ALLIANCE UNIVERSITY
Private University established in Karnataka State by Act No.34 of year 2010
Recognized by the University Grants Commission (UGC), New Delhi
Alliance School of Law

Celebrating 25 SILVER JUBILEE years of Alliance Education

ACADR

SENTENTIA | ACADR E-NEWSLETTER

VOLUME - 01 | ISSUE - 03

JUDICIAL APPROACHES TOWARDS RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

DECEMBER 2022

EDITOR-IN-CHIEF
Prof (Dr.) Kiran D Gardner
Professor and Dean,
Alliance School of Law,
Alliance University, Bengaluru

FACULTY EDITOR
Prof. Vishal Ranaware
Assistant Professor,
Alliance School of Law,
Alliance University, Bengaluru

STUDENT EDITORS
- Bharatee Preeya A.K.
- Meghana Chowdary D.
- Pranay Dhakad
- Thejaswini Sivapuram V.L.
- Ramya S.R.

ABOUT ACADR

Vision

The Alliance Centre for Alternative Dispute Resolution (ACADR) seeks to contribute to the vision of the Alliance School of Law, Alliance University of developing human beings who are technically sound, socially relevant, and emotionally strong thereby imbibing in themselves the requisite skills of alternative dispute resolution methods like active listening, understanding other's point of view, discussions, empathy, rational thinking, solution-oriented approach, analytical understanding, and community interest.

Mission

The ACADR has a mission to promote the full utilization of ADR methods amongst the legal and non-legal professionals, students, and general public at large. The Centre envisages a society which values harmony, brotherhood, peaceful co-existence, and multiplicity. The skills involved therein ADR methods are not only for harmoniously resolving the disputes and differences, but these are lifelong skills which are needed by all of us. The Centre aspires to bring in place an indelible change in the viewpoints of the society with regard to the disputes/ disagreements not as scars but as an opportunity.

Objectives

- To provide counselling services to people, lawyers, organizations, NGOs, government dispute resolution mechanisms.
- To raise the level of awareness on issues with regard to alternative techniques of dispute resolution mechanisms thereby practicing conflict management.
- To organize seminars/conferences, workshops, debates/discussions on contemporary issues with regard to ADR mechanisms.
- Publication of journal, magazine, newsletter etc. on alternative dispute resolution methods and best practices.
- Designing industry driven courses and conducting classes on courses like diploma, certificate on ADR methods like arbitration, mediation, dispute management, etc.
- To stimulate academic research maneuvers on contemporary issues relating to dispute resolution, dispute management, mediation, conciliation.
- To liaise with ADR professionals, lawyers, institutions, NGOs, government on matters relating to dispute resolution.

CONTENTS

FROM THE DESK OF DEAN

ACADEMIC CONTRIBUTIONS

1 **ARE ARBITRAL AWARDS IMMUNE FROM THE WRIT PETITION?**
AYUSH BHATI, Indore Institute of Law, Indore, Madhya Pradesh

2 **EMERGENCY ARBITRATION: PATH FROM DISSENT TO ASSENT**
PARTH BINDAL, School of Law, UPES, Dehradun, Uttarakhand

3 **EQUAL REPRESENTATION AND DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION**
RAUNAK SHUKLA & PRIYANKA SHARMA, Amity University, Mumbai, Maharashtra

4 **IMPACT OF JUDICIAL INTERVENTION IN THE FIELD OF ADR: IS IT A BOON OR BANE?**
RIYA RICCA KISKU & MANSI PIPAL, National Law University, Jodhpur, Rajasthan

5 **IMPORTANCE AND BENEFIT OF ARBITRATION IN LIMITED LIABILITY PARTNERSHIP**
VINIT DHAGE, Maharashtra National Law University, Nagpur, Maharashtra

6 **INTERNATIONAL ARBITRATION: A CRITICAL ANALYSIS**
ABHIMANYU KAPOOR & SHARMA SHUBAVI, Symbiosis Law School, NOIDA, Uttar Pradesh

7 **INTERNATIONAL INVESTMENT AND COMMERCIAL TREATY ARBITRATION**
ISHAAV MISHRA, Nirma University, Ahmedabad, Gujarat

8 **JUDICIAL INTERVENTION IN ADR: A PARADIGM OF CHANGE OR INTERVENTION?**
ARNOLD STANLEY & MANVI KISHORE, St. Joseph's College of Law, Bengaluru, Karnataka

9 **JUDICIAL INTERVENTION AND ITS IMPACT IN THE FIELD OF ADR**
ABHAY SHROTIYA, Institute of Law, Nirma University, Ahmedabad, Gujarat

10 **POSITION OF NON-SIGNATORY PARTY IN ARBITRATION AGREEMENT IN THE LIGHT OF THE PRECEDENTS**
SARIKA MITTAL, School of Law, UPES, Dehradun, Uttarakhand
SAAD ANWAR, Jamia Milia Islamia University, New Delhi

11 **AN ANALYSIS OF SECTION 17 IN THE LIGHT OF AMAZON VS. RELIANCE**
JUHI MANISH SELARKA, Alliance School of Law, Alliance University, Bengaluru, Karnataka

12 **THE DILEMMA OF FOREIGN ARBITRAL AWARD IN LIGHT OF GAS AUTHORITY OF LTD. VS. SPIE CAPAG, S.A. AND OTHERS**
SHUBANG GOMASTA, Amity University, Gwalior, Madhya Pradesh

13 **VIEWING INDIA'S JUDICIAL DISPOSITION OF ARBITRAL AWARDS**
ADITYA MEHROTRA, Symbiosis Law School, Pune, Maharashtra

14 **WATERSHED MOMENT OF 'AFCONS INFRASTRUCTURE' CASE IN ALTERNATE DISPUTE RESOLUTION JURISPRUDENCE: AN ANALYSIS**
SAMRAT BANDOPADHYAY, RGSOIPL, IIT Kharagpur, West Bengal
ADBUR RAHMAN MALLICK, Young Professional (Law)

UPCOMING EVENTS IN ADR

STUDENT TESTIMONIALS

ALLIANCE CATCHING MOMENTS

FROM THE DESK OF DEAN

The key aim of alternative dispute resolution is to provide quick and inexpensive resolution to conflicts and reduce the burden of the judiciary. However, the experience of judicial intervention (cases like BALCO, Saw Pipes, Phulchand, etc.) suggests that the interference of the judiciary in arbitral proceedings discourages parties from arbitration.

Section 5 of the Arbitration and Conciliation Act, 1996, Law Commission Reports, and legislative amendments to the relevant sections suggest that the Government is taking steps to remove these lacunas and become a pro-arbitration state.

The current issue of 'SENTENTIA: ACADR E-Newsletter' is highlighting the concerns related to judicial intervention and how they can be dealt with to become a hub for arbitration. Students from across the country have contributed to this newsletter. They have written their articles on the scope of judicial intervention in arbitral proceedings, the doctrine of public policy, investment arbitration, emergency arbitration, etc. Hope you will enjoy reading the current issue of 'SENTENTIA: ACADR E-Newsletter'.

I thank the authors for their contribution to the newsletter. Also, congratulate the entire editorial team and wish the Centre splendid success in the future!

Prof. (Dr.) Kiran D. Gardner
Professor & Dean,
Alliance School of Law,
Alliance University, Bengaluru.

ACADEMIC CONTRIBUTIONS

ARE ARBITRAL AWARDS IMMUNE FROM THE WRIT PETITION?

Ayush Bhati
Indore Institute of Law, Indore, Madhya Pradesh

In *M/s V. Kare Biotech and Ors. vs. Hemant Aggarwal Anr. (2022 LiveLaw (HP) 12)*, Justice Satyen Vaidya dismissed a writ petition filed against an arbitral order. The grounds cited for this decision were that the Arbitration and Conciliation Act, 1996 (the Act) is independent in and of itself and cannot be intervened in unless as provided under the Act.

The petitioner filed the case before the high court on denial of a request by an arbitrator for two reasons. First, the application was not maintainable before the submission of a written statement, and second, the application was premature since it could not be determined if the interrogatories were relevant without the petitioners' written statement being on record.

This case also raises the question of whether an order issued on a miscellaneous application during an arbitral hearing can be challenged in court under Article 227 of the Indian Constitution. The petitioners, in this case, have argued that the Act does not offer any recourse for contesting the contested order. As a result, the petitioners contend that they had no other effective alternative to approaching the High Court through the petition. Furthermore, it has been argued that Article 227 grants the high court the authority to preside over all courts and tribunals. The jurisdiction of the Court under Article 227 is not in question because the forum of the arbitrator is also a tribunal.

The petition's denial led to a significant debate on whether the Act has a flaw that prevents any remedy from applying to arbitral awards made by the arbitral tribunal. The Court has shed light on the issue by declaring that the Act is complete and independent of the legislation governing arbitrations. The Court said that Section 5 of the Act has a language that strongly precludes participation by any judicial body in subjects controlled by Part I of the Act, except where so provided in each part, the Court stated. Section 5 grants the arbitral tribunal protection from the powers of constitutional courts, although the court has some precedents that make that power available to the courts.

The Court referred *Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Anr., (2020) 15 SCC 706*, wherein the Supreme Court of India while dealing with a slightly different fact scenario, filed proceedings under Article 227 challenging the decision entered in the first

appeal under Section 37 of the Act, held that the High Court would be extremely cautious in interfering with the arbitral proceedings, taking into account the statutory policy, so that interference is limited to orders that are passed that are blatantly lacking in inherent jurisdiction. Petitioners could challenge judgments allowing or dismissing first appeals under Section 37 of the Act via Article 227.

The Court while referring to *Bhaven Construction through Authorised Signatory Premjibhai K. Shah vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75* and *S.B.P. & Co. vs. Patel Engineering Ltd. & Anr., (2005)8 SCC 618*, observed that the goal of minimizing judicial intervention would be defeated if the matter is referred to the High Court under Article 226 or Article 227 of the Constitution of India against every decision made by the arbitral tribunal while being arbitrated.

Given the preceding, the court decided that the writ petition could not be maintained because, according to the court's ruling, an arbitrator's award may be challenged only on the grounds defined under Section 34 of the Act. It is quite different to suggest that the petitioners have no imminent remedy accessible to them than that they have no remedy at all. The Court acknowledged that even though there is no remedy available right away, it cannot be said that there is no remedy available.

EMERGENCY ARBITRATION: PATH FROM DISSENT TO ASSENT

Parth Bindal

School of Law, UPES, Dehradun, Uttarakhand

Emergency arbitration is gaining popularity around the world, and it comes into play if there is no arbitral tribunal in place and whenever setting one up might take too long, depending upon the needs of either an agreement to arbitrate or even the guidelines in place. The emergency arbitration procedure adjudicates interim relief sought by either party to the dispute faster than court procedures, is less expensive, and eliminates extra-judicial intrusion. However, if the order of an arbitrator isn't abided, its entire emergency arbitration mechanism becomes ineffective.

The enforceability of awards made by an emergency arbitrator in India was clouded by conflicting judgments from various High Courts. To counter this inconsistency over the same, the Law Commission of India proposed an amendment to the wordings of Section 2(d) of the Arbitration and Conciliation Act, 1996 (the Act) in its 246th Report (2014). This reform has been intended to guarantee that

institutional rules like International Chamber of Commerce (ICC) rules, Singapore International Arbitration Centre (SIAC) rules and Hong Kong International Arbitration Centre (HKIAC) rules which provide the appointment of an emergency arbitrator were being legally recognized in India.

