Page 3576 - 3590 **DOI:** *https://doij.org/10.10000/IJLMH.115285*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

International Commercial Arbitration: Contemporary Legal Issues with Special Reference to India

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ABSTRACT

Due to the development of the society, human clashes are inescapable. As a result of this undesirable circumstance it is required that, there ought to be a powerful, simple and speedy instrument for resolution of such debate, separated from judiciary, which is as of now burdened with pending cases. In this circumstance international commercial arbitration has contributed immensely in the commercial field. The field of international commercial arbitration has developed with momentous speed in recent times. It has expanded significantly as the foremost viable dispute settlement mechanism and thus a critical and imperative apparatus for advancing worldwide trade and investment. Hence, conventions and pacts have been adopted, and specialized institutions have been set up, in order to move forward and encourage the working of international commercial arbitration. In India, with the modernization of the legitimate framework, since 1990, there has been a dynamic slant towards the codification of arbitration and ratification of progressive arbitration law. Eventually in 1996, after the failure of the Arbitration Act, 1940, India opened a modern chapter in its arbitration law when it passed the Arbitration and Conciliation Act, 1996. This Act is primarily propelled by the Model Law (1985). India too has joined different imperative international conventions on international arbitration, such as the Geneva Convention, 1927 and especially the New York Convention, 1958 on the implementation of foreign awards. This paper throws light on the contemporary legal issues related with international commercial arbitration, with special reference to India.

Keywords: *International Commercial Arbitration, Dispute settlement mechanism, Resolution, Judiciary, Modernization.*

I. INTRODUCTION

Human clashes mushroomed with the development of society as it has been said that where there are two minds there will be three conclusions. Due to development of the society human clashes are inescapable and due to this undesirable circumstance it is required that, there ought

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 [ISSN 2581-5369]

to be an efficient, simple and a speedy component for resolution of such disputes.[2] It is additionally required that disputes must be settled at low cost and rapidly, so that the overburden on judiciary may be decreased and expedient equity may be guaranteed for such inevitable circumstances. Since, the ages, the civilization has recognized the right of each individual to look for redressal through courts and tribunals. Conventional concept of "access to justice" as caught on by common man is to reach out to the courts of law. For a common man a court is where equity is allotted out to him. But the courts have become out of reach, due to different obstructions such as destitution, social and political backwardness, lack of education, ignorance, procedural customs and the like. To induce justice through courts one should go through the complex and exorbitant strategies included in litigations. This made the individuals to think of a framework to resolve their disputes outside courts agreeably.

This underlines the requirement for a satisfactory and viable dispute resolution mechanism, which is a vital prerequisite for the subsistence of a civilized society and a welfare state. They looked for a dispute resolution mechanism which is arbitration, mediation, conciliation, negotiation etc. Alternative Dispute Resolution or ADR alludes to a conglomeration of dispute resolution strategies that basically serve as substitute to litigation and are by and large conducted with the help of an impartial and autonomous third party. The essential basis of ADR as the expression itself infers is to resolve dispute outside the customary legal framework and so amid the whole procedure of appreciation of ADR, the genesis remains as litigation. ADR methods have hence developed as particular substitutes to the courts, set up under the writ of the state and consequently the tag 'alternative' has been coined.

In practice some popular kinds of arbitration are as follows:

1. **Ad-hoc Arbitration:** it is a kind of arbitration where the disputes may allude for arbitration even in the absence of arbitral agreement. It is found reasonable for international as well as for domestic arbitration both.
2. **Domestic arbitration:** where both the parties for arbitration are from Indian territory and place of arbitration is inside India. In domestic arbitration all the proceedings for arbitration are ruled by the substantive law of the India.
3. **International Arbitration**: where one of the party to the arbitration has a place outside the nation or where the subject matter of arbitration is located or enlisted or managed by

[2]Pankaj Kumar Gupta & Sunil Mittal, *Commercial Arbitration in India*, 2 International Proceedings of Economics Development & Research 6 (2011).

