

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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INDIA AND THE PERMANENT COURT OF ARBITRATION; A CRITICAL EXAMINATION OF INSTITUTIONAL ARBITRATION AND BILATERAL COOPERATION

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ABSTRACT

The Permanent Court of Arbitration (PCA), established by the Hague Conventions of 1899 and 1907, is one of the oldest intergovernmental organisations for international dispute resolution. Although in terms of age, the PCA is a venerable institution, it has experienced an institutional renaissance in the twenty-first century and today is a premier venue for investor-state, inter-state and mixed arbitrations. This study examines the twenty-first century evolution of the PCA and explores the ambivalent and wavering Indian posture towards international investment arbitration, while at the same time, the country remains a founding member-state and provided valuable support in important PCA proceedings.

This dissertation examines India's relations with and engagement towards the PCA across three dimensions: institutional arbitration, BITs and domestic judicial development. The case laws of "BALCO", "Bhatia International", "White Industries", "Vodafone International Holdings" and "Cairn Energy" are discussed and the thesis advances the argument that the course of the cases and their outcomes might have been different had an equivalent of the PCA existed within India.

The thesis exposes the vulnerability of India in investment arbitration by arguing that the lack of a credible domestic institutional arbitration provision comparable to the PCA is a serious deficiency in India's arbitration policy. The dissertation undertakes a comparative analysis of the jurisdiction of the PCA and the Indian institutions offering arbitration services and undertakes a detailed examination of the relevant provisions of the Arbitration and Conciliation Act, 1996. On the basis of the findings, the thesis recommends the establishment and regulation of a Permanent Indian Arbitration Institution (PIAI) along the lines of the PCA. Through an in-depth analysis of the amendments to the Arbitration and Conciliation Act, 1996, and the India Model BIT of 2015, the thesis critiques the current and evolving policy on arbitration and demonstrates that the policy remains incomplete.

Keywords: Permanent Court of Arbitration, International Arbitration, India, Bilateral Investment Treaty, Investor-State Dispute Settlement, BALCO, White Industries, Cairn Energy, Arbitration and Conciliation Act 1996, Institutional Arbitration.

CHAPTER 1: INTRODUCTION

1.1 Background and Context

One of the greatest contributions of nineteenth-century international law to the rule of law in international relations has been the development of arbitration for the resolution of international disputes. The Permanent Court of Arbitration established pursuant to the Convention for the Pacific Settlement of International Disputes concluded at The Hague on 29 July 1899, is the focal point of this tradition of dispute resolution. Over the course of more than a century, the PCA has evolved from a minimalist intergovernmental framework into a sophisticated, full-service arbitral institution capable of administering disputes of extraordinary legal and financial complexity.

India's location within this international institutional architecture is paradoxical. As one of the original signatories to the Hague Convention, India bears a founding relationship with the PCA that predates the modern Indian republic by half a century. In 2007, India executed a Host Country Agreement with the PCA providing for the conduct of PCA-administered arbitrations within Indian territory, extending to PCA officials and adjudicators privileges and immunities equivalent to those of UN officials under Article V¹ of the 1946 Convention on the Privileges and Immunities of the United Nations. India has also co-hosted the landmark PCA India Conferences of October 2017 and October 2018 with the Ministry of External Affairs. Yet, independent India's engagement with international arbitration particularly investor-state arbitration under Bilateral Investment Treaties (BITs) has been characterised by reluctance, resistance, and periodic crisis. The sequence of adverse awards rendered against India in international arbitral proceedings, involving entities such as White Industries Australia, Vodafone International Holdings, and Cairn Energy, has exposed fundamental gaps in the country's arbitral policy and institutional infrastructure.

India has recently suffered a string of adverse arbitral awards in high profile cases including those involving White Industries Australia, Vodafone International Holdings and Cairn Energy among others. These awards have laid bare a number of lacunae in India's arbitral policy and its institutional framework dealing with international arbitration.

Domestic arbitration in India is governed by the Arbitration and Conciliation Act, 1996, which

incorporates principles from the UNCITRAL Model Law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Despite major amendments in 2015, 2019, and 2021, India continues to face structural challenges in becoming a leading arbitration hub. Excessive judicial intervention, the absence of a credible permanent arbitral institution of international standing, weaknesses in the BIT framework, and other institutional deficiencies have limited India's growth as a preferred seat for international commercial arbitration.

