



INDIA ADR WEEKDAY 2: MUMBAI

SESSION 1

India's Unprecedented Ascent: Managing Legal and Economic Risks in a Changing World Order

08:30 AM To 10:00 AM IST

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Vikram Nair, Partner, Rajah & Tann LLP

Shreya Jain, Partner, Shardul Amarchand Mangaldas



1 **HOST:** A very good morning, everyone, and welcome to the day two of India idea week in
2 Mumbai. We have the first session by FTI Consulting on India's unprecedented ascent,
3 managing legal and economic risks in a changing world order. On the panel we have Mr.
4 Karthik Balisagar, Senior Managing Director at FTI Consulting. Ms. Shanelle Irani, senior
5 associate at WilmerHale. Ms. Priyanka Shetty, partner at AZB & Partners. Mr. Sudhanshu
6 Swaroop KC, Barrister at Twenty Essex. Mr. Vikram Nair, Partner at Rajah & Tann LLP and
7 Shreya Jain, Partner, Shardul Amarchand Mangaldas.

8
9 **KARTHIK BALISAGAR:** Thank you, Charvi. We have an unusual topic for an arbitration
10 conference as part of FTI Consulting I'm a damages expert and can speak on damages but also
11 I deal with economics and accounting and I thought we'll talk about India's ascent and what it
12 means for the country. What it means to disputes what it means for trade. And where does
13 India sit in the geopolitical macroeconomic landscape today? India is not only doing well it's
14 doing well in the backdrop of a changing world order, and that's what makes it even more
15 special. I have a stellar panel today. I'll just probably spend less than a minute or so, and I'll
16 request them to briefly introduce themselves. Shanelle.

17
18 **SHANELLE IRANI:** Good morning my name is Shanelle Irani and I'm a senior associate
19 with WilmerHale in London. My practice focuses on commercial, international commercial
20 arbitration, but also some investment arbitration. I'm originally from here, from Mumbai. And
21 I worked in Dubai and London for the past almost decade.

22
23 **SUDHANSHU SWAROOP:** Hello. Good morning, everyone. I am barrister and King's
24 Counsel, practicing from Twenty Essex Chambers in London. I practice international
25 arbitration, commercial litigation, and public international law, including investment
26 arbitration. I'm also Co-Chair of the COMBAR India Committee. And I've done and do various
27 kinds of work, both public, international and general commercial related to India.

28
29 **PRIYANKA SHETTY:** Hi. Very good morning to you all. I am Priyanka Shetty, a partner at
30 the dispute resolution team at AZB & Partners. While I am seated in Mumbai I'm fortunate
31 that work has taken me all around primarily international arbitrations, we also dabble into
32 investment treaty arbitration where we can.

33
34 **SHREYA JAIN:** Good morning, everyone. My name is Shreya Jain. I'm a partner at SAM in
35 Mumbai. Like most of this panel, my practice also focuses on domestic international
36 arbitrations and related litigations. Before working in Bombay, I was working in New York,
37 also in the same field. Besides, sort of the topics we are discussing, I'm very passionate about



1 diversity in arbitration and try to regularly write and speak on it. I'm a Co-Chair of the...I mean,
2 I am India Co-Chair of the Young ITA. I'm involved with the LCIA's under 40 group and also
3 an editor of the Kluwer Arbitration Block. So, if I can encourage those of you who are here to
4 contribute more towards what we try to do at the blog, really welcome it.

5

6 **VIKRAM NAIR:** Hi. I'm Vikram Nair. I'm the deputy head of dispute resolution at Rajah &
7 Tann. We have probably the largest practice in Singapore and Southeast Asia, both for disputes
8 and general legal work. We have about 1000 lawyers now, which is quite big in a small
9 neighbourhood. And our disputes team we do equal parts litigation and arbitration, and that's
10 also my practice. So, I'm a trial lawyer, a pellet lawyer, but I also do a lot of international
11 arbitration. And for several years, about half of my work anyway, would come from India
12 related disputes but usually arbitrations in Singapore. We don't do any arbitration seated in
13 India, for that we've got plenty of friends who do that. And, yeah look forward to this panel.

14

15 **KARTHIK BALISAGAR:** Thank you. Vikram and he's being very modest. He's also a sitting
16 member of the Member of the Parliament of Singapore and it is important to know your views
17 on topic today. And I'll come back to you in ten minutes, I hope. So, the format is I'm going to
18 present for ten minutes on the geopolitical/macroeconomic picture and then go into the
19 panellists and ask them questions as to what it means for trade and disputes. So, with that, I'll
20 start off the slides.

21

22 So, I presented this chart about two years ago, about two years ago to a strategy group of
23 lawyers at a London law firm. And I don't know whether it is causation or correlation, but if
24 you look at inflation increases in history, in recent history you always had some sort of crisis
25 ideally most likely a situation of war starting around the peak of inflations. Now, again, I'm
26 not saying inflation is a cost for war. But Ukraine war was already on by that time. But what
27 we are seeing in Middle east wasn't. And if you see the recent peak we had around 2021, and
28 then what's happening today in the world it sort of broadly paints a picture. The question is,
29 why are we here, from a macroeconomic standpoint? And it's really important to understand
30 where US sits in the whole canvas. So if you look at the richest nations, right? They're called
31 G-7, a group of seven. And if you look at the deficit, the average deficit between 1970 and 2008,
32 the average deficit was about 3.1%. And that means basically, between your assets and
33 liabilities of the national balance sheet, there was a difference of 3.1%. That has shot up to
34 8.7%. This world order as we know today, US centric world order, for the last 200 odd years is
35 about to change or at least be challenged. One of the factors, one of the forces, among the three
36 forces, and I'll talk about the other two forces shortly, is a weakening balance sheet of the west,
37 and that's factor number one.



1

2 Why is it weakening? An obvious answer. Look at that graph. Right? This is the debt, public
3 debt, private debt of G-7, nation. The blue line represents the GDP. If you look at the
4 government debt after 2008 it has significantly shot up. And if you look at the GDP, it all was
5 flatlined. If you look at private debt, again there's a significant increase. Now debt in itself is
6 not bad. But debt, with a backdrop of low productivity and generating low national income is
7 dangerous. And this is not the first time. If you go back in history, there have been cycles. It
8 happened with the Dutch in 1600-1700. It happened with the British later. And today we are
9 seeing the same issue coming up with the US. So it's increasing a weakening balance sheet,
10 huge increases in debt. And what does that do? And as I said, debt is not bad in and of itself.
11 But if it's not deployed properly, it's an issue. If you look at the GDP growth rate, a global GDP
12 growth rate, largely driven by the G-7 and China, it was about 8% until 2006, 2008, but again
13 after 2008 until 2020-2021 it's almost flatlined at 3%. There's a significant drop in economic
14 activity and a significant increase in public debt. And the biggest issue that is coming out is
15 wealth distribution problem. Debt when you don't have good productivity and good generation
16 of national income it goes into only benefits only two sectors.

