

INTERNATIONAL COMMERCIAL ARBITRATION: A STUDY OF LEGISLATIVE FRAMEWORK IN INDIA

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Abstract

International commercial arbitration is the most imperative means that has been adopted in the resolution of international business disputes expeditiously and efficiently. Arbitration has confidentiality, flexibilities and impartiality, and it is a desirable mean rather than a legal action for the parties and from different legal backgrounds. Arbitration has confidentiality, flexibilities and impartiality, and it is a desirable mean rather than a legal action for the parties and from different legal backgrounds. International commercial arbitration occupies a key position within the system of alternative means of protecting the rights of business entities, as it allows the parties to select arbitrators, choose the applicable law, determine the seat and language of proceedings, and rely on the confidentiality and finality of decisions. International commercial arbitration is pivotal in global dispute resolution, offering parties a neutral forum that ensures fairness and impartiality. One of the central instruments guiding the practice of international arbitration is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. The Model Law, introduced in 1985 and amended in 2006, provides a framework for harmonizing arbitration laws across jurisdictions. The UNCITRAL Model on International Commercial Arbitration of 1985 and the UNCITRAL Arbitration Rules, 1976 also serve as the foundation for the Indian arbitration laws. Main goal of this Act is to offer quick and efficient conflict resolution for domestic and international business arbitration, conciliation, and the implementation of foreign awards in India. The Act was subsequently revised in 2015, 2019, and 2021 to bring it into compliance with the most recent global standards.

Keywords: *Arbitration, Commercial, Dispute, Foreign Award, Global, International, Resolution, UNICITRAL.*

1. Introduction

Contractual agreements govern the extremely globalized society in which we now live. Complex issues regarding international law and local law's impact on contracts involving parties from different nations are expected to arise with the ever expanding scope of international trade and business.¹ In order to preserve the legality of contracts, commercial ties must be maintained. However, when a conflict emerges, parties frequently go to court. And when such circumstances occur, it frequently complicates and stresses the relationship for both partners.² The process is also quite expensive and time-consuming, which frequently has a negative effect on both parties even after the dispute is resolved. To continue operating, businesses must quickly resolve disputes.³ Due to the sometimes-delayed delivery of court-ordered solutions, an effective method of conflict resolution has been developed. "Of all mankind's adventures in search of peace and justice, arbitration is among the earliest. Men had used the arbitration for settling their disputes, differences, and resolving their conflict much prior to the foundation of laws, judges formulated legal rules and setting up of the courts".

1.1 Meaning of Arbitration

'Arbitration' is a mechanism to solve the dispute amicably in presence of third party who is commonly known as an arbitrator, deliver a judgment (Award) after hearing both the parties.⁴ Arbitration is a consensual process. It is not a matter of coercion. No arbitration statute can require parties to arbitrate when they have not agreed to do so. Nor can it prevent them from excluding certain claims from the scope of arbitration agreement in any manner they choose. In a case *Volt Information Sciences, Inc v. Leland Stanford University*, it was held that if requires Courts can pursue and enforce the mutual agreements for arbitration, under the certain terms and conditions agreed between the parties.⁵ The term 'Arbitration' word has not been defined under the Arbitration and Conciliation Act, 1996 but it has been explained under Section 2(1) (a) of the said Act, that arbitration may be Institutional or permanent as well as ad-hoc in nature. It also emphasizes that arbitration proceedings must be governed and initiated through the arbitration agreement or by arbitration clause. The parties have to clearly refer or mentioned the disputes which they want to refer for the settlement through the arbitration. Further the decisions of the third party shall have equal status of decree of a civil court and it shall be binding upon the parties. In *Jivaji Raja v. Khimiji Poonja & Company*⁶, held that, the arbitration proceeding may initiate through the reference to appointed arbitrator or to the court for the appointment of such authorities.

¹ Tarapore and Co. v. Cochin Shipyard Ltd., (1984) SC 1072.

² Available at: <https://ilbmania.com/2021/10/01/arbitration-in-india-scope-and-challenges/>, visited on August 11, 2026.

³ *Ibid.*

⁴ Black's Law Dictionary, 105, 6th edn. West Publishing Co (1990).

⁵ 489 US 468(1989)

⁶ AIR 1934 Bom 476.

1.2. INTERNATIONAL COMMERCIAL ARBITRATION: EVOLUTION AND ITS JOURNEY

The last ten years have seen a rise in international arbitration, which now seems to be the preferred method for resolving economic disputes on a global scale. The roots of international arbitration can be traced back to very early periods, first emerging in the city-states of ancient Greece and the Roman Empire in the 6th century BC, even though this technique of dispute resolution has only recently gained attention¹⁴. With the advent of increased trade, the procedure was increasingly employed to resolve a business conflict⁷. Originally, it was used primarily to resolve political disagreements and disputes.⁸

Mediaeval times saw a reduction in arbitration's use, with few examples found in Germany, Italy, France, and England.⁹ However, as international trade increased, particularly in Europe, commercial hubs like port cities in the Mediterranean region witnessed an increase in the submission of disputes to specialised tribunals with the use of "lex mercatoria," a body of trade-specific laws.¹⁰ The phrase "customary commercial law, customary rules of evidence and procedure, and the general principle of commercial law" is frequently used to describe lex mercatoria.¹¹ Hugo Grotius, who is frequently referred to be the founder of international law, wrote about arbitration and its benefits for resolving international disputes in the 17th century.¹² The John Locke-drafted arbitration statute later entered English law in 1698, encouraging conflict resolution without the need for pointless legal restrictions and challenges.¹³ In order to resolve disputes that had arisen following the American War of Independence, the Jay Treaty between Great Britain and the United States established an arbitral tribunal with an equal number of arbitrators appointed by the parties⁹. The treaty is regarded as exceptional because it established various commissions to resolve disagreements between the two state actors. There were primarily three types of commissions. boundary disputes, British nationals' requests for compensation, and US citizens' complaints over how Great Britain treated their property. The agreement opened the way for the contemporary arbitration practised today as well as for the resolution of conflicts between individuals from two separate governments.¹⁴

⁷ Frank D. Emerson, History of Arbitration Practice and Law, 19 Clev. St. L. Rev. 155 (1970) available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol19/iss1/19>

⁸ Temin, Peter, Statistics in Ancient History (February 13, 2013). MIT Department of Economics Working Paper No. 13-06, Available at SSRN: <https://ssrn.com/abstract=2217011> or <http://dx.doi.org/10.2139/ssrn.2217011>.

