Asia Pacific Jurist Association, (APJA) is a non-governmental organization of like minded jurists, judges, lawyers, environmentalists, academicians and members of civil society from all walks of life, who joined hands in the year 2005 with the objective of promoting interaction in the field of environmental laws and studying common factors relating to ecological degradation, Arbitration and other relevant subjects of interest of legal fraternity in the Asia Pacific Region.

The objective of APJA is sought to be achieved through interactions and deliberations, resulting in recommendations, suggestions and resolutions to render a high level of awareness, so as to bring in proper policy changes, in the thrust areas of laws and regulations and their effective enforcement.

APJA has a track record of holding several important seminars and functions. In the year 2006, APJA had organized a three day International Conference on “Awareness as a tool of enforcement of environmental laws”, at Delhi. This conference was inaugurated by His Excellency, the then President of India, Dr. A.P.J. Abdul Kalam. APJA held another conference in 2008, on the subject “Safeguarding Indian Traditional Knowledge”, at Delhi.
when the new Patent law, was enacted by the parliament and the said conference was presided over by the then Chief Justice of India, Hon'ble Mr. Justice K.G. Balakrishnan.

With successful chapters at Chandigarh in Punjab & Haryana, Rajasthan Chapter and Kerala Chapter, Asia Pacific Jurist Association has a Pan India presence.

In the past two years, APJA has made tremendous progress in disseminating knowledge in core areas of AJPA as described above by way of seminars / symposiums / conferences / meetings etc. Firstly, in the month of June 2012, a conference was held in Bangkok, Thailand. Thereafter, Rajasthan Chapter was inaugurated in Jaipur by holding a two day conference at Jaipur between 18.01.2013 to 20.01.2013, on the topic “Sustainable Development - Role of Courts” and “Law in Service of People”. Thereafter, a conference was held in Haryana Bhawan, Delhi on 17.05.2013 on the topic “Current prevailing situation in our country”. Thereafter, a conference was held in Hongkong and Macau in the month of April 2013. Thereafter, conferences were held in Kochi, Kerala on the topic “Environmental Degradation: Climate Change & Disasters” and at Goa.

On the occasion of inauguration of Jaipur Chapter of Asia Pacific Jurist Association APJA, Hon'ble Mr. Justice Vijender Jain, President of APJA & Chairman Haryana State Human Rights Commission in his Presidential Address said

“Habit of our people in Southeast Asia and Pacific Region are almost similar. The developmental process is almost similar, therefore, it was in this background that we thought that we must share our experiences in this region so as to commonly understand and discuss the problems that we face. We have got similar problems we might have similar solutions to offer and we can enrich ourselves with the experiences of our people with the other people in the rest of the region.

Intellectual property rights, Alternative Disputes Mechanism System, i.e. arbitration, mediation and conciliation, are the legal requirements for which we have to create infrastructure in India. Time has come when lawyers, corporate, industrialists should have a clause in their agreements for having the place and seat of arbitration in this region. Inspite of a sound system of law, inspite of eminent lawyers, inspite of eminent judges, why we cannot create confidence that the International Arbitration, the Disputes Redressal Mechanism can be adhered to the laws of the countries of this region, which will benefit the industries, the lawyers and will create an atmosphere even in the developed world that the regional mechanism of dispensation of ADR is sound enough in our region as well”.

In consonance with the aim and objects of APJA and the views expressed by the President of APJA, Hon'ble Mr. Justice Vijender Jain, the seminar is being organized under the guidance of Hon'ble Mr. Justice Vijender Jain, on APJA is holding a full day seminar at Hotel Claridges, New Delhi on the topic 'International Commercial Arbitration in Asia' on Saturday 15th November 2014 at Hotel Claridges, New Delhi.

The present conference titled “International Commercial Arbitration in Asia” strives to provide meaningful coverage on current trends in the field of International Arbitration in the dynamic economies of Asia. The conference intends to highlight Asia's potential to grow as Arbitration friendly region and the complex issues still troubling the region's economy.

Hon'ble Mr. Justice A.K. Sikri, Judge Supreme Court of India will be inaugurating the conference and will delivery key note address.

The conference is supported by London Court of International Arbitration (India), Singapore International Arbitration Centre, International Chambers of Commerce, Hong Kong International Arbitration Centre, Singapore Corporate Counsel Association, Kuala Lumpur Regional Centre for Arbitration and Indian International & Domestic Arbitration Centre. The conference has also been endorsed by Law Society of England & Wales.

Inaugural session will followed by three sessions on different topics concerning various aspects of Law of Arbitration. Each session will be chaired by Hon'ble Judges/Eminent Jurists. Eminent jurist will share their views on various topics on Law of Arbitration.

To commensurate the occasion, APJA present this souvenir in association with Symbiosis Law School, Noida.

Hon'ble Mr. Justice Anil Kumar
Executive President
APJA
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<th>Time</th>
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<tr>
<td>9:00 - 9:30</td>
<td>Registration</td>
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<td>9:30 - 9:40</td>
<td>Welcome address</td>
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<td>9:40 – 9:50</td>
<td>Introductory address by Hon'ble Mr. Justice Vijender Jain, Chairperson,</td>
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<td>Human Rights Commission of Haryana and Utrakhand.</td>
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<td>9:50 - 10:10</td>
<td>Inauguration &amp; Key Note address by Hon'ble Mr. Justice A.K. Sikri, Judge,</td>
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<td>Supreme Court of India.</td>
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<td>10:30 - 11:45</td>
<td>Session-I-Arbitration in Asia: Characteristics and Approaches</td>
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<td>Panelists from various jurisdictions across the region will discuss</td>
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<td>characteristics and approaches in their respective home jurisdictions</td>
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<td>towards Arbitration. The discussion will aim to highlight the cross</td>
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<td>cultural effects, preference of Ad hoc or Institutional Arbitration,</td>
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<td>enforcement of awards etc.</td>
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<td>Chair: Hon'ble Mr. Justice S.K. Mishra, Judge, Delhi High Court.</td>
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<td>Co-Chair: Hon'ble Mr. Justice Rajesh Bindal, Judge, High Court of Punjab</td>
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<td>&amp; Haryana.</td>
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<td>Moderator: Mr. Sanjay Jain, Additional Solicitor General of India.</td>
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<td>Speakers:</td>
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<td>Mr. Prakash Pillai, Partner, Clyde &amp; Co., Singapore.</td>
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<td>Mr. Abhinav Bhushan, Deputy Counsel, International Court of Arbitration,</td>
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<td>Ms. Janie Wong, Senior Associate, Orrick, Hong Kong.</td>
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<td>Mr. Sonal Kumar Singh, Partner, A.K. Singh &amp; Co.</td>
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<td>Rapporteur: Ms. Nikita Arora and Ms. Arveena Sharma, Fifth Year Learners,</td>
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<td>Symbiosis Law School, NOIDA</td>
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<td>12:15 - 1:30</td>
<td>Session II- (Panel Discussion) – Indian Courts, from No-Arbitration to</td>
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<td>Pro-Arbitration</td>
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<td>Based on the UNCITRAL Model law on International Commercial Arbitration,</td>
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<td>1985, the Arbitration and Conciliation Act (1996 Act) was enacted with</td>
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<td>the objective of encouraging arbitration as a cost-effective and quick</td>
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<td>mechanism for dispute settlement. However, the 1996 Act's objectives</td>
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<td>were not effectively fulfilled due to various factors. But recent</td>
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<td>developments have resulted in a revival, making India a pro-arbitration</td>
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<td>destination. This can be attributed to the efforts to promote</td>
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<td>arbitration in India by executives, legislatures and the</td>
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<td>judiciary. The Session will aim to discuss the change in trend of the</td>
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<td>legislature and judiciary towards arbitration in India.</td>
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<td>Chair: Hon'ble Mr. Justice G.S. Sistani, Judge, Delhi High Court.</td>
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<td>Co-Chair: Hon'ble Mr. Justice R.K. Jain, Judge, High Court of Punjab &amp;</td>
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<td>Moderator: Mr. Sachin Dutta, Senior Advocate.</td>
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<td>Speakers:</td>
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<td>Hon'ble Mr. Justice Vijender Jain, Chairperson Human Rights Commission</td>
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<td>of Haryana and Utrakhand.</td>
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<td>Mr. Gaurab Banerji, Senior Advocate, Supreme Court of India.</td>
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<td>Mr. Abraham Vergis, Managing Director, Providence Law Asia, Singapore.</td>
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<td>Mr. Virender Sood, Advocate.</td>
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<td>Rapporteur: Ms. Swati Sharma, Fifth Year Learner, Symbiosis Law School,</td>
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<td>1:30 – 2:30</td>
<td>Lunch</td>
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<td>2:30 – 3:45</td>
<td><strong>Session III – (Panel Discussion) – International arbitration in Asia: Safe bet?</strong>&lt;br&gt;As cross-border transactions within Asia Pacific intensify, and trade between East and West heightens, the consequential wave of disputes is becoming increasingly evident. Major cities within the region are eagerly flaunting their arbitration credentials. Which is a safer seat, is the question. The panelists will discuss the factors to be considered before choosing a seat, growth of arbitral centres in Asia, infrastructure and legal framework in various jurisdictions.&lt;br&gt;<strong>Chair:</strong> Hon'ble Ms. Justice Hima Kohli, Judge, Delhi High Court. <strong>Co-Chair:</strong> Hon'ble Mr. Justice Najmi Waziri, Judge, Delhi High Court. <strong>Co-Chair:</strong> Hon'ble Mr. Justice Ajay Tiwari, Judge, High Court of Punjab &amp; Haryana. <strong>Moderator:</strong> Mr. A.K. Singh, Managing Partner, A.K. Singh &amp; Co. <strong>Speakers:</strong>&lt;br&gt;Mr. Abhinav Bhushan, Deputy Counsel, International Court of Arbitration, International Chambers of Commerce, Paris. Mr. Janie Wong, Senior Associate, Orrick, Hong Kong. Ms. Scheherazade Dubash, Deputy Head (South Asia), Singapore International Arbitration Centre. Mr. Ajay Thomas, Director and Registrar, London Court of International Arbitration Centre. <strong>Rapporteur:</strong> Mr. Aman Verma and Mr. Nishant Tanwar, Fourth Year Learner, Symbiosis Law School, NOIDA</td>
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<td>3:45 – 4:00</td>
<td>Tea Break</td>
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<td>4:00 – 5:15</td>
<td><strong>Session IV- (Panel Discussion) - Is Arbitration still a preferred of resolving disputes: Industry perspective.</strong>&lt;br&gt;Do major corporations, across different industry sectors, continue to affirm the benefits of arbitration to resolve their disputes? Do cost issues and delays in proceedings persist and are the in-house counsels still focused on getting value from the arbitration process? The panel discussion would aim at addressing such issues and allow the corporate Counsels/ General Counsels/ CMDs of various organizations to share their views and experiences on International Arbitration/Arbitration.&lt;br&gt;<strong>Chair:</strong> Hon'ble Mr. Justice Munishwar Nath Bhandari, Judge, Rajasthan High Court. <strong>Co-Chair:</strong> Hon'ble Mr. Justice V.P. Vaish, Judge, Delhi High Court. <strong>Co-Chair:</strong> Dr. Govind CEO, National Internet Exchange of India <strong>Moderator:</strong> Mr. Pulin Kumar, Legal Head, Adidas. <strong>Speakers:</strong>&lt;br&gt;Mr. Ashok Sharma, Director Ciarb, India. Mr. J.K Bodha, Group Manager (Law) ONGC. Mrs. Rohini Roy, Head International Transaction, BHEL. Mr. Yogesh Anand, Legal head, GMR Energy. Mr. Sunil Malthotra, Advocate. <strong>Rapporteur:</strong> Mr. Abhishek Mathur, First Year Learner, Symbiosis Law School, NOIDA</td>
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<td>5:15 - 5:30</td>
<td><strong>Closing remarks:</strong> Hon'ble Mr. Justice Anil Kumar, Chairperson Appellate Tribunal for Prevention of Money Laundering &amp; Chairperson Appellate Tribunal Forfeited Properties.</td>
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<td>5:30 – 5:40</td>
<td><strong>Vote of Thanks:</strong> Mr. Pushkar Sood, Advocate</td>
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<td>6:30 pm</td>
<td><strong>Delegate Reception at Royal Plaza Hotel, Ashoka Road, onwards New Delhi</strong></td>
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Arbitration, a type of alternative dispute resolution, is a disputes resolution means outside the traditional Court, where parties to the dispute refer the matter to one or more persons (known as the ‘arbitrators’), and by whose verdict (the ‘award’) they consent to be bound. It is thus a resolution system in which a neutral third party examines the evidence and comes out with a decision which is legally binding on both the sides as well as enforceable. International commercial arbitration denotes the process of resolving commercial/business disputes between or among multinational/transnational parties through arbitration instead of the Court. Parties usually have an agreement in this regard or there exists an arbitration clause in the contract or business agreement. There are mainly two kinds of arbitrations namely, ad hoc and institutional. In an institutional arbitration the matter is entrusted in the hands of any of the arbitration institutions for resolution, while an ad hoc arbitration is conducted alone without any such organization and as per the rules agreed to by the parties. Prima facie, an ad hoc arbitration seems to be cheaper and more flexible, however, the advantage of institutional arbitration is that it provides an autonomous, impartial set of rules that already exist, and ensures that the arbitration proceeds smoothly.

