An Exploratory Analysis on Arbitration law in Bahrain: A Significant Step towards Liberalism

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Abstract

Arbitration is now considered to be an effective form of alternative dispute resolution under international law. The GCC countries have several mechanisms in order to provide arbitration as a means of resolving commercial disputes. However, only Bahrain has made efforts to bring its arbitration regime in accordance with the UNITRAL Model Law on International Commercial Arbitration. Law 9/2015 is the most recent legislation that will significantly improve the arbitration regime in Bahrain.

This paper aims to analyze and assess arbitration law 9/2015 implemented in Bahrain in 2015, in order to check its efficacy as well as identify the areas where improvement is needed in order to make arbitration more effective in the country. The best practices related to international arbitration practice need to be implemented in Bahrain in order to achieve the highest levels of success. An exploratory qualitative study has been undertaken to study the law by referring to research resources on arbitration and international legal frameworks.

The findings from the paper suggest that the new law will be beneficial as foreign investors are protected as they can refer to the law by hiring legal representatives that do not have license or registration to operate in Bahrain for international commercial arbitrations.

Consequently, the benefits are that preferred legal counsel of foreign investors can participate in such proceedings. Another benefit of the new law is that arbitrators will be immune from liability which happens due to actions and decisions taken during the arbitral proceedings.

Keywords: arbitration regime, commercial disputes, commercial arbitration, dispute resolution, UNCITRAL Model Law.

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1 Introduction

Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates sought to establish an economic and political policy coordinating organization called the Gulf Cooperation Council (GCC) in the year 1981. The aim of the GCC has been to foster closer economic and political cooperation. The legal systems in the GCC have transformed with the passage of time. The results have been beneficial for foreign investors and businessmen as the legal systems in the GCC have helped to reduce risk and volatility while providing conventional legal protections.

The rapid development of oil resources in the GCC has seen an impressive increase in the standards of living in the GCC region. This has generated a wealth of international contracts which contain arbitration clauses designed to use arbitration that is one of the most valued methods of conflict resolution in international commerce in the GCC states. Consequently, the advantages of arbitration have been that commercial parties can avoid the tedious litigation process in favor of arbitration which is a flexible and cost effective method for commercial parties.

Bahrain is the only GCC state to have passed Law No 9/2015 which promulgates a standalone arbitration law which significantly alters its arbitration regime. The law is applicable to locally seated arbitrations and if the parties agree then it is applicable for foreign seated ones also.

The law is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on international commercial arbitration of 1985. The aim of this study is to assess Law No 9/2015 and analyze its impact on the arbitration regime in Bahrain. It will seek to identify the strengths and weaknesses of the law.

1.1 Objectives of The Research

The objectives of the research are to analyze Law no 9/2015 which is the new arbitration law promulgated in Bahrain. The goal will be to test the efficacy of the law and its potential impact on the use of arbitration in Bahrain. Finally, the study will make recommendations regarding the best ways that the law can be enhanced for the benefit of commercial parties and other stakeholders in Bahrain.

1.2 Background Study

Bahrain is an Arab constitutional monarchy situated in the Persian Gulf. It is an island country that is a member of the GCC. The modern history of Bahrain began when it signed a treaty with Britain in 1880 to become a protectorate until achieving independence in the year 1970. The year 1999 witnessed Sheikh Hamad ibn al-Khalifah becoming the head of state. Several changes were introduced in the country such as giving Bahraini citizens the right to vote in a National Charter Referendum in 2001 and New Constitution on 2002.

The state became a constitutional monarchy in the year 2002. Arbitration was adopted in Bahrain before World War I with a customary council being in charge of resolving disputes related to water sites in accordance with local traditions(1). The Code of Commercial and Civil procedure regulated arbitration in Articles 223 to 243. The provisions of the UNCITRAL Model Law were applicable in all international commercial arbitrations unless specified by the parties. The previous laws on arbitration were incomplete such as the Chamber of Commerce and Industry of Bahrain has the right to solve disputes submitted to them by arbitration(2). The Act of Establishment and Organization of the Stock Exchange cites arbitration as a method for settling disputes. Article 13 provides the development of an Arbitration Commission for settling disputes that occur as a result of transactions in the Exchange.

Arbitration can also be used to collective labor disputes in accordance with labor law(3). Law 9/2015 is the most recent legislation that will significantly improve the arbitration regime in Bahrain. The new arbitration law needs to be analyzed and assessed in order to check its efficacy as well as identify the areas where improvement is needed in order to make arbitration more effective in the country. The best practices related to international arbitration practice need to be implemented in Bahrain in order to achieve the highest levels of success.

1.3 Problem Statement

Arbitration is an alternative dispute resolution (ADR) which is used to settle disputes. The dispute can be decided by arbitrators that are neutral persons

(1) Rogers Catherine A., Ethics in International Arbitration, Oxford University Press, 2014, p.45.
(2) Rogers Catherine A., Op. Cit., p.92.
(3) Rogers, Catherine A., Op. Cit., p.109.

selected by the parties. They can award "arbitral awards" which is legally binding on both sides and enforceable in the courts. The GCC has made several strides in updating the legislation regarding arbitration because of its importance in resolving commercial disputes(4).

