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## Delhi Arbitration Weekend 2024: Setting the Stage for South Asia's Aspiring Arbitration Jewel

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The Delhi Arbitration Weekend (“DAW”) returned for its second edition from 6 to 10 March 2024. For the first time, the event received the patronage of the Supreme Court of India, with [Chief Justice D.Y. Chandrachud](#), serving as one of the keynote speakers and the Patron-in-Chief for the DAW. Other keynote speakers included [Justice Judith Prakash](#), Senior Judge, Supreme Court of Singapore, and [Justice Manmohan](#), Acting Chief Justice of the High Court of Delhi.

Spanning five days, the DAW featured training sessions catering to the needs of a diverse audience and external receptions to bring together practitioners, arbitrators, and academics. This blog post provides insights into the discussions from the opening and closing keynotes of the DAW 2024.

### Understanding the Unsaid: Biases in Arbitration and the Role of Tribunals and Courts

The opening keynote titled “Understanding the Unsaid: Biases in Arbitration and the Role of Tribunals and Courts” officially kicked off the DAW 2024.

#### Arbitrator Bias

In addressing arbitration, Justice Manmohan emphasised two facets of bias: (a) apparent bias, which hinges on the perception of a fair-minded person, and (b) systemic bias, which stems from an institution’s or system’s inclination toward a “particular legal outcome”. This was an important observation from the perspectives of counsels and arbitrators, as understanding the nature and root cause of bias would allow them to take specific measures against it.

Justice Manmohan quoted Professor Jan Paulsson and referred to party appointed arbitrators as a “moral hazard”, and that over the years, more academics and practitioners had concurred with Professor Jan Paulsson’s view. This observation underscores the systemic bias that has been confirmed by [publications](#), [surveys](#) and also notable practitioners such as [Albert Jan van Den Berg](#). For instance, there have been several cases where party appointed arbitrators have been inclined to rule in favour of the appointing party. However, the mere fact that a party appointed arbitrator gave a dissenting opinion should not in itself lead to apprehensions of bias. As pointed out in a fairly

recent publication, several works and surveys on bias are based on “questionable methodologies”,<sup>1)</sup> that may lead to incorrect assumptions.

Supporting Justice Manmohan’s observations, Justice Judith Prakash reflected on instances of apparent bias. She highlighted that in several arbitrations, arbitrators were selected from a limited pool, with appointing parties expecting their appointees to rule in their favour. This observation highlighted the perception regarding party appointed arbitrators, and how it may lead parties to lose faith in arbitral mechanism altogether.

### Interplay of Bias and Legitimacy During an Arbitral Process

Addressing legitimacy, Justice Manmohan quoted Professor Catherine Rodgers and quipped, “who decides what forms of biases are legitimate? And how do we police the boundary between legitimate and illegitimate forms of bias?”. Such an enquiry holds particular relevance from an Indian viewpoint, where a **majority** of arbitrations are conducted on an ad-hoc basis without institutional oversight. However, the absence of credible arbitral institutions and misconceptions surrounding institutional arbitrations, such as **higher costs and inflexibility**, contribute to Indian parties’ continued preference for ad-hoc arbitrations. This can also be understood as a contributing factor for challenges that end up before courts, which inadvertently increases judicial intervention in arbitration.

### Tale of Two Judiciaries: India and Singapore

While discussing courts, Justice Judith Prakash drew parallels between the approach of Singaporean and Indian courts, while deciding challenges for bias. She noted that while Singaporean courts considered “reasonable suspicion” in the eyes of a “fair minded observer”, Indian courts had an objective position where they considered the viewpoint of the parties rather than mere suspicion of any fair minded person (who in theory may be a disinterested third party) (referring to Singapore). This demonstrates that contrary to the prevalent view, the Indian judiciary has taken active measures to reduce court intervention. Thus, a party willing to challenge an award will have to demonstrate the existence of justifiable doubts from the perspective of a party to the proceedings, rather than just relying on the perceptions of a fair minded observer.

### Contemporary Notions of Bias

In his plenary address, Justice D.Y. Chandrachud observed that the concept of neutrality runs far deeper than the provisions contained in the Indian Arbitration and Conciliation Act, 1996. He stated that bias should be understood to include broader categories such as “cognitive” and “ideological” biases, which can be overcome by diversity. His observation comes at a time when there have been **repeated calls** to increase diversity in arbitration. Further, increased diversity has the potential to make the entire process more legitimate by demonstrating that arbitration as a mechanism is not just cost effective and flexible but diverse across.