**Historical Analysis**

International commercial arbitration has been used to determine disputes from time immemorial. As remarked by one scholar, ‘Commercial arbitration must have existed since the dawn of commerce.’ To realize fully the present position of international commercial arbitration, and what form it is likely to take in the future, it is significant to look at historical developments which form the basis for our existing system of arbitration.

Arbitration as a means to justice was born of the merchants, and has been in existence in some form or the other for years. During the ancient period, arbitration existed as a set of trade customs in Egypt and Babylonia and later the Greek City States. It soon became a part of the Roman *Ius Gentium*. Under this system, merchants were allowed to judge their own disputes without the supervision or intervention of the government. It is also believed that King Solomon who was in power from 971–931 B.C was an arbitrator. Likewise, Philip (II) often used arbitration as a means for resolving disputes with the southern states of Greece.

In England arbitration can be said to be as old as the common law system they have and dates back to as far as 1224. The first law regarding arbitration in England was enacted in 1697. In France, the French Revolution regarded arbitration as a ‘droit naturel’ and the Constitution of 1791 gave its citizens the constitutional right to resort to arbitration. It was also made a part of the Code of Civil Procedure in 1806. The beginnings of the thought of arbitration in France go back to the ancient Court of ‘Gros Poudeur’ (from the French pied poulard, meaning vagabond), established by the boroughs to resolve disputes between merchants on business days.

In 1883 the Court of Common Council of the City of London set up a committee to consider the establishment of a tribunal for the arbitration of trans-national commercial disputes arising within the limits of the City. The proposal came from London's...
business community, which was becoming more and more discontented with the sluggish and costly process of litigating in the English Court.

In 1919 the world’s business community established the International Chamber of Commerce (‘the ICC’). The ICC has been the foremost body in asserting the needs of the international business community and has been a major driving force in the development of arbitration as a means for the resolution of international commercial disputes as well as the need for international regulations to endorse and support arbitration. However, as world trade developed, the need for the establishment of a mechanism for the international recognition and enforcement of both arbitration agreements and awards in relation to international commercial agreements was viewed as vital. In 1958 the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (‘the NYC’) was adopted. The NYC deals with matters relating to international recognition and enforcement of arbitration agreements and awards by local Court. From the time of its adoption, the NYC has been the foundation stone of international commercial arbitration and has represented a huge leap forward for international arbitration.

As international arbitration increased and the influence and benefits of the NYC became apparent new arbitration institutions began to be created as a supplement to ad hoc arbitrations. Each institution has framed its own rules and procedures and offers arbitration services that were initially influenced considerably by its own national practices. There are numerous such arbitral institutions, the major institutions ones being London Court of International Arbitration, in London (established in 1892); Stockholm Chamber of Commerce, in Stockholm (established in 1917); International Chamber of Commerce, in Paris (established in 1919); American Arbitration Association, in New York (established in 1926); Hong Kong International Arbitration Centre in Hong Kong (established in 1985), and the Singapore International Arbitration Centre in Singapore (established in 1991). In the early 1970s there was an increasing demand for an impartial set of arbitration rules appropriate for use in ad hoc arbitrations. Under the patronage of the United Nations, a set of arbitration rules were prepared by the United Nations Commission on International Trade Law (‘UNCITRAL’). The UNCITRAL Rules are exhaustive and deal with all aspects of the arbitral proceedings such as model arbitration clauses, appointment of arbitrators and interpretation of the award, and so on.

A further historical landmark came in 1985 with the UNCITRAL Model Law on Arbitration, which has been recognised by a growing number of countries all over the world, and many other countries (where they have not adopted it outright) have based their arbitration laws upon it. Further, recently, in 2008 the ICC established a branch of its Secretariat in Hong Kong and in Singapore. Also, in 2008, the LCIA established (together with the Dubai International Financial Centre) a centre in Dubai, known as DIFC-LCIA. And, in April 2009, the LCIA established a satellite branch in India, identified as LCIA India.

This brief summary of the history of international commercial arbitration shows that, all through history, international trade has led to the creation of arbitration machineries and legal agendas. In determining the future of arbitration, one has to and must analyze the historical as well as current practices for a better and clearer understanding.

Jurisprudential Theories

International commercial arbitration has been perceived as the most accepted method of alternative dispute resolution. It is also noted that different interpretations have been given by national Court in relation to various aspects of arbitration. One reason behind this is the fact that different national Court adopt different theories in relation to international commercial arbitration. For example, with regard to the issue of delocalisation both French and US Court have placed more weight on the ‘contractual element’ and

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1 Id.
enforced some arbitral awards which have been set aside at the place of arbitration whereas the English Court are still espousing the jurisdictional nature.

The Jurisdictional Theory

The jurisdictional theory calls upon the significance of the supervisory powers of the states, especially of the place where arbitration is conducted. Although the theory does not disregard the notion that an arbitration has its basis in the parties’ arbitration agreement/clause, it upholds that the validity of the arbitration agreements and arbitration procedures requires to be policed by national laws and the validity of an arbitral award is to be settled on by the laws of the arbitral seat along with those of the country where the recognition/enforcement is sought.39 Supporters of this theory believe that arbitrators are similar to judges of ordinary Court because the former’s powers are derived from the states by way of the rules of law.40 Moreover, the awards passed by the arbitrators are viewed as having the same eminence and outcome as a judgment of a Court. Supporters of this theory further stress on the importance of the seat of arbitration. According to them, various aspects international commercial arbitration regarding the validity of the arbitration agreement/clause, the procedures, the arbitrator’s power, and other such issues have to be determined as per the rules and public policy of the law of the forum (lex fori)41 failing which the award may be set aside by the Court the arbitration is conducted. Furthermore, recognition or enforcement of the awards may be rejected by the Court of the enforcing states. As regards the interface between arbitration and the national Court of the place where the arbitration is conducted or where recognition or enforcement of the awards is desired, the jurisdictional theory provides a strong base for the national Court exercising supervisory powers over the arbitration.42 Such supervisory powers are also provided in the New York Convention, 1958. For example, Article V provides that if no express choice of law is made, the validity of arbitration agreements, arbitral awards, the composition of the arbitral authority and the arbitral procedures shall be decided in accordance with the law of the country where the arbitration is conducted.

