

HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA



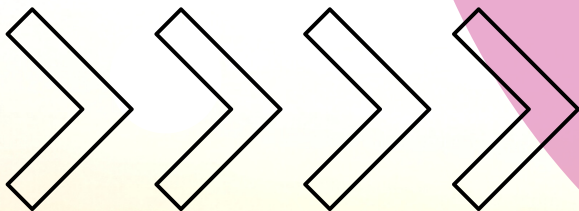
E- NEWSLETTER

ISSUE IV | VOL. 1 | JULY, 2022

**CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION &
PROFESSIONAL SKILLS**

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INTERNATIONAL NEWS

SCC EXPRESS DISPUTE ASSESSMENT – QUICK AND DIRTY

The Stockholm Chamber of Commerce Express Dispute Assessment (SCC Express) constitutes a new, hybrid form of dispute resolution between arbitration and mediation. Depending on what the Parties want, the SCC Express offers them a binding or non-binding legal assessment of their dispute(s) by a neutral professional. The SCC's biggest marketing points are that the Neutral issues its findings within just three weeks after the dispute is submitted to the Neutral and that the fees are fixed at 29,000.00 €. [Read more here.](#)

COURT ORDERS PARTY TO WITHDRAW ACTIONS IN MEXICO BECAUSE THE PARTIES AGREED TO DELEGATE QUESTIONS OF ARBITRABILITY TO THE ARBITRATORS

In the case of Citigroup Inc. v. Sayeg, No. 21-cv-10413, the court was confronted with the question of whether the parties to the dispute had agreed to arbitrate the question the arbitrability. It was held by the Court that while this issue was not specifically addressed in the agreements, the application of the American Arbitration Association Commercial Arbitration Rules was specified. The same empowered an arbitrator to determine the issues pertaining to arbitrability. [Read more here.](#)

COMPLETE ARBITRATION FRAMEWORK IN THE EYES OF NEW DIAC RULES

The recently issued Rules of the Dubai International Arbitration Centre have come into effect on 21 March 2022. The New Rules respond to the business needs of the international community and most importantly deal with common pitfalls that existed under the 2007 version of the Rules. Businesses operating in the UAE now have access to a more robust arbitration framework, aligned with international arbitration standards. [Read more here.](#)

TWO MAJOR DEVELOPMENTS IN CROSS-BORDER ARBITRATION LAW

The Privy Council held that a foreign court judgment refusing recognition and enforcement of an arbitral award may create an issue estoppel if such judgment meets the following requirements: (i) unity of parties, (ii) unity of the subject matter, (iii) the judgment must be given by a court of a foreign country with jurisdiction to give it and (iv) final and conclusive on the merits. Secondly, it determined that what constitutes a violation of "due process" must be assessed by applying local legal standards, but the interpretation of those standards should have regard to international law. This involves identifying basic minimum, fundamental, and generally accepted standards that are essential to a fair hearing. [Read more here.](#)



THE FEDERAL COURT OF AUSTRALIA DECIDED ON WHETHER TO RECOGNISE OR ENFORCE AN AWARD THAT HAD ALREADY BEEN SATISFIED

Australian Courts continue to take an arbitration-friendly approach to applications to recognize and enforce foreign awards. In *EBJ21 v. EB021*, [(2021) 395 ALR 310] the Federal Court of Australia considered whether to recognize or enforce a confidential arbitral award in circumstances where the award had been paid on time and in full. Distinguishing between enforcement and recognition of an award, the court held that it was unnecessary to make any order for the agreed award to be recognized. [Read more here.](#)

NEW YORK STATE COURT APPLIES PRINCIPLES OF CONTRACT FORMATION SET OUT IN THE CISG AND PERMANENTLY STAYS AN ARBITRATION

In a special proceeding brought before a trial-level court in New York, the New York State Department of Health ("DOH") moved for an order and judgment permanently staying an arbitration commenced by a Chinese company, Rusi Technology Company, Limited ("Rusi"), before the China International Economic and Trade Arbitration Commission ("CIETAC"). The court granted DOH's application to permanently stay the CIETAC arbitration. [Read more here.](#)

FIRST CIRCUIT VACATES GRANT OF MOTION TO COMPEL ARBITRATION

While deciding upon the authority in resolving gateway disputes, the First Circuit court engaging a de novo review under the Federal Arbitration Act applied the presumption that courts, and not arbitrators must resolve gateway disputes about whether a particular arbitration clause binds parties in a particular case. The court noted that, while parties can agree for an arbitrator to decide issues of arbitrability, there must be clear and unmistakable evidence of such delegation, because arbitration is a matter of consent. [Read more here.](#)

AMAZON TO CONTINUE ARBITRATION AGAINST FUTURE GROUP IN SINGAPORE

With respect to the arbitration proceedings initiated by Amazon against the Future Group in the Singapore International Arbitration Centre, it has been claimed by an Amazon official that the same shall be taken ahead by the Company, where it will now raise the issue of the Group alienating its retail assets in favor of Reliance Industries. The SIAC is expected to resume the hearing in the first or second week of May. [Read more here.](#)

