Centre for Alternative Dispute Resolution, Rajiv Gandhi National University of Law

CADRadar

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

Quarterly Newsletter

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About CADR

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

The Centre for Alternative Dispute Resolution, RGNUL (CADR) is a research centre dedicated to research and capacity-building in Alternative Dispute Resolution (ADR). CADR's ultimate objective is to strengthen ADR mechanisms in the country by emerging as a platform that enables students and professionals to further their interests in the field.

In its attempt to further the objective of providing quality research and information to the ADR fraternity, the CADR team is elated to present the First Edition of the Sixth Volume of its quarterly newsletter, "The CADR Radar."

The Newsletter initiative began with the observation that there exists a lacuna in the provision of information relating to ADR to the practicing community. With an aim to lessen this gap, the Newsletter has been comprehensively covering developments in the field of ADR, both national and international.

Additionally, the newsletter documents the events at CADR and the achievements of RGNUL students in ADR competitions. The CADR Radar is a one-stop destination for all that one needs to know about the ADR world; a "quarterly dose" of ADR News.

NEWS UPDATES

Catch up on the latest developments in the fields of Domestic Arbitration, International Commercial Arbitration, Investment Arbitration and Mediation

Domestic Arbitration

– Raima Singh & Vismaya Vinod

Avoid lengthy submissions and pleadings to maintain efficacy of Arbitral proceedings: Supreme Court

In the case of ***Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani***, a two-judge bench of the Supreme Court urged that lawyers pleading before it incorporate only legally permissible grounds for proceedings under §34 and §37 of the A&C Act. Both the time of the Court and the stakeholders was wasted by long-winding pleadings and submissions; the very purpose of arbitral proceedings as an expeditious and effective model of dispute resolution was defeated. **Read more**

Unilateral appointment of arbitrator ineligible even without allegations of bias: Calcutta HC

In the case of ***Kotak Mahindra Bank Limited v. Shalibhadra Cottrade Pvt. Ltd. And Ors.***, Justice Sabyasachi Bhattacharyya held that mere unilateral appointment of an arbitrator is enough to render the appointment ineligible. No additional charges, such as allegations of bias under §12(5) of the A&C Act are required to render the appointment ineligible. The Court also held that this does not mean that the proceedings or the Award are void in nature. **Read more**

Invoking arbitral proceedings beyond time specified in arbitration clause does not constitute waiver of parties' rights: Calcutta HC

In the case of ***The Incoda v. The General Manager, Metro Railway And Anr.***, it was held that the intention of the parties to resolve the dispute via arbitration must not be frustrated by the time limits set in their arbitration clauses. The time stipulated in the clauses do not represent an outer limit for approaching an arbitrator,

and no additional limitations were to be read into the clause apart from existing laws. The intent of the parties to resolve their dispute must be honored. **Read more**

Disobedience of interim orders due to insolvency proceedings does not constitute contempt of Court: Delhi HC

In the case of ***Mr. Rajan Chadha & Anr. v. Mr. Sanjay Arora & Anr.***, it was held that if disobedience of interim orders resulted from circumstances out of one's control, such as financial constraints or other ongoing disputes, contempt charges shall not be passed. Only willful disobedience shall attract the charge of contempt. Owing to the quasi-criminal nature of proceedings for contempt of court, the standard of proof is higher. Therefore, establishing knowledge of conduct and consequences as well as intention is necessary. **Read more**

Silence of party cannot be presumed to be consent for appointment of arbitrator: Delhi HC

In the case ***S. K. Builders v. CLS Construction Pvt. Ltd.***, it was held that for the appointment of an arbitrator, there should be consensus ad idem between both parties. The consent should be positive in nature and not negative, arising out of approval and true understanding between the parties. Although the notice in the instant case specified that silence amounted to consent, it could not be implemented as it was patently illegal. The proceedings arising out of such an appointment were vitiated on the basis of being void ab initio. **Read more**

Supreme Court lays down procedure for conversion of foreign arbitral award into Indian currency

In the case of ***DLF Ltd. v. Koncar Generators and Motors Ltd.***, the Supreme Court held that the appropriate date for determining conversion of currency was the date on which the award was to become enforceable. In case a certain sum of money that was deposited with the Court was withdrawn during the course of proceedings, then the appropriate date would be the date on which the money was deposited. It was held that the award holder cannot use higher exchange rate for their own benefit, and the aforementioned dates must determine the rate of conversion. **Read more**

Arbitral Tribunal cannot award damages excluded by contract terms: Delhi HC

In an appeal filed by Plus91 Security Solutions under Section 37(1)(c) of the Arbitration and Conciliation Act, the Delhi High Court upheld the decision of a Single Judge to set aside an arbitral award granting ₹8.43 crores for loss of profits. The Court ruled that the award violated the terms of the Memorandum of Understanding (MOU), which explicitly barred certain types of damages. Emphasizing the importance of adhering to contractual clauses, the Court found the award to be patently illegal and dismissed the appeal, reinforcing the principle that arbitrators cannot grant damages excluded by contract. **Read more**

