CHAPTER-2

ORIGIN, GROWTH AND DEVELOPMENT OF INTERNATIONAL COMMERCIAL ARBITRATION

2.1 Introduction

International Commercial Arbitration (ICA) in world is no means a recent phenomenon, though it has been organized on more scientific line, expressed in more crystal clear terms and employed more comprehensively in dispute resolution in recent years than before. But, a better and complete understanding of the present is possible only when we have some idea of the past because the roots of the present lie buried in the past by studying the history and development of arbitration laws in world.

Therefore, in this Chapter, the issue of development of arbitration is considered. For this purpose, first, the study traces the development of arbitration from its early foundations to the well-established dispute resolution mechanism that it has become today. In the next Section, the interplay between the two strands within the context of Indian legal system, as the background to the Indian arbitration law, is studied. It begins with a review of modernization process of the legal system in the country, stressing business legislation. An examination of adjudicative bodies in India is followed.

2.2. SECTION - A: INTERNATIONAL SCENARIO

2.2.1 Ancient History to the Birth of Modern International Law

International Commercial Arbitration (ICA) has seen gigantic growth in the late 19\textsuperscript{th} and early 20\textsuperscript{th} century and has indubitably become the preferred method for resolving international commercial disputes in worldwide. However, the concept of disputant parties referring to a neutral third party of their choice for the resolution of disputes between them is very much older and dates back to beginning of recorded
human society. Arbitration is said to have existed ‘long before law was established, or courts were organized, or judges had formulated principles of law’.\textsuperscript{1}

Resort to arbitration indeed seems natural: when two persons want to resolve a disagreement between them, an instinctive reaction is to turn to a mutually respected third person, such as a tribal elder. It is therefore not surprising that arbitration was practiced in ancient periods in all corners of the world.

The ancient Sumerians, Persians, Egyptians, Indians, Greeks and Romans all had a tradition of arbitration. Archaeological research reports that Clay tablets from contemporary south of Iraq recite a dispute between one Tulpunnaya and her neighbor, Killi over water rights in village near Kirkuk which was resolved by arbitration (with Tulpunnaya being awarded Ten silver shekels and an Ox),\textsuperscript{2} but as matter of fact, arbitration owed its beginnings to commercial disputes as it started with trade disputes being resolved by peers as early as the Babylonian days.\textsuperscript{3} The Sumerian Code of Hammurabi\textsuperscript{4} (c. 2100 BC) was promulgated in Babylon, and under the Code it was the duty of the sovereign to administer justice through arbitration. Arbitration for resolve individual, commercial and financial disputes\textsuperscript{5} was also popular in ancient Egypt; it has been said that until about the mid-20\textsuperscript{th} century, most of disputes would be settled out of court by recourse to a respected and popular elder chosen for his wisdom, integrity and standing in the community.\textsuperscript{6} Eastwards, in India also has an ancient history of resolving disputes in a three-tiered

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\item Roebuck, Derek. “Sources for the History of Arbitration: A Bibliographical Introduction”, Arbitration International 14, no. 3 (1998); 237-343.
\item Ibid.
\item The Code of Hammurabi is the longest surviving text from the old Babylonian period. It is far more significant in legal history than any of its forerunners, such as Ur-Nammu. Made up of 282 laws, carved in forty-nine columns on a basalt stele, the Code addresses a variety of issues arising out of civil, criminal and commercial matters. Hammurabi describes the code as “laws of Justice” intended to clarify the rights of any “oppressed man”. See more detail; Steven Kriss. “The Code of Hammurabi”,[Online]: The History Guide (3\textsuperscript{rd} August 2009), <http://www.historyguide.org/ancient/hammurabi.html>, accessed date on (02/08/2012).
\end{enumerate}
structure that is comparable to modern-day arbitration. In ancient times, long before the courts of law were established, people 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. This system continued through until the British arrived in India and made significant changes to the legal system with the first Bengal Regulations, enacted in 1772 during the British rule, followed by the Arbitration Act, 1940, which was later modernized by the Arbitration and Conciliation Act, 1996.

Arbitration was no less common in West. Early matters of arbitration from the West include ancient Greek, in certain for the resolution of maritime disputes with trading partners such as the Phoenicians and between Greek city States (the Greeks were subsequently influenced by their Egyptian ancestry and continued the use of arbitration) and ancient Rome. After an apparent decline in usage under late Roman practice, ICA between State-like entities in Europe experienced a revival during the middle ages. Arbitration was the preferred method for resolving civil matters and wide variety of regional and local forms of arbitration were used to resolve private law dispute throughout during the middle ages in Europe. It was also used to resolve colonial power struggles between States, such as to define the areas of influence among colonial empires particularly American and British colonies in the 15th and 16th centuries.

Western countries would often turn to the Pope (head of the Roman Catholic Church) to arbitrate such matters, giving the arbitral award an almost divine authority. Indeed, one of the famous examples of the age’s division of the discoveries of the new world include the arbitral decision rendered in 1493, in the

9 Ibid.
wake of Christopher Columbus’ epochal discoveries, by Pope Alexander VI\textsuperscript{12} which clarified borders between Spanish and Portuguese colonies in the Pacific Ocean and paved the way for the linguistic division of Latin America between Spanish and Portuguese in the Treaty of Tordesillas in 1494.\textsuperscript{13} It also clarified land ownership division in India. International disputes were also frequently referred to other sovereigns who acted as arbiters in the resolution of those disputes.

The first ICA of the modern era is often said to be the Alabama Claims Arbitration\textsuperscript{14} which took place in the consequence of the American Civil War. The United States (U.S) claimed that Britain had violated neutrality obligations under international law by allowing the battle ship \textit{CSS Alabama} to be constructed in Britain in full knowledge that it would enter into service with the Confederacy.\textsuperscript{15} As a result, the U.S asserted that Union merchant marine and naval forces had suffered heavy direct and collateral damages.\textsuperscript{16} After years of unsuccessful US diplomatic initiatives to obtain compensation, in 1871, President Grant’s appointed Secretary of State Hamilton Fish, worked out an arbitration agreement with Sir John Rose (British representative) in Washington to create a commission consisting of six members from the British Empire and six members from the United States (totally 12 members) to resolve the Alabama claims. On 8\textsuperscript{th} March 1871, the Washington Treaty was signed at the State Department and after 16 days on 24\textsuperscript{th} May 1871 the U.S. Senate ratified the treaty. According to parties’ agreement, an arbitral tribunal

\textsuperscript{12} Alexander VI, original Spanish name in full Rodrigo de Borja y Doms, Italian Rodrigo Borgia (born 1431, Játiva, near Valencia—died Aug. 18, 1503, Rome), corrupt, worldly, and ambitious pope (1492–1503), whose neglect of the spiritual inheritance of the church contributed to the development of the Protestant Reformation. For more detail see: <http://www.britannica.com/EBchecked/topic/14138/Alexander-VI>, accessed date on (21/03/2013).


\textsuperscript{14} This is the name given to the claims in the Treaty of Washington, 1871.

\textsuperscript{15} The \textit{CSS Alabama}’s story, beginning with the manner in which it was commissioned and armed through to its naval battles and its ultimate demise, is extraordinary. It involves many acts of subterfuge and culminates in a sea battle witnessed by thousands of people standing on the French coastline. See, e.g. Bingham, Tom. “The Alabama Claims Arbitration”, International and Comparative Law Quarterly 54, no. 1 (2005): 1-25.

\textsuperscript{16} Charles Sumner, then Chairman of the Senate Foreign Relations Committee, argued that British aid to the Confederacy had prolonged the Civil War by two years and indirectly cost the US hundreds of millions or even billions of dollars (Sumner suggested US$2.125 billion). Some Americans adopted this argument and suggested that Britain should offer Canada to the US as compensation.
met in Geneva.\textsuperscript{17} The arbitral tribunal issued its decision in September 1872, ordering Britain Government to pay the U.S some $15.5 million\textsuperscript{18} (This would correspond to about $ 200 million in 2014) in compensation for direct damages suffered. The arbitral tribunal was rejected indirect damages.

The following inferences may drive from the Alabama Claims result:


b) A number of significant improvements of certain principles of international arbitration.

c) Codifying international law to facilitate peaceful solutions to international commercial disputes.

d) A precursor to the Hague Conventions of 1899 and 1907 (which instituted the Permanent Court of Arbitration), and perhaps even part of the inspiration for aspects of the League of Nations, the United Nations (UNs) and the International Court of Justice (ICJ).

\textbf{2.2.2 Early 20th Century: The Growth of International Commercial Arbitration (1880 to 1920)}

In the late 19\textsuperscript{th} century, international arbitration began to gather significant momentum but its governance remained the preserve of national law. Without any international regulation of arbitration, the enforcement of awards was handled differently in different States.\textsuperscript{19} The seeds of ICA saw know it today were sewn in the late 19\textsuperscript{th} and early 20\textsuperscript{th} centuries as a response to growing international business, mainly in Europe continental, and the desire for an internationally enforceable, commercially sensible mechanism to resolve disputes.

