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RESEARCH ARTICLE

JUDICIAL RECONSTRUCTION AND SUPPORT FOR THE INTERNATIONAL COMMERCIAL ARBITRATION SYSTEM

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Abstract

The relationship between the judiciary and arbitration involves multiple dimensions. This article focuses on elucidating the procedural intersections between the judiciary and arbitration and the impact of the judiciary on arbitration. It emphasizes the bi-directional interactive nature of both systems aids in comprehensively analyzing their relationship, clarifying the respective scope and boundaries of arbitration and the judiciary, and conducting in-depth research on their interconnections in overlapping domains.

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Introduction:-

Due to its incorporation of neutrality, voluntariness, and expediency, modern international commercial arbitration has achieved significant breakthroughs. Through the widespread adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention), a globally enforced framework for mandatory execution has been established. This convention has garnered broad recognition within the international community and various national legal systems, making it the preferred avenue for resolving international commercial disputes. As the realm of international commercial arbitration continues to evolve, the involvement of courts becomes inevitable. This article delves into an in-depth exploration of the mutual development of international commercial arbitration and the judiciary, analyzing several modes of mutual influence in the collaborative mechanism between the judiciary and arbitration. How can both sides achieve mutual influence? Will the judiciary intervene in the development of the international commercial arbitration system?

The Role of Judicial Review in International Commercial Arbitration

Arbitration and litigation are two commonly employed methods for resolving civil and commercial disputes, with courts serving as essential entities responsible for executing judicial power. In the realm of international commercial arbitration, courts inherently exert influence over various specific aspects of arbitration, encompassing the confirmation of arbitral effectiveness, arbitration procedures, the formulation of awards, recognition, and enforcement, as well as safeguarding the parties' rights throughout the arbitration process to ultimately realize substantive justice for the parties involved. To achieve judicial supervision over arbitration, courts exercise judicial review, which refers to the legal authority of national judicial organs to support, examine, regulate, and intervene in various stages of commercial arbitration. This state judicial power constraint reflects the distinctive nature of international commercial arbitration and aims to protect the legitimate rights and interests of arbitration participants, maintain a just and equitable legal order, and achieve social stability and harmony (Chen Zhi, 2019).

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As international commercial arbitration continues to develop, the proliferation of contracting parties to the New York Convention and the global role of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (hereinafter referred to as the "Model Law") have led to a convergence of judicial review practices among countries. For instance, in international commercial arbitration, many countries impose limitations on court intervention in arbitration procedures to safeguard the independence and autonomy of the parties, resulting in the focus of judicial review primarily on procedural aspects. On the other hand, only a few countries allow comprehensive re-examination by courts concerning substantive matters such as factual determinations, applicable law, and evaluation of evidence. This approach is primarily designed to ensure the finality of awards and enhance arbitration efficiency. Excessive review might contradict the principle of arbitration autonomy and lead to the wastage of both judicial and arbitration resources. Therefore, in most countries, courts refrain from undertaking secondary reviews, and restraint is expected in exercising judicial review. Different countries may use various terms to describe this review, such as "judicial intervention" or "judicial supervision." In China's judicial practice, the term "judicial review" is commonly used. To ensure the consistent use of terminology in theory and practice, this article adopts "judicial review" as the preferred term to explore the regulatory and supportive relationship between the judiciary and international commercial arbitration (Zhao Wei & Qian Fei, 2021).

Judicial review refers to the legal system whereby judicial organs review and confirm the legality and appropriateness of arbitration activities. It involves recognizing the effectiveness of legal and compliant arbitration activities while nullifying or rectifying illegal or inappropriate arbitration activities. Therefore, judicial review serves the function of supervisory examination over arbitration. Moreover, international commercial arbitration has gradually become a dominant method for resolving international commercial disputes and a powerful means for commercial autonomy. It not only profoundly impacts domestic legal orders but is also widely accepted in the international business arena. With the intensification of competition in international commercial matters, the ultimate goal of state supervision over international commercial arbitration is not to restrict arbitration development, but rather to enhance the credibility and authority of arbitration, support its healthy development, and meet the demands of commercial societal progress.

The Supervisory Nature of Judicial Review

The supervisory nature of judicial review is primarily reflected in courts' correction of arbitration processes that do not comply with legal requirements or contravene the parties' intentions. This entails reviewing issues such as the validity of arbitration agreements, the composition of arbitration tribunals, and flaws in arbitration procedures. Courts exercise their authority by excluding arbitral jurisdiction, revoking awards, and refusing recognition and enforcement as means of negative assessment and correction.