⁹ Gabor Szalay, A brief History of International Arbitration, its role in the 21st Century and the examination of the Arbitration Rules of certain Arbitral Institutions with regards to privacy and confidentiality, 8,9 (2016).

¹⁰ W.R. Slomanson, "Historical Development of Arbitration and Adjudication", 238-241 *Miskolc Journal of International Law*, Vol. 1. (2004)

¹¹ Guilhem, J. Lex Magica, A Lex Mercatoria Reflection, 37 Thomas Jefferson L R, 1, 125-126, (2014).

¹² Henry S. Fraser, Sketch of the History of International Arbitration , 11 *Cornell L. Rev.* 179 (1926) Available at: <https://scholarship.law.cornell.edu/clr/vol11/issue2/3>

¹³ J. Oldham, Arbitration in America, the Early History. Review ,Cambridge Vol. 31, Issue 1, (Feb 2013), 246 .

¹⁴ J.T. Newcomb, New Light on Jay's Treaty, 28 *American J. Int'l L* 4 686-689 (1934).

The New York Chamber of Commerce was founded in 1768 with the aim of promoting arbitration as the sole civil tribunal for disputes between Great Britain and the United States. Arbitration was referred to as "the most reasonable means of dispute resolution between citizens" in France by the edict of August 16–24, 1790.

Arbitration appeared to be the only practical method to settle such conflicts as the industrial revolution in the 19th century established global trade and commerce. The first arbitration clause that ended the Mexican War was included in the Treaty of Guadalupe Hidalgo in 1848. The Treaty of Washington, which was signed in 1871 by Great Britain and the United States to settle issues resulting from the Revolutionary War, followed the principles of the Jay Treaty. By passing the Common Law Procedure Act of 1854, which put commercial arbitral tribunals under the control of domestic courts for the purpose of reviewing arbitral awards, and the Arbitration Act of 1889, which regulated various aspects of commercial arbitration, England was the forerunner in developing the culture of arbitration. The Hague Convention, the most significant piece of writing in the history of international arbitration, was adopted by the international community as the first multilateral treaty employing arbitration between states in certain matters and establishing the system of arbitration in 1899 and 1907, respectively, at the Hague Peace Conferences. The Permanent Court of Arbitration with its seat in The Hague was founded under the Hague Convention, making it the first permanent tribunal as opposed to the numerous ad hoc ones in the past²⁶. The Hague Convention laid the foundation for a number of multilateral agreements that would emerge in the 20th century, particularly following World War II as foreign investments began to flow and gain sway. The construction of new arbitral

2. International Commercial Arbitration : Conceptual and International Framework

2.1. Meaning and concept of International Commercial Arbitration

Generally, the nature of the dispute and the disputants determine whether the dispute is International or Domestic. Few Domestic arbitration laws, the same rules apply to both and they do not clearly distinguish between International and Domestic arbitration, such as those of UK, Germany, Netherland, Czech Republic, Austria and Slovenia. Most legal regimes, such as USA, China, France, Hungary, Iran, Romania, Australia, Switzerland or Ukraine do make this distinction. No doubt, International arbitration differs from domestic arbitrations in that the first involves parties from different countries and deals with international trade matters. According to Redfern & Hunter when a classification is made to determine whether the arbitration is international, attention is normally given as to where the company has its seat of management and control.¹⁵ Like other literature, there is not a global definition or uniform understanding among the countries on the exact meaning of the term ‘International’ in the context of ICA. In defining the term, two criteria or approaches are

¹⁵ Alan Redfern & Martin Hunter. “Law and Practice of International Commercial Arbitration”, London: Sweet and Maxwell, (1999), 24.

used, either alone (Like as Switzerland and Netherland) or in combination.¹⁶ A first criterion is by analyzing the nature of the dispute so that arbitration is international if it involves the interests of international business or trade. The wide adoption of this test is within the ICC Court of Arbitration in Paris. They do not give any crystal clear definition of an ‘International Arbitration’, but do give the following guidance: “The international nature of the arbitration does not mean that the parties must necessarily be of different nationalities. By virtue of its object the contract can nevertheless extend beyond national borders, when for example a contract is concluded between two nationals of the same State for performance in another country or when it is concluded between a State and a subsidiary of a foreign company doing business in that State.” This is definitely a comprehensive interpretation, and would include a subsidiary of a foreign company arbitrating against a State even when that subsidiary is incorporated in the State against whom it is arbitrating (although apparently not two subsidiaries of foreign companies arbitrating against each other about a contract to be carried out in the same State). The alternative criteria are focus attention on the parties, their nationality or habitual place of residence or, if the party is corporate entity, the seat of its central control and management.¹⁷ This approach is predominate. For instance, Article 1.1(a) of the European Arbitration Convention, 1967 and Swiss Arbitration Law or the English Arbitration Act of 1975 which gave effect to the NYC (1958), applies to agreements which are: “Arbitration Agreements concluded for the aim of resolving disputes arising from international trade between legal or physical persons having, when concluding their agreement, their habitual place of residence or their seat in different contracting countries.

The ML (1985) was specifically designed to apply to International arbitration, and as a result necessarily required a definition of international arbitration. It is a marriage of the both criteria set out above; in addition to the situs test¹⁸ and opt-in test.¹⁹ The draftsman of the ML (1985) defined ‘International’ as follow: “Arbitration is international if:

- (a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
- (b) One of the following is situated outside the State in which the parties have their place of business:
 - (i) The place of arbitration, if determined in, or pursuant to, the arbitration agreement;
 - (ii) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

¹⁶ Article 1492 of French Arbitration Decree, 1981.

¹⁷ Redfern & Hunter., 2004, op.cit, 15.

¹⁸ The situation of the arbitration proceedings outside the place of business of one the parties.

¹⁹ he parties expressly agreeing that the subject matter of the arbitration agreement relates to more than on country.