SGCA: TRIBUNAL NOT BOUND BY PRECISE TERMS OF PARTIES' PLEADINGS AND SUBMISSIONS

The Singapore Court of Appeal (SGCA) in *CJA v CIZ* [2022] SGCA 41, held that a tribunal that made findings beyond the precise terms of the pleadings and submissions advanced by a party did not exceed its jurisdiction as the findings were premised on the fundamental point raised by the parties. Concomitantly, the making of such findings also did not breach the rules of natural justice as the parties had a reasonable opportunity to address the determinative issue. [Read more here.](#)





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NATIONAL NEWS

FM ANNOUNCES INTERNATIONAL ARBITRATION CENTER AT GIFT CITY

To speed up dispute resolution, Finance Minister Nirmala Sitharaman announced the setting up of an international arbitration center at GIFT City. Along with an arbitration center, the government also proposed setting up world-class foreign universities in GIFT City. According to the minister, services for global capital for sustainable and climate finance in the country will be facilitated in the GIFT City (Gujarat International Finance Tec-city). [Read more...](#)

SIAC QUASHES ASHNEER GROVER'S EMERGENCY PLEA AGAINST BHARATPE'S 'GOVERNANCE REVIEW'

The Singapore International Arbitration Centre (SIAC) has rejected BharatPe cofounder Ashneer Grover's emergency plea to stop a "governance review" which is looking into allegations of financial irregularities at the fintech company, three people with knowledge of the order said. In an order passed on Friday, the arbitration body said Grover's claims that the governance review was undertaken in an unfair manner held "no merit", to the people said. [Read more...](#)

'INDIAN COURTS ARE KNOWN FOR THEIR PRO-ARBITRATION STANCE': CJI NV RAMANA AT INTERNATIONAL CONFERENCE IN DUBAI

Speaking at the fourth edition of the International Conference on 'Arbitration in the Era of Globalisation' in Dubai, the Chief Justice of India, N.V. Ramana, pointed out the importance of developing an acceptable and fair dispute mechanism system for the globalized world. Chief Justice Ramana briefly alluded to how countries have moved away from protectionism and towards liberalization. [Read more...](#)

THE SECOND APPLICATION FOR APPOINTMENT OF AN ARBITRATOR IS MAINTAINABLE, EVEN THOUGH NO LIBERTY HAS BEEN GRANTED BY THE COURT WHILE SETTING ASIDE THE AWARD: JHARKHAND HIGH COURT

The Jharkhand High Court has ruled that after an arbitral award has been set aside and quashed by the Court under Section 37 of the Arbitration and Conciliation Act, 1996 (A&C Act), an application under Section 11(6)(c) of the A&C Act for appointment of an arbitrator afresh is maintainable, even though no liberty has been granted by the Court while passing the order under Section 37. [Read more...](#)

ONCE PARTIES ACKNOWLEDGE THE EXISTENCE OF AN ARBITRATION CLAUSE, THE COURT CAN APPOINT AN ARBITRATOR EVEN IF STAMP DUTY IS INSUFFICIENTLY PAID: BOMBAY HIGH COURT

The Bombay High Court has recently observed that once the parties have acknowledged that an arbitration clause was embodied in the substantive contract, insufficiency of stamps cannot prevent the court from disposing of an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrators. [Read more...](#)

THE EXCLUSIVE JURISDICTION CLAUSE OVERRIDES THE SEAT CLAUSE IN AN ARBITRATION AGREEMENT: DELHI HIGH COURT

The High Court of Delhi has given primacy to an exclusive jurisdiction clause over the seat clause in an arbitration agreement. The court held that when a clause confers exclusive jurisdiction on a court other than the seat court, then only the court on which exclusive jurisdiction is conferred shall decide all the applications arising from the arbitration. [Read more...](#)

ARBITRAL TRIBUNAL CAN GRANT POST-AWARD INTEREST ON INTEREST COMPONENT INCLUDED IN THE SUM OF THE AWARD: SUPREME COURT

The Supreme Court Bench comprising Hon'ble Justice Mr. Shah and Justice B.V. Nagarathna, held that the arbitral tribunal could grant post-award interest on the award sum, including the interest component. The court reiterated that the word sum used under Section 31(7) of the A&C Act consists of the interest awarded on the substantive claims. [Read more...](#)

APPLICATION UNDER SECTION 11(6) NOT MAINTAINABLE FOR APPOINTMENT OF ARBITRATOR IN ABSENCE OF A WRITTEN AGREEMENT BETWEEN PARTIES: SUPREME COURT

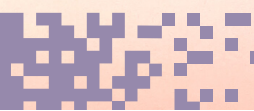
The Supreme Court has ruled that there is a difference between the arbitrator appointed under Section 11(5) and under Section 11(6) of the Arbitration and Conciliation Act, 1996 and failing any written agreement between the parties on the procedure for appointing an arbitrator (s) under Sec 11(2), application for appointment of the arbitrator (s) shall be maintainable under Section 11(5) and not under Section 11(6). [Read more...](#)

HC REITERATES THAT SECTION 34 OF THE ARBITRATION ACT ALLOWS THE COURT TO ADJUDGE PATENT ILLEGALITY OF AN AWARD, REJECTS NHAI'S CLAIM

The Delhi High Court rejected the petition filed by NHAI under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996, challenging the interim arbitral award passed by the Arbitral Tribunal in favor of the respondent on the ground that it interprets specific contractual terms, which are subject to evidence which is yet to be led, and without finally concluding the rights of the parties. [Read more..](#)

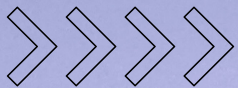
SC: 'THE SEAT' ONCE FIXED BY THE ARBITRAL TRIBUNAL SHOULD REMAIN STATIC AND FIXED, WHEREAS THE 'VENUE' OF ARBITRATION CAN CHANGE TO A NEW LOCATION.

