Time limitation and fast-track Arbitration in India – Analysis of Section 29A and 29B

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Abstract

Recently time limitation, as well as fast-track arbitration, has been given concern by the lawmakers in India in order to make India a seat for international commercial arbitration in the near future. Section 29A, as well as 29B, reflects the changes that have been brought under the arbitration mechanism in India through Arbitration and Conciliation (Amendment) Act, 2015. The article highlights the nature and role excepted to be played by Section 29A and 29B.The author postulates the scope of Section 29A, by comparing it to similar provisions that existed under the previous Arbitration Act, 1940 as well as the jurisprudence that existed before the enactment of the Arbitration and Conciliation (Amendment) Act, 2015.The author focuses on the way the interpretation of this provision has been done by the Indian Courts in order to overcome the hurdles that come in their way. Subsequently, Section 29B is the need of the hour. It is observed that fast-track arbitration is helpful in dealing with commercial as well as contractual matters. Therefore, this article is an attempt to understand the importance to have delivery of justice without causing any delay in matters related to arbitration. Additionally, the emphasis is made on the need to have laws, which could help in maintaining international standards in Indian arbitration mechanism, and the author in the article will illustrate further changes made in the laws concerned with the passage of time.

Keywords - Arbitration Act 1940, Commerce, Fast-track, International arbitration, Time limitation.

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Introduction

The 1996 Arbitration & Conciliation Act was first promulgated by way of issuing an Ordinance, which was meant for the urgent need to have economicreforms, which wereinitiated by the new economic policy. With the passage of time after 20 years, another Ordinance was introduced which was known as the 2015 Arbitration & Conciliation (Amendment) Ordinance whichfocused on the amendment of the 1996 Act in order to maintain international standards.[2]This resulted in the effectiveness of new amendments in the Indian arbitration law, which is now known as Arbitration and Conciliation (Amendment) Act, 2015.

It is evident to note that in India there are almost 31 million cases which arepending in various Courts. According to 31st December 2015 records, there are about 59, 272 pending cases in the Apex Court of India. Moreover, the High Courts are overburden with 3.8 million pending cases, which are required to be lightened, is the need of the hour.Sadly, the District Courts suffer from the same circumstances and it is observed that 27 million cases are still not decided yet. However, 26 percent of the cases belong to a period which is older than 5 years and are more than 8.5 million in numbers.[3]

It is, therefore, interesting to study the amendmentsthat have taken place in order to revolutionize the arbitration mechanism in India.In this respect, the law of arbitration has been recently amended from which we can learn that law is made to encourage trade and commerce in the country. The recent amendments are based on the recommendations, which were given by the 246th Law Commission Report and among of which has focused on time and fast-track arbitration. This effort came into force on 23rd October 2015 and today we have new laws, which govern said above aspects.[4]

With the arrival of 2016 the Arbitration and Conciliation (Amendment)Act,2015 brought Section 29A, which reflects on time limitation, and Section 29B emphasizing on fast-track arbitration in India. The main highlight of the new amendments is made on to have a

[2]Rohit Moonka &Silky Mukherjee,*Impact of the recent reforms on Indian arbitration law*, 4 BRICS L. J.,59 (2017).
[3]Bibek Debroy &Suparna Jain,*Strengthening Arbitration and its Enforcement in India – Resolve in India*,NITI AAYOG, (Apr. 10, 2018), http://niti.gov.in/writereaddata/files/documentpublication/Arbitration.pdf.
[4]D. Gracious Timothy, *The Conundrum underlying Section 26 of the Arbitration Amendment Act,2015: Perspective orRetrospective?* 5 IND. J. ARB. L., 205 (2016).

mechanism that could encourage the practice of quick relief in matters related to the commercial sector.

