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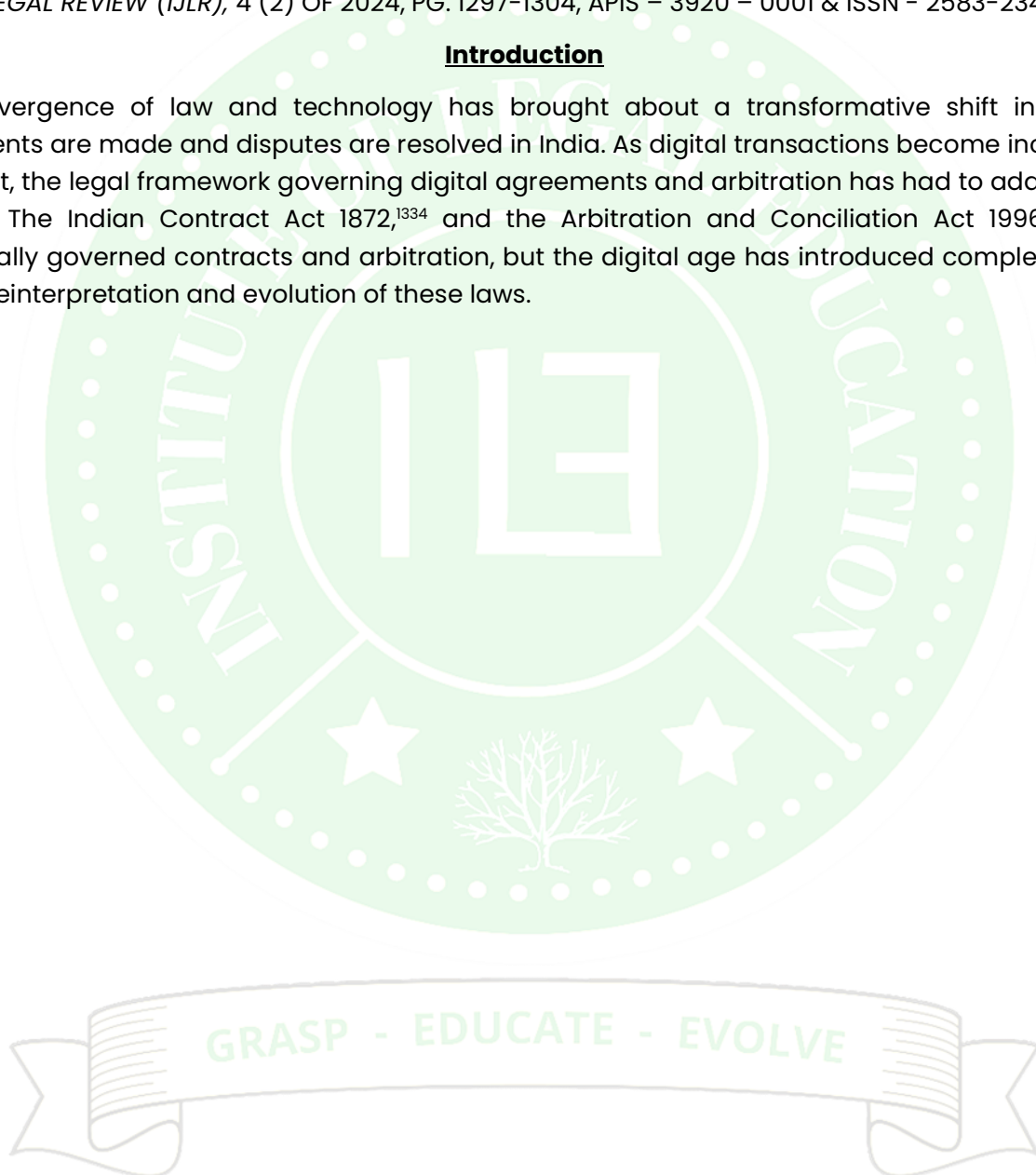
## THE IMPACT OF RECENT SUPREME COURT JUDGMENTS ON DIGITAL AGREEMENTS AND ARBITRATION IN INDIA: TOWARDS GREATER EFFICIENCY

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### Introduction

The convergence of law and technology has brought about a transformative shift in the way agreements are made and disputes are resolved in India. As digital transactions become increasingly prevalent, the legal framework governing digital agreements and arbitration has had to adapt to new realities. The Indian Contract Act 1872,<sup>1334</sup> and the Arbitration and Conciliation Act 1996,<sup>1335</sup> have traditionally governed contracts and arbitration, but the digital age has introduced complexities that require reinterpretation and evolution of these laws.



