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Twenty-Five Years Later: The Extent of Judicial Intervention in Appointment of Arbitrator

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ABSTRACT

Arbitration is a private adjudicatory forum resembling the characteristics of judicial adjudication rendering final justice to the parties at dispute. The foremost task of the process of arbitration is the appointment of the arbitrator(s), which constitutes the arbitral tribunal and facilitates the process further. The process of appointment of the arbitrator(s) is dependent upon the agreement of the parties to the contract. Failure to agree upon the procedure or deadlock between the parties is concomitant to external aid, either of the Court or the permanent arbitral institute, depending upon the curial law of the country. The statutory procedure of appointment of the arbitrator(s) varies from one country to another despite the attempt of the United Nations Commission of International Trade Law Model Law on International Commercial Arbitration, 1985, to uniform the law of arbitration globally. This journey of twenty-four years from 1996 to 2020 have shaped and encapsulated the best arbitration practices in the Indian arbitration regime, specifically vis-à-vis the appointment of the arbitrator(s) under section 11 of the Arbitration and Conciliation Act, 1996. The legislature enacted two amendment Acts, and the one common element of both the amendments was a drastic atonement of the procedure of appointment of the arbitrator(s) under Section 11. To put it succinctly, there was a shift from 'chief Justice' to 'Court' and then to 'arbitral institute' as the appointing authority. The judiciary, on the other hand, equally contributed towards developing a better and improved law of arbitration in each phase of the shift under section 11, scrutinising the agreement and determining the circumstances under which the Court can legitimately exercise its jurisdiction under section 11 to appoint the arbitrator(s). This paper, through descriptive and comparative research, attempts to trace and analyse the shift and development in the procedure of appointment from both the legislative as well judicial aspect.

***Keywords**: Arbitration, Arbitrator, Appointment, Judicial intervention*

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I. INTRODUCTION

A national court is a standing body to which the parties can approach at any time after a dispute has arisen, but in case of arbitration, there exists no established forum, and the parties must constitute a competent tribunal that would have the jurisdiction to hear the claims. One of the essential attributes of arbitration is the parties' autonomy to appoint an arbitrator through an agreement.[2] The process of composition of a tribunal is lengthy, especially when the party, mostly the respondent, fail to appoint an arbitrator and can take at least two months.[3]

A quarter of a century in 1996, the Indian Parliament enacted the indispensable and unified legislature to regulate arbitral proceedings and for the enforcement of foreign awards in India, the Arbitration and Conciliation Act 1996[4] (ACA) (Principle Act[5]). Since the enactment of the ACA, it has been atoned twice, at first in the year 2015 via the Arbitration and Conciliation Amendment Act, 2015[6] (AA of 2015), incorporating various imperative changes making the arbitral process expeditious and also reducing the scope of judicial intrusion in the arbitral process giving effect to the principle of Kompetenz-Kompetenz. Secondly, in 2019 via the Arbitration and Conciliation Amendment Act 2019[7] (AA of 2019), amending the ACA further to prune the involvement of the judiciary in the arbitration proceedings and also to promote and strengthen institutional arbitration in India. It is observed that the Indian legislature, through constant endeavour, has been continuously turning its wheels to pave the way for an improved and efficient legislature on arbitration in India which is in line with the international norms, specifically the United Nations Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) of 1985[8]. In both the amendments to the ACA, Section 11 is drastically atoned. Section 11 provides for the provision relating to the appointment of an arbitrator in cases parties are unsuccessful to concur or get stuck in a deadlock regarding the arbitrator's appointment.

Amendments to section 11 have given rise to a plethora of instrumental judicial interpretations in respect of the nature and scope of the appointment of the arbitrator(s) either through the

[2] Gary B. Born , International Commercial Arbitration 1638 (2nd ed. 2014) [hereinafter Gary B. Born]
[3] Redfern and Hunter, International Arbitration 230 (6th ed. 2015) [hereinafter Redfern]
[4] Arbitration and Conciliation Act, 1996, No 26 of 1996 [hereinafter ACA]
[5] All mentions of Principle Act in this article are to be interpreted as references to the Arbitration and Conciliation Act 1996 as amended by the AA of 2015 and the applicable notified provisions i.e. ss. 1,4,5,7,8,9,11,12,13, and 15of the AA of 2019.
[6] Arbitration and Conciliation Amendment Act, 2015 3 of 2016 [hereinafter AA of 2015]
[7] Arbitration and Conciliation Amendment Act, 2019 33 of 2019 [hereinafter AA of 2019]
[8] United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration, 1985 UNGA Res 40/72 (11 December 1985), as amended by UNGA Res 61/33 (18 December 2006) UN Doc A/RES/61/33 [hereinafter UNCITRAL Model Law]

