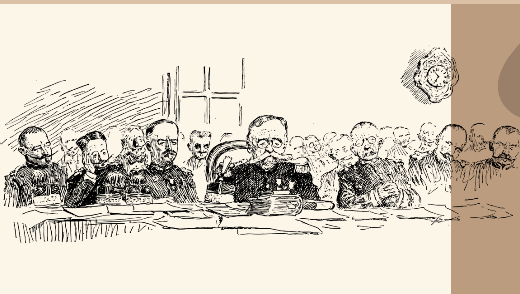
ADR BOARD
2020-2021

**CHRIST**
(DEEMED TO BE UNIVERSITY)
BANGALORE · INDIA

# ADR E-NEWSLETTER VOLUME 1

## "ACCESS TO SPEEDY JUSTICE THROUGH THE USE OF ADR MECHANISMS"



**Dr.Fr. Benny Thomas**
**DIRECTOR**

**Dr. Jayadevan S Nair**
**DEAN**

**Dr. Sapna S**
**HOD**

---


**Student Convenors**

K Prajna Kariappa
prajna.kariappa@law.christuniversity.in

Karan Parmar
karan.parmar@law.christuniversity.in

**Faculty Co-ordinators**

Mrs. Sawmya Suresh
Assisstant Professor

Dr. Sivananda Kumar K
Assisstant Professor

Mr. Shibu Puthalath
Assisstant Professor

# INDEX


- Editor's Note.......... 1
- Keynote Address-Dr.Jayadevan.S.Nair.......... 2
- Keynote Address-Dr.Sapna S.......... 3
- In conversation with Mr.Vikas Mahendra;Exploring the Avenues of ADR for Access to Speedy Justice.......... 4

Cases:

- M/S.Shriram EPC Ltd. v. Rioglass Solar Sa (2018).......... 10
- Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd (2018).......... 10
- Cairn Arbitration Case (2016).......... 11
- Vodafone Arbitration Case (2012).......... 11
- Perkins Eastman v. HSCC (2019).......... 12
- P.E.C. Ltd. v. Austbulk Shipping SDN BHD (2019).......... 12

Articles:

- Cultural Facets To Mediation: Can we improve the Indian Mediation Experience- Amruth Anand.......... 13
- Contract Law and Dispute Resolution for Sports Law In India-Ajay TK.......... 14
- Enforcement of Foreign Arbitral Award-Sricharan Sundar.......... 15
- Singapore Convention:A gateway to speedy justice in International Commercial Disputes-Jonah Jesuraj,Sanctus, Palguna.M.......... 16
- Exploring the viability of using arbitration to resolve commercial disputes in India, with reference to International Commercial Arbitration-Sandesh Pai.......... 18
- Conflict of Laws in International Commercial Arbitration-Nandita Phal.......... 19
- ADR During The Time Of COVID-19: How a global health crisis changed matters in the legal fraternity-Sthapitha Thangamma.......... 20
- India As A Global Arbitration Hub: Utopian Ideal or Reality?-Nithish Balaji.......... 21
- ADR as a catalyst to Film and Media Industry Disputes-Sanjana Santhosh.......... 22
- Crossword.......... 24

# EDITOR'S NOTE

Greetings! The ADR Board is delighted to bring to you the first issue of the ADR E-newsletter titled “Access to Speedy Justice through the use of ADR Mechanisms". This newsletter is a combined effort of the ADR Board and the student body at School of Law, Christ (Deemed to be University), Bangalore. During these challenging times intolerance is at its acme and this has acted as a catalyst to the rate at which conflicts are rising. During such scenarios the need for different ADR mechanisms has become of cardinal importance. This newsletter aims to enlighten students pursuing studies in various fields about the developments in the field of ADR. It even aims to inspire individuals to pursue ADR mechanisms in the future as a career option and thereby help achieve justice amicably.

The newsletter comprises of various articles, case snippets and interactive excercises that aim to further our vision of inculcating awareness pertaining to ADR. The ADR Board would like to extend our gratitude towards the student body at School of Law, Christ (Deemed to be University), Bangalore for their remarkable contributions and aiding us in achieving our efforts in inculcating a research-culture. Further, we would like to thank the Faculty-in-charges and the Management for their guidance and providing us with this great opportunity to develop this newsletter.

Student Convenors,

K. Prajna Kariappa
(prajna.kariappa@law.christuniversity.in)

Karan A. Parmar
(karan.parmar@law.christuniversity.in)

Faculty Co-ordinators,

Mrs. Sawmya Suresh

Dr. Sivananda Kumar K

Mr. Shibu Puthalath

# KEYNOTE ADDRESS

Dear Readers,

The Alternative Dispute Resolution (ADR) Committee of the School of Law, CHRIST (Deemed to be University) is coming out with an e-newsletter at a most opportune time – when an economy and legal administration ravaged by a pandemic is trying to be functional. The theme of "Access of speedy justice through the use of ADR mechanisms" is appropriate in this context. The e-newsletter is taking on the challenge of knowledge dissemination when all legal operational machinery is switching to the online medium. It is reliably learnt that the alternate dispute resolution processes have also switched to the online orbit to continue with its work.

Specialized legal knowledge has always been costly as it comes from an industry of legal publications. If one has to democratize the discipline of ADR then it has to be easily accessible to the earnest law student from all backgrounds. Hence there is a vast market out there of followers of the discipline, who want to keep abreast of the subject but who cannot avail it due to costs involved particularly in a specialized discipline like ADR. An endeavor by the students for students and the inquisitive out there would surely cater to this cross-section. It is noteworthy that ADR is not about arbitration alone. It is also about negotiation, conciliation and mediation. Each of which has grown into a specialized discipline and groomed specialists. Channelizing their pool of talent in research and editorial acumen, the students from School of Law, intend to create an avenue for information dissemination, analyze significant developments and create a forum for dialogue.

The discipline has also thrown up a lot of specialists in the field who have been successfully practicing in this area. By following them and knowing them up-close, the newsletter can inspire law aspirants to take up ADR as a career path. I am sure that this endeavor will develop into a significant reference point for reliable literature in the realm of ADR in future.

Best Wishes,

**Dr. Jayadevan.S.Nair**
**Dean**
**School of Law,**
**CHRIST (Deemed to be University)**

# KEYNOTE ADDRESS

I would like to thank the ADR Board, School of Law, Christ University for extending the invitation for me to record me Keynote address. It is truly an honour. I wish to congratulate the originators of the ADR newsletter concept and those who have stuck with that idea to its fruition, as is signalled by this event.

Ø Respected Director, Fr. Dr. Benny Thomas, for his continued support.
Ø Dean, School of Law, Christ University for his encouragement and interest.
Ø Faculty Convenors, Prof. Sawmya Suresh, Dr. Sivananda Kumar K & Prof. Shibu Puthalath as the initiators of the said feasibility Edition and for their continued support throughout.
Ø Student Convenors, K. Prajna Kariappa & Karan A. Parmar for editing this Newsletter and bringing it to this shape.

As HOD of School of Law, Christ University I am very pleased to support the launch of this Newsletter. It is an innovative approach in the attempt to improve access to justice delivery through sensitization and systematic dissemination of information. It is hoped that this will serve to reinvigorate the interest in arbitration, and ADR in general, and help to dispel the fear expressed in seminal text on alternative dispute resolution that, "arbitration as an alternative method of dispute resolution has for all intents and purposes fallen into disuse" [1] I invite you to join me in congratulating them. It cannot be denied that easily accessible and efficient and effective options for dispute resolution are key components to, and indicators of, economic and social development.

The Kintsukuroi Perspective which is the Japanese meaning for 'repair with gold' is the mettle that gives the ADR mechanism the warmest embrace today. As the most preferred mode of dispute resolution, ADR like for instance arbitration, has entered new avenues like investment disputes, public funds, taxation policy, art and fashion going beyond the traditional simple sale and purchase agreements, supply and construction contracts. With advent of online dispute resolution and smart contracts, the promotion of access to justice is predicated on, offering a variety of approaches and options to dispute resolution. It cannot be stressed enough therefore that, "integrated approach to dispute resolution in which ADR plays an appropriate part, and in which it complements the role of the courts in resolving disputes" warrants its description not as an alternative to litigation but o It is pellucid, therefore, that ADR is as an integral part of justice administration, ne technique which is appropriate in the context of dispute resolution generally. For Lawyers now it is has become imperative to diversify their traditional practice to include an active ADR practice –whether it be mediation, conciliation, arbitration, or all of these. It is pellucid, therefore, that ADR is as an integral part of justice administration!
I wish the ADR board all the best.

**Dr. Sapna S**
**HOD, School of Law,**
**Christ University**

---

\[1] Albert Fiadjoe, Alternative Dispute Resolution: A Developing World Perspective (Cavendish Publishing Limited, 2004) at p 72 citing SM Shelton, 'Arbitration as an Alternative Means of Dispute Resolution: An Introductory Road Map' (2001) 26(1) and (2) WILJ 84.