One of the most debatable amendment is Section 29A where time limitation for fixing arbitration proceeding should be done within 12months.[5]Presently, it has been discussed that the prescribed time frame is sufficient to consider the domestic matters although for the international perspective they might need to have the further extension of time in order to decide disputes related to international arbitration. Due to the introduction of new Sections, we are able to focus on the accountability of the arbitrators in order to maintain discipline in lawyers and litigants.[6]

One of the key aspects of the new amendment is Section29A, which provides time limitation tenure in order to serve for domestic arbitrations in relation to consider arbitral awards. Subsequently, when we locate Section 29A (1), it shows that an award which has been made within 12 months from the date when the arbitral tribunal was entered upon reference. This reference shall be made from the date when the arbitrator has received the notice of appointment in written form.[7]It is essential to check whether these amendments are successful in speeding the disposal of arbitration matters. It is with this perspective in mind, the author will reflect the role played by this Section and has emphasized on the necessity to reduce the number of pending cases and need to make alternative dispute resolution effective in its working.[8]

Before tackling the core issue, it is important to look at the amendment which has been made in form of Section 29A where Section 29(1) states that the award shall be made 'within a period of twelve months' from the date the Arbitral Tribunal 'enters upon the reference.' Moreover, the Explanation provides that an Arbitral Tribunal shall be deemed to enter upon the reference on the date when the arbitrator or all the arbitrators as the situation may be when the notice in written has been placed on them by the process of appointment. Additionally, subsection (2) states that the Arbitral Tribunal shall be entitled to receive additional fees as the parties agree when the award is made within a period of 6 months from the date the Arbitral Tribunal enters upon the reference. Whereas, Section 29A (3) states that the time period can be extended on the will of the parties by their consent as stated under

[5]Arbitration and Conciliation (Amendment) Act,2015, sec.29A.
[6]*Supra* note 3, at14.
[7]Arbitration and Conciliation (Amendment) Act, 2015, sec. 29A (1).
[8]*Supra* note3,at 7.

Section 29A (1) for the further period, not more than 6 months. Further, Section 29A (4) states that if an award is not considered under subsection (1) or (3) then the mandate of the arbitrators shall be terminated unless the Court has either made a prior or after the expiry of the period so specified, extend the period. Under such condition, if the Court finds that there has been the delay in the proceedings then the Court may order reduction of fees of arbitrators which will not be more than 5 percent for each month for causing such delay. In addition, subsection (5) gives information related to making an application by any of the parties in order to refer the matter to the subsection (4) and there should be sufficient cause on the basis of which application has been made and follow the terms and conditions imposed by the Court. Moreover, subsection (7) shows that the reconstituted shall be deemed to be in continuation of the previous appointed Arbitral Tribunal. Subsequently, subsection (8) where it will be open to Court to impose actual or exemplary costs upon any of the parties under Section 29A.The time limitation stated under subsection (9) illustrate that within 60 days from the date of service of notice on the opposite party the application which was filed under subsection (5) will be disposed of by the Court.Subsection (6) with reference to subsection (4) states that the Court shall substitute one or all the arbitrators and when any of them are substituted then the arbitral proceedings shall continue from the stage which it has already reached and on the basis of the evidence as well as material available on records and the arbitrators appointed shall be deemed to have received said above.[9]

Moreover, the 2015 amendment also provides Section 29B[10]where encouragement has been given to have fast-trackprocedures in India so that there could not be an undue delay and pending cases in arbitration mechanism in the near future. From subsection (1), the law states that the parties to an arbitration agreement at any stage before or at the time of the appointment of the Arbitral Tribunal would agree in writing that they want their dispute to be resolved by the fast-trackprocedure. By following the procedure stated under subsection (3) where the Arbitral Tribunal shall decide the dispute on the grounds written in the pleadings, documents as well assubmissions filed by the parties with giving any reference to any oral hearing. The Arbitral Tribunal can further call for information or clarification, which can be obtained from the parties in addition to the pleading and documents filed by the parties. AnOral hearing will be made only if the Arbitral Tribunal feels it is necessary or on the request made by all the parties in order toclarify certain issues. Further,subsection (2)

[9]*Supra*note 7.
[10]Arbitration and Conciliation (Amendment) Act, 2015, sec. 29B.

