



DEVELOPMENT OF INTERNATIONAL COMMERCIAL ARBITRATION IN IRAN

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Abstract:

The significant of international commercial arbitration as a tool in resolving international transaction conflicts cannot be overstated. International commercial arbitration is considered as the best method for resolution of disputes with various advantages like quickly, flexibility, consistency, cheap, fairness and confidentiality that may be lacking in the existing legal system which is not able to cope up with the ever increasing burden of international trade conflicts.

Most recently, Islamic republic of Iran (hereinafter Iran) opened a new chapter and fresh confidence toward arbitration especially international commercial arbitration when the Iranian parliament was enacted a new legislation on international arbitration entitled Law on International Commercial Arbitration (hereinafter LICA) on 1997 with 9 parts compose 36 sections.

The LICA directly adopted most significant provisions of the United Nations Commission on International Trade Law (hereinafter UNCITRAL Model law) which it is a great and positive leap in Iranian arbitration act but the mere following of the UNCITRAL Model law will not guarantee modernize of Arbitration Act. A big legal reform is required to be improved in order to develop the arbitration in Iran.

This survey follows a development perspective in which development of LICA in Iran with the purpose of understanding two main questions; 1) How did LICA grow in Iran? And, 2) what is the position and problem of LICA 1997?

KEYWORDS:

Iran, International Commercial Arbitration, UNCITRAL Model Law, Law of International Commercial Arbitration (LICA), Arbitration Act, Arbitral Process, Arbitral Awards.

1.INTRODUCTION

Iran with geopolitical and geographical position with rich and vast natural resource provide it with a merit that has been exploited by its experts population to apply huge influence on the trade in Asian region even international business.

With rapid globalization of world economy, Iran opening the economy gate to international trade and increasing contracts in international level which the resulting has led to an increase in international commercial disputes. It has required providing reliable legal rules for resolving of international commercial disputes but the lack of a good act for resolving commercial disputes, can be a big obstacle to development of international trade, and particularly attractive foreign investments in Iran.

Most recently ,Iran opened a renewed chapter and fresh confidence toward arbitration especially

international commercial arbitration when the Iranian parliament (Islamic Consultative Assembly) was enacted a new legislation on international arbitration entitled Law On International Commercial Arbitration (LICA) on 1997 with nine parts compose 36 sections and ratified by the Guardians Council on 1st October 1997.

The new Act got permission for publication in Iranian official gazette after 15 days from publication date in official gazette. It comes in to force on November 1997 based upon UNCITRAL Model law 1985 on international commercial arbitration.

STATEMENT OF PROBLEMS:

Inexplicable inordinate delays are fetal diseases in the Iranian judicial system. This occurrence has major impact on the social, political, economic and legal scenario of Iran (Agarwal, 2006:2). There is a serious need to speed up the various matters related to international commercial arbitration, opening in the national courts because not only the present business disputes are taking a much time for resolution, the future investment is also being closed. (Agarwal, 2008:35) The investors will invest, only if they are persuaded that real protection and remedies are guaranteed by the national laws (Al-Siyabi, 2008:2). The Iranian authorities in the Act 1997 have been tried to expedite the process but with little success. Generally the road for the Act 1997 in Iran is bumpy. Innumerable loopholes and problems exist.

Furthermore, International Commercial Arbitration has not received the kind of attention the other areas of legal research have received. As developments matters in related to international commercial arbitration are in novice stage, not an abundant literature has been published in this area in Iran. Though, there are studies dealing with some aspects of arbitration, the coverage and focus almost of these researches are limited to domestic arbitration only.

Accordingly, with globalization, gigantic economical development, impact and increasing openness to foreigner, the international commercial arbitration needs a fresh look in Iran.