(c) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.”²⁰

2. 2 UNICTRAL Model Law

United Nations Commission on International Trade Law (UNCITRAL) is a specialized commission of the United Nations, established in 1966 to enable the United Nations to play a more active role in reducing or removing legal obstacles to the flow of international trade.²¹ U.N. recognized that various economic and legal differences existed between States. These differences were the source of many of the problems that hindered the advancement of an integrated international trade system. The General Assembly considered it desirable that the process of harmonization and unification of the law of international trade be substantially coordinated, systemized, accelerated, and that a broader participation by States, be secured. As a result, the UN General Assembly adopted the resolution establishing the Commission. UNCITRAL is composed of sixty member states elected by the General Assembly of the United Nations. Membership in UNCITRAL is limited to a small number of states, so as to facilitate the deliberations. UNCITRAL was originally composed of 29 nations and now it includes 60 nations includes 14 African nations, 14 Asian nations, 8 Eastern European states, 10 Latin American/Caribbean nations, and 14 Western European or other nations. Of all the texts prepared under the auspices of UNCITRAL and then launched into the world of international commerce by the UN General Assembly, dispute resolution particularly arbitration, distinguish themselves as obvious success stories. These are the Arbitration Rules of 1976, the Model Law on International Arbitration of 1985, and the Conciliation Rules of 1980. The Model Law on Arbitration was according to Holtzmann, worthy of standing alongside the New York Convention and the UNCITRAL Arbitration Rules as a crucial pillar in the worldwide system of arbitral justice.²² The UNICITRAL model law on International commercial arbitration was adopted by the UNICITRAL on 21 June 1985 in the 18th annual session. The General assembly by its resolution 40/72 of 11th December 1985, recommended that “ that all the states give due analysis to the model law on International Commercial Arbitration, in view of the uniformity in the arbitral procedures and the requires an practice in International commercial arbitration”.²³ This model law has a desired to harmonization and improvement of national laws and it covers all the steps in arbitral process. This form of model law has chosen for harmonization and improvement in preparing new arbitration laws in states.

The Model Law sets out the basic requirements of a domestic arbitration law, the arbitration agreement form, the arbitration tribunal composition, the tribunal jurisdiction, elementary procedural rules, the award and

²⁰ Article 1(3) of the Model Law, 1985.

²¹ UNCITRAL: The United Nations Commission on International Trade Law at 3, U.N. Sales No. E.86.V.8 (1986)

²² H. Holtzmann, The Conduct of Arbitral Proceedings, Report submitted to ICCA Interim Meeting at Lausanne, in UNCITRAL’s Project for a Model Law on International Commercial Arbitration, 2 ICCA CONGRESS SERIES 159 (1984).

²³ International Commercial Arbitration, UNCITRAL Secretariat Explanation of Model Law.

recognition, and enforcement. The Model law follows the terms of UNCITRAL Arbitration Rules and characterized by a number of notable aspects. The first is the importance of party autonomy accorded to all phases of arbitration. This is, however, issue to default procedures where no agreement has been reached by the parties. The second noteworthy feature is the right of parties and the arbitrators, in contrast to the position in most domestic arbitral frameworks, not to apply the domestic law²⁴ of the gathering to the procedural aspects of the arbitration. Third, the role of the courts²⁵ in the arbitral process is critically restricted. Their involvement is restricted to the appointment of arbitrators where no agreement exists, the hearing of challenges to arbitrators, the replacement of arbitrators unwilling to act, the resolution of preliminary matters as to the jurisdiction of the arbitrators on appeal from their decision on the point, providing assistance with obtaining evidence and the setting aside of awards on certain grounds. A final and highly significant principle of the Model Law is that it does not provide for a right to appeal against an error of law.

On 10th July 2017, the UNCITRAL Commission has agreed to work on multilateral reform of investment dispute settlement. UNCITRAL members have decided to work on investor-state dispute settlement (ISDS). The UNCITRAL is a subsidiary body of the General assembly of the United Nations tasked with a mandate of furthering the progressive harmonization and unification of international trade and investment law. The commission is made up of 60 states. In summary, the UNCITRAL Model Law on Arbitration was said to be, according to H. Holtzmann is worthy of standing alongside the New York Convention and the UNCITRAL Arbitration Rules as a crucial pillar in the worldwide system of arbitral justice.²⁶ Improvement and harmonization of national laws remain key factors in the facilitation of international arbitration because of the need for increasing uniformity and predictability of effective arbitral procedures to lower the risks of international commerce and to contribute to overall global economic relations. It assists in curing the adverse effects of the disparity between national laws in international cases, avoiding territorial constraints and local peculiarities, and it provides for functioning and fairness of the arbitral process by a universal standard. The objectives of the Model Law are to devise a fairly complete and generally acceptable set of non-mandatory provisions, closely modeled on, but sometimes distinguished from, UNCITRAL Rules, and to clarify a number of issues in the interpretation and application of the New York Convention.

2.2 The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

The New York Convention is one among the main important tools in international arbitration. The New York Convention was established in June 1958 as a result of dissatisfaction with the Geneva Protocol and Convention. The proposal to restore the Geneva treaties came from the International Chamber of Commerce

²⁴ Article 19, UNCITRAL Model Law.

²⁵ Article 6, 27 and 34, UNCITRAL Model Law.

²⁶ H. Holtzmann, The Conduct of Arbitral Proceedings, Report submitted to ICCA Interim Meeting at Lausanne, in UNCITRAL's Project for a Model Law on International Commercial Arbitration, 2 ICCA CONGRESS SERIES 159 (1984).

(ICC)²⁷, which issued a preliminary draft convention in 1953. The ICC's proposal was taken over by the United Nations Economic and Social Council (ECOSOC)²⁸, which produced an amended draft convention in 1955. That draft was discussed during a conference at the United Nations in May-June 1958, which led to the establishment of the New York Convention. The New York Convention 1958²⁹ was described as the most successful treaty in private international law. The Convention entered into force on 7 June 1959, and it is adhered to by more than 158 nations as of 2018. More than 1,750 court decisions from more than 65 countries reported in the Yearbook³⁰: Commercial Arbitration shows that enforcement of an arbitral award is granted in almost 90 percent of the cases.

2.2.1. New York Convention – Basic Actions

The New York Convention applies to awards made in any State other than the State in which recognition and enforcement are sought. It also relates to awards “not considered as domestic awards”. When allowing to be bound by the Convention, a State may proclaim that the Convention will apply regards (a) in respect to awards made only in the territory of another Party and (b) only to legal relationships that are compared “commercial” under its domestic law. The New York Convention contemplated two basic actions; the first action is the foreign arbitral awards recognition and enforcement, i.e., arbitral awards executed in territory of another (contracting) State. This field of application is defined in Article I.³¹ The general responsibility for the Contracting States to accept such awards as binding and to enforce them in accordance with their rules of procedure is laid down in Article III.³² Article IV of the convention provides that to acquire the party applying for its recognition and enforcement at the time of application shall give (a) the arbitral award; and (b) the arbitration agreement. The party against whom enforcement is required can object to the enforcement by submitting evidence of one of the grounds for refusal of enforcement which is imitatively listed in Article V (1).³³ The court may on its own refuse enforcement for reasons of public policy as provided in article V (2).³⁴ If

²⁷ ICC is the world business organization, helping businesses of all sizes and in all countries to operate both internationally and responsibly.

