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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided 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

# **INDIAN JUDICIAL SYSTEM ON A ROAD TO INVALIDITY UNSTAMPED ARBITRATION AGREEMENTS- A CRITIQUE**

AUTHORED BY - MANOJ V AMIRTHARAJ

## **Abstract:**

This research “Em-templates” the contemporary problem of the Indian judiciary in a neo-centric view on enforcing an arbitration agreement inducted on an unstamped agreement in the Indian legal system has created a vague and misty situation for invoking an arbitration. This adds more complexity and pressure on the developing arbitration hub of India on engaging and harmonizing in International Commercial Arbitration. This change in the procedure brought by the Indian Supreme Court in the case NN Global Mercantile Pvt Ltd v Indo Unique Flame Pvt Ltd will be reflected through a defragmented state of arbitration agreements from its true nature of invocation. This stance has created immense pressure on the Indian legal system to showcase its competence as a reliable Global Arbitration Hub. Indian Arbitration forums resolve thousands of international contractual disputes each year, and the enforcement of unstamped agreements raises a question about the efficiency and credibility of the country’s arbitration mechanism. The Court's interpretation of the Stamp Act and the Indian Contract Act appears to be overreaching, as it contradicts the fundamental nature of arbitration as an independent and autonomous dispute resolution mechanism through specially enacted law, which is the Arbitration and Conciliation Act, 1966. India has adopted UNCITRAL Model Laws through the Act with an aim to harmonize its legal redressal mechanism with international norms. However, the current decision has created uncertainty for international investors and businesses to seek arbitration in India. This uncertainty may lead to a loss of confidence in India’s legal system and discourage foreign investment. This ruling has affected a lot of sectors including aviation, e-sports, logistics, etc. A comprehensive judicial review is necessary to ensure India's continued growth as an arbitration-friendly destination and to bolster its position on the global stage for dispute resolution.

## **Key Words:**

International Commercial Arbitration, NN. Global Mercantile case, Unstamped Arbitration Agreement, Em-Templates, Private Adjudication.

# 1. Introduction

The Indian judicial mechanism is stepping towards a ramification on the validity of the unstamped Arbitration Agreement, which may cause a cost to India's future Global Arbitration Hub for surplus procedures of the Court. The Hon'ble Supreme Court in the case of **NN Global Mercantile Pvt Ltd v Indo Unique Flame Pvt Ltd**<sup>1</sup> laid and affirmed the view of *Vidya Drolia v Durga Trading Corporation*<sup>2</sup> on narrowing its view on Arbitration agreements to be stamped for enforceability.

This decision of the Supreme Court has placed a huge burden on the Indian legal system to prove itself out of this situation for establishing the Indian Arbitration hub globally as it has become an inevitable part of the Indian legal machinery. Indian Arbitration forums settle nearly thousands of international contractual disputes yearly with highly efficient Arbitrators which is in question now.

## 2. Nature of Arbitration Agreement<sup>3</sup>:

We can derive defining that:

*“The Arbitration Agreement is characterized fundamentally as an independent dispute resolution invocation of the agreement in the written document either contractual or non-contractual in nature to set the intention of the parties to seek redressal primarily through outside court settlement through arbitration by appointed neutral third party to conduct the private adjudication.”*

From the Positivist point of view arbitration agreement in international law is an engagement of two parties toward voluntary resolution by common will, to settle disputes in an agreed manner of private adjudication for private justice by a neutral third party like Arbitrator.<sup>4</sup>

The very nature of the Arbitration agreement itself is an independent document from the principal document in which the terms of the intention are stated by the parties on a specific or general subject matter of the intention.<sup>5</sup>

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<sup>1</sup> (2014) 4 SCC 379

<sup>2</sup> (2021) 2 SCC 1.

<sup>3</sup> Mohammad Nevisandeh, The Nature of Arbitration Agreement, *Procedia Economics and Finance*, Volume 36, 2016, Pg 314-320.

<sup>4</sup> Goel, Shivam. (2015). International Commercial Arbitration - India. SSRN Electronic Journal.