Arbitral institutions contributed substantially to the growth of international arbitration during this period. A large number of institutions with arbitration rules


for merchants had developed already during the 19th century. In London, for example, the well-known Grain and Feed Trade Association (GAFTA), was established in 1878 and The London Court of International Arbitration (hereafter ‘LCIA’). The LCIA celebrated its centenary in September 1993. The LCIA goes back to ‘The London Chamber of Arbitration’, that was set up in 1892 and that altered its name to ‘The London Court of Arbitration’ in 1903 and then, after 92 years in 1995, to ‘LCIA’.  

The amicable settlement of disputes between States is the subject of the Hague Conventions of 29th July 1899 and 18th October 1907. As a result of the Hague Convention, 1899, the Permanent Court of Arbitration (hereafter “the PCA”) was set up at The Hague, in the Peace Palace (offered by Mr. Carnegie). It became the first worldwide institution for the resolution of international disputes between States or between States and private individuals (cf. Article 20 of the Hague Convention, 1899 and Article 41 of the Hague Convention, 1907). The PCA provides for mediation, good offices, inquiry/fact-finding commissions, and conciliation and arbitration services. However, the PCA does not have any authority to intervene in a dispute in any way on its own initiative; its sole objective is to enable or facilitate the amicable resolution of disputes. 

Over the decades that followed, a group of international businessmen who called themselves ‘Merchants of Peace’ set up the International Chamber of Commerce (ICC) with the inception of the former occurring in 1919 and the later in 1923. It quite rightly claims to be the most important private international organization in the world’s economy and quickly realized that an effective mechanism for resolving international business disputes would foster growth in international trade and commerce and assist in achieving world peace. It covers approximately 5,000 large firms and 1,500 industrial organizations, is established in over 50 States through its own national groups and provides a worldwide operating

20A few years ago, the London Court of International Arbitration was established an office in India. 
21 Blessing, Marc. “Introduction to Arbitration: Swiss and International Perspectives.” Helbing und Lichtenhahn, (1999), 75 
22 Blessing, Marc., 1999, op.cit., 89. 
and discussion forum for the main concerns of economic activity throughout the world. Its many expert committees, made up of representatives from all over the world, compile commentaries and reports on central topics in the law of Finance, International Payment Transactions, Credit Insurance, Insurance Law, Tax Harmonization, Environmental Protection Law, Energy Law, privatization, Merger Controls, Marketing, International Transportation (including Maritime Law and Air Traffic Law), Telecommunications, Commercial Practices (to name just a few of the committees).²⁵

The vital part played by the ICC in international arbitration, particularly through two institutions: the ICC’s Institute of International Business Law and Practice as a scientific institution (presided over by Professor Pierre Lalive, Geneva) and, even more importantly, the International Court of Arbitration of the ICC, the world’s foremost arbitral institution. Recently, the ICC registered its 10,000th cases.²⁶ The ICC began administering international disputes in 1921 and had dealt with 15 such cases before the ICC International Court of Arbitration (‘ICC Court’) was set up in the year 1923 which become a truly universal institution headquartered in Paris. The ICC Court’s mission was to foster international trade and commerce by providing a framework for the resolution of international commercial disputes. Various ICC congresses in the early 1920s called strongly for better legal recognition of arbitration, which was rapidly gaining popularity among international businessmen. The following resolution was adopted at an ICC Congress in Rome in March 1923:

“ The International Chamber of Commerce considers that for the purpose indicated in the preceding resolutions it is desirable that one or more international conventions should be negotiated with the least possible delay, to embrace the largest possible number of States, particularly those of commercial importance. Such conventions should pledge the contracting States to recognize and make effective arbitration clauses in international commercial contracts, and to provide that if two disputant parties of different nationalities agree to refer disputes that may arise between them to

²⁵ Ibid.
²⁶ Ibid.
arbitration, an action brought by either party in any country shall be stayed by the Court, provided that the Court is satisfied that the other party is, and has been, willing to carry out the arbitration.”

During the first decades of the twentieth century, business community and legal fraternity in developed States called for legislation to facilitate the use of arbitration in resolving domestic and, particularly, international commercial disputes. In 24 September 1923, initially under the auspices of the newly founded ICC, major trading nations negotiated the Geneva Protocol on Arbitration Clauses (hereafter the GP, 1923) in Commercial Matters. The GP (1923) was ultimately ratified by the Brazil, France, Germany, India, Japan, United Kingdom (UK), and about 24 other Nations. Although the United States of America (USA) did not ratify the GP (1923), the nations that did so represented a very significant portion of the international trading community at the time. The GP (1923) was the first genuine international convention especially concerned with commercial arbitration to be adopted internationally.

The GP (1923) played a vital and critical—if often underappreciated—role in the development of the legal framework for ICA. Among other things, provisions I, III and IV of the GP (1923) planted the seeds for a number of principles of enormous future importance to international arbitral process.

27 International Chamber of Commerce, Resolutions Adopted at the Second Congress, Rome, Brochure No.31, (March 1923), 37.
30 Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different contracting states by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.
31 The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid by virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.
32 Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory.
Afterwards, the next step forward was the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (hereafter the GC, 1927)\(^{33}\), which did not replace, but complemented the GP (1927). The Convention’s focus was enforcement of foreign awards, and, unlike the GP (1923), did not limit itself to enforcement of domestic arbitral awards. The Convention set requirements for recognition and enforcement of awards, as well as conditions for refusing enforcement of such awards,\(^{34}\) and listed the documents necessary for requesting enforcement of an award.\(^{35}\) With the growth of international commerce in the Post-War era, it became more and more clear that the GC (1927), too, did not meet the requirements of ever expanding international arbitration. Under the Convention, for recognition and enforcement of an award, not only must it have been made in the territory of a signatory State, but also the disputant parties to the dispute must have been subject to the jurisdiction of a High Contracting Party.\(^{36}\) On many occasions, however, both these conditions cannot be met, as arbitration is usually conducted in a country to whose jurisdiction none of the disputant parties were subject. The disputants prefer a third neutral country as the seat of arbitration. Hence, enforcement of foreign arbitral awards needed a more pro-enforcement and comprehensive regulatory regime.

The outbreak of Second World War halted international business.\(^{37}\) Thought the two decades from 1927 the outbreak of Second World War there was a steady development in Europe continental of arbitration as recognized means of dispute settlement in international commercial matters.\(^{38}\) However, its immediate aftermath saw huge economic growth and trade, particularly from the 1950s onwards when global commerce between private parties began to flourish.\(^{39}\)

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\(^{33}\) On 26 June 1927.

\(^{34}\) Articles 2 and 3 of the Geneva Convention, 1927.

\(^{35}\) Article 4 of the Geneva Convention, 1927.

\(^{36}\) Article 1 of the Geneva Convention, 1927.


\(^{39}\) Greenberg & et al , 2011,op.cit., 9
2.2.3 The Gigantic Growth of International Commercial Arbitration 1950 to the Present

It turned out that the language of these Protocol and Convention was far from ideal, with various shortcomings and ambiguous provisions. Neither of these Convention has much practical effect today because they have been superseded by the New York Convention, 1958. Perhaps the most important milestone in the entire history of ICA was the adoption of the New York Convention. Clearly, the impressive upturn of international arbitration and the success of arbitral institutions such as the ICC and others are closely linked to the significance of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (hereafter the NYC, 1958). It placed the GP (1923) and the GC (1927) on a new basis. The NYC (1958) is one step beyond the GC (1927), in the sense that it applies to arbitral awards irrespective of where they are made.

The Convention was adopted—like many national arbitration statutes—specifically to address the needs of the international business community, and in particular to improve the legal regime provided by the GP (1923) and the GC (1927) for the international arbitral process. The first draft of what became the Convention was prepared by the ICC in 1953. The ICC introduced the draft with the observation that “the Geneva Convention, 1927 was a considerable step forward, but it no longer entirely meets modern economic requirements”, and with the fairly radical objective of “obtaining the adoption of a new international system of enforcement of arbitral awards.”

Preliminary drafts of a revised convention were prepared by the ICC and the United Nations’ Economic and Social Council (“ECOSOC”), which then provided the basis for a three-weeks conference in New York (USA)—the United Nations Conference on Commercial Arbitration—attended by 45 States in the Spring of 1958.

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40 Blessing, Marc, 1999, op.cit., 121
The New York Conference resulted in a document— the New York Convention—that was in many respects a radically innovative instrument, which created for the first time a comprehensive and an universal legal regime for the international arbitral process. The original drafts of the NYC (1958) were focused entirely on the recognition and enforcement of arbitral awards, with no serious attention to the enforcement of international arbitration agreements.\(^43\) This drafting approach paralleled that of the Geneva treaties (where the GP (1923) dealt with arbitration agreements and the GC (1927) addressed awards). It was only late in the Conference that the delegates recognized the limitations of this approach and considered a proposal from the Dutch delegation to extend the treaty from the recognition of awards to international arbitration agreements. That approach, which was eventually adopted, and the resulting provisions regarding the recognition and enforcement of international arbitration agreements form one of the central elements of the Convention.

