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Growing Pains and Coming-of-Age: The State of International Arbitration in India

By Jory Canfield¹

I. INTRODUCTION

The Indian economy accounts for almost three quarters of the South Asian region's GDP.² It is predicted to grow fivefold in the next twenty years, with an associated increase in both domestic and international commercial contracts.³ As any first-year law student knows, and many lawyers hope, where there are contracts, there are disputes. In the fast-paced arena of international trade, the speedy resolution of such disputes is crucial. So when a dispute arises between global businesses in India, what are parties to do with a court system that has 27 million cases pending in lower courts, 4 million pending in higher courts, and a wait time for final resolution that can take up to 15 years?⁴ The answer for many has been arbitration. Arbitration is a form of dispute resolution that ensures party autonomy and a reasoned award by an independent third person that is final and binding on the parties, in a time span determined by the parties.⁵ These features have made arbitration a valued, and often preferred, method of dispute resolution between international commercial entities.⁶ However, the potential benefits

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2. *UN report projects 6.1% growth for India*, THE HINDU (Jan. 18, 2013), <http://www.thehindu.com/business/Economy/un-report-projects-61-growth-for-india/article4320105.ece>.

3. Christopher Gardner, *Arbitration in India: The Challenges of the 21st Century*, 16 No. 2 IBA Arb. News 51, 51 (2011). A UN report titled "World economic situation and prospects 2013" predicts that GDP growth in India will accelerate to 6.1% in 2013 and 6.5% in 2014. *UN report projects 6.1% growth for India*, *supra* note 2.

4. Gardner, *supra* note 3 at 51–52.

5. *Id.* at 52.

6. *See infra*, Part II.A for further discussion of the benefits of arbitration. More than just a preferred method, it can be said that in an international environment, arbitration is the only option:

The fact that international arbitration is, practically speaking, a monopoly is no reason to celebrate. It is simply a fact. It is unlikely, in our lifetimes, that we will see the emergence of Global Commercial Courts having compulsory jurisdiction. . . . So the

of arbitration have faced challenges in Indian courts because of a practice of judicial intervention.⁷ Although India has made several attempts to create laws more favorable to international arbitration, they have thus far been only partially successful.⁸ Between 1996 and 2007 there were 565 court challenges to domestic arbitration awards, 16.63% of which were successful and 4.96% of which resulted in a modified award.⁹ Because of this, companies prefer to arbitrate their disputes outside of India.¹⁰

On September 6, 2012, the Indian Supreme Court decided the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technincal Service, Inc.*, Civil Appeal No. 7019 of 2005, overruling their previous decisions in *Bhatia International v. Bulk Trading SA*, (2002) 4 S.C.C. 105, and *Venture Global Engineering v. Satyam Computer Services Ltd*, 2008 S.C.A.L.E. 214. The *Bharat* decision marks a major change in Indian law regarding international arbitration, bringing the country more in line with global standards and attitudes toward international dispute resolution.¹¹ Commentators have

reason I insist that international arbitration is not arbitration is that we can live without arbitration. Countries A, B, and C may take different views—encourage, discourage, or even outlaw arbitration—but if *international* arbitration goes, international economic exchanges will suffer immensely. Nothing will take its place.

Fali S. Nariman, *India and International Arbitration*, 41 GEO. WASH. INT'L L. REV. 367, 368 n.3 (2009) (quoting Jan Paulsson, *International Arbitration Is Not Arbitration*, STOCKHOLM INT'L ARBITRATION REV., no. 2 at 1 (2008,)) (emphasis added).

7. See *infra*, Part II.

8. See *infra*, Part II. Although Indian arbitration law is currently viewed as behind global standards, arbitration itself has a long history in India:

Arbitration is a deeply embedded dispute resolution mechanism in India's commercial practices and social life. It can be traced back to when people voluntarily submitted their disputes for consideration to the panchayat, the wise men of the community, whose decisions were binding on the parties. The law governing arbitration in a formal sense was first introduced during the British rule with the creation of the Bengal Regulations in 1772.

Harpreet Kaur, *The 1996 Arbitration and Conciliation Act: A Step Toward Improving Arbitration in India*, 6 HASTINGS BUS. L.J. 261, 262 (2010).

9. Gardner, *supra* note 3, at 52.

10. See John Samuel Raja, *Why Singapore scores over India on settlement of corporate conflicts*, THE ECONOMIC TIMES (Jan. 1, 2013), http://articles.economictimes.indiatimes.com/2013-01-01/news/36094176_1_arbitration-law-domestic-arbitration-indian-arbitration-act. A 2011 survey of 68 Indian companies by accounting firm Ernst & Young showed that companies prefer arbitration over courts, but outside of India: 74% said that a contract should have an arbitration clause, while the preferred entities for handling the arbitration were, in order, SIAC in Singapore (60%), LCIA in the UK (50%), LICA in India (34%), and ICA in India (29%), with the Delhi HC Arbitration Centre and the ICADR coming in last at 9% each. *Id.* 52% of the respondents felt that the government's recent steps like amending the Indian arbitration law and opening new dispute resolution centers were in the right direction. *Id.*

11. Umer Akram Chaudhry, *Marking Their Territory: Bharat Aluminium v. Kaiser Aluminium Technical Services* (2012), KLUWER ARBITRATION BLOG (Sept. 13, 2012),

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hailed this development as a watershed decision that will prevent courts from intervening in the arbitral process and finally make India an arbitration-friendly jurisdiction.¹² The new attitude represented in *Bharat* is a welcome change for those hoping to see India join the international arbitration community. However, there are still issues left unaddressed by *Bharat* that could present obstacles to the proper functioning of international arbitration in India.¹³ This article will discuss the development of international arbitration in India up to its present state, examine the impact of *Bharat*, and scrutinize the road ahead for arbitration's growth in India.

Strengthening international arbitration and providing for a more stable process that is cost-effective and time-saving can help India attract foreign investors and commercial entities, which is a goal of their government.¹⁴ The *Bharat* decision is an important development in Indian law that affects international businesses by making India less likely to intervene in foreign-seated arbitration matters.¹⁵ However, there are still some issues with international arbitration in India that need to be highlighted and addressed, such as the way arbitration law is amended, interpreted, and conducted in India.¹⁶ This topic is important not only for the country of India and the international businesses operating there, but also for the many other countries with emerging markets who are attempting to develop arbitration law that will match current international arbitration practices and attract foreign investment.¹⁷

<http://kluwerarbitrationblog.com/blog/2012/09/13/marking-their-territory-bharat-aluminum-v-kaiser-aluminum-technical-services-2012>.

