CHAPTER 1

AN INTRODUCTION TO ARBITRATION

1.1 Introduction

Human species, undoubtedly the finest creation of God, is also the most intelligent. This species has also put the best of its efforts to excel in every field and has stretched its ability to such an extent that it sometimes thinks that it has reached the level of challenging its creator, until a calamity like an earthquake, tsunami or Covid strikes. Newer inventions by humans have not only made life more meaningful but also changed the dimensions of trade and business. If the development of aviation wrote a new chapter in international trade, the invention of the internet became the game changer in trans-border trade and commerce. But with the increase in international trade, disputes also increased. The existing judicial system for dispute resolution was inadequate to address the requirements of the industry. When we hear Chairpersons and CEOs saying that they don't have time to even breathe, spending years or sometimes decades in dispute resolution is certainly not acceptable, which gave rise to the need to find an alternative for dispute resolution.

Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable. Other forms of ADR include mediation (a form of settlement negotiation facilitated by a neutral third party) and non-binding resolution by experts.

There is no precise definition of arbitration. None of the Acts or statutes defines it either. So different people perceive it differently like the story of the four blind men

describing an elephant. For students or academicians, it is an alternative dispute resolution system, for stake holders it is an effective and speedier dispute adjudication system, for retired judges of higher Courts, it is an avenue for income, much higher than the salary they were drawing and for small traders it is luxury litigation, generally conducted in the board room of five-star hotels for whom the arbitration clause in the agreement itself is a white elephant!

India, the largest economy of the world can fulfil its dream of becoming a super power only by excelling in trade and commerce. We have established our supremacy in the IT sector and will outperform many developed countries in other fields too. The Indian economy was projecting a growth rate of 7.5 per cent for India in 2016.[1] The Covid – 19 pandemic will definitely have its effect on this rate, but so will it on the economies of other countries. However, in the US and UK, disputes usually take a few years, whereas in India it is common for disputes to go on for more than a decade.[2]

Another way in which many Indian corporates are acting in order to avoid being entrenched in the legal system in India is to look overseas. Indian entities are more frequently looking to other jurisdictions for a remedy when an investment or contract encounters difficulty and often opt to have an arbitration clause in their contract to hold proceedings on foreign shores – the preferred venue being the Singapore International Arbitration Centre.[3]

Arbitration, though seemingly a fancy new term for adjudication of disputes, has existed since time immemorial. Though not in its present form, arbitration has found place even in the Aesop's Fables.

As children, we have all grown up listening to stories by our grandmothers of how two cats fighting over a piece of cheese, referred the matter to a neutral arbitrator in the form of a monkey. However, in that case, the 'arbitrator' devoured the entire subject matter of

[1] IMF, World Economic Outlook Update, July 2015
[2] R. Ghosh, "*Commercial Disputes in India"*, Kroll Vol. 9 Issue 3, 2011
[3] See Chapter 3 for a discussion on the SIAC

the dispute for his own benefit! King Solomon had a strange dispute of two women each claiming to be the mother of a baby, and he resolved the matter between them after listening to the version of each woman. There abound similar folk tales in India. Tenali Raman, who later became the court jester of King Krishnadevaraya, used to resolve disputes that occurred amongst his friends while playing. This was plain and simple arbitration by hearing both parties and then giving a verdict. It may be said that all these eventually led to the framing of the first Arbitration Act in 1940, eventually progressing to the latest amendments of 2020. The instances narrated above had no judge in a formal sense. The decision of the monkey or of Tenali Raman was not binding on the cats and the friends respectively. Besides, it did not need several 'hearings' or the payment of any fees. Arbitration, as it has developed over the years, involves expenses not just in terms of the time consumed of the arbitrating person, but also in terms of conveyance of the parties and/or the arbitrator, the cost involved in the venue of the arbitration, the documents and records required for presenting the facts of the matter to the arbitrator, etc. Despite all these expenses, it is still economical as compared to litigating in a court of law. The entire process of litigation is a rigmarole, court fees need to be paid, multiple copies of documents need to be printed, adjournments are a common occurrence, and lack of subject knowledge in some cases or paucity of time on the part of the advocates owing to handling litigation matters simultaneously, is a disadvantage to the litigating party. On the other hand, arbitration is a speedier method of resolving disputes, the parties have the option of choosing their own arbitrator unlike the court where there is no option to choose your judge - which would be helpful when professional knowledge is required more than legal - and it is conducted in an informal setting where a party can put forth his/her case without appointing a counsel for representation. In addition to all these advantages, the decision or award of the arbitrator has binding force.