17

18 The first sector is the financial sector and the equity markets and the related markets and the
19 second one is the real estate sector. And I've just plotted this graph, again, the second graph
20 you should see that's the MSCI World Index vs Dow Jones. You see the increase it's, for 6%
21 until 2008, and it shot up since 2008 to about 9%. Depends which index you take. Actually, if
22 you take S&P, it's much higher today. It's all time high today. So it went and created a lot of
23 acid bubbles because it was not being used properly. The significant increase in debt. And what
24 happens if real estate sector and financial sector increases in the backdrop of huge debt and
25 flatline GDP? You have an issue which is the third force I'm talking about. You have an issue
26 of internal conflict. You're creating a wealth distribution problem amongst your people. So,
27 there's more haves and have nots, and that leads to populism of the left and populism of the
28 right. And that's exactly what we're seeing in the world today.

29

30 We all know what's happening with the US elections and the energy levels are really high. But
31 it's also extreme in terms of the populism. And that's dangerous. And if you look at this, this
32 is slightly dated chart, and this talks about political polarization in the developed world. You
33 see the red line, which is United States, it's at an all-time high. We hope it settles down soon,
34 but it looks like it won't. And if you look at other countries, we have the same problem in
35 Western Europe. And you've read the headlines these days. So one needs to understand this
36 and the backdrop of what's happening to the economy and what's happening to the public debt
37 system in these countries. It's an aging demography. So there are three forces, right? You have



1 a weakening balance sheet. You have an internal conflict and then you have the rise of debt,
2 and this is creating a massive problem with these economies. And then you have the last force
3 of rising China as a potential threat to the existing world order.

4

5 There's no right or wrong. I'm not making an assertion here. All I'm saying is the world order
6 as we knew, that lasted for 200 to 250 years is being challenged. I mean, there's no good or
7 bad, right or wrong here. We have a global south. We have countries like India rising up, and
8 this is going to challenge the existing world order as we have seen it.

9

10 Now, against this backdrop, where does capital flow? One needs to understand, where does
11 capital flow. Capital generally flows, there are five factors that investors consider. A strong
12 fiscal position. That means you have an increase in surplus or a reducing fiscal deficit. That's
13 not happening in the West. I've just shown you the chart. A young working population. I mean,
14 I can ask, how young is the Indian average India age. Median is about 28 years as opposed to
15 the US being 38, China being 44, and India is predicted to be around 40, even at 2050. So, we
16 have a very young and thriving population. The rule of law, a stable government and neutral
17 geopolitical position on controversial issues. If you take those five factors together there are
18 only three regions that pop up on your world map today. It's the GCC region. It's Singapore
19 and it's India. And amongst those, if you look at India it is the only fastest large growing
20 economy.

21

22 So, when people say India is doing well, India is doing extremely well relative to other
23 countries because of these factors, and that needs to be understood. And I'm trying to put that
24 in light. And this is amazing. This chart is amazing. Yesterday I had Aneesh was saying, look
25 how far we have come and this is the chart that I love. It took 60 years to achieve the first
26 trillion, right? In terms of GDP, it took only seven years to achieve a second trillion. And the
27 third trillion came in another seven years, but that is despite COVID and we are expected to
28 hit 4 trillion by the turn of 2025, and about 7 trillion by turn of this decade. That is
29 unprecedented growth. That's never happened in the past other than China, and at least for
30 the, you know, for, for other, other, other economies like Japan and, and, and Germany, which
31 are, number four, number five are almost now shrinking. So that is something which is
32 unprecedented in terms of growth.

33

34 I've already spoken about this. I'll skip this. This is about, you know, the demographics. We
35 are so blessed to have 28 years as an average age, and it's only going to be 43 in 2070 as
36 opposed to the other countries. If you look at it, larger economies, they're already at 38, 40,
37 and China is going to have an aging problem at 55 in 2070. And this has an impact on the



1 economic activity. One of the key factors or risks with our demographic is also that you need
2 to be creating constantly or generating jobs. Otherwise, that becomes a challenge, and that is
3 going to be a challenge for India. But let's hope that that is answered adequately. So I won't
4 spend too many... I mean, I've got a lot of things going on.

5

6 People talk about infrastructure investments in the Middle East, and that's great. But look, in
7 India. We had planned infrastructure, committed infrastructure into construction projects of
8 \$1.3 trillion, and that's just unprecedented. And this was supposed to be started to execute
9 before 2025. That's Phase 1. So, the amount of economic activity that comes from these factors
10 is just unprecedented again. And this means trade agreements, this means inbound
11 investments become important and therefore there's a lot more work for people in this room.

12

13 So, with this backdrop I will now go to my panellists. I'll request Vikram to open. And the
14 question I have is, how do you see this change in world order and the geopolitical situation
15 macroeconomic play and how do you see from where you sit in Singapore in terms of trade
16 and negotiations?

17

18 **VIKRAM NAIR:** Thank you, Karthik. And that was a very interesting backdrop, I think quick
19 run through of economic and political history. Both of which are closely intertwined.
20 Singapore's history is relatively young. I think it's an independent nation with just about 60
21 years old. And some of the interesting figures I will add to, I think, Karthik's presentation.
22 Because there's been a lot of talk about I think world order and trade, right? So, in terms of
23 trade as a percentage of GDP, just to put things in perspective, and I think for the US, that
24 number is around 27.36%, which means what they trade is about 27% of their GDP. For the
25 UK, it's about 69.5%. For India, it's about 49%, Germany, around 99%. China, around 38%.
26 Any guess on where Singapore would be? We are at 336%. So, trade is more than three times
27 our GDP. I mean, we are a nation that lives and believes in free trade. And the arguments
28 against free trade are not new.