The Supreme Court bench headed by Hon'ble J. Ajay Rastogi and J. Sanjiv Khanna stated that once the arbitrator fixes 'the seat' in terms of subsection (2) of Section 20 of the Act, the arbitrator cannot change 'the seat' of the arbitration, except when and if the parties mutually agree and state that the 'seat of arbitration' should be changed to another location. [Read more...](#)

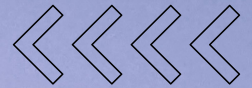




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SUCCESS STORY



Dr. P. C. Markanda, Father of Indian ADR



**Dr. P.C.
Markanda**

On the 18th of October, 21 Dr. P.C. Markanda left us for his heavenly adobe. While the entire legal fraternity is saddened by the demise of the great soul, We at CADR & PS celebrates his life and acknowledges his journey full of courage and inspiration.

About

Dr P.C. Markanda, Senior Advocate and a renowned authority on Arbitration Laws. He was one of the leading arbitration lawyers of India having strong international and domestic exposure. He was popularly known as Father of Indian Arbitration for his experience in domestic and international arbitration. As an expert arbitration and contract lawyer he handled cases of international and domestic Arbitration in the fields of construction and infrastructure investment and joint venture, international and domestic supply contracts, service contracts, oil and gas company contracts, railways etc.

Education

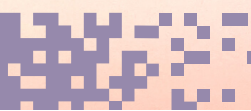
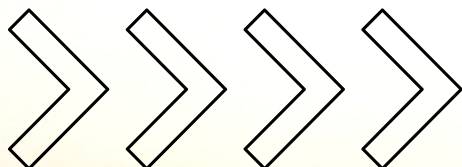
He was a Civil Engineering graduate and has to his credit LLD (Doctor of Laws). He has authored many books on law of arbitration, partnership, building and engineering contracts, for the laypersons and experts. He had to his credit more than 70 papers published in journals of repute. He had also served on various Boards and Advisory Committees and provided valuable advice to the voluntary sector.

Achievements

As a civil engineer for 27 years he left an indelible mark having constructed and designed many multi storeyed RCC structures, including Gymnasium in Punjab University having 100 feet clear span, the largest in any University in Asia, and was consultant to the Engineering Consortium in 1982 in Baghdad (Iraq).

Possessed of a strategic mind and ability to formulate bespoke solutions to clients requirements he has for many years acted for parties involved in contractual disputes. For his deep knowledge of arbitration and related fields he is on many arbitral tribunals with known High Court and Supreme Court judges.

He has been elected as member of the Governing Body of Indian Council of Arbitration for a record 10 terms. He was the Vice President of the Body in the year 2007-08. He has also been invited to speak before distinguished professionals in the industry at various forums and seminars.





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Books

I. P C Markanda Arbitration - Step by Step

A thematic commentary on Arbitration and Conciliation Act, 1996, the book delves into the procedures and practices of arbitration in India. It is a handbook on practices and procedures for the effective conduct of arbitration matters which focuses on practical aspects of arbitral proceedings and highlights the pitfalls in its smooth conduct.

The book analyses the implications of the Arbitration and Conciliation (Amendment) Act, 2015, and discusses arbitration relating to engineering disputes. Further, it examines critical steps in the conduct of arbitration proceedings and enforcement of awards in chapters arranged thematically including:

- (I) Appointment of Arbitrators,
- (II) Conducting and controlling arbitration proceedings,
- (III) Recourse against Arbitral Award

The book is a must-have for Arbitrators/Mediators, Advocates, Law Firms, Indian Council of Arbitration, Judges, Corporate In-house counsels, Judicial Academies, Alternative Dispute Resolution Institutions, International Centre for Dispute Resolution, Indian Institute of Arbitration and Mediation, ADR Centers, Construction Industry Arbitration Council (CIAC), International Chamber of Commerce (ICC).

II. Dr. P.C. Markanda's Mediation: Step by Step

Mediation in India has gained great traction, especially in view of the direction by the Bar Council of India to various universities in the country offering LLB. degrees to introduce mediation as a compulsory subject in their curriculum. Mediation: step by step will be highly useful to those engaged in the practice of Conciliation and mediation.

To achieve success in mediation, it is necessary to train Mediators in mediation techniques and practices. This book seeks to achieve the said objectives by introducing various chapters on mediation techniques, such as methods of communication, how to hold mediation hearings, and how to overcome impasses and hindrances during mediation. It will add to the knowledge of students and Mediators as well as lawyers.

The author has dealt with the subject of mediation at a time when our Courts are dealing with a backlog of more than 3, 30, 00, 000 cases. Further, the author advocates that all matters should first be referred for ADR before they are referred to the court it is done in France, Norway and Japan.