# IN CONVERSATION WITH MR.VIKAS MAHINDRA; EXPLORING THE AVENUES OF ADR FOR ACCESS TO SPEEDY JUSTICE

**1.What impact does the pandemic have on ADR in India and do you think this has given ODR mechanisms an opportunity to become the 1st mode of dispute resolution?**

"Firstly, I need to set some context as to what ODR is and then take that from there. So far as ODR is concerned, it's a whole host of things. It's everything from E-Filing, E-service document, signing document, maintenance and repository, calendaring notifications and virtual hearings. So it is actually a combination of lot of factors and it's that perspective, which one should be looking at. The pandemic has most certainly increased the use of ODR and it has promoted some aspects of it more than others. So, for instance, virtual hearings have certainly been something that has received a huge push in light of the pandemic. A lot of people know are moving towards virtual hearings, including courts tribunals, similar is the situation with private mechanisms as well. So, if you look at arbitration or mediation, also, they are moving online. So, in light of all of that, certainly in terms of virtual hearing the pandemic has made a huge difference. So far as other aspects of it are concerned those have received an impetus even slightly before the pandemic.

So, if you look at the number of initiatives that have been taken by the Supreme Court to start, and adopt sort of E-filing processes, E-notification processes. All of those things have been in the works for quite a while and it's slowly chugging along. The pandemic has not made a huge difference in their uptick, but it's certainly opened up to create a use of technology. So that sort of has had a spill over effect and a wider embracing of ODR has certainly happened."

**2. Will this pandemic help people trust the ODR process and what measures need to be taken to promote ODR and increase awareness amongst the people of India?**

"So far as trust is concern there is definitely a trust deficit that exists, there are a number of aspects of ODR now, one of the elements, which the pandemic has impacted the most is the virtual hearings within there. People still have distrust and those trust issues are continuing to be worked overtime. So, for instance, people have some concerns about witness coaching, people have some concerns such as whether there is cyber security confidentiality, privacy, all of those things in a virtual hearing. In the context, to be perfectly honest, the concerns around confidentiality and privacy are not as significant, and this I'm speaking from experience having built an ODR platform. So, people are not really concerned about it as much, but they're certainly concerned about external interferences in a dispute resolution process.

So, if you are talking about a witness being tutored or if the witness is concerned or trying to tell the witness what that person needs to say, those are the kinds of things that continue to remain a problem and there are ways and means of trying to address that. The pandemic has made it seem inevitable, so a lot of times people used to prefer physical hearings to overcome these barriers. But now, because physical hearings it is simply not impossible.

They've, been forced to find ways around this. So, even though there is a status in there, it's almost like the option between the devil and the blue sea. So, they don't know which one to prefer and slowly, but surely people are moving towards ODR, even if there are some limitations with the ODR process, even if there are some limitations with the virtual hearing, people will adopt it and embrace it

We will do the best we can to minimize those. And those steps have been taken, for instance, having a witness observer, so far, I've been sitting in one place and one witness observers in the place for the witnesses situated, or having some sort of technology where let's say you have multiple cameras, or you have a 360 camera, so these are ways it means that people are exploring to try and minimize the impact of these external forces that exist. So, the long answer to that was that the short answer is probably, yes there has been a reduction of the trust deficit not that it's completely eliminated.

There still is some concern, but people don't have any other options, they have to continue with it, and because of that perception, there will be a small percentage of disputes, which after the pandemic will revert to a physical mode. But because some people have managed to overcome the trust barrier after pandemic, there will be certain disputes that will continue to remain on the online dispute resolution mechanism.

To answer the question of awareness, it's not only for high-profile complex, international commercial disputes or investment treaty disputes that are arbitrated, or not just the highest profile disputes, such as Ambani disputes, which is prone to mediation. There are disputes, which are there everywhere, which can use, and which are already embracing ODR mechanisms. The students can plug into it by starting to plug into these smaller disputes to start with, that's where the awareness is built, that's where the ability to start making a difference is actually huge because if you look at the total number of arbitrations, total number of mediations, then 99% of them come from small value disputes. People don't even look at or are taught about these small disputes in university, so it's about bringing awareness, one in the universities to say that there is this whole range of disputes, which require online dispute resolution, two, students once they graduate start focusing on such small value disputes to start with

. So, I think the short answer there is recognizing these low value disputes, which are extremely voluminous there. There are lakhs of such disputes, which arise on an everyday basis and to try and resolve them as we can."

**3. Since the pandemic does not seem like it's going anywhere soon, and cases are significantly increasing, uh, the lack of infrastructure that a country like India faces, given the amount of people below the poverty line would it be a challenge when it comes to ODR mechanisms?**

"There is certainly a lack of infrastructure and there is no denying there is a lack of good Internet connectivity, solid Internet connectivity, which reduces and minimize a lot of, the elements that you would otherwise face. But there is enough infrastructure to make an improvement now, let us consider those below the poverty line, those without these facilities, they still have to go to a physical court, which means they either need to take a bus, multiple bus rides, spends an entire day travelling to a physical court and eventually might just find that the court is adjourning the matter without even hearing them. Now, if the same amount of time, energy and effort was to be dedicated towards accessing an online dispute resolution mechanism, it would be significantly better.

You don't need that amount of time or the resources either. People can go to the nearest town and try and access a cyber cafe, which are obviously significantly more accessible than the court. So, even if you take the highest requirements, you are able to meet those requirements with much lesser effort than you need as of today. But the thing is, it is capable to provide even more. So, for instance, you don't have to have the process strictly online. It is similar to video conferencing, you can have telephone as a suitable alternative, and if people are able to use telephone, if people are able to use WhatsApp to try and resolve the dispute, you are making a significant leap over what the existing system offers.

So, that way, it's about envisioning things significantly broader than just video conferencing. If you look at it, when you're continuing obviously, you'll see that there's a lot of limitations. You can't do it without significantly improving infrastructure.

But if you look at beyond that, then, of course, you start opening yourself up to greater possibilities, but access to justice can be significantly improved.

Not only from a technology point of view, but also from a language point of view. So, you don't have to necessarily have those barriers of language or the need-to-know English. You don't need to know sophisticated language. You can deploy mechanisms in the vernacular of the parties. You can develop and deploy regional languages, and that can make a significant difference. So, you can even deploy it a non-legal language. So that there is greater awareness of what the issues are, and they're able to resolve things much better. Are we in a position where we can do all of that overnight? No, we are not. But, we're certainly there in a position where we can start taking strides towards that and recognizing that Courts probably will take much, much longer to get to that point than private mechanisms."

**4.There has been a significant growth of legal tech start-ups who are advancing the cause of out of court settlements. Will this growth have a positive impact on ODR and will they promote existing businesses to utilise ODR mechanisms?**

"It's already happening, so if you look at it or not, I'm speaking now, wearing my hat as Co-founder, of CORD. We've already seen businesses incorporate our dispute resolution clauses in their contracts. We've already seen businesses starting to use it to actually resolve disputes in a real time basis. So, it's not a futuristic thing it's already happening and that's the same with almost all start-ups, maybe they are at different stages in their life cycle. Some have great a number of cases than others, but overall, that is certainly been the trend that there is definitely been an option. Some have a great number of cases than others, but overall, that has certainly been the trend that has definitely been an option. Because, the need is so great that there is no alternative, whether it will become much wide spread, it remains to be seen. So, for instance, success would be where consumer contracts routinely have ODR systems, success will be where Business to Business (B2B) contracts, business contracts, which are negotiated, start having process where non-negotiated contracts, where there are unequal bargaining power kind of situations where there is a unilateral implication of standard terms and conditions that's where we are starting to find place.

But when we move from that to saying, when people are negotiating and are still retaining these causes, that's when it will be the next level of success. But we are on the way that we are now at a position where standard form contracts are incorporating ADR clauses. Hopefully we'll get to a point when negotiated contracts will also start incorporating the same."

**5. Sir, we know that the Government is the biggest contributor to litigation in the country, considering this fact, do you believe that ADR and ODR mechanisms have been underutilized in Governmental litigation?**

"It most certainly has been underutilized and there is a number of real factors for it. There are a number of real factors for it. When it comes to ADR, firstly, ADR, let's split it up into two further things, there's arbitration and then there is mediation. These are very different aspects. So far as the arbitration is concerned, the government is fairly well embraced.

So, if you look at most of your infrastructure contract, if you look at most of your public work's contract, a lot of them have arbitration clauses. So, to that extent of ADR has been an embraced area. In arbitration, the problem is that if the government loses arbitration, they file a Section 30 for challenge, challenging the award because no one wants to take the blame in the government level. They almost routinely challenge any arbitration award given against the government.

So that way the goal of moving away from court simply does not happen. There, although there is an improvement of mechanisms it's not taken in spirit. It's only taken in form and you're still trying to go back to courts to try and prove your point. So far as mediation and negotiation is concerned, it's not even adopted and there is a huge shortcoming in adoption and that's because no one wants to take the blame. If I am a civil officer or a state civil services officer, I don't want to take a decision that I want to settle a matter for less than what I think I am owed, because someone will later point a finger at me and say, he was corrupt, he took a break and that's why he settled smarter for significantly lower than the actual user no one wants to take that risk. So, they say you go fight it out. I'm not going to mediate it.