Delhi HC issues notice to government based on PIL contesting office memorandum concerning domestic arbitration in public procurement contracts

Division bench of Acting Chief Justice Manmohan and Justice Tushar Rao issued notice seeking response and relevant records from Ministry of Finance

and Ministry of Law and Justice in a PIL concerning an office memorandum issued in June 2024. The memorandum prescribed the limit of arbitration clauses in government contracts to less that 10 crore. The plea, filed by a registered society called 'Infrastructure Watchdog', claims that the rules are arbitrary and formed without due consultation from stakeholders. The next hearing is scheduled to be held in December 2024. **Read more**

Courts shouldn't address complex issues at the referral stage if a valid arbitration agreement exists: SC

The Supreme Court in the case of ***Cox & Kings Ltd. v. SAP India Pvt. Ltd. & Anr., (2024)*** has reaffirmed that courts should not delve into contested factual issues at the referral stage if a valid arbitration agreement exists. Referring to Cox & Kings v. SAP India Pvt. Ltd. (2023), the court held that decisions on whether a non-signatory is bound by an arbitration agreement should be left to the arbitral tribunal. Emphasizing the doctrine of competence-competence under Section 16 of the Arbitration Act, the court reiterated that judicial interference at the referral stage should be minimal, as highlighted in recent rulings. Read more

Delhi HC upholds designated arbitrator's role in arbitration dispute

The Delhi High Court in the case of ***Meenakshi Agrawal v. M/s Rototech*** iterated that when a party seeking arbitration faces a lack of response or refusal from the opposing party regarding a notice under Section 21 of the Arbitration Act, the appropriate course of action is to approach the court under Section 11(5) or Section 11(6). The court clarified that a party cannot unilaterally grant jurisdiction to an arbitrator. **Read more**

International Commericial Arbitration

– Gautam Taneja & Syed Raiyyan

IP arbitration in Chile: Arcano's victory in an Internet Domain Name Dispute

Saudi Arabian Oil Company ("Aramco" or the "Claimant") recently secured a big victory in an Intellectual Property dispute in Chile regarding property rights in an internet domain. The decision was given by a sole arbitrator seated in Santiago de Chile. The dispute arose on September 15, 2023, when Mr. Poblete (respondent) registered and acquired the property rights to the website "aramco.cl", immediately after the claimant arrived in Chile by acquiring the Chilean company Esmax Distribución. The revocation was finally granted by the sole arbitrator on the grounds that Mr. Poblete's registration of the domain "aramco.cl" would otherwise "misleadingly" identify the Claimant. **Read more**

Landmark decision by Privy Council on Arbitration & Insolvency policy

The Privy Council's recent decision in ***Sian Participation Corp (In liquidation) v. Halimeda International Ltd.*** affirms the BVI Court of Appeal's stance on handling winding-up petitions with arbitration agreements, diverging from the English Court of Appeal's approach in Salford Estates. In England, petitions were typically dismissed or stayed to prioritize arbitration. The BVI, however, required the debtor to prove a debt was "genuinely disputed on substantial grounds" for a stay or dismissal. The Privy Council concluded that Salford Estates was wrongly decided, directing that it should no longer be followed in England and Wales, marking its first use of Willers v Joyce to change English law. This decision may influence other jurisdictions like Malaysia and Singapore, which currently follow Salford Estates, while Hong Kong applies a broader standard, staying petitions tied to arbitration unless disputes are frivolous or vexatious. **Read more**

ICCA signs MoU CRCICA to include arbitral awards in ICCA Awards Series

A landmark Memorandum of Understanding (MoU) has been signed between The International Council for Commercial Arbitration (ICCA) and Cairo Regional Centre for International Commercial Arbitration (CRCICA). This collaboration seeks to make previously unpublished arbitral awards available in the ICCA Awards Series while maintaining the confidentiality requirements set out in the CRCICA arbitration rules. Publishing CRCICA awards in the ICCA Awards Series promotes transparency and access to such material, contributing to the elaboration of case law on arbitration worldwide, reaching a more uniform understanding, and increasing consistency in the interpretation of the law on arbitration. **Read more**

