INTERNATIONAL COMMERCIAL ARBITRATION VIS-À-VIS INDIAN CONTEXT

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ABSTRACT

We have noticed a significant change in how the world functions over the past ten or so years. The days of conducting business with people who lived inside their home bounds are long gone. The business world has become a global village since the introduction of globalization. When working with companies based abroad, people are able to cross national barriers. When conflicts or disputes emerge between the parties involved, they typically turn to methods of arbitration, conciliation, mediation, and similar processes rather than approaching the appropriate courts. These alternative conflict resolution processes have proven to be very beneficial for the parties who have been wronged because they reduce the expenses, time, and effort associated with court proceedings. The conciliation method that businesses most frequently choose is arbitration. The primary legislation of the Arbitration and Conciliation Act, which regulates international arbitration, is crucial and has developed over two decades into the best tool for settling conflicts abroad. Indian courts have given arbitration clauses a more genuine reading, which will be reflected in this text. This article focuses on how, when, and the challenges encountered when implementing arbitration procedures in matters involving international trade.

Keywords- arbitration, mediation, conciliation, international trade.

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Arbitration, one of the mechanisms of Alternative Dispute Resolution (ADR) is considered to be one of the oldest methods of dispute settlement. There is a great debate as to the origin of 'Arbitration' which is not yet clear. Sometimes, it is considered to be as ancient as the court system which is a common method of dispute settlement. Dispute resolution has become a necessity after the invention of trade and commerce and has also developed rapidly. Arbitration has its traces everywhere, ranging from prehistoric Romans to the Malwas.[1] Solomon was one of the earliest arbitrators looking into world history. Later, even the Queen of the Malwa Kingdom, Her Highness Ahilya Bai Holkar insisted on referring all disputes to arbitration.[2] Arbitration awards were delivered by various members of the State like the King, Queen, etc., after considering the facts and circumstances of various disputes that arose in front of them. In a primitive society arbitration was known as friendly settlement. This proves that there was existence of alternative dispute resolution mechanism during the period of Renaissance.

The development of arbitration in the commercial world is closely related with the words 'market' and 'merchant'. Commercial arbitration was developed from the methods that were used by the merchants to resolve their everyday disputes. The use of arbitration and dispute resolution without litigation has also been noticed in various ancient literary works. According to Hindu Law, one of the most punctual known treatises that makes a reference about arbitration is "Brhadaranayaka Upanishad".[3] But it was made clear by the precedents in 17th century that arbitration could not be pleaded in courts. However, things have changed and arbitration from dispute resolution mechanism has now become a relief for trading parties. It now eclipses the traditional methods of dispute settlement mechanisms.

1. INTERNATIONAL COMMERCIAL ARBITRATION DEFINED

International business arbitration is a means of resolving disputes between private parties originating from cross-national commercial agreements that permits the parties to avoid litigation in national courts. It aids in the resolution of international conflicts stemming from internal economic agreements. International commercial arbitration is defined as disputes

[1] Manushi E. Z., *Ahilyabai Holkar: A Magnificent Ruler, Saintly Administrator,* Rare Book Society of India, 2001.
[2] *Ibid.*
[3] Available at https://viamediationcentre.org/readnews/MzU4/Ancient-History-of-Arbitration.

arising out of the legal relationship where one of the parties is a citizen, resident, or habitually residing out of India.[4] International commercial arbitration is used by traders from several nations to settle business disputes.

When it comes to international commercial arbitration, the first question that arises is what are the subject-matters that fall within the purview of it. There is no clear definition for the term 'commercial' when it is taken in relation with arbitration. But there are steps taken to make it clear that what the term "commercial" means. The first step taken in this direction was the Geneva Protocol on Arbitration Clauses of 1923 which limited the enforcement of awards within the territory of the state only. This restriction was removed after 4 years when the Geneva Convention (Geneva Convention on the Execution of Foreign Arbitral Awards) made international enforcement of awards possible. The Arbitration (Protocol and Convention) Act, 1937 was implemented for proper functioning of the said protocol and convention. However, there were several obstructions with regard to the implementation of the awards under this act.[5]

In *Enercon (India) Ltd. & Ors v. Enercon GmbH & Anr,*[6], it was decided that the "venue" of adjudication refers to the physical place selected by both parties according to convenience rather than the "seat" of arbitration, which establishes the proper competence.

