

GOURAB BANERJI

Senior Advocate & Barrister

CURRICULUM VITAE

Barrister; M.A. Cantab (Law Tripos), 1st Class;
Bundy Scholar, Norah Hunter Dias Prize in law;
Magdalene College, Cambridge University;
Call to the Bar in 1990 (Lincoln's Inn);
Practising before the Supreme Court and High Courts of India since 1989;
Designated a Senior Advocate;
Overseas Associate, Essex Court Chambers, London.

NATURE OF PRACTICE

- Gourab has developed his practice mainly before the Supreme Court of India as a Senior Counsel with an emphasis on commercial matters, and particularly commercial arbitration.
- He appears as counsel in a large number of domestic and international commercial arbitrations and investment arbitrations in India and overseas and routinely appears before the Indian courts on behalf of clients seeking enforcement of foreign awards. He is regularly briefed by Indian Public Sector Undertakings as also leading private companies.
- Currently, a private legal practitioner, Gourab has also been a government legal officer, both at the Federal and the Provincial levels. While Additional Solicitor General for the Union of India, Gourab represented the Government of India in a number of sensitive and landmark cases. A noteworthy case is the landmark case of *Republic of Italy v Union of India* [2013] 4 SCC 721 before the Supreme Court of India. The Supreme Court held that India had concurrent jurisdiction to prosecute the Italian marines accused of shooting Indian fishermen within the Exclusive Economic Zone of India.
- He has also advised the Government in the case of *Kulvir Singh Barapind v The Government of the Republic of India, et al*, a case before the U.S. courts under which the Government was sued under the Alien Torts Claim and summons were served on the Government, various governmental entities and officials (including the Prime Minister and various Cabinet Ministers); and succeeded in receiving an order from the court in the U.S. granting the motion to dismiss the case against the Republic of India. Further, on numerous occasions he has advised the Ministry of External

Affairs on various matters concerning Public International Law.

- While as a government legal officer and in private practice, Gourab has also successfully represented his clients before the Supreme Court in several civil and commercial cases including *Essar Steel Ltd v Union of India and Ors.* [2016] 11 SCC 1, *New India Assurance Company Ltd v Genus Power Infrastructure Ltd* [2015] 2 SCC 424, *MECL v AK Diskbit* [2015] 2 SCC 535, *BHEL v Tata Projects Ltd* [2015] 5 SCC 682, *UPSC v Arun Kumar Sharma* [2015] 12 SCC 600, *Three Cheers Entertainment v Calcutta Electricity Supply Co* [2008] 16 SCC 592 and *Vijay Industries v NATL Technologies*, [2009] 3 SCC 527.
- Gourab has often represented clients such as subordinate judiciary judges' associations pro bono in the Supreme Court of India. Apart from that, he has been appointed *amicus curiae* by the Courts in a number of matters relating to land laws as well as indirect tax. He is currently representing the state of Andhra Pradesh in an inter state river water dispute against Odisha, Karnataka, Maharashtra, Chhattisgarh. Recently, he argued before a constitutional bench of the Supreme Court in *Kalpna Mehta v Union of India (2018) 7 SCC 1* on whether use of Parliamentary Standing Committee Reports in courts of law amounts to breach of Parliamentary Privileges.

IMPORTANT PRACTICE AREAS

▪ ARBITRATION

Some important cases (with subject matter in parentheses) pertaining to Indian Arbitration in which Gourab has appeared are –

- (i) *Jaiprakash Associates Limited v Tebri Hydro Development Corporation Limited* (2019) 2 SCALE 718 (Levy of interest on arbitral awards)
- (ii) Represented a judgment debtor successfully in *K. Kishan v M/s Vijay Nirman Company Pvt. Ltd.* (2018) 10 SCALE 256 where an award was held to be a disputed debt under the Insolvency and Bankruptcy Code 2016.
- (iii) *S.B.P & Co v Patel Engineering* [2005] 8 SCC 618 (Jurisdiction of courts and arbitral tribunals to adjudicate on the nature, scope and validity of arbitration clauses. This case was decided by a Constitutional Bench).
- (iv) *Smita Conductors v Euro Alloys* [2001] 7 SCC 728 (Enforcement of Foreign Awards in India).
- (v) *Sanshin Chemicals Industry v Oriental Carbons & Chemicals*, [2001] 3 SCC 341 (Seat of Arbitration).
- (vi) *Thyssen Stahlunion GmbH v Steel Authority of India*, [1999] 9 SCC 334 (Applicability of the new Arbitration & Conciliation Act 1996).