 [ISSN 2581-5369]

an authority of foreign national. The laws enforceable in International arbitration are represented by the law selected by the contracting parties.[3]

II. GROWTH AND DEVELOPMENT OF INTERNATIONAL COMMERCIAL ARBITRATION

(A) International Scenario

International Commercial Arbitration (ICA) has seen tremendous development in the late nineteenth and mid twentieth century and has undoubtedly become the favored technique for settling international business disputes in and around the world. Notwithstanding, the idea of disputant parties alluding to a nonpartisan outsider of their choice for the settlement of disputes between them is particularly more seasoned and goes back to ancient times. Arbitration is said to have existed years before law was built up, or courts were sorted out, or judiciary had penned down principles of law.

From 1950s, it appeared that the language of these Protocols and Conventions was a long way from perfect, with different deficiencies and ambivalent provisions. Neither of these Conventions has a lot of pragmatic impact today since they have been supplanted by the New York Convention, 1958. Maybe the most significant achievement in the whole history of ICA was the adoption of the New York Convention. Unmistakably, the amazing upswing of international arbitration and the triumph of arbitral organizations, for example, the ICC and others are firmly connected to the importance of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (from now on the NYC, 1958).[4]

The Convention was embraced—in the same way as other national arbitration legislations—explicitly to address the necessities of the international business network, and specifically to improve the legal system built by the Geneva Protocol on Arbitration Clauses (hereafter the GP, 1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (hereafter the GC, 1927) for the international arbitral procedure. The principal draft of what turned into the Convention was set up by the ICC in 1953. The ICC presented the draft with the perception that "the Geneva Convention, 1927 was an impressive step forward, yet it never altogether meets current financial prerequisites", and with the genuinely radical target of "getting the appropriation of a modern international system of implementation of arbitral awards."

Preliminary drafts of a revised convention were drafted by the ICC and the United Nations'

[3]Sumeet Kachwaha, *The Arbitration Law of India a Critical Analysis*, 12 Asian International Arbitration Journal 105-07 (2005).
[4]N.V.Paranjape, LAW RELATING TO ARBITRATION & CONCILIATION IN INDIA 23 (4d ed. 2011).

 [ISSN 2581-5369]

Economic and Social Council ("ECOSOC"), which at that point gave the premise to a three-weeks conference in New York (USA)— the United Nations Conference on Commercial Arbitration—graced by 45 States in the Spring of 1958. The New York Conference developed a document, the New York Convention-that was in numerous regards a drastically innovative document, which developed for the first time, an all inclusive and a global legal system for the international arbitral procedure. The first drafts of the NYC (1958) were centered altogether around the acknowledgment and authorization of arbitral awards, with no genuine regard for the implementation of international arbitration agreements. This drafting approach paralleled that of the Geneva treaties (where the GP (1923) managed arbitraton agreements and the GC (1927) tended to awards).[5]

The NYC (1958) made various noteworthy enhancements in the system of the Geneva Protocol and Geneva Convention for the implementation of international arbitration agreements and arbitral awards. Especially significant was the effort of the NYC to build up a solitary uniform arrangement of international legal parameters for the authorization of arbitration agreements and arbitral awards. The fundamental benefits of the NYC (1958) are: (i) the acknowledgment of arbitration agreements (according to Article II of the NYC, 1958) and, (ii) the setting of the parameters and criteria for the acknowledgment and implementation of international arbitral awards (according to Articles IV and V). It is as per these standards and criteria that national lawmakers have effectively been guided in international arbitral matters as far back as 1958. The Model Law additionally mirrors these criteria.

The expanding multifaceted nature of international transactions, the development of international trade and the despondency with the guideline of international trade by these different State laws encouraged an atmosphere conductive to harmonization and unification of these laws under the support of different international associations, including the United Nations. Along these lines, there have been a few endeavors at blending such laws. Prime among such endeavors was the adoption of the United Nations Commission on International Trade Law Arbitration Rules (hereafter UNCITRAL AR) which were molded in the mid-1970s out of the need to make an instrument for the settlement of arguments emerging in international trade in the form of globally acknowledged standards for Ad hoc arbitration.

