

The Application of Terms of “Fraud and Corruption” in a Recent Amendment of Indian Arbitration and Conciliation Act

최근 인도 중재화해법 개정의 “사기와 부패”의 적용

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국문초록

인도 중재화해법(Arbitration and Conciliation Act, 1996)은 1996년에 제정되었고, 3차례의 개정을 거치며 인도의 중재를 관할하고 있다. 2021년 최근의 개정에서 동법 제36조에 “사기(fraud) 또는 부패(corruption)가 중재조항의 체결과정에서 발생하거나, 중재판정과정에서 발생할 경우에는 자동적인 집행중지의 효력을 가지도록 하여 절차상의 편이를 제공하였다. 다만, 이는 중재에서 법원의 지나친 개입을 허용하여, 1996년 동법 시행과 2015년 개정 과정에서 논의된 ‘아시아의 중재허브’를 구축하고자 하는 노력에 역행하고 있다는 비판이 있다. 특히, 동법 제36조는 인도 내에서 처리된 중재판정(domestic arbitral award)만 규율하도록 하고 있어, 외국인 투자자는 인도 이외의 장소에서 중재를 하고자 할 우려가 있다.

2021년 개정의 장단점이 있다. 장점으로는 기존의 인도중재과정에서 사기 또는 부패의 여지를 인정하고 이에 대한 피해자를 적극적으로 구제하겠다는 노력의 여지로 볼 수 있다. 2021년 개정을 통하여 특정한 “사기 또는 부패”(fraud or corruption)를 추가하여 법원의 적극적인 개입을 용인하여 적극적인 법적 보호를 제공하고자 하였다. 그러나, 외국인 투자자의 입장에서 위의 개정을 본다면, 인도법원의 지나친 개입으로 인하여 부담으로 작용할 우려가 있다. 인도법원은 이미 적체와 지체현상으로 인하여 많은 문제점을 노출하고 있기 때문이다. 또한, 인도내 또는 국제 중재판정(domestic or foreign arbitration award)에 대하여 이미 인도법원은 인도의 공서양속(Indian public policy)의 해석과 적용을 통하여 중재판정의 인식과 집행(recognition and enforcement)을 심리할 수 있기 때문에 법원의 개입은 충분히 허용되고 있다.

주제어: 부패, 사기, 인도, 중재, 중재판정, 중재법개정

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I. Introduction

The purpose of this article is to seek the main changes on the Indian Arbitration and Conciliation (Amendment) Act, 2021 (hereafter “the 2021 Amendment”) and to analyse advantages and disadvantages of each participants with their own perspectives of adding two terms of ‘fraud’ and ‘corruption.’¹⁾ Then, The 2021 amendment added a proviso which permits the courts to allow an unconditional stay if they are prima facie satisfied that the arbitration agreement is induced by fraud or corruption. Therefore, this paper analyses each participants’ favorites for the additional terms mentioned above.

One significant change that the amendment brought about was the insertion of the words of ‘fraud’ and ‘corruption.’ The 2021 amendment to section 36 of the Arbitration Act’s proviso, which now permits an automatic stay on the application of the decision if it can be shown, at a minimum, that fraud or corruption was used to induce or influence the award’s creation, is on level with worldwide norms.²⁾ There may be a variety of problems with fraud or corruption within the arbitral award-making process. Because there is no exact and clear definition of these two terms of “fraud” and “corruption” in the 2021 amendment.

Arbitration is already recognized as one of the alternatives for legal dispute resolution rather than litigation proceedings.³⁾ In this regard, both parties previously agreed to use arbitration for their resolution when they face the legal disputes. And

1) Sneha Mahawar, *EC Arbitration 2021: Amendment of Arbitration Act* (available at <https://blog.ipleaders.in/ec-arbitration-2021-amendment-of-arbitration-act/> (last visited on Aug. 15, 2022)); Niharika Agrawal, *Evolutionary Review of Arbitration and Conciliation (Amendment) Act, 2021* (available at <https://blog.ipleaders.in/evolutionary-review-arbitration-conciliation-amendment-act-2021/> (last visited on Aug. 1, 2022)).