12. See, e.g., Ashish Chugh, *The Bharat Aluminium Case: The Indian Supreme Court Ushers in a New Era*, KLUWER ARBITRATION BLOG (Sept. 26, 2012), <http://kluwerarbitrationblog.com/blog/2012/09/26/the-bharat-aluminium-case-the-indian-supreme-court-ushers-in-a-new-era/>; Sherina Petit, Michelle Keen, & Sohini Lakhani, *Landmark judgment delivered from the Indian Supreme Court*, NORTON ROSE (Sept. 2012), <http://www.nortonrose.com/knowledge/publications/70563/landmark-judgment-delivered-from-the-indian-supreme-court-in-bharat-aluminium-co-v-kaiser-aluminium-technical-services-inc>.

13. See *infra*, Part III.A.

14. Agencies, *Indian PM vows to attract more foreign investment*, GLOBAL TIMES (Aug. 16, 2012, 10:04 AM), <http://www.globaltimes.cn/content/727225.shtml>.

15. Chaudhry, *supra* note 11.

16. Shaun Lee, *Case Update: Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc.*, OLSWANG (Sept. 19, 2012), <http://www.olswang.com/articles/2012/09/case-update-bharat-aluminium>.

17. Vinay Tyagi & Aishwarya Singh, *Enforceability of Foreign Arbitral Awards in India*, 12 VJ 91, 92 (2008) ("The risk of litigation before . . . [potentially biased] tribunals [with arcane and parochial laws], coupled with the impossibility of compliance with complicated local regulatory

II. BACKGROUND

A. General Background

International commercial arbitration is a way for transnational parties to resolve business disputes outside of the courts, requiring agreement between the parties, usually in the form of an arbitration clause in a contract.¹⁸ Arbitration makes it possible to avoid litigation in a foreign court system, which a party may distrust and which may be time-consuming, complicated, expensive, and could result in an unenforceable decision.¹⁹ Arbitration is administered by independent arbitrators, often with specialized knowledge and chosen by both parties.²⁰ It is confidential, cost-effective, and its awards are usually final, binding, and have a high level of international

schemes, discourage investors in pursuing opportunities in markets that display great potential for profitability but suggest uncharted risks.”).

18. See Gloria Miccoli, *International Commercial Arbitration*, AMERICAN SOCIETY OF INTERNATIONAL LAW (last updated Dec. 1, 2011), <http://www.asil.org/erg/?page=arb>. Arbitration can be divided into two kinds: ad hoc, which is conducted independently according to rules specified by parties and their attorneys, and institutional, which is handled by a major arbitration institution (of which there are many). *Id.* Deciding whether to choose ad hoc or institutional arbitration will depend on the specific circumstances of the parties and their dispute:

From our past experience it can be safely stated that . . . [institutional] arbitration . . . is more desirable in cases where there are claims around the several million dollar mark. However, if the parties are engaging law firms, which have considerable experience in international arbitrations, they can also resolve their disputes by constituting an international ad hoc arbitral tribunal under UNCITRAL Rules. In such cases, the experience of respective law firms can be used in selecting suitable arbitrators, arranging for support services at the venue of arbitration, and so on.

The international institutions offer the following advantages:

- Efficient conduct of proceedings and greater likelihood of receiving award within fixed time periods.
- High quality and competence of arbitrators.
- Greater certainty of the award standing scrutiny in a court of law.
- The award can be enforced in India without risk of challenge in Indian courts.
- Increased chances of settling the disputes through mediation.

The parties from developing countries often find international arbitration to be very expensive. Though successful parties are able to recover almost the entire costs of the arbitration (including the travelling expenses, legal fees, administrative expenses, etc.), they need to be aware that losing an international arbitration greatly increases the risk of having to bear the entire arbitration costs.

Hiroo Advani, *International Commercial Arbitration – An Indian Perspective*, ASIALAW (July 2004), <http://www.asialaw.com/Article/1972177/Search/Results/International-Commercial-Arbitration-An-Indian-Perspective.html?Keywords=UNCITRAL>.

19. See Miccoli, *supra* note 18.

20. See *id.*

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recognition.²¹ Arbitration is seen by some as a way to resolve disputes while keeping business relationships intact.²² Arbitration is generally a more efficient dispute resolution mechanism than litigation, particularly in a court system like India's that has a tremendous backlog of cases.²³ As businesses navigate the global economy, disputes will inevitably arise, making access to effective dispute resolution forums a necessary feature of any country hoping to gain foreign investment.²⁴

B. Statutory Law

In the early 1990s, India began to seek foreign investment, and in so doing, looked for ways to join the global business climate.²⁵ One significant measure taken in pursuit of this goal was to adopt the 1996 Arbitration and Conciliation Act ("the 1996 Act"), replacing its outdated arbitration legislation, which at that point consisted of the Arbitration Act of 1940 and the 1961 Foreign Awards Act.²⁶ The Arbitration Act of 1940 allowed for the appeal of domestic arbitration awards to Indian courts, which could then modify, remit, or set aside the award for a variety of reasons.²⁷ Such an

21. See *id.* More than 140 countries have agreed to abide by the terms of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereinafter "New York Convention"). The New York Convention requires courts of contracting states to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II–III, June 10, 1958, 22 U.N.T.S. 330.

22. See Tracy S. Work, *India Satisfies its Jones for Arbitration: New Arbitration Law in India*, TRANSNATIONAL LAW 217, 224–25 (1997).

23. See Gardner, *supra* note 3, at 51.

24. See Work, *supra* note 22, at 225 (referencing a statement made by former Prime Minister P.V. Narasimha Rao, telling lawyers that it was "necessary to bring the laws on settlement of disputes in India in line with international standards because the economy is "undergoing substantive reforms"""); see also Charlotte L. Bynum, *International Commercial Arbitration Guide*, CORNELL UNIVERSITY LAW LIBRARY (revised Nov. 2010 by Robert G. Cruz), <http://www.lawschool.cornell.edu/library/WhatWeDo/ResearchGuides/International-Commercial-Arbitration.cfm> ("[M]any countries have adopted new arbitration laws or amended existing laws to remove impediments to the arbitration process in hopes of attracting more global business.").