Additionally, under the jurisdictional theory, the Court in the country where recognition or enforcement is sought has a supervisory power as regards the issue of arbitrariness. Accordingly, under Article V (2) of the NYC, 1958, the Court have the option to decline to recognise or enforce an arbitral award if it finds that ‘The subject matter of the difference is not capable of settlement by arbitration under the law of that country’ or ‘recognition or enforcement of the award would be contrary to the public policy of that country’.43 A similar approach has been taken by the United States Supreme Court, which validated the federal policy supporting arbitration in the famous Mitsubishi vs. Solet-Chrysler-Plymouth case.44 In the said case, an anti-trust dispute which was refrained from being settled through arbitration, the US Supreme Court recognized and enforced the arbitration agreement between the parties involving an anti-trust dispute, irrespective of the fact that a contrary outcome would be impending in a domestic scenario as Justice Blackmun pointed out - ‘the national Court of the United States will have the opportunity at the award-enforcement stage to ensure that the legitimate interest in the enforcement of the anti-trust laws has been addressed.’ It is because that ‘if the convention reserves to each signatory country the right to refuse enforcement of an award where the recognition or enforcement of the award would be contrary to the public policy of that country.’45 This argument thus is in line with the underlying principle of the jurisdictional theory on the relationship between the Court and arbitration being that of a supervisory nature.

With regard to the status of arbitrators, the jurisdictional theory pursues the approach of the delegation theory, according to which, an arbitrator possesses a delegated authority conferred by the state where he sits to conduct an arbitration, and any award passed by an arbitrator in the absence of this authority will be invalid and unenforceable. As to the nature of arbitral awards as per this theory, an arbitral award must be given the same position and effect as a judgment passed by a Court as arbitrators are regarded as similar to judges.46 By virtue of a like status given to awards, if there is no voluntary performance of the award by the losing party, the same shall have to be enforced by the local Court where the recognition/enforcement is sought. Regarding choice of law issues, most countries allow judges of local Court, while dealing with international commercial disputes to apply either the national law of their own State or the national laws of other states if the parties agree.47 Alternatively, if the parties fail to express choice of the proper law, they have to than decide on the substantive law in line with the choice of law rules of the place they sit.48

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39 Mustill, supra note 1.
40 ADAM SAMUEL, JURISDICTIONAL PROBLEMS IN INTERNATIONAL COMMERCIAL ARBITRATION: A STUDY OF BELGIAN, DUTCH, ENGLISH, FRENCH, SWEDISH, SWISS, US AND WEST GERMAN LAW 63 (Schulthiss 1989).
41 Id.
43 SAMUEL, supra note 14 at 88.
44 The New York Convention, 1958, art. V.
47 Id. at 113.
48 Id.
The Contractual Theory

Discarding the importance of the lex fori, supporters of the contractual theory contend that arbitration originates from the agreement between the parties. They contend that no relationship exists between the arbitration proceedings and the national laws of the place where it is conducted. They uphold that parties have the liberty to decide the pertinent issues regarding the arbitration procedures and this liberty must not be hampered with by the States. The contractual theory, as opposed to the jurisdictional theory, looks at the concept of arbitration from a contractual point of view. Consequently, an arbitration agreement between the parties is given the same status as a contract that expressly provides the parties' desire to have the disputes settled through international commercial arbitration. Such a contract is voluntarily entered into by the parties, and permits them to decide the time and seat of arbitration, choose the arbitrators as well as the laws governing the procedural and substantive aspects. The supporters of the contractual theory advocate that the resolution of the dispute through arbitration should not be controlled by the States and that the principle of 'pacta sunt servanda' must prevail.

As to the relationship between parties and arbitrators it is the contractual theory that is accepted and followed in most countries. For instance, in England, in the case of Cereals S.A. vs. Tradex Export S.A., where the Court while holding that a contractual relationship existed between the parties and the arbitrators, observed that the arbitrators became parties to the arbitration agreement the moment they were appointed. The Court observed: 'It is the arbitration contract that the arbitrators become parties to by accepting appointments under it. All parties to the arbitration are, as a matter of contract (subject always to the various statutory provisions), bound by the terms of the arbitration contract.'

Regarding the status of arbitrators, the contractualists rebuff the delegation theory according to which arbitrators are similar to judges of national Court, and argue that arbitrators are employed as the agents of the parties to decide the disputes on their behalf. Thus, being the agents of the parties, arbitrators stand for the latter and seek to settle the dispute as per the parties' instructions. Further, as per the agent theory, arbitral awards are viewed as contracts made and passed by the arbitrators who represent the parties. Due to this principal-agent relationship, the contract (award) thus made, is binding principals (parties). Also, the award being a contract can be easily enforced in any country as there will be no concerns of territoriality since no state/authority would be involved.

In the Vynior's case, the Chief Justice (Coke) stated that the arbitrator's power and authority may be revoked like a number of engagements, such as making a letter of attorney to make livery or assign auditors and so on. As regards the choice of law issues, under the contractual theory parties have full freedom in choosing both the governing law as regards both procedural and substantive aspects.

The Hybrid Theory

Both the jurisdictional theory and the contractual theory have substantial backing. However, to some scholars and jurists, neither the jurisdictional theory nor the contractual theory offers an adequate and logical justification of the modern structure of international commercial arbitration. It is under these circumstances that a compromise theory of a hybrid nature has developed.

The hybrid theory was propounded by Professor Survive, and further developed and promoted by Professor Saiser-Hall. As per this theory, international commercial arbitration is of dual character, that is, on the one hand the contractual elements of arbitration are revealed in the fact that arbitration has its basis in a private party contract, wherein the parties full freedom to decide on the arbitrators as well as the rules that will govern the arbitration. On the other hand, the elements of jurisdictional theory are obvious from the fact that arbitration has to be conducted in accordance with the local legal system especially in relation to matters related to the powers of the arbitrators, the validity of the agreement and the enforceability of the awards.

Accordingly, arbitration has been defined as 'a mixed juridical institution, sui generis, which has its origin in the [parties'] agreement and draws its jurisdictional effects from the civil law.' Also, in relation to the recognition or enforcement of arbitral awards, the validity of arbitral awards will be inspected as per the obligatory rules and public policy of the country in which the recognition or enforcement is sought.

Further, under the hybrid theory, the relationship between the arbitrators and the parties is viewed as contractual in nature, and finds its basis in the arbitration agreement made between the parties. Under the arbitration agreement, the parties submit the disputes for arbitration and choose the arbitrators who are viewed as competent to settle the disputes. Nonetheless, as opposed to the contractual theory, the scope of the arbitrator's power is dependent on

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4Id.
5[1981] 1 WLR 711
6Cereals S.A., [1981] 1 WLR 711 at 47.
7KITAGAWA, supra note 25 at 138.
8[1969] 8 Co Rep 81b
9Vynior's, [1969] 8 Co Rep 81b at 23.
10S.MUELLER, supra note 14 at 160.
11Id.
12Id.
the examination of the obligatory rules of the law of the forum (lex fori) as well as the public policy considerations of the enforcing states. As to the nature of the arbitral awards is concerned, different from both the jurisdictional and contractual theories, under the hybrid theory an arbitral awards is half way between a contract and a judgment.  

As to the choice of law issues, the theory advocates that, in the absence of any express agreement between the parties, the law of the place where the arbitration is conducted will be the applicable law. Arbitrators are obliged to settle on the proper law of the agreement in line with the private international law rules of the lex fori.  

The Autonomous Theory

The Autonomous theory was first developed by Rubellen-Devichi and approaches the various aspects of arbitration in a more practical manner. The theory follows the thinking that international commercial arbitration came to be developed due to its speedy and flexible nature, and thus the most appropriate theory must be propounded keeping in mind the use and rationale behind arbitration. The autonomous theory thus refutes both the jurisdictional as well as the contractual theory on the grounds that both have failed to keep up with the reality and often oppose each other.  

Following this line of thought, the supporters of the autonomous theory contend that the true nature of arbitration must be decided as per its functions and objectives by positioning arbitration at a ‘supranational’ level and upholding its autonomous character. The autonomous theory suggests that to permit arbitration to have the development it warrants, within its suitable limits, countries must accept the fact that its character is ‘neither contractual, nor jurisdictional, nor hybrid, but autonomous’. The theory does not refute the dual character of arbitration, but does not agree with the measures employed in trying to differentiate the jurisdictional aspects from the contractual ones. As per this theory, it is almost impossible to make this differentiation, and even if made it will only lead to an unwanted distortion of the growth of international commercial arbitration.

Furthermore, the theory maintains that, arbitration agreements and arbitral awards are enforceable in any State. This flows out from the belief that ‘only an original system, free from both the contractual and jurisdictional notions, would permit the necessary speed and provide the necessary guarantees which the parties legally claim to be brought together’. It further acknowledges full party independence in shaping every facet of the arbitration, and denies the controlling powers of the lex fori over arbitration.

To have a good understanding of the operation of international commercial arbitration in various jurisdictions, it is essential to first understand the origin of the theories which have been adopted by different jurisdictions. While the jurisdictional and contractual theories take two contrary positions on the similar spectrum, the hybrid theory takes a more compromised viewpoint which appears to be more satisfactory. The autonomous theory seeks to offer a basis for an idyllic arbitration system. A good understanding of these theories as adopted by different countries gain importance as within the existing arbitration framework, the norm for determining whether the award can be enforced in a particular jurisdiction, is watched over by the relevant domestic laws of the country.

The jurisprudential aspects of arbitration play a significant role in determining the nature of arbitration laws that a country will enact and follow as these determine various issues such as the extent of the Courts power to intervene or the independence given to parties. It is thus important for the parties seeking arbitration services in a foreign State to make a study of the same.