The GCC is an important regional bloc that comprises of the world's richest countries in terms of oil reserves. Bahrain is one of the GCC members that have several mechanisms for arbitration. Law 9/2015 is the most comprehensive arbitration law that has been promulgated by the Kingdom of Bahrain. It is based on the UNCITRAL Model Law on International Commercial Arbitration. The new law has not been tested yet which means that there is the need to study and analyze it in order to determine its key strengths and weaknesses.

1.4 Research Questions

The following are the research questions that will be answered in this study:

- What is the impact of Law 9/2015 on Bahrain's arbitration regime?
- What are the strengths and weaknesses of Law 9/2015?
- What are the ways that arbitration regime in Bahrain can be strengthened?

1.5 Importance of The Study

Bahrain is an important player in the world because of its huge oil reserves. Additionally, it remains a developing country that needs various products from industrialized countries. The world is now becoming economically interdependent with the result that an effective legal framework for the promotion of international trade and investment is acknowledged in order to promote economic growth and stability.

International trade is strong linked with arbitration which means that legal frameworks in Bahrain must play a strong role in contributing towards economic growth(5). The important of this study will be to identify the impact of Law 9/2015 on Bahrain together with its key strengths and weaknesses. However, the scope of this study is only applicable for Bahrain. Further research will be needed in order to identify the ways that other GCC countries can enhance or modify arbitration in order to achieve greater levels of economic trade and investment.

(4) Whaley Douglas J. and Stephen M. McJohn, Problems and materials on commercial law, Wolters Kluwer Law & Business, 2016, p.78.

(5) Stipanowich Thomas, Reflections on the State and Future of Commercial Arbitration: Challenges, Opportunities, Proposals, (2014), p.67.

2 Literature Review

2.1 Theoretical Background

There are many forms of business dispute resolution procedures. These include alternative dispute resolution mechanisms (such as mini-trials, mediation, conciliation etc.), litigation, arbitration and negotiation[6]. One way to settle disputes or breach of contract is arbitration which refers to an independent arbitrator that can be selected by the parties. The goal of the arbitrator will be to focus on coming up with a decision based on arguments and evidences presented to the arbitration tribunal[7]. It is agreed upon by the parties that the decision of the arbitrator regarding the dispute will be binding and final.

Commercial arbitration is a type of arbitration that is designed to be used in a business or commercial relationship, and not in labor laws, family laws or personal relationships[8]. To prohibit the use of arbitration as a dispute resolution mechanism in areas like family law, the adjective of commercial is included with arbitration. There is growing number of international transactions and international businesses in today's globalized world.

Even if a contract or a transaction is well planned, there is still a possibility of a conflict or dispute. Thus, the parties should keep in mind this possibility and understand the need to incorporate dispute resolution mechanisms in their business contracts beforehand. The arbitration agreement can be made either in advance or after the conflict arises[9]. Traditionally, arbitration has been limited to trade, business or commercial relationships but with the growing dissatisfaction of the public with the civil court system, arbitration has been adopted as an alternative dispute resolution measure.

2.2 Commercial Arbitration

Historically, the use of arbitration as a means to resolve disputes was a simple self-regulated system. It was a usual practice for the traders to turn to a third party to resolve their conflicts related to commercial transactions[10]. The third

(6) Aboul-Enein M.I.M, Peaceful Settlement of Commercial Disputes: Commercial Arbitration and other ADR Techniques, (1st ed, 2005), p.34.
(7) Aboul-Enein M.I.M, Op. Cit., p.36.
(8) Aboul-Enein M.I.M, Op. Cit., p.43.
(9) Berg Albert (ed), International Commercial Arbitration: Important Contemporary Question. (1st ed, 2003), p.56.
(10) Berg Albert (ed), International Commercial Arbitration: Important Contemporary Question (1st ed, 2003), p.64.

person was a neutral party who would act as an arbitrator and find a solution to resolve their conflict. However, with the growing number of international transactions and international businesses, there was a need to have international regulations. The domestic statutes alone could not cope with the issues of enforcement of arbitral awards and arbitration agreements.

This is where the concept of international commercial arbitration was introduced. The first protocol on the arbitration clauses was the Geneva Protocol that was introduced in 1923[11]. It enabled the international enforcement of arbitral awards and arbitration agreements. The scope of the international enforcement of these agreements was extended by the Geneva Protocol introduced in 1927.

The UN Convention on the Enforcement and Recognition of Arbitral Awards, which was introduced in 1959, was UN's first major effort to international arbitration[12]. The formation of these international treaties, especially the NY Convention, was influenced by the arbitral institutes like the London Court of International Arbitration that was established in the year 1892. The concept of modern international arbitration has its roots in the Jay Treaty of 1794 between the United States and Great Britain, which led to the formation of three arbitral commissions to settle claims and questions arising out of American Revolution[13].

In the nineteenth century, numerous arbitral agreements were made that established ad hoc arbitration tribunals to handle particular cases or to deal with numerous claims. Commercial arbitration was historically used to resolve disputes amongst medieval merchants in marketplaces and fairs in the European continent, in England and in the Baltic and Mediterranean Sea trade[14]. The use of commercial arbitration was made possible after the courts were given the power to implement the parties' decision to arbitrate.

