CHAPTER - 1

INTRODUCTION

1.1 Introduction

Since the beginning of recorded human society, there have always been disputes and differences. It is an inseparable part of humanity to disagree, and this causes disputes. Depending upon the level of these, they can be resolved in a friendly manner without the mediation of an external party, or they may need an independent party to settle the disputes. As human relations became more complex, so did the disputes that arise in civilized society. This function of resolving disputes become a State subject and it was entrusted to judiciary, one of the organs of State machinery.

Practically, there are various methods of alternative dispute resolution. Among them, arbitration has been an effective mechanism of settling disputes since the first stage of the legal thinking of human, in Greece, Rome, Persia, China, Egypt and India. It has rapidly developed throughout the urban development of human and has now reached the flourishing stages witnessed today both nationally and internationally. Interestingly, the major reasons why parties opted for arbitration in ancient times, namely; congestion, delays and expensive nature of litigation in the courts, remain the same today. In modern times however, arbitration has become more attractive for various reasons such as its privacy, party control of the process and the international recognition and enforcement of arbitral awards, as against Court judgments. Basically, arbitration offers parties the opportunity to settle their

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2 These forms are: (a) negotiation, (b) conciliation, (c) mediation, (d) mini-trail and (e) arbitration.
3 The origin of this system is obscure: Italy, Greece, china, Iran, India and other States claim to be the first States to introduce arbitration. The fact remains that this system in its modern sense is of a very early origin. See more detail in; S.K. Roy Chowdhury and H.K.Saharay. “Law of Arbitration and Conciliation”, 4th Ed., Eastern Law House, Calcutta, (1996), 5.
disputes using private and optional means, the result of which is binding and enforceable.5

Arbitration is a legal technique for resolution of all types disputes outside the national courts, when in the parties to a dispute refer it to one or more neutral third party (the “arbiter” or “arbitral tribunal”), by whose final decision (the arbitral award) they agree to be bound. The parties to an arbitration agreement usually choose experts who are familiar with law and the actual or potential disputes between them. The agreement to arbitrate is usually included in the contract and is known as an arbitration clause. By this method, parties agree that in the event of a dispute, such dispute will be submitted to arbiters for determination. Arbiters are preferred because they are better placed than national Courts to deal with the several legal problems that arise frame transnational relations. Arbiters employ procedures that are more flexible, and readily apply international merchants, than national laws that may not cater for their needs.6 Arbiter should, on the one hand, know the nature of the disputes, in order to be able to arbitrate. On the other hand, they should know the applicable national and international law, in order to conduct arbitration and make an arbitral award that satisfies legal principles, and is enforceable.

Since the disputants may select the arbiters, they can ensure that experts determine their disputes. The disputants can set up Ad hoc arbitration panels or submit their dispute to any of the internationally established arbitration bodies that are found in many parts of the world which are also known as institutional arbitration. At international levels, a lot of institutions were created to provide a framework for the conduct of international arbitration.7 The most notable being the International Court of Arbitration of the International Chamber of Commerce (Paris, France), the Zürich Chamber of Commerce (Switzerland), American Arbitration Association (New York City, United States), the Vienna Arbitral Centre (Austria), International Centre for Settlement of Investment Disputes (Washington, D.C.,

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United States), and the London Court of International Arbitration (London, United Kingdom).

There is however various international conventions and protocols that were entered into by various States to bring in sync the rules governing International Commercial Arbitration. The most arguably and important international instruments that have developed international arbitration to its modern status was the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Award, 1958 (the New York Convention, 1958) and the Model Law, 1985 introduced by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. They provide an essential legal framework for international arbitration procedure in many jurisdictions around the world. These efforts were followed by various other conventions including the European Convention of 1961 and the Washington Convention of 1965. As a result of these international conventions, most States have enacted legislations that seek to strongly restrict negative interference of the courts in arbitration proceedings. Consequently, it seems that agreements intended to broaden the scope of courts beyond the predetermined standards have no support under these international instruments.

It is important to note that the development of International Commercial Arbitration (ICA) is an ongoing process and even today various international organizations are working towards further improving the existing system and also various States have associated themselves with this new phenomenon in the legal field to enhance their economy and development of their countries judicial system. And, India is no exception.