highlights thatif the oral hearing is held the Tribunal may dispensewith any of the technical formalities and adopt such a procedure, which it feels appropriate for disposal of the case. In furtherance of agreeing for resolution, the parties have to agree on that the Arbitral Tribunal shall consist of a sole arbitrator, which shall be chosen by the parties. Moreover, subsections (4) and (5) gives information related to the time period where 6 months has been given from the date the Arbitral Tribunal enters upon the reference in order make an award. If such tenure is not followed then provisions of subsections (3) to (9) shall be applied to the proceeding of Section 29A.Lastly, (6) subsection emphasis on the fee payment and its mode which shall be agreed between the arbitrator and the parties.[11]

Precisely, it is important to reflect on whether the new amendments made through Section 29A and Section 29B would result in strengthening the Indian arbitration mechanism. Although recently Arbitration and Conciliation (Amendment) Bill, 2018 was introduced which has proposed to make changes in Article 29A(1) concerning time limitation with an objective to encourage institutional arbitration in India and making India center for international arbitration which has approved now.[12]To sum up, it is essential to make it worth it in order to make India as a seat for international arbitration in the future.

Statutory evolution of the concept of time limitation: Indian perspective

Since this article intends to reflect on the historical perspective of arbitration law in relation to time limitation of an arbitral award, it is necessary, to begin with, a brief description of Arbitration Act, 1940 governing time limitation aspect.

Time limitation

TheArbitrationAct 1940dealt with domestic arbitration in India. An arbitration agreement shall include the provisions set under the First Schedule in relation to reference unless there is adifferent intention.[13]Moreover, within the period of 4 months, the arbitrator shall make an awardafter entering on the reference or to act after being called by notice in writing from any party to the arbitration agreement or in the duration of extended time as the Court may allow under the First Schedule of Section 3.[14]

[11]*Supra* note 10.
[12]Government of India, Ministry of Law & Justice, *Cabinet approves the Arbitration and Conciliation (Amendment) Bill, 2018*, PIB (March 7, 2018), http://pib.nic.in/newsite/PrintRelease.aspx?relid177128.
[13]Arbitration Act, 1940, sec. 3.
[14]*Id.* at r.3.

Whereas, theCourt may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time for making the award. Therefore, the power has been given only to the Court to enlargethe time for making an award.Further, subsection (2) of Arbitration Act, 1940 add-on that if an arbitration agreement comprises of a provision with the consent of all the parties, the arbitrator or umpire cannot ask for time enlargement for making the award and the said agreement will be considered void and will not be effective in manner.[15]

For instance, *NBCC Ltd. v. J.G. Engineering Pvt. Ltd*.[16]is a well-known case where the Court has appreciated the argument said by the appellant that the Court doesn't have the power to extend the time at present law despite this earlier we had Section 28 under Arbitration Act, 1940.At present we do not have any law that gives the Court the power to fix time limitation for concluding arbitration proceeding. However, the Court can apply its inherent power on the application of either of the party. It is important to note that in a situation where the arbitration agreement has given the procedure for enlargement of time and parties have consented to extend the time by the arbitrator even then the Court cannot exercise its inherent power in the absence of the consent of any of the parties.

Although, *Virkaran Awasty v. Hassad Netherland B.V. & Ors*.[17]where the Court has clarified that Article of the LCIA India Rules grants the Tribunal the necessary powers with wide discretion. Therefore, there was no appeal or other petition, which wasassailing such an exercise of power by the Tribunal, which was permitted at the present stage under Indian law. It was held that at that time there was a procedure, which was agreed to be adopted by the parties for enlargement of time, whichthe Court cannot interfere.

With this perspective in mind, Bharat Oman Refineries[18]is a landmark case where an agreement was entered with consultants according to which the respondent had to do some work which was related to interstate project concerning pipelines and this agreement was comprised of arbitration clauses. It was concluded that in such circumstances if the work were not carried out according to the directions of the agreement then it would be terminated. Rather there were certain disputes, which have taken, place between the parties and the respondent has invoked the arbitration clause. Moreover, the sole arbitrator was appointed in

[15]Arbitration Act, 1940, sec. 28.
[16]NBCC Ltd. v. J.G. Engineering Pvt. Ltd.,(2010) 2 S.C.C. 385.
[17]Virkaran Awasty v. Hassad Netherland B.V. & Ors., OMP (T) (COMM.) No. 18/2015, Feb. 16, 2016 (Delhi High Court).
[18]Bharat Oman Refineries Ltd. v. Mantech Consultants, (2012)S.C.C. Bom.669.

