



Legal and Arbitration factors affecting currency's worth with respect to appreciation & depreciation of its value and future implications with required solutions.

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ABSTRACT :

The legal aspect of currency valuation and variations that take place due to bilateral and multilateral litigation, arbitration matters which can span from intergovernmental, multinational corporations with gargantuan amount of recovery money in from of damages are a matter of concern in the current state of the economy as there are various newly found finance and technology firms and new methods of negotiating terms and also monopoly. A traditional approach to the regulation and harness of the currency free float has its requisites for a for a uncertain future and prevention of financial adventurism risking national economy. Understanding this particular aspect of the monetary flow and the variations in the appreciation and depreciation of the currency with respect to arbitration, litigation awards for damages. Taking in consideration are cases ranging from Intellectual Property Arbitration, Information Technology Arbitration, Commercial Arbitration to Land and Border Dispute Arbitration.

Keywords: Arbitration; Currency Value; Dispute; Litigation; Demand; Stable; Traditional Institutionalism; Indian Rupee;

1. Introduction

Ever since the superpowers in context of countries have emerged, currency and its value is quintessential to set benchmark for trade, business reliance, forging friendship and unionization of countries for co-operation and security. In the course of transactions, the international currency exchange rates are introduced which displays the amount of money that can be converted from one unit of currency to another. Currency exchanges are floating or they can be changed based on a multiple factors, or they can be pegged to a different asset or currency of value like the dollar was once pegged to gold initiated by the then President of the United States Woodrow Wilson and the modern economic development have led to various other factors of currency value determination; currencies when pegged and when the pegged currencies are stable the valuation movement is in synchronization with the currency to which they are pegged to, though the discussion of pegged currencies in not to be brought up in this paper but the determination of variation due to arbitration in disputes initiated issues are discussed, issues which involves the matters in taxation and currency for damages awards are brought to light and a relationship with a major currency i.e. the US Dollar with the Indian Rupees performance per demand are in correlation. Other cases which involve the settlement of damages are inter-country disputes induced by external diplomatic differences. The Indian perspective on the matter being one of the largest consumers of the global products and exporter of quality agricultural produce is seen, the Indian Rupee is a currency is seen as a preferred currency for settlement of trade. There are cases which are mentioned and other disputes are also mentioned (Nicholson and Dyson, 2022), (Katoch and Sidhu, 2020).

In the fast paced world with the drastic economic movement in major economies, arbitration and litigation is the part of the process of settlement of disputes between the parties, if the parties are international bodies such as governments and inter-governmental bodies, multinational companies and industries. The matters are taken into arbitration since commercial matters are subject to pecuniary settlements. These disputes are handled by the World Trade Organization's Dispute Settlement Body (DSB), which is called upon to resolve them if one or more of the disputing parties are WTO members. The DSB has the authority to establish dispute settlement panels, to refer matters to arbitration, adopt panel, appeal judgements and prepare arbitration reports. Also, the DSB is a surveillance body to monitor and to ensure that the decisions made by the disputes settlement body are made in an orderly manner. India has been a member of the WTO since January 1995 and has been a part of the General Agreement on Tariffs and Trade (GATT), the predecessor to the WTO, since July 1948. The country since its membership has been avidly been scrutinized by other members when there is a conflict of interest in trade and commerce related disputes. In the settlement of such trade related disputes which in the recent times India has not been subject to any form of payments like in the DS585: India - Additional duties in certain products from the United States, Agreements cited (as in request for consultations): Art. II:1(a), II:1(b) GATT 1994, Agreements cited(as cited in panel request) Art. I:1, II:1(a), II:1(b) GATT 1994, Panel requested 3rd July, 2019. Mutually agreed solution notified on 13th July, 2023.

The United States and India exchanged requests for consultations on July 3, 2019, concerning India's imposition of additional duties on certain products that are American-made.

The United States asserted that the actions seem to be at odds with:

GATT 1994 Articles I:1, II:1(a), and II:1(b). proceedings before panel and appellate body

The United States requested the creation of a Panel on September 19, 2019. In its meeting on September 30, 2019, the DSB postponed creating a panel.

