Arbitration fundamentally is a method of settlement of disputes by which litigants to the quarrel get the same resolved through third person called arbitrator without having recourse to a court of law. Arbitration as a method of settling dispute is gaining more and more importance today. Arbitration is getting worldwide recognition as an instrument for settlement of disputes. Almost all business transactions carry arbitration clauses. “An independent and efficient judicial system is one of the basic structures of our constitution… It is our constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases”1 It has a great urgency today when there has been an explosion of litigation in the Courts of law. An effective and efficient judiciary is an essential foundation of good governance. Fair, economic, rational and speedy deliverance of justice is the endeavor of every legal system. However, at present, there is a growing crisis of judicial delay and arrears before the Courts. To reduce the number of pending cases, various methods had been tried out – yet the number remained high because of the population explosion, more rights awareness among citizens and various other inevitable reasons. Hence it becomes necessary to find a quick and easy method of resolution of the disputes. Arbitration is one of the alternatives to remedy the situation.

1 Brij Mohan Lal V. Union of India & Others 2002 4 Scale 433
The source of arbitration law from the time immemorial straight from the medieval, British, post and pre Independence period after a long scroll by trial and error has been carved out suitably to meet the demands of the litigants both related to economic and commercial transactions ultimately to secure ends of justice. The main objective of the Arbitration and Conciliation Act 1996 being the present legislative enactment of arbitration law is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimise the supervisory role of courts in the arbitral process and to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of disputes. Section 5 of the Act brings out clearly the object of the New Act namely that of encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement, the Court’s intervention should be minimal.² The question as to whether a transaction pertains to civil dispute or commercial dispute is immaterial as far as application of the Act is concerned. Existence of an arbitration agreement is a crucial criterion for reference to arbitration. Arbitrability does not depend upon the question whether the deal is a civil dispute or commercial dispute.

However, equal emphasis is focused to caution that under the pretext of finding a solution to the problem of judicial delays and arrears before the Courts of law it is also equally significant to focus that the aspiration to secure quick and economic disposal of cases is not to affect the cardinal principle that decisions should be just and fair. Justice cannot be hurried to be buried so as the arbitral award should not be an arbitrary award. A Deep and pervasive control of judicial intervention as

² P. Anand Gajapathi Raju V. P.V.G. Raju AIR 2000 SC 1886
contemplated in the arbitration legislation is sourced to be a functionary methodology to attain these objectivity to provide speedy justice both quantitatively and qualitatively.

Notwithstanding the fact that the act aims at finding speedy disposal of cases in economic and commercial transactions, such speedy disposal shall not be at the cost of Justice. Justice ought not to be placed at the altar for the purpose of speedy disposal of cases. The Act also prudentially contemplated to enable the court to intervene whenever justice appears to be trampled for the purpose of targeting speedy disposal of cases. Supreme Court and High Courts being courts of justice are vested with the power to render justice even in economic and commercial transactions in matters that come under its purview of arbitration. The intervention of the court implies justice is done. Intervention of the Judiciary may appear to be delaying the case, but judicial consideration of commercial disputes implies justice is done in the proper sense. Speedy disposal of the case is one aspect but justice is an important aspect of jurisprudence. Speedy justice is the blend of both and it is the need of the hour in the matters related to economic and commercial transactions including arbitration matters.

So significant is the arbitration which is recognized as an apparatus for getting speedy justice in all spectrums. This can be visualized from the provision of Section 89 of the Civil Procedure Code.\(^3\) This provision contemplates that whenever it appear

\(^3\)Section 89 of Code of Civil Procedure, 1908 (as inserted by C.P.C. (Amendment) Act, No. 46 of 1999) Settlement of disputes outside the Court (1) Where appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—
to the court that there exists a possibility of settlement which may be acceptable by
the parties, the court may satisfying the conditions therein, refer the same to
arbitration, one among the alternative dispute resolution. When the dispute is
referred for arbitration or conciliation, the provisions of the Arbitration and
Conciliation Act 1996 shall apply as if the proceedings for arbitration or conciliation
were referred for settlement under the provisions of that Act.

RESEARCH QUESTIONS

In this backdrop, the following research questions attract significance to be
probed and answered to make this research work to reach the objective correctly and
fruitfully.

1. What are the legal rules and provisions of law in the arbitration legislation
   which are enacted for judicial intervention as an edifice for making the
   arbitration mechanism as a speedy justice?

2. How far the provisions contemplated for judicial intervention in arbitration
   proceedings pave way for speedy justice?

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or
(d) mediation
(2) Where a dispute has been referred--
(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of
1996) shall apply as if the proceedings for arbitration of conciliation were referred for settlement under
the provisions of that Act;
(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of
sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other
provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;
(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such
institution or person shall be deemed to be a lok Adalat and all the provisions of the Legal Services
Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the
provisions of that Act;
(d) for mediation, the Court shall effect a compromise between the parties and shall follow such
procedure as may be prescribed.
3. Need and necessity for the role of judicial intervention before the commencement of arbitration proceedings?

