Monthly • Volume XXXVIX • Page 1-73 • No.04 • April, 2020

ICSI-NIRC NEWSLETTER

Insight

Arbitration & Alternative Dispute Resolution Mechanism

Motto

सत्यं वद। धर्मं चर।
speak the truth. abide by the law.

Vision

"To be a global leader in promoting good corporate governance"

Mission

"To develop high calibre professionals facilitating good corporate governance"

Published by :
CS Sonia Baijal, Regional Director for and on behalf of Northern India Regional Council of the Institute of Company Secretaries of India 4, Prasad Nagar Institutional Area, New Delhi-110005; E-mail: niro@icsi.edu; Phones: 49343000; Fax: 25722662; Published at: NIRC-ICSI, 4, Prasad Nagar instl. Area, New Delhi.

INSIDE :

NIRC-ICSI NEWSLETTER

- NIRC-ICSI Newsletter is generally published every month.
- Articles on subjects of interest to Company Secretaries are welcome.
- Views expressed by contributors are their own and the NIRC-ICSI does not accept any responsibility.
- The NIRC-ICSI is not in any way responsible for the result of any action taken on the basis of the advertisements published in the Newsletter.
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- The write-ups of this issue are also available on the website of the NIRC-ICSI.

Message

From

Hon'ble Mr. Justice Dipak Misra

Former Chief Justice of India

Justice Dipak Misra
Former Chief Justice of India

97, Ground Floor, Sukhdev Vihar, New Delhi-110025, India
Tet: +91 11 26935111 Mobile: +91 9560333111
E-mail: justicedmisra@gmail.com, justkedmisra~infodesk@gmail.com

Message

I am extremely delighted to learn that Northern India Regional Council (NIRC) of the Institute of Company Secretaries of India (ICSI) is bringing out a monthly newsletter on the theme of Alternative Dispute Resolution Mechanism with special emphasis on Arbitration.

Alternative Dispute Resolution System received a different kind of statutory flavour in the early years of this century and the said legal framework has gradually acquired the exalted status.

The litigants can take recourse to Arbitration, Mediation, Conciliation, Lok Adalat and also seek Judicial Settlement depending upon the factual scenario. The fundamental concepts, namely, speedy justice, establishment of an atmosphere of amity and amiability and access to justice constitute the motto of this system. Arbitration and Mediation are at the zenith of the Alternative Dispute Resolution Structure and many commercial disputes are finalized through these two modes. Through the process of Mediation, number of litigations touching various social and family disputes are resolved.

Company Secretaries are proficient in understanding the legal framework underlying commercial transactions and their expertise is necessitated in the drafting of arbitration agreements. These professionals advise the corporates on the invocation of arbitration and conciliation proceedings. They even play an active role in arbitration proceedings involving transfer of securities, insurance claims, etc. If Company Secretaries manifest their unflinching allegiance to the ADR mechanism, it can very well prove to be the catalyst in galvanizing the concept of speedy justice.

I am quite certain that a fusion reaction between vital atomic nuclei of ADR and Company Secretaries is the prerequisite for achieving the desired result of speedy justice in the corporate arena, for ADR is the most efficacious mode of resolution of disputes. Thus, it is incumbent upon every professional, including Company Secretaries, involved in handling corporate matters to nurture and explore, try and get the result of ADR Mechanism for resolving corporate disputes, for it would go a long way in catering not only to the corporate community but also the larger societal interest.

I wish all success to the growth of the newsletter which should inspire the creed of Company Secretaries to inculcate the spirit of ADR and become active participants.

Dipak Misra

Message

From

Hon'ble Mr. Justice (Rtd.) M. M. Kumar

Founder President, National Company Law Tribunal
Former Chief Justice, Jammu and Kashmir

Justice (Retired) M. M. Kumar
Founder President, National Company Law Tribunal
Former Chief Justice, Jammu and Kashmir

D-163, Lower Ground Floor
Defence Colony, New Delhi
mmkumar.j@gmail.com

Message

My greetings and felicitation on your monthly newsletter being published on behalf of Northern India Regional Council of the ICSI. I am happy to note that the theme of newsletter is Arbitration and Alternative Dispute Resolution Mechanism. As an arbitrator and former President, NCLT, I may observe that arbitration is the most potent, efficient and quick way of redressal of disputes. The topic is most appropriate in the times of COVID-19 because a large number of disputes involving breach of contract and force majeure clauses are likely to arise in the post COVID scenario. The newsletter assumes greater significance in that context.

I wish the Northern Region successful times ahead and hope that the newsletter would serve the readers as a milestone to resolve their disputes by ADR.

Justice M. M. Kumar (Retired)

Message

From

CS Suresh Pandey

Chairman, Northern India Regional Council of
The Institute of Company Secretaries of India

From the Chairman

"The greatest glory in living lies not in never failing, but in rising every time we fail."
- Nelson Mandela

Dear Professional Colleagues,

First and foremost, hope you and your family are healthy and safe during these uncertain and unprecedented times. Certainly, we are living through a difficult time but as the saying goes "**This too shall pass**".

As governments around the world are implementing measures to contain this public health crisis, we as Citizens and Governance Professionals, have to act as extended arms of the Government to respond to the health crisis and I am confident that we are going to get through this, together.

Friends, despite all the hurdles and unfortunate happenings, I look at the positive side which is quite evident in the air we breathe, the river we live nearby and the opportunity to introspect ourselves. This is the time when we should do our SWOT analysis and work on our weaknesses.

Friends, our Institute has, till now, contributed an amount of 5 Crore rupees from the Corpus of ICSI and Rupees Twenty Five Lakhs from contributions of members and employees of ICSI to the PM CARES Fund, with a view to support in combating and providing relief efforts against the Pandemic. I also feel proud that some of our members are working tirelessly during these testing times and helping the needy people around.

It is a matter of great satisfaction that, our initiative of starting Online Classes for OTC Students of NIRC has made headway and was extended Pan India for all the OTC Students of ICSI, thereby assisting the students in this Pandemic crisis. Our efforts to deliver quality education in classrooms continue in providing excellence in the online coaching also.

To keep our members updated, ICSI is continuously organizing webinars. Very recently, NIRC organized programmes for its members with IICA and very soon, we will be organizing regular online programmes for our members for their knowledge updation and capacity building.

I take this opportunity to pay my sincere thanks to the entire NIRC Team of all Regional Council Members, Chapter Chairpersons, Managing Committee Members of Chapters and Officials of Northern Region and Chapters for the hard work and dedication they have put in this time of global pandemic for continuous development of members, students and all the stakeholders.

This time the theme of our Newsletter is based on **"Arbitration & Alternative Dispute Resolution Mechanism"**, to mark the recognition provided to the Profession of Company Secretaries under the Arbitration & Conciliation Amendment Act, 2019.

Possessing knowledge of the legal system, drafting skills, advisory skills, a Company Secretary can prove to be a valuable asset in the field of Arbitration and this will not only contribute in his professional growth but also in the development of the entire ADR Mechanism.

Our newsletter of this month assumes great significance not only because the theme of this newsletter is related to new area of recognition for us but also because the special messages on this theme is coming directly from the former heads of the Judiciary of India. I feel honored and humbled that our Honorable (Justice) Dipak Misra, former Chief Justice of India & Honorable (Justice) MM Kumar, Founder President, NCLT & Former Chief Justice, Jammu and Kashmir both has encouraged us through their messages in this newsletter.

I am confident that, we, the Company Secretaries will act as an important catalyst in the national and international ADR Mechanism.

I look forward to your valuable suggestions and feedback. Feel free to interact with me at chairman.nirc@icsi.edu

Wishing all of you a good health!
Stay Safe, Stay Healthy, and take care.
I am just a phone call away!

Yours Own,

CS Suresh Pandey
Chairman-NIRC of ICSI
Chairman.nirc@icsi.edu
Mob. - +91 9968300649

ICSI-NIRC Seminar on International Women's Day on the theme "An Equal World Is An Enabled World # Each For Equal, I am Generation Equality: Realizing Women's Rights" on 8th March, 2020 at India Habitat Centre, New Delhi

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1 CS Suresh Pandey, Chairman, Northern India Regional Council, ICSI addressing the participants of the Seminar.

2 CS Suresh Pandey presenting planter to Chief Guest, Ms. Shazia Ilmi, Spokesperson and Vice-President, BJP Delhi.

3 CS Suresh Pandey, Chairman, NIRC presenting Shaheed Ki Beti Certificate to Chief Guest, Ms. Shazia Ilmi.

4 CS Ashok Kumar Dixit, Officiating Secretary, ICSI presenting Shaheed Ki Beti Certificate to Guest of Honour, Dr. (Ms.) Madhu Vij, Central Council Member (Govt. Nominee) ICSI.

1 CS Suresh Pandey presenting Shaheed Ki Beti Certificate to Guest Speaker, CS Vijaya Sampath, Advocate and Independent Director along-with CS Monika Kohli, Chairperson, Women Empowerment Committee, NIRC & Sister BK Sangeeta, Guest Speaker.

2 CS Suresh Pandey presenting Shaheed Ki Beti Certificate to Guest Speaker, Sister BK Sangeeta along-with CS Monika Kohli, CS Devender Suhag, Treasurer, NIRC & CS Himanshu Harbola, Regional Council Member, NIRC.

3 L to R CS Sonia Baijal, Regional Director, NIRC, CS Monika Kohli, CS Suresh Pandey, Ms. Shazia Ilmi, Dr. (Ms.) Madhu Vij, CS Ashok Kumar Dixit, CS Devender Suhag, Treasurer, NIRC & CS Himanshu Harbola launching Special Edition of NIRC-ICSI Newsletter on International Women's Day.

4 Group Photograph of Dignitaries.

5-6 Audience view of the Seminar.

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1 CS Suresh Pandey, Chairman, NIRC-ICSI addressing the participants of 303rd MSOP: Dias - CS Himanshu Harbola, Chairman, MSOP Committee, NIRC-ICSI, Special Guest, CS Ashish Kumar Gupta, Practising Company Secretary and CS Surya Kant Gupta, Regional Council Member.

2 Group Photograph of Valedictory of 303rd MSOP Batch

3-4 CS Suresh Pandey, Chairman, NIRC, Presenting Completion Certificate to participant of 304th MSOP Batch.

5-6 Interactive session of CS Suresh Pandey, Chairman, NIRC with EOS/ Office In-Charge of Chapters in Northern India Regional Council.

Recent Initiatives taken by NIRC

Dear Friends,

I am pleased to enlist the recent initiatives for your kind information and ready reference:-

DISTANCE NO BARRIER – WORK FROM HOME

Despite the lockdown there is no stoppage in the workflow of NIRC and its chapters. We are trying our best to fill all the gaps created due to current situation. In a first of its kind, all the officials of NIRC are dedicatedly working from their respective homes. All Chapters are in alignment with the Regional Council. Many Video Conference are organized with the Chapter Chairman and Chapter Incharges. Almost every day we are connected through Video Conferences and Whatsapp group.

Further, to provide better service, dedicated email id's for matters related to Members & Students are being maintained and we are able to resolve most of the quires on real time basis.

You may contact to our dedicated email id's i.e at chairman.nirc@icsi.edu for matters related to members, arun.rawat@icsi.edu for matters related to Program Credit Hours and at vinay.baisoya@icsi.edu for matters related to Oral Tuition Classes at NIRC.

NIRC ORAL COACHING – EXTENDED PAN INDIA

Need is the mother of innovation and this applies correctly to the current scenario. We started providing online Classes to students of NIRC OTC, which got extended to Pan India OTC students of ICSI. The students who have registered for coaching of Executive course of OTC throughout the length and breadth of India are taking the advantage of Online classes of NIRC. We are thankful to CS Ashish Garg, President, ICSI to enable us to extend NIRC OTC Classes Pan India and to the faculty who consented to outreach the students at wider scale. This is very proud moment for NIRC that in the need of the hour, we could contribute our bit for the development of the students.

FIGHT AGAINST COVID-19

In the compelling circumstances caused by COVID-19, the CS fraternity is standing tall and our members are coming forward and doing their best to provide the necessities of life to fellow citizens, be it food, money, sanitizers, masks etc. by distributing them to the people in need. The details of efforts taken by our members from different chapters, districts are covered in the Newsletter under the head Initiatives of Chapters of NIRC of ICSI.

VIDEO COMMUNIQUE

A first ever Video message by the Chairman, NIRC, encouraging people to remain connected by leveraging on technology during social distancing and sharing initiatives of NIRC of ICSI was uploaded on NIRC portal as well as circulated amongst members and students. It is one of the most effective way of communication in the present circumstances caused due to Pandemic. The video is available at the link https://photos.app.goo.gl/H6ayEMW1BiCjWnJi6 for kind viewing.

PODACAST MESSAGE

A first ever PODCAST message by the Chairman, NIRC and Mr. Suneel Keswani, Corporate Trainer was circulated to all the CS Students of Northern Region. This message is for the benefit of CS Students on how to overcome these testing times of Pandemic Lockdown. The Objective is to motivate, inspire and guide students to invest this special time at home so that they continue their academic progress on a Self-directed learning mode and de stress themselves by spending a quality time with their family.

ONLINE CRASH COURSE

CS Examinations are approaching, and this is the time when we had thought of organizing Crash Course for students. But keeping in view the current scenario due to Pandemic situation and to equip our students, we are organizing online crash course batch for the student of Executive Program in Tax Laws.

ONLINE MSOP

With a view to facilitate students, the Executive Committee of NIRC discussed the matter in its meeting held on 06-04-2020 through video conference and initiated to organise online MSOP for students of Northern Region so that the students can update themselves in current scenario as well as get their Membership timely. We have taken up the matter with Head Office and are seeking their permission. The same will be informed to all the eligible students after getting the approval of the competent authority.

ONLINE MASTER CLASSES

Due to lockdown prevailing in the country and requests received from members for organising online programs, we have initiated the process of organizing the Online Master Classes. The same will be informed to all the members through announcement in coming days.