1.2 The Growth of Arbitration law in India

Although India has only recently experienced a major expansion into the areas of arbitration and conciliation but it is not a new concept for India. The modern legal context in India with a long and vibrant history has been influenced by at least three strands of legal tradition. Without resorting to a rigid scale of

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measurement arbitration in India since today can be divided into three phases. They are as follows:

a) Ancient period to till British period.

b) British period to till Independence period.

c) Independence period to the Present.

The origin of arbitration may be traced back to the age-old system of village Panchayats prevalent in ancient India. Disputants often voluntarily submitted their disputes to a group of wise men of a community—closely related to modern-day arbitration called the Panchayat—for a binding resolution.10 The final decisions of Panchas while sitting collectively as Panchayat commanded great respect because of the popular belief that they were the embodiment of voice of God and therefore had to be accepted and obeyed unquestionably. In course of time this mode of divine dispensation of justice through Panch Parmeshwar underwent radical changes with the changing pattern of sociality and growth of human knowledge and civilization. This old, fully tested system still carried the efficacy of disputes resolution and maintenance of peace with full satisfaction to both the disputants. This system has now got a constitutional recognition under Articles 243 to 243O of Indian Constitution which was inserted as Part IX of the Constitution of India.11

12 The lack of a single homogeneous legal system in the State and the incapacity for self rejuvenation of the major legal systems (Hindu and Muslim) coupled with the break down and fragmentation of central political authority (the Mughal Emperor at Delhi) presented a confusing vacuum in the rule and legal judicial system at the time of the advent of the British.12

The British came to India as trader with establishment of East India Company (approximately 1600 B.C.). Compelled and tempted by then circumstances in India, the British merchants turned in to administrators and

conquerors. Although, British did not abrogate the system relating to arbitration as prevalent in the country at the time, they came in to power. But their regime had introduced various laws closely relating to arbitration which were applicable either to a part of the country or subsequently to the whole nation. Like most Indian laws, the law relating to arbitration in India is also based on the English arbitration law.\footnote{N.V. Paranjape. “Law Relating to Arbitration & Conciliation in India”, fourth Ed. Allahabad: General Law Agency, (2011), 3.} A basic form of arbitration, as it is recognized today, was introduced between 1772 and 1827 in the Presidency towns of Madras, Calcutta and Bombay.

The Bengal Regulations of 1787, 1793 and 1795 were the first to introduce the concept of the courts referring matters to arbitration as well as the procedure for the conduct of arbitration proceedings. After the establishment of the Legislative Council for India, it passed the Code of Civil Procedure of 1859 which was repealed by the Act of 1877 and subsequently revised by the Code of Civil Procedure Act, 1882. Later, the Act was further replaced by the Code of Civil Procedure of 1908. This Code was contained elaborate provisions relating to arbitration in Sections 89 and 104 and Second Schedule of the Code of Civil Procedure of 1908. The Indian Arbitration Act of 1899 as a first Indian legislation devoted entirely to arbitration, however, continued to be applied only to subject-matters which were not before a Court of law for adjudication. This Act was built on English common law principles.\footnote{Sood, Sandeep S. “Finding Harmony with UNCITRAL Model Law: Contemporary Issues in International Commercial Arbitration in India After the Arbitration and Conciliation Act of 1996”, (2007), 47, <http://works.bepress.com/sandeep_sood/2>, accessed date on (12/01/2013).}

Ultimately in 1940 after a largely unsatisfactory of the Act, 1899, The Indian Government base on the English Arbitration Act, 1934 opened an important chapter in the history of the law of arbitration in British period as in this year was enacted the Arbitration Act, 1940.

After independence in 1947, with increasing emphasis on arbitration there was more and more judicial grist exposing the infirmities, shortcomings and lacunae in the Arbitration Act of 1940. It was not compatible with the new aspirations and dimensions of multiple needs of the emerging social and economy trends. As the Act
of 1940 was largely unsatisfactory, India opened a new chapter in its arbitration law when it enacted the Arbitration and Conciliation Act, 1996.