²⁸ The United Nations Economic and Social Council (ECOSOC; French: Conseil économique et social des Nations unies, CESNU) is one of the six principal organs of the United Nations, responsible for coordinating the economic, social, and related work of 15 UN specialized agencies, their functional commissions and five regional commissions.

²⁹ Berg. A, The New York Convention of 1958: An Overview, ICCA.

³⁰ International Council for Commercial Arbitration Year Book, VOLUME XXXV 2010: Kluwer Law International December (2010)

³¹ Article I of the Convention deals with the provisions relating to recognition and application and enforcement of arbitral awards etc.

³² Article III of the Convention provide that each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards

³³ Article V (1) deals with 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, with certain proof contained therein.

³⁴ Article V (2) Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

the award is subject to an action for setting aside in the country in which or under the law is made, the foreign court before which enforcement of the award is required may adjourn its decision on enforcement (Article VI).³⁵ Finally, if a party seeking enforcement prefers to base its request for enforcement of the court's domestic law on enforcement of foreign awards or bilateral or other multilateral treaties in force in the country where it seeks enforcement, it is allowed to do so by virtue of the so-called more favourable provision of Article VII(1).³⁶ The second action studied by the New York Convention is the recommendation by a court to arbitration. Article II, paragraph 3, provides that a Contracting State court, when carry a matter on request of either of party made an agreement of arbitration and submit them to arbitration.³⁷ In both of the actions arbitration agreement must satisfy the requirements of Article II, paragraphs 1 and 2, which include, in particular, that the agreement is in writing.

2.1.2. The principal purpose of the New York Convention

The New York Convention is one among the most important and successful instruments of the UN treaties in the international trade law area and the cornerstone of the international arbitration system. The Convention's principal aim is (1) to oblige State Parties to ensure non-discrimination of foreign, (2) non-domestic arbitral awards, such that these recognized awards and (3) ability of enforcement in their jurisdiction in the same and similar way as domestic awards which can best be achieved through the uniform and effective application and interpretation of the convention. The aim of this Convention is "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are noticed and arbitral awards are enforced in signatory countries".³⁸ However, it is also argued that the international legal regime for the enforcement of arbitral awards does not give adequate protection to the interests of losing parties. This leads one to question as to what extent does the New York Convention, as the main international legal instrument for the enforcement of arbitral awards, protect the losing party in the arbitral process. UNCITRAL aimed to improve on the success of the New York Convention by encouraging such uniform and effective application of the Convention. The Convention was calculated and designed to subserve the cause of enabling the international trade and promotion by providing for the resolution of disputes in speed which are arising in such trade arbitration. The New York Convention provides a common yardstick on

³⁵ Article VI provides with matters relating to matters that if an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e) and other conditions contained in the said Article.

³⁶ Article VII (1). The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

³⁷ Article II (3). The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

³⁸ Markanda P.C., Law relating to Arbitration and Conciliation-Commentary on the Arbitration and Conciliation Act, 1996, Lexis Nexis Butterworths Wadhwa Nagpur, (7th Ed., 2009)

the touchstone of which these agreements and awards are recognized and enforced in the countries which have acceded to the same, thus, generating confidence in the parties, who may be unfamiliar with the diverse laws prevailing in different countries with which they are trading, that the arbitral agreements and awards flowing there from will be respected and enforced by the courts of the States where the enforcement is sought, provided the conditions laid down in Article I and II are satisfied with such enforcement.

3. Legislative Framework in India

3.1 Evolution of arbitration in India

In India the first law on arbitration was the Arbitration Act 1899³⁹ and it was solely based on English arbitration Act of 1899. The law found its place in another code that is the Code of Civil procedure 1908 in schedule 2. Thereafter came Arbitration Act 1940 which was based on the Act.⁴⁰ Then came the Foreign Awards Recognition and Enforcement Act, 1961 which provided a platform for enforcement of foreign awards in India. Arbitration act also undertook various provisions of Geneva Protocol and the New York Convention respectively. Thereafter the Arbitration and Conciliation Act, 1996 which was based on UNCITRAL⁴¹ was passed and it gave impetus to International commercial arbitration providing for a consolidated law of arbitration in India and the other three statutes which were earlier formed were repealed thereafter. The Act marked a formal step of economic liberalization and provided for a cost-effective resolution of disputes with regards to the increasing globalization. It sought to reduce Court intervention, fostering cooperation between the judicial system and the arbitral process. In 1920, the government appointed a Civil justice Committee⁴² and provided for amendments of the Arbitration Act, as it was, solely based on the English act of 1899, thereafter the English Arbitration Act was enacted in 1934. Ratan-Mohan Chatterjee Committee⁴³ was appointed in 1938 by the government of India for the revision on the law of arbitration and the report provided certain amendments which provided for the enactment of the Arbitration Act of 1940.

Before that, arbitration was solely based on the Geneva Protocol and Convention of 1924 and 1927 respectively. In 1908, the Civil Procedure Code was also amended to provide for the direct enforcement of decrees in respect of the reciprocal treaties that has been entered by the countries as per the international obligations and treaties. Certain decrees were not allowed to be enforced as arbitration awards if their enforcement was impossible as a decree or judgment due to public policy issues in a country.

³⁹Santvana Tripathi, Evolution of arbitration in India, 1(3) JUS CORPUS LAW JOURNAL 221-227 (2021)

⁴⁰ Arbitration (Protocol and Convention Act) 1937

⁴¹ UNCITRAL Model Law of Arbitration

⁴² Parvez, Shahid, Development of Arbitration Law in India, SSRN (November 9, 2009).

⁴³ INBA (Indian National Bar Association) viewpoint, 1(1) (April 2016)

3.2 The Arbitration and Conciliation Act, 1996⁴⁴

The Act's preamble highlights its primary purpose, which is to provide for a legal framework to facilitate the fair and effective resolution of disputes through arbitration and conciliation. These alternative dispute resolution mechanisms are seen as essential for reducing the burden on the traditional court system and expediting the resolution of disputes.