I'm not going to negotiate it. How we address that problem is another battle altogether, whether you get senior advocates, start giving opinions on what is the real recoverable on this, make a cost benefit analysis. We don't know what the actual solutions to those are, but there's certainly a huge deficit in my opinion because of that factor, when it comes to mediation and negotiation, there are a number of policies, which are now sought to be driven, but none of them addresses the root cause of the problem."

**6. What is your view on the scope of arbitration in Intellectual Property Disputes?**

"That issue on scope of arbitration in Intellectual Property is now settled, like, the recent decision of the Supreme Court, very clearly says that when there is a "Right in rem" in Intellectual Property rights.

The intellectual property rights in themselves are not arbitrable (i.e.) the validity of a patent cannot be decided in arbitration but any subordinate rights in these intellectual rights are arbitrable.

Hence any contractual rights, arising out of intellectual property rights are now arbitrable. So, that has certainly opened up the ADR field in certain ways like, licensing agreements, which relates to a copyright or if you have any other form of intellectual property transfer agreement, which has a arbitration clause are now arbitrable and are now valid and certainly there is going to be an increase in the kind of disputes that arise out of those kinds of clauses and the supreme court has also held that these are arbitrable and hence it is no longer a subject of matter of too much debate."

**7. How would community mediation act as a tool in India to increase the access of speedy justice in India?**

"In community mediation the lokadalat kind of models are going to be very handy. So the need is for some mass mediation and mass conciliation process so as to access speedy justice in grass root level. Honestly, the way lokadalat function is, when that there is a hope for settlement and the parties are willing to settle, instead of agreeing the parties settlement the court directs them to lokadalat to deal with such matters.

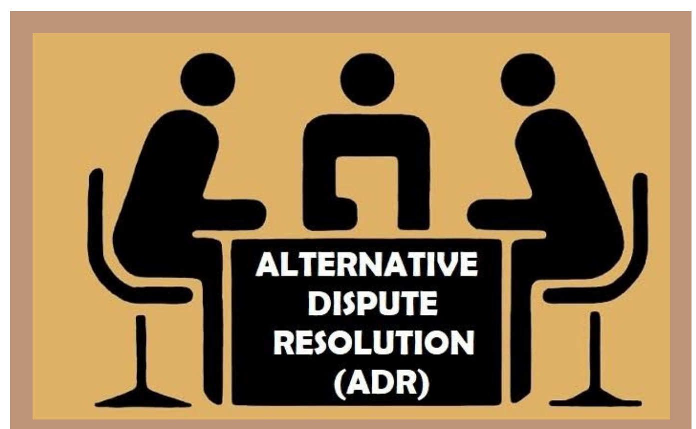
A good portion of disputes that goes to the lokadalat are not actually conciliated or mediated in the lokadalat.

Those matters are already resolved and lokadalat agrees to such settlement and certifies the same. In case of mass conciliation it requires a significant amount of efforts and skill, the possibility of mass conciliation is really negligible and it actually requires huge amount of time dedicated to resolve such disputes.

So for matter the lokadalat, which has retired High court judge or district court judge would persuade parties to some extent to settle the disputes, but that's not the spirit of conciliation or mediation that parties expect.

The other way to achieve that is to have a significant increase in the number of mediators and arbitrators and that's where young law graduates and students will start having to play a role because there are huge number of law students that are graduating each year and not everyone is going to get placed in a top-tier law firm, and there is a need to look for viable alternatives which is been underutilized.

If the students start developing their mediation skills and other dispute resolution skills, there is a good chance of making a career out of it and that's where a community mediation can actually make a difference, where you have thousands of disputes and you have hundreds of mediations who are sitting and trying to resolve these disputes with enough mind space to give to each of those disputes, rather than a rubber stamp, when lok adalats resolve 2000 disputes in a day, the time that was spent in each case to resolve such disputes is not sufficient, and that is not the proper way of settling disputes."



**8. With the rising number of number of international commercial arbitration, how has the sovereign immunity affected the enforcement of foreign arbitral award?**

"The sovereign immunity really is not a barrier to international commercial arbitration right, and that's been a well recognized principle of law. When the sovereign enters into a commercial contract, it is acting as a commercial party. So you cannot take the defence of sovereign immunity, and therefore not going to enforce these contracts, and that's not been the reason for non compliance with arbitral awards.

I can't think of the last time and enforcement was challenged on grounds of sovereign immunity. These are mostly textbook concepts that no longer have relevance in international commercial arbitration.

Certainly some role has to be played in investment treaty arbitration, where sovereign functions and sovereign actions are being challenged.

So, for instance, the ability of the state to tax, the ability of the state to impose distinctions and make laws, make regulations, that's where some element of sovereign immunity still continues to remain enforced. But even that it's whittled down to a great extent.

Because parties are no longer seeking enforcement within the country, parties are looking at enforcement in foreign countries where the excuse to resort to sovereign immunity, significantly more limited. And the foreign courts are not going to give way to this argument and sovereign immunity. So, to that extent, sovereign immunity is not a huge roadblock, either for commercial arbitration or for investment, treating arbitrary."

**9. Arbitration and Conciliation (Amendment) Act, 2021 has been recently passed by the parliament, we would like to have your comments on the removal of 8th schedule which deals with qualifications of arbitrator and what according to you will be the effect on ADR Proceedings?**

"It's a great step forward for the reason that there's a, was a huge factor on party autonomy if two parties have a dispute they have a greater autonomy in choosing the arbitrator.

For example, I think my grandfather is the best person to resolve the dispute, who is the Supreme Court, or who is the government to tell me that my grandfather doesn't have the educational qualifications to resolve the dispute, if the parties trust the person. Therefore, the removal of that schedule is easy a step in the right direction. Now, does that mean quality of arbitrators is going to come down? Yes, to an extent correct, I mean, because there are no quality controls imposed by statute.

The quality control has to come in from either the choice of the parties or from institutions, and I think that's where institutional arbitration will start playing a huge role. A credibility of institutional depends on the credibility. The arbitrators they have on their roster. And unless an institution is able to retain that credibility and say, I will only have extremely good arbitrators on my platform. I have some element of evaluations screenings, reading, out of poor arbitrators, etc.

The quality of arbitrators is going to fall, but that is where, the, good institutions will differentiate themselves from the average and the poor ones, but there is no need for an imposition from the legislature. Anything done through the legislature will be painting it with too broad ambits and it doesn't take into account for individual requirements or identify individual peculiarities. But institutions are more capable of tailoring it.

So, for instance, "if the parties have a simple dispute, and don't need an experienced or qualified arbitrator to settle that dispute, it can have a law graduate, who has basic understanding of law to resolve the disputes, but for high value disputes the parties are not going to have the same arbitrator. The parties will appoint someone a little bit more experienced.

So, it's about making that call on a case to case basis and not having a schedule is a good."

**10. In attempt to regulate third party funding across the globe, many countries like Singapore, Australia, and U.K have made laws recently. Is there a need for India to regulate third party funding?**

"There is certainly a need to regulate it, but a very light touch approach, I think 3rd party funding has its own advantages. One of the advantages in a 3rd party vendor does an initial assessment of a claim, so the parties are very well aware as to whether it's a good claim or bad claim. If the 3rd party vendor feels that it is a good claim, they continue if there's a bad when they don't even continue so it might even avoid litigation because there's a 3rd party vendor who's coming in and making that independent assessment, and a 3rd party vendor has a vested interest.

Third party vendor, know whether the money is going to be realised, depending on the outcome of the case. So they will make a proper assessment of these models. Hence it has a huge benefit in terms of weeding out frivolous cases. But, there is a some amount of control that needs to be done because, there is some element of transparency that is required.

So, you know, they will be some conflict of interest, like an arbitrator. If the same arbitrator is acting for a number of disputes for the same 3rd party vendor or the 3rd party vendor is implementing appointment of the same arbitrator in a number of cases.

So that there is some amount of Nexus between the arbitrator and the 3rd party vendor, those are the kinds of things that needs to be regulated. So, there is need for transparency that is to say, whenever there's a 3rd party funding arrangement, the 3rd party vendor has to disclose it. And that disclosure needs to be there so that the arbitrator can make that disclosure accordingly. So, that is the only aspect of regulation. Some element of regulation will be desirable, controlling it and containing it so that the benefits are rapped and all the evil effects are removed from such 3rd party funding."

## M/S. SHRIRAM EPC LIMITED
## V.
## RIOGLASS SOLAR SA((2018) 18 SCC 313)

In this case, an arbitration proceeding arose between the Appellant and the Respondent resulting in an Award favourable to the Respondent.. Pursuant to this, the Award as challenged by the Appellant under Section 34 of the Indian Arbitration and Conciliation Act. Subsequently, this petition was dismissed as this was not applicable against an award which is not given in India. An Arbitral Award was delivered in favour of the respondent in London, pursuant to arbitration proceedings between the Appellant and the Respondent. The Appellant had challenged the award under section 34, which was dismissed on the ground that such a petition was not maintainable as against a foreign award. Then, the Respondent filed a petition under Section 47 of the Indian Arbitration and Conciliant Act which was allowed. The Appellant then filed an appeal in the Madras High Court under Section 50 which was not accepted by the High Court. The Appellant then filed an appeal in the Supreme Court on the ground that an unstamped foreign award could not be enforced.

