ANCIENT ERA

HINDU LAW

The law and practice of private and transactional commercial disputes without court intervention, is rooted in the haze of ancient history. Arbitration or mediation as an alternative to dispute – resolution by municipal courts has been prevalent in India from Vedic times. The earliest known treatise is the Brhadaranayaka Upanishad, in which sage Yajnavalkya refers to various types of arbitral bodies puga or gana, sreni and kula. Broadly speaking, the pugas were local courts, the srenis were guilds of persons engaged in the same business or profession and the kulas were concerned with the social matters of the members of a particular community. Such bodies were known as Panchayats and their members were known as Panchas, which used to deal with the disputes under a system, which were similar to the system of arbitration. An aggrieved party could however go in appeal to Sreni against the decision of Kula and to Puja against the decision of Sreni and finally from the decision of Puga to the Pradvivaca. Though these bodies were non governmental and the proceedings before them were of informal nature, free from the cumbersome technicalities of the municipal law and their decisions were reviewable by municipal courts.
In the absence of some serious flaws of bias or misconduct, by and large, the courts have given recognition and credence to the awards of the Panchayats. For instance, in Sitanna V. Viranna, the Privy Council affirmed an award of the Panchayat in a family dispute, challenged after about 42 years. Sir. John Wallis J stated the law in the following words:

“Reference to a village pinhead is the time honoured method of deciding disputes of this kind, and has these advantages, that it is generally comparatively easy for the panchayatdars to ascertain the true facts, and that, as in this case, it avoids protracted litigation which, as observed by one of the witnesses, might have proved ruinous to the estate. Looking at the evidence as a whole, their Lordships see no reason for doubting that the award was a fair and honest settlement of a doubtful claim based both on legal and moral grounds, and are therefore of opinion that there are no grounds for interfering with it”.

MUSLIM LAW

During Muslim rule, all Muslims in India were governed by the Islamic laws – The Shari’ah, as contained in the Hedaya. Imam Abu Hanifa and his disciples Abur Yusuf and Imam Mohammad, in the commentary which came to be known as the Hedaya, systematically complied the Muslim law. However, with respect to transactions between Muslims, a hybrid system of arbitration laws developed. The Hedaya contains provisions for arbitration between the parties. The Arabic word for arbitration is Tahkeem, while the word for an arbitrator is Hakam. The court language throughout the Muslim era was Persian. The Persian word for arbitrator is Salis and a party to arbitration is a Salissee. Agreement of arbitration is Salisnama

32 AIR 1934 PC 105, 107; Amir Bibi V. Arokiam AIR 1919 Mad 1113 (DB)
while the word for the award is Faisla. The practice of recourse to arbitration evolved up to the end of the Mughal Empire and continued during the British Period throughout the country, in one form or the other. Shari’ah – Arbitration, in most Islamic countries, is governed by Shari’ah, which is the basic law of the Muslims. The effect of the agreement to submit their disputes to the Shari’ah law is that the parties agree that Shari’ah will govern all aspects of arbitration to the complete exclusion of any ‘secular system’. However, in the area of international commercial arbitration, strict application of Shari’ah has diminished with emergence of arbitration rules.

**BRITISH RULE**

But between the years 1772 and 1827, the government gave legislative form to the law of arbitration by promulgating regulations in the three Presidency towns viz Calcutta\(^{33}\), Bombay\(^{34}\) and Madras\(^{35}\), in exercise of the powers conferred upon it by the British Parliament. During British rule, Bengal Regulation Act of 1772, for the first time introduced the statutory provisions relating to arbitration. Subsequent enactment further strengthened the very basic idea of the arbitration, when the Bengal Regulations of 1787, 1793 and 1795 introduced certain procedural changes by empowering the court to refer suits to arbitration with the accord of the parties and further empowering the court to encourage reference of cases not exceeding Rs.200 in value to arbitration, and disputes relating to partnership account, debts, disputed bargains and breach of contract. They also laid down the procedure for conducting arbitration proceedings before the arbitrators.