Not long after embracing the UNCITRAL AR, in exertion to overcome the rest of the hindrances to international trade and the inconsistencies in national trade law, the United Nations Commission on International Trade Law (UNCITRAL) and the UN General Assembly

[5]Rajan R. Desing, A PRIMER ON ALTERNATIVE DISPUTE RESOLUTION (ADR) 593-601 (1st ed. 2005).

 [ISSN 2581-5369]

in 1985, likewise endorsed UNCITRAL Model Law (the ML,1985). This proposed, the ML (1985) was to be founded on the provisions of the NYC of 1958 and the provisions of the previously mentioned UNCITRAL AR.[6]

The UNCITRAL is an assemblage of world specialists which has as its principal reason the dynamic harmonization and unification of the national laws overseeing international trade. Its way to deal with harmonization has been to depend on Model Laws as opposed to international conventions. The ML was endorsed in 1985. The principle objectives of the ML (1985) are as per the following:

"[a] the liberalization of International Commercial Arbitration by limiting the role of national courts, and by giving effect to the doctrine of the 'Autonomy of the Will', allowing the disputant parties freedom to choose how their disputes should be determined;

[b] The establishment of a certain defined core of mandatory provisions to ensure fairness and due process;

[c] The provision of a framework for the conduct of international commercial arbitration, so that in the event of the disputant parties being unable to agree on procedural matters, the arbitration 'would nevertheless be capable of being completed; and,

[d] The establishment of other provisions to aid the enforceability of awards

and to clarify certain controversial practical issues."

The ML (1985) and its amendments of 2006, portray a huge forward advancement, exceeding the NYC (1958), towards the advancement of an anticipated "pro-arbitration" legal system for commercial arbitration. Nevertheless, the ML (1985) transcend the Convention by recommending in essentially more prominent detail the legal system for international arbitration, by explaining purposes of uncertainty or difference under the Convention, and by building up directly applicable national enactments.[7]

(B) Indian Scenario

In India, arbitration is an integrated part of its history and legal system, as it relies on different other enactments for its legitimate working. Henceforth, the Arbitration law can't be scrutinized completely, until the legitimate setting within which it has been created is investigated adequately.

a. The Arbitration Act, 1940

[6]Gary B. Born, INTERNATIONAL COMMERCIAL ARBITRATION 10 (2d ed. 2014).
[7]*Id.* at 14.

 [ISSN 2581-5369]

Finally in 1940, The Indian Government opened a significant chapter in the entire history of the law of arbitration in British period, as in this year was passed the Arbitration Act, 1940 (hereafter the Act, 1940). The Act was framed based on the Act of 1899, certain parts relying to a great extent on the second schedule of the Code of Civil Procedure, 1908 and the English Arbitration Act, 1934. The Act was a consolidated enactment on arbitration, yet it didn't contain the sections with respect to ICA and uniquely set out the structure inside which domestic arbitration was carried out in India. The provisions of the Act, 1940 may be summarized below:

1. It made provision for control of judicial intervention in three kinds as follows: – (i) arbitration without judicial-intervention; (ii) arbitration in suits i.e., arbitration with judicial intervention in pending suits; and (iii) arbitration with judicial intervention, in situations where no suit was pending before the court. It then continued to make further provisions, similar to all the three sorts of arbitration.
2. This Act of 1940 made provisions for safeguarding the 'arbitration agreement' from being vitiated by the presence of some deficiency in it. [Sections. 6 &7]
3. It presented certain authorities on the arbiters and the umpire to encourage the efficient discharge of their capacities. [Section. 13]
4. In instances of arbitration with judicial-intervention, where a suit was pending, all the interested parties may consent to direct any issue in dispute to arbitration. The Act,1940 made elaborate sections with regard to the selection of arbitrator and the order of reference. [Sections. 21 to 25][8]

