CHAPTER-IX
CONCLUSION AND SUGGESTIONS

The concept of parties settling their dispute in a binding manner by reference to a person or persons of their choice or private tribunals was well known to ancient and medieval India.\(^1\) Appeals were also often provided against the decisions of such persons or tribunals to the courts of judge appointed by the king and ultimately to the king himself. However, the law or arbitration as is known to modern India owes its elaboration, in phases, to the British rule of India. Through a series of what were know as Regulations framed by the East India Company in exercise of the power vested in it by the British government, beginning with the Bengal Regulations of 1772, the court in different parts of British India were empowered to refer, either with the consent of the parties or at the instance of the parties, certain suites to arbitration. The successive Civil Procedure Codes enacted in 1859, 1877 and 1882, which codified the procedure of civil courts, dealt with both arbitration between parties to a suit and arbitration without the Intervention of a court.

The law relating to contracts also simultaneously developed certain principals of relevance to arbitration. Ordinarily, all disputes arising under a contract have to be settled by courts established by the state. Section 28 of the contract Act, 1872 provides that every agreement, by which any party thereto

\(^1\) Nripendra Nath Sircar, The Law of Arbitration in British India, 1942.
is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceeding in the ordinarily tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent, In short, no man can exclude himself from the protection of courts by contract.\(^3\) Exception 1 to section 28, however, provides that the said 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 subject shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. Exception 2 provides that section 28 shall not 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 reference to arbitration. Section 21 of the Specific Relief Act, 1877, Also provided that, save as provided the Code of Civil Procedure and the Indian Arbitration Act, 1899, on contract to refer present or future difference to arbitration could be specifically enforced; but, if any person who had made such a contract and had refused to perform it sued respect of any subject which he had contracted to refer, the existence of such contract would bar the suite.\(^4\)

The first Indian Arbitration Act was enacted in 1899.\(^5\) This Act was largely based on the English Arbitration Act of 1889 and applied only to cases

3. Rehamatunnisa Begum v. Price, AIR 1917 PC 116,
4. sec.14 (2) of the Specific Relief Act, 1963.
5. see Societe De Tractoin etc. v. Kamuni Engineering Co. AIR 1964 SC 558, 563.
where, if the subject matter submitted to arbitration were the subject matter of a suit, the suit could be instituted, whether with leave or otherwise, in what was then known as a Presidency town. The scope of this Act was confined to arbitration by agreement without intervention of a court.

The Code of Civil Procedure enacted in 1908 originally left the arbitration provision much as they were in the earlier Codes expect that it placed the said provisions in a Schedule-the Second Schedule-in the hope that they would be transferred later into a comprehensive Arbitration Act. The Second Schedule dealt with arbitration in suits, though arbitration without intervention of courts was also briefly provides for. It also contained and alternative method whereby the parties to a dispute or any of them could file their arbitral agreement before a court which, after following the prescribed procedure, referred the matter to an arbitrator.

The year 1940 is an important year in the history of the law of arbitration in British India as in that year was enacted the Arbitration Act, 1940 (hereinafter, “the 1940 Act”). It consolidated and amended the Law relating to arbitration as contained in the Indian Arbitration Act, 1899 and the Second Schedule-i to the Code of Civil Procedure, 1908. It was also largely based on the English Arbitration Act of 1934 and came into force on 1 July 1940. It extended to the whole of India expect the State of Jammu and Kashmir. The Act dealt with broadly three kinds of arbitration: (i) arbitration without

intervention of a court, (ii) arbitration with intervention of a court where there is no suit pending, and (iii) arbitration in suits, Save insofar as was otherwise provided either by the Act or any other Act, it applied to all arbitrations, including statutory arbitration.


Thus, prior to the commencement of the Arbitration and conciliation Act, 1996 (hereinafter, “the Act”) the law of arbitration in India was contained in three enactments: the 1937 Act, the 1940 Act, and the 1961 Act. The Act consolidates and amends the law relating in India.

