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Message by patrons in chief

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At the heart of UNUC Legal LLP lies a legacy built on pioneering vision and relentless pursuit of excellence. Shri S.B. Upadhyay, Senior Advocate, whose commitment to institutional legal reform and jurisprudential development remains unparalleled, laid the foundation of UNUC Legal LLP with a single goal to provide strategic, insightful, and client first legal services in the most complex commercial and infrastructure disputes. UNUC Legal LLP has been engaged in arbitration matters involving aggregate claim values exceeding USD 1 billion.

This vision was inherited and expanded by Advocate Pawan Upadhyay, under whose leadership UNUC Legal LLP has scaled new heights.
The firm today commands the trust of some of India's leading conglomerates and PSUs. Beyond private litigation, both patrons in chief have played an instrumental role in shaping the Arbitration and Conciliation Act, 1996, laying the very framework on which the present Indian arbitration regime stands.

From the hallowed halls of the Supreme Court to various High Courts across the country, UNUC Legal LLP has led arguments in over 5,000 cases spanning commercial, civil, and criminal domains with several matters contributing directly to the evolution of modern Indian jurisprudence. It is in continuation of this tradition of thought leadership that we are proud to inaugurate the first edition of our arbitration focused newsletter. This platform shall serve as both a repository of advanced legal analysis and a source of practical insight for in house legal professionals navigating the complexities of commercial arbitration.

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Dispute resolution in India is undergoing a significant shift, shaped by changing judicial approaches, evolving statutory interpretation, and the growing maturity of arbitration and specialised adjudicatory frameworks. This edition captures that transition across construction, infrastructure, real estate, power, and commercial contracting, focusing on how disputes are increasingly being resolved through a careful balance of party autonomy, statutory discipline, and commercial realism.

A central theme of this edition is the recognition that procedure often determines outcome. Interim relief, particularly under Sections 9 and 17 of the Arbitration and Conciliation Act, 1996, has assumed heightened importance in contemporary dispute strategy. Early judicial or tribunal intervention now frequently shapes bargaining power, preserves or disrupts cash flows, and frames the narrative of the dispute long before final adjudication. This edition reflects how interim measures have become a decisive stage rather than a merely temporary arrangement, requiring parties to approach them with the same rigour as final hearings.

Another important strand running through this edition is the judiciary's firm stance that statutory rights cannot be diluted through contractual drafting. Courts have consistently limited the operation of no damages for delay and extension of time only clauses where delays are attributable to the employer. By reaffirming the primacy of Sections 55 and 73 of the Contract Act, the jurisprudence signals that contractual risk allocation cannot override substantive legal entitlements. This approach promotes fairness in projects of extended duration, particularly in construction and infrastructure works where imbalance in bargaining power and pre drafted contracts are common.

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In the real estate sector, this edition reflects a maturing understanding of the relationship between RERA and arbitration. Earlier views that treated RERA remedies as exclusive have given way to a more nuanced approach that recognises parallel remedies. Courts are increasingly guided by the nature of the dispute and the relief sought, allowing arbitration to proceed in appropriate cases while preserving statutory protections for homebuyers. This shift restores party autonomy without undermining the consumer welfare objectives of the legislation.

The infrastructure and power sector discussions in this edition highlight the growing overlap between commercial arbitration and regulatory law. Disputes relating to project imports, customs valuation, and duty exemptions demonstrate that arbitrators are often required to interpret and apply complex statutory frameworks. At the same time, courts have shown pragmatism by distinguishing between procedural lapses and substantive breaches, ensuring that technical irregularities do not defeat legitimate commercial claims. The emphasis is on informed adjudication that respects both contractual intent and regulatory boundaries.

Finally, this edition emphasises the practical importance of strategy, timing, and documentation. Notices invoking arbitration, delay notifications, contract registration, and forum selection are no longer routine steps but decisive actions with long term consequences. As legislative reforms and institutional mechanisms continue to evolve, practitioners must adapt their approach to dispute resolution with foresight and precision. This edition is intended to provide readers with a coherent perspective on the current trajectory of dispute resolution in India, offering insights that are both doctrinally sound and practically relevant for those navigating complex commercial disputes.