Definitions⁴⁵: The Act begins by providing definitions of key terms. These definitions serve as the foundation for interpreting the various provisions of the Act. Some critical definitions include arbitration agreement, arbitral tribunal, and conciliation.

- Arbitration Agreement⁴⁶: This section outlines the requirements for a valid arbitration agreement. It stipulates that an arbitration agreement must be in writing, either as part of the main contract or in a separate document. The agreement should specify the disputes intended for arbitration. Parties are free to determine the number of arbitrators, but the Act provides default rules for appointment if parties fail to agree.
- Appointment of Arbitrators⁴⁷: The Act empowers parties to choose their arbitrators. If they cannot agree on an arbitrator or the number of arbitrators, the Act provides mechanisms for appointment by the court. Arbitrators are required to disclose any circumstances that may give rise to doubts about their impartiality or independence.
- Jurisdiction of Arbitral Tribunals⁴⁸: Once constituted, an arbitral tribunal has the authority to rule on its jurisdiction, following the "kompetenz kompetenz"⁴⁹ principle. If a party disputes the tribunal's jurisdiction, the tribunal decides whether it has the authority to hear the case.
- Conduct of Arbitral Proceedings⁵⁰: These sections detail the procedural aspects of arbitration proceedings, including the presentation of evidence, the examination of witnesses, and the tribunal's power to order interim measures for preserving assets or preventing harm during the arbitration process.
- Interim Measures⁵¹: Arbitral tribunals have the power to grant interim measures to protect the rights of the parties involved in the arbitration. This can include issuing injunctions, preservation of evidence, or assets.
- Making of the Award⁵²: The Act lays out the process for making an arbitral award. Awards must be in writing, signed by the arbitrator(s), and contain the reasons for the decision. The Act specifies a timeframe within which the award should be made.

⁴⁴ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996).

⁴⁵ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.2.

⁴⁶ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.7.

⁴⁷ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.8-11.

⁴⁸ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.16.

⁴⁹ Available at: <https://www.mondaq.com/india/arbitration--dispute-resolution/1162214/understanding-the-kompetenz-kompetenz-principle>, visited on 19 august,2026

⁵⁰ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.19.

⁵¹ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.17.

- **Challenging and Enforcement of Awards⁵³:** The Act allows for the setting aside of arbitral awards in specific limited circumstances, such as fraud, bias, or a violation of public policy. On the other hand, it also facilitates the enforcement of awards, treating them as if they were court orders, which makes them legally binding.
- **Appeals⁵⁴:** The right to appeal against an arbitral award is limited under the Act, restricted primarily to questions of law arising from the award. Parties cannot appeal on the merits of the case, promoting the finality of arbitration awards.
- **International Commercial Arbitration ⁵⁵ :** The Act incorporates the UNCITRAL Model Law on International Commercial Arbitration, making it applicable to international commercial arbitrations conducted in India. This alignment with international standards enhances India's status as a hub for international arbitration.
- **Conciliation (Part III):** In addition to arbitration, the Act also includes provisions for the process of conciliation. Conciliation involves a neutral third party (the conciliator) who assists the parties in reaching a settlement. The conciliation process is non-binding, and any settlement reached is recorded in writing and binding on the parties.
- **Confidentiality⁵⁶:** Arbitration and conciliation proceedings are generally confidential, fostering open and candid discussions among the parties without fear of disclosure.
- **Costs⁵⁷:** The Act allows the tribunal to award costs, including legal fees, to the successful party in the arbitration. This can serve as an incentive for parties to resolve disputes efficiently.

The Act is designed to encourage an ADR culture in India. By promoting arbitration and conciliation, it aims to reduce the burden on the traditional court system and expedite the resolution of disputes. This not only saves time and resources but also fosters more creative and flexible solutions to disputes. Since its enactment, the Arbitration and Conciliation Act, 1996, has undergone several amendments to address emerging issues and international developments in arbitration. These amendments have focused on streamlining procedures, enhancing the enforcement of awards, and further aligning Indian law with global standards. The act plays a pivotal role in shaping India's legal landscape for dispute resolution. By providing a robust framework for arbitration and conciliation, it empowers parties to resolve their disputes efficiently, confidentially, and with enforceability. This, in turn, contributes to reducing the backlog of cases in the courts and promoting a culture

⁵² The Arbitration and Conciliation Act, 2019 (Act 26 of 1996), s.28-33.

⁵³ The Arbitration and Conciliation Act, 2019 (Act 26 of 1996), s. 34-36 and s.48.

⁵⁴ The Arbitration and Conciliation Act, 2019 (Act 26 of 1996), s.37.

⁵⁵ The Arbitration and Conciliation Act, 2019 (Act 26 of 1996), s.44

⁵⁶ The Arbitration and Conciliation Act, 2019 (Act 26 of 1996),s.75

⁵⁷ The Arbitration and Conciliation Act, 2019 (Act 26 of 1996), s.31 A.

of alternative dispute resolution in the country. The Act continues to evolve to meet the changing needs of businesses and individuals seeking fair and efficient resolution of their disputes.

3.3 Arbitration Agreement and Arbitral Tribunal

Section 7 of the Arbitration Act outlines conditions that must be met for an arbitration agreement amongst the parties to be regarded as binding. It is not possible to start the arbitration procedure unless both parties have signed an arbitration agreement, which is why this portion of the Act is called “The Arbitration Act”. After then, the procedure can begin in earnest. Section 21 of the Act, sets forth the procedure to be followed in order for the arbitration processes to begin. It states that the arbitration process for a particular dispute will start on the day the respondent receives a request to submit that case to arbitration, except the parties agree to something otherwise. Even if the parties agree to something different, this is the case. The detailed process of arbiter selection is given under Section 11 of the Act. It gives power to the parties to appoint an arbiter/s in their disputes. It also lays down the procedure to be followed while appointing an arbiter as well as the steps to be taken if the parties do not arrive at common consensus in this matter. Moreover, the parties can approach the Supreme Court/High Court for said purpose in concerned matter i.e. Domestic or International arbitration. The parties decide on the location of the arbitration venue at the time the arbitration contract is signed⁵⁸. The place of the arbitration hearings will be used if the venue of arbitration is not determined. The arbitral tribunal will decide the parties' disagreement. “Arbitral tribunal” is defined in Act⁵⁹ as either a single arbiter or a panel of arbiters. The provisions of the contract signed by parties will govern how the tribunal is set up. The arbitrators have an oath to render a fair decision about the issue. However, the High Court and Supreme Court will choose the arbitrators if parties fail to do so. The arbitrators may also be chosen by any additional institution or organization.

