Recognition and Enforcement of Arbitral Awards in International Commercial Arbitration: A Study with Reference to Indian Legal Regime

ABSTRACT OF THE
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CHAPTER - I

Arbitration is an effective method of alternative dispute resolution system which consists of dispute resolution processes and techniques to settle litigations between parties. Arbitration in India is not a new concept it prevailed from ancient days as the system of Panchayats. It is a method that presenting the issues or disputes to the person selected by the parties to act as an impartial intercessor where the parties agreed to accept and follow the arbitrator's award which was issued after hearing of all the parties have the opportunity to be heard. Arbitration in India is followed by the Arbitration and Conciliation Act, 1996. The parties to the dispute pick the arbitrating body themselves and are obligated to accept the terms of the settlement. The decision of the arbitral tribunal is called an “award” which is just as final and binding as a court judgment. The main object of arbitration is to provide the fair decision on disputes by a tribunal without any unnecessary delay or expense. Presently, in India Arbitration and Conciliation Act, 1996 was applicable according to the lines of model Law of the UNCITRAL (United Nations Commission on International Trade Law. International arbitration is a complex and important international legal framework.

Arbitration

The Term Arbitration derived from Roman law. The word arbitration in Latin Etymology derived from the word “arbitration”, which derived from the word “arbitrary” which means to Judge or arbitrate and full meaning of it is “the process of resolving disputes (as between labour and management) or a grievance outside of the court system by presenting it to an impartial third party or panel for a decision that may or may not be binding. It can be defined as a process whereby parties to a contract submit their disputes and differences to the consideration and decision of one or more independent persons called arbitrators.

Arbitration is a procedure by which parties to a dispute decide that a third party will settle the matter. Arbitration is therefore considered as an alternative to resolving the case through litigation in the courts. “The term “Arbitration” is used in several senses. It may refer the matter to the private and judicial arbitration. Mainly there are two types of Arbitrations mentioned as an ad hoc arbitration and an arbitration organized in permanent institutions.

Domestic Arbitration

In India, the Arbitration and Conciliation Act, 1996 relates to both the domestic arbitration and international arbitration. The expression “Domestic Arbitration” has not been defined in the Act, even though it appears in Part I of the Act. Section 2(2) in Part I says “it shall apply where the place of Arbitration is in India”, while Section 2(7) further provides that an arbitral award made under Part I shall be treated as a “domestic award”. The Law
Commission of India in its 176th Report on Indian Arbitration and Conciliation (Amendment) Bill 2003, recommended the following definition of the word domestic arbitration. Domestic Arbitration means an arbitration relating to a dispute arising out of legal relationship whether contractual or not, where none of the parties is: An individual who is a nationality of, or habitually resident in, any country other than India; or A body corporate which is incorporated in any country other than India; or An association or a body of individuals whose central management and control is exercised in any country other than India; or The Government of a foreign country.

International Commercial Arbitration

Clause(f) of sub-section (1) of section 2 of the 1996 Act defined international commercial arbitration as “arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as a commercial under the law in force in India and where at least one of the parties is: An individual who is a national of, or habitually resident in or any country other than India; A corporate body which is incorporated in any country other than India; A company or an association or body of individuals whose central management and control is exercised in any country other than India; The government of the foreign country.”

‘International’ Character of Arbitration

The international character of arbitration was established in three different ways. Its subject matter or its procedure or its organization is international, or the parties involved are connected with different jurisdiction, or there is a combination of both.

Enforcement of an award

In the International arena, in the behind time of 19th century, International Commercial Arbitration undertakes to assemble conspicuous momentum yet its governance survived the safeguard of national law. Without any guidelines in arbitration at the international level, the enforcement of awards was handled by different countries in a different way. India is a party to the conventions as followed are: The Geneva Protocol on

1 176th The Law Commission of India Report, submitted to Union Government on Arbitration and Conciliation (Amendment) Bill, 2001 commented that 1996 Act, lays stress on the parties’ residence and nationality in determining whether the subject matter of dispute is domestic or International. However, in view of difficulties in the implementation of the Act by reason of conflicting judgments of the High Courts in regard to enforcement of awards the Commission felt that there is a need to define the term domestic arbitration and international arbitration and as such, recommended to amend the same, Law Commission of India, 176th Report, 2001.
2 https://arbitrationandconciliation.wordpress.com/the-types-of-arbitrations/

Under the Arbitration and Conciliation Act, 1996 for enforcement of arbitral awards, requires the courts to recognize and enforce awards rendered in accordance with national and international law i.e. domestic and foreign award. The Domestic award is the one which is made where the arbitration is seated in India and both parties are Indians. The Foreign award is one where the proceedings are made outside India. On the choice of laws, the parties have the freedom to select to decide on the law of international commercial arbitration in such agreement they will select agreed to substantive law and procedural law. The general principles adopted in the international commercial arbitration about the law of proper may be recognized accord to the law of the country whereas to be implemented are Lex Arbitri, Lex Loci Contractus, and Lex Loci Solutions.

International commercial arbitration is undertaken for the purpose and in the confidence that an award is binding, recognizable and enforceable between the parties. The fundamental importance of the arbitral process is the recognition and enforcement of arbitral awards. The Proper recognition and enforcement of awards serve both as a means of ensuring the effectiveness of the arbitral process, and also as a key factor recommend the use of arbitration than other modes of dispute resolution. The main problem faced in international commercial arbitration was the recognition and enforcement of an arbitral award made in one country in the courts of other countries. Recognition and enforcement of Foreign Awards under the jurisdiction of the domestic courts have been one of the unsettled issues and this call for a relook into the existing legal regime governing International Commercial Arbitration.

Though the Act has made arbitration as a complete and self-contained alternative, a plethora of cases is coming before the courts challenging arbitral awards on the ground of public policy, apart from other ground set out in the Act. In the recent past, the concept of public policy has been generating a crop of litigation before the courts, and it has become a much-debated area among the legal circles across the country.

Review of Literature

The review of literature is an important part of the research in any field. It gives an account of various studies conducted in the research topic selected i.e., Recognition and enforcement of arbitral awards in international commercial arbitration: a study with reference to Indian legal regime.
Sarah.E. Hilmer\textsuperscript{4} in his article “Did Arbitration Fail India or Did India Fail Arbitration”, discussed the criticized the Arbitration Act, 1940 and mentioned the need for a new act.

Mark Mangan\textsuperscript{5} in his article “with the globalization of arbitral disputes, is it time for a new convention?” discussed the deficiencies of the New York Convention.

Sanders\textsuperscript{6} in his work entitled New Trends in the Development of International Commercial Arbitration and the Role of Arbitral and other Institutions was emphasized on the role that the global arbitrations are playing by formulating arbitral procedure and supporting the business community at the international level.

Francisco Orrego Vicuña\textsuperscript{7} in his book International Dispute Settlement in an Evolving Global Society: Constitutionalization, Accessibility, Privatization addressed three salient issues of contemporary international dispute settlement about the development of international constitutional law in worldwide society.

Sumeet Kachwaha\textsuperscript{8} in his work titled Enforcement of Arbitration Awards in India, This work points the worldwide enforcement of awards is an advantage of arbitration but the Indian enforcement mechanism for foreign awards has referred inefficient and uncertain.

R. Desing Rajan\textsuperscript{9} in his book A Primer on Alternative Dispute Resolution addressed the history and evolution of Arbitration in India; how arbitration was developed from the Vedic period to till now.

Jean-Georges Betto & others\textsuperscript{10} in their article on “International Arbitration: New Trends”, concentrated only on four issues that are emerging in the International arena of Commercial Arbitration.

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\begin{itemize}
\itemSarah.E. Hilmer, \textit{Did Arbitration Fail in India or Did India Fail Arbitration}, International Arbitration Review, 33(2007)
\itemMark Mangan, \textit{with the globalization of arbitral disputes, is it time for a new convention}, International Arbitration Review, 133, (2008).
\itemR. Desing Rajan, \textit{A Primer on Alternative Dispute Resolution}; Barathi Law Publications; (2005).
\end{itemize}
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Margaret L. Moses in The Principles and Practice of International Commercial Arbitration focused on how and why arbitration works. It gives the legal and regulatory framework for international arbitration.

Gary Born and Wendy Miles in their work Global Trends in International Arbitration discussed the ability in avoiding the widespread jurisdictional choice of law and emphasized the requirement of centralized dispute resolution forum.

Prof. Nadja Alexander in his book Global Trends in Dispute Resolution has discussed contemporary dispute resolution principles, processes, and practices.


David W Rivkin and others in their article “Current Trends in the United States of America and International Arbitration”, discussed the biggest challenge that is being faced in international arbitration presently is to make the procedure sufficiently rapid to reflect the growing pace of international commerce itself.

Horacio A. Grigera Naón and Paul E. Mason in their work International Commercial Arbitration Practice: 21st Century Perspectives discussed how arbitration is conducted under different legal systems such as common law, civil law, and shari'a law and cultural issues in international arbitration.

Andrew Myburgh and Jordi Paniagua in their article on “Does International Commercial Arbitration promote Foreign Direct Investment”, has focused on the effect of international arbitration on FDI and develops a model to interpret the use and effect of settling international disputes through arbitration.

16 Horacio A. Grigera Naón and Paul E. Mason, International Commercial Arbitration Practice: 21st Century Perspectives; Published by LexisNexis; (2010)
Merton E. Marks in his article entitled “New Trends in Domestic and International Commercial Arbitration and Mediation”.

Ghanshyam Singh in his research work titled “Institutionalized Alternative Dispute Resolution of International Commercial Disputes in India” emphasized on Indian standpoint of view and use of ad hoc and institutionalized alternative disputes resolution in India.


Jujjavarapu, Aparna Devi in her research work titled “Judicial Review of International Commercial Arbitral Awards by National Courts in the United States and India” emphasized on India was not recognized many non-statutory standards for review arbitral award.

Leon Trakman in his article “Legal Traditions' and International Commercial Arbitration” describes legal tradition and how it is distinguished from a legal culture in relation to international commercial arbitration and the impact of legal culture on international commercial arbitration.