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Immunity of Arbitrators under the Arbitration and Conciliation Act: Scope, Standards, and Judicial Approach

Prior to the amendments introduced in 2019, the Arbitration and Conciliation Act, 1996 did not provide any express statutory immunity to arbitrators for acts performed in the course of arbitral proceedings. This absence of protection raised concerns regarding the exposure of arbitrators to civil and other legal proceedings arising from their conduct during arbitration. The apprehension was that such vulnerability could impair decisional
independence and discourage competent professionals from accepting arbitral appointments.

Taking guidance from comparative jurisdictions, particularly the Arbitration Act of the United Kingdom, it was considered appropriate to grant a degree of statutory protection to arbitrators in India. In furtherance of this objective, a High Level Committee was constituted to review the arbitration framework. One of the Committee's recommendations was the introduction of a statutory provision conferring limited immunity upon arbitrators acting in the discharge of their functions.

This recommendation culminated in the Arbitration and Conciliation (Amendment) Act,2019, which introduced Section 42B into the principal Act. "42B. Protection of action taken in good faith.No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."The provision represents a significant development in Indian arbitration law. It recognises the need to protect arbitrators from vexatious or retaliatory proceedings arising from the discharge of their adjudicatory functions. At the same time, the immunity conferred underSection 42B is expressly qualified. The protection extends only to acts done or intended to be done in "good faith".The immunity granted under Section 42B is therefore not absolute. Arbitrators do not enjoy the same blanket protection that is accorded to judicial officers under the Judges (Protection) Act, 1985. This distinction appears to be rooted in the contractual foundation of arbitration. Unlike judges, whose authority is derived from the sovereign judicial power of the State, arbitrators derive their mandate from the agreement of parties.

The scope of immunity under Section 42B thus turns on the meaning of the expression"good faith". Neither the Arbitration and Conciliation Act, 1996 nor the Indian Contract Act, 1872 defines the term. Under the General Clauses Act, 1897, an act is deemed to be done in"good faith"if it is in fact done honestly, whether it is done negligently or not. In contrast, the Bharatiya Nyaya Sanhita, 2023 provides that nothing is said to be done or believed in"good faith"which is done or believed without due care and attention.

These divergent definitions illustrate that "good faith" is not a uniform concept. Its content varies depending on statutory context. Within the arbitration framework, this ambiguity assumes particular significance, as the extent of an arbitrator's immunity under Section 42B is directly contingent upon whether the impugned act can be characterised as having been done in good faith.

The Arbitration and Conciliation Act itself reflects legislative intent to subject arbitrators to accountability where there is a failure to discharge duties with diligence. Section 14 addresses circumstances in which an arbitrator becomes de jure or de facto unable to perform functions. Section 29A empowers courts to reduce arbitral fees where delay is attributable to the arbitrator. Section 34 permits the setting aside of an award on grounds including fraud.

Judicial interpretation has further clarified this balance. In Kothari Industrial Corporation Ltd. v. Southern Petrochemical Industries Corporation Ltd., the Madras High Court held that arbitrators need not be impleaded as parties in routine challenges to arbitral awards. Impleadment may be warranted only in rare cases where specific and personal allegations are made against the arbitrator.

The statutory and judicial position reveals a calibrated framework. Section 42B protects arbitrators from undue harassment, while preserving accountability. Immunity is functional, not absolute. It enables arbitrators to act without fear, while ensuring that misconduct or lack of diligence remains open to scrutiny

Recent Judicial Developments

Kothari Industrial Corporation Ltd. v. Southern Petrochemical Industries Corporation Ltd.
(Madras High Court)
While adjudicating a petition under Section 34 of the Arbitration and Conciliation Act, the Madras High Court examined whether an arbitrator ought to be impleaded as a party in proceedings challenging an arbitral award. The Court held that, as a general rule, arbitrators need not be impleaded in such proceedings. Impleadment would be warranted only in rare cases where specific and personal allegations are made against the arbitrator.The decision reinforces the principle that arbitral independence must be protected from routine adversarial exposure. At the same time, the Court recognised that immunity is not absolute and remains dependent upon the conduct of the arbitrator, aligning with the qualified protection contemplated under Section 42B.