Thus, arbitration was intended to not just provide a cost-effective and quick remedy but also incidentally help to reduce some of the backlog of cases in courts. Despite these being the objective of the arbitration statutes, the purpose does not seem to have been served in an increasing number of cases. More often than not, the matter drags on and since senior counsels are engaged for 'better' representation, the cost increases with not

much difference between it and litigation cost. Arbitration has become a mixed bag of cost and convenience. An overhaul of the legal provisions and creating awareness are necessary in order to make it the preferred mode of dispute resolution.

The Supreme Court in *F.C.I. v. Joginderpal Mohinderpal*[4], at para 7 observed –

"We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situation, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have been done."

Several other cases adversely commented upon the working of the 1940 Act. The anguish of the Supreme Court is evident from the observations of D.A. Desai J. in *Guru Nanak Foundation v Rattan Singh*[5] :

"Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedy for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940 ("Act" for short). However, the way in which the proceedings under the Act are conducted and without exception challenged in Courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under that Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal Forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Court been clothed with 'legalese' of unforeseeable complexity."

To make India the hub of international commercial arbitration, the government needs to make concentrated efforts. Some efforts are also required on the part of the legal

[4](1989) 2 SCC 347
[5](1981) 4 SCC 634

fraternity and the business community in India. Multinational companies/foreign companies will only pick India as the preferred destination for arbitration if the environment for conducting international arbitrations in India is corporate-friendly. Mere amendments to the law governing international commercial arbitration in India are not going to help. The full support of the legal fraternity and the Corporates in India is required, which cannot be achieved only on the basis of nationalist sentiments or patriotism but on the basis of practical criteria and the efficiency of the Indian justice delivery system. These and many other problems have led to this study.

1.2 Statement of Problem

A Study on International Commercial Arbitration in India: Challenges and Opportunities

1.3 Rationale of the study

The rationale of the study is as below -

In an economically liberalising regime, there is an underlying need to have a commercial dispute resolution law, which brings about cross-border uniformity in dispute resolution procedure. As judicial systems in different countries are dissimilar and fraught with their own peculiarities, it is a complex matter to imbibe within the judicial system a cross-border uniform procedural code for adjudication of commercial disputes.

This impediment can be overcome by adopting an alternate forum for commercial dispute resolution. Enacting a standardised arbitral procedural code is one such mechanism whereby a foreign investor is not thrown into unfamiliar territory when a legal dispute arises. However, the uniformity only continues so long as the law is interpreted in accordance with its international meaning and interpretation of the law is in consonance with accepted international norms and understandings. Since adroitness is a known devil of advocacy, very often brilliant and baffling legal defences are taken

up to throw the arbitration mechanism into a tailspin.

The law governing arbitration needs to be revamped to bring about major changes pertaining to speedier and more cost-effective adjudication of disputes. The Arbitration and Conciliation (Amendment) Act, 2015 aimed to amend the Arbitration and Conciliation Act, 1996, which was further amended by the 2019 Amendment Act. The effect of the 2019 Act is required to be examined keeping in mind the rise of international arbitration amongst Indian multinationals. The approach taken by international parties towards choosing India as the seat of arbitration depends largely on the level of interference by the courts in matters that are the subject matter of an arbitration agreement.

The Arbitration and Conciliation Act, 1996, being amended by the Arbitration and Conciliation (Amendment) Act, 2015 and then the Arbitration and Conciliation (Amendment) Ac,t 2019, has not been the subject of any comprehensive research till date. With an increase in the presence of arbitration clauses in commercial contracts, it is important to examine whether the existing statute is sufficient to address the concerns of the international community. The need for effective and popular national level arbitration institutions in India along the lines of SIAC, CIETAC and LCIA is felt more than ever. However, though arbitration seems all gold, the fact that increasing costs and consumption of time are leading parties to incline away from the ADR methods cannot be denied.