The text of the Convention was approved on 10 June 1958, by 35 votes to none with 4 abstentions of the Conference (with only the United States and three other countries abstaining).\(^44\) The Convention is set forth in English, Chinese, French, Russian and Spanish texts, all of which are equally authentic.\(^45\) The text of the Convention is only a few pages long, with the instrument’s essential substance being contained in five concisely drafted provisions (Articles I through V). Despite its brevity, the Convention is now widely regarded as “the cornerstone of current International Commercial Arbitration.”\(^46\) In the suitable words of Judge Stephen Schwebel, earlier President of the ICJ, “It works” or, as the late Sir Michael Kerr put it; the NYC (1958) “is the foundation on which the whole of the edifice of international arbitration rests.”\(^47\)

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\(^43\) G. Born, 2009, op.cit., 32.


\(^45\) The New York Convention, Art. XVI.


\(^47\) G. Born, 2009, op.cit., 95.
The NYC (1958) made a number of significant improvements in the regime of the Geneva Protocol and Geneva Convention for the enforcement of international arbitration agreements and arbitral awards. Particularly important were the NYC’s to establish a single uniform set of international legal standards for the enforcement of arbitration agreements and arbitral awards. And also, it has been applied in over 700 State court decisions in which the national courts have generally supported the Convention to a significant extent. Nevertheless, it was still felt that ICA practice needed more back-up in the form of specialist as well as regional multilateral treaties. Specialist conventions may address particular requirements of trade relationships in a specific area of commerce, while regional conventions provide more incentive and confidence for encouraging countries to join.

The essential merits of the NYC (1958) are: (i) the recognition of arbitration agreements (as per Article II of the NYC, 1958). And (ii) the setting of the yardsticks and criteria for the recognition and enforcement of international arbitral awards (as per Articles IV and V). It is according to these principles and criteria that national legislators have successfully been guided in international arbitration matters ever since 1958. The the Model Law also reflects these criteria.48

In 1961, three years after the adoption of the NYC (1958), a great deal of importance is also attached, with regard to the development of international arbitration, to the European Convention (hereafter the EC, 1961) on ICA of 21st April 1961 (sometimes also called “the Geneva Convention, 1961”) drawn up under the aegis of the UN Economic Commission for Europe and ratified by 22 countries (but not by Switzerland).49 The EC (1961) as the first regional convention was adopted to facilitate arbitration in commercial relations within Europe and particularly between the Western and Eastern European States.

The Convention is noteworthy as being the first international instrument to have the words “International Commercial Arbitration” in its title. This was more than a curiosity. It signaled a change in the attitude towards arbitration of international commercial disputes. The nation-State would be in charge of the rules,

48 Blessing, Marc, 1999,op.cit., 122
49 Blessing, Marc, 1999,op.cit., 123
but those rules should recognize the special requirements of an arbitration which involves international economic matters and in which one or both disputant parties may be foreign.\textsuperscript{50}

The Convention addresses the three principal phases of the international arbitral process;

1) Arbitration Agreements: in this regard, the Convention provides for a limited, specified number of bases for the invalidity of such agreements in proceedings concerning recognition of arbitral awards, but instead does not expressly provide for their presumptive validity.

2) Arbitral Procedure: in this regard, the Convention restrictly limits the role of State courts and confirms the maximum autonomy of the parties and the arbiters (or arbitral institution) to link the arbitration proceedings. And,

3) Arbitral Awards: in this regard, the Convention is designed to supplement the NYC (1958), substantially dealing solely with the effects of a judicial decision annulling an arbitral award in the arbitral seat in other jurisdictions (and not with other recognition obligations).\textsuperscript{51}

There was also progress in regard to the rules of procedure that governed the arbitration. In 1966, the Arbitration Rules for Ad hoc arbitrations were adopted by both the United Nations Economic Commission for Europe (ECE) and the United Nations Economic Commission for Asia and the Far East (ECAFE). The same year, the EC (1961) providing a Uniform Law on Arbitration was adopted by the Council of Europe.\textsuperscript{52}

Afterwards, the World Bank Convention on the Settlement of Investment Disputes between States and Nationals of other States of 28\textsuperscript{th} March 1965, known as the ICSID Convention or the Washington Convention, 1965 (hereafter the WC, 1965), must be mentioned. The Convention provides for arbitration when disputes

\textsuperscript{50} The UN Working Group, 2005, op.cit., 23.

\textsuperscript{51} G. Born, 2009, op.cit., 38.

\textsuperscript{52} The UN Working Group ,2005,op.cit., 23
arise between a State on the one hand and a national of another State. More than 144 States from all geographical regions of the world have joined the Convention.

The WC (1965) provides for international methods of settlement and, particularly, international conciliation or arbitration. The Convention is designed to facilitate the settlement of ‘investment disputes’ that the parties have agreed to submit to the WC (1965). As to such disputes, the Convention provides both conciliation and arbitration procedures. Arbitration is governed by the ICSID Arbitration Rules and the ICSID Convention. These facilities are made available through the WC (1965) to which Contracting States and nationals of Contracting States may submit their investment disputes if they so desire.

It is, however, the task of Conciliation Commissions and Arbitral Tribunals constituted under the Convention to conduct conciliation and arbitration. It is a main feature of the WC (1965) that it considers only disputes to which a State or State entity is a party. Under the Preamble of the Convention, “Mutual consent by the disputant parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with.” More importantly, Contracting States must recognize and enforce arbitral awards made by the ICSID, as if they were final judgments of their national courts.

The WC (1965) contains a number of comparatively unusual provisions relating to international arbitration. For example, the WC’s final awards are directly enforceable in signatory States, without any method of judicial review in State courts. This is a fundamental and substantial difference from the NYC (1958) model, where arbitral awards are subject to annulment (in the arbitral seat) and non-

53 Blessing, Marc, 1999, op.cit., 124
54 At present, 155 States have signed the ICSID Convention. However, 144 States have deposited their instruments of ratification, acceptance or approval of the Convention to become ICSID Contracting States. See more detail; “List of Contracting States”, <http://www.worldbank.org/icsid/constate/c-states-en.htm>, accessed date on (10/07/2013).
55 Investment disputes are defined as controversies that arise out of an “investment” and are between a Contracting State or designated state entity (but not merely a private entity headquartered or based in a Contracting State) and a national of another signatory State.
recognition (elsewhere). The WC’s caseload has very significantly increased in the last two decades, particularly as a consequence of arbitrations brought pursuant to Bilateral Investment Treaties (BITs) or investment protection legislation.

Except aforementioned conventions, there are many regional conventions as well as bilateral or multilateral treaties between countries for the arbitration especially in the recognition and enforcement of arbitral award. As an example, The Moscow Convention of 26th May 1972 provided for a referral to arbitration of all disputes which arise between economic organizations of the former Council for Mutual Economic Assistance Countries (CMEA Countries). The arbitration rules were unified in 1974 under the “Uniform Arbitration Rules of the Arbitration Courts attached to the Chambers of Foreign Trade of the CMEA Countries.” They were slightly amended in 1987. Arbitration was thus the compulsory dispute resolution mechanism within the COMECON, and the system became widely harmonized throughout the member States. Awards were final and binding and enforceable in the same manner as court judgments; grounds for refusal of enforcement were strictly limited.

For instance in Latin America, the Inter-American Convention on ICA- that so called “Panama Convention” (hereafter the PC, 1975) - was adopted by the Organization of Latin American States in 30 January 1975. Fifteen (15) Countries, including the USA, have joined the Convention. The NYC (1958) served as a model and was largely followed. The PC (1975) marks a very significant improvement regarding the recognition of an arbitration clause or arbitration agreement, by doing away with the requirement, in some of the Latin American States, according to which an arbitration clause was nothing more than a kind of natural obligation

57 International Chamber of Commerce Arbitration Yearbook (1976); 147–156.
58 The Council for Mutual Economic Assistance (English abbreviation COMECON, CMEA, or CAME), 1949–1991, was an economic organization under the leadership of the Soviet Union that comprised the countries of the Eastern Bloc along with a number of Socialist States elsewhere in the world. The COMECON was the Eastern Bloc's reply to the formation of the Organization for European Economic Co-operation in non-communist Europe. The descriptive term was often applied to all multilateral activities involving members of the organization, rather than being restricted to the direct functions of COMECON and its organs. This usage was sometimes extended as well to bilateral relations among members, because in the system of socialist international economic relations, multilateral accords—typically of a general nature—tended to be implemented through a set of more detailed, bilateral agreements.

which had to be corroborated by a fresh submission agreement once a dispute had actually arisen. According to its Article 3, disputants were free to determine the arbitral procedure; absent such agreement, the procedure would be conducted under the Rules of the Inter-American Commercial Arbitration Commission. And also, under Article 4 of the Convention, “An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.”

Although the PC (1975) follows the regime of enforcement set by the NYC (1958), unlike the latter, it does not distinguish between foreign and domestic arbitral awards.

