BSOLS VOICE

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ADR SPECIAL EDITION

BHARATA MATA SCHOOL OF LEGAL STUDIES, CHOONDY, ALUVA

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FOR MORE INFORMATION PLEASE CONTACT:

Bharata Mata School of Legal Studies
(BSOLS)
Aluva-Perumbavoor Road
Choondy, Aluva-683 112
Tel: 0484-2838070, 9207748070
office@bsols.edu.in
https://bsols.edu.in/

"WITH A DIFFERENCE, MAKE A DIFFERENCE AND FOR A DIFFERENCE - FOR GOD AND COUNTRY"

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Email: bsolskerala@gmail.com, Website: www.bsols.edu.in

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Editorial

Director's Message

All big things have small beginnings. People often wonder at great people, corporates, and countries for their wonderful achievements. It is a fact that all of them have started from the bottom with a small beginning. With their first step, they could construct an admiring reality of their dream. As every drop contributes to the massive ocean, every journey to success is a small step with a vision. We must consider that a lot of small things of many have contributed in the past to the bright horizon of today. It is true that a small beginning is more important than sitting idle.

The small beginning of 'BSOLS VOICE', will mark a great day in the history of Bharata Mata School of Legal Studies. The magazine will make a culture of goodness, a culture of communication, a culture of cooperation, a culture of knowledge sharing, a culture of fraternity, and a culture of one spirit in BSOLS.

I appreciate the hard work of the editorial board, committees, and contributors of valuable articles, staff and students. I wish all the best to all.

Fr. Sebastian Vadakumpadan
Director, BSOLS

Asst. Director's Message

It fills me with immense pleasure that our Barata Matha School of Legal Studies is releasing 'BSOLS VOICE' holding its vision of *"With a Difference Make a Difference and For a Difference"*. As we always impart a value-based education system for the budding lawyers to reflect and shine at the peak of their growth, BSOLS Voice is also another stepping stone for that. It will definitely help the LLB novice, graduate, and practitioners to understand and learn matters in the changing scenario. Our new venture is going to be an asset to each and every one who is very much eager to know the changing scenario of the legal world.

I express my gratitude and congratulations to each one of the members of the editorial board and others those who worked behind this to make it a reality.

Fr. Thomas Mazhuvancherry
Assistant Director, BSOLS

Principal's Desk

Bharata Mata School of Legal Studies (BSOLS), since its inception in 2013, has grown tremendously in its curricular, co-curricular and extra- curricular activities. Its beginning was with a lone batch of 60 students. Now we have integrated five-year honours programmes in three streams viz; B.A. LL. B, B.B. A. LL.B. (two batches) and B. Com. LL.B. We have started Masters degree programmes with specializations in Criminal Law and Commercial Law in 2020. BSOLS proposes to commence a three-year LL.B. course and LL.M. with specialization in Maritime Law from this year onwards. Five-year integrated honours programmes in B.S.W.LL. B and B.Sc; (Forensic Science) LL.B and a wide variety of certificate courses as add-on courses for our students and also for outsiders are also there in the pipeline.

There are more than a dozen Clubs which are very vibrant, functioning in our Law School. They organize within the limited time available, many activities which are noteworthy. These are in addition to the various seminars and conferences organized by the Law School. These multifarious activities that are happening in Law School must get documented and made known to the outside society as well. In the considered opinion of the great English Essayist Francis Bacon, it is writing that makes an exact man. To carry forward this wonderful idea it is necessary to encourage the students and teachers to write short articles/ comments on issues and subjects they consider significant and relevant.

With a view to accomplish the above said objectives, BSOLS has decided to publish periodically a magazine in online/offline mode entitled "BSOLS VOICE". In addition to showcasing the various activities and events that take place at BSOLS, short articles by teachers and students from within and outside will also be included as its contents. In this way, we hope that it will operate as a new platform for a very useful interaction between the students, teachers and the general public.

I hope that "BSOLS VOICE "will soon become the mouthpiece of our institution and wish this endeavour all success.

Dr. V. S. Sebastian
Principal, BSOLS

Vice Principal's Desk

It is a privilege to congratulate our BSOLS family as it brings out the first issue of the magazine BSOLS VOICE. It is our aim to create an intelligent, legally spirited, and socially committed generation of students to serve the society. The magazine will no doubt serve this purpose as it throws light on contemporary matters and round up the college activities. I congratulate the team of faculty members for coordinating this admirable initiative. I am looking forward to reading the initial volume of the magazine and all its future volumes.

Wishing the magazine team, the very best.

Dr. Seline Abraham
Vice Principal, BSOLS

EDITOR'S CORNER

Perception regarding legal developments is an essential requirement for a law student to emerge himself / herself as a successful icon in the legal profession. BSOLS is providing an opportunity through the "BSOLS VOICE" for every student to attain skills of comprehensive reading, proficiency in writing, and gaining legal awareness which is inevitable in a law student's life.

Bharata Mata School of Legal Studies adhering to its vision, organized an Alternative Disputes Resolution System (ADR) International Conclave on the 22nd and 23rd of May 2022 with a view to inculcate into the young minds the importance of the Alternative Disputes Resolution System (ADR) in the contemporary legal arena. The present issue of the magazine focuses on the significance of ADR. It comprises articles written by experts, members of faculty, and students. It will provide a better understanding of ADR mechanisms for budding lawyers, academicians, civil society groups, and all those interested.

The magazine also covers the important events organized by BSOLS. Recent Judicial pronouncement on ADR is also analyzed. The achievements of BSOLS' jewels are accentuated to appreciate them and to inspire others.

To realize and acknowledge the rights and duties of individuals for themselves and for society, increases the worth of a human being. BSOLS aims at creating such virtuous citizens for God and Country.

Dr. Vidya V Devan
Asst. Professor, BSOLS

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Dr. ANEESH V. PILLAI
Assistant Professor
School of Legal Studies
Cochin University of Science and Technology, Kerala

INTRODUCTION

In every country, the dispute resolution process and its effectiveness have a direct link with the national economy of that country and the global perception about the ease of doing business in the country. In this globalized world, the countries are looking for more and more foreign participation in the commercial sector, as it improves the national economy and provides other benefits to society. The resolution of different disputes in the commercial sector assumes great importance. The parties of commercial disputes look for speedy and effective settlement of their disputes with minimum complication. 'Arbitration' is widely accepted in the world as an effective method for the settlement of commercial disputes in comparison with judicial settlements.

In India, arbitration is used as a method of resolution of disputes from ancient times onwards. It is a process in which the parties will submit their disputes or differences to a third party i.e. an arbitrator, acceptable to both the disputing parties. The disputing parties will present their claims and defenses to the arbitrator, based on the submissions of the parties and after applying the legal principles, the arbitrator will decide the claims. Usually, the decision of the arbitrator, i.e. arbitral award is binding on the parties. Arbitration has emerged as an alternative to traditional court litigation due to the inherent problems of the judiciary such as delay and complexity of procedures. The development of arbitration as an effective method for the settlement of disputes has led to the establishment of several arbitral institutions all over the world. There are well-known arbitral institutions such as the International Chamber of Commerce[1]; Singapore International Arbitration Centre[2]; International Centre for Settlement of Investment Disputes[3]; London Court of International Arbitration[4]; Swiss Chambers' Arbitration Institution[5]; Court of Arbitration for Sport[6]; and Hong Kong International Arbitration Centre[7], etc.

In India more than 40 arbitral institutions were established, however, these institutions were not able to attract the disputing parties and hence they are dealing with a very less number of disputes in

[1] Hereinafter referred to as ICC
[2] Hereinafter referred to as SIAC
[3] Hereinafter referred to as ICSID
[4] Hereinafter referred to as LCIA
[5] Hereinafter referred to as SCAI
[6] Hereinafter referred to as CAS
[7] Hereinafter referred to as HKIAC

comparison with other well-known arbitral institutions in the world. The need for strengthening arbitral institutions was realized by the Indian Government and hence took several measures including amendments to the Arbitration and Conciliation Act, 1996 and the enactment of the New Delhi International Arbitration Centre Act, 2019. This paper seeks to examine the various initiatives of the Indian Government to reform and strengthen the institutional arbitrations in India.

INSTITUTIONAL ARBITRATIONS: CONCEPT AND MEANING

Institutional arbitration is an arbitration administered by a specialist arbitral institution in accordance with its own rules and procedures. The concerned institution provides logistical and other necessary services like the appointment of arbitrators, the conduct of the proceedings, etc. According to Gary Born institutional arbitrations are conducted pursuant to institutional arbitration rules, almost always overseen by an administrative authority with responsibility for various aspects relating to constituting the arbitral tribunal, fixing the arbitrator's compensation and similar matters[8]. The parties to an agreement can at the time of entering into the agreement designate a particular arbitral institution for the settlement of any disputes arising in connection with such agreement. Even after entering into the agreements, if a dispute arises, the parties can designate an institution to settle their dispute. In both these cases, the arbitral institution can start the proceedings at the request of the parties and conduct the arbitral proceedings.

The arbitral institutions generally designate an arbitral panel and the panel will administer the arbitration under the supervision of the institution. There are many well-known arbitral institutions functioning in the world such as the ICC; SIAC; ICSID; LCIA; SCAI; Institute of the Stockholm Chamber of Commerce; CAS; and HKIAC; etc. Institutional arbitration offers several advantages to the parties, hence the worldwide these institutions are administering a large number of arbitrations every year. The major advantages of institutional arbitrations are:

Reputation: If disputes are settled through reputed institutions, such awards will be considered more authentic and are acceptable to other bodies and agencies. Hence, the reputation of arbitral institutions will influence the enforceability and acceptability of the awards.

Clear Rules: Institutional arbitrations are held in accordance with the rules and procedures developed by such institutions. These rules are generally very flexible and clear. Hence, the parties can easily settle their disputes without any difficulties.

Trained Arbitrators: The institutional arbitrations are conducted by a panel of arbitrators designated by the concerned institutions. Arbitral institutions have their own training programmes and certification programs and they will induct a person as an arbitrator only if he possesses the required quality parameters set by the institution. Hence, the panel designated to settle the dispute will consist of well-trained arbitrators.

Efficient Administration: Another advantage of institutional arbitration is that these institutes are generally

[8] Ibrahim Shehata, Arbitration in Egypt: A Practitioner's Guide, Kluwer Law International, 2021.

administered by efficient and trained professionals. Hence, the whole process of arbitration will be administered efficiently and effectively.

Cost of the Tribunal: In the case of institutional arbitration, the remuneration to be paid to the arbitrators is on a fixed scale. Hence, the disputing parties are not supposed to bargain with the arbitrators to decide the terms and amount of remuneration.

Default Proceedings: Several arbitral institutions makes it mandatory that, the proceedings will continue without any stop, even if one of the parties defaults in the course of the proceedings[9].

Infrastructure Facilities: The infrastructure of the arbitral institutions will also influence the smooth conduct of the arbitral proceeding[10].

ARBITRAL INSTITUTIONS IN INDIA

In India, like in other countries, arbitration is used as an alternative to traditional court litigations. Though both Adhoc and institutional level arbitrations are recognised, the parties generally prefer adhoc arbitrations. Ad hoc arbitrations are a process in which parties will select an arbitrator and the said arbitrator will conduct the proceedings in consultation with the parties and based on the Arbitration and Conciliation Act, 1996. In these types of proceedings, there is no involvement of any arbitral institutions. It is to be noted that there are more than 50 arbitral institutions in the country. It includes domestic arbitral institutions, international arbitral institutions and public sector institutions. Most of these institutions are following their own rules and procedures. Some of the prominent arbitral institutions are: Delhi International Arbitration Centre (DIAC); Indian Council of Arbitration (ICA); Construction Industry Arbitration Council (CIAC); LCIA India; International Centre for Alternative Dispute Resolution (ICDAR); ICC Council of Arbitration; Nani Palkiwala Arbitration Centre; Mumbai Centre for International Arbitration (MCIA), etc.

There are many arbitral institutions in India, however, the caseload of these institutions is very less when compared to international arbitral institutions. Moreover, not even a single institution in the country has achieved a global repute in this field. It is to be noted that, in 2016, a total of 307 cases were administered by Singapore International Arbitration Centre and in that 153 cases involved Indian parties. So also it is found that about 4.4 % of the LCIA's caseload in 2016 was contributed by Indian parties. This shows that Indian parties are interested in institutional arbitrations however, they are not opting for arbitral institutions from India. There are various reasons for the failure of arbitral institutions in India. It includes the absence of credible institutions; lack of infrastructure; lack of legislative support; lack of support from the government; judicial intervention in the proceedings and awards; inexperienced arbitrators and staff; etc[11]. It is to be noted that, the Arbitration and Conciliation Act, 1996, the chief legal

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[9] See, Article 21 (2) of the ICC Rules.

[10] Valbon Mulaj, "The Advantages and Disadvantages of Arbitration in Relation to the Regular Courts in Kosovo", Hungarian Journal of Legal Studies 59, No 1, pp. 118-133 (2018); Rolf A Schütze, Institutional Arbitration: A Commentary, Hart Publishing, 2013; William Hartnett, QC and Michael Schafler, "Ad Hoc v. Institutional Arbitration - Advantages and Disadvantages", available at http://adric.ca/wp-content/uploads/2017/09/Hartnett-and-Shafler.pdf, visited on 18.06.2022.

[11] Bibek Debroy and Suparna Jain, "Strengthening Arbitration and its Enforcement in India - Resolve in India", available at https://smartnet.niua.org/sites/default/files/resources/Arbitration.pdf, visited on 18.06.2022.

framework dealing with the arbitration in the country does not provide any provisions related to institutional arbitration. However, it extensively deals with ad hoc arbitrations. The failure of arbitral institutions has created a misconception about the significance of institutional arbitration in the country and hence, the caseload of these institutions is very negligible compared to ad hoc arbitrations administered in the country.

MEASURES TO STRENGTHEN INSTITUTIONAL ARBITRATIONS IN INDIA

The idea of settlement of disputes in India through an arbitrator was prevalent from ancient times onwards. However, the modern arbitration laws have their origin in the Bengal Regulations of 1772. As per this regulation with the consent of parties, Courts were empowered to refer certain kinds of disputes to arbitration. Further, the legislations such as Arbitration (Protocol and Convention) Act, 1937; Indian Arbitration Act, 1940; and Foreign Awards (Recognition and Enforcement) Act, 1961 were adopted to deal with different aspects of arbitration. During the early years of 1990, the long delay and complex procedures along with various other reasons compelled the government to think of an alternative mechanism. The need for a forum to resolve international and domestic disputes in a speedy manner was emphasised by a conference held in New Delhi on 4th December 1993 under the chairmanship of the Prime Minister and presided over by the Chief Justice of India. As a result, in 1995 the International Centre for Alternative Dispute Resolution (ICADR) was established for the promotion and development of ADR facilities and techniques. The ICADR is an autonomous organization working under the aegis of the Ministry of Law & Justice, Govt. of India with its headquarters at New Delhi and Regional Centers at Hyderabad and Bangalore.