Thus, the researcher has taken this topic mainly because of the following:-

1. What is the reason behind India not being a favourable arbitration destination?

2. What will be the significance of the Arbitration and Conciliation Act, 1996 along with the subsequent amendments in the light of India not being a favourable arbitration destination?

3. Does the Arbitration and Conciliation Act with all its amendments still suffer from lacunae that can harm the main object behind its framing?

4. Do the Indian Courts continue to instil faith in foreign parties by creating a trust-worthy enforcement regime?

5. What are the measures that can be taken apart from legislative reforms to make India a favourable destination for international arbitration like Singapore and London?

6. What is the perception of lawyers, arbitrators and academicians as regards the Arbitration Act and India being a favourable arbitration destination?

1.4 Object of the study

The object of the study is as below -

Length of arbitration is 569 days in India and recognition and enforcement proceedings take 1,654 days.[6]

The main purpose of this research is to examine the existing arbitral framework in India with respect to International Commercial Arbitration and to analyse the challenges faced by India in attracting investors and parties to a commercial contract to settle disputes in India. This requires a solid faith in the Indian arbitral framework, which in turn requires a solid legal base to adjudicate such disputes. The Arbitration and Conciliation Act, 1996 was a much needed law that was brought into force at that time. However, changing attitudes and changing contractual terms require a dynamic law that can supplement the existing framework. An evolution in the form of the Arbitration and

6 FDI Regulations Database, 2012

Conciliation (Amendment) Act, 2015 further amended by the Act of 2019, came into the picture with a promise to strengthen the diminishing faith of international parties in Indian arbitral laws and Indian courts.

The researcher has conducted the study with the following objectives:

1.4.1 To analyse the history of arbitral laws in India and how it has progressed over the years to take its present form.

1.4.2 To examine the main concerns in the 1996 Act, the changes suggested by the 246th Report of the Law Commission and whether the subsequent amendments have managed to address and incorporate all of them.

1.4.3 To understand the rationale behind arbitration as an alternative method of adjudication.

1.4.4 To examine the effect of the amendments to the Arbitration and Conciliation Act, 1996 on international agreements and India as a favourable arbitration destination.

1.4.5 To study the UNCITRAL Model Law with reference to the Arbitration and Conciliation Act, 1996 as amended from time to time.

1.4.6 To compare the Singapore and English arbitration law and the Indian arbitration law and to examine the approach taken by courts in favourable arbitration destinations.

1.4.7 To analyse the decisions of various High Courts and the Hon'ble Supreme Court in matters pertaining to Arbitration.

1.4.8 To study the challenges and opportunities in India with respect to International Commercial Arbitration.

1.4.9 To take into account the opinions of lawyers, arbitrators and academicians as to what still lacks in the amended arbitration legislation and their suggestions in conducting party-friendly arbitrations with least judicial interference.

1.5 Scope and Delimitation of the study

The scope of the study extends to determination of the fact as to whether the Arbitration and Conciliation (Amendment) Act, 2019 and the subsequent Ordinance of 2020, will be enough to plug the loopholes in the existing Arbitration regime. The focus of the study will be on intervention of the courts in cases that are the subject matter of an arbitration agreement.

The research has been limited to the effect and significance of the amendments to the Arbitration and Conciliation Act, 1996, but will take into account the efficiency of Arbitral laws around the world vis-à-vis India. A few important judgements by courts in Singapore and the UK are also studied in this regard. Arbitration practice in party friendly jurisdictions like Singapore and London forms a part of the study. The study is hence limited by the numerous amendments that are implemented on the basis of recommendations of the 246th report of the Law Commission and the judgements of courts in India, Singapore and the UK.

1.6 Significance and Utility of the Study

Arbitration law in India exists from 1899. It has existed for more than 100 years. A major amendment to the law happened in 2015. After which, there have been amendments in 2019 as well as 2020. Despite so many amendments in such a short span of time from 2015, India is still not a preferred destination for international arbitration. Through the study, the researcher has aimed to find the reasons for the aforementioned problem and suggest possible solutions for the same. If the arbitration law in India is revamped and India becomes a preferred country for international arbitration, India

stands to gain immensely from foreign investment and businesses willing to set up shop in India. This will result in huge inflow of foreign investment. The direct beneficiary of the study would be the legislature, since a proposed Act is suggested and formulated by the researcher. The indirect beneficiary is the business community and the people of the country who stand to gain from greater foreign investment.