III. Law Relating To Arbitration And Conciliation

The book is a commentary on the Arbitration and Conciliation Act, 1996 covering all aspects of Arbitration law. It includes commentary on the Arbitration and Conciliation (Amendment) Act, 2015, judicial and legislative developments and reflects the current trend in arbitration law.

The book has been cited by the Madras High Court in NEPC India Ltd., formerly NEPC Micon Ltd. v. Sundaram Finance Ltd., 1998 111MLJ 116 and Mankanner Jain School Welfare Society v. Anilkumar J. Doshi, (2007) 1 MLJ 769.

The book is a standard reference for Arbitrators, Judges, Advocates, Corporate Lawyers, Law firms, Indian Council of Arbitration, In-house counsels, Judicial Academies, ADR Institutions, Conciliators and Mediators, Court and Tribunal Libraries, Industry Chambers, Government Departments, and Law School Libraries.



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RESEARCH ESSAY

INDIA'S DREAM TO BECOME HUB FOR INTERNATIONAL COMMERCIAL ARBITRATION: CHALLENGES AND PROSPECTS

by Sanjana Rai & Samridhhi Jha

3rd Year, BBA LLB, Jagran Lake University, Bhopal

International commercial arbitration is the most preferred method of resolving business disputes for decades as it offers the benefit of not going to the regular courts and thus saving yourself from legal consequences.

India seeks to become the newest international commercial arbitration hub through the institution of the center for arbitration in Mumbai named the Mumbai Centre for International Arbitration (MCIA). There's strong hope that disclosure of the MCIA will emphasize India's significant growth in commercial arbitration over recent years. It also highlights the Government's desire to make India an attractive international arbitration hub as well as make it a viable business entity by bringing reliable corporate governance of India. Although the desire to be recognized as a pro-investor-friendly arbitration has been around for a few years now, positive steps have been taken and action has been made recently, with the enactment of the 'Arbitration and Conciliation Act (Amendment), 2015 and the Commercial Courts, Commerce Division and Commercial Appellate Division of High Courts Act, 2015', to fulfill India's dream to be the most dominant destination and popular choice of arbitration. The encouraging steps through these enactments seek to reduce the ever-present burden of litigation and allow parties to resolve their differences amicably. A peaceful resolution of disputes between parties also promotes the enforcement of contracts and procedural instructions as concerned. The law of arbitration in India over the years has not only been developed for legal purposes and sanctions but also the courts have played a major role in their development.

It is also noteworthy that there are a large number of cases where awards are enforced and court intervention in the arbitration process is significantly reduced.

Though, India's consideration doesn't seem appealing due to time excess concession, legal intervention, costs, difficulty enforcing both domestic and international awards, and reasons for accountability based on public policy, preventing foreign investors and groups from choosing as an arbitration hub. Instead of quickly resolving business disputes, international commercial arbitration has begun to be viewed, not unfairly, as part of an already complex process in India. Despite being known for its independence, neutrality, and courage, foreign business leaders are wary of choosing India as an arbitration hub to avoid court interventions, as it may take months if not years to reach a settlement. Even though steps have been taken to improve the commercial arbitration space in India, some challenges remain. India is striving for modern development; it is still a developing country. The fact is that most people do not know about arbitration and still trust the courts more than once to resolve disputes. This is not a bad thing at all, to put faith in the human system of justice, but when the citizens of the world's largest democracy are ignorant and unwilling to change, this kind of religious thinking can hurt rather than help anyone. The impact of the measures taken by the legislature and the approach adopted by the judiciary can be attested to by the fact that at the 'World Bank level to facilitate business, India is ranked 131 out of 189 countries in 2016, which has now grown to 63 of the 190 countries by 2019. India has climbed the ladder in terms of its level, however, due to the challenges that remain, there is still a foundation to be covered by being at a higher level than other internationally declared commercial arbitration centers'.





OVERVIEW: REALITY v. FALLACY

Arbitration is a very old concept in India. The development of arbitration in India can be seen from the pre-independence era. During the British Period, the concept of arbitration was not as developed as it is in modern times. There were various laws and all of the laws were scattered and there was no specific law for arbitration. The lack of proper law attracted the legislators and several committees were formed in order to form a proper law for arbitration.

A proper consolidated law was formed in the year 1940. The said act on arbitration was inspired by English Arbitration Act, 1934. The said act covered domestic arbitration and did not include the enforcement of foreign arbitration awards. Foreign Awards were being enforced in India by two separate legislations these are -

1. The Arbitration (Protocol and Convention) Act, 1937 - For Geneva Convention Awards.
2. The Foreign Awards (Recognition and Enforcement) Act, 1961 - For New York Convention Awards.

But the act of 1940 and the laws which followed was unable to achieve the said objective and were highly scrutinized. The processes advised by the said regime were slow, complex, and not at all economical. Therefore, it called for the need for a proper law that will be less complex and will be able to meet the demands of the modern world. A new act, Arbitration, and Conciliation Act, 1996 was passed by the parliament in order to achieve the said goals of creating a proper framework for the arbitration processes. This act was based on the UNCITRAL Model Law on International Commercial Arbitration 1985 and the UNCITRAL Conciliation Rules, 1980.