The first law related to this was passed in 1889 and was called the English Arbitration Act which was then merged into the act of 1950[15]. This law was

(11) Berg Albert (ed), Op. Cit., p.67.

(12) Bron Gary, International Arbitration and Forum Selection Agreement: Drafting and Enforcing (2nd ed, 2006), p.89.

(13) Bron Gary, Op. Cit., p.90.

(14) Binder Peter, International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdiction (2nd ed, 2005), p. 87

(15) Binder Peter, Op. Cit., p.88.

adopted by many nations in the British Commonwealth. This law was also followed in the U.S by an arbitration law of New York that was introduced in 1920 and the Federal Arbitration Act that was introduced in the year 1925. The Federal Arbitration Act dealt with the implementation in the federal courts of arbitration agreements. It also dealt with awards involving foreign and interstate commerce and maritime transactions. Most states in America adopted, at time with little alterations, the Uniform Arbitration Act that was introduced in 1955 and was later altered in the year 1956.

Earlier, the common law allowed the arbitration agreement to be revoked, but this Act made the arbitration agreement irrevocable. This Act also allowed the substitution of arbitrators in case the parties failed to choose an arbitrator(16). The courts thus play a crucial role in enforcing arbitration agreements and provide judicial assistance against the non-compliant party. The modern arbitration law is included in the arbitration statutes of almost all the nations worldwide.

2.3 Scope and Function

Arbitration has usually been used to settle controversies and arguments between different exchanges in commodities and securities trade and between affiliates of trade associations. A standard arbitration clause is often included the form contracts that refer to the particular rules of arbitration(17). Many arrangements between different parties in commerce and industry also allow the use of arbitration in disputes arising out of agreements and contracts for distribution arrangements, financial operations, engineering and construction projects, sale of manufactured goods and numerous other undertakings.

The first step of the arbitration process is initiation and filing. The second step involves the selection of an arbitrator. The third step is the preliminary hearing. An initial hearing is conducted with the parties by an arbitrator(18). He discusses procedural matters such as depositions and witnesses and issues related to the case. The fourth step involves preparation for presentations and information exchange. The fifth step is when hearings take place. The parties can present evidence and testimony to the arbitrators during the arbitration hearings. Unless the nature of the conflict is very complex, this is normally the

(16) Binder Peter, Op. Cit., p90.
(17) Bunni Nael, Construction Arbitration in the Middle East, (2004) 6 DIAC Journal 6, p.98.
(18) Bunni Nael, Op. Cit., p.54.

only hearing that takes place before the arbitrator[19].

In post hearing submissions, both parties can present more documentation, if allowed by the arbitrator. After the post hearing submissions, the arbitrator finally renders the award. Selecting an arbitrator is a crucial aspect of the arbitration process because the arbitrator has to be unbiased and neutral. The arbitrator's fairness, knowledge and ability are the most decisive and crucial elements in any arbitration process[20].

Usually, an arbitrator is selected by both the parties involved. The selected arbitrators then choose a chairman and form a tribunal. The agencies administering and overseeing commercial arbitration often select the arbitrators under already established regulations and rules of the arbitration process. These organizations (that include chamber of commerce, produce exchanges, trade associations) maintain a board of skilled and proficient arbitrators[21]. The parties have the choice to either select the arbitrators themselves or to entrust the selection and appointment of the arbitrators to these agencies. The arbitration process faces many challenges. It is challenged at times on the grounds that the arbitrator was biased. Such challenges can be generally maintained only after the conclusion of the arbitration process as the courts are hesitant to interfere in the arbitration procedure before rendering the awards.

The arbitration procedure is regulated by the rules mentioned in the arbitration agreement. The arbitrators can also determine the rules of the arbitration process. The arbitrator has the power to request the third persons and the parties involved to present documentary proof[22]. If one of the parties does not appear at the hearing without a legitimate reason, the arbitrator in most cases can proceed with the procedure and give an award after completing his investigation regarding the dispute. Under the arbitration practice and the law in most nations, an award is binding and valid when given by the majority of arbitrators.

The statutory law of many nations and the regulations of the organizations overseeing and administering business arbitration include provisions on the

(19) Caron David and Caplan Lee and Pellonpaa Matti, The UNCITRAL Arbitration Rules (1st ed, 2007), p.98.
(20) Caron David and Caplan Lee and Pellonpaa Matti, Op. Cit., p.99.
(21) Caron David, Caplan Lee and Pellonpaa Matti, Op. Cit., p.99.
(22) Drahozal Chistopher and Naimark Richard (eds), Toward a Science of International Arbitration: Collected Empirical Research, (1st ed, 2005), p.92.

notification, certification, form and the delivery of award. The arbitrator has to comply with these requirements[23]. The recognition and the enforcement of an award are denied if it is not in line with the public policy. The authority and power of an arbitration award is similar to that of a court decision.