The Supreme Court of Vietnam sets precedents for the use of arbitration

In Vietnam, the Supreme Court developed a system of precedents for uniform application of the law in accordance with the 2013 Constitution. Until now, 72 precedents have been enacted; two of them deal with arbitration. Precedent No. 42/2021 confirms the right of consumers to go to court despite the arbitration clause in contracts, while Precedent No. 69/2023 completes the latter by confirming the powers of arbitral tribunals about non-compete and non-disclosure agreements inserted in employment contracts and the confirmation of loss of jurisdiction objection upon failure to so do before the arbitration. Recent draft proposals aim at precedent drafts proposing to explain that construction contracts are a matter of civil law. This might close debates arguing the damage assessment. Another draft proposes that documents which are not legalized cannot be used as a reason for annulment of arbitral award, if the arbitration center does not require legalization. **Read more**

Hong Kong Court refuses enforcement of mainland arbitral awards due to procedural irregularities & public policy violations

In ***A v. R1 and Anr. [2024] HKCFI 1511***, the Hong Kong Court of First Instance (CFI) refused to enforce two related Mainland awards due to substantial procedural failings in the first arbitration, which compromised due process and public policy. The unusual case involved ex parte communications between the claimant, the administering institution, and the tribunal, leading to a 7-year delay in the initial arbitration. Despite this, the claimant received a significant award, then initiated a second arbitration where a different tribunal awarded interest from the start of the first arbitration. The tribunal did not consider the respondents' argument that the claimant solely caused the delay. The CFI concluded that such irregularities violated fundamental justice principles, demonstrating Hong Kong courts' readiness to deny enforcement where procedural integrity and fairness are undermined. **Read more**

The Supreme Court of Ecuador recognizes foreign awards

Resolving a long-standing dispute, the Supreme Court of Ecuador has decided that the Ecuadorian legal system does not require recognition of a foreign award prior to its enforcement in the country. This dispute arose after CW Travel Holdings N.V. (CW Travel) initiated a Paris-seated arbitration against Seitur Agencia de Viajes y Turismo under the International Chamber of Commerce Arbitration Rules. CW Travel attained a favorable award. However, the competent national trial court and the Provincial Court of Pichincha ruled against enforcing the award on the grounds of it lacking a certificate of finality and such awards not being recognized pursuant to Article 363 of the Ecuadorian domestic procedural law. The Supreme Court overturned the decisions holding that the Ecuadorian legal system does not require recognition of a foreign award prior to its enforcement and such demand would be an unreasonable requirement to enforce foreign awards. **Read more**

Kosovo's new law on sustainable investment

In September 2024, Kosovo enacted the Law on Sustainable Investments, replacing its 2014 Law on Foreign Investment. This updated legislation broadens its scope by covering both foreign and domestic investors, and removes automatic consent to arbitration, now requiring explicit consent for dispute resolution. Additionally, it allows the state to seek compensation for damages caused by investors, aiming to balance investor rights with governmental interests. Arbitration can now take place within Kosovo, which may strengthen local investor confidence. However, the adoption of a "national treatment" approach for all investors could reduce foreign investment while empowering local entrepreneurs. The real impact of these changes will unfold in time. **Read more**

Indonesian Supreme Court limits appeals in arbitration annulment cases

In ***PT Angkasa Pura II (Persero) v. PT Ibad Amana Perkasa***, the Indonesian Supreme Court ruled that, according to Article 72(4) of the Indonesian Arbitration Law, appeals are only permitted against court decisions that grant an annulment application. This means that if a court rejects an application to annul an arbitration award, no appeal can be made against that decision. The ruling clarifies that the law allows appeals solely when an annulment is approved, reinforcing the finality of arbitration awards in cases where annulment requests are denied, thereby promoting arbitration's role as a conclusive dispute resolution method. **Read more**

UK Supreme Court upholds anti-suit injunction for foreign- seated arbitration in UniCredit Bank case

The UK Supreme Court recently upheld the English Court of Appeal's decision in ***UniCredit Bank GmbH v RusChemAlliance***, granting an anti-suit injunction (ASI) against Russian entity RCA.

This ASI prevents RCA from continuing proceedings in Russia, in violation of an English-law governed arbitration agreement that required ICC arbitration in Paris. Initially, the English Commercial Court had denied the ASI, citing that ASIs are not available under French law (the arbitration seat's law). However, both the CoA and Supreme Court found that England, as the law governing the agreement, was the proper forum to issue the ASI, especially since French courts would recognize, though not issue, ASIs. This decision reinforces English courts' willingness to protect arbitration agreements under English law even when seated abroad. **Read more**

UK Court of Appeal upholds arbitration ruling on Covéa's £69.3M COVID-19 business interruption claim against Unipol

The UK Court of Appeal upheld that French insurer Covéa's COVID-19 business interruption claims met the "catastrophe" definition under reinsurance policies with Italian reinsurer UnipolSai. Unipol argued that "catastrophe" must be sudden and cause physical damage, but the Court found no such restriction, agreeing with an earlier arbitration tribunal's interpretation. The Court also dismissed Unipol's attempt to limit Covéa's payouts by aggregating individual losses under an "hours clause." Covéa was ordered to pay £69.3 million in claims, reinforcing broader rulings that COVID-19 disruptions triggered insurance coverage. **Read more**

