10 RMLNLUJ (2018) 84

An Appraisal of Perennial Hurdles in the Enforcement of Arbitral Awards in Nigeria and India

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ABSTRACT

Due to globalization and technological advancement, people with diverse interest, engaged in cross border transactions. Thus, disputes become inevitable. Hence, prudent businessmen, make provision for settlement of potential disputes. Alternative Disputes Resolution (ADR) has become a suitable means of commercial dispute settlement. Arbitration, owing to it several advantages which include, relatively cheapness, speedier resolution, less toxicity, privacy, confidentiality, expertise and universal enforcement has been preferred over ADR mechanisms. At the end of arbitral proceedings, the arbitrator or tribunal usually delivers an award. The award, by its nature, like judgments of court, is binding and enforceable between the parties, upon fulfillment of certain conditions. Where the unsuccessful party voluntarily complies with the award, there is no need for enforcement. However, where he fails or neglects in whole or part to satisfy the award, the successful party is constrained effectuate the award through the court. This article through comparative research methodology, examines the legal hurdles a successful party to an arbitral proceeding is likely confronted with in the process of enforcing an arbitral award in Nigeria and India. The article argues that these hurdles which include public policy, limitation period, and procedural delay is characteristic of both jurisdictions but due to certain peculiar inadequacies, they have become a bane to the growth

of arbitration in Nigeria. The article compares these hurdles in both jurisdictions and highlights the similarities and divergence between their experiences. The article makes vital recommendations which will chart a new course for enforcement of arbitral awards in both jurisdictions which would consequently engender a better enhanced arbitral award enforcement regime in both jurisdictions.

Keywords: Arbitral Award, Jurisdiction, Limitation Period, Public policy, Arbitration

I. INTRODUCTION

In today's world, business transactions have gone beyond national boundaries to cross-border trading.[1] Aside globalization and trade liberalization amongst nations of the world aided by the disruptive advancement in science and technology, the ever surging human needs and the desire to meet them have catalyzed cross-border trade.[2] It is almost needless to argue that arbitration is now available and most often chosen mode of settlement of commercial disputes adopted by prudent businessmen in the world India and Nigeria inclusive. The businessmen's act of subscribing to arbitration does not obliterate from the adjudicatory jurisdiction of the courts.[3] The reasons arbitration has enjoyed almost a worldwide acceptance is not far-fetched.[4] Prominent amongst these reasons is the fact that arbitration has successfully attained an

independent status as a dispute resolution mechanism thereby making it to rank *pari passu* with litigation and Alternative Disputes

Resolution (ADR).[5] Also, it has been accorded statutory flavour in both jurisdictions through the enactment of the Arbitration and Conciliation Act (ACA) 1988 of Nigeria and Arbitration and Conciliation Act 1996 of India.[6] The fact that an arbitral award, by its characteristic nature, once delivered, is binding on and enforceable against the parties to the arbitral proceedings makes it most favoured.[7] The enforceability of an arbitral award is subsumed in the parties' act of subscribing to an arbitration agreement/deed either before or after the occurrence of a dispute.[8]

However, the fact that a party has successfully arbitrated and an award is issued in his or her favour is not an end in itself but the exploitation of the award. Where the unsuccessful party voluntarily complies with the award, there is no need to take further steps. However, where there is non-compliance or partial compliance, the successful party has to seek enforcement of the award. Under Nigerian and Indian laws, mechanisms exist for enforcing an arbitral award, whether local or international. However, the party

who seeks enforcement would realize that the process of enforcement is not free of hurdles which he or she must overcome. These hurdles which include limitation period, public policy reservation and procedural delay, their analysis form the crux of this article. They are analyzed with a view to strengthening and enhancing arbitral proceedings regime in both jurisdictions in a symbiotic comparison. The article is divided into six parts. Part one contains the general introduction. Part two examines the meaning of arbitration from both jurisdictions. Part three discusses the legal framework and modes of enforcement and recognition of arbitral awards in Nigeria and India. Part four interrogates the theories of enforcement of arbitral awards. Part five critically examines hurdles a party who is seeking to enforce an arbitral award would be confronted with in both jurisdictions which include public policy reservation, limitation period and procedural delay. Part six contains the conclusion and recommendations.

II. ARBITRATION DEFINED

It is apposite to state that the definition of arbitration can be safely regarded as a variegated issue. Despite the multiplicity of definitions by various sources, whether statutory, judicial or scholarly, the kernel of arbitration however remains the same. Thus, all the definitions herein examined underscore the same point though from diverse views which is characteristics of academic endeavours.

According to Mbadugha,[9] arbitration is the private, judicial determination of a dispute, by an independent third party. An arbitration hearing may involve the use of an individual arbitrator or a tribunal. A tribunal may consist of any number of arbitrators though some legal systems insist on an odd number in order to avoid a tie. One and three are the most common numbers of arbitrators. The disputing parties hand over their power to decide the dispute to the arbitrator(s). Arbitration is an alternative to court action (litigation), and is generally final and binding (unlike mediation, negotiation and conciliation which are non-binding). Sharma posits that

arbitration is a process used by the agreement of the parties to resolve the dispute. In arbitration, disputes are resolved, with binding effects, by a person or persons acting in the judicial manner in private, rather than by a national Court of law that would have jurisdiction but for the parties to exclude it.[10] Arbitration is a procedure for settlement of disputes under which the

parties agree to be bound by the decision of an arbitrator whose decision is in general final and legally binding on both parties. In the case of *Agala* v. *Okusin*,[11] the Supreme Court of Nigeria (SCN) defined arbitration thus "arbitration is a reference to the decision of one or more persons either with or without an umpire of a particular matter in difference between the parties."

The arbitral process derives its force principally from the agreement of the parties and, in addition, the state acts as supervisor and enforcer of the legal process.[12] So, where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons of their choice, in a judicial manner, the agreement is called an arbitration agreement.[13]

Thus, in a nutshell, arbitration is an alternative or supplement to litigation whereby parties to a dispute consensually agree (where it is not mandatory arbitration such as that provided by statutes in which the disputants resort to arbitration as a matter of law and not choice) to submit their dispute either to a person known as an arbitrator or two or more persons known as an arbitral panel mutually selected by them and vested with authority to hear, in a judicial manner, their case and deliver a final and binding decision on same.[14] It is trite that arbitration is one of the means

of amicable out-of-court settlement of disputes whereby parties to a dispute, especially of a commercial nature which requires expeditious settlement, willingly appoint either one or more persons to hear and determine in a judicial manner a dispute that has arisen between them and deliver a binding decision known as an award at the end of the whole proceedings.[15]

Thus, it is apposite to note that an arbitration agreement by its nature or from general practice, is symmetrical i.e. each party has the right to have recourse to arbitration where necessary. However, recent practice in arbitration shows that parties are now adopting asymmetrical arbitration agreement i.e. only a party is allowed to have recourse to arbitration.[16] Such asymmetric clause arbitration are frequently used in financing transactions, where one party wishes to be sued only in its forum of choice (such as its home jurisdiction), but conversely wants the flexibility to enforce security and pursue assets against the other party wherever possible.[17] Enforcement of asymmetrical arbitration agreement could be tricky, in some jurisdictions; they are viewed as detraction from the cornerstone principle of agreement between the parties. In China they are generally prohibited. Hence, users of asymmetric arbitration agreement need to be aware of it potential enforcement difficulty to avoid being constrained to litigate in an unwanted

forum.[18] The validity and enforcement of this kind of arbitral clause/agreement buttress the pristine nature of *pacta sunt savanda* and disregard obvious presence of unequal bargaining power where it exists.

In Singapore, asymmetric arbitral clause is enforceable. The recent Singapore Court of Appeal decision in *Wilson Taylor Asia Pacific Pte Ltd.* v. *Dyna-Jet Pte Ltd.*[19] explicates this assertion. The arbitral clause provided that at the election of the Appellant, any disputes from the contract could be referred to arbitration, this is clear that the clause lacks mutuality nevertheless, it was held to be enforceable based on the parties' agreement. In England, asymmetric arbitral clauses have been held to be enforceable. In *NB Three Shipping Ltd.* v. *Harebell Shipping Ltd.*[20] where the arbitral clause entitled the ship-owner to bring arbitral proceedings while the charterer was limited to litigation, the ship-owner in exercise of his right of arbitration option, sought for an order of stay of proceedings for parties to arbitrate. Though the order was not granted, the Court per Coram Morison J held that the clause gave "better right" to the ship-owner. However, in *Law Debenture Trust Corpn. Plc.* v. *Elektrim Finance BV*[21] Mann J. upheld the validity and enforceability of an asymmetric arbitral award and granted the Applicant's application for stay of proceedings. No doubt, Britain is an arbitration friendly forum and its quest for an improved arbitral regime is not in doubt. Aside the decisions above, just recently, the English court demonstrates that it would give effect to an arbitration agreement whether symmetric or asymmetric, it is guided by the principle of *pacta sunt savanda* and would not bother to inquire into the equity of the agreement as can be deduced from the cases of *Barclays Bank Plc.* v. *Ente Nazionale Di Previdenza Ed Assistenza Dei Medici E Degli Odontoiatri*[22] and *Commerzbank AG* v. *Liquimar Tankers Management Inc.*[23] France *Cour de Cessation* upheld the validity and enforceability of asymmetric arbitral clause in *Sicaly Cass.*[24]