Extensions of Time Without Compensation: Emerging Trends in Construction and Infrastructure Arbitration

In complex construction and infrastructure projects, delay is inevitable. Contracting parties therefore negotiate clauses allocating the risk of delay and how time extensions and compensation will operate. Historically, employers have favoured "extension of time without compensation" or "no damages for delay" clauses to restrict the contractor's remedy to a mere extension of time. Such provisions are common in Indian EPC contracts and the Federation Internationale des Ingénieurs Conseils (FIDIC) suite. They seek to avoid liability for prolonged costs, overheads and liquidated damages by the owner arising from its own defaults. Courts and tribunals have long scrutinised these clauses against statutory rights under the Indian Contract Act and public policy. In recent years, a series of decisions demonstrate a shift towards circumscribing their scope and allowing contractors to recover damages where the employer caused the delay.

Demarcating compensable, excusable and non compensable delays

Delay may be categorised as non excusable (contractor caused), excusable/non compensable (caused by owner but not giving rise to damages), and excusable/compensable (owner caused and entitling damages). When delay is excusable but non compensable, contractors may seek only an extension of time; owners insert such clauses to avoid cost overruns. However, the Supreme Court has stressed that where the owner's breach causes delay, the contractor's right to damages cannot be excluded unless the language is unequivocal, and ambiguity is construed against the owner. The decision in Rawal Construction Co. v. Union of India, Suit Appeal Nos. 983 and 1245A of 1979 adopted this strict construction, holding that "no damages" clauses do not deprive contractors of compensation for employer caused delays.

Statutory rights cannot be waived by EOT only clauses

In MBL Infrastructure Ltd v. Delhi Metro Rail Corporation, O.M.P. (COMM) No. 311/2021, the arbitral tribunal denied damages on the basis that the contract restricted remedies to extension of time. The Delhi High Court set aside this portion of the award, holding that clauses providing only for EOT are void because they defeat Sections 55 and 73 of the Contract Act, which confer a statutory right to compensation for loss caused by breach. The Court observed that restricting remedies to EOT amounted to a contractual waiver of statutory rights and was against public policy under Section 23 of the Contract Act. Hence, arbitrators must ignore such clauses and award damages where the owner is in breach. The judgment signals judicial intolerance toward draconian "extension without compensation" clauses and emphasises arbitrators' obligation to assess actual delays and damages.

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No damage for delay clauses are strictly interpreted

Earlier decisions such as Ramnath International Construction Pvt. Ltd. Vs. Union of India (Appeal Civil) 3167 3168/2005and General Manager, Northern Railway and another Vs. Sarvesh Chopra, (2002) 4 SCC 45 required contractors to notify the employer of their intention to claim damages when seeking an extension. In Asian Techs Ltd. v. Union of India, (2009) 10 SCC 354, the Supreme Court held that an exclusionary clause does not prevent arbitrators from awarding damages when delays are attributable to the department. These authorities remain good law and have been relied upon by courts to temper the effect of no damages clauses.

Emerging trends in arbitral practice

Contemporary construction arbitration is witnessing a rise in delay and disruption claims as projects become larger and more complex. Tribunals increasingly employ digital tools and expert evidence to analyse critical path delay, concurrency and cost overrun claims. Virtual hearings, electronic evidence and efficiency protocols have become commonplace in international arbitration, enhancing access and reducing costs. Parties must proactively manage records, baseline programmes and contemporaneous delay analyses to substantiate claims. Furthermore, climate related disruptions and supply chain shocks have accentuated the need for flexible EOT provisions that allocate risks fairly and anticipate force majeure events. The trend is towards bespoke drafting rather than boilerplate clauses.

Lessons for practitioners

Employers should avoid overly broad no damages clauses that could be struck down as contrary to statute. Instead, they should differentiate between owner caused delays (compensable) and neutral events (non compensable) and specify caps on damages. Contractors should ensure that notices of delay and claims are timely, as failure to notify may bar recovery even where the clause is construed narrowly. Arbitrators must scrutinise delay analysis thoroughly and apply Section 55 and Section 73 of the Contract Act, disregarding contractual restrictions that waive statutory rights. With courts signalling a pro contractor approach and promoting fairness in risk allocation, it is prudent for parties to adopt balanced EOT provisions recognising that time is not always money, but sometimes it is.

