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REPORT ON
THE EFFECTS OF THE NEWLY ENACTED
"The Arbitration and Conciliation (Amendment) Act, 2015
3 of 2016
&
The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015"
4 of 2016

Report Prepared by Knowledge Partner

LawSenate
Arbitration Law-Firm

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MESSAGE

The Parliament has recently passed two important Bills on (i) the Arbitration and Conciliation (Amendment) Bill, 2015, and (2) The Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Bill, 2015, which were earlier promulgated as Ordinance by the Hon'ble President of India. Both these Bills are set to revolutionize the resolution of commercial disputes in India. It is hoped that this will bring radical change in the image of India which has been infamous for having a heavily overburdened legal system that leads to indefinite delays in the disposal of court cases. Inefficiencies in its legal infrastructure have made it all the more difficult for foreign as well as domestic large investors to protect their investments in India.

Truly, the amended Arbitration and Conciliation Act, 2016& the establishment of the Commercial Courts together would bring a revolution in the speedier resolution of the commercial disputes in India. Both acts reflect commitment of the Government to improve investment climate and spur economic growth. Now India can seek a place as the new arbitration hub of the world after London and Singapore. Hence it is essential to know their key provisions and its effectiveness.

Against this backdrop, ASSOCHAM is actively involved in showcasing related programmes to bring updated knowledge and policy guidelines for the industry and all stakeholders. ASSOCHAM jointly with Law SenateLaw Firm is bringing out this Knowledge Report for the benefit of participants and practitioners. I wish all the best and success for the National Conference and assure that such knowledge based events shall continue to be held for the benefits of all segments of the industry and commerce.

D.S. Rawat
Secretary General

New Delhi
April, 2016

MESSAGE

Speedy dispute resolution with regard to commercial disputes is one of the important drivers for economic development in any country. Being one of the celebrated democracies of the world it is important to ensure to ensure effective and speedy judicial delivery system. But unfortunately even though thousands of Judges work so hard sacrificing their financial growth, they are not able to feel proud of the situation only because of the huge pendency of cases in all levels of Indian Judiciary. Hence judicial reforms is the need of the hour to achieve a strong economy.

All Global efforts to expedite the disposal of commercial disputes like the effort of UNICITRAL model law on arbitration also have resulted very less results in terms of disposal just because of the unmanageable pendency of cases. Unfortunately, the Governments were too busy to touch the complex subject of legal and judicial reforms. Even though it was talked about loudly by various leaders' time and again but no concrete step was taken to effectively manage or resolve the issue.

Government of India has really made a sincere attempt to deal with the pendency of commercial disputes and the issues undermining the arbitration systems in India by enacting The Arbitration and Conciliation (Amendment) Act,2015 & The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act,2015. The amendment to the Arbitration & Conciliation Act,1996 has tried to address all the major challenges faced by the parties in the field of arbitration. The Commercial Courts Act, has introduced a formalised commercial court system in the District and High Court levels, which is expected to create a special plat form for handling commercial cases.

In this report the author and his team has tried to place before you all, the benefits of the above said legislations, expected impact of both the above legislations on the commercial dispute resolution status of India and the suggestions to take our country to the next step forward in the field of commercial dispute resolution. We welcome any feedback from the readers.

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EFFECTS AND IMPLICATIONS OF RECENT AMENDED ADR/ COMMERCIAL COURTS LAWS

Growth in Investments and Effective Dispute Resolution system: In an endeavour to project India an attractive destination for foreign investment, a lot of attention is being paid by the Government to make investment friendly economic policies. The term 'Strengthening of the Economy" is understood by a common man as an effort to drive India's GDP growth rates up, from the present trend to a minimum of 8% per annum or above. Some other economists see it from the perspective of the growth in the employment opportunities for the people of India. Everyone knows that GDP is not only the critical performance indicator to measure the economic strength of a country, it is one of the reliable, scientific and globally accepted indicators, since it is measurable in clear terms on the basis of the proved economic data& statistics. Every economist is also aware that, to achieve and sustain such a high growth rate for a longer period, the country should ensure effective and speedy dispute resolution system. This is because a progressive dispute resolution system ensures timely and effective delivery of justice in commercial cases which unleashes the funds locked in the corridors of the courts. Such a vibrant judicial delivery system will make Foreign investors to consider India as a safe investment destination. Such an image will lead to larger foreign investments, enthusiastic economic governance and consequential growth in the economy. In fact, such an active dispute resolution system can be one of the important stimulators since it unleashes the unused wealth locked because of the pending cases. The World Bank's report on doing business, which compares the business regulations for domestic firms in 189 countries, ranks India 130th position with respect to ease of doing business and 178th position out of the said 189 countries with respect to enforcement of contracts. The said ranking is based on various factors including time, cost and procedural complexity of resolving a contract dispute.

2015 Legal reforms & structural changes (The Arbitration and Conciliation Amendment Act, 2015 & The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act,2015") : Along with the changing business models, changing social needs and increasing number of people all the sectors need to change including laws of a country and dispute resolution mechanisms. Judicial reforms are a part of the overall legal reforms to match with the present requirements of the modern society is due for a long time in our country. Even though every leader and government has been aware of the need of the reforms no leader was ready to take up this big task and deliver to the people, a strong and effective Legal system.

In the year 2015 Government of India has taken historical decisions to deal with the pendency of commercial disputes and the issues defeating the effectiveness arbitration in India by enacting two forward looking legislations "The Arbitration and Conciliation Amendment Act,2015 & The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act,2015". The amendment to the Arbitration & Conciliation Act, 1996 is addressing, the major challenges faced by the parties in the field of arbitration. The Commercial Courts Act, has introduced a formalised commercial court system in India for the first time, in the District and High Court levels, which is expected to create a special plat form for handling commercial cases.

In this report the author and his team has tried to place before you all, the benefits of the above said legislations, expected impact of both the above legislations on the commercial dispute resolution status of India and also some suggestions, to lead our country, to the next step forward in the field of commercial dispute resolution. We welcome any feedback from the readers.

The Status of Judicial Delivery system in India : In my opinion Judicial reforms include improvements in the judicial structure, increase in capabilities, modernisation of infrastructure, justice delivery system, time bound conclusion of cases, quality and expertise of the judges, quality of lawyers, training to the court officers, infrastructure, Cost to the public exchequer etc., If the judicial reforms can find ways to find resources, time bound plan to improve the end user confidence and experience, then that reforms is the need of the hour. Today the quality of any service is rated on the basis of the end user experience. Many may

be very reluctant to accept any type of comparing judicial services with the other commercial or non-commercial services. Since our Judges are sacrificing their financial prosperity in this service to the country, the court staff are working so hard with a lot of limitations and the judicial work is God's work, the judicial services cannot run away from the public scrutiny with regard to quality.

