



The Bar Council

Alternative dispute resolution in international commercial transactions

Speech by Sam Townend KC, Chair-Elect of the Bar of England and Wales
Bar Council of India International Lawyers' Conference, New Delhi
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CHECK AGAINST DELIVERY

1. Namaskar (good afternoon)
2. My name is Sam Townend KC. I am the Chair-Elect of the Bar Council of England and Wales. The Bar Council represents nearly 18,000 specialist advocates and senior advocates including 2000 KCs. The British system is different to the Indian system in that we have a split legal profession of solicitors, client-facing, handle client money on the one-hand, represented by the Law Society of England and Wales, and barristers, specialist advisors and advocates on the other, who I represent.
3. International work is a staple for barristers from my jurisdiction. 13% or £440M of the Bar's income is from exporting its specialist advice and advocacy services. That is in relation to domestic seated international arbitration as well as, of course, barristers going abroad to represent multi-national companies in different jurisdictions. Surveys repeatedly show that London is currently the world's preferred centre for arbitration. In 2021 alone, 28,639 civil disputes were resolved through arbitration, mediation and adjudication in the UK.

4. I am a part of this. A specialist advocate in the construction, infrastructure and energy field, both domestic and international. I have personally represented parties throughout the world including in international arbitrations and dispute adjudication boards in London, Australia, Singapore, Paris, and Dubai. I have acted both as mediation advocate and mediator in the UK and abroad, for example, at Abu Dhabi General Markets. From experience I can say that working with, against, and before, advocates and tribunals of differing legal backgrounds is both professionally fulfilling and culturally enriching. It adds a real quality to professional life.
5. Both as the representative of the English Bar and personally, I am therefore delighted to be invited to attend and to speak at the International Law Conference organised by the Bar Council of India and on the topic of Alternative Dispute Resolution in relation to International Commercial Transactions.
6. Arbitration in relation to disputes between international parties can be highly desirable. It allows for the agreed appointment of a neutral specialist tribunal at a neutral venue; the procedure is private and confidential- there is no “washing of dirty laundry in public”; importantly it allows for flexibility of procedure and for speed that may be regarded as more commercial than court-based processes- FIDIC contracts, for example, which are one of the standard form contracts for international infrastructure projects, provide for dispute boards to resolve disputes using a speedy process allowing for a determination within three months or so of commencement.
7. Multi-national companies, including many of those from and with headquarters in India, with very substantial commercial and other disputes like

and expect the flexibility, autonomy and control that international alternative dispute resolution processes allow to them.

8. India is brilliantly placed to capitalise on this and has great natural advantages to becoming just as significant centres for international arbitration.

8.1 First, you have the ever adaptable common law system shared with England and Wales (also used in 27% of the World's 340 jurisdictions).

8.2 Secondly, you use English alongside other Indian languages, which is the language of 80% of the World's international commercial transactions.

8.3 Thirdly, you have a cohort of excellent experienced domestic senior advocates- as seen by the recent phenomenon of established Indian senior advocates joining London Chambers to practice international arbitration (and occasionally in Court) to complement their India-based practices (such as Harish Salve KC, Gourab Banerji, Ratan K Singh, Sharan Jagtiani, and Amit Sibal to name just a few).

8.4 Fourthly, a massive body of talented junior lawyers keen to be involved in international dispute resolution and hungry to learn and experience.

9. In order to capitalise on these natural advantages, the jurisdiction needs to make it as easy as possible for international companies, both domestic and international, to resolve their disputes in India. These international companies, including many Indian companies that have a strong presence in the UK such as Tata, are used to having complete freedom of choice as to who they wish to advise them and to represent them in dispute resolution processes. It is a fact that some are put off by current restrictions and choose to use London,

Singapore, Hong Kong or elsewhere as the forum for their dispute resolution processes rather than India.

10. The BCI has shown leadership in publishing Rules permitting for the possibility of foreign lawyers to practice in India. Also for entering an inaugural Memorandum of Understanding with the Bar Council of England and Wales and the Law Society which addresses how to intensify and expand the relationship between lawyers in the two jurisdictions. But there is more than can be done.
11. The Bar Council would like to see the BCI regulations loosened in one respect so that individual foreign advocates, who are not intending to establish permanently in India, but simply wish to act on a case by case basis on a 'fly in, fly out' basis, do not have to go through the full rigmarole of registration, and the complexity, time and cost that entails. Speaking frankly the proposed registration process is practically speaking uncommercial for individual barristers and KCs who simply wish to act in the occasional international arbitration in India. We wish to see, as for Indian lawyers in London and therefore on a fully reciprocal basis, subject only to visa requirements, that individual lawyers could simply fly in to act for the international or domestic party in India in non-court based dispute resolution processes such as Indian seated international arbitration without the need for registration.
12. In saying this I want to stress that the Bar of England and Wales is not interested in competing with Indian law firms for their clients. As we do the World over, we just want to be able to work with Indian lawyers to help them, help their clients in domestic seated International Arbitrations and other alternative dispute resolution processes.

13. As the Bar Council of India rightly says in its Objects and Reasons to the March 2023 draft Regulations “Time has come to take a call on the issue...the opening up of law practice in India to foreign lawyers in the practice of foreign law, diverse international legal issues in...international arbitration cases would go a long way in helping the legal profession grow in India to the benefit of lawyers in India too.”
14. I firmly believe that by sharing a part of the international arbitration pie, that pie will grow far more quickly, and Delhi, Mumbai, Bangalore and other cities will achieve their full potential as centres of international arbitration.
15. Working together I think we can truly achieve Vasudhaiva Kutumbakam (One Earth, One Family, One Future).
16. Thank you for listening.