1.2 Objectives of the Study

The present study sets out the following objectives: (i) to trace the historical evolution and institutional architecture of the Permanent Court of Arbitration and to assess its contemporary relevance; (ii) to examine India's legislative framework for international arbitration, including successive amendments to the Arbitration and Conciliation Act, 1996; (iii) to analyse India's bilateral cooperation with the PCA and its obligations under multilateral and bilateral arbitral instruments; (iv) to critically examine landmark case laws involving Indian parties in international and domestic arbitral proceedings and to conduct a counterfactual analysis of how such cases might have been decided under a PCA-equivalent institutional framework; and (v) to formulate evidence-based recommendations for the establishment of a permanent institutional arbitration body in India modelled on PCA principles.

CHAPTER 2: INDIA AND THE PCA – BILATERAL COOPERATION AND TREATY OBLIGATIONS

2.1 India as a Member State of the PCA

India's membership in the PCA derives from its status as a successor state to British India, which was a signatory to both the 1899 and 1907 Hague Conventions. Upon attaining independence in 1947, India succeeded to British India's treaty obligations, including its membership in the PCA. India's participation in the PCA Administrative Council and its designation of Members of the Court panel have been consistent features of India's engagement with The Hague-based institution.

India's practical engagement with the PCA has been considerably more limited than its formal membership status might suggest. India has historically preferred to resolve inter-state disputes through diplomatic channels or bilateral treaty mechanisms rather than through international arbitration. The rare instances in which India has participated in PCA proceedings most notably

the Kishenganga Arbitration and the Bay of Bengal Maritime Boundary Arbitration have generally been involuntary, arising from claims initiated by other states under treaty obligations rather than from India's affirmative choice to arbitrate.

2.1.1 India's Participation in PCA Proceedings

The most significant PCA proceeding to which India has been a party is the Indus Waters Kishenganga Arbitration (Pakistan v. India), PCA Case No. 2011-01.² The Kishenganga Arbitration arose under the Indus Waters Treaty and concerned India's diversion of the Kishenganga River for a hydroelectric project in Jammu and Kashmir. Pakistan initiated arbitration under the Treaty's dispute resolution mechanism, and the tribunal was constituted under the Permanent Court of Arbitration, which delivered its Final Award on 20 December 2013. The case is significant because it demonstrated India's ability to effectively participate in complex international arbitral proceedings and present advanced legal arguments before an international tribunal. The award determined a minimum flow for the Kishenganga River. This shows the PCA can render authoritative and nuanced determinations on complex technical disputes. A degree of institutional commitment to the PCA framework for dispute resolution can be inferred from India's compliance with the Kishenganga ruling.³

2.2 The Indus Waters Treaty and the PCA

The Indus Waters Treaty established a dispute resolution mechanism culminating in arbitration under the Permanent Court of Arbitration framework. In the Kishenganga Arbitration, Pakistan challenged India's Kishenganga Hydroelectric Project, and the PCA tribunal ultimately directed India to maintain a minimum downstream water flow while rejecting Pakistan's primary objections. In 2016, Pakistan initiated another arbitration concerning the Ratle and Kishenganga projects. Despite India's reservations about the proceedings, the PCA mechanism has continued to provide a structured and credible forum for resolving sensitive inter-state water disputes involving sovereign resource claims.

CHAPTER 3: CASE LAWS AND COUNTERFACTUAL ANALYSIS – INDIAN DISPUTES THROUGH THE PCA LENS

This chapter elaborates five crucial arbitration cases and how they have been decided and whether such disputes could have been avoided; If India had a domestic institution similar to the Permanent Court of Arbitration. The counterfactual analysis is not intended as a definitive

jurisprudential determination but as a heuristic device to identify the institutional gaps that have contributed to the difficulties India has experienced in international arbitral proceedings.