In India, the validity and enforceability of asymmetric arbitral clause/agreement is imprecise due to inconsistent decisions by the Indian Courts. The likely reason for this is that Indian law favours mutuality in an arbitral agreement and is not favourably disposed to untrammeled application of *pacta sunt servanda.* Thus, the Delhi High Court have held that asymmetric

arbitration agreement is invalid (or even a symmetrical arbitration clause/agreement) until the point at which the party exercise its option arbitrate, prior to that, there is lack of mutuality. This was the decision in *Union of India* v. *Bharat Engg. Corpn.*[25] However, the Calcutta High Court has held that an asymmetric arbitral agreement is valid and therefore enforceable in *New India Assurance Co. Ltd.* v. *Central Bank of India*[26]. In fact, the Calcutta High Court expressly rejected the decision of the Delhi High Court and held that an asymmetric arbitral agreement constitutes a valid arbitration agreement *ab initio*, albeit, enforceable only by the party who has the option to explore arbitration. The likelihood of Indian court taking into account the balance of convenience, the interests of justice and other accommodating circumstances when deciding whether they have jurisdiction under a contractual choice of forum or court clause is high. This position is supported by the decision in *Black Sea Steamship U.L. Lastochkina* v. *Union of India.*[27] It can be safely asserted that going by recent decisions particularly of the Indian Supreme Court which however are not directly on the validity/enforceability of asymmetric arbitral agreement; it could be argued that the Courts are favourably disposed to some asymmetric

agreements. The Indian Supreme Court in *TRF Ltd.* v. *Energo Engg. Projects Ltd.*[28] held that a clause entitling only one party to appoint an arbitrator without the participation of the other is valid. This notwithstanding, it is vehemently contended that unless and until the Supreme Court of India reconciled the seemingly contradictory position with regard to the validity and enforcement of asymmetric arbitration clause/agreement in India, the state of the law is far from settled. Hence, it would be prudent for parties to tread with utmost caution along the paths of asymmetric clauses to avoid unwanted outcome. In Nigeria, the courts are yet to have the opportunity to pronounce on the validity/enforceability of asymmetric arbitral clauses thus, any articulation is at best, legal prognostication. However, it would appear that the Nigerian Court would adopt a case-by-case basis approach in determining the validity of such clauses where it is confronted with it. It is however worthy to note that Nigeria's public policy reservation is not flexible and the courts are not generally reluctant to guard and guide it jealously and would be ready to impugn an asymmetric clause base on it where there is a likelihood of unequal bargaining power. Also, where the situation is such that there is some level of equality between the parties, it would not be ambitious to argue that the Nigerian Courts would tilt towards upholding *pacta sunt servanda.* Whichever way, while the Courts are not expected to sacrifice Nigeria's public policy, sense of justice, equity and fairness, it is hoped that it would also not become a bane to the much needed growth and development of arbitration in Nigeria giving Nigeria's growing trade

relations and the general acceptance of arbitration in settlement of disputes emanating from such trade relations.

III. LEGAL FRAMEWORK AND MODES OF RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA AND INDIA

This section of the paper examines the modes and legal framework for the recognition and enforcement of arbitral awards in Nigeria and India as a precursor to the growth and development of arbitration in both jurisdictions. The position in Nigeria is discussed first while that of India is second. As a matter of preliminary remarks, it is apposite to state at this juncture that some judicial and scholarly opinions have contended that there is a discrepancy between recognition and enforcement, whether of a foreign judgment or a domestic or international arbitral award, notwithstanding that the words are often used interchangeably.[29] Mbadugha argues that "there are instances when an award is recognized but not enforced." However, the essence of enforcement is to give effect to an award i.e. to exploit the benefit conferred on the successful party by the award, hence, where an award is recognized and the party in whose favour it is so recognized derives some benefit(s) by the recognition, the outcome is just like enforcement. The outcome is the same though the process and procedure is different, coupled with a slight difference in the degree of coerciveness in the outcomes.

Section 31(1) of the ACA provides that "an arbitral award shall be recognized as binding and subject to this section and section 32 of this Act, shall, upon application in writing to the court, be enforced by the court." The clear and unambiguous implication of this section is that arbitral awards are enforceable in Nigeria.[30] This section is applicable to domestic award while section 51 is applicable to international arbitral awards. Under these sections, two modes of enforcement are available, to wit, summary enforcement of award and enforcement by an Action in court.[31] The application in each case is made *ex parte* by originating summons subject, however, to

the court's discretion to order the applicant to put the respondent on notice, to meet the overriding need of fair hearing enshrined under section 36 of the 1999 Constitution of the Federal Republic of Nigeria, as was held by

the Supreme Court of Nigeria in *Nathaniel Adedamola Babalola Kotoye* v. *Central Bank of Nigeria*[32].

By virtue of section 31(2) of the ACA, an applicant seeking to enforce an arbitral award shall supply or submit the duly authenticated original award or a duly certified copy thereof, the original arbitration agreement or a duly certified copy thereof. These requirements have been given judicial recognition by the Court of Appeal in *Clement C. Ebokan* v. *Ekwenibe & Sons Trading Co.*[33] The Applicant is also duty bound to disclose any matter known to him or her which may prejudice the granting of the application. Enforcement of an award by a court action is hinged on the principle of *pacta sunt servanda*, i.e., on the understanding that the parties to an arbitration agreement impliedly agreed to perform a valid award. If the award is not performed, the successful claimant can proceed by action in the ordinary courts for redress regarding the breach of this implied promise. The main relief of such a lawsuit would be the enforcement of the arbitral award. The court may give judgment for the amount of the award, or damages on failure to perform the award. It may also, in appropriate cases, decree specific performance of the award, or make a declaration that the award is valid, or pronounce on its construction and effect.[34]

Arbitral awards whether foreign or domestic are enforceable in Nigeria.[35] Asouzu[36] captured the essence of enforcement of foreign arbitral awards in Nigeria and indeed every other jurisdiction thus:

> One reason business people enter into arbitration agreement or may insist on inserting arbitration clause in a contract is to hope for a binding and enforceable award should one be rendered. An arbitration agreement or award without an effective enforcement mechanism may, in practice, be valueless. If an agreement or award which is not voluntarily carried out cannot be coercively enforced against a recalcitrant party, then the rationale for arbitration is eroded and confidence in the arbitral process would be shaken.

One of the modes for enforcing arbitral awards in Nigeria is by action upon the award. This mode is pursuant to section 51 of the ACA.[37] Although the ACA does not specify the mode of applying to the court but by virtue of section 57(1) of the ACA which defines court to include the High Court of a State, Federal High Court and High Court of the Federal Capital Territory (FCT) it follows that it is the High Court that has jurisdiction.[38] This position has been affirmed by the Supreme Court in *Adeoye Magbagbeola* v. *Temitope Sanni.*[39] Thus, under the various High Courts Civil Procedure Rules (HCCPR), an application for enforcement could either be through a Motion on Notice or Originating Summons.[40] Another mode is pursuant to the Foreign Judgment (Reciprocal Enforcement) Act (FJREA).[41] Pursuant to section 2 therefore a foreign arbitral award can be enforced in Nigeria within six years from the date it was

delivered.[42] The precondition for enforcement under the Foreign Judgment (Reciprocal Enforcement) Act is reciprocity from the jurisdiction in which the award sought to be enforced was rendered. The application would be made through originating summons.[43] Also, it could be enforced pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (CREFAA)[44] pursuant to section 54 of the ACA. Nigeria acceded to this convention on the 17th day of March, 1970 but in 1988 it was domesticated through the enactment of the ACA.

In India, the position is quiet different and very impressive. In fact, India would readily pass for a pro-arbitration jurisdiction with regard to enforcement procedure. One of the stated objectives of the Indian Arbitration and Conciliation Act 1996 is that every final award is enforced in the same manner as if it were a decree of the Court.[45] However, it is apposite to state that like Nigeria, there are two types of arbitral awards in India though with different enforcement mechanism unlike Nigeria that it is the same.

Domestic awards are regulated by part I of the 1996 Act.[46] Part I mandatorily applies when the arbitration is held in India[47], unless expressly or impliedly excluded. It is applicable to arbitration concluded outside and part I applies when both the *lex arbitri* and *lex contractus* are not specified.[48] For a domestic award, once rendered by the arbitrator or tribunal, it becomes enforceable like a decree of the Court and there is no need for the winning party to instigate the process of the Court to get it enforced. It is self enforcing upon delivery and the winner need not make any procedural move with the intent of enforcement.[49] Thus, it is for the losing party to petition the court to have the award set aside within the specified time limit to do so. This self enforcing nature of domestic awards in India is diametrically opposed and innovative to the Model Law provision duplicated in Nigeria's Arbitration and Conciliation Act, 1988. Article 35 and 36 of the Model Law and sections 31 and 32 of the ACA contains procedure and grounds for enforcement of awards may be refused.

Thus, if there is no application to set aside an award pursuant to section 34 of the Act or the objection has been overruled, the award can executed by the winner as a decree of the Court without further protocol.[50] The application to set aside a domestic award must be made within three months from the date of receipt of same and the court can extend this period for thirty days (30) upon reason cause being shown but not further.[51] The Supreme Court of India in *Union of India* v. *Tecco Trichy Engineers & Contractors*[52] held that the date the award was received by a person who is in a position to meet the terms of the award is the date time begins to run for a large organization or government agencies.

Part II of the 1996 Act which gave effect to the New York Convention and the Geneva Convention deals with enforcement of foreign arbitral awards. However, an analysis of the pre-1996 position would not be a surplusage but of historical relevance as to what is a foreign award. In *NTPC Ltd.* v. *Singer Co.*[53] with regard to what would amount to a foreign arbitral award, the Supreme Court held that an award made[54] on an arbitration

agreement governed by Indian law though made outside India, falls within the

province of the saving clause (b) in section 9 of the 1961 Act and was therefore not considered as foreign award in India.[55] This anachronistic position was given judicial amplification and fortification by the decisions in *Sumitomo Heavy Industries Ltd.* v. *ONGC*[56] and *Gas Authority of India Ltd.* v. *SPIE Capag. SA*[57]. However, this position under the Foreign Award (Recognition and Enforcement) Act, 1961 has been radically altered by the 1996 Act as would be seen next.

Thus, for an award to be regarded as foreign under the 1996 Act, it must fulfill two prerequisites. Thus, it must deal with disputes arising out of a legal relationship which is under Indian law regarded as commercial in nature whether it is contractual or not.[58] However, Indian Courts have adopted an elastic interpretation to the requirement of commercial relationship as to do otherwise would have cantankerous result on the growth and development of arbitration in India with its attendant negative effects. The Indian Supreme Court in *R.M. Investment & Trading Co. (P) Ltd.* v. *Boeing Co.*[59] in constructing the phrase commercial relationship held that *the term commercial should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not.*[60] The second perquisite is that the country from where the award was issued must be a jurisdiction notified by the Indian Government to be a country wherein the New York Convention is applicable.[61] One can easily and safely argue that this requirement is anchored on the need for reciprocity. Where a notified country disintegrates into two or more, each of the disintegrated countries qualify as notified countries without any need for new notification as was held by the Supreme Court in *Transocean Shipping Agency (P) Ltd.* v. *Black Sea Shipping*.[62] The condition which a foreign award must fulfilled to become enforceable under the 1996 Act are the same as those provided for under the New York Convention but with an addition of the explanation of the circumference of India's public policy.[63] It is apposite to note with ecstasy that under the 1996 Act, there is no procedure/provision to set aside a foreign award. It can be set aside or suspended under

the law or the country in which it was rendered but not in India.[64] However, this laudable and pro-arbitration stance of the 1996 Act was dealt a fatal blow by the Supreme Court in the case of *Ventures Global Engg.* v. *Satyam Computer Services Ltd.*[65] *However; the abnormality accessioned by the Ventures Global case*[66] above was remedied by the Supreme Court's decision in *Bharat Aluminium Co. Ltd.* v. *Kaiser Aluminium Technical Services Inc.*[67] This case would be ex-rayed in the latter part of this article dealing with public policy.