25. See Work, *supra* note 22, at 218–24 (discussing India's original discouragement of foreign investment, leading to a reputation for "red tape, bureaucratic delays, and bribery," and the subsequent shift in the government's objectives for a more open, free market economy).

26. See *id.* at 225.

27. See *id.* at 226. One Justice once pronounced that "[t]he way in which the proceedings under the 1940 Act are conducted and without an exception challenged in the Courts, has made lawyers laugh and legal philosophers weep." Harpreet Kaur, *The 1996 Arbitration and Conciliation*

appeal would halt any further arbitration proceedings until the court proceedings were finished, which could take many years.²⁸ The other important piece of legislation was the 1961 Foreign Awards (Recognition and Enforcement) Act, which dealt with the enforcement of foreign awards under the New York Convention and replaced the 1937 Arbitration (Protocol and Convention) Act.²⁹ The 1961 Foreign Awards Act required a decree from an Indian court to enforce foreign awards—a time-consuming process that could ultimately end in frustration if the court refused to enforce the foreign award on public policy grounds.³⁰

The 1996 Act replaced the above acts and attempted to appease the complaints of foreign investors about the existing dispute resolution process in India.³¹ Based upon the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration and their Model Conciliation Rules, the 1996 Act was seen as a radical step forward in making arbitration "fairer, efficient, and more predictable."³² The 1996 Act is divided into three sections: (1) domestic and foreign arbitrations, (2) enforcement of certain foreign awards, and (3) conciliation.³³ Part I lays out the extensive rules for the regulation of arbitration proceedings.³⁴ Under section 9, courts are given broad powers to take interim measures before or during arbitral proceedings, or at any time after the making of an award, but before an arbitral award is enforced.³⁵ Section 34 gives courts the power to set aside an arbitral award in certain circumstances.³⁶ The Indian Supreme Court has struggled in its construction of the 1996 Act and many of its decisions in this area have been widely criticized.

Act: A Step Toward Improving Arbitration in India, 6 HASTINGS BUS. L.J. 261, 262 (2009) (quoting *Guru Nanak Found.v. Rattan Singh & Sons*, (1981) 4 S.C.C. 634).

28. See Work, *supra* note 22 at 226.

29. Amelia C. Rendeiro, *Indian Arbitration and "Public Policy"*, 89 TEX. L. REV. 699, 702 (2011).

30. See Work, *supra* note 22, at 226–27. Under Indian law, an arbitral award could be set aside if it violated the public policy of India, in that it was contrary to: the fundamental policy of Indian law, the interest of India, justice or morality, or was patently illegal. Gardner, *supra* note 3, at 52.

31. See Work, *supra* note 22, at 228.

32. Tiyaqi & Singh, *supra* note 17, at 91.

33. Work, *supra* note 22, at 229. Conciliation is a voluntary agreement between parties to settle a dispute through the use of a conciliator who meets with the parties separately to seek concessions and explore potential solutions. *Id.* at 237–38.

34. The Arbitration and Conciliation Act, No. 26 of 1996, Part I, INDIA CODE (1996), available at <http://www.ficci-arbitration.com/htm/acts.pdf>.

35. *Id.* § 9.

36. *Id.* § 34.

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C. Case Law Prior to Bharat

The case of *Bhatia International v. Bulk Trading S.A.*, concerned an arbitration in Paris under the rules of the International Chamber of Commerce. Bulk Trading filed an application with an Indian court seeking various interim reliefs, including an injunction to secure the property of Bhatia International, in order to ensure recovery of its award in the event of a win.³⁷ Bhatia objected on the grounds that Part I of the 1996 Act did not apply to arbitrations where the seat of arbitration was outside India.³⁸ The Supreme Court found for Bulk Trading, holding that Part I of the 1996 Act applied to international commercial arbitrations that take place outside of India, and thus, Indian courts can grant interim injunctions in such arbitrations.³⁹

In *Oil & Natural Gas Corp. v. SAW Pipes Ltd.*, the Supreme Court considered a challenge to a domestic arbitral award rendered in a contractual dispute involving supply of equipment for off-shore oil exploration. The award was challenged on the ground that it contravened Indian law.⁴⁰ The Supreme Court held that the award could be set aside under section 34 of the 1996 Act because it was contrary to public policy in that the departure from substantive law made the award patently illegal.⁴¹

In *Venture Global Engineering v. Satyam Computer Services Ltd.*, (2008) 1 S.C.A.L.E. 214, the Supreme Court examined a dispute between a U.S. corporation and an Indian company that entered into a joint venture. The dispute involved a Shareholders Agreement that gave the option, in the event of default, for the non-defaulting shareholder to purchase the defaulter's shares at book value or cause immediate dissolution and liquidation.⁴² Satyam won in arbitration, and sought to have the award

37. See *Bhatia Int'l v. Bulk Trading S.A.* (2002) 4 S.C.C. 105, 3, available at <http://www.indiankanoon.org/doc/110552/>.

38. *Id.* ¶ 3.

39. *Id.* The Court's reasoning focused on the contradictions that would result if the 1996 Act was read to state that Part I does not apply to arbitrations outside of India. See *id.* ¶ 14(a)-(d). In reaching this conclusion, the Court noted that "the said Act does not appear to be a well drafted legislation." *Id.* ¶ 35.

40. See *Oil & Natural Gas Co. v. SAW Pipes Ltd.*, (2005) 5 S.C.C. 705, available at <http://indiankanoon.org/doc/919241/>.

41. See *id.* "Patent illegality" thus became a new public policy consideration for setting aside arbitral awards in addition to the previous three—fundamental policy of Indian law, the interest of India, and justice or morality—enumerated by the Court in *Renusagar Power Co. v. General Electric Co.*, (1994) 1 S.C.R. 22.

42. See *Venture Global Eng'g v. Satyam Computer Servs. Ltd.*, (2008) 1 S.C.A.L.E. 214, ¶ 3.

recognized and enforced in Michigan.⁴³ Venture then filed suit in India, asking the court to set aside the award on the grounds that the required transfer of shares would violate Indian law.⁴⁴ Relying on *Bhatia*, the Supreme Court found that Indian courts are able to set aside foreign awards for violating statutory provisions or because they are contrary to Indian public policy.⁴⁵ This was an extension of the *SAW Pipes* judgment, which only gave Indian courts the power to set aside domestic arbitral awards.