Firstly, regarding the judicial review of arbitral jurisdiction. Courts, upon the parties' request, conduct an examination of the validity of arbitration agreements according to legal provisions to determine whether the disputes fall within the scope of arbitration, based on which they confirm the arbitration matters. Additionally, courts review whether the form and substantive requirements of arbitration agreements comply with legal provisions and whether the formation of agreements is based on the parties' voluntary will or whether any circumstances render the agreement invalid or void. In cases where the arbitration agreement does not meet statutory requirements, courts rule to exclude the arbitral tribunal's jurisdiction (Sun Nanshen & Hu Di, 2017).

Secondly, the review of the arbitral tribunal's jurisdictional autonomy. Based on the principle of autonomy, when parties challenge the arbitral tribunal's jurisdiction, the tribunal may make a preliminary ruling or a final decision as a preliminary issue. However, in any case, the tribunal's decision is not the final determination of the matter; it still requires judicial review by domestic courts. Even if the parties express dissatisfaction with the tribunal's decision, courts with jurisdiction over supervising the arbitral tribunal's autonomy may accept the parties' objections. Article 3 of the Model Law establishes the arbitral tribunal's jurisdictional autonomy and specifies that the court's ruling on the tribunal's preliminary ruling is decisive to prevent any malicious delays and ensure arbitration efficiency. During the court's review, the arbitral tribunal can continue making awards without interrupting the arbitration process. In international commercial arbitration practice, the arbitral tribunal's autonomy is widely recognized, ensuring that it possesses such rights. After the arbitral tribunal renders its award, the court typically exercises judicial review over the award.

Thirdly, the re-arbitration of cases. Re-arbitration refers to situations where parties challenge the arbitral award, and courts find flaws in the arbitral tribunal's decision after their review. Re-arbitration allows the arbitral tribunal to correct mistakes and render a more fair and just award (Wang Zhe, 2015). On one hand, parties choose arbitration as a method for resolving civil disputes based on factors such as efficiency, justice, and confidentiality. On the other hand, the state needs to maintain social justice and a fair order. Therefore, judicial review should ensure the independence of arbitration while upholding its fairness. Re-arbitration differs from setting aside awards or refusing recognition and enforcement. It remedies defects in the process rather than negating the finality of the arbitral award. This approach weakens judicial interference in arbitration and guarantees the finality of arbitration. Moreover, recognizing arbitration aligns with the regulated dispute resolution mechanism and the characteristics of speed, confidentiality, and cost-effectiveness (Zhu Huafang & Guo Youning, 2021).

Fourthly, the judicial review of arbitral awards. When parties raise objections to the arbitral award, they may apply for setting aside the award in court. The court will conduct a review based on relevant provisions to determine the validity of the award. Generally, the right to set aside the award is exercised by courts in the country where the award was made, which is widely regarded as a remedy for correcting errors in arbitration decisions. For example, Swiss Federal Private International Law specifies that parties can apply to the Federal Supreme Court to set aside the award based on certain conditions set by the law (Zhang Shengcui, 2017). Article 34 of the Model Law also clarifies that setting aside the award is the only legal recourse against the arbitral award and lists specific circumstances for setting aside the award, such as if the arbitration agreement is invalid, the notification of the arbitration is improper, the arbitral tribunal exceeded its jurisdiction, or the composition of the arbitral tribunal was not in accordance with the agreement. Furthermore, if the court finds that the award concerns issues that cannot be arbitrated or actions that violate public policy, these may also be grounds for setting aside the award. The exercise of setting aside the arbitral award is an essential means and function of state judicial review, with significant legal consequences as it affects the legal effectiveness of the arbitration award.

Fifthly, the judicial review of applications for recognition and enforcement of arbitral awards. As arbitration tribunals lack compulsory enforcement powers, the implementation of arbitral awards depends on the voluntary compliance of the parties. If one party refuses to comply with the award, the other party can seek court assistance. The recognition and enforcement of arbitral awards are interrelated yet distinct, with the recognition of the award being a prerequisite for enforcement. However, an award recognized by the local court may not necessarily be enforced smoothly. Generally, laws of various countries authorize their courts to recognize and enforce foreign awards, and courts conduct judicial review upon receiving the parties' applications for recognition and enforcement. Based on the case's circumstances and the arbitration tribunal's proceedings, courts decide whether to recognize and enforce the award (Tang Di, 2021). This power of decision-making is an essential means and function of state judicial review. The international legality of foreign arbitral awards is based on the 1958 New York Convention, which establishes enforcement conditions and grounds for non-enforcement at both international and domestic law levels, involving considerations of public policy. The New York Convention has firmly safeguarded the international enforcement of arbitration and injected vitality into the global enforcement of international commercial arbitration, contributing significantly to the rapid development of international commercial arbitration after World War II (Chen Zhi, 2019).