Investment Arbitration

– Kavya Jain & Kshitij Prakash

India Faces Arbitration Claim by UK-based Mining Company

The UK-based mining company Zamin Ferrous has initiated a claim against India under a bilateral investment treaty. The claim stems from disputes over a mining project in India that was allegedly unfairly terminated. The company claims that India violated its international obligations, leading to significant losses for Zamin. India now faces another arbitration, further adding to its growing number of international disputes. **Read more**

South Korea Challenges Samsung Merger Arbitration Award

South Korea has lodged a challenge against an arbitration award related to the controversial Samsung-Cheil merger. The government alleges procedural irregularities and substantive errors in the tribunal's decision, which had ruled against the state in this high-profile case involving one of South Korea's largest corporations. **Read more**

European Union Withdraws from Energy Charter Treaty

The Council of the European Union adopted a set of decisions greenlighting the withdrawal of the EU and Euratom from the ECT. The step follows several months of intense negotiations among the EU member states and marks a significant shift in European and global investment policy, as the ECT is the investment treaty that has generated the highest number of investment arbitrations. An open question is whether the EU and its member states will conclude a so-called inter se agreement to address the ECT's sunset clause, according to which investments made before the withdrawal continue to benefit from the treaty for a period of 20 years. **Read more**

International Centre for Settlement of Investment Disputes Tribunal Appointments

A new list of arbitrators sitting in ICSID tribunals has been released, showcasing a diverse group of experts handling a wide range of complex investor-state disputes. This list provides insight into the evolving dynamics of the arbitration world, with various professionals from different legal and geographic backgrounds contributing to the resolution of high-stakes disputes. **Read more**

The International Institute for Sustainable Development Has Developed a Model Inter Se Agreement to Neutralize The Energy Charter Treaty Sunset Clause

IISD has developed a model inter se agreement to neutralize the sunset clause between the EU and non-EU contracting parties of the Energy Charter Treaty. This model agreement is aimed at reducing legacy ISDS risks emanating particularly from fossil fuel investors affected by energy transition policies. While the UK-EU relations may be a likely place to start implementing such an agreement, the text is designed to be open for subsequent accessions by any other ECT contracting party. In practice, an inter se agreement could help prevent claims such as the one filed by UK-based electricity distribution investors against Finland that ICSID registered in August 2024. **Read more**

Malaysian State Entity Brings ICSID Claim Against South Sudan

A Malaysian state-owned oil company has filed an International Centre for Settlement of Investment Disputes (ICSID) claim against South Sudan over a dispute related to its oil operations in the country. This was after the collapse of a US$1.25 billion deal to sell the company's local assets. The company seeks compensation for the damages arising from South Sudan's alleged breaches of contract and investment protections under a bilateral investment treaty. **Read more**

Ukrainian State Entity's Claim Against Russia Clears Hurdle

A Ukrainian state-owned energy company's arbitration claim against Russia has advanced after an ICSID tribunal rejected Russia's jurisdictional objections. The claim relates to the alleged expropriation of assets in Crimea following Russia's annexation of the region in 2014. **Read more**

EU-Angola SIFA Comes into Force

The European Union (EU)-Angola Sustainable Investment Facilitation Agreement (SIFA) entered into force on September 1, 2024. The SIFA is an example of the new trend of international investment agreements (IIAs) that, instead of focusing on investment protection, deals specifically with sustainable investment facilitation and dispute prevention. **Read more**

The EU, Euratom, and Member States deny benefits to Russian and Belarussian investors under the ECT

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UNCITRAL Working Group Meets Again to Discuss a Set of Reform Proposals

The 49th session of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on investor-state dispute settlement (ISDS) Reform took place from September 23rd to 27th, 2024, in Vienna. The topics for the discussion were a draft statute of the standing mechanism for the resolution of international investment disputes, cross-cutting and procedural issues, and a draft multilateral instrument on ISDS reform. **Read more**

US Court Stays Ukrainian Bank's Billion-Dollar Enforcement Action Against Russia

A U.S. court has stayed an enforcement action initiated by Ukraine's Oschadbank, which sought to enforce a billion-dollar arbitration award against Russia. The award arose from the nationalization of the bank's Crimean assets following Russia's annexation of the region. The court's stay is pending an appeal in the case, leaving the enforcement efforts temporarily on hold. **Read more**

Permanent Court of Arbitration Opens its Office in Delhi

The Permanent Court of Arbitration (PCA) has opened its new office in Delhi, across the road from the Indian Supreme Court, marking its third office outside The Hague. This expansion strengthens India's presence in the international arbitration community and aims to handle a growing number of cases from South Asia. The office is expected to facilitate more accessible dispute resolution services for the region. **Read more**