Ray Turner in his book Arbitration Awards: A Practical Approach provides clear and practical guidance on the method of preparing or writing an award.

Significance of Study

Due to the growing needs of trade and commerce and the rapid globalization and the rising International Trade, the United Nations formed the Arbitration Conciliation Rules in 1980. The basic object of Arbitration law has been its focus on “Party autonomy” the right of users to appoint an arbitrator of their choice. International Commercial Arbitration is an alternative mode of adjudication of the disputes at the international level; its main object is to simplify the process of setting the disputes by allowing parties from a different legal and

cultural background dealing in international business activities to resolve their disputes according to the procedure they have selected. It is private adjudication affair, where the parties while entering into the contract add a clause or may have a separate arbitration agreement, that if any disputes arise in the future from the contract the parties can refer the dispute to arbitration by appointing arbitrators, and also select the procedure to be followed at the arbitration proceeding, the procedure can be from any country they desire because they are not tied to a particular procedure or practice or according to the arbitration agreement. An arbitral award is a decision made by an arbitration tribunal in an arbitration proceeding and the decision is final and binding in nature. As rightly said that the proper recognition and enforcement of arbitral award say what arbitration is all about. The recognition and enforcement of the foreign arbitral award may be either voluntarily or by court proceedings which is a key issue and central to the mechanism of international commercial arbitration. This fact is an important justification and significance of this study.

Research Questions

The researcher has formulated research questions as follows:

1) How was the Arbitration developed in India?
2) How was the Arbitration developed in various countries?
3) What is the purpose of international conventions and how the institutions have initiated for the development of arbitration?
4) What is the purpose of the Arbitration and Conciliation Act 1996?
5) What is the variation of domestic arbitration and international arbitration?
6) How the International Commercial Arbitration served its purpose for resolving commercial disputes in the enforcement of arbitral award?
7) What are the grounds for the intervention of courts in arbitration?
8) What are the global trends for development of arbitration?

Scope and limitations of Study

Accordingly, keeping in view of these limitations, the researcher confines herself to the following areas-

1. The analysis of historical aspects of International Commercial Arbitration in respect of India, China, France, Germany, Singapore, Sweden, Switzerland United Kingdom and the United States of America.
2. The genesis of Arbitration and International Arbitration as an Alternative Dispute Resolution adopted for resolution of disputes in the International arena between Countries and business organizations.

3. A review of International Commercial Arbitration regime developed under the auspices of UNCITRAL Model Law, the Geneva Convention, and New York Conventions.

4. The institutional framework of International arbitral institutions such as London Court of International Arbitration (LCIA), London Maritime Arbitral Association (LMAA), International Chamber of Commerce (ICC), and American Arbitration Institution (AAA).

5. A study on the Indian legal framework dealing with Recognition and enforcement of the arbitral award.

6. An analysis of the Indian response and Indian law perspective with a view to analyzing judicial response in International level.

Objectives

The scholar has identified the following objective for the purpose of the present research topic:

1. To examine the growth and development of International Commercial Arbitration at the national and international level.

2. To study the International legal regime governing the International Commercial Arbitration.

3. To undertake a critical study of Indian legal regime governing the domestic and International Commercial Arbitration.

4. To study the issues and problems relating to the recognition and enforcement of the foreign commercial arbitral award.

5. To evaluate the judicial trends in the interpretation of the law relating to enforcement of the arbitral award.

6. To draw conclusions and make certain constructive suggestions for the effective enforcement of International Commercial arbitral awards.

Hypothesis

In order to systematically undertake the research work, the researcher has formulated the hypothesis
1. Though the law governing arbitration in India much reflected in the Arbitration and Conciliation Act, of 1996, which is comprehensive legislation, still not foolproof and adequate for effective settlement of the International Arbitration Commercial cases.

2. The law governing International Commercial Arbitration in India is still lagging behind and failed to keep up with the International best practices, in spite of the fact that India has been a signatory to the international Conventions on Arbitration like Newyork Convention.

3. Conflicting and contradictions in domestic legal systems governing the rules of international commercial arbitration are seriously hampering the settlement of disputes and the implementation of the arbitral awards to its logical ends;

4. The problems of enforcement of foreign award in India are not connected with international mechanism of arbitral award and the grounds for challenging the enforcement of International Foreign Awards under Indian law such as public policy, the notion of morality or justice etc is making the law uncertain, often contrary to the letters and spirit and the principles and practices governing international commercial arbitration.

**Research Methodology**

The Scholar has followed the doctrinal method and non-empirical method of research which did not require any field data or sample collection to investigate and analyze the recognition and enforcement of arbitral awards in international commercial arbitration: a study with reference to Indian legal regime. As a part of the Doctrinal study, the researcher has examined both primary and secondary sources of information on the topic which includes the relevant provisions of Arbitration and Conciliation Act 1996, provisions of constitutional law for conducting this research with a combination of critical, comparative, historical and analytical approaches.

**Collection of Data:**

Data Collection is a process of collecting information from all the relevant sources to test the hypothesis and to evaluate the outcomes. The collection of data was basically divided into two categories they are: primary source and secondary source.

**Primary Source:**

Literature available with Law libraries and by various authors and International Conventions and arbitral institutions such as International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Chartered Institute of Arbitrators (CI Arb),
International Bar association (IBA) American Arbitrators Association (AAA) and the University of London have been extensively referred.

Every effort has been made to collect material from appropriate and authoritative sources of information. Certain data has also been obtained from International Law Office an online library and Kluwer Law International Library. The researcher has also personally elicited the views of some sitting and retired Judges of Singapore, United Kingdom and the Courts of Dubai International Financial Centre. That apart, views expressed by International Commercial Arbitration practitioners in London, Singapore, Dubai, and Switzerland has been gathered apart from appearing at various international seminars. However, this information from various dignitaries was disclosed subject to maintaining confidentiality.

Secondary Source:

The proposed research work includes a detailed analysis of the various secondary sources such as impressionistic books, research papers, articles and scholarly journals, new stores of literature on International Commercial Arbitration, web links.

Scheme of Study

Chapter-I is the introductory chapter and traces the development of arbitration from its beginning to the well-established dispute resolution mechanism that it has been practiced in India and worldwide. Apart from a review of the literature, the chapter covers research questions, objectives and hypothesis on which the present study proceeds and the methodology adopted for the study.

Chapter-II is devoted to studying the historical background together with the evolution of alternative disputes resolution system and briefly traced out the alternative disputes resolution system obtaining in various industrialized countries throughout the world i.e., USA, UK, China, Germany, France, Singapore, Sweden and Switzerland and with special emphasis on the Indian historical background on the alternative disputes resolution system, the arbitral institutions are ICC, LCIA, LMAA, AAA, and the UNCITRAL Model Law are discussed.

Chapter-III is devoted to studying on international legal regime on Alternative Dispute Resolution there are several Conventions and Treaties of both International and Regional Arbitration Instruments and traced certain important International and regional instruments relating to alternative disputes resolution the basis of International Legal Regime that applies to International Commercial Arbitration. This chapter also explains the concept of lex mercatoria and its application together with UNIDROIT principles as International Legal
Regime including Geneva and New York Convention and special emphasis has been made to explain the role of the World Trade Organization (W.T.O.) and the commerciality in commercial arbitration.

Chapter-IV has been devoted to studying the Indian statute on arbitration and conciliation i.e., the Arbitration and Conciliation Act, 1996. In this Chapter, the scholar has examined and evaluated the International Arbitration Regime in India under 1940 and 1996 Acts and examined basic concepts like arbitration, arbitration agreement, arbitral awards, foreign awards, challenging provisions etc.

Chapter-V has been devoted to studying on the enforcement of both domestic and international awards in respect of international commercial arbitration with a view to eliciting intercomparison between Domestic and International Arbitration. This chapter discussed the enforcement of arbitral awards in two sections i.e., the enforcement of domestic and foreign awards.

Chapter-VI the researcher has made an attempt to analyze the judicial response in respect of International Commercial Arbitration. In this chapter, it has been explicitly examined Indian viewpoint in addition to other jurisdictions in respect of arbitral awards and its enforcement under Geneva and New York Conventions. Special emphasis has been made to analyze judicial interpretations on the doctrine of Public Policy with the support of landmark judgments with a special reference to UNCITRAL Model Law.

Chapter-VII is the concluding chapter. In this chapter the researcher has made an overall evaluation and discussed present global trends of the topic of study. The Scholar has successfully tested the hypothesis of the study and examined research findings. This Chapter contains certain constructive suggestions for the effective administration and enforcement of foreign arbitral awards.
CHAPTER – II

In this chapter, the researcher has briefly traced out the alternative disputes resolution system obtaining in various industrialized countries throughout the world and with special emphasis on the Indian historical background on the alternative disputes resolution system and trace the formation of arbitral institutions and how they are becoming an instrument in settling international trade dispute by offering professional support and services.

United Kingdom

Arbitration in London has a high reputation and leading hub throughout the commercial world. London remains an attractive venue for parties to choose as a seat for arbitration. As Arbitration in London lost out as a venue for international commercial arbitration.24 While the Departmental Advisory Committee decided to adopt the Model law (1985), As, England enacted 1979 Arbitration Act25 which was an attempt to redress the disincentives which were turning parties away from London.

United States of America

Arbitration in the United States was an established form of dispute resolution and many states passed statutes permitting the enforcement of arbitral awards, but a pro-arbitration reform movement formed in New York and passed the United States Arbitration Act, and codified in 1947, like the FAA26. The arbitration in international agreement involved businesses of the United States which were achieved in 1970 when the Uniform Convention on the Recognition and Enforcement of Foreign Arbitral Awards i.e. The New York Convention became law to the Federal Arbitration Act in the United States.

Germany

ADR has now gained popularity and much known in the German business world and for a long time, the German court system was considered quite acceptable by the business community. The German arbitration regime is specified in the tenth (10th) book of the German Code of Civil Procedure, which is similar to the UNCITRAL Model Law. The German Code of Civil Procedure27 (Zivilprozessordnung) ZPO forms the legal foundation for arbitration in Germany due to its function as federal law28.