The Supreme Court held that the Stamp Act does not apply to foreign awards. Therefore, unless the award contravenes any provision mentioned in Section 47, the award is automatically considered to be a decree.

## ORIENTAL INSURANCE CO. LTD. V. NARBHERAM POWER AND STEEL PRIVATE LTD.(2018) 18 SCC 313

In this case, the Appellant and the Respondent were parties to a Fire Industrial All Risk policy for a factory .Due to a cyclone in 2013, the Respondent suffered substantial damages. Insurance amount was not settled despite repeated requests and finally, the Respondent sent an arbitration notice and hence invoked the arbitration clause The arbitration clause was invoked by the Respondent by way of an arbitration notice. The Appellant repudiated the claim made by the Respondent and hence declined to refer the disputes between the parties for arbitration. The Respondent filed an application under Section 11 for appointment of an arbitrator before the High Court to adjudicate the dispute. Due to this, the Appellant appealed in the Supreme Court.

The court here held that per Clause. 13 of the Policy, if the claim was repudiated and the Respondent had disputed or not accepted the liability. Therefore, the Respondent couldn’t invoke the arbitration class. The Respondent has the right file a civil suit but not arbitration and hence the Order of the High Court was set aside.

## CAIRN ARBITRATION CASE·(PCA CASE NO. 2016-7)

The dispute stems from the much-debated retrospective taxation issue. Fifteen years ago, in 2006-2007, Cairn UK had, as part of an internal rearrangement process, transferred shares of Cairn India Holdings to Cairn India. Income-Tax authorities then decided that since Cairn UK had made capital gains, it ought to pay capital gains tax up to Rs 24,500 crore. The company interpreted Indian laws on capital gains differently, and refused to pay. Several rounds of litigation at the Income-Tax Appellate Tribunal (ITAT) and the High Court followed. Cairn lost the case at ITAT; a case on the valuation of capital gains is pending before Delhi High Court. The company had only one other recourse. They had to take the matter international. And that is precisely what they did.

(Held)

The Permanent Court of Arbitration at The Hague said the issue was not just related to tax, but was an investment-related dispute and was therefore under the jurisdiction of the international arbitration court. Three member arbitration panel said that the demand of tax against claimants is inconsistent with the treaty and are relieved from any obligation to pay it and ordered the respondent to neutralise the continuing effect of the demand by permanently withdrawing the demand

## VODAFONE ARBITRATION CASE·2012 6 SCC 613

Vodafone approached the permanent court of arbitration at Hague contesting that the amendment of the tax code amounted to a gross violation of fair and equitable treatment promised under two separate Bilateral Investment Treaties (BIT)— The India-Netherlands BIT and the India-UK BIT.

(Held)

The International Court ruled in favour of Vodafone arguing that India had breached the terms of the agreement and it must now stop efforts to recover the said taxes from the company. The international court also ruled that the government had to turn over the ₹45 crores they've collected so far (from Vodafone) and further compensate them for all the charges borne at the tribunal. India has already filed an appeal in a Singapore Appeals court against the Vodafone verdict. The government contests that it has sovereign right of taxation, and private individuals cannot decide on that. Besides, it falls outside the domain of a bilateral investment treaty and beyond the jurisdiction of international arbitration

# CASES

## PERKINS EASTMAN V. HSCC(2019) SCC ONLINE SC 1517

The judgment delivered by the Hon'ble Supreme Court reiterates the imperatives of creating a healthy arbitration environment and is in line with the amendments to the Act. The Hon'ble Supreme Court has clarified that in order to attain a complete impartial arbitral domain a person deriving any interest in the arbitral proceedings has no authority to appoint a sole arbitrator. The said parameter has been strictly laid down in order to avoid partiality and doubts as to the independence of the person appointed as the arbitrator and aims to make India more conducive for arbitrations.

Further, by this decision, the Hon'ble Supreme Court has established that the court of competent jurisdiction has the right to annul the arbitrator appointed in order to grant justifiable and impartial reliefs to the parties. This judgment will have a significant impact, especially on government contracts that frequently contain one-sided arbitration clauses. Though the decision may cause significant disruption in the short run, in the long run it is likely to provide benefits in the form of a more robust & impartial Indian arbitration eco-system.

## P. E.C LTD VS. AUSTBULK SHIPPING SDN BHD (2019) SCC ONLINE SC 1517

The Appellant (P.E.C Ltd), entered into a charter party agreement with Respondent for a charter vessel transportation work. Dispute arose between parties, the arbitrators delivered an Arbitral Award in favour of Respondent, following which the Respondent filed an Application in High Court of Delhi under Section 47 of the Arbitration and Conciliation Act, 1996, the objections of the Appellant (P.E.C Ltd), were dismissed and the application was allowed. Aggrieved by the decision of the High Court, the Appellant (P.E.C Ltd) filed an appeal before the Supreme Court. The argument of the Appellant, production of arbitration agreement at the time of filing of the application was rejected by the Supreme Court. The court opined that, the word "shall" appearing in Sec 47 shall be read as "may" relating to the production of evidence as specified in Sec 47 of the Arbitration and Conciliation Act, 1996. A reference has been made by the Supreme Court to the 'New York Convention', to understand the intention of the legislature, which restricted the substantial condition for the enforcement of Foreign Arbitral Awards.

It was held by the Apex Court that, it is not mandatory to furnish the original copy of the Arbitration Agreement, while filing an application under section 47, for enforcement of Foreign Arbitral Awards.

# CULTURAL FACETS TO MEDIATION: CAN WE IMPROVE THE INDIAN MEDIATION EXPERIENCE -AMRUTH ANAND

Mediation is a form of dispute resolution that has the least intervention involved. However, it being a process that is centric around people, their attitudes and most importantly, their approach to the process in itself can mean the difference between a successful mediation and a failed one. The attitude that a certain person has towards dispute resolution in general is often a matter of personal choice. However, one of the greatest impact factors in the general levels of perception to mediation comes for cultural attributes unique to specific regions across the world.

When one hears the term 'Indian Culture', the first thing that springs to mind is the hustle-bustle, the tradition and the spicy food. Yet, these very cultural factors (I don't mean the food of course) have an overriding influence on how disputes are settled in India. With ADR becoming increasingly popular, cultural factors in dispute resolution is an often-overlooked perspective when determining the effectiveness of these mechanisms. As early as 1939, scholars such as Harold Nicholson that a 'national character', traditions and requirements cause differences in what he describes as the 'permanent and universal standards' of negotiation.[1] the mindset that mediation requires is one of an objective and unbiased view. This view can be influenced by cultural factors that is unique to every society.

Professor Walter A. Wright divides societies into two distinct kinds, the individualistic and the collectivist societies.[2] An individualistic society is often described as one where the population views themselves as independent and only have a loose connection to the other individuals.[3] The latter however places a group or societal interest to form a greater priority and in case of a conflict of interests, it is always the group interest that is to be taken into consideration.[4] Most western societies such as the United States and Northern and Western Europe are considered individualist whereas the eastern societies are generally more collectivist.[5] Mediations are influenced by these factors as , primarily, mediation as we traditionally perceive it , has a great degree of practices that are inflicted by individualism. The unbiased, largely facilitative mediator works when the factors affecting the individual are his own and he is not bound by external factors or cultural influences.

The Indian diaspora fits into the collectivist bracket comfortably, yet it has some peculiar cultural traits that are unique to it. Marriages, which are amongst the most mediated disputes in India, [6] are considered an institution rather than a relationship between two individuals. Recent years have seen a change in the demographic setup of the nation, with more Indians moving to urban settings, joint families reducing in size and number and greater tendencies of individualism coming into the country,[7] there is still a strong influence of familial tendencies. Family businesses in India too differ from the rest of the world considering the number of members directly involved and the control that one presiding member of the family exerts over the business.[8]

The question is therefore, should mediation be tweaked to fit into this new demographic to make it more acceptable in India?

It is not that mediation is not successful in India, but there is still a level of hesitation to undertake it as a fully-fledged process. While some of this is due to mediations lacking legal sanction, some of it is also due to parties not having full faith in the process.

[1] Daniel Druckman, Cultural Differences in Bargaining Behaviour: India, Argentina, and the United States, The Journal of Conflict Resolution, Sep., 1976, Vol. 20, No. 3 (Sep., 1976), pp. 413-452.
[2] , Wright, Walter A Cultural Issues in Mediation: A Practical Guide to Individualist and Collectivist Paradigms
2 Asian Disp. Rev. 28 (2000), pp. 28.
[3] Harry C. Triandis, Individualism and Collectivism 2, 12, 28, 34-35, 43-44 (1995).
[4] Hofstede, Culture and Organizations: Software of the Mind 50-51 (rev. ed. 1997).
[5] Edward C. Stewart & Milton J. Bennett, American Cultural Patterns: A Cross-Cultural Perspective 94-96, 110, 133-38, 142-47 (rev. ed. 1991).
[6] Kritika Vohra, Mediating Matrimonial Disputes in India, Trends from the Bangalore Mediation Centre, Economic and Political Weekly Vol. 52, Issue No. 45, 11 Nov, 2017.
[7] Nivedita Nair, Scope of Mediation in Matrimonial Disputes in India, 8 NUALS L.J. 154 (2014).
[8] ASHWINI SURENDRA KADAM, A Study of Conflict and its impact on Family Managed Business: with Special Reference to major cities in Western Maharashtra, D.Y. Patil University,2014.