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3Id.
4SAMUEL, supra note 14 at 160.
5Id.
8Lew, Mistelis, & Kroll, supra note 40 at 46.
9Id.
10Drahovil, Christopher R, supra note 41.
11Id.
p. s. Legal
ADVOCATES

Offices at:
18, Harcharan Bagh, Vasant Kunj Road, New Delhi - 110 074 India
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"FAIR, SPEEDY AND INEXPENSIVE TRIAL BY AN ARBITRAL TRIBUNAL" – FIRST AND PARAMOUNT PRINCIPLE OF ARBITRATION LAW! : THE SCI

The Hon'ble Supreme Court of India (hereinafter referred to as "the SCI"), in its recent judgment titled "Union of India & Others versus U.P. State Bridge Corp. Ltd, 2014(10) SCALE 564", gave an interesting push to the future of Arbitration in the Country by laying down that the first and paramount principle of arbitration law is "Fair, speedy and inexpensive trial by an Arbitral Tribunal", especially where the contracts between Government Corporations/State owned companies with private parties/contractors are concerned, expanding the scope of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), on appointment of arbitrators contrary to the contract between parties by relying on its judgment in "North Eastern Railway v. Trupple Engineering Works, 2014(9) SCALE 351", wherein the SCI in almost identical circumstances approved similar directions of the Patna High Court, while taking note of various judgments, the SCI reiterated that, "The "classical notion" that the High Court was bound to appoint the arbitrator as per the contract between the parties has seen a significant erosion in recent past." The SCI also relied on its view expressed in "Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523", by which it extended the above principle of 'default procedure' under Section 11 of the Act for constitution of substitute Arbitral Tribunal where earlier Arbitral Tribunal has failed to perform; further emphasizing that, "Court is not powerless in this regard." Although, the Judgment is certainly positive in its circumstances, it may have far reaching consequences in future, especially, where 'party autonomy' is concerned.

Briefly, facts of the said case were – the Appellant entered into an agreement with Respondent for construction of guide bunds, 1 foundation and substructure of rail bridge across river Ganges near Digha Ghat, Patna. Clause 64(1)(ii) of the General Condition of the Contract 2001 (hereinafter referred to as "GCC"), contained the arbitration clause for deciding disputes through arbitration by an Arbitral Tribunal per terms of said Agreement. Disputes arose and on request of Respondent an Arbitral Tribunal was constituted in 2007 in which all members were Railway Authorities. Inspite of expiry of four years, said tribunal did not complete the arbitral proceeding and matter stayed in limbo due to transfers/retirements/adjudgements etc.

Respondent injured by the long delay filed a Request Case in 2010. Taking note of the situation, High Court disposed of said Petition on 09.03.2011, with last chance to Arbitral Tribunal to complete proceedings within three months with direction to hold regular sittings at Patna from date of receipt/production of a copy of said order, with liberty to Respondent to approach the Court again if, proceedings not completed within the period fixed and the Court would be constrained to pass appropriate order in accordance with the Act.

Arbitral Tribunal received copy of Order on 25.03.2011. It was to complete the case by 25.06.2011. Yet, could not complete the proceedings within the allotted time, hence, Respondent approached the High Court with another Request Case on 29.06.2011. Appellant contested the said petition on various grounds and also gave its reasons of why the Tribunal could not complete proceedings on time. It was also pointed out, that Tribunal was ready to hear the case and finally decide it on 22.07.2011, but the Respondent informed the Tribunal of the said Petition which led to adjournment.

The High Court took note of hearings fixed by Tribunal between 25.03.2011 and 25.06.2011 and came to conclusion that delay caused in arbitral proceedings was intentional. So much so, members of Tribunal were continuing their dilatory tactics in deciding the matter before it since 2007 and four years had passed in process. Tribunal had faltered even after specific directions to conclude the matter within three months and long adjournments were granted thereby violating specific directions of the High Court. Terming this attitude of the members of the Tribunal as negligent towards their duties with no sanctity for any law or for the orders of High Court, it allowed the petition of Respondent herein and set aside the mandate of the Tribunal with appointment of sole arbitrator by Court itself.

Appellant challenged the judgment of High Court before the SCI in appeal, pleading that it was not open to the High Court to appoint the sole arbitrator as it was not empowered to constitute the Arbitral Tribunal of its own and, that too, contrary to arbitration.

1Mr. Nagar is an LL.M. from the University of Manchester, U.K [Mail at: ps@pslegal.in ]  
2Mr. Paranjay Chopra, Associate – p.s. Legal, Advocates, assisted Mr. Nagar with this Article
clause as agreed between Parties, and that no such power is vested in High Court under the Act. And that even if the mandate of Tribunal was to be terminated, fresh Tribunal could be constituted only in accordance with the Arbitration Agreement, hence, at the most, the High Court could have directed the Appellant to constitute another Arbitration Tribunal in accordance with Clause 64 of the GCC.

H.M.J. Sikri, authoring an elaborate judgment, made some strong and specific observations against the Appellant i.e. the Railways and the Government, for defeating the very purpose and essence of having an arbitration clause in the agreement. Such observations against the government surely bring into focus, the future of standard arbitration clauses used by Government undertakings to give themselves a dominant position to constitute the Arbitral Tribunal. H.M.J. Sikri, observed that although such clauses “... are held to be valid, they certainly cast an onerous and responsible duty upon the person designate to appoint such persons/officers as arbitrators who are not only able to function independently and impartially, but are in a position to devote adequate time in conducting the arbitration.” Hence, bringing them under proper scrutiny of Courts in future.

Furthermore, in para 16 of the judgment, the SCI observes that, “In so far as first pillar is concerned, it contains three general principles on which the entire edifice of the said Act is structured.” Further, while quoting Mance, L.J. in an English Court judgment in the case of “Department of Economic Policy and Development of the City of Moscow v. Bankers Trust Co., (2004) EWCA Civ 314”, wherein he “… succinctly summed up the objective of this Act in the following words: ‘Parliament has set out, in the Arbitration Act, 1996, to encourage and facilitate a reformed and more independent, as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interests of the public and of basic fairness’. Section 1 of the Act sets forth three main principles of arbitration law viz. – (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles.”

What appears most interesting is the fact that, whereas, there may be nothing apparent to suggest any disparity and/or superiority amongst the three main principles of arbitration law are concerned as stated in the second part of Para 16, hereinafore, yet, Para 18 of the judgment advances “fair, speedy and inexpensive trial by an Arbitral Tribunal”, to be the first and paramount principle of the first pillar, whereas, ‘party autonomy and minimum court intervention’, although being equal and integral parts of the first pillar, as a whole, seem to have been sidelined in general.

Moreover, in Para 21 the SCI has held that “The appointment of arbitrator by the Court, of its own choice, departing from the arbitration clause, is therefore not unknown and has become an acceptable proposition of law which can be termed as a legal principle which has come to be established by a series of judgments of this Court. Reasons for debating such a course of action are not far to seek and already taken note of above.”

It appears, that the SCI is certainly aware of the debate, which seems apparent, as already taken note of above. Para 21, does generate curiosity in a subtle way, especially, in terms of the impact it could have on matters concerning Arbitration in coming days, with reference to it expanding, the scope of Court intervention by empowering them further, especially, in view of the fact that, whereas the present case is an exceptional one and deals specifically with government undertaking contracts, whereas, the observations made in para 21, above, are more in a general tone, wherein “… such departing from arbitration clause is not unknown... having become an acceptable proposition of law, being termed as a legal principle.”

What remains to be seen is whether the courts now being empowered vide this Apex Court decision, which dealt specifically with cases of government undertakings, whether will exercise discretion cautiously or will adopt a more liberal approach to intervention in arbitration matters, especially in cases where both parties may be private. Incase this judgment holds good on a general basis, in light of the observations made in para 21, of it being a “general legal principle.” In that case, things may become worrisome in terms of principles like ‘party autonomy’ and ‘minimum court intervention’ being cornerstones of Arbitration law are concerned. This judgment of the SCI, reminds of H.M.J. P. N. Bhagwati, Ex-Chief Justice of India, who famously quoted that, “The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society.”
EXTENSION OF ARBITRATION AGREEMENTS TO THIRD PARTIES

INTRODUCTION
Arbitration is consent based by nature. The arbitrators' jurisdiction flows exclusively from the parties' agreement to resort to arbitration for the purpose of resolving their disputes. Consequently, the jurisdiction of the arbitrators extends to only those issues that fall under the arbitration agreement.

Having said that, it is easy to hypothesize that a party that has not signed a contract containing an arbitration clause has no right or obligation to arbitrate under such a contract. However, in today's times, the word 'signatory' does not precisely reflect the issue. Under the New York Convention as well as most domestic arbitration laws, such as Swiss Private International Law Act, the prerequisite that the arbitration agreement be signed is not an unqualified one anymore. Since 2000, UNCITRAL's Working Group on Arbitration has been working on probable amendments to the writing requisite in Article 7(2) of the Model Law, including the one which provides for the complete deletion of this provision.

Nevertheless, the issue of extension of arbitration agreements to non-signtories remains a highly discussed and debated topic. The present paper is focused on the analysis of the different jurisprudential theories that allow such extension of arbitration agreements as well as the prevalent practices in different jurisdictions.

The paper has been divided into three parts. Part I explains the various theories that Courts across the globe have relied upon to bind third parties to arbitration agreements. Part II focuses on the approach and practices of the Common and Civil Law nations. Part III scrutinizes the position of law on the subject in India and traces down the approach adopted by Courts through various decisions over the time. The conclusion summarizes the finding of all the chapters and shows the common and distinctive trends prevalent in different jurisdictions.

PART I: THEORIES BEHIND EXTENSION OF ARBITRATION AGREEMENTS
There are a number of theories upon which Courts and Tribunals have relied to rope in parties who are not signatories to an arbitration agreement. Mostly, these doctrines which make arbitration agreements binding upon non-signtories have their origin in ordinary contract and agency principles. Some of the theories on which Court's have relied are discussed below.