<sup>1334</sup> (*Indian Contract Act, 1872*) <<https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>> accessed 10 August 2024

<sup>1335</sup> (*The Arbitration and Conciliation Act, 1996*) <[https://www.indiacode.nic.in/bitstream/123456789/11799/1/the\\_arbitration\\_and\\_conciliation\\_act\\_1996.pdf](https://www.indiacode.nic.in/bitstream/123456789/11799/1/the_arbitration_and_conciliation_act_1996.pdf)> accessed 10 August 2024

In response to these emerging challenges, the Union government has finalised the draft 'Indian Stamp Bill, 2023,' which aims to modernize the stamp duty regime.<sup>1336</sup> This draft legislation is a significant step towards enabling the e-stamping of digital instruments, aligning with the government's focus on e-governance and the removal of redundant colonial laws, a key pledge made by Prime Minister Narendra Modi in August 2022. The draft law introduces the concept of an electronic stamp or e-stamp, defined as an electronically generated impression denoting the payment of stamp duty by electronic means or otherwise. This modernization is crucial for facilitating the seamless execution of digital agreements and ensuring their legal enforceability.

Recent Supreme Court judgments have further shaped the legal treatment of digital agreements and arbitration, addressing critical issues such as the validity of electronic contracts under the Indian Contract Act, the enforceability of e-signatures as per the Information Technology Act, 2000,<sup>1337</sup> and the applicability of arbitration clauses in digital agreements under the Arbitration and Conciliation Act. These rulings, in conjunction with the proposed Indian Stamp Bill, 2023, are significant not only in clarifying legal ambiguities but also in promoting the use of technology in legal processes, thereby enhancing efficiency and accessibility.

Societal aspects also come into play as these judgments and legislative initiatives impact how businesses and individuals interact in the digital realm. The increasing reliance on digital platforms for contracts and dispute resolution reflects broader societal shifts towards technology-driven interactions. These

developments raise important questions about access to justice, digital literacy, and the need for a legal system responsive to technological advancements and inclusive of all societal groups.

The Supreme Court's proactive approach in interpreting laws to address the challenges posed by digital agreements and arbitration, coupled with the government's efforts to modernise the stamp duty regime, is a step towards a more efficient and effective legal system. However, it also highlights the need for continuous legal reform and societal adaptation to ensure that the benefits of digital advancements are equitably distributed. This topic delves into the intersection of law, technology, and society, exploring how recent judicial decisions and legislative initiatives are shaping the future of digital agreements and arbitration in India and what this means for the broader legal and societal landscape.

### Legal Framework Governing Digital Agreements and Arbitration

The legal framework governing digital agreements and arbitration in India is a complex interplay of traditional contract law, modern technology laws, and evolving arbitration practices. As digital transactions and online dispute resolution mechanisms have grown, the Indian legal system has had to adapt, often through reinterpretation of existing laws and the introduction of new regulations. This section elaborates on the key legal instruments that govern digital agreements and arbitration in India, focusing on how these laws interact and the challenges they address.

