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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CONTRIBUTION OF SUPREME COURT OF INDIA IN ENFORCEMENT OF UNCITRAL MODEL LAW ON ARBITRATION AND PROMOTION OF ACCESS TO JUSTICE: A CRITICAL STUDY**

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## **Abstract**

*Justice in the future needs to be envisioned outside of physical boundaries. Courts ought to be a service rather than a place. The service ought to be robust, ubiquitous, comprehensible, fearsome, and outcome-oriented in its skeleton. Nonetheless, the courts do not have to bear the entire cost of providing this service. The Indian judiciary has been long at the forefront. Although arbitration has long been used in India as a means of resolving disputes, the country's first laws dates back to 1899, with a few clauses under the Code of Civil Procedure, 1908. Later the legislation pertaining to arbitration was dispersed among several laws. The Arbitration and Conciliation Act of 1996, which streamlined Indian arbitration law and replaced earlier statutes, was based on the UNCITRAL Model Law on International Commercial Arbitration. It was hailed for modernizing Indian arbitration legislation to more effectively address modern needs while limiting intervention of courts anticipating synergy between the arbitral and judicial processes. Courts have made an attempt to facilitate cooperation between the arbitral and judicial processes. The eCourts Mission Project has undertaken a number of important projects, the effects of which will spread laterally and vertically. However, an effective system that settles disagreements before they go to court is required to make dispute resolution far more effective. In light of this, the author through the article is devoted to study the vital role the Supreme Court of India played in interpreting the 1996 Arbitration and Conciliation Act and effectively enforcing the UNCITRAL Model Law in order to advance prompt and high-quality justice.*

**Keywords:** UNCITRAL Model Law, The Supreme Court of India, Arbitration and Conciliation Act, 1996, Arbitral Proceedings, Justice

## **1. Introduction:-**

We're living in the epoch of globalization. Globalization has created both openings and challenges. The processes of globalization, liberalization, and privatization have brought about fierce contest in all spheres of mortal actuality, not only the profitable bones. There has been an antithetical shift in the life system itself; individualities ask to do tasks fleetly and efficiently. For example, fast food is the ultramodern word for the food system itself. Still, the metamorphosis brought about by information and communication technology, or ICT, has had a profound effect on all angles of frugality and mortal actuality. India's frugality is among the fastest expanding in the world. A rapid rate of economic growth necessarily leads to increasing wages and purchasing power, which stimulates the expansion of effective demand and supply, eventually raising living standards, life expectancy, and other facets of human well-being. The number of court cases has increased dramatically as a result of foreign corporations entering Indian markets in a range of industries, including the service sector. These litigation are already substantially backlogged and have been pending for an extended period of time. This has an influence on enterprises, individuals, and the overall growth of the Indian economy. Arbitration is increasingly being used as a preferred method of conflict resolution, providing parties with a flexible and effective alternative to going to court.

The United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration has helped to advance the enforcement of arbitral awards and harmonize arbitration proceedings across the world. The Supreme Court of India has played an important role in developing arbitration law and ensuring access to justice in the country by interpreting and applying the UNCITRAL Model Law. Arbitration has long been recognized and accepted in India, dating back to the norms established by the East India Company, which were followed by subsequent legislative legislation.<sup>1</sup>

### **1.1 Background:-**

Arbitration, conciliation, and mediation are among the earliest procedures for resolving conflicts in the ancient times, spanning numerous cultures. Arbitration as a form of justice is as ancient as civilization. Forms varied - as they must - over time and in different locations. It has existed in Roman law and Greek society from the sixth century B.C. Disputes were handled by arbitration in Greece in the sixth century B.C. The types of conflicts included border

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<sup>1</sup> Indian Arbitration Act, 1899 (Act 9 of 1899).

determination, ownership to colonies and territory, assessment of damages caused by hostile invasion, monetary claims between states, and religious issues. In England, however, the early attitude toward arbitration was largely unfavorable. There was a policy against agreements that removed the Court's jurisdiction. Such agreements were deemed invalid under public policy. Business exigencies transformed the situation throughout time, making way for commercial arbitration. England established the first Arbitration Act in 1889, which was preceded by the Common Law Procedure Act of 1854 and many enactments.