The need for enactment of the Act had arisen on account of several factors. Though the English Arbitration Act, 1934, on which the 1940 Act was based, had been replaced by the English Arbitration Act, 1950 which in turn was amended by the Arbitration Act, 1975 and the Arbitration Act, 1979, to
keep pace with the developments in the field of arbitration, the Indian Act had remained static. The Indian courts have noted for evolving effective safeguards to prevent such abuses.\(^7\) The Supreme Court observed:

Interminable, time-consuming, complex and expensive court procedure 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 the Arbitration Act, 1940\('\text{Act for Short}'\). 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 proceeding 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 parties for expeditious disposal of their disputes has by the decisions of the Courts been clothes with 'legalese' of unforeseeable complexity.\(^8\)

The Public Accounts Committee of the Lok Sabha had also commented adversely on the working of the Arbitration Act.\(^9\) Its complaints mainly related to the long delays that took place in the completion of arbitral proceeding, the number of extensions of the period permitted for making the

\(^7\) \text{state of Kerala v. Joseph Anchilose, AIR 1990 ker. 101, 106- 107.}
\(^8\) \text{Guru Nanak foundation v. M's Rattan Singh & Sons., AIR 1981 SC 2075, 2076-2077}
award that were obtained either by consent of the parties or through the intervention of the court, the several numbers of years taken for completion of arbitral proceeding, and the enormous expenses incurred by way of fees payable both to the arbitrators and the counsel. In the light of these adverse comments, the Government of India decided to have a second look at the provisions of the Arbitration Act and, for this purpose, referred the matter, in 1977, to the Law Commission for its examination. The Law Commission's recommendations in this regard are contained in its Seventy-sixth Reports submitted to the Government in November 1978. The Government of India consulted the State Governments on these recommendations and, before any action was taken in this regards, the Thirteenth Law Commission undertook further examination of its recommendations.

An opportunity to review the situation again presented itself more recently in the context of the growing awareness about the inadequacies of the formal judicial system in India to contend successfully with the demands placed on it. There are about twenty-five million cases pending in different courts in India. Each case consumes a number of years before it is settled. The need to get away from the traditional conception that a court is the only place in which to settle disputes is no longer disputes. The subject-matter of arrears of cases in courts had engaged the attention of various Commissions and Committees in India. More recently, the Arrears Committee, popularly known as the Malimath Committee, constituted by the government of India on the recommendations of the Chief Justices’ Conference, made a number of
recommendations in a Reports submitted in 1990. Similarly, the Law Commission of India had also submitted as many as 16 Reports containing recommendations on various aspects of the frightful problem of mounting arrears of cases in courts. It is now widely recognised that respective of the number of courts that may be constituted and the number of judge that may be appointed, our justice system may not be able to take the entire litigation load. With a view to reducing the pressure on courts as also to offering dispute resolution by bodies well informed in the areas falling in their respective jurisdiction, the Constitution made provisions for the establishment of administrative tribunals at both the Central and State levels. At the Central level, there are about 13 such tribunals. There are more than half a million cases pending in theses bodies. The Malimath Committee as also the Law Commission had recommended a number of alternative modes such as arbitration, conciliation and mediation for dispute resolution.

On 4th December 1993, a meeting of the Chief Ministers and Chief Justices was held under the chairmanship of the Prime Minister of India to evolve a strategy or dealing with the congestion of cases in courts and other fora. The meeting adopted a resolution that sets forth ways and means to deal with the arrears problem as expeditiously as possible. While dealing with the arrears of cases in courts and tribunals, the resolution also recommended that a number of disputes lent themselves to resolution by alternative means such as arbitration, mediations and negotiation. The resolution further emphasized the desirability of disputants taking advantage of alternative disputes resolution.
(ADR) which provided procedural flexibility, saved valuable time and
money and avoided the stress of a conventional trial. ADR is seen as part of a
system designed to meet the needs of consumers of justices, especially in the
context of recent reforms in the economic sector. Simultaneous with has been
the growing demand of both the business community within the country and
investors from abroad for reforms in the arbitration law of India. The
Government of India also felt that its economic reforms might remain
incomplete if corresponding changes were not brought in the law relating to
settlement of disputes, especially through arbitration and conciliation.

The Supreme Court also observed: We should make the law of
arbitration simple, less technical and more responsible to the actual realities of
the situations but must be responsive to the cannons of justice and fair play
and make the arbitrator adhere to such process and norms which will create
confidence, not only by doing justice between the parties, but by creating sense
that justice appears to have been done.

The need for reform in the law relating to arbitration thus became
necessary and urgent. The question then was whether the 1940 Act should be
amended or the new Law be written on a clean slate. Besides the seventy sixth
Report of the law Commission of India on Arbitration Act, 1940, the
Government had before it representations from, among others, the Indian
Council of Arbitration,

11. Ibid., at 1267
the Indian Society of Arbitration, of confederation of India Industries; the Federation of Indian Chambers of Commerce and Industry, the Associated Chambers of commerce and Industry proposing amendment to the 1940 Act. Proposals for amendment of the 1940 Act were also received from eminent lawyers.

