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Mapping Opportunities of Cooperation and Collaborations in Socio-Legal Frameworks in and Within the Global South: A Road Map Towards Sustainable Development

HARPREET SINGH*

ABSTRACT

This research highlights opportunities for knowledge exchange, capacity building and inclusive development in and within the Global South by identifying some of the key areas where potential measures could be taken to develop collaborations for capacity building on the basis of the success of the unique experiences, strategies and practices that some of the countries in the Global South have to offer in terms of capacity building for India, as well as the lessons to be learned from India's successful experiences by other countries in the Global South. Such collaborations and capacity building can go a long way towards strengthening the nation's efforts to achieve important milestones and to foster a roadmap to accelerate the achievement of the Sustainable Development Goals.

Keywords: *Global South, capacity-building, collaborations, India, sustainable development*

I. KEY AREAS TO DEVELOP COLLABORATIONS FOR CAPACITY BUILDING IN INDIA

Some of the areas that require possible capacity building amongst the countries in the Global South to deliver results in people's lives and to strengthen their institutions for a more sustainable future can be identified as under.

A. Introduction of Third-Party Funding to Foster a Robust Arbitration Culture in India

Over the past few years, in the wake of the emerging global market, arbitration has become a popular alternative to litigation in India, where both institutional and ad hoc arbitration are the primary methods for resolving disputes under the *Arbitration and Conciliation Act (A&C Act), 1996*. The *Arbitration and Conciliation Act, 1996*, modelled after the United Nations Commission on International Trade Law (UNCITRAL) Model Law, is the primary legislation governing arbitration and conciliation in India and provides the legal framework for resolving

* Author is a Senior Standing Counsel for DRI and DGGI at High Court of Delhi, New Delhi, Delhi, India.

disputes through domestic and international arbitration, including the appointment of arbitrators, the conduct of proceedings, and the recognition and enforcement of awards in India, though most arbitration in India is ad hoc rather than institutional. Nevertheless, the establishment of arbitration institutions such as the Indian Institute of Arbitration and Mediation, the Delhi International Arbitration Centre (DIAC) and the Mumbai Centre for International Arbitration (MCIA) has played a transformative role in promoting the culture of institutional arbitration in India for resolving international and complex domestic disputes within a structured framework, and has paved the way for positioning India as a leading arbitration hub. Although India has established the above-mentioned institutions to administer arbitration proceedings, they still lag behind institutions of global repute such as the International Court of Arbitration of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Permanent Court of Arbitration (PCA), the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC). As a result, when engaging in business contracts with Indian companies, multinational corporations and other international commercial entities do not favour India as the venue for arbitration proceedings and thus prefer a foreign arbitration centre. In order to streamline institutional arbitration in India, an amendment was made to the Act in 2019, which provided for the establishment of the Arbitration Council of India, an independent body endowed with various functions ranging from framing policies for grading arbitral institutions, accrediting arbitrators and making uniform professional standards, to maintaining a repository of arbitral awards. However, it failed to address the regulation of third-party funding (TPF) in India's international commercial arbitration proceedings, as TPF is not governed by any specific legislation in India at present, but has gained momentum following its success in foreign jurisdictions and can strengthen India's position as an attractive venue for both domestic and international disputes. It is worth mentioning that, though India lacks any specific legislation dealing with TPF, over the past few decades the growing acceptance of TPF in litigation and arbitration has also been signalled by several judgments of the constitutional courts of India, wherein the courts have highlighted its benefits and recognised its tremendous potential to flourish in the Indian market. For instance, the Supreme Court in *Bar Council of India v. A.K. Balaji* (2018)¹ observed that there is no restriction on TPF litigation and getting reimbursement after the outcome of litigation; hence, third-party funding is legal in India. But the Court "strongly suggested" that advocates in India cannot fund litigation on behalf of their clients. Similarly, in May 2023, the Hon'ble Delhi High Court in *Tomorrow Sales Agency Private*

¹ *Bar Council of India v. A.K. Balaji*, AIR 2018 SC 1382.