1.7 Hypotheses of the Study

The research was conducted on the basis of the following hypotheses:

1.7.1 Arbitration has emerged as the most preferred alternative mechanism for dispute resolution in India as well as around the world.

1.7.2 The need for arbitration will only increase with time, requiring the law to be continually brought at par with the then requirements.

1.7.3 Despite arbitration being conducted since decades, the law relating to arbitration is in dire need of an overhaul.

1.7.4 The Arbitration and Conciliation Act, 1996, though based on sound premises, has failed to deliver the expected results.

1.7.5 Despite having provisions relating to international commercial arbitration, India is not a preferred place for international arbitration.

1.7.6 The amendments to the Arbitration and Conciliation Act, 1996, will bolster several inept provisions of the law.

1.7.7 India has the potential to be the venue for international arbitration and can stand on the same footing as Singapore and London in terms of party-friendly jurisdictions.

1.8 Research Methodology

The present study is a doctrinal as well as non-doctrinal study. The foundation of the study rests on the Arbitration and Conciliation Act, 1996 and its subsequent amendments along with an analysis of judicial decisions by courts. Hence, an analysis of certain statutory provisions is necessary. Judicial precedents back these statutory provisions, and in certain cases, by way of judicial activism, fill a gap in the statute as regards interpretation.

Not only this, but research conducted by various international scholars and legal luminaries is examined in detail while conducting the study. International opinion and approach towards arbitration plays a major role in forming a sovereign nation's own laws, as is the case in the Act of 1996 being based on the UNCITRAL Model Law.

For the vast amount of qualitative and quantitative data that is collected during the course of the research, graphs and tabular images are used to analyse how to paint a bigger picture of the arbitral scenario in India and the developed countries. Such techniques are useful for reducing and/or guiding analysis of large amounts of text, although these approaches result in a lot of detail and require piecing together interpretations from multiple, distinct reports.

Sources for the research are in the form of international journals on arbitration, books, articles by scholars and eminent legal minds, judicial precedents and the 246th Report of the Law Commission, which is the driving force behind the amendments. Publications by reputed law firms are also examined and referred to in the study.

Foreign judgements, particularly those by courts in Singapore and the UK are also examined.

The non-doctrinal part of the study involves the preparation of a questionnaire and collecting responses from the target individuals in the field. The questionnaire uses a sampling method known as purposive sampling since the target audience comprises

only of lawyers practising in arbitration, senior advocates, arbitrators and academicians. This not only helped give an insight into the current trends in arbitration but also helped with formulating a solution taking into account multiple suggestions and criticisms concerning the existing framework for arbitration in India.

The study follows the ILI style of citation for footnotes and references.

1.9 Scheme of the Study

In order to fulfil the above objectives, the study is divided into the following chapters-

CHAPTER 1: AN INTRODUCTION TO ARBITRATION

This chapter deals with the introduction and the need for the research to be carried out. This will include general introduction to the research topic, object, scope, significance and utility, research questions and hypotheses. The chapter scheme finds place in this chapter along with a brief review of related literature.

CHAPTER 2: TRACING ARBITRATION THROUGH THE TIMES

This chapter traces out the arbitral law and its evolution in India. The chapter begins with the influences of Islamic law, Christian law and Hindu law on arbitration. The evolution of arbitration from the pre-nineteenth century to the present day legislation is examined in detail in this chapter. This chapter will also focus on how civil and commercial disputes were resolved before the arbitration system was evolved and why it was decided to amend the law. Salient features and drawbacks of the laws pertaining to arbitration in India are examined in this chapter. The study that is carried out in this chapter gives an insight into how the need for amendment in the arbitration law was felt with the passage of time. The recommendations of the Law Commission that gave us the present day Arbitration Act are also studied in this chapter. This chapter will also study the UNCITRAL Model Law and its comparison with the Indian

legislation.