Supportive Nature of Judicial Review

Through judicial review, the courts can rectify improper conduct in arbitration and provide support and assistance to international commercial arbitration. The private nature of international commercial arbitration renders it lacking in coercive power and authority. In modern society, its functioning relies not only on the authority of the parties' contracts and commercial customs but also on the support and authority of the state's judicial system. The supportive role of the judiciary in arbitration is manifested in several aspects:

Firstly, the state's recognition of arbitration's involvement in resolving commercial disputes has led to the conservation of judicial resources, and relevant laws and regulations have been established. With the increasing activity in international commercial transactions, countries have recognized international commercial arbitration as an effective means of social management and dispute resolution. Legislative measures have been enacted to confer quasi-judicial status on arbitration, recognizing the arbitral tribunal's legitimate jurisdiction (Molly, 2018). When parties attempt to exclude the arbitral tribunal's jurisdiction, arguing that the arbitration agreement does not exist or is defective, the court, after examining the matter, may exclude its own jurisdiction and support the decision of the arbitral tribunal.

Secondly, assistance in constituting the arbitral tribunal. According to the provisions of the Model Law, if the parties in arbitration fail to reach an agreement on the appointment of arbitrators or the appointed procedure is not followed, they may apply to the court for assistance. The court has a responsibility to decide and assist in constituting the arbitral tribunal, ensuring the smooth conduct of the arbitration proceedings. Especially in ad hoc arbitrations where the arbitration institution is absent and cannot appoint arbitrators according to its rules, some countries explicitly grant the courts the power to appoint arbitrators. For instance, the French Code of Civil Procedure explicitly states this point. When French law governs the arbitration, the parties can apply to the President of the local court in case of difficulties in constituting the arbitral tribunal (Zhang Jian & Hao Ziyi, 2018).

Thirdly, taking interim measures, such as preservation. In litigation, to prevent parties from deliberately damaging, concealing, transferring, or destroying evidence and property, thereby affecting the case trial and subsequent enforcement work, there exists the system of interim preservation. In the arbitration process, evidence and property involved in the case may need to be preserved, but due to the non-coercive nature of arbitration, the arbitral tribunal cannot enforce interim preservation measures. Therefore, apart from empowering the court to make corresponding orders, some countries also grant the arbitral tribunal the power to order preservation measures (Zhang Congcong, 2015).

Fourthly, assisting in evidence collection by the arbitral tribunal. As the binding force of the arbitration agreement only applies to the parties, and it cannot bind third parties, the arbitral tribunal cannot directly request evidence from third parties. This stands in stark contrast to civil litigation, where laws impose an obligation on citizens to provide evidence (Song Jiafa, 2014). Some countries' arbitration laws allow the arbitral tribunal to seek the court's assistance. The court has the power to order third parties to cooperate based on the application from the arbitral tribunal, for example, in Russia's International Commercial Arbitration Law, the arbitral tribunal can apply to the court with jurisdiction. Within the scope prescribed by law, the court has the power to make corresponding rulings.

Fifthly, recognition and enforcement of arbitral awards. After international commercial arbitration issues an award, it is only legally effective if recognized by the court. Through judicial review, the court confirms the award and ensures its enforcement, providing the most substantial support for arbitration. International commercial arbitration itself lacks enforcement power and relies on the authority and coercion of the judiciary. According to various countries' laws, after the court's examination, it can enforce the arbitral award. Only after obtaining an enforceable award can the parties truly realize their rights and achieve fair and just dispute resolution through arbitration. An award losing its enforcement power renders it unable to provide relief to the parties, and its social foundation will cease to exist.

Clarifying the nature of judicial review is of great significance for the correct understanding and handling of the relationship between the judiciary and arbitration, guiding the work of judicial review. In academic circles, there are various theories on the exercise of arbitration power, including the contract theory, judicial theory, hybrid theory, etc. However, regarding the nature of judicial review power, there is still a lack of in-depth exploration. Generally, the exercise of arbitration power is conducted by the court, which reviews and makes decisions on the parties' or the arbitral tribunal's relevant requests during the arbitration process, based on the country's laws, either supporting or denying them. The power of arbitration is entrusted by the parties to the arbitral tribunal, but its exercise also requires the support of the state's authoritative bodies. In the context of dispute resolution, both arbitration and the national judiciary play similar roles, with the micro perspective involving the fair resolution of the parties' interests based on their agreement and the macro perspective related to maintaining a fair and stable social order (Zhu Ke, 2018). As a form of power, the arbitration power is prone to abuse and misuse, especially in the business society, where arbitrators vested with ultimate decision-making power are susceptible to corruption and manipulation. Without effective establishment, the sustainability of the arbitration system is challenged. The supervision of arbitration involves not only the parties directly participating in the arbitration process and the arbitral tribunal but also the society and the state. As the leader of the entire social order, the state's judicial authorities, through supervision and correction of deviations in the arbitration process, safeguard the legitimate rights and interests of the parties and citizens, protecting the smooth functioning of dispute resolution mechanisms.