2) The Indian Arbitration and Conciliation (Amendment) Act, 2021, sec. 36(3) (the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provision for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

Provided further that where the Court is satisfied that a Prima Facie case is made out that,

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

3) Madhusudan Saharay, *Textbook on Arbitration and Conciliation with Alternative Dispute Resolution*, 2 (2015); Vikram Raghavan, *New Horizons for Alternative Dispute Resolution in India-The New Arbitration Law of 1996*, 13-4 J. of Int’l Arb 5, 5-6 (1996).

Arbitration's typical concept is flexibility and party's autonomy for figuring out their legal dispute outside court proceedings.⁴⁾

In India, it could be one of the reasons to escape the delay and pendency caused in the courtrooms.⁵⁾ In addition, arbitrator's role could be the neutral adjudicator and his or her decision could be final and binding on the parties. Furthermore, the arbitral awards might be limitedly challenged by the parties and reviewed by the court in their jurisdiction for expedite and cost-effective process.⁶⁾

However, before the 2021 amendment, the Indian court frequently interfering with reviewing the domestic and foreign arbitral award when unfavorable party challenge to set aside the stay of the operation award if the Indian court is satisfied with certain conditions. Even though the Indian court might have better opportunities to intervene the arbitral process of automatic stay and enforcement of the arbitral award induced by fraud or corruption.⁷⁾

The Arbitration and Conciliation (Amendment) Act, 2015 contained the party might challenge to set aside arbitral award if it is induced or affected by fraud or corruption in section 34(2) explanation 1.⁸⁾ But the 2021 Amendment is allowing automatic stay of being reviewed by the court based on the fraud or corruption in making of the arbitral award or the arbitration agreement.⁹⁾ Because of these new terms, favorable party might suffer from the court intervention that is extended and face the unexpected obstacle to enforce the award in India.

4) Mallika Taly, Introduction to Arbitration 13 (2015); Hiram E. Chodosh, Stephen A. Mayo, A.M. Ahmadi & Abhishek M. Singhvi, *Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process*, 30 N.Y.U.J. Int'l L. & Pol. 1, 73 (1997-98).

5) Chodosh, Mayo, Ahmadi & Singhvi, *supra* note 1.

6) Avtar Singh, *Law of Arbitration and Conciliation and Alternative Dispute Resolution Systems*, 564 (2018).

7) Anish Dholakia & Ketan Gaur, Narendra, *India's Arbitration and Conciliation (Amendment) Act, 2021: A Wolf in Sheep's Clothing?* (available at <http://arbitrationblog.kluwerarbitration.com/2021/05/23/indias-arbitration-and-conciliation-amendment-act-2021-a-wolf-in-sheeps-clothing/> (last visited on Aug. 3, 2022)).

8) The Indian Arbitration and Conciliation (Amendment) Act, 2015, sec. 34(2) Explanation 1.

9) Shubham Sharma, *Arbitration and Conciliation (Amendment) Act 2021: What It Holds for Foreign Investors* (available at <https://www.mondaq.com/india/arbitration-dispute-resolution/1169106/arbitration-and-conciliation-amendment-act-2021-what-it-holds-for-foreign-investors> (last visited on Aug 1, 2022)).

II. Historical background of Indian Arbitration and Conciliation Act, 1996

The Indian Arbitration and Conciliation Act was initially enacted in 1996. There were 3 times of amendments in 2015, 2019 and 2021 respectively.¹⁰⁾ The 2021 Amendment was passed into the law on March 11, 2021 and promulgated in November 2021.¹¹⁾

India is currently suffering from a legal explosion as the U.S. experienced similar problem in 1970's.¹²⁾ For example, India has currently had tremendous volumes of pending cases and the judges would suffer from overloaded cases on their shoulders. Extraordinary expansion of the judiciary's role caused of increasing in workload of administrative agencies and legislatures.