The cumulative effect of these decisions was that any arbitral award granted outside of India could be challenged in Indian courts, resulting in disproportionate interference by Indian courts in foreign-seated arbitrations. This stance put Indian jurisprudence at odds with the objective of the 1996 Act to modernize and internationalize their arbitration law.⁴⁶ Under the New York Convention, which the 1996 Act was based on, contracting states are obligated to recognize and enforce foreign arbitral awards, except in limited circumstances.⁴⁷ By allowing Indian courts to intervene extensively in the process and awards of foreign arbitrations, the Supreme Court's decisions essentially negated the benefits of speed, cost, certainty, and autonomy that arbitration provides over other methods of dispute resolution.

D. Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.

On September 6, 2012, the Supreme Court delivered its judgment in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.*, finally addressing many of the criticisms leveled against their previous decisions in an expansive opinion spanning 190 pages. The decision dealt with a purely legal issue and actually pertained to a group of cases.⁴⁸ In *Bharat*, the

43. *See id.* at 7.

44. *See id.* at 8.

45. *See id.* at 57.

46. *See* Alok N. Jain, *Supreme Court overrules Bhatia judgment in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. – First Post*, ARBITRATION INDIA – PERSPECTIVES (Sept. 16, 2012), <http://arbitrationblogindia.blogspot.in/2012/09/supreme-court-overrules-bhatia-judgment.html>.

47. New York Convention, *supra* note 21, at art. V; *see also* The Arbitration and Conciliation Act, No. 26 of 1996, § 5, INDIA CODE (1996) (“Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”).

48. *Bharat Aluminium Co. v. Kaiser Aluminium Technical Serv., Inc.*, Civil Appeal No.7019 of 2005; *White Indus. Australia Ltd. v. Coal India Ltd.*, Civil Appeal No.6284 of 2004; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Serv., Inc.*, Civil Appeal No.3678 of 2007; *Harkirat Singh v. Rabobank Int’l Holding B.V.*, Transferred Case (C) No.35 of 2007; *Tamil Nadu Electricity Bd. v. Videocon Power Ltd.*, Special Leave Petition (C) Nos. 3589-3590 of 2009; *Tamil Nadu Electricity Bd. v. Videocon Power Ltd.*, Special Leave Petition (C) Nos. 31526-31528 of 2009;

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Supreme Court overruled their previous decisions in *Bhatia International v. Bulk Trading S.A.* and *Venture Global Engineering v. Satyam Computer Services Ltd.*⁴⁹

The factual scenarios of the attendant cases were similar to the facts of *Bhatia International* and *Venture Global*. One of the cases involved an arbitration agreement where the seat of the arbitration was in London, to be governed by English procedural law and Indian substantive law.⁵⁰ The award granted in this arbitration was challenged in Indian Courts under section 34 of the 1996 Act.⁵¹ Another case involved an arbitration seated in Paris and governed by French procedural law and English substantive law.⁵² Here, one of the parties sought interim relief measures in Indian courts under section 9 of the 1996 Act.⁵³ The Supreme Court was asked to decide again whether sections 34 and 9 of the 1996 Act apply to arbitrations seated outside India.⁵⁴ The Court held that, in accord with the UNCITRAL Model Law,⁵⁵ Part I of the 1996 Act did not apply to foreign-seated arbitrations and thus parties to arbitrations seated outside India could not seek interim relief or challenge an award in Indian courts.⁵⁶

III. ANALYSIS

A. *BALCO v. Kaiser*

To reach their decision, the Supreme Court reevaluated several of the arguments it had accepted in earlier cases. . A large part of the Court's reasoning focused on a single word. . The UNCITRAL Model Law states that its provisions "apply *only* if the place of arbitration is in the territory of

Bharati Shipyard Ltd. v. Ferrostaal AG, Special Leave Petition (C) No. 27824 of 2011; Bharati Shipyard Ltd. v. Ferrostaal AG, Special Leave Petition (C) No. 27841 of 2011.

49. *Bharat*, Civil Appeal No.7019 ¶ 199.

50. *Id.* ¶ 4.

51. *Id.* ¶ 5.

52. *Id.* ¶ 8.

53. *Id.* ¶ 9.

54. *Id.* ¶ 14.

55. The Model Law requires states to recognize and enforce foreign arbitral awards. UNCITRAL Model Law on International Commercial Arbitration, 28 (2006), available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf. India's stance of judicial intervention thus put them at odds with global standards.

56. *Bharat*, Civil Appeal No. 7019 ¶ 199.

this State.”⁵⁷ India’s 1996 Act states that Part I “shall apply where the place of arbitration is in India.”⁵⁸ It was argued that the Indian legislature intended to omit the word “only” so as to depart from the Model Law’s territorial approach in granting supervisory jurisdiction.⁵⁹ The Court found that, although the omission of “only” was intentional, it did not change the limitation of Part I of the 1996 Act to arbitrations seated in India because other variations of the 1996 Act from the Model Law made the word superfluous.⁶⁰ Additionally, the Court held that the 1996 Act accepted the principle of the Model Law that there must be a territorial link between the site of arbitration and the governing law, thereby restricting the application of Part I of the 1996 Act to arbitrations seated within India.⁶¹ It should be noted that arbitrations under Part I include both arbitrations in India between two Indian parties and international commercial arbitrations in India.⁶² Both are considered domestic awards and, as such, can be challenged in Indian courts.⁶³

The Supreme Court also distinguished between the seat and venue of an arbitration, affirming the principle that the seat of an arbitration is the “centre of gravity,” providing the laws to govern the conduct of the arbitration when the parties have not selected other law.⁶⁴ Furthermore, the Court affirmed that Parts I and II of the 1996 Act are mutually exclusive, and Indian courts cannot annul foreign arbitral awards, nor can they order interim relief for foreign-seated arbitrations.⁶⁵ The Court ended by making their decision apply prospectively, so that their holding only governs arbitration agreements executed after September 6, 2013.⁶⁶ The Supreme

57. UNCITRAL Model Law, *supra* note 55, at ch. I, art. 1(2) (emphasis added).

58. The Arbitration and Conciliation Act, *supra* note 34, § 2(2).

59. *Bharat*, Civil Appeal No. 7019 ¶ 16. This argument was the basis for the ruling in *Bhatia International*. *Bhatia International v. Bulk Trading SA*, (2002) 4 S.C.C. 105, 23 (India).

