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Expanding Scope of Industrial Arbitration Practice Under a Global Industrialization Policy Driven by International Digital Economy

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Abstract

As global industrialization is achieved by internationalization of domestic production and services, corporate challenges and complications arising therefrom, often overstretch the dispute settlement mechanisms of the Courts. Thus, creating the need for a dispute settlement system that would not consume time and financial resources as experienced with the Court system. Hence, a resort to arbitration. The advent of arbitration has over the years driven the dispute settlement process to the point where a lot of merchants prefer to have their disagreements handled by experienced practitioners of their trades, than allow judges of Courts who must rely on expert opinions to make technical decisions. In this regard, arbitration, when it is related to industrial disputes requires the inputs of highly experienced arbitrators in order to evaluate all claims, defenses and general concerns of the parties. These trepidations become more complicated where the issues before the panel border on contracts that are of high capacity technological nature. In such cases, the field experience of the arbitrators become a crucial requirement. In view of these and related concerns, awards from arbitration panels are sometimes reviewed in Courts of law to determine their consistency with statutory provisions. Thus, the Courts in reviewing the arbitral awards, often make their own rules which sometimes negates the spirit and purpose of the legislative enactments that enabled the arbitration panels to conduct the proceedings and make the awards. In this regard, the industrial arbitrator is therefore faced with enormous challenges of the expanding scope of his work as technological breakthroughs advances.

Keywords: *industrial arbitration, industry 4.0 technologies, platform economy, operability enablements, investment disputes, double exequatur, arbitrable conditions, arbitral awards*

1. Introduction

While Industrial Administration Practice deals with the direct and efficient management of all available resources incidental to the industrial operator under scale-up production or service processes, Industrial Arbitration becomes the corporate approach of settlement of attendant disputes resulting from the discharge of obligations incumbent on the industrial production or services actors. This becomes more complicated where cutting edge digital technologies are the platform of production or services. Although this definition is not by any means all-encompassing, it is relevant to the nexus between industrial arbitration, administration and the dynamics of international digital economy. Thus, digital economy is premised on the growing availability of research results which are converted to technological innovations and their advanced support systems.

In view of these developments in industrial scientific research outputs, technical data required to drive digital infrastructure are products of balanced scientific findings that are appropriately deployed and harnessed to expand or extend the potentials and possibilities of data propelled industrial production processes. This paper therefore addresses the industrial expansion possibilities inherent in the deployment of these industrial technologies. Consequently, the impacts of these emerging Industrial 4.0 innovations on industrial arbitration and administration practice is enormous, considering the challenges encountered in technology platform migration activities. Thus, industrialization is correspondingly driven by the expanding or growing needs of domestic and foreign markets and their

relative demands; implying that, there is the need for appropriate digital infrastructure to support and sustain such growing projections. In addition to this infrastructural development, there is also the need to evaluate the relevance of the services of the industrial arbitrator in this integrated expansion of production activities geared towards increasing industrialization on the basis of intervention of digital technologies. Hence, the expanding drive for industrialization imposes a task on all facets of the production process to both participate and sustain their relevance by acquainting themselves with the developments in their respective industries and the significance of their involvement to drive the process.

Accordingly, the industrial arbitrator must find opportunities to be abreast with the crucial concerns in the emergence of *Industry 4.0 Technologies* and how his services can be beneficial to future industrial developments. Further, the paper shall establish the fact that, changes in industrial administration dimensions pursuant to changes in digitally driven scale-up of production activities also influences the roles or functions of the industrial arbitrator in addition to the effectiveness of his involvement in global industrial harmony. Since the idea of globalization deals with integrated packets of individual performances in their countries or localities, there is the need for integrated supports for the building of domestic skills which will enable local players to access the relevant Industrial 4.0 technologies necessary for their contributions to the global digital economy. [1]

The foregoing view underscore the need for better and expedited access to sources of funding, information and training. This imply that, since newer technologies introduce new business initiatives, then the industrial arbitrator must recognize the opportunities inherent in the new business models and how incidental disputes arising from the deployment of the new technologies can be addressed by arbitration without recourse to the courts. In response to this, it has been argued that governments should focus on the development and provision of digital public infrastructures and services. These utilities can be operationalized to create and sustain effective data bases that can be applied in relevant sectors to create industrial values. [2]