29

30 About 100 years ago in the British Parliament, there was a Politician and Economist, David
31 Ricardo. He was speaking up against agricultural protectionism at the time. And his idea was
32 a very simple one, but one which almost all economists of both sides, both left and right agree
33 with. And that is the theory of comparative advantage. So that time his argument was England
34 could do manufacturing and agriculture. It was quite good at both. But in relation to
35 manufacturing, it had a significant comparative advantage over other countries. So, it was
36 actually best for the world if England focused on what it was relatively best, which was
37 manufacturing and let the rest of the world develop in agriculture because England had



1 already invested a lot in industry. Its advantage in agriculture was much less. So, this was an
2 argument against protecting the agricultural sector so that resources could be allocated to
3 manufacturing. And at that time, it wasn't a popular view. Right?

4

5 The more popular view was mechanism. Protecting your industries. You don't want to let an
6 industry die. And this view has very strong political support as well. Because, of course, if
7 you're a farmer, you don't want to lose your lunch to someone far away. So, this tension has
8 been there for a long time, right? It's a debate that keeps reigniting itself. But most economists
9 agree that based on a theory of comparative advantage, both sides would be better off if there
10 was free trade. Right? So, one side focuses on agriculture, one side focuses on manufacturing,
11 they trade, and overall, you will have more manufactured goods and more agricultural
12 products. So, this theory only became popular probably post-World War II, like with the, what
13 we call the Bretton Woods institutions and also, of course, the general agreement of trade...
14 tariffs and trade, which started the process of reducing tariffs and facilitating free trade. The
15 World Trade Organization was a development from the general agreement on tariffs and trade.

16

17 So, I would say that the prosperity the world has enjoyed over the last hundred years, post-
18 World War II of maybe 80 years has been because of free trade. Right? Because countries had
19 more of an opportunity to focus on what they are good at and generally more products were
20 created in the world. Now, the chart that I think Karthik showed on India's economy is also
21 interesting because India's relationship with free trade was not always a very happy one.
22 Right? And I think Mahatma Gandhi, even his view was, we should do everything at home,
23 right? Spinning wheels and so on. Why do we buy from England? So that's why it was an
24 interesting chart but Karthik said it took 60 years for India to make the first trillion.
25 Interestingly, India started opening up after that. So, the next trillion came in seven years, and
26 the next trillion after that, another seven years. So actually, India has also benefited a lot from
27 free trade and from opening up.

28

29 Now in relation to Singapore, India and Singapore's I think more recent economic history goes
30 back to 2005, where we had the comprehensive economic cooperation agreement. And this
31 opened the door for both free trade, free movement of labour, as well to a lesser extent. And
32 in the 20 years since then, little Singapore has been India's largest source of foreign direct
33 investment. Think something like 136,000,000,000. Small for a big economy, but that shows,
34 I guess, our commitment as well. Right? So once the legal agreements are in place, the
35 framework is open investment flows in terms of trade. We are a very small country, but in
36 terms of ASEAN Trade, we're about 27.3% of India's trade with ASEAN. So, I think Singapore
37 and India have had very close economic ties in the last 20 years, partly on the back of CICA.



1 Unfortunately, in many places this is not a fashionable view, so even in Singapore we have
2 political pressure. Our party, the ruling party has come under pressure because of CICCA
3 saying that we are giving Singaporean jobs to Indians, because the Indian community at
4 Singapore does very well, and these are pressures we have to deal with. Right? The same
5 arguments are probably happening in China, in the US, in the UK, because free trade allows
6 some people to win more. For example, in the English case, it would have been the
7 manufacturing group but the people who are doing agriculture would have lost out. Right?
8 And that's the same thing when countries specialize in focus in areas. So, I think the role of
9 government then is actually to facilitate the reallocation of capital and labour. So, in Singapore
10 we try to do that. We've had so many industries disrupted every 20 years. We were a huge
11 manufacturing hub 60 years ago. Much of that manufacturing is now closed or changed but
12 we've had very strong relationships with the unions, and right now our new manufacturing is
13 in the healthcare sector. So, I think one of the biggest threats we face to the world order is
14 exactly what Karthik has said that free trade will become less fashionable, countries will
15 become more insular. That is going to significantly reduce wealth generation in the world. For
16 those who don't share this view, I think it's important for us to speak up. Speak in favour of
17 free trade, but also recognize its limitations and recognize that government has an important
18 role to play in the reallocation of capital and to support those that may lose out from free trade
19 when countries specialize. I can go on this topic forever, but I took you about the people yeah.

20

21 **KARTHIK BALISAGAR:** Thank you. So, I'll move to Sudhanshu. Interesting comment,
22 'facilitate capital flow'. What's been the UK experience of facilitating capital flow more recently
23 and what does it mean for India-UK trade partnership?

24

25 **SUDHANSHU SWAROOP:** What I actually was proposing to talk on specifically was the
26 relation...was the Indian experience of BITs. And in that context, particularly the prospects of
27 massively increased outward flows of investment. The background is this. From the 1990s
28 onwards India entered a series of bilateral investment treaties with over 70 states. Under these
29 treaties, the idea was that India and the other state would enter legally binding commitments
30 to protect the investors of the other state and their worlds to be an arbitration mechanism that
31 would allow these investors to actually sue the states directly. Many of you will be familiar with
32 that. The theory was that by entering these investment agreements, India would help to attract
33 foreign investment. However, from the 1990s onwards, India started to find itself as a
34 Respondent state in many claims, some of them very high profile. I acted in for the
35 Government of India in one of the first of these claims. And these claims included, for example,
36 the White Industries case. Though 4-02-2017, India introduced Notice of Termination, for
37 almost 60 of those investment treaties and is now trying to renegotiate its treaties based on a



1 model BIT which waters down the investment protection by, for example, narrowing the
2 definition of investment.

3

4 Moving on then, to the issue of the future. My point is simply this. Looking at the existing
5 outflow of investment by Indian investors going into foreign countries, including the UK. And
6 the prospect that that will increase even more in the future when renegotiating these BITs, it
7 is relevant, in my view, to consider these BITs, not just from the perspective of India as a
8 potential Respondent state to arbitrations but also from the perspective of Indian investors as
9 potential Claimants against foreign states seeking to invoke the protection of those claims.
10 And again, I say that having also acted in one of the first claims brought by an Indian investor
11 against a foreign state. I was looking at the UNCTAD website and this shows at the moment
12 just twelve reported cases involving Indian investors against foreign states, including the UK.
13 Pending claims include claims by Indian investors against Eastern European countries and
14 African countries relating to mass investments concerning mining, railways, ports. These
15 kinds of claims can run not just into the tens of millions or the hundreds of millions, but into
16 billions of pounds.