4. Need and necessity for the role of judicial intervention during the arbitration proceedings?

5. Need and necessity for the role of judicial intervention after arbitration proceedings?

**OBJECTIVE OF STUDY**

The following objectives are culled out from the research questions in order to have comprehensive and explicit answers.

1. To understand the concept of “speedy justice” in arbitration proceedings.

2. To understand the concept of “Judicial Intervention” in arbitration proceedings.

3. To evaluate the role of Judicial Intervention before the commencement of the arbitration proceedings.

4. To evaluate the role of Judicial Intervention during arbitration proceedings.

5. To evaluate the role of Judicial Intervention after arbitration proceedings.

6. To examine the advantages in respect of judicial intervention in the arbitration proceedings.

7. To examine the disadvantages in respect of judicial intervention in the arbitration proceedings.

8. To critically analysis the functioning of judicial intervention in arbitration proceedings and the areas for its improvement so as to reach the objectivities of the Arbitration Legislation.
CONCEPTUAL ANALYSIS

The concepts like “Speedy justice” “Judicial Intervention” among others are operationally defined and used repeatedly. They require operational definition for systematic analysis. All the possible concepts, that would help in understanding the research problem and proceedings with the research in a right tract are analysed.

Focusing upon the conceptual definitions of both “Speedy Justice” and “Judicial Intervention” the functionary method of arbitration with its owed object is only to provide speedy justice not only in the sense of quantity to show the disposal of cases but however make endeavour with equal emphasis to provide qualitative relief which can be the only proposition to be culled out without any hesitation.

Therefore, in this research work, equal emphasis is focused to caution that under the suggestion of finding solution to the alternative remedy to mitigate the pending backlog of cases before court and judicial delay, it is also equally significant to ensure the presence of the element of fairness, equity and good conscience in the process of arbitration. Justice cannot be hurried to be buried so as the arbitral award should not be an arbitrary award. Thus the due process of law coupled with the principles of natural justice is embedded in the arbitration mechanism to provide speedy justice both quantitatively and qualitatively.

With this definition of speedy justice it would be much easier to whet the parrelly focused conceptual definition of judicial intervention. The deep and pervasive control of judicial intervention as contemplated in the arbitration legislation would only be a functionary methodology so as to fine tune and lead the arbitration to
successfully complete and attain its objectivity. The functions discharged by the judiciary which are mandated under the Arbitration Legislation must be complete without leaving any explanation to render a proposition other than the one to result in speedy justice – both in the nature of quality and quantity. If this criteria is fulfilled it can be safely concluded without any hesitation that the legal rules and provisions of law in the arbitration legislation which are enacted for judicial intervention is a boon and edifice for making the arbitration mechanism as a speedy justice.

**RESEARCH METHODOLOGY**

In consonance with the most of the research work and for ease of reading, this study is based upon doctrinal research with in depth study of the subject exploring primary and secondary source being the relevant legislative enactments, law books, reference to case laws and it is based on an abundance of courts decision and arbitral awards respectively. The researcher had also made comparative analysis on all the aspect of the legal rules and provision pertaining to the research topic and has discussed and compared the same with the help of Indian and English case laws, detailing other related cases relevant to the subject of study. The researcher had made a honest attempt to study elaborately and in detail the various aspects involved in the different ways to analyze the purpose of an arbitration clause in a contract is a step stone for an approach to speedy justice with the help of valuable quotes of eminent jurists.
REVIEW OF LITERATURE

Elaborate review of literature has been made in the process of this research work. A passing reference may be useful to summarize some of the useful literature which was a boon for to have a deep study to pursue this research work. The Association for International Arbitration (AIA)\(^4\) during the year 2001 has developed into a group concerned in the area of private international law to keep in pace to resolve the dispute mounting up within the global sector. Organization provides information, training and educational activities to expand the promotion of arbitration globally by means of securing partnerships with various organizations and parties to get involved in the life of the association.

Reference was culled out from the write ups from the Center on Democracy, Development and the Rule of Law - CDDRL\(^5\) on the subject of “Development and Practice of Arbitration in India – Has it evolved as an Effective Legal Institution” A reference was made out from the consultation paper for the future changes to be incorporated in Arbitration and Conciliation Act 1996 published by the Adviser to Union Minister for Law & Justice, Wherein this article periodically stressed upon three conditions for setting aside an award which are violation of (a) the rudimentary principles of Indian law; (b) the significance of our Nation and (c) righteousness of morals.