#### Indian Contract Act, 1872

The Indian Contract Act, of 1872,<sup>1338</sup> is the cornerstone of contract law in India, laying down the fundamental principles that govern the formation, execution, and enforcement of contracts. The Act's relevance to digital agreements lies in its broad and flexible

<sup>1336</sup> 'Government to Revamp Stamp Duty Regime, Proposes New Law' (Hindustan Times, 17 January 2024) <<https://www.hindustantimes.com/business/government-to-revamp-stamp-duty-regime-proposes-new-law-101705510722945.html>> accessed 10 August 2024

<sup>1337</sup> (Information technology act, 2000) <[https://www.indiacode.nic.in/bitstream/123456789/13116/1/it\\_act\\_2000\\_updated.pdf](https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf)> accessed 10 August 2024

<sup>1338</sup> (The Indian Contract Act, 1872) <<https://indiankanoon.org/doc/171398/>> accessed 10 August 2024



definitions of contracts, which allow it to be applied to digital transactions despite being enacted long before the digital age.

#### Key Provisions<sup>1339</sup>

- **Offer and Acceptance:** Sections 2(a) and 2(b) of the Act define offer and acceptance, as crucial elements in forming a contract. In the digital context, these principles apply to online offers (such as terms and conditions on a website) and acceptance (such as clicking an "I Agree" button).
- **Consideration:** Section 2(d) defines consideration, which can be monetary or any other benefit agreed upon by the parties. In digital agreements, consideration may include online payments or exchanges of digital goods.
- **Capacity and Consent:** Sections 11 and 13 address the legal capacity of parties to contract and the necessity of free consent. Digital agreements must ensure that parties are legally competent and that consent is not obtained through undue influence, coercion, or fraud.
- **Electronic Contracts:** Although not explicitly mentioned in the 1872 Act, the principles governing contracts apply to digital agreements, with the added complexity of ensuring that electronic communication methods fulfil the traditional requirements of offer, acceptance, and consideration.

#### Challenges<sup>1340</sup>

- **Authentication and Evidence:** Proving the existence of an electronic contract can be challenging, especially in disputes where the authenticity of digital

signatures or electronic communications is questioned.

- **Jurisdictional Issues:** Digital agreements often involve parties from different jurisdictions, raising questions about which laws apply and where disputes should be resolved.

#### Information Technology Act, 2000

The Information Technology Act, of 2000, was enacted to provide a legal framework for electronic governance and commerce in India. It is particularly significant for digital agreements as it grants legal recognition to electronic contracts and signatures.

#### Key Provisions<sup>1341</sup>

- **Legal Recognition of Electronic Contracts:** Section 10A of the IT Act explicitly recognizes the validity of contracts formed electronically, provided they meet the basic requirements of the Indian Contract Act, of 1872. This provision ensures that agreements made via email, electronic data interchange, or other digital means are legally enforceable.
- **Electronic Signatures:** The IT Act also legitimizes electronic signatures as a valid form of signing contracts. Section 5 allows for the use of digital signatures or other forms of electronic authentication methods, such as Aadhaar-based e-signatures, to validate agreements.
- **Attribution, Acknowledgment, and Dispatch:** Sections 11 to 13 deal with the attribution of electronic records, the acknowledgement of receipt, and the dispatch of electronic records, mirroring the traditional contract law principles but adapted for the digital medium.
- **Data Protection and Privacy:** The IT Act contains provisions on data protection,

<sup>1339</sup> techthug99, 'Indian Contract Act 1872: Notes, PDF, Summary, Section' (Geektonight, 29 May 2023) <<https://www.geektonight.com/indian-contract-act-1872/>> accessed 11 August 2024

<sup>1340</sup> 'E-Contract and the Indian Contract Act, 1872: Navigating Challenges and Expanding Horizons' (Legal Service India - Law, Lawyers and Legal Resources) <<https://www.legalserviceindia.com/legal/article-12833-e-contract-and-the-indian-contract-act-1872-navigating-challenges-and-expanding-horizons.html>> accessed 11 August 2024

<sup>1341</sup> Admin, 'Information Technology Act, 2000, Section 66A OF IT Act. Notes for UPSC & Govt. Exams.' (BYJU'S, 30 January 2024) <<https://byjus.com/free-ias-prep/information-technology-act-2000/>> accessed 11 August 2024

which indirectly impact digital agreements by imposing obligations on entities handling personal data. Section 43A requires companies to implement reasonable security practices, which is critical in contracts involving sensitive information.