The new independent India established the Arbitration and Reconciliation Act in 1996 which repealed the outdated and complex act of 1940. This new act was comprehensive in comparison to the 1940 act but before the act was passed in 1996, India adopted the Arbitration and Conciliation Ordinance of 1996. The main aim of the Act of 1996 was to provide a speedy solution to dispute between parties, limit judicial intervention, remove the outdated laws and consolidate different laws governing arbitration.¹³⁾ This act of 1996 was a modern act and tries to remove the load on courts as well as ease it for the disputant parties as well. But the Indian has been criticised as a “non-friendly” arbitration jurisdiction by the international community.¹⁴⁾

III. Participants' perspective of fraud and corruption clause

A foundation for automatic staying an arbitral award that was made because of fraud or corruption would require more accountability from arbitrators in cases involving corruption as well as from arbitral organisations. However, it might induce

10) Xinyi Shen, *India Moves One Step Further Towards “Arbitration-Friendly” Jurisdiction*, 11 Penn St. Arb. L. Rev. 266, 266-72 (2019).

11) Mahawar, *supra note 1*.

12) John H. Barton, *Behind the Legal Explosion*, 27-3 Stanford L. Rev 567, 567 (Feb 1975).

13) Shen, *supra note 10*.

14) Joseph Saei, *Indian Executive's Pro-Arbitration Power Move Sanctioned by Parliament: Transnational Ideals Versus National Reality*, 41 Yale J. Int'l. L. Online 1, 1-3 (2016).

that the Indian parliament put more legal and ethical accountability on the arbitrator's shoulder in the domestic arbitration institution by the 2021 amendment. Before the 2021 amendment, the Act contained the qualification of arbitrator in schedule 8. But the recent amendment removed it even though it emphasized the role of arbitrators in an Indian domestic arbitration.

These fraud and corruption problems can arise as a result of the parties' actions or the arbitral tribunal's participation. Even while the institutional regulations aim to address the behavior of the parties, there is little advice on how the complaints against the arbitral tribunal can be resolved or if arbitral institutions should actively investigate corruption-related concerns. In this regard, the recent amendment is focusing on the accountability on arbitrators in Indian arbitration institution.

1. Arbitrator

The India judiciary has suffered from the pendency and delay in its jurisdiction and the Indian arbitration institutions are also caused certain types of corruptions during the arbitral proceedings.¹⁵⁾ Corruption has a variety of repercussions, particularly where arbitration is still being conducted.

The corrupt arbitrator will likely be dismissed from the arbitral tribunal as a result. A request to remove an arbitrator from institutional arbitration owing to corruption is often presented before the institution handling the case. This request must typically be presented to the appointing authority in ad hoc arbitration. At the tribunal's discretion, it may be necessary to go through the same formalities that led to the corrupt arbitrator's dismissal or resignation.

'Corruption' is not properly defined in any act, but corrupt or illegal means of activity covered under the Prevention of Corruption act, 1988¹⁶⁾. Section 2(c)(vi) of the Act defines an Arbitrator as a public servant and any illegal means of the activity or corrupt activity done by the public servant is punishable under the act and trial procedure covered under the Code of criminal procedure, 1973.¹⁷⁾ Sections 12, 13, and 34 read with schedule 7 of the arbitration and conciliation act, 1996¹⁸⁾ mentioned

15) Yonghwan Choung, *Study of Legal Corruption in Indian Courts and Reforming Civil Court System to Reduce Pendency*, 26-1 Kor. Asso. For Corruption Studies 201, 202-03 (2021).

16) Prevention of Corruption Act, 1988.

17) Code of Criminal Procedure, 1973.

18) Arbitration and Conciliation Act, 1996, sec. 12,13,34.

provision related to the arbitrator's relationship with the party or with the co-arbitrator. Any undue advantage¹⁹⁾ is covered as a corrupt or illegal activity. Therefore, the 2021 amendment put more professional and ethical responsibility on the arbitrator's shoulders based on adding terms of fraud and corruption.

In the theoretical approach, the 2021 amendment adds more accountability because it addresses more specific terms linked to criminal matters. Even though the 2021 amendment requires the more burdens on the arbitrators, the amendment removes the schedule 8 of qualification of arbitrators. If the amendment gets a target to put more responsibility on arbitrators, it should require more strict qualification to be arbitrator.²⁰⁾

2. Indian judiciary (Court)

It needs to test whether the 2021 amendment puts severe duties on the Indian courts or the Indian court prefer to apply the amendment of adding terms of 'fraud' and 'corruption.'²¹⁾ There were a huge debate regarding interpretation of Indian public policy to set aside the award.²²⁾ In order to review the enforcement of an arbitral award in India, the Indian judiciary has intervened it based on an interpretation of the Indian 'public policy.'