2. EVOLUTION OF INTERNATIONAL COMMERCIAL ARBITRATION

The term commercial arbitration was first evolved after the market, trade and merchant came into existence. At the time of trade and commerce, there existed many issues which were trivial as well as serious. This opened the door for the growth of various methods and ways of arbitration. Great merchants and leaders of trade union were generally the members of such adjudicating bodies. The main aim of these bodies was to dispense speedy justices for the cases that came under the jurisdiction of their respective markets and business laws. These pre-existing judicial bodies have been called the "ancestors" or "predominant version" of modern arbitration. This non-violent and convenient method of adjudication was then spread from the market and businessmen over the whole society covering all directions and it was then known to each and every section of the society. Many more such adjudicating bodies having

[4] Section 2(1)(f) of the Arbitration and Conciliation Act, 1996.
[5] *Renusagar Power Co. Ltd. v General Electric Co., 1994, SCC 644.*
[6] AIR 2016, 5 SCC 1.

specialized knowledge were then established which worked truthfully to settle disputes within the stipulated time.

The traders now started liking this method of dispute resolution and were comfortable more than that of traditional method of court system. With the advent of multiple trading bodies and unions, there came up multiple charters and treaties that were signed and developed by the various merchant groups.[7] For example, there existed the charter of the Company of Clothworkers, the charter of the Guild of Yarmouth and multiple others.[8] The traders and merchants were governed by the law of community while giving judgment in any dispute. Hence, it can be concluded that these dispute resolving bodies retained unity and promoted fraternity throughout the society while deciding a case in favor of any single party.

The level of international trade grew rapidly as a result of the growth of the sea trade route which also amalgamated the countries and the area of trade. At distinct places the trade of certain raw materials like spices, metals such as iron, etc. and textiles increased significantly in huge volume which paved the way for international trade and traders to create global links. International trade contracts also started taking shape because of the huge investment from the traders in international market which also worked as a written proof and documentation for just and fair trade and exchange among the different countries of the world which were the party to the contract. Filing of suits by one party against the other became a very common occurence. That's how the equilibrium came to be in a trade where stakes were high. To settle conflicts through such judicial bodies became shorthand for having legal issues resolved by officials with a vested interest in the operation of businesses.

Meanwhile, in England, according to Lord Mustil, private arbitration flourished "on a scale which may not have been equaled elsewhere".[9] The arbitrator was selected *intuit personae i.e.*, on the discretion of the parties because the parties trusted the arbitrators. The arbitration at that point of time lacked in few parameters. The biggest issue with this method was the absence of any authority, so as to make the parties complete the arbitration. The parties were free to move the court in between the arbitration proceedings without any problem. The arbitration tribunal's decisions were not enforceable because there was no way to get them implemented. The

[7] Subramoniam R. M. & Jain N., *International Commercial Arbitration: An Introduction,* EBC, Delhi, 2022, pp.2.
[8] *Goldsmiths'- Kress Library of Economic Literature,* Microfilm, New Heaven, Research Publications, England and Wales, London, 1974,
[9] David R., *Arbitration in International Trade,* Kluwer Arbitration, 1985, pp. 29.

arbitration provision was viewed as being completely revocable at the parties' discretion and discretion alone.

By that time, an agreement for arbitration was not considered to be immoral or disqualified by law rather it was not legally recognized. The parties with the arbitration just on a "com-promissum"[10] vis-à-vis a double promise. It was the fiduciary relationship between the parties and not any legislative framework that worked as a binding force when it comes to arbitration as a method of dispute resolution.

3. EVOLUTION OF COMMERCIAL ARBITRATION IN INDIA

India had been a center for arbitration since a very long time. At the beginning there was no such legislation to deal with any dispute. A group of nobles were selected by the common people which decided the smaller disputes and prolonged quarrels. Panchayats, which functioned as the villagers' elected representatives, existed at the village level. The decisions made under this system were easily taken into account and accepted. Later, these conflict resolution panels came to be despised by the public due to numerous political reasons. As trade and commerce grew many other bodies were established like trade unions, courts, etc. The people that had common thinking started coming together to form communities which then worked as an arbitrating organization within themselves.

As the British entered India and started trading within the country, many things changed like the process of the judicial administration. During this period, both dispute settlement through traditional courts and through alternative dispute resolution, moved parallel to each other.[11] But, with the commencement of British rule in the country, alternative dispute settlement methods took a backseat. But, again after the Bengal Resolutions of 1772, arbitration was set to prominence.[12] Motivated by these rules, people again started believing in arbitration as a process for fast dispute resolution. After the independence of India Lok Adalats were also flourished as a method of arbitration among the parties. Initially, it lacked any legal recognition but after the passing of the Legal Services Authority Act, 1987, it was recognized. The Arbitration and Conciliation Act, 1996 came as a successor of the pre-independence Arbitration Act of 1940 after some modifications.