Therefore, besides correcting errors and regulating arbitration conduct, the ultimate purpose of judicial review is to ensure the proper functioning and development of arbitration as a mechanism for resolving social disputes. It also cooperates with litigation, mediation, and other dispute resolution mechanisms to construct a citizen rights protection system. In the course of judicial review, the court should provide maximum support to arbitration in

accordance with the law, using specific standards tailored to arbitration, such as the Arbitration Law, to make decisions that favor the arbitration system.

The Role of Arbitration in the Judicial System

The judicial function includes both legal and social aspects. The legal function involves the judgment of disputes and the determination of rights and liabilities in international legal activities (Yang, 2018). The social function of the judiciary refers to the positive impacts of judicial activities in society, such as alleviating social conflicts, promoting economic development, advocating social norms, and establishing a rule of law system (Fengfei, 2021). The development of international business society shows that international commercial arbitration plays a significant role in influencing national judicial systems. The rise of the international commercial arbitration system reflects its adaptability to the development needs of the business community and the proactive choices of the international community and national judicial mechanisms. The conception of the international commercial arbitration system conforms to some functions of the judiciary and, through communication and interaction with the state, society, economy, and law, jointly builds a dynamic and diverse development of human society.

Balancing Contradictions between the Business Society and Civil Society, Achieving the Unity of Arbitration and Judicial Value Pursuits

Judicial and arbitration systems have different focuses in resolving disputes. The judiciary emphasizes legal fairness and justice, while the business society, formed through long-term transactions, demands efficiency and influence in commercial activities. When there is a conflict between legal justice and commercial rules, and a balance between fairness and efficiency cannot be achieved, special mechanisms are needed to reconcile these conflicts. Arbitration procedures can fall within the scope of autonomy, besides being subject to public policies and mandatory laws, and should consider the parties' intentions and business practices. Arbitration contributes to achieving commercial fairness, but due to the lack of enforcement power, it needs to be subject to judicial review to gain state support and protection. The judiciary supports and complements the arbitration process to meet the challenge of limited judicial resources, which is a rational choice for modern states (LiYongjun, 2017).

In the interaction process between arbitration and the judiciary, arbitration participants disseminate business customs widely, and the judiciary learns from some aspects through arbitration review. For example, legal value pursuit is not limited to fairness and justice; efficiency is also a constraining factor in achieving legal values. The principle of party autonomy widely used in civil litigation helps parties identify with the dispute resolution result. The attitude of judicial review has evolved from non-review to strict review to the current form of formal review. The emergence and institutional construction of international commercial courts have borrowed many institutional designs in line with commercial practices from international commercial arbitration and made appropriate modifications through reliance on the national judicial system. Numerous international commercial arbitration cases not only help countries address the practical dilemma of few cases and fewer people but also have a significant impact on the judicial system.

In reality, the success of the international commercial arbitration system has won it a larger stage and market for the state. Social development cannot be separated from the assistance of the business society, and arbitration, through continuous development and constant interaction with the judiciary, better serves the business society, demonstrating a positive trend of coordinated development between the state and the business society. In this process, arbitration mitigates the contradictions between the business society and civil society, achieving consistency in the functions of arbitration and the judiciary in resolving disputes and constructing a fair social order (Song, 2018).

Arbitration Enriches the Judicial Connotation—Integrating Justice and Efficiency

As a dispute resolution mechanism, international commercial arbitration is recognized by various countries' laws and competes with litigation as two effective instruments in resolving civil disputes. The differences between arbitration and litigation are closely related to the dispute over efficiency and fairness, which is a focal point in the theoretical community.

The state upholds social order and justice. In other words, the judiciary is a way for state power to be demonstrated in the dispute resolution field, and its purpose is to safeguard the legitimate rights and interests of all citizens. The judiciary is an expensive public resource with strict formal requirements, and sometimes it sacrifices efficiency for the purpose of appeasing disputes at a high cost (XuDongxin, 2017). Arbitration, on the other hand, is a private

organization, and the result of arbitration is the outcome of the autonomy of the parties, expressing their intentions. This is an area of autonomy that cannot be replaced by judicial adjudication. The purpose of the parties' agreement to arbitration is to obtain a simplified dispute resolution process and quick, efficient, and professional results (Yang Xi, 2018). Achieving this goal depends to a large extent on the reasonableness of the scope of judicial review of arbitration awards. However, in international commercial arbitration, the adoption of strict formalism in judicial review may lead to a reduction in efficiency and provide some parties with opportunities to delay proceedings, which directly affects the significant advantages of the arbitration system, namely autonomy and efficiency.