IV. THEORIES OF ENFORCEMENT OF FOREIGN AWARDS

As enforcement of foreign judgments and or awards has become necessary, owing to cross border commercial exigencies, schools of thoughts have emerged in modern times on the enforcement of awards. These schools, according to Ananaba,[68] are divided into three and are the local law theory, theory of acquired rights and the theory of obligations. Am amplification of these theories is foregrounded below.

The local law theory in conflict of laws was developed and expounded by Walter Wheeler Cooks. Cooks argued that what lawyers investigate in law practice is how Judges have operated and performed in the past, in order that it may be foretold how they will probably act and perform in the future in similar circumstance. He made a case for judicial precedent which is dominant in the Common law system.[69] This theory insists on the territorial nature of law and lays emphasis on the law of the forum and

not the law of the foreign country in which the operative facts or most of them occurred. According to Cooks, the court of the forum recognises and enforces a local right, i.e. the right created by its own law. The local court applies its own rules to the exclusion of all foreign rules. However, where it is confronted with a case that has a foreign element,[70] it does not necessarily apply the rules that would govern an analogous purely domestic character, but, for reasons of socio-legal expedience and practical convenience, takes into

consideration the laws of the foreign country in issue.[71] The court creates its own local right, but fashions it as nearly as possible upon the law of the country in which the decisive facts have occurred.[72] The dictum of Judge Hand of the United States, in *Guinness* v. *Miller*[73] further emphasises the local law theory thus,

> No court can enforce any law but that of its own sovereign, and, when a suitor comes to a jurisdiction foreign to the place of the tort, he can only invoke an obligation recognized by the sovereign, a foreign sovereign under civilized law imposes an obligation of its own as nearly homologous as possible to that arising in the place where the tort occurs.[74]

The theory of acquired rights[75], on the other hand, was propounded by Ulrich Huber.[76] The theory is based on territoriality. It asserts that the validity of a contract cannot, on general principles, be determined by the application of any other law than that which applies to the acts of the parties, that is, the law of the place of contracting. Where the *lex loci contratus* creates no obligation, there is no other law which has the capacity to do so. The duty of the Judge, therefore, is not first to enforce foreign law. Rather, it is the law of the territory that must exclusively govern cases before the Judge. What the Judge does is to protect rights that have already been acquired by a party in a foreign judgment/award. Thus, any right which has been duly acquired under the law of any civilised jurisdiction is recognised by the English courts and no right which has not been duly acquired is enforced,[77] or, in general recognised by the English courts.[78] Sir William Scot's judgment in *Dalrymple* v. *Dalrymple*[79] espoused the theory of vested or acquired right in which the English court accepted that the right of the Petitioner must be adjudicated upon in England with reference to the country in which the right was acquired.

On its own part, the theory of obligation was espoused in *Russell* v. *Smyth*[80] and it is to the effect that, where a foreign court/tribunal of competent jurisdiction had adjudicated a certain sum to be due from one person to another, the liability to pay the sum becomes a legal obligation that may be enforced in England in an action on the debt.[81] Ananaba, while commending this theory, opinionates that the theory is a positive contribution to the quest for a convenient, effective and beneficial way of enforcement of foreign judgments and awards because, it is not as ambiguous, grafting and imprecise as the theory of comity.[82] The Supreme Court of Nigeria applied this theory in its decision in *Alfred C. Toepfer Inc. of New York* v. *Edokpolor*.[83] However, it is worthy to note that since obligation is the basis for enforcement, a defendant can plead and rely on any defence against such obligation to escape liability

which is one of the limitations of the theory.[84]

V. HURDLES TO ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA AND INDIA

In Nigeria concluding any domestic or international arbitral proceedings is one thing and exploiting or reaping the benefit of the proceedings as contained in the award is another thing altogether.[85] There are some teething hurdles which stand in the way of a beneficiary of an arbitral award, in his bid to enforce the award. While some of these hurdles are procedural in nature, others are substantive and are both reflective of the general inherent inhibitions within the justice delivery system of Nigeria. These obstacles are discussed hereunder.

A. Public Policy and Political Consideration

Owing to its intricacy, it is germane to interrogate the meaning of the term "public policy" before any further elucidation on the subject. In

1824, in *Richardson* v. *Mellish*[86], it was helplessly and hopelessly held by the Court of Common Pleas that "public policy is a very unruly horse, and when once you get astride it, you never knew where it will carry you..." policy as far back as 1602, public policy was defined as that which is "against the benefit of commonwealth."[87] In 1914, it was used to denote "acting against the commonwealth"[88] and in 1916, it took the nomenclature of "prejudicial to the interests of the public."[89] The doctrine of public policy, under the common law, is essentially a creation of the courts.[90] The position in American States and some European countries shows there are statutory provisions in relation to the application of foreign laws in the interest of public order.[91] The public policy concept, as a learned writer, puts it, has

become "an enigmatic monster which shows no desire of being analyzed and which defies the concerted attack of professors, daring thesis writers and treaty makers."[92] In the opinion of the Judges, the concept is an unruly horse which has looked like even less accommodating animals. Others have thought it to be like a tiger, and have thus refused to mount it at all, perhaps because they feared the fate of young lady of Riga, to some it is like the Balaam's ass which would carry its rider nowhere. However none, at any rate at the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community"[93] The Supreme Court of Nigeria in *Okonkwo* v. *Okagbue*[94] stated that, "the phrase public policy appears to mean the ideal which for the time being prevails in any community as to the conditions necessary to ensure its welfare, so that anything is treated as against public policy if it is generally injurious to the public interest. It is the community common sense and common conscience, extended

and applied throughout the state to matters of public morals, health, safety, welfare and the like."

Public policy serves as a hurdle to a seamless enforcement of arbitral award. As a matter of fact, public policy reserve to enforcement of foreign arbitral awards has been

considered the greatest single threat to the use of arbitration in international commercial disputes. Courts and commentators alike have expressed misgivings over this potential "loophole" in binding international commercial arbitration.[95] These misgivings are based on the ease with which a court might disregard a foreign arbitral award for virtually any reason, however persuasive, simply by finding that enforcement of the award would conflict with the public policy of the forum. Such action by courts would undermine the arbitral award enforcement process, and weaken international commercial arbitration as a method of dispute settlement.[96] Section 52 (1)(2) (viii)(b)(ii) of the ACA, permits any of the parties to an arbitration agreement to request the court to refuse recognition or enforcement of the award if the party against whom it is invoked furnishes the court with a proof that the recognition or enforcement of the award is against public policy of Nigeria.[97] The loophole in this provision is that the Act does not define what public policy is, at least, to serve as a guide for its invocation in refusing recognition and or enforcement of an arbitral award.[98]

Hence, this has left the meaning of the concept to the whimsical idiosyncrasy and capricious discretion of any individual Judge. It is, therefore, contended that the concept of public policy is amoebic as it is not a one-way traffic susceptible to a precise definition and this imprecision avails the court an opportunity to engage in judicial legislation, guided by the prevailing needs of the particular society.[99] Though a learned writer, in dealing with the vacillating nature of public policy, has opined that "The potentially unruly horse has been tightly bounded by the judicial rope of precedent and has led to the categorizations of more-or-less definitive rules of the law within which public policy may be respectably invoked"[100], this may not be totally correct. The dynamic nature of the society which necessarily rubs off on the principle of public policy has been recognized by the Court of

Appeal in *Total Nigeria Plc.* v. *Elijah Omoniyi Ajayi*[101] thus, "public policy, like chameleon, changes from time to time and from place to place...public policy is not, however fixed and stable. From generation to generation, ideas change as to what is a variable thing. It must fluctuate with the circumstances of the time." The case of *IPCO (Nigeria) Ltd. Nigeria National Petroleum Corporation*[102] where the NNPC used the clog of public policy to frustrate the enforcement of the arbitral award obtained against it, further demonstrates the tyranny of public policy.

The anti-arbitration attitude of the Nigerian court anchored on public policy and political consideration is completely opposite of the United State of America (USA's) court's pro-arbitration disposition, as highlighted in *Scherk* v. *Alberto-Culver Co.*[103] where, in enforcing an arbitration award, the USA Supreme Court held that "the invalidation of such an agreement and the award in the case before us would reflect a parochial concept that all disputes must be resolved under our laws and in our courts. We cannot have trade and commerce in the world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts."[104] The power to annul an award is restricted to part I which deals with only domestic awards.[105]

Public policy consideration is not an exclusive preserve of Nigeria. Section 57(1)(e) of the 1996 Arbitration and Conciliation Act of India makes it abundantly obvious that for a foreign arbitral award to be recognized

and/or enforced in India, it must not be contrary to the public policy of India or its law. Section 48(2) of the 1996 Act empowers the Court to refused recognition and/or enforcement of an award that obliterates from India's public policy. The explanatory note to the said section provides that without prejudice to the generality of clause (b) of the section, it is hereby declared, for the avoidance of doubt, that an award is in conflict with the public policy of India if the making was induced or affected by fraud or corruption.