[10] Redfern A. & Hunter M., *Law and Practice of International Commercial Arbitration,* 4th Edition, Sweet & Maxwell, London, 2004.
[11] *Supranote* at 7, pp. 4.
[12] Sircar N.N., *Law of Arbitration in British India*, Subodh Kumar De, 1942.

Businesses were not confined to the territory of India, rather they spread beyond the territories of different countries of the world. Trade flourished and broke the barriers of borders between the countries and the same was the case with international commercial arbitration. For example, if any Indian company enters into a contract with any company that is present in France, then neither the Indian law nor the law of France could solely resolve any dispute that could arise. But this problem was solved after different countries signed some treaties and conventions.

India would not have been introduced to the concept of international commercial arbitration, among other financial system strategies and mechanisms, if Indian markets had not been opened to the global market. The liberalization, privatization, and globalization model allowed for an infusion of global commerce, which led Indian enterprises to enter into contracts with foreign companies, and for this, the government had to make provisions for alternative dispute settlement.

By 1995, the government had resolved to promote the use of arbitration as a method of conflict resolution. It filed a bill in the Indian Parliament, which resulted in the approval of the Arbitration and Conciliation Act, 1996. India, like other nations that followed the UNCITRAL Model's processes to construct their arbitration rules, created a legislative framework with the goal of adopting laws that were uniformly connected to arbitration. However, the Arbitration and Conciliation Act, 1996 is silent on the UNCITRAL Model Law and it contains a distinct chapter dealing with the provisions of international commercial arbitration, the passage for enforcement of awards was not an easy task. It came as a result of some Supreme Court's judgments. So, as to check this trend many changes have been made in the Act based on the recommendations of the Law Commission.

The main aim behind making the amendments is to limit the power of the judiciary to judicial review over commercial arbitration in general and international arbitration in specific because the uncontrolled power of review could destroy

1. The basic advantages of arbitration such as speedy and efficacious settlement of international commercial disputes;
2. Arbitration as an alternate dispute resolution mechanism; and
3. The interest of the international business community.[13]

[13] *Supranote at 7.*

3.1 VIEWS OF COURTS

Since the institutionalization of arbitration laws governing international business transactions, there has always been a debate about which instances constitute or meet the criteria for being referred to as an international dispute. To some extent, the outlook on what might be termed an international case has been cemented by multiple precedents and differing judgements. However, there is still room for grey.

- Prior to the 2015 modification to the Act, the High Courts, which have limited jurisdiction over international arbitration issues, frequently intervened in such procedures and exercised the authority to set aside arbitral decisions and, in some cases, interim decrees.
- The Supreme Court of India has not shied away from getting involved in instances in which the relevant foreign dispute has already been decided by qualified arbitration panels, as evidenced by cases like *Venture Global Engineering v. Satyam Computers Services*[14], but the same was then justified through the application of s.9 & s.34 of the Act, mainly because the parties to the case had not included the application of Part I of the Act to their agreement.[15]
- Through the numerous Amendments to the Act that took place in 2015, 2019, and 2021, the courts in India have reduced the level of intervention in adjudication disputes and made efforts to make the arbitration panels autonomous and systematic enough to handle every case thrown to their attention.
- By altering the structure of fundamental elements like the independence and objectivity of arbitrators and judicial bodies, reducing the interruption caused by these disagreements by the judiciary, and spending the costs related to arbitral hearings, among other things, these amendments have frequently enhanced the standard of dispute resolution processes and the regulations that surround them.

These efforts and changes in the judiciary's overall approach to adjudication have enhanced not only the overall effectiveness of tribunals in internal cases, but have also helped India develop in terms of International Commercial arbitration and, in fact, has attempted to move India on

[14] AIR 2008, 4 SCC 190.
[15] Available at https://viamediationcentre.org/readnews/MTE2Ng==/Evolution-of-International-Commercial-Arbitration-in India.

the world map in order to make India a desirable country for international arbitral dispute resolutions.

4. FRAMEWORK OF INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA

The framework for international dispute resolution in India is based on the New York Convention, 1958 and the United Nations Commission on International Trade Law (UNCITRAL) Model Law, 1985. Initially, India had Arbitration Act, 1940 which was then replaced by Arbitration and Conciliation Act, 1996 (herein, the "Act") which completely changed the scenario of Arbitration in India. Through this legislation, India acceded to the international treaties and conventions on the subject.[16] The act is divided into four parts.