#### Challenges<sup>1342</sup>

- **Security and Fraud:** The reliance on electronic signatures and digital records raises concerns about cybersecurity and the potential for fraud. Ensuring the integrity and authenticity of digital agreements is paramount.
- **Interpretation and Enforcement:** The relatively recent nature of the IT Act means that its provisions are still being interpreted by the courts, particularly in cases involving complex digital transactions.

#### Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, of 1996, governs arbitration proceedings in India and is particularly relevant to digital agreements that include arbitration clauses. Arbitration is a favoured method of dispute resolution due to its efficiency and flexibility, both of which are enhanced when applied in the digital context.

#### Key Provisions<sup>1343</sup>

- **Arbitration Agreement:** Section 7 of the Act defines an arbitration agreement as an agreement by the parties to submit to arbitration any disputes that may arise between them. In the digital realm, arbitration clauses can be included in online contracts, clickwrap agreements, or other electronic formats.

- **Recognition of E-Arbitration:** The Act does not explicitly mention e-arbitration, but the flexibility of its provisions allows for arbitration proceedings to be conducted online, using digital platforms for hearings, submissions, and awards.
- **Conduct of Proceedings:** Sections 18 to 26 outline the procedures for arbitration, including the appointment of arbitrators, the submission of evidence, and the conduct of hearings. These procedures can be adapted to a digital environment, making the arbitration process more efficient and accessible.
- **Enforcement of Awards:** Section 36 deals with the enforcement of arbitral awards, which, in the case of digital agreements, must be recognized and enforced in line with electronic records and signatures as per the IT Act.

#### Challenges<sup>1344</sup>

- **Jurisdiction and Applicability:** Digital agreements often involve cross-border transactions, leading to jurisdictional challenges in arbitration. Determining the applicable law and enforcing arbitral awards across different jurisdictions can be complex.
- **Technological Adaptation:** While the Act is flexible, there is a need for more explicit provisions or guidelines on the use of technology in arbitration, especially concerning the security and integrity of online arbitration platforms.

#### Indian Stamp Act, 1899 and the Indian Stamp Bill, 2023

The Indian Stamp Act, of 1899, governs the payment of stamp duty on legal documents, including contracts and agreements. Stamp duty is a form of tax levied on documents to make them legally enforceable. Traditionally,

<sup>1342</sup> Undefined, 'Information Technology Act, 2000' (INSIGHTS IAS - Simplifying UPSC IAS Exam Preparation, 14 August 2021) <<https://www.insightsonindia.com/security-issues/role-of-media-and-social-networking-sites-in-internal-security-challenges/information-technology-act-2000/>> accessed 11 August 2024

<sup>1343</sup> 'Arbitration and Conciliation Act, 1996: Your Guide to Friendly Dispute Resolution in India' (Legal Service India - Law, Lawyers and Legal Resources) <<https://www.legalserviceindia.com/legal/article-15749-arbitration-and-conciliation-act-1996-your-guide-to-friendly-dispute-resolution-in-india.html>> accessed 11 August 2024

<sup>1344</sup> VIKASH KUMAR SINGH, 'ARBITRATION IN INDIA: RECENT DEVELOPMENTS AND KEY CHALLENGES' (International Journal of Creative Research Thoughts (IJCRT)) <<https://ijcrt.org/papers/IJCRT2307247.pdf>> accessed 10 August 2024

stamp duty was paid using physical stamps, but the rise of digital agreements necessitates a modern approach.

Indian Stamp Bill, 2023<sup>1345</sup>

- **Introduction of E-Stamping:** The draft Indian Stamp Bill, 2023, aims to modernize the stamp duty regime by introducing e-stamping for digital instruments. This allows for the electronic generation of stamps, ensuring that digital agreements can be duly stamped and recognized as legally enforceable.
- **Definition of E-Stamp:** The Bill defines an electronic stamp or e-stamp as an electronically generated impression denoting the payment of stamp duty by electronic means. This provision is crucial for facilitating the seamless execution and enforcement of digital agreements.
- **Alignment with E-Governance:** The Bill aligns with the government's broader push towards e-governance and the removal of redundant colonial laws, making the legal framework more responsive to modern needs.