<sup>5</sup> Sir Michael John, Transnational Arbitration in English Law, 133, *CURRENT LEGAL PROBLEMS*, 1984



### **2.1. Independent character of Arbitration Agreement:**

The Supreme Court's ruling is principally founded from a presumption pointing out an arbitration agreement, as a self-regulating contract, is liable to levy stamp duty. Given this viewpoint, the Constitution Bench reformulated the question to determine whether the statutory bar in Section 35 of the Indian Stamp Act, 1899, which applies to instruments chargeable with stamp duty, renders the arbitration agreement confined in such an unstamped instrument non-existent, invalid, or unenforceable until stamp duty on the main contract or instrument is paid.

The Supreme Court first resorted to section 2(h) of the Indian Contract Act, 1872, which defines a contract as a legally binding arrangement. The court next looked at the terms of the Indian Stamp Act of 1899, which say that an Indian stamp is a legal document.

The Supreme Court first resorted to the Indian Contract Act, 1872 under section 2(h), which establishes a contract as a legally binding arrangement. The court next looked at the requirements of the Indian Stamp Act of 1899, which indicate that an agreement without appropriate stamping is legally unenforceable since it does not "exist" and is unable to be "acted upon" as a genuine contract. As a result, the Supreme Court ruled it an arbitration agreement, whether independent or contained in the section or in another contract that requires stamping, is non-existent and cannot be relied on by a court to submit conflicts to arbitration.

## **3. Critical analysis of N.N. Global Mercantile case:**

### **3.1. Background information:**

In the relevant case, the Appellant and Respondent had a subcontracting relationship in the manner of a Work Order. The Work Order included an Arbitration Clause in Clause 10. According to Clause 9 of the Work Order, the Appellant provided a bank guarantee, which the Respondent invoked owing to specific issues between the parties. After the previously mentioned guarantee was activated, the Appellant filed a lawsuit to prevent the bank guarantee from being encashed. The Commercial Court denied the Respondent's application to send the matter to an arbitral tribunal under Section 8 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act'). The Respondent then filed a writ petition to challenge the Commercial Court's order that did not allow the application made in accordance with Section 8 of the Arbitration Act, with the main contention being that the Arbitration Agreement turned to non-enforceable because the Work

Order was unstamped. The major question before the Court was how well the Arbitration Agreement would be legally recognized and executed even if the Work Order was unenforceable and unstamped according to the Indian Stamp Act of 1899 (the "Stamp Act").

### **3.2. Historical background:**

A three-judge Apex Court bench had previously declared in *N. N. Global Mercantile Pvt. Ltd<sup>6</sup> v. Indo Unique Flame Ltd.*[1] that the Arbitration Agreement is not listed in the Schedule of the Stamp Act as an instrument subjected to stamp duty. The Court determined that there was a non-payment or deficit in the stamping of the Work Order, which was liable to stamp duty payment. However, the Court determined that such nonpayment or insufficiency on the Work Order wasn't enough to invalidate the contract, but rather rendered it inadmissible as evidence until the flaw was corrected. It was determined that Section 35 of the Stamp Act wasn't sufficient to render the unstamped instrument unlawful, non-enforceable, or void in law. As a result, the Apex Court determined that the Arbitration Agreement was a discrete and autonomous contract between the parties. The Arbitration Agreement is likewise not included as a stamp-duty-paying instrument in the Stamp Act Schedule. Using the Doctrine of Separability, it was determined that the arbitration agreement wasn't going to be concentrated as non-existent, unenforceable, or invalid, even if the primary contract containing it was unenforceable in evidence or could not appear on behalf, because it was unstamped.

A significant question was raised when the Apex Court's three-judge bench was determining the case, and as a result<sup>7</sup>, it was addressed by the Five Judges Constitution Bench. After careful consideration of the case, a majority of three judges overruled previous judgments on the position of law and issued a new landmark order conducting that the arbitration agreement or clause itself cannot be invoked when it is contained in a document or contract that is not duly stamped or is insufficiently stamped.

The Bench also overruled the decisions in *SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited*<sup>8</sup>, and *Garware Wall Ropes Limited v. Coastal Marine Constructions & Engineering Limited*<sup>9</sup>, which had held that the Arbitration Agreement is an independent agreement

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<sup>6</sup> (2021) 4 SCC 379.

<sup>7</sup> (2021) 4 SCC 379.

