil Co., 751 F.2d 551 (2d Cir. 1985).

IV. IMPOSITION OF PROTRACTED TIMELINES FOR ARBITRATION AND ITS DRAWBACKS

The main intention behind the imposition of a timeline is to make the process efficient and for a prompt delivery of the award. While such a timeline may be a sufficient strategy in some situations to ensure that tribunals are prompt, it is not without a few problems of its own. Firstly, arbitration as a dispute resolution mechanism maybe opted for by parties for a variety of matters ranging from disputes on contracts to labour law issues. The time required for an arbitration would hence vary, depending on the technicalities and legal complexities that are present in the case or even on the volume of evidence that maybe presented before the tribunal.[77] Therefore, setting a general timeline for all arbitration matters would ignore the vast range of issues that could arise. Timelines set in national laws or institutional rules may be unrealistic. This would affect the quality and enforceability of the award.[78]

Most of the national laws and institutional rules require that the parties in need of an extension or in the case of a lapsed deadline are to approach courts to resolve the matter. One of the main factors attracting parties to arbitration is minimal court interference. If court approvals are required for a further extension of the deadline, this defeats the goal of minimising the role played by the courts.[79] And it would ultimately end up overburdening the courts which is the opposite of the intended effect of arbitration as an alternative dispute

[77]Amendments to the Arbitration Act, THE FIRM: CORPORATE LAW IN INDIA (Oct. 30, 2016), http://thefirm.moneycontrol.com/news_details.php?autono=3893801.
[78]Id.
[79]Prakash Pillai & Mark Shan, Persisting Problems: Amendments to the Indian Arbitration and Conciliation Act, KLUWER ARBITRATION BLOG (Mar. 10, 2016), http://kluwerarbitrationblog.com/2016/03/10/persisting-problems-amendments-to-the-indian-arbitration-and-conciliation-act/.

resolution mechanism.[80] Additionally, on the lapse of the deadline, if the tribunal's mandate is also terminated, this may lead to the reconstitution of a new tribunal which would have to examine the matter presented before them from the start.[81] By such time, the parties involved would have incurred various costs and expenses and restarting the entire arbitration procedure would defeat the imposition of a timeline in the first place.[82]

Although deadlines encourage arbitrators to conclude proceedings swiftly, a possible disadvantage of a deadline is that parties may find it hard to find arbitrators who are willing to take up the arbitration and complete it within the specific time.[83] This may be the case, especially when the arbitrators could be held personally liable for delay and may risk having to pay a penalty.[84] In order to comply with the deadline, the tribunal may be forced to speed up the process and thereby not give the parties adequate time to present their case, or issue an award which is improperly reasoned due to the paucity of

[80]Id.

[81]Kateryna Bondar, Efficiency in International Arbitration, http://gentiumlaw.com/wp-content/uploads/2017/01/ICC_YAF_event_Tbilisi_1-3_Dec_2016_-_Kateryna_Bondar.pdf.

[82]Id.

[83]Michael Mcilwrath & John Savage, Chapter One: The Elements of an International Dispute Resolution Agreement, International Arbitration and Mediation: A Practical Guide (Kluwer Law International; Kluwer Law International 2010), http://www.kluwerarbitration.com.ezproxy.nujs.ac.in/CommonUI/document.aspx?id=kli-ka-1016002-n.

[84]Prior to the enactment of the Argentinian Arbitration Act, 2015, arbitration in Argentina was governed by the Civil Procedure Code which laid down in Article 756 that if the arbitral tribunal does not issue its award within the time limit stipulated in the Compromiso Arbitral, it will forfeit its right to be paid and may be liable for any damage or loss caused by the delay.

time.[85] Therefore, the deviation from due process could make the award vulnerable to challenge.[86]

There are also chances that recalcitrant parties may employ means to use the statutory deadline to their own benefits by wasting as much time as possible to ensure that the deadline is not met.[87] Parties that realize that arbitration may not be going in their favour could bring forth various challenges that may not be relevant, call upon a large number of witnesses, or simply delay the hearings in order to delay the proceedings.[88] In such a scenario, a fixed deadline would only prove disadvantageous to the parties.

As expeditious as an arbitration concluded within a deadline may prove to be, the drawbacks impose serious challenges. Therefore, while imposing such time limits, pre-emptive measures should be taken to avoid any of the aforementioned shortcomings in the arbitration proceedings that would be detrimental to party interests.

V. CONCLUSION

Arbitration is ideally considered the speedier alternative to litigation and it is only natural that parties expect expediency. Arbitration is becoming a more popular dispute resolution mechanism day-by-day and with more people opting for arbitration and a disproportionate growth in the arbitrator's pool, chances of delays and long drawn out arbitration proceedings increase. The arbitrator has a duty to follow due process and issue a timely award. Delays could negatively impact

[85]Victoria Clark, Time Limits for Awards: The Danger of Deadlines, BERWIN LEIGHTON PAISNER (Aug. 10, 2016), http://www.blplaw.com/expert-legal-insights/articles/time-limits-for-awards-the-danger-of-deadlines.
[86]Id.
[87]Supra note 51.
[88]Id.

the quality of the award due to various reasons. Although in most scenarios a delay by itself is not enough to constitute an irregularity serious enough to pose a challenge to the award or grounds to refuse recognition or enforcement of the award, the arbitrators have a duty to carry out proceedings without any undue delay. A delay would have a negative impact on the award only when it can be proved that, had it not been for such a delay, the tribunal would have arrived at a different conclusion. Therefore, the delay must have caused a severe irregularity and must not be a mere technicality. The parties to arbitration should, therefore, consider including a time limit within the agreement or opt for national laws or institutional rules that include a provision for a deadline to govern the arbitration. While it is impossible to have a uniform standard for all arbitrations, one way to mitigate this is to include such a clause within the agreement so that arbitrators also have a fair idea as to the time frame within which the award is expected. However, such a timeline imposed by parties must be practical and should be set keeping in mind the nature of the dispute. It should provide for reasonable flexibility within the arbitration agreement itself. The arbitration agreement should ideally empower the arbitrator to a certain extent to be able to extend the timeline. The arbitrator would know the nuances of the dispute well enough to predict the amount of time required to render the award better than anyone else. This would also provide a solution to minimizing interference by the courts, thus preventing frivolous claims at the courts which are already overburdened. Thus, the inclusion of a practical deadline that is extendable at the will of the arbitrator in the agreement between parties may be the best way ahead in ensuring that awards are issued efficiently and promptly. Arbitral institutions and national laws have now recognised delays as a potential ground for challenging the award and are now actively seeking to tackle this issue by imposing timelines. However, the deadlines will be effective only when a balance is struck between

reasonable extension of the timeline as and when required and when these extensions are sought for legitimate reasons and not just frivolously. Co-operation by parties and vigilant arbitrators are thus, the key to restoring the integrity and expediency of arbitration proceedings.