JANTA CURFEW

With the apprehension of spread of Coronavirus, the appeal made by Hon'ble Prime Minister of India, Shri Narendra Modi to observe the Janta Curfew on 22nd March, 2020 was widely disseminated and the Company Secretary fraternity observed Janta Curfew on 22.03.2020 in letter and spirit.

'PM CARES' FUND – CONTRIBUTE GENEROUSLY

The spread of COVID-19 virus has warranted supportive and concerted efforts on the part of each one of us. To support those affected by COVID-19, we appeal all our members, to come forward and support to the cause by making voluntary contributions by clicking the following link: http://www.icsi.in/DonationCovid19/

All contributions are eligible for Section 80G benefits.

The Institute has, till now, contributed an amount of 5 crore rupees from the Corpus of ICSI and Rupees Twenty Five lakhs from contributions of members and employees of ICSI to the PM CARES Fund, with a view to support in combating and providing relief efforts against the Pandemic.

Let us all contribute in our own humble way and aid the fight against this pandemic.

RESEARCH PAPER WRITING COMPETITION

A Research Paper Writing Competition is arranged for the members of Northern Region on the topic "Sustainability of Indian Economy Post Lock Down (Corona Pandemic)". The evaluation will be done by independent screening committee and the authors of 25 selected Research Papers will be awarded 4 PCH and Research Papers will also get published appropriately.

FUNCTIONAL COMMITTEES

As you are aware that NIRC performs its various activities through functional Committees constituted every year. The details of Committees for the year 2020 were sent through email to all the members and the same is also covered in this issue of Newsletter.

INVESTOR AWARENESS PROGRAMS

NIRC organized Eight Investor Awareness Programs at various Colleges and Institutes, during the first quarter, under the aegis of Investor Education and Protection Fund Authority, Ministry of Corporate Affairs, Government of India for the benefit of students and faculties of Commerce department.

SEMINAR ON INTERNATIONAL WOMEN'S DAY – 1ST TIME IN WOMEN'S DAY PROGRAMME BOTH MEMBERS AND STUDENTS PROVIDED PLATFORM

In order to celebrate the International Women's Day on March 8th, NIRC-ICSI organized a Full Day Seminar on the topic An Equal World Is An Enabled World # Each For Equal, I Am Generation Equality: Realizing Women's Rights at India Habitat Centre, New Delhi. Ms. Shazia Ilmi, Spokesperson, BJP and Vice President, BJP Delhi was the Chief Guest. Dr. (Ms.) Madhu Vij, Council Member (Govt. Nominee), ICSI was Guest of Honour. CS Vijaya Sampath, Advocate & Independent Director and Sister BK Sangeeta were the Guest speakers. The Seminar witnessed rich deliberations and extensive exchange of ideas. The unique feature of the Seminar was that Participants of Seminar were also provided platform to share their views on the occasion of International Women's Day.

INTERACTIONS WITH STUDENTS & ADDITION OF PUBLICATIONS IN NIRC LIBRARY

We have many interactions with the students of NIRC OTC and students availing Library and reading room services at NIRC, to understand and appreciate suggestions/issues/concerns, which were appropriately dealt with. The students also shared the list of Books, which may be added to our Library. With a view to provide quality education to students, many publications are added to NIRC Library.

TWO PARALLEL BATCHES OF MSOP

Keeping in mind that the students will be eager to apply for the membership of our Institute. We organized two parallel batches of MSOP - 303rd & 304th batch. Both the batches had 50 participants each. The participants of both the batches attended the Seminar on International Women's Day at India Habitat Centre, New Delhi and given an opportunity to share their views in front of more than 300 Professionals. Further Special visit was arranged for the participants of 302nd MSOP to NCLT, Delhi. In the last few concluding days of MSOP, due to apprehension of spread of Corona virus, special measures were taken to ensure safe environment to the participants and social distancing was maintained in the valedictory session.

STUDENT PROGRAMS

Various programs were organised for the overall development of the Students of the Institute inter- alia including the following:

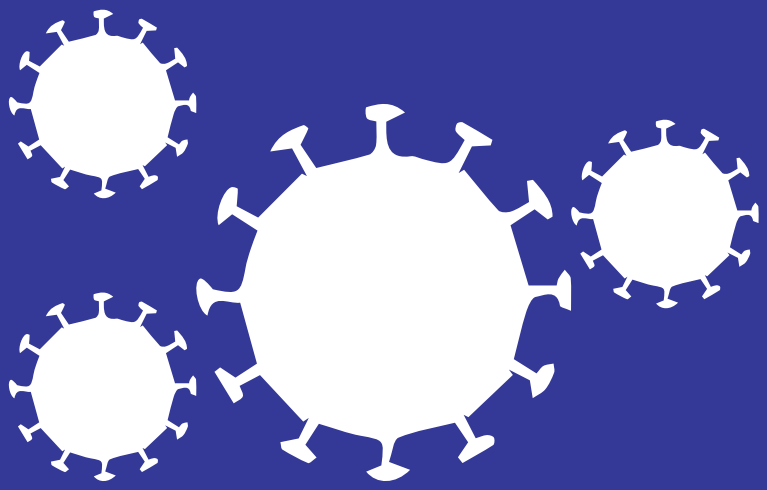
I. One day Orientation Programme for CS Foundation Students (9th March, 2020)
II. 2 Days induction Program (3rd - 4th March 2020)
III. 3 Days E-Governance Program (5th - 7th March 2020)
IV. Professional Development Program (13th March 2020)
V. 303rd Batch of MSOP (2nd – 19th March, 2020)
VI. 304th Batch of MSOP (4th – 21st March, 2020)

As always, I am just a phone call away! Please feel free to connect for any suggestions or feedback.

Looking forward for your invaluable support.

Yours own,

CS Suresh Pandey
Chairman-NIRC of ICSI
Chairman.nirc@icsi.edu
Mob. - +91 9968300649



FIGHT AGAINST COVID-19

EFFORTS FROM NORTHERN REGION COUNCIL

1 Treasurer, Faridabad Chapter distributing food.

2 White wash at Faridabad Chapter building for students protection.

3 Members of Bareilly Chapter distributing Sanitizers in their areas.

4 Member distributing food.

5 Amritsar chapter officials distributing daily food.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Dear Professional Colleague,

Together we can, Together we will

The Institute of Company Secretaries of India (ICSI) has constantly endeavoured to support the initiatives of the Government of India. Realising its duty and responsibility towards the nation, the ICSI has undertaken a host of supportive actions, initiatives and measures for its own members and students as well as to stand shoulder to shoulder with the Government. One such measure has been contributing a sum of Twenty Five Lakh rupees in first tranche to the PM CARES Fund dedicated towards the cause of curbing the spread of COVID-19 virus, which was much applauded by Shri Narendra Modi, Hon'ble Prime Minister of India.

In furtherance of our initial contribution and understanding the need to support the efforts of the government in scaling up the public healthcare infrastructure, the Institute has contributed an additional sum of **Five Crore rupees** from the Corpus of ICSI to the PM CARES Fund with the primary objective of dealing with this unprecedented challenge posed by the spread of COVID-19 pandemic, and to provide relief to those affected.

We extend our heartfelt appreciation to all our members, students and stakeholders for standing up to the occasion and supporting the cause and hope that we shall continue to support the cause in the times to follow.

Holding strong to our affirmation **"Together we can, Together we will"**, we are confident that with our committed and dedicated efforts, we shall soon be able to overcome this situation and march forward on the road of becoming a much stronger nation.

Regards,

(CS Ashish Garg)
President
The Institute of Company Secretaries of India

APPRECIATING ICSI FOR COMING TOGETHER FOR THE HEALTHIER FUTURE OF INDIA

EXTENSION OF ONLINE ORAL TUITION CLASSES OF NIRC TO THE PAN INDIA

COMMUNIQUE

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Dear Students

"We wish to inform that that in view of the current situation of entire country being under lockdown, ICSI, has taken an initiative to provide online Classes to Executive course students of Class Room Teaching Centres of ICSI.

ICSI has received an overwhelming feedback from the Students who have attended these online classes in Northern Region of ICSI.

To extend the benefit of online classes to the Class Room Teaching students of ICSI across the country who are undergoing classes at Regional/Chapter offices , ICSI is making these online classes available for all CRT students.

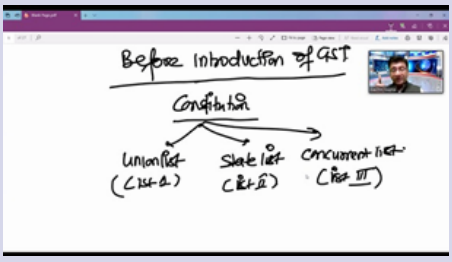
In this way we are saving the time of the Students and also helping them to study sitting at their home. The tentative daily schedule of Module 1 of Executive course online classes (Monday to Saturday) is as under please: 1. Tax Laws by Mr. Sachin Gupta : 09:00 AM to 10:00 AM 2. Setting up business entities and closure by Mr. Neeraj : 10:00 AM to 11:00 AM 3. Jurisprudence, interpretation and general laws by Mr. Pritika Nagi : 11:00 AM to 12:00 PM. 4. Company Law by Mr. Simranjeet Singh : 12:00 PM to 01:00 PM. You may join the classes through the link

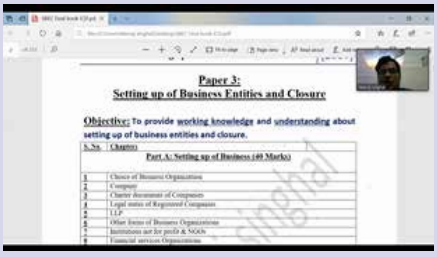
https://zoom.us/j/536788823

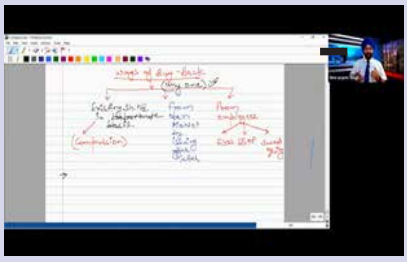
Kindly click on the link mentioned above to join online classes as per given schedule . The classes will be available on first come first serve basis. We shall also arrange Executive Module 2 schedule online live classes shortly. Wish you all the very best and good luck.

Regards
CS Ashish Garg
President

GLIMPSES OF NIRC ONLINE CLASSES PAN INDIA







Students feedback regarding Online Session of OT Classes

Feedback of Students about all India online OT Classes by Northern India Regional Office - ICSI

Good Initiatie by ICSI . it is very useful to us
Nirmala
Chennai

It's a reaaly helps to this time towards revision and further improvement
Hri Krishnan
Chennai

Faculties are good and teaching ability good, it's a stand by when these type of situations arises
Saleem
Chennai

Methodolgy good but for like south students some where explaining in Hindi language unable to catch the same
Saryanya
Chennai

Its very good idea by icsi and exends support in this manner.
Nandinee
Chennai

Good Initiative by ICSI. it is very useful to us in this scenario.
Mausami Singh
Kolkata

Faculties doubt's and concept is clearance and lectures on time.
Ribhu Bagchi
Kolkata

From Home online lecture is convenient. Faculties Notes easy understanding and doubt clearance.
Isha Mukherjee
Kolkata

All the online classes given by ICSI was very good and interesting for both module still now ..
Sreyashi Das
Kolkata

The technique of teaching is just amazing. Explained each and every point so that gst is now very easy for us..

Anal Roy
Kolkata

I am thankful to institute's concern for us by providing us online classes during outbreak of Covid-19.
It would be really great if we students get the recording as well after all the lectures the same day.
One suggestion I would like to give is please increase the time duration of lectures.
Sincere thanks to all the faculties, vinay sir and director maam.

Diya Vermani
Executive module-1
New batch

Ayush Exe Admin Jun2020
Feedback regarding online classes
@Madhav Rv
Classes are going pretty well. Since it was day-2 today, students and faculty members will get used to this new way

Faculties are good and teaching ability good, it's a stand by when these type of situations arises.
Guru Karthick
Chennai

Time to time completion of faculties are doing, Communicating is Simple.
Tarun Karanam
Mumbai

Faculties way of teaching is understanding, Faculties notes are understanding.
Mansi Wadel
Mumbai

Faculties are providing notes for easy understanding, Each and every points explaining in details.

Faculties are providing notes for easy understanding, Each and every points explaining in details.
Harsha Shamdasani
Mumbai

Faculties explanation and communciation skills is good
Komal Makwana
Mumbai

Faculties doubt's and concept is clearance and lectures on time.
Sanya Fonseca
Mumbai

CONNECT THROUGH VIDEO CONFERENCES DURING THE LOCKDOWN

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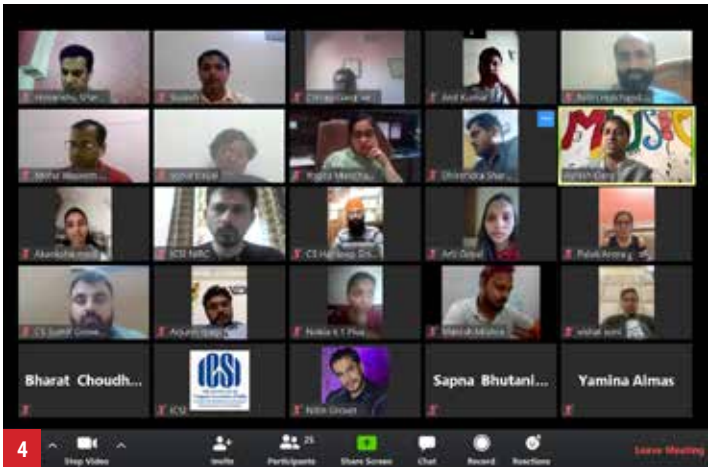

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1-2 CS Ashish Garg, President, ICSI addressing the informal meeting with CS Suresh Pandey, Chairman, NIRC and Chairperson of Chapters of NIRC-ICSI.

3-4 CS Suresh Pandey, Chairman, NIRC, addressing the participants of Video Conference with Chairperson of Chapters of NIRC of ICSI.