Project Imports and Customs Valuation Disputes in Infrastructure and Power Projects: Key Lessons for EPC Contracts

India's Project Import Scheme (PIS), under Heading 98.01 of the Customs Tariff Act, 1975, simplifies the import of plant and machinery by treating all goods required for a project as one consignment. The importer must obtain sponsorship from specified authorities and register the contract with customs, enabling provisional assessment until project completion. The scheme aims to prevent delays and reduce costs by avoiding classification of individual items. Infrastructure and power projects frequently rely on this concession, but disputes often arise over eligibility, valuation and conditions of use, giving rise to arbitrations when contractual parties disagree on risk allocation.

Understanding the scheme and its requirements

To benefit from the PIS, the importer must register the project contract and provide evidence of sponsorship from designated agencies such as the Central Electricity Authority or state authorities. The scheme covers import of plant and machinery for setting up or substantial expansion of power plants, subject to concessional duty rates. Courts apply strict interpretation to eligibility conditions but adopt a liberal approach to procedural requirements, recognising that registration is not a substantive condition. In Essar Power Gujarat Ltd v. Jamnagar, Customs Appeal No. 10385 of 2015, the Hon'ble CESTAT held that registration under Project Import Regulations is merely procedural and may be done before clearance for home consumption; benefits are not lost if registration occurs after goods arrive.

Valuation and classification disputes

Disagreements often concern the assessable value of imported equipment. In Bombay Dyeing & Manufacturing Co. Ltd v. Collector of Customs, 1997 INSC 153, the Supreme Court emphasised that project import registration is provisional and customs authorities must conduct final assessment based on costs directly connected to importation; charges such as vendor inspections and technology fees cannot be added. Thus, only components integral to importation may be included in the assessable value, reducing the scope for arbitrary additions. Conversely, importers must meticulously document the cost breakdown to avoid undervaluation allegations.

Customs duty exemptions and the burden of proof

Customs exemptions are strictly construed and the importer bears the burden of proving eligibility. Exemptions may be general, conditional, preferential, project-based or linked to export promotion schemes; disputes often revolve around documentation and compliance. Arbitrations involving EPC contractors and employers may hinge on whether increased duties constitute a force majeure or change in law event. Parties should clearly address potential fluctuations in customs duties in contract clauses and record relevant correspondence to support claims.

Lessons for EPC contracts

Project developers should ensure timely registration of contracts with customs and maintain proper records of sponsorship and valuations. Contracts should address who bears the risk of duty increases, classification disputes and redeployment restrictions. Including escalation clauses and insurance for customs liabilities can mitigate disputes. When disagreements arise, arbitration is the preferred forum, offering technical expertise and confidentiality. However, arbitrators must be mindful of statutory customs provisions and judicial precedents. Recent jurisprudence demonstrates that courts are sympathetic to procedural lapses but strict on substantive compliance; they also recognise change-in-law events and allow compensation where government policy shifts materially impact project costs.

By understanding the PIS, adhering to registration and valuation requirements, and drafting robust contractual provisions, infrastructure and power project stakeholders can minimise customs disputes. Where disputes do occur, arbitration provides a nuanced forum that combines commercial pragmatism with legal precision, yielding outcomes that respect both the customs framework and the complex realities of project execution.

Can Developers Still Arbitrate Real Estate Disputes? Lessons from Recent Court Decisions

The introduction of the Real Estate (Regulation and Development) Act, 2016 (RERA) created a special regulatory regime for India's housing sector. RERA establishes authorities and tribunals to adjudicate disputes and provides that its provisions override inconsistent laws. Early decisions suggested that arbitration clauses in builder–buyer agreements were rendered ineffective because Sections 88 and 89 of RERA state that the Act is in addition to but not in derogation of other laws and will prevail in case of inconsistency, while Section 79 bars civil court jurisdiction over matters within RERA's purview. Authorities held that disputes concerning delayed possession and deficiency of service fell exclusively within RERA and could not be referred to arbitration. This created uncertainty over whether developers could still rely on arbitration clauses.