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national courts or the parties themselves. The procedure of appointment of the arbitrator(s) in the last twenty-four years has undergone a drastic shift. Thus, the author explores and analyses the depth of section 11 in light of the two amendments of 2015 and 2019. In addition to such analysis, the author compares section 11 as amended by the AA of 2019 with the curial law of the leading players of arbitration in South-East Asia, specifically Singapore and Hong Kong. Moving further, the author illuminates various judicial pronouncements which have changed the paradigm of arbitration practice in India vis-à-vis the appointment of the arbitrator(s) and questions of law ancillary to such appointment, followed by a conclusion.

II. TURNING OVER A NEW LEAF: RECURRENT ATONEMENTS

In the international sphere among the various jurisdictions, it is a well-accepted practice to upgrade the curial law in order to inculcate the novel trends and to keep pace with the requirements of the twenty-first-century arbitration users.[9] The appointment process witnessed such a shift in the 20th century when premier international arbitration institutes were established globally.[10] Appointment via arbitral institutes is also in line with the general principle of restraining judicial interference in the arbitration process, being a private adjudicatory body.[11]

In India, the judiciary had a prominent role in the appointment of the arbitrator(s) under section 11 of the ACA. Institutional arbitration is a recent trend in India as the bulk of the domestic arbitration users prefer ad-hoc arbitration[12] , to which the Indian Parliament has responded through the AA of 2019, entrenching and encouraging institutional arbitration in India. The nature and scope of section 11 of the Principal Act can be studied under three categories. Firstly, judicial appointment under section 11 in light of the original section[13] and as amended by the AA of 2015, which is still relevant. Secondly, an institutional appointment has given the users of arbitration in India the first flush of hope and promise of true arbitration experience. Lastly, comparing the appointment procedure as amended by the AA of 2019 with that of the curial law of the other prominent arbitration jurisdictions in South-East Asia, namely, Singapore and Hong Kong.

[9] Cosmos Nike Nwedu, Spotlight on International Arbitration: A Survey of Emerging Trends and Challenges to Its Practice, 6 YB on Int'l Arb 23, 26 (2019); Christopher R. Drahozal, Commercial Norms, Commercial Codes, and International Commercial Arbitration, 33 Vand J. Transnat'l L.79, 120 (2000)

[10] Lawrence G S Boo, SIAC and Singapore Arbitration' 1 Asian Bus Law 32 (2008); ("Arbitral institutions such as the Court of Arbitration of the ICC (established in 1923) in France, Arbitration Institute of Stockholm Chamber of Commerce (established in 1917) and China International Economic Trade Arbitration Commission (CIETAC, established in 1956) cast a strong influence over how arbitrations are conducted in these countries.")

[11] Gary B. Born, supra note 1, at 212-213

[12] Deepto Roy & Madhukeshwar, Institutional Arbitration in India the way forward Desai 92 (Shashank Garg ed. 2018)

[13] As introduced when the Arbitration and conciliations Act, 1996 was first enacted.

(A) Judicial Appointment: Still not Obsolete

Section 11 of the ACA under Sub-sections (1) and (2) provided that the parties, upon their own volition, can determine the procedure for appointment of the arbitrator(s) and except the parties agree otherwise, they may appoint an arbitrator of any nationality. These two Sub-sections are still unchanged as they go to the very root of arbitration proceedings and are considered the essential characteristics of arbitration giving effect to the principle of party autonomy. Sub-section (3) of Section 11 of the ACA stands as it was twenty-four years ago and provides for a statutory procedure of appointment of three arbitrators in case the parties are unsuccessful to concur on the appointment procedure, wherein each party appoints an arbitrator severally, and the third arbitrator is designated by the two appointed arbitrators.