17

18 So just in conclusion, and I, of course, appreciate that renegotiating these treaties is very
19 complex and a lot of interests have to be taken into account. But my narrow point is simply it
20 would be consistent with this narrative of India as a rising power, from which is all about
21 outward bound investment as well as inward bound investment to take account of the interests
22 of those Indian investors in these renegotiations.

23

24 **KARTHIK BALISAGAR:** Thank you, Sudhanshu. We all agree that India is shining, the
25 economy is doing well. It's forced to do better. Free trade is important. We just heard that and
26 therefore protection of these investments through a BIT mechanism is also important. And it
27 has a two way mechanism. It's not one way. One of the key sectors that is important to all of
28 them and all of the participants in this room and the arbitration community is legal services,
29 which has been much debated recently. So just pausing on this issue of legal services market.
30 I did some research and these are estimates so I could be wrong. The legal services market in
31 the UK is about 40 billion, which roughly translates, roughly translates into 1.6% of GDP. The
32 legal services market in the US is about the same order. It's 1.6% of GDP. Again, these are
33 developed economies. So, I looked at developing economies such as Brazil and Mexico and the
34 legal services market there ranges that various estimates, but it ranges between 1% to 2% for
35 Mexico and Brazil. When it comes to India that statistic appears to be abysmal, at least going
36 by what's available, publicly available. And that statistic is about .08% as a percentage of GDP.
37 For a thriving economy, for an economy as large as India, I'd like to understand from you,



1 Priyanka, how do you see these statistics? Do you think there's something wrong in how it is
2 measured or there's something more to it?

3

4 **PRIYANKA SHETTY:** So, I think perhaps abysmal was the right word that you use, Karthik,
5 because frankly, as an Indian lawyer .08% is, to put it mildly, surprising, if not shocking.
6 Because we folks today are 1.25 million lawyers in India, which is roughly one lawyer for every
7 880 Indians on the ground. And we are not far away from the total number of lawyers in the
8 US of A, which is around 1.35 million lawyers today in the US. And these are recorded
9 numbers. Like Karthik pointed out, we are the fifth largest economy today, the largest
10 population and most importantly, we are also the third largest economy today in terms of
11 purchase power parity. And I mean, why not, right? Indians love to shop, whether it's clothes,
12 gold, shares and companies. If you look at the FDI inflows, India has witnessed a 20 times
13 increase in its FDI inflow in the last 24 years. So that's roughly around 990 billion US dollars
14 from 2000 to 2024. And if you look at the deal count in India, the last quarter of 2024 was
15 roughly 501 deals valued at \$21.4 billion. The year before, I think India hit a record in terms
16 of deal making with around 600 deals valued at \$112,000,000,000. Three of the largest Asia
17 Pacific M&A that closed last year had an India element.

18

19 And not just India on perhaps the buy side or the sell side. this was an out and out domestic
20 Indian transaction with India both on the buy and the sell side. And largely driven by us Indian
21 lawyers. I think we have the statistics up there. So, in terms of where the India, Indian legal
22 sector is today and where will it be tomorrow, I think the thread follows the needle, and that
23 squarely applies to the Indian legal sector as well. But what I am truly most excited about is
24 perhaps as an Indian lawyer, to witness the development and growth of the arbitration sector
25 in India. Because even today a lot of arbitration is outbound in terms of seat outside India.
26 SIAC, ICC, LCIA all recognize India as major players and users of their Institutional Rules.
27 Forget the major arbitration institutions, even the Finland Arbitration Institution in 2022, out
28 of the 80 cases had two cases with India parties. With India and Indian parties being a
29 significant player in international arbitrations today, how many of Indian arbitrators are really
30 appointed in international arbitrations? Thanks to India Promise and my lovely team, we've
31 actually crunched up a few numbers. I'll put it very shortly. We roughly have around 5458
32 cases from 2021 till 2023 in the top three arbitration institutions today, of which, gentlemen
33 and ladies, only 92 Indian arbitrators were appointed, which is roughly 1.68%.

34

35 **KARTHIK BALISAGAR:** That's really helpful. Thank you. Shreya given the activity level in
36 India, both economic, and thank you, Priyanka, for all these statistics. It's illuminating. What
37 should India do? Are there any reforms that India needs to embrace? And the famous question



1 at arbitration conferences, can India be a hub for arbitration? Can you enlighten the audience,
2 please?

3

4 **SHREYA JAIN:** I think we could go on for the entire India ADR Week on this topic. But I
5 want to focus just on really, one small point, and I don't know if you have the slide. So this is
6 a chart from the 2018 Queen Mary Survey on the key considerations of choosing a seat. I am
7 really just focusing on a couple of them. The second one, you see efficiency of local court
8 proceedings. The fourth one, track record and enforcing arbitration agreements and awards.
9 Then the fifth one, National Arbitration Law. And then the second last one, neutrality and
10 impartiality of the local legal system. All of them have just one theme, really, which is minimal
11 court intervention and how the legal system treats arbitrations. And in the Indian context and
12 I think Priyanka touched upon this, we very often even as disputes teams advise our
13 transactional colleagues to pick a seat outside India. And obviously what that means is that
14 you have an award, and then you can go in and force it, hopefully outside India or you really
15 don't have to face challenges in India. What you don't want to get stuck with is that you go
16 through the process, get an award in 18 months, but then you get stuck in Indian Courts for
17 really, like, decades.

18

19 But the problem is that as long as we keep advising that and as long as we keep off shoring that
20 work, we are really never going to become an arbitration hub ourselves. And therefore, a
21 marquee aspect of any good seat of arbitration is two things. One is minimum court
22 intervention. And second is quick disposal of any applications which come to court. That's
23 really, I think, an area where concerted effort needs to be taken by all stakeholders to improve
24 India as a seat of arbitration. Just this year, and I think the entire audience must be familiar
25 with the Delhi Metro decision which was a curative petition decision by the Indian Supreme
26 Court. An arbitration award seated in India, which went through, really, five rounds of appeals
27 till it got set aside by the Indian Supreme Court. That's a very disappointing precedent and will
28 open gateway and interfering in domestic awards in future. That's going to court intervention,
29 which we really need to overhaul as an approach.