*Limited v. SBS Holdings, Inc.*² observed that "third-party funding is essential to ensure access to justice", for in the absence of third-party funding a person having a valid claim would be unable to pursue it for recovery of amounts that may be legitimately due. It was further observed by the Court that the funder could not be "mulcted with liability" which it neither undertook nor was aware of. Therefore, this pivotal judgment, while giving the much-needed recognition to TPF in arbitration proceedings, also laid down the contours of the liability of such entities in the absence of any legal framework in this regard. Further, on an appeal filed by SBS Holdings Inc. against the decision of the Delhi High Court, which is still pending before the Supreme Court, with an observation that the issue is important and demands the attention of the court, this decision is expected to lay down the much-awaited jurisprudence on the importance of TPF and a funder's role in security payable in aid of enforcing an arbitral award.³ Though, as of now, there is limited judicial authority and the judicial framework for TPF is still developing, it paves the way for pragmatic discussions about developing a regulatory framework for TPF in India and accepting and integrating TPF into the Indian arbitration landscape. It is also pertinent to note that, along with various judicial precedents on TPF, general principles from contract law provide guidance on how TPF agreements may be treated and require TPF agreements to adhere to the principles outlined in the *Contract Act, 1872* in compliance with public policy and morals. Furthermore, through certain state amendments in Maharashtra, Madhya Pradesh, Gujarat and Uttar Pradesh pertaining to security for costs and financial arrangements to ensure compliance with legal principles and to give a boost to arbitration in India, statutory provisions under Order XXV Rules 1 and 3 of the *Code of Civil Procedure (CPC), 1908* also provide a framework for TPF in the context of civil suits, as endorsed by the High-Level Committee Report known as the "Sai Krishna Committee Report", which was formed in 2017 to review the institutionalisation of the arbitration mechanism in India.⁴ Therefore, at this juncture, looking at certain common law and civil law jurisdictions where the practice of TPF is burgeoning can certainly lay the foundation for developing a viable regulatory framework for TPF in India, where the absence of any clear regulatory framework gives rise to various ethical questions regarding control over the arbitration process and potential conflicts of interest, which need to be addressed through the development of dedicated regulations similar to those in the countries of the Global South. For instance, Singapore, in March 2017, became the first country in Asia to legalise TPF for arbitrations, bringing an amendment to its civil law by passing the *Civil Law*

² *Tomorrow Sales Agency Private Limited v. SBS Holdings, Inc.*, 2023 SCC OnLine Del 3191.

³ Varun Gakhar, *Supreme Court to Lay Down Contours of Third-Party Litigation Funding in India*, NDTV PROFIT (2023).

⁴ Dormaan Jamshid Dalal, *Third-Party Litigation Funding and the Law in India*, SCC ONLINE BLOG (Apr. 11, 2022).

(Amendment) Act 2017 to legalise TPF for arbitration and associated proceedings (section 5B(2) of the *Civil Law Act*). It abolished the torts of maintenance and champerty altogether. On the same day, the Civil Law (Third-Party Funding) Regulations were also passed, and new rules were included in the *Legal Profession Act (LPA) 2001* and the Legal Profession (Professional Conduct) Rules (LPPCR) 2015 (collectively, the "TPF Framework"). Initially, these rules were confined to international arbitration; however, they were later extended to cover domestic arbitration proceedings and related court proceedings, certain proceedings in the Singapore International Commercial Court (SICC) and related mediation proceedings via the *Civil Law (Third-Party Funding) (Amendment) Regulations 2021*. Similarly, Hong Kong legalised third-party funding for arbitrations and mediations via the *Code of Practice for Third Party Funding in Arbitration*. The United Kingdom, under the *Code of Conduct for Litigation Funders* ("the CoC") developed by the Association of Litigation Funders (ALF), also recognises the importance of TPF in arbitration, ensuring that the funded party and their legal representatives are not unduly influenced or controlled by the funder. In France, the legality of TPF is well established and is backed by the resolution adopted on 21 February 2017 by the Paris Bar Council, which expressed its support for TPF in the context of international arbitration, viewing it as an inevitable and positive development for access to justice.⁵ Therefore, considering the emerging exposure of arbitration in India, a viable regulatory framework for third-party funding, framed after comparison with various international practices, can help establish a hub for international arbitration with wider resources. Further, to make the institution of arbitration more accessible, there is also a need for effective training and accreditation of arbitrators and reduction of fees for small and medium-sized enterprises, in the manner that the Nairobi Centre for International Arbitration in Kenya, established under the *Nairobi Centre for International Arbitration Act, No. 26 of 2013*, has done, in addition to raising awareness and understanding of arbitration in society.

B. Need for Collaborative and Restorative Justice Reforms

Built on the foundation of the three core elements of Encounter, Repair and Transform, the restorative justice approach not only recognises the needs and viewpoints of all parties involved in the offence, that is, the victim, the state, the judiciary and the perpetrator, in order to facilitate dialogue amongst them, but also repairs the harm that the offence has caused and aids in the offender's rehabilitation.⁶ In India, where the adversarial nature of the dispensation of criminal

⁵ Pavni Tuli, *Third-Party Funding in Arbitration in India: Setting the Law Straight*, INTERNATIONAL BAR ASSOCIATION (2021).

