

An Analysis: Enforceability of Insufficiently Stamped Arbitration Agreements

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Abstract

Indian courts have varied opinions on the enforceability and validity of insufficiently stamped or unstamped arbitration agreements. Initially, the Supreme Court declared these agreements invalid, however, legislature modifications made in 2015 caused certain High Courts to modify the law and leave matters to the arbitration panel. In 2019 the Supreme Court reinstated the status quo but another bench expressed doubts as to its accuracy. This paper argues that the inclusion of an unstamped arbitration agreement does not prevent the establishment of an arbitration panel, as the panel remains competent to adjudicate on issues relating to alleged infringements of stamp law. In this study, we look at the legal context surrounding the stamping requirement, court decisions, and opinions to determine why the stamping requirement exists and its implications for the enforcement of arbitration agreements. This research examines the legal legitimacy of unstamped agreements. The paper evaluates the rationale behind stamping requirements and their effect on the legality of arbitration agreements, as well as the potential consequences of unstamped agreements on public policy and legal clarity, as well as their independence. This paper concentrates on the notion of enforceability and validating the improperly or insufficiently stamped arbitration agreement where an agreement is unstamped. As there are many questions and complexities surrounding the need for stamping and legality of the Indian stamped documents, the paper focuses on requisites required to make an arbitration agreement effective.

Keywords: arbitration, enforceability, unstamped agreement

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Introduction to Arbitration

Over the years, arbitration has become an increasingly popular and influential alternative dispute resolution technique in India. This system provides parties with an opportunity to resolve commercial disputes out-of-court. Given its effectiveness and cost-efficiency, the Arbitration and Conciliation Act, 1966 seeks to make arbitration an integral part of India's growth as a global hub for dispute resolution. To bolster India's position in the global arena, the Government of India has adopted measures to promote arbitration. However, for a country such as India, enforcing arbitration agreements has become a contentious issue.¹

An 'arbitration agreement' is defined as follows: an arbitration agreement is a contract between two or more parties committing to the use of arbitration as a means of resolving disputes. As explicitly provided under the provisions of the Arbitration and Conciliation Act, 1966, specifically section 7 of Chapter-II states "The parties must sign the agreement in writing and the agreement must contain an arbitration clause to resolve any disputes between the parties." The Tribunal is the only body having the power to decide on certain issues under this Act.

Under the Indian Stamp Act of 1899, documents must be stamped in order to be served according to the legal requirements. An instrument cannot be served as evidence in court if it is not stamped properly. A properly stamped document must have been paid stamp duty or fee in full before it can be served.

The Supreme Court held in the case of *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*² that the applicant's claim that they did not have the right to redress because of a properly stamped agreement would not succeed. As a result, each legally binding agreement or contract containing an arbitration clause is treated as distinct from the agreement concerning its

¹ Pathak, Harshad. "THE CURIOUS CASE OF INSUFFICIENTLY STAMPED ARBITRATION AGREEMENTS IN INDIA." BLACC INTERNATIONAL YEARBOOK ON BUSINESS LAW AND DISPUTE RESOLUTION, 2021:55. <https://heinonline.org/HOL/hein.journals/collection>

² (2021) 4 SCC 379

fundamental rights. Consequently, an invalid agreement would not be treated in the same manner as an agreement's arbitration clause is.³

Introduction to the Indian Stamp Act, 1899

India's Stamp Act of 1899 requires certain documents to be stamped to ensure the legal validity of an agreement, a deed, a document, an affidavit, or a general power of attorney. For instance, sufficient stamping of an agreement makes it enforceable in the court of law. If a deed is stamped incorrectly or improperly, it will challenge the title it conveys and will not be enforceable in court or accepted as evidence. This is the case for property-related documents such as sales and other title transfer documents.

In India, a document or something related to a document needs to be physically present in order for it to be stamped and be legally valid. When the document's execution takes place within India, it must take place here or at least one executing party must be a citizen of India. The Indian Stamp Act also penalises inadequate stamping.