- (vii) *Sumitomo Heavy Industries v Oil & Natural Gas Corporation*, [1998] 1 SCC 305 (Applicable law/Choice of Law in Arbitration).
- (viii) *Venture Global Engineering v Satyam Computer Services* [2008] 4 SCC 190 (Challenge to a foreign award in India).
- (ix) *M/S. Centrotrade Minerals & Metal Inc. v Hindustan Copper Ltd.* [2017] 2 SCC 228 (Validity of multi-tier arbitration clauses).
- (x) *XSTRATA Coal Marketing AG v Dalmia Bharat (Cement) Ltd* [2016] 6 ArbLR 270(Delhi) (Enforcement of a foreign award)
- (xi) *Glencore International AG v Dalmia Bharat (Cement) Ltd. (2017) 4 Arb. LR 228 (Delhi)* (Enforcement of a foreign award)
- (xii) *Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd. (2018) 4 Arb. LR 66 (Delhi)* (Challenge to a multi-million-dollar arbitration award). A Special Leave Petition against the Delhi High Court judgment is presently pending before the Supreme Court of India, where Gourab is appearing for Antrix. Also advised on enforcement of Devas award in France and in the USA.

Gourab has also appeared in numerous arbitration proceedings. Some international commercial arbitration proceedings in which he has participated in recent years are –

- (i) Presently acting as a sole arbitrator in a multi-jurisdictional LCIA arbitration.
- (ii) Recently appointed as a sole arbitrator by the Supreme Court of India in an international commercial arbitration seated in New Delhi.
- (iii) Represented the Republic of India in certain Bilateral Investment Treaty arbitrations.
- (iv) Represented an Indian PSU as the lead counsel in an arbitration concerning a dispute arising between the parties under the Contract of Affreightment, where the PSU was the charterer.
- (v) Represented an English company against an Indian textile manufacturer in respect of disputes arising out of a finance agreement.
- (vi) Represented an Indian oil company in a major international arbitration dispute pertaining to charter-hire of a drilling vessel.
- (vii) Represented a consortium of foreign companies against a public sector undertaking, in a construction dispute regarding the construction of New Delhi's new underground metro rail.

- (viii) Instructed on behalf of an Indian firm against a multinational drilling company in a dispute arising out of an indemnity clause for customs duty liability.
- (ix) Instructed on behalf of the State Government of Andhra Pradesh to defend a claim for damages arising out of the termination of three power project contracts.
- (x) Instructed as lead counsel along with English counsel and solicitors on behalf of a public sector insurance company in an arbitration pertaining to a multi-million dollar claim arising out of cyclone damage to an oil refinery. This arbitration involved the first 'advance loss of profits' claim to be adjudicated in relation to India.
- (xi) Represented an Indian company in a major arbitration dispute for non-payment of "Take or Pay" charges under a Gas Sale agreement.
- (xii) Represented a Norwegian company in relation to disputes arising out of contracts for exploring and producing hydrocarbons in India and overseas.
- (xiii) Represented an Indian company in a multi-million dollar arbitration dispute pertaining to an Engineering Procurement Contract for Power Generation and Distribution System and Integrated Balance Works.
- (xiv) Represented a public sector undertaking in a series of arbitrations for non-payment of "Ship or Pay" charges.

▪ CIVIL & COMMERCIAL LITIGATION

Civil and commercial disputes arising out of contract form a significant component of Gourab's practice. In addition to contractual disputes generally, Gourab has been instructed in quite a few cases arising out of contractual disputes and relating to the invocation of bank guarantees, letters of credit, tenders and termination of contracts.

Some instances of cases in this field that Gourab successfully argued before the Supreme Court of India are *BHEL v Tata Projects Ltd* [2015] 5 SCC 682, *Air India Cabin Crew Association and Ors v Union of India and Ors* [2012] 1 SCC 619, *Oil & Natural Gas Corporation v City Industrial Development Corporation*, [2007] 7 SCC 39, *Ojas Industries v Oudh Sugar Mills* [2007] 4 SCC 723, *Panchanan Dhara v Monmatha Nath Maity*, [2006] 5 SCC 340, *Food Corporation of India v Babulal Agrawal* [2004] 2 SCC 712 and *Ahmedabad Municipal Corporation v GTL Infrastructure Ltd. and Ors.*[2016] 12 SCALE 1002.

