

LAW COMMISSION OF INDIA

194TH REPORT

ON

VERIFICATION OF STAMP DUTIES

AND

REGISTRATION OF ARBITRAL AWARDS

JUNE 2005

JUSTICE
M. JAGANNADHA RAO
Chairman

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June 7, 2005

Dear Shri Bhardwaj Ji,

I have great pleasure in forwarding the 194th Report of the Law Commission on 'Verification of Stamp Duties and Registration of Arbitral Awards'.

The subject was taken up suo motu pursuant to the communication of the Judgment of the Division Bench of the Madras High Court in O.P.D. 27597/02 dated 17.12.2003 (modified on 30.1.2004) to the Law Commission and pursuant to the observations therein that the Law Commission may consider a legislative amendment.

We may state that under the new Arbitration & Conciliation Act, 1996, sec 31(5) states that the arbitral tribunal shall communicate a 'signed' copy of the arbitral award to the parties. Thereafter, the parties are entitled to file applications for setting aside the award under sec 34(1) or for enforcement of the award under section 36, as the case may be, by annexing the copy of the arbitral award communicated to them. If only a copy of the award is to be filed along with the said applications under the new Act of 1996, the Court will not be in a position to know whether the original award is duly stamped or, where it requires compulsory registration, whether it is duly registered. The Madras High Court, in the above Judgment, while observing that a legislative amendment is necessary, formulated an interim working solution under which the applicant could be directed by the Registry of the Court to file fresh stamp papers in the Court of the required value or to deposit the money-value of the required stamp duty, along with the application under sec 34(1) or sec 36, with a right to obtain refund thereof, in case the original is thereafter found by the Court to have been duly stamped. This solution, in our view, is not satisfactory as it can cause serious hardship to the parties where the stamp duty is a heavy amount. Further, the above solution suggested by the Court does not solve the problem relating to registration. Under sec 35 of the Stamp Act, 1899, an award which is unstamped or is insufficiently stamped is inadmissible for any purpose and under sec 17 of the Registration Act, 1908 an award, if it affects immovable property in the manner mentioned in the section, it requires compulsory registration, and will be invalid if it is not registered. Under the Act of 1940, the problem of verifying the original did not arise in as much as section 14(2) of that Act required the original award to be filed into Court and hence the Court was able to verify whether the original award was duly stamped or was duly registered, where it required compulsory registration.

The Commission, in the present Report, has examined several alternatives solutions and compared their advantages and disadvantages. The Commission found solutions (3) and (5) (referred to in Chapter IV) as acceptable. Solution (3) would require the original award to be filed into Court as under section 14(2) of the old Act, while solution (5) would require the arbitral tribunal to make an endorsement on the photocopy of the award (which is sent to the parties) as to whether the original award is duly stamped (and specifying the value of the stamp duty paid) and specifying whether the original award is duly registered (where it requires compulsory registration). Either of these two solutions would, in the opinion of the Commission, meet the problem posed by the Madras High Court, being a problem that is being faced by the Courts whenever applications under sec 34(1) or under sec 36 are filed. A Draft of the Amendments suggested is also enclosed.

With regards,

Yours sincerely,

(Justice M. Jagannadha Rao)

Sri H.R. Bhardwaj
Union Minister for Law and Justice
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INDEX

<u>Chapter</u>	<u>Title</u>	<u>Page Nos.</u>
I	Introductory	3 – 5
II	Issues arising out of requirement of stamp duty and registration of the arbitral awards	6 – 12
III	The interim working solution found by the Madras High Court	13 – 16
IV	Comparison of different solutions and our Recommendations	17 – 26
	Annexure	27 – 28

CHAPTER I

Introductory

1.1 Preliminary:

The subject of this Report, namely, “Verification of Stamp Duties and Registration of Arbitral Awards” is taken up by the Law Commission, pursuant to the judgment of the Division Bench of the Madras High Court in The Commissioner Corporation of Chennai v. K. Ramdass & Co. (O.P.D. No.27597/02) dated 17.12.2003 (modified on 30.1.2004) which was forwarded by the Registrar (Management), Madras High Court in his R.O.C. 517/2004, O.S. dated 17.2.2004. The High Court, in its above judgment, requested the Law Commission to consider the proposals for amendment made in the judgment.