This Act repealed all previous statutory provisions on arbitration in India were contained mainly of three different statutes, namely; (i) the Arbitration (Protocol and Convention) Act, 1937 (ii) the Indian Arbitration Act, 1940 and (iii) the Foreign Awards (Recognition and Enforcement) Act, 1961. It has two main parts about Arbitration and part III of the Act on the base on UNCITRAL Conciliation Rules, 1980 is only about Conciliation.

The present Act is mainly inspired by UNCITRAL Model Law, 1985 and New York Convention, 1958. Its primary objectives of the Act were to achieve twin goals in arbitration as a cost effective and quick mechanism with the minimum court intervention for the settlement of commercial disputes. The Act, 1996 is barely 18 years old and what is the Indian experience is obvious by the fact the Act not met the purpose for which the Act was passed.

1.3 Statement of the Problems

This study concerned with ICA in India. The earlier Arbitration Act, 1940 was primarily designed with domestic commercial arbitration in mind and therefore, it is of limited assistance in ICA sphere. For solve of this serious lacuna, Indian legislature with enactment of the Arbitration Act, 1996, has highly developed rules and principles all aspects of ICA but practically, it faced many serious problems with them which cannot be overlook in present day of intentional trade transactions. That means, the road for ICA in India is bumpy. Umpteen problems exist such as;

1. There is no separate Act for ICA in India.
2. The present contexts the draft Articles provisionally adopted by the Arbitration Act, 1996 do not provide clear guidance.
3. Judicial interference in arbitral process is not minimal.
4. Foreign arbitral awards in India are not recognized and enforced smoothly and effectively.
5. India does not constitute an ideal or even advisable forum for international arbitration, mainly due to the existing uncertainty in this area of legal practice.
6. Arbitration legislation and practice in India lagged behind many other countries in the world.

In fact, the present Arbitration Act, 1996 did not effectively facilitate ICA. It has sufficed in the past, but as ICA is ever increasing and changing, the present Act has become outdated. This phenomenon has serious impact on the economic, social and political scenarios of India. In social scenario, most of Indian parties in an arbitration agreement do not want to subject themselves to refer to the Arbitration Act, 1996. They provide for a seat of arbitration outside of India. And in the economic and political scenarios, increasing engagement of India with the world economy and the opening of the Indian economy to international business has required providing reliable legal means of dispute settlement. Lack of an updated legal rules for resolving international commercial disputes, can be a serious obstacle to the development of international business, and particularly foreign investment in India. The investors will invest, only if they are persuaded that real protection and remedies are guaranteed by law.¹⁵

The key concern lies in an understanding of ICA on the present Arbitration Act, 1996. Hence the research problem for the present study is entitled “International Commercial Arbitration: A Legal Analysis With Special Reference To The Contemporary Issues Under Indian Law.”

1.4 Research Questions of the Study

The research has the following questions:

1. How did arbitration grow?
2. What is the position of ‘International Commercial Arbitration’ in India?
3. How far the international conventions are effective in facilitating the International Commercial Arbitration?
4. What are the procedural problems of the Indian Arbitration and Conciliation Act of 1996?
5. What are the grounds in which Courts can intervene?

6. How far the International Commercial Arbitration has served its purpose of being an international forum for resolving commercial disputes in the light of the problems faced during the enforcement of foreign award?

7. Whether International Commercial Arbitration is successful and fruitful?

1.5 Review of Literature

Review of literature is very important to study the different aspects of International Commercial Arbitration, which gives a clear picture about the development of ICA all over the world. ICA literature helps us to know the different aspect of ICA in both national and international levels. And, it has made great contribution towards development of international trade law.

The studies available in India having direct and indirect bearings on the objectives of present study are reviewed under some prominent area namely public policy, definition of the court in the Arbitration Act, 1996 and its interpretation, judicial Court intervention, recognition and enforcement of foreign award, and etc. These are as follow;

Rajan, R. Desing. (2005) carried out a historical review of the origin and growth of arbitration to its present period of development in India. This book created a clear picture and certain view of arbitration in India with a brief history of International Commercial Arbitration. The author without a deep discussion has concluded that arbitration method in India suffered from fatal diseases such as slow, expensive, lack of infrastructural facilities, lack of adequate knowledge of potential parties, lack of institutional framework and contestants avoid finality. The author for remedies of the poor conditions of working of arbitral process in India has suggested thirteen technical solutions such as development of arbitration culture, infrastructural facilities, fast track arbitration awareness programs, teaching and training at law school and setting up more arbitration center, etc.  