24 Guy Pendell and David Bridge, CMS, Arbitration in England and Wales.
25 The Act was given the Royal Assent on 4 April 1979 and commenced working from 1 August 1979.
27 Section 1029 ZPO.
China


Singapore

Singapore feels the benefits of arbitration and mediation over civil litigation involves lower costs and confidentiality of the process. Arbitration takes root in the 1990s with the passing of the Arbitration Act and the International Arbitration Act. Singapore accepted to the 1958 New York Convention on 21 August 1986 and sanctioned the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States i.e. the Washington Convention on 24 October 1968. In 1993, the Law Reforms Committee recommended adopting the UNCITRAL Model Law in relation to International Arbitrations.

France

In France, arbitration always played an important role and adopted a very favorable law on arbitration in 1981 and UNCITRAL Model Law in 1985. On January 13, 2011, France adopted a new law on arbitration and UNCITRAL Model Law was adopted in 1985. French courts had in turn shown an extreme pro-arbitration bias as regards all aspects of arbitration.

Sweden

Arbitration as a method of settling disputes is not a new phenomenon in Sweden. Swedish arbitration is governed by the Arbitration Act of 1999, which conforms closely to the UNCITRAL Model Law. The leading Swedish arbitration body is the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC Institute).

Switzerland

Switzerland’s arbitration history is old. In 1911, In Switzerland, large commercial disputes are usually brought before the ordinary courts or settled through arbitration. Until 1969 arbitration (domestic and international) was governed by different rules in 26 cantonal

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29 Articles 1492–1507.
Codes of Civil Procedures. In 1989 when the Swiss Private International Law Act (‘SPILA’) came into force a separate chapter governs the international arbitration.

**ADR system in Israel**

In Israel, Alternative Dispute Resolution comprises various approaches for resolving disputes. Arbitration agreements in Israel are primarily governed by the Israel Arbitration Law, 5728-1968. The domestic arbitration process in Israel is primarily regulated by the Arbitration Law. The Israeli Courts’ proceed towards arbitral awards is generally favorable and they are usually accepted as judicial awards, enabling their enforcement. The Arbitration Procedure Regulations 1969 govern Court procedure implementing the Arbitration Law and provide its enforcement.

**Genesis and growth of Arbitration in India**

Arbitration in India is an old concept, originating in ancient India. The same is a grass root system called Panchayats. It is still prevalent today in villages where the seniors of the village or community sit and resolve disputes between villagers and/or community. During the Muslim rule, all the Muslims in India were governed by Islamic laws. *Shari’a* law governs the entire arbitral process. To enforce awards the jurisdiction court is not examining the disputes on a merit basis or the arbitrator's opinion. However, in the area of international commercial arbitration, the strict application of Shari’ah has diminished with the emergence of arbitration rules. Therefore the first law of Arbitration comes into force in India in 1697. In the British period, The Bengal Regulations of 1772, 1780 and 1781 were originated to encourage arbitration. After several regulations, the Arbitration Act VIII of 1857 has certain provisions which codified the procedure of Civil Courts. From time to time after some provisions Indian Arbitration Act, 1899 was passed based on the English Arbitration Act, 1899. Then, the Arbitration Act of 1940 was enacted. After the Independence in 1947, due to fall of trade and industry in the commercial community became the need of arbitration requires substantial changes in the Arbitration Act, 1940 by the Arbitration and Conciliation Act, 1996 according to UNCITRAL Model Law\(^\text{32}\).

**Arbitration in International Scenario**

Arbitration is not a recent phenomenon. As courts endeavored to initiate their jurisdiction at a rate consistent with the number and complexity of trade disputes in the rapidly growing sphere of international commerce, arbitration quickly became the dispute

\(^{32}\) The UNCITRAL is core legal body of the United Nations system in the field of international trade law, with universal membership specializing in commercial law reform worldwide. UNCITRAL's business is the modernization and harmonization of rules on international business.
resolution mechanism of choice. As, inevitably, some of those relationships break down, parties need to consider the perfect means of resolving any disputes which may arise.\textsuperscript{33} Today, the Model Law provides a vital legal framework for arbitration procedure in many jurisdictions around the world.

**International Commercial Arbitration Institutions**

There are rigorously hundreds of institutions in the worldwide whose services are available to appoint arbitrators and to administer arbitral proceedings. Most of these institutions are affiliated with local chambers of commerce\textsuperscript{34}.

**London Court of International Arbitration (LCIA)**

In 1892 the London Court of International Arbitration\textsuperscript{35} was established as an institution for commercial dispute resolution. The LCIA provides an efficient, flexible and impartial administration of arbitration and other ADR proceedings, regardless of location, and under any system of law.

**London Maritime Arbitral Association (LMAA)**

The London Maritime Arbitrators Association ("LMAA") is an association of maritime arbitrators practicing in London. It exists to promote and support London maritime arbitration in a different process. It does not administer or supervise the conduct of arbitrators.

**International Chamber of Commerce (ICC)**

The ICC and its International Court of Arbitration is one of the most well-known institutions for international arbitration. The Court of Arbitration does not determine disputes it plays a prominent role in administering arbitrations under the ICC rules.

**American Arbitration Association (AAA)**

American Arbitration Association was created in 1926 with its headquarters in New York, United States of America. The AAA role in the dispute resolution procedure is to administer cases, from opening (filing) to closing. The AAA provides managerial services in the U.S., as well as abroad by its International Centre for Dispute Resolution (ICDR). Most international arbitration cases today follow AAA rules or ICC ones, according to Offenkrantz\textsuperscript{36} for agreements that are international in scope or are between citizens of

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\textsuperscript{34} Ibid.

\textsuperscript{35} The word “International” was added in 1981.

different countries, administration of arbitration will often be had under AAA’s Commercial or International Rules or those of International Chamber of Commerce (“ICC”).

**UNCITRAL Model Law**

United Nations Commission on International Trade Law (UNCITRAL) is a specialized commission of the United Nations, established in 1966 to enable the United Nations to play a more active role in reducing or removing legal obstacles to the flow of international trade\(^{37}\). UNCITRAL is composed of sixty member states elected by the General Assembly of the United Nations. The UNICITRAL model law on International commercial arbitration was adopted by the UNICITRAL on 21 June 1985 in the 18\(^{th}\) annual session.

**CHAPTER - III**

In the present chapter, the researcher has extensively discussed the international legal regime on Alternative Dispute Resolution. There are several Conventions and Treaties of both International and Regional Arbitration Instruments today and made an attempt to explain the concept of lex mercatoria and its application together with UNIDROIT principles\(^{38}\) as International Legal Regime including Geneva\(^{39}\) and New York Convention\(^{40}\). Special emphasis has been made to explain the role of the World Trade Organization (W.T.O.).

**Legal Systems**

Introduction to the law, there are various different types of legal systems managing in countries all over the world. Among the Legal Systems, the one used by most Commonwealth countries and the United States is based on Common Law and the others in Civil Law.

**Common Law System**

Common law system exists a legalized system which has a preceding authority on the basis of it is unjust in treating the related facts unusually on distinct instances. It is an uncodified law. The body of precedent is known as a "common law". The distinctive feature of the common law is that it represents the law of the courts as expressed in judicial decisions.

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\(^{38}\) UNIDROIT (Institute International pour l’Unification du Droit Privé) is an international organization that aims to harmonize of private international law

\(^{39}\) Geneva Convention 1927 is on the execution of foreign arbitral awards signed at Geneva on 2609-1927.

\(^{40}\) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, popularly known as the New York Convention, was adopted by a United Nations diplomatic conference on 10 June 1958 and entered into force on 7 June 1959.
The grounds for deciding cases are initiated in precedents\textsuperscript{41} provided by past decisions, as contrasted to the civil law system, which is based on statutes and prescribed texts.

**Civil Law System**

This system is mostly differentiating in procedure law and the substantive law. As the nations have their own law system with certain trademark aspects but sometimes it has updated legal codes. The main feature of which is that laws are written into a collection, codified, and not as in common law, interpreted by judges. The civil law proceeds from abstractions formulate general principles and distinguish rules of substantive from procedural.

Considering the dominance of these systems in the International Legal Regime it is necessary to examine to what extent are the rules and practice of international commercial arbitration influenced by these legal traditions of Civil and Common Law, or by other traditions. There are different principles of legal tradition of International Commercial Arbitration. It has benefited from the authority of arbitration awards according to the Recognition and Enforcement of Foreign Arbitration Awards i.e., New York Convention.

**Lex Mercatoria – The Concept**

Lex mercatoria described as “the Law Merchant” in English, is the body of commercial law during the medieval period used by merchants throughout Europe. It has been molded on the idea of the old lex mercatoria. It was this body of law applied to merchants.\textsuperscript{42} The assumption that national laws did not reflect the realities of international business life and therefore a new system of rules was to emerge in business practice which, like the medieval lex mercatoria, founds its origins outside domestic legal systems and was essentially composed of international sources of law, customs, and self-regulatory rules\textsuperscript{43}.

**International Commercial Arbitration – Lex Mercatoria**

Lex mercatoria must is considered as a body of rules capable of governing international business transactions. The most common explanation is that they want to avoid the inadequacy of national legal systems or rules which are unfit for their international transaction. In the International Legal Regime, especially in International Commercial Arbitration is providing *lex mercatoria* with an auto-poetical structure through the introduction of the practice of precedents. In solving commercial disputes, arbitrators are

\textsuperscript{41} Judicial precedents derive their force from the doctrine of stare decisis i.e., that the previous decisions of the highest court in the jurisdiction are binding on all other courts in the jurisdiction.


\textsuperscript{43} F. de Ly, Uniform Commercial Law and International Self-Regulation, Dirritto del Commercio Internazionale- Italy.
claiming that old previous cases constitute precedents for them and begin to distinguish and to overrule. However, whatever may be against the concept of lex mercatoria, the argument in favour of lex mercatoria in International Commercial Arbitration regime is that the binding force of it did not depend on the fact that it was made and promulgated by state authorities, and as such it has a de facto recognition as an autonomous legal system by the business community and state authorities\textsuperscript{44}.