5 Meeting of Executive Committee of NIRC through Video Conference.

6 Management Committee meeting of Panipat chapter of NIRC-ICSI.

Together we can, together we will

Stay home, stay safe, salute to all front line fighters and maintain social distancing and do #Namaste

#promotenamasteIndia

#CS Members support Namaste India Campaign!

In Sanskrit, the word is Namaste is the combination of namah (to bow) and te (you), meaning "I bow to you." It recognizes the belief that the life force, the divinity, the Self, or the God in me is the same in all. Acknowledging this oneness and equality with the meeting of the palms, we honor the god in the person we meet.

Scientific reason is also believed to be with folded hands. This activates the Heart Chakra and the obedient cycle and the rapid transmission of positive energy in the body which gives mental peace and self strength. This increases control of anger and brings humility in nature.

As the outbreak of the coronavirus, which has so far infected many people in the world, The World Health Organisation (WHO) has suggested that the best way to fight this spread is for everyone to practice social distancing. Now, more people across the globe, including global leaders, are using Namaste.

In every situation, "Namaste has become a necessity.

#Let's do Namaste !

***Initiative by Chairperson, Gorakhpur Chapter of NIRC-ICSI**


#TogetherWeCan
292nd Batch of MSOP - ICSI
PIC•COLLAGE

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

NORTHERN
INDIA
REGIONAL
COUNCIL

INITIATIVES OF CHAPTERS

AGRA CHAPTER

Initiatives to Fight against COVID 19

Agra Chapter has circulated mail and appealed to Join the moment of Govt. of India along with ICSI and make contribution to fight with Corona Pandemic (COVID-19).

Other Initiatives

Extending full support to stake holders via online modes e.g email, Whatsapp etc.

ALWAR CHAPTER

Initiatives to Fight against COVID 19

Managing Committee members and other members of Alwar Chapter contributed in ICSI Fund in respect to covid 19 Corona relief & Some of our members had distributed Rashan Kit to needy People.

Other Initiatives

Online test papers/series for our foundation OTC students of June, 2020 attempt is being circulated among students for practice, Our management committee has also invited Articles and write-ups for NIRC news letter & Queries/emails of students and members are being attended over phone/WhatsApp/emails and suitable suggestions are provided to them with full support.

BHILWARA CHAPTER

Initiatives to Fight against COVID 19

Bhilwara Chapter is encouraging members to contribute in relief fund, an appeal is made to all the members and students for taking precautionary measure and to follow the government guidelines.

Other Initiatives

Provided personal contact number to all the members and students and encourage them to use online services, module and call/mail personally if required.

CHANDIGARH CHAPTER

Initiatives to Fight against COVID 19

Sending bulk emails to the Students and Members regarding the preventive actions to be taken to fight against the COVID 19, looking to the degradation of the environment, health has become one area of concern. For the betterment of the members in this direction, we have tied up with one hospital for offering the discount to the members.

Other Initiatives

Students and Members were asked to submit articles on various issues like burning issues of Corporate Laws etc (members) / Innovative Ideas for the Betterment of Chapter etc. (Students) during this time of lock down & Ways and Means be thought for to ensure that maximum members interact.

AJMER CHAPTER

Initiatives to Fight against COVID 19 and Other Initiatives

Shifting of Chapter office at new location, Start of quarterly e-news letter of Chapter, Starting of Class Room Teaching Classes & Webcast by chapter during COVID-19.

AMRITSAR CHAPTER

Initiatives to Fight against COVID 19

Under the initiative work from home, Amritsar Chapter is fully supporting and replying to all the queries of students and members via mail, whatsapp and phone, Requesting Members of management committee and other stakeholder to contribute in PMNRF to fight with COVID-19, Members of Amritsar Management Committee are planning to distribute ration kit to the needy.

Other Initiatives

Encouraging Members to take CSBF Membership of ICSI & Taking all other precautions to defeat corona virus.precautions to defeat corona virus.

BAREILLY CHAPTER

Initiatives to Fight against COVID 19

Fight against COVID 19, Chairman is making appeals to students and members to contribute to the relief fund of Govt. of India and Govt. of Uttar Pradesh & Making appeals to all the stakeholders to follow the guidelines of Government of India during lockdown.

Other Initiatives

The OTC have being resumed through online mode. The students have been motivated to approach office regarding their queries or contact ICSI through www. support.icsi.edu & All the teachers who attended the Teachers' Conference have been apprised of CSEET by sending E - brochure and CSEET prospectus through WhatsApp.

BIKANER CHAPTER

Initiatives to Fight against COVID 19

Encouraging members to contribute in the relief fund, an appeal is made to all the members and students for taking precautionary measure and to follow the government guidelines.

Other Initiatives

Provided personal contact number to all the members and students and encourage them to use online services, module and call/mail personally if required.

DEHRADUN CHAPTER

Initiatives to Fight against COVID 19

Queries/Mail circulates and appeals to Join the moment of Govt. of India along with ICSI and make contribution to fight with this Pandemic COVID-19.

Other Initiatives

Under the initiate work from home, we are fully supporting and replying to all queries of students and member via mail, phone and Whatsapp.

GHAZIABAD CHAPTER

Initiatives to Fight against COVID 19

Encouraging Members for contribution towards relief fund set-up by ICSI.

Other Initiatives

Invited Articles and Write-ups for our Chapter's monthly newsletter (Navchetna) for March issue, Resumed our OT Classes by online mode & Encouraging Members to take CSBF Membership of our institute.

GORAKHPUR CHAPTER

Initiatives to Fight against COVID 19

In the fight against COVID-19, Chairperson collected Rs. 10,000/- from all the known and professional friends and donated it in COVID -19 Relief Fund. She has also donated in PMCARE and ICSICARE. Chairperson also distributed Biscuit packets to more than 300 needy persons, Requested the Members and other Stakeholders to Join the movement of Govt. of India along with ICSI by making contribution towards the PMNRF and PM CARES to fight with this Pandemic COVID-19. Cleaning of entire Chapter premises was carried out. Do's & Don't displayed at Notice board of the Chapter. Managing Committee Members are informed to donate contributions towards Relief Fund.

Other Initiatives

Queries/emails of students and members are being attended over phone/ WhatsApp/emails and suitable suggestions are provided to them with full support. Students are being suggested to submit & resolve their queries through http://support.icsi.edu & Members and Students are encouraged to make effective use of online services viz Online Placement portal, Online Examinations for value additions, PCH Hours etc.

JAIPUR CHAPTER

Initiatives to Fight against COVID 19

Providing food to needy, 2000 food packetson daily basis with the help of social organizations under the guidance of Chairman, Jaipur Chapter. Also helping various organisations in this like forti, Akshay patra. Some of our vendors organization also providing food services to needy. Like celebration day cafe. , blue Pluto, La calliforne cafe.

Other Initiatives

Under the initiate work from home, we are fully supporting and replying to all queries to students and member via mail, phone and Whatsapp.

JALANDHAR CHAPTER

Initiatives to Fight against COVID 19

Distribution of Biscuit packets to more than 250 needy persons. Cleaning of entire Chapter premises was carried out.

Other Initiatives

Queries/emails of students and members are being attended over phone/ WhatsApp/emails and suitable suggestions are provided to them with full support, Students are being suggested to submit & resolve their queries through http://support.icsi.edu

KANPUR CHAPTER

Initiatives to Fight against COVID 19

COVID-19, instructions followed and communicated to the members/staff. Orders, Directions issued by the Central Govt., State Govt. as well as ICSI HQ have also been followed. Members are requested to contribute in the PM Crises Fund through ICSI. Kanpur Chapter is also planning to help to the poor families by providing food/ materials from the contribution of the members/ managing committee/ staff members. Taking Report on Safety of chapter assets time to time.

Other Initiatives

Online classes provided to the students of class room teaching of Kanpur Chapter with the help of NIRC Team.

FARIDABAD CHAPTER

Initiatives to Fight against COVID 19

Faridabad Chapter has taken the initiative of cleaning the Chapter Building Class room and officials /Chairman room by white-washing the same, We have put a Sanitizer at the main entry door, Do's and Don'ts of COVID19 is fixed on the Notice Board, All Students advised to connect through online mode only, Facilitate/ handle all queries of the Students through whatsapp/e Mode/Phone, Ensuring the Safety of the Building /Assets during Lockdown- We have taken the steps to ensure the safety of the building and assets of the ICSI-FBD Chapter by deputing round the clock the security guard (day/night) earlier it was only on night , now it for day time also.

Other Initiatives

Strengthen OT Classes: In order to strengthen our oral coaching classes, Chapter has proposed students to pay fees of oral coaching classes in two instalments instead of paying in one go, this will help ease their financial burden and in a way we can compete with the private coaching centres. CAP at Rural Areas- Chapter has conducted CAP in rural areas to make them aware of CS and our oral coaching classes. Reading Room Facility – Chapter is going to establish reading room facility for the CS Students at our Chapter premises, but due to COVID19 the same is postponed. Seminars/Workshop: In order to complete the PCH hours for members, Chapter is conducting Seminars/Workshops for members every weekend from February, 2020, CSBF Members : We are encouraging our members for becoming a member of CSBF by making them aware of the benefits of the same, Corporate Membership : We are encouraging more members from Faridabad to become a Corporate Member with minimum Fees of Rs.1500 (inclusive of GST) for the Calendar year 2020 at Faridabad Chapter program, in same lines as in year 2019.

GURUGRAM CHAPTER

Initiatives to Fight against COVID 19

At this time of crisis when the entire country is fighting against COVID-19, the Chairman has taken the initiative to collect funds from people to help the poor and needy people who are require assistance at this time, Coordinating with local police station and Gurugram administration office for monetary and food related help: Chairman, Gurugram Chapter is coordinating with the local police station as well as the Gurugram administration office in providing monetary and food related assistance to the needy people who are in dire need of the same in this critical situation.

Other Initiatives

Chairman, Gurugram Chapter is availing this time to teach his parents about the basics of computers so that they can also learn computers which will assist them in the future should any such situation arises which requires them to use the computers. Also, he is helping them at this time in learning basic English for their own benefit, Teaching free Income Tax on zoom to those who want to grow in job: Chairman, Gurugram Chapter is utilizing this time to teach Income Tax to those people who wish to grow in their job by acquiring the knowledge of Income Tax. The best about this initiative is that the same is being taught to the people on honorary basis and no fees is being charged for it.

JODHPUR CHAPTER

Initiatives to Fight against COVID 19

Requested the Members and other Stakeholders to join the movement of Govt. of India along with ICSI by making contribution towards the PMNRF and PM CARES to fight with this Pandemic COVID-19.

Other Initiatives

Replying to all queries of students and member via mail, phone and Whatsapp.

JAMMU CHAPTER

Initiatives to Fight against COVID 19

Members are informed to donate contributions towards relief fund.

Other Initiatives

Started classes on zoom app since 15th march 2020. There are total 14 students in EXECUTIVE mod II, Students are informed to submit their queries on support.icsi.edu and even contact telephonically to Office.

KARNAL CHAPTER

Initiatives to Fight against COVID 19

Requested the Members and other Stakeholders to join the movement of Govt. of India along with ICSI by making contribution towards the PMNRF and PM CARES to fight with this Pandemic COVID-19.

Other Initiatives

Replying to all queries of students and member via mail, phone and Whatsapp.

LUCKNOW CHAPTER

Initiatives to Fight against COVID 19

All precautionary measures are being taken to fight the COVID 19. Additionally, an appeal by Chairman, Lucknow chapter to help all those people who require assistance in terms of food or financially and encouraging members for contributions towards relief fund.

Other Initiatives

Queries/Emails of all stakeholders either over phone or emails are being attended & suitable suggestions are provided accordingly, Students are being suggested to submit & resolve their queries through http://support.icsi.edu, Members are encouraged to make effective use of online services viz Online Placement portal, PMQ, Online Examinations for value additions, PCH hours etc., Students are being advised to avail online modes of classes through HQ & through our faculties (Oral Coaching Classes are being run via Zoom App) so that their preparations should not be hampered. The online mode of our classes will be resumed soon.

MEERUT CHAPTER

Initiatives to Fight against COVID 19

Cleaning of entire Chapter premises was carried out, Do's & Don't of WHO displayed at Notice board of the Chapter, MC Members are informed to donate contributions towards Relief Fund. The Chairman has advised to contribute once the lockdown is over.

Other Initiatives

Queries of Stakeholders are taken over phone & whatsApp and are suitably replied. Also they are encouraged to utilize online services of the ICSI as much as possible.

NOIDA CHAPTER

Initiatives to Fight against COVID 19

Chapter is following directives received from time to time such as use of sanitizer etc and then work from home.

Other Initiatives

During this period, we have tied up with 5 Hospitals and two more yet to receive letters, we have resumed our OT Classes by online mode, E newsletter of Noida Chapter is under process and will be released soon, Chapter Chairman is encouraging Members for contribution towards relief fund.

PANIPAT CHAPTER

Initiatives to Fight against COVID 19

The Management Committee had contributed in ICSI in respect to Covid 19 Corona Relief Fund.

Other Initiatives

The Management committee is taking initiative to conduct E. PDP and E. EDP for the students, The Management committee has invited Articles and Write-ups for chapter News Letter.

UDAIPUR CHAPTER

Initiatives to Fight against COVID 19

Encouraging members to contribute in relief fund and appeal to all the members and students for taking precautionary measure and follow the government guidelines.

Other Initiatives

Provided personal contact number to all the members and students, encourage them to use online services, module and call/mail personally if required.

KOTA CHAPTER

Initiatives to Fight against COVID 19

Requested the Members and other Stakeholders to join the movement of Govt. of India along with ICSI by making contribution towards the PMNRF and PM CARES to fight with this Pandemic COVID-19.

Other Initiatives

Replying to all queries of students and member via mail, phone and Whatsapp.