2. Relevance of the Knowledge of Platform Economy to the Industrial Arbitrator

The modern day industrial arbitrator must be open to the opportunities for creation and or acquisition of new knowledge. This is the only way he can remain relevant in discharge of his duty as an arbitrator. In support of this view, it has been observed that digitally driven innovations that are based on the generation of new knowledge is easily achievable on the basis of the understanding and application of platform economy. [3] Consequently, the imperative of *platform economy* to modern industrial practices cannot be over emphasized on account of its capability to take the lead in industrial revolution thereby displacing a lot of sectors that have previously driven the global industrialization process. Relatedly, digital innovation has resulted a redefinition of the manufacturing enterprise by setting agenda that strategically re-orders global economic activities. These changes introduced by advancements in digital capacity outputs must be well understood by industry operators as to guide them in the settlement of disputes when the needs arise. This view is well settled when considered along the lines of direct implication of learning new things that are relevant to an arbitrators' areas of expertise.

The foregoing further indicates, that adequate knowledge of the operability of digital programs devices, and production facilities integrated or embedded into established platforms is crucial to proper evaluation of evidence in respect of interests, rights, obligations and responsibilities of parties before a high tech-arbitration panel; given the specialized nature of the disputes and the necessity of fairness in determination of the issues brought by the parties. It should be noted that, 'platform economy' is a term that describe the intrusion of digital protocols in the actualization of the 4th

Industrial Revolution (4th IR). It thus represents or connote a digital product or technology or a systemic service relevant to industrial development. [4] Thus, a digital platform becomes the base or foundation layer upon which an entire operational system can be built with capacity for extension and upgrade within the objectives of the particular industry. [5]

In furtherance of this explanation, where a platform is a service then the platform becomes a market base that can attract diverse operators and stakeholders, which includes, producers, suppliers, users, distributors and regulators, etc. These stakeholders could be made to interact in areas that are of paramount interest to them on the platform. Consequently, the high-tech industrial arbitrator must understand that digital platforms significantly rely on the expanding scope that technology affords within the interconnectivity and interface of the required or programmed operations. [6]

The foregoing implies that while platforms build on one another, they also jointly provide opportunities for newly discovered applications or services to thrive within their inter-operability enablements under a central platform or hub, such as Facebook and Google, which serve as a base on which other platforms are built or made to operate. This central hub is referred to as the 'platform leader' [5] or 'keystone firm'. [7]

Further, the industrial arbitrator whose specialization borders on advance digital applications must also be knowledgeable on the issues of innovation or re-invention of existing platforms. These platforms do not require the interference of new knowledge, but new markets and applications that create new sets of values and assets. [8] In another setting, a new scientific knowledge could be developed alongside its market and both are operationalized on the same platform with all stakeholders activating and operating their sub-platforms and creating different values applicable to their interests. This creation of value has been categorized into four models of value creation, [2] namely;

i. platform companies operating within technological frontiers to offer products or services under Industry 4.0 Technology enablement.

ii. platforms that introduces new markets where none exist or exists but not effectively operational.

iii. platform firms that expand existing markets and serve the markets using online services, but still manufacture and transport conventional products to buyers.

iv. platform firms that create new mediums of expression and networking, ranging from messaging formats to large social networking sites such as Twitter or streaming services such as Netflix.

In view of the forgoing, it is imperative to state that industrial development is all about changes in perspectives which includes socio-economic and socio-cultural dimensions. Undeniably, designers of products and services rely on the benefits of these changes in social perspectives to develop products and services in very appealing and appetizing ways. The link between the producers and those at the user point is the knowledge gap that is expected to be filled by the industrial arbitrator who must possess the requisites capacity to settle disputes arising from these technologies. Consequently, it has been observed that modern concept of social, cultural and economic capital is significantly reliant on our ability and capacity to connect and communicate relevant information and the industrial arbitrator must be conversant with this attribute. [9]

3. Digital Economy and Definition of Disputes Capable of Resolution by Industrial Arbitration

It is noteworthy to mention that arbitration cannot be used in the settlement of all disputes. However, this paper shall investigate if the advent of digital economy driven by Industry 4.0 technologies have resulted disputes capable of being settled by means of industrial arbitration. The study is to further determine if industrial arbitration anchored on the extent of digital industrialization is a viable tool at the settlement of industrial disputes. This makes digital economy a candidate for analysis; which is dependent on consideration of statutory provisions of some national and international conventions and arbitration rules. These rules have the components and limits of arbitrable concerns. Although some of these definitions are very broad, their direct application and implication to the practice of industrial arbitration is nevertheless crucial to the settlement of industrial disputes as shall be discussed in the section that follow.