Challenges<sup>1346</sup>

- **Implementation:** The transition to a fully digital stamp duty system requires robust infrastructure and widespread adoption. Ensuring that all stakeholders, including businesses and legal practitioners, are equipped to handle e-stamping is critical.
- **Interplay with Existing Laws:** The integration of e-stamping with other legal provisions, such as those in the IT Act and the Arbitration and Conciliation

Act, must be seamless to avoid legal ambiguities.

### Background on Arbitration Agreements

Recent Supreme Court judgments have significantly altered the landscape of arbitration agreements in India, particularly concerning issues of stamping and the doctrine of separability. The principles established in these rulings emphasize the importance of party autonomy in international commercial arbitration and seek to ensure that arbitration can proceed efficiently without unnecessary judicial interference.<sup>1347</sup>

### Unstamped Agreements and Enforceability

The enforceability of arbitration agreements contained in unstamped contracts has been a contentious topic. Historically, the Supreme Court held that arbitration agreements in unstamped contracts could not be invoked unless the main contract was duly stamped, effectively rendering such agreements unenforceable.<sup>1348</sup> However, recent rulings have challenged this perspective by firmly establishing that the arbitration agreement is separate and may remain valid even if the underlying contract faces issues related to stamp duty.<sup>1349</sup>

<sup>1345</sup> 'Department of Revenue, Ministry of Finance, Invites Suggestions on Draft "Indian Stamp Bill, 2023" from Public within a Period of 30 Days' (Press Information Bureau) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1997072>> accessed 11 August 2024

<sup>1346</sup> Rajput CA, 'Analysis and Explanation of the Draft Indian Stamp Bill, 2023' (TaxGuru, 2 April 2024) <<https://taxguru.in/corporate-law/analysis-explanation-draft-indian-stamp-bill-2023.html>> accessed 11 August 2024

<sup>1347</sup> Vikash Kumar Jha NS, 'Final Word on Enforceability of Unstamped Arbitration Agreements' (Dispute Resolution Blog, 18 March 2024) <<https://disputeresolution.cyrilamarchandblogs.com/2024/03/final-word-on-enforceability-of-unstamped-arbitration-agreements/#:~:text=Are%20arbitration%20clauses%20in%20unstamped%20or%20inadequately%20stamped%20agreements%20enforceable%3F%20This%20is%20a%20question%20that%20has%20been%20under%20legal%20scrutiny,a%20decade.>>> accessed 11 August 2024

<sup>1348</sup> (Transnational notes) <<https://transnational.law.nyu.edu/2021/06/marching-towards-a-pro-arbitration-regime-indian-supreme-court-upholds-the-doctrine-of-separability/#:~:text=The%20issue%20of%20enforceability%20of%20an%20arbitration%20agreement%20contained%20in%20an%20unstamped%20agreement%20has%20previously%20been%20addressed%20by%20the%20Court%20in%20numerous%20judgments.%20The%20Court%20in%20SMS%20Tea%20Estates%20Pvt.%20Ltd.%20v.%20M%20F%20Chandmari%20Tea%20Co.%20Pvt.%20Ltd.%5B11%5D%20held%20that%20until%20the%20payment%20of%20stamp%20duty%20with%20penalty%20C%20a%20court%20cannot%20act%20upon%20the%20contract%20which%20means%20consequently%20the%20court%20cannot%20act%20upon%20the%20arbitration%20agreement%20contained%20in%20the%20contract.%20This%20issue%20also%20came%20up%20for%20the%20consideration%20of%20the%20Court%20in%202019%20in%20Garware%20Wall%20Ropes%20Limited%20v.%20Coastal%20Marine%20Constructions%20and%20Engineering%20Limited%5B12%5D%20wherein%20it%20was%20held%20that%20the%20Stamp%20Act%20applies%20to,unenforceable%20agreement.>>> accessed 11 August 2024