1.2 Effect of non-filing of original awards in Court:

After an award is passed by the arbitral tribunal, the question arises whether the original arbitral award passed by the arbitral tribunal under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as new Act) has been duly stamped or duly registered. The reason why the question has arisen is because the 1996 Act does not require the original award to be filed in Court. Sec. 31(5) of the Act merely states that the arbitral tribunal shall communicate a ‘signed copy’ of the original arbitral award to the parties. The ‘signed copy’ of the award does not reveal whether or not the original arbitral award is duly stamped or registered. There is no provision

in the new Act which states that the original award shall be filed in the Court nor a provision which speaks about what the arbitral tribunal is supposed to do with the original award passed by it. Several arbitrators have been finding difficulty as to what they should do with the original award and the arbitration papers – including the papers containing the oral and documentary evidence.

In the existing situation, if only a signed copy of the award is to be sent to the parties and the party who receives it wants to file an application under sec. 34(1) of the new Act for setting aside the award in a Court of law or if a party wants to file an application for enforcement of the award in a Court of law, the said Court is not in a position to know whether or not the original award has been duly stamped or registered. In the abovesaid judgment of the Madras High Court it was held that in such circumstances where the Court is not sure if the award was duly stamped, the Court could direct the applicant to deposit the necessary stamp papers or the money value thereof into Court along with the application so that in case it was later discovered that the stamp duty had been paid, the Court could return the stamp papers or refund the amount. However, such a course could, in our view, cause serious inconvenience and hardship to the parties if the stamp duty payable on the award was substantial. Nor is the Court able, at the stage of these applications, to determine whether the original award has been duly registered, where it is compulsorily registrable under the provisions of section 17 of the Registration Act, 1908.

1.3 Position under the Arbitration Act, 1940:

It may be pointed out that there was no such difficulty under the Arbitration Act, 1940 (since repealed) inasmuch as the original award had to be filed in Court under section 14(2) of that Act so that a decree could be passed on the basis of the award. But, under the new Act, the award becomes enforceable as a decree straightaway after the period for filing an application to set aside the award has expired. Thus, while there was no difficulty for the Court to look into and verify the original award under the 1940 Act, the difficulty has arisen in regard to awards passed under the new Act for the simple reason that under the new Act, an arbitral tribunal is required to send only signed copies of the award to the parties.

1.4 We shall deal with the matter in detail in the ensuing chapters on issues arising out of the requirement of payment of stamp duty on the arbitral award and their compulsory registration.

CHAPTER II

Issues arising out of requirement of stamp duty and registration of the arbitral awards

Preliminary:

2.1 We shall initially refer to the issues presented by the laws relating to stamp duties and registration in respect of arbitral awards. So far as stamp duties are concerned, the Indian Stamp Act, 1899 applies in respect to arbitral awards throughout India, but some States have passed separate Stamp Acts to govern stamp duties in their States. So far as registration of awards is concerned, the Registration Act, 1908 deals with registration of documents. In some States, there are brief State amendments to this Act. The issues of requirements of stamp duty and registration of arbitral awards are discussed under two separate headings: (A) Stamp Duties and (B) Registration.

2.2 (A) Stamp Duties:

Section 35 of the Indian Stamp Act, 1899 (and corresponding provision in the State Acts) says that documents which are required to be stamped, if they are not stamped, or are inadequately stamped, will not be admissible in evidence 'for any purpose'. Section 33 deals with impounding of documents presented before a public authority who is entitled to record evidence. Stamp duty that is leviable and Penalties for non-payment or insufficient payment of stamp duties can be collected as

provided in section 35. The Schedule to the Indian Stamp Act, 1899 contains a specific provision in Article 12 mentioning the stamp duty payable on 'arbitration awards'. Sections 33 and 35 of the Stamp Act are thus attracted if the award is not stamped or is insufficiently stamped.

It will be appropriate, in this connection, to refer to the judgment of the Madras High Court dated 17.12.2003 (modified on 30.1.2004) to which reference has been made in Chapter I. The question that arose there was in relation to stamp duties, namely, whether the Registry of the High Court would be justified in impounding the copy of the arbitral award where it was filed along with the application under section 34(1) of the Arbitration and Conciliation Act, 1996 (a like question will arise if an application is filed under section 36 of the new Act for enforcement of the award).