Despite the Law Commission's report, no such necessary changes have been made to nullify the opposing viewpoints. However, the Supreme Court's decision in *Future Coupons Private Limited and Ors. vs. Amazon.com Nv Investment Holdings LLC and Ors., (2022) 6 SCC 121,* is expected to end India's conundrum of emergency arbitration enforcement, which is discussed as follows:

Emergency Arbitrator Vis-À-Vis Arbitral Tribunal

The single arbitrator ordained from an arbitral institution to listen to an implementation for emergency interim relief has been regarded to it as an Emergency Arbitrator. It should be noted that the position of the emergency arbitrator is premised on legal capacity because under the Act the parties involved have complete independence to select and appoint an arbitrator. Furthermore, under emergency arbitration, the arbitral tribunal in emergency arbitration will have similar authority to an arbitral tribunal to determine provisional relief and the same award is valid and enforceable on any disputing parties.

It would not, however, bind the arbitrator(s) that is later formed, and the arbitrator(s) has the authority to rethink, alter, discontinue, as well as invalidate the arbitrator's order passed during emergency arbitration, and any order given under emergency arbitration by the emergency arbitrator also isn't conclusive upon that arbitral tribunal constituted after the dissolution of emergency arbitration proceedings, pertaining either to inquiry, concern, as well as disagreement settled. However, an interim relief has to be conclusively diverse, released, as well as rescinded, for whole or even in portion, by such a subsequent order and otherwise award issuance from an arbitration panel upon that implementation of any party or *suo motu*.

Dissense Over Emergency Arbitration

The Amazon and Future Group dispute over the enforcement of an "Emergency Award" fueled the growth of the emergency arbitral award in the country. The Act does not recognize the concept of emergency arbitration; however, Indian courts and arbitration institutions are familiar with it. This can be attributed to looking forward to the discussion on the same with the help of case laws.

In *Raffles Design International India Pvt. Ltd. & Anr. vs. Educomp Professional Education Ltd & Ors., 2016 SCC OnLine Del 5521,* the arbitration took place in Singapore, and the appointed emergency arbitrator granted interim relief. U/section 9, an application was submitted before the High Court of Delhi due to violations of the emergency arbitrator's order. The Delhi High Court ruled that the decision made during the emergency arbitration is not enforceable under the Act and the sole option which is available to the applicant would be by filing a suit. Although redress u/section 9 isn't reasonably there with the object of executing orders passed during emergency arbitration. But the same can't preclude courts in India from autonomously applying the psyche and granting equitable remedy in instances where that is merited under the Act. Similarly, the Bombay High Court in *HSBC PI Holding (Mauritius) Limited vs. Avitel Post Studiouz Limited, Arbitration Petition No. 1062 of 2012,* allowed interim relief in favour of the applicant, as had the Delhi High Court passed previously in a Singapore seated emergency arbitrator, and as a result, the applicant was successful in implementing the same.

The primary difference between these two cases is that, in the *HSBC case*, the court granted interim relief in what seems like a style analogous to that of the emergency arbitrator. However, in the *Raffles Design case*, the court was held to have the authority to decide to choose whether to confer interim measure or not. The concept of emergency arbitration was reaffirmed and got a broader view by the apex court in the *Amazon and Future Group Dispute case* which is necessary to put an end to the conflicting views of various high courts on emergency arbitration.

Conclusion

Although Emergency Arbitration serves a seismic shift across the world when it comes to injunctions in dispute settlement, In India, we have yet to receive formal legal backing for the same. However, Supreme Court's decisions in the *Amazon and Future Retail case* have significantly increased the effectiveness of emergency arbitration decisions in the Indian context, providing further acceleration to India's arbitration jurisprudence's pro-arbitration trajectory. It also helped in re-emphasizing "party autonomy" as a guiding principle of the Act and highlights the option of "Emergency Arbitrations," which are now recognized remedies for interim relief and are enforceable.

(Alliance School of Law organised an Intra-Debate Competition to provide exposure on argumentative skills.)

EQUAL REPRESENTATION AND DIVERSITY IN ALTERNATE DISPUTE RESOLUTION

Raunak Shukla

Amity University, Mumbai, Maharashtra

Priyanka Sharma

Amity University, Mumbai, Maharashtra

Alternative Dispute Resolution (ADR) is the term for any method of resolving disputes outside of court. Diversity and inclusion have long been a top priority for businesses, law firms, and ADR service providers. Employers at all levels continuously endeavor to entice and retain diverse personnel. Many organizations have made an effort to urge corporations to prioritize diversity and inclusion through the development of resolutions and other activities.

The Ameriacan Bar Association (ABA) and Judicial Arbitration and Mediation Services (JAMS) both believe that enhancing diversity in dispute resolution is a crucial element to improve diversity in the legal profession as a whole. Having said that, it might be essential for this group to pay closer attention to innovative concepts to enhance variety in ADR. Many companies and law firms are currently making great efforts to guarantee that the legal teams they employ are diverse. To guarantee that diversity objectives are met, companies are subject to financial incentives and/or withholdings.

The main issue is that many ADR neutrals, including judges and law firm partners, begin their careers as eminent lawyers. Despite an increase in minority associates, the ABA discovered that diversity has reduced at the highest levels of partnership. The Mansfield Rule states that at least 30% of senior lateral roles, equity partner promotions, formal client pitch opportunities, leadership and governance positions, and jobs requiring legal expertise must go to women, attorneys of color, LGBTQ+ attorneys, and attorneys with disabilities. An effort is made to address the root of the problem and develop a more diverse pool of notable practitioners who would be interested in acting as neutrals in an ADR proceeding by developing a consideration pool for higher-level jobs.

As of this writing, 180 prestigious law firms have ratified the Mansfield Rule. Overall, the main issue with a lack of varied neutrals can become obvious when there are misconceptions or cultural nuances that are not reported in ADR proceedings. Through the Diversity in ADR Award, the group recognizes an individual or group that has significantly

contributed every year. The International Institute for Conflict Prevention and Resolution (CPR) is a pioneer in advancing diversity through the publication of articles, the delivery of talks on how to practically promote diversity, and the leadership of its employees on diversity committees in the conflict resolution industry.

IMPACT OF JUDICIAL INTERVENTION IN THE FIELD OF ADR: IS IT A BOON OR BANE?

Riya Ricca Kisku
National Law University, Jodhpur, Rajasthan

Mansi Pipal
National Law University, Jodhpur, Rajasthan

An avalanche of pending cases in front of the Indian Judiciary is a well-known fact, which arises due to the inefficiency of the traditional judicial system in handling the continuous piling up of cases effectively. This shortcoming contributed to the evolution of a new way of resolving disputes i.e., Alternative Dispute Resolution (ADR). In ADR, which is a legal substitute for litigation, the disputing parties agree to present their respective different viewpoints to an impartial third party for resolution. It is aimed at reducing the burden on the judiciary by overcoming delays and cost-effectively dispensing justice in an informal and amicable setting. The essence of ADR is to provide justice, maintain the integrity of the society and find its roots in Articles 14 and 21 of the Indian Constitution.

Although it is a private forum, it is unavoidable that the judiciary will be involved in the ADR process. In most cases, the judiciary or courts do not intervene in ADR processes. Before the 2015 amendment, court interference in arbitration procedures was one of the main issues with the arbitration regime, which ran counter to the entire purpose of the regime, which was to relieve India's overburdened judicial system.

The inclusion of Section 5 demonstrates the legislation's intention to minimize the judicial influence in the arbitration regime by urging to reduce any kind of judicial intervention unless expressly stated in the statutes themselves and encouraging quick resolution of the issues submitted to arbitration. Section 5 of the Act was derived from a Model Law article that urged for the Court's action in arbitration matters to be limited. The purpose of this provision is not to categorically forbid all types of judicial action, but rather to restrict judicial intervention and prohibit all other remedies. The remedies that are not accessible include interim measures under Section 9, referral of

on-going litigation to arbitration under Section 8, and the appointment of arbitrators under Section 11. The excluded remedies are not restricted to phases of arbitration or the pendency of the proceedings. If a valid agreement appears to exist prima facie, section 8 of the Act compels courts to refer disputes to arbitration tribunals upon request from a party to the arbitration agreement or any claimant acting on his or her behalf, no later than the date on which the party submits his or her first statement on the merits of the dispute. This enables the arbitration tribunal to assess the validity of the arbitration agreement and whether it has the right to continue hearing the case in accordance with Section 16 of the Act.

The ADR methods have an underlying principle of non-intervention, as the party's consent to such methods in the form of a contract with the sole purpose of resolving disputes while avoiding the involvement of the judiciary.

In *Dyna Technologies Pvt. Ltd. vs. Crompton Greaves Ltd., 2019 SCC OnLine SC 1656*, it was held that judicial intervention in the Arbitration Proceedings should be limited. The parties opt for a mechanism of ADR like Arbitration; they choose to exclude the jurisdiction of the Courts. However, the complete absence of judicial intervention can never be an option because the rights of the parties are always at stake.

In *M/s. Sundaram Finance Ltd. vs. M/s. N.E.P.C. India Ltd., Appeal (civil) 141-143 of 1999*, the Supreme Court explained why there should not be a complete absence of intervention by the court. The purpose of Section 9 is to make the proceedings easy. In this case, the parties involved were misusing the provision to delay the proceedings. Judicial intervention in arbitral proceedings is just to ensure fairness and protect the rights of the parties.

Judicial intervention is tried to be restricted to special circumstances, so it doesn't defeat the purpose of ADR. Section 34 of the Act is one such example where an arbitral award can be set aside by a court. It was held in *McDermott International Inc. vs. Burn Standards Co. Ltd., MANU/SC/8177/2006*, that the courts only have supervisory authority to set aside the arbitral award under section 34 of the Act and not to correct it. This judgment was one of several that repeatedly emphasized the limited intervention of this section. While it was decided in *Dyna Technologies Case* that the courts should not overturn an award simply because another interpretation of the facts or the contract exists. The Courts were asked to be cautious about interfering with the award due to the reasoning provided in the award by the arbitral tribunal unless it comes under the unpardonable list provided under Section 34.

Despite constant reminders, several judgments led to a continuous increase in the intervention

by the court by broadening the ambit of the phrase 'public policy' under Section 34. However, after the 2015 amendment, Courts have refrained from giving wide interpretations to the phrase and only the grounds mentioned under section 34 are to be taken to set aside an order, this was held in *Venture Global Engineering LLC and Ors. vs. Tech Mahindra Ltd. and Ors., (2018) 1 SCC 656.* Allowing for more involvement than is necessary will destroy the objective of arbitration as every other award will be challenged in court.

It can be concluded that the intervention of the Judiciary in the ADR proceedings is both a boon and a bane; it depends on the circumstances of the proceedings and the methods adopted by the ADR system. The court of law has the power to intervene in the ADR proceedings however, court should consider the broader objectives of ADR processes while intervening.