Suri, Prit. (2005) conducted a study entitled “Enforcement of Foreign Awards in India: Simplification Under the 1996 Act” with the goal to understand the

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present situation of India for enforcement of foreign awards. But without any suggestion for improvement of this mechanism in India, she has concluded that the Arbitration Act, 1996 has provided an effective and efficient basis for dispute resolution between Indian and foreign companies by minimising the intervention of Courts in the arbitral process. Nonetheless, the role of the Courts is not completely dispensed with, since they play a crucial role in the enforcement of arbitral awards.\textsuperscript{17}

\textbf{Jujjavarapu, Aparna Devi. (2007)} in a research work entitled “Judicial Review of International Commercial Arbitral Awards by National Courts in the United States and India” has highlighted that though India has not effectively recognized many non-statutory standards for reviewing arbitral awards, Indian courts have been inconsistent in their approach in setting-aside of the arbitral awards under the Arbitration Act, 1996. This is a cause for concern since it is precisely this independence from the courts which is imperative for achieving some of the key goals of arbitration, namely speed and efficiency.\textsuperscript{18}

\textbf{Atul, Chitale. (2007)} in a study entitled “The Asia-Pacific Arbitration Review - Country Overview (India)” has tried to answer the question, why arbitration is not succeed in India? To answer the question, the author focused on the speed in arbitration process without an enough attention for others factors like expensive and judicial Court intervention. The author has concluded that even though the numbers of ICA in relation to India are growing, most arbitration agreements provide for seat of arbitration outside of India. This is largely on account of the fact that the court process in India is slow and disputant parties don’t want to subject themselves to the jurisdiction of Indian courts and there is also a lack of reputable arbitral institution in India.\textsuperscript{19}

\textbf{Dickstein, Stephanie. (2007)} carried out a Comparative study entitled “A Comparative Study: The Rule of Law and International Commercial Arbitration in

\textsuperscript{17} Suri, Priti. “Enforcement of foreign awards in India: Simplification under the 1996 Act”, Asian Dispute Review database, Hong Kong International Arbitration Centre (2005).


China and India.” The first argument presented by author was that India’s judicial system is characterised by the rule of law to a greater extent than China’s is. The transaction costs associated with adjudicating international commercial disputes are therefore lower in India than they are in China. This makes going to court to resolve a commercial dispute more attractive in India whereas it is more attractive to foreign investors in China to seek alternatives to adjudication. In second argument, the author believed the rule of law is that politicians and other government officials are less able to interfere to prevent the Indian judiciary from scrutinising the arbitral process then their Chinese counterparts are in the Chinese system. This is explained by the existence of stronger rule of law provisions in India.  

**Dev, Chopra. (2008)** in a study entitled “Supreme Court’s Role vis a vis Indian Arbitration and Conciliation Act, 1996” with the aim to examines some aspects of the growth of judicial law making by the Supreme Court in the last twelve years of the working of the Indian Arbitration and Conciliation Act, 1996. It also examined the negative role of the Supreme Court in taking the law backward thus preventing the growth of international trade and commerce. According to conclusion of this study, the court interference should be minimal as is set out in the Model Law (1985) on which the is based. The Arbitration Act, 1996 experience is obvious by the fact that the Court’s interference is not minimal and the Indian courts are hyper active. The Supreme Court has also forgotten that the Arbitration Act, 1996 was intended as an alternative dispute resolution method as it was both less time consuming and was effective and for promoting international trade and commerce and by continuously interfering in such matters these purposes are defeated.  

**Agarwal, Anurag K. (2008)** in his article entitled “Resolving Business Disputes in India by Arbitration: Problems Due to the Definition of ‘Court” has concluded that an Arbitration as a method for speedy redressal of business disputes is facing uncertainty in India. Court intervention has to be reduced to the minimum. It is true that this intervention can never be eliminated. Thus, there is an urgent need.

