ABSTRACT

The UNCITRAL Model Law ("**Model Law**") has undergone substantial revisions in 2006 to address the growing needs and challenges while obtaining interim measures in international commercial arbitration. India too attempted to address these challenges by amending the Arbitration and Conciliation Act, 1996 ("**Act**") in 2015 and 2019. In light of these changes, this thesis examines interim measures in international commercial arbitration in order to critically examine the fault lines in the Indian regime with respect to interim measures by comparing the Model Law and jurisdictions that have adopted the Model Law, as well as the rules of major arbitral institutions.

The thesis comprises four parts which discuss the broad spectrum of issues ranging from (i) the nature of interim measures; (ii) court-ordered interim measures in support of arbitration proceedings, in aid of foreign seated arbitrations, and the power to grant anti-suit and anti-arbitration injunctions; (iii) interim measures granted by arbitral tribunals, including security for costs and anti-suit injunctions; and (iv) the enforcement regime for interim measures granted by the court and arbitral tribunals. Each chapter of the thesis addresses (a) the need for interim measures; (b) the source of the power to grant them; (c) the standards to be applied by courts and arbitral tribunals; (d) the types and measures that can be granted; (e) the limitations while granting interim measures; and (f) the safeguards to be considered before granting interim measures.

This thesis highlights that despite being a Model Law jurisdiction, the Indian regime substantially deviates from the Model Law and the international practice. The consistent dependence on the provisions of the Code of Civil Procedure, 1908, and the Specific Relief Act, 1963 has prevented arbitration from being truly autonomous and less cumbersome for the parties in India. The lack of express standards, safeguards, lack of clarity on the power of courts and tribunals to grant anti-suit and anti-arbitration injunctions and the patchy recognition of extra-territorial support to arbitration proceedings has added to the costs and delay in arbitration proceedings. Further, the right of appeal at every stage of court or tribunal ordered interim measures is in complete deviation from the Model Law and the cardinal principle of minimum court-intervention. Lastly, the failure to provide appropriate enforcement provisions, especially for interim measures granted by foreign seated tribunals, has rendered the purpose of interim measures largely futile. Therefore, the thesis concludes with proposed amendments to the Act which can address these problems and bring India at par with other pro-arbitration jurisdictions and international best practices.