Alter Ego
This doctrine centers on the commercial relationship or affiliation to adhere a nonsignatory to an arbitration agreement. Though not many in number, but there are a few instances where, under relevant legal principles, the association between a corporation and a subsidiary may be enough to validate piercing the corporate veil and holding a nonsignatory entity bound to the arbitration agreement of another entity.

In Bridas S.A.P.LC vs. Government of Turkmenistan, the Court of Appeals held that the Government of Turkmenistan was bound to the arbitration agreement on the application of the doctrine of alter ego ‘as an alter ego of State Concern Turkmenneft as the control of Government of Turkmenistan over its affiliate corporation was used to commit a fraud or another wrong on plaintiff’.

Another recent case involving the application of this doctrine is Dallah Real Estate and Tourism Holding Co. vs. Ministry of Religious Affairs, Government of

1Sonal is practicing lawyer in India & Solicitor from England & Wales (NP). He is partner at A.K. Singh & Co. a leading dispute resolution firm based in Delhi, India. He is member of Regional Committee of ICC YAF (Asia).
2Akantha Singh is working as associate in Dispute Resolution team of A. K. Singh & Co.
4Id.
Pakistan. In this case, Dallah and the Government signed a MoU as per which Dallah was to provide for construction of housing for Pakistani pilgrims to Mecca. Thereafter, the Government created a trust which entered into a contract with Dallah that included an arbitration clause. When the trust ceased to exist, Dallah initiated arbitration proceedings in France against the Government for the breach of contract. An award, which was in Dallah’s favour was passed by the arbitral Tribunal. However, the same was refused enforcement in the UK on the ground that the Pakistani Government had not signed the contract. On the other hand, the same award was held to be enforceable in France by the application of the alter ego doctrine. In France it was held that the establishment of the trust was merely a formality as the Government always acted and conducted itself as if it were the true party and had control over the trust.

Alter-ego analysis is a highly fact intensive task, and the entirety of the circumstances must be considered before the application of the same. Due to this difficulty in determining the factual grounds, most of the cases examining this doctrine, have not found the non-signatory bound to the arbitration agreement.

**Equitable Estoppel**

Equitable estoppel is a doctrine which comes into operation when ‘a party seeks to preclude another party from claiming rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity’. As one Court stated, the ‘inclusion for equitable estoppel is equity-fairness’, and this basic idea remains the same across the different forms of the doctrine. In the arbitration context, the equitable estoppel doctrine provides that a party may be estopped from averring that the absence of his signature on a contract in written form bars the enforcement of the contracts arbitration clause when he has time and again maintained that the other provisions of the same contract are enforceable to his benefit.

One mode of application of the doctrine is where a party to an arbitration agreement has been held to be ‘estopped’ from declining to arbitrate with a non-signatory party when the issues existing between the parties are ‘intertwined’ with the agreement containing an arbitration clause. An example of such a situation is illustrated in the case of Letizia vs. Prudential Bache Securities, Inc.

Here, post filing of a suit against two brokerage account executives, the Plaintiffs also succeeded in compelling arbitration on the basis of an arbitration clause in the brokerage agreement. It was argued that this action against the individual account executives cannot be subject to arbitration since these individuals did not sign the arbitration agreement. The Court of Appeals rejected this argument and noted that all of the wrongful acts as alleged against these individuals related to the management of the securities account which contained the arbitration clause. Thus, since the dispute was related to the agreement containing the arbitration clause, non-signatories were held to be bound by the Court.

In a large number of cases, however, signatories to arbitration agreements have been allowed to make non-signatories arbitrate. The case of M.S. Dealer Serv. Corp. vs. Franklin, is a leading example in this regard. In this case, the Plaintiff alleged fraud in the sale of a vehicle service contract in respect to the purchase of a car. The ‘buyer’s order’ between the plaintiff and the automobile dealer contained an arbitration clause, however, the vehicle service
contract did not. MS Dealer, which had provided the vehicle service contract, initiated arbitration proceedings. The District Court denied MS Dealer’s motion as it was not a party to the agreement containing the arbitration clause. However, the Eleventh Circuit reversed the decision and identified two instances where signatories will be able to bind nonsignatories to the arbitration agreement: (1) equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claim against the nonsignatory; (2) the doctrine is also applicable when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more signatories to the contract.

In another variant of this doctrine, nonsignatories have been successfully compelled to arbitrate when during the period of the contract, such nonsignatories have ‘embraced’ the contract, but at the time of litigation, the same have made attempts to reject the arbitration clause in the contract.9 Similarly, a nonsignatory to an arbitration agreement was made party to arbitration proceedings where it claimed against a party on the ground of that party’s breach of an agreement which contained an arbitration clause.10

Agency

Traditional principles of agency law may also bind a nonsignatory to an arbitration agreement.11 In Arnold vs. The Arnold Corp.,12 the Court of Appeals allowed officers and agents of the defendant corporation to rely on the arbitration clause in the contract signed on behalf of the corporation, stating the ‘well-settled principle affording agents the benefits of arbitration agreements made by their principal.’ Likewise, in Davidson vs. Becker13, the Court held that the defendant, Dr. Becker, could benefit himself of the arbitration clause even though he was not a signatory relying on the agency theory. As per the Court, an agent can presume the protection of the contract which the principal has signed. The Court ruled that, ‘while Defendant did not sign on to the employment agreement between MADA and Plaintiff, he can use it to compel arbitration’. The Court further stated that such a determination would also hinder the ‘circumvention of valid arbitration agreements by plaintiffs.’

It has further been held that an agent can bind its nonsignatory principal to an arbitration agreement14. However, a nonsignatory cannot bind another party simply because he is an agent of that party who is a signatory to an arbitration agreement15.

Third Party Beneficiary

Courts have steadily recognized that ‘nonsignatory third-party beneficiaries’ under an agreement containing an arbitration provision may bind signatories of the arbitration agreements16. The general rule, however, is that the contract containing the arbitration provision must indicate an intention to bestow some direct benefit on the third party, and only being affected by such a contract or having an interest in the same is not enough17. A prima facie indica of a third-party beneficiary interest will be whether the non-signatory files a claim against one of the signatory parties.18

Incorporation by Reference

Under this doctrine, a nonsignatory may compel arbitration against a signatory to the arbitration agreement when the latter has entered into a distinct contract with the former which contains an arbitration clause19. For example, in Kvaerner ASA vs. Bank of Tokyo-Mitsubishi Ltd.,20 where an arbitration clause in a construction contract between the project owner and guarantors’ joint venturer, was extended and also incorporated into the guarantees executed by the guarantors. Consequently, the bank, which was a party to the guarantees, was held eligible to arbitrate its disputes. However, where an arbitration clause is not clearly incorporated by reference, Courts may not bind a nonsignatory to arbitration.21 For example, in Grundstad vs. RTF22, where a phrase in a guaranty, as per which the guarantor agreed to ‘guarantee all of the provisions [of the underlying agreement]’ did not particularly incorporate the original agreement’s arbitration clause, the Court held that because there was no specific reference to ‘incorporation,’ the same could not be implied.

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14920 F3d 1260 (6th Cir. 1990).
16InterGen N.V. vs. Grima, 344 F3d 134 (1st Cir. 2003).
17Flint vs. Carlson, 856 F2d 44 (8th Cir. 1998).
18ashington Square Sec., Inc. vs. Aume, 385 F3d 432 (4th Cir. 2004); John Hancock Life Ins. vs. Wilson, 254 F3d 48 (2d Cir. 2001).
19Fleetwood Enterprises, Inc. vs. Gaskamp, 280 F. 3d 1069, 1075 (5th Cir. 2002).
20E.I. Du Pont de Nemours&Co. vs. Rhone Poulenc Fiber&Resin Intermediates, SAS, 269 F3d 192 (3d Cir., 2001)
22210 F3d 262 (4th Cir., 2000).
24106 F3d 201 (7th Cir. 1997).
Assumption by Conduct

A party may be held to be bound by an arbitration provision if its subsequent conduct proves that it is itself taking on the liability of arbitrating. In Caribbean SS Co., SA v. Somnez Denizcilik Ve Ticaret AS, the Court held that by assigning the non-arbitrable claim of the cargo owner's claim to a charterer, the latter could not compel the ship owner to arbitrate the cargo owner's claim as the charterer never had any intention to be bound by the arbitration provision.

Contrary to this, in Thomson-CSF, SA v. American Arbitration Ass'n, the Second Circuit Court of Appeals held that a parent company that had recently acquired a subsidiary did not assume the liability, under an agreement between its subsidiary and its subsidiary's supplier, to arbitrate disputes with that supplier, even though the parent company had knowledge of the fact that the agreement was meant to bind the parent company as an associate company of the subsidiary. Here, the Court held that the parent company at no point of time showed an intention to be bound by the agreement and unambiguously rejected any duties/liabilities arising out of that agreement.

Group of Companies

The most extensively recognized principle for the extension of arbitration agreements is the ‘group of companies’ doctrine, which evolved in the famous Dow Chemical vs. Isoner St. Gobain case. This doctrine provides that companies that form part of a larger corporate group may be deemed to be a single legal entity. As per this doctrine, a group of companies comprises one and the same ‘economic reality’ regardless of the legal autonomy of each individual entity from the other, where the conditions of the contract's termination, its performance, and the extent of control exercised among the group companies calls for such a conjecture. However, in all ‘group of companies’ decisions, the determination of an express or implied accord of the parties is the key factor in binding non-signatories to an arbitration agreement, and this doctrine is not applicable merely due to some affiliation between the companies.

In Dow Chemical, an ICC Tribunal at Paris held that the parent company, Dow Chemical Company (USA) should become a party to an agreement applying to its subsidiary Dow Chemical (France), as the former had exercised complete control over its subsidiaries either by signing the pertinent contracts or effectively participated in their performance and termination.