HISTORICAL BACKGROUND OF ARBITRATION IN IRAN

Iran has always held a strong and deep rooted commitment to the philosophy of arbitration (Aparna Devi Jujjavarapu, 2007:40). In fact, in most Iranian villages, people often voluntarily submitted their disputes to Khan or Kadkhod-who the head man or the wise man of village -for only rational and feasible disputes settlement mechanism. (Hamid G Gharavi, 1999:2)

A basic form of arbitration, as it is recognized today, was introduced by original Iranian Code of Civil Procedure in 1911 (Godarz Eftekhar Jahromi, 1999:13). This act were the first to introduce the concept of the court referring matters to arbitration with especial reference civil nature in low level cases but the basic principles of Iranian law on arbitration were finally incorporated in article 632 of the Iranian code of civil procedure (ICCP) of 17 September 1939 which were made a minor amendments in 1983. (Hamid G Gharavi, 1999:3)

The ICCP covered only domestic arbitration and while it was perceived to be a good piece of legislation in its real operation and implementation by all potential parties (Suwasini, D and S. Bose, 2011:16) but it was largely premised on indifference and at worst as dispute or even suspicion of the arbitral process and afforded multiple opportunities to litigants to approach the court for intervention.

THE SCOPE OF THE NEW ACT

In order to modernize the outdated 1939 act, Iranian parliament enacted a new chapter in Iranian arbitration law entitled "law on international commercial arbitration". According to Iranian authorities, the new act closely modeled or patterned the UNCITRAL Model law 1985 on international commercial arbitration. The LICA focuses in three vital aspect; first, unlike the UNCITRAL Model law, which was designed to apply only to international commercial arbitration, it applies both to foreign or international and domestic. Second, it tries to minimizing court intervention in arbitral process but practically, court intervention can never be eliminated and finally, foreign final arbitral awards are binding on the parties (Suwasini, D and S. Bose, 2011:16).

PROVISIONS OF UNCITRAL MODEL LAW AND ITS ADOPTION IN LICA

According to Iranian authorities, the LICA with the exception of small significant changes closely adopted the UNCITRAL Model law 1985 in its whole entirety. The act adopts the following provisions from the UNCITRAL Model law such as;

- a) The definition of all the terms used in UNCITRAL Model law;
- b) Type of the arbitration agreement;
- c) The power of court to grant interim measure;
- d) The arrangement of the arbitral tribunal;
- e) The grounds of judicial intervention;
- f) Appointment of arbitrators and grounds of challenge to an arbitrators;
- g) Procedure of arbitration;
- h) The setting the arbitral tribunal;
- i) Finality and enforcement of arbitral award and appeal and etc.

There is no doubt that direct link exist between provisions of UNCITRAL Model Law and LICA structurally and substantively (Hamid G Gharavi, 1999, 5) but Iranian parliament in LICA goes steps beyond the UNCITRAL Model law especially in article 11(6) about Supervisory Authority which provides;” In cases where more than two parties are involved in arbitration and the parties have not agreed otherwise, the board of arbitrators shall be appointed as follows:

- a. The plaintiff shall appoint one arbitrator. In case of multiplicity, the plaintiffs shall jointly appoint one arbitrator. The arbiter of defendant/s shall be appointed in the same manner. Should the plaintiffs or the defendants fail to agree on their arbitrator, the arbiter of each of the parties (plaintiffs and defendants) shall be appointed by the authority described in Article 6 above.
- b. Appointment of the umpire shall be the responsibility of the elected arbitrators. If they do not reach an agreement, the umpire shall be appointed by the authority mentioned in Article 6 above.
- c. Where a dispute occurs as to whether one or more of the parties must be considered as being defendants or plaintiffs, then the board of arbiters shall comprise three members appointed by the authority mentioned in Article 6 above.
- d. Other cases in multilateral arbitration including replacement and omission shall be subject to the regulations set for bilateral arbitration”.

And article 26 about Joinder by a Third Party which provides;” Where a third party considers for himself an independent right in the subject of the arbitration and/or considers himself beneficiary in the rightfulness of one of the parties, he shall join the arbitration as long as the termination of proceedings have not been announced provided that he accepts the validity of the agreement, arbitration rules and the “arbitrator” and his Joinder shall not be objected to by either one of the parties”.