30

31 And the second point is quick disposal of any applications which do come before Indian
32 Courts. I was reading a couple of weeks ago that insofar as the Gift City initiative is concerned,
33 it's being proposed that there will be a separate arbitration institution to deal with those
34 disputes. But more importantly, they propose to have a separate bench of the Gujarat High
35 Court, which would deal with all sort of appeals or applications which are coming from those
36 arbitral awards. Of course, it's difficult to see or we are yet to see how successful that will be in
37 bringing by itself investments to Gift City. But perhaps that's an idea we can incorporate for



1 the Indian legal system as a whole. That we have dedicated arbitration benches which are
2 hearing these cases as opposed to a changing roster where just last week we came to know that
3 one of sort of the Section 34 that our team is handling, which was pending for several months,
4 is now going to be heard by a separate judge because the roster has changed and we are starting
5 afresh. So, these are just sort of practical, everyday problems which are hampering India to
6 get there as a hub of arbitration. And I think those are the factors that we need to tackle
7 because that will end up hitting five out of the seven things we see on the seat.

8

9 **KARTHIK BALISAGAR:** Thank you, Shreya. Notwithstanding all the problems, right? We
10 still have yesterday and today we had a room full of foreign delegates, foreign law firms. So
11 definitely there's interest and the elephant in the room is, will India open up its legal services
12 market for foreign law firms to set up. We have two representatives of two international law
13 firms here, two Indian law firms. The debate can go on forever. So, I'll put the question in the
14 barrister's hands. What do you think, Sudhanshu?

15

16 **SUDHANSHU SWAROOP:** Well, I will just talk from the perspective of disputes. And in
17 that regard what one has to, I think, be granular and consider which aspect of the disputes
18 market are we talking about? If we're talking about domestic Indian court litigation, the day
19 to day stuff, that many of you will be involved with. I think there's a distinction between
20 whether they should open up and whether, even if they do, it's going to make much difference.
21 Because I do wonder how much interest foreign firms will have in terms of getting involved in
22 domestic litigation. I think maybe arbitration, particularly international arbitration, is a
23 different matter and there is an interest there. But ultimately, I think in terms of answering
24 the question of should, it boils down to two things. Service, i.e. if international firms come in,
25 will it improve the quality of the service to Indian litigants? In theory I suppose it ought to,
26 because there would be increased competition. And secondly, cost. Will that service be at a
27 reduced cost? On that question, I really don't know the economics, but make a fee an argument
28 that it might actually go the other way. So, I'm really sitting on the fence here.

29

30 Just one last observation I'd make about what I've seen in the London market. Go to the point
31 of reciprocity. What I am seeing, which I never saw even 10-15 years ago is a lot of very bright
32 Indian qualified lawyers who are coming to London and working either for the very top UK
33 and indeed US London based firms, or indeed in some of the top London Barristers Chambers.
34 London Barristers COMBAR Chambers. So there is an argument, I think, around reciprocity,
35 that if that is happening there should be something reciprocal happening over here.

36



1 **KARTHIK BALISAGAR:** Shanelle, do you want to add your international experience on
2 this?

3

4 **SHANELLE IRANI:** Thank you yeah, I will add just a couple of points. In terms of foreign
5 firms coming in, I think that the BCI Rules were already the first step, in that, towards that.
6 Obviously, the rules are not the clearest and in fact, the way they seem to be worded right now,
7 it might just be easier to not actually come in and fly in and fly out. If India does, in my opinion,
8 really want to become an international arbitration hub, I think that there has to be an easier
9 way for foreign law firms to come in and out. Whether that is to set up an office, but just apply
10 in and out like a 60 day aggregate rule to be present here, it's just too restrictive for example.
11 Agreed with Sudhanshu that nobody really wants to come in and maybe not do litigation,
12 which is, I think what the worry is. And the rules can be clear on that as to what you can do
13 and what you can't do. But as long as the rules are clear, I think that is definitely one step
14 towards India becoming an arbitration hub. The other things we could do in terms of structural
15 changes, which was your original question, is maybe come up with legislation regarding third
16 party funding, would say Singapore has, for example, Hong Kong, et cetera. People are not
17 really sure what the situation is currently in India with regard to that. And the arbitration bar,
18 for example, is a really good step towards bettering India and making it an arbitration hub.

19

20 We hope that the arbitration bar does more in terms of promoting Indian lawyers, but also
21 promoting arbitration generally, outwardly, when people look at India from the outside. You
22 know, court interference, obviously, but judicial stability. Every time we go two step forward,
23 sometimes we always somehow come one step back. But there's always a one judgment or the
24 other and that people are not sure. There's no stability. And if we can just keep that consistency
25 for, like, five years, I think India is definitely on its way because there's no question about it.
26 Your statistics said it all the work. A lot of the work is coming out of here, and all we need to
27 do is make a couple of changes, and I think that we can get there.

28

29 **KARTHIK BALISAGAR:** Okay, thank you. I mean, we're trying to weave a very broad topic
30 here. So, I'm going to quickly move to the next topic. So, we started with the state of economy.
31 macroeconomics, world order. Why global trade is important and backdrop of that where does
32 legal services in India sit? One of the key driving factors for growth is private equity. And
33 private equity is important for transaction work. Private equity is important for disputes work.
34 Given where India is today and if India wants to drive further investments into India, what do
35 you think should be done? And where do you see this going as far as arbitration is concerned?