Mediation

– Sayed Kirdar Husain & Natasha Mittal

UK's Justice Secretary urged to take "a different approach" after £51bn hit to economy from family breakdown

The Family Mediation Council (FMC) Chair Stephen Burke has urged the Justice Secretary Shabana Mahmood to take 'a different approach to family breakdown' and to help raise the profile of family mediation after reports have estimated that family breakdown costs the country £51bn each year. In a letter to the Justice Secretary, FMC Chair wrote, *"They (family breakdown and separation costs) are not limited to welfare benefits, but include 'hidden' costs such as physical and mental health, social services and care, emergency housing following domestic violence, and educational provision."* **Read more**

IAMC Hyderabad signed a MoU with four leading institutions at the Asia ADR Summit in Kuala Lumpur, Malaysia

In a significant move to encourage cross-border dispute resolution, IAMC Hyderabad has signed a Memoranda of Understanding (MoU) on July 26, 2024, with four prominent institutes: Borneo International Centre for Arbitration and Mediation (BICAM), China International Economic and Trade Arbitration Commission (CIETAC), Maldives International Arbitration Centre (MIAC), and the Asian Institute of Alternative Dispute Resolution (AIADR) at the Asia ADR Summit in Kuala Lumpur, Malaysia. The summit was first-of-its-kind event which brought together leaders, visionaries and innovators to shape the future of Alternative Dispute Resolution (ADR) in Asia. **Read more**

Global Survey reveals International Commercial Mediation as the most satisfying Dispute Resolution Mechanism

The Singapore International Dispute Resolution Academy (SIDRA) launched the SIDRA International Dispute Resolution Survey 2024 Final Report. The SIDRA Survey is a global study on how users of dispute resolution mechanisms, including businesses and their legal representatives, make decisions about resolving cross-border disputes. The 2024 Final Report reveals key insights on user satisfaction with dispute resolution methods, showing a strong preference for mediation over arbitration and litigation. International Commercial Mediation had the highest satisfaction rates, with 75% satisfied with costs and 83% with speed. In contrast, satisfaction with International Commercial Arbitration was lower for costs (30%) and speed (42%), and International Commercial Litigation saw 45% satisfaction with costs and 36% with speed. **Read more**

Singapore International Mediation Centre Unveils AI-Powered Tool to enhance efficiency in Dispute Resolution

IISD has developed a model inter se agreement to neutralize the sunset clause between the EU and non-EU contracting parties of the Energy Charter Treaty. This model agreement is aimed at reducing legacy ISDS risks emanating particularly from fossil fuel investors affected by energy transition policies. While the UK-EU relations may be a likely place to start implementing such an agreement, the text is designed to be open for subsequent accessions by any other ECT contracting party. In practice, an inter se agreement could help prevent claims such as the one filed by UK-based electricity distribution investors against Finland that ICSID registered in August 2024. **Read more**

Mediation in Arbitration Cases: Gujarat High Court launches India's First Med-Arb Centre

The Gujarat High Court Arbitration Centre inaugurated its Med-Arb Centre on August 15, 2024, following the Flag Hoisting Ceremony. The event was presided over by Hon'ble Mrs. Justice Sunita Agarwal, Chief Justice of the Gujarat High Court, alongside Hon'ble Mr. Justice Biren A. Vaishnav and other dignitaries. This first-of-its-kind Centre introduces Med-Arb, a two-stage hybrid process blending mediation and arbitration, especially in commercial disputes. Gujarat, being a commercial hub, is expected to benefit significantly from this model. Earlier, a May 2024 conference on Med-Arb and specialized lawyer training underscored its importance for cost-effective dispute resolution. **Read more**

International Arbitration & Mediation Centre Hyderabad signs MoU with The Russian Arbitration Centre in Dubai

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East Meets West: A Legal & Mediation Dialogue between Portuguese-Speaking Countries & Singapore

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CCI must respect Mediation process: Delhi High Court sets aside probe against JCB

The Delhi High Court recently quashed an inquiry by the Competition Commission of India (CCI) against JCB and its Indian subsidiary, initiated over alleged dominance abuse (***JCB India Ltd. v. Competition Commission of India***). Justices Prathiba M Singh and Amit Sharma criticized the CCI for proceeding despite Bull Machine's withdrawal of its complaint after a mediated settlement with JCB. Emphasizing the importance of respecting mediation outcomes, the Court underscored that regulatory bodies, including the CCI, should uphold such settlements to encourage amicable dispute resolution. The Court also reinforced intellectual property holders' rights and advised CCI against overstepping into IP-related disputes pending in higher courts. **Read more**

