SECTION 29A: TIME BOUND ARBITRATION – HAVE ARBITRAL TRIBUNALS BECOME ORGANS OF THE COURT?

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Abstract

Section 29A of the Arbitration and Conciliation (Amendment) Act, 2015 lays down a mandatory time limit for an arbitral tribunal to render its award in an India-seated arbitration. This article will attempt to examine the Pandora's box opened by the introduction of Section 29A, with a view to suggest some amendments that might enhance its effectiveness and acceptance within the arbitration community in India and abroad. The Arbitration and Conciliation (Amendment) Bill, 2018, which is currently pending before the Parliament and has incorporated some of the recommendations of the Srikrishna Committee, will be discussed in this context. The article begins by elucidating the genesis of Section 29A. In the second part, the need for a provision like Section 29A is examined, along with a comparative analysis in part three to understand the manner in which other jurisdictions have dealt with similar issues. The fourth part deals with the judicial interpretation accorded to Section 29A and its applicability, which is argued to be a case of judicial overreach. The last part examines the ambiguity created by diverging opinions of the courts and the legislature with reference to Section 29A and proposes some amendments to reconcile the challenges posed by the enactment of this provision.

I. A Brief History of Section 29A

Section 29A of the Arbitration and Conciliation (Amendment) Act, 2015 ["**2015 Amendment Act**"] requires an arbitral tribunal to render an award within 12 months (which may be extended up to 18 months with the consent of the parties) from the date on which the tribunal is constituted.[1] On a failure to do so, the tribunal loses its mandate and the parties are required to approach the courts for extension of the time limit beyond 12 months or 18 months, as the case may be. If the mandate of the tribunal is terminated in accordance with Section 29A, the tribunal becomes *functus officio* not only with respect to the claim filed by the claimant, but also with respect to the counter claim (if any) filed by the respondent.[2] There is no time limit prescribed under Section 29A of the 2015 Amendment Act for making an application for extension of time, but such an application must be made within a reasonable time.[3]

There is a common misconception, as has been echoed by the Supreme Court in its latest judgment on the 2015 Amendment Act, that strict timelines for the making of an arbitral award

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1 The Arbitration and Conciliation Act, No. 26 of 1996, Explanation to § 29A(1) [*hereinafter* the "Arbitration Act"].

2 Angelique International Ltd. v. SSJV Projects Pvt. Ltd. & Ors., 2018 SCC OnLine Del 8287, ¶ 26 [*hereinafter* "Angelique International"].

3 FCA India Automobiles Pvt. Ltd. v. Torque Motor Cars Pvt. Ltd. & Anr., 2018 SCC OnLine Bom 4371, ¶ 33 [*hereinafter* "FCA India"].

have been laid down in Section 29A of the 2015 Amendment Act,[4] for the first time. However, this is not the first time that any country, including India for that matter, has enacted such a provision. The confusion possibly arises from the fact that there was no mention of Section 29A in the 246th Law Commission Report,[5] which proposed various changes to the Arbitration and Conciliation Act, 1996 ["**1996 Act**"], most of which have been introduced vide the 2015 Amendment Act.

Rule 3 of the First Schedule under the Arbitration and Conciliation Act, 1940 ["**1940 Act**"] prescribed a time limit of 4 months to render the award, after the tribunal had entered into reference to render the award. The court had the discretion to extend this time, and no upper limit was prescribed for the same under the 1940 Act.[6] The 1996 Act was enacted to consolidate and amend the law relating to arbitration in India, and the 1940 Act subsequently stood repealed. The 176th Law Commission, set up to review this new arbitration regime, in its 2001 report recommended prescribing a mandatory time limit, and attributed delays in arbitration to removal of such a provision pursuant to the enactment of the 1996 Act.[7] It also provided guidance as to the factors which should be taken into account while passing an order for costs in relation to such delays and the future procedure to be followed by the arbitral tribunal, which are enumerated below:

a) extent of work already done;
b) reasons for delay;
c) conduct of the parties or of any person representing the parties;
d) the manner in which proceedings were conducted by the arbitral tribunal;
e) further work involved;
f) amount of money already spent by the parties towards fee and expenses of the arbitration; and
g) any other relevant circumstances.[8]

The Justice Saraf Committee, which was set up to review the recommendations of the 176th Report, unequivocally rejected the proposal to include mandatory time limits in the 1996 Act.[9] The Committee considered court-controlled arbitration to be antithetical to the growth of

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4 Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287, ¶ 25 [*hereinafter* "BCCI"]; *See also* Sanjeevi Seshadri, *Section 29A of the New Indian Arbitration Act – An Attempt at Slaying Hydra*, KLUWER ARB. BLOG (Feb. 2, 2016), *available at* http://arbitrationblog.kluwerarbitration.com/2016/02/02/s-29a-of-the-new-indian-arbitration-act-an-attempt-at-slaying-hydra/ [*hereinafter* "Sanjeevi Seshadri"].

5 LAW COMMISSION OF INDIA, REPORT NO. 246, AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT, 1996 (2014) [*hereinafter* "Report 246"].

6 Arbitration and Conciliation Act, No. 10 of 1940, § 28.

7 LAW COMMISSION OF INDIA, REPORT NO. 176, THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2001 (2001) [*hereinafter* "Report 176"].

8 *Id.* at 127.

9 JUSTICE SARAF COMMITTEE REPORT ON IMPLICATIONS OF THE RECOMMENDATIONS OF THE LAW COMMISSION IN ITS 176TH REPORT REGARDING AMENDMENT OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND THE AMENDMENTS PROPOSED BY THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2003 AND SUGGESTIONS AND RECOMMENDATIONS (2004), *in* MINISTRY OF LAW AND JUSTICE, *Proposed Amendments to the Arbitration and Conciliation Act, 1996 - A Consultation Paper* (2010), at 127, *available at* https://www.legallyindia.com/images/stories/docs/Arbitration-Act-LawMin-ConsultationPaper-on-Arb-Act-April2010-1.pdf [*hereinafter* "Justice Saraf Committee Report"].