Through time, without exceptions, every country desires to be the central hub for commercial

arbitration because of the various benefits involved, also each country wants to get more investment, but the investors are aware of various factors before investing in a country, namely considering, whether it has a strong arbitration mechanism, the Courts and Government of that country agree to intervention-free arbitration or otherwise, which provides them the ease to do their business as well as have the stability of preferred location in the longer run. As seen, most arbitration proceedings in India are Ad Hoc, while we are slowly moving towards institutional arbitration. Adding on, even when the arbitration seat is abroad, the award should be enforced in India, if you oppose the Indian party; that is what is done by the courts of India. In the case of 'White Industries Australia in 2011, India was reprimanded by the arbitration tribunal for a bilateral investment treaty of arbitration as there was a seven-year delay in Indian courts". These delays have been considered by the hearing panel as equity and not providing an effective and immediate legal remedy, thus putting foreign investors into a precarious position.

In such a situation, which foreign enterprise, in its proper form, would agree to have an arbitration seat in India? Others may be driven to it if they wish to do business with Indian companies or else companies themselves insist on finding a solution in India. Initially, Indian businesses while entering into contracts with international investors and companies were themselves not very focused on holding arbitration in India. Not only does the foreign enterprise refrain from India, but also Indian businesses themselves prefer the enforcement of arbitral awards to foreign companies under their control as well as arbitration abroad to simplify the process.



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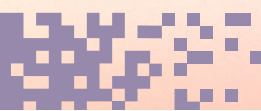
To make arbitration even more improbable in India, non-convincing yet improbable steps were taken by some of the world's best-known arbitration agencies to strengthen their center while draining off the autopsy of Indian arbitration- for example the "International Chamber of Commerce (ICC) Paris London Court of International Arbitration, Singapore International Arbitration Center" through establishing their offices and agencies in India and providing their services in the provincial areas of the country, with a magnitude of business disputes, where all foreign judicial institutions would like to have their piece and are more willing to go the extra mile to attract Indian businesses. Although there is no shortage of legal expertise in India, with a large number of lawyers, retired judges, professionals, and officials, Indian arbitral institutions are not the same as international competitors in terms of experience, communication, equal pay arbitrators, technology secretarial services, and timely termination. But the level of services provided by international arbitration centers is so soaring that the Indian institutions, particularly the 'Indian Council of Arbitration and the International Center for Alternative Dispute Resolution' can be just seen as inching steps toward commercial arbitration.

For India to be the next international commercial arbitration hub, there's a concerted need for efforts by the government, legal entities, and the communal sector of India. Foreign companies will choose India as their destination only if the international commercial arbitration in India complies to be business-friendly without interruptions. The government alone will not be able to do so, despite the efforts to make the necessary amendments to the arbitration law passed by the legislature. There has to be complete business and legal support as an essential part, which can only be achieved based on commercial and practical conditions and not based on nationality, patriotism, or defense.

The government has also taken steps to make India a global arbitration hub for commercial disputes, "The Arbitration and Conciliation Act (Amendment), 2019, based on the recommendations of the B.N. Srikrishna Committee Report, aimed at making institutional arbitration in India. It also provides for the establishment of the Indian Arbitration Council under Sections 43-A to 43-M however, these measures are not enough". Thus, the outline of India's commercial arbitration requires robust reformation to pitch out the fallacy to be recognized globally.

COMPARATIVE ANALYSIS OF INDIA'S COMMERCIAL ARBITRATION WITH LEADING GLOBAL HUBS: THE UNITED KINGDOM & SINGAPORE

Commercial arbitration is gaining importance in the field of commercial dispute resolution. It may be because arbitration is a less complex way as compared to litigation because our judiciary is overburdened with a huge number of cases. The quick resolution of disputes and satisfying results have made it standard practice for the parties to include arbitration clauses in all large transactions and agreements. In India, arbitration is still an emerging state. We have made a lot of progress in the field of arbitration but there's a long way to go. There were many schemes to improve the arbitration landscape in India. But we can adopt various arbitration practices which are being followed in many countries of the world furthermore to upgrade the arbitration methods in our country. By comparing the laws regulating the arbitration process in our country with the major international arbitration hubs, we can assess the areas in our law where we need much better legislation and major ideas can be withdrawn from the existing laws in the international arbitrational hubs such as the United Kingdom and Singapore.





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I. SINGAPORE

Singapore is gradually becoming a leading arbitration hub in the whole world. Singapore International Arbitration Centre receives the greatest number of cases and the state is known to have a separate independent judiciary for dealing with arbitration-related matters. The SIAC is the ideal institution for taking inspiration in order to improve the process and handling of arbitration. Some of the key features of the rules of the SIAC are -

- **Arbitration Proceedings**

In Singapore, if any of the conflicting parties want to commence the arbitration proceedings, they may directly do it under rule 3 of SIAC. Party can file a notice before the Registrar mentioning all the necessary details such as the reason for moving to an arbitration proceeding and other relevant information, in that notice. The notice submitted is being verified by the Registrar along with the other attached necessary document and then it is being processed. Unlike India, where the arbitration proceedings start when the party who wants to start, gives a notice to the other party informing the same, and it is accepted by the other.