CHAPTER 3: AN ANALYSIS OF INTERNATIONAL ARBITRATION LAWS

This chapter studies the various enactments, provisions, laws and rules in favourable arbitration destinations like Singapore and the United Kingdom and will provide an insight into why these destinations are the more preferred destinations over India. The chapter also discusses the impact of the provisions of the International Arbitration Act of Singapore, on making Singapore one of the most arbitration-friendly jurisdictions in the world, and the impact of the Arbitration Act, 1996 of the UK, on making the UK one of the most preferred destinations for arbitration in the European continent. The chapter is broken down into various sub-headings and topics under arbitration law and their provisions in each of the three laws are discussed in detail. Deviations of the Indian legislation from the legislations of Singapore and the UK are also studied in this chapter. The researcher has also included comments analysing each of the three laws after each sub-heading. Apart from legislations, certain landmark judgements of Singapore and the UK that have aided in supplementing the arbitration law in their respective jurisdictions, are also studied.

CHAPTER 4: AN ANALYSIS OF JUDICIAL DECISIONS

This chapter deals with important case laws and various judicial decisions given in arbitration cases by Indian Courts. Case laws are important to discuss because they show the actual face and implication of the prevailing law of the land. In a country like India where there are 25 High Courts, and one Supreme Court, there are bound to be contradictory judgements amongst various courts. However, the contradiction must result in legislative amendments instead of waiting till the Supreme Court clarifies the current legal position. Even in the Hon'ble Supreme Court, there have been instances where contradictory judgements have been delivered by coordinate benches. Such judgements do not instil faith in the mind of the foreign party that seeks to commence arbitration in India. Hence, it is necessary to study the attitude of Indian courts in order to suggest a possible

solution and amend the law in such a way that there is minimal court interference in arbitration matters.

CHAPTER 5: CHALLENGES AND OPPORTUNITIES FOR INTERNATIONAL ARBITRATION IN INDIA

This chapter focuses on international commercial arbitration and the challenges faced by India, keeping in mind the existing legal framework and amendments. There are certain challenges that can be possible impediments to India in becoming a favourable arbitration destination. A few issues not only pose challenges, but also have the potential to be opportunities to bring India at par with the arbitral popularity that is enjoyed by Singapore and the UK. All such challenges and opportunities are discussed in this chapter. India has the potential to be a much sought after destination for international arbitration given its highly skilled legal fraternity and a huge population. Accessibility to inexpensive labour leads to more industries being set up in India. Foreign corporates have shown a willingness to try out the Prime Minister's 'Make in India' model and opportunities to turn the tide of international arbitration in India are examined in this chapter.

CHAPTER 6: DATA ANALYSIS

For the purpose of carrying out research at the ground level and obtaining data from primary sources, the researcher prepared a questionnaire consisting of 20 questions. The respondents were chosen based on purposive sampling as those being lawyers practising in arbitration, senior advocates who regularly appear in international arbitrations and argue cases of national importance, arbitrators and academicians. The respondent lawyers and arbitrators practice in various High Courts as well as the Supreme Court and their diversity brings forward an unbiased opinion on the issues faced in arbitration in India. This chapter will deal with the analysis of all the data that is collected in the form of responses to the questionnaire and also the interviews conducted by the researcher. The response to each question is followed by an analysis of the question and the responses by the researcher.

CHAPTER 7: CONCLUSION AND SUGGESTIONS

This chapter deals with a summary of all that is mentioned in the various chapters. An attempt has been made to reach to conclusions to the hypotheses made in the introductory chapter and present the findings of the entire study that is conducted by the researcher. The later portion of the chapter deals with all possible suggestions to provide a better arbitral framework in India. A proposed legislation in the form of the International Arbitration Act, 2021, is mooted by the researcher that incorporates the suggestions received from the respondents to the survey and aims to fill the lacunae that exist in the current legislation.

1.10 Review of Related Literature

Some of the related literature is as follows-

- **Gaurav Mohanty (2019)**, in an article titled "Bombay High Court on the Rights Available under the Arbitration and Conciliation Act if the seat of Arbitration is London" has critically analysed the judgment of the Bombay High Court in *Prysmian Cavi E Sisteni S.r.l. v. Viiay Karia* and has examined whether pursuing a London seated arbitration would deprive an award debtor of its right to resist an award on jurisdictional grounds under Section 48 of the Arbitration and Conciliation Act. It also examines the English Law since in English Law, the number of challenges that are provided to an arbitral process are more than those provided under any other jurisdiction having adopted the New York Convention, 1958.