arbitration in India, and contradictory to the best practices in the international arena.[10] In fact, experts cautioned that with such an amendment, the "*arbitral tribunal will become an organ of the court rather than a party-structured dispute resolution mechanism*".[11] Thereafter, the 246th Law Commission looked at the issue of amendments required with respect to the 1996 Act anew. While examining the role of the judiciary in arbitration, and the statutory bar on unnecessary judicial interference under Section 5 of the 1996 Act,[12] the 246th Law Commission noted the stark contrast between the 1996 Act and the 1940 Act. The drawbacks of judicial intervention in arbitral proceedings were also discussed,[13] and the need for courts to act as "*partners, not superiors or antagonists*" was emphasized.[14] Additionally, it has been acknowledged that since the parties have chosen to arbitrate and not litigate, the courts must respect this choice and remember that their powers under the arbitration statute exist only to support, and not supersede, the powers of the arbitrators.[15]

Upon examination of the genesis of Section 29A, it is clear that the experts had duly considered the consequences of including such a provision in the pro-arbitration regime which had been ushered into India by the 1996 Act and decided against imposing any mandatory time limits on the arbitral process. The 2015 Amendment Act has been enacted to ensure expeditious and cost-effective disposal of arbitral matters, with minimal judicial intervention.[16] Section 29A of the 2015 Amendment Act is peculiar in this regard; as although it aims to fulfil the objective of expediency, it nonetheless appears to defeat the goal of reducing court interference. It is therefore, unclear as to why the government decided to incorporate this provision into the 2015 Amendment Act.

The scheme of Section 29A is such that the tribunal is bound to render an award within 12 months, which can be extended up to 18 months with the consent of the parties.[17] If there is a failure to do so, the mandate of the tribunal stands terminated. The courts are empowered to extend the time limit when provided with proof of sufficient cause for such delay. Thus, the parties' ability to extend the time period has been taken away completely and such power has instead been entrusted with the courts, regardless of the stage at which the arbitral proceedings are. This is a significant erosion of party autonomy in arbitration proceedings. Moreover, while extending the time limit under this section, the courts can impose costs on the arbitrator(s) and even replace them.[18] What makes the provision even more controversial is its applicability, to not only domestic arbitrations, but also international commercial arbitrations.[19] In all its previous

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10 *Id.*

11 *Id.*

12 "*Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.*"

13 REPORT 246, *supra* note 5, ¶ 22.

14 O.P. MALHOTRA, *Foreword* to LAW AND PRACTICE OF ARBITRATION (1st ed. 2002) *quoted in* REPORT 246, *supra* note 5, ¶ 20.

15 *Id.*

16 The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, Statement of Objects and Reasons [*hereinafter* "The 2015 Amendment Act"].

17 *Id.* Explanation to § 29A(1).

18 *Id.*, §§ 29A(4), 29A(6).

19 The Arbitration and Conciliation (Amendment) Bill, No. 100 of 2018, § 6 [*hereinafter* "2018 Amendment Bill"] seeks to remove international commercial arbitrations from the purview of Section 29A.

forms, i.e., as enacted under the 1940 Act,[20] as proposed in the 76th Law Commission Report on the Arbitration Act, 1940,[21] or in the 176th Law Commission Report on the Arbitration and Conciliation (Amendment) Bill (2001),[22] the provision was restricted to domestic arbitrations.

The 176th Law Commission Report empowered the parties to extend the time limit by another year by way of mutual consent, while no such power was given to the arbitrators or the court.[23] The 176th Report also recommended that arbitral proceedings be suspended only until the application for extension is made to the Court. This application could be filed by any of the parties to the arbitration or by the arbitral tribunal. The mandate of the tribunal would resume on the filing of an application for extension, thereby ensuring that all the time and expense invested into the arbitral proceedings is not rendered futile.[24] Any delay in the disposal of the application by the court would not hamper the resolution of the dispute if the tribunal's mandate continues; much like the amended Section 36, which provides that no automatic stay is granted to the enforcement of the award, despite the pendency of a Section 34 application, i.e., an application for the setting aside of an arbitral award. It is difficult to understand why certain proposals, which were pro-arbitration, were omitted from the 2015 Amendment Act, thereby contradicting the objective of the 1996 Act and the very purpose for which the amendments were enacted in 2015.

II. Necessity or Legislative Blunder?

A fundamental component of party autonomy in arbitration is the parties' freedom to choose the procedure for arbitral proceedings.[25] In fact, one of the primary reasons that parties prefer arbitration over litigation is the flexibility to choose the procedure that would govern their proceedings, as long as such procedure is not in derogation of the *lex arbitri*.[26] This principle has been adopted in India under Section 19 of the 1996 Act. Section 29A is also applicable to international commercial arbitrations, the entire edifice of which rests on the principle of party autonomy.[27]

Section 29A uses mandatory terms such as an "*award shall be made*",[28] and "*mandate of the arbitrator shall terminate*".[29] The only semblance of party autonomy in this provision is sub-section (3) that allows the parties to extend the time period by 6 months, after the expiry of 12 months.[30] Neither the parties, nor the tribunal, have the power to extend the time limit beyond the

20 The Arbitration Act, No. 10 of 1940, sch. 2, r.3.
21 LAW COMMISSION OF INDIA, 76TH REPORT ON THE ARBITRATION ACT, 1940, ¶ 11.12 (1978).
22 REPORT 176, *supra* note 7, at 127.
23 *Id.* at 123.
24 *Id.* at 127.
25 SIMON GREENBERG ET AL., INTERNATIONAL COMMERCIAL ARBITRATION: AN ASIA PACIFIC PERSPECTIVE 305, ¶ 7.4 (2011) [*hereinafter* "Greenberg et al."]; Arts. 18 and 19 are considered to be the most important provisions of the UNCITRAL Model Law and have been referred to as the "*Magna carta of arbitral procedure*" in UNCITRAL Secretary General, *Analytical Commentary on Draft Text of A Model Law on International Commercial Arbitration*, ¶ 1, U.N. Doc. A/CN.9/264, (Mar. 25, 1985).
26 GREENBERG ET AL., *supra* note 25, at ¶ 1.82; JEFFREY WAINCYMER, PROCEDURE AND EVIDENCE IN INTERNATIONAL ARBITRATION 52 (2012) [*hereinafter* "WAINCYMER"].
27 GREENBERG ET AL., *supra* note 25, at 305, ¶ 7.4.
28 The 2015 Amendment Act, *supra* note 16, § 29A(1).
29 *Id.* § 29A(4).
30 Manini Brar, *Implications of the New Section 29A of the Amended Indian Arbitration and Conciliation Act, 1996*, 5(2) IND. J. ARB. L. 113, 117 (2017) [*hereinafter* "Manini Brar"].