- **Enforceability of Foreign Awards**

Singapore is a member of the New York Convention therefore, all the awards made in Singapore are enforceable to the parties of the Convention and all the awards made in the signatory countries of the convention are enforceable with a few exceptions. These exceptions include the grounds for refusal of enforcement of an award under section 36 of UNCITRAL Model Law on Arbitration. But there are still a lot of problems in the enforcement of non-convention awards. The awards issued in countries that are not part of the New York Convention are not enforceable in Singapore. There is no law dealing with this subject which is why the non-convention countries refrain from engaging in any dispute resolution in Singapore.

- **Seat of Arbitration**

The seat of arbitration is decided by the parties and if there is no agreement between the parties then Singapore is considered the seat of arbitration. But the tribunal can change the seat of arbitration by taking in consideration the circumstances of the matter in conflict. While in India, parties are free to choose the seat of the arbitration under section 20 of the Arbitration and Conciliation Act. If the parties fail to come into an agreement regarding the seat of arbitration, then the tribunal may decide any place for a consultation.

II. THE UNITED KINGDOM

- **Appointment of Arbitrators**

In London, the appointment of an arbitrator totally depends on the discretion of the parties involved. The parties can collectively appoint a single arbitrator as their sole arbitrator. If the parties wish to have two arbitrators, then each party will appoint one arbitrator on their own and if the parties wish to have three arbitrators, then each one of the parties will appoint one arbitrator and then the two arbitrators will appoint a third arbitrator who will be the chairman of the tribunal.

If both the parties fail to appoint an arbitrator then any party can file an application in front of the English Court for the appointment of the arbitrator or for revoking the appointments already made by the court. While in India the appointment of the arbitrator is given under Section 11 of the Arbitration and Conciliation Act, 1996. But if the arbitration seat is in London, then the law to be followed is the English procedural law.

- **Enforcement/challenge to the Award**

The United Kingdom is a member of three conventions, they are[3]:

1. The New York Convention
2. The Geneva Convention
3. The ICSID Convention



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Thus, every award which is given by a country that is a party to the given convention is enforceable. The English Arbitration Act of 1996 provides for enforcing all arbitral awards. But there are few exceptions for making the foreign arbitration awards can be refused and the court has limited discretion over the enforcement of the above-said awards.

• **Execution of Award**

The awards declared by the arbitrators can be executed only in the National Courts. The enforcement of international awards can be done in the following ways:

- By securing a judgment in the UK.
- The position of the claimant is the same as in domestic arbitration if the award falls within the ambit of any of the three conventions on.
- An action on the award which has been made enforceable by a foreign judgment, can be sought in the court.
- An arbitral award has the same place and value as a judgment.
- If the arbitral award is made in the UL but other than in England or Wales and is enforceable there as judgment then such an award is enforced by registration in England.

CHALLENGES BEFORE INDIA TO BE THE GLOBAL HUB FOR INTERNATIONAL COMMERCIAL ARBITRATION

Challenges are at various levels- from infrastructure to mentality and they need to be addressed simultaneously if India hopes to see itself as a hub for international commercial arbitration.

- **Enforcement of Foreign Arbitral Awards:** The subject of 'foreign awards' in India has been facing some interesting issues by the judiciary recently, whether to enforce arbitral awards that have been set aside by the court at the 'seat' or to follow the interim international public policies or domestic public policies while arbitrating the proceedings under the exception of public policy.

Whereas these issues have been dealt, with very well internationally, the opinions of investors remain uncertain as they have to wait till the time law evolves and is enforced in India. Also, there have been no answers from Indian courts to address these issues, posing a question about India's image and aim to be an 'arbitration-friendly' nation.

- **Insufficient Arbitration Institutes:** Despite the considerations of a few in-league arbitration centers, like 'The Mumbai Centre for International Arbitration (MCIA), Delhi International Arbitration Centre (DIAC), Nani Palkhivala Arbitration Centre (NPAC), etc.' India still struggles to compete with the standards of globally recognized arbitration institutions. As mentioned earlier, the majority of arbitration proceedings in India are Ad hoc, which makes the Indian mechanism less competitive and robust. Thus, unless and until institutional arbitration becomes mandatory in India the mechanism couldn't be robust.
- **Interference of Government:** Leading institutions like- LCIA, ICC, SIAC, etc., are not being controlled by the government. Whereas, the 'Delhi International Arbitration Centre and Arbitration Council of India' has members of government. Thus, the independent functioning of arbitration in India has been completely influenced by the government's interference which should be minimized.
- **Appointment of Retired Judges as Arbitrators:** It's unforeseen to see that the best arbitrators are struggling with arbitration proceedings because there aren't so many options to choose from. The reason is that we do not allow young professionals to be appointed as arbitrators and as a result, the majority of retired Judges are appointed which makes their work overburdened.



Source: Image via Pixabay

This practice must be stopped and new lawyers must be appointed as arbitrators in disputes. This will make the arbitration process more robust and the level of awards will also not be compromised. Often, it is difficult to maintain the quality of the awards when you have a large number of arbitration issues; thus, this will improve the performance and make the system more efficient.