As the information technology industry continues to grow, there are many questions and complexities surrounding the need for stamping, including questions in court regarding the legality of foreign documents in India, legality of Indian documents in international tribunals & courts, legality of registered documents, etc.

There are a number of documents and agreements which are required to be stamped legally. Consequently, it becomes imperative to stamp these documents. It is important to note that no such document is listed in the 'Indian Stamp Act' of 1899. However, 'Section 17' of the Indian Registration Act, 1908 lists the documents which are automatically required to be registered. As registration necessitates stamping, it is mandatory for the same documents to be suitably 'stamped'.

³ Alle-Murphy, Linda. "Are Compulsory Arbitration Clauses in Consumer Contracts Enforceable-A Contractual Analysis." *Temp. L. Rev* 75 (2002): 125. <https://scconline.org/library/detail.aspx>

In order to facilitate the resolution of disputes through traditional legal channels, parties must adhere to arbitration agreements. However, there are circumstances in which certain procedures, such as stamping, must be adhered to for agreements to be enforceable.

Necessity of Stamping an Agreement

It is essential to stamp agreements and documents for a number of reasons, including:

1. **Legality:** A properly stamped document ensures its legal validity. If a document is in doubt or is not admissible, its legal validity is affected. However, insufficient stamping alone does not invalidate the document.
2. **Enforceability:** An agreement or deed is legally enforceable. It can be registered according to the Indian Registration Act 1908, which ensures its enforceability if properly stamped.
3. **Admissibility:** A document that meets the requirements for legal validity may be admissible in a lawsuit involving contested property titles or a dispute over the content of the document.
4. **Avoiding Penalty:** There are various excuses for documents with insufficient stamps that can be used as evidence. However, it is in the best interest of the executing party to comply with the stamping, as the penalty will be paid by the executing party.⁴

Evidentiary Value of Insufficiently Stamped Arbitration Agreement

Section 35 of the Stamp Act of 1899 states that documents that have not been stamped are not admissible in court. Apart from the general rule mentioned in sections 35, 36, and 37 of the Act, there is one more exception. Section 35 of the Act conflicts with Section 49 of the Registration Act, 1908. This has been a matter of dispute in many cases. In the Act, Section 35 is replaced by a proviso which states that in the case of a suit for special performance of a contract based on Chapter II of the Special Relief Act of 1877, a non-registered document affecting immovable property that is required to be registered by the Indian Registration Act of 1908 or by the Transfer

⁴ Manasa Tantravahi and Aman Gupta, Arbitration agreement, which is part of an unstamped contract, has no existence, Lakshmikumaran & Sridharan (May 25, 2023), <https://www.lakshmisri.com/insights/articles/arbitration-agreement-which-is-part-of-an-unstamped-contract-has-no-existence/>

of Property Act of 1882 may be admissible in evidence as evidence of collateral transactions that do not need to be registered or executed by registered instruments.

Any part of a document, not limited to a single sentence, word, or signature, may be admitted in evidence, even if the document is being admitted only for collateral purposes as a supporting document. Once the requisite stamp duty and penalty are paid in accordance with the Rules of Procedure, none of this shall be relevant.

Rectification of an Unstamped Agreement

Regardless of the method employed, the primary aim is still to rectify inadequate or inaccurate stamping, in some cases in addition to the imposition of fines. Consequently, the only action to be taken is to rectify the insufficient stamp. If the question arises as to what to do in the event of an agreement being incorrectly stamped, which of the requirements to be met will depend on the facts and circumstances of the case and when the inadequate stamping was discovered.⁵

Effect of an Unstamped Agreement

When an unstamped document is presented to a court or tribunal, there are two primary consequences:

1. Any person having the authority to receive evidence pursuant to law or consent of the parties is prohibited from accepting the unstamped document as evidence for any purpose
2. Any public official is prohibited from acting upon the unstamped document. In practical terms, acting upon the arbitration agreement would involve appointing an arbitrator pursuant to Section 11 of the Law or granting temporary relief pursuant to Section 9 of the Arbitration Act in response to the unstamped agreement.

