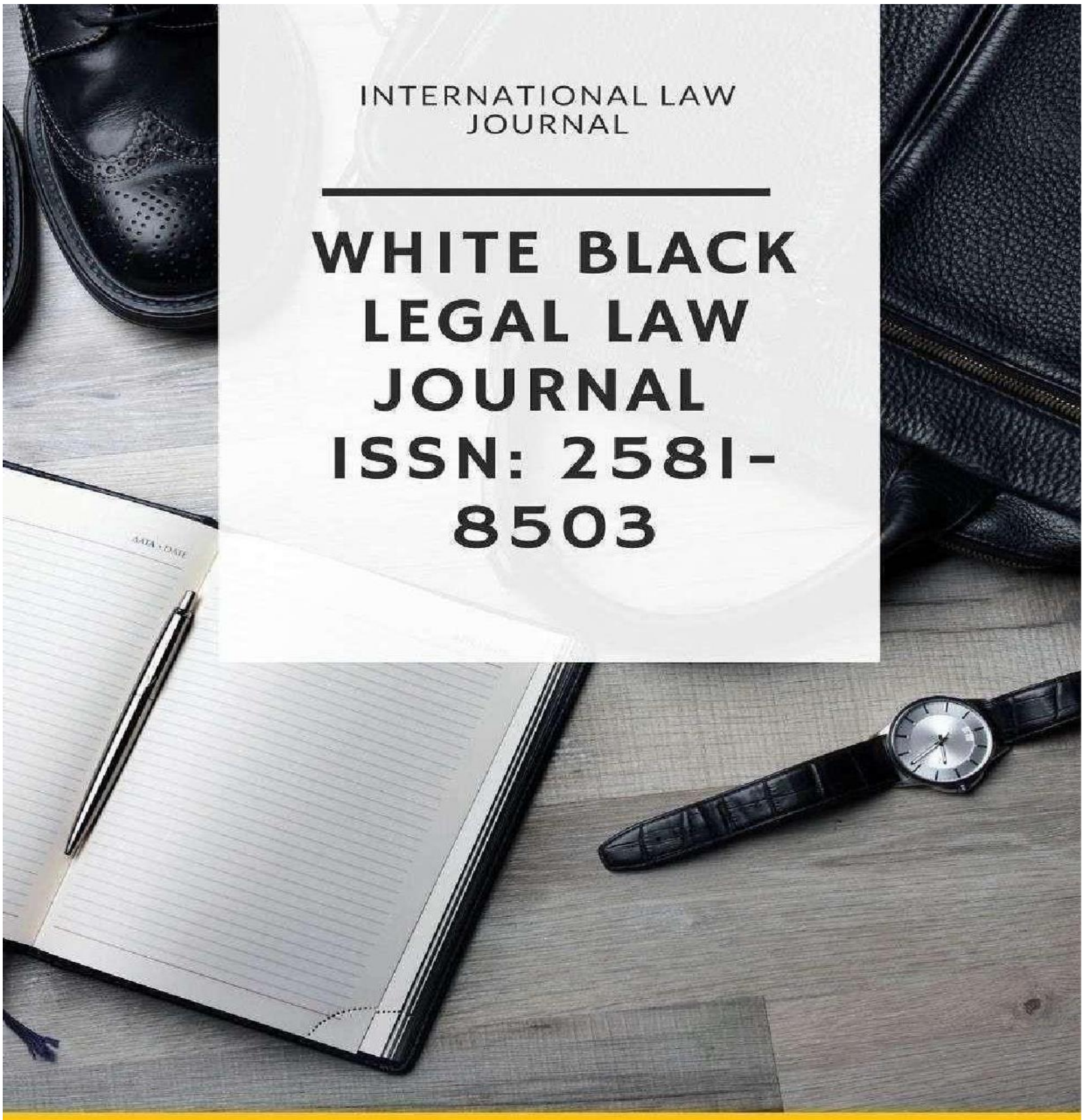

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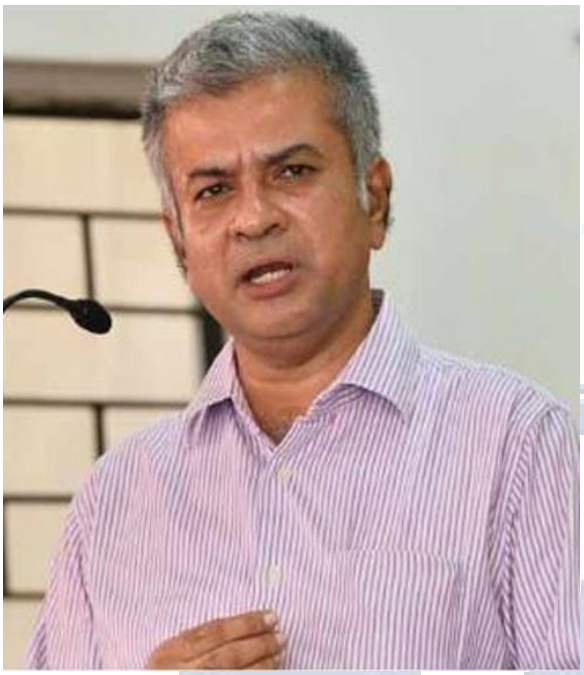

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CAN INDIA BECOME THE HUB FOR INTERNATIONAL ARBITRATION?

- SHASHWAT BHARDWAJ[1]

ABSTRACT

Humans have always been at dispute with each other due to their conflicting viewpoints, but with the advent of globalization international parties can been seen disputing over issues which can be as little as a simple trade deal or as complex as border disputes. But we all know that the most prominent method of dispute resolution i.e., Litigation is outdated and tiresome and ADR Mechanisms such as arbitration is the future, especially international arbitration, where disputing parties from across borders can resolve their disputes easily.

This paper highlights all about international arbitration and answers a big question, "**CAN INDIA BECOME THE HUB FOR INTERNATIONAL ARBITRATION?**

INTRODUCTION TO THE SUBJECT OF INTERNATIONAL LAW

International law is a system of laws and principles that govern the interactions and relationships between the State Actors and other international entities. The concept of International Laws is a legal framework that tries to control state behavior, promote peaceful cooperation, and resolve international conflicts.

Jeremy Bentham, an English Philosopher, Jurist, and Social Reformer is regarded as the father of International Laws, as it was him who coined the term "International Law" also referred as the Laws of Nation, in the year 1780. In his work Jeremy Bentham defined International Laws as "a collection of rules governing relations between States."

Various Jurists and Philosophers have provided their own definition of International Law, such

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as,

1. **Professor Oppenheim:** - **"**Professor Oppenheim has defined international law as- international law is the name for the body of customary and conventional rules which are considered legally binding by civilized States in their intercourse with each other."
2. **Kelsen: - "**International law or the Law of Nations is the name of a body of rules which, according to the usual definition, regulate the conduct of the States in their intercourse with one another."