The major objectives of ICADR are: to promote and popularize the settlement of domestic and international disputes by different modes of ADR; to establish, facilitate and provide administrative and other support services for holding conciliation, mediation and arbitration proceedings; to promote reforms in the existing system of settlement of disputes; to undertake training/teaching in ADR; to develop infrastructure for higher education and research in the field of ADR; and to arrange for fellowship, scholarships, stipends etc., with a view to developing professionalism in ADR.

Based on the influence of globalisation and liberalisation, the Government of India adopted a new Arbitration and Conciliation Act in 1996 superseding all the existing laws in this regard. This 1996 Act was modelled in line with the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration and the Arbitration Rules (UNCITRAL Model Law). This Act has undergone several amendments and juridical interpretations to fill the gap existing in its provisions[12].

In 2015, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act were enacted with a view to settling commercial disputes in a speedy and effective manner. However, this move has not significantly encouraged the settlement of commercial disputes in an effective way. It was generally argued that ICADR and the existing legal frameworks in India have failed to

[12] See, https://icadr.ap.nic.in/, visited on 18.06.2022.

achieve the object of encouraging institutional arbitration and as a result, the caseload of Indian institutions is very less and the Indian parties are approaching arbitral institutions of other countries. This scenario compelled the Government to review the existing legal framework and arbitration landscape in the country. Hence, a High-Level Committee was formed in 2017 under the chairmanship of Justice B. N. Srikrishna. The major aim of this committee was to review and recommend necessary measures to strengthen the institutional arbitration system in India. The committee identified that, even when there are several arbitral institutions in India, Indian parties prefer ICC; SIAC; and LCIA, etc. In the case of domestic disputes, the parties are preferring ad hoc arbitrations rather than institutional arbitrations. The committee points out that, the caseload of the ICADR is only 49 arbitration cases since its inception in 1995. Hence, the committee suggest a revamping of ICADR and several other measures.

In order to strengthen the institutional arbitrations in the country, based on the recommendations of the Justice B. N. Srikrishna Committee, the Government of India has introduced the Arbitration and Conciliation (Amendment) Act, 2019. The aim of this Amendment is to institutionalize the arbitration processes and make India a hub for international commercial arbitration. The Act wants to establish an Arbitration Council of India (ACI). It is charged with the function of grading arbitral institutions, the appointment of arbitral panels, developing rules for the functioning and acting as a depository for all the awards. Further, the Act confers power to the Supreme Court and High Courts to designate institutions graded by ACI as arbitral institutions. The Act also introduced certain provisions to restrict the power of the Courts to interfere with the arbitration process.

Another significant development in the field of institutional arbitration is the adoption of New Delhi International Arbitration Centre Ordinance, 2019. The purpose of this Ordinance was to establish the New Delhi International Arbitration Centre (NDIAC) for the purpose of creating an independent and autonomous regime for institutionalised arbitration in the country. Subsequently, this Ordinance was replaced with the New Delhi International Arbitration Centre Act, 2019. The objective of this Act is the "establishment and incorporation of the New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalised arbitration; and to make the centre a hub for institutional arbitration and to declare the New Delhi International Arbitration Centre to be an institution of national importance"[13].

As per Section 3 of the Act, "the Central Government shall, by notification, establish a body to be called the New Delhi International Arbitration Centre for the purposes of exercising the powers and discharging the functions under this Act". This centre consists of a chairperson, who is a person, who has been a Judge of the Supreme Court or a Judge of a High Court or an eminent person, has special knowledge and experience; Full-time Members or Part-time Members (Two eminent persons having substantial knowledge and experience); one representative of a recognized body of commerce and industry (Part-time Member); Secretary, Department

[13] See, Preamble

of Legal Affairs, Ministry of Law and Justice or his representative (Member, ex officio); one Financial Adviser (Member, ex officio); and Chief Executive Officer (Member, ex officio)[14].

The major objectives of this Centre are:

- Implementation of the deliberate reforms
- Establishing itself as a leading institution for international and domestic arbitration.
- Promotion of the legal research and study and organization of the conferences and seminars
- Facilitating conciliation, mediation, and arbitration procedures with facilities and administrative assistance.
- Management of the national and international panels of the arbitrators, conciliators and mediators as well as professionals.
- Coordination and cooperation with the national and international institutions for ensuring the credibility
- Establishing adequate facilities in India and other foreign nation-states to promote the centre's activities.
- Establishing and developing parameters for the centre's various modes of alternative dispute resolution methods and techniques.
- Adopting other methods as the centre deems fit but only with the approval of the Central Government[15].

For the purpose of achieving these objectives the following functions are assigned to the centre:

- To facilitate the conduct of international and domestic arbitration with professionalism and transparency.
- To offer services for the conduct of the arbitration and conciliation proceedings to be cost-effective, timely and efficient.
- To encourage improvements in the system of dispute resolution.
- To encourage and promote research and studies in ADR and its associated issues or matters.
- Promotion of education and dissemination of knowledge of legislation and the process related to arbitration dispute resolution.
- Granting of diplomas and certifications and other academic and professional qualifications.
- To impart training in the ADR
- Cooperation and coordination among agencies
- To abide by all the other functions entrusted by the Central Government for the promotion of arbitration dispute resolution[16].

So also the centre is empowered to constitute different committees[17]. Further, the centre should establish a Chamber of Arbitration for empanelling the arbitrators and also scrutinise the applications for admission to the panel of reputed arbitrators to maintain a permanent panel of arbitrators. This chamber consists of well-experienced arbitration practitioners of repute, at the national and international level and persons having wide experience in the area of alternative dispute resolution and conciliation. So also the centre can establish an Arbitration Academy. The purpose of this academy is: to train the arbitrators, particularly in the area of

[14] Section 5
[15] Section 14
[16] Section 15
[17] Section 19

international commercial arbitration; to conduct research in the area of ADR and allied areas and; to give suggestions for achieving the objectives of the act.

The establishment of NDIAC will help the country to establish a robust framework for institutional arbitration both for domestic and international disputes. Some of the possible benefits of an institution like NDAIC are: flexibility in the process; decrease in the backlog of cases; co-operation and co-ordination with different agencies; privacy of the parties; speed and efficiency; proper training; legal certainty can be ensured; judicial intervention can be reduced; To build country's reputation globally; and to emerge as an arbitral institution of global repute.

CONCLUSION

The need for reforming the existing scenario of institutional arbitration in the country was highlighted by the Justice B. N. Srikrishna Committee. Hence, for addressing the serious concerns in the field of arbitration practices in the country, the Government of India has adopted several measures including amendments to the Arbitration and Conciliation Act, 1996 and the introduction of the New Delhi International Arbitration Centre Act, 2019. The passage of this legislation can be considered as a milestone in the development of the institutional arbitration framework in the country. This is the first step toward developing an institution of global repute. However, it is to be noted that the competitor of NDIAC is world leaders in institutional arbitration such as SIAC; ICC; LCIA; HKIAC; ICDR; etc. Hence, in order to attract the domestic and international parties to the centre, the NDIAC has to perform well and needs to emerge as a credible institution. It is to be noted that, the existing legal framework of arbitration in the country needs to be more arbitration-friendly and should provide clear guidance for the conduct of institutional arbitrations. A coordinated effort of NDIAC, Government and judiciary along with the Government and an appropriate arbitration-friendly legal framework can achieve the goal of making India, a hub for international commercial arbitrations.

IMPORTANCE OF ARBITRATION AGREEMENT IN SUCCESSFUL ARBITRATION

Mr. SASEENDRAN K
Senior Faculty, BSOLS
Rtd. Registrar
High Court of Kerala

Arbitration is a private dispute resolution mechanism whereby two or more parties agree to resolve their current or future disputes by an Arbitral Tribunal, as an alternative to adjudication by courts or a public forum established by law. Parties by mutual agreement forgo their right in law to have their disputes adjudicated in the courts or other public forums. The object and purpose of arbitration is quick resolution of the dispute between the parties without submitting themselves to the regular court proceedings. As Russel puts it, "An Arbitrator is neither more or less than a private Judge of a private Court, who gives a private Judgment". Party autonomy is the hall-mark of the alternative dispute resolution mechanisms.

A prior agreement between the parties in respect of a defined legal relationship, contractual or otherwise, is a must for commencement of arbitral proceedings. An arbitration agreement gives contractual authority to the Arbitral Tribunal to adjudicate the disputes and bind the parties. According to section 7 (1) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), an arbitration agreement means 'an agreement between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not'. The agreement may cover all or any of the disputes that are existing or that may arise in the future, under the contract in question or it may be limited to certain specific issues or it may apply to cover all but excluded matters.

According to the language of section 7 (2) of the Act an arbitration agreement may be in the form of an arbitration clause in an agreement between the parties or it may be a separate agreement. Section 7(3) of the Act insists that the agreement shall be in writing and signed. Section 7(4) of the Act clarifies that an agreement may be in writing, if it is contained in a document signed by the parties, or in an exchange of letters, telex, telegram or other means of communication including communication through electronic means, which provide a record for the agreement or in an exchange of statement of claims and defence in which the existence of the agreement is alleged by one party and not denied by another.

What is contemplated under Section 7 of the Act is the pre-existing intention, in writing, of the parties to submit to arbitration all or any of the disputes, which have arisen or may arise in future between them in their legal relationship. The provisions of the Act, inter alia, empower the parties to agree upon the following matters: (1) number of arbitrators - whether parties want a panel of arbitrators or sole arbitrator; (2) appointment of institutional arbitrator or arbitrator on ad hoc basis; (3) nationality of arbitrator or arbitrators; (4)

procedure for appointment of arbitrator; (5) in case the agreement is for appointment of panel of arbitrators, procedure on failure to appoint arbitrator by a party or on failure of the two arbitrators appointed by each of the parties to appoint the third arbitrator or presiding arbitrator; (6) qualification required of arbitrators; (7) procedure for challenging arbitrator; (8) procedure consequent on withdrawal of arbitrator; (9) termination of arbitrator and appointment of substitute arbitrator by parties themselves or by approaching the Arbitral Institution/Court for such appointment; (10) terms of reference to the Arbitral Tribunal and Jurisdiction of the Tribunal; (11) procedure regarding conduct of arbitration by the Arbitral Tribunal; (12) place (seat) of Arbitration; (13) date of commencement of arbitration; (14) language or languages to be used in arbitral proceedings; (15) agreement on amendment or supplementing of pleadings; (16) whether oral hearing is to be permitted for presentation of evidence or the arbitral proceedings shall be based only on documents and other materials; (17) procedure on default of a party to appear and present his case; (18) appointment of experts to report on specific issues; (19) application of principles of equity and conciliation to arbitral proceedings; (20) applicability of trade usages applicable to the transaction; (21) how the decision shall be rendered by Panel of Arbitrators-unanimous or by majority. If there is no agreement, it shall be by majority; (22) procedure to be followed in arbitral proceedings may be decided by the Presiding Arbitrator; (23) whether parties want to follow Fast Tack Procedure; (24) settlement of the dispute by mediation, conciliation or other procedures; (25) arbitral tribunal need not state reason for award; (26) interest to be awarded or not; (27) assessment of payment of costs; (28) conferring jurisdiction exclusively on one of the courts having jurisdiction to the exclusion of other courts having concurrent jurisdiction

Two parties might be having business or commercial relationship for several years or months and might have entered into a comprehensive master contract outlining their business or commercial relationship. A clause in such a contract providing for referring to arbitration any dispute arising between them would amount to an arbitration agreement. As held in *Rajpura Gas House v. B.S. Koli and another*[18], agreement to refer all disputes to arbitration may be in the form of a term in the contract. In *Visa International Ltd. v. Continental Resources (USA) Ltd.*[19], the Supreme Court held that in order to determine whether there existed a valid arbitration agreement between the parties, the Court is required to decide whether the existence of an agreement to refer the dispute to arbitration can be clearly ascertained in the facts and circumstances of the case. In *Jagdish Chander v. Ramesh Chander & Co.*[20], the Supreme Court held that while there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. In *Enercon (India) Ltd. v. Enercon GmbH*[21], Supreme Court held that the arbitration clause forming part of a contract shall be treated as an agreement independent of such a contract. Even if the main contract is declared

[18] AIR 2009 P & H 137
[19] (2009) 2 SCC 55
[20] (2007) Civil Appeal No. 4467 of 2002
[21] (2014) 5 SCC 1

invalid or void, the arbitration clause is severable and valid for commencing arbitration.

An arbitration can be said to be successful and fruitful when the award passed by the Arbitral Tribunal is final and binding on the parties; when there is no scope for challenging the award; and when the parties implement the award on their own volition. If the parties specifically address and agree all the issues on which they are empowered by the Act to reach agreement prior to the conduct of the arbitration, and the Arbitral Tribunal passes an award within its authority, there would be no scope for challenging the award and the award would be final and binding, 90 days after it is passed.

To achieve the real object and intent of the legislature in enacting the Act, apart from the agreement contemplated under Section 7 of the Act, the parties have to reach prior agreement on all the relevant aspects stated above and reach a comprehensive agreement in advance. The legal expert endowed with the task of drafting agreement between the parties has the onerous responsibility to consult the parties extensively and meticulously on all aspects covering the arbitration and draft the agreement in such a way that there is clarity on all aspects and there is no scope for ambiguity or dispute, once the award is passed. Parties will not challenge and the courts will definitely not interfere with such an award. Speedy disposal coupled with party satisfaction must be the ultimate goal of Alternative Dispute Resolution Mechanism.

GANDHIJI AS AN ADR PRACTITIONER

Mr. P. S. ANTONY
Senior Faculty
Former District Judge

"It is much to be wished that people would avoid litigation".