However, common law countries such as England and Australia have been averse to apply this theory to bind the non-signatories. Peterson Farms Inc. vs. C&M Farming Ltd., for instance, is a case where an English Court rejected this doctrine outrightly. In this case, the Commercial Court held that ‘the group of companies’ doctrine . . . forms no part of English law. In Switzerland too, this doctrine has been rejected for the purpose of extending the arbitration agreement to non-signatories.

PART II: PRACTICE UNDER THE CIVIL AND COMMON LAW

Common Law

One of the basic principles of common law is that a contract cannot confer rights or impose obligations arising under it on any person other than the parties thereto. Thus, a person who is not a party to a contract neither can enforce nor be bound by any term of the contract. This is known as the doctrine of privity. For the purpose of this article, we shall focus on the law and practice in UK, Singapore and Australia.

In the UK, Section 8 of the Rights of Third Parties Act provides in certain cases for the third party to initiate arbitration. Section 8 (1) of the Rights of Third Parties Act, 1999 provides that where a right to enforce a term of a contract under section 1 of the Rights of Third Parties Act is subject to an arbitration provision which is in writing, then such a third party, for the purposes of the UK Arbitration Act, 1996 will be taken as a party to the arbitration agreement ‘as regards disputes between himself and the promisor relating to the enforcement of the substantive term by the third party.’ The reasoning behind this subsection is simple. If a party wishes to take the advantage of a right under a contract, then it will...
also be bound by the arbitration clause within the contract. Thus, where a third party initiates Court proceedings claiming a benefit under a contract which is covered under the Rights of Third Parties Act, the promisor can assert that the litigation be stayed to arbitration. This, however, generates some complexity where a third party has an array of claims and all of them do not arise under the contract itself. In such a scenario, unless section 8(2) of the Rights of Third Parties Act is applicable, the claims that are based on rights arising under section 1 of the above mentioned Act may have to be resolved through arbitration and the other claims through litigation. 

In the case of Eddie Javor vs. Francon and Fusion Crette Inc, the Supreme Court of British Columbia had to decide upon the issue if a nonsignatory to an arbitration agreement, who had been found to be a proper party by the arbitrator, could have an award against him enforced. Answering the question in the negative, the Court took note of the fact that the New York Convention does not apply to non-parties to the arbitration agreement, and that the recognition of the award would be contrary to public policy. It was thus held that the modus operandi was not in line with the agreement between the parties because the nonsignatory was not a party to the arbitration agreement.

Likewise, in the recent case of Fortress Value Recovery Fund I LLC and others vs. Blue Sky Special Opportunities Fund LP and others, the English Court of Appeal was called upon to determine the relationship between the Arbitration Act 1996 and the Contracts (Rights of Third Parties) Act 1999 (the Act) as well as the degree to which third parties to a contract may be bound by an arbitration clause.

Here, the claimants initiated litigation against the defendants, who were managers of an ‘investment structure holding underlying assets comprising businesses’ in Italy. The business structure was based around an English limited partnership, called the Blue Skye Fund, which was regulated by a Deed of Limited Partnership. The claimants alleged that the defendants, along with three other persons and twelve corporate entities, framed and executed a dishonest scheme to rearrange the fund and its assets, with the intention to weaken or purge the rights and interests of the partners of the fund in relation to the assets, to exercise control and gain benefit from the assets, and to enable themselves to extort fees and other value from the assets.

The defendants in this case were not parties to the Deed, but the Deed consisted of certain indemnities and exclusion clauses for the benefit of the defendants. The Deed also contained an arbitration clause referring disputes to ICC arbitration in London. The defendants sought to stay the claim under section 9 of the Arbitration Act 1996, which allows a party to an arbitration agreement against whom Court proceedings are brought with respect to a matter which under the agreement is to be submitted to arbitration, to apply to the Court to adjourn the proceedings to the extent they relate to that matter. The Deed, in this case, made direct mention of the provisions of the Act. The defendants, thus, claimed that under section 8 of the Act, they should be dealt with as parties to the arbitration agreement as they were entitled to enforce the indemnities and exclusion clauses under section 1 of the Act.

The Court of Appeals held that the question as to whether the right to benefit from a contractual exclusion is subject to the obligation to arbitrate is a matter of interpretation and construction of the contract. In this case, since the Deed did not expressly state that the indemnity or exclusion was subject to the arbitration clause, the Court sought refuge at the intention of the parties, and held that very clear and unambiguous language will be required to show that a third party’s right to benefit from an exclusion clause in a contract was also subject to an arbitration provision in the same contract. This judgment throws light on the extent to which third parties can enforce rights under a contract including an arbitration provision. The judgment, further, highlights the the need for exceedingly clear and unambiguous drafting if parties intend to involve third party and resolve disputes through arbitration.

A similar line of thought is followed by the Australian Courts. Recently, in IMC Aviation Solutions Pty Ltd vs. Altair Khuder LLC, the Victorian Court of Appeal rejected the enforcement of a Mongolian arbitral award on the ground that the award-debtor had not signed the arbitration agreement. The Court held that the party in whose favour the award is passed and a prima facie ‘evidential onus’ to prove that the other party is also a party to the arbitral award.

Singapore also follows an approach similar to that followed by British Courts. Provision analogous to Section 8 of the UK Act exist under the Singapore Contracts (Rights of Third Parties) Act, 2001 as well and

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(2) Where—(a) a third party has a right under section 1 to enforce a term providing for one or more descriptions of dispute between the third party and the promisor to be submitted to arbitration (“the arbitration agreement”); (b) the arbitration agreement is an agreement in writing for the purposes of Part I of the Arbitration Act 1996; and (c) the third party does not fail to be treated under subsection (1) as a party to the arbitration agreement, the third party shall, if he exercises the right, be treated for the purposes of that Act as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having so immediately before the exercise of the right.


9Id

10Id

11Id

12[2003] BCL No 480

13[2013] EWCA Civ 367

14[2011] VSCA 248
states that where a third party seeks to rely on a clause in the agreement, and where such an agreement also includes arbitration clause, such third party is also bound by the arbitration clause. Non-signatories may also be held to be bound by the arbitration agreement by way of application of certain legal principles such as assignment of rights/ liabilities or novation, agency, after ego principle, or the doctrine of estoppel. The Group of Companies doctrine is not recognized in Singapore.

In April 2013, the latest version of the SIAC Rules was released. As per Rule 24.1 (b), third parties can be joined in arbitration proceedings if they are a party to the arbitration agreement and have given their consent to the effect. In Lao People’s Democratic Republic vs. Sanum Investments Ltd., the Singapore High Court issued subpoenas against a third party to an arbitration to make available documents and records for use in the arbitration. Further, in International Research Corp PLC vs. Lufthansa Systems Asia Pacific Pte Ltd and another, the Singapore Court of Appeal clarified that the test for holding a third party bound by an arbitration agreement. The Court held that the purported ‘strict rule’, which provides for incorporation of the arbitration agreement by explicit reference into the applicable contract, had been ‘overextended impermissibly’ and the same should not be taken as a general rule. Instead, the issue whether a third party is bound by an arbitration agreement is one of interpretation and construction, having regard to the circumstances of the case. Thus, in Common Law Courts look for affirmative conduct that clearly shows third-party’s intention to comply with the contract as well as the original parties’ acceptance of the same.

Civil Law

In civil law countries, more and more Courts are making arbitration provisions binding even on parties who did not sign an arbitration agreement. This development is the outcome of two factors. Firstly, Courts have profoundly relied upon the common law principles of contract and agency to broaden the scope of both the responsibility and the prospect to arbitrate to non-signatory parties. Secondly, in the US, most of the disputes that are covered under the Federal Arbitration Act, Courts are relying upon the firm federal policy supporting arbitration. As per this policy, the parties’ intentions are generously construed as to issues of arbitrability, and all ‘ambiguities as to the scope of the arbitration clause itself’ must be determined in support of arbitration. Evidently, these rules are not absolute, as ‘clear evidence’ showing that the parties had no intention of submitting a claim to arbitration may prevail over the ‘presumption of arbitrability’.

However, some Courts have rightly observed that it is wrong to rely on the federal policy in order to bind non-signatories to an arbitration agreement. For example, in California Fina Group, Inc. vs. Herrin, the Court observed that “[f]ederal policy favoring arbitration does not apply in a case like this when a Court is determining whether an agreement to arbitrate exists. Rather it applies when a Court is determining whether the dispute in question falls within the scope of the arbitration agreement already found to exist.”

The United States Supreme Court in Howsam vs. Dean Witter Reynolds, Inc., clarified that ‘a gateway dispute about whether parties are bound by a given arbitration agreement clause is for a Court to decide’. On the lines of this principle, the Court of Appeals for the Federal Circuit, in the case of Microchip Technology Inc. vs. U.S. Philips Corp., has held that it for the Court to decide if a non-signatory successor company is bound by the arbitration agreement signed by the original predecessor company.

However, there are cases, when the issues relating to the arbitrability involving a third party are determined by the arbitrator. Where the parties have clearly and unambiguously established their intention of resolving their dispute by way of arbitration, the United States Supreme Court has held that in such cases it is the arbitrators and not the Courts, which shall determine the arbitrability.

In Switzerland, under the Swiss substantive law, involvement in the execution of a contract may bind a third party to an arbitration agreement. However, keeping in mind the ‘principle of relativity of contractual obligations’, the prerequisites for binding a third party are quite stringent. In a recent decision by the Swiss Federal Tribunal it was held that generally, an arbitration agreement binds only the signatories or parties of the contract. However, there may be cases where an arbitration clause may be assigned.