LUDHIANA CHAPTER

Initiatives to Fight against COVID 19

Ludhiana Chapter is always striving to upgrade the skill set of the members. In this direction a small step was taken by Ludhiana Chapter by organizing ICSI-RVO course at Ludhiana Chapter. That was attended by 14 participants. This has opened a new and emerging area of ample opportunities for the members of ICSI and also connected the professionals having prowess in other domains, we are always keen to explore the unexplored areas for our members. We always try to connect the other professionals with us for creating synergies. In the times to come, we have also planned to connect engineers for sharpening our skills in the area of Cyber Intelligence. We are trying to organize the programme on GST Practice and Consultancy. Further we have also lined up a programme with a renowned Advocate as a speaker for enlightening us on the schemes of MSME, recovery and compliance mechanism under it, Policies under MSME. We have approached the members and students for approaching their schools for conducting Career Awareness Programmes.

Other Initiatives

Looking to the degradation of the environment, health has become one area of concern. For the betterment of the members in this direction, we have tied up with hospitals for offering the discount to the members.

PATIALA CHAPTER

Initiatives to Fight against COVID 19

The cleanliness of the chapter premises will be fully taken care of as well as the infrastructure, the members of the Patiala chapter has taken following initiatives for Novel Coronavirus (Covid-19).

Other Initiatives

Start the Quarterly E-newsletter of chapter & we are trying our best to start the OTC class.

PRAYAGRAJ CHAPTER

Initiatives to Fight against COVID 19

Replying to all queries of students and member via mail, phone and Whatsapp.

Other Initiatives

Requested the Members and other Stakeholders to join the movement of Govt. of India along with ICSI by making contribution towards the PMNRF and PM CARES to fight with this Pandemic COVID-19.

SHIMLA CHAPTER

Initiatives to Fight against COVID 19

The Chairman cordially appealed to all stakeholders to donate generously in the Prime Minister National Relief Fund or 'PM CARES'. Some of the members had already donated.

Other Initiatives

Online/E-mode to be used vigorously- The Chapter Whatsapp group is being used for troubleshooting queries of student/ Members/ Stakeholders.

VARANASI CHAPTER

Initiatives to Fight against COVID 19

Chapter is advising Members and Students to take precaution against Corona Virus and follow the instruction issued by Central & State Government, Members are advised to contribute for the relief fund.

Other Initiatives

Dealing Student and Members Query through E-mail and Phone and Solve them accordingly, OTC Student is informed to take online class & Chapter will sanitize the whole office after office reopens.

The Information is compiled by Mr. Mrinal Madhur (Incharge, Gorakhpur Chapter) & Ms. Suman Iyer (Executive Officer, Faridabad Chapter) and designed by Ashish Kumar Tiwari (Incharge, Lucknow Chapter)

"अंधियारों की अट्टहास"

दीप को भी अब कहीं
तुम आस–पास रखना,
देखना ये रात अब कुछ
लंबी होने वाली है।

आलोक का अट्टहास तो
न जाने अब कब होगा,
अंधियारों की गहराई
अब घोर होने वाली है।

जालिम हो रहा है अब
हवाओं का रुख भी,
देखना ये बयार भी
अब तूफान होने वाली है।

ख्वाहिशें धूमिल हुई अब
मखमली बिछौने की,
पथरीली ठाँव भी
दुश्वार होने वाली है।

इंतजार था की बसंत में
कुछ कोंपलें निकलेंगी,
अब पतझड़ों को देखना,
भरमार होने वाली है।

मंजिलों का रास्ता
कैसे अब दिखाई देगा,
मौसमों में कोहरे की
बरसात होने वाली है।

चांद भी अब क्या करे
जब सूर्य का ही साथ नहीं,
चांदनी भी अब हमसे
नाराज होने वाली है।

ऐसी चुप्पी छाई है कि
परिंदे तक भी मौन हुए,
शहरों में पसरा सन्नाटा,
अब कहर होने वाला है।

खुशहाली अब फंस चुकी है,
महामारी की गिरफ्त में,
अमृत जैसा ये जहां
अब जहर होने वाला है।

बिजलियों की गर्जना को
यदि वक्त पर समझे नहीं तो ,
बेवक्त ही वर्तमान भी
अब इतिहास होने वाला है।

"महामारी में आशादीप"

मैं दीप हूँ दहलीज का,
राहों में पलक बिछाता हूँ।
मैं दीप हूँ मुंडेर का,
उत्सव हर्ष मनाता हूँ ।

प्रज्वलित होकर देवालय में ,
श्रद्धा दीप कहलाता हूँ ।
बनकर पूजा का पर्याय ,
मन का अंधकार मिटाता हूँ।

रोशनी का दीप बनकर,
कभी लड़ता अंधियार से ।
डरकर तो मैं बुझा नहीं ,
कभी आंधी और बयार से ।

नहीं जला कभी ईर्ष्या में ,
हुआ नहीं कभी खाक मैं।
जलता रहा मानव के हित में,
दिन को जला चाहे रात में ।

स्मृतियों को जिंदा रखता,
मैं यादों का दीप हूँ ।
नम आंखों से जब जलता हूँ ,
संस्कारों का मैं दीप हूँ।

आज तुम्हारे हाथों में हूं ,
मैं आशा का दीप हूं।
महामारी पर विजयी भव तुम,
इस कामना का दीप हूं।

मिलकर लड़ो तुम आपदा से,
अपना कर्तव्य निभाओ तुम।
प्रेरणा तुम्हें मेरी ज्योति देगी,
अब आगे कदम बढ़ाओ तुम।

"सन्नाटा"

थक गए हैं अब सभी ,
आराम करते करते।
इतने तो कभी थके नहीं
हम काम करते करते ।

सप्ताह के वो सात दिन ,
अब उल्टे पुलटे हो गए ।
कब आया था रविवार ,
कब शनी जी रुखसत हो गए।

अनुशासन और नियम तो
पता नहीं कहां भाग गए ।
जब चाहो सो जाओ और,
जब चाहो तब जाग गए।

दहलीज और दरवाजे पर,
पूर्ण विराम सा आया है ।
मौन हुई ये डोरबैल भी,
अब सन्नाटा सा छाया है।

इंसा ने खूब हैं जुल्म किए,
प्रकृति को बहुत सताया है।
अब बारी है उसकी आई ,
यही तो बस समझाया है।

- Dr. Raj Singh
Regional Director (North), Ministry of Corporate Affairs

ADAPTIVE IMMUNITY AND COVID-19 : STRATEGY THROUGH NUTRITIONAL MANAGEMENT

DR. LUXITA SHARMA

IMMUNE SYSTEM IN HUMAN BODY

Human body is a complex system with many organs working simultaneously. One of the important system is the Immune system. It is defined as a bodily system which defends the body from foreign substances, cells and tissues by producing the immune response.

The major functions of Immune system are as follows –

1) To fight the foreign invasions of Bacteria, Viruses or Fungi with their successful removal from the body

2) To find and inactivate the harmful microscopic and visible non environment friendly organisms without harming human body

3) To fight autoimmune disorders, major illnesses as Cancer, Aids, Chronic fevers, flu etc

4) To constantly cut down the growth of malignant cells in the body

INNATE (NON-SPECIFIC IMMUNE SYSTEM)

Innate Immunity is a general/common defence mechanism of the body against germs and substances. These are defense mechanism that is present in skin and digestive system.

ADAPTIVE IMMUNE SYSTEM

As the name indicates that Immune system develops specific antibodies for specific targets. They are made by the body to specifically to kill a particular class of germs or harmful microbes. This is also called as "acquired" (learned) or specific immune response. The body stores this data also and is capable of fighting with microbes which change over time.

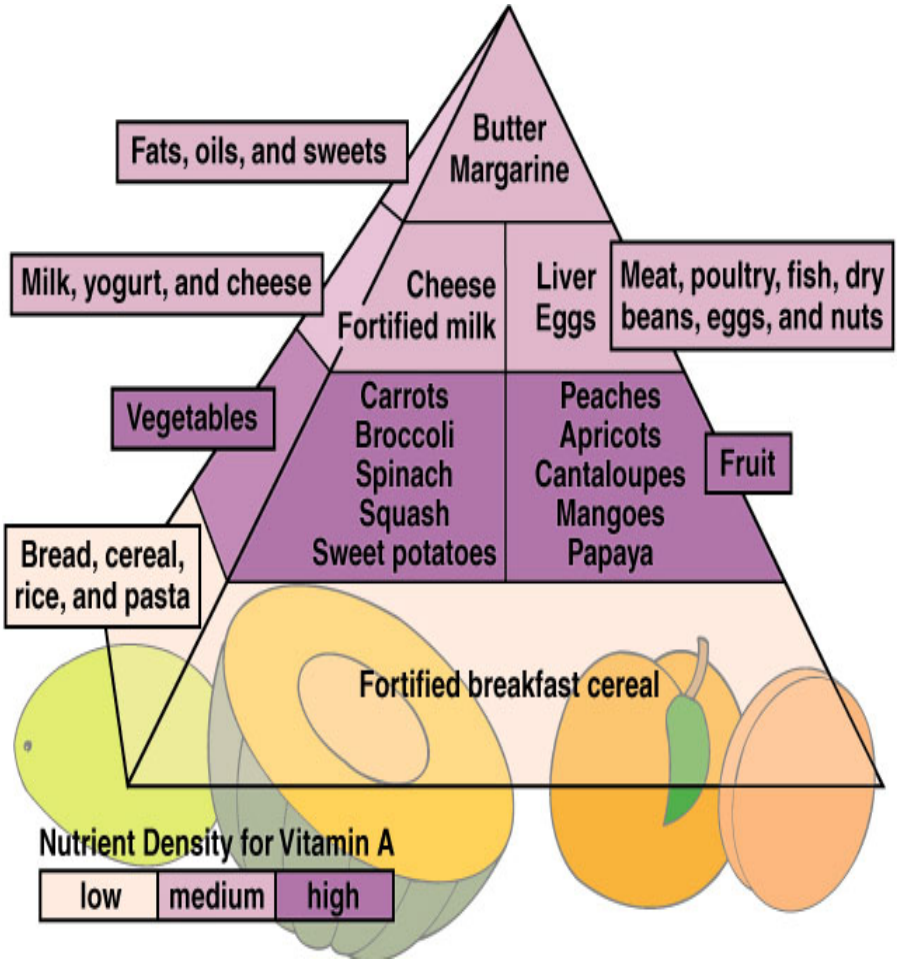
Sometimes though rarely body recognises its own antigens as foreign material and its immune system attacks its own cells which are harmless. This is called as an autoimmune response.

If the pathogen manages to avoid these innate defenses, a more complex, adaptive, antigen-specific response is triggered, mediated by T and B lymphocytes, which produces antibodies to target and destroy the pathogen. Both systems also protect against native cells that may be harmful, such as cancerous or precancerous cells

NUTRITIONAL REQUIREMENTS OF HUMAN BODY TO BUILD ADAPTIVE IMMUNITY

Vitamin A

An observation was made that there is a strong link between vitamin A and immunity, even before the structure of vitamin A was deduced (Villamor & Fawzi, 2005). Green and Mellandy (1928), concluded that Vitamin A shows the ability to boost up the anti-inflammatory response of organisms and tagged Vitamin A as the "anti-inflammation vitamin". Both the innate and adaptive immunity syatem is affected by the role of vitamin A as it promotes and regulates immune system; thus enhancing the functions of the immune system and increases the capability of the body to fight against a number of infectious diseases.



*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

Vitamin C

Vitamin C or ascorbic acid is a water soluble vitamin. Immune system of the body is supported by vitamin C by aiding in different functions carried out by the cells for proper functioning of the innate as well as the adaptive immune system. Vitamin C supplementation has been able to both prevent and treat respiratory and systemic infections and improves activities of the immune system such as antimicrobial and natural killer cell activities, lymphocyte proliferation, chemotaxis, and delayed-type hypersensitivity

Vitamin D

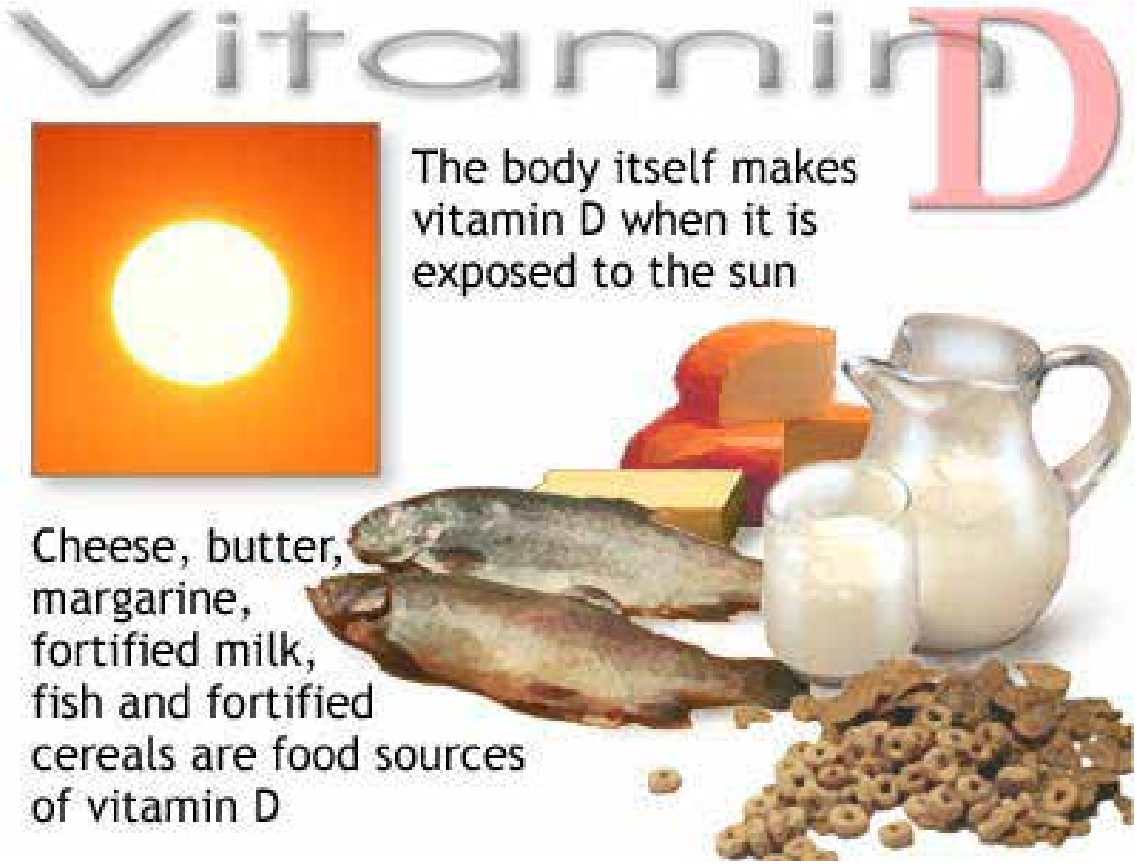
Vitamin D showed their effectivenss in impacting the functions of immune cells in both the innate and adaptive immune systems. The Vitamin D receptors can proliferate the activity of B & T cells which are responsible for adaptive immunity in Human body. The food products rich in Vitamin D are Fish, Cheese, Eggs, Fortified foods such as cows milk fortified with vitamin D.