b. The Foreign Awards (Recognition and Enforcement) Act, 1961

As per Lord Mustill the NYC (1958) was 'the best example of International enactment in the whole history of business law' where India was a signatory to it. The Foreign Awards (Recognition and Enforcement) Act, 1961 came into power on 30th November, 1961. The fundamental objective behind the aforementioned Act was to give impetus to the NYC (1958) and the Act recommended the law and methodology for the application of foreign awards in India to which, the said convention applied.[9]

c. The Arbitration and Conciliation Act, 1996

To internationalize the arbitration law in India, it was felt that the Arbitration Law, 1940 had

[8]Derek Roebuck, *Sources for the History of Arbitration: A Bibliographical Introduction*, 14 Arbitration International 237-343 (1998).
[9]Rebello & Akash Pierre, *Of Impossible Dreams and Recurring Nightmares: The Set Aside of Foreign Awards in India*, Cambridge Student Law Review 286-87 (2010).

 [ISSN 2581-5369]

turned obsolete in the present situation of economic reforms around the world. The Commission of India, domestic and international arbitration bodies and few specialists in the field of arbitration connected with business and industry and all concerned – the disputants, arbiters, legal advisor and the courts have proposed broad amendments and changes to the Act, 1940 to make the law increasingly compelling and adaptable to suit more, with the law connected with the settlement of disputes with regard to local and global business matters. The Arbitration and Conciliation Bill, 1995 was passed by the Parliament and on sixteenth August 1996, the Bill got the consent of the President Shankar Dayal Sharma and appeared on the statute book as the Arbitration and Conciliation Act, 1996 on 22nd August 1996.

The Act, 1996 has two fundamental parts about Arbitration and part III of the Act based on UNCITRAL Conciliation Rules, 1980 is just about Conciliation. Part I of the Act is increasingly extensive and has provisions for any arbitration directed in India and authorization of arbitral awards thereunder, regardless of nationalities of disputants. What's more, Part II of the Act is more confined and accommodates enforcement of foreign arbitral awards. Any arbitration held in India or implementation of arbitral award thereunder (regardless of whether domestic or international) is administered by Part I, while implementation of any foreign arbitral award to which the NYC (1958) or the GC (1927) applies, is ruled by Part II of the Act, 1996. The Act, 1996 contains two unique characteristics that varied from the ML (1985). To begin with, while the ML (1985) was intended to apply just to ICA, the Act of 1996 applies both to international and domestic arbitrations. Secondly, the Act, 1996 transcends the ML (1985) in the domain of limiting legal intercession.

The present Act, 1996 is for the most part propelled by ML (1985). The main aim of the Act was to accomplish twin objectives in arbitration as a practical and speedy component and with the slightest Court involvement for the settlement of commercial disputes. The strong backdrop and close contact with international arbitration laws and even current international guidelines are not satisfactory for managing the issues of arbitration in a nation like India as the issues are associated with the difficulties of its enforcement in India.

III. INTERNATIONAL COMMERCIAL ARBITRATION UNDER INDIAN LAW

Current Indian arbitration law, the Arbitration and Conciliation Act, 1996 (hereafter the Arbitration Act, 1996 or the Act, 1996), became applicable from 25th January 1996. This Act is a unification legislation as it was expected to have impact on different global commitments embraced by India, specifically, the Model Law, 1985 (the ML, 1985), the New York Convention, 1958 (the NYC, 1958) and such. The present Act, 1996 not only unites, but also

 [ISSN 2581-5369]

merges Indian Law both on Domestic and International Commercial Arbitration (ICA).

(A) Arbitration in India: General Features

It can be deduced that the main objective of the Act, 1996 is to endorse and expedite arbitration. It presents arbitration as a dependable technique for dispute resolution, with obligatory and enforceable results. It is shown as a regulated technique that can't be halted with delaying strategies. For instance, a challenge to the selection of an arbiter can't stop the procedures, except if it is allowed either by the arbitration tribunal or the Court. The Act additionally plans to constrain court intercession in arbitration proceedings. For example, an arbitration tribunal selects its own jurisdiction, without the probability of court intercession, until the termination of the arbitration proceedings.