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33 Bengal Regulations I of 1772, LVII of 1781, XXVII of 1787, XVI of 1793, XV of 1785, XXI of 1793, VI of 1813, XXVII of 1814 and VII of 1822, VI of 1832 and IX of 1833
34 Bombay Regulations I of 1799, IV and VI of 1827
35 Madras Regulation I of 1802 and Regulations IV, VI and VII of 1822
The Bengal Regulation of 1793 was extended to the city of Benaras in the year 1795. The limits of jurisdiction of arbitration were extended by the Bengal Regulations of 1802, 1814, 1822 and 1883 by making diverse procedural changes. Similarly, in the Presidency town of Madras, the Regulations of 1816 empowered the district Presidency town of Madras; the Regulations of 1816 empowered the District Munsifs to convene district panchayats for settling disputes of a civil nature in connection with real estate and personal property. In the Presidency town of Bombay, Regulation VII of 1827 provided for settlement of civil disputes and also laid down that arbitration shall be in writing to named arbitrators, wherein the time for making the award had to be stated. These remained in force till the Civil Procedure Code 1859 (Act No. 7 of 1859), was extended in 1862 to the Presidency towns as well.

THE CODE OF CIVIL PROCEDURE 1859

After establishment of the Legislative Council for India in the year 1834, it passed the Code of Civil Procedure 1859 (Act No. 8 of 1859), with the object of codifying the procedure of civil courts except those established by Royal Charter, namely the High Courts in the Presidency towns of Calcutta, Bombay and Madras. Civil Procedure Code of 1850 was introduced for the first time on the statute book and the law relating to arbitration was also incorporated. Arbitration in suits was dealt with under Sections 312 to 325 while sections 326 and 327 provided for arbitration without court intervention. The Regulations in the Presidency towns continued to remain in force till the Civil Procedure Code 1859 was extended to the Presidency towns in the year 1862.

36 Nuseerwanji V. Moynoodeen (1855) 6 MIA 134
THE CODES OF CIVIL PROCEDURE 1877 AND 1882

The Act of 1859 was repealed by the Code of Civil Procedure 1877, which was again revised in the year 1882 by the Code of Civil Procedure 1882 (Act No. 14 of 1882). The provisions relating to arbitration were mutates mutandis reproduced in sections 506 to 526 of the new Acts.

INDIAN ARBITRATION ACT 1899

In the year 1899, the Legislative Council enacted the Indian Arbitration Act 1899 which came into force on 1st July 1899. This Act was substantially based on the British Arbitration Act of 1889. Though this was the first substantive legislation on arbitration, in India, its application was confined only to the Presidency Towns viz. Calcutta, Bombay and Madras. It expanded the area of arbitration by defining the expression ‘submission’ to mean ‘a written agreement to submit present and future differences to arbitration whether an arbitrator is named therein or not’. Prior to that, the expression ‘submission’ was confined only to ‘subsisting disputes’.

The working of the Arbitration Act 1899 presented complex and cumbersome problems, and judicial opinion in *Dinkar Rai Lakshmiprasad V. Yeshwantrai Hariprasad*\(^{37}\) started voicing its displeasure and dissatisfaction with the prevailing state of the arbitration law.

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\(^{37}\) AIR 1930 Bom 98, 105
THE SCHEDULES OF THE CODE OF CIVIL PROCEDURE 1908

Later the provisions relating to arbitration were included in the Second Schedule of the new Code of Civil Procedure 1908 (Act 5 of 1908) which repealed the Code of Civil Procedure 1882. The provisions relating to the law of arbitration which extended to the other parts of India was contained in The First Schedule to this Code while the arbitration outside the operation and scope of the 1899 Act was dealt with in the Second Schedule.

THE PROTOCOL ON ARBITRATION CLAUSES, 1923 (GENEVA PROTOCOL)

Arbitration is a well recognised mode for resolving disputes equally arising out of International commercial transactions. The strange difficulty felt and crept in the International Commercial Transactions was that of the recognition and enforcement of an arbitral award made in one country by the Courts of other countries. Various International Conventions has adventured and sought to remove such difficulty.38

In this regard International Chamber of Commerce promoted an international convention for removal of impediments to the enforceability of the arbitral clause. The first serious effort in this direction, was made under the backing of The League of nations, which matured in the conclusion of a treaty on September 24, 1923 called Protocol on Arbitration Clauses (hereinafter “the Geneva Protocol”) which was ratified by 30 States. The Protocol though baptized as “Protocol on Arbitration

38 Renusagar Power Co. Ltd., V. General Electric Co., AIR 1994 SC 859 (874)
Clauses” also catered for arbitral procedure and execution of arbitral awards. The Protocol comprised of eight Articles.\(^39\)