2001 by the Single Judge of Hon'ble Bombay High Court in February. The arbitration agreement comprised of following clause where it has stated through Section29.3b[19]that the award should be in writing as well as the published by the arbitrator within the time limit of 2 years after entering upon the reference or that might extend further till 12 months as the sole arbitrator appoints in writing.

As mentioned above, the facts of the case show that the parties have given their consent to the arbitrator in order to make as well as publish the award within the time specified. No objection or even protests are considered appropriate at this stage. One needs to find out if the pronouncement of an award is valid or not after flowing out of time in the arbitration agreement.[20]

It clearly demonstratesthat there was no time mentioned in the agreement concerning the pronouncement of the arbitral award. In case of unreasonable delay when the award is passed then the Court will refer the principle that was set in *Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd.*[21]where due to the existence of public policy of India under such circumstancesextra time was given for the arbitral award. From this, we can learn that when the arbitration agreement has provided a time period then the award is required to be passedwithin that tenure.Besides this, if anything occurs beyond this time without the approval of the parties then it would not be considered as a good law. So there can be an extension of time only if the parties have mutually consented and consider it to be appropriate then theaward will be passed beyond that time prescribed.[22]

Analysis of section 29A with previous laws

(a)Section 29A (1) of Arbitration and Conciliation (Amendment)Act,2015

Presently, the new amendment states that withina period of 12 months the award shall be made from the date the Arbitral Tribunal has entered upon the reference in the said above subsection.

Since 1940Act allows the entering on the reference in order to calculate the time limitation period. Although there was no clarity on which date the reference should be entered by the

[19]*Ibid.*
[20]S*upra* note 18.
[21]Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd., O.M.P. No. 160/2005 (Delhi High Court).
[22]*Arbitration award after efflux of prescribed time: Valid or Invalid?*, NISHITH DESAI,http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/arbitration-award-after-efflux-of-prescribed-time-valid-or-invalid.html.

Arbitral Tribunal. The provision has emphasized 'on the reference' which was incomplete in itself. Learning from *Bajranglal Laduram*[23]it seems that there was uncertainty about when arbitrator accepts office and communicate with each other.

In a subsequent decision, *Soneylal Thakur v. Lachhminarain Thakur*[24]emphasized thesituation if they have done anything further in relation to the executive of the work of arbitration. It is worth noting that in this the arbitrator has entered on the reference on the mentioned date. There can be a possibility that the decision-making can vary on the basis of facts and circumstances of the cases.The Court held that the award has been made within 4 months since the date on which he has entered on reference would be considered within the time limit.

Additionally, there was*Jolly Steel Industries Pvt. Ltd. Poona v. Union of India & Anr*.[25]which illustrated the situation that if they have attended the hearing of certain claim. The resume of events, in this case, indicated that no effective step was taken by the arbitrator, till the hearing of the dispute commenced. Further, each one of the earlier stages covered merely some or the other of the ministerial acts such as issuing of notices, acceptance of the statement of claims and adjourning the case to suit the convenience of the parties.

Similarly, Section 29A (1) has emphasized that the Arbitral Tribunal will enter upon a reference on the date which the arbitrator or all the arbitrators have received the notice in writing about their appointment as the case may be. This is found in LCIA Rules, which stipulates on the determining the date on which communication was made or received. As per Articles 4.1 to 4.3 the written statement shall be considered as it has been received by a party on the day when it was delivered or it might be the circumstance where electronic means has been used and transmission has been done.[26]

(b)Section 29A (3) of Arbitration and Conciliation (Amendment) Act,2015

As far as Section 29A (3) is concerned, the time period can be extended further to 6 months if the parties have given their consent. It is important to see if the requirement of the consent will be appropriately met by reference in order to extend the time limitation period for rendering the final award. For instance, MCIA Rules provides that within the period of 30

[23]Bajranglal Laduramv. Ganesh Commercial Co., A.I.R. 1951 Cal. 78.
[24]Soneylal Thakur v. Lachhminarain Thakur,A.I.R. 1957 Pat.395.
[25]Jolly Steel Industries Pvt. Ltd. Poona v. Union of India & Anr.,A.I.R. 1979 Bom. 214.
[26]LCIA Rules, 2014, art. 4.

