ABSTRACT

Introduction

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

Traditional concept of “access to justice” as understood by common man is access to courts of law. For a common man a court is where justice is meted out to him. But the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy, ignorance, procedural formalities and the like. To get justice through courts one has to go through the complex and costly procedures involved in litigation.

Therefore a movement started throughout the world for Alternative Dispute Resolution and Arbitration is one among them because with Economic Liberalization and the opening up of the market, there is a phenomenal growth of international trade, commerce, investment, transfer of technology, developmental and construction works, banking activities and the like. To cope with the changing scenario, India has updated its arbitration legislation in order to provide a level playing field for both domestic and foreign entrepreneurs. Indian arbitration law ensures fairness and justice to all the concerned parties. India has undertaken major reforms in its arbitration law in recent years as part of

Arbitration means any arbitration whether or not administered by permanent arbitral institution. But in simple terminology arbitration means a process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is submitted to and determined judicially and with binding effect by the application of the law by one or more persons (the arbitral tribunal) instead of by a court of law.

Domestic Arbitration takes place in India when the arbitration proceedings, the subject matter of the contract and the merits of the dispute are all governed by Indian law. International Arbitration can take place either within India or outside India in cases where there are ingredients of foreign origin relating to the parties or the subject matter to the dispute. A foreign arbitration is an arbitration conducted in a place outside India and the resulting award is sought to be enforced as a foreign award. In institutional arbitration the parties call upon an arbitration center or an arbitral institution that they will have chosen to administer the proceedings in accordance with the institutions arbitration rules.

Following are the main International Arbitration Institutions:

1. International Court of Arbitration of the International Chamber of Commerce.

2. International Center for Settlement of Investment Disputes (ICSID)
3. China International and Economic and Trade Arbitration Commission (CIETAC)
4. International Center for Dispute Resolution of the American Arbitration Association (AAA)
5. Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute)
6. London Court of International Arbitration (LCIA)
7. Kuala Lumpur Regional Centre for Arbitration (KLRCA)
8. Permanent court of Arbitration
9. Indian Council of Arbitration

Presently, there is a wide divergence and disparity in laws relating to various aspects of business contracts in different countries. Such disparities create practical difficulties and legal problems in the smooth and swift flow of international business. With the view to promote uniformity at least on fundamental principles in the various business laws, UNCITRAL has either made Model laws/Conventions or has prepared guidelines on various subjects. The Government of India has already taken up the task of harmonization and globalization of the legal framework relating to international trade and arbitration laws. The present arbitration law in India is radically based on UNCITRAL Model Law on international commercial arbitration as the Arbitration and Conciliation Act, 1996. In the past, statutory provisions on arbitration were contained in three different enactments, namely, the Arbitration Act, 1940, (hereinafter referred as 1940 Act), the 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 two Acts dealt with enforcement of foreign awards. These three statutes have been repealed and replaced by a consolidated, comprehensive legislation in the Arbitration and Conciliation Act, 1996. This legislation, by and large adopts the UNCITRAL Model Law in its entirety.

The Arbitration and Conciliation Act, 1996 is the result of borrowing the provisions from UNCITRAL Model Law and an improvement over the Arbitration Act 1940, which only deals with Domestic Arbitration while the Act of 1996 is mainly for the purpose of dispute resolution in International Trade. Although the Arbitration and Conciliation Act, 1996 is based on UNCITRAL Model Law still it departs from Model Law – Subsection. (1) of section 10 of the 1996 Act deals with the number of the arbitrators in an arbitral tribunal and provides that the number shall not be of even number. The Model Law does not contain any such limitation. Where the parties fail to determine the number of arbitrators, the Model law provides that the number of arbitrators shall be three. Subsection (2) of section 10 of 1996 Act provides that in such an eventuality, the arbitral tribunal shall consist of a sole arbitrator. In the matter of appointment of arbitrators, where the parties fail to reach an agreement, the model law permits the party to approach a court or other authority specified in the National Law for appointment of the third arbitrator or sole arbitrator as the case may be. However, section 11 of the 1996 Act empowers the Chief Justice of the High court concerned or any person or any person or institution designated by him to appoint the arbitrator. Further in the case of International commercial arbitration, it is the Chief Justice of India, or any person or institution designated by him, who is empowered to appoint the arbitrator. Subsection (10) of the section 11 empowers Chief Justice of India or the
Chief Justice of High Court, as the case may be, to make such scheme as he may deem appropriate for dealing with such appointments.

The Model Law lays down the procedure for challenging an arbitrator. It empowers the arbitral tribunal to decide on the challenge and, if a challenge is not successful, the challenging party may request a court or other authority to decide on the challenge. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award. The corresponding provision contained in section 13 of the 1996 Act does not permit the challenging party to approach the court at that stage. However after the award is made the party could challenge the award on the ground that the arbitrator has wrongly rejected the challenge.

**Selection of Topic:**

Business and commercial organizations enter into numerous contracts with its customer, clients and consumers everyday due to enormous increase in the volume of business. When a large number of contracts have got to be entered into by giant and large size of the commercial organization, it is practically not possible for these commercial entities to litigate the matters in the court of justice. To save time and for the purpose of convenience it was felt necessary to use the alternative dispute resolution methods to resolve the dispute expeditiously, with less expenses and saving of time. Nowadays the use of alternative dispute resolution method in the form of arbitration is very common in every business, trade and industry. Thus the purpose for selecting this topic for research is to critically analyze its importance and misuse of arbitration law in India for resolution of disputes under the Arbitration and Conciliation Act, 1996.
Statement of Research Problem and Hypothesis:

Object of present study is whether arbitration law in India is satisfactory in its working after getting influenced from the various protocols conventions, treaties, regulations, rules and Acts etc, in the form present enactment, the Arbitration and Conciliation Act, 1996.