36



1 **SHANELLE IRANI:** So, I'd say most of the, not most... a significant chunk of the private
2 equity activity is in the middle markets. And to my mind managing... I mean, obviously a lot
3 of disputes come out of private equity investment. To my mind, the biggest area of disputes
4 comes from managing rapid growth and risk. Obviously, investors want returns quickly. And
5 sometimes founders or management take shortcuts that leads to disputes. Likewise, it can be
6 the other way around. It's the founders that want, they have a certain vision for the company.
7 And they find investors coming in and saying, you need to comply with this, that and the other,
8 to be quite frustrating and annoying, and they want to take shortcuts. So, I'd say that's where
9 the disputes come from, generally, from in the private equity area. The other problem is,
10 obviously middle market. The companies... smaller, mid-level companies don't have very
11 robust legal compliance teams and again, leads to shortcuts. I'd say it's really the companies
12 or themselves that can do things to begin with to avoid disputes that includes clear and well
13 defined contractual agreements. So, when you sign your SHA or whatever, your base
14 transaction document is most likely the SHA, make sure that it has very clear role defined
15 rights and obligations explains exactly exit strategies, valuation metrics, et cetera. Otherwise
16 not good for you. But confidentiality, non-compete clauses, et cetera. Have regular,
17 transparent communication between investors and founders. Give investors updates,
18 regularly, be aligned. They should be aligned so that it's not like the investor is going off and
19 wanting returns, which is unrealistic. It's not like the founders having this vision, which is
20 unrealistic, so they should be aligned. Corporate governance obviously has come into the
21 forefront with some high level... not high level famous disputes recently. So that's another
22 thing that people need to focus on in internal regulatory compliance, also extremely important
23 to avoid disputes. Exit strategy obviously, a lot of dispute arise when people are trying, when
24 investors are trying to exit. So, know from the beginning what you want, how you want to exit,
25 what the valuation will be etc. etcetera.

26
27 I can go on, obviously. Dispute resolution your clause should be clear. What do you want to
28 do? Litigation. Arbitration. Obviously, I will say arbitration. I think it's the quicker easier
29 method. I would still maybe sometimes say arbitration not seated in India currently or if it is
30 seated in India, I feel like we always are going around blaming the courts, judiciary, saying,
31 oh, there's too much judicial intervention etc., etc., which there is sometimes. But let's admit
32 it, the courts have changed their attitudes significantly over the past ten years. There has been
33 a sea change in that. But personally, it can't be only the courts. And that's picking up on the
34 last question that you've also asked. It can't only be the courts that are changing their attitude.
35 It's the parties and the lawyers that also need to change their attitude. Parties need to stop
36 wanting to delay matters. Lawyers need to stop advising, Oh, yeah, okay. We filed this petition.
37 Section 9, Section 11, section so and so and so, and so. And then, you know, you can delay your



1 matter by five years, ten years enforcement by, by however long. So there has to be a change
2 in everybody's attitude. It can't.... We can't only be saying, oh, the court, the court, the court.
3 The court has changed and is changing, but we also need to change. So that's another thing
4 that say... I feel like I've lost what your main question was, but that was my take of time with
5 equity.

6

7 **KARTHIK BALISAGAR:** Thank you that's really helpful. Vikram, can you throw light from
8 a Singapore perspective, I think everybody in this room would have experienced. Those of us
9 who do India work some sort of a Singapore dispute, Singapore seated dispute involving
10 private equity. What are the lessons from a private equity standpoint from a Singapore
11 context? And what do you think needs to be done in India, if at all, to make it more easy to
12 arbitrate?

13

14 **VIKRAM NAIR:** I'm always very careful about preaching or saying that what Singapore is
15 doing is right and will work elsewhere. But certainly, in Singapore, about, I mentioned a lot of
16 my work does come from India related parties. Plenty of that also involve JV shareholder
17 disputes. Now, for most of the disputes that I deal with, there will be assets outside of India.
18 So it's not such a big issue to enforce an award. So, it's typically one Indian party and one non-
19 Indian party and they pick Singapore as a neutral venue. But just from feedback I've heard
20 from parties that do want to invest directly in India, and I'll keep it simple. Maybe just three
21 things right?

22

23 The first is foreign exchange. So, I think some parties say India has a lot of growth. But if a
24 foreign investor were to invest, it's quite difficult to take the proceeds out. RBI has quite a lot
25 of requirements, and there are probably good reasons for this. But certainly, if India wants to
26 welcome more foreign investment, I think making it easy to get returns out will be one
27 important consideration. The second is and certainly Singapore companies and many
28 companies outside India will have difficulty navigating the many levels of the legal system. So,
29 you can have an agreement to invest in a state with a State Government, the State Government
30 changes, that agreement, may suddenly go on hold, right? Or priorities may change. Federal
31 government agreements may not necessarily be adequate if you're investing at municipal level.
32 So, if there is some way to make it easier to invest or some kind of protection that can be given
33 to investors against these kinds of political uncertainties. I think that would help as well. And
34 the third is, I think something that others have mentioned as well. Opening up the legal
35 market. I mean, 40 years ago, Singapore had this discussion whether we should allow foreign
36 lawyers to come in, and we have. While, of course, keeping Singapore Bar open. One of the big
37 differences that has made is you see, many foreign investors like agreements governed by their



1 own laws. So, we have Japanese law firms. Norwegian law firms, plenty of English and
2 American law firms, and I don't feel any of them are eating our lunch. But what they're doing
3 is they are bringing in American companies, Norwegian companies, Japanese companies with
4 a law that they are familiar with. So, it's a different way of looking at things. So basically
5 lawyers, we're not driving this for ourselves, but rather facilitating the flow of capital. So, yeah,
6 those are the three main things.

7

8 **KARTHIK BALISAGAR:** Thank you. Sudhanshu, do you have any comments on this
9 question?

10

11 **SUDHANSHU SWAROOP:** Yeah. So, one substantive comment, which is based on my
12 experience of what I'm seeing in London, I'm seeing generally disputes concerning
13 investments that are coming out of India into the UK courts or arbitration. But which often
14 there's a pattern that they're now being routed through Dubai in different ways and for
15 different commercial reasons. It might be the family office has relocated there or there might
16 be other reasons. The first point I want to make is from the perspective of a UK lawyer. It's
17 essential to understand exactly what's going on from a commercial perspective and why all of
18 that happened because it may impact questions such as jurisdiction, applicable law, issues of
19 disclosure, and so on, so that's just a standard comment. And also I wanted to make just a
20 practical comment, and this is much more general about experience of dealing with clients
21 from India. And my point is this - UK lawyers, dealing with the commercial clients from India
22 should not assume that just because India is a common law jurisdiction, indeed, a
23 sophisticated common law jurisdiction. Just because your clients may be sophisticated with
24 its own General Counsel, you must not assume that that client understands the idiosyncrasies
25 of UK litigation, in particular in the UK whenever you sign off on a pleading whether it's a
26 claim or a defence. You have to sign a Statement of Truth saying in terms the Claimant
27 believed. The client believed the facts alleged in this document are true, and the Claimant
28 recognizes that it is liable for contempt of court if that turns out not to be the case. I've had too
29 many experiences with clients from India. There's not a criticism of Indian clients, it's just the
30 way things are done in the UK, where you're trying to get to the bottom of what happened here.
31 And the answer is not this is what happened. The answer is, well, what could the happened is,
32 and that's very, very different, and it can have very profound consequences. If there's a
33 misunderstanding about the nature of your GCC Court, the similar points arise in the context
34 of witness statements and disclosure, the very strict duties around Statements of Truth.

