

## Maharashtra's New Stamp Duty Ordinance 2024: A Game Changer for Arbitration?

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Duty Ordinance 2024: A  
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### 1. Introduction: Understanding Stamp Duty in the Context of Arbitration

The Honorable Supreme Court of India on 13 December, 2023 in *Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act of 1996 and the Indian Stamp Act of 1899* overturning the prior judgment in *NN Global Mercantile Private Limited v. Indo Unique Flame Limited* addressed the issue of the admissibility of unstamped or insufficiently stamped arbitration agreements and held that such agreements, while inadmissible as evidence due to under-stamping, are not void or unenforceable; instead, the defect is curable. This decision strengthened India's pro-arbitration stance, aligning with international practices and emphasizing minimal judicial intervention. The Apex Court also emphasized that the Stamp Act's primary aim is to regulate the payment of stamp duty on instruments and ensure that unstamped documents are impounded.

Thereafter, the Maharashtra government has recently promulgated Stamp (Amendment) Ordinance, 2024 which drastically increased the stamp duty applicable to arbitral awards in order to increase the state revenue.

## 2. Understanding stamp duty

Stamp duty, levied on legal documents like property transfers and arbitration agreements, ensures legal validity and court admissibility. Paid through stamps or direct payment, it is a major revenue source for governments, funding public services and infrastructure. As a state subject, stamp duty rates vary across States, governed by state-specific laws under the Indian Stamp Act, 1899. For instance, the Maharashtra Stamp Act, 1958, applies to documents in Maharashtra, with Schedule I prescribing rates, typically paid using non-judicial stamp paper unless exempted. While arbitration and arbitral awards are governed by the Arbitration and Conciliation Act, 1996, the state-specific Stamp Act determines stamp duty on arbitral awards.

## 3. The New Maharashtra Law on Increased Stamp Duty for Arbitration Awards

In order to increase its revenue streams, the Maharashtra government promulgated the Maharashtra Stamp (Amendment) Ordinance, 2024 ("**Ordinance**") on 14 October, 2024. This Ordinance introduces substantial amendments to the Maharashtra Stamp Act, 1958 particularly changing the methodology for calculating stamp duty on arbitral awards. While the earlier framework in Maharashtra mandated a fixed stamp duty of ₹500 for awards, the new regime introduces an *ad valorem* system. Under this approach, the stamp duty will be determined based on the monetary value of the award.

The revised stamp duty is as follows:

. For awards related to movable property:

Up to INR 50,00,000 (Fifty lakhs): 0.75% of the award amount.

Above INR 50,00,000 (Fifty lakhs) up to INR 5,00,00,000 (Five crores): A base amount of INR 37,500 plus 0.5% of the amount granted in the award.

Above INR 5,00,00,000 (Five Crores): A base amount of INR 2,62,500 plus 0.25% of the amount granted in the award.

. For awards related to immovable property:

The duty now matches the rates applicable to conveyances under Article 25(b) of the Maharashtra Stamp Act, which varies depending on the property's location and market value.

Additionally, in October 2024, the Government of India released the draft Arbitration and Conciliation (Amendment) Bill, 2024, seeking public feedback. The draft bill introduces significant amendments to Section 31 of the Arbitration & Conciliation Act, 1996, which deals with the form and contents of arbitral awards, particularly inserting the words "duly stamped." This mandates that arbitral awards must be "duly stamped" from the outset. Previously, parties paid stamp duty during the time of enforcement ensuring that the award is admissible as evidence in court. The absence of flexibility under the new law places the onus on arbitral tribunals to ensure compliance with stamping requirements, adding procedural complexities.

## 4. The Misapplication of Stamp Duty to Arbitration Awards

There is a lack of explanation for applying stamp duty to arbitral awards which raises a logical issue, as they are enforced like court decrees. The Stamp Act typically applies to instruments created by mutual consent; however, an arbitral award is a unilateral adjudication. Indian courts have repeatedly addressed the consequences of unstamped awards, such as inadmissibility or impoundment, but have not yet clarified whether arbitral awards qualify as "instruments" under the Stamp Act or should be subject to stamp duty.

As a quasi-judicial process, arbitration results in awards akin to court decrees, which do not require payment of stamp duty obligation for its enforcement. Imposing stamp duty on arbitral awards is unjustified, and they should be enforced under the Arbitration Act without such additional financial burdens.