4. Arbitrability of Disputes that are Based on Digital Economy Applications in Respect to International Conventions

It is noteworthy to mention that when parties to an international transaction elect in their agreement to refer their disputes to arbitration, they must specify the international instrument or jurisdiction or seat of arbitration they prefer their disputes to be submitted to. This consent requirement is crucial as we shall discuss subsequently. Consequently, it is imperative to state that there is a necessity to analyze some provisions of international arbitration conventions with respect to issues arising from the applications of digital technologies. These analysis of arbitration instruments as discussed below shall be conducted to inferentially assert their applicability in the settlement of disputes arising from breaches to contracts bordering on the application of digital programs and platforms.

4.1 ***(a)*** *The Geneva Convention (1923)*

The Geneva Convention [10] define in Art 1, issues that are capable of resolution by arbitration under the following words:

> *"any difference that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration"*

In *Art. 1* of the Convention above, "contract relating to commercial matters" includes all forms of contracts whether of digital economy or otherwise. This imply that if the parties to the disputes entered into a valid enforceable contract to provide services or goods or raw materials, then such contract if breached is subject to arbitration of a commercial nature. It therefore becomes imperative that when the issues of contention are large scale and affects the larger society or users, then such disputes should be treated as industrial disputes although it has commercial undertone. The relative implication of this definition is that contracts of digital nature fall within the definition of *Art.1* and any dispute arising from the operation of such contract is arbitrable if the agreement of the parties makes provisions for arbitration.

4.1 ***(b)*** *The New York Convention (1958)*

In defining the context under which arbitration may apply, it is noteworthy to mention that *Art. II* of the New York Convention [11] stipulates that differences:

> *"arise or which may arise between them in respect of a defined legal relationship whether contractual or not concerning a subject matter capable of settlement by arbitration"*

In *Art. II* above, the operative terms are 'defined legal relationship' and 'whether contractual or not'. Thus, the term legal relationship invokes the necessity of adopting legitimate measures such as industrial or commercial arbitration, since legal relationship is the basis of the transaction between the parties.

Secondly, *Art. II* further expanded the arbitrability of the issues when it affirmed that so long as the issue or subject matter can be settled by arbitration, then it does not matter if it is contractual or not. This provision makes it incumbent on the parties to nominate the use of arbitration as a means of dispute settlement. Where this is done, then a panel can assume jurisdiction to hear and determine issues referred to them to arbitrate on.

4.1 ***(c)*** *The Washington Convention (1965)*

It is important to state that the Washington Convention's definition of arbitrable disputes [12] as stated in *Art. 25* deals more with state actors and state interests. In *Art. 25*, the Convention asserts:

> *"any legal disputes arising directly out of an investment between a contracting state (or any constituent subdivisions or agency of a contracting state designated to the center by that state) and a national of another contracting state, which the parties to the disputes consent in writing to submit to the center"*

Before discussion of the forgoing provision, it should be noted that the Washington Convention is the product of a World Bank sponsored international treaty [13], which was intended to serve as a neutral forum for the promotion of foreign investments between States and individuals from other nation states. The formal name of the Washington Convention (1965) is the '*Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*' simplified as the International Centre for the Settlement of Investment Disputes (ICSID).