India as a arbitration hub has a pro-investment public policy regime.[106] Thus, in India, a domestic arbitral award may be refused enforcement if it violates India's public policy.[107] In *Renugar Power Co. Ltd.* v. *General Electric Co.*[108] it was held that a foreign arbitral award would be refused enforcement on the ground of public policy if it is contrary to the fundamental policy of Indian law; or the interest of India; or justice and morality. It is instructive to note that these grounds are exclusive and conclusive and nothing can be added to it or subtracted.[109] Thus, the provision in section 48(1) which are *in pari material* with Article V(e) of the New York Convention have been held as not conferring jurisdiction on Indian courts to sit an appeal over foreign arbitral awards with a view to annul same, thus, Indian Courts lack the jurisdiction to annul foreign arbitral awards as was held in *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*[110] However, with regard to domestic awards, aside the express grounds comprises Indian public policy encapsulated in section 34(1) of the 1996 Act, in 2003, the Supreme Court added a fourth ground to it in *ONGC Ltd.* v. *Saw Pipes Ltd.*[111] wherein it held that an arbitral award can be impugned if it contravenes the Arbitration and Conciliation Act, 1996 or any other law.[112] This decision has been severely criticized as being outside the confines of section 34 of the 1996 Act.[113] Although, public policy as seen above is not a concept that is clear, plain and precise therefore necessitating judicial legislation through interpretation, it is trite that section 34 of the 1996 Act is clear and unambiguous and the court should have confined itself rather than expanding the unruly horse. It is however apposite to note that public policy as held by the Supreme Court in *Murlidhar Aggarwal* v.

State of U.P.[114] does not remain static in any given community which may account for expansion as the court did in *ONGC Ltd.* v. *Saw Pipes Ltd.*[115] However, it must be done with extreme caution as hinted by the Nigerian Supreme Court per Kayode Eso JSC (as he then was) in *Sonnar (Nigeria) Ltd* v. *Nordwind.*[116] Thus "it is dangerous for a court to base its decision mainly on public policy, which indeed would be another means of avoiding the rules, laws and procedures which governs a matter."[117]

B. Procedural Delays

One of the major hurdles which characterize the Nigerian justice delivery system is procedural delay. It is trite law that justice delayed is justice denied. Interlocutory applications are meant to address urgencies that may have arisen in the course of adjudication and the right of appeal is provided to ensure that an aggrieved litigant ventilates his grievances to a court higher than the court of first instance. Rules of Courts are meant to guide and regulate proceedings in court towards the attainment of substantial justice. However, unscrupulous litigants and their lawyers have unfortunately used interlocutory applications to delay proceedings in court as well as

resort to frivolous appeals, all in a bit to delay the expeditious determination of court proceedings. Frivolous amendments and unnecessary adjournments are hurdles usually encountered in Nigerian courts. Some lawyers and litigants, out of share untidiness and unprofessionalism, resort to seeking and obtaining frivolous adjournments all in a bid to frustrate expeditious adjudication especially when they perceive that the outcome of the proceedings would not be in their favour. Some judges and lawyers alike, regrettably, are suspicious of arbitration and would easily not cooperate whenever they are called upon for assistance.

The case of *IPCO (Nigeria) Ltd.* v. *Nigeria National Petroleum Corporation*[118] clearly illustrates the unfortunate implication of delay in the Nigerian justice system. There, the court recounted how the NNPC applied to the Nigerian Federal High Court to set aside the award in favour of IPCO. The NNPC took to unending amendment of its processes and also applied to the court for an order restraining IPCO from enforcing the award. IPCO applied to the court for accelerated hearing of the matter. The NNPC after this changed its counsel and the new counsel brought an application seeking re-assignment of the case to another Judge for hearing and suspending the delivery of the ruling on IPCO's application. The case was thus re-assigned to a new Judge after several adjournments. Subsequently,

NNPC brought an application that IPCO application be heard *de novo* and the new Judge granted the application for hearing *de novo.* The court then summed up its chagrin on the procedural delay thus:

> In the light of all this, it is apparent that even a decision at first instance on the preliminary objection may now be very many years away. The potential delay involved in any of the possible outcomes of the appeal is five years altogether with however long it takes for the matter first to be resolved in the Court of Appeal. On a best case analysis at the conclusion of that period either Okeke J would deliver her ruling, assuming she is still available to do so or Auta J. or another judge would proceed to rehear the preliminary objection de novo.[119]

However, in India, deducing from the analysis above, for domestic award, it would be safe for one to contend that it would take little or no time for it to be enforced. The rationale for this assertion is that, the award is regarded to have the same force with a decree of the Court and can be enforced without any recourse to the court unless there is a challenge to the award.[120] Thus, where the party against whom the award is rendered does not take steps to impugn same within the statutory period, the irresistible conclusion is that the winner can and should proceed to execute.[121] It has been argued that it would take approximately six months to enforce an arbitral award in India particularly foreign award.[122]

C. Statutory Limitation Period

The limitation period for enforcement of judgment/arbitral awards in Nigeria is statutorily regulated.[123] The question of when time begins to run for the purpose of commencement of enforcement proceedings has been the subject of much debate.[124] Generally, under the Nigerian law, a judgment of

a court may be executed within two to six year after the date of delivery and thereafter

with the leave of the court.[125] However, this may not be the case with arbitral awards in respect of arbitration agreements not under seal or made pursuant to the Arbitration and Conciliation Act.

Thus, Section 7(1)(d) of the Limitation Act provides that *the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, actions to enforce an arbitration award, where the arbitration agreement is not under seal or where the arbitration is under any enactment other than the Arbitration Act.*[126] This statutory provision in the light of the snail pace justice delivery system of Nigeria is a clog on the wheels of arbitration particularly on enforcement of awards. The above statutory provision has been interpreted to mean that for the purposes of recognition and/or enforcement of the award as the judgment of the court, the date of accrual starts to run from the date of accrual of the original cause of action and not the date the award was actually delivered. In *Murmansk State Steamship Line* v. *Kano Oil Millers Ltd.*[127] the learned trial Judge held that since the cause of action must be deemed to have arisen on February 28, 1964, and the award given on February 28, 1966, the action brought on 2nd February, 1972 to enforce the award was barred by the Statute of Limitation, 1966, which requires that all civil action must be commenced within six years of the cause of action. On appeal to the Supreme Court, the decision was affirmed and the court held that:

> We think that there is force in these submissions of the learned counsel for the Respondent. The present case is one of a simple reference of any dispute to arbitration and contains no clause making an arbitration award a condition precedent to the bringing of an action … the period of limitation is deemed to run after the date of the award only when a party has by his own contract expressly waived his right to sue as soon as the cause of action has occurred. If there is no such *Scott* v. *Avery clause*, the limitation period begins to run immediately.

This issue came up again in *City Engg. (Nigeria) Ltd.* v. *Federal Housing Authority*[128] the issue in this case was whether the limitation period under section 8(1)(d) of the Lagos State Limitation Law began to run on the 12th day of December, 1980, when the cause of action arose, or November, 1985 when the arbitration award was made, so as to determine

if the application made in 1988 to recognise as well as enforce the award was statute-barred. The Supreme Court, relying on its earlier decision in *Murmansk case*,[129] held *inter alia* thus "*… limitation period runs from the date of the accrual of the cause of action in the arbitration agreement and not from the date of the arbitral award.*" The English Court had, in a disguised manner, also toed the same line in its decision in *Agromet Motoimport* v. *Maulden Engg. Co. (Beds.) Ltd.*,[130] when it held as follows:[131]

> It is an implied term of an agreement to submit to arbitration disputes arising under a contract that any award made on a submission will be honoured. A breach of that implied term arising out of the failure to honour an award gives rise to an independent cause of action to enforce the award distinct from the original cause of action for breach of contract which gave rise to, and was the subject matter of, the submission. Accordingly, the time limit prescribed in s. 7 of the Limitation Act 1980, namely that "An action to enforce an award" must be brought within six years from the date on which 'the cause of action' begins to run from the date of the breach of the implied term to perform the award, and not from the date of the accrual of the original cause of action giving rise to the submission, since the 'action' and the 'cause of

action' referred to in s. 7 are the independent cause of action for breach of the implied term to perform the award and not the original cause of action.[132]

In *City Engg. (Nigeria) Ltd.* v. *Federal Housing Authority*,[133] the Supreme Court, per Oguntade, JSC reviewed the *Agromet Motoimport* v. *Maulden Engg. Co. (Beds.) Ltd.*,[134] and drew a distinction between an action to enforce/recognise an arbitral award and an action to seek redress for failure to comply with the implied condition to perform a valid award. The Court held that:

> ... a distinction must be drawn between an action to enforce an arbitral award- this is provided for in the arbitration law itself, and the relief that can be granted in such an action is an order enforcing the award as if it

were a judgment of the court and an action for damages for breach of an implied promise to perform a valid award where it is open to the court to order damages for failure to perform the award or decree, in appropriate cases, specific performance of the award or grant an injunction restraining the losing party from disobeying the award or grant a declaratory relief. In my respectful view, the statutory period of limitation in respect of the former form of action runs from the breach that gave rise to the arbitration. The action leading to the appeal before us belongs to that category therefore, that Otton J. in *Agromet Motoimport* adopted the approach of Mustill and Boyd on Commercial Arbitration, I find myself, with respect, unable to go along with him.[135]

The draconic nature of the Limitation Act makes nugatory what one could have considered a leeway from the limitation period quagmire through the insertion of a *Scott* v. *Avery* clause in the agreement. Belgore J. S.C. (as he then was) in *City Engg. (Nigeria) Ltd.* v. *Federal Housing Authority*,[136] recognised the leeway as follows:

> When parties, by their contractual agreement, provide resort to arbitration first and only after failure of agreement on arbitral award, can a party pursue a cause of action in court, time starts running, for the purpose of limitation, from the date of the award. This is not to say the parties by their agreement oust the Court's jurisdiction; far from it. It only postpones resort to litigation before the court. In these type of cases, the clause to stay access to the court commonly referred to as "*Scott* v. *Avery Clause*" defers the application of statute of limitation to the date of arbitral award. In the absence of such a clause the time starts to run, for the purpose of limitation statute, from the date of breach of contract. This is based on commonsense of respecting the intention of the parties. As contained in the contract signed by them nothing should be read into a contract other than what its clear and plain words indicate.

However, section 62 of the Limitation Act provides that:

> notwithstanding a term in the submission to the effect that no cause of action shall accrue in respect of a matter required by the submission to be referred until an award is made under the submission, the cause of action shall, for the purposes of this Act and of any other limitation enactment (whether in their application to

arbitrations or to other proceedings) be deemed to have accrued in respect of the matter at the time when it would have accrued but for that term in the submission.