Supreme Court launches Online Mediation Training Web Portal

The Gujarat High Court Arbitration Centre inaugurated its Med-Arb Centre on August 15, 2024, following the Flag Hoisting Ceremony. The event was presided over by Hon'ble Mrs. Justice Sunita Agarwal, Chief Justice of the Gujarat High Court, alongside Hon'ble Mr. Justice Biren A. Vaishnav and other dignitaries. This first-of-its-kind Centre introduces Med-Arb, a two-stage hybrid process blending mediation and arbitration, especially in commercial disputes. **Read more**

New AFNIC Mediation Procedure: Fast & Free Dispute Resolution for Domain Name Holders

The 2024 edition of the Afnic Legal Meetings was held on 26 September 2024 in the association's new headquarters in Guyancourt, Yvelines. This was the occasion to present the first annual report on Afnic's mediation service. This amicable resolution service for domain name disputes was launched in July 2023 as a complement to the PARL Expert and Syreli alternative dispute resolution (ADR) procedures. After one year of operation all the indications are that the introduction of this simple, rapid, free service has been a success. **Read more**

Delhi High Court orders Constitution of review Committee to consider DDA cases for Resolution through Mediation

The Delhi High Court, addressing a longstanding contempt petition, instructed the Delhi Development Authority (DDA) to promptly resolve its backlog of disputes. Justice Dharmesh Sharma directed DDA panel lawyers to identify at least ten cases each, focused on issues like property mutation, leasehold conversions, flat allotments, and unauthorized construction. The cases will be screened by a newly established review committee, which will seek inputs from various departments and assess resolutions through Lok Adalats or the Delhi High Court Mediation Centre. Regular weekly or biweekly meetings will ensure ongoing review, with monthly reports documenting case progress and settlements. **Read more.**

UNDP highlights its support to Regional Insider Mediators on International Day of Peace

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BLOG

Draft Amendment on Interim Measures : How would the removal of § 9(3) bode for the regime to come?

– Kartikey Tripathi & Swastika Saha Chowdhury

Introduction

Interim measures form a fundamental aspect of arbitration proceedings, serving to protect the parties' rights and ensure that post-arbitration awards retain substantive enforceability. The Government of India recently released the Draft Arbitration and Conciliation (Amendemnt) Bill, 2024 ("the Draft Bill") as an amendment of the Arbitration and Conciliation Act1996 ("the 1996 Act"). In the 1996 Act, parties had the option to approach the court through an application under § 9(3) of the Act even after an arbitral tribunal had been formed. This section provided that if the court identified circumstances where a remedy under § 17 may not be efficacious, the court had the power to grant interim measures. Through the proposed draft bill, this provision has been removed which will bear certain implications on arbitral proceedings, including the aspects of involvement of courts, party autonomy and time period for commencement of arbitral proceedings, as per § 9(2) of the Act. This article shall explore the implications, both positive and negative, arising out these aspects of the Draft Amendment Bill, on arbitral proceedings in the future.

Time period for commencement of arbitral proceedings as per Section 9(2) of the Act

§ 9(2) of the 1996 Act was added through a 2015 Amendment in order to rectify the issue of commencement of arbitration proceedings in a timely manner after an interim relief had been granted. Under the section–

"Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine."

Simply put, this meant that post interim relief, arbitral proceedings would start within ninety days upon the court's discretion. An amendment to this has been proposed in the Draft Bill, per which:

"*Where, before the commencement of the arbitral proceedings, a party files an application for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of filing of such an application in the Court.*"

In essence, change proposed is that proceedings' initiation has been mandated to start from the date of filing the interim relief application instead of the court passing an order. The main issue of time-sensitive arbitral proceedings, for example, those relating to time-sensitive and immediate transactions in a corporate entity and facing problems with regard to the time period remains largely unaddressed. To address this, the Draft Bill could have rectified this problem by reducing the time period for the commencement of arbitral proceedings.

However, two steps have been taken towards this, firstly by letting the parties file the application and not being dependent on the orders of the court and the time for the commencement of the proceedings not dependent on the discretion of the court. The issue could have been rectified for the benefit of the parties involved by reducing the mandated time period to a maximum of forty-five days for the commencement of proceedings.

Court Involvement and Party Autonomy?

The removal of the remedy of the court in exceptional circumstances has various implications on the parties to arbitration. Existence of Court's discretion meant that in cases where a remedy under § 17 could not be provided, the access to the Court's doors was still available.

For example, in cases of death of arbitrator or their recusal or physical incapacity the Court would step in to allow the interim measures listed in § 17. In case of ***Bhubaneshwar Expressways Pvt. Ltd. v. NHAI***, the Delhi High Court entertained a § 9 application despite the presence of a tribunal, as the tribunal could not function due to an arbitrator's recusal. Thus, the Court's role was cardinal to provide relief to the requesting party in that case.