In view of the forgoing, under the Washington Convention (1965) or ICSID rules, certain requirements are fundamental to arbitrability of disputes. These conditions include:

i. a subject requirement concerning the nature of the parties
ii. an objective requirement concerning the direct relationship with an investment
iii. consent of the parties

In the first two conditions above, both subject matter and objective requirements cannot be said to be sufficient basis to commence a dispute settlement by arbitration. However, the two conditions must be present in addition to the third condition that requires the consent of the parties as evidenced in their agreement to submit to arbitration. Hence, the consent of the parties is an overriding condition irrespective of the fact that the party's country is a signatory to the convention.[13] Further, it has been noted that under this convention, jurisdiction also imply that both parties must have consented to arbitrate under the ICSID rules for which one party must be a contracting state and the other party must be a national of a different contracting state and thirdly, the dispute must be a legal dispute arising out of an investment.[13]

In addition, where the agreement did not state the consent requirement, but the host state has ratified any of the treaties, the parties can still proceed to arbitration under such rules that have been

approved by either of their states, by ratification. In furtherance of this understanding, arbitration tribunals have held that jurisdiction can still be inferred by the conduct of the parties where no express agreement exists about nationality; but there is evidence of foreign state control of either of the parties. Another condition for assumption of arbitral jurisdiction is that if the host state knew that the party was controlled by an investor domiciled in a foreign state, as in the case of *Amco Asia Corp. and others v. Republic of Indonesia,* [14] or if the state signed an investment agreement with a subsidiary in which it agreed to the ICSID arbitration clause as in the case of *Liberia Eastern Timber Corporation v. Republic of Liberia.* [15]

The implication of the instant *Liberia decision* is that when a contracting state signs an investment agreement containing Washington Convention ICSID arbitration clause with a juridical entity under a foreign control, the contracting state could be seen to have accepted or agreed to the Washington Convention by accepting the terms of the ICSID arbitration clause. It should further be stated that this provision is more applicable in situations where the contracting state makes it mandatory by state legislations that all foreign investors must establish its presence by registering its business as a juridical entity before it can be permitted to carry on business.

4.1*(d)* *The United Nation's Model Law (1985)*

Under the United Nation's Model Law, the definition of arbitrable conditions is clearly detailed in Art 7 [16] in the following wordings:

> *"…disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not…."*

Thus, under the UN Model Law, a transactional condition that creates a legal relationship also compulsorily makes the transaction arbitrable; whether a contract is implied or not. The implication of this to the industrial arbitrator is that the UN Model law gives a wide range of jurisdiction to the arbitrator on the basis that a legal relationship imposes a responsibility for specific performances on all parties; failure to perform such statutory responsibility implies a breach, remediable by arbitration awards. Further, the limitless extent of this wide jurisdiction is emphasized in under *Art. 7 (2)* which stipulates as follows:

> *'The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference to a contract in a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make the clause part of the contract.'*

In view of the foregoing, it is important for the industrial arbitrator to note that even when the parties have not expressly entered into an arbitration agreement, if the exchange of communication between them disclose any form of intention to submit their dispute to an arbitration, then the panel has the *locus standi* and jurisdiction to find the existence of an agreement to arbitrate. It is also noteworthy to mention that *Art 7(2)* [17] also affirms the existence of an agreement to arbitrate where issues are joined by the parties by way of exchange of pleadings in statement of claims and defense thereto and none of the parties are in denial of the existence of such facts.

Consequent on the foregoing, this expanded jurisdictional mandate of the arbitration panel also imply that upon assumption of jurisdiction, the arbitrator's orders and awards and all proceedings are legally binding on the parties.

4.2 Arbitration Instruments and the General Conducts of the Parties as Grounds for Unenforceability of Awards

Relatedly, the foregoing view is sustained by virtue of fact that under the 1927 Geneva Convention, double *exequatur* applied, where the enforcing state may require a confirmation from the judicial organs of the seat of arbitration before arbitral awards can be enforced in another state. [18] Accordingly, it has been argued that the use of the word 'binding' instead of 'final in the country in which it has been made', is intended to protect the non-appealable nature of arbitral awards when they are given on the merit. A comparative but contrary view is however considerable on the ground that under *Art III* of the New York Convention [19], it is required that countries 'recognize' arbitral awards as binding and to enforce them in accordance with national laws that are consistent with the provisions of the convention. Thus, the use of the term 'recognize' implies an acknowledgement of the award as a valid and binding instrument on the matters determined therein and must be accorded judicial acceptance on the basis of enabling national laws. [20]

Although it has been argued in this paper that an arbitral award has the characteristic of unappealability, if the award is given on the merit; suffice to say that the New York Convention further introduced conditions of unenforceability of certain arbitral award. In furtherance of this position, under *Art. V(I) (i)* of the New York Convention, an award will not be enforced if it deals with a different issue not contemplated by the terms of the parties' agreement or if the award is given outside the scope of the parties' agreement. This imply that only matters that are within the scope of the parties' agreement, can be enforced.