During its October 28, 2019, meeting, the DSB formed a panel. Third-party rights were reserved by Brazil, Canada, China, the European Union, Guatemala, Indonesia, Japan, Malaysia, Mexico, Norway, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Turkey, Ukraine, and Venezuela.

On January 7, 2020, the panel was assembled per the parties' agreement.

The panel's chair notified the DSB on June 2, 2020, that the panel anticipated providing the parties with its final report no later than the second quarter of 2021 because of the complexity of the dispute and the need to postpone the panel's first substantive meeting with the parties because of the global pandemic. The Chair informed the DSB that the report would be made public after it was distributed to the Members in each of the three official languages, and that the date of distribution would depend on when the translation was finished. As long as COVID-19-related travel and meeting restrictions persisted, the panel, in consultation with the parties, decided to continue delaying its first substantive meeting until sanitary conditions would permit in-person meetings in Geneva, the Chair of the panel informed the DSB on December 16, 2021. The panel's chair notified the DSB on February 21, 2023, that the panel was planning to consult with the parties regarding the next steps in these proceedings and that it did not anticipate providing its final report to them before the end of 2023.

The performance of the Indian Rupee against the dollar was competent during that particular period and twice became the best performing Asian currency, i.e. during the entire period of the pandemic, the cause of the occurring was the peak performance of the capital markets and increase in manufacturing induction and the timely settlement of legal disputes like in the above given time frame and case for the matter. Arbitration has played a key role in the sustenance of the Indian economy in during the pandemic.

There are examples of other cases like the DS579: India — Measures Concerning Sugar and Sugarcane where the panel report is under appeal as of 24th December 2021, the issue was raised in the similar time frame as DS585: India - Additional duties in certain products from the United States. This was the period when there was a global slowdown in economic growth and India's performance was tipping. India's (INR) performance against the Real (the currency of Brazil, the complainant in the DS579: India- Measure concerning Sugar and Sugarcane) was impressive, commercial arbitration has set example for its competency. Though the matter is in appeal, currency performance has been sincere. There is another ditto case of DS584- Tariff Treatment on Certain Goods; Complainant- Japan; INRs performance against the Yen has been sustainable as well. (Panel report, Dec, 2021 | Dispute Settlement 2021, WTO Doc, WT DS579, December 2021).

2. Findings

Understanding the issues in damages awards with reference to Taxation and currencies is an aspect to the findings in this paper, there are other angles to understand the perspective of maintaining a stable currency rate with the help of Arbitration as a string of sorts in bilateral, multilateral commercial and diplomatic relations, diplomatic relations are additives for a better settlement. Potential economic obstacles can be minimized by minimizing the distortions in the value of awards that claimants receive as a result of how taxes and currency are handled.

Tax and Taxes on transactions are a daily activity in the major jurisdictions of corporate activity. Potential economic obstacles can be minimized by minimizing the distortions in the value of awards that claimants receive as a result of how taxes and currency are handled.

Calculation of damages in International Arbitration

The principle established by the Permanent Court of International Justice (predecessor to the International Court of Justice) in the Chorzow Factory case of 1928 serves as the basis for calculating an award of monetary damages in bilateral investment treaty (BIT) arbitrations (Nicholson and Dyson, 2022). Reparation must, to the greatest extent feasible, eliminate all consequences of the illegal act and restore the situation that would have existed if that had not been committed. In international commercial arbitration, a fundamentally similar principle usually holds true: the claimant should be put back in the same position it would have been in if the tribunal hadn't found any violations. We shall call the principle of full compensation (Nelson, 2014).