- **Krishan Singhania, Alok Vajpeyi (2019)**, in "Assignment in Arbitration: Scope and Issues in India" have discussed the question as to whether the right to arbitrate can be transferred through assignment to some other party. In this context, the author has discussed the judgment in *DLF Power Limited v. Mangalore Refinery & Petrochemicals Ltd. & Ors.* The judgment weighs on the

conclusion that the arbitration clause does not take away the right of assignment of a party to a contract if it is otherwise assignable.

- **Kunal Kumar (2018)**, in "Impact of Assignment and Novation on Arbitration Agreements" discusses the attitude of Indian Courts post the judgment in *BALCO* and the applicability of Part I of the Act to foreign seated arbitrations, when faced with an action in a matter in respect of which the parties have made an agreement referred to in Section 44 and the reference to arbitration unless the said agreement is null and void, inoperative, or incapable of being performed.

- **Anchal Jain (2018)**, in "Resolving the Issues Arising from Emergency Arbitration" discusses the new concept of emergency arbitration in India and the provisions pertaining to emergency arbitration under the International Chamber of Commerce (ICC) rules, UNCITRAL Model Law and the rules thereunder and the provisions laid down in the Singapore International Arbitration Centre Rules,2016. The author considers the impact of the enforceability of an emergency arbitral award in a hypothetical situation wherein the above mentioned provisions in the rules would have been made a part of the Arbitration Act, thereby limiting the jurisdiction of the Court to deal with the matter of interim measures in detail.

- **Soham Banerjee (2018)**, in "Breaking New Ground: The Impact of *BCCI v. Kochi Cricket Pvt. Ltd.* on the Arbitral Regime in India" has dissected the decision of the division bench of the Hon'ble Supreme Court in regards to the nature of the amended Act holding it to be prospective in operation and holding its applicability to both arbitral proceedings initiated on or after the commencement of the Amendment Act and even to court proceedings in relation to arbitral proceedings initiated on or after the Amendment Act having come into force.

- **Sneha Bhawnani and Swatilekha Chakraborty (2017)**, in "Supreme Court on

the Independence and Impartiality of Arbitrators" speak about the Hon'ble Supreme Court's judgment in the case of *Voestalpine Scheinen GmBH v. Delhi Metro Rail Corporation Limited* and have discussed key aspects of the independence and impartiality of arbitrators to make arbitration more effective and efficacious.

- **Gursharan Virk (2017)**, in "The McDermott – the Scope of Interference under Section 34 of the Arbitration Act" discusses the decision of the Hon'ble Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.* wherein it was held that the court cannot correct errors of the arbitrator, but it can only quash the award leaving the parties free to begin the arbitration again if desired. The author also discusses about the judgment of the Gujarat High Court in cross appeals filed by *Simplex Industries Ltd. and Gujarat Mineral Development Corporation Limited* under Section 37 of the Arbitration and Conciliation Act.

- **Agnish Aditya (2017)**, in "Additional Concerns raised by TRF v. Energo" discusses the Hon'ble Supreme Court's ruling in *TRF v. Energo Engineering Projects* and the concerns it raises with regards to unilateral appointments of arbitrators. It deals with the inaccuracies in the judgment and how it goes a long way in shaking the faith of the international arbitral community in the Indian judiciary.

- **Aishwarya Singh (2017)**, in "Revisiting Arbitrability of Claims of Oppression and Mismanagement: A Singapore Perspective" discusses a judgment by the Bombay High Court and another judgment by the Singapore Court of Appeals on the issue of minority oppression claims and how the reasonings behind the two judgments are different. The author points out why the approach taken by the Singapore Court of Appeals seems to be the more sound and pragmatic approach.

- **Aditya Swarup (2016)**, in “Arbitrability of Copyright Disputes”, analyses the consequences of a Bombay High Court judgment wherein it was held that a copyright dispute is not a dispute in rem but instead a dispute in personam. This would mean that copyright disputes could be arbitrable..

- **Shreyangshi Gupta (2016)**, in “Arbitrability of Securities Law in India”, identified the nature of rights pertaining to securities law and whether they can be resolved by an arbitrator. The article revolves around the popular debate about whether public law issues that involve public interest can be settled through the ADR mechanism. Such issues boil down to the arbitrability of the subject matter.