⁵ Manasa Tantravahi and Aman Gupta, Arbitration agreement, which is part of an unstamped contract, has no existence, Lakshmikumaran & Sridharan (May 25, 2023), <https://www.lakshmisri.com/insights/articles/arbitration-agreement-which-is-part-of-an-unstamped-contract-has-no-existence/>

Series of Divergent Judicial Decisions

The Indian Supreme Court has issued contradictory decisions in the matter of whether an 'arbitration agreement' is to be subject to 'stamp duty'. This is a matter that has been addressed in various High Courts across the country.

The Supreme Court initially ruled on the issue of 'stamping of arbitration agreements' in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*⁶ In 2011, a panel of judges ruled that an 'arbitrator' could not be appointed on the basis of an 'unstamped arbitration clause' in a contract that was not 'stamped'. This ruling was based on section 35 of the 'Stamp Act', which prohibits the court from 'acting upon' an unstamped document, such as an arbitration agreement that has not been 'stamped'. As a result, the High Court has remitted the matter to the 'Gauhati' Court, which would assess whether the stamp duty was 'stamped' on the document prior to the selection of the arbitrator. Hence the Supreme Court in the above case held that an unstamped agreement cannot be enforced by the court unless the requisite stamp tax and penalty have been paid. This applies to the arbitration clause contained in the agreement or other document that has not been stamped.⁷

An unstamped arbitration agreement is rendered to be void and invalid. In *SMS Tea Estates*, the Supreme Court reiterated the judgement given in *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.*⁸ that an unenforced agreement is unlawful under section 2(g) of the Indian Contract law, 1872. The Supreme Court ordered that courts have the power to impound unstamped agreements and adjudicate on them before deciding on Section 11 application for the appointment of arbitrators on the basis of unstamped agreements. It was held that the court should consider the application only after payment of the applicable stamp duty and penalty. The Supreme Court instructed that the appointed High Court may, while proceeding with the procedure of Section 11, attempt to harmonise the legislative requirements of both the Arbitration Act and the

⁶ (2011) 14 SCC 66

⁷ Rajat Wadhwa, Arbitrability of Disputes under an unregistered and unstamped agreement (Dec 12, 2022) <https://articles.manupatra.com/article-details/Arbitrability-of-Disputes-Under-An-Unregistered-AndOr-An-Unstamped-Lease-Agreement>

⁸ *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.* (2019) 9 SCC 209.

Stamp Act. Furthermore, the court should consider the application only after payment of the appropriate stamp duty and penalties. The appointing High Court may, in the course of the application, confiscate the instrument and pass it on to the competent stamp authorities for immediate stamp duty determination in order to comply with the legal mandates of both the Arbitration Act and the Stamp Act. The case recognised that the stamp duty deficiency could be remedied by making the necessary payment. Once the shortfall stamp duty has been paid, the arbitration process can begin. This lawsuit followed the guidelines set out in the SMS case.⁹

In December 2020, the Supreme Court upheld the logic of Garware in the case *Vidya Drolia v. Durga Trading Corpn.*¹⁰ ["Vidya Drolia"], which involved an arbitration agreement. The court held that the validity and existence of an arbitration agreement are linked and that if an agreement does not meet mandatory legal requirements (such as payment of stamp duty) it is invalid, and an agreement is void. The Court of First Instance acknowledged that Vidya Drolia had upheld the decisions in Garware and that the two cases were determined by benches of similar strength. As a result of the conflicting circumstances surrounding the case, the Court decided to refer the matter to a Constitutional Bench composed of five judges. The referral was made in order to resolve the dispute and to bring together the divergent views of Vidya Drolia, as there had been a discrepancy in their respective interpretations of the law.