The first part of the act is designed on the basis of the UNCITRAL Rules and Model Law and the rules envisaged under this part are applicable on both national and international conflicts provided the arbitration occurs under Indian territory. Second part consist of the list of enforcement of foreign awards under two conventions namely, New York Convention and Geneva Convention. part third envisage the UNCITRAL Conciliation Rules, 1980. These rules were the first Indian law that deals with the governance of conciliation in India. This part states the process to initiate the conciliation proceedings and administration of them between parties. The proceedings are started by inviting a conciliator by the way of written notice. The parties may appoint one or more conciliators to adjudicate their dispute.[17] The role of the conciliator is to assist the parties in arriving at an amicable settlement.[18]

Fourth part of the Act consist of some provisions regarding power of High Court and Central Government to make laws. The main vision of these provisions is to give sufficient powers to the authorities so that they can remove any obstacle in the implementation of this act. The overall intent of the legislation is to-

1. Provide for a speedy resolution of disputes between the parties;[19]
2. Minimize judicial intervention;[20]

[16] "Treaty-Making Power Under Our Constitution" National Commission to Review the Working of the Constitution, Legal Affairs Department of the Government of India, New Delhi, 2001.
[17] Section 64, Arbitration and Conciliation Act, 1996.
[18] Section 67, *Ibid.*
[19] Agarwal K., Justice dispensation through the Alternative Dispute Resolution System in India, Russian Law Journal, 2014, pp.63.
[20] *Ibid*.

3. Recognize a strict procedure for international commercial arbitration and domestic arbitration;[21] and
4. Enforce and recognize arbitral awards, both domestic and international.[22]

Hence, the legislation related to arbitration was introduced in India through the 1996 Act which was based on a pre-existed model and the enforcement of foreign awards was also recognized under the law. The incorporation of UNCITRAL Model made sure that India remains in line with other jurisdictions across the globe that have adopted the same.

As it has been mentioned above that when the arbitration takes place within the territory of India, part one of the act is applicable on the international disputes also. This part contains total 43 sections and 10 chapters which are based on UNCITRAL Rules and Model Law. So, to better the understanding of framework of international commercial arbitration, we need to know what is UNCITRAL Model Law. UNCITRAL is one of the main legal organizations of the United Nations in the field of international trade law which is established by the UN General Assembly. The main reason for the establishment of this body was to make free flow of international trade possible which was hindered due to the conflicts that arose between the national laws of different countries.

The purpose of the UNCITRAL model legislation is to help countries create domestic law and update their laws on arbitration proceedings while taking into account the special requirements and characteristics of international commercial arbitration. It places emphasis on the universal acceptance of key elements of foreign arbitration procedures used by various nations, subsets of states, and legal or economic systems worldwide. The important features of the Model Law are-

1. It establishes specific rules and regulations with the goal of achieving consistency in international commercial arbitration.

2. The substantive part of international commercial arbitration is outlined in Article 1 of the Model Law, which states that the arbitration process is considered global if the parties' places of business at the time of the arbitration contract were in different States or if one of the locations lies outside the state where both sides to the agreement maintain their places of business:

[21] "Dispute Settlement: International Commercial Arbitration", United Nations Conference on Trade and Development, 2005.
[22] *State of Maharashtra vs Atlanta Ltd.,* AIR 2012, 11 SCC 619.

- Or the place where the commercial relationship has been performed.
- Or where the subject matter of the dispute has occurred.
- Or the parties to the arbitration agreement have jointly agreed to include more than one place for the subject matter of the agreement.[23]

3. The makeup of an arbitral tribunal and the enforceability clause of an arbitral award are reflected. It would be implemented in a State if the seat of arbitration is within that State's territory and the arbitral award had global enforcement. The notion of 'party autonomy,' on the other hand, declares that the parties in a dispute are free to determine the laws that will govern the arbitration process.
4. It limits the court's engagement in the arbitration process by permitting judicial involvement only in the selection of arbitrators, the contestation and removal of an arbitrator, the legitimacy of an arbitral tribunal, and the annulment of an arbitral decision. Additionally, it makes it possible for judicial assistance in gathering evidence, recognising arbitration agreements, and upholding arbitration judgements.
5. It emphasises the significance of the arbitration clause or agreement that must exist if the disputing parties opt to resolve their dispute through arbitration. The Model Law also identifies the topic of the clause and grants recognition to it to the judiciary.

Article 9 of the Model Law, which concerns arbitration agreements and court-ordered interim measures, has been modified to Section 9 of the Act. According to the Model Law, a party may ask a court for a temporary safeguard throughout the arbitral process. The Indian Act, however, goes further Article 9 by enabling a party to ask the courts to continue even after the arbitration decision has been carried out. In enforcement of foreign arbitral awards where the parties have a timely remedy, the court may grant temporary relief under Section 9 of the Act, but this relief cannot be applied following the creation of an arbitral panel.. This has been commendably introduced under Section 9(3) of the Act by the Arbitration and Conciliation (Amendment) Act, 2015.