The decision of the Court of Appeal in *Tulip (Nigeria) Ltd.* v. *Noleggioe Transport Maritime SAS*[137] reinforces this harsh position of the law. The position of the law as seen above is diametrically opposed to the position in England based on which the earlier Supreme Court decision in *Murmansk State Steamship Line* v. *Kano Oil Millers Ltd.*[138] was anchored as seen in *Agromet Motoimport* v. *Maulden Engg. Co. (Beds.) Ltd.*[139] In the more recent case of *International Bulk Shipping and Services Ltd.* v. *Minerals and Metals Trading Corpn. of India*[140] Otton J. position in *Agromet case*[141] was reiterated and upheld. Notwithstanding its harshness, the decision in *City Engg. (Nigeria) Ltd.* v. *Federal Housing Authority*[142] remains the position of the law in Nigeria and it is hoped that the Supreme Court would up turn same whenever the opportunity presents itself[143] to ensure that there is no persistence in unfairness reducing Nigeria's desire of becoming a hub for foreign arbitral seat.[144]

However, under Indian law, the limitation period for filing for enforcement of arbitral award is three years and the actual execution is the same as for civil proceedings which is 12 (twelve years) from the date of the award[145] pursuant to the Limitation Act, 1963. This position was reiterated

by the Supreme Court in *Umesh Goel* v. *H.P. Coop. Group Housing Society Ltd.*[146] However, before a domestic award holder can forge ahead to execute same, a period of ninety days must lapse.[147] However, with regards various High Courts have given divergent interpretations on the limitation period for enforcement of foreign awards. The Bombay High Court in *Noy Vallesina Engg. Spa* v. *Jindal Drugs Ltd.*[148] held that since unlike domestic award, a foreign award is not a decree of the Court *per se* it would come under the purview of article 136 and 137 of the 1963 Limitation Act and not section 43(1) and undergoes two procedure for its enforcement, the limitation period would be 3 years for the party to commence the enforcement proceedings and when the application is granted, its executory lifespan would be twelve years pursuant to article 136. The Madras High Court in *Compania Naviera "SODNOC"* v. *Bharat Refineries Ltd.*[149] held that a foreign award is already stamped as a decree and the party having such an award can proceed without more to apply for its enforcement and the limitation period would be twelve years like a decree of the Court.

However, the Delhi High Court in *Hindustan Petroleum Corpn. Ltd.* v. *Videocon Industries Ltd.*[150] took a contrary position and holden that no limitation period is provided for under section 48 of the 1996 Act. It stated that the limitation period provided under section 34 under Part I do not have a similar provision in Part II which deals with foreign awards. Hence, section 34 provides a mandatory period for challenging domestic awards and no such limitation provision is provided for under section 48 of the 1996 Act. Thus, under section 34 an objection can be taken against the limitation period whereas, under section 48 it can only be initiated once its enforcement is sought.[151] Thus, by this decision, section 34 is styled as proactive while section 48 is regarded as reactionary. Thus, it is hoped that this seemingly contradictory interpretations would be harmonized by the Supreme Court to create certainty to avoid the situation in *Centrotrade Minerals & Metals Inc.* v. *Hindustan Copper Ltd.*[152] This notwithstanding, it is abundantly clear that limitation period for enforcement of arbitral awards in both jurisdiction on a comparative analysis, the position in India, with regard to length of time, is not only preferable but humane.

VI. CONCLUSION AND RECOMMENDATIONS

From the above, it is obvious that arbitration has been entrenched into the *corpus juris* of Nigeria and India. Its entrenchment has, coupled with its numerous advantages, when compared to litigation, made it more appealing to disputants for the settlement of disputes, particularly of commercial nature. Thus, once parties enter into an arbitration agreement either before or after the occurrence of a dispute, they do so with an implied obligation to be bound by its outcome. Where a party complies with an award, the arbitration is deemed to have achieved its aims amicably. However, where the unsuccessful party fails and/or neglects to fulfill his or her obligation thereof, the successful party has to seek the recognition/enforcement of the award. In doing this, he is bound to overcome certain hurdles such as Nigerian and Indian public policy consideration, limitation period and procedural delay. These hurdles which are man-made and statutory have been dissected in this paper drawing their divergence and convergence in both jurisdictions. The article found that despite the commendable increasing rate with which litigants now embrace arbitration in Nigeria and India, the identified hurdles are however capable of frustrating the growth of arbitration in both jurisdiction. However, India has a more arbitration friendly legislation and its Courts have adopted a pro-arbitration posture when compared to Nigeria particularly with the issue of limitation period and public policy consideration. Thus, there is a lot that Nigeria can emulate from India in the enforcement of arbitral awards by amendment of its law and its judges imbibing the pro-arbitration attitude of Indian judges in interpreting the Arbitration and Conciliation Act, 1988.

Extrapolating from the foregoing discussion and findings, the following recommendations are made:

a. It is recommended that section 62 of the Limitation Act, 1961 of Nigeria and its equivalent in all other limitation statutes operating in Nigeria, which prohibit the insertion of the *Scot* v. *Avery Clause* as a limitation postponing technique, should be repealed by deleting same.

b. Also, to enable the steady growth and attractiveness of arbitration as a means of dispute resolution mechanism in Nigeria, it is recommended that the statutes of limitation should be amended, so as to make the limitation period with regard to application for recognition/enforcement of arbitration award, to run from the date of delivery of the arbitral award instead of the date the cause of action arose.. In other words, section 7(1)(d) of the Limitation Act and its equivalent in the states should be repealed or amended in this regard.

c. Moreover, the author suggest that the Arbitration and Conciliation Act 1988 of Nigeria be amended, comprehensively, not only for the purpose of tailoring it in line with the technology-driven or digital age and its peculiarities, but also for the purpose of making provisions for the period within which arbitration proceedings must be concluded, just like election petition proceedings which are sui generis and time bound. This will go a long way in preventing parties from

resorting to dilatory tactics and antics to frustrate the timeliness of arbitration as opposed to litigation.

d. It is also recommended that while the time frame for limitation period for enforcement of domestic award in India is settled, the Supreme Court should where the opportunity present itself, harmonize the divergent views of the various High Court to create certainty on the issue.

e. It is further recommended that while the Indian Supreme Court have upheld the validity of an arbitral clause permitting only a party thereof to appoint an arbitrator, while both the High Courts of Delhi and Calcutta have handed contradictory decisions on the validity and enforcement of asymmetrical arbitration award leaving the law in a state of flux, the Supreme Court should endeavour to harmonise these decisions to create certainty on the state of the law with regards to asymmetric arbitration agreement/clauses.

f. Lastly, it is recommended that the government and other key stakeholders in the justice sector should embark on a continuous enlightenment campaign on the benefits of arbitration. The general public should be sensitized on the need to explore arbitration, by bringing its comparative advantages to their knowledge.

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[1] Olaniyan, A., and Faseemo, V., "A Legal Consideration of the Prospects and Challenges of Online Dispute Resolution in Nigeria" vol. 4, no. 2, Joseph Ayo Babalola University Law Journal, 2017, p. 1.

[2] Nishith Desai Associates, Enforcement of Arbitral Awards and Decrees in India, available online at <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Enforcement_of_Arbitral_Awards.pdf> accessed 23 August 2018.

[3] Obiozor, C.A., "Does an Arbitration Clause or Agreement Oust the Jurisdiction of the Courts? A Review of the case of *The M.V. Panormos Bay* v. *Olam (Nig.) Plc*." (2010) vol. 6 no. 1, Nigerian Bar Journal, pp. 166-174.

[4] Borokini, A.A., "Is ADR the Death of Litigation?" (2006) vol. 4, no. 2, Fountain Quarterly Law Journal, pp. 43-55, at p. 43 where the learned author stated that "ADR is to supplement the available resources for justice by providing enhanced, more timely, cost-effective and user-friendly access to justice … the courts of this country should not be places where the resolution of disputes begins. They should be the place where disputes end-after all means of resolving disputes have been considered." *See* also Fletcher Moulton dictum in *Doleman & Sons* v. *Ossett Corpn.*, (1912) 3 KB 257 at 267.

[5] Chukwuemerie, I.A., "An Overview of Arbitration and the Alternative Dispute Resolution Methods (ADRs)", (2010) A Journal of the Civil Litigation Committee of the Nigerian Bar Association, p. 102. *See* also Akpata, E.O.I., "The Nigerian Arbitration Law in Focus", (Lagos: *West African Book Publishers Ltd.*, 1997), p. 163 where he stated and rightly in our view that, "Nowadays it is mediation and conciliation and not arbitration that are referred to as alternative dispute resolution methods (ADR). This two and other alternative methods of dispute resolution are regarded as alternative to arbitration. Arbitration was and is still to a large extent regarded as an alternative to litigation." *See* also Ike, D., "Enforcement of Annulled Arbitration Awards: Lessons from a Proposed 'New' New York Convention", (2017) vol. 7, Journal of Commercial and Contemporary Law, pp. 34-41; Aderibigbe, S.I., "Imperatives for the Enforcement of Arbitration Agreements in Nigeria" (2015) vol. 2, Ife Juris Review, p. 345; Aina K., "Alternative Dispute Resolution" (1998) vol. 2 no. 2, Nigerian Law and Practice Journal, p. 169; Iman, W., "The Nigerian and International Arbitration" (1999) vol. 3 no. 3, Modern Practice Journal of France and Investment, p. 1; Ajogwu F., *Commercial Arbitration in Nigeria: Law and Practice*, 2nd edn., (Lagos: Mbeyi & Associate (Nig.) Ltd., 2005) p. 15.

[6] Arbitration and Conciliation Act, Cap. A 18, LFN, 2010. *See* also Indian Arbitration and Conciliation Act, 1996.

[7] Ezejiofor, G., "The Law of Arbitration in Nigeria", (Lagos: Longman Nigeria Plc. 2005) p. 115. The author states that "It is a principle of the common law that a party to an arbitration award is entitled to enforce the resultant award by an action in law. Arbitral awards, according to the common law, are inherently binding and enforceable. Parties to an arbitration agree in a contract that disputes between them shall be settled by a private tribunal. When a particular dispute is settled by such a tribunal, its award binds the parties and brings the dispute to an end. This is so because the parties have, in effect, agreed that their rights in respect of the dispute shall be as stated in the award." *See* also Abdulrauf, L.A. and Daibu, A.A., "Challenges of Section 20 of the Admiralty Jurisdiction Act to International Arbitration Agreements" vol. 2, Journal of Contemporary Law, 2013, pp. 34-37;

Akeredolu, A.E., "Enforcement of Alternative Dispute Resolution Agreements: What is New Under the Lagos Multi-Door Court House Law?" (2010) vol. 6 no. 1, Nigerian Bar Journal, pp. 203-205.