Earlier, in M/s Wilson & Co. Pvt. Ltd. v. K.S. Loka Vinayagam: AIR 1992 Madras 100 (in a case decided under the 1940 Act), the Madras High Court had held that in view of section 35 of the Stamp Act, 1899, the award could not have been admitted in evidence and it gave a direction for impounding the award as prescribed in section 33 of the Stamp Act. It relied on the judgment of the Supreme Court in Rikhabdas v. Vallabhdas: AIR 1962 SC 551. Subsequently, a different view was taken by the High Court in cases decided under the new Act (D.No.25215/2001 and D.No.6108/2002) that inasmuch as the 1996 Act does not compel the parties to file the original award into Court, the above principle of M/s Wilson & Co. Pvt. Ltd. does not apply.

The conflict in judgments led to a reference to a Division Bench for resolving the difference. The Division Bench in its judgment dated 17.12.2003 has held that a signed copy of the award was not the same thing as the original award. The Court said that Rikhabdas case decided by the Supreme Court merely held that the remittal of the defective award (passed under the 1940 Act) by the High Court to the arbitrators for rewriting the award on stamp paper was not correct and the proper remedy was to direct parties to take steps to cure the defect by paying the stamp duty along with such penalties as may be levied. In fact, in Srinivasa Rao v. V. Narasimha Rao AIR 1963 AP 193, the Andhra Pradesh High Court held that the arbitrators become functus officio as soon as the award is signed and hence they cannot “rewrite” the award on stamp paper for presentation before the registration authorities. In M. Venkataratnam v. M. Chelamayya AIR 1967 AP 257 (FB), a Full Bench of the Andhra Pradesh High Court held that if the original award was unstamped and a copy of the award written on stamp papers was filed along with the original award, though the original award could not be regarded as duly stamped, the stamps on the copy of the award might be treated as intended to serve as payment of stamp duty so as to enable the original award to be admitted in evidence under section 35 of the Stamp Act. It treated the original award and copy thereof as a single document. The Supreme Court in M. Chelamayya v. M. Venkataratnam AIR 1972 SC 1121 accepted the above view of the Andhra Pradesh High Court. In Jupudi v. Pulavarthi AIR 1970 SC 1070, the Supreme Court had held that section 35 of the Stamp Act imposes a bar on the reception of any document except the original and forbids the reception of secondary evidence and section 36 of the Stamp Act lifts the bar imposed by section 35

only in a case where the original unstamped or insufficiently stamped document was admitted into evidence without objection.

The Madras High Court in its judgment dated 17.12.2003 held that in view of section 31(5), the copy of the award signed by the arbitrators could be treated as a counterpart as done in Jayarama Iyer v. Ramanatha Iyer (1976 (1) MLJ 135) within section 62 of the Evidence Act, 1872 and that the copy does not fall within section 63 of that Act and hence a copy is chargeable to stamp duty under Art. 25 of Sch. I of the Stamp Act. The Madras High Court observed that in view of Art. 25, if a counterpart of any instrument is sought to be produced in evidence, it is open to the Court to require the original to be produced unless it bears an endorsement showing that duty has been paid on the original.

The Madras High Court pointed out that there may be a situation where a party feels it necessary to file an urgent application for stay of enforcement of award and if the Court insists on production of the original award which may indeed be not available with the applicant, it can cause serious and grave hardship which sometimes cannot even be compensated in restitution proceedings if the award be later set aside. Though section 36 of the new Act of 1996 states that enforcement of the award is not to be permitted if an application for setting aside the award is pending, it is possible that the opposite party may well nigh contend that there is no valid application under section 34 as the signed copy of the award does not disclose that the original award bears the required stamp or that it is duly registered.

Likewise, when an application is filed under section 36 of the new Act (without there being an application under sec. 34 by the losing party), the losing party may contend that the award is inexecutable because only a signed copy of the award is filed and that either the original award be filed or there must be proof that the original award is properly stamped and duly registered.

The Madras High Court, therefore, gave an interim working solution that the applicant will have to deposit the requisite stamp papers or equivalent value in cash in the Court, with a right to refund after the original award is called for and produced. We shall discuss this aspect in detail in the next Chapter.

Having referred to the problems that can arise in the light of provisions relating to stamp duties, we shall next refer to the problems arising under the registration laws.