- **No Full-Time Arbitration Lawyers:** One of the biggest problems is that we do not have fully qualified full-time arbitration lawyers. Lawyers usually give a second preference to arbitration matters and choose a time after the court hours to arbitrate. After spending a whole day in court, already exhausted, the process does not last long which results in delays. Also, they sometimes ask for the case to be postponed while they are in court and also set dates for resolutions when they do not have a trial before the court. Similarly, some of the arbitrators, who work in the courts, are unable to provide sufficient time for adjudication. Therefore, there is a need for full-time arbitral advocates and arbitrators who can provide adequate time so that there is no delay in the process.
- **Need of an Arbitration Bar:** Firstly, if not the main one, the aim should be to significantly reduce the number of domestic disputes from the access to 'foreign jurisdictions such as Hong Kong and Singapore through arbitration'. To achieve the desired results, the establishment of a robust arbitration bar is inevitable. The bar will ensure the availability and accessibility of more people, experienced and knowledgeable in the commercial arbitration sector.
- **Cost:** Cost efficiency may vary depending on the current conflict and/or the type of solution (ad hoc or institution) used.

Higher fees will be paid to arbitrators and the representatives for both types of arbitration, varying in degree. Parties will have to pay temporarily for expensive accommodation and hotels most of the time. 'Arbitration is a cost-effective process alternative to litigation in many countries.. However, in India, arbitration is expensive given the long-standing practice of arbitration.

- **The Judicial Intervention:** Not surprising but there has been inadequate support from the courts for arbitration enforcement in India. The paramount delays because of the overburdened courts have ascertained the arbitration proceedings. The enforcement of arbitral awards as well as challenges to an award is highly time-taking and tedious which discourages the parties' and investors' interest.

CONCLUSION

All of these major issues have led the international community to believe that India is not the preferred place for international arbitration. However, India has always tried to overcome these obstacles and follow the law in the right way. Undoubtedly, in the last few years, there has been a significant increase in arbitration in India. The situation has improved and various arbitration centers have now emerged and started taking steps toward the same. These institutions play a key role in strengthening the country's arbitration through their operations and imparting information to the general public by arranging several conferences and seminars. But one should remember building infrastructure is not the only thing that is needed. We already have many, as it will depend on fair and sustainable use. Also, a culture of arbitration is needed in other cities such as Kanpur, Ludhiana, Lucknow, Kolkata, etc. which are also business bases. The entire focus should not be focused on tier cities like New Delhi and Mumbai.



Facilitating business, contract enforcement, and the issuance of arbitral awards are some of the key factors that will help make any authority favor investment. Adding on too few to the initial implementation as well-

- **Creating Awareness**

Promoting arbitration and preventing independent players from rushing to court without attempting to arbitrate should be a goal. Keeping this in mind, it is very important to raise awareness about arbitration, and its importance.

- **Compulsory Arbitration**

India will not have a strong domestic arbitration facility unless arbitration is authorized and compulsory.

- **Submission of Appropriate Rules**

The introduction of appropriate legislation is also required. The rules of arbitration are required to be amended every time as we aim to improve the conditions of arbitration in India.

Thus, the impact of the action taken by the legislature and judiciary can be attested. India has climbed the ladder in terms of its level, however, due to the many challenges, there is still a basis for working in parallel with other internationally announced arbitration centers.

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Obiter Dictum

Conflicts have a human face. One must have the foresight to look beyond the conflict. A dispute should not spoil your relationship. Prolonged litigation can drain resources and cause animosity, and conflicts can be resolved in a neutral environment, where both parties are in a win-win situation. After all, life is a balancing act.

~Former CJI NV Ramana



EVENTS

Source: Image via Pixabay

UPCOMING EVENTS

JERC NATIONAL MEDIATION & NEGOTIATION COMPETITION 2022

[July 18, 2022]

JERC is organizing a National Mediation Competition. The competition will help students brainstorm probable solutions for near-to real-world challenges while providing them with the comfort of choosing their roles as per their preferences. This competition will also provide an opportunity for the participants to develop the requisite lawyering and communication skills. Students pursuing law from a recognized law institute are eligible to participate in the competition. Students are also provided with a tour of the Pink City, Jaipur & Cultural Night with meet and greet. The last date for registration is July 18th, 2022. [More about the event.](#)

1st NATIONAL ADR TOURNAMENT, 2022, BY IDRC & LATESTLAWS.COM

[July 1, 2022]

The IDRC & LatestLaws.com have announced their 1st edition of the ADR Tournament 2022. It is a 2-day event. The Arbitration Tournament is scheduled from August 6th to August 7th, 2022, which will be followed by a Mediation Competition in November 2022. This event would be a great opportunity for all law students (currently pursuing a five-year integrated course, three-year LLB or LLM) across the world. This event is of great importance in the present scenario in India. It is a unique opportunity and one of the best avenues where students can experience a medley of dispute resolution activities simultaneously, which would stimulate their cognitive and practical abilities as a lawyer. The last date for registration is July 1st, 2022. [More about the event.](#)

2nd INTERNATIONAL ARBITRATION MOOT BY MEDIATEGURU

[October 1, 2022]

After the grand success of the 1st International Arbitration Moot 2021 and after requests from participants and universities from diverse jurisdictions, MediateGuru is going to organize the 2nd International Arbitration Moot 2022. In furtherance of MediateGuru's initial aim to promote ADR practices, this competition will focus on providing practical exposure to ADR enthusiast law students on arbitration. The theme of this competition would be "Commercial Arbitration." Students must be enrolled as full-time or part-time law students in the academic year 2022–2023 in order to participate. Students who graduated in 2022, prior to the tournament, but no more than six months before it started, are still allowed to compete. The last date for registration is October 1st, 2022. [More about the event.](#)