⁶ GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES* (Routledge 2d ed. 2013).

justice is often held responsible for making victims feel completely powerless, with no say in the proceedings, the introduction of various reforms in the restorative process can be of extreme importance in giving those witnesses a newfound status and a voice under the system of criminal justice. In India, the origins of the restorative approach can be traced through various mechanisms such as the Panchayats, Gram Nyayalayas and Lok Adalats, which provide opportunities for negotiation and collaboration between the offender and the victim, thereby promoting the victim's interests. Further, recognition of the vision of restorative justice can also be seen in the substantive and procedural criminal law of the country, that is, the *Bharatiya Nyaya Sanhita (BNS)* and the *Bharatiya Nagarik Suraksha Sanhita (BNSS)*. The introduction of community sentencing under the BNS (Section 4(f)), in addition to provisions under the BNSS pertaining to plea bargaining (Sections 289-300), compounding of various offences (Section 359), payment of compensation to victims (Sections 395-396), release of an offender on probation after demonstrating good behaviour or after being admonished (Section 401), permitting a victim to engage an advocate to assist the public prosecutor subject to the court's permission (Section 18(8) proviso) and the provision of immediate medical care to victims (Section 397), indeed strengthens the spirit of restorative justice and rehabilitation measures in India to help both victims and offenders. Similarly, another enactment named the *Juvenile Justice (Care and Protection of Children) Act 2015* also espouses the principle of restorative justice and emphasises a reformatory approach for juvenile offenders while ensuring their protection and reintegration into society by providing for alternative sanctions such as counselling, community service, fines, probationary release and placement in a facility for reformatory services. It is also pertinent to note that, apart from these measures adopted by the legislature, the judiciary in India too has recognised the need for integrating the principles of restorative justice and has advocated several measures to infuse a restorative approach into the Indian justice system, such as victim-offender meetings, sentencing circles, community service, meditative drills and study classes to help restore both the victim and the offender (*Sunil Batra v. Delhi Administration* (1980)⁷; *Rattan Singh v. State of Punjab* (1979)⁸; *Anupam Sharma v. NCT of Delhi and Another* (2008)). In fact, it was due to the Supreme Court promoting mediation in matrimonial disputes and highlighting its importance in several landmark judgments that, over the years, restorative justice principles have been applied to matrimonial and family disputes through mandated mediation in such proceedings. However, careful perusal of the restorative justice framework in India reveals certain loopholes in these legislative

⁷ *Sunil Batra v. Delhi Administration*, (1980) 2 SCR 557.

⁸ *Rattan Singh v. State of Punjab*, (1979) 4 SCC 719.

provisions and their inconsistent implementation, in addition to various gaps in the training of personnel, infrastructure and resources, which have contributed to its limited success and call for concerted efforts to develop supportive policies and frameworks to integrate restorative justice more effectively into the Indian legal system. Under the given circumstances, India can indeed benefit from examining the experiences and practices of many nations in the Global South that have developed innovative, culturally sensitive restorative justice practices, thereby serving as valuable models for other countries. Akin to countries such as Colombia, Rwanda and South Africa, the Indian government can also implement similar collaborative justice programmes to address the issue of violence and conflict in the country, bringing together victims, perpetrators and community leaders to find a way to resolve conflicts and promote peace, while providing a platform for offenders to accept responsibility for their actions and reintegrate into society. Looking at the success of community-based courts, that is, the Gacaca Courts in Rwanda focusing on truth-telling, reconciliation and community involvement, as well as the group conferencing approach in New Zealand in both criminal and civil cases, which has resulted in lower rates of reoffending and greater satisfaction for victims, India too can develop and implement effective restorative justice practices that are culturally relevant and contextually appropriate to build a crime-free, just and peaceful society.

C. Establishing Partnerships between Legal Institutions

Since access to justice is a basic human right, and yet it remains elusive for many people, particularly in developing countries, due to inadequate and insufficient capacity within the legal justice sectors to provide effective services, there is a pressing need for collaboration and capacity-building efforts leading to sustainable transformations along with progressive shifts in attitudes and mindsets. Collaboration in this field can take many forms, including training programmes, establishing partnerships between legal institutions in developed and developing countries, sharing best practices and promoting mentorship and coaching programmes for legal professionals. Additionally, there may be projects that aim to connect legal scholars, practitioners, judges and activists from various nations to share their experiences. It is worth mentioning at this juncture that various capacity-building measures have already been taken in the legal justice sectors in the Global South, such as the United Nations Development Programme (UNDP) supporting several initiatives, including training for judges and legal professionals, developing legal aid services and improving access to justice for marginalised communities. Similarly, the International Legal Assistance Consortium (ILAC), a global network of legal professionals and organisations, provides technical assistance, conducts assessments and supports capacity-building efforts in legal justice institutions in conflict-

affected and post-conflict countries. The World Bank and the Open Society Foundations (OSF) have also provided technical assistance and funding to support the development of legal aid services in several countries. However, these are just a few examples of the many measures taken to develop collaborations for capacity building in the Global South. While there is still much work to be done, these efforts nevertheless demonstrate the importance of international cooperation and collaboration and their potential to maximise the efficacy of the socio-legal frameworks of the legal systems concerned.