The goal of this 2015 change is that once the subject is assigned to the tribunal, it is appropriate for the tribunal to hear all interim applications. This revision is consistent with the spirit of the 2006 amendment to the UNCITRAL Model Law. As a result, the court has delegated primary authority to Indian tribunals.

[23] Available at https://blog.ipleaders.in/analysing-law-international-commercial-arbitration-india-w-r-t-uncitral-model-law-amendment-2006/.

To be clear, the UNCITRAL Model Law on International Commercial Arbitration, 1985 (Model Law, 2006) does not state whether the court's authority should be available as a fallback choice in the event that an arbitrator is unable to perform effectively. The idea that the courts can only get involved if the arbitral panel hasn't done its job well was put on hold for later thought. As a consequence, the Model Law is not specifically mentioned as a requirement for adopting this method. It is interesting to note that India's courts have laudably transferred the majority of authority to the arbitral panel through a number of court decisions. This idea also holds true for arbitration with a foreign location.

4.1 NEW DELHI INTERNATIONAL ARBITRATION CENTRE BILL, 2018

A high-level commission headed by former Justice B.N. Srikrishna evaluated the International Centre for Alternative Dispute Resolution's operations (ICADR). The report of the Justice Srikrishna Committee on 30 July 2017 acknowledged the necessity for a distinct and competent corporate structure for the proper operation and expansion of the country's international commercial arbitration process. The report also notified that-

1. The governing council of the existing ICADR with 47 members is too large and inefficient.
2. There is a need to market the ICADR infrastructure for its use as a potential venue for conducting the arbitral proceedings.
3. Although amended in 2016, there exists a need for an upgradation of the ICADR Rules and Provisions in accordance with the changing regime for arbitration worldwide.
4. There is a lack of proper case management team.[24]

The New Delhi International Arbitration Centre Bill, 2018 was introduced in the Lok Sabha and was passed in 2019 and the bill intends to establish an independent and self-governing arbitral administration organization in India. Many elements of the institution and their importance in modernizing the country's arbitration process were highlighted by the Minister of Law and Justice, Shri Ravi Shankar Prasad.

The main aim of the bill is to give all the rights, title, and interest that are vested in the ICADR to the Central Government and then to the NDIAC after an issued notification. In this way the NDIAC will be established as an institution which functions for

a) encouraging alternative dispute settlement and doing out progressive research;

[24] *Supranote* at 7, pp. 137.

b) keeping a constant panel of competent arbitrators on hand; and
c) facilitate the conduct of arbitral proceedings and other related responsibilities.

4.2 NDAIC: A SIGNIFICANT REFORM

Alternative dispute resolution has undergone considerable modifications, leading to its acceptance as a valid means of settling disputes both locally and internationally. India has positioned itself as a strong proponent of conflict settlement through arbitration. This is due to the strong backing it has received from the Indian legislative and judiciary. Alternative Dispute Resolution is the out of the court proceeding for any arbitration but sometimes it also needs the help of the courts. India can never become a place for international commercial arbitration without the help and assistance of such courts. The recent amendments in the act had adopted the changes that have taken place under the UNCITRAL Model Law. This has helped India to keep a pace with other countries that have also adopted the same Model Law as genesis of their arbitration laws.

The government's plans to make India a hub for international alternative dispute resolution and a safe place for commercial arbitration internationally are made stronger by the creation of NDIAC. With-state-of-the-art-facilities and being an all-rounded institution, one of the core missions of the NDIAC is to provide institutional support for domestic and international arbitrations and other dispute resolution proceedings.[25] The NDIAC could be a place where both regional and international arbitrations take place.

The main work of NDIAC is to manage the proceedings of international commercial arbitration. The parties will accept the provisions of an institution so that they what will be their duties and liabilities during the proceedings. This knowledge of duties and responsibilities will prevent any delay in the commencement of arbitral proceedings.

Furthermore, institutional assistance and secretarial services are made available to the parties, lessening their burden and assuring the smooth functioning of the arbitral processes. The NDIAC will maintain a wide database of competent arbitrators with various specializations and expertise from which the parties can select.

4.3 PROCEEDINGS OF INTERNATIONAL COMMERCIAL ARBITRATION

i. **Notice of Arbitration [Sec. 21]-** Dispute resolution proceedings commence after the respondent receives a notice for transferring the conflict to arbitration. Section 21 of the

[25] *Ibid*, pp.139.