<sup>1349</sup> *Supra* note 14



### **The N.N. Global Mercantile Case<sup>1350</sup>**

A pivotal case in redefining the legal approach to arbitration agreements was the N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. judgment, where the Supreme Court underscored that the non-payment of stamp duty does not invalidate the arbitration agreement<sup>3</sup>. This landmark decision illustrates a shift toward a more arbitration-friendly stance, allowing parties to maintain their agreed-upon dispute resolution mechanisms without being impeded by technicalities related to the validity of the underlying contract.<sup>1351</sup>

### **The Doctrine of Separability**

The doctrine of separability, as affirmed in recent cases, states that the validity of an underlying contract does not inherently affect the validity of the arbitration clause within it. The Supreme Court recognized this doctrine as essential for ensuring that arbitration agreements can be enforced even when the main contract faces legality challenges. This allows arbitration to proceed unobstructed and reinforces the autonomy of the arbitration process as a preferred means of dispute resolution.<sup>1352</sup>

### **Judicial Economy and Efficiency**

By allowing arbitration clauses to stand independent of their underlying contracts, the Supreme Court aims to promote judicial economy and reduce congestion in courts. This change not only enhances efficiency in resolving disputes through arbitration but also aligns Indian arbitration practices with international norms and expectations, fostering a more favourable environment for investors and businesses.<sup>1353</sup>

<sup>1350</sup> N.N. Global Mercantile Private Limited vs Indo Unique Flame Ltd. Ors, 2023 Latest Caselaw 368 SC

<sup>1351</sup> 'Indian Supreme Court Relieves Stamp Duty Headaches on Arbitrator Appointments' (*Clifford Chance*, 24 January 2024) <<https://www.cliffordchance.com/insights/resources/blogs/arbitration-insights/2024/01/indian-supreme-court-relieves-stamp-duty-headaches-on-arbitrator-appointments.html>> accessed 11 August 2024

<sup>1352</sup> *Supra* note 15

<sup>1353</sup> Thadikkaran M, 'Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective' (*Journal of International Arbitration*, 21 January 2012)

### **Implications for Digital Agreements**

With the rise of digital agreements, these judgments hold particular relevance. Digital contracts often deal with complex, multi-faceted transactions where quick and efficient dispute resolution mechanisms are imperative. The Supreme Court's emphasis on minimizing judicial interventions and reinforcing the separability of arbitration agreements is pivotal for the digital landscape, where time is of the essence in resolving disputes.<sup>1354</sup>

### **Supreme Court judgments compare to arbitration laws in other countries**

#### **Comparison with U.S. Arbitration Laws**

In the United States, the Federal Arbitration Act (FAA) emphasizes party autonomy, allowing parties to craft their arbitration agreements without excessive restrictions. Similar to the Supreme Court's recent rulings in India, the FAA enforces the separability of arbitration clauses from the main contract, ensuring that the validity of the arbitration agreement is maintained regardless of potential issues with the underlying contract<sup>1</sup>. Moreover, U.S. laws allow arbitration agreements to cover future disputes, aligning with the flexibility seen in the Indian Supreme Court's judgments.<sup>1355</sup>

#### **Comparison with U.K. Arbitration Laws**

The arbitration framework in the United Kingdom, specifically the Arbitration Act 1996, also supports party autonomy and the enforceability of arbitration agreements. U.K. law requires arbitration agreements to be in writing, yet they need not be signed, facilitating a broad interpretation similar to India's approach.<sup>1356</sup> The U.K. courts apply a strong

<<https://kluwerlawonline.com/journalarticle/Journal-of-International-Arbitration/29.6/JOIA2012042>> accessed 11 August 2024

<sup>1354</sup> Kartikey Mahajan and Malak Bhatt, 'Extension of Arbitration Agreement to Non-Signatories' (*[pdf] implicit arguments | semantic scholar*, 1 October 2013) <<https://www.semanticscholar.org/paper/Implicit-Arguments-Bhatt-Pancheva/b46a01550503e32bc647a3620ff3b5bfb03d6d>> accessed 10 August 2024

