Arbitrations and Private firms

What is the issue?

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Choice of arbitrators is a tough issue even after an amendment in the Arbitration and Conciliation Act.

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What is the act about?

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- Arbitration and Conciliation Bill 2015 was introduced to amend the Arbitration and Conciliation Act, 1996.
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- **Relevant court -** The Bill stated that in the case of international arbitration, the relevant court would only be the relevant high court, not any principal civil court or high court with original jurisdiction
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- These provisions would also apply to international commercial arbitrations even if the place of arbitration is outside India.
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- **Appointment of arbitrators -**The Act permits parties to appoint arbitrators, i.e. right to choose their own arbitrator.
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- If they are unable to appoint arbitrators within 30 days, the matter is referred to the court to make such appointments.
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- **Speedy justice -**The Bill states that any challenge to an arbitral award that is made before a Court, must be disposed of within a period of one year.
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- Following the 246th Law Commission Report, amendment also introduced disqualifications standards for arbitrators.
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- This act made arbitration more user-friendly and cost effective and made India a hub of International Commercial Arbitration.
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What are the recent cases based on this act?

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- **HRD Corp Vs Gail** - In a recent case that travelled from the Delhi High Court to the Supreme Court(HRD Corporation vs GAIL) the US Corporation argued that two retired judges in the three-member tribunal were ineligible to act as arbitrators under the amended Act.
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- The allegation against the judges was mainly about their relationship with GAIL.
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- One of them allegedly acted as arbitrator in a case involving GAIL, the other judge had reportedly given legal advice to GAIL on another matter.
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- **BSNL Vs Motorola India** - BSNL claimed that arbitrator appointed must be a government servant.
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- **Sahil Projects vs Eastern Railway -** Three arbitral tribunals consisting of railway officials were constituted but did not conclude the proceedings in a decade.
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- When the aggrieved contractor moved the high court, it appointed its own ex-judge as arbitrator.
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- It remarked that leaving the private firm at the mercy of officials against whom claims were made would add insult to injury and affect the credibility and impartiality of the whole process.
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- **National Highways Authority of India -** It received a dubious certificate from the Delhi High Court for repeatedly raising untenable objections in arbitration appeals.
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What is the stand of courts on the allegations?

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- SC in GAIL case stated that business relationship or an advisory would not disqualify a judge from the present arbitration.
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- The appeal of the US Corporation was dismissed by the Supreme Court with an even more elaborate judgment.
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- Only in the Motorola case did the Supreme Court call BSNL's claim unfair.
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What actions of governments affect private companies?

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- At many instances SC fails to address the claims made by the private firms.
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- Few government servants deliberately extend the arbitration for decades.
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- Public sector undertakings (PSU) with most high-priced projects, do not offer a level playing field to private contractors.
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- The agreements often contain a term in which the disputes are arbitrated by the PSU officials themselves.
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Source: Business Standard

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