Though Gandhiji was a lawyer by profession, he always discouraged litigation. Writing in Young India on 23/07/1919 Gandhiji opined, "It is much to be wished that people would avoid litigation. "Agree with thine adversary quickly" is the soundest legal maxim ever uttered. The author knew what he was saying. But it will be asked, what when we are dragged, as we often are, to the courts? I would say 'do not defend'. If you are in the wrong, you will deserve the sentence whatever it may be. If you are wrongly brought to the court and yet penalized, let your innocence soothe you in your unmerited suffering. Undefended, you will in every case suffer the least and what is more you will have the satisfaction of sharing the fate of the majority of your fellow beings who cannot get themselves defended "

Gandhiji's life was not only an experiment with truth but also an experiment with law. As a young lawyer, Gandhiji had gone to South Africa to attend to the case of Dada Abdulla. It was a money suit for 40,000/- pounds. Arising out of business transactions, it was full of intricacies of accounts. Part of the claim was based on promissory notes, and part on the specific performance of the promise to deliver promissory notes. The defense was that the promissory notes were fraudulently taken and lacked sufficient consideration. There were numerous points of fact and law in that intricate case. In his autobiography, Gandhiji has recounted his experience in the preparation and the subsequent settlement of Dada Abdullah's case. In his own words,

" I saw the facts of Dada Abdullah's case made it very strong indeed and that law was bound to be on his side, but I also saw that the litigation, if it were persisted in, would ruin the plaintiff and the defendant, who were relatives and both belonged to the same city. No one knew how long the case might go on. Should it be allowed to be continued to be fought out in the court it might go on indefinitely and to no advantage of either party.

I approached Tyeb Sheth (defendant) and requested him to go to arbitration. I recommended him to see his counsel. I suggested to him that, if an arbitrator commanding the confidence of both parties could be appointed, the case could be quickly finished. The lawyers' fees were so rapidly mounting up that they were enough to devour all the resources of the clients, big merchants as they were. I felt that my duty was to befriend both parties and bring them together. I strained every nerve to bring about a compromise. At last, Tyeb Sheth agreed. An arbitrator was

appointed, the case was argued before him, and Dada Abdulla won. But that would not satisfy me. If my client were to seek immediate satisfaction of the award, it would be impossible for Tyeb Sheth to meet the whole of the amount and there was an unwritten law among the Porbander Memens living in South Africa that death should be preferred to bankruptcy. It was impossible for Tyeb Sheth to pay down the whole sum of about 37000 pounds and cost ".

Finally, Gandhiji persuaded Dada Abdullah to allow Tyeb to pay in moderate instalments and both were happy over the result and both rose in public estimation. Gandhiji says, " My joy was boundless. I had learned the true practice of law. I had learned to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burned into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul".

In this age of ADR-ODR disputes and litigations are being compelled to be resolved and settled outside the court due to the mounting pendency in the regular courts. Gandhiji as an ADR practitioner is an inspiration and role model for lawyers of today and tomorrow.

Legal Aid Club Activities

DELIVERING JUSTICE: ONLINE DISPUTE RESOLUTION MECHANISMS IN INDIA

Dr. LINA ACCA MATHEW
Assistant Professor
Government Law College
Ernakulam[1]

The Covid-19 pandemic has forced traditional methods of delivering justice to give way to more technologically advanced structures on a global scale. The term "Online Dispute Resolution" (sometimes known as "ODR") refers to a process that can help resolve disagreements, as well as prevent and manage them. The cost-efficiency and simplicity of alternative dispute resolution (ADR) are two factors that contribute to the robustness of the legal system. Unconscious bias is mitigated by the fact that this form of remote communication does not necessitate the participant's actual physical presence. ODR has the potential to improve the enforcement of contracts, which will in turn increase India's ease of doing business.

It is not appropriate to confine the settings in which disputes are settled to pre-determined locations that require all parties involved to be there in person. Instead, the resolution of disputes ought to be regarded as a service that is not only widely accessible, but also potent, comprehensible, pervasive, trustworthy, and focused on achieving its goals. The use of technology as a tool to aid conflict resolution through online channels may make this a possibility if it were applied as such. As a result, the problem consists of making sure that resources are distributed fairly via increasing accessibility to the internet. The use of ODR can facilitate society's progression toward one that is predicated more on the "rule of law."

Emerging information technology frameworks such as artificial intelligence, machine learning, big data, and blockchain, for instance, are some examples of technologies that can be gradually incorporated into legal systems. In addition, India is working toward achieving global connection. There is a wide variety of e-learning software available for the legal education of laypeople. Therefore, litigants have a greater opportunity to select the legal service providers they want to work with. The actual potential of technology can be realised in the context of arbitration processes and smart contracts that are powered by blockchain. It is possible to employ technology to automate the process of enforceability through the use of "smart contracts," which are legally binding agreements written in computer code. The management of settlements based on such smart contracts might consequently be handled via blockchain arbitration.

[1] Dr. Lina Acca Mathew, Assistant Professor, Government Law College Ernakulam. The author can be reached at linamathew@gmail.com

THE FOUR LAYER MODEL FOR ACCESS TO JUSTICE: THE NITI AAYOG REPORT 2021

The NITI Aayog Report in 2021 titled 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India' (hereafter referred to as the NITI Aayog Report 2021) throws light on the definition of the term Online Dispute Resolution or ODR. ODR would not consist of the simple scheduling of hearing dates via email or the exchange of papers online. In the event that substantial communication (including verbal and non-verbal) takes place between the parties or between the parties and the neutrals through the aggregated use of ICT tools or over an ODR Platform, it would be considered to fall under the purview of ODR. ODR would comprise of utilisation of ICT-based instruments outside of the traditional judicial system. However, court cases could be sent to ODR at any step of the different life cycle stages that a case goes through. ODR can be utilised prior to a case being filed into court (for example, pre-litigation mediation), referred to ODR after a case has been filed in court (for example, reference under Section 89 of the Code of Civil Procedure, 1908), or even after a case has been resolved in a court and is considered closed (e.g. for modifying divorce orders post-separation).

The majority of early ODR attempts have, to a considerable part, been modelled after ADR procedures through the pooled use of straightforward ICT technologies. However, now ODR has moved from being merely an extension of e-ADR to being able to function as a neutral third party by providing the parties involved with support in the form of algorithmic assistance tools. This type of technology can take many forms, including intelligent decision support systems, smart negotiating tools, automated resolution, and machine learning. In the long run, online dispute resolution (ODR) will be able to provide multi-door conflict resolution by means of processes that are individualised for certain parties and their disagreement (Colin Rule, 2020). These individualised methods can be built with the use of various technological tools to reach an optimum conflict resolution for all parties involved in the disagreement.

The creation of ODR technologies that are driven by data can provide knowledge to individuals, allowing them to make educated decisions based on the strengths and weaknesses of the stance taken by the law and thereby help in avoidance of disputes (Richard Susskind, 2019). For instance, the analysis of thousands of credit disputes can help parties identify, even before a dispute has emerged, the stages at which the problems are likely to develop. This gives them the opportunity to pre-emptively address any challenges that are likely to surface as a result of the dispute. Furthermore, Online Dispute Resolution (ODR) can assist the parties in determining the likely outcome of the case if the rights are being contested in the circumstance.

ODR can play a major role in confinement of disputes before they reach the judicial system (Richard Susskind, 2019). There is a path to conflict resolution that does not include the use of the judicial system, which is provided via alternative dispute resolution (ADR) techniques such as mediation and arbitration. ADR "has not quite realised its early promise" of resolving disputes outside of the traditional court system. ADR has turned into something that is "very court-like," meaning that it has descended into having convoluted procedures in addition to the time and financial restrictions that it was first intended to provide relief

from. In this regard, ODR has the potential to enhance the effectiveness of ADR by providing it with an additional digital layer known as 'dispute-containment layer.' (Richard Susskind, 2019). For instance, required pre-litigation alternative dispute resolution (ODR) matters involving e-commerce claims, minor cause claims, and cheque-bouncing concerns can be handled before they reach the court system. This is of the utmost importance for the Indian judiciary, which is dealing with an increasing number of cases.

As a result, it is clear that although courts are only involved in the resolution of disputes, ADR mechanisms deal with the containment of disputes through out-of-court settlements using tools such as arbitration, mediation, and negotiation, and ODR mechanisms can go one step further and help in the avoidance of disputes altogether, thereby contributing to the robustness of the legal system. Thus, the four layers of dispute resolution, dispute containment, dispute avoidance and legal health promotion comprise the Four Layer Model for Access to Justice (Richard Susskind, 2019).

The NITI Aayog Report 2021 conducted research on notable ODR initiatives located all over the world in order to evaluate the efficiency of the services offered by these organizations. It divided these platforms into three categories: those managed by the government, those annexed by the courts, and those run privately. Structures such as tiered dispute resolution models, which comprises of three-tiered that allow disputing parties to negotiate, mediate, and arbitrate (like in Hong Kong), and five-tiered structures, which offer online consultation, online evaluation, mediation both online and offline, online arbitration, and online litigation (like the Online Dispute Diversification Resolution Platform in Zhejiang, China), along with hybrid dispute resolution models, which allow disputing parties to both negotiate and mediate their disputes both offline and online are some examples of ODR models (the Online Dispute Diversification Resolution Platform at Zhejiang, China is an example of the hybrid model also). ODR mechanisms allow for the effective resolution of consumer disputes, as seen in government-run ODR platforms in Brazil, Mexico, and the European Union. ODR mechanisms have also been implemented in the private sector, such as by PayPal and eBay, which have developed in-house mechanisms and technological solutions for the resolution of consumer disputes. Good practices in ODR process are outlined in the NITI Aayog Report 2021. These practices include teaching and assessment strategies that generate better understanding among the disputing parties about their legal position in order to expedite matters. Another recommended best practice is that technology solutions should be designed with cyber security in mind. This is because maintaining the secrecy of proceedings is necessary in order to build confidence in the ODR processes. In light of the fact that there are a variety of models of cooperation between the judicial system and ODR platforms, one more beneficial practice that is required is to have clarity on the execution of final agreements. In light of these experiences, it is clear that India requires its own individualised ODR platform.

TYPES OF ODR MECHANISMS IN INDIA

Unlike in the rest of the world, the growth of ODR mechanisms has been slower. Rapid growth in the ODR sector has happened mostly in the latter part of this decade. A chronological order of

developments in ODR mechanisms is enumerated below:

The National Consumer Helpline (NCH) was established in 2005 by the Department of Consumer Affairs with the goal of promoting consumer welfare and disseminating information on problems that are relevant to consumers.

In 2006, the National Internet Exchange of India (NIXI) adopted the .in Domain Name Dispute Resolution Policy (INDRP) which provided a mechanism for ODR complaints. Complaints can be submitted through the website without the need of in-person hearings and disputes are resolved by an arbitrator or arbitrators on the basis of the written representations made by both parties.

In 2011, Chennai hosted the 10th International Forum on Online Dispute Resolution.

In 2015, the Income Tax department introduced e-assessment of returns, making payments, claiming refunds etc

In August of 2016, the Department of Consumer Affairs expanded the NCH service with the launch of an initiative called the Integrated Consumer Grievance Redressal Mechanism (INGRAM). The goal of this initiative was to provide a platform for customers to have their complaints and concerns addressed directly by businesses that have voluntarily partnered with the National Consumers' Household (NCH). In order to accomplish this goal, the Department has also introduced a "Consumer App" that may be used to collect complaints from customers and give rapid redressal. This is further strengthened by the Consumer Protection (E-Commerce) Rules, 2020, which encourage e-commerce businesses to work with the NCH initiative on a 'best efforts' basis.

In 2016, the Online Conciliation and Mediation Centre (OCMC) was established at the National Law School of India University under the supervision of the Ministry of Consumer Affairs with the goal of promoting online mediation as a primary option for resolving consumer disputes. The development of such a facility draws attention to the significance of ODR in terms of achieving effective resolution of disputes.

In June 2017, the Goods and Service Tax Network called GSTN was launched as a technology platform for collection and administration of taxes. It is not necessary to file numerous returns because the GSTN, by way of the common portal, offers uniform common returns for the Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Union Territory Goods and Services Tax and Integrated Goods and Services Tax (IGST).

In 2017, the Department of Justice began a conversation about the use of online dispute resolution (ODR) to address disagreements between government bodies. They did this by publishing a list of online dispute resolution platforms and encouraging government departments to settle their disagreements online.

Thereafter in 2017 itself, the Ministry of Micro, Small and Medium Enterprises launched the SAMADHAAN portal. This portal includes facilities for the electronic filing and online settlement of Micro and Small Enterprises' (MSE) dues against Public Sector Enterprises, Union Ministries, Departments, and State Governments. These entities account for the majority of the dues payable to MSEs. MSEs are also able to utilize the platform to file payment due applications against private firms, proprietorships, and other types

of businesses that are part of state-specific MSE Facilitation Councils.

The E-Way Bill was launched by the Central Board of Indirect Taxes and Customs in 2019 to eliminate check-posts in state borders, helping to track suspected transactions and reduce tax evasions.

The E-ADR Challenge was established in February 2019 with the intention of locating and assisting ODR start-ups.

The Report on the High level Committee on Deepening of Digital Payments that was established by the Reserve Bank of India was released in May of 2019. Within that report, a recommendation was made to use an ODR system for the resolution of disputes about digital payment methods.

The Vivaad se Viswas Scheme, which is aimed at the expedient resolution of tax disputes through the use of ODRs, was introduced by the Government of India in February of 2020.

The state of Chhattisgarh held the first ever online Lok Adalat and offered conciliation services via video conferencing in the month of July 2020.

In July of 2020, NITI Aayog appointed Justice (Retired) AK Sikri to lead a group that was charged with expanding the usage of online dispute resolution (ODR) platforms in India.

A paper on the mainstreaming of ODRs in India was issued by the Vidhi Centre for Legal Policy in July of 2020.

Based on the 2019 Report of the High level Committee on Deepening of Digital Payments, the Reserve Bank of India (RBI) introduced ODR for the first time in a Statement on Developmental and Regulatory Policies. The purpose of ODR was specified to resolve customer disputes and complaints regarding digital payments through the use of a system-driven and rule-based mechanism with zero or minimal human intervention. Due to this development, Payment System Operators (PSOs) were given the recommendation to implement ODR processes for the purpose of resolving disputes that are related to failed transactions. Over the course of time, the Reserve Bank of India plans to broaden the scope of ODR so that it can encompass additional types of disputes and complaints as well.

In the report that they produced in September 2020, the Department related to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice urged for the implementation of technology in the processes of arbitration and conciliation.