As per the Act of 1996, arbitration implies any 'Arbitration' regardless of whether governed by permanent arbitral organization. The definition covers a wide range of arbitration conducted through any method of arbitration, yet doesn't throw any light on the term arbitration itself. Further, the definition covers solely part I of the statute, although generally definitions cover the entire specific legislation. In this Act, this is a novel step which limits the extent of definitions, maybe to moderate the disagreements regarding interpretation, and without expanding the extent of perplexity.

Another difficult issue identified with the idea of arbitration in International arbitration is characterizing what is implied by the expression "International". The ML considers an arbitration 'International' if:

i. The place of business of the disputants is in multiple States;

ii. The place of arbitration is outside the State of which the disputants have their places of business;

iii. The place where a significant part of the obligations of the business relationship is to be performed is outside the State wherein the disputants have a business;

iv. The place with which the subject matter of the dispute is most firmly associated is in a State other than the one in which the disputants have their places of business; or

v. The subject matter of the arbitration agreement is identified with multiple states.

(B) Arbitration Agreements

The Act of 1940 and also the Act of 1996 perceives both arbitration clauses and submission agreements as the legitimate reason for referring to arbitration, disputes that may emerge between two disputants in regard of their legal relationships, regardless of whether contractual

 [ISSN 2581-5369]

or not. It pursues that the argument must be of a lawful nature. Moral spiritual related issues are not fit topic of arbitration. Article 7(1) of the Act of 1996 provides that *"In this Part, 'arbitration agreement' means an agreement by the disputants to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not."*

(C) Arbitration Tribunal

The arbitral tribunal is the result of an arbitration agreement by disputant parties. It is up to the disputants to bestow upon it such powers and recommend such course of action for it to pursue, as they think fit, insofar as they are not contrary to law. The arbitration agreement must be in compliance with the rule of law. According to the Supreme Court decision in Irrigation Deptt, Govt of Orissa v. G.C. Roy,[10] the arbitral tribunal should likewise act and make its award as per the general tradition and agreement. Article 10 of the Arbitration Act, 1996 says that the arbitration tribunal must be established by the arbitration agreement. Following Article 10 of the ML (1985), the quantity of arbiters can be decided by the disputants, however in the event that they fail to do as such, the number will be three.[11]

(D) Arbitration Procedure

It was the Act of 1940 that initially set procedural principles for arbitration in India. The substitution of the Act of 1940 with the Act of 1996 presented a lot of procedural standards more in accordance with the guidelines acknowledged by the rest of the world. The Procedural law (or lex arbitri) is just one division of legal principles which are relevant and utilized during arbitration procedures by the arbitral tribunal. The lex arbitri as a component of arbitration when it comes to such a perplexing subject as guideline of arbitral procedures might be classified underneath:

1. Internal Procedural Law: A body of rules which identifies with the internal conduct of arbitration procedures and administers relations between disputant parties and disputants and arbiters.
2. External Procedural Law: A body of law which controls the connection between tribunal and national courts in instances of acknowledgment and imposition of the award or other procedural issues like interim actions or challenge of arbiters.

[10]A.I.R. 1992 S.C. 732.
[11]Vikram Raghavan, *New Horizons for Alternative Dispute Resolution in India,* 13(4) Journal of International Arbitration 5-7 (1996).

 [ISSN 2581-5369]

(E) Arbitral Awards

Arbitration proceedings are completed when an award is made by the arbitration tribunal. The arbitration tribunal, whenever comprised of more than one individual, must make its award based on the majority vote, except if otherwise is concurred by the disputants. Thus, it is possible that the disputant parties concur that the award must be made in a united manner, or by the chairman of the tribunal. The Act of 1996 necessitates that the arbitration award or a part of it can't be published without the consent of the disputant parties. This is on the grounds that arbitration is a classified way of dispute settlement. Nevertheless, when an arbitration case is brought before the court, regardless of whether for implementation or setting aside, it might become public and accessible for inputs and reference.