Judicial services in India if rated by an independent non-philosophical agency in comparison with the other services in the country and in comparison with the global standards it will surely get a rating "very poor". Such a very poor condition of judiciary does not only affect the parties to the litigation but also affects the economy of this country in a big way. Projects worth crores, crores worth of money and assets are locked in the corridors of the courts and tribunals just because of the completely overburdened and uncared judiciary. The situation remains alarming for decades but no Government was ready to touch it because of the age old philosophies, fully backward management system, completely missing political will and absence of visionary leadership. The situation has gone worse because people decide to go to courts, lawyers' advice their clients and judges decide the cases, not only on the basis of law but also keeping in mind the pendency of the cases. Now entire system is used to this poor services without realising the fact that it has affected the economy in a big way. The endeavour of this report is to suggest some ways to urgently (but without deviating long term perspectives) reform the judiciary and give a kick start to the economy by achieving faster finality to cases, reducing false cases, training judiciary, making Judiciary self – sufficient, revising the ADR mechanisms, reducing government litigations, releasing lakhs of projects and their investment faster from the courts and rebuild the investor confidence and entrepreneur spirit.

The present paper is divided into four major chapters:

1. Statistics of pendency of cases
2. Issues Faced by parties while arbitrating under un-amended Arbitration & Conciliation Act, 1996?
3. The effect of The Arbitration and Conciliation (Amendment) Act,2015
4. The impact of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act,2015
5. What more we require India to be an arbitration hub?
6. What more we need to make Commercial Courts more effective?

General Judicial Delivery situation in India : The main safe guard for a common man from the other fellow citizens, erring business associates, arbitral actions of the Government etc., is the judiciary and hence it a major organ of the democracy. When judiciary becomes ineffective the citizen becomes helpless. Everyone in the country including the Judges, Political leaders, lawyers, bureaucrats, litigants and public who are the stake holders of the democracy are fully aware that Indian Judicial delivery system is in the stage of crashing. The performance indicator of the present situation of judicial system is that every litigant who approaches the court does not approach the court because of the confidence that he will get justice but because he is left with no other option except to approach the court. Such a situation is shameful for any democracy because it shows that the common man has lost his faith on the major pillar of democracy, which is given the powers to enforce his rights against individuals, Companies and government. The impact of such a reaction from a common man may not create a negative impact on the economy of the country. But such a negative impression is in the minds of business people or the companies or the investors of the country can lead to the following disastrous results:

a) May seek the help of illegal mechanisms to resolve the disputes
b) May try to make profits out of the crashing judiciary and delayed justice
c) May reduce the risk and go for smaller ventures
d) May operate from abroad and abandon this country
e) May choose foreign dispute resolution agencies
f) Get struck with legal issues and spend years to get them resolved and get frustrated

Hence to achieve the objectives of the Government to make India a manufacturing hub and a fast growth economy can be achieved only when the business people and investors have the confidence that Indian

judicial system will protect their contracts and Indian courts will swiftly help them to enforce the contracts and safe guard their business interests and investments. The investor confidence does not mean only the foreign investor confidence it also includes the Indian investor and business men. No business man will take risk and invest his money in a situation where to get a finality of a breach of contract it may take 10 -15 years. The present judicial situation puts even the Indian entrepreneurs to take conservative and risk free investment decisions which leads to stagnation and lesser development in the economic growth.

Pendency of Cases in the Courts of India: India is one of the few countries in the world where a commercial litigation remains pending without attaining finality for more than 10 years. Even though every stake holder of the community is fully aware of the problems and its evil consequences on the economic development of India, no action has been taken by any government. The only effective action taken was by the 11thplanning commission in the year 2000 and 1734 local Fast track courts were established of fast track courts and allocating the required funds of about 502.90 crores for a period of 5 years (2000-05). Even though the said effort resulted in a very good disposal in the lower court level, the successive Government wanted the said effort die on its own and consequentially did not allot any funds for the continuance of the programme. Only the State of Tamil Nadu came forward to allocate state funds and extended the programme. Hence a Writ Petition was filed by "All Media Association" a group of press people with public interest and the Supreme Court of India seeking to extend the Fast Track Court scheme, which was entertained by the Supreme Court of India and extended the scheme till 31.03.2011 (The author was the lawyer appeared in the said case for the said Association). Nearly 33 Lakh cases were disposed by these Fast Track Courts over a period of 11 years. But again Government of India refused to extend the said scheme for want of funds. The following are some examples to show that the pendency situation is alarming:

Pendency in the Supreme Court of India :

Sl.No	As on	Admission matters	Regular Hearing matters	Total Pending matters
1	01.01.2015	34,421	28,373	62,794
2	01.07.2014	36,500	29,470	65,970
3	01.01.2014	35,752	30,597	66,349
4	01.07.2013	40,279	29,167	69,446
5	01.01.2013	37,659	29,033	66,692
6	02.07.2012	36,833	27,018	63,851

CIVIL CASES - All Courts of India

Year	Institution	Disposal	Pendency at the end of Year
2002	3385715	3342653	7254871
2003	3170048	3121978	7302941
2004	3697242	3726970	7042245
2005	4069073	3866926	7254145
2006	4013165	4019383	7237496
2007	3777348	3757403	7280737
2008	404973	33855719	7539848

CRIMINAL CASES - All Courts of India

Year	Institution	Disposal	Pendency at the end of Year
2002	11159996	10177254	15185505
2003	11635833	10874673	15946665
2004	11888475	10857643	17624765
2005	13194289	12442981	18400106
2006	11809666	11975308	17842122
2007	11322073	11040103	18052011
2008	12305802	11577091	18869163

Judges strength in India as on 31.12.2011

Sl. No.	Name of Court/s	Sanctioned Strength	Working Strength	Vacancies
1	Supreme Court	31	27	4
2	High Courts	895	622	273
3	Subordinate Courts	17945	14275	3670
	Total	**18871**	**14924**	**3947**

Source : Supreme Court of India Annual Report 2011

Sl. No.	State / Union Territory	High Courts*	Lower Courts*
1.	Uttar Pradesh	9,81,608	56,71,924
2.	Andhra Pradesh	1,98,757	9,58,052
3.	Maharashtra	3,55,977	36,67,600
4.	Goa	BHC	29,310
5.	Daman & Diu	BHC	1,905
6.	Dadra and Nagar Haveli	BHC	3,891
7.	West Bengal	3,39,112	28,85,826
8.	A & N Islands	CHC	15,504
9.	Chhattisgarh	57,304	2,70,484
10.	Delhi	62,618	8,66,734
11.	Gujarat	86,663	21,82,556
12.	Assam	52,092	2,60,749
13.	Nagaland	GHC	5,114
14.	Meghalaya	GHC	3,161

Sl. No.	State / Union Territory	High Courts*	Lower Courts*
15.	Manipur	GHC	9,698
16.	Tripura	GHC	55,666
17.	Mizoram	GHC	4,078
18.	Arunachal Pradesh	GHC	6,530
19.	Himachal Pradesh	46,156	1,83,999
20.	Jammu & Kashmir	77,230	1,96,887
21.	Jharkhand	61,414	2,99,214
22.	Karnataka	2,46,248	11,46,911
23.	Kerala	1,27,217	10,18,611
24.	Lakshadweep	KHC	158
25.	Madhya Pradesh	2,29,140	11,57,216
26.	Tamil Nadu	4,65,239	11,91,267
27.	Puducherry	MHC	25,052
28.	Orissa	2,86,993	11,10,291
29.	Bihar	1,23,158	15,68,864
30.	Punjab	2,36,894	5,76,011
31.	Haryana	P& H HC	5,65,621
32.	Chandigarh	P & H HC	71,974
33.	Rajasthan	3,01,412	15,09,032
34.	Sikkim	61	1,240
35.	Uttrakhand	19,175	1,49,287
	Total	**43,50,868**	**2,76,70,417**