The government had also before it several international models including the UNCITRAL Model Law on International Commercial Arbitration (hereinafter,” the Model Law”) and the ICC Rule on Conciliation and Arbitration. 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 law and civil law concepts on arbitration and thus contains provisions that are designed for universal application.

The United Nations Commission on International Trade Law (UNCITRAL) was established by General Assembly resolution 2205 (XXI) on 17 December 1966. The Commission's object is promotion of the progressive harmonization and unification of the law of international trade. The Commission consists of 36 states representing various geographic regions and the principals economics and legal systems of the worlds. Even since its inception, India has been a member of this Commission. Largely at the instance of the Asian-African Legal Consultative Committee\textsuperscript{12} and on the basis of extensive deliberation held in its Working Group on International Contract

\textsuperscript{12} UNCOTRAL (UN Publication). 1986, pp. 29-30.
Practices and Consultations with arbitral institution and individual arbitration experts, the commission adopted the Model Law on 21 June, 1985. The Model Law is not a treaty and does not, therefore require the state adopting it to enact its national law in terms thereof. There are, of course, obvious advantages in following its terms in as close a manner as possible as this will enable a country adopting the Model Law to integrate its legal system with the emerging law of International arbitration. The General Assembly, by its resolution 40/72 of 11 December 1985, recommended that,” All states give due consideration to the Model Law on Intern Commercial Arbitration, in view of the desirability of uniformity of Law of arbitral procedures and the specific needs of international commercial practice”. A number of countries including Australia, Bahrain, Bermuda, Bulgaria, Canada(by the Federal parliament and by the Legislatures of all Provinces and Territories), Cyprus , Egypt, Finland, Hong Kong Hungary, Mexico, Nigeria, Peru, the Russian Federation, Scotland, Singapore, Tunisia, Sri. Lanka and within the United States of America, California, Connecticut, Oregon and Texas have enacted law to give legal force to the Model Law within their jurisdictions.

The Act, being based on the Model Law which is also broadly compatible with the Rule of Arbitration of the International chamber of Commerce (hereinafter,” the ICC Rules”) 13, puts India on the international map of arbitration. The most significant feature of this Act is the recognition it

a accords to the freedom of the parties to agree on how their arbitration should be conducted. In certain respects, the Act constitutes an improvement over the Model Law inasmuch as it nearly takes away the role of courts except in a few matters. Though the Model Law was conceived in the context of international commercial arbitration, the Act uses it, with certain modifications, as the basic for domestic arbitration of all arbitral disputes. It was felt that a well conceive law of international commercial arbitration would be equally appropriate for domestic arbitration.\(^{14}\)

The Act of 1996 contains 86 sections, besides the Preamble and three Schedules. The Act is divided into four Parts. Parts I contains general provisions on arbitration. Part II deals with enforcement of certain foreign awards. Part III deals with conciliation. Part IV contain supplementary provisions. The preamble to the Act explains the bases of the legislation. The three Schedules reproduce the texts of the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927, the Geneva Protocol on Arbitration clauses, 1923, and the New York Convention on the Recognition and Enforcement Arbitral Awards, 1958, respectively. In past the statuary provisions were contained in three different enactments namely the Arbitration Act 1940, Arbitration (Protocol and Convention) Act, 1937 and the foreign awards (Recognition and Enforcement) Act 1961. The 1940 Act covered only the domestic arbitration while the other two Acts dealt with

enforcement of foreign awards, these three statute have been repealed and replaced by the Arbitration and conciliation Act 1996, which was based on UNCITRAL Model Law in its entirety.

The Arbitration and Conciliation Act 1996 is divided into four parts

1. Domestic Arbitration
2. Enforcement of Certain foreign Awards
3. Conciliation
4. Supplementary Provisions

The hypothesis of the researcher is based on the working of the arbitration law in India and Impact of Globalization on its functioning and whether the arbitration law in India in the form of the Arbitration and Conciliation Act 1996 is a success or failure, as the main objectives of the Act are that it has to deal with International Commercial Arbitration and Domestic Arbitration, arbitral procedure is fair, efficient and capable of meeting the needs of the specific arbitration, arbitral tribunal remains within the limits of its jurisdiction, minimize the supervisory role of courts in the arbitral process, to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage the settlement of disputes, to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court to provide that for the purposes of enforcement of foreign awards every arbitral award made in the country to which one of the two international convention relating to foreign arbitral award to which India is a party applies, will be treated as a foreign award.
As the Arbitration Law in India in the form Arbitration and Conciliation Act, 1996 is a culmination of various Conventions, Treaties, Protocols, Rules, Regulations and Acts etc. So the researcher has to see whether present Arbitration Law by getting influenced from various Laws of different nations and organizations is a success or failure.