Act mandates that a "notice of arbitration" has to be served by one party on the other, the latter being the respondent.[26] The day on which the respondent receives the notice is considered to be the commencement day of the arbitral proceedings. Mere intention to transfer the case to arbitration and the supposition that the second party will take a step towards the same would be sufficient to start the proceedings. A notice for arbitration consists of a prayer to ask the second party to appoint an arbitrator and this is not required to be mentioned explicitly rather it is to be inferred from the language of the notice. It is mandatory to send this notice and it also necessary to state that all the requisites and considerations have taken place so as to resolve the dispute and mediate the dispute. The word "party" has been defined under the amendment act and it also includes persons claiming through or under such party. Any proper and necessary parties can participate in the arbitration proceedings irrespective of being a non-signatory to the arbitration agreement.[27] The court in *Cheran Properties Ltd. v Kasturi and Sons Ltd.*[28] upheld the same and explained that an arbitration agreement between two parties may operate and bind other related parties. The court in this interest pointed out scenarios of business and composite transactions.

ii. **Referral to Arbitration [Sec. 8]-** After an application is filed by the party the court is bound to transfer the case for arbitral proceedings only if the case can be settled through arbitration. Also, the case could be referred when the agreement for arbitral proceedings specifically mentions the subject-matter of the case. The following points must be taken into considerations while referring the dispute to arbitration-

- The application must be made before or at instance of submitting the first statement on the substance of the dispute.
- It must be accompanied with the original arbitration agreement or a duly certified copy of the same.[29]

iii. **Interim Reliefs [Sec. 9 and 17]-** The parties can ask the adjudicator and courts for temporary relief and provisions before or during the arbitration process, or at any time after the arbitral award is made but before it is put into effect. Provided that, circumstances exist which render the available remedies under Section 17

[26] *State of Goa v Praveen Enterprises*, AIR 2012, 12 SCC 581.
[27] *Chloro Controls India Pvt. Ltd. v Severn Trent Water Purification Inc.,* AIR 2013, 1 SCC 641.
[28] AIR 2018, 16 SCC 413.
[29] *Supranote* at 7, pp.141.

inefficacious.[30] The court in *Bishnu Kumar Yadav v M.L. Soni & Sons*[31] held that the power of the court under Section 9(3) of the Act is not barred after an Arbitral Tribunal is set up. The Arbitral Tribunal may order the party to take interim measures of protection.[32] This is based on the history and requirements of the case going in the tribunal. The arbitral proceedings must commence within 90 days from the date of the interim protection order or within such time as the court determines.[33] Section 17 of the act gives same power to the tribunal as that of a civil court in respect of providing temporary reliefs, with limited exemptions. Hence, a tribunal could provide relief even when the award is executed. Moreover, any order of the tribunal will be enforceable under the Code of Civil Procedure, 1908.[34]

iv. **Appointment of Arbitrators [Sec. 11]-** Under the act, the parties could appoint any number of arbitrator(s). it is suggested to appoint odd numbers of arbitrators so that there is no situation of tie when the decision is made. When the parties fail to decide the number of arbitrators, the tribunal shall consist of a single arbitrator. The parties can also challenge the composition of the tribunal when it is not in accordance of the act. The parties are free to choose the nationality, qualification, etc. of the arbitrator. An agreement made between the parties appointing the Managing Director of a party as the arbitrator was held to be contrary to the Act.[35] If the parties fail to appoint the arbitrators or if the appointed arbitrators fail to decide on the presiding arbitrator, both within 30 days, then the parties can request the Chief Justice of the High Court who has the jurisdiction to make the appointment.[36]

v. **Challenge to the Arbitral Jurisdiction [Sec. 16]-** The doctrine of kompetenz-kompetenz confers on the Arbitral Tribunal the jurisdiction to decide on the validity of its own jurisdiction.[37] This power gives the tribunal the right to say whether or not the arbitration agreement is legal. Also, the substantive law of the main contract is usually stated in a clause that is distinct from the arbitration clause. This not only helps in setting the arbitration clause independent but also sets a contract that is clear and balanced.[38] Any challenge to the jurisdiction of the arbitral tribunal should be raised before or during

[30] *Bishnu Kumar Yadav v M.L. Soni & Sons,* 20166 SCC OnLine Cal 1420: AIR 2016 Cal 347.
[31] *Ibid.*
[32] Section 17, Arbitration and Conciliation Act, 1996.
[33] Section 9, *Ibid.*
[34] Section 17(2), *Ibid.*
[35] *T R F Ltd. v Energo Engg. Projects Ltd.,* AIR 2017, 8 SCC 377.
[36] Section 11(4), Arbitration and Conciliation Act, 1996.
[37] *GAIL Ltd. v Keti Construction Ltd.*, AIR 2007, 5 SCC 38.
[38] *Enercon (India) Ltd. v Enercon GmBH*, AIR 2014, 5 SCC 1.

the submission of the statement of defense.[39] The participation of party in the appointment of arbitrator does not bar him from challenging the jurisdiction of the tribunal.

vi. **Essentials for the proper Arbitral Proceedings [Sec. 18-22]-** The following are the essential components that must be present to make the conduct of the arbitral proceedings fair and just.