When the role of the Court exists and it passes an interim order siding towards the applicant under § 9, it might force the Arbitral Tribunal to decide au contraire in the final award being influenced by the interpretation of the Court; this being the same court in which lies the § 34 application against the final award. Thus, the pressure of the Court has the power to alter the final findings of the Arbitration Tribunal. The removal of this provision limits applications where claims rejected by the Tribunal may be made to the Court by deeming them to be exceptional and outside the scope of Tribunal's efficacy. However, this would in a way positively contribute to lesser frivolous litigation as well and further the aim of Section 9 and introduce only limited scope of adversarial intervention as elucidated in ***Bhatia International v. Bulk Trading S.A.***.

The removal of § 9 (3) might look ominous as no effective remedy, other than writ petitions would lie, in case the Arbitral Tribunal, for any reasons discussed above, is unable to provide interim relief(s) to the party.

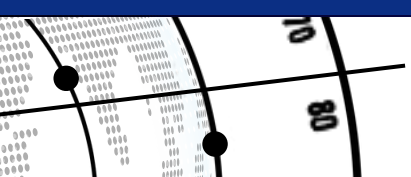
Post-constitution incapacity also prevents utilization of Emergency Arbitration under the proposed § 9A. Emergency arbitration requires the parties to approach an arbitral institution only before the constitution of an arbitral tribunal. However, the provision relating to emergency arbitration does not factor in cases where an existing tribunal becomes defunct due to reason discussed above, thus blocking the access to this remedy of interim relief.

Conclusion

Access to Interim Measures act as significant procedural safeguards in ensuring the efficacy of the arbitration process. They serve to protect the rights of parties from the inception of the dispute till the execution of the final award. While the Draft Bill has certain positive changes in the form of minimising judicial intervention and greater party autonomy, these changes may also effect aa negative impact such as claims not getting the chances to be recognised as exceptional and getting dismissed by Tribunals with no appeal instead.

CADR Spotlight

Stay updated on the latest events and developments from CADR, RGNUL!



Upcoming Events

Online Certificate Course in Sports Law & Dispute Resolution

The "*Online Certificate Course in Sports Law & Dispute Resolution*," organized by the Centre for Alternative Dispute Resolution (CADR) at RGNUL in collaboration with the Dr. P.C. Markanda Chair on ADR, is scheduled to start in **November 2024**. This is a three-month online course, and participants are expected to complete it within one year. It covers key topics like sports governance, dispute resolution in sports, and legal issues specific to the sports industry at both national and international levels.

Upcoming Events

Online Certificate Course on Mediation

The "*Online Certificate Course in Mediation*," organized by the Centre for Alternative Dispute Resolution (CADR) at RGNUL in collaboration with the Dr. P.C. Markanda Chair on ADR, is scheduled to start in **November 2024**. This is a three-month online course, and participants are expected to complete it within one year. The Course aims to equip the learners with the undertanding of Mediation as an evergreen process of dispute resolution and allows them to learn the procedure and framework surrounding it.

Ongoing Events

5th Surana & Surana & RGNUL International Arbitral Award Writing Competition, 2024

The Centre for Alternative Dispute Resolution (CADR) at RGNUL, in collaboration with Surana & Surana International Attorneys, is organising the 5th Surana & Surana and RGNUL International Arbitral Award Writing Competition, 2024. This prestigious competition invites law students worldwide to participate by drafting an arbitral award based on a complex hypothetical case scenario. This year, focusing on Construction Disputes, the competition provides a unique opportunity for participants to demonstrate their analytical and drafting skills in the field of international arbitration.

The competition is structured to encourage thorough research and innovative thinking around contemporary arbitration issues, with submissions evaluated through a two stage review process. Winners will receive cash prizes and certificates, boosting their academic and professional credentials. Notably, there is no registration or participation fees, making this competition accessible to a wider audience passionate about arbitration.

Completed Events

Orientation for the Batch of 2029

The Centre for Alternative Dispute Resolution (CADR) warmly welcomed the Batch of 2029 in an Orientation Session held on **27th August**. This event introduced the new students to CADR's goals and activities, laying the foundation for their journey in alternative dispute resolution. With a dynamic session designed to showcase the skills required in arbitration and mediation, the orientation emphasized CADR's commitment to nurturing a collaborative environment where innovation in dispute resolution thrives. The following day, students participated in mock rounds, gaining hands-on experience and preparing to tackle real-world challenges.