60. *Bharat*, Civil Appeal No. 7019 ¶ 60.

61. *Id.* ¶ 89.

62. *Id.* ¶ 94.

63. *Id.*

64. *Id.* ¶¶ 95–100. This principle is “one of the most fundamental concepts of arbitration law.” Chaudhry, *supra* note 11.

65. *Bharat*, Civil Appeal No. 7019 ¶ 89. The inapplicability of § 9 of the 1996 Act to foreign-seated arbitrations could prove problematic as there is now “no provision either under the Act or under the (Indian) Code of Civil Procedure, 1908 which enables enforcement of interim orders of foreign courts or interim orders of an arbitration tribunal having its seat outside India.” Vinay Vaish & Sandhya Iyer, *A critique of Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs., Inc.*, VAISH ASSOCIATES ADVOCATES (Oct. 5, 2012), <http://www.mondaq.com/india/x/199168/Arbitration+Dispute+Resolution/International+Commercial+Arbitrations+A+Critique+Of+Bharat+Aluminium+Co+vs+Kaiser+Aluminium+Technical+Services+Inc>.

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Court's decision to make their ruling apply prospectively is likely to cause some problems. Prospective overruling has traditionally been used by the Supreme Court to avoid "gravely unfair or disruptive consequences."⁶⁷ It is unclear how such consequences could result from this ruling, except for court cases initiated on the basis of the previous jurisprudence.⁶⁸

B. Additional Issues

Although a major step forward, the *Bharat* decision did not address all of the issues facing the development of international arbitration in India. While Indian courts can no longer set aside foreign arbitral awards, the enforcement of such awards can still be challenged under the broad public policy doctrine of *Oil & Natural Gas Corp. v. SAW Pipes Ltd.*⁶⁹ This creates some uncertainty and goes against the general principle that courts of contracting states under the New York Convention are to recognize and

66. *Bharat*, Civil Appeal No. 7019 ¶ 201.

The judgment in *Bhatia International* (supra) was rendered by this Court on 13th March, 2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in *Venture Global Engineering* (supra) has been rendered on 10th January, 2008 in terms of the ratio of the decision in *Bhatia International* (supra). Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter.

Id.

67. Chugh, *supra* note 12.

68. *Id.*

69. See *supra* notes 40–41 and accompanying text. The Supreme Court applied the public policy standard to challenge the enforcement of a foreign award in *Phulchand Exports Ltd. v. OOO Patriot*, (2011) 10 S.C.C. 300 (India). In that case, Phulchand, an Indian export company, initiated arbitration in the International Court of Commercial Arbitration at the Chamber of Commerce and Industry of the Russian Federation against OOO Patriot, a Russian company, under a contract governed by Russian law for the export of rice to Russia. *Id.* ¶ 2. The Tribunal awarded damages to OOO Patriot, who sought to enforce the award in the High Court of Bombay. *Id.* ¶ 6. Phulchand challenged the enforceability of the award on the ground that it was contrary to public policy. *Id.* ¶ 8. Although the challenge did not succeed on the merits, the Supreme Court expanded the meaning of the public policy of India doctrine to include foreign awards that are "patently illegal." *Id.* ¶ 12. "Patent illegality" is not defined under the 1996 Act. See Raja, *supra* note 10. The Court in *Oil & Natural Gas Company v. SAW Pipes Ltd.* stated:

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

Oil & Natural Gas Company v. SAW Pipes Ltd., (2005) 5 S.C.C. 705, ¶ 31. (India).

enforce foreign arbitral awards.⁷⁰ Because of the vagueness of the public policy considerations that courts can entertain, it is unclear on what grounds parties can challenge foreign arbitral awards in local Indian courts.⁷¹ With respect to countries that are not signatories to the New York Convention or Geneva Convention⁷² (“Non-Convention Awards”), arbitral awards granted in these countries are not governed by the 1996 Act, creating a lacuna in the Act and leaving no recourse for enforcement of such awards in India.⁷³

Indian courts can refuse to refer a matter to arbitration where there are serious allegations of malpractice or fraud, or where there are complicated questions of fact or law requiring extensive evidence.⁷⁴ This rule poses a threat to party autonomy and undermines § 8 of the 1996 Act, which gives courts the power to refer parties to arbitration where there is an arbitration agreement.⁷⁵ The Supreme Court has held that this reference is

70. New York Convention, *supra* note 21, at Art. III.

71. *See* Raja, *supra* note 10.

72. “Geneva Convention” here refers to the European Convention on International Commercial Arbitration, convened at the European Office of the United Nations in Geneva. *See* European Convention on International Commercial Arbitration, Apr. 21, 1961, 484 U.N.T.S. 349. The purpose of this convention was to “promot[e] the development of European trade by, as far as possible, removing certain difficulties that may impede the organization and operation of international commercial arbitration in relations between physical or legal persons of different European countries . . .” *Id.*

73. *See* Vaish & Iyer, *supra* note 65.

74. *See* Radhakrishnan v. Maestro Eng’rs, (2010) 1 S.C.C. 72 (India). *Maestro* involved a dispute between partners involving allegations of fraud, collusion, and financial malpractices. *Id.* ¶ 3. *Maestro Engineers* filed a suit seeking a declaration that Radhakrishnan was not a partner of the firm. *Id.* In return, Radhakrishnan filed an application under § 8 seeking reference to arbitration, as the Partnership Deed contained an arbitration clause. *Id.* The Supreme Court held that court was a more competent forum to handle the dispute than arbitration. *Id.* ¶ 7. The Court based their decision on the serious nature of fraud, collusion, and financial malpractice allegations, the wider range of reliefs courts can provide over arbitrators, and the binding provisions of evidence and procedure rules that guide complex cases in courts. *Id.* ¶ 13. The precedent set by this decision could have broader implications, however:

Whilst the intent of the judiciary has a rationale, it remains to be seen how far in practice, will the Courts broaden the scope and extent of their interference in Arbitral proceedings, by taking aid of this view. This may well be used to strike a blow to party autonomy, which is the very root of evolution of Alternate Dispute Resolution Mechanisms, including Arbitrations.