3. **Gray: -** "International law or the Law of Nations is the name of a body of rules which according to their usual definitions regulate the conduct of states in their intercourse with each other."

After witnessing two World Wars the world realized the importance of having a legal framework that could govern not just one State but every State / Nation throughout the Globe and provide them with a platform to come forward and establish relations, trade, unions, and alliance with each other to ensure world peace. Thus, keeping in reference all such requirements the United Nations was founded on October 24, 1945 and from there a formal setting was established and International Laws were given the recognition they deserved.
There are several objectives that International Laws strive to achieve, some of which are,

1. Promoting friendly relations amongst the Member States,
2. Providing and ensuring basic human rights throughout the globe,
3. To resolve International Disputes without resolving to violence,
4. To maintain peace and order and ensure such a situation does not rise which could lead the world towards World War III, are some of such aims.
5.

ARBITRATION

The Indian Judicial System is of the world's oldest and the most overburdened Judicial System with more than 5 Crore litigations pending before the Indian Courts. To reduce the burden of the courts, both the Government of India as well as the Judiciary advises adopting and bringing the Alternate Dispute Mechanisms to the mainstream.

The Alternate Dispute Resolution (ADR) mechanisms are an alternative to the regular court system. The ADR is a generic term which refers to any means of settling a dispute outside the formal settings of the court or tribunals established by the State. Arbitration, Mediation, Lok Adalat, Conciliation etc., are all examples of the ADR Mechanism.

- ❖ Advantages of opting for ADR Mechanism: -
    1. It is extremely cost effective.
    2. The process of ADR Proceedings is expeditious.
    3. The process is comparatively less formal to normal court proceedings.
    4. The proceedings of the ADR Mechanisms ensure client's privacy as it is confidential, because the proceedings are carried outside from the eyes of the public.
    5. Reduces the burden from Courts. These are a handful of the advantages of the ADR Mechanism.