- ***Equal treatment to parties and flexible procedure-*** Section18 of the act states that the parties must be treated equally. The basic principle of the arbitration had always been the non-discrimination and its strict adherence among the parties. It is the foundation of social justice and, as such, the primary feature of equity and good conscience. The parties' right to self-defense and the opportunity to defend their case is an enhanced essential power. Article 18 of the UNCITRAL Model Law acknowledges this. It is mandatory that each party should be given full opportunity to present its case and shall also be treated equally.[40]
- ***Flexibility of place-*** The parties have the freedom to choose and agree on the location of arbitration. In the absence of the same, the tribunal shall have the power to determine the place according to the convenience of the parties.[41] The tribunal shall do the same after giving express regard to the important circumstances of the case.[42] It is critical at this stage to distinguish between the "seat" and "venue" of arbitration. The courts of the arbitration seat have supervisory and allied jurisdiction over the arbitral proceedings. Meanwhile, the venue may simply refer to the location or location where the hearings or other aspects of the arbitral procedures take place. The decision of the Supreme Court in *Bharat Aluminium Company v Kaiser Aluminium Technical Services Inc.*[43], made it clear that the choice of another country as a designated seat of arbitration may lead to the ipso facto acceptance of the law and procedural legislations of that country as the supervisory laws of the arbitral proceedings.

[39] Section 16(3), Arbitration and Conciliation Act, 1996.
[40] Section 18, *Ibid.*
[41] Section 19(3), *Ibid.*
[42] Section 20, *Ibid.*
[43] AIR 2102, 9 SCC 649.

- ***Flexible language-*** As per the requirements, the parties have the right to agree on the language(s) that will be used during the arbitration with their consent. If they fail to do so the tribunal shall determine the same. The written statement, hearing, award and all other formal procedural communications shall be made in the language or languages that have been agreed upon by the parties or as has been determined by the tribunal.[44] All the necessary documents such as documentary evidence shall be accompanied by a translation to the language(s) in which the proceedings take place.[45]
- ***Submission of claim and defense statements-*** As the "statement of claim," the claimant must disclose the evidence supporting his allegation, the points at question, and the relief or remedy requested. Whilst, the respondent shall state his defense in respect of these particulars.[46] The "statement of defense" admits or denies the contest of the claimant.[47] It may also include the counterclaim of the respondent.[48] The tribunal and the parties might agree on a time frame for the written submission at their leisure. Parties may also submit other relevant documents and evidence with their respective statements.[49] Here, the respondent also has the opportunity to submit a counterclaim or plead a set-off, given that the same falls within the purview of the arbitration agreement entered between the parties.[50]
- ***Hearings and written proceedings-*** Hearings, meetings, or inspections should be scheduled with reasonable advance notice to the parties. Subject to the agreement, it is upon the Arbitral Tribunal to decide whether proceedings can be conducted by an oral hearing or on the basis of documents and other materials.[51] Unless expressly prohibited by the parties' agreement, even the parties can request that the tribunal conduct oral hearings. If the tribunal conducts hearings on a daily basis, it retains the authority not to grant an adjournment unless

[44] Section 22, Arbitration and Conciliation Act, 1996.
[45] Section 22(4), *Ibid.*
[46] Section 23, *Ibid.*
[47] *Kolkata Metropolitan Development Authority v Hindustan Construction Co. Ltd.*, AIR 2017 SCC OnLine Cal 18978.
[48] *Ibid*.
[49] Section 23(2), Arbitration and Conciliation Act, 1996.
[50] Section (2-A), *Ibid.*
[51] Section 24(1), *Ibid.*

adequate cause is shown. The tribunal also holds the power to impose exemplary costs on parties if the adjournment sought for is without any sufficient cause.[52]

vii. **Settlement during Arbitration [Sec. 30]-** If needed, the tribunal may encourage the parties to settle the dispute through mediation, conciliation or any other procedures at any point of time during the continuation of the arbitral proceedings.[53] If the parties reach an amicable settlement during the conduct of the dispute settlement, the arbitration is deemed to be terminated with immediate effect. With the express consent of the parties, a consent award, containing the settlement between the parties, shall be delivered by the tribunal.[54]