- **Gunjan Chabra and Prabhat R.V. (2016)**, in “To be or not to be.. Two Indian Parties Having a Foreign Seat of Arbitration: Supreme Court’s verdict on Sasan Power” wherein the decision of the division bench of the Madhya Pradesh High Court, holding that two Indian parties could have a foreign seat of arbitration, was under challenge before the Hon'ble Supreme Court.

- **Gaurav Mohanty (2016)**, in “Arbitration in India: The Merits of Third Party Funding”, discusses how despite the creation of the Mumbai International Arbitration Centre (MIAC), it has failed to make a radical change in the slow arbitration processes in India. The author further goes on to discuss about the merits of third party funding in jurisdictions like Hong Kong and Singapore.

- **Blackaby, Partasides, Redfern and Hunter (2015)** have examined various case laws and judicial decisions of different courts across borders in “ Redfern and Hunter on International Commercial Arbitration”. The book provides comprehensive cross-referenced Tables of Cases, Arbitration Awards and Legislation as well as a comprehensive index and list of abbreviations.

- **Canfield (2014),** in "Growing Pains and Coming-of-Age: The State of International Arbitration in India", has examined the changes in arbitration law that can provide India with the potential to become an international hub for arbitration, fostering economic growth and launching a new era for international arbitration in the region. The author, after examining various judicial decisions, has come to the conclusions that the judgment in BALCO demonstrates that India wants to follow best practices in international arbitration and is willing to make changes in furtherance of that goal; although BALCO did not fix everything and there are still problems that need addressing, the decision signals a willingness to break from past attitudes and find solutions to the problems that are keeping India from being the hub of international commercial arbitration.

- **Mr. F. Nariman (2011)** has examined the ten steps that can reinforce India as a universally accepted arbitration destination in "Ten Steps to Salvage Arbitration in India". The author examined the effect of three decisions of the Supreme Court that have distorted the provisions of the Arbitration and Conciliation Act, 1996, the three decisions being-

1. Bhatia International judgment (2002)
2. Saw Pipes judgment (2003)
3. Venture Global judgment (2008)

wherein the Court not only made Part I of the Act applicable to arbitrations seated outside India, but also expanded the scope of public policy which led to numerous challenges to arbitral awards. The Constitutional Bench of the Supreme Court on September 6, 2012 in its decision in *Bharat Aluminum Co. v. Kaiser Aluminum Technical Service, Inc.*, after laudable consideration of jurisprudence laid down by various Indian & foreign judgments and writings of renowned international commercial arbitration authors, ruled that findings by the Court in its judgment in *Bhatia International v. Bulk Trading S.A &Anr.* and *Venture Global Engineering v. Satyam Computer Services Ltd and Anr.* were incorrect. It concluded that Part I of the Arbitration and Conciliation Act, 1996

had no application to arbitrations which were seated outside India, irrespective of the fact whether parties chose to apply the Act or not, thus getting Indian law in line with the well-settled principle recognized internationally that "the seat of arbitration is intended to be its center of gravity". The author found that such decisions rendered by the Apex Court led to the international commercial community losing faith in the Indian legal system.

- **Franz Schwarz (2010),** in "Limits of Party Autonomy in International Commercial Arbitration, in Investment and Commercial Arbitration – Similarities and Divergences", describes party autonomy in relation to the field of international commercial arbitration. The author notes that he will only discuss the issue of procedural autonomy and will not focus on substantive party autonomy.

- **Shah and Gandhi (2011)** studied the probability of a shift among the people preferring institutional arbitration over ad-hoc arbitration following the rule of supply and demand in "Arbitration: One size does not fit all: The necessity of developing institution arbitration in developing countries". The authors advocated-

1. A symbiotic relation between the courts and the arbitration institutions to ensure that the court is not over burdened by the suits which can be disposed of through arbitration.

2. Institutional support of supervision, time limit and scrutiny to be inculcated in a mechanism analogous to the informal arbitration bodies like the Panchayat at the grass roots level.

The authors concluded that with the development of institutional arbitration, there would be a shift among the people preferring the same over ad-hoc arbitration.