In this regard, he narrated the instance from an arbitration involving Jay-Z, which prompted the

American Bar Association to take measures for the inclusion of African Americans in their general pool of arbitrators. He observed, “diversity does not achieve anything extraordinary but reflects the reality of the world we live in”. This underlines the commitment of Indian stakeholders to international arbitration and demonstrates that Indian practitioners not only wish to make India a favourable seat but also take active measures to make the arbitral mechanism more diverse and legitimate.

### **Building a Safe Arbitral Seat: Harmonising National Interest and International Expectations**

The closing keynote titled, “Building a Safe Arbitral Seat: Harmonising National Interest and International Expectations”, featured addresses from Mr. R. Venkatramani, Attorney General for India; Mr. V.K. Rajah SC, former Attorney General of Singapore; Mr. A.R. Meghwal, Minister of Law and Justice; Justice Sanjiv Khanna, Judge, Supreme Court of India; and Justice Vibhu Bakhru, Judge of the High Court of Delhi.

#### India’s Roadmap

Mr. R. Venkatramani observed that there was a need for flexible dispute resolution mechanisms. In this regard he stated that India could usher in a few changes such as a scheme laying down the instances when court intervention may be justified or institutionalisation of certain features such as arbitrator appointments and deciding challenges, amongst others. His points underscore that the Indian arbitration community acknowledges the areas that need to be improved, and is ready to take concrete steps towards the same.

In this regard, Mr. V.K. Rajah started with a vision of India in 2040 where the India International Arbitration Centre is one of the leading centres for arbitration and Indian counsels and arbitrators as one of the most sought after. However, he highlighted that cities which are global hubs today, have an entire ecosystem of courts, governments, judiciary and bar associations supporting them. Hence, if India were to replicate the same, a collective effort would be required. He observed that this could in fact be achieved if India had (a) the right ethics; (b) the right educational ecosystem and (c) the right structure of arbitration specific courts.

Among others, the arbitration bar is expected to be a catalyst to India’s roadmap and make way for not just a dedicated forum for arbitration lawyers, but specialised training programmes for students and practitioners to impart the correct training and skills from the outset. Further, creation of an arbitration bar will make way for greater participation of arbitration practitioners, and bring India at par with other favourable arbitral landscapes such as Singapore, Switzerland, and France, etc.

#### Re-imagining India’s Potential

Mr. A.R. Meghwal observed that historically India has been a land of ethics and education, and it was essential to rediscover the same. He noted that Indians should collectively deliberate on larger issues to understand why Indian parties conduct their arbitration proceedings outside of India. This remark highlighted the lack of awareness and faith among Indian parties, as they have a tendency

to conduct arbitrations at foreign seats, even when both the parties and arbitrators were Indians.

To this, Justice Sanjiv Khanna added that the stakeholders should be mindful of the domestic landscape, while making a “constant push” to meet international standards. He noted ongoing efforts by courts and the legislature to cure the deficiencies in Indian arbitration, and urged the arbitration stakeholders to evolve while looking ten years ahead of us. These observations yet again reflect that the stakeholders of arbitration in India were mindful of the shortcomings, and are taking the necessary steps towards the development of legislative frameworks, ethics, practices etc., which were conducive to international arbitration.

The event formally came to an end with Justice Vibhu Bakhru’s observations that a lot could be drawn from India’s rich cultural heritage when it came to resolving international disputes.

From dedicated training sessions on award writing and cross examination to panel discussions addressing crucial issues, the DAW 2024 focused on addressing the issues rather than merely discussing them. With practitioners from Europe, Middle East, South Asia, and all corners of India flocking to New Delhi, the DAW 2024 seems to have set the right tone for India’s aspirations and ability to contribute to the global arbitration community.

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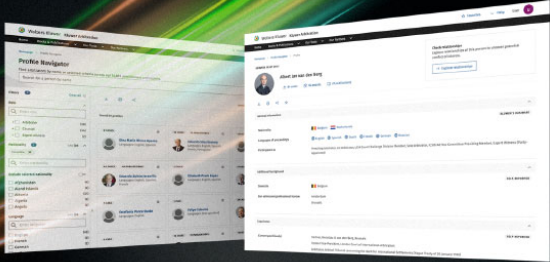
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## References

- ?<sup>1</sup> Catherine A. Rogers, Reconceptualizing the Party Appointed Arbitrator and the Meaning of Impartiality, *Harvard International Law Journal*, Volume 64 No. 1, p. 152.

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