Vitamin E

Vitamin E is a fat soluble antioxidant vitamin. It is also one of the important vitamins needed for the proper functioning of the immune system. Even a minor deficiency of this vitamin can affect the efficiency of the immune response. Vit E is proportional to amount of PUFA content Added by manufacturers to vegetable oils & processed foods

OTHER MICRONUTRIENTS

Various micronutrients are essential for immunocompetence, particularly vitamins A, C, D, E, B2, B6, and B12, folic acid, iron, selenium, and zinc. Micronutrient deficiencies are a recognized global public health issue, and poor nutritional status predisposes to certain infections. Immune function may be improved by restoring deficient micronutrients to recommended levels, thereby increasing resistance to infection and supporting faster recovery when infected. Diet alone may be insufficient and tailored micronutrient supplementation based on specific age-related needs necessary. This review looks at immune considerations specific to each life stage, the consequent risk of infection, micronutrient requirements and deficiencies exhibited over the life course, and the available evidence regarding the effects of micronutrient supplementation on immune function and infection.



IMPACT OF "FORCE MAJEURE" CLAUSE IN COVID-19 SCENARIO

MR. MIHIRR MEHROTRAA
&
MS. RUCCHE SIINGH

Ever since the emergence of Corona Virus (Covid-19) few months back, it is spreading faster and is currently showing no signs of slowdown or mercy to anybody anywhere. Covid-19 is ripping apart the entire human race, companies, businesses, economies and nations in many ways-be it physically or psychologically or otherwise. It has given a major blow to all nations whether developed or developing.

The tremors can be felt in almost every sphere of life inter-alia closure of several manufacturing facilities globally; disruption of air and sea traffic, plummeting stock markets all across the World to name a few.

Due to the disruption caused by the Covid-19 pandemic, there are high chances that the parties to contracts may seek to delay and/or avoid performance of their contractual obligations and/or terminate contracts, either legitimately due to prevailing circumstances which prevented them from performing their contractual obligations or as an excuse to save themselves from an unfavourable deal.

Last week, some of the leading newspaper(s) have published that several large retail chains as well as leading Automobile manufacturers are trying to use the force majeure clause to back out from their commercial obligations. It is sad that some of them are attempting to wrongfully wriggle out of their contractual obligations in such difficult times, particularly oppressing smaller associates.

Further, the Government of India vide its office memorandum dated 19th of February 2020 has also clarified that the disruption due to Covid-19 will be considered the case of a natural calamity and therefore 'Force Majeure' may be invoked, wherever considered appropriate.

MEANING OF FORCE MAIEURE CLAUSE

The literal meaning of Force Majeure is "superior force" or "unavoidable accident".

The Law relating to Force Majeure is embodied under Sections 32 and 56 of the Indian Contract Act, 1872. It is a contractual provision agreed upon between the parties.

It is an event that makes it impossible or impractical for the affected party to perform its obligations under the Agreement. The basic test is that the event should be beyond the control of the affected party.

Force Majeure does not cover events which arise out of negligence of a party or events.

The presence of a force majeure clause does not absolve the parties from their responsibility of taking reasonable precautions for preventing or limiting the effects of the events.

WHETHER COVID-19 IS FORCE MAIEURE EVENT ?

Since, Covid-19 is declared as a Pandemic by the World Health Organization (WHO), a specific inclusion of word 'Pandemic' in the

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list of force majeure events will directly qualify the Covid-19 as a force majeure event.

A generic usage of phrases like (unforeseeable, unavoidable or any other event beyond the reasonable control of a party) and absence of word 'Pandemic' from the list of force majeure event will bring in real conflict in relation to determination of Covid-19 as force majeure event.

Invocation of Force Maieure Clause

There are two possible instances where force majeure clause may be invoked:

(a) if the Contract specifically covers the definition of a force majeure event;

(b) if the force majeure clause covers events or circumstances beyond the reasonable control of the parties.

Further, the parties to an Agreement has to ensure that the event was beyond the control of the parties, affects the performance of any of its obligations under the Agreement and was incapable of having been foreseen or provided against with reasonable effort.

Whether 'Notification / Prior Intimation' is required for invocation of Force Maieure Clause of the Contract(s)?

Force majeure clauses commonly contain a prompt and time bound notification requirement, which can operate as a contractual condition precedent to relief or not.

Thus, the process of notification should be expressly mentioned in the contract as it is essential / relevant for the parties seeking to invoke force majeure.

Consequences of a Force Maieure Event

The language of the force majeure clause will determine the remedies available to the parties. Following are the consequences of a force majeure event on the Contracts:

a) Immediate termination of the contract.

b) Put the contract on hold until the force majeure event is resolved.

c) Enforce limitation in time after which either party may terminate the agreement with written notice to the other (i.e. if non-performance caused by the event is prolonged or permanent).

d) The contract to remain in effect until the force majeure event is resolved.

e) Partial suspension of certain obligations / conditions of the contract.

ABSENCE OF'FORCE MAIEURE' PROVISION IN THE CONTRACT

In the absence of'Force Majeure' provision in the contract, a party may claim exemption from a contract performance based on the 'Doctrine of frustration' under Section 56 of the Indian Contract Act, 1872.

However, in order to claim that the contract is frustrated, it must be established that the performance of the contractual obligations has become impossible by reason of some event which the claiming party could not prevent and that the impossibility is not self-induced by the claiming party or due to his negligence.

However, if there is an alternative way to perform the contract then in such cases the party has to perform the contract by using such alternative mode.

CONCLUSION

A carefully negotiated force majeure clause is an important tool for reducing the risk of liability associated with unforeseen circumstances. Taking appropriate precautions at the outset can provide reassurance that, even in the worst of times, one will have the flexibility to make the best decision and can safeguard from the wrath of worst times as prevailing currently.

ARTICLES ON THEME

ARBITRATION & ALTERNATIVE DISPUTE RESOLUTION MECHANISM

Article

ARBITRATION & ALTERNATE DISPUTE RESOLUTION MECHANISM

CS ANCHAL ARORA

OVERVIEW

The Constitution of India, through its Preamble, has guaranteed to its citizens 'Justice'- economic, political and social. It is an acknowledged fact that the justice delivery system had been experiencing docket explosion and the problem of huge arrears of pending cases. To solve these problems there was need to evolve new procedures, which lend themselves to the resolution of the disputes effectively and in efficient manner. These new/alternative procedures of settlement of disputes are ALTERNATIVE DISPUTE RESOLUTION (ADR).

Alternative Dispute Resolution methods are being increasingly acknowledged in field of law and commercial sectors both at National and International levels. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously.

In Addition to the Court

Alternative Dispute Resolution techniques are in addition to the Courts in character. They can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. These alternative dispute resolution methods usually involve a third party referred to as neutral, a skilled helper who either assists the parties in a dispute or conflict to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.

The Alternative Dispute Resolution mechanism by the very methodology used, it can preserve and enhance personal and business relationships that might otherwise be damaged by the adversarial process. It is also flexible because it allows the contestants to choose procedures, which firms the nature of the dispute and the business context in which it occurs.

"The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." — Justice Sandra Day O'Connor

ADR MECHANISMS

The term "Alternative Dispute Resolution" takes in its fold, various modes of settlement including, Arbitration, Conciliation, Mediation, Lok Adalat and Judicial Settlement. In the Civil Procedure Code 1908, Section 89 transpires that there are five types of ADR procedures, made up of one adjudicatory process i.e. Arbitration and four negotiatory i.e. non adjudicatory processes such as Conciliation, Mediation, Judicial Settlement and Lok Adalat. The difference between success and failure lies chiefly in the level of commitment, companies that give ADR top priority—even in cases where they're sure they're right—are realizing immense savings of time, money, and relationships. In contrast, companies that let old litigious habits worm their way into the process might as well go back to court.

"Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough." – Abraham Lincoln

ARBITRATION

Arbitration is a form of Alternative Dispute Resolution (ADR), a way to resolve disputes outside the courts, where the parties to a dispute refer it to one or more persons – Arbitrators, which gives its decision in a form of an award that is legally binding on the parties to the disputes and enforceable in the courts.

Parties usually enter into a binding Arbitration Agreement or any other form of agreement with an arbitration clause, which allows them to lay out major terms for the arbitration.

The prospect of arbitration quickly brought the case to its virtually predestined end, with a result almost certainly better than litigation could have achieved.

"At all events, arbitration is more rational, just, and humane than the resort to the sword" - Richard Cobden.

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

ARBITRATION AND ADR MECHANISM

Ms. TANVEEN BINDRA

"It is the spirit and not the form of law that keeps the justice alive."

- LJ Earl Warren

Desire for quick and affordable justice is universal. Right to speedy trial is a right to life and personal liberty of every citizen guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure. In 1996, the Indian Legislature accepted the fact that in order to lessen the burden on the courts, there should be a more efficient justice delivery system in the form of arbitration, mediation and conciliation as an Alternative Dispute Resolution (ADR) options in appropriate civil and commercial matters. Thus, Parliament enacted Arbitration and Conciliation Act, 1996, with a view to provide quick redressal to commercial dispute by private Arbitration. Alternative Dispute Resolution encompasses a wide array of practices, which are directed towards cost effective and quick resolution of disputes. Mahatma Gandhi has said "I realized that the true function of a lawyer was to unite parties…" Hence, role of lawyers in promoting non-adversarial dispute settlement mechanisms is undoubtedly very significant. Arbitration is a process for settlement of disputes fairly and equitably through a person or persons or an institutional body without recourse by the disputing parties pursuant to an agreement.

SIGNIFICANCE OF ADR

The system of dispensing justice in India has come under great stress for several reasons mainly because of the huge pendency of cases in courts.

It is in this context that a resolution was adopted by the Chief Ministers and the Chief Justices of the States in a conference held in New Delhi on 4th December,1993 under the chairmanship of the then prime minister and presided over by the chief justice of India.

It said: "The chief ministers and Chief Justices were of the opinion that Courts were not in a position to bear the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration, mediation and negotiation. They emphasized the desirability of disputants taking advantage of alternate dispute resolution which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial".

ADR, provides an economic, expeditious and informal remedy for disputes. Supreme Court in State of Jammu & Kashmir v.

Dev Dutt Pandit19 has observed that: "Arbitration has to be looked upto with all earnestness so that the litigant has faith in the speedy process of resolving their disputes."

ADR IN INDIA- IMPACT

With several recent landmark judgments of the Supreme Court, the arbitration regime in India has witnessed a paradigm change with greater degree of sanctity being afforded to arbitral decisions and arbitration as a mechanism for resolution of disputes. Even prior to the coming into force of the Arbitration Amendment Act, Courts were taking an increasingly pro-arbitration approach.

With a view of making Indian ADR mechanism to be in harmony with the different legal systems of the world that have already granted legal recognition to different ADR mechanisms and for the speedy disposal of cases, Arbitration and Conciliation Act 1996 was passed. The 1996 Act is based on the UNCITRAL Model Law.

ARBITRATION AND CONCILIATION ACT, 1996

The 1940 Act became outdated and a need was expressed by the Law Commission of India and various representative bodies of trade and industry for its amendment. Part I of this act formalize the process of Arbitration and part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

Arbitration:

- The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties.
- It is less formal than a trial, and the rules of evidence are often relaxed.
- Generally, there is no right to appeal an arbitrator's decision.
- The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute.

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Conciliation:

Conciliation has been given statutory recognition by incorporating provisions in Sections 61 to 81 of Part III of the Arbitration and Conciliation Act, 1996.

- A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.
- Conciliation is a less formal form of arbitration.
- The parties are free to accept or reject the recommendations of the conciliator.
- However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

Mediation:

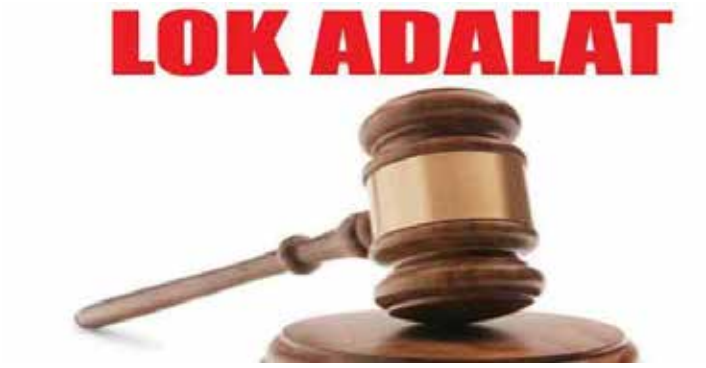
- "Discourage litigation. Persuade your neighbors to compromise where you can. Point out them how the nominal winner is often the real loser – in fees, expenses and waste of time. -Abraham Lincon
- In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute.
- The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves.
- Mediation leaves control of the outcome with the parties.

Negotiation:

- A non-binding procedure in which discussions between the parties are initiated without the intervention of any third party with the object of arriving at a negotiated settlement to the dispute.
- It is the most common method of alternative dispute resolution.
- Negotiation occurs in business, non- profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life.