A collectivist approach to mediation is often considered by scholars to be one with a more informal and minor quirks, like not addressing senior members by their first names (as often is the case in formal mediations) are not adhered to.[9] This almost falls into line with the traditional 'village elder' mediations that would take place in rural India. Some other techniques recommended, include having a private caucus initially, and having a general session after that, as a conference session may be perceived to be one where the parties might 'loose face'.[10]

The negotiation too, in collectivist societies are more person oriented and attempt to lay a greater emphasis on addressing emotions. mediators will have to factor in, not only the impact of the session on the individual, but also on the collective family and community.

As much as India's embrace of mediation as a form of dispute resolution is a positive one, we have directly adopted mediation techniques that were pioneered in predominantly individualistic society. By making minor but not insignificant changes to the techniques we employ during the mediation, we can make the whole experience more palatable to the Indian diaspora, thereby increasing the popularity of mediation as a form of dispute resolution.

[9] Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation pp 80 (Jim Stutzman & Carolyn Schrock-Shenk eds., 3d ed. 1995).
[10]David W. Augsburger, Conflict Mediation Across Cultures: Pathways and Patterns 28-35 (1992).

## CONTRACT LAW AND DISPUTE RESOLUTION FOR SPORTS LAW IN INDIA - AJAY TK

Every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality. The freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life [1]

The United Nations received the topic of "Sport for Development and Peace" in its Motivation in 2001, which exhibited the nearby linkage between Sports advancement and Youth improvement, and Youth advancement and the accomplishment of the Millennium improvement Goals. Further, the United Nations General Assembly praised 2005 as the "Year of Sport and Physical Education" consequently underscoring the need to incorporate sport and physical training into the general improvement plan.

Each sport has its own system of rules and regulations. There are two aspects of it, one dealing with the 'rules of the game' and the other with 'commercial aspects of the organization of the sport'. Lately, commercial development in the sports sector has blurred the boundary between these two aspects[2] The result has been the gradual juridification of sport, a phenomenon which has accelerated academic interest in the idea of sport and the law as an area of legal study [3]

Established general legal principles deriving from the rule-led boundaries of modern law have become applied to a growing number of sporting activities. Hence, contract law, the law of torts, , have been applied to sporting contexts involving public order, drugs, safety, disciplinary measures, conduct and wider issues relating to restraint of trade, anticompetitive behaviour and the commercial exploitation of sport.[4] Global Sports law, conversely, may temporarily be characterized as a transnational self-sufficient lawful request made by the private worldwide

[1] The International Charter of Physical Education and Sport, UNESCO, 1978.
[2]Richard Parrish, 'The Birth of European Union Sports Law', Entertainment Law, Vol.2, No.2, Summer 2003, pp.20–39, at 20.
[3] Grayson, E., Sport and the Law (London: Butterworth, 2nd edn., 1994).
[4] Parrish, see supra note 11 at p 21.

organizations that administer global sports. [5]It is a kind of *sui generis* set of principles created from transnational legal norms generated by the rules, and the interpretation thereof, of international sporting federations [6] With respect to resolving conflicts, Sports Dispute Resolution (SDR) is one form of resolving disputes for matters of Sports law. In Canada, UK and other countries SDR has proven to be an effective method of dispute resolution. In India, the matter in dispute goes to the court and the court tries to solve the dispute. As a result, the pressure of an unresolved dispute would result in some amount of mental and physical strain. SDR is an optimal option to choose compared to the expensive and time consuming process of going to court.

Conclusion

With the existence of International forums which regulate their respective sports, the Law of Contracts has always had its effect on regulating and controlling different aspects of Law of contracts. India lacks a uniform regulation that guides and controls its sportsmen. It lacks any kind of regulation for sports. Upon the failure to implement National Sports Policy of India after multiple attempts, the government is unable to implement strict policies or enforce contractual relations between agents and principals. Sports associations are using contracts more frequently, not only in business affairs but also in areas of employment and programming. For example, coaches sign employment contracts; athletes sign participation contracts with the sport association as well as with major Games organizations; organizations, suppliers and athletes sign sponsorship agreements; and participants in recreational sport sign waivers (a form of contract).These contracts cover everything from conduct and discipline to selection processes and money issues [7] General principles of contract apply to such contracts. Indian laws must be compatible to newer discoveries in the Sports sector

[5]Foster, K., 'Is There a Global Sports Law?', Entertainment Law, Vol.2, No.1, Spring 2003, pp.1–18, at 1.
[6] In Teubner's phrase truly a 'global law without a state'. See Teubner, G. (ed.), Global Law Without a State (Andover: Dartmouth, 1997).
[7]Julius Melnitzer, 'This Sporting Life: Amateur Sports', Canadian Lawyer, March 1999, at p. 22

with respect to contracts, enforcement of contractual relations and dispute resolutions when there is a breach.

This would make the courts in India less inclined to meddle in the choices of the Indian Court of Arbitration for Sports or the Sports Ombudsman's choice, except if it finds that the choice of these bodies was without ward, against public strategy, the gathering was under some inadequacy, a substantial notification was not given or if the topic in debate is equipped for settlement. The game debate goal in India is at a significant stage as the very idea of Sports Ombudsman appearing, would rely on the proclamation of the National Sports Development Act, while the demeanour of the courts towards the Indian Court of Arbitration for Sports would possibly be known just when such a choice is examined under the watchful eye of a court.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS
## - SRICHARAN SUNDAR

Foreign Arbitral Award is an arbitral award on the difference between persons arising out of a legal relationship between parties, whether contractual or not, considered a commercial under the law in force in India. The foreign arbitral award's enforcement is essential to limit the defence available to unsuccessful parties and promote dispute settlement by the arbitral tribunal.
Before enacting the Arbitration Amendment Act, 2015, there was a need for expeditious and streamlined disposal of matters. The Supreme Court in the case of venture Global Engg v. Satyam Computer Service Ltd [1] (Venture Global Case), the Court held that grounds for challenging a domestic arbitral award under Section 34 of Part I of the Arbitration and Conciliation Act, 1996, would be available to an award-debtor for challenging a foreign award as well.With Foreign entities entering the market, the Indian dispute resolution sector was expected to rise to the occasion. After all, expeditious and streamlined disposal of matters was the need of the hour.

[1]Global Engg V/s Satyam Computer Service Ltd, 2008 4 SCC 190

The solution to India's arbitration woes was found in the UNCITRAL Model Law. Therefore, based on the model law came the 1996 Act, indeed a step in the right direction. From the viewpoint of a foreign arbitral award, it replaced FAREA and APCA by consolidating their provisions within Part II of its scheme.

In 2012, the landmark Judgement concerning enforcement of the foreign award was made by the Supreme Court's constitutional bench, in the case of Bharat Aluminium Co. Technical Services v, Kaiser Aluminium Inc.[2](BALCO Case) clarified the enforcement of a foreign award in India. Thus it overruled the previous judgement and held that "It was no more option for the parties to seek application of any of the provision part I of the Act including Section 34.

Depending on the judgment of Renusagar [3] wherein the importance of articulation of 'public approach' under Section 7(1)(b)(ii) of the Foreign Awards Act, 1961 was questioned. A test was set down for deciding the implementation of a foreign arbitral award corresponding to India's public policy as to under what conditions will it be held, disregarding the open approach and will not be enforceable in the area. The arbitral award would be held opposite on the accompanying grounds:

- ·Principal strategy of Indian Law,
- ·The interest of India,
- ·Equity and ethical quality

In the judgment of Ssangyong Engineering and Construction Co. Ltd v. Public Highways Authority of India [4]This also talked about India's public policy, which emphasized the test set down in Renusagar. This Court, in the judgment, held that the award could not be supposed to be enforceable based on the test set down in the previously mentioned case as its authorization would be against the crucial strategy of Indian law and the essential idea of equity. Subsequently, the award was held unenforceable. The High Court was said to have blundered in law in holding the foreign arbitral award to be enforceable. Subsequently, NAFED was held to be not at risk to pay any damages under the unfamiliar award.

The decision made by the Apex Court was a re-assuring statement as it efficiently curtailed the inference of the Court while enforcing foreign awards in India. The judgement of the Supreme Court in Shri Lal Mahal Ltd v. Progetto Grano Spa [5] paved the way for the amendment Act, 2015, which narrowed the scope of public policy and further terminated "Interest of India" as a ground for enforcement.

Conclusion:

From the case of Renusagar to Vijay Karia, the Indian regime for the enforcement of a foreign arbitral award in India, and with the recent amendments, the Court is proving for collectively achieving their enforcements regime of enforcing the arbitral award.
After the amendment of the Arbitration and Conciliation Act, 2015 [6] the courts have limited the grounds of intervention to a minimal role. During recent years the enforcement of a foreign arbitral award in India and the Judiciary acting as a catalyst has widened the scope of international commercial arbitration in India. This is a positive step towards enforcement of the foreign arbitral award, as the Arbitration and Conciliation Act's purpose would not be fulfilled and would futile legislation.