(Renowned mythologist Mr. Devdutt Pattanaik talks about 'Is there an Indian Approach to Management?' in his opening address here at Asia Pacific Literary Festival 2022.)

IMPORTANCE AND BENEFIT OF ARBITRATION IN LIMITED LIABILITY PARTNERSHIP

Vinit Dhage
Maharashtra National Law University, Nagpur, Maharashtra

Limited Liability Partnership (LLP) is self-explanatory which means a form of partnership where one partner or all the partners have limited liabilities. It means a partner is not completely liable to the firm and his assets are safe in case of dissolution of the partnership.

In China, an LLP is known as a special general association. The hierarchical structure is confined to information-based callings and specialized help enterprises. The structure shields co-accomplices from liabilities because of the stubborn unfortunate behavior or gross carelessness of one accomplice or a gathering of accomplices.

In German, a *Partnerschaftsgesellschaft* or *PartG* means a relationship between non-commercial experts, cooperating. Although not a corporate substance, it can sue and be sued, own property, and act under the association's name. The accomplices, nonetheless, are mutually and severally at risk for all the association's obligations, aside from when just a few

accomplices' wrongdoings made harm another organization and later just if proficient obligation protection is obligatory.

In Canada, all territories, aside from Yukon, Prince Edward Island, and Nunavut, have allowed LLPs for legal advisors and bookkeepers.

In the USA, this kind of organization is known as a Limited Liability Company (LLC). In this sort of association, the firm has a separate lawful character of its own not quite the same as accomplices which isn't a case in the Partnership firm.

In India, an LLP has the Limited liability Partnership Act, 2008 (the Act) to governs the LLP agreements.

Role of arbitration in LLP

Arbitration, as is a higher setup and has an extended history; no matter its personal and private nature, it's miles just like courtroom docket in that events will gift their case to a tribunal, to make willpower through which the events could be certain. They are, however, certain through consent: the events have agreed through settlement to present the tribunal jurisdiction over their dispute and agreed to be certain through their findings. While making the partnership agreement if the arbitration clause has been inserted by the parties about the dissolution of the firm, then the parties will go for arbitration at the time of dissolving the partnership firm. The assets and liabilities will be assessed, the debts will be played off in a partnership firm and the rest of the issues will be settled between the partners by the arbitrator. As the same thing is discussed in *E.F.D. Mehta vs. M.F.D. Mehta, 1971 AIR 1653*. Where a clause was entered while making the partnership agreement by the parties.

Even if the partnership agreement does not include any such clause the partners can go for an arbitration at the time of dispute arises or at the time of dissolution of the partnership firm when all the partners agree to it.

Section 23(4) of the Act says that "In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule".

Rule 14 notified on 10/07/2010 state that "All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)". It says that arbitration should be added as a clause in the agreement for the disclosure of LLP.

Arbitration for Third-party Relation

An arbitration clause in a bill of partnership firm where a partnership firm is a member of an Association sold goods to a non-member firm subject to rule and regulations of the association which provide for an arbitration clause in cases of disputes and differences between the parties, the parties are bound by the arbitration clause.

In *Luda Rani Ved Prakash vs. Maharani of India, Appeal No. 1360-A of 1986,* the Delhi High Court stated that the arbitration clause will prevail when a dispute arises between partners and third parties. Parties are bound to follow the clause which is there in agreement.

Power of the Court to Dissolve Despite an Arbitration Clause

When one party approaches the court to dissolve the partnership on the just and equitable grounds, the jurisdiction of the court is always there to give appropriate relief notwithstanding the provision for arbitration in the partnership deed. In *Sat Pal Anand and Ors. vs R.K. Ahuja and Ors., AIR 1973 P H 197,* the Punjab & Haryana High Court set aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 on the grounds of just and equitable principle.

In *Pannalal vs. Padmavati, AIR 1960 Cal 693,* the arbitrator valued all the assets and liabilities and the valuation of all the properties were valued and then the arbitrator gave the award of dissolution of the partnership firm.

Arbitration in case of death of a partner

When there is an arbitration clause in a partnership deed on the death of a partner the partnership is dissolved proceedings by the legal representatives of the deceased partner under Section 85 of Arbitration and Conciliation Act, 1996 are maintainable.

In *Sunder Lal vs. Bhagwati Devi, AIR 1967 All 400,* Sunder Lal, Madan Lal father of Madho Lal, and Seth Sarju Prasad entered into a partnership agreement to run the sugar mills at Doiwala. The three partners were brothers and the portion of each was 33%. The organization arrangement executed by the three accomplices is on the record and Clause 9 thereof gave "That in the event of any debate among the accomplices the issue will allude to an assertion and the honour of the referee or the authorities as the case might be will, he last and official on the accomplices".

Madan Lal passed on and the organization consequently stood broke up. There was no new association; however, since after the demise of Seth Madan Lal, the other two siblings kept on running the Sugar Mills at Doiwala. Aside from a brief period when under the break request of the High Court Seth Sarju Prasad and Madho Lal were permitted to

run the Sugar Mills. This break request was passed after the activity of the request for the Civil Judge. Debates seem to have emerged during the existence season of Seth Madan Lal, yet the current application under Section 20 of the Arbitration and Conciliation Act, 1996, nonetheless, moved by his lawful agents Smt. Bhagwati Devi and Madho Lal, around two months after his demise. Section 4, 6, 20 of Partnership Act, 1932 were likewise actualized and held that assertion understanding endures even after the disintegration of the organization firm and the case was viable by the lawful agents of Madan Lal.

Power of Arbitrator to Dissolve Partnership

The arbitrator has the power to award dissolution of the partnership regarding all matters in difference between the partners to him. In *Belfield vs. Bourne, (1894) 1 Ch. 521,* when the parties opted for the arbitration form of dispute resolution in that after resolving all the disputes between parties or between partners and third parties the arbitrator gives the arbitral award which states the dissolution of the partnership firm.

Conclusion

Arbitration is the quickest and easiest way to resolve disputes as compared to litigation or going to the courts and all. It comes into the role when either the LLP agreement or partnership agreement contains an arbitration clause in it. It will enable partners to resolve their internal disputes outside the court through an arbitration.

INTERNATIONAL ARBITRATION: A CRITICAL ANALYSIS

Abhimanyu Kapoor

Symbiosis Law School, NOIDA, Uttar Pradesh

Shubhavi Sharma

Symbiosis Law School, NOIDA, Uttar Pradesh

International Arbitration is very similar to the litigation process in the domestic courts but the procedure of arbitration in international arbitration takes place in front of a private adjudicator when a dispute arises between two parties from different countries. Most companies in today's time have started including international arbitration as a clause in their commercial contracts as it is pocket-friendly, faster, more neutral, and has fewer clerical formalities.

The best feature of international arbitration which attracts companies towards it is that the parties can select an arbitrator who might be an expert in the field in which the dispute has arisen. The popularity of International Arbitration has been seen in recent times of

COVID – 19. Subsequently, London, Singapore, and Hong Kong have become the most preferred places to conduct arbitration. Around, 97% of respondents chose arbitration as their preferred method of resolving cross-border disputes, either as a stand-alone method (48%) or in conjunction with ADR (49%).

What Are the Codes on Which the International Arbitration Works?

Most of the arbitration institutions have their own code on which the lawyers argue the case of their party. The best-known code and rules for International Arbitration are of the institution like the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC), and the Hong Kong International Arbitration Centre (HKIAC).

Scope of International Arbitration in India

Because of the large number of caseloads and backlogs in our nation, it is typical for things to get trapped with the court for an extended length of time in India. As a result, parties are looking for alternate dispute resolution procedures. So, it is common for parties to put arbitration clauses in all large deals and contracts. Multiple amendments have been made to the Arbitration and Conciliation Act, 1996, and there has been a substantial improvement in the country's arbitration environment alongside a simultaneous rise in its use.

Reasons For Singapore to Lead in International Arbitration

Singapore, London, Hong Kong, Paris, and Geneva are the most desired seats for arbitration. Among them, Singapore is the most desired seat in the 'Asia-Pacific region' and is tied with London for the top spot as the most desirable seat in the globe. There are some key reasons why Singapore and the Singapore International Arbitration Centre (SIAC) are preferred over other arbitral seats or institutions:

- The country's courts' well-deserved reputation for uprightness and justice, as well as their enthusiastic backing of the process.
- Singapore's central location in the Asia-Pacific region, as well as its business-friendly atmosphere and status as a global hub for businesses, also constitute as important rationales for the country to top the list.

Fast-Track International Arbitration and When Does It Come to Function?

International arbitration has been under a lot of increasing criticism for its rising costs and considerable duration of hearings of proceedings, which have rendered it more like

conventional court litigation, given the fact that it should be faster and less expensive than court-action. Multinational arbitration boutiques, which often charge less than major international corporate firms, come into the scene to bring down the price of international arbitration. It is also possible to lower the overhead personal expenses of international arbitration for victims using third-party finance when an investor agrees to pay the legal fees in exchange for an interest in the final decision.

The article shows that International Arbitration is a more viable and efficient process than traditional litigation, therefore, becoming a very famous way of alternative dispute resolution system but as it is growing all over the world the cost efficiency is decreasing due to increased administrative costs in many seats of International Arbitration the process is becoming very similar to the traditional litigation when we talk about the money aspect of it.

To overcome this problem the administrative formalities should be minimum and most of the power of the arbitration should be directly given to the hands of the arbitrator appointed by both the parties, this will reduce the cost of the process as there will be a single major person who will be taking the decisions thus reducing the administrative formalities.

INTERNATIONAL INVESTMENT TREATY ARBITRATION

Ishvaa Mishra
Institute of Law, Nirma University, Ahmedabad, Gujarat

Arbitration is a method of resolving disputes and discrepancies among parties in a contract or an agreement without going to court or any judicial proceedings. Arbitration is a smaller circle in the Venn Diagram of Alternative Dispute Resolution (ADR).

Nowadays courts are always overburdened with cases and petitions, and because of this, many who are merited to get justice are not able to. Judicial proceedings require both time and money, people who are from rural backgrounds who use tribunals or district courts have neither of them, so for them, to waste time and money every year to get justice is very enervating. Here, ADR proves to be the optimum medium because it can help the legal system by taking off some affliction.

Investor-State dispute settlement

Investment Arbitration is also known as Investor-State Dispute Settlement (ISDS). The contestation between a foreign investor and the host state is fathomed. These kinds of disputes arise under a public treaty covenanting between two contrasting states. The guarantee

provided by the host state to sue a particular party in the state or the state itself gives confidence to a foreign investor to invest in the country.

Consent for Investment Arbitration

Acquiescence for International Investment is conventionally given by the host state. Permission for international investment by any country can be given under Stand-alone Investment Treaties also known as Bilateral Investment Treaties (BIT), North American Free Trade Agreement (NAFTA), Transpacific Partnership Agreement (TPP), or Energy Charter Treaty (ECT). Investment treaties are made to create a circumspect environment with lower to no non-commercial risk and to promote solvent foreign investment in a country.

Mechanism of Investment Treaty

A. Instigate the Dispute Procedure

Conventionally, it is the foreign investor who initiates the process of dispute resolution. But if there are certain clauses in an agreement that violates a country's national law and regulation or if the investor had been involved in illegal or hazardous activities in the host's state, then the host has the power to initiate arbitration against them or even initiate a suit against the investor.