In addition, because there is no exact guidance of meaning and interpretation of the public policy, the Indian Supreme Court interpreted it with a wide or narrow application. Furthermore, the Supreme Court tried to intervene it to review all cases or proceedings of application in India in Ssangyong case.²³⁾ Then, the Indian courts have a judicial trend of interpreting a public policy with a wide application of enforcement in India.²⁴⁾

Based on the application and interpretation of 'public policy,' the Indian courts has

19) Prevention of Corruption Act, 1988, sec. 2(d)

20) Dholakia, Gaur & Narendran, *supra note 7*.

21) Mishra, *supra note 9*.

22) Cf. Yonghwan Choung & Siddharth Shukla, *Interpretation and Application of Public Policy in Enforcement of Foreign Arbitral Awards in India: Comparison with the Interpretation of Public Policy under the Civil Procedure Act*, 30 Dong-A J. of Int'l Bus. Trans. L. 263 (2020).

23) Ssangyong Engineering and Construction Company LTD. v. NHAI, Civil Appeal No. 4779 of 2019.

24) Harpreet Kaur, *The 1996 Arbitration and Conciliation Act: A Step Toward Improving Arbitration in India*, 6 *Hasting Bus. L. J.* 261, 262 (2010); Choung & Shukla, *supra note 22*, at 264-65.

continuously interfered with arbitration process on the litigation proceedings. There was constant fluctuation in application of it. Furthermore, based on Ssangyong case, the Court broadly applied merits of interference of arbitration based on the interest of India.

There is another contradiction on an application of adding “fraud” and “corruption” with an interpretation of “Indian public policy.” Challenging the recognition and enforcement of arbitral award in India, the party can request the Indian judiciary to review and execute the award.²⁵⁾ In this process, the arbitrator’s decision might bind the parties at the end of arbitral proceedings.²⁶⁾ Then, the arbitral award could be executed with a same effect of a decree of the court. Before enforcing the award, either party can challenge it based on the public policy by setting aside the award.²⁷⁾

According to the Act’s current structure, an arbitral decision may be challenged if it was made as a result of fraud or corruption because doing so would be against public policy.²⁸⁾ In *Venture Global*, the Supreme Court defined fraud in the context of making awards and held that withholding facts from the arbitral tribunal could be construed as fraud during the award-making process.²⁹⁾ However, the concealed facts must have a causative link, and if the concealed facts are revealed after the award has been made and have a causative link with the facts constituting or inducing the award, such facts are relevant in a proceeding to set the award aside.³⁰⁾

Furthermore, just executing the arbitral award as the decree of court is the only thing that can be done during enforcement procedures under Section 36. As a result, it is important to understand how charges of fraud or corruption might be viewed at face value and whether proof has to be presented in Section 36 proceedings.³¹⁾

In a short conclusion, the Indian courts have aggressively intervened the arbitration process in application and interpretation of public policy. It means that court might provide better protection in their jurisdiction based on the interests of India and effective protection for participants and users of arbitration institutions in India.

25) Arbitration and Conciliation Act, sec. 35.

26) Arbitration and Conciliation Act, sec. 36.

27) Choung & Shukla, *supra note 22*, at 264-65.

28) Arbitration and Conciliation Act, sec. 36, Explanation 1.

29) *Venture Global v. Satyam computer services Ltd*, (2008) 1 Arb LR 137: AIR 2008 SC 1061.

30) *Id.*

31) Nivedita Singh, *Evolutionary Review of Arbitration and Conciliation (Amendment) Act, 2021*, *India Law Journal* (available at <https://www.indialawjournal.org/evolutionary-review-of-arbitration-and-conciliation.php> (last visited on Aug. 2, 2022)).

3. Individual party

I believe that the India parliament confessed that India has suffered from corruption and fraud in arbitration process by the 2021 amendment because the section 36 amended is only applicable to a domestic arbitral award provided by the Indian arbitration institutions. In this regard, it is very valuable to identify their problems and to revise these.