2.4 Advantages and Disadvantages

The significance and usefulness of arbitration is shown by its growing use by the legal profession and the business community worldwide. Although the usual way to resolve conflicts is to submit them to the court of law, but arbitration has become popular over the past few decades as a way to resolve international business disputes[24]. The impartiality of the international arbitration institutes or arbitrators, the flexibility in arbitration procedure, the implementation of arbitral awards in foreign nations, confidentiality of the arbitration process and the ability to quickly resolve conflicts are the most advantageous attributes of the international commercial arbitration procedure. However, there are certain short comings of this process as well[25].

There are numerous advantages of arbitration. First, arbitration saves a lot of time. The speed with which the disputes between the parties can be resolved through arbitration is faster as compared to other court procedures that involve long delays[26]. Second, the arbitrators have expert knowledge and information regarding the usages and customs of a particular trade which makes much of the documentation and testimony by others completely unnecessary, thereby eliminating some costs that are usually linked to court procedures[27]. Third, the arbitration procedure maintains privacy and confidentiality.

The issues discussed during the arbitration proceedings that might not be favorable to one of the parties aren't revealed to the outsiders. This helps to maintain the reputation and image of the parties that could easily be tarnished in normal court procedures[28]. Litigation in the public courts often attracts a lot of media attention, hence parties can benefit from arbitration by resolving their disputes privately. Fourth, the arbitral process is a flexible procedure. It

(23) Drahozal Chistopher and Naimark Richard (eds), Op. Cit., p.34.

(24) Lew Julian, Mistelis Loukas and Kroll Stefan, Comparative International Commercial Arbitration, (1st ed, 2003), p.23.

(25) Lew Julian, Mistelis Loukas and Kroll Stefan, Op. Cit., p. 24

(26) Lew Julian, Mistelis Loukas and Kroll Stefan, Op. Cit., p.30.

(27) Morrissey Joseph and Graves Jack, International Sales Law and Arbitration: Problems- Cases and Commentary, (1st ed, 2008), p.21.

(28) Morrissey Joseph and Graves Jack, Op. Cit., p.102.

has no set standards, rules and regulations that are necessary to follow.

The international business arbitration allows the parties freedom to select a proficient decision maker and to agree on the procedural regulations and schedules. Fifth, since this is an informal process, it does save a lot of time as compared to the court hearings. Sixth, the arbitration process is a simplified procedure(29). It does not involve multiple hearings, mounds of documentation and paperwork. Thus, an arbitration process may help to eliminate some or all of those expensive and time-consuming tools of litigation. Sixth, arbitration is a fair procedure.

The parties select the arbitrators themselves or agree to entrust a third party to choose an arbitrator. Thus, choosing a party is done on mutual agreement and consent and eliminates the subjectivity and partiality from the procedure(30). However, the arbitration process has many disadvantages as well. First, there can be a divergence in the court decisions and the municipal laws that leads to various interpretations of similar arbitration questions(31). This serves as an obstacle to the wider application of the commercial arbitration law. Second, the final award rendered by the arbitral tribunal is binding and irrevocable.

Even if the arbitrator has made an obvious mistake, it is not easy to appeal arbitration rulings(32). Thus, the finality of the awards is a disadvantage of the arbitration procedure. Third, there can be concerns about the lack of justice and impartiality regarding the arbitrators. Fourth, if the arbitrators, clients and counsels are busy, it is not easy to schedule hearing dates; this can make the pace of the arbitral process slower and can add to procedural delays(33). Fifth, since there is a lack of formal evidence procedure, it means that instead of depending on a jury or judge, the parties have to depend solely on the experience and skill of the arbitrators. No depositions or interrogatories are taken.

The arbitration procedure does not include a discovery process. Lastly, in some

(29) Morrissey Joseph and Graves Jack, Op. Cit., p.102.

(30) Morrissey Joseph and Graves Jack, Op. Cit., p.104.

(31) Poudret Jean-Francois and Besson Sebastien, Comparative Law of International Arbitration (1st ed, 2007). p. 74

(32) Poudret Jean-Francois and Besson Sebastien, Op. Cit., p.74.

(33) Poudret Jean-Francois and Besson Sebastien, Op. Cit., p.78.

cases the international commercial arbitration can be an expensive process[34]. The parties have to pay the expenses and fees to the arbitrators. Administrative fees have to be paid to the arbitrator or the arbitral agencies. In addition to the administrative expenses, the parties may also have to pay the costs of hiring rooms for hearings and meetings instead of using facilities of the public.

2.5 Bahrain Arbitration Law

Bahrain Law No 9/2015 was promulgated the Arbitration Law in the year 2015. The Article 1 of the New Arbitration Law makes the provisions of the UNCITRAL 1985 Model Law with its 2006 amendments on international commercial arbitration to be applicable in any arbitration case if it takes place in Bahrain or abroad[35]. It will help to regulate international and local business and commercial disputes as Bahrain is the only GCC country to update its arbitration legislation in accordance with international standards.

The Article 253 and Section 7 on arbitration from the Civil and Commercial Procedures Act implemented by Decree No 12 of 1971 have been repealed[36]. The International Commercial Arbitration Law promulgated by Decree No 9 of 1994 has also been repealed[37]. This law is considered to be a major step towards unifying international arbitration rules and ensuring Bahrain is an attractive jurisdiction to settle commercial disputes. However, it is important to study the law and its impact on the legislation regarding commercial disputes and problems.