days from the date when the Tribunal has submitted the draft award to the Registrar then the final award shall be rendered. Despite this, in other situations as well as if there is any further application made by the Tribunal and or the Registrar will or the Council on its own initiative can further extend the time for performance of the award.[27]

See from this angle,Article 2(e) of UNICTRAL shows that when a provision of the present law is referred to the facts where the parties have agreed or they might agree or in any other way reference is to be made to an agreement made by the parties in such situation this will also include any arbitration rules. Additionally, Article 2(d) of UNCITRAL states that when the parties are free to determine certain issues it would include freedom such as the right of the partiesto authorize a third party,as well as including an institution in order to make the said above determination with exceptionto Article 28 of UNCITRAL.[28]

According to *Transair v. Kuwait Airways*[29]the Court held that if one closely examines the conception of the institutional arbitration it can be found that the rules of the institution providing for the mode of the conducting the arbitration shall govern the arbitration in relation to these rules which are dealing with the appointment, replacement and all other processes and steps which are required to be taken during the course of conducting the arbitration, as well as the applicability of the substantive law, shall be relied on it. Therefore, these rules of institutions for conducting of reference shall be treated as the agreement between the parties or agreed procedure for the purposes, which are non-mandatory provisions of the Act.

From above we can understand that Section 29A (3) of 2015 amendment requires something more than the mere reference to arbitral rules.

(c)Section 29A (4) of Arbitration and Conciliation (Amendment)Act,2015

When the award is not made within the period specifiedthen the mandate of the arbitrator(s) will be terminated as stated under Section 29A (4). Previously, the expiry of the statutory time limit without extending further by the competent Court resulted in similar impact.[30]

[27]Arbitration Rules of the Mumbai Centre for International Arbitration, 2016, r. 30.3.
[28]United Nations Commission on International Trade Law, Model on International Commercial Arbitration, 1985 U.N.G.A Res 40/72, Dec. 11, 1985, asamended by U.N.G.A Res 61/33, Dec. 18, 2006, UN Doc A/RES/61/33.
[29]Transair v. Kuwait Airways,(2013) S.C.C. Del. 4184.
[30]State of Punjabv. Hardyal, A.I.R.1985 S. C. 920.

It was held, for example, *inJolly Steel Industries Pvt. Ltd. v. Union of India & Anr.*[31]where it wascontended that most of the arbitrator should have awarded a decree for compensation and not mentioned for the specific performance of the contract especially where there a lot of time has been passed from the date on which the contract was to be enforced and the date when the award was being confirmed. Because of this impossibility of performance of any contract is a matter of concern, which an arbitrator is required to address when it is required.Besides this, in past under the 1940 Act also the expiry of the statutory time limit without a further extension by the competent Court had similar consequences.

Through*Transair* decision,[32]we can easily make it clear that when a party by seeking the termination cannot plead that the arbitration proceedings axiomatically come to an end. It is essential that the necessary consequence of law would be termination of the mandate of the arbitrator, which should be done under Section 14 where the focus is made on the appointment of the substituted arbitrator, which is made under Section 15. Further, the appointment procedure is followed as well as Article 12 of IATA Rules is the clear departure of Section 14 and 15. Therefore, the remedy of seeking replacement the arbitrator will on the ground of the termination of the mandate of the arbitrator in the instant case would be considered to the Director-Generalas per the mechanism and framework agreed and provided under the IATA Rules of 1999 and finally it was held that the petition stated under Section 14 is not maintainable.