To adapt to the needs of social development, the judiciary is continuously reforming, striving to integrate fairness and efficiency, and providing more efficient relief channels for citizens, while maintaining the predominant position of litigation in dispute resolution mechanisms, reducing social conflicts and contradictions, and promoting harmonious and stable social relationships. However, achieving the integration of the two is a global challenge, and the golden mean of the two needs to be established. It is worth noting that fairness and efficiency can change interdependently under specific conditions (YinZhongxian, 2006); they are dialectically unified, interpenetrating, and communicating with each other. From the perspective of the development of commodity society, efficiency is the foundation of fairness. Although improving efficiency does not automatically lead to fairness, it undoubtedly lays the necessary material foundation for fairness. Fairness, in turn, is the guarantee of efficiency. Without fairness, efficiency cannot ultimately be achieved, and the fair resolution of disputes in business activities has a clear effect on improving the efficiency of economic operations.

To realize the service function of the judiciary as a public good, apart from achieving the goal of justice, improving efficiency is always a core issue. Both justice and efficiency together constitute a criterion for recognizing the excellence of dispute resolution mechanisms (Zhou Wei, 2018), requiring the strengthening of the judiciary's authority from the aspects of justice and efficiency. While competing with international commercial arbitration, litigation gradually breaks free from the inertia formed by excessive reliance on state power, mobilizing competitiveness and self-improvement, continually improving efficiency on the path to pursuing justice. By optimizing the litigation process, giving reasonable space to the parties, designing more flexible procedures, resolving disputes early, and enhancing the efficiency of the courts, the golden balance point between justice and efficiency can be found. The cost of justice and the pursuit of justice is an eternal topic in law, and the state adheres to reducing the burden of justice while maintaining social fairness and justice in the design of the judicial system. Besides internal reforms, litigation also integrates and communicates with the arbitration system through institutional design, providing more accessible and reasonable relief mechanisms for the legitimate rights and interests of the disputing parties.

The interaction and integration of international commercial arbitration and litigation in the field of dispute resolution create conditions for achieving the integration of justice and efficiency and serve as beneficial supplements to the dispute resolution mechanism, also influencing the reform of the judicial system. The judiciary is gradually absorbing the advantages of arbitration, strengthening its own efficiency, and providing citizens with higher quality assistance. Through this mutual influence and development, both arbitration and litigation contribute to the construction of a fair and efficient dispute resolution system.

Changing the Concept of Judicial Review, Building a New Model of Modern Commercial Society Governance

Modern commercial society is a collection of commercial relationships based on capitalist production relations and modes of production. With the development of market economy, the number of social sectors has increased, and social division of labor has become finer. New commercial subjects, such as producers and consumers, sellers and consumers, insurers and insured parties, employers and laborers, among others, have gradually emerged (Xuan Yizhou & Yu Yue, 2021), extending the scope of business beyond the mere trade of goods. Apart from traditional profit-oriented transactions, all business activities related to profit are included. In modern commercial society, the integration of commerce and law has made the market economy a rule-of-law economy, and the development of commercial society is closely related to the legal system. While the concept and scope of commercial law may vary among countries, it is generally acknowledged that all profit-oriented business activities fall within the scope of commercial law, covering fields such as trade, transportation, insurance, banking, finance, product liability, and others (Lin Yi, 2015). In this context, arbitration in the commercial society has gradually become a universally significant dispute resolution option (Zhao Wei & Qian Fei, 2021).

Judicial review of international commercial arbitration is an important responsibility of domestic courts. The purpose of judicial review is to ensure that the arbitration procedure and award operate within the scope of the rule of law, guaranteeing the fairness and efficiency of arbitration. In modern society, the fusion of business and law makes the market economy a rule-of-law economy, and the development of commercial society is closely related to legal relations. The attitudes of various countries towards arbitration have gradually shifted from strict scrutiny to limited review, demonstrating goodwill and support for arbitration (Zhou Zishan, 2020). The transnational nature of commercial activities makes international commerce an important indicator of a country's foreign trade and economic development. In the competition for the international commercial market, countries have realized the significant value of international commercial arbitration in the international commercial order and the discourse power in international trade. To gain a foothold in the competitive international commercial arbitration market, the foundation of party autonomy cannot be abandoned, as it can assist modern commercial society in building a commercial order that serves the overall interests of the international community (Sun Jianli, 2020).

International commercial arbitration arises and develops within specific social groups and specific social relations. In this mechanism, the national laws of arbitration venues and places of enforcement, which are related to arbitration, place international commercial arbitration within the jurisdiction of their respective national laws. Consequently, they may have an impact on arbitration. Arbitration disseminates national legal rules and legal spirits into the international commercial order through international commercial activities, indirectly contributing to the construction of the international commercial order. Traditional theories attach more importance to the special role of the arbitration venue in arbitration proceedings. However, after World War II, with the rise of the "de-nationalization" theory, the arbitration procedure is liberated from the legal order of the arbitration venue, and the parties adjust their choice of law governing the arbitration. The emergence of online arbitration further reduces the physical dependence on the arbitration venue. Countries attract more parties to choose their national laws for arbitration through domestic arbitration law reforms and the implementation of a friendly policy, helping their national arbitration institutions and arbitrators gain more market share. This, in turn, gradually infuses the national legal culture into each arbitration case, forming discourse power over arbitration order and commercial order.

