ABSTRACT
This article begins with a discussion on the ever growing relationship between International Economic Law (IEL) and Arbitration predominantly the part that arbitration carries out as an effective remedy to resolve international economic disputes. The chief purpose of this article is to address queries with regard to when, why and how IEL and Arbitration have gradually become fundamentally interfaced, further this paper deals with cope and contemporary implementation of arbitral proceedings in certain areas of IEL, moreover the paper points out various challenges that in some or the other way could weaken its effectiveness as well as suitability as a result of third party interference entrusting in the power of authority to resolve international economic disputes. In the settlement of economic debates between various states, arbitration used to play an uncertain role. However, focusing on the last few decades, it has been observed that arbitration has become influential in the zone of IEL not just in determining disputes among states or international organizations but also amongst states and private entities or individuals. Presently, it has been expected and foreseen that arbitral proceedings has reached in all corners of IEL. Hence, arbitration is seen as the frequently occurring legal mechanism to resolve legal disputes in both FTA and BITs. Likewise, arbitration also is seen among the rank of dispute resolution alternatives which is accessible to WTO members. Not only this there are arbitration methods available within the IMF and World Bank where valuable support has been given to resolving disputes based on sovereign debts through establishing arbitral tribunals. Many international economic organizations encourage the use of arbitration to resolve their disagreements.

KEY WORDS
Arbitration, International, economic, dispute, settlement

OBJECTIVES OF THE STUDY
a) To evaluate the background and developments of both international arbitration and IEL.
b) To elucidate the institutional workings of arbitration in international trade law, international investment law as well as international monetary law.
c) To enumerate the major challenges that emerges from the use of arbitration for resolving disputes in IEL.

RESEARCH METHODOLOGY
The methodology which would be applied for undergoing this research is “Doctrinal”. In this research the sources of data are articles on influence of International arbitration on international economic law and key international organizations relevant for its working and administration. The paper involves study of Law Reviews, Bar Journals and Legal Periodicals on Westlaw and Lexis Directory and Online Databases such as Kluwer Arbitration and Oxford Journals Online. This Paper involves a comprehensive...
The importance of arbitration cases in ancient and medieval period should not be ignored, rather there should be taken as stages of historical development of arbitration proceedings and institutions even though at that time these proceedings were not carried out with that much technicality as it is now being practiced. Also, these cases can be taken as a classic example to understand the concepts of arbitration which were used in ancient period upon which the modern arbitration is developed. Further the ancient and medieval cases help in understanding the foundation of the arbitration institution, which ultimately offer better understanding of its origin and development.

Arbitration was used as an alternative dispute settlement mechanism because of its flexibility, freedom to select application of laws, and freedom of the parties to choose the arbitrator of their own choice. Further, the arbitral awards given to the parties being adjudicatory in nature were no less than a courts judgement that made the awards legally enforceable which doesn’t occur in other methods such as negotiation and mediation. The first agreement to use arbitration as a means to resolve their dispute was between U.S. and Great Britain for Jay Treaty in 1794 after that is was used by many states as a means for dispute redressal. With the increase in the number of arbitration cases, it led to the creation of Permanent Court of Arbitration in the Hague Convention of 1899. Since then, arbitration institution has been available to the international parties

1 Anna Spain, International Dispute Resolution In An Era Of Globalization, https://lawweb.colorado.edu/profiles/pubpdfs/spain/InA.pdf, last visited on 20th July, 2021
2 Ibid
3 Ibid

study with international dimensions focusing on the role of international adjudication and its challenges. The present study aims to arrive at such an international economic dispute settlement regime wherein arbitration is the most appropriate and recognised channel to settle the economic controversies.