<sup>8</sup> (2011) 14 SCC 66.

<sup>9</sup> (2019) 9 SCC 209.

between the parties and is not chargeable to payment of stamp duty, and thus the non-payment of stamp duty on the commercial contract.

### **3.3. Ratio decidendi:**

While the minority dissenting ruling of the Hon'ble Apex Court said that the fundamental goal of enacting the Arbitration and Conciliation Act 1996 was to eliminate procedural complexity and prolong the duration of litigation before courts. It was noticed that confiscating and stamping at the Section 11 stage, which is purely for the appointment of arbitrators, would defeat the objective of the Arbitration Act by causing additional delay and stalling the problems. It was also held that preliminary issues such as insufficiently/unduly stamped documents, thereby calling the legality of the arbitration agreement into question, are to the Arbitrator or the arbitral tribunal according to Section 16 of the Act, 1996, which has the power to do so under the Doctrine of Kompetenz - Kompetenz, according to which the arbitral tribunal itself establishes its jurisdiction with respect to disputes.

The Constitution Bench's minority opinion was that court intervention at the pre-referral phase of Section 11 of the Arbitration Act should be limited to the prima facie scrutiny of the 'existence of an arbitration agreement' alone, keeping in mind the object of the 2015 amendment to the Arbitration Act, and that courts must positively follow to the time schedule for the appointment of Arbitrator directed under Section 11(13) of the Arbitration Act. As a result, it was suggested that the presence of an arbitration agreement through copy/certified copy at the pre-referral phase, whether unstamped/insufficiently stamped is sufficient to treat it as an enforceable document for the purposes of appointing an Arbitrator under Section 11(6A) of the Act, 1996.

However, the 3-judge majority from the Constitution Bench upheld the rationale in SMS Tea Estates Case and Garware Wall Ropes Case by considering the relevant provisions of the Stamp Act, The Registration Act, with the Indian Contract Act, 1872 has reached various decisions, like (a) The Stamp Act is a monetary enactment and the courts are duty bound to consistently interpret in favor of enforcement of the law in question rather than its breach, (b) that the court after that an unstamped/insufficiently stamped instrument is only enforceable in law after it has been validated under the Stamp Act, and (d) that contracts or agreements are to be properly stamped to avoid additional intervention when it is not sufficiently stamped and thus proceeding with the arbitration process. The Ratio Decidendi part of this Amicus may be referred to for a full explanation of the numerous submissions in the case and the ultimate ratio.

### **3.4. Question of law from a jurisprudential point of view on the N.N. Global Mercantile Pvt. Ltd case:**

In SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd., the Hon'ble Apex Court of India held that where an arbitration clause has been comprised in an unstamped agreement, the provisions of the Indian Stamp Act, 1899 necessitate the judge analyzing the Section 11 application to seize the agreement and make sure that the stamp duty and penalty, if any, are paid thereon before proceeding with the Section 11 application.

According to the Stamp Act under Section 35, as long as the stamp tax and penalty payable on the document are paid, the court is incapable to act on the instrument, which includes the arbitration agreement that is a fragment of the instrument. Therefore, the court shall first determine whether an opposition in that regard is posted or not, i.e., if the document is correctly stamped, whether a lease deed or another legal document can be depended upon and asserted as the arbitration agreement. If it is determined that it was not appropriately stamped, it should be seized and handled in accordance with the Stamp Act under section 38. Such papers and the arbitration provision therein are not subject to court action. However, the document is capable to be used or admitted as evidence provided the deficiency duty and penalty are paid in accordance with section 40 or section 35 of the Stamp Act. In the context of Garware Wall Ropes Limited v. Coastal Marine Constructions & Engineering Limited, the court determined that section 2(h) of the Indian Contract Act, 1872 made it impossible to enforce an unstamped agreement. The Judges believed that until the subcontract was officially stamped, the arbitration clause incorporated in it would not have legal standing. As Vidya Drolia and Ors. v. Durga Trading Corporation<sup>10</sup>, the same had been affirmed and authorized.