B. Rules applicable in Investment Treaty

Commonly, while creating the agreement parties decide how they will resolve any disputes occurring between them. While making the treaty or contract, the parties decide and make clauses that would be suitable for both, under these clauses both the parties need to resolve and determine how they would resolve such disagreements.

C. Appointment of Arbitrators

Normally, there are three arbitrators involved in dispute resolution, one is appointed by the appellant, the other is appointed by the respondent and the last one is appointed by or through a joint agreement or an arbitrational institution or even by a judicial court if it is in their jurisdiction. The third arbitrator is commonly the president of the bench.

D. Proceedings and Amicus Curiae (Third Party Participation)

By the virtue of, UNCITRAL Proceedings and ICSID Rules a third party can intervene in arbitration if there is a scope of involvement that would be mentioned in the clause. Parties such as intergovernmental organizations, other states, non-governmental organizations, or an academic expert can be included in the process as a third party.

E. Remedies for Parties

The most common remedy that is provided under an arbitration treaty is monetary compensation. Because this arbitration occurs

under an investment treaty, it is very difficult to order annulment, revocation, administrative action, or even countermanding however, easy to sell or seize the asset of a foreign investor or state, hence monetary compensation is the most viable remedy given under an investment arbitration.

F. Review of Awards under Investment Arbitration

Under the rules of ICSID and the conventions of UNCITRAL, an annulment of the award can be done by a special administrative bench, it can also be revised if any contemporary facts related to the case are discovered. This reappraises of the award under the treaty can be done by an independent party, a domestic court, or the original court. The decision of either one of them about the reassessed award is binding on both the parties of the treaty.

Conclusion

ADR is something that is still not benevolent in India. There are many reasons why the Indian judiciary and society are not ready to take ADR as a process of settlement. Just like every other court proceeding, ADR and arbitration also has its advantages and disadvantages, in-spite of that, the chance of resolving a dispute through ADR helps in resolving disputes in a smooth manner. With ever-evolving laws and norms in India, ADR might become the most preferred mode of dispute resolution.

JUDICIAL INTERVENTION IN ADR: A PARADIGM OF CHANGE OR INTERVENTION?

Arnold Stanley

St. Joseph's College of Law, Bengaluru, Karnataka

Manvi Kishore

St. Joseph's College of Law, Bengaluru, Karnataka

Arbitration, one of the most sophisticated and popular ADR modes, has a lengthy history in the Indian legal system. In truth, local panchayats are used to resolve disputes through arbitration. The panchayats currently have constitutional recognition under the Constitution (73rd Amendment) Act, 1992 in Part IX of the Indian Constitution. During their reign, the British enacted different arbitration. It was the UNCITRAL Model Law on International Commercial Arbitration, 1985 that led to the Indian Arbitration and Conciliation Act of 1996 (the Act).

One of the most important benefits of arbitration is the minimal court interference and the capacity to enforce arbitral rulings as if they were court orders. The Act specifies three

scenarios in which the courts may intervene in arbitral proceedings:

- When the parties' method of appointing arbitrators fails, the court steps in and selects arbitrators (S11),
- Help to obtain evidence (S.27),
- Termination of the arbitrator's mandate owing to the inability to execute functions or inaction (S.14).

Justification for Judicial Intervention

The statistics on litigation in India are frightening and unpleasant. Litigation in India is expensive and time-consuming. Indian civil courts are notoriously slow. A backlog of more than 40 million cases and frequent delays in deciding a case have harmed public confidence in the rule of law. This circumstance draws attention to arbitration since it spares parties from lengthy and stressful litigation.

Arbitral proceedings enable unbiased, discreet, and rapid resolution of disputes arising from international trade and transactions. Foreign parties are more likely to trust arbitration if they have complete party autonomy. The reality differs greatly from the aspirations of the legislation. Due to numerous issues in the country, parties to arbitration processes often seek the intervention of courts of justice. A key reason for judicial intervention in arbitration procedures is the dearth of institutions providing arbitration facilities.

In most cases, retired judges are appointed to arbitration panels, and because they are familiar with lengthy litigation procedures requiring procedure and evidence, arbitration procedures are prolonged, culminating in a pleading war between the parties.

Judicial Intervention to Preserve Public Policy: Has It Led to Unwanted Interference?

Sections 34 (domestic arbitration) and 48 (foreign arbitration) of the Act allow courts to annul arbitral rulings if they violate state public policy. The term "public policy" was originally considered in the case of *Renusagar Power Co. Ltd. vs. General Electric Co., 1994 Supp (1) SCC 644,* It investigated whether the phrase "public policy" in the context of international arbitration must be defined narrowly or whether a broader idea of public policy should be accepted in international law. The court finally established that the word "public policy" should be defined narrowly, and that simply breaking an Indian law does not constitute a violation of public policy. Applying this, it was concluded that implementation of a foreign award is prohibited if it is adverse to an essential policy of Indian law; national interests; justice, or morality.

In *Oil and Natural Gas Corporation Ltd vs. SAW Pipes Ltd., (2003) 5 SCC 705*, the court stated that the role of the court was seen to be that of

an appellate or revision court, which increased its power. It stressed that Section 34 of the Act gives an exhaustive list of reasons to dispute an arbitral ruling and that these pertain primarily to procedural issues without entering into substantive issues.

The Law Commission of India previously stated that a tribunal's mistake of law cannot be used to throw aside an arbitral award. A court's assessment of the evidence did not invalidate an arbitral award. The 2015 amendment to Section 34 contained these key revisions. These were the modifications that limited the court's ability to interfere with arbitral rulings based on public policy. As a result, explanation 2 to Section 34(2) and Section 2A were added. Explanation 2 of Section 34(2) provides that determining whether a fundamental policy of Indian law has been violated does not require an assessment of the dispute's merits.

In *Associate Builders vs. Delhi Development Authority, MANU/SC/1076/2014,* the Supreme Court clarified the concept of morality and justice. The court stated that an arbitral award must shock the court's conscience and go against the mores of the day to be set aside for moral and legitimate reasons. The preceding case changed the law so that courts could no longer reappraise evidence or set aside awards simply because the arbitral tribunal handled it incorrectly. These adjustments were made to reduce the likelihood of judicial interference in arbitration proceedings, thus preserving the arbitration's purpose and virtue. The subjective nature of the court's conscience plays a big role in the court's ability to get involved in arbitration.

Choice of Arbitral Persons: A Judicial or Administrative intervention?

Before the amendment to the Act, the Chief Justices were responsible for appointing arbitrators by an arbitration agreement for arbitrations seated in India. In such a case, the Chief Justice could undertake a detailed trial to determine the arbitration clause's existence. This power was judicial rather than administrative, thereby destroying the value of alternative dispute resolution. As a result of such involvement, arbitrators are appointed late, and the arbitral award is issued late. One of the most important features of any ADR process is its time efficiency. A late award dissatisfies parties that chose arbitration over litigation to save time.

Delegation of the appointment of arbitrators to an arbitral institution was advocated by the 246th Law Commission Report. Essentially, the Act's revised Section 11 allowed for such delegation. The modified provision also set a sixty-day deadline for the court to decide on an application for the appointment of arbitrators. The UNCITRAL Model Law on International Commercial Arbitration, 1985 approves this

approach of assigning arbitrators, which suggests any appropriate authority prescribed by the legislature to execute the duty. Despite such rules, courts rarely utilize such delegation of power, resulting in underutilization of such facilities and unnecessary judicial interference in arbitral procedures. The courts still operate as a middleman in arbitral procedures rather than encouraging arbitral institutions to actively intervene and help expeditiously dispose of cases.

Conclusion

Contrary to its pending obligations and the arbitration regulations, the Indian courts' interference in arbitration procedures looks to be an over-step. Despite the 2015 amendment, loopholes and ambiguities still exist, diminishing the benefits and virtues of arbitration. The basic goal of arbitration, or ADR, was to save time and preserve diplomatic relations between international parties. Instead, judicial intervention leads to further chaos. To make the Indian Arbitration system work well, the judiciary needs to delegate responsibility to arbitration institutes, intervene only when necessary, and scrutinize cases. Finally, closing the remaining gaps and loopholes will help arbitration achieve prominence in a country like India, which values its diplomatic and commercial relations.

JUDICIAL INTERVENTION AND ITS IMPACT IN THE FIELD OF ADR

Abhay Shrotiya
Institute of Law, Nirma University, Ahmedabad, Gujarat

Alternative Dispute Resolution (ADR) is also a part of the judiciary. It helps people and businesses to settle their disputes speedily. Most of the people believe that the judiciary is the only way to achieve justice and because of this thinking, they do not take part in ADR. Both in developing countries and developed countries, the courts are burdened with large numbers of pending cases, resulting in the delay in the resolution of the dispute through the judiciary, which ultimately decreases the confidence of its citizens in the judiciary. Here comes the role of the ADR. It is a legal process in which the parties to the dispute can solve their disputes outside the court in a speedy manner. For solving the dispute through ADR, both the parties mutually appoint a third party who will help disputing parties to resolve their dispute.

History of ADR in India

ADR is not a novel concept for the people of India. In ancient and medieval India, disputes were settled through an impartial third person who is either an elder person or the village chief. It is only in the 19th and 20th century the

adversarial form of justice came into existence which proved to be costly and time-consuming.

The modern form of ADR in India came into the picture with the Trade Dispute Act of 1929 to provide settlement to industrial disputes through the creation of the Board of Conciliation and Court of Inquiry but the limitation to this act was that the decision of this act was not binding.

This rule was changed through the Industrial Dispute Act, 1947 empowering the Central Government to refer disputes to conciliation. India's first law on an arbitration was introduced in 1940 but it was not effective which led to litigation as a result of the challenges of the awards. To make the ADR more effective the government introduced the Arbitration & Conciliation Act of 1996 under which now the award of arbitration can only be challenged on limited grounds.

Issues related to Judicial intervention in ADR and Recent Developments

Due to the rapid increase in economic growth in India, there is an increase in the number of litigations. But the Indian Judiciary was not able to cope with the time. Judiciary takes years to resolve a case. Because of this, to provide an effective and quick resolution to the cases, the Government of India introduced the Arbitration and Conciliation Act of 1996.

- Section 5 of the Act restricts judicial intervention and states that "notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part [I], no judicial authority shall intervene except where so provided in this Part [I]." It does not limit the judicial intervention as a whole but restricts it to modify the arbitration award.
- Section 9 of the Act states that the parties of the case may before or during the arbitration proceedings or after any time, after making the award but before the enforcement of the award under Section 36 may apply for interim relief for the protection of the case. On other hand, Section 17 of the Act provides power to the arbitral tribunal to grant interim relief. The major difference between these two provisions is that under Section 9, the power given is imminent and provides sustenance and durability to the award and it does not curtail the right and prejudices of the party, whereas Section 17 gives power to the arbitral tribunal and binds the judicial intervention.
- Section 34 of the Act stipulates grounds to challenge the arbitral award made under Section 31. But the challenge to the award is challenged within three months of the date of receipt of the award.