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to speed up the numerous matters pending in the subordinate courts, particularly in the court of District Judges. This can easily be done if the legislation allows transfer of these matters to the courts of the Additional District Judges.  

Kachwaha, Sumeet. (2008) without understand the real difference between recognition and enforcement, carried out a study entitled “Enforcement of Arbitration Awards in India”. The author used both phrases together and did not make a distinction between them. According to conclusion of this study, the recognition and enforcement of awards is of paramount important for the success of arbitration in international arena. This is well evidenced by the fact that the enforcement of awards worldwide is considered one of the primary advantages of arbitration but unfortunately the Indian enforcement mechanism for foreign awards has thus been rendered inefficient, clumsy and uncertain. The most effective solution to the present problem would be just solved by an amendment to the Arbitration Act, 1996. Article 1(2) of Model Law on ICA should be added the Act, 1996 and notwithstanding the interventionist instincts and expanded judicial review, Indian courts do restrain themselves from interfering with arbitral awards.  

Hirani, Lavin. (2009) carried out a study entitled “The Legal Regimes Affecting International Commercial Arbitration in India & Singapore”. The author tried to separately describe the arbitration laws of both countries without any comparative tool and technique. He has concluded that India with its vast population and current enormous economic growth has great potential to become a world class center for ICA. India due to its new liberal policies has opened up to foreign investments in various fields and the legal sector must make full use of this opportunity to tap the international market for commercial disputes by ironing out its issues with the problem of judiciary and faulty systems which are now hindering its progress to become a hub for arbitration in spite of there being so


many reasons for it to progress like cheap work force, a huge source of lawyers, etc.\textsuperscript{24}

**Anthony, Aust. (2010)** in his book entitled “Handbook of International Law” has believed that ICA is not necessarily cheaper or less complicated than judicial. But the parties should better able to control the process (choice of arbiters, languages, confidentiality, etc.).\textsuperscript{25}

**Vasudha Sharma. & Pankhuri Agarwal. (2010)** in their article entitled “Rendering India in to an Arbitration Friendly Jurisdiction- Analysis of the Proposed Amendments to the Arbitration and Conciliation Act, 1996” have concluded that the Indian legislature has proposed some significant changes in the Arbitration Act, 1940 with the intention of upholding the ‘minimal judicial intervention’ standard and to clear the confusion created by some innovative judicial interpretations of the Act and to some extent its poor drafting itself as set out in the Arbitration and Conciliation Act, 1996. Indian legislature by an emergent legislative action should amended the Indian law of arbitration with a view to removing the serious lacuna and difficulties exist in the present law of arbitration. But the author did not attention that the enactment of an Act itself could not sufficient in rendering India an arbitration friendly jurisdiction.\textsuperscript{26}

**Rebello, Akash Pierre. (2010)** in a study entitled “Of Impossible Dreams and Recurring Nightmares: The Set Aside of Foreign Awards In India” has concluded that majority deviations from the Model Law in applying certain provisions only to domestic arbitration and not to international arbitration has prompted courts to fill in the gaps by recourse to judicial interpretation. And, it can be observed that the judgment was motivated as much by conservative judicial attitudes towards arbitration in India as by faulty drafting of Arbitration Act.

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\textsuperscript{26} Sharma, Vasudha, and Pankhuri Agarwal. “Rendering India in to an Arbitration Friendly Jurisdiction- Analysis of the Proposed Amendments to the Arbitration and Conciliation Act, 1996 “, 3 NUJS L. REV. (2010); 529-542
Therefore, essential to reclaiming the dream of arbitral autonomy and finality in India will be a softening of judicial attitudes towards arbitration.27

**S.S.Misra. (2010)** in his book entitled “Law of Arbitration & Conciliation in India with Alternative Dispute Resolution Mechanism” has believed that the present Arbitration Act, 1996 has sought to remove many serious defects with which the earlier Arbitration Act, 1940 suffered and at the same time, has also incorporated many modern concepts of arbitration which are universally accepted by most countries of the world. It may be reasonably concluded that the working of the Arbitration Act, 1996 would bring about qualitative improvement in the arbitration practice in India.28