In the United States, the narrative of arbitration began in 1887, when the Chamber of Commerce of New York State formed the first privately operated tribunal of businesspeople.<sup>2</sup> The State of New York enacted the first modern arbitration law in 1920, followed by the Federal Government in 1925 and more than a dozen states. The areas covered differed. The National Conference of Commissioners on Uniform State Laws adopted a uniform arbitration law in 1955, which was later updated.<sup>3</sup> The Bengal Regulation, the Madras Regulation, and the Bombay Regulation remained in effect until the Code of Civil Procedure of 1859 was implemented. The aforementioned Code of Civil Procedure empowers the parties to petition the court to submit the dispute to arbitration.<sup>4</sup> It also enacted the provisions for making the award and enforcing it.<sup>5</sup> In addition, the Civil Procedure Code of 1859 restricted judicial participation in certain circumstances.<sup>6</sup> In 1899, for the first time in Indian legal history, the Government of India issued a particular legislation governing arbitration. The Civil Procedure Code of 1908 has detailed regulations about arbitration.<sup>7</sup> Despite a long history of acceptance and recognition of the arbitration process, its progress has been hampered by a number of factors, including the approach of litigants, the Bar, and the judiciary, which bears ultimate responsibility for interpreting the law and enforcing arbitral awards. Up to the medieval period, ancient India had a long and rich history of arbitration and reconciliation. In the event of a conflict amongst members, the affairs of the community were normally overseen by a single headman, whose position was either hereditary or elected. In certain sections, this authority was delegated to a village council rather than a single individual. The council's strength was mostly constituted with five persons; it was known as a "Panchayat". Traces of these

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<sup>2</sup> Cameron K. Wehringer, *Arbitration Precepts and Principles* (Oceana Publications, New York, Issue 39 Part 1, 1969).

<sup>3</sup> *Ibid.*

<sup>4</sup> Code of Civil Procedure 1859, s. 312.

<sup>5</sup> *Id* at ss. 313, 314.

<sup>6</sup> *Id* at ss. 327, 328, 329.

<sup>7</sup> Code of Civil Procedure 1908, ss. 89, 104.

institutions can still be seen in India today, albeit in rudimentary villages.

The British Raj laid the groundwork for the modern arbitration system that we use today. The Bengal Regulation 1772 particularly allowed the parties to bring their account-related issues to arbitration. The Bengal Regulations of 1781 and 1787 include the same provisions. The Bengal Regulation 1793 expanded the subject matter of the disputes beyond ordinary accounts and partnership documents to nonperformers of the contract subject to the arbitrators' verdict. In addition, it established pecuniary jurisdiction, which means that the value of the claim must exceed Rs.200/- in order to be sent to arbitration procedures. The Bengal Regulation 1813 authorized the parties to bring immovable property disputes to arbitration.<sup>8</sup> In 1822, the Collectors were ordered to make every effort to persuade the parties in the Revenue Court proceedings to send the case to arbitration of judgments, appeals, and enforcement of awards.<sup>9</sup> The Bengal Regulation, the Madras Regulation, and the Bombay Regulation remained in effect until the Code of Civil Procedure of 1859 was implemented. The aforementioned Code of Civil Procedure empowers the parties to petition the court to refer the dispute to arbitration.<sup>10</sup> It also specified the procedure for making the award and enforcing it.<sup>11</sup> The Civil Procedure Code of 1859 in addition restricted judicial intervention in particular circumstances.<sup>12</sup>

In 1899, for the first time in Indian legal history, the Government of India issued a particular legislation governing arbitration. The Civil Procedure Code of 1908 has detailed regulations about arbitration.<sup>13</sup> The Arbitration and Conciliation Act of 1940 has received negative comments from successive Public Accounts Committees.<sup>14</sup> The Government of India has referred the subject to the Law Commission of India. The Commission examined the concerns and delivered a thorough report to the Government of India in 1978, chaired by the well-known jurist Shri Justice H R Kanna.<sup>15</sup> In the case of Ms. Guru Nanak Foundation vs. M/s. Rattan Singh & Sons, the Hon'ble Supreme Court of India harshly condemned the act.<sup>16</sup>

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<sup>8</sup> The Bengal Regulation No VI of 1813.