The Geneva Protocol had two objectives, first endeavour to make arbitration agreements and arbitration clauses in particular, enforceable internationally, and secondly, it made an effort to guarantee that awards made pursuant to such arbitration agreements would be enforced in the territory of the State in which they were made.\(^40\)

The Geneva Protocol mandated every Contracting State to embark on to make sure the execution by its authorities in accordance with the provisions of its national laws of arbitral awards made in its own territory. Thus under the Geneva Protocol only domestic awards could be enforced by the Courts of the member States. This was one of the glaring shortcomings of the Geneva Protocol.\(^41\)

**INTERNATIONAL CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS, 1927 (GENEVA CONVENTION)**

In order to overcome the deficiencies exhibited by the Geneva Protocol, the League of Nations was instrumental in the conclusion of another treaty for securing the recognition and enforcement of the international arbitral awards arising out of the arbitration agreements falling under the Geneva Protocol. This treaty called International Convention on the Execution of Foreign Arbitral Awards (hereinafter ‘the Geneva Convention”) was concluded on September 26, 1927 at Geneva. This was ratified by 24 states. Undoubtedly Geneva Convention supplemented the Geneva

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\(^39\) *Gas Authority of India V. SPIE CAPAG, S.A.*, AIR 1994 Del 75 (79)

\(^40\) *Renusagar Power Co. Ltd., V. General Electric Co.*, AIR 1994 SC 859 (874)

\(^41\) *Gas Authority of India V. SPIE CAPAG, S.A.* AIR 1994 Del 75 (79)
Protocol by making it possible to enforce an award in a Contracting State other than where the award was rendered. As per the Geneva Convention each Contracting State was required to recognize as binding and to enforce, in accordance with the rules of the procedure of its territory, arbitration award made in another Contracting State pursuant to an agreement covered by the Geneva Protocol.\textsuperscript{42}

\textbf{ARBITRATION (PROTOCOL AND CONVENTION) ACT 1937}

The Geneva Protocol on Arbitration Clauses 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 were implemented in India by the Arbitration (Protocol and Convention) Act 1937. India was a signatory to the clauses set forth in the First Schedule to this Act and to the Convention on the Execution of Foreign Arbitral Awards set forth in the Second Schedule to this Act. This Act was enacted with the object of giving effect to the Protocol and enabling the Convention to become operative in India. This Act applied only to such matters that were considered ‘commercial’ under the law in force in India.\textsuperscript{43} The operation of this Act was based on reciprocal arrangements and it mainly concerned itself with the procedure for filing ‘foreign awards’, their enforcement and the conditions of such enforcement. The Rules framed by the High Courts provided details in respect of the proceedings under the Act. The Provisions of this Act now have been amended and consolidated in the Arbitration and Conciliation Act of 1996 in Pt II ch.2.

\textsuperscript{42} \textit{Gas Authority of India V. SPIE CAPAG, S.A. AIR 1994 Del 75 (79)}
\textsuperscript{43} Arbitration (Protocol and Convention) Act 1937, Sec 2
THE ARBITRATION ACT OF 1940

The judicial reprimand as well as clamour of the commercial community led to the enactment of a consolidating and amending legislation viz, The Arbitration Act of 1940 (Act No. 10 of 1940). The Arbitration Act, 1940 consolidated and amended the law relating to arbitration as contained in the Indian Arbitration Act, 1899 and the Second Schedule to the Code of Civil Procedure 1908. It was also largely based on the English Arbitration Act of 1934 and came into force on 1 July, 1940. It extended to the whole of India except the State of Jammu and Kashmir.

The 1940 Act contemplates three kinds of arbitration: (1) arbitration without intervention of a Court, dealt with in Chapter II of the Act which includes section 3 to section 19, (ii) arbitration with intervention of a Court where there is no suit pending dealt with in chapter III which consists of only one section viz. section 20; and (iii) arbitration in suits, which is covered by chapter IV.

The Supreme Court of India has observed in Food Corporation of India V. Joginderpal Mohinderpal

“We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situations but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only to doing justice between the parties, but by creating sense that justice appears to have been done.”

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44 Act 10 of 1940
45 AIR 1989 SC 1263 (1266)
The Law Commission of India, representatives of trade associations, arbitration bodies and arbitration experts also favoured amendment to the arbitration laws to satisfy the constitutional requirement of speedy resolution of disputes in the light of economic reforms in India.