statutory period of 18 months. Hence, they are compelled to approach the courts to seek an extension. The wording of this section indicates that it is of a mandatory nature because phrases such as "*unless otherwise agreed by the parties*" or "*subject to party agreement*" have not been used. The plain text of the statute is likely to trump any agreement between the parties to the contrary, and it might also override any determination by an arbitral institution as to the time limit for resolving the dispute at hand. Gary Born argues that the validity of this kind of a mandatory time limit, that has been imposed even on international arbitrations, can be contested under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ["**New York Convention**"].[31] Article V(1)(d) of the New York Convention recognizes the parties' autonomy to agree upon arbitral procedures, including procedures different from those which the laws of the seat prescribe. Consequently, Article V(1)(d) would not permit a Contracting State to override the parties' agreement on the appropriate length of the arbitral process, based on a mandatory, local, statutory time limit.

A mandatory time limit to render an arbitral award has several adverse consequences, apart from the fissures it creates in party autonomy. The appropriate duration of the arbitration depends on the number and complexity of the issues, the need for (and complexity of) discovery or disclosure, the length of any hearing, the urgency with which it needs to be concluded, as well as the parties', tribunal's and counsels' calendars.[32] Extensive evidence might have to be led before the court to establish the complexity of the matter in dispute,[33] thereby increasing the costs and time expended during the course of the proceedings. By setting a common timeline for all arbitrations, the legislature has ignored the vast range of variation in issues, facts and evidence as well as the degree of complexity of the disputes that may arise before arbitral tribunals. Section 29A, in fact, substantially curbs party autonomy by not allowing the parties to choose a different set of deadlines, based on their needs and the complexity of the matter.[34] Moreover, each party might try to blame the other or the tribunal for the delay in any applications for extension filed before the court, and the pronouncements of the courts, being judicial decisions, would be open to appeal. Considerable time is likely to be spent in determining the facts and circumstances of the case and/or disposing off of appeals, thereby prolonging the time period for dispute resolution, and defeating the very purpose for which the amendments have been enacted.

Another adverse consequence of imposing a rigid time limit is that experienced arbitrators may be reluctant to accept appointment in complicated matters that may require the examination of voluminous documents or protracted recording of evidence.[35] This concern is amplified by the fact that the courts have been empowered by Section 29A to reduce the arbitrators' fees if the delay is attributable to their conduct.

Confidentiality of proceedings makes arbitration a preferred means of dispute resolution for

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31 GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 2238, n. 645 (2d ed. 2014).

32 *Id.* at 2239.

33 Sanjeevi Seshadri, *supra* note 4.

34 WAINCYMER, *supra* note 26, at 415.

35 Jyoti Singh & Smiti Verma, *Section 29A of the Indian Arbitration And Conciliation Act: Possibility of Timebound Arbitration,* MONDAQ (June 9, 2017), *available at* http://www.mondaq.com/india/x/600704/Arbitration+Dispute+Resolution/Section+29A+Of+The+Indian+Arbitration+And+Conciliation+Act [*hereinafter* "Singh & Verma"].

parties that wish to achieve an objective, efficient and commercially sensible solution, while also limiting disclosures to the press, public, competitors and others.[36] Section 29A may give rise to a situation wherein parties are required to appear before the court and disclose the nature of their dispute, reveal details concerning the arbitrators, the stage of the arbitral proceedings, nature of the evidence being recorded and so on. This may result in a violation of the concerned parties' confidentiality agreements or the tribunal's duty to maintain confidentiality (once the Arbitration and Conciliation (Amendment) Bill, 2018 ["**2018 Amendment Bill**"] is passed).[37]

The arbitrator (if replaced under Section 29A(6)[38]) will also need time to familiarize himself with the case, and in the author's view, merely deeming prior constitution (Section 29A(7)[39]) will not address the practical difficulties of having the dispute decided by someone who has not attended any oral hearings. Additionally, in a scenario where only the writing of the award remains and the substitute arbitrator proceeds to give a decision without hearing the parties, a challenge could be raised under Section 34(2)(a) of the 2015 Amendment Act, thereby hampering the enforceability of the award.[40]

Imposition of a mandatory time limit in India is especially problematic, given that Indian courts are faced with a heavy backlog of cases,[41] and the legislative objective since 1996 has been to reduce unnecessary delays and judicial interference in Indian arbitrations.[42] After experimenting with time bound arbitrations in the past and failing to achieve the desired results under the 1940 Act, Section 29A as introduced by the 2015 Amendment Act seems to be more of a legislative blunder than a necessity, particularly when one questions the need for such a provision. Arbitral tribunals have an inherent responsibility to avoid unnecessary expenses and delays.[43] Moreover, parties can stipulate any time limit in their arbitration agreements if they feel the need to, and such time limit shall bind the arbitral tribunal. In any case, time limits for completing the arbitral proceedings can be agreed upon after the dispute has arisen, in consultation with the tribunal (in case of *ad hoc* arbitration) or the arbitral institution.

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36 NIGEL BLACKABY ET AL., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION ¶ 1.105 (6th ed. 2015); BORN, *supra* note 31, at 2003-04, 2782.

37 § 42A of the 2018 Amendment Bill seeks to provide statutory recognition to the implicit duty of an arbitral tribunal to maintain confidentiality, to all arbitral proceedings (except awards). The proposed amendment is as follows:

"42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall keep confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award".

38 "While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material".

39 "29A(7). In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal".

40 The award could be challenged on the basis that "the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case" [§34(2)(a)(iii)] or that "it is in conflict with the most basic notions of morality or justice" [§34(2)(b)(iii)] – the right to be heard is a principle of natural justice, which comes within the ambit of this provision. *See generally* ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263, ¶¶ 28, 29.

41 LAW COMMISSION OF INDIA, REPORT NO. 245, ARREARS AND BACKLOG: CREATING ADDITIONAL JUDICIAL (WO)MANPOWER (2014).

42 DEPARTMENT OF LEGAL AFFAIRS, REPORT OF THE HIGH LEVEL COMMITTEE TO REVIEW THE INSTITUTIONALIZATION OF ARBITRATION MECHANISM IN INDIA 19 (2017) [*hereinafter* "HLC Report"].