The Amman Convention on Commercial Arbitration of 1987 was agreed by the Arab Ministers of Justice, and signed by 13 Arab League in 1987 (it should be remarked that Saudi Arabia has not yet ratified this Convention). After its ratification by eight States, namely Iraq, Jordan, Lebanon, Libya, Palestine, Sudan, Tunisia and Yemen, the Convention came into force in 25 June 1993. Since today, however, no other State ratified or acceded to the Convention. The preamble of the Convention refers to “the need to conceive unified Arab rules on commercial arbitrations which would find their place amongst the international and regional arbitration rules.”

Under Article 4 of the above Convention, the Arab Centre for Commercial Arbitration (with headquarters in Rabat, Morocco) will be established for the settlement of commercial disputes particularly between Arab entities. Nevertheless, the Centre has not been established yet, and the Convention has not yet become operative. Consequently, no commercial dispute has been referred to arbitration under the Convention.

Alongside multilateral conventions and bilateral treaties, national statutes play an indispensable essential role in regulating arbitration. Divergence among national laws of various States has appeared as an impediment to facilitation of international arbitration. Thus, the law on ICA first emerged as a patchwork of

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60 Article 4, the Panama Convention, 1975.
61 The preamble of the Panama Convention, 1975.
diverse national laws on arbitration. The increasing complexity of international transactions, the growth of international trade and the disappointment with the regulation of international trade by these various State laws fostered a climate conducive to harmonization and unification of these laws under the auspices of various international organizations, including the United Nations. Thus, there have been some attempts at harmonizing such laws. Chief among such attempts was the adoption of the United Nations Commission on International Trade Law Arbitration Rules (hereafter the UNCITRAL AR) which were shaped in the mid-1970s out of the need to create an instrument for the settlement of disputes arising in international trade in the form of internationally accepted rules for Ad hoc arbitration.

The UNCITRAL AR provide a real and attractive option for Ad hoc arbitration: first, as an option or alternative to institutional arbitration under the aegis of an arbitral institution (such as that of the International Chamber of Commerce (Paris), the Zürich Chamber of Commerce (Switzerland), the London Court of International Arbitration (London), the Vienna Arbitral Centre (Austria), etc.). And, second, as an alternative to “pure” Ad hoc arbitration (i.e. arbitration which is solely governed by the national arbitration Act – for instance, in Switzerland, by Chapter Twelve of the Private International Law). Moreover, the UNCITRAL AR have been designed to serve as a model for arbitral institutions as their single or optional rules.62

The UNCITRAL AR acquired particular importance after 1981 because they were chosen as the arbitration rules applicable to the Iran-US Claims Tribunal (hereafter the IUSCT), based on the 1981 Algiers Agreement 63 between the USA and Iran. In the past 32 years, therefore, thousands of arbitration cases have been decided on the basis of the UNCITRAL AR, and a substantial arbitration practice in the

63 The Iran-United States Claims Tribunal came into existence as one of the measures taken to resolve the crisis in relations between the Islamic Republic of Iran and the United States of America arising out of the November 1979 hostage crisis at the United States Embassy in Tehran, and the subsequent freezing of Iranian assets by the United States of America. The Government of the Democratic and Popular Republic of Algeria served as intermediary in the search for a mutually acceptable solution. Having consulted extensively with the two Governments as to the commitments each was willing to undertake in order to resolve the crisis; the Government of Algeria recorded those commitments in two Declarations made on 19 January 1981. The "General Declaration" and the "Claims Settlement Declaration", collectively "Algiers Declarations", were then adhered to by Iran and the United States".
IUSCT has been developed in relation to the individual provisions of the UNCITRAL AR.  

The UNCITRAL AR was also the starting point so to speak for the very extensive work done for creating the UNCITRAL Model Law. Their close contacts can be seen from a comparison of numerous provisions.

Shortly after adopting the UNCITRAL AR, in effort to break down the remaining barriers to international trade as a resolute the disparities in national trade law, the United Nations Commission on International Trade Law (UNCITRAL) and the UN General Assembly in 1985, also approved UNCITRAL Model Law (the ML, 1985). This proposed the ML (1985) was to be based on the provisions of the NYC of 1958 and the provisions of the aforementioned the UNCITRAL AR.

The UNCITRAL is a body of world experts which has as its main purpose the progressive harmonization and unification of the national laws governing international trade. Its approach to harmonization has been to rely on Model Laws rather than on international conventions. The ML was adopted in 1985. It was drafted by a Working Group of UNCITRAL for extensive consultation and debates consisting of States, the business and international arbitration community (between representatives of the UNCITRAL Secretariat, International Council For Arbitration; ICC International Court of Arbitration and the ICC), and regional organization (Asian–African Legal Consultative Committee “AALCC”). The main policy objectives of the ML (1985) are as follows:

"[a] the liberalization of International Commercial Arbitration by limiting the role of national courts, and by giving effect to the doctrine of the 'Autonomy of the Will', allowing the disputant parties freedom to choose how their disputes should be determined;

[b] The establishment of a certain defined core of mandatory provisions to ensure fairness and due process;"

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64 Blessing, Marc, 1999, op.cit.; 129 -130.
65 Blessing, Marc, 1999, op.cit., 130.
[c] The provision of a framework for the conduct of international commercial arbitration, so that in the event of the disputant parties being unable to agree on procedural matters, the arbitration 'would nevertheless be capable of being completed; and,

[d] The establishment of other provisions to aid the enforceability of awards and to clarify certain controversial practical issues.”

On purpose, the goal was not to draft an international convention, which then would have to be ratified by the States; rather, the goal was a more modest one, i.e. to simply work out a model for a piece of legislation to be adapted by the national legislators, thus allowing States more flexibility to incorporate it in their own national legislation. This approach was certainly wise, as demonstrated by the impressive acceptance which the ML (1985) has had to date.

The United Nations General Assembly was approved in the same year that legal uniformity governing arbitral procedures was desirable and recommended that “all States give due consideration to the UNCITRAL Model Law on International Commercial Arbitration”.

The ML (1985) was designed to be implemented by national legislators, with the purpose of further harmonizing the treatment of ICA in different States. The ML (1985) consists of 36 Articles, which deal widely with the issues that arise in State courts in connection with ICA. Among other things, the ML (1985) comprises provisions as follows;

a) Enforcement of arbitration agreements. [Articles. 7-9]

b) Appointment of and challenges to arbiters. [Articles. 10-15]

c) Jurisdiction of arbiters. [Article. 16]

d) Provisional measures. [Article. 17]

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67 Resolution 40/72(11 December 1985).
e) Arbitral proceedings, including language, seat (or place) of arbitration, and procedures. [Articles. 18-26]

f) Evidence-taking and discovery. [Article. 27]

g) Applicable substantive law. [Article. 28]

h) Arbitral awards. [Articles. 29-33]

i) Setting aside or vacating awards. [Article. 34]

j) Recognition and enforcement of foreign arbitral awards, including bases for non-recognition. [Articles. 35-36]

Under the ML (1985), written international arbitration agreements are presumptively valid and enforceable, subject to limited, specified exceptions.68 Article 8 of the Law provides for the enforcement of valid arbitration agreements, regardless of the arbitral seat, by way of a dismissal or stay of national court litigation.69 The ML (1985) also adopts the Separability Doctrine70 and expressly grants arbiters the authority (Kompetenz-Kompetenz Theory or Competenz-Competenz Theory)71 to consider their own jurisdiction.72

The ML (1985) prescribes a principle of judicial non-intervention in the arbitral proceeding.73 It also affirms the parties’ autonomy (subject to specified due

68 UNCITRAL Model Law, Arts. 7-8; infra ; 159-73, 322-421. The original 1985 Model Law’s “writing” requirement for arbitration agreements is broadly similar to, but somewhat less demanding than, Article II of the New York Convention. See UNCITRAL Model Law, Art. 7(2).

69 UNCITRAL Model Law, Art. 8(1); infra ; 261-80.

70 UNCITRAL Model Law, Art. 16; infra ; 173-201.

71 The doctrine of Kompetenz-Kompetenz overcomes the conceptual problems arising out of any decision by the arbitrator on his own jurisdiction. Any decision by the tribunal that no valid arbitration agreement exists would include at the same time a corollary finding that the tribunal also lacked jurisdiction to decide on its own jurisdiction (since there was no basis for such a jurisdiction). The doctrine of Kompetenz-Kompetenz is a legal fiction granting arbitration tribunals the power to rule on their own jurisdiction. To justify the assumption of these powers, reference was first made in Article 36(6) Statute of the International Court of Justice (ICJ) which allows the ICJ which to rule on its own jurisdiction. A comparable competence was recognized for arbitration tribunals in the European Convention Article V (3). Since then the doctrine has found recognition in the ICSID Convention Article 41(1) and is now firmly established in most modern arbitration laws. However, even if such provisions did not exist arbitration tribunals have traditionally assumed a right to rule on their own jurisdiction. See more in: Redfern, Alan. “Law and Practice of International Commercial Arbitration.”, Sweet & Maxwell, (2004), 18.

72 UNCITRAL Model Law, Art. 16; infra ; 201-34.

73 UNCITRAL Model Law, Art. 5; infra ; 745-46.
process limits) with regard to the arbitral procedures and, absent agreement between the disputant parties, the tribunal’s authority to prescribe such procedures. The basic approach of the ML (1985) to the arbitral proceedings is to define a basic set of procedural rules which—subject to a very limited number of fundamental, non-derogable principles of fairness, due process, and equality of treatment—the disputant parties are free to alter by agreement. The ML (1985) also provides for judicial assistance to the arbitral process in prescribed respects, including provisional measures, constitution of a tribunal, and evidence-taking.