Lastly, in the case of *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* ["NN Global"], the three judge Supreme Court ruled that the arbitration agreement is distinct from the underlying commercial agreements and is not subject to the charge of stamp duty. The Court further applied the concept of severability, which stipulates that courts may distinguish between the arbitration agreement and the unstamped instrument and may select an arbitrator on the basis of the legitimate—even if unstamped—arbitration—agreement. Furthermore, appointments made pursuant to Section 11 of the Arbitration Act were allowed to be made on the actual contract subject to payment of stamp duty. As a result, the Supreme Court essentially annulled the judgment given in

⁹ Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineering Ltd. - (Supreme Court) (10 Apr 2019) Insufficiently stamped agreement cannot be acted upon by court MANU/SC/0511/2019

<https://updates.manupatra.com/roundup/contentsummary.aspx?iid=26751>

¹⁰ (2021) 2 SCC 1

the SMS Tea Estates case and challenged both the Garware proportion and the Vidya Drolia logic. As the ruling in NN Global was made by the Coordinate bench, the five-judge Constitution bench was requested to re-consider the matter.

The Supreme Court of India has issued a landmark judgment in the matter of N.N Global 2021, which was delivered by a panel of three judges, in a manner that is distinct from the earlier decisions of the Court of First Instance in the cases of SMS Tea Estates, Garware Wall Ropes and Vidya Drolia. The questions relating to whether stamp duty pursuant to the Stamp Act is to be paid on the basis of an arbitration agreement or a provision contained in an overarching agreement, and whether failure to pay, or inadequate payment of, such stamp duty renders an arbitration agreement void have been settled by the Constitution bench in this case.

Constitution Bench Judgement Analysis: N.N. World Mercantile Ltd. v. Indo Unique Flame Ltd. & Ors.

The Court ruled that it was unable to confirm the position set out in Garware interim order and referred the matter to the five-judge Constitutional Bench for a preliminary ruling. The Court gave precise guidance on the treatment of unstamped agreement and when the arbitrators were to be appointed in the Garware case. The Court drew attention to the distinction between the purpose of Section 9 and Section 11 of the Arbitration and Conciliation Act, 1966. The Court further clarified that, in the event of an urgent and interim application of Section 9, the Court must first grant an interim relief to safeguard the object of the arbitration, before confiscating the agreement until payment of the requisite stamp duty.

In the judgment of the Constitution bench of the Indian Civil Service Tribunal in the case of *N.N. World Mercantile Limited v. Indo Unique Flame Limited Ors.*, it was held that if the document containing the arbitration agreement was not stamped according to the Stamp Act, 1899 it would not be legally enforceable in accordance with Indian Contract Act, 1872. Consequently, it was declared that such an agreement did not exist legally and could not be enforced. This ruling was based on the following arguments:

- (1) An arbitration agreement is not exempted from stamp duty.
- (2) An unstamped agreement renders it unenforceable for any reason.
- (3) When the court appoints arbitrators pursuant under Section 11 of the Arbitration Act, it must first ascertain whether the relevant stamp duty was paid on both the agreement and the document underlying it.
- (4) Provisions of the Stamp Act, 1899 namely Section 33 allows the court to confiscate unstamped documents. Section 35 of the Act also allows the court to adjudicate on required stamp duty. Even in a referral under the Arbitration Act, it seems unreasonable to “shirk” or delegate this task to an arbitral panel. If an agreement is not stamped correctly, the court may refer the dispute to arbitration on the basis of the “existence” of the arbitration agreement. The arbitrator has the power to impound the agreement if the court finds that the allegation of insufficient stamp duty is unsustainable.