35

36 **KARTHIK BALISAGAR:** You raised your hand. Quick one.

37



1 **PRIYANKA SHETTY:** Yeah, I think very quickly. I think one of the key takeaways for me in
2 the last two years in disputes, it's perhaps to be more aware of the conflict law of law issues
3 that really arrive. Particularly in the India Singapore space, because what's happening with us
4 in the shaadi.com case at the *Westbridge Anupam Mittal* matter is really is your
5 quintessential conflict of law issue and in arbitration versus the Indian Courts or Tribunals,
6 because the position India today is, the law of the seat governs the law of the arbitration
7 agreement and issue the mismanagement and oppression are not necessarily arbitrable under
8 Indian Law. However, in Singapore, thanks to the Anupam Mittal matter now, the law
9 governing the arbitration agreement follows the substantive law of the contract. However,
10 issue, the mismanagement and oppression are arbitrable under Singapore Law. So, in the
11 event you won't issues of mismanagement and oppression to be arbitrated in an arbitration
12 seated in Singapore, it would be important for the draftsmen to identify upfront what should
13 be the law governing the arbitration agreement.

14

15 **KARTHIK BALISAGAR:** Thank you. I was told by Neeti that can go on to the ten past the
16 hour. So, I'm seeking express permission. Thank you. We have a fun segment coming up. Now,
17 I want to show you a chart before the fun segment starts. Look at the bottom two. Or you can
18 look at the three charts from the right hand corner. That's the share of cash transaction
19 reducing rapidly. We all know what UPI has done to India, right, in terms of cash transaction?
20 That's reduced. You can go buy vegetables from the *sabziwala*, just flashing the phone. That's
21 just unbelievable. And then look at the mobile connections. We have 1.2 billion I think today.
22 1.2 billion mobile connections more than 900 million internet connections and these are
23 unprecedented in terms of size and scale. The number of financial transactions that happens
24 online real time is probably three or four times than of China. And 50% of the global
25 transactions happen through India in real time as far as online transaction is concerned. So,
26 India just dominates the space. Now this leads to the question of IP and its importance in our
27 context, because that is really important to facilitate trade. How many of you have heard about
28 Squid Games? How many of you have heard about this case, Shah versus Netflix? Okay, this is
29 going to be interesting then, Shreya, over to you as to where you see IP disputes. And you need
30 to really talk about Squid Games as well.

31

32 **SHREYA JAIN:** Thanks for giving me the lead on this question. I spent an inordinately long
33 amount of time going in the Reddit deep hole of *Shah versus Netflix* and Squid Games
34 versus the alleged movie that it is copied from. So, I'll touch upon that. But coming to your
35 question, trend in new age IP disputes, and I know you mentioned OTT movies, music. But I
36 also will touch a little bit about metaverse, a concept that was alien to me until a few months
37 ago but it's very interesting. So, coming to OTT, India has about 40 or more than 40 OTT



1 platforms today. The OTT industry is expected to reach a value of \$12.5 billion by 2030, and
2 in comparison, just in 2021, which is just a year after the COVID boom in OTT, the market was
3 US 1.5 billion. So, it's really an increase in about 12 billion in about nine years. So, this is on
4 the back of factors which Karthik mentions, such as better networks, digital connectivity,
5 smartphones, et cetera. And there are broadly four buckets of disputes in the OTT and movie
6 space that we foresee.

7

8 So one is, of course, contractual disputes, which is breach of contracts relating to IP right side.
9 So typically, in the OTT space, the kind of contracts you see are between the production house.
10 So, say Netflix producing its content as well as a broadcaster for creation, licenses and
11 distribution of that content. As you all know Netflix, for example, is not just a producer of its
12 content, it also hosts a lot of content produced by other producers, so there are contracts in
13 that sphere as well. And these disputes can be your classic contractual, scope of work disputes.
14 So, for example, if there's a license agreement to license rights in relation to certain content to
15 a third party, then does that license include the power to sublicense it. Those kinds of disputes
16 which you see in any IP contract.

17

18 The second kind of dispute is infringement of IP rights. And that's where the **Shah versus**
19 **Netflix** case is important because that's about whether or not you have suffered a breach of
20 copyright or trademark rights because somebody else has copied the way in which you express
21 your idea. And I want to make that distinction clear because just in the copyright world, merely
22 copying an idea is not a breach of copyright. It's copying the expression of that idea, which is
23 a breach of copyright. So, coming a little bit into **Shah versus Netflix**, now, this is effectively
24 really a dispute in New York courts, and it's still pending. So, we'll see how the resolution goes.
25 But Netflix has a... sorry Netflix has a show known as Squid Games, and I think some of you
26 may have seen it. Some of you may have heard about it. It's really a concept where there are
27 people competing in a certain game where they pay with their lives, and it's for the
28 entertainment of a whole class of people above for whom it is entertainment. So, a little bit like
29 your Hunger Games idea, which is expressed a bit differently in Squid Games, but really it's
30 not about Hunger Games versus Squid Games. The question here is whether it's a copy of a
31 movie known as Luck, which was released by, released in the Indian movie industry around, I
32 think, 2008 or 2009, which is the same year in which the creator of Squid Games has said he
33 was developing Squid Game. So that's actually the commonality of the year. Again, anything
34 you say in the media many years ago remains, remains on Twitter and media. So, remember,
35 you can go back on those statements. So it's an infringement suit for copyrights filed by a
36 Soham Shah, who produced the Luck movie in the US District Court for Southern District of
37 New York against Netflix. This was filed just a few days ago, on September 13, 2024. And I'd



1 suggest going... I won't suggest going down the deep, Reddit deep hole that I did, but I think a
2 few news articles will give you the idea of what was the plot of Luck. In my view, just as a
3 layman person, it does seem that they were similar. That said, of course, as I said, it's not about
4 the idea being similar. It's the expression of the idea being similar. So, we'll see how the courts
5 decide it.