DISPUTE RESOLUTION AND INTERNATIONAL ECONOMIC LAWS: SPECIAL FOCUS ON ARBITRATION AND ITS CHALLENGES

INTERNATIONAL ARBITRATION

For the purposes of international dispute resolution, international arbitration is a well-known method which the parties resort. According to various sources, it can be seen that public and private arbitration was frequently used by the ancient cultures. Example of public arbitration could be spreading of arbitration among the cities of Greece. On the other hand, the Romans are not very keen to adapt public arbitration because of its foreign policy and hierarchy of political organization. However, there are evidences of use of arbitration by the municipal authorities of Roman justice in various cases.

Also, during the medieval age arbitration was used to resolve the disputes related to territorial conflicts, war damages and to decide other kinds of compensation claims. At that time arbitration was used in both international and national disputes and also the participation of Catholic Church and kingdom as adjudicative parties used to play an important role in the growth of international arbitration.1
for settling their dispute as a much reliable mechanism.\(^4\)

Arbitration has also contributed internationally as a means for promoting multilateral cooperation in resolving international disputes which ultimately result in providing globalized justice. During World wars, private organizations like the ICC which is an organization for arbitration and international commercial law played an important role for enhancing arbitration. United Nations was created after World War II, which also enhanced arbitration through formation of effective international dispute resolution mechanism. Article 33 of the United Nations Charter provides arbitration as a means to resolve international disputes.\(^5\)

Also, adjudication was improved in the ICJ that led to replacement of Permanent Court of International Justice.

**INTERNATIONAL ECONOMIC LAW**

The evolution of international economic law was followed by economic liberalism in the industrial revolution during the 19th century till 20th century, the process of free trade economy following the fall of the era of Soviet Union. The Industrial revolution stimulated market economy with the principles of liberalization. The states played a non-interventionist role during this period and followed the principle of 'laisser faire laissez passer', that continued till the 19th century.\(^6\) This trend was interrupted by the two world wars, because of which international economy and international trade was affected which were dominated by schemes of states that protected them from unfavourable commercial exchanges in the international market. International Economic law includes many categories like international trade law, competition/antitrust law, law regarding international commercial transactions, Intellectual property rights, international monetary law, etc.\(^7\)

In 1945 the Charter of United Nations was adopted by the countries to deal with the issues of international trade. It focused on developing understanding between the states. After that a Bretton woods system was adopted by the states to promote post-war international trade and cooperation between the states on the basis on international economy. The absence of an institution for dealing with the rules of international trade led to the economic clash between the developing countries and the developed countries. This conflict was resolved by establishing a coherent body of rules which will deal with these issues. United Nations Conference on Trade and Development (UNCTAD) was established as a subsidiary organ of United Nations and the maintenance of Charter of Economic Rights and Duties of the States.\(^8\)

At present it is hard to determine a conclusion as to approaches of private and public international law. There are discussions

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\(^6\) ibid


going on as to determine the level of incorporation in IEL of public and private approaches. But, in the last decade adaptation of rule-oriented power in international economy and trade law allowed the states to function in the international market with a juridical framework and an institution to claim their rights.

INTERFACE BETWEEN IEL AND ARBITRATION

THE LEADING FACTORS

The leading factors which led to the formation of a bond between IEL and International Commercial Arbitration includes the change of governance of international economic relations from power oriented to rule oriented, recognition of private entities and individuals as a subject of International law and the use of arbitration with juridical framework and as a mechanism to resolve the economic disputes between private entities as well as the states. IEL developed as a slow pace but it reached a momentum wherein it led to the creation of the WTO and promoting and protecting the foreign investments and wave of bilateral investment treaties. These were crucial events in the development of arbitration institutions and juridical framework of the international economy. In relation to conflicts in international economic matters which begin within organisations or there are courts for resolution of disputes on arbitration basis, whole procedure is defined by the organisation and proper institutional structures are directed towards arbitration models which ultimately aim at resolution of disputes. Nowadays we observe that how cyberspace is also getting exploited commercially over all aspects of internet.