Lok Adalat:

As Justice Ramaswamy said: "Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties"



- Lok Adalat or "people's court" comprises an informal setting which facilitates negotiations in the presence of a judicial officer wherein cases are dispensed without undue emphasis on legal technicalities. The order of the
- Lok-Adalat is final and binding on the parties, and is not appealable in a court of law.
- All proceedings of Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

The concept of Lok Adalat is not a new phenomenon, but an ancient concept is given now statutory basis. One of the unique features of Lok Adalat is that dispute are settled summarily without going through the complexities of legal proceedings of the routine Courts.

CONCLUSION

Alternative Dispute Resolution mechanism (ADR) is not a replacement of litigation, rather it would be used to make our traditional court systems work more efficiently and effectively.

ADR procedures have advantage of being cheaper, faster, more flexible & preserving business and personal relationships. ADR has proven successful in clearing the backlog of cases in various levels of the judiciary.

However there are limitations pertaining to enforceability of awards, judicial review, domestic policy considerations and lack of awareness which raise questions on the effectiveness of ADR.

The National and State Legal Services Authorities should disseminate more information regarding these, so they become the first option explored by potential litigants.

It is important here to mention the statement made by John F. Kennedy: "Let us never negotiate out of fear but let us never fear to negotiate."

ADR: TRUSTED & INDEPENDENT PROFESSION FOR DISPUTE RESOLUTION

CS (DR.) JYOTI ARORA DHILLON

WHAT IS ADR?

Conflicts are an inevitable part of doing business. ADR (Alternate Dispute Resolution) refers to a range of out-of-court processes that resolve conflict timely, harmoniously, and encourage innovative solutions. Though likely outcome of ADR and litigation is the same, i.e. to arrive at a settlement of a dispute, ADR offers the same in an amicable, cost effective and time bound manner.

NEED OF ADR SYSTEM

The importance of ADR can be determined from the assertion made by M.N. Venkatachaliah, Former Chief Justice of India, wherein he quotes "Justice, it is said, is too serious a matter to be left to the courts alone."

In the words of Justice Madan Lokar, Judge Supreme court, 'Mediation is perhaps the best way, if not the only way, of reducing the large number of cases in the courts across the country'.

ADR is expected to encourage amicable resolution of dispute and in long run, enabling the justice delivery system in India to be more efficient and efficacious. It involves a nonpartisan party intervention, to resolve the disputes. This alternate mechanism can be quicker, cheaper, and less stressful than going to court.

Moreover, in modern time, the inclination has been towards shifting to alternative dispute resolution (ADR) methods due to severe limitations of the formal justice delivery system. Given the limitations in the traditional system of dispute resolution, development of new approaches for dispute resolution in lieu of litigation has become essential. The need of an hour is swift, reliable, flexible & cost efficient mechanism of dispute resolution.

Why ADR = Save Time + Save Cost + Channelizing resources to more productive purposes + Ease the burden on Judiciary + Socially desirable as settlements are made amicably

However, at this onset it must also be made clear that ADR is not to replace but to supplement the existing judicial mechanisms.

CONCEPT OF ADR

Under this disputes settlement mechanism, disputes are determined with the aid of an unbiased third person usually of parties' own preference; that person is ordinarily acquainted with the type of the conflict and is more often an expert with strong experience and knowledge. Here, the proceedings are informal without any procedural technicalities. The proceedings are swift, inexpensive and confidential. Thus the decision making process aims at substantial justice. The goal is to provide more effective dispute resolution. Availability of ADR creates more choices within the justice system.

The primary objective of this forum is to settle the conflict in such a manner that the mutual relationships of the participants remain virtually the same as these had been before the initiation of such dispute. In fact, the ADR process aims at restoring justice in the form and content, which not merely resolves the dispute but also manages to iron out the conflict in the relationship of the parties, which has given, rise to that dispute. Alternative systems for disputes resolution play a significant role in the justice dispensation system not only by improving access to dispute resolution processes but also by providing quality 'Justice'.

VARIOUS ADR TECHNIQUES

The ADR mechanisms can be broken down into two parts. The first is adjudicatory and the other one is non- adjudicatory. Adjudicatory method is that where the unbiased third party hears to both of the parties thereafter resolving the matter. This approach is known as Arbitration. Non-adjudicatory method is where the third person does not decide the matter but act as facilitator in resolving the conflict. The parties to the dispute keep their control over the outcome of the proceedings. These mechanisms are Negotiation, Mediation, Conciliation and Judicial Settlement (like Lok Adalats).

1. Adjudicatory Methods

a. Arbitration

Arbitration is a legal process, which takes place outside the courts, but nevertheless results in a final and legally binding decision similar to a court judgment. It is the procedure by which parties agree to submit their disputes to an independent neutral third party, known as an arbitrator, who considers pleas and evidences from both sides, then hands down a final and binding decision.

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2. **Non- Adjudicatory Methods**

a. Negotiation

It is a non-binding procedure requiring direct interaction & cooperation of the disputing parties, wherein a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other's position. It is a voluntary non-binding process in which parties control the outcome as well as procedures. Negotiation differs from other dispute resolution procedures in as much as it does not involve a third party to facilitate or promote the settlement while all other procedures essentially involve a third party.

b. Mediation

Mediation is a facilitated and structured negotiation presided over by a facilitator with the skill, training and experience necessary to help the parties reach a resolution of their dispute. A Mediator uses special negotiation and communication techniques to help the parties to come to an amicable settlement. A third neutral party is involved in order to structure the meetings and to come to a final settlement based on the facts given through the discussions. It is a non-binding procedure, in which a neutral third party assists the disputing parties in mutually reaching an agreed settlement of the dispute.

c. Conciliation:

Conciliation is one of the non binding procedures where an impartial third party, known as the conciliator, assists the parties to a dispute in reaching a mutually agreed settlement of the dispute. A conciliator does not give a decision, but his main function is to induce/motivate the parties themselves to come to amicable settlement/resolution. The Conciliator may formulate or reformulate the terms of settlement.

d. Judicial Settlement (including settlement through Lok Adalat)

Judicial settlement/resolution means an arrangement entered by the parties with the assistance of the court adjudicating the matter or another judge to whom the court had referred the dispute. In Black's Law Dictionary, "judicial settlement" is defined as "the settlement of a civil case with the help of a Judge who is not assigned to adjudicate the dispute."

LAW GOVERNING & FACILITATING ADR IN INDIA

a. **The Civil Procedure Code, 1908 (Section 89)**

Section 89 of Code of Civil Procedure, 1908 as inserted by C.P.C. (Amendment) Act, No. 46 of 1999 provides for the resolution of conflicts outside the Court.

(1) Where appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—

(a) Arbitration; (b) Conciliation; (c) Judicial settlement including settlement through Lok Adalat; or (d) Mediation.

b. **Arbitration and Conciliation Act, 1996**

The Act aims at streamlining the process of arbitration and facilitating conciliation in business matters.

The Arbitration and Conciliation (Amendment) Act, 2015 passed by the Parliament aims to facilitate and encourage Alternative Dispute Mechanism, especially arbitration, for settlement of disputes in a more user-friendly, cost effective and swift disposal of cases since India is committed to improve its legal framework to obviate in disposal of cases.

Through the Arbitration and Conciliation (Amendment) Act, 2019, among other amendments/ insertions, the eighth schedule has been inserted in the Act specifying qualifications and experience of arbitrator. With the insertion of this schedule a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience is now eligible to be appointed as an arbitrator. Likewise, Chartered Accountants and Cost Accountants under their respective acts with relevant experience are also eligible to be appointed as Arbitrator apart from advocates etc.

c. The Legal Services Authority Act, 1987

An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

d. The Companies Act 2013 (Section 442)

Section 442 of the Companies Act, 2013 vests the Central Government to constitute a panel of experts to mediate and settle disputes pending before the National Company Law Tribunal ('NCLT'), National Company Law Appellate Tribunal ('NCLAT') or the Central Government. Among other things, the section also states that if any party is aggrieved by the recommendation of the Mediation and Conciliation Panel, then said party may file objection to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

e. The Companies (Mediation and Conciliation) Rules, 2016

On 9th September, 2016, Ministry of Corporate Affairs has come up with Companies (Mediation and Conciliation) Rules, 2016 which provides rules and guidelines for empanelment as Mediators or Conciliators.

PANEL OF MEDIATORS OR CONCILIATORS

o Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators.

- A person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications shall apply to the Regional Director in Form MDC-1.
- The applications shall be invited every year during the month of February and the Panel shall be updated and effective from 1st April every year.

QUALIFICATIONS FOR EMPANELMENT:

A person shall not be qualified for being empanelled as mediator or conciliator unless he -

Has been a Judge of the Supreme Court of India ; or a Judge of a High Court ; or a District and Sessions Judge ; or a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force ; or has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience ; or is a qualified legal practitioner for not less than ten years ; or is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary ; or a Member or President of any State Consumer Forum ; or is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

ROLE OF MEDIATOR OR CONCILIATOR

The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the views of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties :

Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.

CASES SUITABLE FOR ADR PROCESS

(i) All cases relating to trade, commerce and contracts;

(ii) All cases arising from strained relationship, such as matrimonial cases, partition cases between family members or co-owners;

(iii) All cases where there is a need for continuation of the pre-existing relationship, such as disputes between neighbours and members of societies;

(iv) All cases relating to tortuous liability, including motor accident claims;

(v) All consumer disputes.

BENEFITS OF ADR SYSTEM

The benefits of the Alternative Dispute Resolution system in India are as under:

1. ADR mechanism is a convenient way to address/resolve the commercial dispute. The resolution of such disputes may call for an altogether different approach than the approach to settle criminal or other civil suits with sharp differences.
2. As the practice observed in ADR mechanism are informal & flexible, parties to dispute are free to formulate their own rules thus making ADR very conducive system for conflict resolution.
3. Alternative dispute resolution methods involve direct participation of the parties. Parties have direct dialogue with each other and with the presiding officer. This increases the opportunity of reconciliation between the parties. Except in arbitration the parties themselves create settlements without direct power of enforcement by the presiding officer. They exercise control over the outcome of the disputes.
4. Owing to fewer adjournments, streamlined procedures and sympathetic approach, ADR processes lead to prompt settlement of conflicts in comparison to the litigation in the courts.
5. ADR being non-authoritarian and built on the doctrine of compromise and mutuality. Participants arrive at an amicable and long lasting settlement.
6. ADR process being pervasive and flexible in nature, can be employed in virtually all contentious issues, which are capable of being resolved under statute, by arrangement or compromise between the parties.
7. Owing to excessive court and advocate fees and other incidental charges enormous cost is involved in engaging in or defending a case in a court of law. On the other hand, ADR process being in the nature of out of court settlement, the resolution of disputes is cost efficient.

LIMITATIONS OF ADR MECHANISM

The shortcomings of the Alternative Dispute Resolution system in India are as under:

1. Since solution offered here are highly customised and decision may not be same in two identical cases. Thus the final outcome of the ADR mechanism in a particular case cannot be regarded as a precedent for other similar/identical cases.
2. ADR mechanism may not work successfully where one of the parties is in dominant position and the said party may suppress the weaker party to get the unfair consent.
3. ADR mechanism cannot be employed where the conflict is due to corruption, prejudice, infringement of human rights or deliberate fraud.
4. ADR system again may not be performed successfully, where there are many parties to the conflicts who may not genuinely engage in the dispute resolution process.
5. Lack of awareness of ADR system is yet another factor that limits the use of this mechanism to its fullest potential.

VIEW OF JUDICIARY ON ALTERNATE DISPUTE RESOLUTION

Time and again courts intervention in arbitral process has been challenged and debated across the borders. The Supreme Court in India has always been in support of Alternative Dispute Resolution Mechanism. The recent judgments rendered & remarks/assertions made by the Supreme Court, clearly aims at projecting India to be pro-ADR in general and arbitration friendly in particular with minimal court intervention.

In the case of Sterling Industries vs. Jayprakash Associates Ltd. (2017), the bench comprising Justice SA Bobde, Justice R. Subhash Reddy and Justice BR Gavai dealt with an appeal against the Allahabad High Court order that had set aside a partial award made under Section 16 of the Arbitration and Conciliation Act. The Supreme Court reiterated that any award passed by the Arbitral Tribunals cannot be set aside by the High Court invoking its writ jurisdiction under Article 226 & 227 of the Constitution of India.

WHO CAN ACT AS ADR PROFESSIONALS

Arbitration and Conciliation (Amendment) Act, 2019 and Section 442 of the Companies Act 2013 on the ADR Mechanism has opened the gateway of professional opportunities for the members of Institute of Company Secretaries of India (ICSI), Institute of Chartered Accountants of India (ICAI) & Institute of Cost and Management of India (ICMAI) in the ADR Mechanism.

Section 442 authorizes Central Government to maintain a panel of experts to be called as "Mediation Panel" for mediation between parties during pendency of any proceedings before Regional Director, Central Government or Tribunal or Appellate Tribunal.

Apart from Advocates, the professionals such as Company Secretaries, Chartered Accountants, Cost Accountants with their diversified knowledge, experience, independent and balanced approach are ideally placed to act as arbitrators, mediators and conciliators to settle the disputes through Alternate Dispute Resolution (ADR) mechanism.

COMPANY SECRETARIES - THE MOST FELICITOUS ADR PROFESSIONALS

The recent amendments in the statutes and favorable view held by the judiciary suggest there are immense opportunities available to ADR professionals. At the same time the challenges for the ADR professionals is to strengthen and augment their knowledge, savvy and competences in Arbitration, Mediation & Conciliation and helping in channelizing the economics resources in more productive pragmatic and useful purposes and place themselves as interdisciplinary experts in the global realm. In view of this, company secretaries are the most apt professionals to render the services as an ADR Professional.

Company Secretaries are the resolute professionals having unequaled competence in providing business advisory services. They are provided exhaustive exposure by the ICSI through compulsory coaching, examinations, rigorous training and continuing professional development programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

Owing to diversified academic & practical exposure, the company secretaries are highly specialized in offering professional services in the area of ADR including but not limited to the following:

1. Rightly appreciating the commercial environment of conflicts the company secretaries can provide effective services as Mediators/ Conciliators/ Arbitrators in a cost effective manner.