Contrary to all of the aforementioned rulings, the Hon'ble Bombay High Court ordered the appointment of an arbitrator until the payment of stamp duty in the proceedings of Honey Bee Multi-trading Pvt. Ltd. v. Ruchi Soya Industries Ltd<sup>11</sup>. According to the ruling, "the matters cannot be left unresolved at this pre-appointment stage and there is no judicial obstacle to the enforceability and legality of the arbitration agreement, until the payment of stamp duty on the fundamental contract." It was determined to be acceptable to employ the authority granted under section 11 for the Court's appointment of the only arbitrator because neither the arbitration

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<sup>10</sup> (2021) 2 SCC 1.

<sup>11</sup> 2023 SCC OnLine Bom 652

provision included in the lease agreement nor its invocation was in question.

In *Weatherford Oil Tool Middle East v. Baker Hughes Singapore*<sup>12</sup>, the Hon'ble Court stated that the matter cannot be left open until the larger bench resolves it due to the time sensitivity involved in dealing with arbitration issues and the fact that all of these matters were still in the pre-appointment stage. It was determined that the arbitration would continue until the constitution bench made its decision.

#### 4. UNCITRAL Model Laws and Current Indian Stand:

The Arbitration agreement according to Article 7(1) of UNCITRAL model law<sup>13</sup> can be either “contractual” or “non-contractual” It shall be considered as consent for submission to Arbitration. This model law was adopted by India in the Arbitration and Conciliation Act 1996 which states and defines the Indian Arbitration regime. The current scenario of the Indian judiciary has a conflicted stand against its purpose which is “Uniformity” and “Modern flexible law”.

The Supreme Court has clearly violated the fundamental principles of Arbitration which are flexibility and amicable settlement through predefined legal relationship by excessive interpretation (Aequitas nunquam contravenit leges. Equity cannot contradict the law. ) of the term “Existence” in Section 11(6A) of Arbitration and conciliation Act 1996, where the Apex Court has interpreted using Section 35 of Indian Stamps Act where any acceptable document before the court should be duly stamped to make it enforceable in the eyes of law.

This bars the enforcement of existing MOUs and Foreign agreements unenforceable as there are no stamp duties on the Arbitration Agreement. The current situation can also create an international conflict of legal procedural standards, which may lead India to an unfavorable position before the international community. Recapped of certain Latin Maxims, “*Conscientia Legi Nunquam Contravenit*” which implies that **legal conscience never contravenes the law.**” here we still aren’t able to look at the present issue where a mere procedure should not create confusion without providing which prior solution for it. Even though the Supreme Court’s decision is in a healthy manner and motive it further needs an alternative solution to back up the existing system from capsizing.

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<sup>12</sup> 2022 SCC OnLine SC 1464.

<sup>13</sup> UNCITRAL Model Law, 1985, Art 7.



This action of the Apex Court of India has created a situation where the “click on Agreements” by the E-Sports industry will completely shift their place of Arbitration outside India which is a huge setback for 72 years of Indian legal legacy. Further, this also violated Article 51 of the Indian Constitution for Harmonizing with international law and the fundamental rights under Articles 14, 19, and 21 for the Right to choose the forum for redressal and the Right to choose the type of legal relations, even though the “Right in Rem” is prior to “Right in persona” which shouldn’t certain the choice of the existing and future legal relations.

## **5. Hindrance in Harmonizing with International Standards on legal redressal mechanism for contractual transactions:**

The recent development of international law has created a huge variety of fragments for regulating statehood and supranational organizations such as WTO, e.g., the WTO itself after 1995 has a separate mechanism for regulating arbitration for international IPR disputes.<sup>14</sup> The recent global transactions have majorly changed towards e-documentations and digitalized transactions which have internal redressal invoking mechanisms in it for attracting available terms and conditions in the disputed company by the aggrieved persons.

The global mercantile trade majorly through maritime follows the modus operandi through a digitalized mode of transactions that clearly inculcated an unstamped form of e-documents it is hindered by the decision given by the Apex Court which doesn’t include a universally applicable solution or alternative but restricts the existing trade in the developing state of Indian economy towards becoming a global superpower.

The fundamental purpose of the ADR itself is for developing a flexible inter-state outside court settlement mechanism for international trade and commerce for which the UNCITRAL Model Law has been accepted by India for co-existing with the global statehood.