[2] Bharat Aluminium Co. Technical Services v/s Kaiser Aluminium Inc, (2012) 9 SCC 648
[3] Renusagar Power Company Ltd vs General Electric Company And Anr, 1985 AIR 1156
[4] Ssangyong Engineering and Construction Co. Ltd v. Public Highways Authority of India, (2019) 15 SCC 131
[5] Shri Lal Mahal Ltd v Progetto Grano Spa, (2014) 2 SCC 433
[6] Arbitration and Conciliation (Amendment) Act, 2015

## SINGAPORE CONVENTION: A GATEWAY TO SPEEDY JUSTICE IN INTERNATIONAL COMMERCIAL DISPUTES?

-JONAH JESURAJ SANCTUS &PALGUNA M

Alternate dispute redressal mechanisms are often heralded as a means to access speedy justice. ADR provides an efficacious and simple alternative to serious problems that have an insidious presence in the judiciary. One of the most common forms of alternative dispute resolution is mediation.

The thorny problem with mediation is that parties to the dispute and the agreement might be entrenched in their own position, and therefore might refuse to negotiate. Mediation would quite possibly require enforcement of those agreements.

Singapore Convention on Mediation

The Singapore Convention on Mediation seeks to provide an international framework for the enforcement of agreements relating to international commercial disputes resolved through mediation. The convention has pioneered the direct enforcement of mediated settlement agreements. The means of enforcement prior to the convention was through arbitral awards or court judgments, thereby increasing legal costs. An international framework at least marks a move in the positive direction in closing the lacuna engendered due to the absence of an enforcing framework.

Applicability

The convention has the capacity to enhance the attractiveness of mediation within regional initiatives [1]. It also offered a risk management mechanism which is accessible in terms of its affordability and flexibility to cross-border business players. There has been a previous lack of such a mechanism to effectively enforce such settlements which has restricted the use of mediation for cross-border disputes. So it is a significant step taken by the international community to try to promote mediation as a form of dispute resolution against the other forms like arbitration and litigation.

It provides an international framework for parties to start fresh proceedings. Taking into account the disruptions caused by the COVID-19 pandemic, the convention has been introduced at the right time. There is also a provision to sidestep uncertainties and complexities in regards to choice of law and enforcement issues caused by uncoordinated contracts at different levels of the supply chain. A cost-effective and timely alternative is provided for clients instead of litigating in unfamiliar jurisdictions or arbitration proceedings which are heard only by a particular institution.

What it brings to the table

The convention has a minimalist framework expediting the enforcement international settlement agreements which are mediated [2]. It is both shield and sword as it not only allows the direct enforcement mediated settlement, but such a settlement can be used to dismiss or stop other dispute resolution proceedings which are related to the dispute. The party to the agreement needs to present the written agreements signed by both parties. It also provides for signatures and agreements in an electronic format. The convention also provides for grounds for refusal of enforcement, providing pragmatic safeguards as well.
It allows for flexibility of the parties to carry out the discussions in any format desired which makes it easier for the participation of businesses in mediation sessions virtually and not having to spend the costs and time associated with travelling to the physical sessions. This is an incentive for parties to use mediation. [3]

Issues and Challenges

Although the convention is a significant move in the positive direction, it does have to account for some uncertainties and ambiguities. There are no standards as to who qualifies as a mediator, this problem is compounded by the fact that there are no international standards either. Domestic law would then be brought into the equation, thus creating disparities, and mediators of some countries would have to undergo training and in other countries such a qualification would not be required. The procedural nuances mentioned in Article 1 might affect the enforceability of agreements and might also affect the confidentiality of the agreements which is crucial in mediation. The effective implementation by domestic administration with respect to the convention can be crucial factor in determining the overall impact of the convention. The convention provides for a 'contract out' or 'opt out' option to the parties to the mediation, which might be used as an evasive bypass by the parties to the settlement and which might vitiate the very purpose of the convention.

[1] Nadja Alexander, The Singapore Convention on Mediation: A Commentary, Singapore International Mediation Institute 2 (2020).
[2] Elisabetta Silvestri, Singapore convention on mediated settlement agreements a new string to the bow? 4 Access to Justice in Eastern Europe 5, 7-8 (2019).

**Conclusion**

According to a survey conducted by School of International Arbitration at Queen Mary University of London, 97 percent of the respondents prefer arbitration as a means of dispute resolution [4]. But it can act as a segue for increased legal costs and hence can hamper international commercial relations and their effective dispute resolution mechanisms. Mediation coupled with a legal framework to enforce agreements can be a viable alternative to a high cost ridden mode of dispute resolution like arbitration. The Convention might have certain irregularities and uncertainties that can affect its effective functioning, but it is at least to a reasonable extent a step ahead in the positive direction.

[3] Kent Phillips & Zachary Tan, The Singapore Convention on Mediation promises 'flexible and affordable' dispute resolution, The Global Legal Post, September 17, 2020, https://m.globallegalpost.com/commentary/the-singapore-convention-on-mediation-promises-flexible-and-affordable-dispute-resolution-66325695/
[4] International Arbitrational Survey 2018: The Evolution of International Arbitration http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey-report.pdf

## EXPLORING THE VIABILITY OF USING ARBITRATION TO RESOLVE COMMERCIAL DISPUTES IN INDIA, WITH REFERENCE TO INTERNATIONAL COMMERCIAL ARBITRATION

### -SANDESH PAI

Arbitration is a procedure in which both parties agree to refer their dispute to one or more arbitrators, who make a binding decision on the same. It offers the parties a private mode of dispute resolution instead of going to Court (1) Arbitration is one of the most favoured dispute resolution mechanisms among other forms of Alternative Dispute Resolution (ADR). It has quite a few favourable traits which makes it such a successful and lucrative method of settling disputes. Some of these traits include consensus among parties to opt for arbitration, ability off both disputants to choose arbitrators on mutual terms,neutrality and technical expertise of arbitrators, confidential proceeding and finality of the arbitral award. Commercial Arbitration, as the name suggests, is a dispute resolution mechanism pertaining to commercial transactions entered into by the concerned parties. The said parties enter into an agreement, stating that any dispute between them in the course of their contractual obligations will be resolved through arbitration. Such an arbitral clause is inserted into the contract, at the time of creating commercial or business relations. Both parties consensually agree that arbitration is the primary method of settling their disputes, and in doing so opt for private adjudication, as opposed to public adjudication, by way of Courts. This is generally prevalent among those who engage in commercial activities at the local, national or international level. Commercial arbitration serves as a great way to relieve Courts of their burden of deciding cases, and further reduces their work load. By incorporating arbitration clauses in their contracts, the concerned parties are able to ensure that their disputes will be resolved outside of Courts, and they would only need to visit the Courts for enforcing arbitral awards. As a result, Courts are able to devote their time in hearing those cases which are more suitable for litigation, like constitutional and criminal matters. Despite this, it is important to note that arbitration is not a universal solution for all commercial disputes that arise between parties (2) Business merchants opt to include arbitration clauses in their contracts as a default, but in doing so they relinquish legal remedies through the judiciary.

Commercial arbitration serves as a lucrative option for business merchants, especially when the arbitrators are experienced in the technical and practical aspects of their trade (3) The ability of parties to choose their own arbitrators allows them to ensure professionalism and expertise in handling their disputes. Both parties are consoled that their issue will be handled by an individual who understands the intricacies of their trade and profession, as opposed to judges or juries, who would lack such in-depth understanding of the problem. As such, the three most significant advantages of arbitration are speed, expertise, and most importantly, confidentiality (4) Speedy dispute resolutiom is of the essence since both parties would like to get back to business once the dispute is resolved efficiently

Expertise of arbitrators is instrumental in arriving at at a sound arbitral award. Lastly, confidentiality is ensured since arbitration is a private adjudication process, involving only the parties and concerned arbitrators, who are bound by confidentiality agreements to not disclose any information to outsiders, including Courts. International commercial arbitration is a private dispute resolution process without government intervention, given effect to by a contract, entered into by two parties from different countries, for the purpose of creating commercial relations among them.

Such transnational arbitration leads to a binding resolution of a dispute between the concerned disputants. It provides parties at the international level, a dispute resolution process which is flexible to meet the mutual needs of the parties, who themselves are able to decide the applicable procedural and substantive rules. It allows disputants to avoid the pit-falls of transnational litigation, since international arbitration provides greater certainty and enforceability, established through global conventions and covenants. Due to its largely contractual nature, arbitration affords surety to business merchants who trade at the global level. To reduce unpredictability at the world level, businesses are more likely to include arbitration clauses in their contracts to protect their commercial and economic interests (5).

[1]WIPO Arbitration and Mediation Centre, Guide to WIPO Arbitration, WIPO Publication No. 919E, at 3
[2]Proceedings of the Academy of Political Science in the City of New York, Vol. 10, No. 3, Law and Justice(Jul., 1923), pp. 195-203.
[3] id. at 198.
[4] Richard B. Mawrey, Commercial Arbitration and Information Technology Disputes, 30 Denning L.J. 155, 157 (2018)
[5] Winston Stromberg, Avoiding the Full Court Press: International Commercial Arbitration and Other Global Alternative Dispute Resolution Processes , 40 Loy. L. A. L. Rev. 1337, 1341-1342 (2007).