**Gupta, Pankaj Kumar, and Sunil Mittal. (2011)** in their paper entitled “Commercial Arbitration in India” has concluded that the present arbitration system in India is still has loopholes and the quality of arbitration has not adequately developed as a quick and cost effective mechanism for resolution of commercial disputes. The concerned channels like arbiters, judges and lawyers should efforts to change general attitude of people towards arbitration.29

**Fali S. Nariman. (2011)** in a study entitled “Ten Steps to Salvage Arbitration in India: The First LCIA-India Arbitration Lecture” has concluded that India has not yet achieved what legislature initially set out to do when they enacted the Arbitration and Conciliation Act, 1996, which was to establish an efficient, competent and credible system of International Commercial Arbitration. He has suggested remedial measures such as: Establishment of an arbitration bar, necessity of good arbiters, set up a new Act, foreign parties must expressly exclude Part I and the like. Unfortunately, Nariman in his study did not suggest any step for improvement of arbitration process in India.

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29 Gupta, Pankaj Kumar, and Sunil Mittal., 2011,op.cit.,6

N.V. Paranjape. (2011) conducted a book entitled “Law Relating to of Arbitration & Conciliation in India.” He has believed that the desired eradication of Courts interference, direct implementation of awards at per with a court decree, autonomy of parties and procedures, transparency with confidentiality of documents and proceedings, impartiality of arbiters, their numbers and procedures for appointment and their workings has been ensured by due provisions in the present Act of 1996. The working of the Act has been found satisfactory by those who happen to be its beneficiary and users.31

S.C. Tripathi. (2012) in his book entitled “Law of Arbitration & Conciliation in India with Alternative Means of Settlement of Disputes Resolution” has believed that the Arbitration Act of 1996, in compare with earlier Arbitration Act, 1940 is more comprehensive and the civil court can intervene only where it so specifically provided in the Act but, unfortunately, the old Act, 1940 had given enormous powers to Civil Courts, which resulted in interference by Court, before, in between and after the arbitration proceedings.32

In all above three books (S.S. Misra, N.V. Paranjape, and S.C. Tripathi.), the present Arbitration Act, 1996 compared with the earlier Arbitration Act, 1940. The result has shown that the law of arbitration in India has gone through the deep changes and significantly improved. But the serious lacuna of above books is that the above authors did not compare the present Act, 1996 with the Model Law or International Conventions like the New York Convention, 1958. And they did not answer the question, whether Indian law of arbitration is now less or more in line with universally accepted standards and practice.

Sebastian, Tania, & Garima Budhiraja Arya. (2013) in their paper entitled “Critical Appraisal of ‘patent Illegality’ as a Ground for Setting Aside an Arbitral Award in India” has tried to answer the question, whether ‘patent Illegality’ should be added as a ground for setting aside an arbitral award in India or not. According to conclusion of this study, the Arbitration laws in India are being

expanded by way of judicial interpretation and it is contrary to legislative intention. Ambiguity and uncertainty of the term public policy as a fatal disease of Indian arbitration Law will always be open to varied judicial interpretations. Although arbitration improved in the Arbitration Act, 1996 but recent court interpretations of public policy have pushed Indian law backwards. An emergent legislature action would undo this serious lacuna.33

The same gap founded in all above literatures is that lack of sources and material is much more evident on the issue of ICA and particularly enforcement of foreign and international awards in India. Few existing works dealing with the issue of ICA in India fall into two categories, namely, those that consider the Indian law of arbitration or part of it, and those that consider the law in the context of a wider comparative study. The first category usually does not extend beyond short papers, and the treatment of the Indian law in the latter is also very brief. More importantly, recent developments in the law have not been discussed sufficiently in the existing literature. Hence, a comprehensive study centering on the Indian law of arbitration, having both comparative and developmental approaches, seems necessary.

1.6 Objectives of the Research

The research has the following objectives:

1. The primary objective of this study is to analyze the past and present arbitration system in India.
2. To discuss worldwide developments in International Commercial Arbitration.
3. To bring out more information and explanatory analysis of legal problem of International Commercial Arbitration.
4. To provide an overview and a legal analysis of the procedure and the principles applicable to International Commercial Arbitration.
5. To investigate several aspects of judicial intervention in arbitral proceedings.
6. To see various legal problems a foreign company may encounter after an arbitration settlement, in terms of enforcement procedure and why they arise.