Initial view: RERA overrides arbitration

Cases like Ganesh Lonkar v. D S Kulkarni Developers, COMPLAINT NO.: CC00500000000317 and Rashmi Realty Builders Pvt. Ltd. v. Rahul Rajendra Kumar Pagariya, 2024: BHC AS:50612 saw the Maharashtra Authority and Bombay High Court hold that disputes involving rights in rem or statutory obligations under RERA were non-arbitrable; homebuyers were entitled to approach RERA notwithstanding arbitration clauses. The reasoning was that RERA is a special social welfare statute intended to protect homebuyers and the arbitral forum cannot enforce orders such as refund and interest that RERA can award. The Supreme Court's decision in Newtech Promoters & Developers v. State of UP, CIVIL APPEAL NO(S). 6745 6749 OF 2021 upheld RERA's retroactive application and emphasised that statutory remedies prevail when parties seek relief relating to possession, refund or interest.

Resurgence of arbitration: Gauhati High Court's intervention

Recent decisions indicate a more nuanced approach. In Pallab Ghosh v. Simplex Infrastructures Ltd., 2024 SCC OnLine Gau 751, the Gauhati High Court held that availability of a remedy under RERA does not bar arbitration. The court reasoned that RERA does not extinguish the right to arbitrate because Section 88 expressly allows other laws to operate and Section 79 only bars civil courts, not arbitral tribunals. It emphasised that arbitration and RERA are concurrent remedies and that parties may elect either. The court appointed a sole arbitrator to resolve the dispute,underscoring party autonomy.

The Patna and Delhi High Courts have likewise permitted arbitration in cases such as Bihar Home Developers v. Narendra Prasad Gupta, AIR 2021 PATNA 142 and Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd., ARB. P. 868/2021 reinforcing the doctrinal shift.

Analysis of statutory provisions

Section 79 of RERA states that no civil court shall have jurisdiction over matters that the authority or tribunal is empowered to determine. Since an arbitral tribunal is not a court, RERA's bar does not expressly exclude arbitration. Section 88 clarifies that RERA is in addition to other laws and does not derogate from them. Section 89 states that RERA will prevail in the event of inconsistency. Legal scholars argue that arbitration is not inconsistent with RERA because both provide mechanisms for resolving contractual disputes; arbitration merely offers an alternative forum. The Supreme Court in Vidya Drolia v. Durga Trading Corporation, CIVIL APPEAL NO. 2402 OF 2019 reaffirmed the principle of party autonomy and held that disputes concerning subordinate rights in personam remain arbitrable even when a statute confers jurisdiction on a special forum.

Lessons for developers and homebuyers

While RERA provides a powerful and consumer-friendly remedy, parties can still choose arbitration if the agreement contains a valid clause, provided the dispute concerns contractual rights and does not touch upon in rem rights under RERA. Developers should ensure that arbitration clauses are drafted clearly and exclude matters exclusively reserved for the RERA authorities. Homebuyers should evaluate whether to file complaints before RERA for speedy statutory relief or pursue arbitration for a confidential and potentially more flexible resolution. The doctrine of election allows parties to choose one forum, but once a remedy is pursued, the other may be barred. In any arbitration, tribunals must consider RERA provisions and ensure that awards do not contravene statutory protections.

The evolving jurisprudence shows that arbitration has not been completely ousted in real estate disputes. Courts are now recognising that RERA and arbitration can coexist; the choice depends on the nature of the dispute and the relief sought. Developers and buyers should be aware of the dual pathways and craft dispute resolution clauses accordingly, taking cues from the recent Gauhati High Court decision and other emerging precedents.

Interim Relief as the Real Battlefield: How Section 9 and Section 17 Proceedings Are Reshaping Commercial Dispute Strategy

The grant of interim measures is often the crucial battleground in commercial arbitration. Sections 9 and 17 of the Arbitration and Conciliation Act, 1996 empower courts and arbitral tribunals respectively to issue interim relief. Recent legislative amendments, judicial pronouncements and proposed reforms have recalibrated this dual regime, compelling parties to rethink their strategy. Understanding when and how to invoke these provisions can determine whether assets are preserved, contracts enforced or rights protected.