▪ OIL & GAS

Gourab has considerable experience in the oil and gas sector and has represented both private parties as well as public sector undertakings in disputes in the Supreme Court of India, various High Courts of India, specialised tribunals as also arbitral tribunals. He is consistently engaged by various public sector undertakings for arbitral

proceedings that cover a wide range of oil and gas related issues including exploration, pricing, supply and transportation of oil as well as gas.

- INSURANCE

Gourab currently represents insurance companies in a wide variety of claims, mostly before arbitral tribunals and before the National Consumer Disputes Redressal Commission (a specialized Tribunal set up for resolving consumer/product liability disputes). He is also routinely consulted on matters involving Indian insurance law and has advised on a matter pertaining to whether a port's physical damage and business interruption claims pursuant to an unexpected weather event were payable by the reinsurers to the insurer under several reinsurance policies.

Currently, Gourab is counsel for insurers in a domestic arbitration concerning disputes arising out of damage due to a fire at a paper manufacturing facility. He is also currently representing a foreign insurance company in another dispute which pertains to the methodology of calculation of loss of profits under a 'fire loss of profits' policy.

Recently, Gourab has successfully impugned an arbitral award passed against an insurance major in *Indo Rama Synthetics India Limited v Iffco Tokio General Insurance Co. Ltd.* in FAO (OS) 156/2015 decided on 15.2.2019 before the Delhi High Court. A Special Leave Petition against the Delhi High Court judgment is presently pending before the Supreme Court of India where Gourab is appearing for the Respondent.

- ANTITRUST

Gourab has appeared before the Courts, before the Competition Commission of India and also before the Competition Appellate Tribunal (a specialized appellate Tribunal set up under the Competition Act, 2002) for the purpose of representing clients across several fields in matters pertaining to Indian competition law. He was engaged by, and represented, a cement company accused of cartelization in the Competition Appellate Tribunal

- TAXATION (Income Tax, VAT, Sales Tax, Excise, Customs)

Gourab has a considerable amount of expertise in the fields of direct taxation and has extensively represented the Union of India as lead counsel in direct and indirect taxation litigation while Additional Solicitor General of India. Some judgments pertaining to taxation argued by Gourab in the Supreme Court include –

- (i) *Commissioner of Customs v N.I. Systems*, (2010) 256 E.L.T. 173 (As Additional Solicitor General of India).
- (ii) *Commissioner of Central Excise v Gujarat Narmada Fertilizer Corporation*, (2009) 1

SCC 101 (As Additional Solicitor General of India)

- (iii) *Liberty India v Commissioner of Income Tax*, (2009) 9 SCC 328 (As Additional Solicitor General of India).
- (iv) *Commissioner of Trade Tax v Kajaria Ceramics*, [2005] 11 SCC 149
- (v) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2004] 7 SCC 242
- (vi) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2005] 4 SCC 272
- (vii) Successfully defended a challenge to the constitutional validity and vires of certain provisions of the Assam Agricultural Produce Market Act before the Gauhati High Court (reported in *Assam Roller & Flour Mills Association v. State of Assam*, 2008 (4) G.L.T. 366).
- (viii) Gourab was instructed in a case challenging a significant demand of sales tax against a government-owned oil company before the High Court of Orissa. (*HPCL v State of Orissa*).
- (ix) Gourab successfully represented a local body before the Supreme Court of India in its levy of statutory cess in *Vasant Chemicals Limited v Managing Director, Hyderabad Metropolitan Water Supply and Sewerage Board and Others* (2019) 4 SCC 592.
- (x) He was appointed by a leading international law firm as an expert to opine on a complicated issue pertaining to tax laws in India in a matter before the Eastern Caribbean Supreme Court.