7. To draw conclusions, provide critique and in discussing the various and problems entailed and also to suggest for scholars interested in International Commercial Arbitration, in order to advance understanding of this important and growing field and also make a series of recommendations for further research in this rapidly growing field.

1.7 Hypotheses of the Research

Based on the objectives of study, the following hypotheses are formulated:

1. The Arbitration and Conciliation Act of 1996 has not met the purpose for which it was passed.
2. The Arbitration and Conciliation Act of 1996 does not appear to be a well drafted legislation.
3. Indian law of arbitration is now less in line with universally accepted standards and practice.
4. The problems of enforcement of foreign award in India are not connected with international mechanism of arbitral awards.
5. The Model Law, 1985 and international conventions like the New York Convention, 1958 are positively effective in developing and facilitating the international arbitration in India.

1.8 Methodology of the Research

This study is a critical examination of the Indian law of arbitration, while studying its links to other parts of Indian law. For this purpose, Doctrinal Method has be adopted. It is substantially doctrinal in nature with a combination of Critical, Comparative, Historical and Analytical approaches.

The researcher has gathered much information based on library research with emphasis primary and secondary documents. A law library contains highly specialized materials and this requires special skill to handle. Basically legal material consists of statutory law and conventions. Researcher uses the Primary Sources for ICA research - treaties, arbitral awards, Court’s decisions both at national or international level and arbitration rules. Also included are Secondary
Sources crucial to thorough research - treatises, periodical literature, current awareness tools and web links.

1.9 Sources of the Research

❖ The Model Law and the New York Convention of 1958, including their historical legislative documents, have been essential sources because of their wide-spread implementation around the world. Institutional arbitration rules are also of value when looking at the form requirement.

❖ National arbitration legislation has also been of important value when treating the form requirements to arbitration agreements, as well as judicial decisions. The decisions have mostly been used to provide examples of the different interpretations existing regarding the provisions in the New York Convention of 1958.

❖ Documents from the work done in the entire world in the area of ICA have been instrumental, as have general books on ICA and articles published in various international journals. Many sources regarding the form requirement may be viewed as slightly outdated compared to the latest developments in the area, thus newer articles in international journals and information available on the Internet constitute important contribution. Notwithstanding, there are few updated and relevant sources on the subject.

❖ For the Case Law, this study uses a variety of available sources including national gazettes and journals, which publish court decisions on Domestic and International Commercial Arbitration. The Case Law includes analysis of approximately all available court decisions in India and international cases related with topic.

❖ Finality, this study also looks the publications of the International Chamber of Commerce (ICC) and the International Council of Commercial Arbitration’s (ICCA) yearbook international arbitration.
1.10 Significant of the Research

With the increasing role of international business and developing economy, the risk of commercial disputes has also grown substantially. Therefore, the importance of international dispute resolution mechanism including arbitration as a means of resolving commercial disputes has assumed greater importance in recent decades. It means that ICA has become the dominant methods of settlement of international commercial disputes and hence its importance has increased.\(^{34}\) This has been because of the demand of business community, which considers arbitration as the most appropriate method of dispute settlement in international trade. There have been attempts at cooperation as well as competition in the world, regarding ICA.

In this environment, in the 1990s, India with liberalization of its economy opened the doors to foreign investors in various sectors and the resulting increase in competition has led to an increase in commercial disputes. But geometric growth of international commercial disputes was a big shock for a judicial system like India which suffered from a fatal disease of sluggish in practice. Therefore, there were even greater needs of international arbitration to help judicial authorities to settle all commercial disputes.

Afterwards, international arbitration receiving such great attention by Indian government and academicians. As a result, studies and research work on international arbitration are coming out very rapidly in India in last decade but it still is far from an ideal when compared with other countries.

Therefore, the rational for undertaking this study is because there is a shortage of modern scholarly works dealing with issues covered in this thesis. The same is with reliable source and update information on arbitration case and practice in this part of the world. Hence, the present study proposes to bridge the gap in the literature and research relating to topic and to give useful insights on ICA in India.