- **Zaiwalla (2010)** has examined the presence of an international institutional arbitration centre in India in "LCIA India: Will It Change the International Arbitration Scene in India?" and has concluded that such a presence can encourage the Indian Courts to have confidence in the awards passed under the aegis of such an institution. The author has found that LCIA India has a golden opportunity to prove itself as a leading institution for international arbitrations in India, provided it is able to deal with some of the unwelcome traits which one often sees in India. However, LCIA ceased operations for lack of participation in India.

- **Noussia (2009)** has set out the modern function and role of anti-suit injunctions in light of the efforts to harmonize private international law in "Anti-suit Injunctions and Arbitration Proceedings: What Does the Future Hold?" The author came to the conclusion that –

1. In the common law systems, antisuit injunctions are positively perceived. Both in the United Kingdom and in the United States, their granting in support of arbitration proceedings is a measure employed to halt judicial proceedings brought in breach of a valid agreement to arbitrate.

2. In England, the trend is to favour the prevalence of individual justice and grant antisuit injunctions in support of arbitration proceedings, not least because they are largely seen as a basic element of the supervisory jurisdiction of the courts.

3. In the United States, the mere existence of a judicial split among the Circuits, and the taking into account of comity principles and other considerations, underscore the general presumption in favour of antisuit injunctions and compelling defendants to obey them, whilst accepting that they should only be permitted where res judicata bars the foreign proceeding, or where foreign litigation threatens public policy or the court's jurisdiction.

- **Born (2009)** has commented on the Indian arbitral system in "International Commercial Arbitration". In the words of Born, "many users of international arbitration remain cautious about seeking arbitrations in India, noting the

attitude of Indian courts." The author's conclusions rest on the premise that the treatments of international commercial arbitration in different national legal systems are not diverse, unrelated phenomena, but rather form a common corpus of international arbitration law which has a global application.'

- **Kachwaha (2008)** has examined and tested the award enforcement regime in India vis-à-vis developed arbitration destinations in "Enforcement of Arbitration Awards in India". The author concluded that –

1. Viewed in its totality, India does not come across as a jurisdiction which carries an anti-arbitration bias or more significantly which carries an anti-foreigner bias.
2. Notwithstanding the interventionist instincts and expanded judicial review, Indian courts do restrain themselves from interfering with arbitral awards.
3. Judged on this touchstone, India has been trying to come across as an arbitration friendly jurisdiction, but not enough has been done in this aspect.

- **Fali Nariman (2008)**, in "Application of the New York Convention in India", has spoken about how issues arising under statutory provisions implementing Article V have been dealt with by courts in India. He concluded that the provisions in the 1996 Act prescribe uniform criteria (or grounds) for the setting aside of domestic arbitral awards and for the non- enforcement (in India) of foreign arbitral awards.

- **Dewan (2007)**, has studied the existing loopholes in the arbitration law in India in "Arbitration in India: An Unenjoyable Litigating Jamboree!". This article lays emphasis on how despite arbitration, litigation is an inevitable 'evil'. It has been found out how, for a country looking for economic growth, imbibing an internationally acceptable arbitral culture is necessary in order to avoid sending a hapless party, seeking to effectively arbitrate a dispute, mirthlessly into a conundrum of delay. The author has also examined the three stages where an arbitration proceeding usually gets intertwined with litigation in court, being:

(1) appointment and jurisdiction of arbitrators;
(2) grant of interim measures of protection; and
(3) after the pronouncement of the award.

- **Nair (2007)** delves deep into the causes of dissatisfaction with arbitral tribunals and arbitral procedures in India in "Surveying a Decade of the 'New' Law of Arbitration in India". He concluded that –

1. The need of the hour is for the inculcation of a culture of arbitration among the key stakeholders - the bar, the bench, the arbitrators, arbitral institutions and the consumers of arbitration - and for them to display a sincere commitment to prevent the 'banalisation' of arbitration.

2. Indian lawyers and judges will do well to be aware of and absorb some of the best arbitration practices from jurisdictions that have a more developed culture of arbitration, if arbitration is to provide the benefits it is capable of delivering.

3. Ten years on, arbitration in India under the 1996 Act is far from having fulfilled its potential and continues to be on probation.

- **Mr. K.R. Narayanan (2000)**, the Former President of India, at the Inauguration of the International Council for Commercial Arbitration Conference at New Delhi in March 2000 spoke about arbitration being a saving grace of the judicial mind to adjudicate commercial disputes.