## CONFLICT OF LAWS IN INTERNATIONAL COMMERCIAL ARBITRATION

- NANDITA PHAL

International arbitration, which was developed as an alternative to national judicial systems, derives its authority from an agreement between two private parties. International commercial arbitration, in particular, has proven to be a competitive alternative to national courts for resolving disputes among international traders in the recent decades. It has provided a more than adequate response to the needs of parties to international contracts, particularly the need for neutrality and efficacy, which no other mechanism for resolving disputes has previously provided. However, the problem of "applicable law" is one of the most critical issues that international arbitration presents. Through the medium of an arbitration agreement, the parties have the option of choosing whether or not their arbitration agreement will be governed by national law. In the absence of such an explicit choice of law and rules governing any applicable choice of aw, national courts, scholars and arbitrators are divided by making a choice between two alternative options– the law of the seat of arbitration, or the law governing the contract. This dispute continues due to differing perceptions about the parties' intentions, differing perspectives on implied choice of law and closest connection law, and differing approaches to the concepts of separability (of arbitration agreements) and validation. It is pertinent to find a solution to the problem of conflict of law in international arbitration because the parties to an arbitration agreement are very much concerned about the process that leads the arbitrator to the choice of the applicable law because the arbitral award, which is equivalent to a judgment in a court of law, is based on the law applied by the arbitrator, and the provisions of that system of law will finally settle the contrasting interests of parties.

There are usually four types of problems that arise in international commercial arbitration. They are conflicts relating to the determination of the substantive law that applies to the merits of the case, determination of the substantive law that applies to the arbitration agreement, determination of the procedural law that applies to the arbitral proceedings and finally, the conflict of law rules applicable to determine each of the above-mentioned laws. Firstly, arbitrators will decide the rule that applies to the merits of the case based on the parties' agreements, unless a mandatory national law or public policy overrides such an agreement. In the alternative scenario that the parties to the arbitration agreement have either failed to reach a common consensus or have not included a clause regarding this matter, the arbitral tribunal will choose the relevant law based on the facts of the case, using criteria such as choosing the law with the closest relation to the dispute.

Secondly, regarding the law applicable to the arbitration agreement itself, the parties may agree to a law that applies to the arbitration arrangement itself, which may be different from the others based on the presumption of separability. In the instance that the parties have not decided on a rule to apply to the arbitration agreement, either the law of the arbitral seat or the law regulating the parties' arrangement or international principles are often made applicable. Thirdly, in most cases, the procedural law applicable would be the domestic arbitration law of the seat of arbitration. This law would extend to all facets of the arbitration proceeding, including the appointment of arbitrators, the issue of temporary relief, the procedural timeline, and award provisions. This law provides a lot of liberty to the arbitrator about the manner in which they conduct and handle the proceedings, as long as due process is followed.

Finally, the arbitral tribunal can determine the relevant conflict-of-law rules for each applicable law. The tribunal can, for example, apply the conflict of law rules of the arbitral seat or international conflict of law rules.

In conclusion, though less complicated than conflict of law issues in domestic courts, the choice of law in international commercial arbitration is more complicated than one would expect. The simplest and easiest way to prevent this complication from arising is to explicitly state in the parties' contract that all laws relating to the merits, arbitration agreement, and arbitration process are similar, and no conflict of law provisions apply.

## ADR DURING THE TIME OF COVID-19: HOW A GLOBAL HEALTH CRISIS CHANGED MATTERS IN THE LEGAL FRATERNITY -STHAPITHA THANGAMMA

The COVID 19 Pandemic has touched every sector and industry possible. The legal fraternity too, went online for quite sometime. Technology lent out its hand to newcomers and old ones, in aiding them to proceed with their daily operations. While disputes did not shut down for the sake of a global health crisis, their approach to resolution might have. Peoples interest saw a rise in what is called the Alternative Dispute Resolution.

Commonly, it is known as a method that is amicable and speedy in nature; well suited to the current situation. ADR includes negotiation, mediation, conciliation, arbitration and client counselling. This pandemic influenced the application of innovative dispute resolution techniques to the process to comply with the health protocols and avoid in person interaction. Therefore, the above-mentioned procedures were conducted on online platforms in an altogether convenient and safe manner. Even before COVID-19, in working with governments on policy reform in the insolvency and debt resolution space, a number of recent trends have been identified, which can potentially be addressed by ODR.[1]

The underlying basis of occurrences during this crisis is that everything has shifted to an online platform. From online classrooms to work from home, each area is not only running but also building from this stance. Because of this, technology has rendered ADR more accessible than it already is. Businesses, entities, organizations or even individuals felt that litigation would not be the practical choice, and neither was it available. Yet, they needed a methodology that would be easily accessible, convenient, safe and trustworthy to resolve their conflicts of interest. ADR stood front as an attractive option. So, it is safe to say that the usage of Alternative Dispute Resolution during COVID-19 is an amalgamation of technology-friendly and by virtue of its adaptive nature, best suits the environment.

These developments were seen not only in India but all around the world. The use of ODR has increased over the past decade in the area of small claims resolution, in countries such as Canada, the UK, the USA and China. Regional initiatives such as by the Asia-Pacific Economic Cooperation forum have also helped to raise awareness of the advantages of the ODR process. ODR technologies not only provide access to dispute resolution services to large numbers of entrepreneurs in remote areas but also go a long way in removing the stigma of applying for court proceedings by introducing a degree of anonymity in the process, with people interfacing via their laptops and smartphones, rather than face-to-face.[2]

The after-effect of this phenomenon is highly important to note. Many research show that these hybrid methods are here to stay. In other words, there is a good adaptation of virtual ADR methods among clientele and not to forget, the pandemic really opened our eyes on this one. It has been viewed as being so convenient, apart from the infrastructure factor, that needs to improve by the government to reach out to all the backward areas for internet connectivity, but other than that, costs have been cut down on travel and leisure. Often, big businesses opt for business hotels for their settlements, which includes the food and stay expenses. This is commodiously bore by the company and not the employees. So, a large part of a business's budget is consumed by miscellaneous column.

Covid-10 changed this for employees. This is when, they saw the difference that was made. Only emergency and necessary circumstances would require meeting in person for the settlement while at other times, virtual procedures were benefitting all parties and their counsels. There is no better time than now to consider alternative dispute resolution (ADR). For inventorship and patent disputes, the ADR professional will typically have a scientific or technical background, which will allow him or her to have a better understanding of the patent dispute. For contractual and employment disputes, the ADR professional will also typically have experience in the life sciences industry.

And, most importantly, the ADR providers have continued serving clients during the pandemic and have been at the forefront of using videoconferencing platforms to conduct remote proceedings. With so much on the line, and where speed and certainty is often most important, ADR mediation and/or arbitration may be the best solution. [3]

---

[1] Antonia Menezes, Nina Mocheva, Sagar Siva Shankar, Under Pressure': Integrating Online Dispute Resolution Platforms into Preinsolvency Processes and Early Warning Tools to Save Distressed Small Businesses, 45 SAGE JOURNALS 79 (2020)
[2] Antonia Menezes, Nina Mocheva, Sagar Siva Shankar, Under Pressure': Integrating Online Dispute Resolution Platforms into Preinsolvency Processes and Early Warning Tools to Save Distressed Small Businesses, 45 SAGE JOURNALS 79 (2020)
[3] Steven Bauer, Is ADR the Cure for COVID-19-Related Litigation? - The benefits of having a neutral with life sciences experience to resolve your disputes, JAMS ADR BLOG (Mar. 30, 2021, 9:51 AM)

## INDIA AS A GLOBAL ARBITRATION HUB: UTOPIAN IDEAL OR REALITY?
## - NITHISH BALAJI

India has taken many progressive steps to make it a global hub for arbitration in order to reap the numerous benefits begotten by becoming one. The Government has taken many steps and so has the Judiciary but there has been certain shortfalls along the way which rendered this aim unachievable.

Making a country a Hub for Global Arbitration means that its enforcement mechanism is trusted and investors are more confident in investing in the said country because they are sure of the Legal Process and trust the sanctity of the system. However, India has always been a country which has sent mixed signals to the Investment community. An example of this would be how many investors prefer if a Company, even if it primarily based and operated in India to be registered in Delaware due to the transparency and laws which promote the ease of doing business. It could also to a certain extent be argued that India's fallacy in the aspect of implementing an arbitration regime conducive towards international business has led to this shortcoming. An example of this would be, India had adopted the New York Convention in the year 1960 whereas Singapore adopted it in 1986

The reason Singapore has pulled far ahead in the race to become a hub could be attributed to its policy decisions and the enforcement mechanism followed by the Judiciary. Some of the elements which helped it achieve it are the staunch principles of neutrality followed, therein developing a reputation for competency and integrity. The Supreme Court of Singapore has also played a major part by upholding Arbitration Awards

. Another major change was the narrow ambit accrued to "public policy" by virtue of it's definition thereby bringing down the number of
.

awards challenged under the grounds of Public Policy. Moving on to some of the other issues that the Indian Arbitration regime is plagued with, the major issue highlighted is the dearth in lawyers who focus on Arbitration full time.