<sup>9</sup> The Bengal Regulation of 1822.

<sup>10</sup> *Supra* note 4.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Supra* note 7.

<sup>14</sup> Fifth Lok Sabha, 210th Report of the Public Accounts Committee, p.no. 133 to 139 and Sixth Lok Sabha, 9th Report of the Public Accounts Committee, p.no. 201 to 202.

<sup>15</sup> Law Commission of India, 76th Report on Arbitration Act, 1940 (November, 1978).

<sup>16</sup> AIR 1981 SC 2075.

In 1993, India's then-Prime Minister, Shri P V Narasimha Rao, made a commendable attempt to organize the All India Chief Ministers Conference to debate arbitration problems. The Government of India, led by Shri P V Narasimha Rao, has made the brave decision to abolish the previous arbitration statute and replace it with new legislation modeled after the UNCITRAL Model Law. The Government of India then issued three arbitration-related ordinances. Finally, the Parliament of India enacted the legislation, which went into force on January 25, 1996. Eventually it was recognized that the new statute did not meet the expectations of the parties, the NDA Government, led by A B Vachbhai, submitted the case back to the Law Commission of India. In 2001, the Commission issued a thorough report to the Government of India.<sup>17</sup> The Government of India then introduced the Amendment Bill in the Rajya Sabha the same year. The Central Government also formed a committee, chaired by Shri. Justice Saraf, which presented its findings in 2005.<sup>18</sup> Following that, there is a change of leadership at the Centre, with the UPA Government taking over, and the Amendment Bill and Saraf's Committee Report have been put on hold.

## **2. An overview - The UNCITRAL Model Law of Arbitration on International Commercial Arbitration**

The United Nations General Assembly has been particularly tasked to carry out the vital work of gradual codification of international law, including international trade law, in order to achieve the UN Charter's objectives. Pursuant to the charter's mandate, the UN General Assembly established the United Nations Commission on International Trade Law to draft international trade law. The UNCITRAL has effectively approved a number of key legislative and non-legislative texts in international trade law to promote the growth of international commerce. The UNCITRAL has taken the following key measures in this approach. The legislative provisions concern the international selling of commodities; international commercial dispute resolution, including both arbitration and conciliation; electronic commerce; insolvency, including cross-border insolvency; international freight transportation; international payments; procurement and infrastructure development; and security interests. Non-legislative materials include arbitration and conciliation procedure regulations, notes on organizing and conducting arbitral processes, and legal guides to industrial construction contracts and countertrade.

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<sup>17</sup> Law Commission of India, 176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001(September 2001).

<sup>18</sup> Government of India, The Center on Democracy, Development and The Rule of Law Project.

## **2.1. UN Mandate and Constitution of The UNCITRAL:-**

In 1966, a resolution passed by the General Assembly gave rise to the United Nations Commission on International Trade Law.<sup>19</sup> The resolution aimed to ensure a uniform interpretation and application of international conventions and uniform laws in the field of international trade law, while also promoting ways and means of progressive harmonization and unification of the law. The Commission is cognizant of the fact that different legal, social, and economic systems across the world, along with varying levels of development, are represented in the Commission.

## **3. The Arbitration and Conciliation Act, 1996 - A Rational Perspective**

Historically, one of the most significant and fundamental roles of the sovereign state was the administration of justice. It has changed with time through different eras and phases. For instance, in the past, citizens were permitted to submit petitions straight to the monarch, who would then administer justice after considering the matter. The king assigned the role via the institutionalization of the justice delivery system in response to the sharp rise in petition volume. The British era is credited with giving rise to the contemporary judicial system administration that we use today. The administration of the legal justice system in India has been profoundly impacted by the implementation of the Indian Constitution. The implementation of the concept of the welfare state, fundamental rights<sup>20</sup> as well as the directive principles of state policy<sup>21</sup> included in India's Constitution, has transformed the justice delivery system into a people-friendly one, and it is no longer a simple sovereign role but a constitutional obligation.