In preceding pages of the present thesis an attempt has been made to study the different dimensions of the Arbitration Law in India.

In the first chapter in the form of introduction researcher has tried to discuss what is Arbitration, what type of arbitrations are in practice all over the world, what is the object of study of the researcher, statement of the problem and hypothesis of the study. The arbitration is a process of dispute resolution when a difference arise between two parties. The arbitration may be of:

1. Domestic Arbitration
2. International Arbitration

Both type of Arbitration can use the method of Institutional Arbitration, Ad hoc Arbitration, Statuary Arbitration and Specialized Arbitration. There are several institutions at international and national level which provide institutional Arbitration e.g. Permanent Court of Arbitration, International Chamber of Commerce, International Center for Settlement of Investment Dispute, Inter American Commercial Arbitration Commission, European Court of Arbitration and Indian Council of Arbitration, Federation of Indian Chambers of Commerce of Industry etc. While the Ad hoc Arbitration method is adopted by the parties themselves and it is without recourse to any
institution and the procedure adopted by the Arbitrators as per the agreement or with the concurrence of the parties. Specialized Arbitration is conducted under the auspices of the arbitral institutions which have framed special rules to meet the specific requirements for the conduct of the arbitration while the statutory arbitration are conducted in accordance with the provisions of certain special Acts which specifically provide for arbitration in respect of disputes arising from matter covered by those Acts.

In the second chapter an attempt has been made to discuss the Genesis of the Arbitration Law in India in which it has been discussed that the arbitration is not a new phenomenon in our country but it has its existence from vedic era that why Yajnavalkya\textsuperscript{15} refers to three types of popular courts and at the time of Britishers several regulations came into existence and before the 1996 Act, the three Acts i.e The Arbitration Act 1940, Arbitration (Protocol and Convention )Act 1937 and the foreign awards (Recognition and enforcement) Act 1961 were in existence for Arbitration Law in India and on the recommendation of United Nations Commission on International Trade Law i.e UNCITRAL Model Law India adopted several provisions and result was Arbitration and Conciliation Act 1996. the various stages of growth of arbitration Law is discussed in this chapter. It is also discussed in this chapter why there was a need for Arbitration And Conciliation Act 1996. when the UNCITRAL Model Law was available to us to guide us for dispute resolution.

\textsuperscript{15} Yajnavalkya II , 30
in International Trade as well as Law Commission of India also recommended change to be made in the Arbitration Law to face the pace of International changing scenario. So the present Arbitration and Conciliation Act 1996 was the need of the day.

In chapter three researcher has attempted to discuss Commercial Arbitration and UNCITRAL Model Law. Commercial Arbitration is of several forms of dispute resolution for commercial agreements. Commercial Arbitration has many different issues. According to Fali S. Nariman,¹⁶ "My exhortation to all who administer the Commercial Arbitration is to work towards an arbitral regime which rekindle the spirit of arbitration that give the life”. Commercial Arbitration must have existed since the dawn of commerce. Commercial Arbitration is distinguished from other types of Arbitration in as much as the Commercial Arbitration derives their authority solely from contract, they resolve the whole dispute and generally do so according to law. UNCITRAL Model Law is also well connected to the Commercial Arbitration as the United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration because the General Assembly of the United Nation recommended that all countries should give due consideration to the said Model Law, in view of the desirability of uniformity of the law of Arbitral procedure and the specific need of International Commercial Arbitration practice.

¹⁶. Article, “Does the world need additional uniform legislation on arbitration”, in Arbitration International Vol. 15 p.p 211
Although the said UNCITRAL Model Law and rules were intended to deal with International Commercial Arbitration and Conciliation, they could, with appropriate modifications, serve as a model for legislation on Domestic Arbitration and Conciliation. The Arbitration and Conciliation Act, 1996, has taken into account the UNCITRAL Model Law and Rules.