43 WAINCYMER, *supra* note 26, at 317.

All institutional arbitrations adhere to a time-table for proceedings, which is finalized with the consent of the parties in the initial stages of the proceedings. One may argue that in a scenario where one of the parties is attempting to avoid the arbitration altogether, it becomes difficult to set or extend time limits by mutual consent. However, in a number of arbitration rules, institutions perform the role of enforcing and extending the applicable time limit with regard to rendering an award.[44] Under the SIAC Rules, for example, the Registrar can extend the time limit for completion of an expedited arbitration,[45] while under the ICC Rules of Arbitration, the ICC International Court of Arbitration is empowered to extend various time limits specified in those rules.[46] The CIETAC Commission is empowered to do the same under the CIETAC Rules.[47] Under the ICC Rules, failure of the arbitral tribunal to complete the arbitration in time may also result in the reduction of fees, or the replacement of one or more members of the tribunal.[48]

Various institutional rules also have provisions for fast track procedure,[49] as does the 2015 Amendment Act under Section 29B. Fast track procedure is an alternative available to the parties, which is not imposed on them and can be chosen of their own volition, unlike Section 29A.[50] Section 29B of the amended Act requires the arbitration proceedings to be concluded within six months from the date the tribunal has entered into reference.[51] The adjudication is conducted on the basis of written pleadings, documents and submissions filed by the parties, with no oral hearings taking place in order to expedite the process.[52] It is important to remember that time limits provided by various institutional rules and by Section 29B of the 2015 Amendment Act are based on the consent of the parties. By making an overarching rule in the form of Section 29A, which is applicable to *ad hoc* and institutional arbitrations (both domestic as well as international), not only is the authority of arbitral institutions undermined, but also India's attractiveness as a destination for international arbitration proceedings is seriously jeopardized.

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44 Vyapak Desai et al., *Arbitration in India: The Srikrishna Report – A Critique*, 20(1) ASIAN DISP. REV. 7 (2018).

45 Arbitration Rules of the Singapore International Arbitration Centre (SIAC) 2016, r. 5.2(d).

46 Rules of Arbitration of the International Chamber of Commerce 2012, art. 31(2) [*hereinafter* "2012 ICC Rules"].

47 China International Economic and Trade Arbitration Commission Arbitration Rules 2012, art. 46.1 [*hereinafter* "CIETAC Rules"].

48 YVES E. DERAINS & ERIC A. SCHWARTZ, A GUIDE TO THE ICC RULES OF ARBITRATION 196-197, 303 (2d ed. 2005); ARBITRATION IN ENGLAND WITH CHAPTERS ON SCOTLAND AND IRELAND 310 (Julian D.M. Lew et al. eds., 2013).

49 2012 ICC Rules, *supra* note 46, art. 30.

50 Singh & Verma, *supra* note 35.

51 § 29B (4) provides that: "The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference".

52 It is possible to have oral hearings even in fast track arbitrations, provided that the parties collectively request the tribunal, or the tribunal considers it necessary. § 29B(3), as given below, is applicable in such cases:
"The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1),
(a) the arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
(b) the arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
(c) an oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
(d) the arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.".

III. Comparative Analysis with other Jurisdictions

The drafters of the UNCITRAL Model Law ["**Model Law**"] considered that a fixed time limit would prevent flexibility, thereby unduly constraining arbitrators. Hence, they chose not to include such a provision in the Model Law.[53] Nonetheless, many ethical codes,[54] and some national laws, impose general requirements for the expeditious conduct of arbitral proceedings.[55] Similarly, some institutional rules[56] and national laws (typically, older arbitration statutes that restrict time limits to domestic arbitrations)[57] stipulate a time limit within which the arbitral tribunal must render its award.[58] Most of the jurisdictions that stipulate a statutory time limit for arbitral proceedings allow the parties the flexibility to determine an extended time limit that best suits the requirements of their case.[59] Some jurisdictions, while setting a time limit for the arbitral proceedings, also stipulate that the expiry of such period will not affect the validity of the award and the tribunal will not lose its jurisdiction, unless otherwise agreed by the parties.[60] However, domestic courts may hold arbitrators liable for damages if they have not rendered an award within the time period agreed by the parties.[61] Still other jurisdictions expressly allow for the

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53 HOWARD M. HOLTZMANN & JOSEPH E. NEUHAUS, A GUIDE TO THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: LEGISLATIVE HISTORY AND COMMENTARY 422 (1989).

54 International Bar Association Rules of Ethics for International Arbitrators 1987, art. 1; The Code of Ethics for Arbitrators in Commercial Disputes Canon I (F) (AM. BAR ASS'N & AM. ARB. ASS'N 2004).

55 United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985 U.N.G.A. Res. 40/72 (Dec. 11, 1985), as amended by U.N.G.A. Res. 61/33 (Dec. 18, 2006), art. 14 ("without undue delay"); The Arbitration Act 1996, § 33(1) (Eng.) [*hereinafter* "English Arbitration Act"]; Art. 1031 ¶ 2 (Rv.) (Neth.) [*hereinafter* "Dutch Code of Civil Procedure"]; § 17 LAG OM SKILJEFÖRFARANDE (Svensk författnings samling [SFS] 1999:116) (Swed.) [*hereinafter* "Swedish Arbitration Act"] (arbitrator may be removed if he or she "has delayed the proceedings"); Code of Civil Procedure, arts. 1007, 1009 (Lux.) (time limit of three months from date of submission to arbitration, unless otherwise agreed); Lei No. 9307, de 23 de setembro de 1996, DIÁRIO OFICIAL DA UNIÃO [D.O.U.], art. 23, Sept. 23, 1996 (Braz.)[*hereinafter* "'Brazilian Arbitration Law"]; Ley De Arbitraje Comercial (Commercial Arbitration Law), art. 22 (Venez.); CODE JUDICIAIRE [C.JUD.] art. 1713(2) (Belg.) [*hereinafter* "'Belgian Judicial Code"] (parties are free to determine the applicable time limit); Art. 820 Codice di procedura civile [C.p.c.] (It.) [*hereinafter* "'Italian Code of Civil Procedure"]; Arbitration Act art. 37(2) (R.D. Ley 2003, 60) (Spain) [*hereinafter* "'Spanish Arbitration Act"].