Iranian parliament even had made such vital modifications the UNCITRAL Model law which the most important changes concern the scope of the law and grounds for setting aside and refusing enforcement of the award in article 33 about Application for Cancellation of the Award which provides;“1. The arbitration award shall be nullified by the court described in Article (6) above, upon a request by one of the parties in the following cases:

- a. If a party lacks legal capacity.
- b. If the arbitration agreement is not valid by virtue of a law the parties have consented to and in case of silence on the governing law, it is in open contradiction with the Iranian law.
- c. If the regulations of this Law concerning notification of arbitrator appointment or arbitration application are not observed.
- d. If the annulment applicant fails to present his reasons out of his control.
- e. If the “arbitrator” issues a judgment beyond the sphere of his powers. Should the matters referred to arbitration be separable, only that part of the judgment which is beyond the powers of the “arbitrator” shall be nullified.
- f. If the composition of the board of arbitrators or the procedural law is not in accordance with the arbitration agreement and/or in case of silence and/or lack of existence of arbitration agreement being opposed to the provisions of this Law.
- g. If arbitration judgment includes the affirmative and effective view of the arbitrator whose replacement has been accepted by the authority described in Article (6) hereof.
- h. If the award of the arbitrator relies on a document whose fabrication has been proved by virtue of a final judgment.
- i. If a document is found, after the issuance of arbitrator's judgment, proving the rightfulness of the objector and is confirmed that the opponent party has concealed that document and/or has caused its concealment.

2. Concerning the cases mentioned in Clauses (h) and (i) of the above clause, the party having incurred a

loss as a result of the forged or concealed document may request, prior to applying for cancellation of arbitration judgment, from the “arbitrator” to re-investigate the matter unless the parties agree otherwise.
3. Application for cancellation of an award set forth under Clause 1 above shall be delivered, within three months from the date of notification of the arbitrator's judgment including amending, complementary or exegetic judgment to objector, to the court being subject of Article (6) above. Otherwise, it will not be acceptable”.

COURT INTERVENTION AND ITS PROVISION IN LICA

National court is a key part in arbitral process over both domestic and international commercial arbitration. It plays a vital role to making existing legal system a success with support to encore arbitral agreements and final arbitral awards. In fact, an arbitration award cannot be effective without court support. (Samuel Marful-Sau, 2009:16)

On the other hand, it will not be most advantageous when using their powers under judicial jurisdiction in whole arbitration process, clearly run the high risk of impinging upon arbitration as successful and effective method among other methods of alternative dispute resolution.

The LICA in article 6 clearly determined jurisdiction and power of national courts in this regard. This article with entitle of: Supervisory Authority provides; “1. The obligations under Article 9, Clauses 3 and 4; Article 11, Clause 3; Article 13, Clause 1; Article 1; Article 14, Clause 3; and Articles 16, 33 and 35 shall be fulfilled by public courts located in provincial capitals where the seat of arbitration is located. As long as the seat of arbitration has not been determined, such obligations shall be fulfilled by Tehran's public court. The decisions of the court in these instances shall be final and binding.

2. In institutional arbitration, fulfillment of the, obligations stipulated in Clauses 2 and 3 of Article 11, Clause 3 of Article 13 and Clause 1 of Article 14 shall be the responsibility of the arbitration institution concerned”.

According this article, publice courts of the relevant province –if the seat of arbitration available- is the court appointed to perform several supervisory and judicial authority functions under this act. Tehran's public court –located in capital of Iran-can be given jurisdiction to perform these functions if arbitration seat is not available in capital of any province or the parties don't agree for jurisdictional place for arbitration. Generally the LICA was not much success in to existence chiefly to achieve, among other purposes, the minimization of court interference in arbitral process in practice because it cannot be eliminated.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN LICA

According to lord Mustill 'the New York Convention was the most effective instance of international legislation in the entire history of commercial law’(Mustill,1989:5)in which Iran is a member of United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the New York Convention).Although Iranian government before the Iranian revolution 1979, submitted a Bill concerning assent this convention to the Islamic Consultative Assembly but it was never approved till, on 10th April, 2001 when Iranian parliament was approved to accede to the New York Convention.