6

7 Another dispute on a similar line was between Sun TV and Amazon, where Sun TV sought a
8 permanent injunction with respect to its copyrighted content in 28 movies which were
9 exhibited by Amazon on its OTT platform. The Madras High Court had granted an interim
10 injunction on the basis that Sun TV had acquired these rights from the producer who owned
11 the first copyright over the film and therefore Sun TV can be expected to exploit all of those
12 rights without infringement by a different entity, which is Amazon. So that's sort of your
13 dispute in the copyright infringement space.

14

15 The third kind of dispute would be establishing the validity on ownership of IP and I'll touch
16 upon this a bit further. But these are the kinds of disputes which are not arbitrable under
17 Indian law. And the fourth is intermediary liability, where you can sue an OTT platform such
18 as Netflix, Amazon for breach of IP rights on its platform by a third party. And why is this
19 relevant? Because in 2021 the Information Technology Rules in relation to intermediary
20 liability of OTT platforms came out and under those rules, there's a requirement that an
21 intermediary will act in due diligence and will not publish any content which infringes patent,
22 trademark, copyrights or other proprietary rights. If it does, there's a whole grievance
23 mechanism where you can file a complaint against the OTT platform before grievance officer.
24 And then that's appealed to an appellate mechanism. So that's really about the kind of disputes
25 you see in the OTT sector.

26

27 Now, coming very briefly to Metaverse. Again, I'm not sure how many people are very familiar
28 with Metaverse . But to those like me who are not, it's a digital virtual world where individuals
29 can create character avatars and then play them on a virtual platform where various kinds of
30 simulation experiences can be created. So, the concept of Metaverse , surprisingly, is not new.
31 It's been in existence since the 1990s. Really why it has come up in the last few years is because
32 of NFTs, which are non-fungible tokens, and them being used as assets to do business. And
33 that's actually led to a whole host of legal issues. So again, what are the kind of disputes you
34 can see in Metaverse ? One is of course, protecting your own IP in Metaverse. So recently, Nike
35 has filed applications to register its trademark for goods and services being provided in
36 Metaverse. And there questions arise for example, that whether license agreements in Nike's
37 own license agreement for online advertising on the Internet, does that extend to Metaverse



1 or not? So those are the kinds of questions which we are seeing. The second is just ascertaining
2 jurisdiction in Metaverse. So, some agreements have jurisdiction clauses, some don't. And
3 then the question arises, really, where is Metaverse located, in which country's jurisdiction is
4 Metaverse located? Or does it extend to all countries? So that's sort of another kind of question
5 that's coming up in a few cases.

6
7 The third is right of publicity. So, these avatars resemble real life people, right? I could have
8 an avatar on Metaverse, and likewise you can create these avatars for celebrities. So, such use
9 without proper authority of the celebrity could result in financial and reputational
10 repercussions. And that's also a kind of dispute we are seeing in some cases. And lastly is
11 intermediary liability. So, for example, the Indian Music Industry Federation, which includes
12 your T-Series, Super cassettes et cetera, Sony Music. They want Metaverse operators to be held
13 liable when the IP of creators and users is infringed on Metaverse. So, it's about whether or
14 not you can, for example, play their music on Metaverse without having the appropriate rights.
15 Very interesting stuff. And I strongly, as I said, suggest not going down that Reddit deep hole.
16 But very briefly what are the kinds of trends you see from an Indian perspective here? And I
17 just wanted to recap how Indian law is for IP disputes. So, of course, different countries have
18 taken different views on whether IP disputes are arbitrable or not. Countries like Australia,
19 Japan, Germany, Canada have a very pro-arbitrable approach to all IP disputes. And of course,
20 we are here. I mean, all of you must have heard about the World Intellectual Property
21 organization, WIPO, which is a specific organization for arbitrating IP disputes. ICC also has
22 a specific sort of mechanism for IP disputes. By contrast, in India, we've seen a bit of flip-flop
23 on whether these disputes are arbitrable. But the position now seems to be as follows, which
24 is that disputes in relation to rights which are *in personam*. So, you know your typical
25 contracts in relation to licensing of IP rights or even copyright infringement. All of those are
26 arbitrable. But disputes which are in relation to *in rem* rights, meaning rights against the
27 public at large or granted by the state are not arbitrable.

28
29 That's coming back to the point I made earlier, that if it's about your legality or validity of a
30 patent, those disputes are not going to go before an arbitrator. Those will go before the relevant
31 Tribunal under the Patent Act. And just finally, just some considerations to bear in mind when
32 you want to pick between arbitration or courts for your contracts in relation to IP. Just two,
33 three things which are sort of, which we don't think about so deeply, but are relevant. Five
34 pieces. So one is that the very sensitive nature of many IP disputes which involve trade secrets,
35 et cetera. Arbitration can give you the necessary confidence protections to protect those.

36



1 Second is having an expert decide your cases. Very often, if you choose court mechanisms, the
2 judges are not that experienced in very technical IP related issues. So you can pick specific
3 experts, especially those on WIPO panels for your IP disputes. And the third is just cross
4 border enforcement because so much of IP is cross border. It's not just about your IP rights
5 within this country, but issues relate to your IP rights globally and therefore cross border
6 mechanism and enforcement is always easier with arbitral awards as opposed to court
7 judgments. And that's something to keep in mind when picking your forum selection.

8

9 **KARTHIK BALISAGAR:** Thank you, Shreya. You've wrapped it up really helpfully. So, I'll
10 just conclude the section with some comments we heard where India sits as far as the
11 geopolitical, global, macroeconomic canvas is concerned. We heard from Vikram, why global
12 trade is very important. We heard from Sudhanshu in light of global trade, why BIT is
13 important. It's a double edged sword. It's not just shying away from BIT because India will be
14 scrutinized. But also protects Indian investors and therefore it's important when the
15 negotiations take place. Then we heard from Priyanka in the context of global trade where
16 India sits as far as legal services market is concerned, what needs to be done there. Quickly we
17 moved on to private equity and what it means for disputes in India and finally concluded
18 beautifully with Shreya's comments on IP disputes and where India is seeing activity in that
19 space. That is amazing for an expert witness on quantum damages to cover without speaking
20 a word about valuation and damages. Thank you very much. But if there's any question, in
21 two, three minutes, if Neeti allows from the audience, she's nodded her head. But one question
22 or we can take it here Neeti. Okay questions over coffee? You never negotiate with Neeti. Okay.
23 Thank you, Neeti. Thanks, everyone.

24

25

~~~END OF SESSION 1~~~

26

27