Further an attempt has been made to discuss the Mechanism of Commercial Arbitration in chapter four. Mechanism of commercial Arbitrations is provided in the Arbitration and Conciliation Act 1996 from Section 7 to 60 in which Arbitration Agreement, Arbitral Tribunal jurisdiction and its composition, conduct of arbitral proceedings, making of arbitral award, termination of arbitral proceeding, recourse against arbitral awards finality and enforcement of arbitral awards appeals and enforcement of certain foreign awards.

In chapter five the researcher has attempted to discuss the use of Arbitration in resolution of Intellectual Property Rights Disputes as the Intellectual Property is emerging is one of the most valuable commodities in the global market, the global economy has come to be dependent on technology invariably increasing the importance of its protection through Intellectual Property Laws. Arbitration mechanism has been outlined in the recent multilateral agreements with the recognition that the traditional litigation is no longer the most viable means of settling International Property Disputes. World Intellectual Property Organization (WIPO) framed WIPO arbitration rules which became effective since October 1, 1994.
arbitration rules shall be deemed to be the part of the arbitration agreement if arbitration agreement has been done to settle the disputes. The tribunal which is formed for the resolution of dispute regarding the IPR shall consist of such of arbitrators as has been agreed by the parties. The sole arbitrator shall also be appointed and any arbitrator may be challenged by a party if circumstances exists that give rise to justifiable doubt as to the arbitrators impartiality or independence. The experts are appointed for the tribunal as the intellectual property disputes requires the tribunal shall decide the substance of the dispute in accordance with the law or the rules of law chosen by the party. The tribunal may make preliminary, interim, interlocutory, partial or final awards. The arbitration should where ever be reasonably possible, be heard and the proceedings declared closed within not more than nine month after either the delivery of the statement of defense or the establishment of the tribunal whichever event occurs later. This shows that the arbitration is being used in the resolution of IPR disputes.

In chapter six Enforcement and Recourses against arbitral awards is discussed. The nature of arbitral award has been changed after following the UNCITRAL Model Law because before the Arbitration and Conciliation Act 1996, came into existence the arbitral awards was filed in the court of Law. On receiving the arbitral award the court use to convert the arbitral award into a judgment form than converted into a decree than it was executed. Therefore the award holder has to face several obstacles before the execution of the arbitral awards. But after the Act of 1996 the position has been changed and
now the arbitral award is deemed as a decree and enforceable without facing the obstacles like earlier. There are also recourses against the arbitral awards i.e under the Act of 1996 the arbitral award. Even the Supreme Court has observed that section 34 of the Act is based on the UNCITRAL Model Law and it will be noticed that under the 1996 Act the scope of the provision for setting aside the award is far less as it was under section 30 or 33 of the 1940 Act.\footnote{17. Olympus Superstructures (P) v Meena Vijay Khaïtan AIR 1999 SC 2102}

In chapter seven the researcher has attempted to discuss the Impact of Globalization Arbitration Law of India. It was either Arbitration Act 1940 or Arbitration and Conciliation Act 1996. Arbitration Act 1940 was having the impact of English Arbitration Act of 1934, Geneva Protocol, Geneva Convention and New York Convention. The Arbitration and Conciliation Act has followed the UNCITRAL Model Law which was recommended by the United Nations to resolve the disputes of international trade. India not only followed the UNCITRAL Model Law for International Commercial Arbitration but also for Domestic Arbitration.

In chapter nine the researcher has tried to discuss that enactment can not fill the gap of huge lacunae of the existing law therefore the Supreme Court and the High Court of this country have contributed a lot in the development of Law in various fields. So the researcher has discussed various case laws under this chapter to through some light on the approach of judges towards the Law of Arbitration and its relevance in today “Global World”.