Ruchi Agnihotri Mahajan, *India: Qualifying A Reference to Arbitrate -N. Radhakrishnan v. Maestro Engineers And Ors. Reviewed-*, MONDAQ (April 22, 2010), <http://www.mondaq.com/india/x/97044/Arbitration+Dispute+Resolution/Qualifying+A+Reference+To+Arbitrate+N+Radhakrishnan+v+Maestro+Engineers+And+Ors+Reviewed>.

75. The Arbitration and Conciliation Act, *supra* note 34, § 8.

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mandatory,⁷⁶ but the rule giving courts the right to refuse to refer certain matters to arbitration leaves the door open for broader judicial interference.⁷⁷

Another issue is whether Indian law applies to foreign arbitrations between two Indian parties. *Bharat* stated that arbitrations in India between Indian parties should be governed by Indian law.⁷⁸ It is likely that it goes against Indian public policy for two companies incorporated in India to contract out of the application of India substantive law through use of a foreign-seated arbitration clause.⁷⁹ Before *Bharat*, this would not have been a problem, because § 28 of the 1996 Act, which empowers tribunals to compel Indian parties to apply Indian law, would have applied to foreign-seated arbitrations.⁸⁰ Because § 28 is contained in Part I of the Act, it no longer applies to foreign-seated arbitrations, leaving the potential for ambiguity as to the governing law where it is not explicitly stated in contracts with foreign-seated arbitration clauses between two Indian parties.

76. See *Shin-Etsu Chem. Case Co. v. Aksh Optifibre Ltd.*, (2005) 7 S.C.C. 234 (India); *Hindustan Petroleum Corp. v. Pinkcity Midway Petroleum* (2003) 6 S.C.C. 503 (India); *Sumitomo Corp. v. CDC Fin. Servs. (Mauritius)*, (2008) 4 S.C.C. 91 (India).

77. See *supra* note 74.

78. *Bharat*, Civil Appeal No. 7019 ¶ 123.

79. See *TDM Infrastructure Private Ltd. v. UE Dev. India Private Ltd.* (2008) 14 S.C.C. 271 (India). In *TDM Infrastructure*, two Indian companies entered into a contract with an arbitration clause that stated that any dispute between the parties would be referred to arbitration as per the provisions of the 1996 Act, with the seat of arbitration to be in New Delhi. *Id.* ¶ 2. A dispute arose, and the parties could not reach consensus on the appointment of an arbitrator. *Id.* ¶ 3. TDM sought to change the venue of the arbitration to Kuala Lumpur, Malaysia, where its central management and control was based, thereby arguing that the dispute was within the scope of an international commercial arbitration. *Id.* ¶ 6. The Supreme Court held that when “both the companies are incorporated in India, and, thus, they have been domiciled in India, the arbitration agreement entered into by and between them would not be an international commercial arbitration agreement.” *Id.* ¶ 16. This decision was criticized by commentators:

This judgment has thus restricted the scope of international commercial arbitration in case of domestic disputes. It is also a departure from the founding premises of arbitration mechanism that the “party autonomy” is superlative.

In today’s commercial environment where contracts are becoming more complex by the day and boundaries of jurisdiction are blending into each other, judgments like the one rendered in the case may not find many supporters. Nevertheless, those in business must take into account the implications of the view taken by the Supreme Court of India.

Alpesh Parekh, *India: Domestic Parties And International Commercial Arbitration – Not Possible Says the Supreme Court*, MONDAQ (Nov. 14, 2008), <http://www.mondaq.com/india/x/67614/Domestic+Parties+And+International+Commercial+Arbitration+Not+Possible+Says+The+Supreme+Court>.

80. The Arbitration and Conciliation Act, *supra* note 34, Pt. I § 28.

Indian parties no longer have recourse to the provisions of Part I of the 1996 Act where the seat of arbitration is outside India.⁸¹ If Indian parties want recourse in Indian courts for interim relief or to challenge awards, they will have to designate India as the seat of arbitration in international commercial arbitration agreements. However, if Indian parties lack the bargaining power to make India the seat of arbitration and lack the resources to arbitrate in a foreign country, it is possible they will be left without a remedy in the event of a dispute.⁸² Furthermore, if a party takes away its assets or investments from India during a foreign arbitration, an arbitral award may be defeated as parties cannot seek enforcement of interim orders of foreign courts or foreign arbitral tribunals.⁸³

Another issue is the scarcity of Indian arbitration institutions. When foreign parties seek institutional arbitration (as opposed to ad hoc arbitration), they prefer to arbitrate with the ICC in Paris,⁸⁴ the LCIA in

81. See *supra* text accompanying note 56.

82. See Raj Panchmatia, *The Viewpoint – The Jurisdiction of Indian Courts in International Commercial Arbitration*, BAR & BENCH (Jan. 3, 2013), <http://barandbench.com/brief/1/3064/the-viewpoint-the-jurisdiction-of-indian-courts-in-international-commercial-arbitration>; see also Rendeiro, *supra* note 29, at 705–06:

A small minority of relevant legal scholarship expresses the competing view that the residual power of Indian courts to intervene in the arbitral process “is desirable—perhaps even necessary—to protect the interests of vulnerable Indian parties.” Globally, select commentators defend the use of limited protectionist measures by developing nations in response to the frequently inferior bargaining power of parties from developing nations in international commercial contracts with wealthier parties from developed countries.

83. See Vaish & Iyer, *supra* note 65.

84. The ICC International Court of Arbitration supervises the arbitral process extensively:

The ICC Court monitors the entire arbitral process to ensure propriety in conduct of proceedings and adherence to rules of procedure. It decides upon the prima facie existence of an arbitration agreement before commencement of proceedings. It also decides upon challenges to arbitrators, whilst also scrutinizing the final award for form and substance to ensure that the awards stand up in a court of law.

Recently, the ICC Court has developed Guidelines for the conduct of arbitration of small cases in an attempt to limit the costs involved in more minor matters. Though the Guidelines do not define a ‘small claim,’ they put forward some meaningful suggestions in regard to such claims. For example: Submit pleadings and petitions electronically; use a single arbitrator; limit the use of experts and; identify a cost-effective venue.