<sup>1355</sup> Rivero F and others, 'Commercial Arbitration: USA' (*Commercial Arbitration: USA - Global Arbitration Review*, 11 April 2024) <<https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/usa>> accessed 11 August 2024

<sup>1356</sup> Schmitthoff CM, 'Arbitration – the next Step in the United Kingdom?' (*OUP Academic*, 15 December 2014)



public policy in favour of arbitration, which resonates with the Indian Supreme Court's inclination towards enforcing arbitration agreements, even in cases where the underlying contract might face enforcement challenges.<sup>1357</sup>

### Comparison with Singapore Arbitration Laws

Singapore's International Arbitration Act incorporates the UNCITRAL Model Law and stresses party autonomy, aligning closely with recent developments in India. The availability of arbitration agreements in various forms and a pro-enforcement attitude by Singapore's courts mirror the Indian Supreme Court's recent rulings that endorse the validity of arbitration clauses even in the absence of a properly stamped main contract. Furthermore, just as the Indian judgments reinforce the doctrine of separability, Singapore law similarly recognizes this doctrine, allowing arbitration provisions to remain intact despite issues affecting the contract as a whole.<sup>1358</sup>

### Conclusion

The intersection of law and technology has significantly influenced the landscape of digital agreements and arbitration in India. The Indian Contract Act, of 1872, the Information Technology Act, of 2000, and the Arbitration and Conciliation Act, of 1996, remain foundational, but they now intersect with emerging challenges in the digital age. The Union government's draft Indian Stamp Bill, 2023, introduces e-stamping for digital agreements, signalling a modernization of the legal framework that aligns with the broader push towards e-governance.

Recent Supreme Court judgments have played a crucial role in shaping the legal treatment of

digital agreements and arbitration. These rulings have clarified the validity of electronic contracts, the enforceability of e-signatures, and the applicability of arbitration clauses in digital agreements. The N.N. Global Mercantile case, in particular, highlights a shift towards recognizing the autonomy of arbitration agreements, even when the underlying contracts face issues related to stamp duty. This approach aligns Indian practices with international norms, promoting judicial efficiency and reducing court congestion.

The doctrine of separability has been reinforced, allowing arbitration agreements to remain valid and enforceable, independent of the underlying contract's validity. This principle is particularly relevant in the digital realm, where efficient dispute resolution is essential. By minimizing judicial intervention and emphasizing the separability of arbitration clauses, the Supreme Court has fostered a more arbitration-friendly environment, essential for the growing digital economy.

Comparatively, the Indian Supreme Court's recent judgments align closely with arbitration laws in countries like the United States, the United Kingdom, and Singapore, where the principles of party autonomy and separability are also emphasized. This alignment further enhances India's legal landscape, making it more conducive to digital transactions and international commercial arbitration.

In conclusion, the combined effect of legislative initiatives like the Indian Stamp Bill, 2023, and progressive judicial rulings have positioned India's legal system to better handle the complexities of digital agreements and arbitration. These developments not only clarify legal ambiguities but also contribute to a more efficient, technology-driven legal framework, essential for the evolving digital age.

<<https://academic.oup.com/arbitration/article-abstract/4/1/67/216596?redirectedFrom=fulltext>> accessed 11 August 2024

<sup>1357</sup> Justin Williams, Hamish Lal and Richard Hornshaw ( *Arbitration procedures and practice in the UK (England and Wales): overview*)

<<https://www.akingump.com/a/web/101415/aokvH/practical-law-arbitration-procedures-and-practice-in-the-uk-.pdf>> accessed 10 August 2024

<sup>1358</sup> Richardson A and Meiklejohn S, 'International Arbitration Laws and Regulations Report 2023-2024 Singapore' (*International Comparative Legal Guides International Business Reports*, 18 September 2023) <<https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/singapore>> accessed 11 August 2024



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