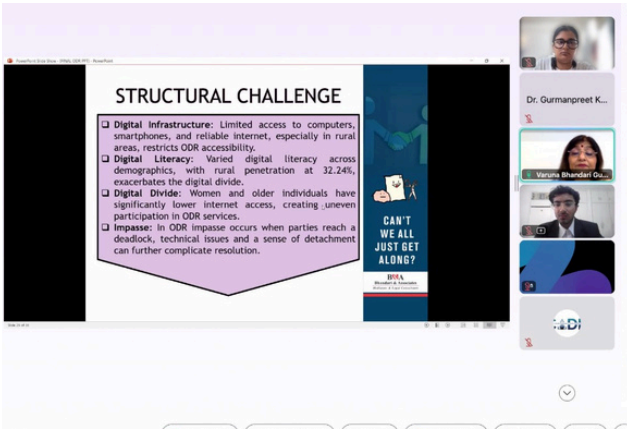
We look forward to seeing how this batch brings fresh perspectives and contributes to CADR's legacy of excellence in arbitration.

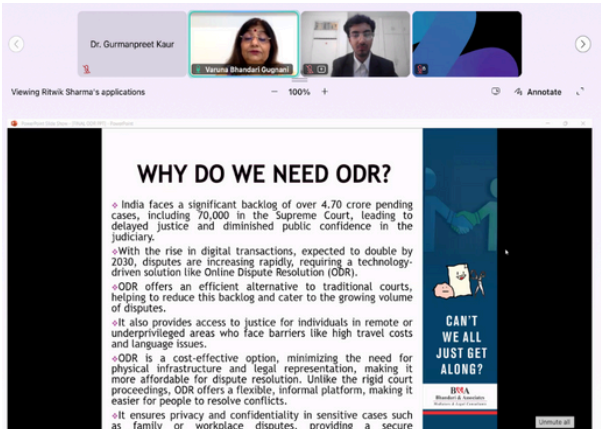
Completed Events

Seven-Day Capacity Building Workshop on Online Dispute Resolution (ODR)

The Centre for Alternative Dispute Resolution (CADR) at RGNUL, in collaboration with SAMA, recently hosted a Capacity Building Workshop on Online Dispute Resolution (ODR) from 22nd to 28th September 2024. This workshop aimed to equip students with skills for resolving disputes in a digital environment, focusing on practical training in ODR—a field gaining prominence for its efficiency and accessibility.

Participants engaged in sessions covering key ODR aspects, including negotiation, mediation, and arbitration through digital platforms. The program also emphasised the technological and ethical considerations essential for effective online dispute resolution. With industry experts sharing insights, this workshop supported CADR's mission to prepare students for the evolving landscape of alternative dispute resolution and highlighted the growing importance of digital competencies in legal practice.





Completed Events

RGNUL Intra Client Counselling Competition 2024

The Centre for Alternative Dispute Resolution (CADR) at RGNUL recently held the Intra Client Counselling Competition 2024 on 18th-19th September. This event offered RGNUL students an opportunity to engage in simulated client interactions, sharpening essential skills in client communication, ethics, and problem-solving—key aspects for aspiring lawyers.

With over 200 students participating, this year's competition marked a significant increase in interest, underscoring a collective commitment to experiential learning. Participants handled realistic scenarios, offering professional and empathetic legal advice, all within a collaborative and competitive environment. This experience has furthered CADR's mission to equip students with practical lawyering skills, preparing them for future challenges in legal practice.

Achievements

Runners-Up | 2nd Samanvay IMC, HPNLU Shimla, 2024

A team comprising of Aviral Pathak (Batch of '26) and Vanshika Jain (Batch of '26) emerged as Runners-up in the 2nd Samanvay International Mediation Competition, 2024 organized by the Himachal Pradesh National Law University, Shimla. We applaud the team's achievement and wish them all the best in their future pursuits!

Achievements

Runners-Up | 4th NMC, Amity Law School, Gwalior

A team comprising of Shoptorishi Dey (Batch of '28) and Swastika Saha (Batch of '28) emerged as Runners-up in the 4th National Mediation Competition, organized by Amity Law School, Gwalior, Madhya Pradesh. We applaud the team's achievement and wish them all the best in their future pursuits! We commend the team on this great achievement and wish them continued success ahead!

Achievements

Runners-Up | X NLS NMC (Mediation Segment)

A team comprising of Indrakshi Chaku (Batch of '28) and R. Dayasakthi (Batch of '28) emerged as Runners-up in the Xth National Law School - Negotiation, Mediation, and Client Counseling Competition (X NLS NMC) organised by National Law School of India University, Bangalore. Hats off to the team for their success, and we hope they continue to excel in the future!

Achievements

4th Position | Mediation Championship India 2024 , PACT-GNLU, Gandhinagar

Congratulations to Dhanya Jha (Batch of '26) and Nidhi Ngaihoih (Batch of '26) for securing the 4th position in The Mediation Championship India 2024, organized by The PACT and hosted by Gujarat National Law University, Gandhinagar. Wishing the team continued success in their future endeavors!

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CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

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