The rise of globalization has proven that quality is the key to success in every profession, including the judiciary. The Indian government has correctly recognized that judicial changes are required to ensure the success of economic transformation. In this context the Government of India has resolved to improve the current ADR system in general and the arbitration in particular.

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<sup>19</sup> The UNGA Resolution No XXXI of 1966.

<sup>20</sup> The Constitution of India, Part 3.

<sup>21</sup> *Id.* at Part 4.

### **3.1. Crucial Rights of the Parties Recognized under this Act:-**

The Arbitration and Conciliation Act 1996<sup>22</sup> is built on the principle of party autonomy, which is reflected in various provisions throughout the act. Parties are given complete freedom to customize their arbitration agreement or clause in the contract, including details such as arbitrator selection, qualifications, and extending the arbitration mandate. The importance of party autonomy is evident in every step of the arbitration process outlined in the act, as shown by phrases like "unless otherwise agreed by the parties," "as agreed by the parties," and "failing agreement by the parties." Such rights are:-

- The parties themselves have the right to establish the regulations governing the procedural aspects of the arbitration proceedings to be conducted by the arbitral tribunal.<sup>23</sup>
- The parties have the right to decide on the number of arbitrators to be selected for the purpose of overseeing the proceedings.<sup>24</sup> Subject to the condition stipulated in the act, the parties have the ability to exercise this right.<sup>25</sup>
- The parties hold the privilege to specify the qualifications necessary for the appointment of arbitrators.<sup>26</sup>

In accordance with the 1996 act, the Supreme Court of India has appropriately acknowledged the exclusive rights bestowed upon the parties. Additionally, it has decreed that the High Court cannot prolong the arbitration mandate without the parties' consent under the existing act.

## **4. Contribution of Supreme Court in Enforcement of UNCITRAL Model**

### **Law: Case Law Analysis**

The Constitution of India provides a robust, extensive, and crucial directive to safeguard, uphold, advance and enforce the rudimentary, inherent, de jure and other rights of the citizens as well as the non-citizens of this country.<sup>27</sup> The Supreme Court of India has effectively and compassionately carried out the aforementioned tasks through processes such as judicial review, interpretation of constitution, statute, international treaties, other instruments, precedent, framing guidelines, and providing various remedies as prescribed in the Indian

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<sup>22</sup> The Arbitration and Conciliation Act, 1996 (Act 26 of 1996).

<sup>23</sup> *Id.* at s.2 (9).

<sup>24</sup> *Id.* at s10.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Id.* at S. 11 (8).

<sup>27</sup> *Supra* note 20 and 21.

constitution. This is done to resolve disputes arising from contractual relationships between consumers and corporations. Companies are structuring contracts in a way that may unjustly limit the rights of consumers or citizens. The author will analyze cases decided by the Honorable Supreme Court of India to address these issues.

#### **4.1. KONKAN RAILWAY VS MEHUEL CONSTRUCTION PVT LTD.**

This case<sup>28</sup> has been decided by the three member division bench consisting of Mr. G.B. Patnaik, Mr. Doraiswamy Raju and Mr. S.N. Variava, JJ.

##### **Question of Law:**

The questions which are really important for considerations are

- (1) What is the nature of the order passed by the Chief Justice or his nominee in exercise of power under Sub-section (6) of Section 11 of the Act? and,
- (2) What is the remedy available to the person concerned if his request for appointment of an Arbitrator is turned down by the learned Chief Justice or his nominee, for any reason?<sup>29</sup>

The Supreme Court of India has undertaken a comparative analysis between the Model Law and the Indian Arbitration Act in order to interpret Section 11 of the Arbitration Act in line with the provisions of the Model Law. In its judgment, the Court states that the establishment of the United Nations Commission on International Trade Law was a response to the recognition by the General Assembly that differences in national laws governing international trade posed hindrances to the smooth flow of trade. The General Assembly viewed the Commission as a platform capable of actively contributing to the reduction or elimination of these obstacles. Consequently, the Commission was entrusted with the responsibility of progressively harmonizing and unifying the laws pertaining to international trade.