In India, there has been a cognizant endeavor to modify those arrangements and standard guidelines that block arbitration, or to discover a few different ways of accommodating those principles with the necessities of present day arbitration. The Indian Law of arbitration has increasingly become tilted to the internationally acknowledged models of arbitration, as it is intensely influenced by the ML, 1985. It has additionally become increasingly regulated and codified. International arbitration, especially in commercial disputes, is perceived, under the present Indian Law of arbitration. Wide definition of ICA, in India, encourages arbitration in different territories of international business, investment, improvement and transfer of technology. Under Indian Law, formal necessities of arbitral agreements and awards are significantly more detailed than they are under numerous other legal frameworks; and this probably won't be viewed as beneficial to international arbitration.

IV. EMERGING ISSUES IN INTERNATIONAL COMMERCIAL ARBITRATION

(A) Multi-Party-Multi Contract Arbitration

A special feature about the International commercial contracts is that these business contracts are commonly subjected to an arbitration clause. The beginning of Arbitration lies in a Contract. It gives more freedom and opportunity to the parties to not only select the law overseeing the contract, the arbitration agreement, the seat of arbitration but also additionally enables them to pursue a lot of procedures of their own decision which is generally best fitted to the dispute involved.

It isn't obscure that multi contract circumstances do emerge between two or more parties, which unfurl with it the Pandora's Box, presenting surprising dilemmas. It is the consistently changing nature of the work managed by the parties that complex contracts are drafted which as a result has set off the quantity of complex arbitration cases involving multiple parties. Since the

 [ISSN 2581-5369]

Arbitration Tribunal can exercise jurisdiction only upon the parties who have agreed to determine their dispute by the method of arbitration, the Tribunal therefore can't issue interim orders which will bindingly affect the third parties.

In India it is the Arbitration and Conciliation Act, 1996 which governs the arbitrations. Within the 1996 Act, there are numerous features of Multi-Party Arbitrations. In *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya &Anr.*[12] the Supreme Court held that once the suit has been initiated between the parties, some of whom are parties to the arbitration agreement and some not, there can be no referral for arbitration on the grounds that no bifurcation is admissible. Besides, a bifurcation, where one part is to be judged by the court and the other part by the Tribunal would result in delay.

In, *Abu Dhabi Gas Liquefaction Co. Ltd. v Eastern Bechtel Corporation*[13], where multiple contracts were signed by multiple parties, for doing certain development work. The employer instituted arbitration against the chief contractor who denied his obligation and put it on sub-contractual workers. Since the agreement between the chief contractual worker and the subcontractor was not quite the same as the principal agreement and which likewise contained an, arbitration agreement, the chief worker wanted to start separate arbitration proceedings against the sub-contractual workers. Lord Denning ordered the unification of the two arbitral proceedings by holding the view that it was required so as to set aside time and cash and to avert the probability of conflicting awards.

This judgment clears the position and sets out the law that under Section 45 non-signatories can be made parties to the arbitration proceedings, in case they are claiming through or under any party to the arbitration agreement.[14]

(B) The Issue of Confidentiality in International Commercial Arbitration:

Most parties choose arbitration as a dispute resolution process, as it provides security and confidentiality. Nevertheless, the parties to a commercial arbitration would be shocked to discover that the supposition of confidentiality may not often be correct and making such a presumption would be imprudent, when the extent of arbitral confidentiality is a long way from a settled issue. There is no uniform practice with regards to the confidentiality of the arbitration proceedings and this is to a great extent subject to the law of the place where the arbitration is being carried out, the principles of the institutions, if any, which are administering the

[12](2003) 5 SCC 531.
[13](1982) 2 Lloyd's Rep. 425, CA.
[14]Vikram Raghavan, *supra note* 9, at 11.

 [ISSN 2581-5369]

arbitration and also whether the parties have acted actively to save privacy.