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1The Singapore Contracts (Rights of Third Parties) Act, 2001 Section 9.
2[2013] SGHC 183
3[2013] SGCA 55
5Id.
6Id.
8Harvey vs. Joyce, 199 Fed. 790 (5th Cir. 2008).
9379 Fed 311, 316 n. 6 (9th Cir. 2004).
11567 Fed 3350 (Fed. Cir. 2004).
1413 ATIP III65 (2008)
transferred, taken over or becomes binding on a third party who engages itself intricately with the contract. Likewise, in the case of Y.S.A.L. vs. Z Sarf, the Swiss Federal Tribunal held that a third party was bound by the arbitration agreement as it had actively participated in the negotiations and execution of the contract.

In France, in certain cases, French jurisprudence permits the extension of an arbitration agreement to third parties involved in the execution of the contract. Although such an extension is mostly invoked in cases of groups of associated companies, the Paris Court of Appeal has recently applied the theory to extend an arbitration clause endorsed by a state-owned corporation to the sovereign state itself. As another decision shows, French Courts remain careful about binding a non-signatory sovereign state and a very high degree of proof of the state's participation in the execution of the main contract is required.

Thus, although it is not very easy to categorize the rules when determining if an arbitration agreement can be extended to a third party under the Civil Law, the decisive factors eventually employed by the Courts are the conduct and participation of the third party.

PART III: POSITION IN INDIA

In India, Courts so far have by and large restricted arbitration to parties to the arbitration agreement. This traditional approach has been acknowledged and adhered to in a number of cases through the years. The case of Sukanya Holdings Pvt. Ltd. vs. Jayesh Pandya6, is seen as the first landmark decision of the Supreme Court regarding the extension of arbitration agreements to third parties. Here, the Court, while determining the scope and extent of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘1996 Act’), held that Section 8 is not applicable where a suit has been initiated with respect to a matter that falls outside the scope of the arbitration agreement and involves parties who have not signed the arbitration agreement.

Likewise, in Firm Ashok Traders vs. Garmukh Das Saluja7, it was held that only a party to the arbitration agreement can seek protection under Section 9 of the 1996 Act. In line with this decision, the Delhi High Court in National Highways Authority of India vs. China Coal Construction Group Corporation8, held that interim measures could be granted only in respect of persons who are a party to the arbitration and in relation with the subject matter thereof. Thus, a petition for the grant of interim measures against a third party was rejected. A similar conclusion was made in the case of Mikuni Corporation vs. UCAL Fuel Systems Ltd.9

In Indowind Energy Ltd. vs. Wescare (I) Ltd. & Subuthi Finance Ltd.10, the Apex Court once again reiterated that a non-signatory to an arbitration agreement cannot be bound by the same. Only those persons who have signed the arbitration agreement can be regarded as parties to the arbitration agreement.11 Following the same principle, in Deutsche Post Bank Home Finance Ltd vs. Taduri SriDhar12, where arbitration had commenced between the developer and the future buyer of a property, the bank that had granted the loan to the buyer for the purchase (under an agreement containing an arbitration clause) was not made a party.

In Mr. Devinder Kumar Gupta vs. Realogy Corporation & Anr13, it was held that the question of the validity of an arbitration agreement could be raised only in the arbitral proceedings and not by filing a civil suit in this regard. However, this Order was set aside by the Division Bench which held Section 11 of the 1996 Act does not give any power to the Chief Justice of India to appoint on behalf of a third party an arbitrator. But since such third parties cannot be left without any kind of legal remedy available to them, they can either file a civil suit or on being served with the notice of arbitration take immediate steps and oppose the same on the ground that he is not a necessary party to the proceedings.

Next was the case of BR. Shah Shares & Stock Brokers vs. BHH Securities14, which was in the context of Bye-laws, Rules and Regulations of the Bombay Stock Exchange. Bye-laws 248 to 281D provided for arbitration between members and non-members and Bye-laws 282 to 315L provided for arbitration between the members of BSE. An arbitration petition was filed by a member against another member as well as a non-member. The question before the Court was whether both these disputes could be combined and heard as one proceeding, or two different proceedings were needed.

At the outset, Raveendran J. pointed out that the arbitration proceedings in this case arose out of the bye-laws of the Stock

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7Kosa vs. Rhodia (Date of decision: 05/05/2011) (Paris Court of Appeal)
8Government of Pakistan vs. Dallah (Case No. 09/2853- Date of decision: 17.02.2011) (Paris Court of Appeal)
9Papillon Group vs. Syrian Arab Republic, Cass. (Date of Decision: 29.11.2011) (1st Civil Chamber)
10(2003) 5 SCC 531
11AIR 2004 SC 1433
12AIR 2006 Delhi 134
132008 (1) Arb. LR 503 (Delhi)
14AIR 2010 SC 1793
15In this context, it may be quite pertinent to state that the Sec. 82 (2) of the U.K Arbitration Act, 1996 has a broader scope by increasing the definition of ‘parties’ to include any person claiming under or through a party to the agreement.
162011 (1) SCC 375
172011 (125) DJB 129
182012 I SCC 594
Exchange and not some contract. Thus, the members of the Stock Exchange were bound by the arbitration agreement by virtue of their membership. On this ground, it was concluded by the Court that on the facts and circumstances of the case, common proceedings between the parties was acceptable.

The next development is the case of Embassy Property Developments Limited vs. Jumbo World Holdings Limited. Here, the Division Bench of the Madras High Court held that the Court could Order interim measures against third parties to the arbitration agreement under Section 9 of the 1996 Act. It was held:

‘We are of the view that the power of this Court, under Section 9 of the Arbitration and Conciliation Act, 1996, is wide in scope and it would extend even to third parties in whom the properties or goods are vested, even though such parties may not be a party to the arbitration clause in an agreement. Even though section 9 of the Arbitration and Conciliation Act, 1996, could be invoked only by a party to the arbitration agreement, the interim relief could be granted by this Court even against the third parties. Unless such a power is available, under section 9 of the Arbitration and Conciliation act, 1996, the parties to the arbitral agreement could be frustrated even if they succeed in the arbitral proceedings before the Arbitration Tribunal concerned.’ Thus, as per this decision on condition that a link exists between the parties to the arbitration agreement and the subject matter of the dispute, Courts will have the power and jurisdiction to grant interim measures against third parties. Likewise, in M/s Sancorp Confectionary Pvt. Ltd. vs. M/s Gamlink A/S, the Delhi High Court held that the parties who have signed the arbitration agreement and who wish to refer and settle their disputes by way of arbitration must be similar to parties to the action. However, this is just a general principle and is thus subject to certain exceptions such as when a third party, claims or is directly influenced by means of a signatory party and is also a signatory to a subsidiary agreement but not to principal agreement which encloses the arbitration provision, in that case if the facts and circumstances permit, the third party may also be referred to arbitration.

In M/s Brahmaputra Realtors Pvt. Ltd. vs. M/s, G.G. Transport (P) Ltd. and Ors., it was held that the Court had no jurisdiction to pass an Order for interim measures against the Appellant as he was not a party either to the arbitration agreement or the arbitral proceedings, further observed that Section 9 can be invoked against a non-signatory only if ‘he is a person claiming under the party to the arbitration agreement or is likely to be affected by the interim measures’. A similar conclusion was reached at in Housing Development and Infrastructure Limited, Mumbai vs. Mumbai International Airport Private Limited, Mumbai and others.6

CONCLUSION

The expansion of arbitration to third parties is a recent development, unquestionably related to the development of arbitration in general. If parties want to keep away from inadvertently becoming bound to an arbitration clause, they should be conscious of these various theories and proceed accordingly. The diverse theories that permit the extension of arbitration agreements to third parties by and large do so on grounds of economic factors, and not by way of creating legal associations from the contract. For example, for the application of the alter ego doctrine, the prerequisites are the close associations between the parties. Likewise, with respect to the group of companies theory, it is the ‘single economic reality’ between the parties, while with the third party beneficiary theory it is the immediate benefit conferred upon the third party.

Common Law Courts have adopted a much more classical position for a non-signatory to be bound by an arbitration clause there must be positive acts that clearly establish the non-signatory’s intent to accede to the contract, and also the original parties’ acceptance of that accession. Civil Law Courts, on the other hand are liberal in the application of the various theories that allow the extension of arbitration agreements to third parties. India being a Common Law country has followed a more traditional approach on the subject. It is only recently that the Courts have extended the scope of arbitration agreements to cover third parties provided the facts of the case necessitate the same.

The discussion regarding the subject is far from coming to an end. Arbitral tribunals all over the world still apply different criteria, and also different legislations according to the particular facts of the case. However, in many cases non-signatories already have seen themselves bound to arbitration proceedings, and there is clearly a trend to keep going further in this direction. Definitely, the question is no longer whether the arbitration agreement should or should not be extended, but under what circumstances it should be extended. Therefore, it would be convenient to reach for internationally accepted standards, to avoid uncertainty and inconsistent decisions.

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603A Nos. 155 to 158 of 2013 (Date of Decision: 20.06.2013) (Madras High Court);
7CS(OS) 2400 of 2012 (Date of Decision: 19.10.2012 (Delhi High Court);
8Arbitration Appeal no. 2/2013 (Date of Decision: 27.05.2013);
92013 Indlaw MUM 1102
SCOPE OF PUBLIC POLICY IN THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD UNDER ARBITRATION LAWS OF INDIA AND SINGAPORE– A COMPARATIVE ANALYSIS

Any prudent or expedient action reserved without any prejudice, to the generality and interests of the public would tantamount to “Public Policy”. Similarly, in legal context, it would relate to the scope of the legal framework not being too rigid to not accommodate the concerns that interests the general welfare of the public.

Therefore it is imperative for the courts to interpret laws in consonance with what is best for the society at large. Every country has its own economic setup, social structure and tradition, which has led to the emergence of diverse legal practices. Hence an action, which may be deemed as violating the public policy of one country, may not necessarily be violating the public policy of another. In turn it becomes difficult to demarcate a generalized scope for public policy or to come to a generalized conclusive definition for it.