The above status is as on 31st March 2012

Huge Pendency leads to less quality disposal of cases:The pendency of cases not only delay the justice delivery system but also affects the quality of the Justice delivery system. Due to un-manageable work load judges are not able to allocate sufficient time and energy to the cases and hence the quality of the judgments gets seriously affected. Even in the Supreme Court of India we can see judges handling about 60 admission matters every day. To impress the judges and to make use of the very little time given for the cases a lot of money is spent by litigants in engaging expensive senior counsels. The Junior counsels do not get even reasonable attention and hence they recommend to the clients to engage senor counsels. We can also see many cases getting dismissed for technical reasons and on unjustifiable grounds. Even for those who choose arbitration route to resolve the disputes, they get delayed because they need to go to court for interim orders, appointment of arbitrator, enforcement of awards and challenging arbitral awards.

Past initiatives to reduce Pendency of Cases:

Various institutions of our country has been aware of the situation of the pendency of cases in the courts of India and the adverse effect it is creating on the economy of this country and society. They made some efforts in the past to change the situation but either they were not sufficient to solve the problem or they were discontinued by the successor governments. The following are some of the few past efforts:

a. The Law Commission, in its 120th report, submitted to the Government on 31st July 1987 recommended optimum figure of 107 judges per million population by 2000, the ratio achieved by USA in the year 1981. That said report suggested a minimum of 50 judges per million people within a period of 5 years and which was endorsed by the Parliament standing committee headed by Mr. Pranab Mukherjee, the President of India. But it is unfortunate that the government did not take any action. Had we implemented the said proposal we should be having 75000 judges, where as we have 18871 Judges today who are handing 3,00,00,000 (Three crores) cases.

b. On the recommendations of the 11th Finance Commission, in the year 2000, the government of India sanctioned 1734 Fast track courts in the rank of District Judges who disposed of 10,99,828 pending cases out of 18,92,583 total cases. The said scheme was extended by the Supreme Court of India while dealing with a Public interest litigation till 31.03.2010.

Issues faced by the parties while arbitrating Commercial Disputes under un-amended Arbitration & Conciliation Act, 1996

The Arbitration & Conciliation Act was enacted by government of India in the year 1996, to bring the arbitration act of India in-line with the UNCITRAL Model arbitration law. But over a period of 10 years the above said law become inefficient because of court interpretations, delays happened in the supervisory courts, delays happened in the arbitral proceedings, excessive costs due to un-regulated arbitration fees, increased court interferences on the ground of public policy etc. As a result of the above said reasons the purpose of arbitration got frustrated, the parties started getting the feeling that arbitration is just a first step before initiating litigation. Hence the stake holders started requesting for amendments to the above said 1996 Act, to bring efficiency to the arbitrations and related litigations seated in India.

The following were the main issues which were hampering and making the arbitration proceedings in India.

- *90% of the arbitrations in India are ad-hoc arbitrations. Hence, the court appointed or party appointed arbitrators were given the liberty to decide the arbitration procedure. Since the lawyers and arbitrators in India are used to have prolonged litigation, which runs for many years, the arbitration schedule was also planned for a minimum of 18 months. Due to adjournments sought by the parties during the course of arbitration, the arbitrations normally took about 3-4 years. There are arbitrations which are pending without any progress for more than 5 years.*
- *As stated above, the adhocarbitrators appointed by the courts had the liberty to finalise the arbitration procedure as well as fees. Normally the arbitrator fee is based on per hearing basis and one hearing normally is for 3 hours. Some arbitrators charged double fees in a day if they hear the matter for more than 5 or 6 hours. Since the lawyer fee as well as arbitrator fee is based on hearing basis they had a tendency to have more number of hearings. Hence all the arbitrations slowly became like a court process with so many applications, counter afidavits and hearings on subsidiary issues etc.,*
- *Many of the big companies had one-sided arbitration clauses which provided for an arbitrator who was either the working or retired employee of the same company. This model of appointing their own officers has been in practice in government contracts, Public Sector Companies and also in contract with big construction companies. The above said one-sided arbitration clauses not only had ineffective arbitration but also used as a tool to stop the aggrieved parties going to court seeking relief.*
- *Some public sector companies and big private companies had arbitration clauses providing for an arbitration done by one of their panel arbitrators. The companies had the panel of arbitrators and the arbitrators in the panel wanted to remain in the panel by trying to help the company in the arbitration.*

Hence, the opposite party always had an impression that the arbitrator is not neutral. There was no mechanism to know the background of the arbitrator, relationship of the arbitrators with the parties etc. since there was no mandatory requirement of declaration by the arbitrator.

- *As per the original 1996 Act, once the appeal seeking to challenge the award under section 34 is filed, then it amounts to granting of automatic stay of the enforcement of the arbitration award. Hence, the losing parties approached the respective court by a petition under section 34 and delayed the enforcement proceedings.*
- *The courts were liberal in entertaining the applications under S.34 filed by the losing parties challenging the arbitration award. Over a period of time the scope of interference in an arbitral award under the ground of public policy got expanded by various judgements of the Supreme Court of India. Because of the above said increased scope of interference by the courts into the arbitral awards, the arbitration became the first step to the litigation and lost the status of alternate dispute resolution system.*
- *Generally, Indian Courts do not award costs. The same practice existed in the arbitrations also. Internationally arbitrators strictly follow the policy of "Cost follow the event" which curtails inflated claims and unnecessary arbitrations. In India, since the costs were not granted on actual basis all claims were inflated, unnecessary counter claims were made and even the winning party in an arbitration had to lose a lot of money over the expenses in the arbitration.*
- *The parties took advantage of the section 9 of the original 1996 Act which permitted parties to seek for interim protection before initiating even the procedure to appoint an arbitrator. After getting the interim protection, parties delayed the starting of the actual arbitration proceeding. Hence all the issues had to be kept open for many years after the completion of the contractual obligations.*
- *Internationally, interim orders were given by the courts in support of a foreign seated arbitration. Because of the judgement entire part-1 became applicable only for India seated international arbitrations. Hence the parties who wanted an interim order for a property or an asset situated in India, which is the subject matter of foreign seated arbitration, became helpless.*
- *As per the original 1996 Act, any enforcement of either a foreign award or a domestic award has to be filed in the District Court having the jurisdiction or in the High Court having original jurisdiction. Unfortunately, In India, leaving six High Courts all the other High Courts do not have original jurisdiction. Moreover, the District Courts do not understand the difference between an Arbitral Award and a regular Court Decree. In such a situation, the enforcement proceedings take a very long time to completely recover the award amount.*
- *Since 90% of the arbitrations in India are ad-hoc arbitrations and hence the parties have to move an application u/s 11 of the Arbitration and Conciliation Act, 1996 in High Court/ Supreme Court seeking to appoint an Arbitrator.*
- *Due to huge pendency of cases in High Courts, the appointment of Arbitrator itself takes about 1 to 5 Years. Such a huge delay in appointing the arbitrator makes the parties get frustrated and defeats the purpose of Arbitration itself.*
- *Even though most of the Arbitral Awards are for payment of some amount which should be treated at par with the money decrees arising out of recovery suits field in a Civil Court but unfortunately, the pre-condition of pre-deposit to file an appeal over a money decree is not provided in the case of Arbitral Awards. Hence, the losing party just go to the Court, files an application u/s 34 of the 1996 Act and stall the enforcement proceedings.*
- *Even if an Arbitrator is biased, closely related to a party or a Counsel, there is no provision to approach the Court of Law to remove him. The provision provides only for a challenge before him and if he doesn't accept and if the party is aggrieved by the final Arbitral Award, then, the party can even take bias as a ground to challenge the award in addition to the other grounds provided in the 1996 Act. This process of conducting the whole Arbitration proceedings before a biased Arbitrator is a waste of time and money for the parties.*