The LICA, unfortunately, does not include any provision on enforcement of foreign final arbitral awards. It must therefore be enforced inside of border as foreign judgment according to article 169 of Civil Judgments Act of 1977. The Iranian Parliament approves the ground for setting aside and refusal of enforcement awards in article 33 of LICA.

Although foreign judgment were recognized under Iranian law, there was no comprehensive regulation for their enforcement until the ratification of Civil Judgment Enforcement Act of 1977, which brought about a major development for enforcement of foreign judgments in Iran. The Civil Judgment Enforcement Act set out clear and well defined prerequisites under which the foreign judgment can be enforced. Article 169 to 179 of this act specifically provide full terms and conditions for enforcement of foreign judgments.

CONCLUSION

In recent years, Iran has taken positive and long leaps towards facilitating resolve transaction conflicts, whether domestic or international. This has been achieved through adoption of most significant provision of UNCITRAL Model law in new legislation. In 1997, Iranian parliament enacted afresh chapter

towards international commercial arbitration with direct followed of UNCITRAL Model law. The LICA is an achievement twin goal in arbitration cost-effective and quick mechanism for the settlement of commercial disputes. Nevertheless, the road for Iran related to ICA is not smooth and there are some lacunas and difficulties that need to be deal with.

The present act needs further reform to enhance national arbitration legal system. This may be achieved by the following points:

Universities in Iran could train a separate lecturer or establish a separate department for arbitration law to encourage specialized study and incisive research.

The reorganization and enforcement of foreign arbitral awards should be included to the Iranian new Act. It is the only way to guarantee the continuation of the lengthy awaited uniformity and harmonization of international community.

All real player-arbitrators, lawyers and judges-should make efforts to change general attitude towards arbitration and the Iranian government should publicize knowledge of advantages of arbitration foster growth of an international arbitration culture among all stakeholder.

Establish a unique court composed of judges specialize in international commercial arbitration area.

Clarifying all ambiguous provisions in present act.

Acceding to the international arbitration conventions such as, The Convention on Settlement of Investment Disputes between States and nationals Of Other, 1965 and all other related conventions.

Entering in to bilateral treaties or conventions for the enforcement of foreign arbitral awards because there are no bilateral treaties between Iran and any other country concerning international arbitration, as of this date.

Reducing the court intervention in arbitral process because the Iranian courts experiences are obvious by the fact the national court's interference is hyper in arbitral process.

REFERENCE

1. Al-Siyabi, Mohamed Khalfan Ali., 2008. "A Legal Analysis of the Development of Arbitration in Oman with Special Reference to the Enforcement of International Arbitral Awards" Ph.D. unpublished Thesis. University of Hull.
2. Agarwal, Anurag K., 2006. Is India Ready for Online Dispute Resolution?. No. WP2006-10-03. Indian Institute of Management Ahmedabad, Research and Publication Department.
3. Agarwal, A. K., 2008. Resolving Business Disputes in India by Arbitration: Problems Due to the Definition of 'Court': Indian Institute of Management Ahmedabad, Research and Publication Department.
4. Eftekhar Jahromi, G., 1999. "Changes in the Laws of Arbitration - Its Achievements in International Arbitration." Legal Research, 44.
5. Gharavi, Hamid G., 1999. "The 1997 Iranian Law on International Commercial Arbitration: The Uncitral Model Law À L'iranienne." International Arbitration 15.1, 85.
6. Jujavarapu, Aparna D., 2007. "Judicial Review of International Commercial Arbitral Awards by National Courts in the United States and India, M. unpublished Thesis. Georgia School of Law,.
7. Marful-Sau, Samuel, 2009. 'Can International Commercial Arbitration Be Effective Without National Courts? A Perspective of Courts Involvement in International Commercial Arbitration', 18.
8. Mustill, M., 1989. 'Arbitration: History and Background', 6:2 J. Int'l Arb. 43.
- Suwasini, D and S. Bose, 2011. 'Arbitration In India Not For The Faint, Hearted: Enforcing Foreign Arbitral Awards'. <www.nalsarstudentlawreview.com/archives/2011-2/>, accessed 12/12/2012.



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