The commercialization and discourse power competition of international commercial arbitration have prompted various countries to support and recognize arbitration through legislation or judicial reforms. However, support for arbitration should not be unilaterally interpreted as reducing judicial review. Arbitration still requires the guarantee of state enforcement, and it cannot be separated from the support and assistance of judicial review. Judicial review ensures the authority of private dispute resolution mechanisms in the parties' choice. It also serves as the final safeguard for the rights of the parties. The parties have the right to seek alternative dispute resolution channels, and the judiciary must not deprive them of this right. At the same time, judicial review should adapt to modern society and continuously change its concept: judicial review is not only supervision and support but also truly achieving party autonomy, providing diverse ways for parties to make choices (XieQingqing, 2009). The maximum support for arbitration is not absolute support for arbitration agreements or awards. Based on observation over the past decade, the proportion of international commercial arbitration awards that are not recognized by courts is less than 10% of the total number. Regardless of recognition or non-recognition, it should be based on the premise of the parties' true intentions. Furthermore, a cooperative mechanism between arbitration and the judiciary should be established. Through judicial review, arbitration can assist the parties in achieving justice and efficiency while building a new order that aligns with the overall interests of society. For example, the understanding of public policy needs to be diversified, not only from the perspective of a single country but also from the viewpoint of all humanity and society (ChenZhi, 2019).

Party autonomy establishes a communication and cooperation mechanism between law and economy, the state and society. International commercial arbitration serves as a bridge between law and economy, laying the foundation for the judiciary and arbitration to transition from competition to cooperation. The purpose of their collaboration is to construct a commercial order that serves the interests of modern society. While the state and society are vital components of the interests of the community, international commercial arbitration should receive the support of state power. However, to prevent its negative impact on state and social interests, the scope of party autonomy cannot be expanded without limit. If the arrangements between the parties affect the interests of the state or society, they should be subject to corresponding regulation.

The state's attitude towards arbitration needs to keep pace with the times. Through multiple interactions between the judiciary and arbitration, the interests of the commercial society are incorporated into the scope of national and

social interests. This guidance leads the commercial society towards development that aligns with the overall interests of the state and society, thereby forming a new model of international commercial society for the modern era. By changing the concept of judicial review, establishing a social governance mechanism that complies with the laws of modern commercial society, and providing a strong guarantee for the prosperity and development of modern commercial society, both the judiciary and arbitration can exert their respective advantages. They work together to contribute to the construction of a fair and efficient dispute resolution system, laying the foundation for a modern and harmonious commercial society.

Defining the Rational Boundary between Judiciary and Arbitration

With the rapid development of new technologies and the irreversible trend of globalization, international commercial disputes are becoming increasingly prevalent. To elevate the status of dispute resolution mechanisms, many countries have started exploring the establishment of specialized international commercial courts to enhance the voice of international commercial order mechanisms and improve the efficiency and fairness of dispute resolution. This has also provided competition and motivation for the development and improvement of international commercial arbitration. In this context, the establishment of international commercial courts has become one of the ways to address a series of issues arising from the new situation (Chen & Zhang, 2014).

In his work "The Spirit of Laws," Montesquieu proposed that power can be easily abused, and it is only through setting boundaries that abuse can be prevented. In the field of international commercial arbitration, there has always been a power struggle between the judiciary and arbitration parties. Therefore, it is necessary to clarify the boundaries between the two (Song, 2020). In delimiting the boundaries, the focus should be on the dynamic relationship between the interactions of both sides, rather than a one-sided view of the judiciary's impact on arbitration. To achieve this, it is essential to ensure the realization of the parties' autonomy of will and limit the exercise of judicial power. In the field of private law, limiting public power to prevent overreach is more challenging and significant than limiting the autonomy of the parties (WangZuxing, 2015).

Theoretical and practical discussions are ongoing on the issue of the boundaries between the judiciary and arbitration. In the discussion of the concept of judicial review, moderate, limited, or reasonable judicial supervision is considered an essential factor in measuring the effectiveness of judicial oversight. At the same time, in terms of judicial support, emphasis should be placed on diversification and multi-dimensional support to maintain the parties' wishes as a fundamental condition. Judicial support does not blindly confirm the effectiveness of arbitration; rather, it seeks to recognize the essence of arbitration. Although existing viewpoints have not yet clearly defined the boundaries, the existence of boundaries has been recognized, and to some extent, in-depth research has been conducted (Chen & Zhang, 2014).