In India, the Arbitration and Conciliation Act 1996 (the Act) is quiet about the privacy of the arbitration procedures in its unequivocal terms. The Act, under section 75, sets down confidentiality provisions for conciliation procedures and according to the section, despite anything contained in some other law for the time being in force, the conciliator and the parties will keep classified all issues with respect to conciliation procedures. Confidentiality will stretch out likewise to the settlement agreement, barring where its revelation is important, for achieving the object of execution and imposition."

In addition under section 81 it is laid out that the parties will not depend on or present as proof in arbitral or juridical procedures, regardless of whether such procedures identify with the dispute that is the subject of the conciliation proceedings –

i. Views communicated or proposals made by the other party in regard of a possible settlement of the dispute;
ii. Admissions made by the other party throughout the conciliation proceedings
iii. Proposals made by the conciliator
iv. The fact that the other party had shown his eagerness to acknowledge a proposition for settlement made by the conciliator.

What can be seen is that the Act ensures the confidentiality of different records and materials which are created and produced in the Conciliation and restricts it from being admitted or relied upon in future juridical or arbitration proceedings, which in any case denies them from being detected in future procedures and also invalidating their evidentiary incentive if at all, a party introduces or relies upon them. However, the Act is quiet about similar circumstances in the arbitration proceedings and subsequently leaves scope for question, varying perspectives and vulnerability. This opens the opportunity for the parties to observe party autonomy in connection to the issue of confidentiality by adding definite confidentiality clause in the agreement itself.

(C) Appellate arbitration clause: two-tier arbitration

In the traditional justice system, the right of appeal is viewed as a basic component of justice. The appeal provision involves substantive right and not only a part of procedural law. The existence of an appellate jurisdiction acts as a protection against biasness and human error at the lower level of authority.

The endorsement of this idea of arbitration has brought about the novel idea of two-tier or

 [ISSN 2581-5369]

appellate arbitration. The proposition of party autonomy has been the cardinal rule of the commercial arbitration wherein the parties get the independence to devise the system for settling the dispute. Inclusion of appellate arbitration clause in their commercial contract can be said to be the augmentation of the rule of part autonomy. Appellate arbitration clause infers that the parties put the provision of an arbitral tribunal which will preside over in appeal over the award of the initial arbitral tribunal. This is known as two- tier arbitration.[15]

V. ONLINE DISPUTE RESOLUTION

Online Dispute Resolution ("ODR") comes as the latest member to the group of ADR. The Online Dispute Resolution is certainly another method for settling disputes and is clearly, an innovation driven mechanism. ODR utilizes either arbitration, negotiation, mediation or every one of them in combination. ODR is a territory specific, specialized mechanism for settling disputes. ODR basically is a technology driven system for settling disputes by utilizing: (a) web related instruments like email; and (b) videoconferencing and telephone conferencing. Online Dispute Resolution (ODR) and Online Arbitration have a great deal of relevance in the present reality where innovation drives pretty much every snapshot of our lives. Nevertheless, in India, there is lack of access to basic, reasonable and suitable PCs or internet availability which frames the foundation of any online arbitration. The uneven design of technological network connectivity in India obstructs a positive approach towards online arbitration or mediation.[16]

In India, till today, arbitration and conciliation have manifested favourable methods to determine disputes between parties. Subsequently, different State offices, for example, Indian public sector undertakings likewise prefer arbitration or other ADR components to determine disputes between one public sector undertaking and another. Statutory Arbitrators are recommended to settle disputes concerning special Acts, for example, Land Acquisition Act, 1894, Indian Electricity Act, 1910, The Railways Act, 1819.

The Arbitration and Conciliation Act, 1996 is drafted based on UNCITRAL Model Arbitration Law and UNICITRAL Conciliation Rules. As per the Arbitration and Conciliation Act, 1996 any party can start conciliation inside 30 days of invitation to take an interest in conciliation and after the selection of a Conciliator. The norms of natural justice and fair play help in arriving at a settlement despite the fact that the choices are not authoritative and the parties can mutually or unilaterally end a proceeding. It is crucial to take note of the fact, that if parties consent to a settlement and sign a binding contract, the equivalent is enforceable in a court of law.