In view of this provision, a saving clause in *Art. V(I)(c)* requires that if the award contain some matters that are beyond the scope of the agreement while there are other issues within the parties' agreement, then those matters within the scope of the parties' agreement are enforceable. The implication of this clause to the industrial arbitrator is that at certain point in discharge of obligations, it is necessary for the parties to jointly review the performance of their obligations under the contract with the view to understanding variances and diversions from the original intensions and agreements; this will enable the parties reprioritize their obligations before the new situations results a breach to the initial contract. This practice can reduce the issue to be arbitrated upon, without unnecessarily expanding the scope of the arbitrators work due to external concerns.

In view of the foregoing positions, in the case of *Parsons Whitmore Overseas Co. Inc. v. Societe Generale de l Industrie du Papier* [21], the court found that the arbitrator exceeded his jurisdiction but all the same granted the enforcement of parts of the award that was within the jurisdiction of the arbitrator. Relatedly, it is important to state that claims that an arbitrator acted in excess of their powers and mandate, has hardly succeeded in most courts, [21] this view is amply supported in the case of *Fertilizer Corp of India V. IDI Management, Inc.* [22] where the court is of the opinion that if the arbitral award cannot be set aside by the Indian Court, then an American Court would enforce it under the New York Convention irrespective of the fact that the arbitrators may have overstretched themselves into making awards with consequential effects in terms of damages; which the agreement of the parties did not provide for. In the case of *Parsons and Whitemore Overseas Co. Inc. v. Societe Generale de L' Industrie du Papier,* the second circuit court in the United States affirmed a foreign arbitral award that granted general damages for losses in production, although the parties' contract excluded such liabilities.

Further, a comparison between s.10 i.e. *9 US Code 10(a)(4)* and *Art. V(I)(c)* of the New York Convention, would indicate the closeness of the views in both statutes. A reproduction of these statutes below, would assist our understanding of the subject matter.

9 U.S. Code § 10. Same; vacation; grounds; rehearing

> *(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration-*
>
> *(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.*

Article V(1)(c) of the New York Convention (1958)

> *1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:*
>
> *(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;*

The foregoing sections indicates that where an award is made outside the scope of the parties' arbitration agreement, then the court should not give effect to it. However, in the case of *Stolt-Nielson v. Animal Feeds* [23] the arbitration panel on invitation by the parties ruled that class action can be permitted even though the agreement of the parties did not provide for it. This position did not go down well with the US Supreme Court which struck down that ruling on the ground that 'the task of the arbitrator is to interpret and enforce a contract, not to make public policy'. [13], [23]

Consequently, this paper is of the view that where an award is made outside the scope of the arbitrator's mandate a court sitting on review over such an award, would well consider the relevance of such issues to the justice of the case before rendering it a nullity. This important view of this paper is crucial, considering the basic elements under which a party seeks the *vacatur* order, by reviewing the arbitral award in a court.

4.3 Limits of Parties Post Arbitration Privileges

In determining the expanding scope of industrial arbitrators' involvements in emerging business climates under advancing digital economies, it is imperative to also understudy the limits of privileges they have with respect to the nature of applications they can bring before the panel, for determination. In this regard, parties' opportunities are defined by both Parliamentary Acts, pronouncement of Courts and acceptable ethics and practices within that industry. In view of this postulation, a representative review of the United States jurisdiction in respect of this issue is instructional. Consequently, under this section two United States Supreme Court appeals would be analyzed as follows:

4.3.1 *Hall Street Associates v. Mattel Inc.* [24]

The judgment of the US Supreme Court in the *Hall Street* appeal is a clear negation of the parliamentary enactment that support arbitration in the sense that arbitration in its essence is devoid of appeal, although a review of its award can be invoked where certain conditions have been met.