## 5. Ambiguities regarding when stamp duty must be paid and Amount of Stamp Duty on specific Arbitration Awards

Under the new stamping regime, the timing and amount of stamp duty on arbitration awards remain ambiguous, creating legal and procedural uncertainties. Previously, stamp duty was paid only after the award's enforceability was challenged for ensuring that the award is admissible as evidence in court, offering flexibility to the parties. However, recent amendments to the Arbitration and Conciliation Act remove this flexibility, requiring payment at the stage when the award is passed, which could increase the costs of arbitration.

Additionally, the *ad valorem* system for calculating stamp duty adds complexity, especially when the award modifies or dismisses a claim. In cases where the claim is upheld, the duty is calculated based on the claim's value, but in situations where the award reflects a 'nil' value, the applicable duty remains uncertain. These ambiguities can lead to disputes over the correct amount of stamp duty to be paid for enforcing the arbitral award, imposing further legal and financial risks on the parties involved. Imagine a scenario where a contractor raises a ₹5 crore claim against a company, but the arbitral tribunal dismisses the claim entirely, resulting in an award with a "nil" value. In such cases, uncertainty arises about whether stamp duty should be calculated based on the original claim amount, the dismissed value, or if no duty is applicable at all, potentially delaying enforcement and causing disputes.

In 2010, the Honorable Delhi High Court in the case of *Eider PW1 Paging Limited & Anr. v. UOI & Ors.* examined whether an arbitration award dismissing a claim i.e., "Nil" value, required stamping when challenged under Section 34 of the Arbitration and Conciliation Act, 1996. Referring to the Supreme Court's judgment in *M. Anasuya Devi v. Manik Reddy* (decided in 2003), the Court noted that stamping issues arise at the enforcement stage as under Section 36 of the Arbitration and Conciliation Act, 1996, not during challenges under Section 34 of the Arbitration and Conciliation Act, 1996. However, the Single Judge in *Eider PW1* deemed that *M. Anasuya Devi* case is per incuriam, arguing it undermined the legislative intent behind increasing stamp duty on awards through the Amendment act for Delhi in the year 2001. However, the Division Bench in the same case later held that stamp duty applies to the awarded amount, not the claim value, and remanded the case to the Single Judge. This contradicted Article 12 of the schedule to the Indian Stamp Act, which links payment of stamp duty to the property value in dispute. This case highlights the tension between revenue considerations and ensuring a pro-arbitration regime, leaving crucial questions unresolved.

## 6. Implications of Stamp Duty on Arbitration Awards and Interim Arbitration Awards

The increased stamp duty under the *ad valorem* regime significantly impacts arbitration costs. For example, an arbitral award of INR 10 crores now attracts a stamp duty of approximately INR 5,12,500, compared to the earlier fixed duty of INR 500. This sharp increase in costs could discourage parties from opting for arbitration as a preferred dispute resolution mechanism.

Micro, Small, and Medium Enterprises ("**MSMEs**") may face particular challenges in light of these changes. Arbitration, traditionally seen as a cost-effective alternative to litigation, may now become financially unviable for MSMEs seeking to recover delayed payments. This undermines the purpose of arbitration for these enterprises and may push them toward litigation despite its inefficiencies.

Mumbai, a key arbitration hub in India, may lose its competitive edge due to the higher costs. Parties may prefer jurisdictions which do not impose similar financial burdens, potentially affecting Maharashtra's reputation as a premier arbitration destination.

## 7. Treatment of Foreign vs Domestic Arbitration Awards

A foreign arbitration refers to arbitration seated outside India, facilitating the resolution of disputes among parties from diverse legal, linguistic, and cultural backgrounds with its resulting award being enforceable as a foreign award under Indian law. Section 44 of the Arbitration and Conciliation Act, 1996, defines a foreign award

as an arbitral decision arising from disputes between parties in legal relationships, whether contractual or otherwise, deemed commercial under Indian law.