The working of the Arbitration And Conciliation Act,1996 is the result of UNCITRAL Model Law which provides provisions to fulfill the need of the present world scenario is perfect in its self or it need to be amended so it can cater the demands of International Trade disputes Resolutions smoothly.

The hypothesis of this present research work is that—

1. Whether the Arbitration and Conciliation Act 1996 is success?

2. What are the impact of UNCITRAL Model Law on the Arbitration and Conciliation Act 1996?

3. How the judiciary has influenced the Arbitration and Conciliation Act 1996?

4. What is the overall Impact of globalization on Arbitration and Conciliation Act 1996?

Objectives of the Study:

As the arbitration is used as an alternative dispute resolution method to resolve the dispute in today’s era of globalization. There are so many National and International business transactions are going on and arbitration is getting importance day by day due its advantage over litigation. Hence, the objective of study to analyze the different
dimensions of the arbitration law in India in dispute resolution for the effectiveness under the provisions of the Arbitration and Conciliation Act, 1996.

The main object of the present study is to examine the use and the misuse of the Arbitration Law in India and also to analyse that whether the present statutory provisions relating to contract are sufficient to meet any situation and are capable to do justice, or there is dearth and scarcity of the statutory provisions in this field, and if so to make suitable suggestions in this regard.

**Research Methodology:**

The present study is based on the doctrinal method. An effort is made to study the case laws enunciated by the Supreme Court of India and various High Courts of India and as well as of the United Kingdom and to ascertain the attitude and the judicial response of the courts regarding the principles of the law of arbitration and enforcement, recognition and recourses against the arbitral awards. The present study is designed to examine the role of the judiciary and to study the judicial response in India in relation to arbitration law. Apart from the case law study, the materials relied on are the Reports of the Law Commissions, Discussion Paper and the statutory provisions relating to arbitration law in India and of other countries of the world.

**Presentation of Study:**

To cover all aspects, the entire work is arranged in nine chapters.

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 abstract 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, types of arbitration, which are in practice in India and other countries of the world? The arbitration is a process of dispute resolution when differences 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 statuary 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’s why Yajnavalkya 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. As the UNCITRAL Model Law was available to guide us for dispute resolution 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, “My exhortation to all who administer the Commercial Arbitration is to work towards an arbitral regime which rekindles the spirit of arbitration that gives 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.

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. WIPO 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.

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’s “Global World”.

**Conclusion**

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 known 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 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 first Indian Arbitration Act was enacted in 1899, based on the English Arbitration Act, 1889.

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 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. It consolidated and amended the Law relating to arbitration as contained in the Indian Arbitration Act, 1899. 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 except 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.

There are certain international conventions which deal with enforcement of foreign arbitral awards like the Geneva Protocol on Arbitration Clauses, 1923, the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. India became a party to both the Protocol and the convention on 23 October, 1937. For giving effect to the obligations under the said instruments, India enacted the Arbitration (Protocol and Convention) Act, 1937. More recently, the New York Convention on the recognition and Enforcement of Foreign Arbitral Awards, 1958 came into force on 7 June 1959. India became a party to this Convention, India enacted the Foreign Awards (Recognition and Enforcement) Act, 1961.

Thus, prior of the commencement of the Arbitration and conciliation Act, 1996, 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. The

“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”.

The Public Accounts Committee of the Lok Sabha in its 210th Report (1975-76) had also commented adversely on the working of the Arbitration Act. 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 this Seventy-sixth Reports submitted to the Government in November 1978.

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. 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. 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 and money and avoided the stress of a conventional trail.

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.

The government had also before it several international models including the UNCITRAL Model Law on International Commercial Arbitration and the ICC Rule on Conciliation and Arbitration.

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. Even since its inception, India has been a member of this Commission. Largely at the instance of the Asian-African Legal Consultative Committee and on the basis of extensive deliberation held in its Working Group on International Contract Practices and Consultations with arbitral institution and individual arbitration experts, the commission adopted the Model Law on 21 June, 1985.

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

The Arbitration and Conciliation Act, 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.

Thus the 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. The requirement of formal arbitral agreement under the 1949 Act has now been relaxed to include even an 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;

2. Extend of Judicial intervention must be defined.

3. Certain preliminary issues at the stage of Sect. 8 should be decided.

4. Certain situations in which Preliminary issues could be decided under Sect. 8 must be laid down.

5. Provision to be made for stay of action in case reference is made under Sect. 8.

6. Interim measures and powers of the arbitral tribunal to be further amplified.

7. Powers to be granted to the arbitral tribunal to enforce its orders to speed up the arbitral process.

8. Procedure for enforcement of peremptory orders passed by the arbitral tribunal under section 23, 24 of the court.

9. The time limit for completion of arbitral proceedings in India for both International and Domestic Arbitration should be laid down.

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.

11. Substantial error of law apparent on the face of award for upholding the rule of law.

12. Provision for fast track arbitration should be added.