The law was implemented on 9th of August 2005 with the aim of have equal rights for the local and international investors whether the consent of partnership is happened in Bahrain or outside[38]. The law is a continuity of the Bahrain UNCITRAL 1985 Model Law which was earlier amended in 2006 to be aligned with the international commercial arbitration. As a result of the implementation of the updated law, promulgation of the New Arbitration Law, Section 7 on arbitration and Article 253 from the Civil and Commercial

(34) Poudret Jean-Francois and Besson Sebastien, Op. Cit., p.98.

(35) Redfern Alan (et al), Law and Practice of International Commercial Arbitration, Thomson/Sweet & Maxwell, London, (1st ed, 2004), p.56.

(36) Sanders Pieter, The Work of UNCITRAL on Arbitration and Conciliation, (2nd ed., 2016), p.21.

(37) Sanders Pieter, Op. Cit., p.22.

(38) Zu'bi & Partners, (2015), Bahrain's Arbitration and Foreign Judgements Laws. [online] Available at: http://zubipartners.com/arbitration-and-the-enforcement-of-foreign-judgments-in-the-kingdom-of-bahrain/ [Accessed 31 Mar. 2018].

Procedures Act promulgated by Decree No. 12 of 1971 were replaced[39].

Further, the International Arbitration Law promulgated by Decree No. 9 of 1994 will also be replaced. With the help of such enhancements, the international commercial disputes are likely to be solved in a better manner considering Bahrain as an attractive place with clear jurisdiction and proceedings.

Impact of Law 9/2015 on Bahrain's Arbitration Regime

The new arbitration law in Bahrain is expected to hail the investors interests in the country. The amendments are a step forward to the commercial settlement for the international investors. The law is expected to have a positive impact on the overall business community and international investors in the country. The previous law was somewhat less appealing international investors. The country has great potential in term of exceptional resources and strategic geographical positioning in the region. In such scenarios, the amendments seek to mitigate the risks by including arbitration clauses under the Bahrain law.

Considering the fact that the new law is the incorporation of the well-known and thoroughly executed UNCITRAL model Law, it is expected to provide much confidence to the local and international investors. According to the law, the Bahraini High Court is the court entrusted with considering and determining all arbitration related applications.

The legal representation of the parties need not be licensed or registered with the local authorities in Bahraini "international commercial arbitration". This adds on the benefits of the foreign investors as the signed contract can be made electronically as mentioned in the Article 7 of the UNICRAL law stating "The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy[40].

(39) Zu'bi & Partners, Op. Cit.

(40) Zu'bi & Partners, (2015), Bahrain's Arbitration and Foreign Judgements Laws. [online] Available at: http://zubipartners.com/arbitration-and-the-enforcement-of-foreign-judgments-in-the-kingdom-of-bahrain/ [Accessed 31 Mar. 2018].

2.6 strengths and weaknesses of Law 9/2015

The analysis of the law provides extensive benefits to the individuals and the amendments provide a more sophisticated system of dispute resolution. Among various benefits following are the most prominent one in accordance with the amendments of Law 9/2015.

- First of all, the confidence of the international community will be increased through the enactment of the arbitration law. It provides speed and informality in the processing for the international investors which is considered to be one of the main reasons investors adopts arbitration over litigation. Further, in many cases the attorney is not needed which causes the process to be lesser costly.
- Arbitrator is someone on who both parties have confidence and can be selected mutually. Both parties have a control on the arbitrator whereas the judge or jury selection is out of the hands of the two people(41). The new legislation also creates a new Bahrain Chamber for Dispute Resolution (BCDR), which is intended to become both a Bahraini national and a Middle Eastern regional arbitration center that will be run with the help of the American Arbitration Association (AAA). Another prominent examples of such arbitration bodies is the Bahrain Chamber for Dispute Resolution in partnership with the American Arbitration Association (the "BCDR-AAA ") that provides a settlement and clear legal processing between Bahrainis and United States Citizens. However, the statistics of the cases are not clear yet the load on the body estimates it to be a continuously growing caseload.
- The internationalization provided with the UNCITRAL law provides an opportunity for the parties to make the deal in any of the countries and the arbitral award will be recognized as binding and will be enforced by the court. Article 3of the New Arbitration law provides authority to the Bahraini High court to entrust with considering and determining all arbitration related application(42). This involves the applications to enforce or set aside arbitral awards. This is a great advancement towards commercial liberalization as earlier lesser trust was placed in arbitration because of rectifying
- Adoption of UNCITRAL Law in arbitration law brings a lot of uniformity and predictability to the judicial system of the Bahrain because of its

(41) Law 9/2015 Article 6: Non-Bahraini lawyers shall be authorized to represent the two parties to the dispute in case the international trade arbitration is held in the Kingdom of Bahrain.