The ML (1985) mandates the presumptive validity of international arbitral awards, subject to a limited, exclusive list of grounds for annulment of arbitral awards in the arbitral seat; these grounds precisely parallel those available under the NYC (1958) for non-recognition of an award (i.e., lack or excess of jurisdiction, non-compliance with arbitration agreement, due process violations, public policy, and non-arbitrability). The ML (1985) also requires the recognition and enforcement of foreign arbitral awards (made in arbitral seats located outside the recognizing State), again on terms identical to those prescribed in the NYC (1958).

During the 28 years since the ML’s adoption (in 1985), significant developments have occurred in the field of international commercial arbitration. In 2006, UNCITRAL adopted a limited number of amendments to the ML (1985). The principal revisions were made as follows:

a) The addition of general interpretative principles. [Article. 2]

b) The definition and written form of an arbitration agreement. [Article. 7]

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74 UNCITRAL Model Law, Art. 19(1); infra ; 727-28.
75 UNCITRAL Model Law, Arts. 19(2), 24(1); infra , 730.
76 UNCITRAL Model Law, Art. 18 (“The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.”) and Art. 24(2) (“The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.”); infra;731-33.
77 UNCITRAL Model Law, Arts. 9, 11-13, 27; infra ; 642, 705-06, 772-74, 865.
78 UNCITRAL Model Law, Art. 34; supra ; 32-33 and infra ; 1095-99.
79 UNCITRAL Model Law, Arts. 35, 36; infra ; 1132, 1131-37.
c) The availability of and standards for provisional measures from international arbitral tribunals and national courts. [Article. 17]

d) Procedures for recognition of awards. [Article. 35]

The 2006 revisions of the ML make useful improvements (for the most part). Nonetheless, the most important accomplishment of the revisions is their tangible evidence of the ongoing process by which States and business representatives seek to improve the international legal regime for the arbitral process.

The ML (1985) and its revisions represent a significant further step, beyond the NYC (1958), towards the development of a predictable “pro-arbitration” legal framework for commercial arbitration. But the ML (1985) goes beyond the Convention by prescribing in significantly greater detail the legal framework for international arbitration, by clarifying points of ambiguity or disagreement under the Convention,\(^{81}\) and by establishing directly applicable national legislation.

2.3 **SECTION- B: INDIAN SCENARIO**

"It (arbitration) is indeed a striking feature of ordinary Indian life. And I would go further and say that it prevails in all ranks of life to much greater extent than is the case in England. To refer matters to a Panch is one of the natural ways of deciding many a dispute in India..." \textit{Marten (Chief Justice)}\(^{82}\)

Arbitration in India is an integrated part of its history and legal system, as it is dependent on various other pieces of legislation for its proper functioning. Hence, the Arbitration law cannot be examined thoroughly, unless the legal context within which it has developed is explored sufficiently. The modern legal context in India has been influenced by at least three strands of legal tradition. Without resorting to a rigid scale of measurement arbitration in India since today can be divided in to three Phases:

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\(^{81}\) In particular, the Model Law makes clear the grounds for annulling international arbitral awards, defines the (limited) scope of national court interference in the arbitral process, and prescribes the types and extent of judicial support for international arbitrations.

\(^{82}\) \textit{Yakubkhm v. Guljarkhan}, AIR 1927 Bom 565 (FB).
a) Ancient period to till British period;  

b) British period to till Independence period; and,  

c) Independence period to the Present.

2.3.1 Ancient Period to till British Period

Every textbook writer on Indian arbitration law starts his work with the same ritualistic statement—that India has always held a deep-rooted commitment to the philosophy of arbitration in general.  

Before the advent of English rulers and application of English laws in India, arbitration was prevalent and was widely accepted and respected not only in redressal of social matters but also in matters of trade and commerce with a slight difference of composition and style of working.  

In ancient times, long before the courts of law were established, people often voluntarily submitted their disputes to a group of wise men of a community-closed related to modern day- arbitration called the Panchayat for a binding resolution (in village level). The Panchayat infiltrate in to villages of India for thousands of years. The concept of arbitration is a laudable one and the system is in vogue in this country since the days of the Panch and Panchayats. The Hindi words Panch (or arbiter) and Panchayat (a panel of group of arbiters) are probably as old as Indian folklore; Hence council of meeting consisting of five or more members of a village or a cast assembled to judge or resolve disputes. There was no Code of laws that applied uniformly to all of India; that vast subcontinent east and south of Indus river. There were royal courts in administrative canters, but they did not produce a unified national legal system such as had developed in the West. The sparse textual law

87 Panchayat [panˈʧərət]: ( Government, Politics & Diplomacy) a village council in India or southern Pakistan [Hindi, from Sanskrit panch five, because such councils originally consisted of five members]. For more detail see: <http://www.thefreedictionary.com/Panchayat>, accessed date on( 20/03/2013).
influenced but did not displace the local or customary law. Throughout most of ancient (even Medieval period) in India, there was no direct or systematic state control of the majority of Indians lived.  

In Pre-British India, there were innumerable overlapping local jurisdictions, and many groups enjoyed minimum autonomy in administering law on to them. Royal courts would not be settled disputes in villages and even in cities, but by the village headman, or by arbitral tribunals of the locality, or of the caste within which the dispute arose, or of guilds and associations of merchants or artisans. On the other view, disputes might be taken for settlement to the Panchayat of the locally dominant caste, or to landowners, government officials or religious dignitaries. Settlements brought about by the Panchayats were honoured, and its decisions were rarely interfered with.  

Traditional arbitration model characterized in India from the earliest time. It is mentioned in Rigveda (the oldest literary work) that dates from approximately 1500 to 100 B.C. The village was the basic unit of administration in early Vedic period. During this period, Ancient Aryans—who lived in small villages—were sown the seeds of regular system of administration. The most remarkable feature of the Ancient Aryans polity consisted in the institution of popular assemblies of which three namely the 'Samiti' and the ‘Sabha’ with an additional Vidhata Assembly. A Samiti was the early Vedic folk assembly that in some cases enjoyed that right of electing a kind while the Sabha exercised some judicial functions and acted as the national judiciary but Veddhata Assembly was associated with military, civil and religious functions. The mediator/arbiter of disputes was namely Madhyamasi.  

In the later Vedic period, the Ancient Aryan had conquered the whole of Northern India and had started penetrating into the South. In this period, the Samiti

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Assembly sank in to a narrow body corresponding to the kings Privy Council. The Civil cases were decided by the king with the help of assessors, sometimes, the king delegated this power to the Adhyaksha (Chief Justice). Generally, in later Vedic age, the Sabha acted as arbiter in certain cases such as the disputes regarding boundaries of property.

The system Sabha Assembly continued to be prevalent during the age of Sutras. In addition to that institutions, there had existed Parishads (Assemblies of learned men who knew law) whose decisions on the interpretation of the Vedic texts were binding. The method of procedure generally embraced by them was carried unanimously or referred for arbitration to a committee of arbiter.

In the course of time, the village bodies took the form of Panchayats that looked into the affairs of village. They had the authorities to enforce law and order. In Dharmashastras period (9th century A.D.), there were three kind of popular institutions or arbitration courts vis:

a) Puga [a board of persons belonging to different sects and clans but residing in the same locality];

b) Sreni [an assembly of tradesmen and artisans belonging different clans but connected in some way with each other] ; And,

c) Kula [an assembly of members of a tribe and speak of the power of these courts to decide law suits. All three institutions were known as Panchayats and their members Panchas].

They were private tribunals, not constituted by the king. They decided almost all civil cases between the inhabitants of the village. Against the decisions of these arbitration court, appeals were provided to the courts of judges appointed by the king and ultimately to the king himself.

Afterwards, in the Mouryan period, the village was the bedrock of administration. The villagers used to organize works of public utility and recreation, settle all civil disputes, and act as trustees for the possession of minors. But, they had not yet evolved regular village councils. It appeared to have evolved into regular

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bodies in the Gupta period. They were known as *Panchamandalas* in central India and *Gramajanapadas* in Bihar. These bodies negotiated with the government for concessions and settlement of disputes. The inscription of *Chola Dynasty* shows the construction and functions of the village assembly and their executive committees. The elected delegates forming village council were performed by the village administrations.

India has been subjected precisely to unusual experience with a long and vibrant history. Medieval India witnessed different judicial administrations by different rulers in different period of time. The Muslim Law starting from the Arab conquest of Sindh in 712 A.D., to death of Bahadur Shah II in 1857 which came via Cochin, Surat and Mumbai ports in South West and Khyber pass in North. Imam Abu Hinifa and his disciples Abu Yusuf and Imam Mohammad in the commentary, which came be famous as *Hedaya*, systematically compiled the Muslim law. The religious language of Muslims was Arabic but court language thought this era was Persian which it was translated (Arabic to Persian).