The Principles of UNIDROIT

The UNIDROIT Principles of International Commercial Contracts i.e., PICC have been drafted by UNIDROIT (\textit{Institut International pour l’Unification du Droit}), International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organization in the Villa Aldobrandini in Rome. The UNIDROIT Principles are a collection of non-national principles which are common to the existing legal systems and best adapted to the special requirements of international commercial contracts and maintains the close relation of co-operation with other international organizations, which in many cases taken the form of co-operation agreements concluded at the inter-secretariat level. UNIDROIT Principles have been drafted on the model of the American Restatements.

The Hague Peace Conference (1907)

The Hague Conventions are the first formal statements of the laws of war and war crimes in the body of secular international law. The Second Hague Peace Conference was convened in 1907, with representatives of 44 states and produced thirteen separate conventions. It dealt with the subjects of the exemption of unoffending private property of the enemy on the high seas, the limitation of force in the collection of contract debts, arbitration, an international peace court, and the establishment of a permanent court of arbitral justice.

The Geneva Protocol on Arbitration Clauses of 1923

The Geneva Protocol played an important role in the development of the legal framework for international commercial arbitration signed at a meeting of the Assembly of the League of Nations in 1923. The parties take an action for damages for breach of the agreement to submit the dispute to arbitration, but that be liable for an empty remedy. To eliminating the difficulties, in respect of agreements to arbitrate, the League of Nations in 1923 adopted the Geneva Protocol on Arbitration Clauses for nondomestic agreements.

The Geneva Convention on Execution of Foreign Arbitral Awards, 1927

As in order to overcome the deficiencies exhibited by the Geneva Protocol, the League of Nations was instrumental in the conclusion of another treaty for securing the recognition and enforcement of the international arbitral awards arising out of the arbitration agreements falling under the Geneva Protocol. As per the Geneva Convention, each Contracting State was required to recognize arbitration award made in another Contracting State pursuant to an agreement covered by the Geneva Protocol\(^{45}\) as binding and enforce, in following the rules of procedure of its territory.

**The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.**

The New York Convention is one among the main important tools in international arbitration for recognizing the increasing importance of international arbitration in settling international commercial disputes, this Convention provides frequent legislative levels for the recognition of arbitration agreements and the court recognition and enforcement of foreign and nondomestic arbitral awards. The New York Convention was established in June 1958 as a result of dissatisfaction with the Geneva Protocol and Convention. The principal aim of the Convention's is that it will not be differentiated against foreign and nondomestic arbitral awards and it requires the parties to make certain such awards are recognized and usually able of enforcement in their jurisdiction in the same manner as a domestic awards and the parties give complete effect to arbitration agreements by requiring courts to refuse the parties access to court in breach of their agreement but refer their matter to an arbitral tribunal. The New York Convention governs neither the procedure to be followed before the arbitrator nor the challenge of the award. The Convention does not permit to review any merits of an award to which it applies and differs from the provisions of some systems of national law governing the challenge of an award, where an appeal to the courts on points of law may be permitted. The New York Convention principal aim is (1) to oblige State Parties to ensure non-discrimination of foreign, (2) non-domestic arbitral awards, such that these recognized awards and (3) ability of enforcement in their jurisdiction in the same and similar way as domestic awards which can best be achieved through the uniform and effective application and interpretation of the convention.

**The World Trade Organization (WTO)**

The World Trade Organization (WTO) came into being in 1995 which is one of the international organizations, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established in the rise of the Second World War. The WTO provides a forum for negotiating agreements pointed at reducing obstacles to international trade and to

\(^{45}\) Ibid.
secure a level playing field for all, thus contributing to economic growth and development. The WTO’s method for resolving trade disagreements under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly. Countries bring disputes to the WTO if they think that their rights under the Agreements are being violated. Judgments by specially appointed independent experts are related to interpretations of the agreements and individual countries’ commitments. Decisions in the WTO are generally taken by unity of the entire membership.

A dispute occurs when a member government believes another member government in breach of an agreement or a commitment that it has made in the WTO. The General Council orders as the Dispute Settlement Body (DSB) to deal with disputes between WTO members. WTO disputes are essentially about broken promises. WTO members have admitted that if they believe fellow-members are breaching trade rules, they will use the multilateral system of resolving disputes instead of taking action unilaterally. The WTO dispute settlement procedure follows the principle of quick and equitable principle. Here the mechanism would be dealt with on the basis of appeal and non-appeal. Disputes settlement is the duty of the Dispute Settlement Body which consists of all WTO members. An appeal can be made either side on points of law such as legal interpretation they cannot reconsider existing evidence or examine new issues.

CHAPTER – IV

In the present chapter, the researcher has elaborately discussed the Indian statute on arbitration and conciliation i.e., the Arbitration and Conciliation Act, 1996. The purpose of this Act is to provide quick redressal to commercial dispute by private Arbitration. This Act includes the domestic, International commercial arbitration and the enforcement of foreign arbitral awards. The Act is of following parts, (a) Part I- Domestic Arbitration, (b) Part II- The Enforcement of Foreign Awards, (c) Part III- The Conciliation procedures, (d) Part IV- The Supplementary provisions, and (e) First Schedule- New York convention (The Convention on Recognition and Enforcement of Foreign Arbitral Award) (f) Second Schedule- Arbitration Clauses (The Protocol) (g) Third Schedule- Geneva Convention (The Convention on the Execution of Foreign Arbitral Awards).

History of Indian Arbitration

To avoid prolonged litigation the parties go to the arbitration due to success in dispute resolution mechanism not only in India but worldwide. It has promoted bonding relations of cross-border transactions and bilateral trade between the countries to increase in legal
obstacles. Disputes have required for a methodology to speed up legal remedies. At England, in the year 1698, the first arbitration law was taken into effect.

Arbitration Act, 1940

The Arbitration Act, 1940 was enacted in British India which consolidated and amended the law relating to arbitration as contained in the Indian Arbitration Act, 1899 and the second schedule of the Code of Civil Procedure 1908. The Arbitration Act, 1940 deals only domestic arbitration. However, enforcement of foreign awards in India was governed by two enactments, the Arbitration Act, 1937\(^{46}\) and the Foreign Awards Act, 1961\(^{47}\).

Arbitration and Conciliation Act, 1996 – An Overview

The Arbitration and Conciliation Act, 1996 was enacted to update the 1940 Act by the government. The UNCITRAL begin to take steps resulting in the uniform arbitral procedure standards. In India, this Model Law has been nearly adopted entirely in the 1996 Act.\(^{48}\) The deficiencies in the 1940 Act and other difference from the 1996 Act are discussed as follows:

Appointment of Arbitrator

Under the 1940 Act, an aggrieved party to get an Arbitrator appointed had to approach the Civil Court either under Section 8 or Section 20. But under the new 1996 Act, if the parties fail to reach an agreement according to sub-section (2), or within the thirty days if the party fail to agree from the receipt of the request then, the Chief Justice can be moved for appointing an Arbitrator either under sub-clause (5) or (6) of Section 11 of the 1996 Act\(^{49}\).

Definitions and Key Concepts

Arbitration

Arbitration as a mechanism for the resolution of disputes takes place, usually in private, pursuant to an agreement between two or more parties, under which the parties are to be bound to agree on the decision given by the arbitrator which is made in terms of law or, if so agreed, on other considerations, after a fair hearing and such decision being enforceable at law. Lord Justice Romilly MR defined the “Arbitration” in the well-known case of Collins vs.

\(^{46}\) The Arbitration (Protocol and Convention) Act, 1937, is an Act to make certain further provisions respecting the law of arbitration in (the words the Provinces of were omitted by the A.O.1950.)India.

\(^{47}\) The Foreign Awards (Recognition and enforcement) Act, 1961, is an Act to enable effect to be given to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on the tenth day of June, 1958, to which India is a party and for purposes connected therewith.


\(^{49}\) Section 11 of the Act provides provisions relating to appointment of arbitrators.
Collins as “An Arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties”.

**Arbitration Agreement**

An arbitration agreement is an agreement requires the person who signed them to resolve any disputes by binding arbitration, rather than in court before a judge. The definition of “arbitration agreement” under Section 7 is identical to Article II (1) of the New York Convention. According to Section 7(1) of the Act and UNCITRAL Model Law defines an arbitration agreement as, “An agreement by the parties to submit to arbitration all or certain disputes which have been arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not”.

**International Commercial Arbitration**

Section 2 (1) (f) of the Arbitration and Conciliation Act, 1996 defines “international commercial arbitration” as an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the Law in the force in India and where at least one of the parties whether an individual, body corporate, or a company is having business or residing abroad and in the case of Government, the Government is of a foreign company.

**Arbitral Award**

An arbitration award is an award which is granted by the arbitrator through their decision. Arbitral award as per section 2 (1) (c) includes ‘an interim award’. It neither gives any meaning nor explains as to what an award is and what it contains an interim award. According to Russell, “an award in order to be valid must be final, certain, consistent and possible and must decide submitted matters, and no more than matters submitted”. An arbitral award may either be a ‘final award’ or an ‘interim award’.

**Foreign Award**

The foreign arbitral award was defined in the 1937 Act and the 1996 Act both emphasize on the dispute being commercial in nature further Section 4(2) of the Act says “Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made and may accordingly be relied on.

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52 Russell on Arbitration (22 Ed, 2003).
by any of those persons by way of defense, set off or otherwise in any legal proceeding in [India], and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award”.53

Appointment of Arbitrators and challenges to the appointment

According to the Arbitration and Conciliation (Amendment) Act, 2015 allows appointing an arbitrator by parties mutually. According to sec 10 of the Act mentioned that the parties are free to determine the number of arbitrators. Section 11 of the Act mentions about the method of arbitrators appointment, Section 12 of the Act enumerates the on which grounds can be challenged about the appointment of an arbitrator by a party Section 13 mentions the procedure to be adopted for challenging the appointment of an arbitrator.

Jurisdiction of Arbitrators

The Arbitrator’s right to rule on their own jurisdiction is an almost fully uncontroversial part of the well-established doctrine and practice in international arbitration. Under the Arbitration Act of 1940 has no provision about jurisdiction. But under Section 16 of the Arbitration and Conciliation Act, 1996 stated that the Arbitral Tribunal has been allowed the power to make a ruling on its own jurisdiction.