## **6. Position of International Instruments after this decision in various global sectors:**

In the international legal regime, all the contracts are unregistered because of the jurisdictional

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<sup>14</sup> WTO, TRIPS, MODULE IX, DISPUTE PREVENTION AND SETTLEMENT, 151, [modules9\\_e.pdf \(wto.org\)](#).

issue between the parties, NN Global's case for sure will overturn the domestic validity of these instruments as it can't be confined to the conventional court procedure for considering the "existence" of arbitration Agreement.

#### **A. International Aviation Sector:**

The current situation on dispute resolution in the aviation sector has created a situation where entirely recourse is taken by the Indian judicial mechanism on validating the internal terms in every aviation transaction such as Air tickets, logistics agreements, etc., into an ominous state against the International Civil Aviation Organisation (ICAO) regulations.<sup>15</sup>

This has created an unfavorably winded environment for all the civil aviation airlines in compelling with the standardized International Air Transport Association (IATA) guidelines for operating their fleet in various airspaces around the globe. The international civil aviation sector majorly depends on ADRs because of variations in domestic standards, jurisdictions, and time. This invalidation of the unstamped arbitration agreement will curtail the right to seek redressal through ADRs by passengers using their air tickets but now because of this ramification, they have to move to domestic courts to seek redressal.

#### **B. International E-Sports Sector:**

The international E-Sports sector is a budding virtual platform for the global community which entirely operates its dispute resolution mechanism through ADRs majorly via Arbitration<sup>16</sup>. Recently only India was added as a venue for the global E-Sports sector after Hong Kong, China but this change of the procedural requirement may add cost and procedural complexity to the existing stakeholders in this sector, which shall shift the place of arbitration outside India with a loss of approx. \$ 2 Million a year.

This setback in the growing sector like E-Sports has created a huge negative view of India towards harmonizing with the International laws which we expressly adopted through the Arbitration and Conciliation Act 1996.

#### **C. International Logistics Sector:**

The international logistic sector which majorly includes air and water transport operates through

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<sup>15</sup> Zhang, Luping and Uva, Rita, The Role of Arbitration in International Civil Aviation Disputes (December 18, 2015).

<sup>16</sup> Shmatenko, Leonid, eSports – 'It's in the Game': The Naissance of a new Field of International Arbitration (April 29, 2021). 40 under 40 International Arbitration 2021, González-Bueno, Carlos (ed.), 393-410.

international transitways following standard international rules and regulations which follow party-binding tickets to ADRs in every receipt, purchase order, shipping order, etc., of shipment. This current change is not going to affect the logistics sector much but still, it will create an uncertain situation for stakeholders regarding the redressal options they have got, if so, orders placed are huge it needs to go through the domestic courts which will create a heavy cost on the parties.

## **7. Impact of Invalidating Unstamped Arbitration Agreements in the Indian Commercial Realm:**

The impact of the invalidation of the unstamped arbitration agreement in the commercial redressal mechanism has it has created a wide void area of unclear procedure in the existing arbitration, which may lead to an over-pressurized situation in handling the automatic invocation mechanism in every available legal document in the commercial sector when it further becomes a problematic state where only E-documents are used.

### **A. Asset Management Companies:**

The majority of the AMC companies use E-documents for their internal process now making it unenforceable will drive the investors and the AMC to confusion as the existing process should be revamped or altered majorly. The cost of each legal relationship will increase due to the documentation cost. If the existing unstamped documents opted for settling in arbitration, they need to be stamped with a penalty cost of 2% per month from the document date, which will increase the pre-referral stage cost of Arbitration.

### **B. Special Purpose Vehicles:**

Special Purpose Vehicles (SPV) generally use multiple layers of contractual relations to regulate the Investor obligor and the originator or the bank within the internal mechanism for both collecting and distributing the returns from the securitized asset of the originator. SPVs in recent days in the Indian economy plays a vital role in establishing the value of paper assets in day-to-day retail investment and SIP investments through Asset Management Companies (AMC).<sup>17</sup>

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<sup>17</sup> Cox and Kings Limited v. SAP India Private Limited & Anr, Arbitration Petition (Civil) No. 38/2020. Shapoorji Pallonji and Co. Pvt. Ltd. v. Rattan India Power Ltd 2021 SCC OnLine Del 2875.

