



BLIND FOLD LEGAL JOURNAL

VOLUME 2 ISSUE 3
[MAR 2023 – MAY 2023]

E-mail: blindfoldjournal@gmail.com

Website: www.blindfoldjournal.com

"Stamp Duty on Arbitral Awards in India: Implications and Considerations"

-Author: Sohail Khan & Md. Mohsin

INTRODUCTION

Arbitration is a widely employed method for resolving disputes in various business contexts, offering an alternative to the formal legal system. In this process, parties agree to settle their differences with the assistance of an impartial third party, known as an arbitrator. The resulting decision, termed an arbitral award, holds the same enforceability as a court judgment. One of the challenges that parties may encounter in executing arbitral awards pertains to the payment of stamp duty. This essay will delve into the concept of stamp duty on arbitral awards and its implications for the involved parties. The resolution of disputes, whether in Civil Courts, Tribunals, or through arbitration, can be a demanding and time-consuming endeavor. Regardless of the venue, the process culminates in the issuance of a final decision, referred to as an "Arbitral Award" in the context of arbitration. Frequently, the party against whom an Arbitral Award is issued may not adhere to the directives outlined in the Award, whether they pertain to specific actions or monetary payments, among other matters. This compels the Award Holder to initiate a new legal action for the purpose of "enforcing" or "executing" the Arbitral Award.

In India, the procedure for implementation or enforcement is conducted within Civil Courts possessing territorial jurisdiction over the location of the Award Debtor's assets. While the implementation or enforcement of Arbitral Awards encounters various challenges, including procedural and administrative hurdles and delays in the judicial process, one significant concern is the imposition of Stamp Duty on an Arbitral Award.

WHAT IS STAMP DUTY?

Stamp duty is a levy imposed on legal documents such as contracts, deeds, and various other instruments that create, transfer, or extinguish rights, titles, or interests in immovable or movable property. The calculation of stamp duty is based on a percentage of the transaction's

value or the amount paid, whichever is greater. This duty is remitted to the national government to validate and legally uphold the document.

The quantum of stamp duty on any instrument in India is determined by the relevant stamp statute prevailing in the state where the document is executed or entered into. For instance, the Indian Stamp Act, 1999 (as amended by state-specific legislation) applies in Delhi, while the Maharashtra Stamp Act, 1958 applies in Mumbai.

WHAT IS AN ARBITRAL AWARD?

An arbitral award is a definitive and enforceable decision issued by an arbitrator or a panel of arbitrators. The determination is made after considering the facts and arguments presented by the parties involved. The award delineates the rights and responsibilities of the parties and carries the same enforceability as a court judgment. It is documented in writing and bears the signature(s) of the arbitrator(s).

STATUS OF STAMP DUTY ON ARBITRAL AWARDS IN INDIA

The treatment of stamp duty on arbitral awards varies across states in India. While some states explicitly exempt arbitral awards from stamp duty, others require its payment. The imposition of stamp duty on arbitral awards is a subject of contentious debate, with proponents contending its necessity for preserving government revenue and preventing stamp duty evasion, while opponents argue that it constitutes an extraneous expense that hinders the expansion of arbitration as a dispute resolution mechanism. The Arbitration and Conciliation Act, 1996, which governs arbitration cases in India, does not provide detailed provisions regarding stamp duty on arbitral awards. Instead, the relevant state statutes are responsible for regulating this matter.

For instance, Maharashtra amended its Stamp Act in 2017 to exclude arbitral awards from the purview of stamp duty. This exemption applies universally, regardless of whether the arbitrator is appointed by the court or by the parties themselves. This move has received acclaim from arbitration professionals in the state, as they believe it will promote arbitration as a more cost-effective and efficient means of dispute resolution.

Haryana has followed suit by exempting arbitral awards from stamp duty. The Haryana Stamp (Amendment) Act of 2018 amended the state's stamp law to exclude "any award made by an arbitrator" from the obligation to pay stamp duty. This exemption encompasses arbitral awards rendered both domestically and internationally.

Conversely, certain states, including Delhi, Gujarat, and Uttar Pradesh, mandate the payment of stamp duty on arbitral awards. In Delhi, the stamp duty on an arbitral award is assessed at 0.2% of the total award. In Gujarat, it amounts to 0.1% of the total sum granted, capped at INR 500,000. In Uttar Pradesh, the stamp duty on an arbitral award is set at 0.25% of the amount granted. While a portion of the awarded sum is typically allocated to cover the stamp duty, in cases involving substantial amounts, this expense can be significant. Failure to remit the stamp duty may render the award or order null and void. Given that the objective of arbitration is to obtain a legally binding and enforceable decision outside of the conventional court system, this poses a substantial risk for parties engaged in the arbitration.

CONSEQUENCES OF NON-PAYMENT OF STAMP DUTY

Failure to pay the required stamp duty can lead to the arbitrator's decision being deemed null and unenforceable. Consequently, the parties are unable to use the award to assert their rights or enforce their obligations arising from the arbitration-related contract or agreement. This poses a significant risk for parties involved in arbitration, as the entire purpose of the process is to secure a legally binding and enforceable decision outside of the conventional court system. Non-payment of stamp duty can also result in the parties incurring penalties and fines, potentially straining their relationship and escalating the costs of arbitration further. Additionally, the arbitrator or the institution conducting the arbitration may face repercussions for failing to pay the stamp duty. If it is determined that the award is unenforceable due to non-payment of stamp duty, the arbitrator or institution may be held responsible for any losses suffered by the parties as a result. This could not only harm their reputation but may also lead to legal action against them. Therefore, parties engaging in arbitration should ensure they are well-versed in the stamp duty requirements of the state where the arbitration decision is to be enforced, in order to avoid the consequences of non-payment. Seeking legal counsel on stamp

duty obligations and any applicable exemptions is crucial to ensuring that the necessary stamp duty is paid in a timely manner.