\(^4\) Described to be a non-profit organization, founded in Paris
Besides so, landmark judgments one amongst others in Saw Pipes case\textsuperscript{6}, the width of public policy was broadened to include challenge of award when such an award is patently illegal\textsuperscript{7}. Some arbitrators have viewed the judgment in the Saw Pipes case with concern. The main attack on the judgment is that it sets the clock back to the same position that existed before the 1996 Act, and it increases the scope of judicial intervention in challenging arbitral awards. It was also criticized on the grounds that conferring a broader meaning to the term ‘public policy’ was incorrect, most particular while the trend in international arbitrations is to reduce the scope and extent of ‘public policy’. Jurists and experts have opined that unless the courts themselves decide not to interfere, Act 1996 would be made a replica of the 1940 Act.

The Parliament, when enacting the 1996 Act did not introduce ‘patent illegality’ as a one of the circumstance under Section 34 of the 1996 Act. The Supreme Court cannot introduce the same through the concept of ‘public policy of India.’ After the Saw Pipes case, a few judgements have made an endeavour to interpret the effect of Saw Pipes. One instance of this is the Supreme Court decision in the case of *McDermott International Inc. V. Burn Standard Co. Ltd*\textsuperscript{8} where the court somewhat read down Saw Pipes. In the case of *Indian Oil Corporation Ltd. V. Langkawi Shipping Ltd*\textsuperscript{9}, the court held that giving a plain meaning to the dictum of the law laid down in Saw Pipes would result in nothing but to take away and abridge

\textsuperscript{6} 2003 (5) SCC 705
\textsuperscript{7} In Saw Pipe case Supreme Court held that “We are not unmindful that the decision of this Court in ONGC case had visited considerable adverse comments but the correctness or otherwise of the said decision is not in question before us. It is only for a larger Bench to consider the correctness or otherwise of the said decision. The said decision is binding on us. The said decision has been followed in a large number of cases.”
\textsuperscript{8} 2006(11) SCC 181 at p 208
\textsuperscript{9} 2004 (3) Arb LR 568
the enactment conferred limited jurisdiction of the court to interfere in the awards made in the arbitration proceedings.

Land mark decision by Hon’ble Apex Court in *Bharat Aluminum Company V. Kaiser Aluminium Technical Service, Inc.* referred to as a ‘Seat-Centric Approach’. The conflict-ridden decision of the Indian Supreme Court in *Bhatia International v Bulk Trading SA* has been ruled out against by the Indian Supreme Court in the case of *Bharat Aluminium V. Kaiser Aluminium*, giving pavement and thereby putting an end to intrusion by the Indian courts where the place of arbitration is seated outside India. The said dictum of law had prospective effect and not retrospective. Therefore the complexity still remains for at least a moment in time in respect of contracts with arbitration clauses executed prior to the date of this decision.

There are innumerable works done through voluminous commentaries, short articles and writings on the subject of Arbitration besides Legislation elaborately touching all the provisions of the law contemplated therein. Some amongst the innumerable works followed for this research work has been adverted at this context illustratively and not exhaustively. Ashok H Desai, ‘Challenges to an award – use and abuse’ Pravin H Parekh, ‘Public Policy as a ground for setting aside the award’, Sumeet Kachwaha, ‘Enforcement of Arbitration Awards in India’, S.K.

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10 ILC-2012-SC-ARB-Sep-3
11 ICA’s Arbitration Quarterly, ICA, 2006, vol. XLI/No.2, p 4. Ashok H Desai is a Senior Advocate of the Supreme Court of India
12 ICA’s Arbitration Quarterly, ICA, 2005, vol. XL/No.2, p 19
13 Asian International Arbitration Journal, 2008, vol. 4, number 1, p 68
Dholakia, ‘Analytical Appraisal of the Arbitration and Conciliation (Amendment) Bill, 2003’\textsuperscript{14}, 34 Law Commission of India\textsuperscript{15}.

The research work upon perusal of the write ups and commentaries were benefited to log on to the websites like Hong Kong International Arbitration Centre\textsuperscript{16} ICC Court of International Arbitration\textsuperscript{17} Japanese Commercial Arbitration Association\textsuperscript{18} London Court of International Arbitration\textsuperscript{19} Singapore International Arbitration Centre\textsuperscript{20} Stockholm Chamber of Commerce Arbitration Institute\textsuperscript{21} Vienna International Arbitration Centre\textsuperscript{22} International Centre for the Settlement of Investment Disputes\textsuperscript{23} United Nations Commission on International Trade Law\textsuperscript{24} All texts are available at\textsuperscript{25} and the full 178\textsuperscript{th} Report of the Law Commission of India\textsuperscript{26} were significant.