In September 2020, following the passage of the Consumer Protection Act of 2019, the Department of Consumer Affairs has made significant progress toward the incorporation of information and communications technology (ICT) in the Consumer Dispute Redressal Commissions, including the creation of an e-daakhil portal that will make electronic filing easier. These kinds of activities may help in the process of integrating ODR into the ecosystem that protects consumers.

E-invoicing was first implemented in October 2020 by the Central Board of Indirect Taxes and Customs with the goal of eventually bringing all businesses and all transactions under the e-invoicing regime. This is intended to promote interoperability between business and tax ecosystems as well as prevent tax evasion.

The Department of Justice (DoJ), Ministry of Law and Justice has curated a unified Pan India Scheme called "Designing Innovative Solutions on

Holistic Access to Justice India" (DISHA). The purpose of this scheme is to address the legal needs of the people who are situated within a particular social legal context and to empower those people with knowledge of their rights, entitlements, and various redressal mechanisms. The purpose of the DISHA Scheme is to offer a solution that is both comprehensive and integrated for access to justice. This is a guide on citizen-centric solutions of "justice delivery" that is embedded with technology, and it also has a definitive capsule on Information, Education, and Communication (IEC). In addition to this, it streamlines and unifies existing access to justice programmes (such as Tele-Law, Nyaya Bandhu, Nyaya Mitra, and Legal Literacy and Awareness) and makes provisions for expanding access to justice on a national scale.

DISHA aims to ensure that marginalised people have access to high-quality legal assistance through the Tele-Law, Pro Bono, and Nyaya Mitra programmes. An online e-interface digital platform known as Tele-Law has been made available by the Department of Justice for the purpose of providing pre-litigation legal advice and consultation through Common Service Centers (CSCs) located at the village level. (see out www.tele-law.in) By the year 2026, the goal is to have 2.5 million and more Gram Panchayats covered by Community Service Centers (CSCs), with the goal of meeting the legal needs of roughly 90 million and more beneficiaries through legal advice and consultation. The Department of Justice has facilitated the creation of Panels on Pro Bono Advocates in various High Courts and has developed web and mobile-based applications (available on Android, IoS, and UMANG platforms) for a systemic database in order to promote and advance the culture of pro bono in the country. This is being done in order to promote and advance the culture of pro bono in the country. The Department of Justice has recently launched its Pro Bono Club Scheme, which will involve law schools around the country. It is proposed that by the year 2026, the number of Pro Bono advocates registered with the programme will exceed 20,000. In an effort to lessen the load that is placed on the judicial system and to work toward the peaceful resolution of legal disagreements, Nyaya Mitra is working to make it easier for the District Courts to dispose of cases that have been lingering there for at least ten years. As part of the DISHA programme, 80 Nyaya Mitra will be placed in District Courts that have been chosen based on the number of pending cases and in conjunction with the Judiciary.

DISHA also aims to heighten people's awareness of the law by promoting legal literacy, information, education, communication and technology. The Legal Literacy and Legal Awareness programme has been revamped in order to broaden the basis of the activities that have been carried out by the Department of Justice notably in the North Eastern States and the UT of J&K and Ladakh since 2012. It includes aspects such as the utilisation of technology, the formation of partnerships across ministries and allied departments, institutions, schools, and so on; the facilitation of capacity building and the utilisation of existing grassroots/frontline workers and volunteers; the development of indicators to measure legal literacy and legal awareness; and the undertaking of concurrent evaluation and periodical assessment of its programmes. It is proposed that this coordinated effort will cover 55 Lakh or more inhabitants over the entirety of the country by the year 2026.

Thus, it can be seen that the ODR ecosystem has witnessed exponential growth in India during the past few years at the three levels of government, judiciary and the private sector.

MEASURES TO STRENGTHEN ODR SYSTEMS IN INDIA

The Arbitration and Conciliation Act, 1996, which was revised in 2019 and 2020, is one of many laws that enable ODR's technological and ADR components. Section 89 of the Code of Civil Procedure (1908) gives the court the authority to refer parties to any type of ADR, including mediation or Lok Adalat, for settlement. The Legal Services Authorities Act of 1987 mandates the establishment of Lok Adalats in each district to provide conciliation services. On July 13, 2020, the Chhattisgarh High Court and the State Legal Services Authority held the inaugural Lok Adalat, in which 2270 cases were resolved through video conference in a single day. Following that, numerous states held e-Lok Adalats and even secured technical support from ODR service providers system in the private sector (NITI Aayog Report 2021).

The court must aid and urge the parties to reach a solution through conciliation, according to section 9 of the Family Courts Act of 1984 when read in conjunction with the "statement of object and reasons." According to the 2003 Securities and Exchange Board of India (Ombudsman) Regulations, disputes must be resolved by negotiation or mediation between the complainant and the listed business or its middleman. The Commercial Courts Act of 2015 made pre-litigation mediation necessary in India, where parties must start negotiations before filing a lawsuit unless one of the parties urgently needs an interim remedy. The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, have been added to this. Other cases where mediation has been used to try to resolve a dispute include the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations 2016, the Companies Act 2013 and the Companies (Mediation and Conciliation) Rules 2016, and the Consumer Protection Act 2019. In addition, e-commerce enterprises are required under the Consumer Protection Act (E-Commerce) Rules, 2020 to establish internal grievance redressal systems within their organisations, laying the groundwork for ODR. According to the Industrial Relations Code 2020, conciliation officers can be appointed to hold hearings in an effort to encourage and support disputing parties in coming to a mutually agreeable conclusion. Sections 65-A and 65-B of the Indian Evidence Act of 1892 acknowledge electronic evidence and set requirements for its acceptance. These provisions can serve as guidelines for policing the exchange of electronic documents and the holding of electronic hearings. The Information Technology Act of 2000 gives electronic documents and signatures legal standing, paving the way for the complete digitization of the justice delivery system. (NITI Aayog Report 2021).

There are numerous startups operating today that innovate to offer easily accessible and reasonably priced ODR services to people, corporations, state governments, and the judiciary. The Department of Legal Affairs invited applications from organizations offering ADR/ODR services in the nation in 2020 due to the success of collaborations between the private sector and the judiciary, as seen in the case of

e-Lok Adalats. Tax incentives ought to be offered to start-ups interested in the ODR market. Enhancing ODR and digitizing the judiciary would significantly contribute to creating a business-friendly climate in India. (NITI Aayog Report 2021).

Reiterating ODR's admissibility as a form of conflict settlement, classifying disputes into those appropriate for ADR, ensuring that competent ADR personnel are educated in the efficient use of technology, promoting innovation and expansion of ODR by assuring a constant flow of cases and disputes to these platforms that allow them to work at scale, establishing a network of collaboration between attorneys, ADR specialists, and ADR/ODR private institutes and the judiciary are the first phase suggested (Deepika Kinhal & Tarika Jain, 2020). The second phase suggested is to use laws in order to establish pre-litigation ADR/ODR for certain types of conflicts. Lawyers can be co-opted to lead the ADR/ODR mission, ODR can be recognised in accordance with current and upcoming ADR laws, innovation and entrepreneurship in ODR can be promoted by establishing supportive legal and regulatory frameworks (Deepika Kinhal & Tarika Jain, 2020). The third phase would commence when all parties have agreed upon and chosen ODR as their preferred method of dispute resolution. This could take place through either privately run ODR platforms or court-annexed ODR, both of which coexist and aid in the development of an effective and reliable dispute resolution ecosystem in India. Every Indian will have access to justice regardless of their financial situation, location, or language thanks to large-scale ODR. However, it is crucial that the public court system and ODR platforms do not function separately. Integrated data sharing systems would be necessary in order to discover regions of influence, more recent areas for dispute avoidance, and collectively co-creating an efficient dispute management ecosystem in India (Deepika Kinhal & Tarika Jain, 2020).

To conclude, enhancing ODR and digitising the judiciary would significantly contribute to creating a business-friendly climate in India. Thus, as specified in the 222nd Law Commission Report, keeping the court administration system under review will help to guarantee that firstly, it is responsive to the reasonable demands of the moment and, in particular, will help to achieve the elimination of delays, prompt payment of arrears, and cost-cutting measures to ensure the swift and inexpensive resolution of cases without compromising the fundamental idea that a decision should be equitable and fair; secondly, to achieve simplification of procedure to decrease and eliminate technicalities and delay tactics so that it functions less as a means to that purpose; and thirdly, to raise the bar for everyone involved in the administration of justice.

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MEDIATION CELLS AND SCOPE FOR RESOLUTION OF CONSUMER DISPUTES THROUGH MEDIATION IN INDIA - THE PRESENT SCENARIO AND THE WAY FORWARD

Dr. JACOB JOSEPH
Associate Professor & Head, Post Graduate Studies and Research, Bharata Mata School of Legal Studies (BSOLS), Choondy, Aluva

INTRODUCTION

The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services which have in turn provided new options and opportunities for consumers. This has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection in the modern age. In order to address these myriad and constantly emerging vulnerabilities of consumers in the present times, the Parliament of India enacted the Consumer Protection Act, 2019 (hereinafter 'CPA 2019) for the protection of interest of consumers and also for the establishment of various authorities for the timely and effective administration and settlement of consumers' disputes. Most of the provisions of CPA 2019 entered into force on 20th July 2020[1] and thus replaced the Consumer Protection Act, 1986 (hereinafter 'CPA 1986')

As compared to the CPA 1986 one can observe several important innovations in the CPA 2019. The most striking of the various innovations is the recognition of the use of ADR mechanisms in the matter of settlement of consumer disputes. Section 74 of CPA 2019 mandates the establishment of 'Medication Cells' attached to the District Commissions, State Commissions and National Commission. The purpose of this short article is to analyse the legal framework relating to the establishment and working of MCs as envisaged in the CPA 2019 and also to examine the way forward as regards the State of Kerala is concerned.

ESTABLISHMENT OF MEDIATION CELLS AND REFERENCE OF COMPLAINTS FOR MEDIATION

Mediation is a voluntary dispute resolution process where the third party facilitates negotiation between the disputed parties to negotiate for their rights and interests by themselves. The third party who facilitates the negotiation between the disputed parties is called mediator. As described by the Mediation and Conciliation Project Committee of Supreme Court of India, 'Mediation' is a voluntary, binding process in which an impartial and neutral

[1] Vide S.O. 2351 (E) published vide Notification dated 15th July 2020 in Part II, Section 3, Sub-section (ii) of Gazette of India Extraordinary No. 2074 dated 15th July 2020. It may be noted that this notification has specified that sections 74 to 81 of CPA 2019 which deal with establishment of MCs will enter into force on 20th July 2020.

mediator facilitates disputing parties in reaching a settlement. A mediator does not impose a solution but creates a conducive environment in which disputing parties can resolve all their disputes.

As per the scheme of CPA 2019 the MC attached to the NC is to be established by the Central Government, while it is for the respective State Governments to establish through gazette notifications the MCs attached to the district and state commissions[2]. According to the Consumer Protection (Mediation) Rules, 2020 (hereinafter 'CPMR 2020) notified by Government of India and published in the Gazette of India[3] every MC is to have a 'panel of mediators' and this panel is to be constituted on the recommendation of a selection committee consisting of the President and a member of that Commission.

The consumer complaints can be referred to mediation if there exist elements of a settlement which may be acceptable to the parties and the parties have consented to in writing to have their dispute settled by mediation. The consent to refer a complaint for mediation is to be sought after a complaint is admitted and at the time of the first hearing. The parties are to give their consent within five days and once consent is given the matter is to be referred for mediation within a period of five days. However, certain matters have been expressly excluded from the purview of mediation. These include (a) matters relating to proceedings in respect of medical negligence resulting in grievous injury or death; (b) matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties; (c) cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion; (d) cases relating to prosecution for criminal and non-compoundable offences; (e) cases which involve public interest or the interest of numerous persons who are not parties before the Commission. In addition to the above the Commission before which the case is pending is given the discretion to choose not to refer a matter for mediation if it is not appropriate having regard to the circumstances of the case and the respective positions of the parties. The CPMR 2020 prohibits parties from initiating any arbitral or judicial proceedings in respect of a matter which is the subject matter of mediation.

APPOINTMENT OF MEDIATORS AND RELATED MATTERS

The qualifications and experience required for empanelment as mediator, the procedure for empanelment of mediators, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed have been specified in the Consumer Protection (Mediation) Regulations, 2020 (hereinafter CPMRG 2020) which was notified by the National Consumer Disputes Redressal Commission and was published in Gazette of India on 24th July 2020.[4] According to CPMRG 2020 the following persons shall be eligible to be empanelled with a Mediation Cell- (i) retired Judges of Supreme Court of India; (ii) retired Judges of the High Courts; (iii) retired Members of a Consumer Commission; (iv) retired District and Session Judges, retired Additional District and Session Judges or other retired Members of the Higher Judicial Services of a State; (v) retired Judicial officers, having experience of not less than ten years; (vi) an advocate with a minimum experience of ten years at Bar; (vii) the mediators empanelled

[2] Consumer Protection Act, 2019, s. 74.

[3] G. S. R. 450 (E) published vide Notification dated 15th July 2020 in Part II, Section 3, Sub-section (i) of Gazette of India Extraordinary

[4] No.346 dated 15th July 2020.

with the Mediation Cell of the Supreme Court of India, High Court or a District Court; (viii) a person having experience of at least five years in mediation or conciliation; (ix) experts or other professionals with at least fifteen years' experience or retired senior bureaucrats or retired executives. A person who has been adjudged as insolvent; a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; a person who has been convicted by a criminal court for any offence involving moral turpitude; a person who is or has been interested in or connected with the subject matter of the consumer dispute or is related to or has been associated or connected in any manner, including in a professional capacity, with any of the parties to the consumer disputes or any of their associates, affiliates, promoters, holding companies, subsidiaries companies, partners, directors or employees, shall be disqualified for being nominated as a mediator in that case and a person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority and are pending or have resulted in a punishment is disqualified from being empanelled as a mediator.

SCOPE FOR VOLUNTARY RESOLUTION OF CONSUMER DISPUTES THROUGH MEDIATION

According to CPA 2019 the parties to a consumer dispute can appear before the mediator in person or through their respective counsel or authorised representatives. It is the responsibility of the mediator to attempt to facilitate a voluntary resolution of the disputes between the parties, assist them in removing the misunderstandings, if any, and generating options to resolve their disputes, but shall not impose any term or any settlement upon the parties. The mediator shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary. The mediator is to be guided by the principles of natural justice and fair play and is not bound by the provisions of the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The parties and the mediator are required to maintain confidentiality in respect of the events that transpire during the mediation proceedings and shall not use or rely upon any information, document etc. produced, the proposals and admissions made or the views expressed during the mediation proceedings.