The Muslim rule contains provisions for arbitration between the disputant parties. The Arabic word for arbitration is Tahkeem while the word for an arbiter is Hakam. An arbiter was required to process the qualities essential for a Kazee—an official judge presiding over a court of law but the Persian word for arbiter is Salis and a party to arbitration is Salisee and arbitration agreement is Salisnama while the word for the award is Faisla.

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97 The term ‘Hakam’ is one of God's names - The Almighty said:“Shall I seek a judge (arbiter) other than Allah?‘(The Holy Ouran Surat Al anaml, Verse 114).

During the Muslim rule, all Muslims in India were governed by Shari'at rule or Shari'ah law (the basic law of the Muslims) and the non-Muslims (mostly Hindu) continued to be governed by their own personal law (i.e. Hindu law). Practically, Muslim rule for more than one century could not obliterate the traditional system of arbitration from the Indian soil. And practice of arbitration in the traditional form of Panchayats (Ancient Hindu period) continued in this period.

The village bodies were the keystone of administration in Mughal period. In this period, the villages were governed by their own Panchayats, especially in the regime of Sher Shah. Each Panchayat comprised of village elders who looked after the interest of the people and administered justice and imposed punishment on defaulters. The head man of the village, a semi government official, acted as a pipeline between the village Panchayat and the higher administrative hierarchy. Akbar (the great, Indian king of Mughal Empire) accepted this system and made it an indispensable part of civil administration. In this period, each village had its own Panchayats. It was maximum autonomous in its own sphere and exercised authorities of justice, punishment, administrative control and local taxation.

The Mughals introduced elaborate administrative machinery with a hierarchy of officials, especially in the field of revenue. The Mughal local administrative system lasted over centuries. It was with the collapse of the Mughal strong hold, the British established their hegemony in India.

2.3.2 British Period to till Independence Period

The lack of a single homogeneous legal system in the country 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 law and legal system at the time of the advent of the British.

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100 Mahesh, J., 2011, op.cit., 85

Like most Indian laws, the law relating to arbitration in India is also based on the English arbitration law. The British came to India as traders, and before long established an inroad in to the cultural nexuses of the land. In the days of Mughals, the establishment of the East India Company (approximately 1600 B.C.) had been exclusively commercial, and the company was chiefly concerned with the management of its own factory at Calcutta, exercising jurisdiction and power over Englishmen residing in what were known as the 'East Indies'. After the battles of Plassey (in 1757) and of Buxar (in 1764), Lord Clive acquired from the Mughal Emperor the Diwani of Bengal, Bihar and Orissa, and thereafter, the company assumed far greater territorial responsibilities.

The East India Company did not abrogate the law relating to arbitration as common and widespread in the country at the time company came into power but it has undergone a phenomenon transformation. It has grown from the level of village elders sitting under a Banyan tree and resolving dispute to the degree of gaining statutory recognition. The first attempt to codify arbitration practices in India was made by the British in the late 18th century through sequences of regulations made applicable to the three presidency towns viz Calcutta, Mumbai and Madras, in exercise of the powers conferred upon it by the British Parliament.

The Orissa High Court in the case of State of Orissa & Ors. v. Gangaram Chhapolia & Ant on 26th July 1982, gives a brief description of the succession of legal developments leading to the formal regulation of arbitration laws before in the Code of Civil Procedure (1859), as they occurred in Eastern India:--

"The first attempt at codifying the law was made by the Bengal Regulations of 1772 and 1780 where provision was made for submission of disputed accounts to decision by arbitration. In 1781, Sir Elijah Impey's Regulation included a provision that "the Judge do recommend, and so far as he can,....."
without compulsion, prevail upon the disputant parties to submit to the arbitration of one person, to be mutually agreed upon by parties.” In 1787, regulation for the Administration of Justice was passed and it contained rules for referring suits to arbitration with consent of disputant parties. There was no detailed provision, however, to regulate the arbitration proceedings. In 1793 Regulation XVI was enacted with a view to promoting reference of disputes of certain categories to arbitration and to “encourage people of credit and character to act as arbiters”. Regulation VI of 1813 made some improvement to the Regulation of 1793 and arbitration was available in cases of disputes in regard to land. Bengal Regulation VII of 1822 authorized the Revenue Officers to refer rent and revenue disputes to arbiters and the Collectors were enjoined to induce disputant parties to agree to such arbitration. Bengal Regulation IX of 1883 authorized the Settlement Officers to refer disputes to arbitration.” 106

The application of English laws since 1726 and establishment of Presidency towns thereafter in its wake brought spectacular changes in Indian judicial system and arbitration system as well. The time line of regulations introduced by the East India Company on the basis of English laws, touching upon arbitration was:

a) Bengal Regulations I of 1772, 1781, 1787, XVI of 1793, 1795, 1813, 1814, 1822, 1832, 1893 and the like ;  
b) Madras Regulations I of 1802 and IV, VI, VII of 1822; and,  
c) Bombay Regulations I of 1799, IV, VI of 1827.

The Regulations introduced compulsory arbitration, empowered reference to the limits of court intervention, provided protections to secure fairness and laid down the procedure for attendance and cross-examination of witnesses. Numerous of these provisions were rudimentary and even incompatible with each other provisions. But there can be positive that they contained the first albeit unrefined versions of provisions that form part of modern arbitration law.

2.3.2.1 The Code of Civil Procedure, 1859

The regulations in Bengal, Mumbai and Madras about arbitration with slight modification continued to operate till the enactment of Code of Civil Procedure, 1859. After the establishment of Legislative Council in 1834, the Code of Civil Procedure, 1859 (hereafter the Grant Code) laid the foundations for the governance of country and the administration of justice according to procedure established by law. The Grant Code continued arbitral provisions but was not applicable to Supreme Court (hereafter the SC), Presidency small cause courts and non regulation provinces.

The Grant Code (with later adaptations) has remained till this day the rudiments of Civil Law in the country. Practically, the Grant Code formed the bedrock of Indian legal system. Sections 312 to 325 provided for arbitration by disputants to pending suits, Section 326 for filing in court of an agreement to refer to arbitration and Section 327 for filing of an award without the intervention of Court. In other words, the Code of Civil Procedure (1859) recognized three distinct types of arbitration. Also, this Code for first time permitted references to arbitration without the intervention of the court. The distinction between arbitration in suits and not in suits continued to be a distinctive feature of the Indian law of arbitration until present in the Arbitration and Conciliation Act of 1996.

The Grant Code was repealed by the Code of Civil Procedure, 1877, which substantially reproduced the provisions of the Code of 1859 regarding arbitration. The Code of 1877 again revised in the year 1882 by the Code of Civil Procedure, 1882 but provisions regarding arbitration contained in Sections 506 to 526 remained substantially the same. This Code recognized only references to arbitration of disputes that had actually arisen and to a named arbiter.

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107 Act No 7 of 1859.
2.3.2.2 The Indian Contract Act, 1872

The Third Commission of British-India formed in 1861 under the stewardship of Chairman Sir John Romilly, with initial members as Sir Edward Ryan, R. Lowe, J. M. Macleod and Sir W. Erly (succeeded by J. Henderson), had presented the report on Contract law for India as draft Contract Law (1866). The Draft law was enacted as the Act, 1872 (on 25th April 1872) and the Indian Contract Act, 1872 came into force with effect from 1st September 1872. Before this Act, there was no codified law for contract in India.

The Indian Contract Act, 1872, by Section 28, recognizes arbitration agreement as an exception to the agreement in restrain of legal proceedings. Section 28, declares that every agreement in restrain of legal proceeding is void. The only exception tolerated is the reference of contractual disputes to arbitration. The agreement to refer future disputes to arbitration was treated as a bar if the other party filed a suit on the same matter (This Section was repealed after the amendment of 1996 which in to force from 8th January 1997). Likewise, Specific Relief Act, 1878 by Section 21 prohibited parties from wriggling out of agreement to refer future disputes to arbitration.

112 Sec.28 of Indian Contract Act, 1872 reads as:-

Agreements in restraint of legal proceedings void.-

Every agreement,-(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. Saving of contract of refer to arbitration dispute that may arise. -

Exception 1.- This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be 1. Exceptions 2 and 3 relating to agreements between partners upon, or in anticipation of, dissolution of partnership and during continuance of partnership, respectively were rep. by Act 9 of 1932, s. 73 and Sch. II. See now ss. 11 and 36 (2) of that Act. 2 Ins. by Act, 1 of 1997, s. 2. w. e. f. (8 -1- 1997 ).- referred to arbitration, and that only the amount awarded in such arbitration hall be recoverable in respect of the dispute so referred. Suits barred by such contracts.- 1] When such a contract has been made, a suit may be brought for its specific performance and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit. Saving of contract to refer questions that have already arisen. Saving of contract to refer questions that have already arisen. - Exception 2:- Nor shall this section render, illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

113 Rajan, R. Desing., 2005, op.cit., 508

2.3.2.3 The Arbitration Act, 1899

The first arbitration law in India was enacted in the shape of the Arbitration Act, 1899 which was based on the English Arbitration Act, 1899.115 It was the first substantive legislation on the law of arbitration in India, nevertheless, its application was only confined to the Presidency towns and was later expended to several other commercial towns if Provincial Government so desired.116

This Act was made applicable to matters which were not pending before a court of law for adjudication. The scope of this Act was confined to the basis of agreement for referring disputes for arbitration without the intervention of court. This Act recognized for the first time reference of disputes that might arise in future to an arbiter whether named or not. And, it showed a clear picture of arbitration by defining the expression “submission” to mean “a written agreement to submit present and future differences to arbitration whether an arbiter is named therein or not.”