In *State of Jharkhand vs HSS Integrated SDN & Anr., MANU/SC/1438/2019,* the court held that

whenever the views of the arbitrator are reasonable, they must not be questioned under Section 34 of the Act. Whereas, in *Vijay Karia vs. Prysmian Cavi E Sistemi SRL, 2020 SCC Online SC 177,* the Delhi High Court made an exception to the rule of non-intervention. They said that the court can intervene when the award is against the basic principle of justice. However, the court is not allowed to look into the merits of the award.

Conclusion

ADR is seen as one of the better ways of resolving disputes in a faster and more efficient manner. It can also reduce the burden on Courts by reducing the number of pending cases. This can be achieved by looking at ADR from a wider perspective where resolving disputes through these methods should be the first choice with limited court intervention.

(Alliance Centre for Intellectual Property Rights (ACIPR) in the School of Law of Alliance University hosted the first Intra-School Quiz on Intellectual Property Rights (IPR). The goal of this event was to keep students up to date on the newest developments in the field of IPR.)

POSITION OF NON-SIGNATORY PARTY IN ARBITRATION AGREEMENT IN LIGHT OF THE PRECEDENTS

Sarika Mittal

School of Law, UPES, Dehradun, Uttarakhand

Saad Anwar

Jamia Milia Islamia University, New Delhi

Can a party who has not given any consent or has not been a signatory to the arbitration agreement be part of the arbitration? In the first place, this question is a very strange one because of the very first rule of contract law which is *consensus ad idem*, it means that there must be a meeting of mind of all the parties involved, therefore an agreement cannot be binding on the non-signatory.

Section 7 of the Arbitration and Conciliation Act, 1996 (the Act) provides that the arbitration agreement must be mutually accepted by the parties with clear, free, and express intention. However, now the parties who are non-signatory to such an agreement can also be part of that under certain exceptions and the same has been laid down by the Supreme Court in various landmark judgements.

In *Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandyai, (2003) 5 SCC 531,* the Supreme Court has categorically stated that a person, who is not a party to the arbitration agreement, cannot be bound into the arbitration proceedings "as causes of action against various parties cannot be separated in an arbitration and that would only bind the signatories." However, the Supreme Court in the very milepost judgement of *Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc., (2013) 1 SCC 641,* formulated the relationships enabling non-signatory to be bound by the agreement. The position was amended, and a few principles were demystified which were the exception to this rule of non-signatory parties. To be precise five classifications were propounded concerning non-signatories to the arbitration agreement:

A) Incorporation theory: It portrays a condition where non-signatory parties may compel arbitration against a party to an arbitration agreement when the parties have entered into distinct contractual relation with the non- signatory which incorporates the existing clause.

B) Assumption Theory: The theory is based on the fact that if any subsequent implied conduct signifies it's assuming of the obligation to arbitrate, the non-signatory parties are bound by an arbitration clause.

C) Agency Theory: A non–signatory party may also be bound to an arbitration agreement by the law of agency as enshrined in the Indian Contract Act, 1872. However, it is imperative to prove contractual liability and intentions to arbitrate must be established.

D) Veil–Piercing or Alter Ego Theory: Under it, the veil could be pierced to hold a corporation legally accountable for the actions of the others.

E) Estoppel Theory: If a party receives any benefits knowingly from the agreement, it is stopped from escaping its obligation to arbitrate, be it a signatory or non-signatory party.

The theories enunciated were remarkable and were verily applied in numerous judgments. Besides these inherent principles, the apex court also promulgated the "Group of Companies Doctrine", which was first recognized in the International Chamber of Commerce (ICC) case of *Dow Chemicals Company & Ors. vs. Isover Saint Gobain (Dow Chemicals), ICC Award No. 4131, YCA 1984, at 131 et seq.* The doctrine stated that if any transaction were with the parent or holding company or a member of a group of companies and the non-signatory is engaged in the performance of the contract, then non-signatory party could be subjected to arbitration. The doctrines and theories

promulgated emphasises dynamically the element of intention and implied consent which would govern the arbitration even if the parties are non-signatory.

The doctrine of "Group of Companies Doctrine" was also applied by the Supreme Court in its very recent case of *Mahanagar Telephone Nigam Limited vs. Canara Bank, MANU/SC/1057/ 2019*, where it observed the scope of implied consent and conduct of the parties which evidenced the parties' clear intention to be bound by an agreement. It further stated that non-signatory parties can also be subjected to the arbitration even without prior consent in exceptional cases where such exceptions would be examined by the court considering the relationship of the party signatory to the arbitration agreement and the subject matter of the agreement. However, the transaction occurring must be of a composite nature, which means a transaction for achieving a common object and collectively having a bearing on dispute. Therefore, the enhancement by adding a proviso clause through various judgements for referring a non-signatory to an arbitration is of great significance in terms of compassing and maintaining the balance practically.

AN ANALYSIS OF SECTION 17 IN THE LIGHT OF AMAZON VS. RELIANCE

Juhi Manish Selerka
Alliance School of Law, Alliance University, Bengaluru, Karnataka

Amazon, the nation's biggest retail chain, and India's Future Group have been sealed in a court dispute for more than a year. Due to the standoff, Future's ₹24,500 crore ($3.4 billion) purchase with Reliance Industries has been curtailed. Amazon has submitted extra lawsuits in its long-running battle with Future, following the Competition Commission of India's (CCI) temporary suspension of a 2019 agreement between the two parties.

Amazon has filed an appeal against the CCI suspension decision with the National Company Law Tribunal (NCLAT). Separately, the US retail conglomerate has appealed the decision with the Supreme Court against the Delhi High Judge's ruling to postpone the arbitration procedures due to the unfair competition revocation of the deal. Future Retail continues to operate 1,800 retail locations all over India's 400+ towns. Amazon saw Future's stores as crucial to its objective of attaining products in select cities within two hours of a client purchasing them. Future and

Amazon collaboration would have given the other a substantial market privilege.

Likewise, an agreement with Future Retail would have solidified Reliance's stance as India's top retail outlet, making the company a somewhat instantaneous strategic advantage in smaller cities and towns, as well as supporting Reliance with last-mile shipment too small towns. Reliance would've risen to prominence in both the online and offline shopping divisions as a result of the transaction with Future Retail.

Future benefited from CCI's decision because it had disappeared to Singapore International Arbitration Centre's (SIAC) Delhi-based tribunal to demand that the arbitral proceedings processes be halted on the basis that the anti-trust regulator's disqualification of authorization had subverted the basic premise of Amazon's case. The Singapore International Arbitration Centre (SIAC), on the other hand, agreed to start with the previously scheduled main arbitration case. Future's new plea will be heard following the main case arguments, according to the ruling.

Meanwhile, Amazon applied with the National Company Law Appellate Tribunal against the CCI's decision to delay approval of its 2019 deal with Future. The NCLAT is hoped to hear Amazon's appeal later this week. In the latest development, CCI suspended the 2019 investment deal between Amazon and Future group firm (Future Coupons) and NCLAT upheld CCI's decision. Amazon approached the Supreme Court. The Supreme Court of India (SC) will hear Amazon's appeal against the National Company Law Appellate Tribunal (NCLAT) order upholding CCI's order, on October 11.

The bench of Chief Justice of India NV Ramana, Justice AS Bopanna, and Justice Hima Kohli remanded the whole matter to the Delhi High Court to be considered afresh without adhering to observations made therein. The bench clearly declined the decision of the arbitration tribunal and refused to intervene with the emergency award (EA) of the Singapore International Centre.

Issues raised

- Whether such an "award" made by an Adjudicating Officer under the Singapore International Arbitration Centre's Arbitration Rules (SIAC Rules) could be regarded as an action under Section 17(1) of the Arbitration and Conciliation Act, 1996 (the Act)?
- Is it probable to appeal a learned Single Judge of the High Court's order imposing an Emergency Arbitrator's award under Section 17(2) of the Act?

Disagreements between the parties

Amazon and Future Group are engaged in a multi-forum class action suit over Future Retail Ltd.'s (FRL) ₹24,500 crore merger with Reliance Retail Ltd, which has been alluded to by the SIAC for arbitration in October 2020. Amazon contended that FRL violated its agreement by agreeing to sell its assets on a slump sale basis to Reliance Retail for ₹24,500 crores.

The CCI stalled its over-two-year-old approbation of Amazon's intention of buying a 49-majority stake in FCPL and FRL promoter fining the e-commerce behemoth ₹202 crores. Amazon has expressed its dissatisfaction with the sales plans, alleging that the Future Group has violated a 2019 memorandum of understanding.

Analysis

Three Delhi High Court judgments, along with the unwillingness to maintain the final and binding conviction that deterred FRL from continuing with its ₹24,731 crore amalgamation with Reliance Retail, were overturned by the Supreme Court, and a new trial was instructed. Furthermore, a bench led by Chief Justice N V Ramana reversed the high court's judgment, which had instructed FRL to preserve the status quo in correlation with the proposed merger. The Verdict was in favour of Amazon in August, stating that the EA award was reasonable. The lawsuit against the ₹24,731 crores FRL-Reliance Retail business combination is legally enforceable under Indian arbitration rules.

In addition, the Supreme Court reversed the Delhi High Court division bench's February 8 and March 22, 2021 rulings, which pulled the single judge's injunction preventing the FRL-RRL merger. A bench led by retired Justice R F Nariman ruled that an EA decision issued by another country is actionable under the Act. The high court's decision underpinning the EA's prize and enforcing a Rs 20 lakh fee on it and its executives was also overturned.

The Supreme Court requested the Delhi High Court begin fresh adjudication, by posting the numerous petitions filed in the Amazon-Future-Reliance case before the same Bench. The bench clearly declined the decision of the arbitration tribunal and refused to intervene with the emergency award (EA) of the Singapore International Centre.

Emergency arbitration

Amazon's legal dispute with Future Retail Limited was resolved in its favour by the Supreme Court. The Future Retail and Reliance merger was put on hold by the Emergency Award issued by the SIAC, according to the Supreme Court, which was upheld as being enforceable in India. Two issues have been set forward by the Court for discussion in court.

The first is whether or not Section 17(1) of the Act applies to the Emergency arbitrator's award, and the second is whether or not the single judge's judgement affirming the SIAC ruling can be appealed.

The Supreme Court has decided to address the first concern by approving the enforcement of the Singapore Emergency Arbitrator ruling, which halted the Rs 24,731 crore merger agreement between Future Retail and Reliance Industries Group.

Additionally, it supported the decision of the Delhi High Court's Single Judge Bench, which had ruled in favour of the execution of the Emergency Award. The Single Judge Bench Order was not appealable to the Division Bench of the High Court, the Supreme Court noted, in accordance with Section 37(2) of the Act.

The Supreme Court's decision has earned the distinction of being a landmark decision because it not only reiterated the Act's guiding principle of "party autonomy," but it also highlighted the option of "Emergency Arbitrations," which, according to the decision, are now recognised remedies for temporary relief and are enforceable under Indian law.

THE DILEMMA OF FOREIGN ARBITRAL AWARD IN LIGHT OF GAS AUTHORITY OF INDIA LTD. VS SPIE CAPAG, S.A. AND OTHERS

Shubhang Gomasta
Amity University, Gwalior, Madhya Pradesh

The Gas Authority of India Limited (GAIL) entered into two agreements with SPIE CAPAG, S.A., NKK Corporation and Toyo Engineering Corporation (Consortium). The agreement consisted of the construction of a gas pipeline via three states starting from Gujarat and ending in Uttar Pradesh. The said pipeline was to be completed via the time frame as laid under Section 3 of the Completion Schedule and all tasks were to be executed by July 31, 1988.