Another issue would be the efficiency of the Indian Arbitration and Conciliation Act. Section 34 of the Act allowed contesting parties to file objections which would result in pausing the execution of the award after the petition was filed. While this was resolved by the Amendment passed in 2015, this also resulted in an issue as to whether this amendment was applicable to Section 34 or not. Even Amendments which had been enacted with good intentions had failed to work properly due to the inefficacy of the language used in drafting. Examples of this would be how the difference between the seat of an arbitration and venue of an arbitration has always been decided by the judiciary and no definition has ever been added to the Act by any Amendment.

However there has been an increase in the setting up of Institutional Arbitration Centers like the Mumbai Centre for International Arbitration and the recently established Delhi International Arbitration Centre. While this is considered to be a good development, it is also detrimental as none of these institutions are said to be as good or as reputable to the Singapore International Arbitration Centre. Additionally, Indians also to a great extent prefer to resort to ad hoc arbitrations rather than institutional arbitration which makes it more difficult in furthering the arbitration regime in India. While the Courts in London and Singapore have been unanimous in upholding Arbitration agreements and the principle of minimal judicial interference has been followed, there have been instances where courts have allowed the arguments to hinge on the merits of the case which is a practice not followed by western courts.

Another issue would be that Foreign Lawyers are not allowed in India which eschews on of the major principles in International Arbitration which is that parties have the right to choose their own counsel. This would become an especially concerning issue in situations wherein an Arbitral Institution situated in India conducts an arbitration between two international parties and an Award is sought to be enforced in India under the New York Convention objections may be raised under the convention due to this practice.

Despite these fault lines, India has been slowly but steadily moving forward towards strengthening its regime with progressive amendments and Judgments which have become unanimous and are uniting the jurisprudence related to arbitration in the country.

[1] Stephen York, India as an Arbitration Destination: The Road Ahead, National Law School of India Review,Vol. 21, No. 2 (2009), pp. 77-103.
[2] Gunita Pahwa, Making India an arbitration hub,Financial Express, 05-09-2019.
[3] Badrinath Srinivasan,Developing India as a Hub of International Arbitration: A Misplaced Dream?, International Conference on Challenges in Domestic and International Arbitration, 23-24September 2016.
[4] Tariq Khan, Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality, 2021 SCC OnLine Blog Exp 10.

## ADR AS A CATALYST TO FILM & MEDIA INDUSTRY DISPUTES - SANJANA SANTHOSH

The Entertainment Industry is often painted as a flawless world, where a preconceived opinion is formed by the society about an artist on the extent of presence they have in the limelight. But little does the world know about the rampant disputes that prevail in the industry, for which artists constantly resort to litigation.

The tedious affair of litigation can hamper an artist's alliances which are crucial for his/her success in the entertainment industry.

Further, judges rarely consider industry practices, making it a highly inflexible mechanism as the process does not adapt to the needs of the industry. This calls for a settlement mechanism enabling artists to come up with mutually agreeable terms resulting in the overall benefit of the artists. [1]

Arbitration and Mediation as Resolution Templates:

The most common form of dispute resolution used in the industry is Arbitration, where parties submit their grievances before an arbitrator, whose decision is final and binding. It is commonly used due to two reasons. Firstly, litigation is quite time consuming and costly in resolving day-to-day contractual disputes, typical in the industry.

Secondly, most artists are members of unions, where almost all unions include an arbitration clause. [2]

Currently there is a rising consideration by Unions to include a Mediation Clause to contracts, serving as a healthy option for resolution of disputes. Parties can select their own mediation services either by opting for a professional mediator or lawyer, or opting for services of organizations such as Centre for Mediation and Conciliation, American Arbitration Association (AAA), Judicial Arbitration and Mediation Service (JAMS), World Intellectual Property Organization (WIPO) and so on. [3]

**Stages of Resolution via IFTA**

The IFTA Arbitration, a division of the Independent Film & Television Alliance (IFTA), is an international dispute resolution system, operating in 23 countries, has formulated certain rules and guidelines for resolving disputes in the global film and television sector:

Stage 1: Claimant sends a demand for arbitration to the opposite party of the dispute. The Notice of Arbitration must contain the necessary requirements along with a copy of the contract in dispute, and an agreement providing for arbitration pursuant to the IFTA Rules.

Stage 2: If pre-arbitration settlement is opted, then the Arbitral Agent will send a letter to the opposite party/respondent providing for a 10-day negotiation period.

Stage 3: If the negotiation period lapses, then the parties will have 5 days to choose an arbitrator from the list proposed by the Arbitral Agent.

Stage 4: Parties advance fees to the arbitrator along with the necessary documents, and a copy of the applicable IFTA Rules.

Stage 5: Parties attend the hearing at a forum designated in the agreement, otherwise it takes place in Los Angeles in accordance with the IFTA Rules.

Stage 6: Parties receive the Final Award which is enforceable in the U.S. and internationally. (As per the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards). The Arbitrator has to deliver the Award within 45 days to the IFTA.[4]

**WIPO Rules for Film and Media**

The WIPO Mediation and Expedited Arbitration Rules for Film and Media, is a recent development in the out-of-court settlement area, which came into effect on 1st January 2020.

These rules are designed to provide a mediation procedure in a time and cost-effective manner. The rules provide for an existing special list of qualified arbitrators, mediator, and experts with knowledge in film and media disputes. Further, detailed Rules have been provided regarding liberal choice of moderators for the proceedings.
The Rules also specify the functions, role and responsibilities of a mediator who has no authority to impose a settlement on the parties, but can propose alternatives. Further, the fee for the mediator is fixed on an hourly basis and upon the complexity of the case.

The Rules provide a confidentiality clause along with the prohibition of using any statement to maintain an action for defamation, slander or libel.[5]

**Conclusion**

The entertainment industry is loaded with disputes and misunderstandings, for which a never-ending litigation process is not an option. Unlike Litigation, Arbitration and Mediation are not confined to predetermined set of legal remedies. Adopting litigation can damage an artist's industrial relationships along with constant obstruction in work life due to frequent court visits. So, it is rational and efficient to adopt ADR mechanisms for resolving disputes considering the susceptibility of frequent disputes in the Entertainment Industry.

Finally, quoting Paul Sugarman, an attorney in San Francisco: "It doesn't cost that much to explore ADR possibilities. If it works, you're a hero."

---

[1] Barry B. Langberg, Entertainment Industry Customs on Trial, L.A. LAW., 19 (1989)
[2] Veronique Bardach, A Proposal for the Entertainment Industry: The Use of Mediation as an Alternative to More Common Forms of Dispute Resolution, 13 Loy. L.A. Ent. L. Rev. 477 (1993)
[3] Tim Ostrander, Comparative Analysis of the uses of mediation in the Entertainment industry, Cornell HR Review (2013)
[4] Rules for IFTA Arbitration, Independent Film and Television Alliance (2018), at https://ifta-online.org/ifta-arbitration/rules-for-ifta-arbitration/
[5]WIPO Mediation Rules for Film and Media (2020), WIPO Mediation and Expedited Arbitration Rules for Film and Media, WIPO, at https://www.wipo.int/amc/en/film/rules#art1
[6] Sandra Bodovitz, Clients Push Use of ADR To Cut Costs, California Law Business, L.A. DAILY J., 16 (1991)

# CROSSWORD

## VERTICAL

1. Foreboder - He has a premonition to defer boor to arbitration
2. JAPANNED - Glossed over judge's arbitration, originally slated?
3. EXPEDIENT - Suitable for the purpose
4. Pax Dei – Peace of God
5. Agency - Intervention producing a particular effect
6. FMCS – Government Mediation Group
7. Concurrence - Fellow feeling ready to support Tory
8. Liaison - Communication between groups
9. Intervention - the act or fact of interposing one thing between or among others
10. Power - Bluffing card game & Might, strength

## HORIZONTAL

1. Submitted - Put forward a matter for arbitration but yielded
2. Bargaining - Haggling for pub and profiting
3. ARBITRAMENT – Settlement
4. Recourse - Freedom to return
5. Intercession- Bury meeting said to be for mediation J
6. Reconciliation - Making up "coin", I alter "icon" arbiAtrarily
7. Interposition - Meddling
8. Beat sixes and sevens - Need mediation, maybe
9. Fracas – Argument draining for conciliation services
10. Maracas - Instrument to ruin conciliation agency

| 8 | | | | | | | | | | | | | | | | | | 7 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | 10 | | | | | | 2 | | | | |
| | | | | | 6 | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | 5 | | | | | | | | | | | | | 9 | | | |
| | | | | | | 6 | | | | 8 | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | 10 | | | | | | | | | | | | | | | | |
| | | | | 1 | | 1 | | | | | | | 3 | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | 4 | | 9 | | | | | | | | | | | | | | | |
| | | | 4 | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | 5 | |
| | | | | | | | | 2 | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | 7 | | | | | | | | | | | | | | | | | |
| | | | 3 | | | | | | | | | | | | | | | |