Unlike domestic awards, foreign arbitral awards are not subject to stamping requirements. The Honorable Supreme Court of India, in *M/s. Shri Ram EPC Limited v. Rioglass Solar SA*, clarified that foreign awards are not liable for payment stamp duty for enforcement. Similarly, the Delhi High Court in *Naval Gent Maritime Ltd v. Shivnath Rai Harnarain Ltd* held that foreign awards do not require registration and can be enforced as a decree without being impeded by stamp duty issues. This position was reiterated by the Honorable Bombay High Court in the case *Vitol S.A. v. Bhatia International Limited* and by the Honorable Madhya Pradesh High Court in *Narayan Trading Co. v. Abcom Trading Pvt. Ltd.* India's exemption for stamping foreign awards is contrary to Article III of the New York Convention 1958, which states that no stricter conditions or higher fees may be imposed on awards covered by this Convention than those applied to domestic awards. This disparity between domestic and foreign awards undermines uniformity and raises concerns about India's commitment to international arbitration standards. To address this differential treatment, the Indian legislature should introduce statutory amendments to the State-specific Stamp Acts, removing stamp duty on domestic arbitral awards as well. This will ensure that the process of both India and foreign-seated arbitrations are cost-effective and the respective awards can be enforced without any procedural complexities.

## 8. Conclusion

The increase in stamp duty on arbitral awards in Maharashtra as per the new Ordinance, and new draft amendment bill 2024, has sparked concerns within the arbitration community and is likely to have a detrimental impact on Mumbai's status as a preferred arbitration hub, reducing its appeal to both domestic and international parties. According to the Mumbai Centre of International Arbitration's annual report released in the year 2023, the number of cases the forum handles increased by 20% in 2022 and the total value of disputes under management surpassed \$1 billion USD. For arbitration to thrive, it is essential to maintain a balance between regulatory compliance and fostering an accessible and cost-effective dispute resolution mechanism. This higher stamp duty may compel the parties to shift arbitration proceedings to jurisdictions with lower stamp duty, such as Tamil Nadu, Gujarat West Bengal which undermines Maharashtra's status as a premier arbitration venue.

To mitigate the legal and procedural challenges emanating from the revised stamping framework, it is imperative that Maharashtra establishes uniform and unambiguous guidelines governing the calculation and timing of payment of stamp duty on arbitral awards, particularly addressing anomalies in cases of "nil" value awards. A harmonized regulatory framework, achieved through cooperation between the state and central governments, would ensure uniform application of stamp duty under the Indian Stamp Act, thereby alleviating jurisdictional inconsistencies. Further, to uphold the cost-efficiency integral to arbitration, exemptions or concessions in stamp duty should be extended to MSMEs and low-value claims, preserving access to arbitration as a viable alternative to litigation. These reforms are essential to balance the state's fiscal objectives with its commitment to promoting arbitration as a streamlined and efficacious dispute resolution process, thereby safeguarding Maharashtra's stature as a preeminent arbitration hub.

The absence of stamp duty on foreign arbitral awards in India facilitates smoother enforcement, enhancing its appeal for international arbitration. This exemption promotes India's appeal as a destination for international arbitration, encouraging foreign parties to choose Indian courts for recognition and enforcement. This exemption contrasts with higher costs on domestic awards, raising questions about unequal treatment. Judicial clarity is still awaited on the necessity of stamp duty for arbitration awards, though they are not instruments. Thus, it is important for the legislature to *firstly* clarify if arbitral award is an instrument that requires stamping

under Stamp Act, and *secondly* to either remove stamp duty on arbitral awards or impose a nominal stamp duty for ensuring India is providing equal treatment to enforcement of foreign and domestic award.

Indian parties increasingly prefer foreign arbitration seats like Hong Kong and Singapore due to their robust legal frameworks, pro-arbitration judiciary, and logistical convenience. The Indian Supreme Court, in *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited*, upheld party autonomy, allowing two Indian parties to choose a foreign seat. Additionally, the stamping obligation for domestic arbitral awards in India further encourages Indian parties to opt for foreign seated arbitrations. Institutions like SIAC and HKIAC, coupled with New York Convention compliance, ensure enforceability of awards, also make venues like Singapore and Hong Kong attractive for dispute resolution.

Though the measure may aim to enhance government revenue, it inadvertently imposes a financial burden on parties seeking efficient and cost-effective dispute resolution. Therefore, this unwelcoming shift to ad valorem system of stamp duty should be withdrawn, for enabling an efficient and cost-effective arbitration process in India.

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