Finality, several important benefits can be derived from the further study this thesis represents. The conceptual benefit will be an argument that this study will

\(^{34}\) Adhipathi, Sandeep. 2003, op.cit., 2.
be of interest to people involved in international commercial trade, with Indian companies, whether they are in a position of a company that uses international arbitration clauses in their contracts, or in position of a lawyer or arbiters representing a party in an ICA and for those wishing to improve the Indian law of arbitration. In such study, potential parties to commercial arbitration in India and their legal representatives may find insights that make them aware of procedural opportunities as well as perils and anomalies existing in Indian arbitration regulations. Since there are not sufficient, if any, in-depth studies to deal with these and some other relevant barriers thoroughly, it has been imperative to embark on such study.

1.11 Limitation of the Study

While any piece of this research work had a great number of limitations, and a complete discussion of them would no doubt be much longer than the work itself, there were a few factors of special importance about this study that should be mentioned.

- This study does not attempt to analyze all the Section of the Arbitration and Conciliation Act, 1996. The focus is limited to analyze and criticize the important topics such challenge of arbitration procedure, various grounds of judicial Court intervention, the debatable of public policy and the enforcement of international arbitral awards.

- The study mainly focus on the most important international instruments on a world wide scale, namely the Model Law (1985) and the the New York Convention of 1958. The European Convention on International Commercial Arbitration of 1961 is not treated as it is of less value than the New York Convention, due to its few Contracting States compared to the New York Convention of 1958, and of its regional scope. Institutional rules will be used for reference, but will not be exhaustively analyzed.

- The scope is further limited as the study only considers the theme in regard to ICA and also limited to Commercial Arbitration, because there are different security and protective measures to be taken into consideration regarding Consumer Arbitration.
For the Case Law includes analysis of approximately all court decision in relevant countries and international cases related with topic but unfortunately all cases are not available because arbitration awards are often confidential and the published awards are often summarized or heavily edited.

1.12 Chapter Layout

For a proper understanding of subject, this thesis consists of Seven Chapters. After this Introductory Chapter which it sets the framework for the thesis, and informs us what type of discussions, with regard to India, are expected to be followed in the rest of the thesis, this study is organized as follows:

- Chapter 2, the Second Chapter will provide a background on arbitration in International and Indian scenarios. It traces the development and modernization of arbitration from its early foundations to the well-established dispute resolution mechanism that it has become today at both international and Indian scenarios.

- Chapter 3 deals with conceptual and theoretical perspectives which relates to International Commercial Arbitration. In this Chapter, at the beginning, main features of arbitration are discussed. It provides us with a theoretical framework to examine in the following Chapters the approach adopted by the Indian legal system in International Commercial Arbitration.

- Chapter 4 deals with legal analysing of the procedure and the principles applicable to International Commercial Arbitration. It analytically explores the existing Indian law of arbitration at length. Such a comprehensive examination is a pre-requisite of assessing the regime of ICA in India. In this and next two Chapters, the Indian law of arbitration is compared with the Model Law (1985) and international conventions like as the New York Convention, 1958 and also with the arbitration laws of other countries, particularly that of United Kingdom.

- Chapter 5 deals to investigate several aspects of judicial court intervention in arbitral proceedings. The important issues of the powers of the court concerning arbitration in various stages, including vacation and enforcement, are mainly dealt with in this Chapter.
Chapter 6 deals to enforcement of foreign arbitral awards in India. In this chapter, after a brief review of the background to the issue of enforcing foreign arbitral awards in India, and legal developments in this regard, those parts of the Arbitration Act, 1996 that address enforcement of foreign arbitral awards are examined. These parts of Indian Law apply to foreign arbitral awards that can be enforced under international conventions or bilateral treaties to which India is a party. Following an examination of general provisions of Indian Law regarding enforcement of foreign awards, grounds for non-enforcement of such awards are considered. Then, the competence of the Court regarding foreign awards is discussed.

Chapter 7 summarizes the study’s findings and implications for practitioners and scholars interested in international commercial arbitration. It also makes a series of recommendations for further research in this rapidly growing field.