If an agreement is reached during the course of mediation the mediator is to explain the terms of the agreement to the parties and only thereafter obtain their signature in the agreement so reached. It may be noted that an agreement can be reached with respect to all of the issues or with respect to only some of the issues involved in a dispute. If an agreement is reached the mediator is to prepare a report of the settlement and forward the signed agreement along with such report to the concerned Commission. In such a situation the respective Commission shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly. If a settlement is reached through mediation, the complainant shall be entitled to receive the full amount of the application fee paid in respect of the complaint.

Where the consumer dispute is settled only in part, the respective Commission shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute. According to section 41 of CPA 2019 an appeal shall not lie from any order passed by the District Commission pursuant to a settlement by mediation.

If no agreement is reached the mediator shall prepare his report accordingly and submit the same

to the concerned Commission. If no agreement is reached between the parties the mediator need not disclose as to what transpired during the mediation proceedings, what was the stand taken by the parties or why the agreement could not be reached.

JUDICIAL INTERVENTIONS

The lethargy on the part of the various state governments in taking proactive steps to facilitate the effective implementation of the various provisions of the CPA 2019, CPMR 2020 and CPMRG 2020 has invited criticism from various corners. In 2021 the Supreme Court of India initiated a *Suo Motu matter titled In re: inaction of the governments in appointing president and members/staff of districts and state consumer disputes redressal commission and inadequate infrastructure across India*.[5] Mr. Gopal Sankaranarayanan and Mr. Aditya Narain are the amici curiae assisting the Apex Court in the matter. One of the aspects addressed by the court in this matter is the delay on the part of several states to establish MCs as envisaged under CPA 2019. In an interim order passed on 12th April 2022 the Court observed that 'mediation is an important, if not at times a better method of resolution of disputes' and thus directed all States to set up the mediation cells and inform the Amici Curiae at least a week before the next date of hearing.

WAY FORWARD FOR STATE OF KERALA

Till date the State of Kerala has not established MCs in the State Commission as well as any of the District Commissions. The State has a long way to go in the matter of facilitating the use of mediation for the voluntary resolution of consumer disputes. On 20th October 2021 a Division Bench of Kerala High Court headed by Chief Justice S. Manikumar and Justice Shaji P. Chaly has admitted a Public Interest Litigation filed by Mr. C. K. Mithran. The PIL has, inter alia, highlighted the delay on the part of State of Kerala to establish MCs. An MC established within the framework of the CPA 2019 is to have the necessary infrastructure and support staff if the system is to work as envisaged by law. According to CPMR 2020 the support staff required for each Commission is to be decided by the President of that Commission in consultation with the Government. The CPMR 2020 further imposes an obligation on the Government to provide all administrative assistance and infrastructure facilities required by the Commission. As rightly pointed out by Joesph Grynbaum, an expert who specialises in mediating complex multi-party disputes, 'an ounce of mediation is worth a pound of arbitration and a ton of litigation'. There is huge scope and potential for the use of mediation for the resolution of consumer disputes. However, a lot will depend on how the State Government discharges its preliminary responsibility of allocating and providing the necessary financial and human resources for realising the implementation of MCs in the Commissions. Rather than imposing the entire financial burden on State Governments, the Central Government acting through the Department of Consumer Affairs should provide the necessary financial support so as to enable the State Governments to discharge their statutory responsibility to provide all administrative assistance and infrastructure facilities required by the Commission. It also remains to be seen how far the parties to consumer disputes will resort to the avenue for voluntary resolution of consumer disputes through mediation. Anyway, it is for sure that in the days ahead the establishment of MCs and use of mediation for voluntary resolution of consumer disputes will be a very interesting area that can be subjected to investigation by researchers and members of legal academia.

[5] Suo Motu Writ Petition (Civil) No. 2/2021

ALTERNATIVE DISPUTE RESOLUTION: A BETTER SPACE IN THE JUDICIAL PROCESS

ABSTRACT

The end of the 19th century is blessed with the concept of Alternative Dispute Resolution (ADR) mechanisms to resolve disputes at skyrocketing pace compared to traditional courtroom adjudication which is much time consuming, expensive, rigid, and even unsatisfactory to the parties. The principle of ADR is not 'to hit on my right' but rather a 'win/win' method where both parties have gratification in the dispute resolution. The entire court system should turn up to the modern concept of a 'multi-door court house' where a disputant may have alternatives to choose from and tackle for the best resolution of a dispute. Alternative Dispute Resolution mechanism had a swift acceptance in all realms of adjudication worldwide still it lacks better clarity of its legal authority in the minds of the common man. The research article relies on secondary materials, with the goal to highlight the splendors of ADR which is a 'participant justice'.

Rev. Fr. BIJU ANTONY THEKKANATH[1]
Asst. Prof. BSOLS
Research Scholar,
JJT University Rajasthan

INTRODUCTION

The need for swift resolution of disputes, excessive delay of court proceedings, skyrocketing expenses, and lack of eminent lawyers boosted the thought and widespread of alternative dispute resolution mechanisms. Alternative dispute resolution which is also known as External Dispute Resolution for its nature characteristically represents a varied collection of dispute resolution mechanisms where the disputed parties may come to settle their disagreements with the support and help of an independent party. The varied collection of dispute resolution mechanisms is Arbitration, Negotiation, Mediation, and Conciliation. ADR is a process where the neutral third party stands between the disputed parties who is to assist the parties to reach a settlement that is amicable to them through better communication and discussion on the most relevant issues of disputes as well as possibilities to reach the best remedial step to the dispute.

ADR: LEGALLY BINDING RESOLUTION

It is a better space in the judicial process though little varied under the umbrella of "The arbitration and Conciliation Act, 1996" in India, which is promulgated to consolidate the varied collection of dispute mechanisms and amend the law linking the domestic and international commercial arbitration and administration of foreign arbitral awards. It is an extraordinary transformation of the dispute resolution mechanism of the time and tide for a speedy, convenient, economical, and advantageous dispute resolution (Harry T Edwards - 1986). In the process of arbitration the arbitrator hears evidence and gives a written legally bonded award which is rationalized by general principles of law.

[1] thekkanthpaul@gmail.com, Ph.9744768738.

ARBITRATION: A NEW ACCEPTED LEGAL VENTURE

Arbitration is the process in which the parties of agreement voluntarily agree to resolve the dispute outside court litigation and appoint a neutral arbitrator or arbitrators in case of any dispute or misunderstanding on their agreement where the arbitral award is final and binding to all parties involved in the dispute. It is a new and legally accepted venture launched towards the end of the 20th century to settle a dispute apace with a workable and fair alternative remedy to our traditional judicial system. The arbitral process is advantageous for parties in dispute for the speedy resolution, saves a lot of time for traditional courts, parties, witnesses, and legal counsel, and the consensus of the parties is greatly considered (Larry O. C. Chukwu and Kevin N. Nwosu - 2016).

ADR process is so convenient for all parties engaged in dispute so it may replace the sporadic and traditional ways of courts. The speedy resolution of cross-border disputes is very essential for the flourishing growth of all spheres of international trade and business. To solve the issue arbitration especially international arbitration is growing swiftly to reach the zenith of business and trade. It should be noted that there are above 3000 investment treaties in existence and each and every dispute that arises might solve within hours to reach back to its foot. Speedy dispute resolutions are needed in international business endeavors for it is not a business between two parties but also between international communities where there is a diplomatic relationship between the countries is also involved (Vikramaditya Khanna and Aditya Singh -2015).

In the process of Arbitration, both parties can clearly sort out their interests and so may conveniently adapt and move themselves to the best possible solution available than dragging for years with traditional court proceedings with the help of an arbitrator or arbitral Tribunal. The success of Arbitration and other collection of dispute resolution mechanisms is not founded on "hit on my right" but rather on getting into a "win/ win" solution style for a better future for the business and profit of both parties. The arbitrator and the parties should focus on all facts surrounding the dispute, accessible to both parties as well as the arbitrator to have a clear understanding of the dispute for a better solution namely 'arbitral award' which is final and legal (Kim A. Lambert (1992). The resolution mechanism is a most popular form which is very much appreciated and legally linked remedial system of dispute resolution, is now part and parcel of almost all business agreements (Steven Shavell - 1995).

Arbitration has extended its wings not only in trade and business but also in Employment Arbitration, Consumer Arbitration, Health Care Arbitration, etc. The arbitration clause has become an embedded clause of any form of agreement that may face disputes.

ADR: PROVIDES PARTICIPATION IN RESOLUTION

Mediation and other dispute redressal alternatives provide the parties in dispute to have a participation in the resolution of a dispute. It is an informal as well as a flexible dispute resolution mechanism. It is a process where the experience and training of the mediator are used to facilitate the parties through continuous counseling and resolution skills to relax and solve the dispute. There is an opening session for open and direct communication, reinforcement of positive bonds, identifying the issues and their priorities for better cooperation for the resolution of the disputed issue before the desk (Jessica Pearson (1982).

The trained mediator through his dynamic communication skills and experience gains the trust, and confidence of the parties to resolve the issue and tackle it through a number of sittings and assist to make a written settlement formula accepted by the disputing parties. Every mediation provides the parties a belief that they have received a better participatory role to solve the issue with the professional assistance of the mediator (Ernest E. Uwazie-2011). Through the professional touch of the mediation, the parties feel that they are considered and not alienated. Thus, it may be said as 'participant justice' (JG Mowatt (1992).

CONCLUSION

The Alternative Dispute Resolution mechanism opens a 'multi-door court house' where the disputants have alternative choices than the mere traditional courtroom procedure to find out a solution even through a pretrial conference. Mauro Cappelletti (1993). The recognition of alternative dispute mechanism rooms in the courtyards of court premises is a clear recognition of the concept of a multi-door court house. It may be ideal to have a screening department for better and swift adjudication in courts itself where disputes may be categorized and forwarded to the most advantageous and appropriate form in the multi-door courthouse. It should be noted that ADR is a worldwide resolution access mechanism that has no boundaries since it starts from the very acceptance of the disputed parties and ends with the same.

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AN ANALYSIS OF JUDGEMENT CANARA BANK v. G. S. JAYARAMA

HON'BLE SUPREME COURT OF INDIA DATED 19.05.2022 IN CIVIL APPEAL NO.3872 OF 2022

DR LISHA AZEEZ
Asst. Professor, BSOLS

Permanent Lok Adalats be able to make a decision on a Dispute On merit - However Conciliation procedures prior to it are essential: Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India observed that the Permanent Lok Adalats have adjudicatory functions under the Legal Services Authorities Act, 1987 and accordingly, powerful to settle a dispute on merits. The Hon'ble Apex Court opined that conciliation procedures as per Section 22-C of the Legal Services Authorities Act are obligatory. Even if the opposite party does not appear or participate, the Permanent Lok Adalat is still responsible to pursue all course of action without fail. The Hon'ble court opined that the most important purpose is, conciliation and settlement of disputes in an independent and impartial manner with regard to public utilities, and also a verdict on merits at all times, being the final remedy.

In this case, Canara Bank had approached the Hon'ble Supreme Court challenging the judgment of the Division Bench of Hon'ble High Court of Karnataka, which had dismissed the writ appeal filed by the appellant and upheld the judgement of the Single Bench with the following observations:-

(1) that the proceedings for conciliation under Section 22-C of the Legal Services Authorities Act was not complied, and therefore, the award under Section 22-C (8) was a nullity; and

(2) the Permanent Lok Adalat could not have acted as a regular civil court in adjudicating the proceedings.

Consequently, the Canara Bank challenged by raising the issues such as:-

(a) Whether Conciliation Procedures are mandatory as per Section 22-C of the Legal Services Authorities Act ?

(b) Whether adjudicatory powers are vested with Permanent Lok Adalats as per the Legal Services Authorities Act ?

The bench of the Hon'ble Supreme Court with reference to Section 22-C of the Legal Services Authorities Act, observed that, the act itself mandates all the procedures to be followed before the Permanent Lok Adalat and also it specifically stated all the proceedings chronologically. As per sub-section (1) - stated about the submission of application; sub-section (2) - Jurisdiction of Court in the same dispute; sub-section (3) - filing of statements and further communication to the opposite parties and sub-sections (4), (5) & (6) - clearly mentioned about the conciliation proceedings. Afterwards, as per sub-

section (7), it stated about the settlement agreement and sub-section (8) mentioned that, even if the parties failed to arrive at an agreement under subsection (7), the Permanent Lok Adalat can decide the dispute on merit, if it is not related with any offence.

In view of the above, it is absolutely clear that, even if the opponent does not appear, the Permanent Lok Adalat is obligatory to follow all the procedures mandated in Section 22-C of the Act.

The appellant's argument in this matter was that, if the opposite party does not present before the Permanent Lok Adalat, it can give up with the conciliation procedures and right away adjudicate the dispute under Section 22-C(8).

It is also stated in sub-section (5) that - Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Keeping in view the mandatory provisions in the Act, the Hon'ble Court opined that, in the case of non-appearance of opposite party also, the Permanent Lok Adalat shall strictly adhere to comply with the proceedings as mandated in the Legal Services Authorities Act as per Section 22-C. It is also stated that, the functions of the Lok Adalat constituted under Section 19 of the Legal Services Authorities Act are different from the functions of a Permanent Lok Adalat constituted under Section 22-B of the said Act.

Hence, the Hon'ble Supreme court held that compliance of Conciliation procedures and proceedings under Section 22-C (Cognizance of Cases by Permanent Lok Adalat) are mandatory in nature as per the Legal Services Authorities Act, 1987.

The Hon'ble Court, while disposing of the appeal, held that the observations of the Division Bench in respect of the adjudicatory powers of the Permanent Adalats were incorrect. However, it upheld its final conclusion, in view of the fact that the Permanent Lok Adalat failed to follow the mandatory conciliation proceedings in the present matter.