It is of the opinion that Section29A (6) supports the said above interpretation and gives an indication that when substitute arbitrators are appointed by the Court then itwill not be necessary to begin the proceedings in a new way. In Supreme Court's opinion, under suchsituation of institutional arbitrations, the appointment will be done as per the procedure stated in theapplicable arbitral rules.[33]

Also, Furthermore, it provides the situation where the Court finds a reasonable delay which would be attributable to the Arbitral Tribunal then it may ask an order for a reduction in their fees under Article 29A (4). It is to be noted that it is a curious provision. One needs to understand the significance of natural justice under such circumstances where the party is required to be heard by the Arbitral Tribunal.Under the 1940 Act, an award did not possess

[31]*Supra* note 25.
[32]*Supra* note 29.
[33]Union of India and Ors. v. Uttar Pradesh State Bridge Corporation Limited, (2015) 2 S.C.C. 52.

any sanctity by itself and therefore it had to be approved by the competent Court on the grounds set on the basis of their validity, effectiveness or existence of such award judgment and the judgment is delivered in the end by following these terms.[34]

A later decision of Supreme Court in*Jatinder Nath v. Chopra Land Developers Pvt. Ltd. and Anr.,*[35]the Supreme Courtobserved that the Court has ample power in this case in order to extend the time and give meaning to vitiated award by making use of their judicial discretion stated under Section 28.Now there is no need to have a separate suit and the power is so wide that it could extend the time even in circumstances where the award is made beyond the time period of 4 months from the date of the arbitrator, which has entered upon the reference.This is limited to have judicialdiscretionary poweronly.[36]

It is crucial to understand that the award will be treated as non-est and not binding on the parties unless the Court extends the time limit and gives life to the vitiated award which can be possible only if we consider previous Act of 1940 where an award didn't have any sanctity by itself. Onecan conclude that one has to get approval by a competent Court which will determine the validity, effectiveness or existence of such award and judgment will be delivered on the basis of said above terms by the competent Court.[37]

Fast-track arbitration in India

It is important to see how Section 29B has been addressed in form of a new amendment made under the Arbitration and Conciliation (Amendment) Act, 2015.From this, we can say that author postulates the reasons set behindsuch law and to understand the necessity to have fast-trackarbitration in India in order to promote international commercial arbitration. Although it is yet an open question to address whether it will be successful in achieving its objective laid behind such amendment that is done recently.

Analysis of section 29B

It focuses on the need to have fast-track arbitration. This shows that in order to expedite the process the Tribunal has made an award within the tenure of 6 months from the date of reference when it is mentioned to the Arbitral Tribunal. The Tribunal will decide the dispute

[34]*Law Commission of India, Report No.-76 - Arbitration Act, 1940 (1978*), LAW COMMISSION OF INDIA, lawcommissionofindia.nic.in/51-100/report76.pdf
[35]Jatinder Nath v. Chopra Land Developers Pvt. Ltd. and Anr,(2007) 11 S.C.C. 453.
[36]*Ibid.*
[37]*Supra* note 34.

on the grounds of written pleadings, documents as well as submissions which are made by the parties and filed by them without holding any oral hearing. There can be further efforts only if parties have requested for oral hearing or when the Tribunal considers that it is essential to clarify certain issues that are prevailing in the arbitration process.[38]

So the crucial question is, therefore, whether it will be helpful for India.The fast-trackprocedures have been used since very long time for the purpose of dispute resolution in institutional arbitrations. For instance, it has been helpful in cases related to a minor dispute that has cropped up or in a situation where parties do not want the process to take longer duration. LCIA Rule,[39]as well as SIAC Rule,[40]has also emphasized on the expedited procedure of Arbitration in order to resolve the dispute. Presently, we have focused on fast-trackprocedureswhich are reflected in the establishment of Delhi International Arbitration Centre and Mumbai Centre for International Arbitration in India. It is a new process and it requires tobe utilized in such a manner that it reduces the burden of Indian judiciary from their pending cases. By giving statutory recognition an effort has been made by the lawmakers to makefast-trackprocedure an accepted mode of dispute resolution in India.[41]Therefore, in 2018 now Arbitration Council of India will look after arbitral institutions and will focus on maintaining electronic records and will illustrate the significance of other ADR mechanism in Indiaand this will be helpful in reducing the burden of Indian courts.[42]

Conclusion

Arbitration is a remarkable institution in its nature but it is essential to find out whether new changes which are made in relation to the time limit and fast-trackprocedure are practical or not is of great concern. Section 29A encourages the Court intervention when the parties ask for further time extension which is above 18 months of the arbitral proceedings. In India, there is only 2 year provided as the minimum tenure to make a decision for an award. It is argued that this law is highly impractical as the time bar set by the legislature is not appropriate.The use of the term ‘may’ and ‘sufficient cause’ has created a wider scope of