For example, in the United States, the Federal Arbitration Act sets restrictive conditions triggering judicial review, such as (1) when a party is not given an arbitration notice or is otherwise unable to participate in arbitration; (2) when the arbitration agreement does not specify certain matters; (3) when a party refuses to accept relevant evidence or has a justifiable reason for refusing to postpone the hearing; (4) when there is corruption, fraud, or other misconduct; (5) when the arbitrator has a close relationship with one of the parties; and (6) when the award is incomplete or ambiguous. Similarly, in Japan, the Japanese Arbitration Act enacted in 2003 lists circumstances such as (1) one party lacks legal capacity; (2) not receiving an arbitration notice or failing to appoint an arbitrator; (3) a party's failure to defend themselves; (4) lack of an enforceable arbitration agreement; (5) arbitration not conducted in accordance with the agreement; (6) the matter is not arbitrable under Japanese law; and (7) the arbitration procedure or award violates public policy. Thus, it can be seen that the judicial review in the United States and Japan typically focuses on procedural issues rather than substantive issues (Braslow, 2004). For instance, Article 34 of the "Model Law" provides circumstances for the court to set aside an arbitral award. The first paragraph stipulates that an application for setting aside an arbitral award can only be made under specific conditions, and the parties must provide the application and evidence. The two situations recognized by the court include: the matter is not arbitrable or conflicts with public policy according to the laws of the court's location. The application for setting aside an arbitral award must be made within three months after receiving the award, or it will be time-barred. The "UNCITRAL Arbitration Rules (2010)" stipulate that the court and the parties have the right to challenge an arbitrator only "if there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence." This makes it possible to explicitly delimit the judicial boundary at the legislative level. In judicial practice, parties to international commercial disputes can choose from various avenues for dispute resolution, including litigation, arbitration, mediation, etc., and may also face risks governed by different legal systems. Due to

differences in the status, psychology, capabilities, and expectations of the parties involved in the dispute, the decision-making process may vary, leading to different outcomes in dispute resolution results. Over time, the role, methods, and degree of the judiciary in relation to arbitration have formed a relatively stable pattern. Different countries have developed distinctive mechanisms of the relationship between the judiciary and arbitration based on their own socio-economic conditions (WenXiantao, 2021).

In long-term judicial practice, the judicial boundary is manifested at various stages of the arbitration process. This boundary can be clearly defined and clearly articulated. From an institutional perspective, many countries have granted the courts the power of review and supervision at various stages of arbitration activities, including arbitration agreements, composition of arbitration tribunals, and arbitration awards. For example, in the process of the composition of the arbitration tribunal (Zhu & Da, 1996), when the parties fail to agree on the appointment of arbitrators, legislation allows them to apply for appointment by the court. This is an example of the boundary between the judiciary and arbitration regarding the appointment of arbitrators. The "Model Law" further requires that when the court accepts an application for the appointment of an arbitrator, it should also consider the special agreements and practical needs of the parties regarding the appointment of arbitrators in the arbitration agreement. Therefore, regarding the appointment of arbitrators, the boundary between the judiciary and arbitration is relatively clear, with the judiciary only playing a role when party autonomy cannot be achieved. However, the boundary is not always rigid; depending on the specific case, it may become more flexible. For example, in the face of new types of cases, a professional arbitration tribunal may be better suited to handle complex situations. In such cases, if the court intervenes in the appointment of arbitrators, it can adopt methods that align with the characteristics of arbitration, such as direct appointment or entrusting arbitration institutions to make the appointment.

In terms of dispute resolution methods, both the judiciary and arbitration require the intervention of a third party to achieve dispute resolution (Zhang & Niu, 2008). Even if arbitration relies on the autonomy of the parties' will, it still needs a neutral third party, and the parties need to choose between the state's power-supported judiciary and arbitration, which tends toward private autonomy. Taking into account the advantages and differences between arbitration and litigation, parties need to weigh factors such as efficiency, cost, and fees to maintain their rights and interests. The subjects of international transactions tend to choose arbitration to resolve disputes, making the boundary between the judiciary and arbitration, while ensuring fairness, lean more toward efficiency.

The statements made at the institutional level regarding the judicial boundary contain both objective facts and value choices. Within the scope of the judicial boundary, the realization of the parties' autonomy of will and the statutory judicial review of the effectiveness of arbitration agreements are in conflict. Arbitration tribunals and courts vie for jurisdiction and arbitrable matters in the "power scope," involving contests over interim measures in procedural safeguards, contests over specific case final decision-making rights in the relief remedies, and recognition and enforcement of awards involving abstract interests at the national level, such as public policy. The portion outside of judicial review falls within the rights that arbitration tribunals lawfully obtain, and the judiciary cannot deprive it and should exclude it from regulation. The portion within the scope of judicial review concerns statutory grounds and should be subject to the court's jurisdiction, and arbitration should not be involved. It usually exists in a balanced state between fairness and efficiency. In practice, judicial review must ensure fairness while considering the rapid resolution of commercial disputes and the protection of business interests (WangKeyu, 2015).

