

# FOREWORD

–Dr. Abhishek M. Singhvi<sup>1</sup>

I congratulate this initiative by the editorial staff and the Advisory Board, apart from those in the legal profession, of supporting the Indian Arbitration Law Review (“IALR”) as a new journal on arbitration law and process. So important is this subject that, despite the proliferation of writings and publications in relation thereto, any new initiative is welcome, provided it adheres to indicia of excellence in content, themes, writers, advisors and quality of the ultimate output.

It is heartening to see that the present proposed publication, subject to its eventual birth, easily and in an accomplished manner, does so. The illustrious names on its Board of Advisors gives it a flying start and an advance certification by associating established reputations with a nascent publication. Its themes appear offbeat, innovative and creative, as reflected in articles on “*Growing Convergence of International Arbitration and Human Rights*”<sup>2</sup> and “*Appraising Remote Arbitration Arising from The Pandemic: Reality Check and Thoughts on Keeping Arbitration Going*”<sup>3</sup>. Even within the traditional, nitty gritty arbitration themes, an attempt appears to have been made to address topics less frequently addressed eg. “*Publication of Arbitral Awards: Balancing Confidentiality and Transparency in Arbitration*”<sup>4</sup>.

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  2. Meenal Garg, *Growing Convergence of International Arbitration and Human Rights* (2022) 4 Ind Arb L Rev.
  3. Steve Ngo, *Appraising Remote Arbitration Arising from The Pandemic: Reality Check and Thoughts on Keeping Arbitration Going* (2022) 4 Ind Arb L Rev.
  4. Binsy Susan and Amogh Srivastava, *Publication of Arbitral Awards: Balancing Confidentiality and Transparency in Arbitration* (2022) 4 Ind Arb L Rev.

Though guilty of quoting myself, I can do no better than to plagiarize (myself!) from what I wrote in the Foreword for another new arbitration journal some time ago. I had then said:

*“The birth of a new journal, dedicated to arbitration, is undoubtedly an occasion to celebrate. While congratulating the organisers of this enterprise heartily in this inaugural issue, I must nevertheless remind them of the wag’s naughty comment that a publication, like some other forms of human endeavour, may be a joy to conceive, but are invariably a pain to deliver. This salutary warning will remind them to constantly strive that extra bit and suffer that extra pain to maintain the quality and integrity of this journal.”*<sup>5</sup>

Since I started my law practice with arbitrations and having retained great affection for this “*first love in law*”, I went onto lament its decline on several parameters:

*“Having recounted my own “Memoirs of a Personal Journey Through Indian Arbitration Law”<sup>6</sup> in 2016 in another arbitration journal and having had the privilege of having appeared in a large number of the major arbitration judgments of the apex court, I am saddened by the degradation of this principal bypass to litigation, even after the enactment of the glittering UNCITRAL Model law as far back as 1996. The ABCD bedevilling litigation—Access, Backlog, Cost and Delay—has engulfed Indian arbitration despite seminars, sermons, legislative amendments and numerous Supreme Court judgments. Hence, non arbitral ADRs—mediation, conciliation, Lok Adalats, ad hoc settlement procedures and so on—have developed and grown as further bypasses to the original bypass. That is good for ADRs, much needed in India, but it equally underlines the manifold failures of*

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5. Abhishek M Singhvi, *Foreword* (2021) 1(1) *Ind Rev Int’l Arb* 1.

6. Abhishek M Singhvi, *Memoirs of a Personal Journey through Indian Arbitration Law* (2016) 4(2) *Ind J Arb L* 14.

*the Indian arbitral process, despite the fanfare surrounding the 1996 Act.*<sup>7</sup>

This “*Good, Bad and the Ugly*” of Indian arbitration includes the absence of any uniform arbitration ethic and culture in a hugely diverse federal Indian constitutional and judicial structure. Highly divergent perspectives regarding court interference in awards by different Indian courts at different hierarchical structures, huge delays in judicially correcting prior erroneous apex court decisions by the apex court, the intermediate spawning of large progeny arising from those errors, the patent errors of law regarding “*arbitral seat*” which keep happening even by the Supreme Court despite clearly established legal principles, the lack of sufficient weight and focus on issues of “*party autonomy*”, the continuing legislative and judicial flip flops on reference to arbitration under Section 11, and other similar issues continue to be the main bugbears which beset this vital subset of law.

Fortunately, some of these transgressions and weaknesses have led to greater reformist zeal, more and better writings and an attempt to make the rightful core of arbitration law and practise, which is virtuous and good, shine and glow by severing the negative baggage it has acquired over the years. There is thus hope and positivity instead of despondency and despair. This new publication is an example of the former. I wish it all the best wishes and Godspeed.

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7. Abhishek M Singhvi, ‘Foreword’ (2021) 1(1) Ind Rev Int’l Arb 1.