3.4 Arbitral Awards

The arbitral award is issued following end of arbitration and is enforceable against parties. Only a few situations, such as when the arbitration agreement was unlawful, the disputing parties lacked the legal ability to enter into a contract, or an unfair process was used, among others, make it possible to contest an arbitral award. The structure and content of arbitral award are covered in Section 31⁶⁰. Under the Act, an arbitral award may be contested⁶¹.

⁵⁸ The Arbitration and Conciliation Act, 1996, section 20.

⁵⁹ Section 2 (1) (d), The Arbitration and Conciliation Act, 1996.

⁶⁰ Section 31, The Arbitration and Conciliation Act, 1996.

⁶¹ Section 34, The Arbitration and Conciliation Act, 1996.

3.4.1 Finality of the Arbitral Award

An arbitration award is binding as stated in “Article 28(6) of the ICC Arbitration Rules”⁶². “Article 32 of the 1976 UNCITRAL Arbitration Rules also supported it¹⁷⁷ and Article 3, NYC, 1958⁶³ also supported it”.

4. Judicial Approach and Challenges

4.1 Judicial approach to International Commercial arbitration in India

The Arbitration and Conciliation Act, 1996 is based on the UNCITRAL Model law on International Commercial Arbitration and it provides to settle the dispute in an expeditious or in a very cost-effective manner of alternative dispute resolution. Despite this, judicial intervention in cases of international commercial arbitration remains evident, making it challenging to align with the objective of minimizing judicial involvement and ensuring the finality, recognition, and enforcement of awards. Various proposals by the Law Commission, especially in the 246th report of August 2014, aimed at amending the Act to minimize judicial intervention. Amendments made between 2015 and 2021 have proven beneficial in utilizing arbitral tribunals for dispute resolution and reducing Court intervention. Analyzing judicial intervention reveals three stages related to jurisdiction: Section 8 allows parties to refer disputes to the arbitration mechanism of the arbitration tribunal, Section 11 deals with arbitrator appointments, and Section 12(5) pertains to challenging an arbitrator's impartiality. Additionally, Section 16(6) grants the arbitral tribunal power to rule on jurisdiction. Court intervention is also provided under Section 9, in line with Section 17, which empowers the arbitral tribunal. Furthermore, Courts assist in obtaining evidence according to Section 27.

The Act also covers arbitration award enforcement (Section 36) and provides a mechanism for challenging arbitral awards (Section 34). It includes an appellate mechanism for certain issues under Section 37 of the Arbitration and Conciliation Act. The primary appeal of arbitration lies in its procedural informality, minimized judicial intervention, cost-effectiveness in certain scenarios, and expedited dispute resolution. This attracts parties more towards arbitration than adjudication. The Supreme Court in **ONGC vs. Saw Pipes Limited**⁶⁴ held that award against public policy of India will not be enforced. This approach imparted a lot of criticism in the international arbitration as it restricted the scope of Section 34. The Court ruled that a specific award could not be enforced due to its patent illegality, expanding the interpretation of India's public policy. It emphasized the

⁶² Every Award shall be binding on the parties. By submitting the dispute to arbitration under these Rules, the parties undertake to carry out any Award without delay.

⁶³ The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

⁶⁴ (2003) 5 SCC 705. In this case ONGC contracted with Saw pipes for supply of equipment for offshore exploration which was delayed due to force majeure clause based on strike by workers. ONGC deducted liquidated damages and initiated arbitration proceedings but in absence of any proof of loss, the tribunal held that deduction was unlawful. Supreme Court set aside the award and directed ONGC to return liquidated damages and also held that asking for proofs is of no rationale by the tribunal when there is a contract between the parties.

need for a broader understanding of public policy in the context of international arbitration, aligning it more closely with public interest. Furthermore, it allowed for setting aside an award if it went against justice, morality, constituted patent illegality, or violated the fundamental policy of India. However, this judgment faced criticism for introducing numerous grounds for parties to challenge arbitration awards, subsequently increasing the time and cost for those involved. However, with the amendment in the 2015, the public policy concept was being narrowed down and it provided that an award which conflicts with the public policy of India only when if it is affected by fraud or corruption or violating Section 75 or 81 or if it is contravening any fundamental policy of India or against justice or morality.

Bharat Aluminum Company vs. Kaiser Aluminum technical services inc.⁶⁵ popularly known as the BALCO judgment, the Supreme Court concluded that Indian Courts will not exercise any jurisdiction with respect to any arbitration that is not seated in India. As a result of this decision, Supreme Court of India minimized extent of judicial intervention to foreign arbitrations and provided that Part 1 of the Arbitration and Conciliation Act, 1996 will not be applicable to the international commercial arbitration which are not seated in India and it got over its earlier decision of **Bhatia International vs. Bulk Trading SA and others**⁶⁶ in 2002 and **Venture Global engineering vs. Satyam computer services and others**⁶⁷ in 2010. In **Sundaram Finance Limited vs. NEPC India Limited**⁶⁸ the Court held that Section 9 is to provide interim relief to the parties and to make the arbitration proceedings easy rather than to create hurdles, so the party should not misuse it and should not make it a weapon to disrupt the arbitral proceedings. In case of **ITI Limited vs. Siemens public Communications Network Limited**⁶⁹ it was held that the provisions pertaining to the CPC, 1908 must be taken into consideration whenever an application comes for interim relief under Section 9.

4.2 Issues and Challenges in promotion of International Commercial Arbitration

4.2.1 Unification

International commercial arbitration consolidation can be understood as a procedural mechanism via which two or more arbitration proceedings, though separate can be merged into one in accordance with the terms of the

⁶⁵ (2010) 1 SCC 47. There was an agreement between BALCO and Kaiser Aluminum, a U.S. based company for the supply of computers to BALCO. The parties agreed that disputes would be governed by English Law at London. The SC held that no interim relief under section 9 to be provided as PART 1 of Arbitration and Conciliation Act, 1996 is not applicable to foreign seated arbitrations.

⁶⁶ Appeal (civil) 6527 of 2001. There was a contract between Bhatia International and Bulk Trading Company and disputes were to be resolved as per ICC rules. The parties agreed for France as seat and Bhatia International applied to SC for interim measures under section 9 which were granted as the Court held that PART 1 applied to International Commercial Arbitration.