3.1 White Industries Australia Ltd. v. Republic of India

3.1.1 Facts and Procedural Background

The White Industries case⁴ arose from a commercial arbitration initiated by White Industries Australia Limited against Coal India Limited pursuant to a contract for the supply of mining equipment and development of coal mines. White Industries obtained an ICC arbitral award in its favour in 2002 for approximately USD 4.1 million. However, Coal India challenged the award before the Calcutta High Court and the case became embroiled in protracted court proceedings that lasted nearly a decade without resolution.

White Industries subsequently initiated investor-state arbitration against India under the India-Australia BIT of 1999,⁵ claiming that India had breached its obligations under the Treaty by failing to provide White Industries with 'effective means' of asserting claims and enforcing rights under Article 4(2) of the BIT, which had been imported from the India-Kuwait BIT via the MFN clause.⁶

3.1.2 The Award and its Implications

The Tribunal, constituted under the UNCITRAL Rules with the PCA serving as registry, issued its Final Award on 30 November 2011, finding India in breach of the 'effective means' obligation. The Tribunal determined that the nine-year delay in the Calcutta High Court proceedings relating to the enforcement of White Industries' ICC award constituted a violation of India's treaty obligations. India was ordered to pay compensation to White Industries.

The White Industries award generated considerable controversy in India and marked a pivotal moment in the government's BIT policy. Out in the open now, the ruling showed how shaky India's stance is under early-model investment treaties - slow courts at home might count as breaking international promises. What followed pointed elsewhere entirely: handling disputes case by case, without steady backing from a standing body tends to drag things out. Nine years waiting to enforce an outcome probably wouldn't stretch so long if India had a proper local setup built to move these cases faster.

3.2 Vodafone International Holdings BV v. Union of India

3.2.1 Facts and Procedural Background

⁷That Vodafone BIT case started when India tried taxing an old deal - Vodafone buying control

of Hutchison Essar in 2007 by purchasing shares in companies based in the Cayman Islands. Though the deal happened overseas, officials claimed it should count as Indian income. Instead of accepting that view, courts had another take. In 2012, India's top court ruled the share transfer took place abroad - not within national borders - so tax law did not apply back then. Because location mattered, taxation couldn't stick. Laws at the time simply didn't reach such cross-border moves. Vodafone International Holdings BV against the Union of India - case handled under UNCITRAL rules, registered at the Permanent Court of Arbitration as number 2016-35. Ruling about authority issued twenty-five days into September, two thousand twenty. Following the Supreme Court's adverse ruling, the Government of India enacted the Finance Act, 2012,⁸ which introduced Explanation 5 to Section 9(1)(i) of the Income Tax Act with retrospective effect from 1 April 1962, overturning the Supreme Court's decision and creating a tax liability of approximately USD 2.2 billion. "Vodafone responded by initiating investor-state arbitration against India under the India-Netherlands BIT of 1995".⁹

3.2.2 Counterfactual Analysis: The Retrospective Legislation Problem

The Vodafone Tax Dispute highlighted institutional weaknesses in balancing legislative sovereignty with international treaty obligations. The retrospective 2012 tax amendment, enacted after Vodafone's Supreme Court victory, created uncertainty and damaged investor confidence. A mechanism similar to the Permanent Court of Arbitration, with expertise in treaty-based disputes and international standards, might have identified such conflicts earlier and provided institutional oversight to reduce disputes arising from sovereign economic measures and treaty obligations.

3.3 Cairn Energy PLC v. Republic of India

3.3.1 Facts and Procedural Background

The Cairn Energy arbitration¹⁰ represents the largest known international arbitral award against India to date. The dispute arose from the Indian Income Tax Department's retrospective application of the Finance Act, 2012 to Cairn Energy's 2006 internal corporate restructuring, in which Cairn India Limited was constituted through the transfer of business assets from Cairn UK Holdings Limited. Following the 2012 Finance Act's retrospective amendment, the Indian tax authorities assessed Cairn India's capital gains tax liability at approximately INR 24,500 crore (approximately USD 3.3 billion). When Cairn contested the assessment, the tax department attached and sold Cairn's remaining shareholding in Cairn India Limited. A significant procedural issue arose in the Cairn Energy arbitration regarding whether documents from the

arbitration could also be used in Indian court cases. In 2018, the Indian government, through the Income Tax Department, requested the PCA Tribunal's permission to submit 263 arbitration documents to the Delhi High Court. These documents included witness statements, hearing transcripts, and exhibits from the arbitration. India argued that the arbitration rules did not explicitly forbid this and that sharing documents with a court was not the same as publicly publishing them.