Recourse against the Arbitral Award

The arbitral award given by the arbitrators is final and binding between the parties and the parties cannot appeal against it. But the parties may take recourse to a law court for setting aside the arbitration award on certain grounds under sec 34 of Arbitration and Conciliation Act, 1996. In India, the mentioned grounds for setting aside an award rendered, either in domestic or international arbitration.

Enforcement of Arbitral Award

The enforcement of the award is an important and last step that follows the arbitration proceedings. The award is enforced as a decree of the court. In the Act of 1996, there were two interesting features dealing with enforcement of awards conferring finality to the award of arbitral u/s 35, and u/s 36 award enforcement in the manner as a court decree.

Public Policy Considerations

The concept of ‘Public policy’ proposes which relates some matter of public good and public interest. There is no definition to the term “Public Policy of India” in the Arbitration and Conciliation Act, 1996, except the reference under Section 34 (2) (b) (ii) of Part I, Section 48(2) (b) of Part II–Enforcement of Certain Foreign Award (New York Convention Awards) and Section 57 (1) (e) of Part II- (Geneva Convention Awards), which inter alia states that the awards made, be not contrary to the “Public Policy of India”. The Indian courts have explained "public policy of India" widely in ONGC v Saw Pipes\(^{54}\) (Saw Pipes). While Renusagar narrowed the term ‘public policy of India’, on the other hand, Saw Pipes vastly enlarged the scope and expanded the same such award could be set aside if it is contrary to the fundamental policy of India, the interest of India, justice or morality, patently illegal. The Arbitration and Conciliation (Amendment) Act, 2015 has made vital changes to section 34.

Problems and Prospectus in implementing Arbitral Awards

The object of the 1996 Act was that judicial authority shall not intervene except where so provided. One of the main obstacles which were created under Section 36 was that merely precluding the award enforcement because of set aside the award application is filed and it is pending before. In fact, the mere filing of such an application should not have a usual stay of the award. Further, in the absence of time limit in disposing of the application filed for setting aside the award under section 34 and 35 it causing an enormous delay in the arbitral process especially in enforcing and implementing the awards. Another important obstacle is that enlarging the application of Part- 1 of the Act to international arbitrations conducted outside India\(^{55}\) which led to conflicting judgments. The major one being enlarging the scope of “Public policy” by giving wider meaning to it which included the phrase “patently illegality”\(^{56}\). Under the head of the Public Policy provided under Section 34 of the Act, any arbitral award can easily be set aside.


CHAPTER - V

In the present chapter, the researcher has presented a detailed study on the enforcement of both domestic and international awards in respect of international commercial arbitration. Therefore, the researcher has discussed the enforcement of arbitral awards in two sections i.e., the enforcement of domestic and foreign awards. Both domestic and foreign awards are enforced in the same manner, as a decree of the Indian courts.

Enforcement of Domestic Arbitral Awards

Under the 1996 Arbitration and Conciliation Act, in case of enforcement of a domestic award, an award holder would have to wait for a period of 90 days after the receipt of the award foregoing to applying for enforcement and execution. During the intervening period, the award may be challenged in accordance with Section 34 of the Act.

Domestic Arbitration under Arbitration and Conciliation Law in India

Domestic Arbitration means when the arbitration proceedings take place in India, the subject matter of the contract and the merits of the dispute are all governed by Indian Law, or when the cause of action and parties for the dispute occurs in India. Insofar as the steps of enforcement, one of the declared objectives of the 1996 Act is that every final award: ‘is enforced as it was a court decree. Execution is enforcement of award passed by an arbitrator which is a deemed decree under Section 36 of the 1996 Act. Under Section 46 of the Act states as to when a foreign award is binding. Section 47 speaks as to what kind of evidence should produce before the court by the party, who is applying for the enforcement of a foreign award. Section 48 deals with the conditions for enforcement of foreign awards.

Establishing International Character

As in domestic matters, international arbitration means a dispute resolution which is binding and enforceable legally by a decision maker. The character of domestic or international commercial arbitration awards are of the different regime but has its own enforcement procedure exists. The methods of the international character of arbitration for its establishment are: Objective Criterion or it connected with the subject matter, procedure, its international organization, Subjective Criterion or the parties involved with different jurisdiction, Combined Criterion or Combination of above both.

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57 However, a further period of 30 days may be granted by a court upon sufficient cause being shown for condonation of delay.
58 Section 34 of the Act deals with application for setting aside arbitral award.
59 Supra note11
Commerciality in Commercial Arbitration

Commercial arbitration has been fallen as the most efficient form of dispute settlement available to participants in international trade. As it is impossible to list exhaustively each and every or all commercial relationship as commercial as brought out in footnote 2 of Model law.

Arbitration Agreement - Enforcement

Each and every contracting state shall allow a writing agreement under which the parties submit all arisen disputes between them to arbitration regarding a decided legally relationship whether it is contractual or not as to a subject matter to settle by arbitration. While the title of the New York Convention refers only to arbitral awards, this international treaty basically contemplates two actions, the enforcement of the arbitral awards and the enforcement of the arbitration agreements.

International Commercial Arbitration - Substantive Law and Curial Law

Law of arbitration was widened in worldwide but there is a variation in the law of contract and Arbitral Tribunal procedure. The parties are allowed to recommend which national laws will be administered. The parties in the international commercial arbitration decide on the practice of law of substantive and on the law of curial. All the international conventions recognize the authority of the parties will, at the top priority and authorize the parties to agree on or designate the law as applicable to the substance of the dispute.

Arbitration: Governing Law

The adopted general principles of international commercial arbitration are mentioned below:

**Lex Arbitri:** The *lex arbitri* means the law of the place of arbitration.

**Lex Loci Contractus:** Lex Loci Contractus is during the conflicts of laws where the land of the contract is made.

60 The Convention does not make any reference to the arbitration agreement in its title, because the drafters' initial intention was to leave the provisions concerning the enforcement of the arbitration agreement to a separate Protocol. Towards the end of the Conference it was however realised that this choice was not desirable, since the purpose of the Convention would be defeated if a court called upon to enforce an arbitral award under the Convention was permitted to refuse recognition of the validity of the arbitration agreement on which the award was based. Accordingly, Art. II, dealing with the enforcement of the arbitration agreement, was drafted the last day of the conference in a rush against time omitting any indication as to many crucial issues, such as the arbitration agreements to which the Convention should apply.
**Lex Loci Solutions:** Lex Loci Solutions is a Latin term which means in which place the performance was made during conflicts between them.

**The Seat Theory - Concept**

In arbitration, the seat theory (seat of arbitration) plays a prominent role and it seeks for domestic arbitration where the seat of arbitration is taking place.\(^{61}\) The concept of the seat theory in arbitration means the place and country where the parties have expressly or impliedly chosen as the center for arbitration. There is no authorized third party (such as an institution) and the Tribunal does not have the authority to decide on the seat of the arbitration and the parties cannot admit the matter may need to be decided by the courts.

**Recognition and Enforcement of Foreign Arbitral Awards**

After the enactment of Arbitration and Conciliation Act, 1996 is in 2\(^{nd}\) part a is the enforcement of foreign arbitral awards given in countries which are signatories to or the Geneva Convention or the New York Convention. With the advent of globalization and with India emerging as a major international in the world economy it is necessary to consider the law concerning enforcement of foreign judgments in India. One of the prerequisites for the enforcement of a foreign arbitral award in India is that it should be a foreign award under the Geneva Convention or the New York Convention.

**Foreign Award and its Enforcement**

Section 44 of the Arbitration Act, 1996 defines Foreign Award as “an arbitral award on the difference between the persons arising out of legal relationships, whether contractual or not considered as commercial under the law in force in India made on or after the 11\(^{th}\) day of October 1960”. However, not all foreign arbitral awards are covered under these definitions. There are other foreign awards, which cannot be classified under either Section 44 or Section 53. The Central Government notifies which countries are parties to the New York and Geneva Conventions for the purpose of enforcement of awards made in arbitrations held in these countries.

**Recognition and Enforcement**

The Recognition and enforcement may be regarded as two different stages of the parties’ set of rights and obligations arising after an award has been rendered\(^ {62}\). Recognition

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relates to the acknowledgment of what has been decided by the arbitral tribunal in the award. It is a defensive process aimed at preventing an attempt to bring new proceedings raising the same issues as those dealt with in the award in respect of which recognition is sought\(^6^3\). Enforcement goes a step further than recognition. It is aimed at altering the parties’ positions in order to reflect the decision taken by the arbitral tribunal. By resorting to enforcement, the successful party seeks the court’s assistance in order to ensure that the award is carried out and it can obtain the redress to which it is entitled.

**Enforcement of Awards**

At the time of enforcement of foreign judgments in India, whether the foreign judgment is passed by a court may depend on two situations in: (i). A reciprocating country\(^6^4\); (ii). A non-reciprocating country. A party pursuing enforcement of a decree of a court in a reciprocating country is involved to file execution proceedings in India while in case of a decree from a non-reciprocating country; a fresh suit has to be filed before the appropriate court in India. On the procedure for enforcement of foreign judgments, the first major step towards enforcement of foreign judgments in India is, to file execution proceedings, which is done by following the procedure, as intended under Section 44A and Order XXI of the CPC.

the grounds of challenge to enforcement of foreign judgments Section 13 of the CPC.

On judicial approach, the courts have been consistent with the view that a party would not be bound by foreign court jurisdiction if it has not submitted to such jurisdiction of the foreign court\(^6^5\). However, whether a party has voluntarily submitted to the jurisdiction of the foreign court would depend on the facts and circumstances of the concerned case.

**Enforcement of a Foreign Award and Refusal**

Sub-sections (1) and (2) of Section 48 of 1996 Act, used a permissive expression that the enforcement of a foreign award “may” be reused instead of a mandatory expression of “shall”. The court has the discretion to overrule the defense put up by a party even if he has proved the existence of one of the grounds listed in this Section. The court may use discretion in cases where it finds a party is estopped from invoking any of the grounds listed in Section 48 of the 1996 Act or that the “public policy” violation involved is not such as to prevent


\(^6^4\) “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of Section 44A of the Civil Procedure Code. Countries which have been officially recognized as “reciprocating countries” by the Central Government of India include certain countries.

enforcement of the award. The enforcement mechanisms for awards under the New York and Geneva Conventions are similar. 1996 Act under Section 48 and 57 lays down the conditions for enforcing a foreign arbitration award in India. The grounds mentioned in Section 48 and 57 are exhaustive. Enforcement may be refused only if the party proves one of the grounds given in sub Section (1) or if the court finds the existence of a ground listed in Sub-section (2).