Rationale of the Decision

Majority View

Justice’s CT Ravikumar, Aniruddha Bose, and Joseph Kurian ruled that an unstamped arbitration agreement lacks enforceability. They held that the Stamp Act constitutes a source of revenue for the State and is not replaced by the 1996 Act. They added that the separability theory does not apply in such a case. The Court of First Instance of the Supreme Court of India, in its judgment on the matter of the unenforceability of an arbitration clause contained in a non-stamped instrument, ruled that the 1996 Act does not supersede the 1899 Stamp Act and thus does not apply in such a situation. However, the Court of Justice of the Sixth Circuit, in its judgment, held that the arbitral agreement in the present case could be broken and not implemented. It is important to note that the basis of the contract and the arbitral agreement are distinct entities, and thus the arbitration agreement is not enforceable due to the absence of stamp duty. The court may, however, decide to retain the unstamped document and provide the parties with a period of time within which the stamp fee must be paid.

Minority View

In their respective dissenting opinions, Justices A.R. Sharma and H.R. Roy argued that an unstamped agreement containing an arbitration clause could be accepted. They asserted that the separability principle was applicable and that the purpose of the 1996 Act was to promote arbitration. The law of separability, which states that an arbitral agreement is distinct from the underlying contract, is applicable in cases where the contract is not stamped. The 1996 Act grants the arbitration panel the power to decide on matters within its jurisdiction, such as disputes concerning the existence, legality, or parameters of an unstamped agreement. J.Sharma concluded that the majority ruling invalidated the Arbitration Act as it would have prevented the panel from deciding on the legality of the unstamped agreement. The severability principle states that a void clause can be separated from a contract by the application of the severability principle. In this case, the parties may have signed an agreement other than the arbitration clause, as the arbitration clause is not necessary for the main contract. According to Judge Roy, the majority's ruling imposes sanctions on parties for non-compliance with unstamped contracts and discourages the practice of arbitration.¹¹

Divergent Opinions of Judges

The main issue in the case was whether an unstamped arbitration agreement could be enforced or not. The majority judgment of Justice Joseph Kurian and Justice C.T Ravikumar held that an unstamped agreement could not be enforced. Justice Ravikumar's reasoning was based on the fact that the Stamp Act of 1899 was still in force and that the "Separability Theory" did not apply to such a situation. The minority put forward that the Act should be interpreted in such a way that it encourages arbitration and acknowledges the applicability of the "Separation of Interests" theory. In the majority judgment of Justice Ravikumar and Justice Aniruddha Bosa, Joseph Kurain added judicial action at a preliminary reference stage, which delayed the appointment of the arbitrators. In the minority's view, the Act seeks to promote arbitration as a means of dispute resolution. This

¹¹ Parva Khare, Alipak Banerjee & Vyapak Desai, Unstamped Agreements And Its Enforceability under Indian law: Recent Developments, Nishith Desai Associates (Sept. 72023). <https://www.scconline.com/blog/post/unstamped-contract/>

view was supported by Justice Ravikumar, who stated in favour of the majority judgment that, "The Act seeks to encourage arbitration as a way of dispute resolution." The outcome of the case was similar to the SMS Tea Estate case. The minority rulings reduce judicial review, comply with international standards, and affirm the principles of severability that is separation. They were of the opinion that the majority's position may be inconsistent with the spirit of the Act.¹²

Paradigm Shift in Judicial Pronouncements

The Court primarily focused on the following issues:

1. Arbitration Agreement as an Independent Agreement

In this particular case, the Supreme Court held that, according to the jurisprudence of the Court of Justice, an arbitration agreement is distinct and independent from the substantive commercial contract in which it is incorporated.¹³ This is based on the notion that parties who enter into a commercial contract containing an arbitration clause are in fact entering into two distinct contracts: the substantive contract which outlines the parties' rights and obligations arising from the commercial transaction and the arbitration agreement which contains the parties' legally binding obligation to arbitrate their respective disputes. The Court further held that an arbitration agreement's independence is based on the dual concepts of Kompetenz-Kompetenz and the Doctrine of Severability.

a) Separability of the Arbitration Agreement

The 1996 Act acknowledges the principle of severability of an arbitration agreement. Article 16 of the 1996 Arbitration Act provides that an arbitration agreement constitutes an independent contract that may be severed from the primary contract in which it is