In the Cairn Energy Arbitration, the PCA tribunal issued Procedural Order No. 16 in 2019, holding that arbitration documents could not be shared with outside authorities, including Indian courts, without permission due to confidentiality obligations under the UNCITRAL Rules and prior procedural orders. The tribunal emphasized that once documents are submitted to another authority, it loses control over their confidentiality. The dispute highlighted the tension between India's domestic legal proceedings and its obligations in international arbitration, while also demonstrating that PCA tribunals exercise significant procedural authority beyond issuing final awards. The arbitration arose under the India–UK BIT, with Cairn alleging violations of fair and equitable treatment, expropriation, and investor protections, and the proceedings were conducted under UNCITRAL Rules with the Permanent Court of Arbitration acting as registry.

3.3.2 Counterfactual Analysis: Institutional Mediation and Compliance

The Cairn Energy Arbitration exposed institutional weaknesses in India's handling of investment treaty disputes, particularly in enforcing and responding to international arbitral awards. A domestic institution modelled on the Permanent Court of Arbitration could have encouraged earlier dialogue, stronger procedural coordination, and more credible compliance mechanisms during the dispute itself.

3.3.3 Institutional lessons from the confidentiality episode

The confidentiality dispute in the Cairn Energy Arbitration highlights the need for India to establish a specialized arbitral institution similar to the Permanent Court of Arbitration. The dispute exposed poor coordination between Indian authorities and arbitration counsel, particularly regarding the attempt to submit arbitration documents before the Delhi High Court. It also demonstrated the technical complexity of international arbitral procedure and the importance of expert institutional management in balancing confidentiality obligations with domestic judicial proceedings. The PCA's handling of the matter reflected a level of procedural sophistication and coordination that Indian arbitral institutions presently lack, strengthening the

case for a permanent Indian institution with comparable expertise and infrastructure.

3.4 Antrix-Devas Dispute

3.4.1 Facts and Procedural Background

In the year 2005, a contract was signed between Antrix which is a part of Indian Space Research Organisation with the Devas Multimedia for the satellites. The issue began in the year 2011 when during the tenure of the former prime minister Mr. Manmohan Singh when the deal was cancelled due to the 2G scam, in which the Devas was also involved.¹¹

After the deal was cancelled, the respondents (Devas) went to the international tribunal in the year 2015 where the (“ICC”) International Commercial Court held that petitioner (Antrix) was wrong in cancelling the contract and ordered it to pay US \$ 562.2 million, along with interest as a form of compensation.¹²

During the pendency of the order passed by the ICC, a F.I.R was filed for criminal conspiracy and fraud against the respondents by the CBI (Central Bureau of Investigation). An application under Section 34 of the Arbitration and Conciliation Act 1996 was filed by petitioners to set aside the award, which was amended in 2021, where for the first time the ground of committing fraud was included and simultaneously a winding up application was also filed in the NCLT against the respondents on the similar grounds which was allowed and was later upheld by the¹³NCLAT (Chennai Bench) in the year 2021 and by the Supreme Court of India in the year 2022¹⁴.

¹⁵The application of Section 34 for setting aside the arbitral award before the Delhi High Court was also allowed stating “*A product of fraud is in conflict with the public policy of any country, including India.*” By the order dated 29 August, 2022.

The Antrix-Devas dispute¹⁶ concerned an agreement between Antrix Corporation Limited, the commercial arm of the Indian Space Research Organisation (ISRO), and Devas Multimedia Private Limited for the lease of S-band spectrum on Indian satellites. The Indian government cancelled the agreement in 2011 on national security grounds. Devas initiated multiple arbitral proceedings against India, including an ICC arbitration and an UNCITRAL arbitration under the India-Mauritius BIT.

The ICC Tribunal issued an award in Devas's favour for approximately USD 562 million in 2015. India challenged both awards before the Swiss courts and other enforcement jurisdictions. Simultaneously, the Indian government pursued a winding-up petition against Devas Multimedia before the National Company Law Tribunal, on the grounds that Devas had been incorporated through fraud.

