



# Arvind Datar SA

*"Arvind Datar has an excellent and longstanding reputation as a litigator and is noted for his handling of indirect tax matters. He is referred to as an 'exceptional counsel' by interviewees."*

*Chambers & Partners, Asia Pacific*

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Arvind Datar SA is a Senior Advocate in India whose practice is focused particularly on constitutional, commercial, taxation and regulatory laws, mainly before the Supreme Court of India.

He also appears as counsel before various High Courts, statutory tribunals and in bilateral investment treaty and international commercial arbitrations.

He started his legal career in 1980, as an Advocate in the Chambers of Mr. N. Natarajan, Senior Advocate, and Mrs. Ramani Natarajan. He later joined the office of M/s. Subbaraya Aiyer, Padmanabhan and Ramamani, where he practiced income tax and central excise/customs laws.

Mr Datar set up independent practice in 1984 and appeared primarily before the Madras High Court on its original, appellate and writ sides. During this time, he was predominantly engaged in matters relating to income tax and central excise, customs and company law.

He was designated as Senior Advocate by the Madras High Court in 2000.

Mr Datar routinely appears before the Supreme Court of India in matters relating to constitutional, corporate, commercial, tax and regulatory laws. He also appears as *Amicus Curiae* appointed by the Supreme Court and various High Courts, to assist the court in matters on questions of constitutional and taxation laws.

## Recent Highlights

### Cairn Energy Plc. v Union of India

Appearing in a Bilateral Investment Treaty (BIT) arbitration before an arbitral tribunal in The Hague, Mr Datar successfully represented Cairn Energy Plc in its dispute against the Government of India regarding the impact of India's retrospective taxation regime. Cairn Energy Plc was awarded damages of approximately US\$1 billion.

### S. Puttaswamy v Union of India (2017) 10 SCC 1

A bench of nine judges of the Supreme Court recognised "right to privacy" as a Fundamental Right even though it

was not specifically enumerated in Part-III of the Constitution.

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### **Abhiram Singh v C.D. Commachen (2017) 2 SCC 629**

Acting in the Supreme Court before a bench of seven judges, in a matter dealing with the provisions of the Representation of the People Act, 1951 to decide whether reference to religion in election campaigns amounts to a corrupt electoral practice.

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### **Navtej Singh Johar v Union of India (2018) 10 SCC 1**

Acting in a case before a bench of five judges, which resulted in a declaration of section 377 of the Indian Penal Code, 1860 – which made homosexuality a crime punishable with imprisonment – as unconstitutional.

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### **Supreme Court Advocate-on-Record v Union of India (2016) 5 SCC 1**

A five-judge bench of the Supreme Court struck down the Constitution (Ninety Ninth Amendment) Act, 2015, which created the National Judicial Appointments Commission (NJAC) for violating the Basic Structure of the Constitution. This was a rare occasion where a constitutional amendment was declared to be unconstitutional. Thereafter, Mr. Datar was appointed as part of a two-member committee to recommend changes in the appointment process for judges of the High Courts and the Supreme Court of India.

## Expertise

### **Administrative & Public Law**

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#### Notable Administrative & Public Law cases

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### **S. Puttaswamy v Union of India (2017) 10 SCC 1**

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### **Jindal Stainless Steel v State of Haryana (2017) 12 SCC 1**

Acting before a nine-judge bench of the Supreme Court, resulting in a ruling on the constitutional validity of entry tax (tax on inter-state trade and commerce).

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### **Abhiram Singh v C.D. Commachen (2017) 2 SCC 629**

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### **Puttaswamy v Union of India (2019) 1 SCC 1**

Acting in a matter in which the Supreme Court struck down certain provisions of the Aadhaar Act, 2016. “Aadhaar” in India is akin to a social security and unique identification number. While the Aadhaar scheme was upheld, certain provisions of the Aadhaar Act, 2016 were struck down for being violative of the “right to privacy”.

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### **Rojer Mathews v Southern Indian Bank Ltd (2020) 6 SCC 1**

Acting in a matter in which the Supreme Court declared certain provisions relating to the service conditions of Tribunal members in Finance Act, 2017, as unconstitutional. The question of whether the bill would constitute a “Money Bill” has now been referred to a bench of seven-judges of the Supreme Court for adjudication.

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Representing the Madras Bar Association before the Parliamentary Committee on the Commercial Courts Bill.

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Appearing as expert witness before the Parliamentary Committee on the Tribunals, Appellate Tribunals and other Authorities (Conditions of Service) Bill, 2014.

## **Company, Restructuring & Insolvency**

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Notable Company, Restructuring & Insolvency cases

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### **Union of India v R. Gandhi (2010) 11 SCC 1**

Acting in the Supreme Court, regarding the constitutional validity of Chapters 1B and 1C of the Companies Act,

1956, inserted by Companies (Second Amendment) Act 2002, which established National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). In the first round of litigation, the validity was upheld but major changes were insisted upon to make the NCLT and NCLAT as independent as possible.