[15]William F. Fox, INTERNATIONAL COMMERCIAL ARBITRATION 201 (3d ed. 1998).
[16]*Id*. at 205.

 [ISSN 2581-5369]

ODR holds a prominent part in making a proficient system for dispute resolution utilizing Information Technology and to advance development of e-commerce business. ODR is likewise a reference point of light that shows advancement towards improvement of a homogenous cyber law similar to the initiation of lex mercatoria. This procedure additionally shows how traditional obstacles of disagreements in customary administrative frameworks, socio-cultural, lawful and psychological approaches can be perfectly spanned by the sheer capacity of innovation and technology. Such is the intensity of technology, only if it is put to the correct use.[17]

VI. CONCLUSION

The aim and object of International Commercial Arbitration (ICA) system mechanism for the most part is to give a convenient, unprejudiced, reasonable, rapid and viable condition for settling disputes connected to international commercial issues. For all intents and purposes, the path for International Commercial Arbitration (ICA) in India isn't smooth. It is still in nascent stage filled with ambiguity that prevented in successful working of this strategy in India which is multifold-beginning from rising needs, to alteration or correction of specific provisions of the Arbitration Act, 1996, to changing the outlook of every single potential party who is associated.

The tendency towards rising judicial interference which will in general meddle with arbitral autonomy is a crucial factor which should be reflected. The need is to accommodate and blend arbitral autonomy and finality with judicial review of the arbitral procedure. UNCITRAL Model Law endeavors to advance consensus and consistency in this arena. The Government of India's changed outlook to make India as the global center point for International Commercial Arbitration for the settlement of cross border business issues. In India, in 1996, the Arbitration and Conciliation Act, 1996, was passed with the positive thinking that it would bring positive change, however fell into its very own abyss. Various choices from the courts gradually guaranteed that the favored seat in any cross-border contract was constantly an intensely negotiated point and, usually, resulted in being either, Singapore, New York or London—the prominent global arbitration centers.

Present Indian law of arbitration is an accomplished achievement in a generally brief timeframe. Notwithstanding, there are a few challenges and lacunae that should be addressed. The Indian legal framework has an exhaustive set of rules administering commercial arbitration. The majority of these principles are set out in a statute, separate from other category of laws, like the, Law of Arbitration 1940, while the rest are amalgamated in different statutes, for example, the Arbitration Act, 1996 for civil and commercial disputes. The procedure of the improvement

[17]Russell, ARBITRATION 345 (23d ed 2007).

 [ISSN 2581-5369]

of the Indian law of arbitration demonstrates a move towards fortifying the contractual provisions of arbitration, instead of its judicial attributes. Such a step can strengthen the trust of overseas businesses. The degree of court intercession in the arbitration procedure is presently constrained. In any case, shielding arrangements are provided to ensure a proper arbitration procedure and, all the more significantly, acquiescence with its result.[18]

It is a perfect time for a revamp of India's arbitration legislation. By recognizing internationally acknowledged practices and rules, the Indian law of arbitration ought to be altered with an object of evacuating the genuine loopholes and problems referenced above and to improve its arbitration scenario on a local as well as global level. Adoption of different enactments controlling arbitration, including international arbitration, setting up bodies dealing with arbitration, whether domestic or international and compliance with global and regional treaties and pacts ought to be achieved while an endeavor is made at harmonization between them. Absence of such harmonization prompts perplexity and undermines the very object of resorting to arbitration, which is clarity and saving of time. Cautious domestic or global synthesis and legitimate transplants in the zone of International Commercial Arbitration might be helpful, only when that they are in harmony with the remnant of legal body in India.

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[18]Alan Redfern & Martin Hunter, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 24 (3d ed. 1999).

 [ISSN 2581-5369]