CHAPTER - VI

In the present chapter, the researcher has a study on Judicial Intervention in Enforcement of International Arbitral Awards. The researcher made an attempt to analyze the judicial response in respect of International Commercial Arbitration.

The judiciary plays an important role in support of the arbitration process, where there is a gap or a failure in the arbitration mechanism; where there is a need to make provisional arrangements pending an award; to enforce the award. The main objective of the Arbitration Act is to reduce the role of courts through decision-making in the arbitral process. The intention of the legislation to minimize the judicial influence in the arbitration regime is evident from the insertion of Section 5

Commencement of Arbitral Proceedings

Prior to the commencement of arbitral proceedings are enforcing the agreement to arbitrate and appointing an arbitrator or confirming the choice of law to such proceedings.

Enforcement of Agreements to Arbitrate

Arbitration is established on a valid agreement to arbitrate. First, it must regulate whether an arbitration agreement is valid and then whether to enforce it or not. The enforcing of an arbitration agreement may proceed before a court by the most common way is for one of the parties to a contract disregard an arbitration clause in the contract, or bring a lawsuit in a court to enforce his alleged rights under the contract. Another way in which the question of enforcing an arbitration clause may come before a court is for a party to bring an action in court seeking an order compelling the other party to arbitrate. Another possible way that the question of enforcing an arbitration agreement may come before a court and it is possible for a party that wishes to contest the validity of an arbitration clause to bring an action in a court to enjoin the other party from proceeding with arbitration.
Appointment of Arbitrators

Appointment of arbitrator(s) is the right of the parties which they appoint on mutual agreement. Another contentious issue in the principal 1996 Act was the provision regarding the appointment of arbitrator or arbitrators in case of a deadlock between the parties. In such cases, a party under Sec. 11 of that Act was allowed to move toward for domestic arbitration the Chief Justice of the High Court of India, and for commercial arbitration of International the Supreme Court Chief Justice or the Chief Justice can select any person or institution. 66

Choice of Law

Once a request to enforce an arbitration clause is validly before a court, the court’s first task is to consider what laws it must apply in deciding whether and on what terms to compel arbitration. There is another aspect of arbitration law that a court must examine when it is asked to enforce an arbitration agreement, namely, whether the dispute is of a kind that is arbitrable under the national arbitration law or whether it is nonarbitrable.

During the Arbitral Proceedings

Under this Section, the forms of judicial intervention once the arbitral proceedings have been commenced will be examined, in particular, the assistance that the court can provide to the arbitral tribunal in the form of interim measures and controversial inherent jurisdiction of the court to intervene.

Interim Measures of Assisting the Process

The power to grant interim relief is an important one in the process of arbitration by the local courts. Article 9 of Model Law, recognizes that a party does not waive his right to arbitrate if he applies to a court for interim relief or if a court grants such relief. Most other modern arbitration laws do the same. 67 With respect to the courts’ power to grant interim relief, for the rules and procedures governing the granting of interim relief, the courts must look, not to the national arbitration law, but to the laws and rules that govern national courts generally. In order to diminish court interventions and to restrict the courts’ power to grant an interim injunction after the constitution of the arbitral tribunal, sub-clause 3 of Sec. 9 was introduced.

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66 Ibid
Inherent jurisdiction of the Courts

Inherent jurisdiction in the context of arbitration process often considered as a controversial power of the court to intervene. Although this jurisdiction to intervene in arbitral proceedings has been carved out by the courts themselves, there would appear to be emerging a more deferential attitude towards arbitration on the part of the courts in its application.

After Arbitral Proceedings

This aspect of judicial intervention represents the most contestable interference in the arbitral procedure. From a critical perspective court interference at this stage necessarily entails an undermining of the meaning of arbitral awards. Where parties are able to challenge, appeal or overturn the outcome of the arbitration, the finality and currency that such an award is compromised. The relative merits and demerits of court interference after the conclusion of arbitral proceedings will henceforth be examined.

Setting Domestic Awards aside and Refusing Recognition and Enforcement of Foreign Awards

The judicial scrutiny of awards in various aspects for domestic as well as international arbitrations has been described below.

Domestic Awards

There are two ways that a failing party in a domestic\(^68\) arbitration may challenge the award. First, the failure may bring an action in a competent court in the jurisdiction where the award was made to have the award set aside under Article 34 of the Model Law. Another way that the losing party in arbitration may challenge a domestic award is by entering a defense in a court action brought by the winner seeking recognition or enforcement of the award.

Foreign Awards

Generally, the challenge to a foreign award will occur when the party that has succeeded in arbitration in one country applies to a court in another country for a judgment recognizing or enforcing the award. The other party may oppose the application by asserting

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\(^{68}\) Some awards have a ‘domestic’ nature, though they may involve international transactions or parties of different nationalities. For the enforcement and challenge of awards, it is the place of arbitration that makes them ‘domestic’. However, under the FAA certain awards made in the USA may be enforced or denied enforcement by US courts under the New York Convention, as if they were rendered in another country, if they bear significant relationships with another country (FAA, § 202); and that an award made in France may be enforced or denied enforcement by the French courts in the same manner as an award made in another country if the award ‘implicates international commercial interests’ (French Code of Civil Procedure, arts. 1492, 1502). For purposes of recognition and enforcement of awards under the Model Law, however, the distinction between ‘domestic’ and ‘foreign’ awards made valid.
that one or more of the grounds for denying recognition or enforcement specified in article 36 of the Model Law or article 5 of New York convention are present\(^\text{69}\).

**Enforcement of Foreign Arbitral Awards – It is Judicial Intervention**

The recognition and enforcement of arbitral awards in foreign nature are of fundamental importance in the arbitral process. Sub-sections (1) and (2) of Section 48 of 1996 Act, gives discretion power to the courts that they may refuse to enforce a foreign award or overrule the defense put up by a party even if such party has proved the existence of one of the ground listed in this section. The ruling of the Supreme Court in *Badat & Co v. East India Trading Co*\(^\text{70}\) stated that “foreign awards and foreign judgments based upon awards are enforceable in India on the same ground and in the same circumstances in which they are enforceable in England under the common law on the grounds of justice, equity and good conscience” In this case the supreme court *Venture Global Engineering v. Satyam Computer Services, Ltd*\(^\text{71}\) broadly interpreted public policy considerations that were previously grounds for challenging only domestic arbitration awards are now appropriate grounds for challenging foreign arbitration awards and upheld a challenge in India to a foreign arbitration award

**Judicial Scrutiny of Awards: Error of Jurisdiction**

According to this rule, parties may challenge either the arbitral tribunal’s ruling because it lacked jurisdiction; or its award on the merits on the ground that it did not have jurisdiction and apply for an order that it does not affect award.

**Judicial Scrutiny of Awards: Error of Law**

The court can examine and scrutinize an award on a challenge where a serious irregularity or misconduct of the arbitrator is alleged. The error of law ground may facilitate a restricted right of appeal in enforcing the awards.

**Judicial Scrutiny of Awards: Public Policy Considerations**

Section 34 of the Act provides limited grounds for challenging the award, and it is also accepted that the courts have no power to get into the merits of the dispute. Supreme Court in *Renusagar Power Plant Co. Ltd. v. General Electric Co*\(^\text{72}\) while establishing or

\(^{69}\) In US, the courts of the view that whether the parties, by agreement, can enlarge the jurisdiction of a reviewing court so as to permit it to set aside awards for errors of law or because findings of fact are not supported by sufficient evidence. Lapine Technology v. Kyocera Corp., 130 F. 3d 884 (9th Cir. 1997) with Chicago Typographical Union No. 16 v. Chicago Sun-Times Inc., 935 F. 2d 1501 (7th Cir.1991).

\(^{70}\) Badat & Co v. East India Trading Co AIR 1964 SC 538.

\(^{71}\) Ibid.

formulating the title named ‘public policy’ in Section 7(1) (b) (ii) of New York Convention, applied the principles of private international law and stated that “an award would be opposing to public policy if the enforcement is against (i) fundamental policy of Indian law, or (ii) the interests of India; or (iii) justice or morality”. This was a narrower interpretation of the expression “public policy of India” in the context of enforcement of foreign awards.

The imprecise meaning of international public policy continues to cause disagreement and even bewilderment among judges, arbitrators, and scholars. The overlapping categories of domestic, international and transnational public policies also risk unruly applications of the public policy exceptions. The diversity of terminology, increasing conflation of private international law and public international law conflate the already overlapping categories of public policy. For instance, the public policy against corruption exemplifies the coalescing international and transnational public policy.

CHAPTER - VII

In a globalized economy, the commercial world is developing as well as increasing global problems. The emergence of a global system of international commercial arbitration has been accompanied by the development of international arbitration. It was felt that such a process should have the confidence of the parties or at least be in a forum that is acceptable to the parties.

Recent Trends in Arbitration

Arbitration is increasingly becoming popular with the parties to settle their international as well as domestic commercial disputes. The need for international commercial arbitration and its services is increasing day by day. The Information and Communication Technology (ICT) has provided a new meaning to international commercial transactions and business.

Fast Track Arbitration

International arbitration was developed as an efficient and flexible form of dispute resolution, but it is no longer considered to be a faster and cheaper alternative to court proceedings. There are many reasons for cost and delay in arbitration. The fast-track arbitrations are emerging aiming to achieve timely results, thereby lowering the costs and difficulties associated with arbitration in traditional. It has limited time i.e., no time is enlarged, strict rules and the decline of time duration shows as more cost-effective. In fast-

73 Winnie (Jo-Mei) Ma, Recommendations on Public policy in the enforcement of arbitral awards, CIArb’s International Journal- Arbitration Vol. 75 (1) 2009, Sweet & Maxwell.
track arbitrations the parties and the arbitrator pursue a procedure that compresses a full arbitration into a finite period of time.