Arbitration & conciliation (Amendment) Act, 2015 :

The Government of India, understanding the urgent requirement of amending Arbitration and Conciliation Act, 1996, it brought in the amendments by way of an ordinance, Arbitration & Conciliation (Amendment) ordinance that came into effect from 23rd October 2015 pending approval by the parliament in the next parliament session. In late December 2015, the Parliament of India passed the 2015 Arbitration and Conciliation (Amendment) Act ("The Amending Act"). The amending Act is identical to the ordinance except that the Amendment Act clarifies about the applicability of the amending act to the pending arbitration proceedings, whereas the ordinance was salient about it. The Amending Act states that unless otherwise agreed by the parties, the revision do not apply to arbitrations commenced prior to 23rd October 2015, the date on which the amending act is deemed to have come into force. Most of the provisions of the Amending Act are intended to improve the speed and efficiency of arbitrations in India.

The following are the important highlights of the amendments:

- **Time Limit prescribed for appointment of Arbitrator by the Courts:** About 80% of the arbitrations in India are Ad-hoc arbitrations and still lawyers and parties are not used to, choosing institutional arbitrations. Still there no arbitration bar developed in this country and hence all lawyers handle arbitrations like civil cases in the court. Hence hundreds of arbitrators are appointed by the arbitrators every day, by the courts in India. But the power to the appointment of arbitrators is vested with High Courts and the Supreme Court of India in case of an international commercial arbitration matter. Many High courts take 1 to 4 years to appoint an arbitrator. It is not the fault of High Courts or Judges, they are flooded with cases, so they do not find time to dispose off these applications
- The amending Act provides for a time limit of sixty days, for disposing the applications seeking appointment of arbitrator by way of a new section S.11(13). Surely this section will help the High Court, to reject unnecessary counter affidavits and lengthy arguments. But at the same time with the current number of judges, over a period of time this section may be out of practice by the courts. Hence increasing the number of High Judges by a minimum of 5 times, is necessary to get the fruits of the amending Act.
- **Time limit prescribed for the arbitral tribunal to render the award:** Previously the 1996 act did not prescribe any time limit, for the arbitral tribunal to render the award and hence there are many arbitrations which are ongoing for more than 3–5 years. Such prolonged arbitrations defeat the purpose of parties choosing the arbitration itself. The Amending Act has introduced a new section 29A which requires arbitrators to render final awards within 12 months of being constituted. The parties are empowered to extend the above said time limit by six months and any further extension can be done only by the supervising courts. The courts are empowered to impose the costs on the party delaying the arbitration or cut down the fee of the arbitrator in-case it was found that the arbitrator is delaying the process.
- Due to increased number of arbitrations in India and since a few popular arbitrators are extremely busy, getting their dates also becomes a problem. Hence because of the non-availability of arbitrators the arbitrations get delayed. To deal with the above issue of delay because of the non-availability of arbitrator the new S12 (1) (b) requires each arbitrator, at the time of appointment, to disclose any circumstances that may frustrate the arbitrator's ability to devote required time to the arbitration and to render an award within 12 months.
- **Fast Track Arbitration:** Many arbitrations can be decided effectively on the basis of the pleadings made by the parties and the documents relied on them. But arbitrators and lawyers normally follow the entire process including examination of oral witnesses in all arbitrations, which delays the speedy disposal of the arbitration proceedings. Globally expedited arbitrations are getting popular to see the finality of dispute. The amending Act gives an option to the parties either before or even during the arbitration proceedings, to opt for a Fast Track arbitration procedure, through a new Section 29B, where the tribunal must pronounce/ render its final award within 6 months of its constitution. The arbitrator shall decide the matter on the basis of the written pleadings and documents produced by parties. The fast track

arbitration will not have any oral hearing, unless all the parties make a special application seeking oral hearing with valid reasons and arbitrator also feels the said oral hearing is necessary. The recognition of the fast track arbitration process, by law will really help to change the mind-set of the arbitrators as well as the lawyers, who always see arbitration like a mini trial.

- **Fees for Ad-hoc arbitrators on the basis of value of the disputes:** Most of the arbitrations in India are Ad-hoc arbitrations and still lawyers and parties are not choosing institutional arbitrations. Hence hundreds of arbitrators are appointed by the arbitrators every day, by the courts in India. The Courts normally gives liberty to arbitrators to decide the fees. Many of the arbitrators' charge high sitting fees and drag the matters for a long period. In India one sitting is normally two hours and if an arbitrator sits for four or more hours, he charges two or three sitting fees. This practice of sitting fees and large number of hearings has frustrated the parties. Because of this sitting fees system, parties also make excessive claims and counter claims without any supporting material.
- The amending Act provides for a fee structure which is applicable to ad-hoc arbitrators by way of "The Fourth Schedule" which should be read with S.11(4). Hence the Courts while appointing arbitrators has to fix the fees on the basis of the fourth schedule. But the said schedule is not applicable for institutional arbitrations. The said fee schedule is not applicable/mandatory for arbitrations in which parties select their arbitrators. Hence party supremacy policy is also followed. This provision will surely help by curtailing frivolous claims and excessive fee schedule of the arbitrators.
- **Limits prescribed for adjournments:** Another major issue which has been hampering the arbitration process in India is "adjournments of hearings". All the lawyers in India are used to handle cases for years and most of the lawyers and arbitrators charge fees per hearings. Hence unfortunately we are used to conducting of a same case for many years, hence for fulfilling every responsibility in the arbitrations, we take many hearings. More over adjournment is one of the important tools used by the losing party or the non-co-operative party to prolong and delay the proceedings. These delays put the parties into a big frustration and financial loss.
- The amending Act to discourage the practice of unwanted pervasive use of adjournments in arbitration hearings, Section 24(1) provides that an arbitration tribunal shall, to the extent possible "hold oral hearings for the presentation of evidence or for oral arguments on a day to day basis and not to grant adjournments if no sufficient cause is made out.
- Time line for initiating arbitral proceedings after the interim order: Since 90% of the arbitrations conducted in India adhoc arbitrations and hence parties have to file an application before the supervising court depending on the nature of arbitration, seeking to grant an interim order. But after obtaining the said order parties drag the time and delay the starting of the actual arbitration. Such a situation frustrates the party suffering an interim order as well as the purpose of the arbitration process itself.
- The Amending Act 2015 has provided for a period of 60 days for the initiating of an arbitral proceedings after obtaining an interim order. This amendment will surely put some pressure on the parties to initiate arbitral proceedings within the set time.
- **INTERIM ORDERS IN SUPPORT OF FOREIGN SEATED ARBITRATIONS:** Many developed countries provide for a provision in their arbitration Act, invoking which parties to a foreign seated arbitration can get an interim protection through the court either before or during the arbitration. *Hence the parties who wanted an interim order for a property or an asset situated in India, which is the subject matter of foreign seated arbitration, became helpless. But the amended Act provides for interim award in support of a foreign seated international arbitration.*