The Supreme Court of India, in *Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd.* (2022), upheld the winding-up order against Devas. Surprisingly, the court uncovered evidence showing the firm was set up with dishonest motives, aiming to secure spectrum rights via the Antrix deal. Because of this, questions emerged about how local insolvency rulings might interfere with global arbitration outcomes. Suddenly, enforcing foreign arbitral decisions became tangled in debates over whether the company's dissolution blocked such actions. Legal clarity faded as judges weighed national corporate rules against cross-border award recognition.

3.4.2 Counterfactual Analysis: Jurisdiction and Institutional Neutrality

The Antrix–Devas Dispute exposed the difficulties that arise when domestic legal proceedings intersect with international arbitration and investment treaty claims. A domestic arbitral institution modelled on the Permanent Court of Arbitration could have provided an early and credible forum to address both contractual and sovereign concerns, potentially reducing overlapping proceedings, conflicting rulings, and enforcement complications. Such an institution, equipped to coordinate cross-border disputes and parallel proceedings, may have brought greater procedural clarity and institutional stability to the dispute.

3.5 Domestic Cases Re-examined Through a PCA Lens

3.5.1 “Bhatia International v. Bulk Trading SA”

The decision in *Bhatia International v. Bulk Trading S.A.* significantly expanded the scope of Indian courts' intervention in foreign-seated arbitrations by holding that Part I of the Arbitration and Conciliation Act, 1996 applied even to arbitrations seated outside India unless expressly excluded. Based on the wording of Section 2(2), the Supreme Court allowed Indian courts to grant interim relief and exercise supervisory powers over foreign arbitrations, departing from the territorial approach of the UNCITRAL Model Law. The judgment created years of uncertainty and increased judicial interference, making India appear less arbitration friendly. It also exposed institutional weaknesses in India's arbitration framework, as clearer institutional guidance similar to that provided by the Permanent Court of Arbitration may have helped avoid such prolonged doctrinal confusion through expert interpretation, model clauses, and internationally aligned procedural practices.

3.5.2 BALCO and the Prospectivity Problem

The *Bhatia International*–*BALCO* episode exposed a major institutional weakness in Indian arbitration law. The ambiguity in Section 2(2) of the Arbitration and Conciliation Act, 1996,

unlike Article 1(2) of the UNCITRAL Model Law, led to nearly a decade of inconsistent judicial interpretation regarding the applicability of Part I to foreign-seated arbitrations. A permanent arbitral institution modelled on the PCA could have identified this drafting flaw early, offered expert guidance to lawmakers and courts, and promoted internationally accepted practices before the issue evolved into prolonged judicial uncertainty. During the Bhatia era, Indian courts exercised extensive supervisory jurisdiction over foreign-seated arbitrations, creating unpredictability and weakening India's arbitration framework. Although the Constitution Bench in BALCO restored the territorial principle in 2012, its prospective application created an awkward dual regime where the governing law depended solely on the date of the arbitration agreement. A stable institutional framework could have eased this transition through consistent procedural guidance and coordinated arbitral practice. Further, disputes such as those arising in the 2016 BALCO residue litigation regarding the relationship between substantive law, curial law, and the law governing the arbitration agreement demonstrate the importance of institutional model clauses and procedural expertise, which bodies like the PCA are equipped to provide.

3.5.3 “ONGC v. SAW Pipes and the Patent Illegality Doctrine”

The decision in ONGC v. SAW Pipes Ltd. expanded judicial review through the doctrine of “patent illegality,” allowing courts to set aside arbitral awards for legal errors and thereby increasing challenges, delays, and costs in arbitration. This approach departed from the limited review framework of the UNCITRAL Model Law. In contrast, the Permanent Court of Arbitration follows a strong principle of finality and non-intervention in arbitral awards. A domestic institution modelled on PCA principles could have encouraged a more restrained interpretation of the patent illegality doctrine and strengthened award finality in India.