The statutory framework

Section 9 allows parties to seek interim measures from courts at three stages: before the commencement of arbitration, during the proceedings and after the award but before enforcement. Section 9(2) requires that arbitration be commenced within ninety days of a pre-arbitration order. Section 9(3), introduced by the 2015 amendment, bars courts from entertaining applications once the arbitral tribunal is constituted, unless the remedy under Section 17 is "inefficacious". Section 17 empowers the arbitral tribunal to grant similar interim measures and, after the 2015 amendment, its orders are deemed to be those of the court and enforceable directly. The 2019 amendment clarified that Section 17 relief is confined to the pendency of arbitration.

Judicial trends

Courts have interpreted Section 9(3) in light of party autonomy and arbitral efficacy. In Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., 2021 SCC OnLine SC 718 the Supreme Court held that once a Section 9 application has been entertained – meaning the court has applied its mind – the constitution of an arbitral tribunal does not divest the court of jurisdiction. The court may continue to decide the application, and the bar in Section 9(3) will not apply. The court clarified that the purpose of Section 9(3) is to prevent parties from bypassing the tribunal, but it is not intended to remit matters already heard back to the arbitrators. The court emphasised that Section 17 relief is as efficacious as Section 9, and courts should ordinarily defer to tribunals unless exceptional circumstances exist. Later decisions, such as Arcelor Mittal, have been followed by High Courts in numerous cases.

In Regenta Hotels Pvt. Ltd. v. Hotel Grand Centre Point, 2026 INSC 32 the Supreme Court clarified that arbitration commences when the respondent receives the notice invoking arbitration under Section 21; it does not depend on filing a Section 11 petition. The court set aside the Karnataka High Court's view that commencement occurs upon filing under Section 11 and held that the ninety-day period under Section 9(2) is calculated from the notice date. The court observed that Section 21 defines commencement exclusively and that no judicial application can displace this statutory scheme. Business news reports emphasise that the ruling reaffirms that the start of arbitral proceedings is a statutory event and not dependent on court filings.

The Delhi High Court and other courts have recognised that Section 9(3) does not exclude jurisdiction of the court entirely but requires an assessment of whether Section 17 remedies are effective. In Jindal Steel & Power Ltd. v. Bansal Infra Projects Pvt. Ltd., 2025 INSC 640, the Supreme Court observed that High Courts may grant interim relief under Article 227 of the Constitution in exceptional circumstances, such as to maintain status quo regarding a bank guarantee pending a Section 9 petition. The case highlights that constitutional jurisdiction remains available where arbitral mechanisms are insufficient.

Emerging reforms: 2024 Draft Arbitration Bill and emergency arbitration

The Draft Arbitration Bill, 2024 proposes to limit court intervention further by amending Section 9 so that courts may grant interim measures only before the constitution of the tribunal or after the award; during arbitral proceedings, parties would be confined to Section 17. The Bill also contemplates inserting Section 9-A to recognise emergency arbitration orders, allowing institutional rules to provide for emergency relief that is enforceable like court orders. The Bill thus aims to promote institutional arbitration and streamline interim relief.

Practical considerations and strategy

Parties should calibrate their approach based on urgency, availability of the tribunal and effectiveness of relief. Before constitution, Section 9 remains a vital tool, but parties must commence arbitration within ninety days to avoid losing protection. After constitution, Section 17 should be the first port of call; courts will entertain Section 9 applications only if Section 17 relief is demonstrably inadequate. Record-keeping is essential to establish when arbitration commenced and to show that

Section 21 notice was duly served. Lawyers must be prepared to conduct mini-trials on issues such as dissipation of assets, bank guarantees and preservation of subject matter, often at an early stage. Strategic deployment of emergency arbitration (once legislated) will further influence the landscape.

The interplay between Sections 9 and 17 has become the real battlefield in commercial arbitration. Judicial trends favour arbitral autonomy and restrict court intervention, but courts continue to play a supporting role where tribunal processes are ineffective or unavailable. With imminent legislative reforms, practitioners must stay abreast of evolving procedures and craft dispute strategies that leverage both statutory avenues while respecting the boundaries set by courts and legislation.

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