E-commerce and Online Arbitration

E-commerce means Electronic commerce is also known as E-business or electronic business involves the buying and selling goods and services, transmission of data or funds through an electronic network between two or more parties for e.g. online shopping. E-commerce offers huge challenges to traditional dispute resolution methods, as it involves parties often located in different parts of the world making contracts with each other at the click of a mouse. Transactions that take place over the Internet are not constrained by national borders and may take place much faster and cheaper than offline transactions. It is generally agreed that\(^\text{74}\) traditional arbitration is not well suited to such a task, and also that conflicts arising online should be resolved online. Practitioners and scholars believe that it has become increasingly necessary to design more efficient mechanisms for resolving online disputes\(^\text{75}\).

Online Dispute Arbitration is a newly implemented method for dispute settlement mechanism and in using the principal of traditional in the law of ICA few problems are facing.\(^\text{76}\) In resolving the disputes the ODR uses as an ADR. The disputes come from transactions of online, e-commerce, or offline disputes i.e., arising without an internet. To decide the disputes it involves a court and judges, the parties also solved through arbitration, mediation, and negotiation. It takes advantage of the speed and convenience of the Internet, becoming the best, and often the only option for enhancing consumer redress and strengthening their trust in e-commerce\(^\text{77}\). The Internet and web-based technology may use by the parties by variance. The development of Online Dispute Resolution in India has legislative help in the Information Technology Act, 2000

Intellectual Property Related Disputes

Intellectual Property Disputes are commercial in nature and often have international dimensions because of people protecting their Intellectual Properties or licensing them in multiple jurisdictions. The ability to utilize, protect and enforce IPRs on an international basis is very often critical for businesses. Further, patent litigation continues to require court

\(^{74}\) W.Slate, **Online Dispute Resolution:click here to settle your dispute**, Dispute Resolution, Journal vol.56,2002,p.8


\(^{76}\) Negi, Chitranjali, **Concept & Overview of Online Arbitration** (January 14, 2016). Available at SSRN: https://ssrn.com/abstract=2715684 or http://dx.doi.org/10.2139/ssrn.2715684

\(^{77}\) Taylor & Francis, **Online Dispute Resolution for Consumers in the European Union**, 2010; Business & Economics.
proceedings in every jurisdiction in which the patent is allegedly infringed. Not surprisingly, therefore, the use of Alternatives Disputes Resolutions, including arbitration, to resolve IP disputes is on the rise. On this point, the United Nations (UN) created a specialized agency i.e. the World Intellectual Property Organization (WIPO) which is dedicated to developing a balanced and accessible international intellectual property (IP) system.

**Maritime Arbitration**

In the present era the prevailing maritime relations to arbitration to resolve arising disputes where parties of these relations should agree on the solution to the current or future conflicts arising from them to an expert arbitrator of parties opinion known for their competence and experience in the maritime field to adjudicate the provisions of the arbitration binding. The recognition of international maritime arbitration is symbolic of the quiet success of the alternative dispute resolution forum. The naval characteristics of maritime dispute resolution; or arbitration are that most of the procedure in maritime dispute resolution is based on documents only. The parties to it are usually settled in different countries. By 2017 the maritime disputes were referred to arbitration in London are 3,582 and more than 584 awards are published by 2014.

**Global Trends**

The School of International Arbitration at Queen Mary, University of London (SIA) has conducted latest International Arbitration Survey (eighth empirical survey) in partnership with the global law firm White & Case LLP focused on a title “The Evolution of International Arbitration”. In 2017 the parties involved in cases filed is 2,316 by 142 countries compared to 2016 is represented by 137 countries. By the 2017 an aggregate range of new cases registered is of US$ 30.85 billion, as the average is of US$45 million. By 2017 end, pending cases are 1,548 an average is US$ 137,325, 630. According to statistics, the ICC Court announced the awards is 512 and the appointment of arbitrators is increased in 2017 i.e., 1488 compared to 2016 i.e., 1411. As in 2017 increases to 15% compared to 11% in 2016 regards to the number of the state was party to the arbitral proceedings.

**Findings of the Study**

The researcher has certain findings by thorough analysis and investigation in on the study “The recognition and enforcement of arbitral awards in international commercial arbitration: a study with reference to Indian legal regime”. Arbitration must develop to settle disputes in an efficient and specialized manner, as an alternative to litigation. Arbitration is one of the oldest forms of dispute resolution in the history of the world. It is clearly not a phenomenon of the twentieth century nor is it an American invention. It is developed as a
consequence of human necessities and it got further developed according to the new necessities that arose. It is widely perceived to serve this purpose in contemporary dispute settlement and retains that pre-eminent status as the dispute resolution mechanism of choice in international commerce. This is the prism through which the present study has been conducted. Likewise, one of the defining characteristics of arbitration particularly is that of the party autonomy. This is one of the theoretical foundations on which arbitration is based and constitutes an attractive feature for many parties. In short, arbitration is an effective method of settling commercial disputes, often in a tailored way, and its utility in this respect have been preserved and enhanced.

The fast improvement of International Commercial Arbitration has constrained the national legal systems is not to tolerate yet to provide for legal regimes to grow. In the 1980s and the 1990s, it analyzed that the world familiarity between Legislature and Judiciary to be focused for further international arbitration. The arbitration regimes of modernization and liberalization and the reassign to encourage the dealing of international arbitration onto the level at domestic are two main effects and followed in the unified arbitration i.e., international and domestic at new trends too. The principle was adopted by Sweden and other countries are what are useful for international arbitration is the same for domestic arbitration. In England, even though there are divergent systems in the Arbitration Act, but it does not keep in effect the domestic rules. The new integrated arbitration system has diminished the variation between both arbitrations of national and international. Prior to the present governing statute on arbitration and conciliation, the previously there are three enactments they are: The Arbitration (Protocol and Convention) Act, 1937, The Arbitration Act, 1940, The Foreign Awards (Recognition and Enforcement) Act, 1961.

The Arbitration and Conciliation Act, 1996 was overruled by the Act of 1940. International commercial arbitration is related in important respects to domestic arbitration. As in domestic matters, international arbitration is resolving of dispute by a private person which is final and binding on parties. In addition, however, international arbitration has several features that distinguish it from domestic arbitration. Most importantly, international arbitration is often designed and accepted particularly to assure parties from different jurisdictions that their disputes will be resolved neutrally. Among other things, the parties pursue a neutral decision maker. In addition, international arbitration is frequently regarded as a means of mitigating the peculiar uncertainties of transitional litigation, by designating a single, exclusive dispute resolution mechanism for the party’s disagreements. Moreover, international arbitration is often seen as a means of obtaining an award that is enforceable in the diversity jurisdiction.
Essential for all of the success of international arbitration is the solid legislation foundations recognizing and fostering conditions for the use of arbitration. The New York Convention and the Model Law are the two most important international documents for this kind of dispute resolution method and, despite being its enactments from such a long time ago, they still lay solid foundations for arbitration use. Another point of utmost importance is that parties were interested in honoring arbitration awards before the appearance of written legislation because this would preserve their reputation in the business sphere.

The UNCITRAL Model Law had several distinctive features but sufficient to say that great emphasis was put on allowing the conduct of arbitration by parties expectations rather than country general. The restriction was only in respect of major defects in the arbitral procedure, the violation of due process, denial of justice and serious breaches of rules of international justice. The Model Law emphasizes in no uncertain terms that international commercial arbitration is an alternative and outside the normal judicial system.

Arbitration is increasingly becoming popular with the parties to settle their international as well as domestic commercial disputes. The need for international commercial arbitration and its services at the global level is increasing day by day. The Information and Communication Technology (ICT) has started a new meaning to international commercial transactions and business. This has also given growth to both traditional as well as contemporary international commercial disputes all over the world. The scope of international commercial arbitration has also widened due to the disputes arising out of multifarious contracts. This trend is explicable embody the fundamental advantages of arbitration over litigation and confirms the postulates that arbitration is the dispute resolution mechanism of choice in international commerce. Although the objective analysis demonstrates the above abstractly, it should not be deductively concluded that this is the case in practice. Alternatively, the empirical inquiry provides illumination and in particular, it was found that importance is attached to reputation both in terms of the rule system chosen to govern dispute settlement and, also, within the framework of institutional arbitration. As the UNCITRAL Model Law continues to be adopted the world over, this induces an inherent value by virtue of the perpetual harmonization that transpires. Undoubtedly, this informs its universal application and reputation.

International Commercial Arbitration in India

Arbitration is a process of settling disputes well known to the Indian system of justice. It is an old practice that Panchayats in villages would settle disputes between the parties. India has been an active participant and party to various international conventions on
international commercial arbitration. Subsequent changes in international treaties resulted in the Parliament enacting its recognition and enforcement i.e., New York Convention.

The UNCITRAL Model Rules (United Nations Commission on International Trade Laws) began to work on model arbitration law from 1979 and after working for several years, on June 21st, 1985 it proposed a Model Law on ICA. The U.N General Assembly passed a resolution accepting the Model Law and India being a party adopted the Model Law in the form of Arbitration and Conciliation Act, 1996. Over a period of 15 years of its enactment and since then the arbitral landscape more generally, the nature of commerce has changed. This made necessary to reform the Arbitration and Conciliation Act, 1996 is thus, apparent once more and therefore, renewed thinking at the moment is certainly required.

**Recognition and Enforcement of Arbitral Award**

The analysis on the functioning of international commercial arbitration in India with a view to determining whether it offers the optimal legislative framework for arbitration to thrive as a method of settling disputes, the research finds that arbitration has achieved a more exclusive status than simply an alternative to litigation in international and domestic legal framework in settling commercial disputes. In the above context, the scholar is of opined that the enforcement of the foreign award in India was against the public policy. The arbitral tribunal has powers to make the award and does not have coercive powers to exercise the award. The New York Convention has been very successful in obtaining the recognition and enforcement of international awards and it made as a cornerstone of international commercial arbitration. Judicial intervention in arbitral proceedings may have two consequences for arbitration. First, it may serve as a way of supporting arbitration. Second, in contrast, it is a way of hindering the process and, in some instances, may undermine arbitral proceedings.