¹² Sinha, Palak. "Enforceability of an Unstamped Arbitration Agreement." *Jus Corpus LJ* 3 (2022): 127. <https://heinonline.org/HOL/lucenesearch?Terms=ENFORCEABILITY+OF+INSUFFICIENTLY+STAMPED+ARBITRATION+AGREEMENT&collection=journals&searchtype>

¹³ Dr Mukesh Kumar Malviya, Jurisdictional Issues in International Arbitration with Special Reference to India, Bharati Law Review, Jan-March 2017, <https://www.sconline.com/blog/post/unstamped-contract/>

incorporated. This principle suggests that an arbitration agreement remains enforceable even if the primary contract lapses or becomes invalid. Section 16 of the 1996 Act recognizes this principle by stipulating that the arbitration provision remains enforceable regardless of the tribunal's decision as to the illegality of the contract. This section is based on the principle of UNCITRAL Model Law.

No matter the terms of their agreement, the parties are able to arbitrate on the basis of the principle of severability. An arbitration agreement is a collateral provision in the contract that addresses the resolution of the dispute rather than the performance of the contract. The contract may terminate due to breach, repudiation, or frustration; however, the arbitration agreement will remain in force. The arbitration provision in such a contract remains unaffected by the termination of the contract for non-performance, but the parties will be subject to arbitration for disputes arising from or relating to the terminated agreement. The Supreme Court commented on this particular principle in its case *N.N. Global Mercantile v. Indo Unique Flames*. In addition, the court held that an arbitration agreement constitutes a separate contract between the parties, and that, in the absence of the avoidance of the original agreement, the unlawful nature of the arbitration agreement would not be the same as that of the original agreement.

b) The Doctrine of Kompetenz-kompetenz

This Doctrine states that the arbitration panel has the power to determine and adjudicate matters within its sphere of jurisdiction, including the existence, lawfulness, and scope of the arbitration contract at the initial stage. Such matters are then referred to the courts for review at a subsequent stage of the proceeding. The concept of kompetenz-kompetenz has two components: firstly, it confers on the arbitration panel the power to determine jurisdiction independently of the assistance of the court; secondly, it confers upon the arbitration panel the privilege of resolving disputes prior to the intervention of the court.

The doctrine has been modified over time to minimise judicial intervention during the preliminary stage and to reduce objections to the arbitration panel's jurisdiction.¹⁴

2. Non-Payment of Stamp Duty Does Not Invalidate the Main Contract

The court drew attention to the legislative framework of the Stamp Act, which is a budgetary measure intended to protect the State's revenue on certain classes of instruments. It observed that, in the event of a failure to pay stamp duty, the underlying contract would be admissible in the context of the Stamp Act and would not be applicable for any purpose. In the present case, the Supreme Court held that the underlying contract remains legally valid regardless of whether the stamp duty had been paid or not for the work order. Furthermore, it ruled that, if the required stamp duty had not been paid, the unstamped document was not admissible for evidence or to be acted upon. This decision is in line with Section 34.

It would only be a shortfall that could be remedied by paying the required stamp duty and would not invalidate the main contract. Therefore, the Court ruled that subject to payment of stamp duty, there are no legal impediments to enforcing the arbitration agreement. However, in order to determine the rights and obligations of the substantive contract, it would be necessary for the parties to have it stamped, in accordance with the relevant provisions of the Stamp Act, in the meantime. The Court made it very clear that, when a request is made to the judicial authority to refer disputes to arbitration, it will make the referral to the judicial authority.¹⁵

Legal Implications

¹⁴ Rajat Wadhwa, Arbitrability of Disputes under an unregistered and unstamped agreement (Dec. 12, 2022) <https://articles.manupatra.com/article-details/Arbitrability-of-Disputes-Under-An-Unregistered-AndOr-An-Unstamped-Lease-Agreement>