(42) The High Civil Court shall perform the functions referred to in Article (6) of this attached law.

substantial body of interpretation. The law provides detail adequately the treatment of parties, Arbitrator challenges, Termination of arbitrator's mandate or of the arbitration, Presumption of reasoned award which strengthens the position of both parties regardless of the country of residence. According to the UNCITRAL Law Article 11, implemented in Bahrain, it is prohibited to preclude any person on the reasons of nationality to act as an arbitrator, unless otherwise agreed by the parties. This provides a great opportunity for the foreign parties to have their own representations in the international community. Further, it is assign to encourage investments by bringing increased confidence to Bahrain judicial system of arbitration.

- Before the domestic arbitration law amendment which adopts the UNCITRAL model, the Civil and commercial Procedures Law of 1971 found to had various issues. For example, Under Article 234 of the Civil and Commercial Procedures Law of 1971, the arbitrator must not be a minor, in incapacitated or deprived of his civil rights as a result of having been imprisoned or made bankrupt which are not included in the UNCIRTAL law and that's increases the scope of the selection of the Arbitrator(43).

2.7 Research Methods

The research methodology helps to play a critical role in identifying the techniques that will be used for acquiring information and data in this study. The methodology is described as the theoretical and systematic analysis of methods which will be used in any discipline(44). The methodology becomes an important part of the study since it will help to identify the proper methods and principles for the branch of knowledge. The goal of research seeks to assess existing assumptions or postulate new findings in the light of the research. A theoretical framework is essential for identifying the best method or practices that can be used in the specific case. The specific research goals and objectives will also be answered using the appropriate methodology.

Descriptive, analytical, physical, and exploratory are considered to be the various research methods available for the research process. The best method is that which is helpful in solving the problem or filling a knowledge gap or explaining the essence of the study(45). The Bahraini arbitration law has

(43) Article 11 of the UNCITRAL Model Law (1) There is no arbitration agreement between the parties; or (2) If one of the agreed arbitrators has abstained, withdrawn or has been dismissed.

(44) Taylor Steven J. and Robert Bogdan and Marjorie DeVault, Introduction to qualitative research methods: A guidebook and resource, John Wiley & Sons, USA, 2015, p. 67.

(45) Taylor Steven J. and Robert Bogdan and Marjorie DeVault, Op. Cit., p. 67.

recently been passed which means that is efficacy and reliability is still vague. Consequently, an exploratory research method is utilized for this study because it helps to study the problem of analyzing the arbitration law which has not been studied properly. Furthermore, exploratory research plays a critical role in establishing priorities and developing operational designs.

2.8 Research Strategy

Data collection can be done through primary and secondary methods. Primary data collection involves the researcher undertaking research in the field while collecting the data through methods like interviews, questionnaires, surveys, and others. These methods help to fill the knowledge gap. Such a method will be used by the objectivist that seeks to develop objective answers. The realistic point of view helps to guide the objectivist towards answering the objectives and goals(46). A second method for collecting data is secondary research which uses existing studies in order to answer the specific questions. The studies undertaken in law can be constructive in nature also. The current research on arbitration law is constructive in nature as it is not limited by time while it will help to answer the questions in a manner that entails different factors or subjective reality of the situation.

2.9 Data Collection Methods

Qualitative approach was identified as being suitable methodology for collection data. The case study approach helps to enhance the qualitative methodology. Bahrain as a case study has been used in order to review the legal framework on arbitration. The goal is to identify the efficacy and potential weaknesses of the new arbitration law. The study focuses on a legal issue while it also conducts a review of the current law. The need for quantitative data from respondents is not needed in this study. Consequently, the secondary research approach was utilized for the objectives and questions of this study(47).

The number of secondary sources on the topic would be extensive which means that only those studies that are relevant and recent have been selected. Books, journal articles, law articles, and other relevant secondary sources that review the arbitration law as well as the international mechanisms on arbitration have been used as part of the study. Secondary research has been

(46) Flick Uwe, Introducing research methodology: A beginner's guide to doing a research project. Sage, 2015, p. 76.

(47) Flick, Uwe, Op. Cit., p.76.

suitable for this study because it has many advantages. The primary benefit is the extensive studies that are published on any given topic. The researcher will be able to access materials in an easy manner about the topic. The relevant parts from the data can be filtered by the researcher due to the secondary research process(48).

Secondary research is beneficial in the sense that it helps to improve the interpretation and understanding of the research problem. The disadvantages of secondary research have been the fact that secondary data might be irrelevant and outdated. Specifically, the researcher has no means to check the veracity of the findings. There is no way to test the biases of the researchers in the research study when secondary research is utilized(49). Secondary research can pose difficulties for researchers as they have to go through volumes of data sources in order to find the appropriate and relevant material.

However, secondary research is appropriate for this study since it is concerned with analyzing the arbitration framework in Bahrain which has introduced a new law in the year 2015. Secondary research can help to identify the rationale behind arbitration as a tool under commercial law while helping to analyze the international legislation that is being used as a model for the current Bahraini law on arbitration.

2.9.1 Justification For Current Methodology

An exploratory qualitative data analytical methodology has been selected for this study. Secondary qualitative data has been used because it has been found in different sources. The sources on arbitration, international laws on arbitration, and Bahrain's new law have been selected for the purpose of this study. The exploratory qualitative data analysis is beneficial since it can be used for exploring the knowledge on the current subject. It provides the researcher with the ability to understand the topic from a broad and critical perspective(50). It helps in understanding the ground rules and developing the understanding of reality that is close to the reality. Moreover, the researcher will be able to successfully provide foundation on the broad research project which can in turn help to answer the questions in an objective manner.