D. Need to Enhance Women's Representation in Decision-Making Positions

Adequate representation of women in decision-making positions in any nation not only aligns with the principles of equality and justice but also enhances governance, judicial fairness and social development. Therefore, by addressing systemic barriers and implementing supportive measures, an inclusive and equitable society in which women have equal opportunity to contribute to leadership and decision-making processes can be established. The importance of increasing the representation of women in social, legal, judicial and political positions can be significantly informed by lessons learned from the Global South. Many countries in the Global South have made strides in increasing women's representation in political and judicial roles, often as part of broader gender equality and social justice movements. For example, Rwanda has achieved high levels of female representation in parliament, providing valuable lessons on the impact of such measures on gender equality. Argentina, South Africa and Kenya have also made progress in female political representation through the implementation of gender quotas and proactive policies that promote women's political participation and gender equality. Similarly, notable progress in female judicial representation can be witnessed in Colombia. As per the report released by The Elders, a group of global leaders working for peace, justice, human rights and a sustainable planet founded by Nelson Mandela in 2007, it is stated that in the majority of judicial institutions across the globe, including the police, courts, magistracies and ministries of justice, there are more men than women in prominent positions. While there has been progress in certain nations, for instance in France, where women make up 71% of judges, and in Italy, where they make up 53%, in comparison to El Salvador and Germany, where this figure is 49% and 45% respectively, in some nations where women have been appointed as judges they are still vastly under-represented. For instance, there are just 7.6% women judges in Iraq, 3.8% in Nepal and none in Kuwait.⁹ In India, there are still not enough women in the judiciary, and certainly not enough women in the superior judiciary. Of the 250 judges appointed since independence, the number of women judges in the Indian Supreme Court

⁹ THE ELDERS, *Access to Justice for Women and the Rule of Law* 13 (Policy Paper, 2022).

is relatively low at 11.¹⁰ Out of a total of 34 justices, only three are women. A recent survey conducted within India's judicial branch showed that women constitute 35% of subordinate court judges and 13% of High Court judges.¹¹ This paradigm must change. Therefore, under the given circumstances, it is imperative to increase the number of women in decision-making positions within justice systems at all levels, not only by promoting legal literacy but also by taking proactive measures through legal practitioners and institutions, thereby empowering impoverished and marginalised women.¹² It is worth noting that, with the aim of promoting gender equality and women's empowerment in Indian society, the Indian Parliament has recently passed the *Nari Shakti Vandan Adhiniyam (Women's Reservation Bill, 2023)*, which mandates that 33% of the seats in the Lok Sabha (Lower House of Parliament), the Vidhan Sabhas (Provincial Legislative Assemblies) and the Delhi Assembly be specially reserved for women.¹³ Nevertheless, the execution of the allocation of the seats would be postponed until the completion of the Census and a delimitation procedure. Currently, the proportion of female members in the Indian Parliament is approximately 14.4%, which is the highest recorded thus far.

II. KEY AREAS TO DEVELOP COLLABORATIONS FOR CAPACITY BUILDING IN THE GLOBAL SOUTH: LESSONS TO BE LEARNED FROM INDIA'S SUCCESSFUL INITIATIVES

A. Adoption of Gender-Neutral Language for Combating Gender Stereotypes

With increased recognition of gender diversity in all nations, and with many international human rights frameworks in the background advocating non-discriminatory practices, the necessity of gender-neutral language has become a mandate for every legal system to adapt, using language that clearly reflects these evolving values and norms in all its legal texts to prevent the marginalisation of non-binary, transgender and gender non-conforming individuals and to be inclusive of all identities who have suffered from the feeling of alienation and inequality on being excluded or misrepresented by traditional gendered language. The adoption of gender-neutral language in any nation is not only a crucial metric of a nation's success in terms of its progressive and forward-thinking outlook, but also of its commitment to the principles of equality, inclusivity and social justice. When all individuals in a nation are respected and valued, it leads to higher levels of civic engagement and trust in government, as

¹⁰ *India Needs More Women Judges in the Supreme Court*, LUKMAAN IAS BLOG (Oct. 14, 2025).