¹⁵ Sinha, Palak. "Enforceability of an Unstamped Arbitration Agreement." *Jus Corpus LJ* 3 (2022): 127. <https://heinonline.org/HOL/lucenesearch?Terms=ENFORCEABILITY+OF+INSUFFICIENTLY+STAMPED+ARBITRATION+AGREEMENT&collection=journals&searchtype>

The Indian courts have consistently upheld the notion that non-payment of stamp duty is a “curable defect” in numerous cases. This means that once the stamp duty has been paid, the unstamped document can still be considered valid and enforceable. It is argued that an unstamped document cannot be considered non-existent by the law, as it allows the flaw to be remedied by payment of a penalty.

Section 11(6A), added in 2015 to the 1996 Act, seeks to reduce the court’s involvement in confirming the continued validity of an arbitration agreement. This was done to streamline the pre-arrangement phase of the process and reduce the need for judicial intervention. However, the most recent ruling could lead to an increase in disputes over the legality of such agreements. Parties will now have the opportunity to challenge the enforceability of the agreement, which could lead to further legal action and further delays in resolving issues. Important concepts of arbitration, such as the Doctrine of severability, limited court intervention, and the concept of kompetenz, are closely related to the interpretation of this clause.

Lawyers and legal professionals have been engaged in a heated dispute regarding the significance of the innocuous word "existential". This dispute has been sparked by divergent views among Supreme Court benches. Some argue that the arbitration panel should be able to determine the scope, lawfulness, and enforceability of an agreement, and the court should limit its investigation to ascertaining the existence of an agreement, regardless of whether it is properly stamped or if the agreement is enforceable. Others, however, argue that the meaning of "existential" is contingent upon the circumstances and legislative standards that determine the scope of an agreement. The Court has highlighted how the existence of an arbitration clause is contingent upon its enforcement and adherence to legal criteria. The 2015 amendment narrows the scope of the investigation to assess the presence of an agreement, thus reducing the involvement of the court. The meaning of “existential” in Section 11 (6A) plays a critical role in determining the relevance and enforceability of an arbitration clause within a broader agreement.

At the international level, the concept of separability (recognized by the International Court of Cassation and Justice (ICC) and the United Nations Convention on the Law of the Sea (UNC Law), as well as other arbitration organisations, emphasises that even if the primary agreement is declared

invalid, an arbitration agreement continues to exist as a separate legal entity and can be enforced independently. Contrary to the original legislative purpose, the SCOTUS opinion adds an extra layer of review to the arbitrator's nomination process to assess the existence and legitimacy of the arbitration agreement. This ruling may significantly increase the duration of the arbitration proceedings from the outset, resulting in further delays.¹⁶

Conclusion

The Indian arbitration regime has evolved in response to the increasing importance of ADR, and in particular, arbitration, as a means of dispute resolution. The system and strategy have been revised significantly in the expectation of India's emergence as a hub for arbitration procedures. The dynamic and driven contributions of arbitration to global trade and commerce make it a viable investment. The controversy surrounding the earlier conflicting decisions has been addressed by the Supreme Court in the N.N. global Mercantile case, which will have a significant impact on the current arbitration procedures in India. This ruling has concluded the long-standing debate on whether an improperly stamped arbitration agreement or an agreement not stamped at all is enforceable. However, it has also jeopardised the Supreme Court's objective of no or limited court involvement, as the additional step of stamping may impede the appointment of an arbitrator in each case. The Court may have set specific criteria to determine the appropriateness of stamping during the preliminary phase of the trial. While this ruling is undoubtedly a positive and progressive one that will assist in setting a standard for future arbitration agreements, the future dynamics and scope of ADR will be affected by this ruling. It will certainly have a significant effect on whether agreements with excessively stamped arbitration clauses are enforceable. The arbitration clause is distinct and distinct from any other provision of a separate contract, even if the contract is terminated.

¹⁶ United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration. <http://www.scconline.com/DocumentLink/>