Prior to that, the expression ‘submission’ was confined only to ‘subsisting disputes.’ Thus, before the legislation, a contract to refer disputed matters to arbitration was governed by 3 statutes, namely;

(a) The Code of Civil Procedure, 1859;
(b) The India Contract Act, 1872; and,
(c) The Specific Relief Act, 1878.

In view of the provisions of the Contract Act, 1872 and the Specific Relief Act, 1878, no contract reference to existing or future disputes to arbitration, could be particularly enforced. However, a disputant who refused to perform was debarred from bringing a suit on the same subject. In this situation, by and large the courts had to draw sustenance from the Common Law principles of English law. Consequently, the law of arbitration was far from satisfactory.117

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115 Parvez, Shahid, 2009, op.cit. 5.
2.3.2.4 The Schedules to the Code of Civil Procedure, 1908

The Code of Civil Procedure was first formulated in 1859 and was later improved in time line of 1877, 1859, 1882, and to its new form that was re-enacted in 1908. The arbitration provisions in this Code were contained in First Schedule (Sections 89 & 104) which these Sections and Second Schedule of the Code of Civil Procedure (1908). Sections 1 to 16 of the Second Schedule dealt with arbitration in suits, Sections 17 to 19 contained an enforcement device of enforcing agreement for reference and Sections 20 to 21 provided a procedure for enforcing arbitration awards in a Court of law, if arrived at without judicial intervention. It was repealed by the Arbitration Act, 1940 and presently the Arbitration and Conciliation Act, 1996.

The First Schedule to this Code contained provisions relating to the law of arbitration which extended to the other parts of India while Second Schedule deal with arbitration outside the operation and scope of the Act, 1899 and too recognized only references to arbitration of disputes that had actually arisen and to a named arbiter. Thus, the Code of Civil Procedure of 1908 and the Indian Arbitration Act, 1899 continued concurrently with matters and provisions regarding arbitration.\textsuperscript{118}

2.3.2.5 The Arbitration (Protocol and Convention) Act, 1937

After the First World War (1914-1919) and establishment of League of Nations in 1920, the world economy on assurance of world peace began together momentum and for encouraging international transactions and to reduce serious difficulties ingrained, therein the Geneva Protocol on Arbitration Clauses, 1923 (came in to force on 28\textsuperscript{th} July 1924) into and in India to enforce foreign arbitration awards, the Arbitration (Protocol and Convention) Act, 1937 was enacted.\textsuperscript{119} Again, India become the party of two multilateral convention by the name of the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (came into force 25\textsuperscript{th} July 1929) and the Convention on The Recognition and Enforcement of Foreign Arbitral Awards of 1958, commonly famous as the New York Convention, 1958.

\textsuperscript{119} Ibid.
Indian Government has enacted implementing legislation on 1937. The Arbitration (Protocol and Convention) Act, 1937 which came into force on 4\textsuperscript{th} March, 1937. The main purpose of the Act was to give effect to the GP (1923) and the GC (1927).

The Act provides for the enforcement of arbitral agreements to which the protocol applied and the enforcement of foreign arbitral awards to which the Convention of 1927 applied.\(^{120}\) Also, this Act applied only to such matters as were considered ‘Commercial’ under the law in force in India.\(^{121}\) The operation of this Act was based on reciprocal arrangements and it mainly concerned itself with the procedure for filing ‘foreign awards’, their enforcement and the conditions of such enforcement. The Rules framed by the High Court’s provided details in respect of the proceedings under the Act.\(^{122}\) Thereafter the Arbitration Act, 1940 was enacted wherein no provision for dealing with foreign awards was made on the belief that foreign awards are duly covered by the Arbitration (Protocol and Convention) Act, 1937, though it was a blunder as the said Act, 1937 did not fulfil the desired need.\(^{123}\) Ultimately, the provisions of this Act now have been amended and consolidated in the Arbitration and Conciliation Act of 1996 in part II, Chapter 2.

\textbf{2.3.2.6 The Arbitration Act, 1940}

Ultimately in 1940, The Indian Government 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 (hereafter the Act, 1940). The Act was enacted base on the Act of 1899, certain provisions in the largely second schedule of the Code of Civil Procedure, 1908 and the English Arbitration Act, 1934.

The Act was a complete and consolidated legislation on arbitration but it did not contain the provisions relating to ICA and specially laid down the framework within which domestic arbitration was conducted in India. The silent feature of the Act, 1940 may be summed up as follows;

\(^{120}\)Rajan, R. Desing, 2005, op.cit.,510.
\(^{121}\)Malhotra, Om Prakash, and Indu Malhotra., 2006, op.cit., p.5.
\(^{122}\)Ibid.
a) It made provision for control of judicial intervention in three types as follow:
– (a) arbitration without judicial -intervention; (b) arbitration in suits i.e.,
    arbitration with judicial -intervention in pending suits; and (c) arbitration
    with judicial -intervention, in cases where no suit was pending before the
court. It then proceeded to make further provisions, common to all the three
kinds of arbitration.

b) The Act, 1940 in Section 2(2) defined the ‘written agreement’ to mean a
    ‘written agreement to submit present or future differences to arbitration,
    whether an arbiter is named therein or not.’ In other words, in the absent of
    a ‘difference’ or an ‘agreement’ to refer the same to arbitration, there could
    be no ‘arbitration’ as postulated by the Act. [Section. 2]

c) It also introduced deeming provisions to include the ‘provisions set out in
    the First Schedule’; in so far they were applied in every arbitration
agreement unless excluded. [Section. 3]

d) This Act of 1940 made provisions for protecting the ‘arbitration agreement’
    from being vitiated by the only presence of some lacuna in it. [Sections. 6 &
7]

e) A court can remove an arbiter and the umpire and to substitute for them,
    with new ones ensuring that the arbitration did not fail by reason of want of
    misconduct or diligence on their part. [Section. 11]

f) It conferred certain authorities on the arbiters and the umpire to facilitate the
effective discharge of their functions. [Section. 13]

g) It authorized the State court to deal judicially with the arbitral award after it
    had been filed before it, allowing it to pass its verdict, including the
    jurisdiction to modify, Set aside or remit the arbitral award. These provisions
mostly applied to non-judicial intervention cases.

h) In cases of arbitration with judicial-intervention, where there was no pending
    suit in the court, detailed provisions were made relating to the form and
manner of making an application to the court for filing the ‘agreement’ and
also as to an order of reference to the arbiter appointed by the disputant
parties. The Arbitration Act, 1940 provided that the arbitration has to
proceed in line with its other provisions, insofar as they could be made relevant. [Section. 20]

i) In cases of arbitration with judicial-intervention, where a lawsuit was actually pending, all the interested disputants might agree to refer any issue in dispute to arbitration. The Act, 1940 made detailed provisions as to the appointment of arbiter and the order of reference. [Sections. 21 to 25]

j) The Act made general provisions to the effect that the awards should be approved by the court by a judgment as to the existence, validity and effect of the arbitral awards or of ‘arbitration agreement’ between the disputant parties to the ‘agreement’ or persons claiming under them. The intention of the legislature, in enacting these provisions, was ‘to make only one Court as the venue for all matters connected with the “arbitration-agreement” or “award” and also to make “applications” (not “suits”) as the basis for approaching that court. The intention was to make explicit that no suit of any kind whatsoever would lie in this behalf.

2.3.3 Independence Period to the Present

After the end of the Second World War - especially after the Independence in 1947- the trade and large industry received a great fillip and the business community became more and more inclined towards arbitration for settlement of their disputes particularly in international level, as against court-litigation, which involved heavy cost and inexplicable and inordinate delays.

With increasing emphasis on arbitration there was more and more judicial grist exposing the infirmities, shortcomings and lacunae in the Arbitration Act of 1940. For instance, the provisions of this Act, about the duties and powers of the arbiters or about the procedure for conducting the proceedings after a reference, were notably inadequate.

The Act was silent about the shortcomings inherent in individual private contracts. The rules providing for filing awards differed from one High Court to another. The lack of provisions prohibiting an arbiter or umpire from resigning at any time in the course of the arbitration proceedings exposed the disputant parties to heavy losses particularly where the arbiters or umpire acted mala fide. The Act also
did not make distinction between the ‘agreement’ made in advance to submit future differences and a ‘submission’ made after a dispute had arisen.

There were no provisions requiring the arbiter to state reasons for sustaining the award. There was no remedy against a non-speaking award albeit such an award could lead to suspicion and embarrassment.