viii. **Adjudication Decision and Order for Penalty and Arbitration Expenses [Sec. 31A]-** This provision punctuating a regime prognosis was just introduced into the amendment act of 2015. It establishes the cost structure for arbitration and court proceedings arising from arbitration. It gives the court and tribunal the authority to determine who is obligated to reimburse the amount and when it must be paid. In the case of an award, it shall be made by the tribunal in conformity with the statute's provisions and procedure. The arbitral tribunal has the authority to order costs. Costs typically include-

   i. *Arbitration costs*- This usually involves the arbitrators fee, the fee on other additional services such as for hiring the hearing venue, a fee for appointing experts and other administrative costs.[55]
   ii. *Legal costs*- This includes the cost incurred on hiring service for legal representation and also for preparing the case and relevant documents such as the pleadings.[56]
   iii. *Interests*- This involves the rate of interest payable on damages and other costs awarded by the tribunal.[57]
   iv. The expense of the necessary actions that may be needed to be conducted as part of the proceedings.

ix. **Challenging Arbitration Award-** There are numerous grounds for contesting an award and preventing it from being acknowledged and executed in a court of law. Section 34 of the Act of 1996 enumerates the grounds. Aside from those considerations, the statute

[52] *Chittaranjan Maity v Union of India*, AIR 2017 9 SCC 611.
[53] Section 30(1), Arbitration and Conciliation Act, 1996.
[54] Section 30(4), *Ibid.*
[55] Section 31-A (1), *Ibid*.
[56]Section 31-A, *Ibid*.
[57] Section 71(7)(b), *Ibid*.

of limitations is an essential consideration. The period of limitation begins from the date on which a valid delivery of arbitral awards has been made as per the provisions of the act.[58] A strong and well-substantiated ground can be an excellent tool for piercing the other party's intent to enforce the award. Initially, the UNCITRAL Model Law established such reasons, which eventually became a component of several laws.

x. **Appeals-** Appeals may be brought on the grounds specified in Section 37, but not on any other grounds. Nevertheless, the rule appears to be blank regarding the restricted time within which the parties must refer an appeal. The court has read the limitation period into the provision with the help of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 as 90 days starting from the date of the decree or the Order of the Court.[59]

xi. **Award Enforcement and Implementation-** Following the passing or declaration of the award, the party will work to have it acknowledged and implemented in the nation of their choice. This will assist them in putting the tribunal's decision into action. The act not only provides for the implementation and acknowledgment of awards issued by Indian courts, tribunals, and arbitration institutes, but it also provides for the execution of foreign decisions. This is accomplished through the use of a dual-limbed mechanism in the form of conventions, especially the New York Convention and the Geneva Convention. Part 2 of the act contains the law governing the implementation of the offset convention.

5. CONCLUSION

Despite being one of the initial signatories to the New York Convention, India has not always followed worldwide best practises in the field of arbitration. However, there has been a considerable beneficial shift in the approach over the previous five years. Courts and politicians have taken steps to align Indian arbitration law with international standards. With the 2015, 2019, and 2021 Amendment Acts in place and the courts' support for the process of arbitration, there is cause to think that these most effective practises are about to be incorporated into Indian arbitration law. We can now see that India is on its way to becoming a centre for international arbitration, as envisioned by the country's governments, as a result of a growing globalisation and harmonisation of international commercial arbitration laws. However, we can see that adjudicators intervene in international corporate arbitration disputes unfairly. Because the

[58] *Union of India v Tecco Trichy Engineers and Contractors*, AIR 2005 4 SCC 239.
[59] *A.M. Prembhushan v N.S. Thulasidas*, AIR 2010.

fundamental purpose of the 2021 amendment to the 1996 Act is to reduce the role of the judiciary in international arbitration matters, such action would be contrary to the objective of the 1996 act.

In the *Bhatia International v. Bulk Trading S.A*. ("Bhatia International") case,[60] the court held that "the concept of Public Policy also applies to foreign arbitral awards and that the judiciary has the authority to nullify the validity of law if the award is in violation of the Indian statutes".

Future insolvency cases will almost certainly be arbitrated, and as countries become progressively focused on achieving stability and growth, more environmental issues will be presented. All of these patterns are projected to persist in the foreseeable future. We, the researchers, have mentioned some ways that might be employed to solve the situation at hand. With effective laws and sufficient government support, we will soon be able to fully realise our goal of "making India a Hub of International Arbitration".

[60] AIR 2002 4 SCC 105.