There was an unexpected delay that occurred to the completion of the given project and as a matter of fact, a dispute arose between the parties. The respondent claims that full payment was received and still work was not completed as stated under the agreement. All of these lead to the dispute of the parties and the Consortium demanded a further payment of US $450 million (equivalent to Rs. 775 crores approximately). On the other hand, the petitioner sought the liquidated damages for

the delay caused and tried to invoke the bank guarantee.

GAIL argued that the respondent request for arbitration itself was an invalid and ultra-virus of the contract between the parties. Further, it claimed that the entire matter was not referable to the arbitration and prayed that the validity and the effect of the arbitration agreement don't hold them liable. However, the respondent claimed that the GAIL did not have the right to levy the liquidated damages. It claimed that there existed a valid arbitration agreement between the parties fulfilling the condition of the New York Convention of the 1958 and comes under the ambit of Section 3 and Article II (3) of the schedule of Foreign Awards (Recognition and Enforcement) Act, 1961 (FARE Act).

Issues in the Case

- Whether or not Section 3 of the FARE Act applies to the arbitration agreement?
- If Section 3 of the FARE Act is applicable then whether or not proceedings before the International Chamber of Commerce (ICC) initiated by the respondent for appointment of three members Arbitral Tribunal for adjudication of the claims raised by it against GAIL, should be permitted to continue?

The Hon'ble High Court discussed the definition of international commercial arbitration. The court was of the view that to satisfy the criteria one of the parties must have the business outside India, further the subject matter associated with the contract must be associated outside the country and the subject matter of the said transaction is another important aspect to decide the nature of the agreement. These criteria qualify for recognition under Article 11 of the New York Convention and Section 3 of the FARE Act.

As per Section 3 of the FARE Act the Indian courts must stay the proceedings for such types of agreements which are covered under Article 11 of the New York Convention. The said convention will not apply to an award that is made in the country where such award enforcement is been sought. The same goes with the awards considered or deemed to be considered a domestic award of the country. Therefore, GAIL obtained a stay against the said arbitration from the Hon'ble High Court and as a result, it invoked the bank guarantee.

The respondent obtained a stay from the Paris court on the same order. The Paris court too ordered the party to pay the damages amounting to a total of 100 million in yen, dollars and rupees respectively. Later on, the inter-governmental committee was set up under the Indo-France relation without the consent of the GAIL and the committee finally

gave an award against GAIL which they were asked to comply with.

VIEWING INDIA'S JUDICIAL DISPOSITION OF ARBITRAL AWARDS

Aditya Mehrotra

Symbiosis Law School, Pune, Maharashtra

The rise of international commerce and economy has created the need for efficient techniques to settle conflicts, such as alternative dispute resolution and enforcement of the decisions given by such techniques. Securing an arbitral decision may just be half the fight in India; the other half is executing it. The Arbitration and Conciliation Act, 1996 (the Act) abolished all earlier laws in India i.e. the Arbitration (Protocol and Convention) Act of 1937, the Arbitration Act of 1940, and the Foreign Awards (Recognition and Enforcement) Act of 1961. It has two important components. Part I of the Act that enforces arbitration and awards in India. Part II deals only with enforcement of foreign arbitral awards giving effect to the New York Convention and the Geneva Convention. The Act and the Code of Civil Procedure, 1908 govern the implementation and enforcement of arbitral judgments in India. Foreign and domestic awards may be enforced in India like judicial decrees. This also applies to settlement-based consent awards.

Judicial Approach vis-à-vis Enforcement

A New York Convention award may be freely enforced in India and other contracting states. Once an arbitral tribunal passes a final award, the party to whom the award was passed in favour of may ask Indian courts to issue it as a decree with the same enforceability as the court's sole other decision under Section 49 of the Act.

Sections 36 of the Act through Section 74 and Order XXI of the Civil Procedure Code, 1908, govern decree/award execution. In *International Woollen Mills vs. Standard Wool (U.K.) Ltd., (Civil Appeal No. 3316 of 2001)*, stated that a decision is regarded to be on merits if the plaintiffs provide oral and/or documented evidence. In *Trilochan Choudhury vs. Dayanidhi Patra, AIR 1961 Ori 158*, the Orissa High Court said that a concise decision based on evidence is enforceable.

Moreover, in *Marine Geotechnics LLC vs. Coastal Marine Construction and Engineering Ltd, MANU/MH/0267/2014*, the Bombay High Court upheld ex-parte decisions. Summary or other non-evidence-based decisions cannot be accepted on the merits of case. Also, consent or settlement-based decisions are regarded as legitimate on the merits. In circumstances when the decree derives from the defendant's absence, either as a punishment or formally, the decision may not be merit-based.

Judicial Approach of Awards vis-à-vis Expiration Date

In the event of domestic arbitral awards, the Limitation Act, 1963 is applicable. Section 21 of the Act states that arbitral procedures begin when the respondent receives a request to bring a matter to arbitration. In *M/s Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society, MANU/SC/0694/2016,* the Supreme Court held that once arbitral awards are enforceable it may be enforced like court decrees.

The Act does not restrict the execution of a foreign judgement however, the limitation period undoubtedly applies. Foreign award limitation periods are interpreted differently by different high courts. In *Noy Vallesina vs. Jindal Drugs Limited, 2006 (5) BomCR 155,* the Bombay High Court said a foreign award was not a decree, rendering it non-binding until registered as enforceable by a competent court.

In *Compania Naviera 'Sodnoc' vs. Bharat Refineries Ltd., AIR 2007 Mad 251,* the Madras High Court held that the foreign award shall be deemed to be a decree of this Court. When a court deems an award to be a decree, the foreign award falls under the residuary clause of the Limitation Act, 1963 making the limitation term three years.

M/s. Fuerst Day Lawson Ltd vs. Jindal Exports Ltd., MANU/SC/0329/2001, established that a single proceeding might have several phases. In the first process, a court decides the award's enforceability. Once enforceability is determined, additional measures might be taken for execution.

Conclusion

In the event of enforcement of foreign awards, an appeal is only possible if the court finds the award unenforceable. However, the party may approach to the Supreme Court under Article 136 of the Indian Constitution for special leave petition (SLP). Such appeals are only heard if the court finds an issue of public interest or fundamental significance. In judicial processes or arbitrations, enforcement has always been difficult.

(Members of Alliance University Legal Service Clinic (AULSC) and Pratishtha (Women & Child) Cell, Alliance School of Law visited the ECHO Centre of Juvenile Justice, Kammanahalli, Bengaluru. During this visit, the representatives of the ECHO gave orientation to the Members of AULSC about their role, activities, facilities available at different institutions, and programmes introduced by them.)

WATERSHED MOMENT OF 'AFCONS INFRASTRUCTURE' CASE IN ALTERNATE DISPUTE RESOLUTION JURISPRUDENCE: AN ANALYSIS

Samrat Bangopadhyay
RGSoIPL, IIT Kharagpur, Kharagpur, West Bengal

Abdur Rahman Mallick
Young Professional (Law)

Capturing the essence of Alternative Dispute Resolution (ADR), Mr. Abraham Lincoln once asserted, "*Discourage Litigation. Persuade your neighbours to compromise when you can. Point out to them how the nominal winner is often the real loser- in fees, expenses and waste of time*". The concept of 'Mediation', as one of the ADR techniques, have seen an invigorated impetus with the Code of Civil Procedure (Amendment) Act, 1999 when Section 89 was added to the Code of Civil Procedure, 1908 (CPC) and placed under Part V with effect from 1st July 2002.

Judging from the lens of judicial precedent of *M/s. Afcons Infra. Ltd. & Anr. vs M/s. Cherian Varkey Construction Co. (Pvt.) Ltd & Ors., (2002) 8 SCC 24*, the Hon'ble Supreme Court held that certain cases of criminal offences involving the character of heinous crimes against the society including serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, and coercion cannot be the subject matter for ADR. It is deemed not fit to be 'taken up' for resolution via ADR. Pertinently, in sequitur, it can be averred that election to public offices disputes and 'Representative suits' in the purview of Rule 8, Order 1 of CPC which involves 'public interest' concerns of a large number of individuals who are not parties before the Court, were deemed unfit for selection in ADR.

Nonetheless, the case acted as the 'guiding light' for mediation ensuring confidentiality, speedy resolution and cost-effective solution and meeting the aspiration of the parties who feel a sense of belonging not only in the mediation process but also leading to higher compliance post the decision of the ADR. Cases involving grant of authority by the court after enquiry, for instance, in cases involving suits for grant of 'probate' or letters of administration were also deemed as per the pronouncement in the aforesaid case to be unfit for considering in ADR. Criminal cases were also left out as prosecution for those cases involves adjudication on substantial facets of facts and circumstances concerning law including inquiry, trial and cross-questioning of witnesses.

The vital fulcrum and the logic of 'Mediation' is to look out for cost-effective and economic solutions where parties themselves try to

arrive at a solution considering the pros and cons of varied solutions which could be possible to settle their disputes amicably. The techniques of facilitating the discussion via negotiations and an attitude of 'accommodating' possible solutions by a trained 'Mediator' has been garnering traction in recent times inter alia for family disputes, commercial litigated matters, tax and tariff disputes resolution and property disputed issues. The best part of this quintessential ADR mechanism of 'Mediation' involves 'voluntary participation' of parties, where the 'Mediator' acts as a catalyst to create an enabling environment to arrive at a mutually beneficial 'win-win scenario'.

The vital quintessential dimension of solution in a comparatively less expensive than traditional methods of court proceedings, which is devoid of varied technicalities is a beneficial factor that lends its growing popularity in recent times. The sense of grievance redressal considering divergent opinions with the Consumer Protection Act of 2019, recognizing the importance of 'mediation' and providing a statutory recognition to it for amicable settlement of a dispute between parties is a step forward that would eventually decrease load in existing justice delivery system in India.

Alternate Dispute Resolution is rooted in the Indic culture and traditions finding its relevance from time immemorial. History is replete with success stories of 'Mediation' in Mahabharata by Lord Shri Krishna between the Pandavas and Kauravas, the Camp David Accord with seminal role of US President Jimmy Carter in mediation between Egypt's Mr. Anwar Sadat and Israel's Mr. Menachem Begin, eventually leading to Mr. Anwar and Mr. Begin winning the Nobel Peace Prize for brokering an amicable solution out of these Accords is worth taking cognizance of.

The 21st Century is a seminal watershed moment to relive those innate facets of 'mediated' solution-oriented dispute resolution culture which is an integral component of our cultural ethos and essence. The need of the hour is to institutionalise those best practices and processes within the justice delivery system and create an enabling environment for constructive solution-oriented culture and mindset which would go a long-way in building the 'core competence' of the legal fraternity and upholding their ever-growing importance in the society where harmonious construction of varied aspects of the law is 'imperative', which cannot be ignored.

UPCOMING EVENTS IN ADR

Global Aviation and Space Disputes Conference (04th February 2023)

Global Aviation and Space Disputes Conference organized by Maharashtra National Law University Mumbai in Online mode on 04 February 2023.