Judge Burrough in Richardson v Melish stated that:

“Public Policy is a very unruly horse, and once you get a stride, you will never know where it will carry you”.

Further Justice Truro in Egerton v Browne, appreciated the concept of public policy and said:

“No subject can lawfully do that which has a tendency to be injurious to the public or against the public good which must be termed, as it sometimes has, the policy of the law or public policy in relation to the administration of the law.”

The concept of public policy is cosmopolitan and has marked its presence even in the arena of Arbitration. It is one of the grounds now commonly used by parties to challenge the setting aside and enforcement of an arbitral awards post the conclusion of arbitration procedure, in a court of law. The arbitral awards would include the domestic award, domestic award in an International Commercial Arbitration and foreign awards.

In India, The Arbitration and Conciliation Act, 1996, provides for the legal frameworks governing arbitration. The Act also provides for the recognition, enforcement and setting aside of the arbitral award covering domestic and international arbitration within the manifold of the Act in two parts namely Part –I and Part –II.

Prior to the promulgation of The Arbitration and Conciliation Act, 1996, the law relating to arbitration in India was governed principally by the Arbitration (Protocol & Convention) Act, 1937, The Arbitration Act, 1940 and the Foreign Awards (Recognition & Enforcement) Act, 1961. All these abovementioned legislations were silent on the aspect of public policy and did not provide “public policy” as a ground to challenge the enforcement of a foreign award or to set aside a domestic award. It is only with the commencement of the Arbitration and Conciliation Act, 1996, that the concept of public policy came into prominence as a substantial ground for setting aside of a domestic award and challenge to the enforcement of a foreign award under section 34(2)(b)(i) and section 48(2)(b) of the Act.

Since none of the above mentioned provision provides for a comprehensive definition of public policy, therefore in recent times, the interpretation of the scope of public policy has taken a highly debated, controversial and complex turn which can be rightly perceived from the stand of Supreme Court in range of judicial pronouncements. And that even the court is unsure of a concise interpretation and is unable to arrive at a workable definition of public policy for the purpose of resolving disputes pertaining to arbitration and arbitral awards.

In Renu Sagar Power Company Ltd. v General Electric Company1, where the Supreme Court while construing the term “public policy” in section 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961 held that an award would be contrary to the public policy if such enforcement would be contrary to fundamental policy of Indian law, or the interests of India or justice or morality. The appellate court in this case also held that the meaning of “public Policy” under section 34(2)(b)(ii) and section 48(2)(b) of the Arbitration and Conciliation, 1996

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1. 1824/2 RING 229 at 252
2. 1853/4 HLC 1
3. AIR 1994 SC 860
is to be construed differently in context of domestic and foreign awards and that the scope of public policy under section 48(2)(b) is narrower in comparison to the scope of public policy, under section 34(2)(b)(i) of the Act.

Further in ONGC vs Saw Pipes Ltd which pertained to the setting aside of a domestic award, the court stated that the meaning of public policy would be interpreted on a case to case basis. The facts of each case would provide a context and background for the interpretation of the scope of public policy and extended the applicability of such interpretation even in case of enforcement of a foreign award.

Although the Supreme Court has held to the contrary in Shri Lal Mahal v Progetto Grano Spa, that the expansive construction accorded to the term “public policy” in Saw Pipes cannot apply to the use of the same term “public policy of India” in section 48(2)(b) thereby reaffirming what it previously held in Renuwagar. The Law commission in its latest report on the “Amendment to the Arbitration and Conciliation Act, 1996” of 2014, has also made suggestions to the same effect, suggesting to arrive at a proper demarcation to interpret the ground of ‘public policy’ under section 34 and 48 of the Act, and do away with ‘fundamental policy of Indian law’ as a countervailing factor under public policy.

India has adopted UNCITRAL Model Law on Commercial Arbitration (“The Model Law”), as the guiding model to incorporate and implement laws governing domestic and International arbitration namely the Arbitration and Conciliation Act, 1996. However, Singapore chose to stick to a combination of Model Laws and English Arbitration Act to govern its international and domestic arbitrations. It must be mentioned here that the grounds for setting aside an arbitral award under Model Laws is different to that of the grounds mentioned under English Arbitration Act.

In contrast to the governing laws on arbitration in India, Singapore provides for two different statutes to govern domestic and international arbitration. The domestic arbitration in Singapore is governed under The Singapore Arbitration Act (AA) of 2001, whereas the international arbitration is governed under the statutes of The Republic of Singapore, International Arbitration Act (AAA), Chapter (143A).

Section 31(4)(b) of the International Arbitration Act, Singapore, provides for the refusal of the enforcement of a foreign award by the court when in conflict with the public policy of Singapore. Section 48 of the Arbitration Act, 2001 provides for grounds on which an arbitral award can be set aside inter alia which one of the grounds for challenge relates to public policy.

The proportionately of the disputes decided on the ground of public policy is yet to progress in Singapore as compared to in case of India which has its own set of judicial pronouncements interpreting ‘public policy’. It is only post 2010 that Singapore court of appeal in AJU v AJT gave a ruling setting aside an international arbitral award on public policy ground by finding that the underlying contract between the two parties was illegal. The reason for the same underlies in the fact that the court in Singapore adheres to the minimal interventionist approach towards the arbitral awards at the intersection of illegality and in conflict with the public policy of their country.

While drawing a contrast between the legal frameworks governing the setting aside and enforcement of an arbitral award in India and Singapore, it can be well comprehended that the provisions governing both the situations are more or less of the same nature and very well include the concept of ‘public policy’ as one of the grounds

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1. (2003) 5 SCC 705
2. (2014) 2 SCC 433
4. AJU v. AJT, [2011] 4 SLR 739
to set aside or challenge the enforcement of an arbitral award. To add on to the contrast between scope of public policy under Indian and Singaporean arbitration laws, it is observed that ‘public policy’ has been construed narrowly in Singapore as opposed to in case of India, since grounds such as arbitral award being induced by fraud, corruption and in violation to the principles of natural justice, forms a distinct ground to set aside a domestic award in Singapore under Section 48 of the Arbitration Act, 2001, which on the other hand in case of India is construed within the ambit of ‘public policy’ under Section 34 of the Arbitration and Conciliation Act, 1996.

Although over time, arbitration laws and practice have tried to align the concept of public policy so that parties may benefit from a universally accepted concept of public policy, the concept is still to be tested at different anvils. The interpretation of the concept of ‘public policy’ is still in its nascent stage in India, Singapore and elsewhere and still hangs in a dichotomy. The situation demands immediate intervention and equal participation of all the organs responsible for the promulgation and interpretation of the arbitration laws, in order to curb and avoid any further sporadic interpretation.

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ACTS AND STATUTES:
- The Arbitration (Protocol & Convention) Act, 1937;
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- The Foreign Awards (Recognition & Enforcement) Act, 1961;
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- The Arbitration Act, 2001 of Singapore;
- The Republic of Singapore, International Arbitration Act (IAA), Chapter (143 A).

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- Richardson v Mellish (1824) 2 Bing 229 at 252;
- Egerton v Brown (1853) 4 HLC 1;
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- Shri Lal Mahal v Progetto Grano Spa (2014) 2 SCC 433;
- AJU v. AJT, [2011] 4 SLR 739;

(A brief write up as of 27th October, 2014)

NIXI is a not for profit organization under section 25 of the Companies Act 1956, for peering of ISPs (Internet Service Providers) among themselves for the purpose of routing the domestic traffic within the Country. Seven Internet Exchange Nodes are functional at Delhi (Noida), Mumbai, Chennai, Kolkata, Hyderabad, Bengaluru, and Ahmedabad. The Internet Exchange nodes have ensured better quality of service (reduced latency, reduced bandwidth charges for ISPs) by saving on international bandwidth. Presently, 41 ISPs with 100 connections are connected with the various nodes of NIXI. The total maximum traffic exchanged at all the nodes is 25 Gbps (Giga bits per second). The traffic has stagnated at this level since the last two years. The growth of NIXI traffic needs to be substantially enhanced with the involvement of all stakeholders in the emerging Internet ecosystem.

IN Registry functions with primary responsibility for managing Country Code Top Level Domains (ccTLDs). Registration of .IN domain has crossed the 1.6 million mark in October, 2014. Presently, 104 Registrars have been accredited to offer .IN domain name registration worldwide to customers. It has helped in proliferation of Web hosting and promotion of Internet usage in the country. Further .IN has become the member of ccNSO (Country Code Name Supporting Organization) and this will help in participation in the IANA transition process.

National Internet Registry (NIR) Coordinates Internet Protocol address (both IPv4 and IPv6) allocations and other Internet resource management functions at a national level within the country. Earlier NIR was recognized by APNIC (Asia Pacific Network Information Centre) which is a regional Internet Registry. Since its launch during March 2013, NIR has registered impressive growth, the number of affiliates reaching 728 as of 27th October 2014.

‘? ??’ (Bharat) domain name in Devanagri script was successfully launched on 27th August 2014 by Hon’ble Minister of Communications & Information Technology, and Minister for Law & Justice, Mr. Ravi Shankar Prasad. The Devanagri script covers Hindi, Dogri, Konkani, Maithili, Marathi, Nepali and Sindhi. The Sunrise period began on 15th August 2014 which will run for 2 months and thereafter, first come – first served process will begin on 18th November 2014. Gujarati and Bengali would be launched in November, 2014. This will be followed by launch of Punjabi, Urdu, Telugu and Tamil languages in December, 2014.

International Corporation for Assigned Names and Numbers (ICANN) has delegated IDN in seven Indian Languages to NIXI.
Team APA is grateful to Hon'ble Mr.
Justice A. K. Sikri, Judge Supreme Court
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sharing his views and deliver the key
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Team APA expresses its gratitude to all
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ASIA PACIFIC JURIST ASSOCIATION
2/14, L.G. F. Sarvapriya Vihar, New Delhi 110016
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