The relationship between the arbitration and international economic law can be evaluated by analysing the changes that were made in the international economy after World War II. The fundamental changes that took place in the international economy where in two areas: trade and investment. The working panels of WTO, enhancement in the dispute settlement mechanism and the insertion of arbitration as a means for settlement of dispute were landmark event for the international community. With respect to investments, formation of ICSID constituted a clear assertion of the existence of rule of law.

One of the most important implications of the legalization of IEL is the recognition of individual through treaty law. Since international law per say does not recognize individuals as personality, states can through treaty law allow the individuals to participate and in application of international law. There are many examples wherein in the individuals can bring a cause of action, like in Human rights protection, environmental protection, commercial law, etc.


ibid

PIF 6.242
protection, intellectual property, etc. An example of fundamental shift in IEL is ICSID Convention which allows the individuals to be owners of claim and through these individuals can participate in IEL in other fields of International economy, trade and finance law with more conclusive actions. The access of justice to the individuals in the most important consequence in process of legalization of IEL. The states and the international organizations are instruments of IEL and help in the growth of IEL, individual’s participation here occurs in three categories: IELs legal order beneficiary, legal personality that acts as a subject at international level, and through acting as agents of civil society organized by NGOs.

INSTITUTIONAL DEVELOPMENTS

INTERNATIONAL TRADE

Article 93(2) of the Havana Charter, 1949 was the first institutional connection between arbitration and the international trade that formed the ITO. This Article defines the scope of arbitration available to the members of that organization. In GATT, arbitration was not a part of the original text, but, through Article XXIII contracting parties can opt for arbitration as a dispute resolution mechanism. With the development of WTO arbitration became an important mechanism for resolution of disputes. In the WTO Charter, Arbitration was included in the WTO Understanding of Dispute Settlement through annexure, with Article 21.3(c), 22.6,22.7,25 and 26.1 of the Understanding on the Rules and Procedures Governing the Settlement of Disputes.

There are three situations wherein, arbitration is resorted by WTO. Firstly, during the scrutiny and adoption of the WTO settlement bodies reports. These reports are issued by the WTO settlement bodies and which needs to be adopted by the WTO members. If there is a disagreement between the parties regarding reasonable time for implementation, parties can request arbitration. The arbitration award given by the arbitrator is binding on the parties. Secondly, disputes can arise over disagreement over the amount of suspension of concession on the losing parties (Article 22.6). Thirdly; member of WTO can opt for arbitration for the proceedings under the Appellate body or panel. Through Article 25, WTO members can participate in arbitration proceedings if the parties consent to it.

INTERNATIONAL MONETARY INSTITUTIONS

The IMF Agreement under Article XXIX (c) states that in case of dispute between the members of IMF during withdrawal of any state member of liquidation of funds they can resort to arbitral tribunal to resolve their disputes. In case of financial institutions, the international development banks, they resort

16 Supra note 5
18 Supra note 4.
19 Supra note 5.
to arbitration at various instances. For example, agreements related to loans and guarantees given by the World Bank comprises of an arbitration clause that is done through ad-hoc procedure. Same clause is also in agreements where the sovereign borrowers that default on loan. These can be sued for non-payment and the party can approach the arbitral tribunal.20

Instead of going for litigation in the national courts IMF favours the use of arbitration in case of clashes between the states and the private parties.21 Even though arbitration is a favourable option but it can have negative impacts against the sovereign states and the capital markets. Another barrier that can occur in case of arbitration is the implementation of arbitral awards, the debtor states can claim that the arbitral award is unenforceable due to violation of constitutional norms.22

Arbitral tribunals established by ICSID have given wider scope to the definition of “investment” and have considered that sovereigns can also fall within the ambit of investments and therefore according to Article 25 of ICSID, they have jurisdiction to hear the cases related to investments.23

CRITICAL ANALYSIS OF SUCCESS OF ARBITRATION ACT, 1996
The 1996 Act was brought as legislation because the previous 1940 Act did not fulfil the goals and objectives and also the aims of general population and the business group in particular.24 Nevertheless 1996 Act was enforced to plug the loopholes and lacunas of 1940 Act; however the arbitral system that has developed under it led to its failure.