Correspondingly, the US Supreme Court in the *Hall Street* appeal, extended the powers of lower courts beyond the statutory mandates of the US Congress as enunciated in the Federal Arbitration Act when the court held thus:

> *'The US District Court for the District of Oregon may enter judgment upon any award, either by confirming the award or by vacating, modifying or correcting the award. The court shall vacate, modify or correct any award: (i) where the arbitrator's findings of facts are not supported by substantial evidence or (ii) where the arbitrator's conclusions of law are erroneous.'*

Thus, the impetus and steam donated by the Supreme Court to the lower courts in the section of the judgement reproduced above seems to direct the courts to sit on appeal after an award, has been made by empowering the lower courts to, in *all cases* act as to; vacate, modify or correct the arbitral award. It should be noted that the parliament only expected the courts to perform such function in extreme situations just to ensure that justice is done. This procedure is clearly defined in the statutes, but however, has been overreached by the decision in the *Hall Street* judgment.

It is therefore imperative to state that the crux of the matter in the *Hall Street* case was whether private parties can approach the court for the type of judicial review they prefer, i.e. whether the modification, *vacatur*, or confirmation of an arbitral award could be made on the basis of the desires of the parties. The Supreme Court decided that the statutory grounds for confirming, vacating or modifying an arbitral award was exclusive to the courts and as such cannot be modified by the parties' contract. In view of the position of the Supreme Court in the *Hall Street* case, the decision of the court in the *Kyocera v. Prudential-Bache Trade Services Inc.* [26] also affirms the decision that parties cannot by their contract expand or alter the scope of judicial review outside the provisions of statutory enactments. Consequently, the courts would be acting outside their statutory mandates to receive powers outside those given to them by parliamentary enactment such as the Federal Arbitration Act of the United States of America.

4.3.2 *Stolt-Nielsen S. A v. Animal Feeds Int'l Corp* [23]

In this celebrated case, the arbitration agreement between the parties did not include provisions for class action liabilities. Thus, the main issues for determination was whether it was appropriate to impose class arbitration where the arbitration clause did not provide for it and such condition not covered by the FAA. [27] In response, the Supreme Court ruled that since the arbitration agreement did not provide for class arbitration. Then, the parties cannot request the arbitrator or court to do so, without expressly agreeing to do so in their agreement to arbitrate. In view of this position, it should be noted that the contention before the courts prior to the *Stolt-Nielson* decision was whether the arbitrators can rule on issues not covered by the arbitration agreement without exceeding their powers; but in the instant case, the issue is whether the arbitrator can allow the parties themselves to expand the powers of the arbitrators into issues not provided for by the parties' arbitration agreement.

Consequently, in *Stolt-Nielsen*, the court found that the arbitrator exceeded her authority by making an award on issues that are submitted by the parties not on issues that are clearly in the arbitration agreement of the parties. In furtherance of this view, this paper posits that the conclusion of the Supreme Court in the referenced case of *Stolt-Nielson* is that 'exceeding their authority' refers to situations where a court which was invited to review an arbitral award disagrees with the arbitrator's view or interpretation of the law that was applied to the facts of a given case. In this case, the court would find that the arbitrator made the award in disregard of the law and such an award can be vacated under s.10(a)4. This is symbolic of merit review of an arbitral award.

5. Legality of Variations in Post Arbitration Agreements

In view of the two case discussed above a clear instance has been established with respect to the use of the courts to limit parties post arbitration agreement privileges. The first privilege is in the expansion of the scope of mandates of the arbitration panel, the other is on the mandate of the courts sitting in review of arbitral awards. It is also noted that the position of the United States Supreme Court partially negates the Federal Arbitration Act, by reason of the court's over stretching of the parliamentary intendments of *9 US Code 10(a)(4)* beyond its permissible limits, thereby arrogating powers to the courts that were not provided for in the statutes. Invariably, the position of the Supreme Court implicates the arbitration panel, by positing that the panel knew of the legal principle, but all the same preferred to negate it by ruling otherwise. In this case, the parties' attempt to alter or modify their arbitration agreement to suit the current or final realities of their transaction was refused by the Supreme Court.