2.3 (B) Registration:

Every non-testamentary document is required to be registered compulsorily under section 17 of the Registration Act, 1908, if the value of the immovable property is one hundred rupees or more and if the document “purports or operates to create, declare, assign, limit or extinguish, whether in the present or in future, any right, title or interest, whether vested or contingent”. This is provided in section 17(1)(b) of the Act. Section 17(2) deals with exemptions. In M. Venkataratnam v. M. Chelamayya: AIR 1967 AP 257 (FB) the Andhra Pradesh High Court held that the ‘absence of any

provision to indicate that an award need not be registered after the coming into force of the Arbitration Act of 1940 seems to point to the conclusion that the legislature considered that an award should be registered if it purported to affect immovable property as contemplated by section 17(1)(b) of the Registration Act. To say that an award to be enforceable will have to be rendered a rule of the Court under sec. 17 of the (Arbitration Act, 1940) is not tantamount to saying that no other requirement of law needs to be complied with for making an award valid'. The Full Bench held that such an award, if it affects immovable property, must be registered in the manner mentioned in sec. 17(1)(b) of the Registration Act, otherwise it will be invalid. Both the Registration Act, 1908 and the Arbitration Act, 1940 had to be read together, it was observed.

The above view of the Andhra Pradesh High Court was upheld by the Supreme Court in M. Chelamayya v. M. Venkataratnam (AIR 1972 SC 1121).

In the light of the above judgments, when an application is filed for enforcement of an award on the basis of a signed copy thereof, it is open to the opposite party to contend that, on facts, the original award is required to be registered and as there is no proof that the original award is registered, the execution application is not maintainable. The Court has no material at that stage to verify if the provisions of the section 17(1)(b) of the Registration Act, 1908 have been complied with.

2.4 Conclusion:

In view of the provisions of section 35 of the Stamp Act, 1899, the award which requires to be stamped is not stamped or is inadequately stamped, is inadmissible for “all purposes” and an award which requires to be registered, if it falls within section 17(1)(b) of the Registration Act, 1908 and if it is not registered, is not a valid document and cannot be treated as affecting immovable property.

Whenever such problems arise in applications under section 34(1) or application under section 36 of the Arbitration and Conciliation Act, 1996, initially the Court has no material before it to verify whether the original award has been duly stamped. Hence, it cannot issue notice on the applications. This problem has arisen under the new Act in view of the fact that section 31(5) requires the arbitrators to send only signed copies of the award to the parties. These problems did not arise under the 1940 Act because section 14(2) of that Act required the filing of the original award in the Court and the parties could also apply to the Court to direct the arbitrators to file the original award into Court.

That is why the Madras High Court in its judgment dated 17.12.2003 (modified on 30.1.2004) felt that this is a matter for a legislative amendment and referred the matter to the Law Commission. In Chapter III, we shall deal in detail with the interim working solution found by the Madras High Court to which we have already made reference.

CHAPTER III

The interim working solution found by the Madras High Court

3.1 The first Order of the Madras High Court dated 17th December, 2003:

In the initial judgment of the Division Bench of the Madras High Court dated 17.12.2003 in OPD 27597/02 (as modified on 30.1.2004), as stated earlier, an interim solution was found but the Court obviously felt that a permanent solution was feasible only by a legislative amendment. We shall now refer to the interim working solution found by the Madras High Court in the above decision.

In its initial judgment dated 17.12.2003, the Division Bench held that it will be open to the Registry, when an application to set aside the arbitral award is filed under sec. 34(1) of the new Act or when an application is filed to enforce the arbitral award under sec. 36 of the new Act, to examine whether the copy of the award produced by the applicant contains an endorsement to the effect that the arbitral tribunal had collected the necessary stamps and the award had been engrossed on stamp papers and when such an endorsement by the arbitral tribunal appears on the award, it will be open to the Registry to act on such an endorsement and process the application filed under sec. 34(1) or sec. 36. _

The High Court further held that where there is no such endorsement on the copy of the award filed along with the said applications, then the