Sub-Themes:

- Arbitrability of Aviation and Space Disputes (ASD)
- Applicable law in ASD
- Specialized Institutions and Specialized Rules for ASD
- Suitability of commercial arbitration and ISDS to resolve ASD
- Trends and practices in dealing with ASD

Eligibility: Papers are invited from teachers, researchers, professionals, students, and space law enthusiasts and from all over the globe for presentation in this conference.

Important Dates:

- Last date to register: 26th January 2023
- Last date to submit abstract: 30th January 2023
- Date of paper presentation: 04th February 2023 (Online)
- Date for submitting full paper: 01st April 2023

Submission Guidelines:

Only high-quality abstracts (up to 300 words) will be accepted for presentation.

Registration Fee:

- Registration for participation only: Free
- Registration for paper presentation (India): Rs. 500 (Limited merit-based scholarships are available.)
- Registration for paper presentation (Foreign Nationals/NRIs/Aliens): Free

For registration click here.

***

Co. Dr. Jeppiaar 1st National Mediation Competition, 2023 (16th - 17th February 2023)

Col. Dr. Jeppiaar 1st National Mediation Competition, 2023 is an Online NationWide Competition organized by School of Law (Centre for ADR), Sathyabama Institute of Science and Technology(Deemed to be University), Chennai, Tamil Nadu as mediation is gaining attraction as an effective and efficient means of Alternative Dispute Resolution.

Date of Conference: 16th - 17th February 2023

Theme: Labour Law, Mediation

Registration Fee:

- Registration Fee inclusive of GST is Rs. 3,000 for one Team, Non - Refundable.

Important Dates:

- 7th January 2023: Opening of Provisional Registrations
- 7th January 2023: Release of Mediation Problem
- 10th February 2023: Closing of Registrations
- 13th February 2023: Last day to seek Clarifications
- 16th February 2023: Inaugural Ceremony along with Preliminary Round I & II
- 17th February 2023: Quarter Finals and Semi – Finals
- 3rd March 2023: Finals, along with Valedictory Ceremony

***

Alliance Student International Conference on "Transcending Disciplinary Boundaries Through Innovation" (19th - 20th January 2023)

Alliance University, Bengaluru is organising the Alliance Student International Conference on "Transcending Disciplinary Boundaries Through Innovation" on 19th - 20th January 2023. This conference is exclusively for students from undergraduate, post-graduate levels and Ph.D. scholars.

Students are invited to submit high quality research contributions describing original and unpublished results of conceptual, constructive, empirical, experimental, or theoretical work in any discipline around the main theme of the conference. The first author and presenter of the paper shall mandatorily be a student. The maximum number of authors for a paper is limited to three. The first author shall be designated as the corresponding author.

For more details and registration click **here**.

STUDENT TESTIMONIALS

Yashvardhan Sharma

Student, Alliance Law of School, Alliance University, Bengaluru, Karnataka

I did the summer internship of 2022 in Karnataka State Legal Service Authority (KSLSA), Bengaluru. This internship at KSLSA provided me with valuable hands-on experience and a better idea about real time cases and what knowledge areas and skills I should attach more importance to and make further improvements to in my way of working. How to lead a case with the basics of statutes and landmark judgments, understand the basics concepts of it and proceed in a most appropriate way.

I have developed skills and have a much greater concept of what to expect after college and a greater understanding of what it is and how to apply it to real situations. It was a wonderful opportunity to learn and get a better understanding of the work culture of the court.

ALLIANCE CATCHING MOMENTS

International Conference on the Future of Alternate Dispute Resolution: Prospect and Challenges organised by ACADR (12th November 2022)

(The Conference was inaugurated by lighting the lamp by Chief Guest Hon'ble Dr. Justice Sanjeeb Kumar Panigrahi, Judge, Orissa High Court)

The International conference on "The Future of Alternate Dispute Resolution: Prospects and Challenges" (ICADR 2022) was organised on 12th November 2022, which marked one of the watershed moments in the history of Alliance Centre for Alternative Dispute Resolution (ACADR), School of Law, Alliance University, Bengaluru. The objective was to provide a platform for discourse for the members from Academia, Industry and students to encourage legal minds to discuss recent issues and the developments in Alternative Dispute Resolution (ADR).

The event was graced by Hon'ble Dr. Justice Sanjeeb Kumar Panigrahi, Judge, Orissa High Court – the Chief Guest, Ms. Reshma Oogorah, International Arbitrator & Legal Counsel, FCIArb, Dubai, UAE and Dr. Purvi Pokhariyal, Campus Director, National Forensic Sciences University, Gandhinagar - the Expert Speakers, Mr. Abhay G. Chebbi, Pro Chancellor, Alliance University, Dr. Anubha Singh, Vice-Chancellor, Alliance University and Dr. Kiran Dennis Gardner, Dean, Alliance School of Law. The event commenced with the welcome address by Dr. Kiran Dennis Gardner.

(Welcome Address by Dr. Kiran Dennis Gardner, Dean, Alliance School of Law)

Thereafter, the Chief Guest of the event, Hon'ble Dr. Justice Sanjeeb Kumar Panigrahi, Judge, Orissa High Court, delivered his address. Bringing in a practical approach and encouraging students to be more partcipative in litigation, the chief guest spoke about the

(Keynote Address by Chief Guest Hon'ble Dr. Justice Sanjeeb Kumar Panigrahi, Judge, Orissa High Court)

change in dynamics of litigation with ADR in play.

(Expert Address by Ms. Reshma Oogorah, International Arbitrator & Legal Counsel, FCIArb, Dubai, UAE)

The expert speakers for the conference, Ms. Reshma Oogorah and Dr. Purvi Pokhariyal spoke at length about the relevance of ADR in contract management, by extension in business development, in terms of legal help, dispute avoidance and dispute containment, both at national and global level.

(Expert Address by Dr. Purvi Pokhariyal, Campus Director, National Forensic Sciences University, Gandhinagar)

The Conference witnessed eight parallel technical sessions. Each of these sessions was chaired by the herein mentioned experts in the given order - Dr. Swapnil Bangali, Advocate & Honorary Director, Maharashtra National Law University, Mumbai, Mr. Srinivasa K L, Advocate and Mediator, Hon' Secretary, CMAC (Centre for Mediation, Arbitration and Conciliation), Bengaluru, Ms. Sahana Devanathan, Senior Associate, INDUS LAW, Bengaluru, Mr. Rajesh C Muttath, Arbitrator & Mediator, Ernakulam, Mr. Tariq Khan, Registrar, International Arbitration & Mediation Centre, Hyderabad, Ms. Radhika Bishwajit Dubey, Independent Counsel & Arbitrator, Mediator, Delhi, Ms. Ria Dalwani, Senior Associate, Economic Law Practices (ELP), Mumbai and Ms. Neeti Sachdeva, Secretary General and Registrar, Mumbai Centre for International Arbitration, Mumbai.

(Dignitaries on the dais unveiling the book "The Future of Alternate Dispute Resolution: Prospects and Challenges" published by ACADR)

Eighty (80) papers from twenty-six (26) institutions across twelve (12) States were presented at the conference bringing up issues in terms of challenges, limitations and developments across all aspects of the ADR mechanism.

The knowledge assimilating sessions converged at the end with the Valedictory

(Participants and presenters presented with their certificates. In photo, Ms. Avisha Pawar receiving conference certificates and publication copy from Dr. Swapnil Bangali, Advocate & Honorary Director, Maharashtra National Law University, Mumbai)

session wherein Dr. Nivedita Mishra, Registrar, Alliance University and Dr. Swapnil Bangali, Advocate & Honorary Director, Maharashtra National Law University, Mumbai presided over the event and provided participants with certificates of appreciation. Mr. Tanniru Venkata Saran, Ms Gowthami Gowda M, Mr. V Suryanarayan Raju, Ms. Suhani Dube, Ms. Mehak Vohra, Ms. Vaishnavi Rastogi, Ms. Avisha Pawar, Ms. Jayanthi Bai HL, Ms. Anjali Nair, Dr. Misha Bahmani were awarded with the 'Best Presenter' certificates for their respective sessions.

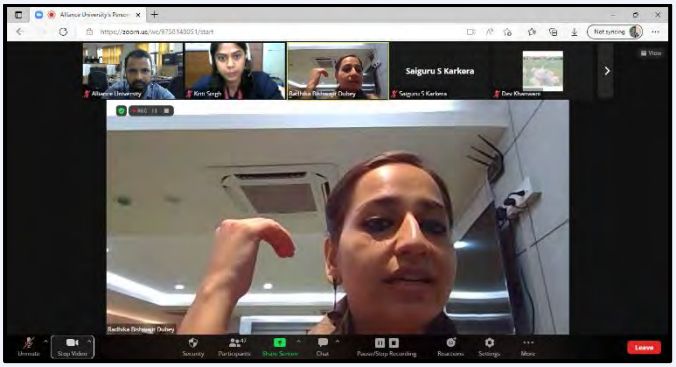
Ms. Jayanthi Bai HL and Dr. Aradhana Satish Nair were awarded the 'Best Researcher' certificates. The vote of thanks was delivered by the Prof. Vishal Ranaware, the Faculty Co-ordinator for the conference. The enthusiastic participation from all sectors and the furtherance of necessary dialogue across all issues of Alternative Dispute Resolution made the conference a success.

(Chief Guest Hon'ble Dr. Justice Sanjeeb Kumar Panigrahi, Judge, Orissa High Court with students at Alliance University Legal Services Clinic)

(ICADR 2022 Organising Committee members with student volunteers)

ACADR Organised a Webinar: "Conciliation Mechanism for Commercial Dispute Settlement" (20th October 2022)

On 20th October 2022, the Alliance Centre for Alternative Dispute Resolution (ACADR) organized a webinar on conciliation techniques. The topic was 'Conciliation Mechanism for Commercial Dispute Settlement'.



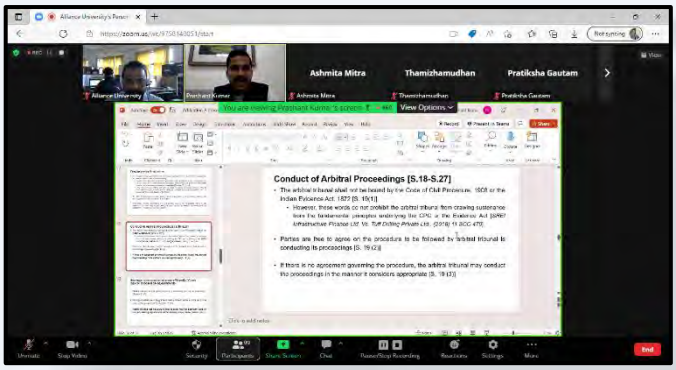
(Guest Speaker Ms. Radhika Bishwajit Dubey)

Ms. Radhika Bishwajit Dubey (Independent Counsel, Arbitrator, Trained Mediator, Former Partner, Disputes, Cyril Amarchand Mangaldas, New Delhi) was the speaker for the event. She shared her valuable insights on the skills and techniques of conciliation. She also reiterated the importance of the conciliation in dispute resolution process as it has the qualities of mediation and arbitration in certain cases. She explained the conciliation process with the help of illustrative cases.