Arbitration is the traditional form of ADR Mechanism which is governed by the Arbitration and Conciliation Act, 1996, which till now has been amended thrice in the years 2015, 2019 and 2021.

In the process of Arbitration, the parties at dispute appoint a neutral third party who is generally a lawyer known as the Arbitrator. The Arbitrator is appointed to assist the parties at dispute to overcome the dispute.

- ❖ In its judgement in the case titled as **COLLINS vs COLLINS**, the court held that "if there is a reference of the problems by the parties to a private person and not to the Court, it would be Arbitration." Similarly, in the case of **Amarchand Lalit Kumar vs Shri Ambica Mills Ltd. (1996)**[2] the court held "Arbitration is a particular method of settlement of dispute by the parties who want to avoid court delays to a person who is not a Judge."

Arbitrators are always in odd number, 1 or 3 or 5 and so on, in order to ensure that there is a clear majority to ensure a mutually satisfactory agreement could be drawn upon. This point has been covered under the provisions of Section 10 of the Arbitration and Conciliation Act, 1996[3].

INTERNATIONAL ARBITRATION

International arbitration is a method of resolving disputes that is similar to domestic court

[2] *Amarchand Lalit Kumar vs Shri Ambica Mills Ltd*., 1966 AIR 1036, 1963 SCR (2) 953.

[3] Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s.10.

litigation, except that it is carried out by private adjudicators known as "arbitrators" and extends outside a country's borders. It is a consensual, neutral, binding, and enforceable method of resolving disputes that is more efficient and quicker than traditional court proceedings. It promotes the gathering and resolution of parties from various legal, linguistic, and cultural backgrounds.

In this form of Arbitration, the parties at dispute are from different States (countries) and the general practice is that whenever two international parties get into a contract, they enshrine in the contract an "**Arbitration Clause**" which states that if this contract is violated on any grounds the parties at dispute would refer the matter to Arbitration, known as International Arbitration.

Although, the process of Arbitration is voluntary, still if the parties have inserted an Arbitration Agreement in their contract previously, they have to abide by it. Same is mentioned under Article II (1) of New York Convention[4], which defines Arbitration Agreement as *"an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not."*

In the domain of International Arbitration, there are two Conventions that are of utmost importance, namely the,

1. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), a.k.a The New York Convention, 1958.
2. ***Convention On The Execution Of Foreign Arbitral Awards, 1927 a.k.a The Geneva Convention, 1927.***

ROLE OF INTERNATIONAL LAW IN INTERNATIONAL ARBITRATION

There are four major primary sources of International Law, namely,

1. Statute of the International Court of Justice, especially Article 38 of the ICJ which is regarded as the backbone of International Law.

[4] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), art. II

2. Treaties and Conventions.
3. Customs
4. General Principles of International Law

Treaties and Conventions in particular are of great importance in respect to International Arbitration because treaties are basically a written international agreement which binds its signatories to work in accordance to the terms decided and mentioned in the treaties.
For example, the signatories to the STOCKHOLM Conference, 1972, abide by the decisions made in that conference.

Similarly, in matters of International Arbitration, treaties such as the Geneva Convention, 1927 and New York Convention, 1958 play an important role. Because for enforcement of a Foreign Award to be enforceable in a State that particular State has to be a signatory to either of the Conventions depending upon the fact which convention is being followed. Similarly, to decide the **place of sitting** and **venue** of Arbitration, the two Parties (of different States) have to be in mutual agreement which would only be possible due to International Relations and pathways for diplomatic talks established by the medium of International Laws.

❖ INTERNATIONAL COMMERCIAL ARBITRATION: -

International commercial arbitration helps to resolve disputes among the international parties arising out of the internal commercial agreements. Section 2(1)(f) of the Arbitration and Conciliation Act, 1996 defines "international commercial arbitration as disputes arising out of the legal relationship where one of the parties is a citizen, resident, or habitually residing out of India. International commercial arbitration is used by the traders of different countries as a way of settling their business conflicts."[5]

In the case of **TDM Infrastructure Pvt. Ltd. Vs Ue Development India Pvt. Ltd.** [6] the Apex Court stated "that if the company has dual nationality, that means it is registered in foreign and in India then that company for this Act would be regarded as Indian corporation and not the foreign corporation. International arbitration just like domestic arbitration takes place

[5] Arbitration and Conciliation Act, 1996 (Act 26 of 1996) s.2(1)(f)

[6] *TDM Infrastructure Pvt. Ltd. Vs Ue Development India Pvt. Ltd.*, Arbitration Application No. 2 Of 2008

involving a third party known as an arbitrator. International commercial arbitration allows the parties to resolve their disputes amicably by maintaining their relationship and with less money by respecting each other's cultural and linguistic background. International arbitration is also known as a 'hybrid form of international dispute resolution' because international arbitration allows mixing two legal provisions the Code Civil Law Procedure, 1908, and the Common Law Procedure. Parties coming together to work often in their legal contract mentions the clause of the arbitration agreement to resolve the disputes without going to court."