Registry will be entitled to direct the party moving the application to pay - the necessary stamp duty (i.e. filing the stamp papers) payable on the award and take the application on file subject to the condition that the applicant, whether he has filed the application to set aside the award or to enforce the award, should satisfy the Court before the first date of hearing fixed for the appearance of the other side, that necessary stamp duty has been paid on the award and the original award has been engrossed on stamp papers. If the party is able to establish that the stamp duty has been paid and the original award has been engrossed on necessary stamp papers, then the stamp duty, if any, paid on the copy produced before the Court, shall be refunded to the party who paid the stamp duty (i.e. the stamp papers filed will be given back). If the party is not able to establish before the first date of hearing for appearance of the other side that the award is duly stamped, the applicant will have to face necessary consequences of payment of stamp duty and penalty and impounding of the document. If the party does not pay the stamp duty and penalty within the time stipulated by the Court, the award shall be impounded and consequently, the copy of the award cannot be taken on record resulting in the dismissal of the application. This procedure the Court held should apply in applications filed whether under section 34 or section 36 of the new Act.

In para 25 of the judgment, the Madras High Court proposed the following amendment to section 31 (1) of the Arbitration and Conciliation Act, 1996. It stated as follows:

"We are of the view that the difficulty faced to find out whether stamp duty has been collected or not can be resolved by a simple amendment to section 31 (1)."

The present provision in section 31 (1) reads:

"31 (1). An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal."

The proposal by the Madras High Court is to substitute the following sub-section for the present section 31 (1). It was proposed by the Court as follows:

"31 (1). An arbitral award shall be made in writing, duly stamped and shall be signed by the members of the arbitral tribunal."

The Court specifically observed that the Law Commission may consider the above proposal and make appropriate recommendations. The Court directed the Registry to send a copy of the judgment to the Law Commission.

3.2 The second Order of the Madras High Court dated 30th January, 2004:

By a subsequent order dated 30.1.2004, the Court stated that the earlier directions given by them for deposit of the stamp duty (i.e. filing of stamp papers and later returning them back) may create hardship and result in problems in granting refund if required stamp papers are deposited into

Court for the purpose of the award. This problem arises because there is a separate procedure under the Stamp Act, 1899 in section 54 for seeking refund if stamp papers which are already purchased for a purpose are not used. The High Court, therefore, slightly modified its earlier order dated 17.12.2003 to the following effect, permitting cash deposit:

"We, therefore, make it clear that it is open to the party either to pay necessary stamp duty or to deposit the sum of money equivalent to the value of the stamp duty, in the Registry and it is also open to the Registry to recover the amount in cash."

This is the interim working solution offered by the Madras High Court. But, the Court felt that the whole issue be examined by the Law Commission.

3.3 In the next Chapter IV, we shall examine the above solution given by the Madras High Court and the problems that the said solution may still create.

CHAPTER IV

Comparison of different solutions and our recommendations

4.1 Preliminary:

In the last Chapter, we referred to the interim working solution found by the Madras High Court (supra) in relation to the payment of stamp duty on award and its draft for amendment of sec. 31(1) of the Arbitration and Conciliation Act, 1996. As stated earlier, in our view, the solution of directing deposit of stamp papers or deposit of money equivalent, can create serious problems or hardship for the parties.

4.2 Analysis of possible solutions and their merits:

In this Chapter, we shall examine various possible solutions and the comparative merits thereof. We shall point out various possible solutions and shall refer to the advantages or shortcomings of each of these solutions. We shall first deal with the interim solution given by the Madras High Court in para (1) below.

- (1) Firstly, the proposal of the Madras High Court deals only with the question whether the original award is 'duly stamped' and not whether the award is 'duly registered'.

Secondly, the Madras High Court does not require that the signed copy of the award which is sent to the parties should

contain an endorsement of the arbitrator, under their signature, that the original award has been duly stamped and registered.

Thirdly, the view of the Madras High Court as to deposit of the requisite stamp papers or payment of cash equivalent of the stamp duty payable on the original award, can cause serious hardship in several cases. If the parties had already provided the necessary stamp papers to the arbitrator for engrossing the award on stamp papers, to ask them to deposit fresh stamp papers or cash equivalent would, in our view, amount to an unnecessary burden. For example, in a case where an award was passed in Delhi in a claim of Rs.500 crores, the parties deposited stamp papers worth Rs.50 lakhs and the award was indeed engrossed on such papers. If in such a case, the original award is retained with the arbitrators and one of the parties files an application under section 34 or 36 of the new Act of 1996, to direct that party to again deposit cash of Rs.50 lakhs would be a great hardship. Hence, this interim working solution may, in a large number of cases, be not a satisfactory solution.