WHY ARBITRATION PREFERRED IN SOLVING INTERNATIONAL DISPUTES
1. Speedy redressal of dispute: Court proceedings consist of of extensive rules besides procedures which a disputing party has to adhere to. However if parties bring up their matter to arbitration then they are not exposed to strict procedures as a result it is a speedy mechanism.25 In spite of the fact that 1996 Act gives further autonomy on arbitrators and prevent judicial interference, it does not mention any time limit so as to when proceedings to get completed. Even though the ambit of judicial intervention under the 1996 Act has been shortened to a huge level, courts through judicial interpretation have enlarged the ambit of judicial review which as a result leads to huge number of suits being reported that were ought to be dismissed at the first instance. In addition, the parties more frequently approach the arbitral tribunal with a mind-set as for litigation which results in awards being customarily ending up in courts, burdening the law court workload and aggregating the time limit for settlement of the matters.26

2. Enforceability of Arbitral Awards: It is more rapidly implemented in contrast to the court decrees. One of the elements in

22 ibid
23 ibid
26 Ibid
determining arbitration as a feasible legal institution is its productivity, efficacy and competence of its implementation. According to Section 36 of the 1996 Act, an arbitral award is executable as a court’s judgment in the provisions of CPC, 1908.\textsuperscript{27} With respect to International commercial arbitration, an award coming from it is implemented in accordance with international treaties and conventions which postulate the acknowledgment and enforcement of arbitral awards.\textsuperscript{28} In India the enforcement of foreign awards is administered by the 1958 NYC and the 1927 GC. The provisions of execution are comparable under the 1940 Act and 1996 Act.\textsuperscript{29} One party keen on foreign awards must put on in writing to a court ensuring locus standi over the subject matter of the dispute.

3. Setting Aside of foreign Awards: In Bhatia International v Bulk Trading S.A. &Anr\textsuperscript{30} and Venture Global Engg v Satyam Computer Services Ltd &Anr\textsuperscript{31} stated that all disputes following to arbitration agreement made after 6\textsuperscript{th} September 2012 shall be ruled by old precedents regardless of fact that such decisions were unfitting and overruled. Another landmark case is Bharat Aluminium Co. v. Kaiser Aluminium\textsuperscript{32} wherein the Apex Court reviewed entirely its previous judgments and reached to a conclusion the Indian Arbitration Act should be read in consonance with the real intent of parliament and in so doing reversed the old findings.

4. Unbiasedness of Arbitrator: To resolve the disputes an impartial and unprejudiced third party is favoured and is picked mutually by the parties.

5. Expert Arbitrator: Parties may also decide on an arbitrator having particular expert knowledge and technical experience in the disputed area which openly aids in resolution of the dispute.

6. Affordability of Arbitration: Arbitration is economical as it does not comprise of an unnecessary number of procedures. Nonetheless the truth regarding arbitration in India especially adhoc arbitration is turning very exorbitant as compared to traditional litigation.

7. Degree of Judicial Intervention under the current Act: One of the main goals of the present piece of legislation was to give to the arbitrators more controls and lessen the regulatory function of the court in the course of arbitration.\textsuperscript{34} With its enforcement we perceive that judicial intervention is central under the 1996 Act as it takes the shape of determination in case of appeal or challenge of awards. Such a preference to impose their power to interfere might be based on their distrust that arbitration is not as effective and efficient at settling differences or else that the judges’ fear of their jurisdiction will get

\textsuperscript{27}Section 36 of the Arbitration and Conciliation Act, 1996- Enforcement- where the time for making an application to set aside an award made under Section 34 has lapsed or application refused, the award shall be enforceable under the Civil Procedure Code, 1908 in the same manner as the decree of a court.