⁶⁷ 2008 (4) SCC 1904

⁶⁸ Appeal (civil) 141-143 of 1999 BENCH: SUJATA V. MANOHAR. The parties entered into a contract for supply of wind turbines along with accessories for which payment was to be made in 36 instalments. There was default in payment

⁶⁹ ITI Limited vs. Siemens Public Communications Network Ltd., 2002 (5) SCC 510. The appeal was filed against the not granting appeal under section 37 where the Court held that it does not bar revision u/s 115 of CPC, 1908.

agreement.⁷⁰ An application for arbitration can be initiated by any party involved. However, it encounters several hurdles raised by the arbitral tribunal, especially when opposition is presented based on the argument that arbitration, being rooted in a contract, should solely involve the directly affected parties without any third-party interference. Additionally, maintaining confidentiality becomes challenging in multi-party proceedings. Therefore, to ensure conflict-free awards and enhance arbitration efficiency, parties should strive for a consensus in multi-party dispute settlement.

Consolidation faces challenges when arbitration agreements governed by different clauses in distinct contracts are involved, resulting in varying substantive laws. Inconsistent incorporation of contracts in the arbitration agreement impedes the consolidation or amalgamation process. Section 35(1) of the English Arbitration Act, 1996⁷¹ provides that arbitration proceedings may be consolidated and 35 (2) grants the arbitration tribunal the authority to order mandatory consolidation proceedings.

India has followed the consolidation of the arbitration in certain cases **Sukanya Holdings Private Limited vs. Jayesh H Pandya**⁷² popularly called as a Sukanya Holdings where the Court provided that subject matter which are covered under the arbitration and even if there are non-signatory parties then the Courts cannot bifurcate the various causes of action and they cannot make a partial reference to the arbitration.

In **Chloro Controls India Private Limited vs. Servern Trent Water Purification Inc.**,⁷³ the parties also sought injunction against the non-signatories. In this case, the Supreme Court ruled that the shareholder agreement or principal agreement, along with all other associated agreements, act in concurrence with the main agreement. All non-signatories who are parties to multiple agreements, as well as related companies having interests in such agreements, are involved in the joint venture of a specific company.

In other cases, pertaining to the consolidation of the arbitration proceedings, the High Court permitted an application under Section 8 of the Arbitration and Conciliation Act, 1996. This allowed the arbitration reference to be made against non-signatories, provided there exists a specific relationship between the parties. Additionally, there should be a common subject matter involved, and the arbitration agreement or other related agreements should pertain to a unified economic transaction.

4.2.2 Multiparty Arbitrations

In multiparty arbitration, the composition of the arbitral tribunal becomes a critical aspect, given its pivotal role in the contract. Therefore, it is imperative for parties to specify the method for forming the arbitral tribunal and

⁷⁰ JEAN-FRANÇOIS POUDRET ET AL., COMPARATIVE LAW OF INTERNATIONAL ARBITRATION 196 (Sweet and Maxwell, London 2nd edn., 2007).

⁷¹ English Arbitration Act, 1996

⁷² (2003) 5 SCC 531

⁷³ 2013) 1 SCC 641 (Chloro Controls)

to outline the procedures to be followed. Apart from addressing legal matters, economic factors, fairness, and justice should also be given consideration to ensure the consolidation of arbitration proceedings without disturbing the essence of the agreement. Courts have played a significant role in providing guidance on multi-party arbitrations. Parties involved should ensure that multiple arbitrations are permissible and are conducted transparently without raising issues solely for convenience in specific proceedings.

4.2.3 Difficulty in interim measures against third party

Major difficulty that arises in India is whether the Courts in India are empowered to grant interim relief to a non-signatory or a third party as Section 17 is mainly to provide interim relief against the parties to the arbitration but 2015 amendment has enlarged the scope of section 9 and section 17 and provided equal powers to the arbitral Tribunal and the Courts to grant interim relief. But in recent case of **Avon Healthcare Private Limited vs. Trade International and Others**,⁷⁴ Delhi High Court denied interim measures against the third party as the Court concluded that there is no such binding precedent which provides for such measures. Therefore, the need of the hour is that there should be conclusive ruling on this issue and it should not be based on the facts and circumstances of a particular case. There needs to be a Supreme Court ruling which provides for an imperative measure to abide by the decisions pertaining to interim relief against third party. Besides this, the Courts have adopted non- interference approach in the interim measures that are being granted by the arbitral Tribunal as the Supreme Court has ruled in a decision against the Gujarat High Court that it will not pass judgment about an interim application relief unless and until it is sure that the remedy which is given by the arbitral Tribunal is not efficacious as held in **Arcelor Mittal Nippon Steel India Ltd. vs. Essar Bulk Terminal**, 2021.⁷⁵

4.2.4 2 tier International commercial arbitration

In traditional system of litigation, the right to appeal is regarded as a fundamental element of fairness. The provision of appeal is a matter of right and not merely a part of procedural law. “The presence of an appellate jurisdiction acts as an insurance against terror, prejudice and human fallibility at the level of the lower authority.”⁷⁶ The Apex Code in **Centrotrade Minerals and Metals Inc. vs. Hindustan Copper Limited**,⁷⁷ recognized two-tier arbitration relying on the agreement by the parties and it showed the intention of the parties that they are not bound by the arbitral award at the first instance, then the award at the second instance is binding on both the parties. The two-tier arbitration is prominently of feature of the international commercial arbitration involving either the Adhoc or institutional arbitration. The European Court of Arbitration

⁷⁴ FAO(OS) (COMM) 67/2021(First appeal order original side)

⁷⁵ Civil Appeal No. 5700 OF 2021

⁷⁶ Air India vs. Nargis Meerza (1985) 2 SCC 732

⁷⁷ 2006 (11) SCC 245

acknowledges the concept of two-tier arbitration. However, in India, there is a challenge in enforcing two-tier arbitration at the institutional levels. Institutions of India like the Mumbai Centre of international arbitration, Delhi International Arbitration Centre or the International Centre for alternative dispute resolution should establish a definitive ruling on two tier arbitration in India. The Arbitration Council of India must ensure the provision of a robust and valid appellate arbitration framework. Such clauses should be incorporated into the arbitration agreement to prevent any commercial or procedural hardships.