REDUCED SCOPE FOR COURTS TO INTERFERE IN THE ARBITRAL AWARDS BY REDUCING THE SCOPE OF "PUBLIC POLICY"The Amending Act has made important changes in section 34 of the 1996 Act by providing reduced scope for the term "public policy of India", timeline of one year for the disposal of an application filed under section 34 of the act seeking to set a side arbitration award. The Term public policy which is one of the grounds to challenge an arbitral award got expanded many times, because of the expanded

interpretations given by the Supreme Court of India. Slowly there was a fear among the practitioners that the challenge proceeding may be converted like a first appeal in a civil suit. In the 2015 Amending Act, 2015 the scope of Public Policy has been reduced and made clear that an award can be considered to be in conflict with the Public Policy of India only if:-

1. The making of the award was induced or affected by fraud or corruption or coerce in violation of Section 75 or Section 81.
2. It is in contravention with the Fundamental Policy of Indian Law.
3. It is in conflict with the most basic notions of morality or justice.

It is also explained that the test as to whether there is a contravention with the Fundamental Policy of Indian Law shall not entail a review on the merits of dispute.It is also further clarified that an Award shall not be set aside merely on the ground of an erroneous application of Law or by re-appreciation of evidence. The above said reduction in the scope of Public Policy will surely help to achieve the finality of an Arbitral Award.

PROVIDES FOR IMPOSITION OF COSTS: In India the courts and arbitrators are normally hesitant to impose cost on the losing party. This is one of the reasons why frivolous litigations are filed by parties and the number of pending cases in the courts are increasing. This is also a reason for the increased number of appeals filed in various courts of India without any valid ground to appeal.

The Amending Act has brought in an amendment by inserting section 31A providing for costs to be imposed on the losing party. This section provides for types of costs and the manner in which costs can be determined by the arbitrators. This section will surely help to reduce wrong claims, appeals without sufficient grounds and compensate the expenses of the party because of the unwarranted arbitration proceedings. This amendment will also put Indian arbitration in line with the international practice of imposing of costs on the basis of the events.

PROVIDES FOR A HIGHER INTEREST: India is one of the countries in which the commercial interest rate is very high which goes upto 12% - 15% per annum. In some commercial loans employed on risky business models it goes upto 18%. But courts in India as well as arbitrators normally grant an interest of 9% - 12% over the award amount. Hence the judgement debtor does not bother to make the payment since the interest awarded in arbitration is much lesser than the market rates.

The Amending Act Section 13 provides a formula of adding to 2% to the interest while awarding the interest over the award amount. This section will surely help the parties to get a reasonable interest over the due amount.

MECHANISM TO ENSURE NEUTRALITY OF ARBITRATORS: The foundation of arbitration is neutrality of the arbitrators. Hence, globally many thoughts have been developed to find out and formulate effective mechanism for ensuring neutrality of the arbitrators. The International Bar Association came out with a guideline to ensure the above said neutrality of the arbitrators by publishing “IBA Guidelines on Conflicts of interest in International Arbitration”

The Amending Act has introduced a system of declaration all arbitrators have to make at the time of accepting the appointment as an arbitrator. The Amending act has modified section 12 of the act by incorporating a mandatory declaration by the arbitrators declaring their relationship with the parties as well as counsels. The Amending Act has also introduced 5th schedule which is a list of possible declaration an arbitrator has to make before accepting the appointment as an arbitrator.

These amendments will surely help to find a finality of arbitration awards. But still the huge pendency of cases in the courts of India will surely have a negative impact over the objectives of these amendments.

The Impact of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

The dispute resolution is commercial area is becoming more complex and technical in nature in the past few years because of nature in the past few years because of the technological revolution and consequential development in law. Hence the need for commercial courts in the district as well as high courts was felt by all the stakeholders. In response to the above said requirement many countries have

developed a hierarchy of commercial courts to deal with the commercial disputes in a specialised manner. In India also the experiment of formulating expert tribunals in the areas of electricity, petroleum, service issues, telecom, taxation etc. But the appeals against those orders are dealt with by the high courts & Supreme Court hence understanding the importance of bringing commercial courts. The law commission of India gave a detailed report which is Report No. 253. On the basis of the above said recommendation of law commission the Govt. Of India has enacted "The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 with effect from 23rd October 2015. The important features of the above said Commercial Court Act are as follows:

1. *Commercial Courts, shall be established in all the high courts having original jurisdiction and in all the district courts.*
2. *A Commercial Appellate Division Court shall be established in all the high courts of India.*
3. *There will be a bar to file any revision petition against interlocutory order passed by a commercial court.*
4. *On the basis of the claim and counter claim of the suit, Jurisdiction of the high court / district court shall be decided an cases will be transferred accordingly.*
5. *All the arbitration matters will be decided by the commercial courts.*

The above said act is historical in nature by bringing in commercial court system in India. This will help to have exclusive courts for commercial disputes dealing with arbitration, banking and finance, export – import, admiralty and marry time, transaction relating to aircraft, construction & infrastructure, franchising, distribution & licensing, joint ventures, shareholders, partnership, technology, insurance etc.

CHANGES REQUIREDIN THE JUDICIAL DELIVERY SYSTEM TO GET THE REAL BENEFITS OF THE AMENDED ARBITRATION & CONCILIATION ACT,1996 & COMMERCIAL COURTS ACT, 2015:

Every day delay in taking a corrective action to set right the present system and bring down the pendency is increasing the risk of judicial delivery system fully becoming useless. Such a further delay will neutralise all the other efforts of the government to impress the foreign investors and also the local entrepreneurs to go aggressive to develop the economy. Hence we suggest the following corrective interim actions which will substantially reduce the pendency and build the confidence of the business community in India and the foreign investors.

Short Term proposals:

1. **Revive Fast track courts in all States and expedite disposal in the local Court:** If the fast track Court system is brought again for another 5 years with a minimum of 10,000 Additional District Judges, the pendency in the lower courts will come down substantially and all pending cases can be disposed of in two years of time. If that back log is cleared once, then with a strength of 25,000 Subordinate Court Judges all over India (The present strength of subordinate judges is 18871) the disposal of the cases can be done within one year from the date of filing of a case or an appeal.