- (2) We shall now refer to another solution of signing more than one original award so that each party can be given one original award.

There may be a situation where the stamp duty payable on the award may not be large and if it is a case where the award is not compulsorily registrable (e.g. where it is only an award for money), parties may be prepared to deposit the requisite stamp papers for more than one original award, so that one can file a section 34 application and the other, a section 36 application. Or

where the award is partly in favour of one party and partly in favour of another party, and each feels aggrieved, they may indeed file separate applications annexing the stamped originals.

But, in our view, a problem can still arise whether there can be more than one original award for, once the first of the original awards is signed on stamp papers, it may be said that the arbitrators have become 'functus officio' and that the second original award signed by them is invalid. It may indeed be difficult to find out which of the two awards was signed first. This solution is thus not helpful.

- (3) Yet another solution could be that after the award is passed, an amendment by introducing a new provision in the 1996 Act may lay down that that the original award should be filed in the Court, within whose jurisdiction the award is passed, i.e. just as it was being done under the 1940 Act. This, in our view, can be one of the possible solutions because the Court will then have in its possession, the original award itself and it can verify whether or not the requirements of stamp duty and registration have been complied with by the arbitrators. There is sufficient merit in this solution.

In fact, several Arbitrators appointed under the new Act, including retired Judges of the Supreme Court and the High Courts, have raised the question as to –

- (a) How long they should keep the original award with them, particularly, if no party files an application under section 34 or section 36?
- (b) How long they should keep the records of the arbitration proceedings, the pleading, evidence, etc., with them? and
- (c) As to the point of time at which they could return the documents to the respective parties who had filed them. After all, the parties may require the original title deeds and documents for various purposes – e.g. raising loan on security or for mortgage the property or sale thereof.

These problems will be solved if the new Act is amended to say that the original award will be filed by the arbitrators in a Court of law.

- (4) We shall now refer to another possible solution of handing over original award to the parties. But then, the question arises, to which party should the original be given. There can be a variety of situations:
 - (a) If a claim is simply dismissed, the original award could be given to the claimant so that he may file an application under sec. 34(1). When a claim is dismissed, there is no question of the opposite party filing any application for enforcement of the award in a Court of law. Here, there is not much of a problem.

- (b) But, where the claim is allowed wholly in favour of the claimant, the opposite party may want the original award for filing an application under section 34(1) for setting aside the award while the successful party may like to have the original award for the purpose of applying for enforcement of the award under section 36. With a single original award it is not possible to accede to the requests of both sides for the original award to be given to them.

- (c) Let us assume that a claim is partly allowed and the rest of the claim is dismissed. Then too, to the extent the claim is allowed, the claimant might want two originals, one original award for enforcement and another for setting aside the award (insofar as the claim is rejected), and the opposite party too might want one original award for setting aside the award to the extent the claim is allowed.

- (d) Take a case where a claim is partly allowed and the counter-claim is partly allowed. The position will be the same as under clauses (b) and (c) above.

These are the various difficulties arising out of this solution.

- (5) Yet another solution can be that the arbitral tribunal while signing the copy of award, should make an endorsement that the original award is duly stamped and duly registered, if it requires compulsory registration. This, in our view, is also a good solution.

4.2 Preference for Solution Nos. (3) and (5):

Analyzing these different solutions, it will be seen that the best solution could be solution (3) by making an amendment for the filing of the original award in the Court of appropriate jurisdiction as was laid down under section 14(2) of the old Act of 1940 so that the Court has the original award before it to verify its features whenever any application is filed under section 34 or section 36. If it is further provided that the records could also be filed before the said Court, the arbitrators could be relieved of the burden of keeping them.

The other solution could be solution (5), that the copy must contain an endorsement that the original award has been duly stamped and, where it requires compulsory registration, that it has been registered.

But then, it has been argued that solution (3) would be unduly burdening the Court to receive the original award and other documents. An immediate answer to this argument could be that there is no additional burden on the Courts arising out of such an amendment to the new Act of 1996 because this was the position under the old Act of 1940 under section 14(2) where the original was being filed in Court.

Thus, in our view, solution (3) or (5) requires to be accepted.

