FOREWORD

– Mr. Darius J. Khambata[1]

I am delighted to see this fifth edition of the Indian Arbitration Law Review. I have previously bemoaned the lack of good legal writing in India. Hence I am enthused by the high standard of scholarship of the articles.

We live in an era where India is finally being accorded its rightful place on the world stage, both in international affairs as well as one of the world's largest and fastest growing economies. This is but part of a natural progression of the growth and vibrancy of the Indian economy over the last three decades. It all started from the economic revolution of 1991. That revolution was not only one of finance and economics. It was also one of the mind. India set itself on a path of competitiveness and improvement in standards across all fields of human development. Restructuring the very way in which it worked as a nation, monumental changes were introduced in India in technology, education, governance and the very fabric of society. Hundreds of millions of people have been lifted above the poverty line and the tears of so many have been wiped from their eyes subserving the dream of Mahatma Gandhi. Yet the task is far from complete. The beckoning goal is one of an India that is libertarian, entrepreneurial and egalitarian, free from the shackles of discrimination, poverty and inequality.

Sustaining a free economy in the long run will inevitably require not only continued reform to unburden it of excessive regulation, but also the creation of a vibrant and diverse market place of thoughts, ideas and expression. India's goals are anchored upon the idea of India aspired to by our founding fathers who fought for our freedom and the dreams which are reposed in the Constitution of India.

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With a growing economy inevitably comes growing commercial litigation. It is clear that Indian Courts, overburdened as they are with massive social, service and administrative law litigation, will not find the resources nor the time, to resolve the exponential increase in commercial disputes. Hence the emergence of arbitration in India as the preferred means of commercial dispute resolution.

Arbitration in India stands on a cusp. No doubt we have moved far from the Arbitration Act 1940 which had caused the Supreme Court to lament that the state of Indian arbitration had made "…. lawyers laugh and legal philosophers weep….". The Arbitration and Commercial Act 1996, particularly after its major amendments in 2015, is now an effective instrument to facilitate speedy and fair arbitration, party autonomy and effective enforcement of awards.

Where do we go from here? The Covid pandemic and the subsequent resurgence of our economy bring into sharper focus the challenges to arbitration in the years to come. But challenges often underpin opportunities. The areas to focus on in the future can be categorised under four heads: Technology, Cost, Efficiency and Accessibility.

To tap into the advantages that arbitration enjoys over traditional litigation in Court, technology can be a game changer. In that sense the compulsions of the pandemic must be seen as an opportunity rather than a calamity. Virtual hearings are here to stay and can become the default model. It is trite that physical hearing offers advantages that are irreplaceable in terms of eye-contact, immediacy of response and greater concentration. But increasingly these are luxuries in a world where speedy and cost effective arbitration is the need of the hour. I look forward therefore to a University or arbitral institution developing and publishing a detailed virtual hearing protocol both for interlocutory as well as for evidentiary and closing hearings. I would also welcome the wide spread use of real time transcription in arbitration. I call it the conscience keeper of arbitration since it provides an accurate and complete record of every word that is uttered during the hearing. Consequently every participant is more careful of what is said. Transcription vastly improves the accuracy and integrity of the process.

The second, and an area of concern, is cost. Clients will have more constraints in their financial capacity and will demand greater mileage from their Rupee of spending. It is for lawyers to make that possible. Here too technology can provide a solution. Fewer physical gatherings and greater virtual functioning is the order of the day.

But that is not all. Efficiency of practice is now the imperative. The elephant in the room is the manner in which, generally speaking, arbitration has been practised in India. An aspiration that India became a popular seat for international commercial arbitration will require an overhauling of the way we lawyers practice arbitration. Strict time limits for pleadings and argument, memorialisation of pleadings (by including citation of legal authorities) detailed yet page limited opening written submissions, strictly no "ambushing" of opponents and chess clock time sharing. The idea of marshalling and disclosing your whole case in detail by reference to documents, evidence and law, prior to the evidentiary hearing is anathema to most Indian lawyers. Yet it is the most efficient manner for a lawyer to structure his/her argument, prune it of the inessential and capture the attention of the Tribunal. It also focusses the core issues that differentiate the respective cases. Both sides will have notice of the points and cases they will have to meet. I was once asked, in a seminar, whether such a course of action was "wise". The young student who did so was extremely sceptical of my suggestion and I don't think was convinced when I tried to explain the advantages of a more transparent way of arguing a case. In the years to come I hope that more lawyers and students will be persuaded to restructure their practice and orient it to greater reliance on the written, rather than the oral, word.

Finally, accessibility. This is not only geographical but also social and cultural. An arbitration and its procedures must be transparent and easy to understand for arbitrants. We must encourage diversity not only of arbitrators but also of lawyers. It is possible to do so without impairing merit or party autonomy. Diversity can range across gender, caste, culture and language.

We must lead by example and not insist on setting better standards only in tandem with our opponents. Arbitration has boundless strengths; it

can be cheap where litigation is expensive; swift where Courts are slow; innovative where litigation is bound by procedure and simple where litigation is technical and complex.

India has several advantages that should have made it a popular international seat of arbitration: an intellectual, innovative, and independent judiciary, a strong and experienced commercial Bar for which English is the lingua franca, a long tradition of recorded common law judgements and increasingly good infrastructural support. Yet to an extent these advantages have been squandered.

We must collectively ensure that the practice of arbitration in India is raised to the highest standards. That is why legal writing and intellectual curiosity, encouraged by law reviews such as the Indian Arbitration Law Review of the National University of Law Institute of Bhopal are so important.

The future of India is ours to seek. Change will come, perhaps not from my generation but from young and aspirational Indians who dream of a golden future. It will come from seats of learning such as the National Law Institute University Bhopal.

I truly believe that, given the vibrancy of our court driven jurisprudence, the strong impetus being given to arbitration by the Government and the evident talent of our young lawyers and graduates, India will evolve into an international arbitration power house.