2. **Implement the Gujarat model of having two shifts in the local courts to manage the infrastructure deficiencies:** The State of Gujarat introduced shift system of local courts from 14th November 2006. 60 evening courts are already working in the State of Gujarat and those courts disposed about 57000 cases between 2006 and 2007. This system can be followed by the other states to temporarily manage the shortage of infrastructure in the lower courts.

3. **Appoint Ad-hoc 1500 Judges in High Courts:** Sanctioned strength of the number of High Court Judges in India is 886. As on 30th June, 2011 the total number of pending cases in all the 35 High Courts & benches of India is 43,50,868. We require a minimum of 1500 Ad-hoc judges for a period of three years in addition to the present strength of judges, to clear the back log and bring the pendency to one – two years. As of now the retirement age of the High Court Judges is 64 and hence thousands of experienced retired healthy Judges are available all over India. The Government can appoint them for a period of 3 years and clear the pendency.

4. **The strength of Tribunals can be increased by three times:** There are many tribunals all-over India including Consumer courts, Administrative Tribunals, Regulatory Commissions, Tax Tribunals etc., The pendency in these kind of tribunals are also more than 5 years. The Strength of the tribunal Judges and members must be increased by three times.

5. **40 Ad-hoc Supreme Court Judges may be appointed for a 3 years term:** In the Supreme court of India leave granted matters take 6 to 8 years to have the finality. To dispose of the 20,000 leave granted matters we require 20 benches to sit all 5 days for clearing the back log within 3 years. They will be able to complete the back log in two years. Since there are so many retired Supreme Court Judges who can be used for this great national service.

6. **Take decision that Government of India will not appeal more than once in any case:** While addressing the conference of Chief Ministers of the States and the Chief Justices of the High Courts in 2004 the then Prime Minister of India, expressed concern about the backlog in courts and admitted that one way of reducing it is to reduce the number of cases filed by the Government and referred to a survey conducted in Karnataka according to which in 65% of the civil cases Government was a litigant and in 95% of the appeals filed by the government, it failed. In more than40 percentage of the cases pending before the various courts of India either the Central Government or the State Governments are parties. Mostly all the cases in which the losing party is the Government, appeals are filed till the Supreme Court of India. Earlier governments tried to reduce the appeals by requesting the law officers to give an opinion about the necessity of filing appeal in every case. But neither the law officers nor the bureaucrats are ready to shoulder the responsibility to take a decision for obvious reasons and hence they just pass on the buck to the court. For the time being if Government of India decides not to file appeal more than once that will bring down the pendency in a big way.

7. **Dedicated benches in High Courts and Supreme Court for Public interest litigation:** Public interest litigation takes away a lot of time at the cost of other regular appeals before the High Courts and Supreme Courts of India. Hence Government may convince all the High Courts and Supreme Court of India to have dedicated courts for handling public interest litigation. This effort will give much better results if those dedicated courts are headed by Ad-hoc Judges. Such an action shall provide more time for the pending appeals and consequential expeditious disposal of the commercial cases and help the economy.

8. **Grant original Jurisdiction to All High Courts in India:** Only six High Courts of India have the original Jurisdiction and in those states even high value commercial cases have to be fought in the District Courts. The District courts have to approached for filing applications under S.9 and S.34 of the arbitration and Conciliation Act,1996. Hence it is necessary to grant original Jurisdiction to all the High Courts in India.

9. **Selection against Judges Vacancies should be completed 3 months before the vacancies actually arise:** Union public service commission is able to estimate the number of vacancies two years in advance and initiate the selection process for the civil servant positions. But always the selection of Judges gets delayed badly and hence thousands of vacancies always exist in the judiciary. Such vacancies again aggravate the disposal of the cases pending in the courts. Hence the government should ensure that the selection should start much in advance so that no post remains vacant even for one day in judiciary.

Long Term Proposals:

1. **Making Judiciary Financially self-sufficient :** Providing affordable or even free legal and judicial service to the poor people of the country is an important duty of the State. But the state should not spend the government funds and subsidise the Judicial service and make it cheap for everybody. People who can afford should pay in full to avail that service. But at the same time the funds of the State can go to economically weaker sections of the society in order to give them access to the judicial and legal services. The members of the economically weaker sections of the community require the support of the government to get a relief and if their costs are not covered by the government they may not be able to fight it. Denying judicial access for poor people will be a violation of the spirit of our constitution. But at the same time making judicial service cheap for everybody has in a way caused adverse results, which are stated as follows:

   A. Knowingly people are filing false cases just to buy time, since the cost for filing a case is just negligible. More over Indian courts never award sufficient costs against the losing party. Even if some costs are awarded in rare cases, the state does not get anything out of it so final loser in all the cases is the state.

   B. Just to delay the proceedings parties take many adjournments to drag on the matter. Again the loser is the government because the costs are absorbed by the state only. At the same time if a party wants to take an adjournment in an arbitration proceeding conducted under Delhi International Arbitration Centre rules, the party seeking adjournment has to deposit Rs.25, 000 in advance before moving an adjournment application.

   C. Losing parties keep filing appeals till the Supreme Court of India, knowingly they will lose the appeal. If Court fee is increased to cover the actual costs of the courts no party will go and file an appeal without valid reasons.