Another advantage is that the data collection method is flexible while being

(48) Flick, Op. Cit., p.77.
(49) Flick, Op.Cit., p.78.
(50) Flick, Uwe, Op.Cit., p.79.

time and space friendly for the researcher. Online repository has been used for identifying literature references together with specific laws in order to improve understanding about the project. The philosophical approach is constructivist in nature because it will help in understanding the context of the new arbitration law and the analysis of its key strengths and weaknesses(51). The analysis of the current Bahraini law on arbitration can be done only when it is done through the critical analysis of the existing literature on international arbitration

2.10 Findings and Analysis

Law No. 9/2015 is the most recent legislation in Bahrain which is associated with the process of arbitration in commercial disputes. The analysis shows that the law is applicable for locally seated arbitrations as well as foreign seated ones depending on agreement by all parties. The law allows Bahraini High Court to consider and identify arbitration related applications. It has the power to give arbitral awards depending on the outcomes of each individual case. This will be beneficial as foreign investors are protected as they can refer to the law by hiring legal representatives that do not have license or registration to operate in Bahrain for international commercial arbitrations(52).

Consequently, the benefits are that preferred legal counsel of foreign investors can participate in such proceedings. In case of any dispute, the party can approach the mediator for proceeding under the support of the BCDR-AAA through a simple request by way of e-mail, regular mail, or fax. The party mediating a dispute at the same time should initiate an informatory letter to the other party for better coordination and alliance.

Another benefit of the new law is that arbitrators will be immune from liability which happens due to actions and decisions taken during the arbitral proceedings(53). There is an exception when gross mistakes or bad faith might influence the arbitral proceedings. The New Arbitration law ensures that Bahrain will use option 1 in Article 7 of the UNCITRAL Law for defining arbitration agreement and its form. The successful process of arbitration will be possible only when it meets the criteria outlined in the provisions of Article

(51) Flick, Uwe, Op.Cit., p.80.

(52) Sheta Ahmed, The Arbitration: An Explanatory and Comparative Study of Judiciary Provisions and Arab and International Arbitration institutions, (1st ed, 2009), p.82.

(53) Moses, Margaret L., The principles and practice of international commercial arbitration, Cambridge University Press, 2017, p.73.

7 of the UNCITRAL Law. The benefits of the new Bahraini law are that "arbitration agreements" are defined as process in which parties have submitted to arbitration process as a result of the defined legal relationship(54).

This relationship can be either contractual or non contractual. The arbitration agreement can be present in the form of an arbitration clause in a contract or it can be a separate agreement. The agreement for arbitration must be present in written form. Furthermore, Bahraini law defines arbitration agreement as being in a written form when it has been recorded in any form. It does not matter if the arbitration agreement has been in oral form or other means. The Bahraini law's advantage is that it will recognize electronic communication for recognizing arbitration agreement if the information can be accessible for subsequent references(55).

Furthermore, the electronic communication is defined in terms of parties being able to exchange and use data messages for communication. The concept of data message is information generated or stored by electronic or similar means. The previous laws of arbitration with regard to recognizing and enforcing foreign arbitral awards were inadequate to meet the modern international arbitration process(56). Furthermore, the previous law in Bahrain did not understand the nature of typical arbitral proceedings. The New Arbitration Law will play a critical role in addressing this problem.

The analysis of the arbitration law in Bahrain suggests that it provides a neutral process in terms of choice of law and arbitrators. This helps to make arbitration an advantageous process. However, there are concerns related to complete neutrality(57). There are no provisions concerning matters such as fraud, arbitrator bias, or misconduct. Private arbitrators might have financial, personal, or professional relations with one of the parties. The arbitrators might be biased which can question the integrity of the arbitral awards(58).

(54) Radhi, Hassan Ali, International Arbitration and Enforcement of Arbitration Awards in Bahrain, BCDR International Arbitration Review 1, no. 1, (2014), 29-47.

(55) Almutawa, A. M., & Maniruzzaman, A. F. M., (2015), Problems of enforcement of foreign arbitral awards in the Gulf Cooperation Council States and the prospect of a uniform GCC arbitration law: an empirical study, p.98.

(56) McClure, M., and C. Shepherd, Arbitration in the Middle East: Expectations and Challenges for the Future, Transnational Dispute Management (TDM) 12, no. 2, (2015), p.98.

(57) Alqudah, Mutasim Ahmad, The Impact of Sharia on the Acceptance of International Commercial Arbitration in the Countries of The Gulf Cooperation Council, Journal of Legal, Ethical and Regulatory Issues 20, no. 1 (2017), p.104.