POST INDEPENDENCE

AFTER THE SECOND WORLD WAR

By the conclusion of the Second World War in 1945, more precisely after the eve of Independence during 1947, trade and industry invaded a great boost and the commercial community emphasised their urge and interest towards arbitration for settlement of their disputes, instead of resorting to court proceedings since it involved long delays and heavy expenses. With the graphic escalating significance on arbitration, there was ever increasing judicial grist exposing the infirmities, shortcomings and lacunae with the Arbitration Act of 1940. The Act also did not make distinction between the ‘agreement’ made in advance to submit future difference and a ‘submission’ made after a dispute had arise. There were no provisions requiring the arbitrator to state reasons for sustaining the award. There was no remedy against a non speaking award, albeit such an award could lead to suspicion and embarrassment. Since Arbitration Act, 1940, did not apply to Foreign awards, Foreign Awards (Recognition and Enforcement) Act 1961 was passed.

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46 V/o Tractoroexport, Moscow V Tarapore and Co AIR 1971 SC I, 11
THE FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) ACT 1961 (FARE)

India was one of the signatories to the New York Convention of 1958. For implementing and giving effect to the New York Convention, the Foreign Awards (Recognition and Enforcement) Act 1961 was enacted. By virtue of the provisions of section 10 of the 1961 Act, the 1937 Act stands repealed in relation to foreign awards to which the 1961 Act applied.

The main object of this Act was to give effect to the Convention. It contained only 11 sections in addition to the text of the New York Convention reproduced in the Schedule as an appendix. In the landmark judgment in *Renusagar Power Co Ltd., V. General Electric*,47 the Supreme Court said that the object of this legislation was to facilitate and promote international trade by providing for speedy settlement of disputes arising in trade through arbitration.

The 1961 Act was aimed at providing a mechanism for speedy referral of disputes to arbitration between the contracting parties and for speedy enforcement of resultant foreign arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards is sought. It did not apply to domestic arbitral awards, that is to say, awards shaped on the basis of arbitration agreements governed by the internal system of laws of the State in which recognition and enforcement is sought.

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47 AIR 1985 SC 1156; *Svenska Handelsbanken V. Indian Charge Crome Ltd.*, (1994) 2 SCC 155
TRANSFORMATION

The Law Commission of India in its report dated 9 November 1978, suggested extensive amendments in the Arbitration Act 1940, taking into account commercial realities, in order to settle the conflicting decisions on various points. In *Guru Nanak Foundation V M/s. Rattan Singh and Sons*, the Supreme Court said that the proceedings under the Act of 1940 ‘have become highly technological, escorting by an endless prolixity at every stage, giving a legal trap to the innocent. Informal forum chosen by the parties for expeditious disposal of their disputes has, by decisions of the courts, been clothed with ‘legalese’ of unenforceable complexity’. In *Raipur Development Authority V. Chokhamal Contractors*, in disgust, the Supreme Court threw up its hands when it said, ‘indeed, this branch of the system of dispute resolution has, of late, acquired a certain degree of notoriety by the manner, in which in many cases, the financial interests of government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety’.

It was felt that 1940 Act was not enough to cover the problems of growing new dimensions. The Law Commission of India proposed numerous amendments in the Arbitration Act of 1940 to make it more responsive. In the meantime Model Law and Rules on International Commercial Arbitration in 1985 and United Nations Commissions on International Trade Law (UNCITRAL) were recommended by the United Nations and all the countries, were desired to adopt the same in their own laws.

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48 AIR 1981 SC 2075-2076
49 AIR 1990 SC 1426, 1435
UNCITRAL AND THE MODEL LAW

UNCITRAL is a specialized commission of the United Nations created by the General Assembly in 1966 in order to harmonize and unify international trade law. Taking into consideration the value of arbitration and its importance in the filed of international trade law, UNCITRAL has taken a number of significant projects in the filed of commercial dispute resolution.

The advent of the UNCITRAL Model Law on International Commercial Arbitration make up the main amazing growth and influential accomplishment in the filed of commercial arbitration in the eighties. The UNCITRAL Model Law constitutes the third major contribution of the United Nations to the development of a just and well-organized process of resolving disputes in international commercial transactions, first being the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the second being the UNCITRAL Arbitration Rules.