56 CIETAC Rules, *supra* note 47, art.42; The Rules of Arbitration of the International Chamber of Commerce 2017, art.31; Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce 2017, art. 43; Mumbai Centre for International Arbitration Rules 2016, arts. 30.2, 30.3; Nani Palkhivala Arbitration Centre Rules, r. 22.

57 BORN, *supra* note 31, at 2238.

58 Italian Code of Civil Procedure, *supra* note 55, arts. 813, 820 (240 days from acceptance of appointment to issue award unless otherwise agreed; the arbitrators can be held liable for damages if the award is set aside on this ground); CÓDIGO PROCESAL CIVIL Y COMERCIAL DE LA NACIÓN [COM.][CIVIL AND COMMERCIAL PROCEDURE CODE] arts. 745, 756 (Arg.) [*hereinafter* "'Argentine National Code of Civil and Commercial Procedure"] (failure to render award within required time forfeits arbitrator's fee and exposes arbitrator to liability for costs and damage); Belgian Judicial Code, *supra* note 55, art. 1713(2) (the arbitrators can be held personally liable for the delay after 6 months (non-mandatory time limit) if the court deems it to be necessary); CODE DE PROCÉDURE CIVILE [C.P.C.] [CIVIL PROCEDURE CODE] art. 1463 (Fr.), version in force from May 1, 2011, provides that if there is no deadline set in the arbitration agreement, a domestic arbitrator's mandate lasts six months from the date of his appointment (subject to extension by the parties or failing party agreement, the French courts).

59 Brazilian Arbitration Law, *supra* note 55, art. 23; CODUL DE PROCEDURĂ CIVILĂ AL ROMÂNIEI [C. PROC. CIV.][ROMANIAN CIVIL PROCEDURE CODE], Bk. IV, art. 567 (Rom.); CODE DE PROCÉDURE CIVILE [C.P.C.] art. 1463 (Fr.); *See also* UNCITRAL, *Notes on Organizing Arbitral Proceedings*, ¶ 4 (2016), *available at* http://www.uncitral.org/pdf/english/texts/arbitration/arb-notes/arb-notes-2016-e.pdf.

60 Spanish Arbitration Act, *supra* note 55, art. 37(2).

61 Italian Code of Civil Procedure, *supra* note 55, arts. 813, 820; Argentine National Code of Civil and Commercial Procedure, *supra* note 58, arts. 745, 756; Belgian Judicial Code, *supra* note 55, art. 1713(2).

removal of an arbitrator if there is excessive delay in completing the mandate of the tribunal.[62] A trend is clearly visible from this comparative analysis: of holding the arbitrators accountable by providing grounds for their removal or making them liable to pay damages for any delays beyond statutory time limits. However, the effects of such delays are not extended to the arbitral award, the tribunal's mandate, or the validity of the arbitral proceedings.

A provision that is similar to Section 29A of the 2015 Amendment Act is Article 21 of the arbitration law applicable in Taiwan, Republic of China, since it allows for termination of the arbitral tribunal's mandate upon the expiry of the statutory time limit. Article 21 permits parties to proceed with a civil suit if the arbitral award is not given within the time limit of 6 months (unless modified by the parties), and the tribunal's mandate ends once such a suit is initiated.[63] It is important to note that there is no mandatory or automatic termination of a tribunal's mandate, so the parties can choose to proceed with the arbitration if they so desire, even though the statutory time limit has expired.[64] This lends a non-mandatory character to the provision and makes it distinguishable from Section 29A of the 2015 Amendment Act.

IV. Judicial Overreach

Though the judicial interpretation of Section 29A is limited, it is still useful to comprehend the effects of introducing a mandatory time limit in India. Courts have emphasized the statutory mandate under Section 29A for completing the arbitration expeditiously while appointing an arbitrator under the 2015 Amendment Act.[65] Even where the provisions of Section 29A of the 2015 Amendment Act do not apply, such as those arbitrations which are being conducted under the provisions of the 1996 Act, courts have expressed the view that it is '*expected*' that arbitral proceedings be completed within 12 months of the tribunal entering upon reference.[66]

Some positive developments can be observed from the judicial treatment of Section 29A. There is evidence to indicate that the courts are following the requirement under Section 15(2) of the 2015 Amendment Act[67] to respect the agreement between the parties while substituting the arbitrator(s) under Section 29A.[68] Some courts have also interpreted Section 29A liberally, in accordance with the principle laid down by the Supreme Court in *State of West Bengal* v. *Sree Sree*

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62 Swedish Arbitration Act, *supra* note 55, § 17; Dutch Code of Civil Procedure, *supra* note 55, art. 1031(2); English Arbitration Act, *supra* note 55, §24(1)(d)(ii).

63 Arbitration Law of the Republic of China, 1998, art. 21 (Taiwan).

64 Manini Brar, *supra* note 30, at 123.

65 Aahaa Planners & Developers Pvt. Ltd. v. Hasan Rizvi Saba, 2017 SCC OnLine Jhar 1566.

66 International Engineers & Project Consultants Ltd. (IEPCL) v. Union of India & Anr., 2017 SCC OnLine Del 8348, ¶ 28; Joginder Singh Dhaiya v. M.A. Tarde, 2017 SCC OnLine Del 12559, ¶ 50.

67 § 15(2) requires: "Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced."

68 It has been followed in Omaxe Infrastructure and Construction Ltd. v. Union of India & Ors., 2017 SCC OnLine Del 11511, ¶ 6, Gammon India Limited v. Ambience Private Limited, 2018 SCC OnLine Del 7642, ¶¶ 9, 10. If the procedure followed is not in accordance with the agreement of the parties, the award can be challenged under § 34(2)(a)(v). Even though it can be argued that § 29A is mandatory and any appointment made pursuant to it will not be subject to challenge based on party agreement, it would be prudent for the courts to consider an agreement for appointment of arbitrator(s), even in case of replacement under § 29A, so as to avoid any further challenges to the award's validity or enforceability. The mandatory nature of the time limit in § 29A in the presence of party agreement to the contrary can be contested by relying on art. V(1)(d) of the New York Convention, as argued above.