2. ADR professionals are expected to have proficiency in Trade & Commerce including Domestic and Cross Border, Finance, Accounting, Valuation, Taxation including Domestic and Cross Border, Corporate restructuring, Commercial and Corporate Laws. Therefore by appointing Company Secretaries as an ADR professionals, parties to the dispute can save time and derive maximum benefits of the ADR Mechanism in its true sense.

3. Under Section 26 of the Arbitration and Conciliation Act an arbitrator has been accorded powers to appoint one or more experts to report it on specific issues. Therefore, company secretary can be appointed during arbitration proceedings to give their expert viewpoints. They can likewise be a part of the arbitration tribunal, if parties concur on choosing a Company Secretary as an arbitrator.

5. Drafting of petitions, deeds and documents is an art and even acquiring working knowledge in this demands application of skills of higher order. ADR professionals like Company Secretaries are well equipped to advice the companies in drafting various documents as well as to undertake legal documentation pertaining to a range of other functions.

Conclusion

In India, justice delivery process has invariably been under pressure due to constantly escalating volume of lawsuits being filed in the court, long convoluted procedural system, absence of time bound disposal of cases, and dearth of judges in the court.

Courts are not in a position to carry the entire burden of justice system and that a number of disputes lend themselves to resolution by alternative modes such as arbitration, mediation and negotiation. Economic and law reformers have time and again reiterated the desirability of disputants taking help of alternative dispute resolution mechanism which provides not only procedural flexibility, but also saves valuable time money and shunned away the stress on a conventional judicial process.

It has been well accepted among the business leaders, Economic & law reformers that in a growing economies like India with sweeping economic reforms under its way, actions for swifter resolution of conflicts for easing the overload on the Courts and to provide means for efficient settlement of conflicts has become inevitable and there is no better option but to endeavor to set up alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation, negotiation, etc.

In the coming millennia, for a professional like Company secretaries, the ADR affords an excellent opportunity and is perhaps one of the most appealing, engaging, challenging and rewarding career opportunities that they can undertake and further to contribute towards settling the conflicts in a time-bound manner.

TIMELINES IN DOMESTIC ARBITRATION: STRENGTHENING ARBITRATION

CS SUSSHIL DAGA

The Arbitration and Conciliation Act, 1996 ("Arbitration Act") was enacted to provide for speedy disposal of cases relating to arbitration with least intervention of court. However, with passage of time some difficulties in the applicability of the Act were noticed. Interpretation of the provisions of the Act by courts in some cases resulted in delay of disposal of arbitration proceedings and increase in interference of the Court which not only have a propensity to defeat the object of the Act but it leads to culminate of the Alternative Dispute Resolution Mechanism.

The Law commission in August 2014 recommended various amendments to facilitate and encourage alternate dispute mechanism vide its 246th Report "Amendments to The Arbitration and Conciliation Act, 1996". The focus of the report was to make stricter timelines in relation to arbitration proceedings inasmuch as make them more user friendly, cost effective and ensure expeditious disposal of the cases. The statistics then suggesting India at 178 out of 189 in Contract enforcement also played pivotal role in taking such measures.

The stricter timelines was the need of hour in order to bring back the stability in adjudication through arbitration, the same has been done, to lucidly understand the changes it has been divided in three stages:

A. Before commencement of Arbitration Proceeding.
B. During Arbitration Proceedings.
C. After Arbitration Proceedings.

1. BEFORE COMMENCEMENT OF ARBITRATION PROCEEDING

In a situation wherein the parties to contract encounter any dispute and the mechanism to resolve the dispute is through the Arbitration Act,then in such a situation generally the party apprehending non preservation of amount in dispute or goods by the other party, would ultimately render the process of resolving dispute through Arbitration as ineffective, and therefore the said party will file an application before the Court (as defined under section 2(1)(e) of the Act) under Section 9 of the Arbitration Act.

Section 9 of the Arbitration Act empowers the Court to grant Interim Measures. However, while granting any interim measure the Court has to see that party seeking interim measure, had manifest intention to resolve the dispute through Arbitration i.e. had the efforts been made to commence the arbitration proceeding.

Now, before commencement of arbitration proceedings another, invariable application filed by either party to dispute is under Section 11 of the Act, before the High Court for seeking appointment of arbitrator.

It was noticed that upon seeking interim measure under Section 9 of the Act, the parties which sought such relief and if was granted the same, became reluctant to quickly proceed under Section 11 of the Act for appointment of arbitrator for the ultimate adjudication of the dispute.

This loophole was plugged vide amendment dated 23.10.2015 ("amendment of 2015") wherein subsection (2) was inserted in Section 9 of the Act that incase, any interim measure was granted prior to commencement of arbitration proceedings than the arbitration proceedings should commence within 90 days from date of such order. The period of 90 days was inserted keeping in mind another amendment made in Section 11 of the Act, by way of insertion of sub section (13) wherein time period to dispose the application to

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appoint arbitrator was mandated to be 60 days from the date of service of notice to the opposite party. It is further seen that the time period for appointment of arbitrator has been reduced to 30 days from the date of service of notice to the opposite party by the amendment of 2019.

Hence, for the first time in the history of arbitration proceedings a party upon getting stay was under scanner to not only show manifest intention to resolve the dispute but the legal fulcrum made the party scuttle before the Court for appointment of arbitrator.

Conclusion in respect of timelines:

a. If the Party has been granted Interim measure by the Court than it has to make all endeavor to start arbitration proceedings within 90 days from such order, the said time can be extended by the Court..

b. The timeline mandated to the Court to decide the applicatiopn for appointment oif arbitrator is 60 days (timeline of 30 days in Amendment Act of 2019 which is yet to be notified) from the date of service of notice to the opposite party.

2. DURING THE ARBITRATION PROCEEDINGS

The two major challenges which drastically reduced the faith of litigants to opt the arbitration remedy through the Arbitration and Conciliation Act, 1996 was Firstly that proceedings before the Arbitral Tribunal would start at certain timeline but its ultimate culmination was not bound under any time frame. Secondly, relating to power of the Arbitral Tribunalin granting interim protection, bare perusal of the power of the Court in comparison to the power of the Arbitral Tribunal to grant interim measure under Section 17 abundantly clarified that Arbitral Tribunal was rather toothless tiger vis-a-vis granting interim measures.

Both the aspects were well plugged by the Amendment Act of 2015, wherein Section 29-A was inserted, which mandated that all awards falling under Part I of the act, i.e. Domestic Arbitration shall be made by the Tribunal within period of twelve months from the date of completion of pleadings.. The newly inserted section gave incentive of additional fees to arbitrator [(Section 29-A (2)] if the proceedings were completed within period of six months, however for the first time the power of extending the time line was withdrawn from the arbitrator and it was mandated that if the proceedings after statutory extensions (extension of further six months by mutual consent of parties for making the award) were not completed within timeline than the mandate of the Arbitrator would terminate and the Court would be empowered to reduce the fees of the arbitrator(s). This was one of the most crucial amendments which had given oxygen to the fading interest of resolving dispute through arbitration.

Two amendments relating to interim measure had sharpen the canning of the Arbitration proceedings, one in Section 17 (Interim measures ordered by arbitral tribunal) of the Arbitration Act, wherein all powers of the Court envisaged under section 9 of the Arbitration Act (Interim measures by Court) while granting interim measure was inserted in Section 17 of the Act and the power of the Court to entertain any application for interim measure during arbitration proceeding was made narrow by insertion of subsection (3) in section 9 of the Act, which mandated the Court to entertain application under Section 9 of the Act only when circumstances exists that depicts that remedy under section 17 was not efficacious.

Conclusion in respect of timelines:

Section 29A, fixes the time-period for passing the arbitral award at twelve months from the date of reference to the arbitral tribunal (i.e. when notice of appointment is received by the arbitrator) and is extendable by another six months with the consent of the parties. Any further extensions can only be granted by the concerned court, either prior to or after the expiry of the time period, failing which the mandate of the arbitral tribunal shall terminate.

3. AFTER ARBITRATION PROCEEDINGS

Once Arbitration is always arbitration, this principle which sidelined the Court from correcting the award and restricted its role to supervise that award which has been passed within four corners of the Act was captured under section 34 of the Act and if the same wasn't done than set-aside it.

The setting aside of an award is restricted to the extent of grounds mentioned in section 34 of the 1996 Act which are as under-

1. **THE PARTY MAKING THE APPLICATION FURNISHES PROOF THAT-**

   a. A party was under some incapacity.

b. The arbitration agreement is not valid under the law to which parties have subjected it.

c. The party making application was not given proper notice of appointment of arbitrator.

d. The award deals with dispute not contemplated by parties.

e. The composition of arbitral tribunal was not in accordance with agreement.

2. THE COURT FINDS THAT-

a. The subject matter of the dispute is not capable of settlement by arbitration.

b. The award is in conflict with the public policy of India.

The most troubled area of arbitration which made it look least lucrative to opt as method as alternate to convention litigation was post the judgment of Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd in year 2003, where after hell broke loose, when wider interpretation was given to one of the ground of setting aside i.e. in conflict with the public policy of India. Prior to these judgments a narrow interpretation of Public Policy of India was followed as laid down in the judgment of Renusagar Power Co. Ltd. v. General Electric Co.. 1994 Supp. (1) SCC 644

However, all this went under serious reform and now as the law stands today, the preposition of narrow interpretation has been restored. The amendment of 2015 further clarified and elaborated the concept of Public Policy of India as it added Explanation 1 to Section 34 (b)(ii) which is as under-

For avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,

(i) the making of award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(ii) it is in contravention with the fundamental policy of Indian Law.

(iii) it is in conflict with the most basic notions of morality or justice.

Apart from ensuring that award could be set aside when there is patent illegality, two major reforms made arbitration as first choice in electing as a medium to resolve dispute.

The Indian arbitration regime has faced difficulties due to the amount of time taken from the commencement of arbitral proceeding until the award is made. However the amendment of 2015 vide which of sub section 5 has been inserted in section 34 of the Act, wherein it has been mandated to the Court to decide the application filed under section 34 of the Act within 1 year. Secondly insertion of subsection (3) in substituted section 36 of the Act, wherein any arbitral award which was automatically stayed upon filing of application under section 34 of the Act, has now been done away with and it has been made obligatory for the Court to stay the order only if it finds appropriate and that too considering the provisions of grant of stay of money decree under the provisions of the Code of Civil Procedure, 1908.

Conclusion in respect of timelines:

Application for setting aside has to be decided within a maximum period of one year from the date of notice to the opposite party. Further, it can be safely said that Arbitration proceeding if pursued diligently, can see all weather from pre arbitration to the challenge made to the award within 3 years as compared to decades spent in doing similar exercise.

IMPACT OF COVIND 19 ON TIMELINES IN DOMESTIC ARBITRATION

Covid-19, a global pandemic that has caused lockdowns in India since March 23,2020 and has badly affected the legal system of India including the Alternate Dispute Resolution Mechanism

The Supreme Court of India, taking suomoto cognizance of the difficulties faced by litigants throughout the country, on account of the Covid-19 Virus with respect to the period of limitation under various laws passed an order dated March 23, 2020. It was held that the period of limitation in all proceedings before any Court or any Tribunal [whether under the general law or Special Laws] shall stand extended w.e.f. March 15, 2020, till further orders are passed.

1. Timelines relating to Section 29A of the Act: The Disaster Management Act, 2005 has been evoked to ensure complete lockdown in the country. Hence the pending arbitration proceedings where the stipulated time period is expiring within the lockdown period may take recourse to Section29A for extension of time upon reopening of the courts of law. The direction of the Hon'ble Supreme Court dated March 23, 2020, the statutory timelines for filing pleadings as well as conduction of all other proceedings stand extended and may be referred to in the application for an extension being filed.

2. Timeline to Challenging an award has been prescribed under sub-section (3) of Section 34 of the Act, in catena of judgments the Hon'ble Apex Court has held that the same cannot be extended beyond timeline mentioned in the Section 34(3) of the Act, however, the order of the Hon'ble Supreme Court dated March 23, 2020, provides relief in extending the limitation period for all such stipulated timelines codified in the Act.

Necessity is mother of all invention; in this case the adversity of Corona has given food for thought that whether the time has arrived that in order to comply with strict statutory timelines enumerated in the Arbitration & Conciliation Act, 1996, Arbitral Tribunal may even resort to video conferencing in routine circumstances for convenience as well as cost-effectiveness. As section 19 of the Arbitration & Conciliation Act, 1996 empowers the Arbitral Tribunal to allow the same and also states that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 nor the Indian Evidence Act, 1872. The parties to the arbitration proceeding or the Arbitral Tribunal may decide on the procedure to be followed in the conduct of such arbitration proceedings. Hence, when entire world is facing the darkest night, we can be only optimistic that the dark will soon fade and No, wonder the Dawn is coming.

Article

ADR IN INTERNATIONAL GLANCE

CS KAMIT JAIN

ADR IN TRADITIONAL SOCIETIES

Alternative Dispute Resolution (ADR) contains the effective mechanism to provide speedy and cost effective justice, it also has the potential to trim the huge arrears of cases to size. The major techniques of ADR are extra-Judicial in nature.

India also has a long tradition of using ADR processes. The most popular method of dispute resolution, panchayat', began 2,500 years ago and is widely used for resolution of both commercial and non-commercial disputes.

In India, the law and practice of private and transactional commercial disputes without court intervention can be dated back to ancient times. Arbitration or mediation as an alternative to dispute resolution by municipal courts has been prevalent in India from Vedic times.

The earliest known treatise is the *Bhradarnayaka Upanishad*, in which various types of arbitral bodies viz (i) the *Puga* (ii) the *Sreni* (iii) the *Kula* are referred to. These arbitral bodies, known as *Panchayats*, dealt with variety of disputes, such as disputes of contractual, matrimonial and even of a criminal nature. The disputants would ordinarily accept the decision of the *panchayat* and hence a settlement arrived consequent to conciliation by the *panchayat* would be as binding as the decision that was on clear legal obligations.