When the UNCITRAL Model was prepared and the Parliament enacted the Arbitration and Conciliation Act of 1996, adopting the UNCITRAL Model, it was important to keep the main objective in mind while interpreting any provision of the Act. The Act aimed to reduce the supervisory role of Courts in the arbitral process, as clearly stated in the Statement of Objects and Reasons. A comparison between Section 11<sup>30</sup> of the Act and Article 11<sup>31</sup> of the Model Law

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<sup>28</sup> AIR 2000 SC 2821.

<sup>29</sup> *Id.* at Para 2.

<sup>30</sup> *Supra* note 22 at s.11.

<sup>31</sup> *Supra* note 27.

reveals that the Act assigns the Chief Justice of a High Court for domestic arbitration and the Chief Justice of India for international commercial arbitration to appoint Arbitrators, while the Court holds this power under the Model Law. The Chief Justice or his nominee must keep in mind the legislative intent of initiating the arbitral process promptly and leaving all contentious issues for the arbitral Tribunal to address.<sup>32</sup> This decision has been affirmed by the Constitutional bench of the Supreme Court of India in *Konkan Railway vs Rani Construction Ltd.*<sup>33</sup> The Supreme Court has highlighted the disparity between Section 11 of the Arbitration Act 1996 and Article 11 of the Model Law. It was noted that the Model Law was the sole consideration in drafting the Act.<sup>34</sup> Nevertheless, the seven Judge Bench of the Supreme Court of India in the *SBP* case overturned the viewpoint of the three Judge Bench<sup>35</sup> and the Constitutional Bench. Interestingly, the seven Judge Bench in the aforementioned case upheld the ruling made by the two Judge Bench in the *Konkan Railway case II*.<sup>36</sup>

#### **4.2. RELIANCE INDUSTRIES LTD & ORS VS UNION OF INDIA**

The powers of the Chief Justice of India (CJI) under Section 11(6) of the Act<sup>37</sup> determined by the Hon'ble Supreme Court of India, with reference to Article 11(5) of the Model Law. The judgment in this landmark case was delivered by Mr. Surinder Singh Nijjar J. The case pertains to the interpretation of Section 11 of the Arbitration Act, 1996. The facts of the case, as narrated by the Supreme Court of India, are as follows: In 1999, the Government of India announced a policy called the New Exploration and Licensing Policy (NELP). Under NELP, certain blocks of hydrocarbon reserves were offered to private contractors for exploration, development, and production through Production Sharing Contracts. One of these blocks was Block KG-DWN-98/3 ("Block KG-D6"). The joint bid made by Petitioners No.1 and 2 for Block KG-D6 was accepted by the Government of India. Subsequently, on 12th April 2000, a Production Sharing Contract (PSC) was executed between Petitioners No.1 and 2 as Contractors, and the Government of India.

#### **The Judgment:**

The Indian Supreme Court has utilized Article 11(5) of the UNCITRAL Law to interpret

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<sup>32</sup> *Supra* note 21.

<sup>33</sup> 2000(8) SCC 159.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Supra* note 30.

<sup>36</sup> 2000 (7) SCALE 211.

<sup>37</sup> *Supra* note 22.

Section 11(6) of the Act.<sup>38</sup> The court correctly determined that the neutrality of the third arbitrator or presiding officer can be established based on two qualifications outlined in the UNCITRAL Model Law and the Indian Arbitration Act: independence and impartiality. It rightly emphasized that neither instrument specifies nationality as a qualification or disqualification for an arbitrator. Section 11 of the Arbitration Act, 1996, mirrors the language used in Article 11 of the UNCITRAL Model Law. Therefore, arguments that the court cannot refer to Model Laws or UNCITRAL Laws to interpret Section 11, including Section 11(6), is unfounded. The neutrality of an arbitrator is already ensured by Section 11(1) of the Act,<sup>39</sup> which allows individuals of any nationality to serve as arbitrators unless otherwise agreed upon by the parties. In this case, there is no agreement between the parties that the third arbitrator must be an Indian national. In fact, Section 11(9) of the Act,<sup>40</sup> grants the Chief Justice of India the authority to appoint an arbitrator of a different nationality than the parties involved in the dispute. Therefore, the argument is impermissible under the Act,<sup>41</sup> to appoint a third arbitrator of a nationality other than Indian. The mere fact that the two arbitrators nominated by the parties are Indian does not automatically imply that the parties have excluded the possibility of appointing a neutral arbitrator from a different nationality. In this particular case, since both arbitrators were appointed by the parties, the requirement of appointing an arbitrator from a non-national background had not even arisen.