▪ INTELLECTUAL PROPERTY AND SECURITIES

Gourab regularly appears before the Courts in intellectual property disputes. Gourab has represented, amongst others, Unilever, in a dispute pertaining to comparative advertising and malicious falsehood before the Delhi High Court *Reckitt Benckiser v Hindustan Unilever* (2008) 38 Patents & Trademark Cases 139. The judgment in *M/s P.K. Overseas Private Limited v. M/s KRBL Limited* FAO No. 317/2018 is presently awaited where Gourab has argued for the Appellant.

▪ SECURITIES MARKET

Gourab has successfully represented the Indian securities market regulator Securities and Exchange Board of India in a litigation before the Allahabad High Court

challenging the regulations that have been issued by SEBI for the purpose of regulating the entry, licensing and business of stock exchanges throughout the territory of India in *UP Stock Exchange Brokers' Association v Security and Exchange Board of India* 2014 [7] ADJ 548. He has also successfully represented SEBI in *SEBI v Rakhi Trading and Others (2018) 13 SCC 753* where the Supreme Court has clarified the definition of *market manipulation* in the Futures and Options segment of the National Stock Exchange.

- LABOUR & EMPLOYMENT

Over the past fifteen years, Gourab has argued a number of cases relating to labour and industrial employment including *State of Uttaranchal v Dinesh Kumar Sharma*, [2007] 1 SCC 683; *ANZ Grindlays Bank v Union of India*, [2005] 12 SCC 738; and *Bharat Heavy Electricals v B.K. Vijay* [2006] 2 SCC 654, *Ritu Bhatia v. Ministry of Civil Supplies, Consumer Affairs and Public Distribution* in Civil Appeal No. 1467 of 2019.

- INFORMATION TECHNOLOGY AND DATA LAWS

Recently, Gourab has advised overseas clients on laws relating to information technology and data privacy and the compliance exercises to be carried out by them.

APPOINTMENTS

- Additional Solicitor General for the Union of India at the Supreme Court (2009-2014).

The Constitution of India provides for Law Officers at the Federal and Provincial levels of Government. At the Federal level, the Union of India is represented by the Attorney General for India, the Solicitor General for India and a team of eight Additional Solicitors General.

- Vice Chairman of the UNCITRAL National Coordination Committee for India (UNCCD); one of the only three UNCITRAL National Coordination Committees constituted world over under the mandate of the United Nations.
- Vice-Chairman of the Permanent Court of Arbitration India Conference Committee (of which Mr. Fali S. Nariman is the Chairman).
- Part of the sub-committee of experts on Investment treaties and Investment treaty arbitrations that assisted the Law Commission of India in its 260th report on India's Model Bilateral Investment Treaty.
- Contributed to the Law Commission's 246th report on Amendment to the Indian Arbitration and Conciliation Act, 1996.
- Part of the Attorney General's Committee set up in 2010 to suggest changes to the Indian Arbitration and Conciliation Act, 1996.

- The Government of India's representative at the UNCITRAL Working Group on Arbitration in Vienna in October 2011.
- Appointed to the Board of ASSOCHAM's (Associated Chamber of Commerce) International Centre for Alternative Dispute Resolution (AICADR), which is formulating an institutional set up for Investment treaty arbitration broadly based on the UNCITRAL Rules.
- Author of the *'India Investment Treaty Know-How'* chapter in the *Global Arbitration Review in 2016 and 2017*.
- Author of 'Halsbury's Laws of India, *Business Associations*'.
- Author of the India chapter of the *Encyclopedia of International Commercial Litigation*, soon to be published by Wolters Kluwer.
- Additional Advocate General for the State of Haryana at the Supreme Court (2007-2009).
- Additional Advocate General for the State of Uttarakhand in the Supreme Court (2002-2007).
Each State/Province is represented by an Advocate-General. Gourab represented the State of Uttarakhand from 2002 to 2007, and represented the State of Haryana as its Additional Advocate General before the Supreme Court from 2007 to 2009.
- Member, National Legal Services Authority (NALSA), New Delhi (2004-2009)
NALSA is the apex body constituted to lay down policies for making legal services available under the provisions of the Legal Services Authorities Act, 1987. Its duties include framing effective schemes for legal services, disbursing funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. The Chief Justice of India is the Patron-in-chief of NALSA.
- Nominated as a Delegate by the Supreme Court of India for the Indo Canadian Legal Forum Meet, 2001; in the Indo-US Legal Forum Meet, 2001 and in the Indo-British Legal Forum Meets, 2003 and 2008.