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### **Madras Bar Association v Union of India (2015) 8 SCC 583**

Acting in the second round of litigation, in which the Supreme Court struck down certain provisions of the Companies Act, 2013; however, the validity of the NCLT was upheld.

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Representing the Madras Bar Association before Eradi Committee that recommended the formation of National Company Law Tribunal.

## **Financial Services**

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### **Notable Financial Services cases**

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### **Sahara India Real Estate Corporation Limited v SEBI (2013) 1 SCC 1 (and numerous other reported judgments in the same dispute)**

Representing the Securities and Exchange Board of India (SEBI), for the last ten years, as the lead counsel in several high-value commercial and regulatory disputes. Over a seven-year period, SEBI has been able to recover Rs.18,000 crores (USD 2.4 billion) through consistent legal proceedings against the directors of the company which had collected Rs.25,000 crores (USD 3.5 billion) from numerous investors and depositors, in one of the biggest corporate scams in India.

## **International Arbitration**

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### **Notable International Arbitration cases**

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### **Cairn Energy Plc v Union of India**

Appearing in a Bilateral Investment Treaty (BIT) arbitration before an arbitral tribunal in The Hague, Mr Datar successfully represented Cairn Energy Plc in its dispute against the Government of India regarding the impact of India's retrospective taxation regime. Cairn Energy Plc was awarded damages of approximately US\$1 billion.

## **Tax**

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### **Notable Tax cases**

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### **Jindal Stainless Steel v State of Haryana (2017) 12 SCC 1**

Acting in the Supreme Court, resulting in a ruling on the constitutional validity of entry tax (tax on inter-state trade and commerce).

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### **Madras Bar Association v Union of India (2014) 10 SCC 1**

Acting in a matter which resulted in the Supreme Court striking down the provisions of the National Tax Tribunal Act, 2005 which established the National Tax Tribunal, set up to take over the existing jurisdiction of the High Courts for deciding appeals pertaining to income tax, customs, central excise and service tax matters. The provisions were struck down for being violative of the Basic Structure of the Constitution and the doctrine of separation of powers.

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Testifying before of Parliamentary Committee on Indirect Taxes.

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Appearing as expert witness before the Parliamentary Committee on the National Tax Tribunal Bill.

## Directory Quotes

*"Arvind Datar is well regarded by sources, with one commentator noting: 'If I had a complicated case, I would go to Arvind Datar'. He is well known for acting on Supreme Court and Madras High Court matters, with expertise in tax-related disputes."*

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Chambers & Partners, Asia Pacific

*"Arvind Datar is renowned for his encyclopaedic knowledge of complex corporate tax matters."*

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Who's Who Legal

## Directory Rankings

## Chambers & Partners – Asia Pacific

- Dispute Resolution: Senior Advocates: Madras High Court (India) – Spotlight Table
- Dispute Resolution: Senior Advocates: Supreme Court (India) – Band 1
- Tax: Senior Advocates (India) – Band 1

## Who's Who Legal

- Corporate Tax – Recommended

## Education

- I.C.W.A, Institute of Cost & Works Accountants (1982)
- B.L., University of Madras (1980)
- B.Sc. (Hons.), University of Bombay (1976)

## International Bar / Court Appointments

- India

## Memberships

- Member, Governing Council, National Judicial Academy, (Supreme Court of India, Bhopal).
- Vice-President, Bar Association of India.
- (Former) Joint Secretary, Tamil Nadu Mediation and Conciliation Centre.
- Director, Nani Palkhivala Arbitration Centre.
- Trustee, Palkhivala Foundation.
- Trustee, Maharashtra Building Trust.

## Teaching

- Part-time/ visiting faculty from 1980 to 1991 at the Southern India Regional Council of the Institutes and Chartered Accountants, Cost Accountants and Company Secretaries.
- Visiting Faculty in Taxation Management at the Bharathidasan Institute of Management, Tiruchirappalli (1984 – 2004).
- Guest lecturer at National Law School University of India, Bangalore; ILS Law College, Pune; School of Excellence, Chennai; NALSAR, Hyderabad; and Indian Institute of Management, Kozhikode (Kerala).
- Guest lecturer at the Cambridge University (2003) and University of Capetown, South Africa (2004).
- Guest Faculty at National Judicial Academy, Bhopal and Tamil Nadu State Judicial Academy, Chennai.

## Publications

- Author, *Guide to Central Excise – Law & Practice* – two volumes and six editions
- Author, *Guide to Central Excise Procedure* – two editions
- Author, *Datar on Constitution of India* – two editions; the third edition is scheduled for release in May 2022
- Co-author, *The Courtroom Genius* – with Soli J. Sorabjee, 17th reprint
- Chief Editor, Kanga & Palkhivala's *Law and Practice of Income Tax* – 10th edition (2014) and 11th edition (2020)
- Editor-in-Chief, *Ramaiya's Guide to Companies Act* – 11th to 19th edition(s)
- General Editor, *Essays & Reminiscences: A Festschrift in Honour of Nani A. Palkhivala* (January, 2020)
- Written over 300 articles in various professional journals, business and daily newspapers