In accordance with the full compensation principle, any award must allow the claimant to resume its pre-injury position while accounting for relevant currency movements and tax implications. The 20th century saw the beginning of the approach to currency and damages; English law stipulated that awards of damages made in English courts had to be made in pounds sterling. At the time of the breach, damages were to be converted into pounds sterling without consideration for changes in the relevant exchange rates. Although the happening of may be sustainable for the transaction to be made in Pound Sterling for the recipient of the damages since they have been doing transactions in the above mentioned currency, the fluctuation rates are extra expenses for the person compensating for the injury in most cases, due to third party exchange rates and costs. Also during phases of currency appreciation the cost of the change in price has also to be paid on the day of transaction. With the possible exception of occasional devaluations, currency fluctuations and the associated risks for the disputing parties were minimal during the Bretton Woods period of fixed exchange rates. However, the risks increased when floating exchange rates emerged in 1968.

The procedure for paying awards in commercial arbitration underwent a two-step shift that began in 1974 when the Court of Appeal of England and Wales upheld a foreign currency award made by commercial arbitrators. At that time, commercial arbitrators used this method when appropriate. Another one occurred in 1975 when the House of Lords specifically rejected the idea that damages claims had to be made in pounds sterling due to the developments of floating exchange rates. From that point on, foreign currency could be used to express claims for breach of contract under English law. If conversion was required for enforcement, the court would set the date of payment. The ruling lessened the possibility that changes in foreign exchange rates would improperly impact parties involved in a dispute.

The process of resolving disputes related to currency settlements and exchange rates in international arbitration, as outlined in McGregor on Damages, begins with a review of the pertinent contracts. According to Lord Wilberforce, damages should be computed even if payments under the contract are made in a particular currency, as there are currency exchange facilities available for smaller amounts (Bowles and Whelan, 1979).

Discussion

The findings in the paper have found a crux and point of confluence where the matters to arbitration to take dispute resolution bodies requires the arbitrators to act in a very diligent and ethical manner since the transacting costs in the matters are in foreign currencies and the consequences in diplomatic terms are dire. The paper discussed the arbitration matters which have been held in the DSB (Dispute Settlement Body) of the World Trade Organization, the cases are not only from the commercial matters with India but from around the globe. Matters are mostly in appeal cases are ranging from Intellectual Property Arbitration, Information Technology Arbitration and other forms of Commercial Arbitration are brought to the forum. In India's harness the Indus River Water Sharing Treaty in a matter to Land and Border Conflict Arbitration, or a Interstate Arbitration with subject of economic sector on Electricity and Power; a dispute between the Islamic Republic of Pakistan v. Republic of India, The matter has fiscal implications for both the sides in the matter of dispute. Pakistan has been constantly committing ceasefire violations, and later infiltrating Indian borders with terrorism, basically to inflict to societal and economic loss to the citizens of India, especially in the State of Jammu and Kashmir, Punjab and other shared borders with Pakistan. Terrorism and economic tantrums of the Pakistani regime has been at the forefront of the tactics of the complainant.

The Indian Rupee during the pandemic outperformed the US dollar twice, making it the best-performing Asian currency overall. This occurred due to the capital markets' peak performance, increase in manufacturing, and the fast agreements of legal disputes, such as those pertaining to the case and the time frame. Throughout the pandemic, arbitration has been essential to the Indian economy's survival.

Case examples like the DS579: India — Measures Concerning Sugar and Sugarcane is one instance of a case where the panel report is currently being appealed as of December 24, 2021. This case was brought up around the same time as DS585: India - Additional duties in certain products from the United States. During this time, India's performance was turning and there was a global slowdown in economic growth. India's (INR) impressive performance against the Real (Brazil's currency, and the complainant in DS579: India- Measure concerning Sugar and Sugarcane) has demonstrated the competence of commercial arbitration. Despite the appeal, currency performance has been authentic. Another similar case is DS584-Tax Treatment on Specific Goods; Complainant: Japan; Performance of INRs against the Yen has been sustainable as well.

Conclusion:

The currency related and economic problems that might come to the forefront have been discussed, the only precaution the Republic of India is the caution of arbitration prowess and settlement of trade issues with respect to the goodwill of the Indian commercial relations with the countries in terms. India has always maintained the best of its relations accordance to law and order and has followed the International rules for the best trade practices and that is the norm for the times ahead. There will be further discussions in matter, and paper shall be concluded for further study with relation to Indian dispute settlements in the International forums.

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