[8] Sharma, D., "Foreign Arbitration Awards and Attitude of the Indian Legal Regime: The Saga of Constant Flip-Flop" vol. 3, no. 2, Galgotias Journal of Legal Studies, 2015, p. 2, available at <http://law.galgotiasuniversity.edu.in/pdf/Foreign-Arbitration-Awards-Attitude-of-Indian-Legal-Regime-Deepankar-Sharma.pdf> accessed 23 August 2018.

[9] Mbadugha, J.N.M., "Principle and Practice of Commercial Arbitration" (Lagos: University of Lagos Press & Bookshop Ltd., 2015), p. 1. The author asserts that "Arbitration is an alternative form of dispute resolution. It is the process by which a dispute between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially by one or more persons instead of by a court of law pursuant to the parties' agreement."

[10] Sharma, D., "Foreign Arbitration Awards and Attitude of the Indian Legal Regime: The Saga of Constant Flip-Flop" vol. 3, no. 2, Galgotias Journal of Legal Studies, 2015, p. 2. Available at <http://law.galgotiasuniversity.edu.in/pdf/Foreign-Arbitration-Awards-Attitude-of-Indian-Legal-Regime-Deepankar-Sharma.pdf> accessed 23 August 2018.

[11] (2010) 10 NWLR (Pt. 1202) 412 at 448 para G.

[12] Eyongndi, D.T., "International Arbitration Agreement under Nigerian Law: Form, Content and Validity", vol. 1 no. 5, Babcock University Socio-Legal Journal, 2016, p.113.

[13] Chukwuemerie, I.A., (No. 5) *op. cit*. p. 103. *See* also Daibu, A.A., "The Lagos State Arbitration Law and the Doctrine of Covering the Field: A Review", (March 2015), vol. 6, no. 1, The Gravitas Review of Business and Property Law, pp. 44-52, Akanbi, M.M., "Domestic Commercial Arbitration in Nigeria: Problems and Challenges", (Germany: Lambert Academic Publishing, 2012), p. 32, Ajogwu, F., *Commercial Arbitration in Nigeria : Law and Practice*, (Lagos: Mbeyi & Associates Nig. Limited, 2009) 5, Daibu, A.A. and Abdulrauf, L.A., "Challenges of Section 20 of the Admiralty Jurisdiction Act to International Arbitration Agreements" (2015) vol. 6 no. 4, The Gravitas Review of Business and Property Law, p. 14.

[14] Idornigie, P.O., and Adewopo, A., "Arbitrating Intellectual Property Disputes: Issues and Perspectives" (2016) vol. 7 no. 1, The Gravitas Review of Business and Property Law Journal, pp. 1-19 at p. 1. The learned writers posit thus, "In modern commercial environment, arbitration is no longer a new system of dispute resolution. Arbitration understandably provides a special procedure by agreement, where parties agree to submit their dispute to a neutral arbitral tribunal for a binding decision. While court proceedings are usually held in public, parties in arbitration have chosen a procedure that is private and confidential for determining their commercial disputes ... with notably for fundamental features, arbitration continues to complement litigation as a dispute settlement mechanism: it is a private mechanism for dispute resolution; it is an alternative to national courts; it is selected and controlled by the parties (principle of party autonomy); and it is the final and binding determination by an impartial tribunal of parties rights and obligations. Arbitration is also anchored on three other fundamental principles: principle of separability (the arbitration clause in a contract is separate and independent of the main contract); the competence of the arbitral tribunal to rule on its own jurisdiction (*kompetenz-kompetenz*); and the principle of judicial non or minimal intervention." *See* also Borokini, A.A., *op. cit*. p. 44; Ade-Ojo, L., "Arbitration Law and Practice in Settlement of Industrial Disputes" (January 2007), vol. 5, Igbinedion University Law Journal, pp. 193-206 at 193 & 194; Adenipekun, A.,"Arbitration" vol. 2, Journal of the Law Students' Society, University of Ibadan, 2008, pp. 11-28; Nicholas, G., "The Mediation of Construction Dispute: Recent Research" (2009), vol. 3, no. 2, The Journal of the Dispute Resolution Section of International Bar Association, pp. 185-197 at p. 185. *See* also <http://www.courts.oregon.gov/OJD/programs/adr/pages/whatisarbitration.aspx> (accessed 23 October, 2017); *Halsbury's Laws of England*, 4th edn., vol. 2 (Reissue), 1991, p. 332. *See* also *Nigerian National Petroleum Corpn.* v. *Lutin Investment Ltd.*, (2006) 2 NWLR (Pt. 965) 506 at 542, para H.

[15] Idornigie, P.O., and Adewopo, A., loc. cit. *See* also Abifarin, O., "Resolving Domestic Violence through Alternative Dispute Resolution in Nigeria", (2010) vol. 6, University of Ilorin Law Journal, pp. 154-168 at p. 164, Orojo, A.J., and Agomo, M.A., Law and Practice of Arbitration and Conciliation in Nigeria, (Lagos: Mbeyi & Associates (Nigeria) Limited, (1999), pp. 36-38; Ezejiofor, G., "The Law of Arbitration in Nigeria", [Ikeja: Longman, 2005 (reprint)], p. 3; Abimbola, A.O., "Prospects in Arbitration: An Overview", in Olatunbosun, A.I., and Laoye, L., (eds.), *Diverse Issues in Nigerian Law: A Collection of Essays in Honour of (Hon.) Justice Okanola Akintunde Boade*, (Ibadan: Zenith Publishers, 2013), pp. 25-26. *See* also Orojo, A.J., and Agomo M.A., (No. 10) *op. cit*., p. 98; Ekwenze, S.A.M., "Arbitration Agreement: Nature and Implications", (2010), vol. 4, University of Ado-Ekiti Law Journal, pp. 316-342 at pp. 317-318.

[16] Vergis, A. and Kamil, N., "The Validity of Asymmetrical Arbitration Clauses" Providence Law Newsflash, Sept. 2017, p. 1, available at <http://www.inhousecommunity.com/wp-content/iploads/2017/10/pProvidence-V12017.09-The-Validity-of-Asymmetrical-Arbitration-Clauses.pdf> accessed 14 October 2018.

[17] Ustinov, L., "Unilateral Arbitration Clauses: Legal Validity". Being a Master Degree Thesis submitted to Faculty of Law, Tilburg University, available online at <http://arno.uvt.nl/show.cgi?fid=142526> accessed 14 October 2018.

[18] Grant, B., Panov, A. and Chung, K., Asymmetric Arbitration Agreements, Norton Rose Fulbright's International Arbitration Report, October, 2017, pp. 25-28, available at <http://www.nortonrosefulbright.com/files/20170925-international-arbitration-report-issue-9-157156.pdf> accessed 14 October 2018.

[19] 2017 SGCA 32.

[20] 2004 EWHC 2001 (Comm).

[21] 2005 EWHC 1412 (Ch).

[22] 2015 EWHC 2857 (Comm.).

[23] (2017) 1 WLR 3497 : 2017 EWHC 161 (Comm).

[24] 1st Civ. 15 May 1974.

[25] 1977 SCC OnLine Del 45 : ILR (1977) 2 Del 57.

[26] 1984 SCC OnLine Cal 166 : AIR 1985 Cal 76.

[27] 1975 SCC OnLine AP 52 : AIR 1976 AP 103.

[28] (2017) 8 SCC 377.

[29] Mbadugha, J.N.M., *op. cit*., p. 225 where he asserts that "The two terms — recognition and enforcement seem interwoven. This is because the New York Convention on Enforcement of Foreign Arbitral Awards and other relevant laws or rules of arbitration refer to, or use, the terms together or in conjunction. These terms, although used as if they are inseparably linked, are in fact distinct. When an award is enforced it is also recognized but this may not necessarily be the case with recognition."

[30] Orojo, A.J., and Agomo, M.A., (No. 10) *op. cit.*, p. 266.

[31] *Ibid*., p. 298.

[32] (1989) 1 NWLR (Pt. 98) 419. *See* also the case of *Imani & Sons Ltd.* v. *BIL Construction Co. Ltd.*, (1999) 12 NWLR (Pt. 630) 254 at 263.

[33] (2001) 2 NWLR (Pt. 696) 32.

[34] Orojo, A.J., and Agomo, M.A., (No. 10) *op. cit.* p. 302.

[35] Ajibade, B., "Enforcement of Foreign Arbitral Awards in Nigeria: Quo Vadis?" Being a Paper presented at the Annual Conference of Chartered Institute of Arbitrators, Nigeria Branch on the 3rd November, 2015 at Transcorp Hilton Hotel, Abuja, available at <https://pdfs.semanticscholar.org/presentation/771e/d9bc9fb49e794ca15e8787636c5c135c0cfd.pdf> accessed 27 August 2018.

[36] Asouzu, A.A., "The Adoption of the UNCITRAL Model Law in Nigeria, Implication of the Recognition and Enforcement of Arbitral Awards" vol. 7, no. 1, Journal of Business Law, 1999, p. 185.

[37] Nwakoby, G.C., and Aduaka, C.E., "The Recognition and Enforcement of International Arbitral Awards in Nigeria: The Issue of Time Limitation" vol. 37, Journal of Law, Policy and Globalization, 2015, p. 123, available online at <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/22555/22930> accessed 28 August 2018.

[38] Aina, K., "Procedure for the Enforcement of Domestic Arbitral Awards in Nigeria" vol. 5, no. 2, Civil Procedure Review, 2014, p. 26, available at <http://www.civilprocedurereview.com/busca/baixa_arquivo.php?id=98&embedded=true> accessed 28 August 2018.

[39] (2005) 11 NWLR (Pt. 936) 239.

[40] Aina, K., (No. 23) *op. cit.* p. 31.

[41] Foreign Judgment (Reciprocal Enforcement) Act Cap. F35 LFN, 2004.

[42] Nwakoby, G.C., and Aduaka, C.E., "The Recognition and Enforcement of International Arbitral Awards in Nigeria: The Issue of Time Limitation" vol. 37, Journal of Law, Policy and Globalization, 2015, p. 117, available at

<https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/22555/22930> accessed 28 August 2018.