\textsuperscript{28} Sunil Malhotra, Enforcement of Arbitral Awards’, ICA’s Arbitration Quarterly, ICA, 2006, Pg 20

\textsuperscript{29} Chapter I, Part II of the 1996 Act deals with enforcement of foreign awards pursuant to NY Convention while Chapter II, Part II of the said Act deals with foreign awards pursuant to GC Convention

\textsuperscript{30} 2004 (2) SCC 105

\textsuperscript{31} 2008 (4) SCC 190

\textsuperscript{32} Civil Appeal No. 7019 of 2015

\textsuperscript{33} Samar Bhoite, ‘Mediation, a process less practiced in India in Business Disputes Resolution’ published in the website www.manupatra.com.

\textsuperscript{34} Arbitration and Conciliation Act, 1996, Statement of Objects and Reasons.
vanished. The ratio decendi in the Saw Pipes case shows this inclination and undermines to hamper arbitration’s progress towards efficiency. The Apex court extended the scope of public policy from the earlier ratio decendi given by three bench judgment in the Renusagar case and that one of the grounds as violation of public policy to challenge award under the 1996 Act. In the matter of Saw Pipes case the range of public policy was stretched to award being patently illegal. Saw Pipes is censured on the ground that it increases the scope of judicial intervention and also meaning broad meaning to the word ‘public policy’. It was also condemned on the ground that while implementing the 1996 Act and keeping in thoughts the UNCITRAL Model Law, the legislature did not bring in ‘patent illegality’ as a ground for challenging an award and consequently the Apex court cannot bring the same through the conception of ‘public policy of India.’

CONCLUSION
In past few decades there has been an upsurge in international commercial undertakings out of India that has as a consequence arisen to international arbitrations containing of their seat of arbitration in India. The chief intention of arbitration as well as litigation is effective justice delivery but arbitration is regarded as a more feasible preference as equated to traditional litigation. Therefore, the amount and degree of protection it assures is across the board.

The Arbitration and Conciliation Act 1996 is definitely not a situation that advocates success and hence involves certain changes and reforms as per the suggestions and advices of Law Commission. Regardless of the situation at present the 1996 Act has achieved a strong role in settlement of matters as it covered the loopholes of the 1940 Act and the indispensable advantage in the present Act is with respect to court’s involvement and intervention as the grounds on which an award could be challenged before the court under the 1940 Act have been majorly diminished, such kind of rebuttal and challenge is now tolerable only on the reason of invalidity of the arbitration agreement, wrong jurisdiction or not an appropriate notice served to party on the question of selection of arbitrator, authorities of arbitrators have been improved, unsettling strategies taken up by contesting parties in arbitration proceedings are crushed by an express provision wherein knowledgeably continuing silent raises a procedural objection will not be allowed, the function of arbitral bodies in encouraging arbitration has been recognised, informal agreement legalised and done away with formal arbitral pact, saving measures been supplemented such as admission by an arbitrator of slightly likely bias, reasoned order and award been given the status of the decree. In this manner Arbitration law in India is in interim stage.

SUGGESTIONS
There are certain recommendations which are below mentioned;

36 2003 (5) SCC 705
37 1969 (2) SCC 554
38 Ashok Desia, ‘Challenges to an award-use and abuse,’ ICA’s Arbitration Quarterly, ICA, 2006, vol. XL1 pg 4
39 Pravin Parekh, ‘Public Policy as a ground for setting aside the award’, ICA’s Arbitration Quarterly, ICA, 2005, vol. XL, Pg 19
40 Supra Note 24, pg 19
1. The scope and range of Domestic Arbitration, International Arbitration as well as International Commercial Arbitration must be clearly identified and demarcated.

2. Characterisation of the extent of judicial intervention is essential.

3. Interim measures and authorities of the tribunal to be further upgraded.

4. Authority to be allowed to the tribunal to permit execution of instructions to increase speed and efficiency of the arbitral process.

5. The time limit for determining a controversy to be well-defined.


7. Establishment of Fast track courts for arbitration.

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