Ms. Radhika pointed out that the proposed changes in the ADR legal framework could impact the conciliation as a dispute resolution method especially proposed law on mediation in India.

ACADR Organised a Webinar: "Arbitration: A Procedural Perspective" (19th October 2022)

Mr. Prashant Kumar (Principal Associate, Dua Associates, New Delhi) was the keynote speaker for the webinar, he has practical knowledge of arbitration. During this webinar, the guest speaker talked about the dispute resolution mechanism, what is arbitration, the stages in arbitration, the interim measures by courts and arbitral tribunal, the appointment of the arbitrator, the conduct of arbitral proceedings, settlement of disputes during the arbitral proceedings, arbitral award, challenge to an award after the amendment in 2015, appealable orders, among other things. This helped the students in understanding the practical aspects of arbitrational procedures.



(Guest Speaker Mr. Prashant Kumar on 'Conduct of Arbitral Proceedings')

Toward the end of the session, the speaker talked about how to start a career in alternate dispute resolution, this helped the students who want to pursue a career path in the alternate dispute resolution mechanisms, to help them understand where they could start their careers.

This webinar helped the students to learn and understand the recent developments in the area of alternate dispute resolution.

ACADR Organised a Webinar: "Resolving Conflicts with Negotiation Skills" and "How to Ace ADR Competitions?" (17th October 2022)

On 17th October 2022, the Alliance Centre for Alternative Dispute Resolution (ACADR) organized a webinar of two renowned speakers on Alternative Dispute Resolution. The topics were:

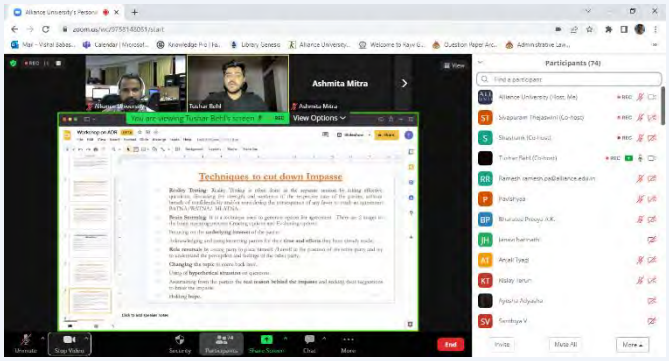
a) Resolving conflicts with Negotiation Skills

b) How to Ace ADR Competitions?

Mr. Tariq Khan (Registrar, International Arbitration and Mediation Centre, Hyderabad) was the first speaker of this event who shared his valuable insights on the skills and techniques of negotiation along with the recent legal developments in the field of ADR. He explained the negotiation process with the help of illustrations and demonstrated a negotiation with the help of participants.

(Guest Speaker Mr. Tariq Khan on 'Zone of Possible Agreement')

In the second half of the webinar, Mr. Tushar Behl (Independent Counsel, Delhi) shared his experiences in ADR Competitions, tips, and guidelines to ace those competitions. He further explained the mediation process and what should be the approach of participants. Based on experience he gave 'Do's and Don'ts' tips to law students.



(Guest Speaker Mr. Tushar Behl on 'Techniques to cut down impasse')

Final year law students Ms. Anjali Tyagi and Ms. Aadrita Biswas also shared their experiences in ADR competitions.

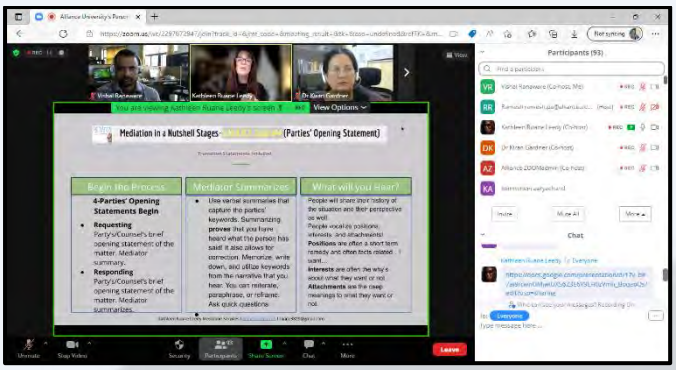
ACADR Organised a Webinar: "'Mediation in Action: Process and Techniques" (26th September 2022)

On 26th September 2022, the Alliance Centre for Alternative Dispute Resolution (ACADR) organized a webinar on mediation techniques. The topic was 'Mediation in Action: Process and Techniques'.

(Guest Speaker Ms. Kathleen Ruane Leedy)

Ms. Kathleen Ruane Leedy, a Washington State and International Mediation Institute (IMI) Certificated Mediator from the United States of America, was the speaker for the event. She shared her valuable insights on the skills and techniques of mediation along with the recent

legal developments in the field of ADR in India. She explained the mediation process with the help of illustrative cases and demonstrated mediation with the help of participants. According to her, a mediator should be attentive and responsive to the communication during the sessions. She pointed out that beginners need to understand that mediation takes time to learn, therefore they should focus on the 'S.M.A.R.T.' goals of mediation practice. Here, 'S.M.A.R.T.' stands for Specific, Measurable, Attainable, Relevant, and Time-based.

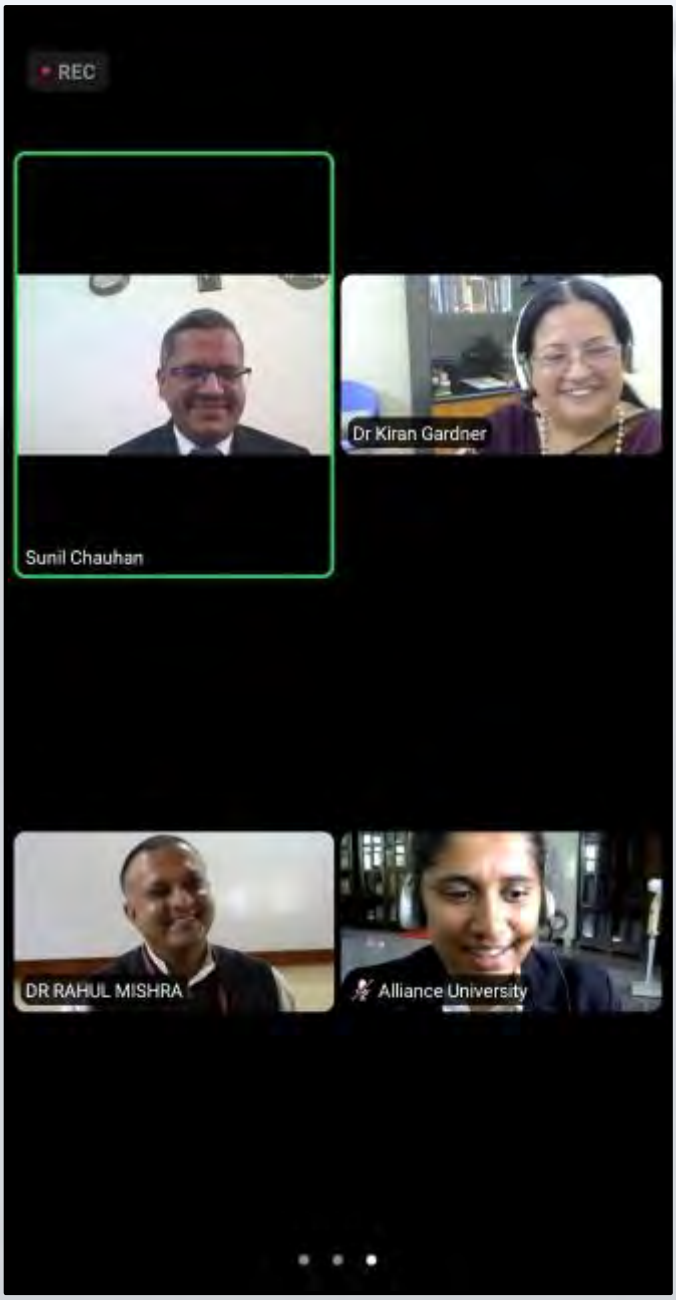


(Guest Speaker Ms. Kathleen Ruane Leedy on "S.M.A.R.T. goals of mediation practice")

If students want to pursue their career in the ADR, then they should start participating in ADR competitions so they will be familiar with the processes and acquire the required skills. This will save their time after completion of the degree, Ms. Kathleen said.

ACADR Organised a Webinar: "Resolving Commercial Disputes through Lok Adalats" (23rd April 2022)

On 23rd April, Alliance Centre for Alternate Dispute Resolution, Alliance School of Law organized a webinar on "Resolving Commercial Disputes through Lok Adalats". It was a virtual event where participants from other colleges, including both students and professionals, attended to gain clear insights on the topic concerned from the guest speaker Mr. Sunil Chauhan, Additional Registrar, Supreme Court of India, New Delhi who have a wonderful experience regarding the working of Lok Adalats.



(Guest Speaker Hon'ble Mr. Sunil Chauhan)

The programme started with an opening address by Dr. Kiran Dennis Gardner, Dean, Alliance School of Law. Dr. Kiran Gardner gave a warm welcome to all the participants and the faculty members present in the webinar and introduced the speaker Mr. Sunil Chauhan and spoke about the different research centres and their continuous efforts for their growth in their respective fields.

ACADR Essay Writing Competition, 2022 on Judicial Intervention in ADR

Alliance Centre for Alternative Dispute Resolution (ACADR) received an extremely overwhelming response to the ACADR Essay Writing Competition 2022. ACADR announced result on 24th May 2022 and winners are:

- Mr. Abhay Shrotiya (Institute of Law, Nirma University)
- Mr. Arnold Stanley & Ms. Manvi Kishore (St. Joseph's College of Law)
- Ms. Riya Ricca Kisku & Ms. Mansi Pipal (National Law University, Jodhpur)

Congratulations Winners!

Winning essays are published in the current issue (Vol 01, Issue 03 of Sententia: ACADR E-Newsletter).

Dimension of Human Rights in the 21st century (10th December 2022)

Alliance celebrates people from diverse backgrounds as our biggest strength & with them share the values of dignity on International Human Rights Day. Glimpses of the School of Law event 'Dimension of Human Rights in the 21st century'.

ACADR TEAM

Prof. (Dr.) Kiran D. Gardner
Professor and Dean,
Alliance School of Law,
Alliance University, Bengaluru

Mr. Vishal Ranaware
Assistant Professor
Alliance School of Law,
Alliance University, Bengaluru

Mr. Mahantesh G. S.
Assistant Professor
Alliance School of Law,
Alliance University, Bengaluru

Mr. S. Chakravarthy Naik
Assistant Professor
Alliance School of Law,
Alliance University, Bengaluru

Ms. Bharathee Preeya A K
(BBA LLB | 2018-23)
Student Co-ordinator, ACADR

CONTACT US AT:

ACADR@ALLIANCE.EDU.IN

Alliance Centre for Alternative Dispute Resolution,
Alliance School of Law, Alliance University,
Chikkahagade Cross Chandapura, Anekal Main Road
Bengaluru - 562 106
Karnataka, India

instagram.com/allianceuniversitybangalore
facebook.com/AllianceUniversity.official
linkedin.com/school/alliance-university
twitter.com/AllianceU
youtube.com/allianceuniverse