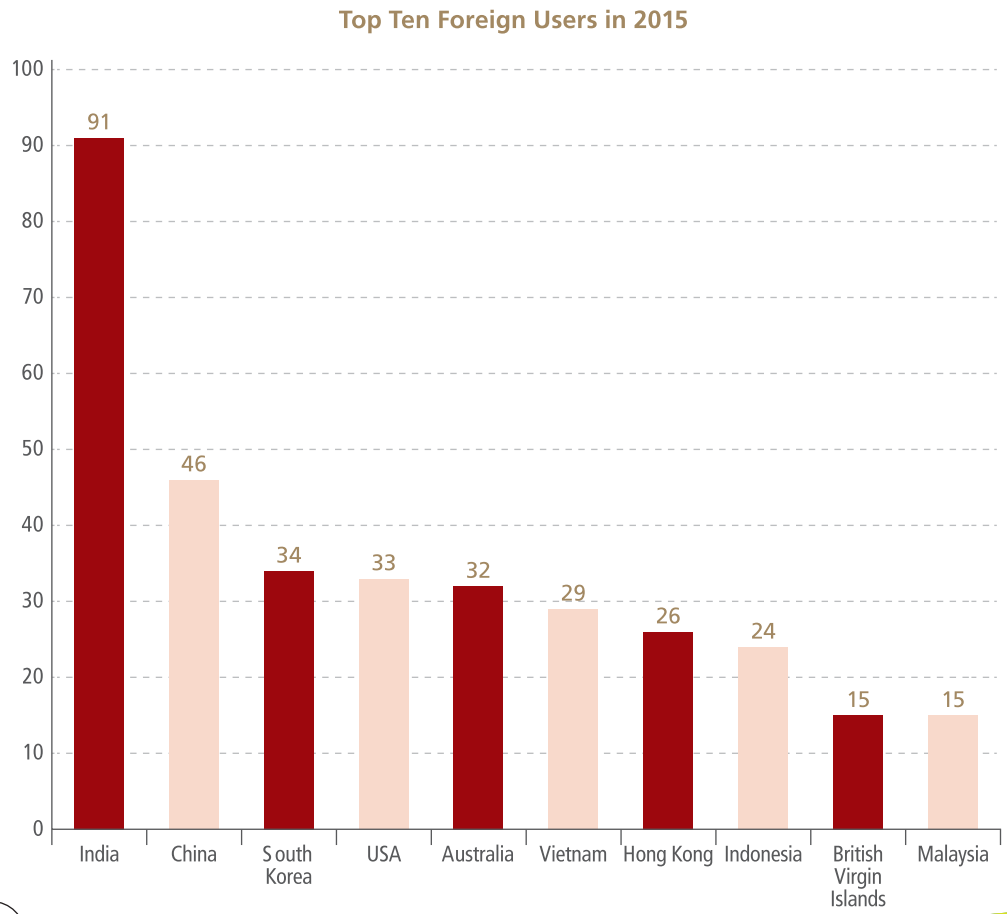
   D. Since the State is absorbing the major portion of the Costs, it is also hesitant to increase the number of courts, increase the judges and facilities. For example for filing a Writ petition the party has to just pay Rs.500 as court fees. But the same party may be paying a lawyer fee of Rs5000 to Rs 50,000 or more. In the same case State may be spending an amount of Rs. 50,000 per case to administer the case till the disposal. A party who can afford should pay the entire cost of Rs. 50,000 as court fee. The court should grant the actual court fee and the

increasing litigation and also less quality disposal of High court cases, which is unavoidable. The Supreme Court of India can exercise only the matters relating to original Jurisdiction, larger bench matters, direct appeals (appeals from Competition Appellate tribunal, Electricity Appellate Tribunal, National Consumer Commission, Regulatory commissions etc.,)

4. **Start Institutional Arbitration Centres all over India through Public Private Partnership and direct all Government departments to specify those centres as arbitration centres for the contracts governments are entering into:** Even though arbitration is gaining maximum popularity and being used by many private parties, still arbitration system in India is in a preliminary stage only. Due to high numbers of ad-hoc arbitrations parties are not able to get the matters disposed of within a reasonable time and reasonable cost. Hence it is necessary to establish a minimum of one Institutional arbitration centre in every state with Public, Private participation. Such a venture can become financially self-sufficient within 12 months from the date of starting, if all the government contracts specify those arbitration institutions in their contracts. Such an effort from the Central and state governments will reduce the court cases drastically.

WHAT INDIA SHOULD DO TO BE AN INTERNATIONAL ARBITRATION HUB?

India has so many advantages in terms of Geographical location, cheap man power, comparatively less cost competent lawyers, less cost hotels etc., to be a great international arbitration hub. International Arbitration Procedures allow Indian parties to choose foreign seats of arbitration and Indian parties also happily choose foreign seats than choosing an Indian seat. It is natural that a foreign seat international arbitration is expensive than an Indian seat arbitration. But many Indian parties choose SIAC (Singapore International Arbitration Centre), HKIAC (Hong Kong International arbitration Centre), LCIA (London Court of International arbitration) etc., against Indian Institutional Arbitrations. The following the chart published by SIAC in their annual report of 2015 which shows that India ranks number one among the Foreign parties using SIAC (91 cases filed in 2015by Indian parties). That means Billions of dollars are going from India to Singapore every year in Arbitral Institution costs, lawyer costs, travel and accommodation costs of the parties etc.,



lawyer fee as the cost to the winning party. If such a situation is there, then the party will file the writ petition if it is necessary and if they have chance of winning. The parties will not use the courts to settle their scores or to harass some body or to drag on an issue.

The following is the comparative chart of the court fee of a commercial litigation if it is conducted in Delhi High Court, in Delhi International Arbitration Centre, Ad- hoc arbitration and Singapore International Arbitration centre.

S.No.	Name of the Court / Tribunal	Value of Claim & Nature of Case	Court Fees in INR
1	Delhi High Court	10 Crores	10 Lakhs
	Delhi High Court	Writ Petition	500
2	Supreme Court	SLP- any value	1,100
3	Delhi International Arbitration Centre	10 Crores	13.5 Lakhs
4	Singapore Intl Arbitration Centre (SIAC)	10 Crores	42 Lakhs

But when it is a writ petition or Miscellaneous petitions the court fee is very low, even if the relief claimed gives benefit to a particular individual. That is a huge subsidy given to those litigants, which unnecessary. For example let us take the case of contractors challenging the tender process by way of a writ petition or people challenging an amendment to a statute which introduces a new tax, Companies challenging a new regulation in their business. These are examples to show how the funds of the government goes towards subsidising the legal costs of litigants who can actually pay for it. Another point which should be kept in mind is that in the above said types of cases lawyers are paid lakhs but court fee is Rs.500 only. When the state is not able to ensure free health care for even the poorest of the poor why it should subsidise the legal and judicial service expenses of even rich people. There can be no rationale or justification behind it. Hence it is just and necessary to slowly make the litigants who can afford to pay the costs on actual basis and employ the government funds to provide good quality litigation support to poor people.

1. **Courts should grant costs on actual basis to the winning client:** In India Courts treat costs very casually and hence they impose costs only in rare cases. But if a statutory right is created for the winning party to claim costs on actual basis at least in commercial matters and civil matters, it will discourage litigants from approaching the courts without valid reasons. This effort will not only improve the pendency status it will also create a quality delivery of judicial service.
2. **Number of Judges should be increased by 5 times at all levels:** As stated in the earlier paragraph, the Law Commission of India, in its 120th report, dated 31st July 1987 recommended appointment of a minimum of 50 judges per ten lakhs people within a period of 5 years and which was endorsed by the Parliament standing committee headed by Mr.PranabMukarjee, the present President of India. But it is unfortunate that the then government did not take any positive action to implement the same. Had we implemented the said proposal we should be having 75000 judges, where as we have 18871 Judges today who are handing 3,00,00,000 (Three crores) cases. When the Government is able to make judiciary self-sufficient it will not be a difficult task to increase the number of judges to 75,000.
3. **One more layer of National courts in the name of National Appeal Courts (Art.136):** The Government can consider creating one more layer of Courts sitting in all the four regions to handle the applications under Article 136 and the corresponding Appeals. The number of petitions filed under Article 136 of the Constitution of India seeking special leave to appeal against a High Court or any other court is increasing every year. This increase is because of

What are the main reasons for parties not opting for India seated arbitrations?