RELEVANCY OF ONLINE DISPUTE RESOLUTION (ODR)

MR. ALIYAR M E
Senior Faculty, BSOLS
Former Judical
First Class Magistrate

Online Dispute Resolution generally known as the ODR, is a public-facing digital space in which parties can convene to resolve their dispute. ODR in simple words is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. This is typically different from the traditional form of platforms for resolving disputes between parties. It is a technology-supported dispute resolution platform that provides a speedy, economic, most convenient, and less expensive method of dispute settlement available in the modern world, particularly beneficial during the Convid-19 like pandemic time. ODR shares and builds upon the foundational characteristics of alternative dispute resolution (ADR). It is found to be the most emphasizing easier and more efficient method of addressing conflicts of parties[1]. The basic advantage of this method is that ODR operates exclusively on an online platform that does not require complicated traditional in-court procedures or events. It is a fact that the ODR programme is explicitly designed to assist litigants in resolving their disputes or cases. ODR makes use of various technologies and dispute resolution methods. That means ODR platforms seeking to resolve something more narrow such as negotiating a dispute for settlement by exchanges of messages between parties and finally they could convey their demands and offers using the platform. Depending on the platform, the parties may be able to jointly draft a settlement and access other documents during the mediation process.

The first ODR platform believes to be the website eBay[2] established in the year 1999 which provides an internal system for parties to a transaction to settle their disputes online. Today, it is estimated that this system helps parties to resolve over 60 million disputes each year. Most of the U S states and European States' court administrative offices have established ODR and adopted ODR programmes into their operations. Since the technology continues to advance, it is sure that ODR will continue to proliferate all over the world within a short span of time.

As feared by the public in general, the ODR method does not support judicial authority. ODR actually is a Court-related Dispute Resolution rather than a form of private ADR. Instead, it integrate and extends dispute resolution

[1] Katsh, Ethan "ODR: A Look at History", Online Dispute Resolution Theory and Practice-Page-21

[2] The establishment of the eBay Dispute Resolution Center is considered a watershed development in the history of online dispute resolution.

services offered by the Judicial Branch into digital space to serve citizens efficiently, transparently, fairly, and even effectively.

ODR PROCESS

There are a variety of different ODR technologies that a court can use. The Judicial Department is to think as to how these technologies can serve litigants. Here parties have the autonomy to choose the type of digital platform and the concerned State Government has to make a legal framework to ensure that the settlements entered between parties' through online platforms are binding and executable. Since there are no standards specifically addressing the ODR, of course, ODR may have ethical issues. So the Ethical Principles for ODR are to be framed. In the US, it was tackled by the establishment of the National Center for Technology and Dispute Resolution. The standards once made by the Center should articulate the ways in which ODR should be accessible, accountable, confidential, fair, and transparent. ODR has the potential to help bridge the gap in access to the justice delivery system for litigants. So this method can be seen as an online equivalent of ADR as it primarily involves the use of negotiation, mediation, or arbitration for dispute resolution. The following are the methods to be employed:-

"Synchronous ODR is a method of dispute resolution where the parties communicate with each other in real-time by using various video-conferencing applications.

"Asynchronous form is where communication is not conducted in real-time but via email or other such communication applications.

"Online Mediation is coming out to be the most favorable form of dispute resolution with nearly 70% of ODR platforms using the same to reach a conclusion. Typically online mediation starts with sending an email to parties that contain basic information about the proceedings followed by virtual meetings to be conducted in the chat rooms.

"Electronic Arbitration is a less popular method of online dispute resolution but it covers the process up to a certain extent.

SCOPE OF ODR IN INDIA

The administration of justice in India has a history of being delayed like anything and the Covid- 19 pandemic has made the situation even worse. Although the Supreme Court has allowed the online filling and hearing of cases, one cannot neglect the fact that the judiciary is already overburdened and heavily clogged with millions and millions of cases. An improvised and efficient solution is required to ease pressure on courts and the answer to this can be ODR. The Online Dispute Resolution covers disputes that are settled over the internet having been initiated in cyberspace but with a source outside it i.e. offline. Originally, arbitration was intended as an alternative to going to court for various kinds of disputes but with time the method itself has become complex and expensive. ODR offers a faster, transparent, and accessible option for many companies to resolve disputes online, particularly those that have high volume and low-value cases. In the past half-decade, India has seen significant growth in the volume of online transactions, no other position would be more convenient to accept ODR as an efficient mechanism to resolve disputes and hence implement a fast and fair dispute resolution system.

ODR PLATFORMS AVAILABLE IN INDIA[3]

ODR platforms have become operable in the country facilitating particular kinds of dispute resolution for many national and international companies. These ODR platforms have made easy the process of dispute resolution by combining the already existing process of ADR with cutting-edge technology, making the process feasible and time convenient altogether.

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION EXCELLENCE (CADRE)

It is a website-based platform for ODR. First, one party approaches the platform which then contacts the other party. If both the parties agree then an arbitrator is appointed and time-stamped intimations are sent through e-mails or WhatsApp. Usually, the parties do not meet face to face but they make contact electronically via video calls. The decisions that are legally binding come within 20-25 days' time. CADRE has been resolving tenant and rental contract disputes for NestAway an online home rental startup.

SAMA is another ODR platform that facilitates easy access to high-quality ADR service providers and helps people to resolve disputes online. SAMA is being used as an ODR platform by ICICI Bank to resolve nearly 10,000 disputes with values going up as high as INR 20 lakh.

CENTRE FOR ONLINE DISPUTE RESOLUTION (CODR)

CODR is an institution that will administer cases online end to end. AGAMI is yet another non-profit ODR platform that aspires to create a better system of law and justice by providing time-efficient and feasible dispute resolution methods.

CONCLUSION

In India, ODR is still in its infancy stage but it is just a matter of time before ODR is adopted on a large scale in India. The electronic form of dispute resolution tries to enable new possibilities that were previously unavailable such as the virtual simultaneous presence of all the parties without needing personal attendance at a particular place and time. With 4.5 million cases pending in various High Courts, 31 million cases pending in District Courts (Subordinate Judiciary), and 350,000 backlogs in the top 5 central tribunals, without a doubt we are in need of more and more ODR platforms and to come up to the rescue. ODR mechanism is simple and effective and has the potential to come into mainstream dispute resolution systems and its acceptance cannot be called into question. In the near future, ODR will not only serve as a platform for quick disposal of cases but also as an area of employment for thousands of arbitrators or advocates.

[3] Karan Singh, India: Online Dispute Resolution (ODR): A Positive Contrivance To Justice Post Covid- 19, mondaq connecting knowledge. Dated 15-5-2020.

ADR MECHANISM- JUDICIAL PERSPECTIVES AND CHALLENGES

Mr. ANANTHU ARAVIND
Final year B.com LL.B.(Hons)
Student, BSOLS

INTRODUCTION

A conflict is essentially a "lis inter partes," and India's judicial system has adopted an Alternative Dispute Resolution (ADR) mechanism as an alternative for adversarial litigation. ADR mechanism is a voluntary process that has gained legal recognition over some time. This paper analyses the problems faced in implementing the ADR system in India and the judicial perspectives on ADR.

India is the largest democratic country with a legal system that gives more importance to the concept of rule of law. A democratic country that gives importance to rule of law should always try to promptly solve the backlog of cases that are pending for years in courts. Gandhiji highlighted the value of ADR in his autobiography by noting that a lawyer's primary duty is not to present a case and the litigants for trial before the judiciary but instead to work towards bringing them together. He believes cases can be solved if a lawyer learns to enter human hearts and trace the better side of their nature. Gandhiji, practiced this method and succeeded in settling more than a hundred cases and lost nothing including the fee and soul.[1]

An individual in his life may experience disagreements over issues that are personal to him. The majority of people believe that courts are the best venue to settle their differences but this is fiction. Many had disagreements with others but have never once sought the assistance of the courts as they managed to resolve their differences harmoniously. Also, some members of society choose not to resolve their disputes in court because of the socio-economic and cultural factors that influence their decision to do so. Therefore, people's perception of the court as the principal means of resolving disputes must be altered. It demonstrates that going to court to resolve a disagreement could be the last option.

At the same time, it should not be inferred that such people who do not resort to the courts had no disputes. One cannot also say that the nature of their disputes is unresolvable. Making an inference that they are capable to resolve their dispute would also be wrong. There are instances where such people and groups have formed them a committee to hear and decide their disputes peacefully and cost-effectively.

[1] M.K. Gandhi, "An Autobiography", (1959), p.97.

Democratic nations like India, the United States, and the United Kingdom have discovered that the traditional judicial process is complex and time-consuming. On the other hand, alternative dispute resolution (ADR) techniques like Lok-Adalat, mediation, arbitration, and conciliation are fast, less costly, and have several additional benefits. For example, the decision reached through ADR is final, costs less than litigation, guarantees privacy and security, gives the people the chance to choose any individual or individuals to represent as arbitrators, encourages negotiating process, and settles the dispute amicably by creating a win-win situation for all the parties.

LAWS, RULES, REGULATIONS & SCHEMES OF ADR IN INDIA

Constitutional Law of India

Articles 14, 22(1), 39A, 44, and 51A of the Indian Constitution are all devoted to promoting social justice. According to it, the legal system must ensure that everyone receives equal justice. Justice must be accessible to all citizens. Many people are unable to access the legal system due to social, economic, and other barriers. Therefore, it is the responsibility of the nation to enact appropriate laws, programs, etc., so that everyone has the chance to seek justice. No disability of whatsoever nature should come in the way of the administration of justice[2]." The fundamental tenet of justice is that everyone should be treated equally. The State must give Alternative Dispute Resolution (ADR) adequate consideration to accomplish all of these goals.

Legal Services Authorities Act, 1987

The LSA Act passed by Parliament in 1987 was implemented on September 11, 1995. This statute's goal is to create institutions that will provide India's disadvantaged sections with uniformly high-quality, free legal help. This legislation's main goal is to prevent suffering due to a lack of resources and opportunities. This purpose is mirrored in the slogan of the Legal Services Authorities, which promises "Access to Justice" for everyone and aims to organize the Lok Adalat to give equal opportunity to everyone, regardless of their social or economic backwardness.

The Arbitration and Conciliation Act, 1996 (as amended by the Act of 2019 and 2020)

As stated in the introduction, the UNCITRAL Arbitration Law and Conciliation Rules serve as the foundation for the legislation known as the AC Act, 1996. The General Assembly of the United Nations has urged all nations to consider it. It was suggested by the General Assembly to bring consistency to arbitration law, particularly to satisfy the needs of international commercial arbitration. For international commercial disputes, the General Assembly has urged the State Parties to apply the arbitration rules and laws, and a focus on peaceful resolution of such problems through the resolution mode has been placed, such as conciliatory tools. These regulations have significantly benefited the standardized arbitration procedures for the resolution of international business disputes.

[2] Durga Das Basu, Shorter Constitution of India, Lexis Nexis, Butterworths, Wadhwa, 14th edn., 2009

Civil Procedure Code, 1908 (July 2002 amendment)

S. 89 of the amended CPC was the first to provide contemporary Indian procedural law with a formal framework. It places a strong emphasis on resolving issues through settlement. In circumstances when litigants want to resolve their disputes, the courts must determine and set the conditions of any settlement. It inadvertently forbids the courts from hearing any cases with such characteristics and imposes a need to transfer cases with such features to ADR for settlement through compromise[3].

Supreme Court Legal Services Committee Report, 1996

The Supreme Court Legal Aid Committee has been taken over by SCLSC, together with all of its rights, obligations, title, assets, and interests, as a result of this rule. It has a total of 18 Rules. It outlines the duties and authority of the Chairman, Secretary, and SCLSC. It also includes information on the chairman's and secretary's employment terms. There is also a clause about the audit of money. Some significant regulations governing the operation of SCLSC include the method in which meetings are held, the eligibility requirements for seeking legal assistance, and the method and procedure for providing legal services. There are two situations in which SCLSC may offer legal services even in the absence of a means test or its outcome: (1) if the case is of significant public interest, or (2) if the matter is unique and calls for a hearing to administer justice. However, SCLSC is required to document why it approved or rejected requests for legal assistance[4].

Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006

The ADR system is governed by the CP - ADR & Mediation Rules, 2006, which were created by the Bombay High Court. It is split into two halves. The first part covers the process. It outlines how to choose and identify the appropriate ADR tools. Additionally, it provides rules for the parties so they may understand the process. The regulations that apply to the "Mediation" are covered in Part II. Section 89(2)(d) of the CPC guided the development of these guidelines. Civil Procedure - Alternative Dispute Resolution, 2006 is the title of Part I, while Civil Procedure Mediation Rules, 2006 is the title of Part II.

NALSA (Lok Adalat) Regulation, 2009

Earlier, there was no uniform practice concerning the proceedings of Lok Adalat. Parties and panels of different areas/States are to follow different guidelines and the prevailing practices concerning TLSC, DLSA, SLSA, and the HCLSC. Therefore, the Supreme Court of India directed the NALSA to formulate guidelines, that can be uniformly applied to the Lok Adalats all over India[5]. Consequently, the NALSA (Lok Adalat) Regulations, 2009 were drafted under s.29 of the LSA Act, 1987 by the Central Authority. It was notified on 20.10.2009 in the Gazette of India. This regulation has introduced a uniform procedure that can be applied to organize and conduct the Lok-Adalat throughout India. This

[3] Section 89 of the Civil Procedure Code [Amendment July 2002]
[4] Rule 14 of the SCLSC Regulation, 1996
[5] Moideen Sevamandir v. A.M. Kutty Hassan, Civil Appeal No. 7282-7285 of 2008

regulation also provides for the composition of Lok Adalat, provision of Notice, allotment of cases to the Lok Adalat, Jurisdiction, manner of holding, summoning of records, pre-litigation matters, communication between Parties, ethics of confidentiality, Awards, maintenance of panel, maintaining the records, compilation of results, appearance of lawyers before the Lok Adalat, etc.

Mediation Rules framed by the Supreme Court

The creation of draught mediation guidelines was pioneered by the Supreme Court of India. By CPC Section 89(2)(d), the Supreme Court established a committee and gave it the mandate to create "ADR and Mediation Rules[6]." The rules were created by the committee; Part-I contains the 2003 ADR Rules, and Part-II contains the 2003 Mediation Rules. The Civil Procedure - ADR & Mediation Rules, 2006 were created by the Bombay High Court based on the directives provided in the aforementioned ruling.

Supreme Court's direction in Afcon's Case

In Afcon's case[7] judges R.V. Raveendran and J.M. Panchal have thought about the broad application of Section 89 of the CPC. Their Lordships have also examined the legislation to establish whether the court has the jurisdiction under Section 89 of the Civil Procedure Code to send a dispute to arbitration as a means of resolving it without first receiving the permission of all parties involved. The Supreme Court provided a negative response to this query. The Supreme Court has also guided what subjects are appropriate for ADR referrals and what matters are not.