### **4.3. P.DASARATHARAMA REDDY COMPLEX VS STATE OF KARNATAKA AND ANR**

This is a landmark case<sup>42</sup> relating to the ascertaining the intention of the parties to arbitrate. This case law laid down the principle relating to the construction of the arbitration clause/ the arbitration agreement. To put it differently, this case helps us in finding the difference between the adjudication process of an arbitration tribunal and expert opinion. This case has been decided by three Judge bench of the Hon'ble Supreme Court of India consisting of Mr.G.S.Singhvi, Mr.V.Gopala Gowda and Mr.C.Nagappan JJ. The Judgement has been delivered by the Hon'ble Mr. Justice G.S.Singhvi. This case talks about Section 2 (7), Section 16 and Section 11 (6) & (8) of the Arbitration Act 1996. This case also talks about the qualifications and impartiality and independence of the Arbitrator as embodied in the Model

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> 2013(13) SCALE 179.

Law.

**Facts of the case:**

For the purpose of convenience, it is important to highlight the facts extracted from the record of Civil Appeal No. 1586 of 2004 - P. Dasaratharama Reddy Complex v. The Government of Karnataka and Anr, as the arguments presented were specifically based on this case.<sup>43</sup> . The Appellant then filed a Special Leave Petition before the Supreme Court challenging the dismissal of their application for the appointment of an Arbitrator. The Supreme Court, after considering the arguments presented by both parties, held that the clause in the contract did indeed constitute an arbitration agreement and that the Appellant was entitled to have their dispute settled through arbitration. The Court emphasized the importance of upholding the principle of party autonomy in choosing the method of dispute resolution and stated that the clause in question clearly indicated the intention of the parties to resolve any disputes through arbitration.

The Supreme Court further directed the Chief Justice of the High Court to appoint an Arbitrator to settle the disputes between the parties in accordance with the Act of 1996.<sup>44</sup> The Court also emphasized the need for expeditious resolution of disputes and directed the Arbitrator to conduct the proceedings in a timely manner. Overall, the Supreme Court's decision in this case reaffirmed the importance of arbitration agreements in resolving disputes between parties and upheld the principle of party autonomy in choosing the method of dispute resolution. The Appellant was granted the opportunity to have their dispute settled through arbitration, ensuring a fair and efficient resolution of the issues at hand.<sup>45</sup>

The Division Bench of the High Court dismissed the writ petition filed by the Appellant, which questioned the order of the Designated Judge. The court observed that Clause 29 of the Contract cannot be interpreted as an Arbitration Agreement or an Arbitration Clause for resolving disputes. In other appeals, the Appellants have challenged the orders passed by the Designated Judge, who rejected their applications for the appointment of an Arbitrator under the relevant clause of their respective agreements.<sup>46</sup> Karnataka Neeravari Nigam Limited and Krishna

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<sup>43</sup> *Id.* at Para 3.

<sup>44</sup> *Supra* note 41.

<sup>45</sup> *Supra* note 43 at Para 4.

<sup>46</sup> *Id.* at Para 6.

BhagyaJala Nigam Limited have filed appeals against the orders issued by the Designated Judge, which appointed the Chief Engineer as an Arbitrator and instructed him to resolve the dispute. A senior advocate, along with other Learned Counsel representing the contractors, contended that the challenged orders should be overturned due to the misinterpretation of the pertinent clauses in the agreements by the learned Designated Judge and the Division Bench of the High Court.<sup>47</sup>

### **The Judgement:**

The Supreme Court of India has established a guiding principle for determining the intention of the parties in relation to the inclusion of an arbitration clause or agreement. The relevant portion of the judgment states the following:

The aforementioned rulings clarify that an agreement or a clause within an agreement can be considered an arbitration agreement only if:

- i. it stipulates or implies the referral of disputes or differences to a non-judicial entity or decision-making body;
- ii. it explicitly or implicitly provides for a fair and impartial inquiry by the non-judicial entity, affording both parties an opportunity to present their cases; and
- iii. it states that the decision rendered by the non-judicial entity is final and binding on the parties involved, with no recourse to any other remedy, and both parties agree to abide by such decision.