Like previous reasons in section 1, the parties in arbitration might have more and better protection in criminal activities, such as fraud or corruption, bribery, etc. But they might be hesitate to involve into court proceedings because the Indian judiciary has suffered from the pendency and delay problems since 1980's.³²⁾

Prior to the 2021 amendment, in *Rashid Raza v. Sadaf Akhtar*,³³⁾ the court mentioned that substantial accusations of fraud can only surface when either condition were met. It issued that a party separately filed and begun criminal proceedings based on the same subject matter. Because it might be referred to arbitration into civil disputes where it can be inferred that the issues involve questions of 'fraud or misrepresentation' and the same can be resolved within the scope of section 17 of the Contract Act. The same rule also applies when a civil lawsuit raises a question of dishonesty, which invalidates the performance of an arbitration agreement.

If either party might prevent the implementation of the arbitral ruling, this party might have another weapon to take advantage of the new insertion based on the terms of "fraud" or "corruption." As a result, it might be expected an infinite stream of petitions asking for a delay in the arbitral ruling's implementation as well as challenges to the arbitral award. If an arbitrator found a prima facie case of fraud or corruption, the case is referred to the court regardless the party's agreement.

The committee of amendment of the Act reported, if any arbitral award is challenged on any ground, the main purpose of the act gets defeated to prevent the parties from "interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedier for resolution of disputes, avoiding procedural claptrap."³⁴⁾ This brings back the parties at dispute to a lengthy and time-consuming litigation at the fault of a third party because

32) Choung, *supra note* 15.

33) *Rashid Raza v. Sadaf Akhtar*, Civil Appeal No. 7005 of 2019.

34) Bill of Arbitration and Conciliation 1996, Statement, Objects and Reasons.

the court allows an automatic stay if prima facie case is satisfied with additional proviso for providing a consolidated protection to uses.

However, this 2021 amendment might push applicants in the Indian litigation proceedings who try to resolve their legal disputes outside of India. Because the parties already agreed to use an foreign arbitration institution, they might not to involve into the Indian court's process. Based on Ssangyong case, the Supreme Court might prefer to interfere the process with widely interpreting a meaning of public policy.

Based on the 2021 amendment, the court permits an unconditional stay when a challenging party's prima facie case is satisfied with fraud or corruption. There doesn't seem to be any advice about what can constitute corruption in the creation of an arbitral award and once more, how a prima facie case might be made because there is no exact definition of these terms.

Therefore, the issue is whether it was necessary to include a particular provision for an application for automatic stay of the arbitral award. Under Section 36 (3), the court already had the authority to order a stay while the arbitral decision was being contested after stating its justifications in writing, if necessary.

One major limitation with this amendment is that now the time taken to resolve this dispute will increase. This process gives the court a lot of power and hence people will start doubting the arbitration system. International persons will be reluctant to resolve their dispute internationally.³⁵⁾ The process is going to be time consuming and brings you back to the shackles of the court system. Now two cases will have to filled one to see if there was fraud or corruption and one challenging the arbitral award.

IV. Proposal

When a party can challenge by making an issue of setting aside regarding arbitral award based on the interpretation of Indian public policy based on the section 34. Based on section 34 of the Act, either party can challenge the arbitral award. It means the intervention of court in arbitral proceedings by the same section.³⁶⁾

35) Agrawal, *supra note* 1.

36) Arbitration and Conciliation Act, 1996, sec. 34.

However, the high court states that if any award is given by the arbitrator is against the public policy of India or patently illegal then the section 34 of the act will protect the rights of parties and can appeal to the high court for set aside of the award. The high court clearly states that section 34 is not giving power for interference in a casual and cavalier manner unless the court concludes that there is a perversity of the award and affects the subject matter of the case.

The 2015 amendment provided time limits for written pleadings and awards to expedite an arbitral proceeding. However, the 2019 amendment removed restriction that arbitral tribunals should make awards within a period of 12 months. Based on section 34 of setting aside, the court consider only materials that turn into the arbitral tribunal. It might interpret that because it provided less protection, the 2021 amendment contains two terms of “fraud” and “corruption” to add an additional protection.

However, there is no clear definition of ‘public policy,’ or ‘corruption’ in Indian Regulations and Acts.³⁷⁾ Based on the court’s interpretation on public policy, it contains ‘interest of India’ and ‘patent illegality.’³⁸⁾ As the interpretation of ‘public policy’ is linked with similar terms of ‘bribery or serious criminal activities,’³⁹⁾ I could not find any particular reason or necessity to add these two terms in the recent amendment.