THE RATIONALE FOR ADAPTATION OF ADR

'The rationale behind the ADR system is that society, the State, and the disputant should all assume equal responsibility for swiftly resolving the issue and should work to do so before it disturbs the peace of the home, family, society, community, business, and ultimately humanity.

Some scholars who oppose ADR tools contend that as the number of court cases declines, so will the demand for the ADR process. They also assert that the need for "alternative dispute resolution procedures" will decline if litigation expenses are reduced. This argument fails for two reasons. First of all, with increased commercialization, company expansion, competitiveness, and legal knowledge cases will continue to expand. Second, resolving disputes successfully, solely through the judicial trial system will never be easy. ADR has many advantages compared to the court trial process. Quick case disposal is beneficial. It lowers the expense of litigation by preventing the institution of cases in the form of appeals, modifications, and other similar processes. Additionally, it prevents any future conflict between the parties. Another viewpoint holds that not all disputes can be resolved outside the court and that all disputes must be decided by judges. This group, which is in favor of this argument, ignores the fact that some disputes must be settled outside of the legal system because they cannot be decided by the courts. Such issues, when the compliance of a decision or order cannot be monitored

[6] (2005) 6 SCC 344

[7] Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors, (2010) 8 SCC 24

and controlled by the courts, are best exemplified by injunction lawsuits.

The concept of justice is reflected in the Preamble of the Indian Constitution. It ensures justice in all spheres, including social, economic, and political justice. So, the constitution's mandate is to ensure justice. The poor and weaker segments of society are guaranteed free legal representation and fair justice under Article 39A of the Indian Constitution. According to Articles 14 and 22(1), the State is obligated to uphold equality before the law and a judicial system that advances justice based on equal access for all people. India is a nation committed to upholding justice and defending the socio-economic and cultural rights of its citizens. Prompt problem-solving is essential for achieving this constitutional objective. The courts alone cannot handle the massive backlog of cases, the goal can, therefore, be efficiently fulfilled through the use of ADR methods. These are the core grounds underlying ADR's implementation in India.

ADR AND CHALLENGES IN INDIA

In India, individuals are effectively shielded from complicated judicial proceedings by the use of ADR mechanisms. The desire for timely justice has not been met by the traditional legal systems. ADR mechanisms are more appealing to parties because they provide quick relief, offer an affordable alternative, take the best approach, and have an easy mode of operation. Nevertheless, the enforcement of ADR is hampered by certain obstacles.

The obstacles may be divided into two categories. They are inherent limitations and human-based issues. The inherent limitation includes lack of a well-defined procedure, non-applicability in non-compoundable matters, linkage to other disputes, and involvement of multiple parties. On the other hand, human-based limitations include conflicting interests of lawyers and clients, non-cooperation of the parties, unethical considerations, lack of effective communication between the parties involved, misinformation about the ADR systems, the jackpot syndrome, ignorance, and corruption.

INSTANCES OF THE MISUSE OF LOK ADALAT

There are times when cases are resolved without giving the parties notice after being referred to Lok Adalat by the courts. When an executable award is passed without the permission of the parties, it raises the stakes considerably. The chairman and members of the panel must ensure that all parties have received notice of the matter and have given their consent to the Lok-Adalat settlement procedure before proceeding further. Justice, equality, and fair play are the three crucial pillars on which the structure of ADR depends, and both the courts and ADR forums should never forget this. Before signing the award, the settlement terms must be verified by all the parties[8].

Where there is no agreement, the panel should resist passing the award of Lok-Adalat. In a case where only a few of the several parties consented to the terms of the agreement, the award should not be passed, as it becomes a settlement only when all parties to the matter have agreed on the same terms.

[8] Kishan Rao And Anr. vs Bidar District Legal Services, AIR 2001 Kant 407, by Karnataka High Court

The Lok-Adalat has no power to pass an award when any or some of the parties are not ready to compromise. In all those cases where the matter could not be reached to settle the matter goes back from the Lok-Adalat to the courts from where it was transferred/referred. S.20(5) of the LSA Act, 1987 provides the same[9].

In one case, after the award of Lok Adalat, when the accused did not comply with the award, the Judicial Magistrate passed an order of conviction of one-year rigorous imprisonment and compensation of Rs.3,75,000/- in the S.138 NI Act matter. The accused went to appeal before the sessions court, but it also did not interpret the law properly, and the accused was directed to deposit the amount of compensation till 16.12.2007 and till then his sentence of imprisonment was suspended. The first appellate court further erred in holding that in the event of failure to deposit the compensation, the suspension would be revoked, and the accused will have to suffer the sentence of imprisonment. The matter went before the High Court, which neither upheld the order of the Magistrate, nor the Sessions Court. It held that once the matter is compromised by the Lok-Adalat and the award is signed, it becomes final and that no appeal can lie against the award. It was further clarified that after the passing of the award by Lok-Adalat, the referral Court (i.e., which had referred the matter to the Lok-Adalat), becomes "functus-officio? and as such loses the power to convict the accused[10].

In another matter, the Supreme Court has expressed, that Lok-Adalat Panel had played the role of a judge. It imposed the compensation based on the hearing without looking into the fact that the affecting party had not consented to it. The Lok-Adalat Panel did not follow the principles of Justice, equity, and fair play. Thereafter, even the first appellate court committed the mistake, it heard the parties and passed an order to enhance compensation, ignoring the fact. The original order was not awarded[11]. The above discussion shows that some litigants have misused the forums of ADR. It is also evident from the cases discussed above that some courts/judges have also committed errors in applying the criteria, law, and practice for choosing the suitable ADR forums and in drawing the decree in terms of compromise.

JUDICIAL PERSPECTIVES ON ADR

Indian judicial system is overburdened and lacks an adequate number of judges relative to the population and adheres to lengthy procedures. The first Attorney General of India, Mr. M.C. Setalvad, in his address to the Indian Bar Association over 40 years ago stated:

> "No doubt, the British system of administration was very good and led to excellent results, but it had its defects which have been accentuated in two ways. We are now a democratic and very populous country. These days, therefore, what is required is a radical change in the method of administration of justice. We want a court where the people can go with ease and with as little cost as possible. It is not merely the quickness of justice but it is the easy approach and quick disposal

[9] *Ibid*

[10] M/S. Valarmathi Oil Industries vs M/S. Saradhi Ginning Factory AIR 2009 Madras 180, by Madras High Court

[11] State of Punjab and another vs. Jalour Singh and others : JT 2008 (2) SC 83

which are essential and that can be achieved only if the system is completely overhauled[12]."

The Law Commission of India observed that the reason for the judicial delay is not a lack of clear procedural laws, but rather the imperfect execution, or even utter non-observance, thereof[13].

Indian judiciary ensures justice. One of the key elements for the harmonious functioning of society is the resolution of disagreements. The Indian judiciary recognizes arbitration as a tool for conflict resolution. The Indian Arbitration Act, of 1940 provided arbitration provisions. The Courts were primarily concerned with the oversight of Arbitral Tribunals and were especially interested in determining whether the arbitrator had overstepped his authority while deciding on the matter that had been presented to him for arbitration.

The Supreme Court made it clear that the deficiencies must be addressed: "An independent and efficient judicial system is one of the basic structures of our Constitution. we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases."[14] The analysis of the Law Commission of India reports sheds light on the factors contributing to delays and a huge backlog of cases before the courts. The main contributory factor is the frequent adjournments at the instance of the clients and lawyers[15] .

A fair trial and access to justice are both fundamental human rights. A fair trial within a reasonable time is a requirement of human rights law in several nations. However, by Articles 14 and 21 of the Constitution of India, it is a fundamental right. Therefore, it is necessary to consider using alternative dispute resolution mechanisms as a way to gain access to justice as a human right. In *Sundaram Finance Ltd. v. NEPC India Ltd.*[16] , the Supreme Court explicitly made it clear that the Arbitration and Conciliation Act, 1996 is very much different from that of the Arbitration Act, 1940. The provisions made in Act of 1940 led to some misconstruction and so the Act of 1996 was enacted. While interpreting the provisions of the Arbitration and Conciliation Act, 1996, it is more relevant to refer to the UNCITRAL model law rather than following the provisions of the Act of 1940.

CONCLUSION

Alternative Dispute Resolution is a framework for organizing and working towards a common goal of resolving disputes using tactics and skills that can be acquired and applied. Alternative Dispute Resolution mechanisms are separate from and in addition to the traditional legal system. Since there are so many cases pending in the courts, the administration of justice in India is under a lot of strain for a variety of reasons. The high volume of court cases, which has augmented dramatically in recent years and caused delays and pendency, highlights the need for alternative dispute resolution techniques.

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[12] Dr Anupam Kurlwal, An introduction to Alternative Dispute Resolution System, Edition 2011 Page no. 76

[13] Law Commission Of India, 77th Report, Pr 4. 1

[14] Brij Mohan Lal V. Union of India & Others (2002-4-scale-433) MAY 6 2002.

[15] Salem Advocate Bar Association, Tamilnadu V. Union of india (UOI), (2005) SCC 344

[16] AIR 1999SC 565;1999(1) Arb. LR 305 (SC)

ACHIEVEMENTS

Lakshmiya T M.
2016 -2021 Batch
1st Rank BBA LL B (Hons.)
Mahatma Gandhi University
Kottayam

Akhila E
2016 -2021 Batch
1st Rank BA LL B (Hons.)
Mahatma Gandhi University
Kottayam

Maria Antony
2015 -2020 Batch
3rd Rank BA LL B (Hons.)
Mahatma Gandhi University Kottayam

Seba Shajahan
College Topper
BA LL B 2013-2018 Batch

Florence Kiran
College Topper
BA LL B 2014-2019 Batch

Jomy Josy Maliakal
2016-2021 Batch
College Topper Bcom LL B

REPORTS

ADR INTERNATIONAL CONCLAVE

Mr. JINESH M, Assistant Professor, BSOLS

The Bharata Mata ADR International (BADRI) in association with Bharata Mata School of Legal Studies (BSOLS) conducted the first ADR International Conclave on the 22nd and 23rd of May, 2022. The conclave was attended by legal practitioners, teachers, research scholars and students of various institutions, universities and colleges in India. The theme of the conclave was "The Current Trends in Modern Alternative Dispute Resolution

Mechanism". The main objective of the conclave was to equip the participants with the basics of the Alternative Disputes Resolution (ADR) processes.

Inaugural Ceremony

The inaugural ceremony held on 22nd May 2022, was presided over by His Excellency Archbishop Mar Antony Kariyil, Archiepiscopal Vicar, Ernakulam-Angamaly Archdiocese. The conclave was inaugurated by Hon'ble Mr. Justice K.M. Joseph, Judge, Supreme Court of India who in his address highlighted the importance of ADR in the Indian legal system and the need to have well-trained arbitrators in the country. Prof. Steve Ngo, an international arbitration specialist and also the founder president of Beihai Asia International Arbitration Centre, Singapore delivered the keynote address. Prof. Steve discussed the current trends in international arbitration and accentuated the need for reform and innovation in dispute resolution. Adv. Harish B. Narasappa, Senior Advocate, High Court of Karnataka, Adv. Krusch Antony, WMO Indian delegate and Educational Advisor, and Ms. Kavita Bhatia, Assistant Professor, Faculty of Law, Maharaja Sayajirao University of Baroda, Vadodara felicitated the event. The inaugural session wound up with cultural programmes presented by the students of BSOLS and was followed by dinner.

Technical Sessions

The technical sessions of the conclave, conducted on 22nd and 23rd of May 2022, were handled by Prof. Steve Ngo, Ms. Kavita Bhatia and Adv. Krusch Antony discussed the development of the various ADR techniques including arbitration, mediation, and negotiation at the international level, and how the best practices in the different countries could be incorporated into our legal system. Emerging global trends of Online Dispute Resolution (ODR), Med-Arb (Mediation-Arbitration), and Arb-Med-Arb (Arbitration-Mediation-Arbitration) were also discussed by the resource persons. The strategies for shaping ADR skills among the students and teachers in law schools were also conversed in these sessions. The plan of action for BSOLS ADR International Club for the next two years was put forth by Adv. Krusch Antony who also is the co-ordinator of BADRI. The sessions were followed by group discussions and presentations.

Certificate Course in Arbitration Theory and Practice

A one-day certificate course in Arbitration Theory and Practice was organized on 24th May 2022 by Bharata Mata ADR International (BADRI) in association with Bharata Mata School of Legal Studies (BSOLS) with the objective of making participants conversant with the different aspects of the ADR procedures at the national and international level and to develop a basic ability to apply ADR methods. The course was inaugurated by Hon'ble Mr. Justice (Retd.) Kurian Joseph, Former Judge, Supreme Court of India. Bharata Mata School of Legal Studies awarded the first BSOLS ADR International Award to Hon'ble Justice Kurian Joseph for his lifetime achievement in ADR practice.

The session started with a presentation by Prof. Steve Ngo. on Beihai Asia International Arbitration Centre (BAIAC) established by Beihai Arbitration Commission, China, is the first-ever international arbitration center in Singapore. Prof. Ngo explained the need for future collaboration of different ADR Centres all around the world to build a common system of dispute resolution so as to facilitate access to justice. He also awarded the lifetime membership of BAIAC to Hon'ble Justice Kurian Joseph.

The course was divided into four modules. Module 1, 'UNCITRAL Model Law and Arbitration and Conciliation Act, 1996,' was taken by Adv. Anil Xavier, President, Indian Institute of Arbitration and Mediation, Cochin. Module 2, 'Recent Trends in International

Arbitration,' was handled by Prof. Steve Ngo. Module 3, 'Institutional Arbitration in India' was offered by Dr. Aneesh V. Pillai, Assistant Professor, School of Legal Studies, CUSAT and Module 4, 'New York Convention on Enforcement of Foreign Arbitral Awards' was taken by Prof. Steve Ngo. Along with discussing the world's leading international arbitral organizations, comparing and contrasting their procedures, and pointing out the advantages and disadvantages, and the impact of the COVID-19

pandemic on international arbitration, the renowned resource persons also threw light on the legal scenario in India. The sessions were followed by interactive question and answer sessions which led to fruitful discussions between the resource persons and the participants. Certificates were distributed to the participants and the training programme concluded with a vote of thanks proposed by Adv. Krush Antony, Co-ordinator, BADARI.