Sub-section (6), (4) and (5) of section 11 of the ACA provided for the selection of the arbitrator(s) in cases of failure to adhere to the agreed procedure laid down by the agreement under Sub-section (2), or failure to adhere the statutory procedure under Sub-section (3), or lastly, failure to enter into an agreement in respect of the appointment procedure of a sole arbitrator under Sub-section (5), by the Chief Justice of the High Court (Chief Justice of India in cases international commercial arbitration) or his designate. The AA of 2015[14] replaced the single appointing authority, the 'Chief Justice', with that of the 'court', either the High Court or the Supreme Court or any person or institute designated by such Court. The reason explained for not including the term 'court' in section 11 of the ACA is as follows:[15]

"It is true that the power Under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament, obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act."

Moreover, analysing the shift in the appointing authority, such a shift is appreciated and welcomed. This shift reduced the burden from the overtaxed shoulders of the Chief Justices'

[14] AA of 2015, supra note 3, s 6(i)
[15] S.B.P. and Co. v. Patel Engineering Ltd. and Anr, (2005) 8 SCC 618 ¶ 18

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of the High Courts and also made the process expeditious as any available judge of the High Court can hear the appointment application.

New Sub-section 6A and 6B were inserted.[16] Sub-section 6A provided for judicial scrutiny of the agreement during the hearing of the appointment application to establish the existence of a lawful arbitration clause/agreement. The Court, in hearing the application for appointment of an arbitrator under section 11, does not have to scrutinise it in a detailed manner and is only required to dwell upon the precursory questions such as jurisdiction, arbitrability, the extant binding arbitration agreement and others.[17] Looking at the importance of time efficiency in arbitration proceedings, it is argued that such provision is not in alignment with the principle of Kompetenz-kompetenz and contributes a considerable time in disposing of the application as the Court would dwell upon the innate intricacies of the agreement, which results in extra hearings and become time-consuming. Moreover, such an issue falls within the ambit of the arbitral tribunal and should have been left to it, giving effect to the principle of Kompetenz-kompetenz.

Sub-section 6B provides that no order made by any person or institute designated by the Court for selection of an arbitrator shall be considered as a delegation of the judicial power of the courts.

The procedure laid down by the AA of 2015 for the appointment of an arbitrator through the higher courts is still not obsolete as all the provisions of the AA of 2019 have not yet been enforced in India, which includes the new appointment procedure laid down under Section 3 of AA of 2019.[18]

(B) Institutional Appointment: The User's First Flush of Hope

The novel appointment procedure under the AA of 2019[19] has entirely done away with judicial intervention in the appointment process and has primarily focused on institutional appointments promoting institutional arbitration in India. Apart from the insertion of Sub-section 3A and the omission of Sub-section 6A, the key changes were again made in Sub-section (4), (5), and (6) of Section 11 of the Principal Act, replacing the appointing authority from the 'court' to the 'designated arbitral institute'. Under Sub-section 3A, the Apex Court and the High Courts shall designate graded arbitral institutes to which the parties can apply for

[16] AA of 2015, supra note 3, s. 6(ii)
[17] Today Homes & Infrastructure P. Ltd v. Ludhiana Improvement Trust, (2014) 5 SCC 68; National Insurance Co. Ltd. v. Boghara Polyfab (p) Ltd., (2009) 1 SCC 267
[18] Ministry of law and Justice, Notification available on http://legalaffairs.gov.in/sites/default/files/notificaiton%20arbit.pdf last visited on 07/08/2020
[19] AA of 2019, supra note 5, s. 3

the appointment of the arbitrator(s).[20] According to the new process, if the circumstances mentioned under Sub-section (4), (5) and (6) exists, the party can apply to the designated arbitral institution, and such institute shall make the appointment.[21] The party shall apply to the graded arbitral institutes designated by the Supreme Court in cases of international commercial arbitration or by the High Court in cases of domestic arbitration only.[22]

The omission of Sub-section 6A by the legislature is a stride in the correct direction. Now, when the request for the appointment of the arbitrator(s) is directly made to an institute, there arises no need to scrutinise the agreement for a valid arbitration clause by the National Court. The new process of appointment is mechanical and leaves all questions of substantive nature to be determined by the arbitral tribunal.[23]