(58) Seyadi, Reyadh, Challenges in implementing the 1958 New York Convention: A case study of the

Another problem with the new Bahraini law is that it would be difficult to construct an effective arbitration agreement and regime in multi party contracts. The need for careful considerations of arbitration clauses is important. The parties have to bear the costs of arbitrator and venue which can be a major problem for many groups. There are no express provisions in the law regarding the costs of arbitral proceedings. The parties are given discretion to agree on the costs or in the absence of an agreement for the tribunal to decide(59). Another problem with the law is that foreign arbitral awards have to be enforced subject to the New York Convention. The arbitral awards are recognized as binding – irrespective of the country in which they were made. However, Bahraini courts recognize foreign awards based on various conditions. The reality is that differences between legal system of the country and other jurisdictions will lead to case being effectively retried on its merits by the Bahraini courts(60).

The analysis of the new arbitration law suggests that it will play a leading role in solving commercial disputes. This is because commercial disputes refer to discords that occur between the organization and its partners over particular aspects of the business contract. Such disputes can be catastrophic for organizations in many ways(61). They can create negative perception and value about the organization.

Furthermore, the organization has diminished productivity and output . This can impact the performance of the organization with respect to its key stakeholders. The new arbitration law helps to provide a framework for resolving commercial disputes through the use of arbitration in Bahrain with updated rules that are according to the international standards(62). Disputes are resolved through several formal and informal mechanisms. Firstly, the parties will attempt to negotiate with each other and raise concerns about their respective interests. An initial meeting usually leads to discussion about creating the procedure for negotiations.

In addition, the nature and cause of the discord is addressed while the

Arab Gulf States, PhD diss., University of Sheffield, 2016, p.83.

(59) Drahozal Christopher R., Empirical Findings on International Arbitration: An Overview, (2016), p.34.

(60) Kidane Won., The Culture of International Arbitration, Oxford University Press, 2017, p.98.

(61) Caron David D. and Lee M. Caplan, The UNCITRAL arbitration rules: a commentary, Oxford University Press, 2013, p.98.

(62) Croft Clyde and Christopher Kee and Jeff Waincymer, A guide to the UNCITRAL arbitration rules, Cambridge University Press, 2013, p.102.

representatives of each side are chosen as a means of ensuring high levels of efficiency and effectiveness. Alternative options are decided through mutual consultation and compromise. Sometimes disputes can fail as both parties are unwilling to pursue dynamic strategies. This means that they can refer the cases to external parties which can use arbitration and mediation as a means of resolving such industrial disputes(63). Arbitration involves a third party whose decision will be final in the entire process. Agreed terms of reference are created for ensuring fairness and impartiality. The final decision cannot be enforced legally on the parties.

wArbitration is successful when there are adequate measures. Sound planning and preparation are critical for achieving success in a collaborative environment. Industry disputes can be settled if both sides are successful in establishing communication channel(64). This helps to remove ambiguities in the process. In addition, the parties must have high levels of awareness and perception regarding the success of the process.

3. Conclusion and Recommendations

The signature of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1988 was a major decision by Bahrain to upgrade its arbitration regime so that it could be effectively used in encouraging the use of arbitration as an alternative to the expensive and time consuming process of litigation. The new law 9/2015 is a major step towards upgrading the law as it will be able to provide high levels of success for Bahrain in encouraging foreign investment in the region.

The promulgation of the arbitration regime will help to ensure transparency and accountability in the entire region. It will help to create an integrated strategy through which long term goals can be attained as number of parties opting for Bahrain as the appropriate jurisdiction for their international commercial arbitrations. There are no provisions concerning matters such as fraud, arbitrator bias, or misconduct. Private arbitrators might have financial, personal, or professional relations with one of the parties. The arbitrators might be biased which can question the integrity of the arbitral awards.

Another problem with the new Bahraini law is that it would be difficult to

(63) Tang Zheng Sophia, Jurisdiction and arbitration agreements in international commercial law, Routledge, 2014, p. 29.

(64) Tang Zheng Sophia, Op.Cit., p.3.

construct an effective arbitration agreement and regime in multi party contracts. The need for careful considerations of arbitration clauses is important. The parties have to bear the costs of arbitrator and venue which can be a major problem for many groups. There are no express provisions in the law regarding the costs of arbitral proceedings. The parties are given discretion to agree on the costs or in the absence of an agreement for the tribunal to decide.

Another problem with the law is that foreign arbitral awards have to be enforced subject to the New York Convention. The arbitral awards are recognized as binding – irrespective of the country in which they were made. Most propounding result of this amendment is the creation of the Bahrain "Free Arbitration Zone" that provides to arbitrate before the BCDR. At the same time, Bahraini courts recognize foreign awards based on various conditions. The reality is that differences between legal system of the country and other jurisdictions will lead to case being effectively retried on its merits by the Bahraini courts. All of these problems related to the new arbitration regime need to be enhanced through the presence of clear and precise goals. Furthermore, there is the need for an integrated strategy that would lead to sound outcomes.

In conclusion it can be stated that at the time of confusion and criticism in the global world for investors and different parties to initiate an investment, Bahrain stands tall through its proactive response based on the lost faith of the people on arbitration conciliation and mediation specifically in the Middle East countries. After going through an evolutionary period of depending only on Civil and Commercial Procedure Laws of 1971, signatory to the New York Convention of 1958 and finally adopting international commercial arbitration based on the UNCITRAL Model is a positive sign for the regional stability and investors interests.

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