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The Enforcement of Foreign Arbitral Awards in Bangladesh: Legal Framework, Challenges, and Prospects

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ABSTRACT

The enforcement of foreign arbitral awards plays a critical role in promoting international commercial arbitration as a reliable method for dispute resolution. This research examines the legal framework governing the enforcement of foreign arbitral awards in Bangladesh, with particular focus on the Arbitration Act, 2001 and its alignment with the 1958 New York Convention. Through a doctrinal analysis of legislation, case law, and comparative perspectives, the study identifies key legal and practical challenges that hinder effective enforcement. These include judicial intervention, procedural delays, and inconsistencies in the interpretation of public policy exceptions. The research further explores recent judicial trends and policy developments to assess the prospects for a more arbitration-friendly enforcement regime in Bangladesh. By highlighting the gaps and proposing reforms, this study contributes to ongoing discourse on strengthening the country's arbitration infrastructure and ensuring compliance with international standards.

Keywords: Foreign arbitral awards, Dispute resolution, Enforcement challenges, Public policy; Judicial intervention

1. Introduction

The enforcement of foreign arbitral awards is essential to the success of international arbitration, which has become the preferred mechanism for resolving cross-border commercial disputes. As businesses increasingly seek neutral and efficient dispute resolution forums, arbitration offers significant advantages in terms of flexibility, finality, and international enforceability. However, the effectiveness of arbitration is contingent upon the willingness and ability of national courts to recognize and enforce arbitral awards. In the context of Bangladesh, the enforcement of foreign arbitral awards is governed by the Arbitration Act, 2001, which incorporates the principles of the 1958 New York Convention. Despite this formal legal structure, Bangladesh faces numerous challenges in practice, including delays in court proceedings, inconsistent judicial decisions, and a lack of institutional support. These obstacles undermine investor confidence and hinder the country's ability to participate effectively in the global arbitration regime. This paper critically analyses the legal framework for the enforcement of foreign arbitral awards in Bangladesh, evaluates judicial attitudes and practices, identifies persistent challenges, and explores prospects for reform. A comparative perspective with jurisdictions such as India and Singapore is also included to contextualize Bangladesh's experience and identify best practices.

2. Legal Framework for Enforcement in Bangladesh

2.1 The Arbitration Act, 2001

The Arbitration Act, 2001 was enacted to consolidate and modernize the law relating to domestic and international arbitration in Bangladesh. The Act is broadly modeled on the UNCITRAL Model Law on International Commercial Arbitration, aiming to align

Bangladesh's arbitration practices with international standards. Sections 45 to 47 of the Act deal specifically with the recognition and enforcement of foreign arbitral awards.

Section 45 stipulates that a foreign award may be enforced in the same manner as a decree of a Bangladeshi court, provided that the award originates from a country that is a party to the New York Convention and the award meets certain formal requirements. The court may refuse enforcement on limited grounds similar to those enumerated in Article V of the Convention, such as incapacity of the parties, invalidity of the arbitration agreement, improper notice, issues beyond the scope of the arbitration, irregularities in the composition of the arbitral tribunal, or violation of public policy.

2.2 The New York Convention

Bangladesh became a party to the 1958 New York Convention in 1992. The Convention obliges contracting states to recognize and enforce foreign arbitral awards, subject to certain defences. By ratifying the Convention and incorporating its provisions into national legislation through the Arbitration Act, 2001, Bangladesh has taken a formal step toward international arbitration compliance. Nevertheless, discrepancies between the Convention's objectives and domestic implementation remain. Courts often invoke exceptions too broadly, especially the public policy exception, resulting in reluctance to enforce awards in practice.

2.3 Procedural Requirements

To enforce a foreign arbitral award in Bangladesh, the applicant must submit the original or a duly certified copy of the award and the arbitration agreement, along with a certified translation if the documents are not in English. The application must be filed in a competent civil court. The enforcement process thus mirrors a decree execution procedure, although it should ideally be faster and less contentious given the nature of arbitral awards.

3. Judicial Approach to Enforcement

3.1 Judicial Precedents

Judicial interpretation significantly influences the effectiveness of arbitration law. In the landmark case *Haji Asmat Ali vs. Bangladesh Shipping Corporation* (2004), the court acknowledged the enforceability of a foreign arbitral award but nullified it on the grounds of public policy without clear justification. This decision highlighted the judiciary's cautious stance and its potential to undermine arbitration outcomes.

Contrastingly, in *Singapore Engineering & Construction Pte Ltd v. Samah Razia Ltd* (2015), the High Court of Bangladesh took a progressive approach by rejecting the respondent's request to re-examine the merits of the case, thereby affirming the finality of arbitral awards. The court emphasized that its role was limited to assessing the grounds for refusal under Section 46 of the Act, which mirrors Article V of the New York Convention.