[43] S. 3(1) Foreign Judgment (Reciprocal Enforcement) Act Cap. F35 LFN, 2004.

[44] Convention on the Recognition and Enforcement of Foreign Arbitral Awards June 10, 1958. (New York Convention).

[45] Statement of Objects and Reasons to the Act, para 4 (vii).

[46] Rautray, G.J., "Enforcement of Foreign Arbitral Awards in India" Rautray Advocate and Solicitors Legal Alert, available online at <http://www.rautray.com/article4.pdf> accessed 23 August 2018.

[47] Sharma, D., (No. 9) *op. cit.* p. 7.

[48] *Bhatia International* v. *Bulk Trading SA*, (2002) 4 SCC 105 : (2002) 1 Arb LR 675.

[49] S. 36 Arbitration and Conciliation Act, 1996 (hereafter referred as "the Act").

[50] S. 2(1)(e) Arbitration and Conciliation Act, 1996.

[51] S. 34(3) Arbitration and Conciliation Act, 1996.

[52] (2005) 4 SCC 239.

[53] (1992) 3 SCC 511 : AIR 1993 SC 998 : (1992) 2 Arb LR 154.

[54] *See* the case of *Hiscox* v. *Outhwaite*, (1991) 1 WLR 545 where the English Court of Appeal held that though the arbitration clause named London as the seat of arbitration but the award was signed by the arbitrator in Paris, same was made in Paris and not London because a document is said to have been made when and where it is perfected and an award is perfected when it is signed. This decision was statutorily reversed by S. 53 of the English Arbitration Act, 1996.

[55] Sharma, D., (No. 9) *op. cit.* p. 5.

[56] (1998) 1 SCC 305 : AIR 1998 SC 825.

[57] 1993 SCC OnLine Del 561 : AIR 1994 Del 75 : (1994) 1 Arb LR 429.

[58] S. 44(a) Arbitration and Conciliation Act, 1996.

[59] (1994) 4 SCC 541.

[60] Kachwaha, S., "Enforcement of Arbitration Awards in India" vol. 4, no. 1, Asian International Arbitration Journal, 2008, 77, available at <https://www.kaplegal.com/upload/pdf/AIAJ_V4_N1_2008_Book_(Sumeet_Kachwaha).pdf> accessed 23 August 2018.

[61] S. 44(b) Arbitration and Conciliation Act, 1996.

[62] (1998) 2 SCC 281.

[63] S. 48(2) Arbitration and Conciliation Act, 1996.

[64] S. 48(1)(e) Arbitration and Conciliation Act, 1996. This section is *in tandem* with Art. V(e) of the New York Convention.

[65] (2008) 4 SCC 190 : AIR 2008 SC 1061 : (2008) 1 Arb LR 137.

[66] (2008) 4 SCC 190 : AIR 2008 SC 1061 : (2008) 1 Arb LR 137

[67] (2012) 9 SCC 552.

[68] Ananaba, P.C., *Recognition and Enforcement of Foreign Judgments and Awards in Nigeria*, (Lagos: Jamiro Press Link, 2017), p. 39.

[69] Ananaba, P.C., *Essential Principles of Nigerian Law* (Ibadan: Agbo Ero Publishers, 2002), p. 24.

[70] Mcclean, D., and Abou-Nigm V.R., *The Conflict of Laws*, 8th edn., (London: Sweet & Maxwell, 2014) p. 2 where they explain that "Foreign element means simply a contact with some system of law other than that of the forum that is, the country whose courts are seized of the case."

[71] Ananaba, P.C., *op. cit.* p.41.

[72] *Ibid.*

[73] 291 Fed 769 (SDNY 1923).

[74] *See* also Lord Parker's *dictum* in *Dynamit Actien-Gesellschaft Vormals Al-fred Nobel & Co.* v. *Rio Tinto Co.*, 1918 AC 292 at 302.

[75] Ananaba, P.C., *op. cit.*, p.43. He states that "acquired rights are those rights that were not possessed originally but were acquired through the activity of the person. It is a right, corporeal or incorporeal, properly vested under municipal law in a natural or juristic person and of an assessable monetary value."

[76] Morris, J.H.C., *The Conflict of Laws*, 16th edn., (London: Sweet & Maxwell Ltd., 2005) pp. 522-524. Dicey one of the proponents of the vested rights theory maintains a logical ground that right of a type recognised by English law acquired under the law of any civilised country must be determined in accordance with the law under which the right is acquired.

[77] Dicey, A.V., *Conflict of Laws*, 5th edn., (London: Sweet & Maxwell, 1932) pp. 17, 43.

[78] Ananaba, P.C., loc. cit.

[79] (1811) 2 Hag Con 54.

[80] (1842) 9 M&W 810.

[81] This theory was applied in *Schibsby* v. *Westenholz*, (1870) LR 6 QB 155, 169; *Williams* v. *Jones*, (1845) 13 M&W 628 : 153 ER 262. Where Baron Park held that "where a court/tribunal of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced."

[82] Ananaba, P.C., *op. cit.*, p. 46.

[83] (1965) 1 All NLR 292.

[84] Read, E.H., "Recognition and Enforcement of Foreign Judgments" (Cambridge Mass: Harvard University Press, 1939) pp. 62-63.

[85] Gbemiga, F.I., "Challenges of Enforcement of Arbitral Award in Nigeria: Charting a New Course". Being a Dissertation submitted to the Faculty of Law, University of Ibadan for the Award of the Degree of Master of Laws, August 2015, p. 81. The writer argues that "Getting either a domestic or foreign award in your favour does not automatically mean you have a clear sight of converting same into money by execution against the losing party in Nigeria. Very often, it may mean you have won the battle but yet to win the war."

[86] (1924) 2 Bing 229, at 252.

[87] *Colgate* v. *Bachelor*, 1602 Cro Eliz 872.

[88] Per Lord Moulton in *North Western Salt Co. Ltd.* v. *Electrolytic Alkali Co. Ltd.*, 1914 AC 461.

[89] Per Lord Atkinson in *Herbert Morris Ltd.* v. *Saxelby*, (1916) 1 AC 688, see also *Veithardt & Hall* v. *Rylands Bros.*, 88 LJCH 604.

[90] Ghodoosi, F., "The Concept of Public Policy in Law: Revisiting the Role of the Public Policy Doctrine in the Enforcement of Private Legal Arrangements" (2016) vol. 94, issue 3, Nebraska Law Review, p. 698 where it was stated that, "The phrase "public policy" is discussed in four contexts: (1) public policy in a modern sense, i.e., policies pursued and enacted by governments (especially the administrative aspects); (2) public policy as a mandatory rule that trumps the parties' contractual agreement; (3) public policy as it appears in conflict of laws, limiting the application of foreign rules; and (4) public policy that bars the enforcement of foreign judgments or arbitral awards", available online at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=2833&context=nlr> (accessed 23 October, 2017). *See* also Yelpaala, K., "Restraining the Unruly Horse: The Use of Public Policy in Arbitration, Interstate and International Conflict of Laws in California" Pacific (1989), vol. 2, McGeorge Scholarly Commons, The Transnational Lawyer, pp. 390-394 where the author opines that,"there are at least eight ways in which public policy may be used by the courts. First, it may be used in the ordinary sense … as in *Egerton* v. *Brownlow*, (1853) 10 ER 359. Public policy could be used in the comprehensive sense to mean *jus cogens* or that body of compulsory and higher order of norms to which every human behaviour, transaction or activity must conform. In this sense public policy constitutes a set of pre-emptory norms severely limiting party autonomy and the legal consequences of individual conduct. Public policy could, however be used in less all-embracing or compelling sense. Indeed, it has been used by some courts and academicians [sic] to mean good morals, fundamental values of society, or deeply-rooted values accepted as

the basis of social ordering. It has sometime been used when referring to "natural justice, equity and good conscience" referring to certain procedural, substantive, and customarily accepted notions of justice in society. It is often used in a concrete rather than an abstract sense, like obscenity, you know it when you see or hear it. When foreign procedural or substantive law is considered repugnant to "natural justice, equity and good conscience, the forum will reject the application of such Law or any legal right created thereunder. Public policy may also be used as good conscience to prohibit the application of foreign law when it is contrary to the forum's sense of what is right or wrong. In this context, public policy includes morality." Available online at <http://digitalcommons.mcgeorge.edu/cgi/viewcontent.cgi?article=1043&context=facultyarticles> (accessed 24 October, 2017). *See* also the comment of Ghodoosi, F., *op. cit.* p. 720 that Montesquieu famously said that a judge is "no more than the mouth that produces the words of law."

[91] For example Italian Civil Code Prel. Disp. Act, 12, see German Law — Art. 30 cited From Kosters 29 Yale Law Journal, 754 at 749 all cited by Yakubu, J.A., *Limits to the Application of Foreign Laws*, (Ikeja: Malthouse Press Limited, 1999), p. 4. *See* also Yelpaala K., op. cit. pp. 387-388 to the effect that, "The meaning of public policy has always eluded even the most astute judicial minds in various common law systems. Judges, Jurists, and academicians [sic] continue to struggle with defining the contours of the concept and its implications in specific situations. One theme that seems to underscore the struggle with the concept of public policy is the view that public policy shares the distinction of vagueness and intractability with fraud and other legal concepts notorious for their elusiveness. The way public policy is viewed by the courts is best exemplified by the following statement by Justice Shenk of the California Supreme Court. The term 'public policy' is inherently not subject to precise definition... The question, what is public policy in a given case, is as broad as the question of what is fraud... Public policy is a vague expression, and few cases can arise in which its application may not be disputed... public policy means anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel is against public policy." Available online at <http://digitalcommons.mcgeorge.edu/cgi/viewcontent.cgi?article=1043&context=facultyarticles> (accessed 24 October, 2017).

[92] For example Halsbury, L.C. in *Janson* v. *Driefontein Consolidated Mines Ltd.*, 1902 A.C. 484, 491 cf. Parke B., in *Egerton* v. *Earl of Brownlow*, (1853) 4 HLC 1.

[93] Yakubu, J.A., *op. cit.* p. 12, Eyongndi, D.T., "Conflict of Laws Issues Arising from Application of the Doctrine of Public Policy in the Recognition of and Enforcement of Foreign Law" (2015) vol. 5, University of Ibadan Journal of Public and International Law, pp. 142-143.