3.5.4 Renusagar and the Public Policy Exception

In Renusagar Power Co. Ltd. v. General Electric Co. (1994),¹⁷ the Supreme Court adopted a narrow interpretation of the 'public policy of India' ground for refusing enforcement of foreign arbitral awards under the 1940 Act and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Court held that enforcement could be refused only where the award violated India's fundamental policy, its interests, justice, or morality. This narrow construction was broadly consistent with international arbitration norms and the New York Convention framework.

However, this restrained approach was progressively eroded in subsequent decisions,

culminating in the expansive public policy ground recognised in *ONGC v. SAW Pipes*. Later came *Shri Lal Mahal Ltd. v. Progetto Grano SPA (2014)*¹⁸, which brought back part of the old Renusagar rule - this time only applying deep legal scrutiny to local awards, not foreign ones. Over time, these shifting rulings show how unsteady court-made rules can be when no lasting body holds them together; something like a permanent arbitration center, remembering past choices and sticking to clear steps, might have made such swings less likely.

3.5.5 ¹⁹Cox and Kings Ltd. v. SAP India Pvt. Ltd.

In *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, a Constitution Bench of the Supreme Court clarified the legal basis of the Group of Companies doctrine under the Arbitration and Conciliation Act, 1996. The Court held that non-signatories can be bound by an arbitration agreement based on Sections 2(1)(h) and 7 of the Act, where their conduct and communications show consent to arbitration. It rejected the idea that concepts like “single economic reality” or piercing the corporate veil alone are sufficient. Instead, courts must consider factors such as party intention, relationship between companies, common subject matter, and composite transactions. The Court further held that at the referral stage under Sections 8 and 11, courts should only conduct a prima facie review, while detailed jurisdictional issues regarding non-signatories must be decided by the arbitral tribunal under Section 16.

The judgment also compared India with countries like France and Switzerland, where courts focus on the parties’ real intention. It noted that “international institutions like Permanent Court of Arbitration, International Chamber of Commerce, London Court of International Arbitration, and Singapore International Arbitration Centre regularly develop clear guidance on issues like joinder of non-signatories, something India still lacks institutionally.”²⁰

5.5.6 ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited²¹

The Supreme Court's judgment represents the Court's most recent and authoritative pronouncement on a question that has long plagued India's arbitration jurisprudence: whether an arbitral tribunal possesses the inherent power to implead a non-signatory to an arbitration agreement as a party to the arbitral proceedings. The judgment, delivered by a bench comprising Justices J.B. Pardiwala and R. Mahadevan, settles a significant doctrinal controversy while simultaneously exposing the persistent legislative deficiencies that characterise India's arbitration framework.

The dispute in *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.* concerned whether non-signatory ASF Group companies could be bound by an arbitration agreement under the

Group of Companies doctrine. The Supreme Court upheld the arbitral tribunal's jurisdiction under Section 16 and the principle of Kompetenz-Kompetenz, holding that tribunals can decide whether non-signatories are part of the arbitration. The Court found that the ASF entities operated as a single economic unit and had shown implied consent to arbitration. The judgment is significant because it aligned Indian arbitration law with international standards on non-signatories and Kompetenz-Kompetenz, while also exposing institutional weaknesses in India's arbitration framework, as such a fundamental issue required extensive judicial clarification even decades after the 1996 Act.

CHAPTER 4: CONCLUSION

This dissertation has conducted a thorough analysis of India's interaction with the Permanent Court of Arbitration across three key aspects: the historical and institutional development of the PCA and its importance for resolving international disputes; India's legal and judicial system for international arbitration; and the crucial relationship between India's domestic arbitration landscape and the international investor-state dispute resolution system managed under the PCA framework. The main conclusions of this dissertation can be summarized as follows. Initially, the PCA transformed from a basic intergovernmental list of arbitrators into a comprehensive international arbitration institution with significant institutional sophistication and worldwide presence. The combination of its procedural rules, institutional framework, and list of distinguished arbitrators sets a standard of institutional excellence that India's domestic arbitration system must be measured against and, as it stands now, is notably lacking.

Secondly, India's connection to international arbitration is marked by a core conflict between the nation's sovereign regulatory interests and its commitments under international treaties. This strain, evident in the spate of unfavourable BIT rulings against India in the White Industries, Vodafone, Cairn Energy, and Devas cases, illustrates not just the nature of India's investment treaty responsibilities but also the lack of a domestic institutional system able to deliver credible, expert, and internationally acknowledged dispute resolution for investment issues.

