PREFACE

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

The rationale and purpose of International Commercial Arbitration (ICA) are generally to provide a convenient, neutral, fair, expeditious and efficacious forum for resolving disputes relating to international commerce. The Basic features which are uniform in the legal framework for resolution of international commercial disputes can be broken down into three stages, Jurisdiction, choice of law and the recognition and enforcement of Arbitral Award.

In International Commercial Arbitration, when the parties are of different legal systems, there automatically arises a conflict of laws, and a choice of the substantive law to be applied in a given dispute has to be made. Many a time, the substantive law to be applied in arbitration may be specified by the parties in their original agreement. But problems arise in determining the applicable law in situations when the parties fails to agree upon a choice of law for the settlement of their dispute.

The trend towards growing judicial intervention which tends to interfere with arbitral autonomy as also finality is a significant factor to be kept in view. The need is to reconcile and harmonize arbitral autonomy and finality with judicial review of the arbitral process. The National laws differ on this issue. UNCITRAL Model Law attempts to promote harmony and uniformity in this sphere.

The Idea for this problem came into Researcher’s mind after BALCO judgment dated 6th September, 2012 it made the people to think of suitable amendments in the Indian Arbitration & conciliation Act,1996 in terms of inter alia applicability of its part I in International commercial arbitration, enforcement of foreign Awards, recourse against foreign Awards as well as appeal against foreign Awards, hence this research work is an effort to search for a solution for the conflicting issues involving in International commercial arbitration.
Furthermore, the researchers wanted to research on above mentioned issues involving in International commercial arbitration and tried to find out solutions from comparative study of arbitration law of other countries, so that the legal issues involving in International commercial arbitration can be resolved and India can be developed as a hub for International commercial arbitration, hence the present study is a comparative analysis pertaining to subject in India, China, Hongkong, Singapore USA and South Africa.

The first chapter ‘An Introduction to Alternative disputes Resolution system’ is an attempt to examine basics about the alternative disputes resolution system (ADR). In the sub part of this chapter there is a comprehensive study of origin and development of ADRs, its objectives, different aspects, its different mechanisms as well the detail justification of statement of problem.

The Second chapter is a detail study of Historical background of International Commercial Arbitration. In this chapter the researcher attempted to explain the historical development of International Commercial Arbitration (ICA), and which proved that it is not a new concept or resolving the commercial disputes, rather it is having its roots in the European business communities as well for the Indian business communities. This chapter is divided into two parts, first part explains the International development of ICA, including the guidelines of UNCITRAL model as well the analysis of International conventions and various principles of ICA globally. Whereas in Second part of this chapter, the researcher discussed about the national development of ICA, with the detail overview of status of arbitration in India before independence including the brief discussion about the statutory provisions relating to arbitration in India.

The Third chapter is with respect to the International Commercial Arbitration(ICA) in India. This chapter is further divided into two parts, first part of this chapter is an analysis of legislative approach towards International Commercial Arbitration(ICA) in India whereas in second part of this chapter Judicial approach toward International Commercial Arbitration(ICA) has been discussed.

The Forth chapter is an analytical discussion towards International Commercial Arbitration(ICA) and is devoted to the comparative analysis of procedural aspects of the International Commercial Arbitration of China, Hongkong, Singapore USA and South Africa and India.
Furthermore this chapter is divided into six parts, in first five parts of this chapter the researcher has discussed the historical background of International Commercial Arbitration as well the Legislative and Judicial trends towards International Commercial Arbitration in China, Hongkong, Singapore, South Africa and of U.S.A. In the last part of this chapter the researcher tested the first hypothesis which was about, “the procedural aspects of International Commercial Arbitration differs significantly amongst the different countries of the world”. However, the procedural aspects relating to International commercial arbitration in different countries differs significantly, on the basis of applicability of law, seat of arbitration, choice of law, appointment of arbitrators setting aside and the provisions relating to appeal against the foreign seated award as well as the issues relating to enforcement of foreign awards. On the basis of comparative analysis the different measures give the impression that the process differs expressively, hence the hypothesis is accepted.

The Fifth chapter is a comprehensive and critical analysis conspicuous deficiencies in International Commercial Arbitration in India. This chapter is further divided into two parts. Particularly part first is an analysis of Gray areas of International Commercial Arbitration under Indian arbitration law, whereas part two is an overview of International Commercial Arbitration, through the recent judicial remarks on International Commercial Arbitration in India.

The Sixth chapter is based upon the empirical study. In this chapter the researcher prepared a structured questionnaire containing open end questions, suggestion based questions as well rating questions, which was sent to different stakeholders. The major objective of this experimental study is to collect the views/ opinions of a wide-ranging stakeholders on improvements and innovations, both past and probable, to make effective International Commercial Arbitration mechanisms in India so as to come up with concrete solution for Indian commercial communities. The survey is conducted over a six month period and comprised two phases. The second hypothesis is “International Arbitration Law in India is capable to attract the foreign investment in the country”, may be looked upon in the light of analysis made in this chapter and concluded that second hypothesis is rejected. After the detail analysis of third assumption that Present setup of International Commercial Arbitration in India, is not sufficient to develop India as a hub for International Commercial, it is evident that there are lots of deficiencies in existing Indian arbitration law’, especially the ambiguities relating to application of the provisions of Part I the Arbitration and conciliation
Act, 1996, for foreign awards in the absence of any mutual agreement for such purposes. That’s way the major reform in the light of present International commercial environment, are so required, so that India can be develop as a hub for International commercial arbitration, hence the present hypothesis is accepted.

In the seventh and last chapter, conclusively the research was started with the quest for solutions to resolve the issues involving in International Commercial Arbitration. After the comparative and comparative analyses of the concept of International Commercial Arbitration in India, China, Hongkong, South Africa & USA, the researcher moves forward with some fruitful suggestions: There must be some effective guidelines for the settlement of international commercial disputes, There must be separate legislation for the enforcement of foreign awards, The legal issues involving under the International commercial arbitration must look and resolve according to the public policy of India, There must be a model law for the enforcement of foreign awards, The regulatory authorities like ICA & ICADR must act more efficiently for the enforcement of foreign awards passed under the International Commercial Arbitration, The awareness regarding the international commercial arbitration mechanisms in India for the resolution of future international commercial disputes must improve., Statutory provisions for the recourse against the foreign awards must separately framed, so that International Commercial Arbitration in India may became more easy and effective as a option for dispute settlement mechanisms, and India may prefer most convenient place for International commercial arbitration for most of the countries of the world.