MA Engineering,[69] that the time and effort into the making of an arbitral award should not be allowed to go waste on mere technicalities.[70] In *Chandok Machineries* v. *SN Sunderson & Co.*,[71] a valid award was challenged for being issued after the expiry of the 12 months limit. The petitioner had delayed the proceedings at various junctures and also refused to give consent for extension of time to render the award, under Section 29A(3). The Delhi High Court laid to rest several important issues in this context. Even though there was no written application for extension of time under Section 29A, the court deemed it fit to exercise its powers under Section 29A(4) and place the burden on the petitioner to show why the time limit should not be extended by the court.[72] The ambit of Section 29A(4) was expanded by ruling that such application need not only be in writing, but can also be made orally. Further, the court clarified that after extension of time by the court under Section 29A(4), any proceedings undertaken by the tribunal after the expiry of the statutory time limit, will stand validated.[73] Decisions like these can go a long way in reassuring parties who are concerned about the effects that Section 29A can have on their arbitration agreements and subsequent proceedings, particularly where one party is not co-operating or intentionally delaying the arbitral proceedings.

As anticipated, Section 29A has given rise to numerous controversies. In one arbitration, the tribunal declined to consider the application for amendment of pleadings, solely on the ground that if the application were to be allowed, it would not be possible to complete the proceedings within the time envisaged under Section 29A of the 2015 Amendment Act.[74] The matter then had to be brought before the court for resolution. Unnecessary delay in disposal of the dispute resolution proceedings was caused because the arbitral tribunal could not grant a procedural request for amendment of pleadings, due to the strict time limit imposed by the statute.

A situation wherein the award is issued after the expiry of the time limit, but before the court considers the application under Section 29A, can also lead to unnecessary delays if the losing party contests that the tribunal had become *functus officio* as per Section 29A(4),[75] before rendering the award. In the author's assessment, which is based on analysis of *Jacob Mathew* v. *PTC Builders*,[76] and *Chandok Machineries* v. *SN Sunderson & Co.*,[77] the party against whom an arbitral award is issued can exploit Section 29A for a double challenge mechanism. The aggrieved party seeks to challenge the award, first, under Section 29A and thereafter, upon failure of such challenge, under Section 34(2)(a)(v) of the 1996 Act.[78]

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69 State of West Bengal v. Sree Sree MA Engineering, (1987) 4 SCC 452, ¶ 4.

70 Chandok Machineries v. SN Sunderson & Co., 2018 SCC OnLine Del 11000, ¶ 33 [*hereinafter* "Chandok Machineries"].

71 *Id.*

72 *Id.* ¶ 32.

73 *Id.* ¶ 31.

74 Asf Insignia Sez Pvt. Ltd. v. Punj Lloyd Ltd., O.M.P.(Misc.)(Comm.) 24/2017 before the Delhi High Court, Decision dated Aug. 28, 2017, ¶ 6.

75 § 29A(4) states that: "If the award is not made within the period specified in sub- section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period.".

76 Jacob Mathew v. PTC Builders, 2017 SCC OnLine Ker 18568 (India) [*hereinafter* "Jacob Mathew"].

77 Chandok Machineries, *supra* note 70.

78 § 34(2)(a)(v) of the 1996 Act is as follows:
"(2) An arbitral award may be set aside by the Court only if—

In *Olympic Oil Industries Ltd.* v. *Practical Properties Pvt. Ltd.* ["**Olympic Oil**"],[79] the respondent was held to be principally responsible for the delay in the arbitral proceedings, and the contention that the delay was solely attributable to the tribunal was rejected. However, the Delhi High Court considered it necessary to appoint '*an independent arbitrator*'.[80] One can compare this with the judgement of a German Court wherein the court refused to terminate the arbitrator's mandate, notwithstanding the 8 years' delay as most of it was due to the parties and experts, although the tribunal was also partially responsible.[81]

In the author's assessment, in order to make India an arbitration friendly jurisdiction, courts need to exercise their powers under Section 29A(6), i.e., the power to substitute the arbitrator(s), sparingly. Substitution of arbitrators should only be carried out in cases where the delay is solely attributable to such arbitrator, since the court will be superseding party autonomy by appointing someone who was not chosen by the parties and who may not have the qualifications or the expertise that the parties desire.

Another ground cited by the Delhi High Court in *Olympic Oil* for replacing the arbitrator was that he was from Mumbai, although the hearings had to be conducted in Delhi.[82] This raises a concern regarding the importance given by the court to the arbitrator's place of residence. In international commercial arbitrations and institutional arbitrations, the place where the arbitrator resides does not have any bearing on the arbitrator's ability to conduct the proceedings.[83] A dangerous trend of regionalisation may follow from the court's decision where all arbitrations in Delhi will have to be presided over by arbitrators resident in Delhi, all arbitrations in Mumbai will be handled by arbitrators resident in Mumbai and so on. Keeping aside the practical difficulties of finding such experts and arbitrators in each city of the country, this goes against the very ethos of party autonomy in selection of arbitrators. Respectfully, it is the author's view that the Delhi High Court overzealously exercised its mandate under Section 29A in this case by substituting the arbitrator, even when the delay was not solely attributable to the tribunal.

Conflicting opinions have emerged regarding the interpretation of Sections 14 and 15 of the 1996 Act, in light of the newly introduced Section 29A. Section 14 provides for the termination of an arbitrator's mandate due to *de jure* or *de facto* inability to proceed with the arbitration. This

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(a) the party making the application furnishes proof that—

…

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part…".

79 Olympic Oil Industries Ltd. v. Practical Properties Pvt Ltd., 2018 SCC OnLine Del 8887, ¶ 18 [*hereinafter* "Olympic Oil"]. The Court observed that the tribunal was partly responsible for the delay as there was no reasonable explanation for not conducting hearings after January 28, 2017.

80 *Id.* ¶ 20.