¹¹ INDIA JUSTICE REPORT, *India Justice Report 2022* (2022).

¹² *Supra* note 10.

¹³ *Nari Shakti Vandan Adhiniyam*, PRESS INFORMATION BUREAU (2023).

citizens feel that their identities and rights are being acknowledged and respected, and at the same time it enhances the global reputation of a nation as a prosperous and harmonious one. It is worth noting at this juncture that the apex court of India, that is, the Supreme Court, in its commitment to promote gender equality, has also taken a significant step by releasing a Handbook on Combating Gender Stereotypes in 2023, which suggests alternative words or phrases to be used while drafting pleadings as well as orders and judgments, replacing prejudicial stereotypes with a view to promoting unbiased language and creating a just social environment for everyone. The Supreme Court's Handbook on Combating Gender Stereotypes offers a valuable model for capacity building in the Global South. By integrating gender-neutral language in developing educational programmes, establishing clear guidelines and fostering public awareness, other countries can also advance gender equality and create a more inclusive legal system that respects and upholds the rights of all individuals, regardless of gender.¹⁴

B. Incorporation of Indigenous Traditional Knowledge and Establishment of People-Centred Justice Systems to Foster Community Engagement

To empower people across the nation to better understand and use the law, capacity building and collaboration in the Global South can be pursued to establish people-centred justice systems that emphasise the needs of people, including the most marginalised, rather than institutions. In this regard, learning lessons from India, which provides for the incorporation of indigenous traditional knowledge and practices into environmental and resource management, the following policies can be considered by other nations: the practice of Community Conserved Areas (CCAs) contributing to biodiversity conservation, sacred groves, the Zabo system in Nagaland and the Phad system in Maharashtra, which combines forest management with water conservation. Similarly, the incorporation of Brazil's provisions pertaining to participatory budgeting processes, allowing citizens to directly influence how public funds are allocated, can be adopted by countries in the Global South, including India, to ensure that public funds address the needs and preferences of local communities. This people-centred approach in the Global South will not only prioritise inclusivity, participatory governance and community engagement but also result in the design of policies and programmes that effectively address local challenges while centring people's needs and perspectives.

C. Strategic Corporate Social Responsibility to Promote Sustainable Social and Economic Development

¹⁴ SUPREME COURT OF INDIA, *Handbook on Combating Gender Stereotypes* (2023).

Capacity building in the context of Corporate Social Responsibility (CSR) involves the effective engagement and management of individuals and organisations in CSR activities. In the case of India, the world's fastest-growing economy, the success of CSR is evident in a visible shift in the funding allocated to various development programmes by the government and corporations, which indeed offers valuable lessons for other nations.¹⁵ Further, with clear guidelines on the areas where CSR funds can be utilised (such as education, healthcare, poverty eradication and environmental sustainability), Section 135 of the *Companies Act, 2013* mandates that companies which fulfil specific requirements devote 2% of their average net profits to CSR activities. Additionally, these companies must establish CSR committees to oversee the development, implementation and oversight of CSR measures.

Further, by encouraging collaboration across sectors regarding resources, expertise and networks, and by publicly recognising and rewarding companies that do well in CSR with tax incentives, this approach has indeed contributed to a strong culture of corporate responsibility in India. Therefore, akin to India's legal mandate for CSR, while identifying and prioritising areas that align with national development goals to maximise the impact of CSR activities with clear guidelines and reporting requirements, various countries in the Global South too can enhance the effectiveness of their CSR initiatives and promote sustainable social and economic development.

III. CONCLUSION

The above discussion reveals that capacity building and collaboration in the Global South are crucial not only for sustainable development but also for addressing various socio-economic challenges. Undoubtedly, each country in the Global South offers valuable insights and practices that can serve as a model for capacity building. A perusal of the success metrics of India's CSR law and the Supreme Court's handbook on gender-neutral language, Brazil's participatory budgeting, Rwanda's community-based reconciliation and the people-centred approach of Global South countries indeed provides a basis for the adoption of similar frameworks and strategies to enhance governance, development and service delivery systems, thereby improving the quality of life for their populations, and can be looked upon as a roadmap towards more inclusive, equitable and effective governance and developmental outcomes.

¹⁵ S. Bhatt & L. Kadiyan, *Corporate Social Responsibility and Social Development in India: An Interface*, 44(3) SOCIAL DEVELOPMENT ISSUES 3 (2023), <https://doi.org/10.3998/sdi.3709>.