THE LAW RELATING TO GOVERNMENT ARBITRATION (1985). By M.A. Sujan. Milind Publications Pvt. Ltd., New Delhi. Pp. xxxix+ 336. Price Rs. 180.

ARBITRATION IS an old and legally recognised process which is informal, convenient, participative, inexpensive, quick and bitterless, whereby justice is done by persons of their "own choosing" who may possess proper skill or expertise in the field to which the matter relates. Arbitration has taken various forms, *viz.*, institutional, government, *ad hoc* and statutory.

The modern state is not a police state to maintain law and order only but is a welfare state as well. It has intruded with a bang in trade, commerce and industrial activities, which were considered foreign to the functions of a traditional state, and is often involved in disputes. In India, the government is the largest litigant and, therefore, it should resort to such non-traditional dispute resolving system. The law of arbitration applies to the government also.

The book under review covers the entire gamut of the law relating to government arbitration. It gives an analytical and comparative treatment of the law on the subject both in England and in India. This adds to its utility as Indian arbitration law is primarily based on English law.

The author has traced the origin and historical development of arbitration in India as well as in England. In India the Bengal Regulation of 1772 and in England the Arbitration Act 1697 respectively are starting points of the legislative growth of the subject.

An arbitration clause is normally a constituent part of a government contract. Almost every such contract follows the pattern of the arbitration clause as stipulated in general or special conditions as, *e.g.*, by the Director General of Supplies and Disposals. Accordingly, a dispute arising out of contract shall be decided by an officer of the Ministry of Law, appointed by him to be an arbitrator. There would be no objection to the fact that the arbitrator was a government servant or that he had to deal with matters to which the contract relates or that in the course of his duties as a government servant he had expressed views on all or any of the matters in dispute. The other party, being a weaker party to the contract, has virtually no option but to accept it.

The arbitrator like Caesar's wife must be above suspicion. He must be independent, impartial, unbiased and fair to both the parties, and if he is not so he can be removed by the court. The Supreme Court in *Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguly*[1] has held that the court "will not enforce and will...strike down an unfair and unreasonable...clause in a contract, entered into between parties who are

1. A.I.R. 1986 S.C. 1571.

not equal in bargaining power."[2] It will strike down a contract "where a man has no meaningful choice, but to give his assent...or to sign on the dotted line in a prescribed or standard form...however unfair, unreasonable and unconscionable a clause in that contract...may be."[3] This case related to termination of services of an employee on the basis of terms and conditions of appointment. However, so far, no case has been decided by the court where specifically such an arbitration clause in the contract might have been questioned. Some cases are pending and it has to be seen as to how the court will decide them, particularly in view of the observations made in the above case. An arbitrator either follows the procedure specified by the parties or as may be evolved by himself. Though the Code of Civil Procedure 1908 and Indian Evidence Act 1872 do not apply to arbitration proceedings, the arbitrator, being a substitute for a court, has powers analogous to those conferred on courts as far as substantive law is concerned. His award is final and binding on the parties until impeached on sufficient grounds, but it is not enforceable by its own force unless it has the *imprimatur* of the court stamped on it. The court, however, has the power to modify correct or remit it for reconsideration or even set it aside on specified grounds. Thus it has the power of scrutiny but it will not, like an appellate court, sit in judgment over the award if the arbitrator acted fairly and within the scope of his authority in accordance with the principles of natural justice. The author has also discussed in detail the post-arbitration award proceedings like filing of award, powers of courts and grounds for setting aside awards.

The book has 14 chapters and six appendices which contain decisions in certain appeals and civil suits concerning arbitration. It compiles principles governing all aspects of arbitration. In the absence of reasoned awards in most of arbitration cases, which may be treated as precedents, they should serve as a guide to arbitrators, lawyers and government as well as non-government agencies including contractors connected with, or in any manner interested in, the arbitration process and the law which governs it.

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2. *Id.* at 1611.
3. *Ibid.*

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