The international commercial arbitration judicial boundary needs to seek a balance between fairness and efficiency while considering the unique nature of disputes and the current allocation of resources for dispute resolution between arbitration and the judiciary. Authorization and prohibition at the legislative level are the starting and ending points for the boundary. In actual institutional design, arbitration and the judiciary show a relationship of mutual influence, trade-offs, and balance. They need coordination and balancing in various aspects, such as fairness and efficiency, national interests and treaty obligations, party autonomy, and judicial coercion. This relationship intuitively reflects the dual-way interaction of arbitration and the judiciary within the facts and legal scope, demonstrating the common goals and complementarity of arbitration and the judiciary in resolving international commercial disputes (Channuwong, 2018; Zhang & Niu, 2008).

Conclusion:-

The judiciary and arbitration are both means of dispute resolution. The parties' desire is to resolve disputes, regardless of the means of dispute resolution. Apart from resolving disputes, the parties have no reason to spend time and money on dispute resolution. In this context, the better and correct view is to view the relationship between

the judiciary and arbitration in the domestic context correctly. Therefore, besides playing the role of "inevitable role" of assisting and supervising, the judiciary and arbitration are actually "partners in dispute resolution services." The two can work together and become a path to a "service cluster" at the regional and national levels, driving cooperation between international commercial arbitration and the judiciary, which is the ideal way to the relationship of international commercial arbitration and the judiciary.

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References:-

1. Braslow, N. T. (2004). Contractual stipulation for judicial review and discovery in United States-Japan arbitration contracts. *Seattle University Law Review*, 27(3), 659.
2. Channuwong, S. (2018). The relationship between good governance principles and organizational justice: A case study of Bangkok Government Officials. *Asia Pacific Social Science Review*, 18(3), 43-56.
4. Chen, W., & Zhang, L. (2014). Discussion on the judicial boundary of international commercial arbitration. *Guangxi Social Sciences*, (4), 83-87. doi:10.3969/j.issn.1004-6917.2014.04.017
5. Chen, Z. (2019). Conflict and coordination of judicial review procedures in the system of the New York Convention: A perspective on Article 6 of the New York Convention. *Wuhan University International Law Review*, (3), 47-64. doi:10.13871/b.cnki.whuilr.2019.03.004
6. Huang, H. (2021). Core essence of Xi Jinping's important discourse on international rule of law. *Wuhan University International Law Review*, 5(01), 27-51.
7. Mo, L. (2018). Humility in the jurisdictional judicial review of international commercial arbitration by domestic courts. *Theoretical Horizon*, (05), 59-69.
8. Song, J. (2014). Research on the system of judicial review of international commercial arbitration. [Doctoral dissertation]. Wuhan University.
9. Tang, D. (2021). On the arbitration judicial review involving judicial sovereignty conflicts. *Journal of Tongling Vocational and Technical College*, 20(01), 32-37.
10. Wang, K. (2015). Logic perspective on the legal choice of international commercial arbitration agreements. *Law*, (06), 73-82.
11. Wang, Z. (2015). The logic and system of arbitration supervision: Based on the optimization of the relationship between arbitration and litigation. *Contemporary Law Review*, 29(06), 3-17.
12. Wang, Z. (2015). Value orientation and institutional design of re-arbitration in international commercial arbitration. [Doctoral dissertation]. East China University of Political Science and Law.
13. Wen, X. (2021). Industrialization of mediation: A comparison with arbitration and litigation. *Commercial Arbitration and Mediation*, (03), 3-15.
14. Yan, S. (2021). Establishment of international commercial dispute resolution mechanisms in the context of the "Belt and Road Initiative". *China-Arab Science and Technology Forum (Chinese-English)*, (03), 1-3.
15. Zhang, J., & Hao, Z. (2018). Vertical and limited: Evaluating the new regulations of the Supreme People's Court in reviewing arbitration judicial review cases. *Journal of Beihua University (Social Sciences)*, 19(1), 69-75. doi:10.19669/j.issn.1009-5101.2018.01.011
16. Zhang, Q., & Niu, Z. (2008). Analysis of the connection between labor dispute arbitration and judicial litigation: Expanding from the values of "fairness" and "efficiency". *Finance & Economics*, (11), 118-124.
17. Zhao, W., & Qian, F. (2021). Maritime arbitration judicial review system: Legitimacy, institutional defects, and improvement ideas. *Commercial Arbitration and Mediation*, (05), 15-24.
18. Zhu, H., & Guo, Y. (2021). Effectiveness and remedies of judicial review rulings in arbitration: A perspective based on judicial interpretation and judicial practice. *Commercial Arbitration and Mediation*, (04), 71-82.
19. Zhu, K., & Da, K. (1996). Comment on the United Nations "Model Law on International Commercial Arbitration". *Wuhan University Journal (Philosophy & Social Sciences)*, (05), 17-21.
20. Zou, X. (2016). Research on the extraterritorial enforcement of interim measures in international commercial arbitration. [Doctoral dissertation]. Wuhan University.