Once the new procedure under the AA of 2019 comes into force, it will substantially reduce the time taken to appoint an arbitrator and would also save the parties from the orthodox practice of lengthy and detailed hearings to which the judges of Indian courts are accustomed. But on the contrary, the appointment of the arbitrator(s) through an arbitrator does not necessarily mean that such proceedings would be institutional in nature; it can also be ad-hoc. Thus, the AA of 2019 has attempted to acquaint the users in India with a globally accepted procedure resonating with the general principle of party autonomy and Kompetenz-kompetenz. It has given the users the first flush of hope and a promise of true arbitration experience since the very inception of arbitration proceedings, that is to say, without the interference of public governance.

III. PRO-ARBITRATION STANCE: JUDICIAL INTERPRETATIONS

The growth of arbitration as a private adjudicatory body can be ascribed to its pivotal attributes, one among those is the parties' volition to regulate the procedure, otherwise known as party autonomy. The UNCITRAL Model Law has also granted the parties the freedom to appoint arbitrators[24] and as rightly pointed out by Redfern and Hunter:[25]

"Once a decision to refer a dispute to arbitration has been made, choosing the right arbitral tribunal is critical to the success of the arbitral process. It is an important choice not only for the parties to the particular dispute but also for the reputation and standing of the process itself.

[20] AA of 2019, supra note 5, s. 3(i)
[21] AA of 2019, supra note 5, s. 3(ii)
[22] Id.
[23] Shivani Vij and Varun Mansinghka, Judicial (non)appointment of arbitrators in India: a case study of 'inadequate stamping' as a ground for non-appointment, 35 Arb Int 20 (2019) [Hereinafter Shivani and Varun]
[24] UNCITRAL Model Law, Art. 11(2)
[25] Redfern, supra note 2 at 233

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It is, above all, the quality of the arbitral tribunal that makes or breaks the arbitration, and it is one of the unique distinguishing factors of arbitration as opposed to national judicial proceedings."

But wherein the parties fail to mutually appoint, there arises a need for external assistance, that is, of the national courts. The Court can assist the parties to constitute an independent, impartial and qualified arbitral tribunal, which can diligently adjudicate the dispute at once, eliminating further dispute and appeals. Section 11 of the present applicable Arbitration and Conciliation Act, 1996[26] (ACA) is subjected to a plethora of judicial interpretations. Among those few were landmark judgments that illuminated the Indian judiciary's pro-arbitration stance and also effectuated a shift in the arbitration paradigm in India. To gain a better understanding of the judicial precedents upon the nature and scope of Section 11 the author classifies it into two major sets. Firstly, before the dawn of the first amendment, discussing a few instrumentals questions of law such as the nature of jurisdiction exercised by the Chief Justice and the scope of judicial scrutiny of an arbitration agreement. Secondly, at the first light of atonement, shedding light on the criteria which the Court takes into account before intervening in the appointment process.

(A) Before the Dawn of the First Amendment: Before 2015

The Supreme Court in Wellington Associates v. Kirit Mehta[27] noted that the courts are not excluded from discovering the subsistence of an arbitration agreement, and neither the tribunal has the exclusive power to decide the issue of arbitrability as section 16 of the Principal Act is only an enabling provision which does not confer exclusivity to the arbitral tribunal. The very next issue which came to light out of this predicament, specifically in relation to Section 11 of the Principal Act was, what truly is the nature of the power wielded by the Chief Justice or his designate — is it judicial or an administrative order — whether such order is subject to special leave petition under Article 136 of the Constitution.

In Konkan Railway Corporation Ltd. v. Mehul Construction Co.[28](Mehul Construction), the Apex Court held:

"The nature of the function performed by the Chief Justice being essentially to aid the constitution of the Arbitral Tribunal immediately and the legislature having consciously chosen

[26] Arbitration and Conciliation Act, No 26 of 1996 as amended by the Arbitration and Conciliation (Amendment) Act, No 37 of 2015 and the Arbitration and Conciliation (Amendment) Act, No 33 of 2019. All mentions of ACA in this article are to be interpreted as references to the Arbitration and Conciliation Act 1996 as amended by the AA of 2015 and the applicable notified provisions i.e. ss. 1,4,5,7,8,9,11,12,13, and 15of the AA of 2019.
[27] (2000) 4 SCC 272
[28] (2000) 7 SCC 201 ¶ 6

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to confer the power on the Chief justice and not a Court, it is apparent that the order passed by the Chief Justice or his nominee is an administrative order.