81 OLG, Dec. 17, 2010, 34 SchH 6/10 (Ger).

82 Olympic Oil, *supra* note 79, ¶ 19.

83 The arbitrator can be disqualified from conducting an arbitration due to several factors, such as lack of independence or impartiality, which have been provided by means of §§ 12, 13, 14 and the 7th Schedule to the 1996 Act. No prohibition to act as an arbitrator based on the place of residence has been laid down in the 1996 Act or in any other national law, Model Law, institutional rules, ethical codes of conduct for arbitrators (such as IBA Guidelines), *et al.* In fact, the International Bar Association's Report, *The Current State and Future of International Arbitration: Regional Perspectives*, IBA ARB. 40 SUBCOMMITTEE (2015) indicates the wide usage of arbitral institutions and arbitrators from across the world in international arbitration.

includes the arbitrator's inability to "*act without undue delay*". Section 15 contains rules concerning substitution of the arbitrator whose mandate has ended in accordance with Section 13 or Section 14 of the 1996 Act. In *Omaxe Infrastucture*,[84] the Court relied on a conjoint reading of Section 14 and Section 29A to substitute the arbitrator. This is in direct contradiction to the Delhi High Court's ruling in the case of *Angelique International Limited* v. *SSJV Projects Pvt. Ltd.* ["**Angelique International Limited**"].[85] Citing the principle of '*expressio unius este xclusio alterius*', which means that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all, the Delhi High Court in *Angelique International Limited,* opined that a conjoint reading of Section 14 and Section 29A is not possible. In the learned judge's view, only when the delay is attributable to the tribunal, the court can order reduction of fees of the arbitrator(s), or substitute the arbitrator(s).[86] Section 14 of the 1996 Act, on the other hand, must be read with Sections 12 and 13 and invoked only in cases where there is a challenge made to the arbitrator(s) on the grounds of *de jure* or *de facto* inability to perform their functions, and not in case of expiry of time limit prescribed under Section 29A. In the author's view, the interpretation given by the court in *Angelique International Limited* is correct.

The principle of '*expressio unius est exclusio alterius*', has been applied previously in the context of the 1996 Act, while interpreting Sections 12, 13 and 14. A division bench of the Delhi High Court in *Progressive Career Academy* v. *FIIT JEE Ltd.*,[87] has opined that any challenge to the arbitrator(s) in courts, alleging bias, lack of independence or impartiality, can only be raised after the culmination of the arbitral proceedings, under Section 34 of the 1996 Act, and not at an intermediate stage under Section 14. Bias may be a *de jure* inability, however, given that the Parliament has provided a separate mechanism for challenges concerning bias under Sections 12 and 13, Section 14 cannot be applied in such cases. A similar interpretation should be extended to Section 14(1)(a) to reconcile it with the time limit provided by Section 29A. Even though it may be possible to challenge an arbitrator under Section 14 for not being able to conduct the proceedings "*without undue delay*" upon the expiry of 12 or 18 months (as the case may be), given that the Parliament has provided a separate mechanism for substitution of arbitrators who do not render an award within the statutory time limit, Section 14 should not be invoked by the courts or the parties in such cases. Further, in the author's view, in order to overcome the inability to raise a challenge on account of lack of independence or impartiality at an intermediate stage, parties are now resorting to Section 29A as a mechanism to get arbitrators replaced by the courts.[88]

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84 Omaxe Infrastructure and Construction Ltd. v. Union of India & Ors., 2017 SCC OnLine Del 11511.

85 Angelique International Ltd., *supra* note 2, ¶¶ 28, 29.

86 *Id.* ¶ 28. This observation is *obiter dicta* as the court ultimately held that the application under §§ 14, 15 was not maintainable because the challenge was being made to an order passed by the arbitrator terminating the arbitration proceedings due to the claimant not prosecuting its claims, which could only be challenged under § 34 of the Act and not under § 29A.

87 Progressive Career Academy v. FIIT JEE Ltd, 2011 SCC OnLine Del 2271, ¶¶ 16, 21.

88 FCA India, *supra* note 3, ¶ 25. The party which had sought several adjournments from the tribunal during the proceedings, refused to agree to an extension of 6 months to render the award. The tribunal's mandate expired on the conclusion of 12 months and the party which had refused to agree to the 6 months extension, appointed another arbitrator to commence the arbitral proceedings anew. Similarly, in Angelique International, *supra* note 2, the party that did not want the appointed arbitrator to continue, kept on delaying the proceedings and then argued that time limit under § 29A had expired.

V. The Way Forward

Section 29A in its present form is regressive and resurrects Section 28 of the 1940 Arbitration Act, by making arbitral tribunals organs of the court and rendering arbitration in India a court-controlled and supervised exercise. This defeats the very objective of the 1996 Act, the essence of the Model Law which the legislature took into account while enacting the 1996 Act, and the 2015 Amendment Act. Thus, there is a need to re-examine the purpose being served by Section 29A in light of various reports by experts rejecting the imposition of a time limit and its current and prospective impact on party autonomy, cost efficiency and expediency, as discussed in various parts of this article.

Taking note of the concerns raised by various stakeholders post the enactment of the 2015 Amendment Act, a High Level Committee ["**Srikrishna Committee**"] was set up to identify measures to promote institutional arbitration, examine specific issues plaguing Indian arbitration and prepare a roadmap to make India an attractive arbitration centre[89] The Committee recommended the application of the amended provisions only to arbitrations commenced after October 23, 2015 and any court proceedings that result therefrom.[90] However, the Supreme Court in *Board of Control for Cricket in India* v. *Kochi Cricket,*[91] ["**BCCI**"] has warned the Government against accepting this proposal of the Srikrishna Committee. The Supreme Court is of the opinion that if the old law continues to apply for court proceedings initiated after October 23, 2015, but arising from arbitrations commenced before that date, there would be increased interference by courts, which would ultimately defeat the objectives of the 1996 Act and the 2015 Amendment Act thereto.[92] The Supreme Court has asked the Attorney General to take note of its judgement in *BCCI* and also forwarded a copy of the same to the Law Ministry, Government of India.[93]

There should, however, be no confusion regarding the retrospective application of Section 29A. The Supreme Court has clarified in *BCCI*[94] that since Section 29A lays down a strict timeline for rendering an arbitral award, which did not exist before the amendment came into force, it cannot be applied retrospectively because it creates new obligations in respect of a proceeding already commenced under the unamended 1996 Act.[95] Despite this, we can see a number of applications for extension of time being filed under Section 29A for arbitrations which commenced before 23 October, 2015 due to lack of clarity regarding the scope of application of the 2015 Amendment Act.[96]

The Indian legislature has taken note of some of these issues and consequently introduced the

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89 HLC REPORT, *supra* note 42, at 3.