The 1996 Act narrows down the scope of grounds available for challenging awards as compared to the earlier 1940 Act. Court intervention after the arbitral proceedings may come in the form of a challenge, enforcement or appeal of the award. However, with the judicial interpretation, the scope of appeal against an award under the 1996 Act has become broader particularly after the decision of the ONGC case, which has widened the ambit of ‘public policy.’ The New York Convention made enforcement of foreign arbitral awards generally considerably easier, but still, there is an obvious lack of uniformity. Albert Jan van den Berg argues that public policy defense rarely causes enforcement to be refused. He believes that one reason for this is the distinction between domestic and international public policy, for what is considered public policy in domestic relations does not necessarily constitute public policy in international relations.
Testing of Hypothesis

For the purpose of systematic research and find answers to the research, the scholar at the beginning has formulated the following Hypotheses to proceed further with his investigations on the subject chosen for the study-

1. Though the law governing arbitration in India much reflected in the Arbitration and Conciliation Act, of 1996, which is comprehensive legislation, still not foolproof and adequate for effective settlement of the International Arbitration Commercial cases.

**Result:** On Hypothesis No 1, the study established that the existing Act i.e. The Arbitration and Conciliation Act 1996 applies to arbitration and conciliation in India. The provisions in this Act were supported by the United Nations Commission on International Trade Law and are broadly compatible by “Rules of Arbitration of the International Chamber of commerce (ICC)”. As at the same time Arbitration and Conciliation Act is not adequate because while reading of the Act it gives positivism but it is a half-hearted attempt to copy model law of the UNCITRAL. This Act was not given a proper definition of the term “Commercial” while the model law has given in Article 2 footnote of this act. This Act failed to touch the reality of grounds incorporated in the Act. As the main purpose of the Act is to provide quick redressal of disputes but it has not adequately developed as a quick and cost-effective mechanism for settlement of commercial disputes. Therefore the research vindicates the hypothesis formulated as the existing Indian law of arbitration is not foolproof and adequate for effective settlement of the International Arbitration Commercial cases.

2. The law governing International Commercial Arbitration in India is still lagging behind and failed to keep up with the International best practices, in spite of the fact that India has been a signatory to the international Conventions on Arbitration like New York Convention.

**RESULT:** The study on Second Hypothesis established that in India the Arbitration Act has developed rules and principles by making various amendments but failed to keep the international best practice in the making of law. The inevitable consequences being that it is unable to satisfy the business world. As the international commercial trade and agreements the international arbitration is growing manifold according to the present era there must be an implementation of the legislative changes by the judiciary along with the building of institutional capacity in the country. Therefore the research proves correct the hypothesis formulated as the law governing International
Commercial Arbitration in India is still lagging behind and failed to keep up with the International best practices, in spite of the fact that India has been a signatory to the international Conventions on Arbitration like New York Convention.

3. Conflicting and contradictions in domestic legal systems governing the rules of international commercial arbitration are seriously hampering the settlement of disputes and the implementation of the arbitral awards to its logical ends;

**RESULT:** The study on Third Hypothesis established that most of the legal systems though parties to the Geneva and New York Conventions but not fully adopted the Model Law governing the arbitration or have been adopted tailor-made arbitration rules thus, has no clarity in rules and procedure and hence, leading to conflicts and contradictions in implementing the arbitral awards taking them into logical ends. Therefore the research vindicates the hypothesis formulated as conflicting and contradictions in domestic legal systems governing the rules of international commercial arbitration are seriously hampering the settlement of disputes and the implementation of the arbitral awards to its logical ends.

4. The problems of enforcement of foreign award in India are not connected with international mechanism of arbitral award and the grounds for challenging the enforcement of International Foreign Awards under Indian law such as public policy, the notion of morality or justice etc is making the law uncertain, often contrary to the letters and spirit and the principles and practices governing international commercial arbitration.

**RESULT:** The study on the Last Hypothesis established that the present conventions and legal institutions are not adequately dealing with the problem regarding enforcement of award but the actual reason is lack of a proper mechanism for enforcement and implementation of the arbitral award. In most of the jurisdictions including developed and developing countries and in India, there is a lot of resistance in enforcing foreign arbitral awards on the grounds of public policy considerations by adopting a wider view in construing public policy, thus the Public policy considerations are often hampering the implementation process of foreign arbitral awards. Therefore the research vindicates the hypothesis formulated as the problems of enforcement of foreign award in India are not connected with the international mechanism of arbitral award and the grounds for challenging the enforcement of
International Foreign Awards under Indian law such as public policy, the notion of morality or justice etc is making the law uncertain, often contrary to the letters and spirit and the principles and practices governing international commercial arbitration.

Thus, the researcher could establish that the Hypothesis is proved to be positive.

Suggestions

International Commercial Arbitration has proved to be a very effective mechanism for resolving disputes but it faces certain obstacles. With the advent of globalization, the economy has expanded a few notches. In developing countries like India, where the economy is developing at a very high rate and thus has a possible scope to enlarge and promote arbitration as an alternative mechanism, the scholar has made an attempt to make some possible suggestions to make the existing mechanism more compatible with the efforts to develop an effective alternative dispute resolution mechanism basing on the foundations of the New York Convention and the Model Law.

1. As the Arbitration Act, 1996 applies to both domestic and international arbitration but not separated. So, the Indian legislature for effectiveness and to easily understand should enact separate Act for International Commercial Arbitration.

2. The Arbitration Act 1996 need to provide the definition of commercial arbitration and to remove ambiguity in the definition of public policy which are important terms for enforcing the awards.

3. Lacunas pointed out by the Different High Court’s and the Supreme Court of India about the legislation of Arbitration and Conciliation Act, 1996 sought to be rectified by way of an amendment basing on the 176th Report of the Law Commission of India and the Consultation Paper published in 2005. The said amendments have not come into effect in spite of its recommendation about 10 years ago, which needs quick action to bring the same into effect.

4. The main disadvantage is not enacting a separate Act for recognition and enforcement of the arbitral award. So the Indian government should enact specific legislation in this regard.

5. The parties intend to choose arbitration to avoid multiplicity of litigations in settling their disputes. Therefore, the court should confine and exercise its power in appointing arbitrator(s) as per the agreement to arbitrate and such power being a facilitation power as held in the Konkan Railway case, the same philosophy must be restored to avoid multiple proceedings in respect of the appointment of arbitrators.
6. Strong and efficient systems of arbitration should first be established as in various countries of the world. This means that laws favoring arbitration should be developed in India and international agreements for the enforcement of arbitration clauses and agreements should be reached.

7. It is necessary for the players in arbitration proceedings (i.e. arbitrators, judges, and lawyers) to know and understand the direction of the arbitration law, respects the will of the parties set out in arbitration clauses, and observe the dichotomy between arbitration and litigation. This change in the mindset must focus on the need to make the system more effective, attractive and functional.

8. The government should disseminate knowledge of the benefits of alternative dispute resolution mechanisms to foster the growth of an international arbitration culture amongst lawyers, judges and national courts. The real problem in enforcing foreign awards around the globe despite the enabling provision of the New York Convention, 1958, is not a legal one; but it is a lack of awareness particularly, amongst lawyers and judges, of the benefits of international arbitration and of its true consensual nature.

9. Lawyers should set aside their court work and other related tasks while working for arbitration exhibiting professionalism and must not treat it as a ‘side-business’. Arbitrators should be fully acquainted with all the rules guiding them. There is ‘judicialization of arbitration’ in a way that evidence is asked for; witnesses are examined etc in the same manner as in the courts. Therefore, it is necessary to understand the goals of arbitration and exhibit professionalism. Hence, there is a need to change the attitude to harness and utilize own resources.

10. There is a necessity to go for settlement of business disputes by institutional arbitration, provided such institutions maintain quality standards in conducting proceedings. The standards are evaluated in terms of professional arbitrators, infrastructure facilities, time and cost saving procedures and uniformity of standards of law that will make the ADR system more sound and acceptable among the business community. Independent institutions should convey training for supporting competent professionals who are trained to delve into the crux of the dispute for its resolution.

11. Recourse may be taken to Institutional arbitration where one can choose the arbitrator, and the fees and the panel can be determined either by the parties or the Institution. In addition, the arbitral institution provides sound infrastructure and brings discipline from day one to the proceedings. In contrast, *ad hoc* arbitration conducted without formal procedures and thus leads to delay and as a result, costs increase. Towards this end, not only the lawyers but the litigants also should change.
12. Refusal of grounds for enforcement of a foreign award was limited under Article V which goes procedural defects rather than a substance of the decision.

13. As the cost of arbitration is very high and therefore, all efforts should be made to bring the costs down. Approximately about 98 percent of the cost of the arbitration is constituted by the fees of the arbitrators and counsels of the parties. The arbitrators should discuss with the council what steps should be taken to resolve the dispute so that both the parties are satisfied with the procedure.

14. The time for resolving the dispute should be reduced, which will further help in reducing the cost of arbitration. This can be done by fixing the time for arbitration in the arbitration agreement itself; or by agreement between the parties in the preliminary hearing; or by the arbitral tribunal. Reduction in costs will allow matters of small claims to come for arbitration which will enlarge the scope of International Commercial Arbitration and even parties who are not financially capable of going for arbitration in case of disputes (at the present costs), will be able to get the benefit of the Arbitration process.

15. The Indian Judiciary ought to respect and support the globally accepted mechanism of dispute resolution on arbitration awards. The Indian courts’ continued attitude in intervening arbitrations is harmful. Mainly for a legal system which is plagued by endemic delays, a pro-arbitration stance will lessen the court's pressure. Arbitration is not merely an alternative option for resolution of disputes, it is absolutely essential to maintain the integrity of the Indian legal system so that the trust in it is maintained and India should work to save the citadel of International Commercial Arbitration.

16. Finally, it is important to be conscious that enforcement under the New York Convention is only as good as the court system where the enforcement is taking place. But in the regional courts, it requires sufficient training to the judges concerned to undertake the procedure.