4.4 176th Report of the Law Commission – Suggestions to insert a new section 33A:

In the 176th Report of the Law Commission, it was recommended that a new section should be incorporated in the Act of 1996 enabling a copy of the award be filed into the Court along with the records so that parties could even obtain copies. This proposal is now contained in section 33A in the new Arbitration and Conciliation (Amendment) Bill, 2003 (Bill No.LXXXV of 2003). The Bill is pending before the Standing Committee of Parliament.

(Another provision in the Bill of 2003 is the one contained in section 34 (1A) that the application for setting aside the award shall be accompanied by the original award or where it is not given to the applicant, by a photocopy of the award signed by the arbitrators.)

But, in the present Report, we do not propose to revise that proposal as stated in the 176th Report for incorporating a new section 33A in the 1996 Act. We are here confronted with a different problem posed to us by the Madras High Court while implementing the existing provisions of the new Act of 1996 insofar as verifying whether the original arbitration award is duly stamped or is registered, if it required compulsory registration.

Even if the proposal for a new section 33A as contained in the Bill referred to above is not acceptable or is not accepted, still a solution has to be found for the problem posed before the Madras High Court.

4.5 **Our Recommendations:**

First Alternative:

A new provision sec. 31(1) can be inserted on the lines of section 14 (2) of the Arbitration Act, 1940 which would steer clear of all problems.

Second Alternative:

A second alternative solution could be to amend section 31(1) and section 31(5) to state that the arbitral tribunal shall have to get the award duly stamped and in addition provide that if the award requires compulsory registration under section 17(1)(b) of the Registration Act, 1908, to have it duly registered. A provision is necessary that the photocopies of the award shall be sent to the parties with an endorsement that the award is duly stamped and wherever it requires compulsory registration, that it has been so registered. Further, the word 'duly stamped' can create some doubts and it will be difficult for the Court in which the copy is filed by the parties with such an endorsement, to find out if the stamp papers on which the original is engrossed are sufficient in value according to the law applicable. Therefore, the new provision must further require that the arbitral tribunal should specify in that endorsement, the value of the stamp duty paid on the original award.

Our above alternative recommendations are presented in the draft amendments annexed to this Report. (see Annexure)

4.6 Summary of Recommendations for Amendment (Two Alternatives):

(A) As stated above, we finally recommend two alternative amendments. The first one will be for filing the original arbitral award into the Court of appropriate jurisdiction so that the Court can verify whether the award is duly stamped or whether, it is duly registered, wherever it requires compulsory registration.

This amendment can be in section 31(1) of the new Act leaving existing section 31(5) of the new Act as it is, so that parties will still get signed copies of the award.

(B) The second alternative will be to amend section 31(1) to say that the award shall be duly stamped and, if it requires compulsory registration, it shall be duly registered; and also to amend section 31(5) which deals with sending signed photocopies of the award to the parties.

Section 31(5) will have to be amended by stating that the arbitral tribunal shall send signed photocopies of the award, after making an endorsement on the copy of the award that the original award is duly stamped and specifying the stamp duty paid and where necessary, that the original award is duly registered.

4.7 We recommend accordingly.

We place on record the valuable assistance rendered by Dr. S. Muralidhar, Part-time Member of the Law Commission.

(Justice M. Jagannadha Rao)
Chairman

(Dr. K.N. Chaturvedi)
Member-Secretary

Dated: 7th June, 2005

Annexure

The following are the draft amendments for the two alternative recommendations:

First Alternative: (substitution of section 31(1))

“(1)(a)An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal after having the award duly stamped and duly registered, where it requires compulsory registration.

(b) The arbitral tribunal shall, at the request of any party to the arbitration agreement or any persons claiming under such party, or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and the costs and charges of filing the award, cause the award, together with the record of the arbitral proceedings, including any depositions and documents which may have been taken and proved before the tribunal, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.”

Second Alternative:

Section 31(1) of the new Act will be replaced by the following:

“(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal after having the award duly stamped and having it duly registered, where it requires compulsory registration.”

Section 31(5) of the new Act will be replaced by the following:

“(5) After the arbitral award is made, a signed photocopy thereof shall be delivered to each party with an endorsement signed by the members of the arbitral tribunal that the original award is duly stamped and mentioning the value of the stamp duty paid, and where it compulsorily requires registration, that it has been duly registered.”

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