In my opinion, foreign investors might elect to arbitrate in a non-Indian forum to escape application of section 36 of the Act in a recent amendment. Because on arbitration procedural history, either or both parties might want to enforce an arbitral award in India even though they arbitrate in international arbitral institutions in outside of India.

V. Conclusion and Policy Implication

Before the 2021 amendment, if an unfavorable party dissatisfied with the arbitral award, they could challenge it to conditional stay in court. The 2021 amendment adds ‘unconditional stay’ in two situations; 1) the arbitration agreement or contract mentions

37) The Indian Contract Act, 1872, sec. 17, defines the meaning of ‘fraud,’ and the consequences of a fraudulent act are provided under sec. 421 to 424 of the Indian Penal Code. But, there is no clear definition of corruption in India.

38) Choung & Shukla, *supra note 22, at 279* (2020).

39) *Id.*

it, or, 2) if the making of award induced by 'fraud' or 'corruption'. In 2015 amendment, it contained similar clause in the explanation 1 in the same section. In addition, the Indian courts might also bring similar or same effect of protection in enforcement of an arbitral awards in India based on the court's interpretation of 'public policy' or 'interest of India,' 'patent illegality.'⁴⁰⁾

It is value matter that the Indian parliament recognizes that fraud, corruption, or bribery might cause the unfair arbitration process through the Indian arbitration institution. Then, this bill might act against the increasing rate of corruption in securing arbitral awards.

However, this paper considers each participant's perspective on the 2021 amendment of adding proviso of 'fraud' and 'corruption.' First, it provides a consolidated protection to parties through additional proviso because the court allows an unconditional stay based on prima facie satisfied with fraud or corruption. Unlike this expectation, a favorable party might enforce an award without interference. In addition, these parties, especially foreign investors, might not want to put their cases into the Indian litigation proceedings because the Indian court system is currently suffering from a huge number of pending cases.

The 2021 amendment might also allow the Indian courts interfering the arbitral process with easier method of the 2015 amendment. Furthermore, this easier intervention toward the arbitration process is putting arms around the Indian Supreme Court's shoulder. The Supreme Court also widely interpreted the meaning of public policy and try to step into the process to review it. This 2021 amendment was criticized because it will increase the burden on courts and reduces the arbitral mechanism in the Indian context. In addition, It fails to specify the clear meaning and definition of fraud and corruption.

The 2021 amendment put the consolidated professional responsibility on the arbitrators who are working in India because a section amended is governing in a domestic arbitration. However, it eliminated the qualification of arbitrator in schedule 8 of the Act. In order to request the ethical accountability to an arbitrator, it had better to put stronger qualifications on the arbitrators.

40) Rajarshi Sen, *Where Will the 'Unruly Horse' Carry Us?*, 19 *Vindobona J. of Int'l Comm L. & Arb.* 181, 189-90 (2015).

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<Abstract>

Application of Terms of “Fraud and Corruption” in a Recent Amendment of Indian Arbitration and Conciliation Act

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Indian Arbitration and Conciliation Act was enacted in 1996 to accept a modern type of arbitration process in India. After 3 times of amendment in 2015, 2019 and 2021, the Act has taken a primary and dominant regulation to govern the arbitral proceedings in India. In the 2021 amendment, it contains the terms of “fraud” and “corruption” in section 36 of the Act. When the arbitral process was reduced or effected by fraud or corruption relate to the arbitration clause in the contract or the making of the arbitral award, it automatic stay as a pending case based on the party’s challenge. Even the law minister mentioned that India wanted to become a hub of arbitration center in Asia during the 2015 amendment, the recent amendment causes to retrogress of previous efforts in India.

There are pros and cons in the 2021 amendment of Arbitration law. It simply realize that certain arbitration clause or arbitral award might be effected by types of fraud or corruption. Then, the Indian judiciary could prevent being induced these kinds and protect the arbitral parties. However, the recent amendment allows the court can intervene the arbitral proceedings by an application of “fraud or corruption” in arbitration. Because the section 36 in the Act is regulating the domestic arbitral award, the foreign investors might want to arbitrate their dispute in international arbitral institution outside of India.

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