## **8. Whether invocation of the Arbitration from unstamped MOU is possible after the ruling of the Apex Court in the case NN. Global Mercantile?**

Yes, The fundamental concept of Arbitration relies on two pillars, which are the doctrine of Separability and the doctrine of Kompetenz. The separability doctrines clearly make the principle document and the arbitration clause a separate individual, independent and autonomous document on invoking an agreed dispute settlement mechanism by the parties<sup>18</sup>. This makes it two distinct documents, which should be considered for invoking arbitration as it requires an agreement, it can be non-contractual as per the Arbitration and Conciliation Act 1996 under Section 7(1) as a recognized as an independent document. This bars the court from intervening in the pre-referral stage of an arbitration proceeding because the Court has the power to adjudicate only where there is a necessity to prove the “Existence” beyond any reasonable doubt of an Arbitration agreement as per the Act under Section 11(6A) and if “existence” of Arbitration Agreement is not disputed by the parties they can invoke the Arbitration proceedings through a notice when the Court is not appointing an arbitrator<sup>19</sup>.

When the appointment of the arbitrator is by Court, it can't reject the Arbitration Application of the parties as the requirement of the agreement is vital not the principal contract. Applying the doctrine of Kompetenz the arbitration tribunal has the power to determine its own jurisdiction and further it also majorly tends to diminish the Court intervention in the pre-referral phase. Considering the nature of the Arbitration and Conciliation Act 1996 it's a special law to regulate arbitration procedures and the Stamp Act is a general law that can't override a special statute if does its null and void.<sup>20</sup> Further, the Court has the power to check the mere “existence” of an agreement, not a contract as per Section 7(1) of the Arbitration and Conciliation Act 1996, and should not apply the general law Indian Contract Act 1872 as it has its known redressal mechanism outside arbitration and the special law will prevail over it, the Court can't bar arbitration based on general laws outside the specified special law. Even though the Apex Court tried to interpret a

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<sup>18</sup> Section 16(1) of Arbitration and Conciliation Act 1996,  
Duro Felguera V. Gangavaram ports, 24(2017)9 SCC 729

<sup>19</sup> Vivek Mehta Vs KARRs Designs & Developments, Bombay High Court, A.A. No. 101 of 2016.

<sup>20</sup> M/s. Consolidated Engineering Enterprises vs Principal Secretary, Irrigation Department & Ors. (2008) 7 SCC 169,

Hindustan Zinc Limited Vs Ajmer Vidyut Vitran Nigam Limited (2019)17 SCC 82,  
Gujarat Urja Vikas Nigam Limited Vs Essar Power Limited (2008) 4 SCC 755

special law through general law provisions as per Indian Contract Act under Section 2(h), it's in a negative and narrow manner that curtails arbitration from its own nature of independence. The Court should either accept as a whole or reject as a whole, but not partially accept the procedure but reject the true nature and intent of the legislation. This is constitutionally challengeable and should be re-ramify the judgment of the Supreme Court.

## 9. Conclusion:

The drive through the above-mentioned provisions of law, concepts, doctrines, judicial decisions, and conventions on International law will oblige the article to conclude by stating:

*“ The current stand of Indian judiciary on the NN Global Mercantile Pvt Ltd v Indo Unique Flame Pvt Ltd<sup>21</sup> is totally unpractical to implement in all corners of the arbitration within legal arena, as the existing regulatory system's fundamental nature is being ramified in an unpleasant manner of overinterpretation of the judiciary, which may tend to lead a major back fall of the Indian commercial sector for harmonizing with international law, which Indian legal system expressly adopted through Arbitration and conciliation Act 1996, further the Hon'ble Supreme Court took a upper hand in interpreting a general law and special law with reference to the application of Stamp Act over Arbitration and Conciliation Act which is a legally nullified application, were only the Special law will prevail general law for regulating the internal procedures of the special statute, this further also violated Article 51(d) for Encouraging settlement of International disputes by Arbitration, finally this statement draws us to point a positive judicial review of the Apex court's decision and preserve the fundamental nature of private adjudication, the additional effort to bring a law reform by the Supreme Court has the negative effort.”*

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<sup>21</sup> (2014) 4 SCC 379