The other important features of Arbitration under the ICC Rules are:

- Tribunal empowered to make interim awards to secure the interests of the parties.
- Specified costs and fees to be determined as per formulae laid down in the ICC Rules of Arbitration.
- Small claims dealt with separately to minimize costs.
- Proceedings strictly time-bound.
- Mandates drawing up “Terms of Reference,” clearly setting out all issues and facilitating agreement over various procedural aspects.
- Time-efficient – no payment by hourly or daily rate, lending to less incentive to prolong proceedings.

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London,⁸⁵ or SIAC in Singapore.⁸⁶ The establishment of the LCIA in India and the Delhi High Court Arbitration Centre in 2009 signaled a change in

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- Institutional support for the settlement of disputes during arbitral proceedings, but before a final hearing.

Advani, *supra* note 18.

85. The London Court of International Arbitration also provides extensive supervision for parties who wish to arbitrate their dispute with this institution:

The LCIA is one of the first major international institutions established for commercial dispute resolution. Over the years it has developed a number of rules to increase the efficiency of arbitration proceedings conducted under its aegis.

A unique feature of arbitration under LCIA Rules is that it requires parties to waive the right of appeal before national courts and other judicial bodies, thereby ensuring the finality of the arbitration award.

The features that commonly attract disputing parties to enlist the services of the LCIA include:

- Tribunal empowered to pass interim orders and provide for interim reliefs, including security for claims and costs.
- Stage deposits – parties are not required to pay for the whole arbitration in advance.
- Interest on deposits made to the LCIA is credited to respective party's account.
- "Fast-track" option for conduct of proceedings.
- Means of reducing delays and counteracting delaying tactics.
- Greater confidentiality – direct communication between the parties and arbitrators is encouraged and pursuant to commencement of proceedings. The LCIA seeks to minimize its role in this process, thus enhancing confidentiality with fewer personnel involved in proceedings.
- Proceedings strictly time-bound.
- Large panel of expert arbitrators available to choose from, though the panel is not definitive or binding and parties are free to select an arbitrator who is not on the panel.
- Provides institutional support for settlement of disputes during arbitral proceedings before final hearing.

Id.

86. See Raja, *supra* note 10; see also *supra* note 10. SIAC in particular presents an interesting success story for institutional arbitration:

In enhancing its arbitration credentials, India will do well to learn from Singapore's experience in establishing itself as a leading international arbitration centre in just over two decades. During this period, SIAC has grown to be a pre-eminent arbitration institution in the region- a fact which is evidenced by its impressive caseload. The presence of a highly-regarded, home-grown institution is perfectly complimented by Maxwell Chambers, which provides state-of-the-art hearing facilities and support services. Pro-arbitration courts, specialist judges to hear arbitration-related disputes and rights of access for foreign lawyers to conduct arbitrations in the city State have all come together to aid Singapore's rise as a hub of arbitration.

Promod Nair, *A sixty month makeover: reinventing India as an "arbitration-friendly" jurisdiction*, KLUWER ARBITRATION BLOG (May 10, 2011),

the attitude towards institutional arbitration in India, however.⁸⁷ There are still obstacles to the efficacy of such institutions created by Indian jurisprudence. In *S.B.P. & Co. v. Patel Eng'g Ltd.* (2005) 8 S.C.C. 618, the Supreme Court addressed the issue of what to do when parties fail to nominate an arbitrator.⁸⁸ The 1996 Act says that the chief justice or an institution designated by him can appoint an arbitrator, but the Supreme Court interpreted this to mean a Supreme Court or High Court judge, weakening the role of arbitration institutions and keeping disputes unnecessarily entangled with the courts.⁸⁹

IV. SOLUTION

A. Problems Created by *Bharat*

The Supreme Court's prospective overruling of *Bhatia* and *Venture Global* applied to arbitration agreements entered into after September 6, 2012.⁹⁰ However, in practical terms, it is not the arbitration agreements themselves in danger of being invalidated by *Bharat*, but any court proceedings initiated in India on the basis of *Bhatia* or *Venture Global*.⁹¹ Clarifying this would clear up some of the confusion created by the Supreme Court's decision.⁹² In the meantime, parties who have contracted with Indian companies should review their arbitration agreements and re-execute them to ensure that they will not be governed by the old law.⁹³

B. Remaining Issues

The enforcement of foreign arbitral awards can be challenged for public policy reasons, including "patent illegality."⁹⁴ This term was never defined under the 1996 Act, creating some confusion and leaving the grounds for

<http://kluwerarbitrationblog.com/blog/2011/05/10/reinventing-india-as-an-arbitration-friendly-jurisdiction/>.

87. See Raja, *supra* note 10.

88. See *S.B.P. & Co. v. Patel Eng'g Ltd.* (2005) 8 S.C.C. 618, ¶ 1 (India).

89. See *id.*; Raja, *supra* note 10.

90. See *supra* note 66 and accompanying text.

91. See Chugh, *supra* note 12.

92. *Id.*

93. See Abhijit Mukhopadhyay, *Indian Arbitration—Recent Trends*, (ARBITRATION WORLD (K&L Gates LLP), Sept. 2012, at 1-4, http://www.klgates.com/files/Publication/6a48bcb9-4421-4d71-99d0-e648e2a01a67/Presentation/PublicationAttachment/56a16496-cd4d-4051-b6c4-37430caf041c/ArbWorld_Sept-2012.pdf.

94. See *supra* note 69 and accompanying text.

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such challenges open ended.⁹⁵ It would be helpful if the grounds on which courts can refuse to enforce arbitration awards under the public policy doctrine were clarified.⁹⁶

Another important reform would be to provide ways for parties to seek interim relief to prevent opposing parties from disposing of assets while international arbitrations are ongoing.⁹⁷ This would protect potential arbitral awards won in international arbitrations. The Indian Parliament can fix this problem by amending the 1996 Act.⁹⁸ Parliament will also have to address the status and enforcement of non-convention awards.⁹⁹

The judicial rule allowing courts to refuse to refer matters to arbitration in certain circumstances should be overruled or limited in its application to international arbitrations.¹⁰⁰ Indian parties entering into agreements with one another that contain foreign-seated arbitration clauses should stipulate Indian law as the governing law.¹⁰¹ Some experts are also calling for the establishment of commercial courts with delineated processes and time limits to handle commercial disputes above a certain value.¹⁰² This would

95. See Raja, *supra* note 10.

96. *Id.*

97. *Id.*

98. See Ben Giaretta & Akshay Kishore, *The renewal of arbitration in India: BALCO -v- KaiserAluminium*, ASHURST (Sept. 2012), available at www.ashurst.com/doc.aspx?id_Content=8246. See also Panchmatia, *supra* note 82:

It is also significant to note that with respect to non-applicability of Section 9 of the Act to foreign seat arbitrations, the Supreme Court has stated that the responsibility of removing any “perceived lacuna” would be with the Parliament and not with it. The Government of India, in its Consultation Paper dated 7 April 2010, proposed to amend the Act so as to extend the application of Section 9 of the Act and Section 27 of the Act to foreign seat arbitrations. Given this proposal and the judgment’s limited applicability, the question of whether this judgment would go a long way in affecting international commercial contracts remains to be seen.