90 *Id.*

91 BCCI, *supra* note 4..

92 *Id.* ¶ 57.

93 *Id.* ¶ 62.

94 *Id.* ¶ 25, n. 2.

95 The Supreme Court relied on its previous decision in Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, ¶ 633 ("…*(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished*…").

96 *See, e.g.,* G.S. Developers Pvt. Ltd. v. Divyadev Developers Pvt. Ltd., before the Madhya Pradesh High Court, Decision dated July 30, 2018; Jacob Mathew, *supra* note 76.

2018 Amendment Bill, which was passed by the Lok Sabha on August 10, 2018.[97] It is currently pending before the Rajya Sabha for approval. This Bill is based on the Srikrishna Committee Report, which proposed numerous changes with regard to Section 29A,[98] the first and the most important of which is to limit the application of Section 29A to domestic arbitrations. The Committee also recommended that the time limit of 12 months should commence after the submission of pleadings (which must be concluded within 6 months). Another significant change proposed was to provide for the continuation of the mandate of the arbitral tribunal during the pendency of an application before the court for extension and deem such an application to have been granted if the court does not dispose of it within 60 days. Lastly, it was recommended that reasonable opportunity of being heard be given to the arbitrator(s) before passing an order for reduction of their fees. All of these recommendations, except deemed grant of application for extension after 60 days of pendency, have been accepted by the Cabinet and incorporated in the 2018 Amendment Bill.[99]

While the amendments proposed by the Srikrishna Committee, as incorporated in the 2018 Amendment Bill are laudable, some aspects need further consideration. Firstly, the exclusion from the mandatory time limit should not only extend to international commercial arbitrations, but also to institutional arbitrations. Arbitral institutions have their own machinery for case management and do not require court control to ensure that their proceedings are completed in an efficient and expeditious manner.[100] If India wishes to become a hub for international arbitration, the autonomy of arbitral institutions cannot be compromised by imposing a mandatory time limit that can only be extended by the courts of the country. Exclusion of institutional arbitrations would further reduce the burden on courts to dispose of applications under Section 29A.

In the *BCCI* decision, the Supreme Court has cited Section 29A as one of the reasons why parties may choose to apply the 2015 Amendment Act retrospectively. They may choose to 'opt in' to the amended provisions in order to avail the benefit of a mandatory time limit for the issuance of their award. While that may be true, a fundamental issue which arises is whether the legislature or the courts will permit parties undertaking an arbitration after the 2015 Amendment Act came into force, the same flexibility in 'opting out' of Section 29A. In the author's opinion, the ability to 'opt in' and 'opt out' of the benefit provided by Section 29A should go hand in hand. However, it seems unlikely that the courts will permit parties to 'opt out' of Section 29A,

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97 2018 Amendment Bill, *supra* note 19, § 6.

98 HLC REPORT, *supra* note 42, at 65.

99 §§ 5 and 6 of the 2018 Amendment Bill are reproduced below:
"(5). In section 23 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—
"The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment."
(6). In section 29A of the principal Act, —
(a) for sub-section (1), the following sub-section shall be substituted, namely:—
"(1) The award in matters other than international commercial arbitration shall be made within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.;
(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:—
"Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:
Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced."

100 *Id.* at 63-64.

given that the Supreme Court has recently ruled that the arbitration law in force binds the parties and that they cannot choose to be governed by older provisions once the Arbitration Act in force has been amended.[101] In light of this, it is important for the Parliament to amend Section 29A and make the provision subject to any party agreement to the contrary. The parties (not the courts) are the ultimate stakeholders in the arbitration process. Therefore, if the parties see it fit to impose a different timeline for resolution of their disputes, the arbitration statute in India should not prohibit them from doing so.

Third, the time limit of 6 months for completion of pleadings should be removed. The proposed amendment to Section 23 in its current form will lead to further delays, as a result of problems similar to those caused by a uniform time limit for completion of the entire arbitration, i.e., disregard for the nature of the dispute, number of parties involved and so on. It is not clear from the proposed amendments whether the courts or the arbitral tribunal are permitted to extend the time limit of 6 months for completion of pleadings. A party which wishes to delay the arbitration proceedings may not submit the statement of claim or defence in time, and this can lead to disagreements regarding the expiry of the time limit under Section 29A, giving rise to unnecessary litigation on the issue. It also remains unclear as to when the pleadings would be said to be completed, in case of a request for amendment of pleadings filed by any of the parties, or if counter claims are filed by the respondent.

The proposal of the Srikrishna Committee to deem the application for extension under Section 29A(4) as granted after the expiry of 60 days should be adopted, to ensure that the arbitral tribunal's mandate is not suspended for an indeterminate period due to the concerned court's inability to dispose of the application in time. Further, the provision for reduction of fees should be removed *in toto* so that arbitrators are not dis-incentivized from undertaking complex cases, which might require more time than the prescribed time limit.

The legislative intent behind the enactment of amendments to the 1996 Act may be laudable, but the effects of Section 29A in practice, and the confusion it has created is antithetical to the growth of arbitration in India. With the Supreme Court and the legislature at odds regarding the applicability of these amendments and the increased judicial interference, one is reminded of the dark era of Indian arbitration that began with *Bhatia International*[102] and ended with *BALCO*.[103] It can only be hoped that the Rajya Sabha will take note of the difficulties that would arise by passing the 2018 Amendment Bill in its present form and appropriate changes will be made before its enactment into law. It is imperative for the Indian legislature and the judiciary to act together, and do so quickly, if they wish to avoid a situation where a provision meant to prevent delays in arbitration becomes infamous for causing delays.

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[101] Purushottam v. Anil & Ors., (2018) 8 SCC 95, ¶ 17. This decision was not in the context of § 29A. The court was considering whether parties can choose to apply the provisions of an older arbitration statute (1940 Act which was mentioned in the parties' arbitration clause) after the enactment of the current arbitration law that is in force when the arbitration proceedings commenced.

[102] Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105.

[103] Bharat Aluminium Co. v. Kaiser Aluminium, (2012) 9 SCC 648.