BHARATA MATA SCHOOL OF LEGAL
ADR INTERNATIONAL CONCLAVE
Cultural Fiesta

REPORT OF THE AWARENESS PROGRAMME ON THE INSOLVENCY PROFESSION

Ms. UMA DEVI S, Assistant Professor, BSOLS

Bharat Mata School of Legal Studies convened an awareness programme on the Insolvency and Bankruptcy Profession on 7th June 2022. The programme was organized by The Insolvency and Bankruptcy Board, Government of India conjointly with the Indian Institute of Insolvency Professional, ICAI, The Institute of Insolvency Professionals and Insolvency Professional Agency of ICAI in collaboration with Bharat Mata School of Legal Studies. A panel of experts on Insolvency and Bankruptcy provided guidance and training to the young lawyers and the interested participants on insolvency and bankruptcy laws and procedures.

The programme was inaugurated by Hon'ble Dr. Justice K Narayana Kurup, Former Judge, High Court of Kerala, and Acting Chief Justice, High Court of Madras with the lighting of the lamp. He was welcomed by Rev. Fr. Sebastian Vadakumpadan, Director, BSOLS. He recollected the excellent contributions of Hon'ble Justice Kurup in the field of environment and human rights while he was serving, and his judgment on the ban on smoking in public

places. During his inaugural speech, Hon'ble Justice Kurup made a reminiscence over his past as a law student and shared the struggles experienced and glories achieved throughout his life. He instigated the young lawyers to work hard for the development of the nation. He cautioned the growing unrest with a large number of pending cases within the court system and elucidated the need and importance of tribunals in resolving the disputes on a timely basis. He further illuminated his experiences with the corporate disputes and distresses of financial creditors and debtors affecting the Indian economy. He warranted a strengthened and resilient system to deal with insolvency and bankruptcy cases.

In the special address Shri B Shankar Narayan, General Manager, IBBI, explained the financial distress that is caused by insolvency and its impact on the present financial market. He suggested the importance of strategic mechanisms for restricting the risks affecting the Indian corporate economy and the need for making awareness of the growing importance of IPs and IBBI in the same.

Adv. Sankar P Panicker, FCMA, IP and CA Vibin Vincent, FCA, IP, RV, experts in the field held their views and opened up brainstorming sessions for the young minds about the laws on insolvency and about the creative opportunities of the career of an insolvency professional. The programme lasted 3 hours starting from 11.00 am and ended with a gracious and humble vote of thanks by Prof. (Dr.) VS Sebastian, Principal, BSOLS. The certificates were distributed by Rev. Fr. Sebastian Vadakumpadan, Shri. Shankar Narayan and Prof. (Dr.) VS. Sebastian.

About Insolvency and Bankruptcy Law: A gist of discussions from the panelists

The term insolvency refers to a state of being insolvent. That is when an individual or any firm is no longer able to pay his/its debts due. This state of financial distress where the creditors will take legal action against the insolvent or his entity or assets to be discharged to pay off the unsettled debts. After the 1991 liberalization policy, corporatization was majorly found critical to the development and functioning of the Indian economy. The booming of minor and major industries and their fluctuating tendency in the market have cautiously been noticed in the latter part of the 20th Century. Economic stability and the tendency to shut down the operations due to large debts became gradual for many industries, especially the minor and medium-scale industries.

The law of insolvency and bankruptcy was a solution to tackle the same. The investor's protection and the restructuring of corporations as a legal remedy for insolvency of corporates was the main aim behind the legislative

efforts. The 2016 Insolvency and Bankruptcy Code was comprehensive legislation that addressed both the causes and consequences of debtors' financial breakdown.

Bankruptcy occurs when a court recognizes and acknowledges insolvency while rejecting instructions for its settlement. When the court is satisfied that the corporation is insolvent, it issues an order dividing the proceeds among the creditors in order to settle the debts. One of the most significant impediments to bankruptcy in India is the 4 years average time it takes to settle bankruptcy cases, which is much longer than in the other developed countries.

IBC Code, 2016

The new Bankruptcy Code (IBC), of 2016 was a result of the TK Viswanathan Committee Report on Bankruptcy Legislative Reforms. The Code creates a separate insolvency resolution process for individuals, companies, and partnership firms. Every insolvency process under the Code may be initiated either by the debtor or the creditors. The maximum time limit is fixed for the completion of the Insolvency Resolution Process (IRP) for both the individuals and the companies. Every application for IRP may be considered within 14 days. The Corporate Insolvency Resolution Process (CIRP) for companies is of 180 days which can be extended to a further period of 90 days when the majority of the creditors agree. For the partnership firms, the time limit is 90 days which may be further extended to a period of 45 days. In 2019, the time limit clause in IBC was amended. The maximum time limit is now fixed as 330 days including the time spent for litigation and for CIRP.

Application of IBC

The law of IBC applies to all individuals, Companies, partnership firms, corporates, etc. But it does not apply to Hindu Undivided families (HUFs), trusts, association of individuals, etc.

The Code repealed the Sick Industrial Companies (Special Provisions) Act, 1985- SICA. The Board of Industrial and Financial Reconstruction (BIFR) was established in the year 1987 under the aegis of the SICA Act, 1985 to determine the level of sickness and to measure the probability of reconstruction of the same. BIFR was dissolved by IBC in the year 2016.

Institutional Framework of IBC

a. The Insolvency and Bankruptcy Board- IBBI

b. National Company Law Appellate Tribunal- NCLAT

c. Insolvency Professionals- IPs

d. Information Utilities-IUS

e. Insolvency Professional Agencies- IPAs

The Insolvency Adjudication Process

The Code deals with a comprehensive way of adjudication of insolvency matters.

For individual Insolvency and Insolvency of Partnership, the Debt Recovery Tribunal is the adjudicating authority and appeals may be made to the Appellate Authority of the Debt Recovery Tribunal.

In cases of Insolvency of Limited Liability Partnership and Corporate Insolvency, the adjudicating authority is the National Company Law Tribunal and appeals may be made to the National Company Law Appellate Tribunal.

Appeals to the Supreme Court of India: Appeals from both the Debt Recovery Appellate Tribunal and the National Company Law Appellate Tribunal is to the Supreme Court of India.

Functional Framework of IBC Code, 2016

Four functional pillars are been established under the IBC, 2016. They are:

a. Insolvency Professionals

They are regarded as an officer of the court. They drive the CIRP or liquidation resolution process of individual insolvency and also under the CA, 2013

b. Insolvency Professional Agencies (IPAs)

There are three main IPAs for enrolling, cost and relationship, compliance, grievance, disciplinary process, etc.

c. Information Utilities (IUs) and NCLAT

The IUs are information gatherers. They assemble, accumulate, validate and disseminate the monetary information from the company and the creditors to facilitate the insolvency process, liquidation and bankruptcy.

d. Insolvency and Bankruptcy Board of India (IBBI)

IBBI frames laws, regulations, bye-laws, circulars, etc with respect to the conduct and process of insolvency and bankruptcy of corporates and individuals.

NCLT - Power to adjudicate

NCLT has the power to issue the following orders in case of insolvency proceeding:

It can order

a. Moratorium

b. Public Announcement of CIRP process and can also call for submission of claims

c. It can appoint an interim Resolution Professional.

While ordering a moratorium, it bars the institution of litigation by or against the corporate debtor at the same time suspends the corporate debtor's ability to move, sell or transfer any of the company assets. One exception to the moratorium is Section 14 (2A) which allows the IRP to continue to supply goods and services as it considers necessary to preserve the value of the corporate debtor. During the time when any of the above orders are prevalent in the CIRP process all the powers ad functions of the Board of Directors stand suspended and the promoters will have no say in the company affairs.

Sooner or later if the CIRP fails, the liquidation process is initiated against the Corporate.

WORLD ENVIRONMENT DAY 2022 - SEMINAR ON OUR ENVIRONMENTAL ISSUES

Ms. NIVYA VALSON
Assistant Professor

Ms. EMIL STANLEY
Assistant Professor

"In the universe are billions of galaxies,
In our galaxy are billions of galaxies,
But there is Only One Earth."

World Environmental Day on June 5th is one of the global platforms to celebrate and create an Environment awareness among the citizen to think positively about the Environment. 2022 is a historic milestone for the global environmental community. It marks 50 years since the 1972 United Nations Conference on the Human Environment, widely seen as the first international meeting on the environment.

Keeping the spirit of the World Environment Day celebration, Bharata Matha School of Legal Studies also celebrated the World Environment Day on 6th June 2022 by organizing a seminar on 'Our Environmental issues'. It also pointed out the importance of preserving nature for the existence of life on the earth. It was a joint venture of BSOLS Nature Club and Goal7[1] . The resource person for the day was Shri Venu Variath, an Environmentalist.

Rev. Fr. Sebastian Vadakumpadan, Director of BSOLS, in his address to the gathering remarked on the importance of nature by recollecting his childhood memories and also insisted on the importance of teaching the value and love of nature to youngsters.

The keynote address was delivered by the expert Shri Venu Variath, an environmentalist.

[8] An internal arrangement of BSOLS formed for quality enrichment.

The speech was enriched with examples and motivation to help the audience to realize and move toward the environment. One of the incidents the speaker quoted was 'Minamata'- the neurological disease caused by mercury poisoning which was witnessed by Japan in the year 1956.

"The Silent Spring" by Rachel Carson was another example that the speaker quoted to inspire the listeners. The book is about the negative effects that humans created on the natural world. It speaks about the pesticides like DDT that were used in the agriculture sector and its impacts on human health . He also put forward the pathetic condition of Endosulfan victims of Kerala.

Along with examples, the speaker was pointing out that the development of the nation is unavoidable, but all developments should consider nature as it is more important for us and also for the future generation. There is a need for scientific research while introducing a new technology or innovation into society. He exemplifies the incident of the nuclear power plant explosion in Germany and its impacts on nature to showcase the importance of research.

Shri Venu Varith, the resource person of the day was also stressing the need for protecting and considering the insects, birds, animals, and other living creatures. According to him, the butterfly should be considered an environmentalist as it helps the creation of next-generation without disturbing the present.

The session was concluded by the speaker expressing his view on nature as the almighty has developed every creature on the earth along with the food they need. It is reserved not only for men but also for all creatures. He asked the audience to look back to our ancestors who were feeding and protecting nature. And also, to respect nature and care for the surrounding for the next generation.

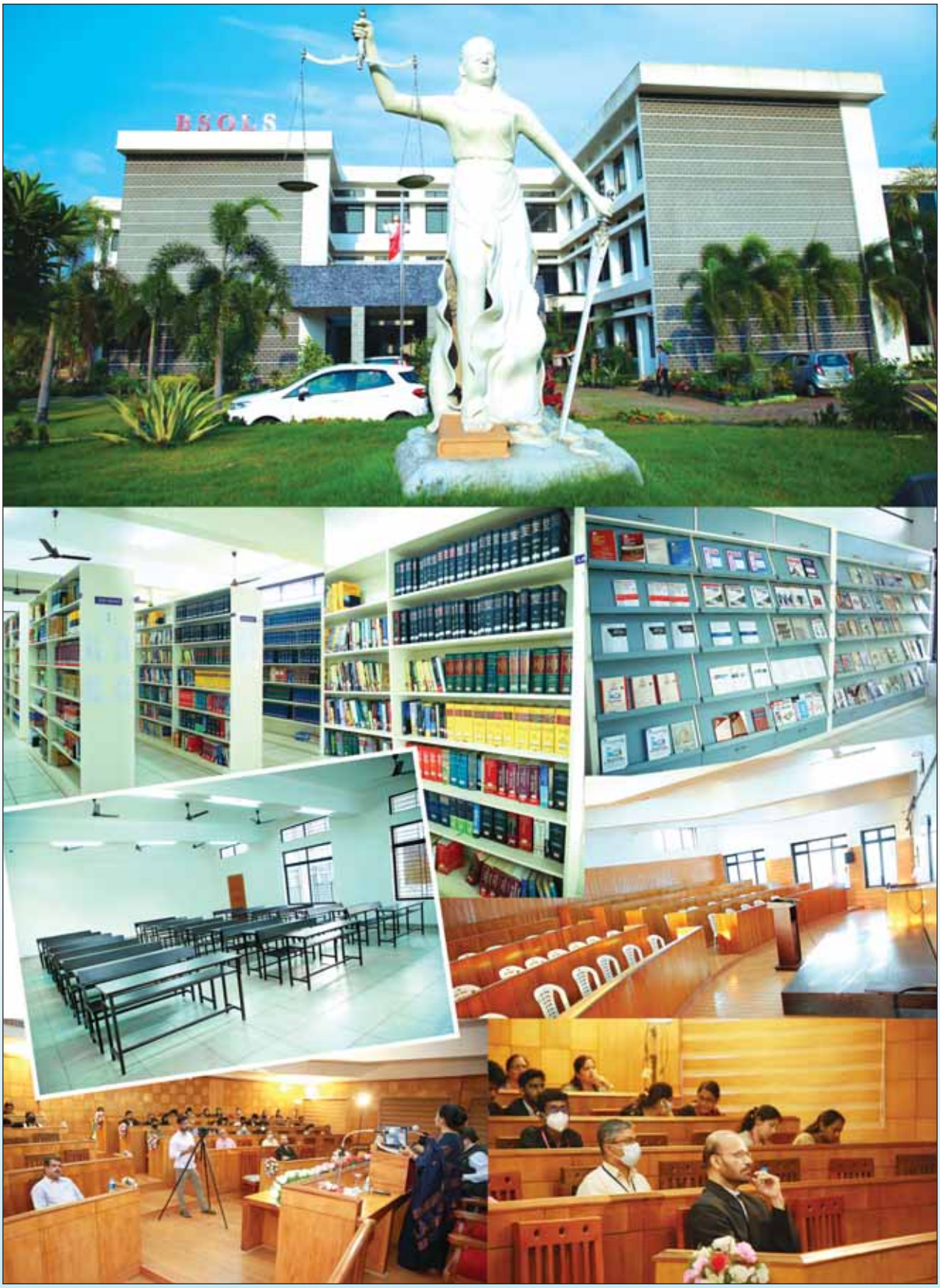
BSOLS always strives to make a difference. World Environment Day, 2022 was celebrated by planting ayurvedic plants.

OUTGOING BATCHES

2016 BA LLB

2016 BBA LLB

2016 B.com LLB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BSOLS Team with Hon'ble Mr. Justice K M Joseph, Judge Supreme Court of India, Archbishop Mar Antony Kariyil and other Dignitaries of ADR International Conclave

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