Third, the counterfactual analysis performed in Chapter 5 shows that the results of various significant arbitration cases with Indian parties could have been significantly altered or the disputes may have never occurred if India had a domestic institution similar to the PCA. The nine-year delay in enforcement seen in White Industries, the enforcement challenges faced by Cairn Energy, and the jurisdictional issues in the Antrix-Devas case all indicate, at least in part,

the lack of a dedicated institutional framework—a permanent, expert, and authoritative arbitral body that can offer the efficient and credible dispute resolution similar to what the PCA provides globally.

India’s arbitration reforms, including amendments to the Arbitration and Conciliation Act, 1996, the 2015 Model BIT, and the proposed Arbitration Council of India, have remained reactive and institutionally weak due to insufficient implementation and political commitment. The failure to operationalise the ACI represents a missed opportunity to build a strong institutional arbitration framework. The dissertation therefore recommends establishing a permanent Indian arbitral institution inspired by the Permanent Court of Arbitration, with legal autonomy, professional administration, expert arbitrators, and international cooperation. Such an institution could strengthen India’s credibility in global arbitration while building on India’s long historical association with international arbitration institutions.

India’s challenge is to transform its historical association with international arbitration into a modern institutional commitment that matches its ambitions as a global centre for trade, investment, and dispute resolution. To become a truly arbitration-friendly jurisdiction, India must reduce excessive judicial intervention, avoid reactive legislative changes, and invest in strong arbitral institutions. This is necessary not only for economic growth and investor confidence, but also to uphold India’s international treaty obligations and the principle, reflected in the Hague Convention of 1899, that disputes should be resolved peacefully through law.

¹ “Permanent Court of Arbitration, Lawyers club India, 12 December 2008, Prakash Vedhula” ²Kishenganga Arbitration (Pakistan v. India), PCA Case No. 2011-01, Final Award, 20 December 2013.

³Indus Waters Treaty, 1960, art. IX and Annexure G.

⁴White Industries Australia Ltd. v. Republic of India, UNCITRAL (IIC 529, 2011), Final Award, 30 November 2011.

⁵India-Australia Bilateral Investment Treaty, 1999, Art. 12.4.

⁶Ibid., Art. 4.

⁷ “Vodafone International Holdings BV v. Union of India, UNCITRAL, PCA Case No. 2016-35, Award on Jurisdiction, 25 September 2020.”

⁸“Finance Act, 2012 (No. 23 of 2012), s. 119 (inserting Explanation 5 to s. 9(1)(i) of the Income Tax Act, 1961 with retrospective effect from April 1, 1962).”

⁹India-Netherlands Bilateral Investment Treaty, 1995, Art. 9.

¹⁰Cairn Energy PLC & Cairn UK Holdings Ltd. v. Republic of India, PCA Case No. 2016-07, Final Award, 21 December 2020.

¹¹ “In dispute with investors over failed satellite deal, Antrix Corp tells US SC it should be treated like a foreign firm”, “Express News Service”, 17 August 2024.

¹² Antrix Corporation Ltd. v. Devas Multimedia Private Limited, PSL Advocates and solicitors.

¹³ Comp App (AT) No. 17 of 2021 & 24 of 2021 (NCLAT CHENNAI)

¹⁴ Devas Multimedia Pvt Ltd v. Antrix Corporation Ltd. & Anr.; Civil Appeal No. 5766 of 2021

¹⁵ O.M.P. (COMM) 11/2021 (Delhi High Court)

¹⁶ Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd., Civil Appeal No. 1109 of 2018 (Supreme Court of India, 2022).

¹⁷ Renuagar Power Co. Ltd. v. General Electric Co., (1994) Supp (1) SCC 644.

¹⁸ Shri Lal Mahal Ltd. v. Progetto Grano SPA, (2014) 2 SCC 433.

¹⁹ 2023 INSC 1051

²⁰ International Commercial Arbitration, Nishith Desai Associates 2022, August 2022.

²¹ 2025 INSC 616