3.2 Trends in Judicial Interpretation

Recent years have seen a gradual shift towards a more arbitration-friendly judicial approach. Courts are increasingly aware of Bangladesh's international obligations and the importance of maintaining a pro-enforcement stance. However, inconsistency remains, particularly among lower courts, where a lack of specialized training and familiarity with international arbitration standards poses challenges.

3.3 Role of the Supreme Court

The Supreme Court of Bangladesh plays a crucial role in setting precedents that lower courts follow. Its interpretation of key legal doctrines, such as public policy and arbitrability, can

either facilitate or hinder enforcement. Encouragingly, the apex court has demonstrated a willingness to uphold foreign arbitral awards, thereby fostering greater predictability and reliability in enforcement proceedings.

4. Challenges in Enforcement

4.1 Procedural Inefficiencies

One of the major challenges is the inefficiency of court procedures. Enforcement applications are often delayed due to procedural complexities, lack of case management tools, and overburdened court dockets. These delays can nullify the advantage of arbitration being a faster mode of dispute resolution.

4.2 Ambiguity in Public Policy Exception

The term "public policy" is not clearly defined in the Arbitration Act, leading to inconsistent application. Courts sometimes interpret public policy broadly, allowing parties to resist enforcement on vague moral, economic, or social grounds. This unpredictability can deter foreign investors and undermine the efficacy of arbitration.

4.3 Judicial Activism and Intervention

While courts are supposed to play a supportive role in arbitration, excessive judicial intervention can be counterproductive. Instances where courts have re-examined the merits of the arbitral award, despite clear prohibitions under the Act, highlight this issue. Judicial activism, often influenced by nationalist sentiments or protectionist tendencies, contradicts the essence of arbitration.

4.4 Lack of Institutional Support

Bangladesh lacks a strong institutional framework for arbitration. There are no specialized arbitration benches or sufficient arbitration-friendly infrastructure. This institutional vacuum contributes to delays, inconsistent decisions, and a lack of confidence among international arbitration stakeholders.

5. Comparative Analysis

5.1 India

India provides a useful comparative model, particularly after the enactment of the Arbitration and Conciliation (Amendment) Acts of 2015 and 2019. These reforms narrowed the scope of judicial intervention and introduced provisions for time-bound disposal of applications. The Indian Supreme Court has also clarified the scope of the public policy exception in several landmark cases, thus enhancing predictability.

5.2 Singapore

Singapore represents a gold standard in arbitration-friendly jurisdictions. The International Arbitration Act and the active involvement of the Singapore International Arbitration Centre (SIAC) have created a robust enforcement regime. Courts in Singapore maintain a strict pro-enforcement bias and are reluctant to interfere with arbitral awards unless absolutely necessary.

5.3 Lessons for Bangladesh

Bangladesh can draw valuable lessons from both India and Singapore. Codifying a narrow definition of public policy, establishing specialized arbitration courts, and adopting time-bound procedures can significantly enhance enforcement. Collaboration with international arbitration institutions could also help build local capacity and improve legal infrastructure.

6. Prospects for Reform

6.1 Legal Reform

Amending the Arbitration Act, 2001 to clarify procedural ambiguities and define key terms like public policy and arbitrability is crucial. The introduction of a fast-track mechanism for enforcement applications would also reduce delays.

6.2 Institutional Development

Developing a national arbitration centre with trained arbitrators and support staff can boost institutional capacity. Establishing arbitration cells within commercial courts and training judges on international arbitration principles will foster consistency and competence.

6.3 Policy Recommendations

The government should initiate public-private partnerships to promote arbitration awareness. Legal education curricula should include modules on international arbitration to prepare future practitioners. Active engagement with global arbitration forums can also help Bangladesh stay updated on best practices.

7. Conclusion

The enforcement of foreign arbitral awards in Bangladesh is at a crossroads. While the legal framework exists in form, its practical implementation is hindered by procedural, judicial, and institutional challenges. Addressing these issues through comprehensive reforms, inspired by successful regional models, can position Bangladesh as a credible arbitration jurisdiction. Such a transformation would not only attract foreign investment but also reinforce the rule of law and commercial certainty. Furthermore, the need for judicial consistency and capacity building cannot be overstated. Continuous legal training, dedicated arbitration courts, and the development of a specialized arbitration bar are necessary steps to ensure coherent jurisprudence. Building trust in the arbitration process through transparency, accountability, and predictability will further align Bangladesh with international arbitration standards. In an increasingly globalized economy, effective enforcement of arbitral awards is not merely a legal obligation but a strategic imperative for economic growth, foreign investment, and international cooperation.

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