2.3.3.1 The Foreign Awards (Recognition and Enforcement) Act, 1961

According to Lord Mustill the NYC (1958) was ‘The most effective instance of International legislation in the entire history of commercial law’ in which India was a signatory to it. The Foreign Awards (Recognition and Enforcement) Act, 1961 came into force on 30th November, 1961. The main purpose of the aforesaid Act was to give effect to the NYC (1958) and the Act prescribed the law and procedure for the enforcement of foreign awards in India to which the said convention applied.

The SC in the case of Renusagar Power Co. Ltd. v. General Electric delivered a landmark judgment and held that the main purpose of the legislation was to facilitate and promote international trade by providing for speedy settlement of disputes arising in trade through arbitration.

2.3.3.2 Recommendation Law Commission of India on the Act of 1940

The Law Commission of India under the Chairmanship of Hon’ble justice Mr. H.R. Khanna, in its report dated 9th November 1978, suggested extensive modifications and amendments in the Arbitration Act of 1940, taking into account commercial realities and in order to settle the conflicting decisions on various points.

2.3.3.3 The Supreme Court on the Act of 1940

Several technical objections were being taken by the legal experts, which eventually led the SC of India to observe in Guru Nanak’s Case on 29th September, 1981, as under:

125 AIR 1985 SC 1156 (Indian kanoon).
“Interminable, time-consuming, complex and expensive Court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to arbitration Act, 1940 (‘Act’ for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the disputant parties for expeditious disposal of their disputes has, by the decisions of the Courts been clothed with ‘legalese’ of unforeseeable complexity.”

2.3.3.4 The Arbitration and Conciliation Act, 1996

To internationalize the arbitration law in India, it was felt that the Arbitration Law, 1940 had become outdated in the present scenario of economic reforms worldwide. The Commission of India, domestic and international arbitration bodies as well as several experts in the field of arbitration relating to business and industry and all concerned –the disputants, arbiters, lawyer and the courts have proposed extensive modifications and amendments to the Act, 1940 to make the law more effective and flexible to suit most with the law dealing with the settlement of disputes in respect of domestic and international commercial matters. There was no comprehensive enactment in India to meet the present requirements to settle domestic and international commercial disputes amicably through arbitration machinery. The need for reform in the law relating to arbitration thus becomes necessary and urgent. The question then was whether the Act, 1940 should be amended or the new law be written on a clean slate?

On 4th December 1993, there was a historic conference of Chief Ministers and Chief Justices under the chairmanship of the Prime Ministers of India to deal with the menace of ever increasing number of dockets. It was also recognized that

Indian economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remained out of tune with such reforms. The government had also before it several international models including the UNCITRAL Model Law on International Commercial Arbitration, UNCITRAL Rules on Arbitration & Conciliation and the International Commercial Arbitration Act, 1986 of British Columbia. It was, felt that there were definite advantages in discarding the old law and in enacting a new law, based on the Model Law, which has harmonized the Common and Civil Law concepts on arbitration and thus contain provisions designed for universal application.

At least, the Arbitration and Conciliation Bill, 1995 was drafted and introduced in the Rajya Sabha on 16th May, 1995. As the parliament was not in session at that time and the President of India was satisfied that circumstances existed which rendered it necessary for him to take immediate action, in exercise of the power conferred by Clause (1) of Article 123 of the Indian Constitution.128 The President promulgated to the Arbitration & Conciliation Ordinance, 1996 on the 16th January 1996 which was brought into force with effect from the 25th January 1996. The Ordinance could not be replaced by an Act because on account of prorogation of the Parliament session and, the Ordinance lapsed automatically after 6 months. In order to give further continued effect to the provisions of the said Ordinance, the President Shankar Dayal Sharma promulgated the Arbitration & Conciliation (Second) Ordinance, 1996 on 26th March 1996. This Ordinance was promulgated as the Arbitration & Conciliation (third) Ordinance, 1996.129 Meanwhile, the Arbitration & Conciliation Bill, 1995 was passed by the Parliament and on 16th August 1996, the Bill received the assent of the President Shankar Dayal Sharma

128 Article 123 of the Indian Constitution reads as; Empowers the President to promulgate Ordinances when both the Houses of Parliament are not in session if he is satisfied that circumstance exist rendering it necessary to take immediate action. Corresponding powers have been conferred by the Constitution on the Governor under article 213. Similar powers have been conferred on the Administrator under article 239B when the Legislature of a Union territory is not in session. On the plain language of Articles 123, 213 and 239B there is no doubt that the satisfaction mentioned in those articles is subjective satisfaction and that it is not justifiable. There is no doubt that this was also the intention of the makers of the Constitution. However, litigation is pending involving the justifiability of this issue and contentions are being raised that the issue is subject to judicial scrutiny. To place the matter beyond doubt, it is proposed to provide in the Constitution that the satisfaction of the President, Governor or Administrator shall be final and conclusive and shall not be questioned in any court on any ground.

129 On 21st June 1996.
and came on statute book as the Arbitration and Conciliation Act, 1996 on 22nd August 1996.

The Act, 1996 has two main parts about Arbitration and part III of the Act on the base on UNCITRAL Conciliation Rules, 1980 is only about Conciliation. Part I of the Act is more comprehensive and provides provisions for any arbitration conducted in India and enforcement of arbitral awards there under, irrespective of nationalities of disputants. And, Part II of the Act is more restricted and provides for enforcement of foreign arbitral awards. On the other words, any arbitration conducted in India or enforcement of arbitral award there under (whether domestic or international) is governed by Part I, while enforcement of any foreign arbitral award to which the NYC (1958) or the GC (1927 ) applies, is governed by Part II of the Act, 1996.

The Act, 1996 contains two unusual features that differed from the ML (1985). First, while the ML (1985) was designed to apply only to ICA, the Act of 1996 applies both to international and domestic arbitrations. Second, the Act, 1996 goes beyond the ML (1985) in the area of minimizing judicial intervention.

The working of the Arbitration Act of 1996 over the years has shown that it does not sufficiently fulfill the requirements of domestic as well as international arbitrations in certain specific areas. Therefore, the Government of India has introduced the Arbitration and Conciliation (Amendment) Bill, 2003. It is still a Bill.

2.4 Conclusion

In international level, The modern law governing ICA began only in the decade of the 1920s with the organization of the ICC Court of International Arbitration, the adoption of the GP (1923) and the GC(1927). There was no substantial further development until the adoption of the NYC in 1958. The

subsequent years have been ones of rapid progress. Approximately all States have become party to the NYC (1958). The convention played a vital and critical role in the development of the legal framework for international commercial arbitration and it especially made a number of significant improvements in the regime of Geneva protocol and Geneva Convention for enforcement of international arbitration agreements and recognition and enforcement of arbitral award.

The increasing complexity of international transactions, the growth of international trade and the disappointment with the regulation of international trade by these various State laws fostered a climate conducive to harmonization and unification of these laws under the auspices of various international organizations, including the United Nations. The UNCITRAL Arbitration Rules of 1976 have been widely used and have become the model on which many institutional arbitration rules are based. The Model Law of 1985 has been the basis of most arbitration statutes adopted since then.

Indeed, the Section- A of this study shows that ICA has become so popular but it is far from an ideal and universal method. The most important reasons of the mentioned points are:

a) The present international convention and legal institution are not adequate for dealing with the problem of international commercial arbitration.

b) The global scenarios existed in international commercial arbitration are not certainly encouraging.

c) The Model law has not met the purpose which was determined for it.

In a State level, Arbitration in India is an integrated part of its legal system and it has an important place in the world. The modern legal context in India has been influenced by at least two strands of legal tradition.

The first is the Pre-British period, or the Ancient period, which is the historical background to Indian law, and still dominates many of its parts. In all States of countries where there has been statutory vacuum regarding arbitration, it is usually filled by it. The prevalent method of the arbitration in India was the
Panchayat, which despite some disparities, is not much different from new versions of Panchayat regarding arbitration.

The second is the Western legal tradition especially the English Arbitration Law, which has now received international recognition through International Conventions such as the NYC (1958) and the ML (1985), and has influenced Indian law through the process of modernization. Modernization of the Indian legal system began as late as 1961, but ever since it has been forcefully underway, particularly in Business Law.

Regarding the interplay of the two strands of legal tradition in India, two conflicting trends can be identified: a move away from the first period and towards modernization of the legal system. The present legal framework in India is the result of the balance between the two trends in that State.

After a large unsatisfactory, India opened a fresh chapter in its arbitration law when it enacted the Arbitration and Conciliation Act, 1996 in attempt to modernize the outdated Act, 1940. In other words, before the Act, 1996, the process of settling disputes in India “Made lawyer laugh and legal philosophers weep.”\(^{133}\)

The present Act, 1996 is mainly inspired by ML (1985). Its primary objectives of the Act were to achieve twin goal 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.

Indeed, the Section B of this study shows that the rich background and close contact or copy with foreign arbitration law even modern international standard are not adequate for dealing with the problems of arbitration in a country like India. Practically, the problems are not connected with aforesaid factors, but with the complications of its implementation in India.

\(^{133}\)Guru Nanak’s Case, AIR 1981 S.C. 2075 at 2076 (Indian kanoon).