Therefore, even an order refusing to appoint an arbitrator will not be amenable to the jurisdiction of the Supreme Court under Article 136 of the Constitution. However, an order of refusal which has decided contentious issues would be an act of non-performance of duty and the authority concerned could be directed by mandamus to perform its duty."

Moreover, in 2002 another landmark judgment of Konkan Railway Corporation Ltd. v. Rani Construction P. Ltd.[29] (Rani Construction), the Supreme Court affirmed its earlier stance as held in the Mehul Construction case on the maintainability of special leave petition and the nature of the order passed by the Chief Justice or his designate.

The Rani Construction stance of the Apex Court, however, was overruled by the landmark judgment of SBP & Co. v. Patel Engineering Ltd. (SBP)[30]. The Court by majority held that "the power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power."[31] The outcome of the SBP judgment was that the Chief Justice or the person or institutes designated by him, while hearing an application for the appointment of the arbitrator(s), would also dwell upon the issue of subsistence and bona-fides of the arbitration agreement, which in fact intersect with the aspect of the principle of Kompetenz-kompetenz incorporated under section 16.

This journey of meticulous analysis of the nature and scope of the jurisdiction of the Chief justice under section 11 was before the dawn of the first amendment to the Principle Act, which culminated with the SBP decision encouraging the legislature to amend Section 11 via the AA of 2015 to incorporate the changes brought about by the SBP decision.

(B) At the first light of Atonement: After 2015

At the first light of the AA of 2015, multiple conflicts within the Principle Act were resolved, which further enunciated the aim and objective of the Act. The Indian judiciary was motivated enough to disseminate a stance that resonates with the global arbitration community and also propagate that India is an arbitration-friendly country. The crystallisation of a pro-arbitration stance of the Indian judiciary can be perceived in view of a few contemporary judgments of the Supreme Court, investigating the extent and scope of Section 11 of ACA.

[29] (2002) 2 SCC 388
[30] (2005) 8 SCC 618
[31] Id., ¶ 47 (i)

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In Perkins Eastman Architects DPC and Ors. v. HSCC (India) Ltd.[32], the respondent, issued a proposal for the appointment of a design consultant for an All India Institute of Medical Sciences Institute. The applicant was awarded the proposal, and thus a contract was entered into between the parties, which provided inter alia for arbitration. The arbitration clause provided for arbitration by a sole arbitrator appointed by the Chief Managing Director of the respondent within 30 days from the receipt of a plea from the applicant. The Chief General Manager of the respondent appointed one Major General K.T. Gajria as the sole arbitrator that too after the lapse of 30 days. The question before the Court was whether there existed justified grounds for the Court to exercise its power to appoint an arbitrator under section 11 of ACA. The Court observed:[33]

"That as the Managing Director became ineligible by operation of law to act as an arbitrator, he could not nominate another person to act as an arbitrator and that once the identity of the Managing Director as the sole arbitrator was lost, the power to nominate someone else as an arbitrator was also obliterated."

Thus, the Court relying on the judgment of TRF Limited v. Energo Engineering Projects Limited[34], Voestapline Schienen Gmbh v. Delhi Metro Rail Corporation Ltd.[35] and uploading the principle of impartiality and independence in arbitration proceeding set aside the appointment of the sole arbitrator by the Chief General Manager of the responded and appointed Justice A.K. Sikri as the sole arbitrator to resolve any or all disputes between the parties.

In another case, the parties entered into an agreement which included an arbitration clause stating, "any dispute, controversy, the difference arising out of or relating to the MoU shall be referred to and finally resolved by arbitration administered in Hong Kong..."[36] The question before the Court was whether the agreement containing a reference 'administered in Hong Kong" is a reference considering Hong Kong as the place of arbitration or merely a venue. The Court held that:[37]

"On a plain reading of the arbitration agreement, it is clear that the reference to Hong Kong as 'place of arbitration is not a simple reference as the 'venue' for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. The

[32] AIR 2020 SC 59
[33] Id., ¶ 15
[34] (2017) 8 SCC 377.
[35] (2017) 5 SCC 665
[36] Mankastu Impex Private Limited v. Airvisual Limited, (2020) 155 CLA 283 (SC), ¶ 21
[37] Id.

agreement between the parties that the dispute 'shall be referred to and finally resolved by arbitration administered in Hong Kong' clearly suggests that the parties have agreed that the arbitration is seated at Hong Kong and that laws of Hong Kong shall govern the arbitration proceedings as well as have the power of judicial review over the arbitration award."