\textsuperscript{14} ICA’s Arbitration Quarterly, ICA, 2005, vol. XXXIX/No.4 at p 23. In the said Article, it is stated that the two cases are: Rajinder Krishan Khanna V Union of India (1998) 7 SCC 129; and Oil and Natural Gas Corporation V Saw Pipes (2003) 5 SCC 705. The data given here is from the Supreme Court Cases Journal. Dholakia is a member of ICC International Court of Arbitration & is a Senior Advocate, Supreme Court of India
\textsuperscript{15} 176th Report on Arbitration and Conciliation (Amendment) Bill, 2001
\textsuperscript{17} www.iccwbo.org/index_court.asp. (Visited on 9.12.2012)
\textsuperscript{18} www.jca.or.jp. (Visited on 9.12.2012)
\textsuperscript{19} www.lcia-arbitration.com (Visited on 9.12.2012)
\textsuperscript{21} www.sccinstitute.com/uk/Home (Visited on 9.12.2012)
\textsuperscript{22} www.wk.or.at/arbitration (Visited on 9.12.2012)
\textsuperscript{24} www.uncitral.org (Visited on 9.12.2012)
\textsuperscript{25} www.kluwerarbitration.com (Visited on 9.12.2012)
\textsuperscript{26} www.lawcommissionofindia.nic.in (Visited on 9.12.2012)
from arbitration journals unanimously referred the judgements in *Saw Pipes case*[^27] *McDermott International Inc. V. Burn Standard Co. Ltd*[^28] *Indian Oil Corporation Ltd. V. Langkawi Shipping Ltd*[^29], *Dealim Industrial Co. V. Numaligarh Refinery Ltd*[^30] *Renusagar Case*[^31] which laid down the modus operandi of the role of judicial intervention in arbitration proceedings.

However since no exclusive and comprehensive analysis is made specifically confining to the arbitration mechanism for speedy justice, in the context of judicial intervention, the researcher had taken a sincere attempt to fill up that gap.

**SOURCES OF DATA**

Enactments and statute relating to arbitration, judgement delivered by Hon’ble Supreme Court and various High Courts, journals on arbitration are the primary sources of data. Article, books, commentaries dissertations, write ups of scholars on this subject, valuable quotes from eminent jurists and review of case laws constitute the secondary sources. The internet is also been used to cull out various English decisions and legislations.

**DELIMITATION**

This research study is confined only to the subject of judicial intervention in arbitration proceedings to make an analytical study. More precisely to analyse the role of judicial intervention before, during and after arbitration. For the purpose of

[^27]: 2003 (5) SCC 705 and 2005 (8) SCC 618
[^28]: 2006(11)SCC 181 at p 208
[^29]: 2004 (3) Arb LR 568
[^30]: Arbitration Appeal No. 1 of 2002 (August 24, 2006)
[^31]: 1968 (2) SCC 554
this study the case laws have been selected irrespective of the Judgement remaining as obiter dicta or ratio decidendi.

**LIMITATION**

This research explores and formulates with critical examination the judicial intervention in arbitration paving way for speedy justice. The materials forming primary and secondary sources are widely scattered. They are identified, collected and assembled and edit them in an organized way to get a complete picture about the given issue. To maintain originality and reliability, the ratio of law laid down by the Hon’ble Apex Court, various High Courts and imminent words of jurists are quoted verbatim wherever required. Inevitably to repeat at the risk of repetition too many citations of the Hon’ble Apex Court are used in this work, whether such Judgement are obiter dicta or ratio decidendi.

**CHAPTERIZATION**

This research work has been divided into Seven Chapters. The **First Chapter** is Introduction; the text of the **Second Chapter** pertains to evolution of Arbitration mechanism making a comparative approach between Global and Indian perspective which has been a source for the evolution of arbitration with its basic structure and notable features. The focus in the **Third Chapter** is upon the tune of Arbitration and its kinds emphasizing the skin of Arbitration Agreement. The major focus upon the **Fourth Chapter** deals with the core subject relating to the extent of judicial intervention which can be drawn under three groups i.e. before, during and after arbitration and particularly in this fourth chapter the role of the Judicial Intervention before arbitration is dealt with. Thereby **Fifth Chapter** is projected to highlight upon
the extent of judicial intervention during Arbitration. In that way the Sixth Chapter examines the extent of judicial intervention after Arbitration. The last Seventh Chapter Conclusion and Suggestions is to evaluate, compare and analyse the essence of the arbitration functioning as an approach for speedy justice. Based upon the study made in the previous chapters, honest assessment has be done to see whether the deep and pervasive control of judicial intervention as contemplated in the arbitration legislation has been discharged as a functionary methodology so as to fine tune and lead the arbitration successfully complete and attain its objectivity. Thereby to further analyze whether the functions discharged by the judiciary which are mandated under the Arbitration Legislation are done completely without leaving any explanation to render a proposition other than the one to result in speedy justice – both in the nature of quality and quantity.

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