In order to achieve uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice, The General Assembly of the United Nations has suggested that all countries to venture and adopt the said Model Law. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The Use of these Rules in case were disputes arise in the context of International commercial relations and the parties seek amicable settlement of their disputes by recourse of conciliation was pressed and suggested by the General Assembly of the United Nations. The vital quality of the said UNCITRAL Model law and Rules is that they have harmonized concepts on arbitration and conciliation of different legal
systems of the world and thus contain provisions which are designed for universal application.

**ADOPTION OF UNCITRAL MODEL LAWS AND RULES**

The Model Law has been substantially adopted by a number of countries including some of the states in the United States (including California), Scotland, Canada, Australia, and also India. In England, although the Arbitration Act of 1996 does not adopt it in its entirety, considerable deference was given to it while drafting it, and the structure and content of the Act owe much to the Model Law.\(^{50}\) Munstill and Boyd noted that it would not be an exaggeration to say that nothing of this kind had been seen in England before.\(^{51}\)

In India, with the exception of a few significant variations, the Model Law has almost been taken into account in the enactment of Arbitration and Conciliation Act 1996. But it cannot be said that each and every provision of the said Model Law and Rules forms part of the Act. Those Model Laws and Rules were in fact taken into account while drafting and enacting the Act but whatever has been enacted is the law on arbitration enforceable in India.


\(^{51}\) Munstill and Boyd, Commercial Arbitration, companion volume to the second edn, 2001. p 12
THE ARBITRATION AND CONCILIATION ACT 1996 (26 OF 1996)

Parliament enacted the Arbitration and Conciliation Act 1996 (hereinafter also referred to as 1996 Act) as a measure of fulfilling its obligations under the international treaties and conventions. The Act was drafted taking the UNCITRAL Model Law on International Commercial Arbitration and Conciliation Rules, as the basis. The emphasis under the Act has been to accord primacy to resolution of disputes through arbitration, and to reduce the intervention of the courts in such proceedings. The Act came into force on 25th January 1996 and its notable features are that it minimizes judicial intervention and reduces the grounds of challenge to the award. The object of the Act is to ensure speedy decision of the disputes between the parties. In other words, the main object to drastically curtail supervisory role of the courts, demolish various stages and proceedings through which an award was required to pass through in the mechanism of old enactments so that the object of speedy resolution of dispute is achieved.

CONSOLIDATING AND EXHAUSTIVE ACT

The law relating to domestic and international commercial arbitration as well as enforcement of foreign arbitral awards has been amended and consolidated under the 1996 Act. It should, therefore, leave no manner of doubt that the Act is intended to be an exhaustive law on the subject and is a self-contained Code. It is divided into four parts.

52 A. Ramakrihsna V. Union of India 2004 (3) Raj 554 (AP)
53 Kohinoor Creations V. Syndicate Bank, 2005 (2) Arb LR 324 : 2005 (2) Raj 622 (DB) (Del.)
54 Western Shipbreaking Corps. V. Clare Haven Ltd., 1998 (Supp) Arb LR 53.: 1998 (1) RAJ 367 (Guj)
Part I of the Act 1996 deals with domestic as well as international arbitration. Section 1 of this Act contains the short title and commencement clauses; Sections 2 to 34 of 1996 Act are largely based on the Model Law. It does, however, diverge from the Model Law in Section 10 (1), regarding the number of arbitrators; section 13(5), regarding decisions on challenge to arbitrators; and Section 29 (1), regarding the choice of the parties concerning the rules germane to the matter of the quarrel. Other provisions of Part I of this Act regarding status of the award, appeals, advance on costs, territorial jurisdiction of Courts, limitation etc.

The arbitral tribunal shall decide the dispute in accordance with the law of India in an arbitration proceeding except other than an International Commercial Arbitration in which case the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the matter of the quarrel. In event of failing an agreement, the Chief Justice or any person or institution designated by him has been entrusted with the appointment of an arbitrator. In international commercial arbitration, the reference to the Chief Justice means the Chief Justice of India, and in domestic arbitration it means Chief Justice of a High Court.

Part II of the 1996 Act deals with the enforcement of foreign awards. Chapter I is based on the New York Convention and seek to replace the 1961 Act. Chapter II is based on the Geneva Protocol and the Geneva Convention and seeks to replace the 1937 Act. Section 9(b) of the 1961 Act shall apply to any award based on an arbitration agreement governed by the law of India. This provision was overlooked and remained dormant until the Supreme Court of India, in *National Thermal Power*
Corporation V. Singer Company\textsuperscript{55}, held that Indian Courts could set aside a partial award rendered in London since it could not be regarded as a foreign award by reason of Section 9 (b) was thus contrary to the New York Convention, and it had created concerns for foreign parties having business interests in India. The provisions relating to enforcement have been made simpler and easier. The Provisions regarding the requirement of Court order filing of foreign awards with the Court have been deleted to save time and effort. Now a party can apply for enforcement of a foreign award simply by filing a Photostat copy of the arbitration agreement and the arbitration award, without the formality of obtaining a prior Court order.