INDIA AS THE HUB OF INTERNATIONAL ARBITRATION

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards a.k.a. the New York Convention till this day is regarded as the absolute authority for International Arbitration and even though India adopted this treaty in the year 1960 itself which is still 28 years earlier than Singapore, which adopted the treaty in the year 1986, is still lacking far behind Singapore in the race to become a hub of International Arbitration. It is evidentiary that even though Singapore adopted the treaty years later in comparison to India, it rapidly rose up the stairs and the **Singapore International Arbitration Centre** gained stature and became a hub of International Arbitration, where parties from around the world come and seek international commercial arbitration and get their disputes resolved. But why has India lacked behind? Some of the reasons that have halted the growth of India are,

1. **Corruption: -** Corruption already makes it difficult to seek justice for the poor litigants and in country where every other person has some "CONNECTIONS," violated the very core of Arbitration, which is "neutrality and unbiases of the Arbitrator."
2. **Judicial Intervention: -** Even though Arbitral Awards are non-appealable, still people use Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award before the court of law.
3. **Lack of full time Arbitrators: -** Justice Hemant Gupta, Former Judge of Supreme Court of India and currently the Chairperson of the New Delhi International Arbitration Centre (NDIAC), in an interview of his with Ms. Rajshri Rai (Managing Director & Editor in Chief of APN News) highlighted that the application for appointment of Arbitrators is pending for years now.
4. Irrespective of the delays and problems that have been endured till now, there are certain new developments that are flowing in. Some time back, Prime Minister

Narendra Modi emphasized on the fact that India should become the capital of International Arbitration.

For that dream to become the reality, it is important that majority of disputes that can be resolved through International Commercial Arbitration are resolved in the International Arbitration Centre situated in India. And there are plans to make this dream a reality.

The Government of India in the year 2019 has made several amendments in the Arbitration and Conciliation Act and has also brought forward the **New Delhi International Arbitration Centre Bill, 2019**. The aims and objectives of the NDIAC are,

(a) "Bring targeted reforms to develop itself as a flagship institution for conducting international and domestic arbitration

(b) Provide facilities and administrative assistance for conciliation, mediation, and arbitral proceedings;

(c) Maintain panels of accredited arbitrators, conciliators, and mediators both at national and international level or specialists such as surveyors and investigators;

(d) Facilitate conducting of international and domestic arbitrations and conciliation in the most professional manner;

(e) Provide cost effective and timely services for the conduct of arbitrations and conciliations at Domestic and International level;

(f) Promote studies in the field of alternative dispute resolution and related matters, and to promote reforms in the system of settlement of disputes; and

(g) Co-operate with other societies, institutions, and organisations, national or international for promoting alternative dispute resolution."[7]

CONCLUSION

So, can India become the Hub of International Arbitration? Well, considering the fact that India follows the common law system, has a strong legal system following the doctrine of separation of powers and is also a signatory of the New York Convention, are all the plus points which

[7] The Quest for making India as the Hub of International Arbitration, *available at*: https://www.pmindia.gov.in/en/news_updates/the-quest-for-making-india-as-the-hub-of-international-arbitration/

indicate to the fact that India can become a hub of International Arbitration. Also, another key factor here is that the government is working in this direction with certain deliberation, as it has already established the NDIAC do indicate that India has embarked on this journey.

But personally, I feel that this would take India a good amount of time to come close, if not get ahead than countries like Singapore, Dubai, and London in handling International Commercial Disputes because first of all, these countries have already developed the platform on which they stand as leaders in International Arbitration and secondly, they do not have several problems to tackle, some of which have been discussed about in the paper itself.

So, I think that it may take India close of 2 decades to truly become an important facet of the International Commercial Arbitration, but would take a little more time to truly become the Capital of International Arbitration.

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