India seated International Arbitrations are considered like Domestic arbitrations as per Arbitration and Conciliation Act,1996

a) Hence for interim orders the parties have to approach District Courts in 20 States and in 4 States to High Courts, which has original jurisdiction. The aggrieved party normally goes on Appeals till Supreme Court of India and hence it takes years to get finality for even an interim order.

b) The Supervisory courts are determined by the Seat of Arbitration chosen by parties, in the International Arbitrations. So parties prefer a jurisdiction where the supervisory courts have trained judges, speedy disposal, less interference and effective handling of award challenge procedure.

c) The Courts in India does not understand the concept of damages and hence parties get dragged to unnecessary applications and proceedings.

d) Judicial discipline is not followed by the Courts and hence law never gets settled even in the Supreme Court level.

e) Above all, long pendency of commercial litigation including arbitration related litigation and many appeal provisions.

FORMATION OF SPECIAL COURTS FOR ARBITRATION MATTERS ALONE CAN MAKE INDIA AN INTERNATIONAL ARBITRATION HUB:

Due to increased filing of cases in all courts in India, the present pendency in all levels is increasing. 3 crore cases pending with 20,000 judges is not a healthy atmosphere for the business community. The international community fears that if they get into a legal issue in India they cannot get justice for a minimum of 15 years. Since there ia huge pendency in higher courts, arbitration and commercial cases also get stuck by the general pendency. Even now by creating commercial bench in the High Courts and District Courts without additional number of Judges, it is not going to impact on the delay part of the commercial dispute resolution system. Hence the best option is to take out all the arbitration related litigation including appointment of arbitrators, dealing with challenge to the appointment, dealing with interlocutory applications, handling of appeals against arbitral awards, enforcement of arbitral awards etc., and give it to a special court for arbitration matters situated in all the state capitals. If such a system is created in India, Indian arbitration scenario will completely change. The above said proposal can be formulated by taking into consideration the following points as well.

- The said special court can have retired judges and technocrats in a bench as presiding officers of the court.
- The special court can decide the number of benches on the basis of the number of pending cases.
- No case can be kept pending in the special court for more than 90-days.
- The court fee paid by the parties, shall cover all the expenses of the court and it will be a financially self-sufficient venture.
- The special court order is final and only the Supreme Court of India can entertain SLPs against the special court orders.
- The special court will train the judges in the field of arbitration before appointing them in that post.
- There will be a bar to the High Courts to entertain any challenge of any orders of the special court.
- The judges can be paid fees on the basis of the value of the appeal.
- International experts also can be appointed as judges to decide international matters

Let us all work together in the mission of making our country a great democratic country by respecting the rights of our people understanding the real need of economic growth.

THE KNOWLEDGE ARCHITECT OF CORPORATE INDIA

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ASSOCHAM initiated its endeavor of value creation for Indian industry in 1920. Having in its fold more than 400 Chambers and Trade Associations, and serving more than 4,50,000 members from all over India. It has witnessed upswings as well as upheavals of Indian Economy, and contributed significantly by playing a catalytic role in shaping up the Trade, Commerce and Industrial environment of the country. Today, ASSOCHAM has emerged as the fountainhead of Knowledge for Indian industry, which is all set to redefine the dynamics of growth and development in the technology driven cyber age of 'Knowledge Based Economy'. ASSOCHAM is seen as a forceful, proactive, forward looking institution equipping itself to meet the aspirations of corporate India in the new world of business. ASSOCHAM is working towards creating a conducive environment of India business to compete globally. ASSOCHAM derives its strength from its Promoter Chambers and other Industry/Regional Chambers/Associations spread all over the country.

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ASSOCHAM has been a significant contributory factor in the emergence of new-age Indian Corporates, characterized by a new mindset and global ambition for dominating the international business. The Chamber has addressed itself to the key areas like India as Investment Destination, Achieving International Competitiveness, Promoting International Trade, Corporate Strategies for Enhancing Stakeholders Value, Government Policies in sustaining India's Development, Infrastructure Development for enhancing India's Competitiveness, Building Indian MNCs, Role of Financial Sector the Catalyst for India's Transformation. ASSOCHAM derives its strengths from the following Promoter Chambers: Bombay Chamber of Commerce & Industry, Mumbai; Cochin Chambers of Commerce & Industry, Cochin: Indian Merchant's Chamber, Mumbai; The Madras Chamber of Commerce and Industry, Chennai; PHD Chamber of Commerce and Industry, New Delhi. Together, we can make a significant difference to the burden that our nation carries and bring in a bright, new tomorrow for our nation.

ASSOCHAM International Council of Alternate Dispute Resolution (AICADR)

- The Law Commission, Government of India, in its 246th Report emphasized on culture of institutional arbitration in India, recommended chambers of commerce to set up new arbitration centers with rules/latest provisions.
- ASSOCHAM International Council of Alternate Dispute Resolution (AICADR) has been formed as an exclusive Council of the Associated Chambers of Commerce & Industry of India, providing Arbitration, Conciliation, Mediation or any other dispute resolution methods.
- The ADR Rules are based on UNCITRAL model, drawn up after meetings and deliberations with the Hon'ble Judges of Supreme Court, High Court, Leading Practitioners, Senior Bureaucrats, Industrial Representatives and Authorities from Secretariat of United Nations Commission on International Trade Law etc.
- Incorporated latest provisions, aiming to bring a fair and trustworthy, faster and cost effective ADR mechanism catering to the needs of domestic and global dispute resolution.

AIMS & OBJECTS

- Propagation of ADR
- Training of arbitrators and business executives
- Research and Coordination with other similar ADR institutions
- Speedy/fair resolution of disputes within fixed time frame at minimum cost

INFRASTRUCTURE

- Panel of renowned arbitrators/conciliators/ mediators
- Professional Team of Secretariat
- ADR meeting rooms equipped with state-of-the-art facilities including Digital projector, audio and visual facilities and a dedicated system
- Multi-point video conference facilities
- Centrally located offices at different locations in India & Abroad

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About

Lawsenate law firm is one of the few law firms in India which is exclusively working in the field of International and Indian arbitration &dispute resolution. The Firm, handles International arbitrations, Domestic arbitrations, arbitration related litigations, Supreme Court litigation and other dispute resolutions in India and across the globe. The Firm has a global network of arbitration lawyers practising in all important jurisdictions.

The Firm's senior Partner Mr S Ravi Shankar who is the author of this report has an experience of more than 20 years in the field of law. He is a known arbitration lawyer practising in the Supreme Court of India. He is an invited speaker in various International and Domestic arbitration conferences. He is also the President of "Arbitration Association of India". He is also an advisory board member of ICCA Publications Committee. He is also the Chairman of one of the world class arbitral Institutions of India IDAC India. He is a member of various professional bodies including International Bar Association (IBA), ICCA, International Arbitration Association (IAA), Asian Society of International law (AISL), Chartered Institute of Arbitrators, Supreme Court Bar Association (SCBA) etc., He was the lawyer who got the fast track court scheme extended through Supreme Court of India in 2005, when the then Central Government decided to allow the scheme to have a natural death by not allotting the funds.

The other Senior Partner Mrs. Yamunah Nachiar is an Advocate on Record in the Supreme Court of India. She has also handled many high value arbitrations involving government and non- government parties. Her expertise in the field of dispute resolution is an asset for the firm. She also has contributed a lot for the preparation of the present report.

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