99. See *supra* note 72 and accompanying text.

100. See Chugh, *supra* note 12; see also Mahajan, *supra* note 74; *supra* notes 74–77 and accompanying text.

101. See Chugh, *supra* note 12; *supra* notes 78–79 and accompanying text.

102. See Raja, *supra* note 10. Another suggestion to combat the backlog and inefficiency of Indian courts would be the creation of a special arbitration bench:

Such a bench or benches would consist of a panel of judges who would review only petitions relating to arbitration. The bench would summarily reject petitions based on spurious claims and petitions that, on their face, appear designed only to induce delay. In hearing accepted petitions for relief, the bench would concentrate on the efficient resolution of such petitions, perhaps through a strict time schedule, and would have the power to dismiss petitions at any point during the hearings process if it became clear that the claim was meritless or that one party was purposefully delaying or prolonging the hearings to further delay enforcement of the award. Depending on constitutional and

further aid in fostering a legal climate in India that would be friendly to business and investment.

V. CONCLUSION

The Supreme Court's decision in *Bharat* appears to be a watershed moment for international arbitration in India. Although many obstacles remain, *Bharat* appears to be the first step towards an arbitration-friendly climate in India.¹⁰³ The Indian legislature has in the past struggled to enact

other considerations, the decision of the bench could be non-appealable or, alternatively, could be appealable only to the Indian Supreme Court, which would then exercise restraint and caution in hearing appeals.

...

Overall, the creation of a special bench to hear arbitration claims would allow the Indian judiciary to adhere to its interpretation of public policy, while ameliorating the negative effect of such an interpretation on the finality, economy, and efficiency of the arbitration process. This would directly address the complaints of foreign investors and reduce the risk premium factored into contracts with Indian parties. At the same time, a special bench would provide timely access to the courts for aggrieved parties and allow the judiciary to address problems of illegality and public policy, especially as exacerbated by unregulated ad hoc arbitration and the unequal bargaining power so often present in Indian contracts. Bearing in mind the relatively limited resources of the Indian government, the cost of the creation of a special bench for arbitration claims would be negligible; given the relatively small number of arbitration claims, the creation of only a few judicial positions would be needed.

Rendeiro, *supra* note 29, at 725–26.

103. In the February 2011 inaugural LCIA India lecture, Fali Nariman (Senior Advocate of the Supreme Court of India and former President of the Bar Association of India) suggested ten steps to salvage arbitration in India:

1. Parties must develop the spirit of arbitration and should learn to honour an arbitral award.
2. Supreme Court should be the exclusive forum for enforcing foreign awards in India.
3. Parties should try to resolve their disputes by mediation.
4. To discourage frivolous petitions in India, the costs must not be ordinary costs but must be fixed on the basis of indemnity.
5. Establishment of an Arbitration bar.
6. Necessity of good arbitrators.
7. Amendments suggested in the Arbitration Amendment Bill, 2003 regarding less strict scrutiny of international commercial arbitration awards and other suggestions should be re-introduced.
8. *Bhatia International*, *Saw Pipes*, and *Venture Global* must be reversed.
9. Foreign parties must expressly exclude Part I.
10. A new law of arbitration or the amendment of the existing one must incorporate principles like the one contained in the French arbitration law (2010) characterizing the role of the courts as one supporting the arbitral process (*juge d'appui*).

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laws that support arbitration, and Indian courts have interpreted those laws in ways that pro-arbitration commentators have criticized. However, *Bharat* demonstrates that India wants to follow best practices in international arbitration and is willing to make changes in furtherance of that goal. Although *Bharat* did not fix everything and there are still problems that need addressing, the decision signals a willingness to break from past attitudes and find solutions to the problems that are keeping India from being a hub of international commercial arbitration. This will come as a welcome change to foreign investors and commercial entities within India.¹⁰⁴ With the courts interpreting laws from a pro-arbitration stance, the goals of the Indian legislature in enacting the 1996 Arbitration and Conciliation Act may finally come to be realized.¹⁰⁵ This change provides India with the potential to become an international hub of arbitration, fostering economic growth and launching a new era for international arbitration in the region.

Badrinath Srinivasan, *Article Review: Fali S Nariman, Ten Steps to Salvage Arbitration in India: The First LCIA-India Arbitration Lecture*, PRACTICAL ACADEMIC (Sept. 16, 2011), <http://practicalacademic.blogspot.com/2011/09/article-review-fali-s-nariman-ten-steps.html>.

Now that *Bhatia International* and *Venture Global* have been overruled, it appears that India is now starting down the path laid out by Mr. Nariman.

104. “[K]nowing that arbitrations with Indian parties seated outside of India will not be subject to interference by local courts will encourage parties to do business on more favourable terms with Indian parties.” Gary B. Born & Suzanne A. Spears, *International Arbitration and India: “A Truly Excellent Judgment!”*, 1 INDIAN J. ARB. L. 1, 5 (2012), available at http://ijal.in/sites/default/files/INTERNATIONAL%20ARBITRATION%20AND%20INDIA_0.pdf.

105. “It is important to recall that India was one of the first signatories to the New York Convention in 1958 and that the Indian Parliament was one of the first national legislatures to give effect to the Convention, through its enactment of the 1961 Foreign Awards (Recognition and Enforcement) Act . . . [which was] calculated and designed to facilitate and promote international trade by providing for speedy settlement of disputes arising in trade through arbitration.” *Id.* at 1–2.