In cases where there is no provision for the referral of disputes to a non-judicial entity, or for a fair and unbiased inquiry, or for a decision that is binding on the disputing parties, there is no arbitration agreement.

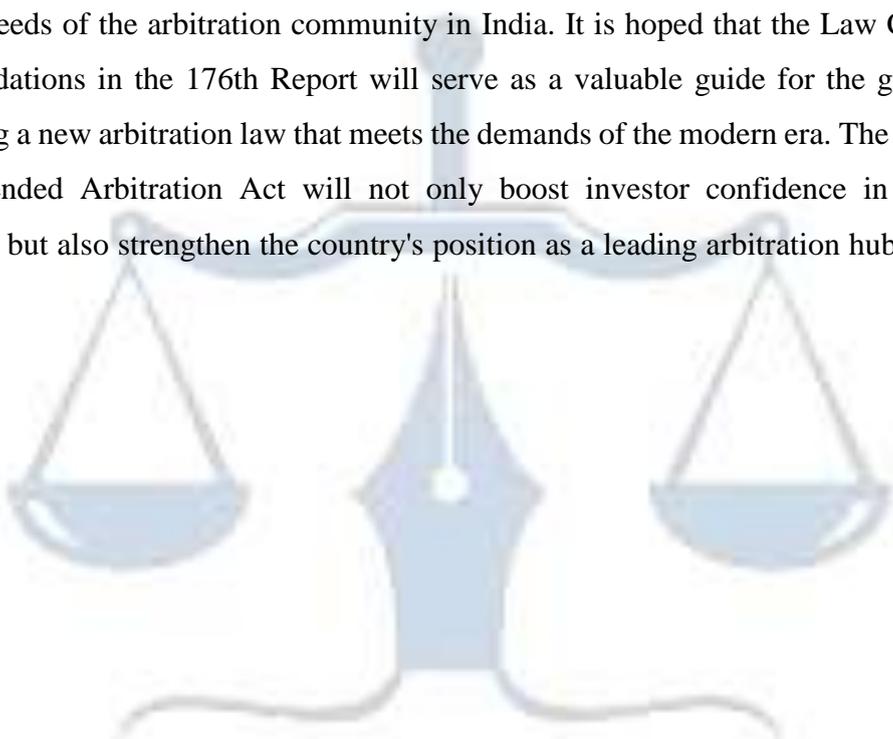
## **5. Conclusion**

Ever since the Amendment Bill expired, there has been a growing concern regarding the outdated clauses of the Arbitration Act of 1996 and how it affects the efficiency and effectiveness of dispute resolution through arbitration in India. The lack of legislative reforms has left many arbitration practitioners and stakeholders frustrated, as they believe that the current legal framework does not adequately address the complexities of modern arbitration proceedings.

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<sup>47</sup> *Id.* at Para 8.

The Supreme Court of India has stepped in to fill this gap by issuing landmark judgments that have not only interpreted the existing law in a progressive manner but have also introduced new principles and practices to enhance the arbitration process in India. These judicial interventions have been widely applauded by the international arbitration community and have contributed significantly to India's reputation as a favorable destination for arbitration. However, the reliance on judiciary-led reforms cannot be a substitute for comprehensive legislative reforms. It is imperative for the government to take proactive steps towards amending the Arbitration Act to align it with international best practices and address the evolving needs of the arbitration community in India. It is hoped that the Law Commission's recommendations in the 176th Report will serve as a valuable guide for the government in formulating a new arbitration law that meets the demands of the modern era. The swift passage of an amended Arbitration Act will not only boost investor confidence in India's legal framework but also strengthen the country's position as a leading arbitration hub in the global arena.



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