Part III of the 1996 Act deals with the law relating to Conciliation. This part is, largely based on the UNCITRAL Conciliation Rules. The parties have been given the freedom to terminate the conciliation proceedings at any time before the settlement agreement. A settlement agreement signed by the parties has been given the same effect equivalent to as that of an arbitral award. The conciliator and the parties are obligated to keep the matter confidential. Confidentiality has been extended to the settlement agreement except where its disclosure is necessary for purposes of implementation and enforcement. Part IV of the 1996 Act contains supplementary provisions regarding the power to make rules, provision for removal of difficulties, repeal and savings clause etc.

\textsuperscript{55} AIR 1993 SC 998
NEW ACT INTRA VIRES

Since the Act contemplates for challenging the award in accordance with the procedure laid down therein, it can be safely voiced that the Act is meeting the basic structure of the Constitution of India. The legislative intent has been so cautious to limit and minimise the judicial intervention in the arbitration proceedings and every order passed by the authority cannot be brought up for judicial scrutiny in which event the object of speedy justice contemplated under the Act would be defeated. Under the 1996 Act, the grounds on which an arbitral award could be challenged before the Court have been severely cut down and such challenge is now permitted on the basis of invalidity of the agreement, want of jurisdiction on the part of the arbitrator or want of proper notice to a party of the appointment or arbitrator or of arbitral proceedings.  

INTERPRETATION OF STATUTES

The 1996 Act has introduced drastic changes in the Arbitration Law prevailing earlier in respect of domestic arbitration. In view of the drastic change in the policy, it is advisable to refer to the UNCITRAL Model Law and not to rely on the provisions of the 1940 Act.  

At the same time, it will not be proper to refer to UNCITRAL Model law in all cases. The Supreme Court has also this to say in a case:” The Model law was only taken into account in drafting of the present 1996 Act. The 1996 Act and the Model

57 *Anil Constructions V. Vidrabha Irrigation Development Corporation* 2000 (2) AKLL MR 119
law are not identically drafted…..The Model Law and Judgements and literature thereon are, therefore, not a guide to the interpretation of the Act.”

RELEVANCY OF ENGLISH DECISIONS

Finding out the how far English decisions are relevant it is seen that even the Supreme Court of India in the 7 Judge Bench decision in Superintendent and Remembrances of Legal Affairs, West Bengal V. Corporation of Calcutta, recognized that the expression “law in force’ in Art. 372 of the Constitution of India included not only the enactments of the Indian Legislature but also the Common law (English Common Law). As such, the courts in India have always found it useful to refer to English decisions.

The Supreme Court has in several decisions emphasized the usefulness of applying the reasoning in the English case law in the decision of cases in India by the Courts. Such use of English decisions in law of arbitration itself was approved by the Supreme Court in Tarapore and Company V. Cochin Shipyards.

Where an English Statute is pair material with an Indian Act, the decisions of English courts under English statute are of persuasive value in interpreting the provisions of the India Act. If the terms of the Indian Act are plain and unambiguous, we cannot have resort to the position in law as it obtained in England or in other countries when the statute was enacted by the Indian Legislature. Such recourse would be permissible only if there was any latent or patent ambiguity and the courts

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58 Konkan Railway Corporation Limited V. Rani Construction Pvt., Ltd., 2002 Arb WLJ 287 (SC)
59 AIR 1967 SC 997
60 AIR 1984 SC 1072
were required to find out what was the true intendment of the Legislature. Where, however, the terms of the statute do not admit of any such ambiguity, it is the clear duty of the courts to construe the plain terms of the statute and give them their legal effect.

REPEALS AND SAVINGS

This Act repeals the Arbitration (Protocol and Convention) Act 1937 (6 of 1937), the Arbitration Act 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act 1961 (45 of 1961). Notwithstanding such repeal the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties, but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force. All rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.\(^\text{61}\)

\(^{61}\) Sec.85 of The Arbitration and Conciliation Act 1996