[38]Anubhav Pandey, *All you need to know about fast track arbitration proceedings,*IPLEADERS, https://blog.ipleaders.in/fast-track-arbitrtaion/.
[39]LCIA Arbitration Rules, 2014, r. 9A.
[40]SIAC Rules, 2016, r. 5.
[41]*Fast track procedure for the arbitration introduced by the Arbitration and Conciliation (Amendment) Act,2015*, MAHESHSPEAK, https://maheshspeak.com/2016/12/02/fast-track-procedure-for-arbitration-introduced-by-the-arbitration-and-conciliation-amendment-act-2015/.
[42]*Supra* note 12.

discretionary power and has caused arbitrariness by the Court. The debate is interesting as it will result in judicial interventions and they will be dependent on the judicial system. Subsequently, this Section seems to become over-ambitious in relation to time standards which appear difficult to perform yet the search is still on.[43]It is suggested that the time limitation under the applicable arbitral rules as well as under the Act which isextended before their expiry are also concerned with the extensions under the arbitral rules are mirroring the extensions granted by Indian Courts. Therefore, there is need to have the smooth working of arbitration mechanism under Section 29A.The laws should be flexible so that they can deliver justice without causing any delay. In this regard, it is in the working process to find out the potentialset behind the applicability ofthis Section in the arbitration mechanism in India. Indeed, due to the existence of new amendment under Section 29A today we have strict timelines for determining the arbitral award. One needs to encourage foreign investor participation in order to improve the prevailing circumstances in India.[44]

Therefore, Section 29A is strict in its nature and there is the possibility of creating unnecessary procedural complications and will result in impeding the potential enforceability ofawards.The problem, however, is that it is unduly restrictive of arbitral institutions that highlight the timelines belonging to arbitration proceedings at different levels.[45]

In a country like Brazil the law provides that the arbitration award will be made within the time period set by the parties. The Arbitral Tribunal will decide the tenure of 6 months from the date of the commencement of the arbitration or from the date of the substitution of an arbitrator if the parties have not mentioned any time limitation. The delivery of the final award can extend with time by having a mutual agreement between the arbitrators and the parties.[46]It is argued that such agreement will also include institutional arbitral rules for establishing specific time limitation.[47]Where it is found that there is different time limitation mentioned by the parties or even by institutional arbitral rules then such different time limit will be applied.[48]

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[43]Mitakshara Goyal*, Extent of judicial intervention in the arbitral regime: Contemporary scenario*,2 INT'L. J. L. 70 (2016).
[44]*Working paper on Institutional Arbitration reforms in India*,ICA INDIA (April 11, 2018),http://www.icaindia.co.in/HLC-Working-Paper-on-Institutional-Arbitration-Reforms.pdf.
[45]*Ibid.*
[46]Brazilian Arbitration Act, 2015, art. 23.
[47]JOAQUIM T. DE PAIVA MUNIZ & ANA TEREZA PALHARES BASILO, ARBITRATION LAW OF BRAZIL: PRACTICE AND PROCEDURE,49 (2nd ed. 2015).
[48]*Ibid.*

It is to be noted that it is essential that the Indian Courts should consider the aspect of reducing the fees of the arbitrators or even by imposing costs on the parties in such a situation where it is depending on who has caused such delay in matters related to setting aside the award. To conclude, the recent amendments which are made through Section 29A and 29B is meant to strengthen the arbitration mechanism in India. There is need to have a cost-effective and user-friendly process in order to make India a place for international arbitration in future. With these new changes effort is made to attract more business operations, large companies as well as to have better dispensation of justice in India.

Recently the Indian Cabinet has approved the Arbitration and Conciliation (Amendment) Bill, 2018 which proposed to amend Section 29A(1) where international arbitration will be excluded from the timeline limitation and concerning arbitral award in other arbitration will be within 12 months from the completion of the pleadings of the parties in order to have speedy mechanism and making India hub for arbitration in upcoming years.[49]

[49] *Supra* note 12.