5. Suggestions and Conclusion

Human conflicts are inevitable as well as disputes are equally inevitable. Disputes may arise among people in relation to their personal, family, economic and political lives. Since disputes are inevitable, there is an urgent need to find a quick and easy method of their resolution. Disputes must be resolved at minimum possible cost both in terms of money and time, so that more time resources and energy can be utilized for constructive pursuits.

The rationale and purpose of International Commercial Arbitration (ICA) mechanism are generally to provide a expedient, impartial, fair, speedy and effective environment for resolving disputes relating to international commercial issues. The Basic features which are found in the legal framework for disposal of such international commercial disputes can be summed-up into three stages, Jurisdiction of the forum, choice of law and the recognition and enforcement of foreign Arbitral Award. In International Commercial Arbitration, when the parties are of different legal systems, there automatically arises a conflict of laws, and a choice of the substantive law to be applied in a given dispute has to be made.

Many a time, the substantive law to be applied in arbitration may be specified by the parties in their original agreement. But problems arise in determining the applicable law in situations when the parties fails to agree upon a choice of law for the settlement of their dispute. The trend towards growing judicial intervention which tends to interfere with arbitral autonomy as also finality is a significant factor to be kept in view. The need is to reconcile and harmonize arbitral autonomy and finality with judicial review of the arbitral process. The National laws differ on this issue.

UNCITRAL Model Law attempts to promote harmony and uniformity in this sphere. The Government of India's transformed focus to make India as the Global hub for International Commercial Arbitration for the settlement of cross border commercial issues.. Focusing the government's persistent assurance to provide a friendly the cross-border business environment, a three-day global arbitration conference was organized recently in Delhi by the government think tank NITI Aayog at the helm of affairs. Under this Global Conference a national initiative has been taken to make stronger arbitration law and its enforcement in India especially for cross border disputes.

In India, in 1996, the Arbitration and Conciliation Act, 1996, was passed with the optimism that it would bring in winds of change, but fell into a chasm of its own. A number of decisions from the courts slowly but surely ensured that the preferred seat in any cross-border contract was always a heavily negotiated point and, more often than not, ended up being either Singapore, New York or London—the established global arbitration centers.

However, developments in arbitration jurisprudence through recent court decisions have now shown the support of the judiciary in enabling India to adopt international best practices. Never before has one seen so many pro-arbitration rulings by the Indian courts. From 2012 to 2015, the Supreme Court delivered various landmark rulings showing a much-needed pro arbitration approach, such as declaring the Indian arbitration law to be seat-centric; removing Indian judiciary's power to interfere with arbitrations seated outside the country; referring non parties to an arbitration agreement to settle disputes through arbitration; defining the scope of public policy in foreign-seated arbitration; and determining that even fraud is arbitrable. In International Commercial Arbitration, when the parties are of different legal systems, there automatically arises a conflict of laws, and a choice of the substantive law to be applied in a given dispute has to be made. Many a time, the substantive law to be applied in arbitration may be specified by the parties in their original agreement. But problems arise in determining the applicable law in situations when the parties fails to agree upon a choice of law for the settlement of their dispute.

The trend towards growing judicial intervention which tends to interfere with arbitral autonomy as also finality is a significant factor to be kept in view. The need is to reconcile and harmonize arbitral autonomy and finality with judicial review of the arbitral process. The National laws differ on this issue. UNCITRAL Model Law attempts to promote harmony and uniformity in this sphere. In different International commercial issues, the total exclusion of judicial intervention does not match with the current trend but the scope of judicial supervision needs to be reduced to the minimum.

The source of authority of the international arbitral tribunal is the agreement of the parties and not the mandate of the State. The choice of law applicable is also determined by the provision in the arbitration agreement. With the increased arbitral autonomy the requirement of reasons for the award is greater. Apart from transparency in the arbitral process it also acts as an inherent check on the arbitrators and discloses to the party the basis of the award and the logical process by which the conclusion was reached by the arbitrators. The presence of reasons also regulates the scope of judicial supervision.

With all these purposes and increasing International commercial disputes for effective implementation of economic reforms, it is necessary to recognize the demand of the business community in country like India and to expand the Indian foreign trade at global level as well as to attract the foreign investors, the Importance of an

effective International arbitration laws for amicable solution for International commercial disputes, is much required. For this vary purposes it is observed by Supreme Court in the case of food corporation of India v. joginderpal Mohinderpal, That, —We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situations but must be responsive to the cannons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence not only by doing justice between the parties, nut by creating sense that justice appears to have been done.

In light of the recent judgment, parties to arbitration are no longer at liberty to either include or exclude the jurisdiction of the Indian courts in cases of international commercial arbitrations. whereas Bharat Aluminum Co v. Kaiser Aluminum Technical Services Inc judgment provides much-needed relief to international players and also rightly recognizes the principle of territorial criterion, which is a cornerstone of arbitration. Even than there are so many issues in international commercial disputes, which are raised or may arise in future, due to lack of clear and effective guidelines it cannot resolve through International commercial arbitration mechanisms. Some major issues are as follows, Enforceability of Arbitration clause/ Arbitration agreement, place of Arbitration and hearing, conflict of laws, difference in substantive and procedural laws amongst the countries, Public policy of different countries, Recognition and Enforcement of Award etc.

There is no doubt that the judgments discussed here have been welcomed in international commercial arbitration domain. But on the same time because of ineffective arbitration laws it has made to revisit the long standing notion of getting foreign awards enforced in India as a time-consuming process with possibilities of judicial interference at various stages.

The latest decisions by the Indian courts wherein the grounds to challenge a foreign award have been restricted will result in faster resolution of disputes through arbitral processes. A hope ensues that with the present judicial scenario on the subject the confidence of the international community in commercial arbitration strengthens as being a plausible ADR mechanism in India.

In furtherance to measures taken by the Indian government in support of the ease of doing business', after two aborted attempts in 2001 and 2010 to amend the arbitration law, on October 23, 2015, the President promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015. The amendments incorporated the essence of major rulings passed in the past two decades, including most of the recommendations of the 246th Law Commission Report, and clarified the major controversies that arose in recent years.

Thereafter, on January 1, 2016, the Arbitration and Conciliation Amendment Act, 2015, was notified in the official gazette, which amended the provisions of the 1996 Act prospectively. The amendments are aimed at taking drastic and reform-oriented steps to bring the Indian arbitration law on a par with global standards and provide an effective mechanism for resolving disputes with minimal court interference. The rationale and

purpose of international arbitration should be to provide a convenient, neutral, fair, expeditious and efficacious forum for resolving disputes relating to international commerce.

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