CALL FOR BLOGS BY USLLS ADR BLOG BY GGSIPU USLLS [Rolling Basis]

The USLLS ADR Blog is an initiative of the University School of Law of Legal Studies at Guru Gobind Singh Indraprastha University. The team at USLLS ADR Blog believes that sustained academic deliberation is required to ensure that the field of Alternative Dispute Resolution Law grows continuously and becomes the mainstream solution to disputes. The objective of this blog is to provide a conducive platform that fosters discussions and deliberations pertaining to the field of ADR by academicians, researchers, law students, and legal practitioners. They accept and publish submissions from all the fields relating to ADR, subjected to a rigorous double-blind review process. [More about the event.](#)

CALL FOR PAPERS BY INDIAN ARBITRATION LAW REVIEW [AUGUST 31, 2022]

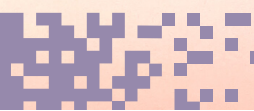
The Indian Arbitration Law Review ("Journal") is an annual double-blind peer-reviewed journal of the National Law Institute University, Bhopal (NLIU). It is supported by L&L Partners Law Offices. Submissions for scholarly, original, and unpublished written works from people across the legal profession – students, academicians, and practitioners – are invited to be published in Volume 5 of the Journal. Submissions made in the nature of long or short articles, case comments, or book reviews are accepted. [More about the event.](#)

CALL FOR PAPERS BY GUJRAT NATIONAL LAW UNIVERSITY SRDC ADR MAGAZINE, [JULY 31, 2022]

Gujarat National Law University SRDC ADR Magazine is inviting submissions for Volume III, Issue II. Contributions to the magazine are welcome from all academicians, practitioners, and law students. ADR Magazine accepts submissions on a rolling basis, subject to the preference for publication in the upcoming issue granted for those submissions made before the prescribed date, i.e., July 31st, 2022. The magazine permits submissions in the nature of articles, case comments, legislative comments, and book reviews falling within the scope of Alternative Dispute Resolution. [More about the event.](#)

CALL FOR PAPERS BY INDIAN JOURNAL OF ARBITRATION LAW BY CENTRE FOR ADVANCED RESEARCH AND TRAINING IN ARBITRATION LAW [ROLLING BASIS]

The Indian Journal of Arbitration Law ("IJAL") is a biannual journal, published in January and July of each year. IJAL strives to provide a platform for discussion of international as well as national developments in the field of arbitration. IJAL regularly publishes contributions from experienced practitioners whilst giving due importance to the theoretical work of academicians at the same time. Each issue contains articles that analyze topics of permanent interest from major national jurisdictions as well as international contemporary problems; notes, which cover topical recent developments and ongoing debates in the field; and book reviews. [More about the event.](#)





Source: Image via Pixabay



HPNLUITES-THE ACHIEVERS

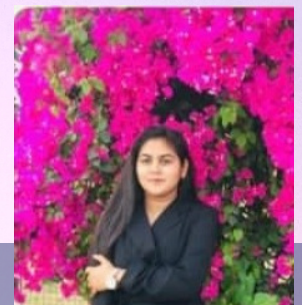
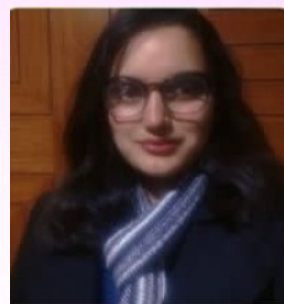


The team comprising Prachi Thakur and Ishu Dayal Srivastava of the 2019-24 batch was adjudged as the WINNER in the Negotiation Competition at the 5th National Alternate Dispute Resolution Tournament organized by Amity Law School, Noida. The tournament witnessed 77+ teams participating from all over the country.

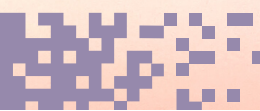
The team comprising Rohit Katara, Shikhar Bharadwaj, and Vanshika Gupta of the 2017-2022 and 2018-2023 batch, respectively, was adjudged as the 'Best Negotiating Pair' at the 3rd edition of Deal Mediation Competition, NLUJ. They also bagged a cash prize of INR 10,000/- for the Best Negotiating Pair.



The team comprising Manaswini Dube, Reetika Verma, and Shruti Madhogaria of Batch 2019-2024 are adjudged as 'Winners' of the 4th Nirmala Devi Bam National Moot Court Competition organized by Indore Institute of Law, Indore. The team bagged the 'Best Memorial' award, and Manaswini Dube was adjudged as the 'Best Researcher'.



The team comprising Arshita Sharma (B.ALL.B 3rd Semester) and Mahak Jain (B.B.ALL.B 3rd Semester) have secured the 'Second Position' in Surana & Surana & RGNUL International Arbitral Award Writing Competition 2021. They also bagged a cash prize of INR 15,000/- for the Second Position.



CADR & PS NEWSLETTER

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Centre for Alternative Dispute Resolution & Professional Skills

Himachal Pradesh National Law University, Shimla

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Address: 16 Miles, Shimla-Mandi Highway, Distt.-Shimla, Himachal Pradesh-171014

Email: cadrehpnlu.ac.in