[94] (1994) 9 NWLR (Pt. 368) 301; *Total Nigeria Plc.* v. *Elijah Omoniyi Ajayi*, (2004) 3 NWLR (Pt. 860) 270, 293-294. *See* also Corr, J.B., "Modern Choice of Law and Public Policy: The Emperor has the Same Old Clothes" (London: College of William & Mary Law School Scholarship Repository, Faculty Publications, 1985), p. 649 where it is stated thus "For the purpose of choice of law, one may define public policy as that doctrine which permits a court to reject a cause of action based on the law of a different jurisdiction on the ground that the other jurisdiction's law is not only different from but also offensive to generally accepted values within the forum. The doctrine is an especially useful vehicle for evaluating the merits of modern and traditional learning, because it is one of the few features of the old learning to have survived the last generation's surge into modern choice of law thinking. Indeed, it appears that no matter which variation of modern learning a State may have adopted, public policy is retained as an instrument for adjudicating choice of law issues. Public policy, therefore, is a rare point of common ground upon which one may directly compare the actual operation of traditional and modern approaches." Available at <http://scholarship.law.wm.edu/cgi?article=1852&context=facpubs> (accessed 24 October, 2017).

[95] Junker, J.R., "*The Public Policy Defense to Recognition and Enforcement of Foreign Arbitral Awards*, (1977) vol. 7 Cal. W. Int'l L.J., p. 228, available online at <http://heinonline.org/HOL/PrintRequest?collection=journals&handle=hein.journals/calwi7&div=10&print=section&format=PDFsearchable&submit=Print%2FDownload&id=236> (accessed 24 October, 2017).

[96] *Ibid.* p. 228.

[97] Akpata, E.O.I., *The Nigerian Arbitration Law in Focus*, (Lagos: *West African Book Publishers Limited*, 1997), p. 143.

[98] Eyongndi, D.T., *op. cit.*, p. 147.

[99] Yepaala, K., loc. cit.

[100] Holder, "Public Policy and National Preferences: The Exclusion of foreign Law in English Private International Law" 17 ICLQ 926 in Yakubu, J.A., op. cit. 10.

[101] (2004) 3 NWLR (Pt. 860) 270, 293-294. *See* also Ndifon, O.C., *Issues in Conflict of Laws*, vol. 1, (Calabar: Vision Connection Digital Publishers, 2001) pp. 255-256, Yelpaala, K., op. cit., pp. 380-381, available online at <http://digitalcommons.mcgeorge.edu/cgi/viewcontent.cgi?article=1043&context=facultyarticles> (accessed 24

October, 2017).

[102] [2006] All FWLR (pt. 301) 1760.

[103] Available online at <www.dundel.&C.VIC> (accessed 24 October, 2017).

[104] *American Construction Machinery & Equipment Corpn. Ltd.* v. *Mechanised Construction of Pakistan Ltd.*, 659 F Supp 426 (SDNY 1987) is another case in which the US pro-arbitration attitude was further manifested. The Southern District Court of New York ignored the fact that a Pakistani Court had declared both the arbitration agreement and the International Chambers of Commerce (ICC) award invalid. Rather than setting aside the award, the court stated that the American Public Policy would be violated if the arbitral award was not enforced. In *Parsons & Whittemore Overseas Co. Inc.* v. *Societe Generale De L'industrie Du Papier (RAKTA)*, 508 F 2d 969 (2nd Cir 1974) in enforcing an arbitration award given under the New York Convention which enforcement had been unsuccessful in Egypt due to its draconic public policy, the Court of Appeal, Second Circuit Court of the US held that enforcement of an arbitral award should and will only be refused in the US "where the enforcement would violate the forum State's most basis notion of morality and justice". In *Waterside Ocean Navigation Co. Inc.* v. *International Navigation Ltd.*, 737 F 2d 150 (2nd Cir 1984). The Court of Appeal, Second Circuit, reaffirmed its position in *Parsons & Whittemore Overseas Co. Inc.* v. *Societe Generale De L'industrie Du Papier (RAKTA)*, 508 F 2d 969 (2nd Cir 1974) and held that the public policy defence must be interpreted in the light of the overriding object of the New York Convention (NYC) as one of the purposes of the Convention was to unify the standard for enforcement of arbitral awards.

[105] *Shri Lal Mahal Ltd.* v. *Progetto Grano Spa*, (2014) 2 SCC 433 : (2013) 3 Arb LR 1.

[106] Rendeiro, A.C., "Indian Arbitration and 'Public Policy'" vol. 89, Texas Law Review, (2011) 704.

[107] *See* S. 34 of the 1996 Act.

[108] 1994 Supp (1) SCC 644.

[109] *See* S. 48(1) of the 1996 Act.

[110] (2012) 9 SCC 552.

[111] (2003) 5 SCC 705.

[112] Satter, S., "Enforcement of Arbitral Awards and Public Policy: Same Concept, Different Approach?", available online at <https://www.employmentlawalliance.com/Templates/media/files/Misc%20Documents/Enforcement-of-Arbitral-Awards-Public-Policy.pdf> accessed 26 August 2018.

[113] Kachwaha, S., "The Indian Arbitration Law: Towards a New Jurisprudence" vol. 10 International Arbitration Law Review, 2007, 13, 15.

[114] (1974) 2 SCC 472 : (1975) 1 SCR 575.

[115] (2003) 5 SCC 705.

[116] (1987) 4 NWLR (Pt. 66) 520 at 535.

[117] *Ibid.*

[118] [2006] All FWLR (pt. 301) 1760.

[119] Gbemiga, F.I., *op. cit.*, p. 82.

[120] Kachwaha, S., "Enforcement of Arbitration Awards in India" vol. 4, no. 1, Asian International Arbitration Journal, 2008, 77, available online at https://www.kaplegal.com/upload/pdf/AIAJ_V4_N1_2008_Book_(Sumeet_Kachwaha).pdf> accessed 23 August 2018.

[121] *See* S. 36 of the 1996 Act.

[122] Muralidhara, C., Katarki, Sony Bhatt, S. "Enforcement of Arbitral Awards in India: Overview", available at <https://uk.practicallaw.thomsonreuters.com/1-619-3233?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1> accessed 28 August 2018.

[123] Nwakoby, G.C., and Aduaka, C.E., "The Recognition and Enforcement of International Arbitral Awards in Nigeria: The Issue of Time Limitation" vol. 37, Journal of Law, Policy and Globalization, 2015, p. 123, available online at <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/22555/22930> accessed 28 August 2018.

[124] Abiloye, O. and Akolade, J., "Challenges in the Recognition and Enforcement of Foreign Arbitral Awards in Nigeria", available online at <http://www.acas-law.com/assets/challenges-in-the-recognition-and-enforcement-of-foreign-arbitral-awards-in-nigeria.pdf> (accessed on 24 October, 2017).

[125] Judgment Enforcement Rules, Or. 5 R. 2.

[126] The Limitation Act, 1963.

[127] (1974) 12 SC 1 at 5.

[128] (1997) 9 NWLR (Pt. 520) 224.

[129] (1974) 12 SC 1 at 5.

[130] (1985) 1 WLR 762 : (1985) 2 All ER 436.

[131] *See* the dictum of Slesser L.J. In *Bremer Oeltransport GmbH* v. *Drewry*, (1933) 1 KB 753 : 1933 All ER 85.

[132] *F.J. Bloemen Pty. Ltd.* v. *Council of the City of Gold Coast*, 1973 A.C. 115 : (1972) 3 WLR 43 : (1972) 3 All ER 357.

[133] (1997) 9 NWLR (Pt. 520) 224.

[134] (1985) 1 WLR 762 : (1985) 2 All ER 436.

[135] The Court further held that "the limitation period, for the purpose of an action subject of an arbitration agreement begins to run from the date of the accrual of the cause of action in the arbitration agreement and not from the date of the making of the arbitral award."

[136] (1997) 9 NWLR (Pt. 520) 224.

[137] (2011) 4 NWLR (Pt. 1237) 254.

[138] (1974) 12 SC 1 at 5.

[139] (1985) 1 WLR 762 : (1985) 2 All ER 436.

[140] (1996) 1 All ER 1017.

[141] (1985) 1 WLR 762 : (1985) 2 All ER 436.

[142] (1997) 9 NWLR (Pt. 520) 224.

[143] Akoni, O., "Limitation Period for the Enforcement of Arbitration Awards in Nigeria — *City Engineering Nig. Limited* v. *Federal Housing Authority*", available online at <http://www.nigerianlawguru.com/articles/arbitration/LIMITATION%20PERIOD%20FOR%20THE%20ENFORCEMENT%20OF%20ARBITRATION%20AWARDS%20IN%20NIGERIA%20%20CITY%20ENGINEERING%20NIG.%20LIMITED%20vs.%20FEDERAL%20HOUSING%20AUTHORITY.pdf> accessed 28 August 2018.

[144] Etomi, E., and Elvis, E.A., "Limitation Law and the Arduous Task of Enforcing Arbitral Awards in Nigeria", available online at <https://www.lexology.com/library/detail.aspx?g=f805445f-a9fc-4444-95bf-228beaa01e5d> accessed 28 August 2018.

[145] Muralidhara, C., Katarki, S. Sony Bhatt, "Enforcement of Arbitral Awards in India: Overview", available at <https://uk.practicallaw.thomsonreuters.com/1-619-3233?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1> accessed 28 August 2018.

[146] (2016) 11 SCC 313.

[147] Nishith Desai Associates, "Enforcement of Arbitral Awards and Decrees in India", available at <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Enforcement_of_Arbitral_Awards.pdf> accessed 27 August 2018.

[148] 2006 SCC OnLine Bom 545 : (2006) 3 Arb LR 510.

[149] 2007 SCC OnLine Mad 223 : AIR 2007 Mad 251.

[150] 2012 SCC OnLine Del 3610 : (2012) 3 Arb LR 194.

[151] Shaji, V., "Period of Limitation for Enforcement of Foreign Awards in India", available at <http://lexarbitri.blogspot.com/2015/02/period-of-limitation-for-enforcement-of.html> accessed 26 August 2018.

[152] (2006) 11 SCC 245 : (2006) 4 ALT 18.