Although these rulings have been argued to be full of ambiguities and uncertainties [23] suffice to say that parties wishing to avoid these problems should avoid arbitration clauses in their contracts. Secondly, the confusion introduced by the decisions in these referenced cases can be resolved by parliamentary review of the enabling Federal Arbitration Act as this would properly put the issue under proper perspective for the arbitral panel or courts to adjudicate upon. This is because the narrow conditions providing for reviews of arbitral awards have been unduly expanded and altered by reasons of court interpretation of the statutes; thereby creating their own rules. Consequently, this parliamentary review and possible amendment of the Act, should further narrow the conditions for review of arbitral award and in so doing maintain the sanctity of arbitral awards and reserve the arbitral review process to very egregious cases of arbitrator manifested misconducts, before an award can be invalidated. Thus, making it a firm policy that when parties enter into arbitration agreement they do so with the intension that arbitral awards are binding on them and there is no recourse to any other judicial organs for interpretation except for situations defined under the enactment.

6. Conclusion

The findings and position of this paper draw attention to the fact that as industrialization permeate the global space, the need for expansion of the scope of influence of industrial arbitrators increases in line with the various types of emerging technologies and their applications. Consequently, modern advancements in the deployment of digital and data technologies to enhance digital economies introduce various technological challenges and concerns that requires study, understanding and acclimatization.

In this vein, sometimes, disputes are certain to arise in discharge of obligations under contracts for rendering of services or supply of goods. These disputes may be of specialized nature given the type of contracts from which they emanate. In response to this situation, modern industrial arbitrators are required to be fully equipped with the technical tools that can efficiently guide the actors to the disputes on their choices, approaches and alternatives at the settlement of industrial or commercial disputes. In pursuit of these ideals, the paper has analyzed the various definitions of industrial breaches that may give rise to disputes and the conditions allowed by statute for such disputes to be arbitrated upon. These conditions include the subject requirement concerning the nature of the parties, an objective requirement concerning the direct relationship with an investment and consent of the parties. These criteria are very crucial to the jurisdictional competence of the arbitration panel; such that where they are lacking, then no valid proceeding or enforceable award can be made. Where they are available, the arbitration award cannot be appealed but under statutory provisions, can be reviewed by courts of law for consistency with the provisions of the statutes and conventions.

Although the judicial review has resulted various pronouncements that are not on all fours with the statutes and conventions, suffice to say that those decisions have only expanded the circle of influence of the courts over the arbitration panels; thus making the arbitration panels operate under very stringent judicial supervision and scrutiny as revealed in some considered cases. The interpretation of the law in these cases by the courts, rather than encourage the practice of arbitration, seemed to derogate from the spirit and purpose of the legislative intents and enactments in that regard. Consequently, the paper posited the acute need for amendment of the enabling statute as to reprioritize the values imposed on the practice of arbitration by parliament. The paper also averred that parties also reserve the rights not to make provisions for arbitration in their agreements in order to avoid the interference of the courts in the review of awards from the arbitration proceedings.

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17. *Art. 7(2) United Nations Model Law (1985)*
18. *ibid,* Moses at p. 222
19. *Article III New York Convention (1958)*
20. *ibid,* Moses at p. 212
21. *Parsons Whitmore Overseas Co. INc v. Societe Generale de l Industrie du Papier (RAKTA) 508 F. 2d 969 (2nd (IR. 1974)*
22. *Fertilizer Corp of India v. IDI Management, Inc. 517 F. Supp. 948, 958-60 (S. D. Ohio 1981)*
23. *Stolt-Nielson v. Animal Feeds 130 S.Ct 1758 (2010)*
24. Forgue, B., Rethinking the Federal Arbitration Act S. 10: Vacating "Manifest Disregard"*, Arbitration Law Review, Vol. 7 Yearbook on Arbitration and Mediation, 2015, p. 1*
25. *Hall Street Associates v. Mattel Inc. 128 S. Ct 1396*
26. *Kyocera v. Prudential-Bache Trade Services Inc. 341 F. 3d 987. 994 (9th Cir, 2003)*
27. *9 US Code s.1.*