Thus the Supreme Court denied the application for appointment of an arbitrator under Section 11(6) of ACA and directed the parties to approach HKIAC for the appointment.

The foremost questions which the Court takes into account in order to exercise power vested in it via section 11 of ACA are whether the Court has jurisdiction in entertaining the application under section 11 of ACA, i.e. whether the seat of arbitration is India and thereafter, whether there exist justified circumstance in the given case for the Court to intervene and make an appointment.

The Apex Court recognised and gave impetus to the 'rules' agreed by the parties in respect of the appointment of an arbitrator expressing deference towards the principle of party autonomy. "Mere neglect of an arbitrator to act or delay in passing the award by itself cannot be the ground to appoint another arbitrator in deviation from the terms agreed to by the parties."[38] Moreover, "whenever the agreement provides for the appointment of named arbitrator, the appointment of arbitrator should be in terms of the contract"[39].

In respect of an agreement containing an arbitration clause in which criminal allegation of fraud is alleged to have been committed, the question before the Court was whether the Court could exercise its power under section 11 to appoint an arbitrator. The Supreme Court, by distinguishing between 'serious allegations' and 'simple allegations' of the plea of fraud, noted that where the plea permeate the contract as well the agreement of arbitration, rending it void, then the contract is not arbitrable, but whereas the allegations of fraud touch upon the internal affairs of the parties and does not have any impact in the public domain, the Court can exercise its power under Section 11 to appoint an arbitrator upon the application of a party.[40]

Lastly, expressing an anti-arbitration approach but upholding the interest of the State, the Apex Court considered it justified in intervening in an arbitral appointment where the arbitration agreement or the contract containing an arbitration clause is unstamped or under stamped. Making a peculiar case of judicial non-appointment in cases of insufficient stamping. In

[38] Rajasthan Small Industries Corporation Limited v. Ganesh Containers Movers Syndicate, (2019) 3 SCC 282 ¶ 31
[39] Union of India (UOI) v. Pradeep Vinod Construction Company and Ors., (2020) 2 SCC 464
[40] Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 ¶ 5

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Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.[41], the Supreme Court placing reliance upon SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.[42] held that "while proceeding with an application under Section 11, the court must impound instrument which had not borne stamp duty."[43]

IV. CONCLUSION

The distrust of the Indian courts in the arbitral tribunal culminated into an intervention-heavy approach in appointment or non-appointment of arbitrator right from the stage of pre-appointment till the enforcement of the award. But with the lapse of time, the Indian judiciary atoned its approach and developed deference towards the arbitral tribunal.

It is unequivocal that the Indian judiciary in the last twenty-four years have witnessed a shift in its approach and have gradually adopted a pro-arbitration stance which echoes from the recent judgments of the Supreme Court precisely in the context of section 11 of the Principal Act. Moreover, The AA of 2019 has finally done away with the judicial intervention in the appointment process, making the process purely automated through the arbitral institutes, which has given the Indian arbitration users the first flush of hope of a true arbitration experience. Whether this new approach will stand the test of time and encourage institutional arbitration or portend a failed attempt is yet to be determined.

The year 1996 was a milestone in the Indian arbitration regime, and now twenty-four years down the path of ups and downs, the Indian arbitration regime is on its way to the summit. A problem shared is a problem halved, the Indian Parliament has done its share of the work by amending Section 11 of ACA in order to eliminate certain inconsistencies and adhering to international norms, whereas on the other hand, the Indian judiciary has diligently performed its functions recognising and upholding the general principles of arbitration and international norms which has assisted India to develop a better image in the global arena of arbitration and also increases the possibility of alluring potential international arbitration users.

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[41] (2019) 9 SCC 209
[42] (2011) 14 SCC 66
[43] Supra note 58, ¶ 27

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