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Thus a close look at the preceding chapters show that Arbitration Law in the form of Arbitration and Conciliation Act 1996 is not a total success and requires certain amendments for which the Law Commission of India also recommended. Although Arbitration and Conciliation Act, 1996, has played an important role in dispute resolution as it has several advantages over the 1940 Act is that the important departure made by the 1996 Act from the previous Law is in regard to the judicial intervention with the process and the product of Arbitration like where there is an arbitration Agreement the court is required to direct the parties to resort to arbitration as per the agreement, the grounds on which the award of an arbitrator could be challenged before the court under the 1940 Act have been severely cut down such a challenge is now permitted only on the basis of invalidity of the agreement, want of jurisdiction on the part of arbitrator or want of proper notice to a party of the appointment of the arbitrator or of the arbitral proceedings or a party being unavailable to present its case, the powers of the arbitrator have been amplified, obstructive tactics sometimes adopted by the parties in arbitration proceedings are sought to be thwarted by an express provision where under a party who knowingly keeps silent and then suddenly raises a procedural objection will not be allowed to do so, the role of arbitral institutions in promoting and organizing arbitration has been recognized for the first time in law, the Act provides a considerable improvement in the nature of appointment of arbitrators with the formulation of the Chief Justice Scheme which takes the task of selecting an arbitrator by courts outside the litigation process and makes it an administrative act. Under
the 1940 Act, there was a time limit of four months within which the arbitrator has to make the award. However this time limit used to be extended by the arbitration tribunal with the agreement of the parties and failing such agreement, by the court. This resulted in delay. The time limit for making award has now been deleted; the importance of transnational commercial arbitration has been recognized. The requirement of formal arbitral agreement under the 1949 Act has now been relaxed to include even a informal agreement, the 1996 Act has clothed the arbitrator with the power to grant interim orders in respect of the preservation of the property and for ordering security; the arbitrator can now decide on his own jurisdiction; the 1996 Act also provides for various other time saving measure such as requiring an arbitrator to disclose any possible bias at the threshold itself; when an arbitrator is replaced the proceedings conducted by him are protected and finally the arbitrators are required to give reasons for the award and the award has now been vested with the status of the decree. Thus Arbitration Law in India is in transitional phase.
SUGGESTIONS

In last it is duty of the researcher to provide some suggestion, which may be considered by legislature, judges and jurists for their help while dealing research problem before them. There are few suggestions which are as follows;

1. The scope of Domestic Arbitration, International Arbitration and International Commercial Arbitration must be defined. In order to remove any confusion in understanding about the domestic arbitration in India when none of the parties are nationals of a country other than India. The definition include shall “international arbitration” in India, whether commercial or not, where atleast one of the parties is a national of a country and where the place of arbitration is in India.

2. Extend of Judicial intervention must be defined-notwithstanding anything contained in any other law for time being in force used in section 5 will not come in the way of the exercise of powers under Article 226 of the constitution of India by the High Court or under or under Article 136 by the Supreme Court of India in as much as these are constitutional.

3. Certain preliminary issues at the stage of Sect. 8 should be decided that where the plaintiff or the petitioner before the judicial authority is not a party to the arbitration clause, validity
of the arbitration clause or its binding nature

4. Situations in which Preliminary issues could be decided under Sect. 8 that the agreement is null and void, inoperative or incapable or being performed

5. Provision to be made for stay of action in case reference is made under Sect. 8 because in a event of a reference being made under section 8, the action before the judicial authority should remain stayed and the stay be subject to the result of the order of the judicial authority on jurisdictional review

6. Interim measures and powers of the arbitral tribunal to be further amplified so the enforcement of the arbitral award can be done like a civil court and that any infraction of its order must be allowed to be treated as contempt of the arbitral tribunal liable to be punished. The powers to require a witness to attend and powers of injunction or appointment of receiver or attachment of third party's property should also be granted with a condition that the tribunal could impose various penalties for violation of its directions

7. Powers to be granted to the arbitral tribunal to enforce its orders to speed up the arbitral process and result in strict compliance with the orders of the arbitral tribunal.
8. Procedure for enforcement of peremptory orders passed by the arbitral tribunal under section 23, 24 of the court – provision to prevent dilatory tactics must be inserted. Because the absence of a procedure for enforcement of the interim measures granted by the arbitral tribunal through the court and this is creating serious problems and prejudice to the parties in whose favors such orders are passed. There must be some special provision in this behalf as is provided in section 42 of the English Act, 1996

9. The time limit for completion of arbitral proceedings in India for both International and Domestic Arbitration should be laid down because the frequent applications for extension in the court added to long delays but it was not the policy of the new Act that the awards can be delayed without any time limit but the awards are getting delayed before the arbitral tribunal even under the Arbitration and Conciliation Act, 1996

10. Copy of award to be filed in the court for purposes of record along with original arbitral record and courts to maintain the register of awards so the court would scrutinize the award before making it a rule of court. Once the award is filed in the court, there is little scope for tinkering with the date of the award or with the body of the award.
11. Substantial error of law apparent on the face of award for upholding the rule of law.

12. Provision for fast track should be added as it was the very aim and object of arbitration as an alternative to settle the dispute expeditiously.