The Muslim rule in India saw the incorporation of the principles of Muslim law in the Indian culture. Those laws were systematically compiled in the form of a commentary and came to be known as *Hedaya*. During Muslim rule, all Muslims in India were governed by Islamic laws-the *Shari'ah* as contained in the *Hedaya*. The *Hedaya* contains provisions for arbitration as well.

The Arabic word for arbitration is *Tahkeem*, while the word for an arbitrator is *Hakam*. An arbitrator was required to posses the qualities essential for a *Kazee*– an official Judge presiding over a court of law, whose decision was binding on the parties subject to legality and validity of the award. The court has the jurisdiction to enforce such awards given under Shari'ah though it is not entitled to review the merits of the dispute or the reasoning of the arbitrator.ADR picked up pace in the country, with the coming of the East India Company. The British government gave legislative form to the law of arbitration by promulgating regulations in the three presidency towns: Calcutta, Bombay and Madras. Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit the dispute to the arbitrator, appointed after mutual agreement and whose verdict shall be binding on both the parties. These remained in force till the Civil Procedure Code 1859, and were extended in 1862 to the Presidency towns.

The ADR system in India is definitely a great achievement where the judiciary is burdened in terms of quality and quantity, this system is definitely an ease for the people who face various negative impact such as delay etc of the contemporary court system. India is a country where dispute resolution was available at various level since ancient time. The popularity of such system exists even till date. This form of dispute resolution was in practice by the disputants in India since time immemorial. After the enforcement of constitution of India,1950 Alternative Dispute resolution in India was founded on the constitutional basis of Article 14 and 21 , i.e : Equality before law and right to life and personal liberty. It was an important attempt made by the legislators and judiciary alike to achieve the " constitutional goal of achieving complete justice". There is an constitutional directives to settle the dispute through the ADR indirectly under Article 39A of the constitution of India stated that the state shall make a principle of state policy relating to equal justices and free legal aid. Under Article 40 of the constitution of India gives a directive to the state to take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self -government. Part IX has been inserted by the constitution (73rdAmendment) act, 1992 enumerated the provision of Constitution of Panchayats. ADR is the best way to resolve the dispute and conflicts. ADR is a solution for a social peace because it brings a peace to the society by the intervention of the Arbitrators and also advocates. This paper analyses the role of ADR which is expected to resolve disputes amicably and in a peaceful manner.

The implementation of Alternative Dispute Resolution mechanisms as a means to achieve speedy disposal of justice is a crucial issue. The first step had been taken in India way back in 1940 when the first Arbitration Act was passed. However, due to a lot of loop holes and Problems in the legislation, the Provisions could not fully implemented. However, many years later in 1996, The Arbitration and Conciliation Act was passed which was based on the UNCITRAL model. Sufficient Provisions have been created and amended in the area of LokAdalats in order to help the rural and commoner segments to make most use of this unique Alternative Dispute Resolution Mechanism in India. It is impossible to oust the conflicts and disputes in any society and the human society develops in contradictions between the People. India is a Sovereign, Socialist, Secular Democratic Republic. The Constitutional goal is to set up an egalitarian society and to secure to all its citizens-Justice, Social , Economic and Political. It is the duty of the state to secure access to Justice to its citizens by ensuring judicial and non-judicial forums of dispute resolution that provides timely and effective justice and enforcement of their legal and fundamental rights.

ADR IN TRADITIONAL INTERANTIONAL SOCIETY

Arbitration was an important feature of Irish Brehon Law. A 'brithem' who had trained in a law-school but had not been appointed by the king as the official judge for the area earned his living by arbitrating disputes between parties who had agreed to be bound by the decision. They simply judged the amount of fines due from those guilty, and left it

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to extended families, patrons or chiefs to enforce payment. If a brithem left a case undecided he would have to pay a fine of 8 ounces of silver. Founded in the maxim 'to every judge his error', he would have to pay a fine for an erroneous judgment. There are many other examples of ADR processes which have developed in traditional societies as mechanisms for resolving disputes. The Bushmen of Kalahari, a traditional people in Namibia and Botswana, have sophisticated systems of resolving disputes that avoid physical conflict and the courts. –When a serious problem comes up everyone sits down – all the men, all the women – and they talk, and they talk and they talk. Each person has a chance to have his or her say. It may take two or three days. This open and inclusive process continues until the dispute is literally talked out. This process incorporates negotiation, mediation, and consensus building and bears some resemblance to the parliamentary filibuster.

THE DEVELOPMENT OF ADR:

The concept of ADR is not a new phenomenon. For centuries, societies have been developing informal and non-adversarial processes for resolving disputes. In fact, archaeologists have discovered evidence of the use of ADR processes in the ancient civilizations of Egypt, Mesopotamia, and Assyria. Furthermore, it can be argued that many of the modern methods of ADR are not modern alternatives, but merely a return to earlier ways of dealing with such disputes in traditional societies. The court system itself was once an alternative dispute resolution process, in the sense that it superseded older forms of dispute resolution, including trial by battle and trial by ordeal.ADR in Classical Times

One of the earliest recorded mediations occurred more than 4,000 years ago in the ancient society of Mesopotamia when a Sumerian ruler helped avert a war and developed an agreement in a dispute over land. Further evidence reveals that the process of conciliation among disputants was very important in Mesopotamian society. During the First Century BC a merchant organisation advocated that commercial disputes be resolved outside of the court process through a confrontation between the creditor and debtor in the presence of a third party referee. The role of the referee was to help facilitate conciliation. In this way, the referee would suggest alternative settlements, if the options put forward by the parties themselves were rejected. If the dispute was not resolved according to this manner, the dispute could be brought before the court.

The development of ADR in the Western World can be traced to the ancient Greeks. As Athenian courts became overcrowded, the city-state introduced the position of a public arbitrator around 400 The arbitral procedures were structured and formal. The arbitrator for a given case was selected by lottery. His first duty was to attempt to resolve the matter amicably. If he did not succeed, he would call witnesses and require the submission of evidence in writing. This can be described as the modern day process of medarb. The parties often engaged in elaborate schemes to postpone rulings or challenge the arbitrator's decision. An appeal would be brought before the College of Arbitrators, who would refer the matter to the traditional courts.

DEVELOPMENT OF CIVIL & COMMERCIAL ADR

(a) Ireland

The first Arbitration Act was the –Act for Determining Differences by Arbitration, 1698. The 1698 Act provided, inter alia, that –It shall and may be lawful for all merchants and traders and others desiring to end any controversy, suit or quarrel ... by a personal action or suit in equity, by arbitration whereby they oblige themselves to submit to the award or umpirage of any person or persons ... so agreed." One of Ireland's first recorded arbitral institutions was the Ouzel Galley Society. Its name derived from an Irish merchant ship. In the autumn of 1695 the Ouzel Galley sailed out of Ringsend in Dublin under the command of CaptEoghan Massey of Waterford. Her destination, it was supposed at the time, was the great Ottoman port of Smyrna in what is now Turkey where the vessel's owners - the Dublin shipping company of Ferris, Twigg& Cash - intended her to engage in a trading mission before returning to Dublin the following year. The Ouzel, however, did not return as scheduled; nor was she seen the year after that. When a third year passed without any sign of her or her crew, it was generally assumed by the people of Dublin that she had been lost at sea.55 1.45 In 1698 a panel comprising the city's most distinguished merchants was established to settle the question of insurance. The panel's ruling was that the ship had been lost and that its owners and insurers should receive their due compensation. The galley's complement of 37 crew and 3 officers were declared dead and the insurance was paid out.56 1.46 Two years later, however, in the autumn of 1700, the Ouzel made her unexpected reappearance, sailing up the River Liffey. The ownership of the Ouzel's cargo became a matter of dispute. Litigation commenced later that year but was arduously slow. Eventually in 1705 the merchants of Dublin decided to form an arbitration court to hear the dispute and the panel of merchants which had arbitrated in the case in 1698 was formally established as a permanent arbitration body to deal with similar shipping disputes that might arise. In contrast with the court proceedings the arbitration reached a relatively speedy conclusion.57 According to records, "It was resolved that the entire of the pirates' booty would form a fund for the alleviation of poverty among the merchants of Dublin.—58 The Ouzel Galley Arbitration led to the formation of the Ouzel Galley Society. The Ouzel Galley Society thrived until the 1820's. Between 1799 and 1869 for instance it is known to have made 318 awards - the majority of these being made before 1824. The members were generally drawn from among the city's most eminent politicians and businessmen - among them Arthur Guinness and John Jameson. For much of the 18th Century the society met in public houses. In 1783 the society was partially subsumed by the newly formed Dublin Chamber of Commerce. From that year on it declined, in parallel to the decline in the city's fortunes, and it was eventually wound up in 1888.59 1Further developments in the field of arbitration in Ireland include the enactment of the Arbitration Act 1954 (as amended by the Arbitration Act 1980) which continues to govern domestic arbitrations and the Arbitration (International Commercial) Act 1998 which governs international arbitrations. The 1998 Act adopts the UNCITRAL Model Law on International Commercial Arbitration with a few minor amendments. In 1998, the Bar Council opened the Dublin International Arbitration Centre.60 In May 2001, the International Centre for Dispute Resolution, a separate division of the American Arbitration Association, the world's largest provider of commercial conflict management and dispute resolution services, opened its European headquarters in Dublin.61 Provision for mediation has been made in a number of recent Acts and statutory instruments, including: Judicial Separation and Family

Law Reform Act 1989; Family Law (Divorce) Act 1996; Employment Equality Act 1998;

(b) United States

In the United States, Chambers of Commerce created arbitral tribunals in New York in 1768, in New Haven in 1794, and in Philadelphia in 1801. These early panels were used primarily to settle disputes in the clothing, printing, and merchant seaman industries. Arbitration received the full endorsement of the Supreme Court in 1854, when the court specifically upheld the right of an arbitrator to issue binding judgments in Burchell v Marshall.62 Writing for the court, Grier J stated that –Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. The federal government has promoted commercial arbitration since as early as 1887, when it passed the Interstate Commercial Act 1887. The Act set up a mechanism for the voluntary submission of labour disputes to arbitration by the railroad companies and their employees. In 1898, Congress followed initiatives that began a few years earlier in Massachusetts and New York and authorised mediation for collective bargaining disputes. The Newlands Act 1913 and later legislation reflected the belief that stable industrial peace could be achieved through the settlement of collective bargaining disputes; settlement in turn could be advanced through conciliation, mediation, and voluntary arbitration. Special mediation agencies, such as the Board of Mediation and Conciliation for Railway Labor 191364 and the Federal Mediation and Conciliation Service 1947 were formed and funded to carry out the mediation of collective bargaining disputes.

(c) ENGLAND

England & Wales Sander's concerns for the future of the civil justice system were echoed in the Woolf Reports on the civil justice system of the 1990's when the system in England and Wales was viewed as —. . too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown; and it is incomprehensible to many litigants. The then Lord Chancellor appointed Lord Woolf in 1994 to review the rules of civil procedure with a view to improving access to justice and reducing the cost and time of litigation. The aims of the review were –to improve access to justice and reduce the cost of litigation; to reduce the complexity of the rules and modernise terminology; to remove unnecessary distinctions of practice and procedure. Perceived problems within the existing civil justice system, summed up by Lord Woolf in his review in England and Wales as –the key problems facing civil justice today... cost, delay and complexity.

The Woolf Reports led to the enactment of the UK Civil Procedure Act 1997 and the Civil Procedure Rules 1998 (CPR). The new CPR Rules apply both to proceedings in the High Court and the County Court. The stated objective of the procedural code is to enable the court to deal with cases justly.80 Dealing with a case justly includes, so far as practicable: Ensuring that the parties are on an equal footing; Saving expense; Dealing with the case in ways which are proportionate; Ensuring that the case is dealt with expeditiously and fairly; and Allotting it to an appropriate share of the court's resources.The CPR vests in the court the responsibility of active case management by encouraging the parties to co-operate and to use ADR.82 Under the CPR a court may either at the request of the parties or of its own initiative stay proceedings while the parties try to settle the case by ADR or other means.

INDIA

The Code of Civil Procedure, 1859 in its sections 312 to 325 dealt with arbitration in suits while sections 326 and 327 provided for arbitration without court intervention. The Code of Civil Procedure (Act 5 of 1908) repealed the Act of 1882. The Code of Civil Procedure, 1908 has laid down that cases must be encouraged to go in for ADR under section 89(1).[7] Under the First Schedule, Order XXXII A, Rule 3 a duty is cast upon the courts that it shall make an endeavor to assist the parties in the first instance, in arriving at a settlement in respect of the subject matter of the suit.[8]

The second schedule related to arbitration in suits while briefly providing arbitration without intervention of a court. Order I, Rule 1 of the schedule says that where in any suit, all the parties agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced; apply to the court for an order of reference. This schedule, in a way supplemented the provisions of the Arbitration Act of 1899.

TO SUM UP

India has a long history of settlement of disputes outside the formal justice delivery system. The concept of parties settling their disputes by reference to a person or persons of their choice or private tribunals was well known to ancient India. Long before the king came to adjudicate on disputes between persons such disputes were quite peacefully decided by the intervention of the kulas, srenis, pugas and such other autonomous bodies. These traditional institutions worked as main means of dispute resolution, not an alternative. During the British rule the system of dispute resolution was changed and a new formal, adversary system of dispute resolution originated. Arbitration was recognised as out of court method of dispute resolution and several provisions were enacted relating to that. The ADR system as is understood in the present scenario is the result of the shortcomings of that formal judicial system. Now the alternative disputes resolution techniques are being used to avoid the costs, delays and cumbersome procedure of the formal courts.

With the advent of the alternate dispute resolution, there is new avenue for the people to settle their disputes. The settlement of disputes in LokAdalat quickly has acquired good popularity among the public and this has really given rise to a new force to ADR and this will no doubt reduce the pendency in law Courts. There is an urgent need for justice dispensation through ADR mechanisms.

The ADR movement needs to be carried forward with greater speed. This will considerably reduce the load on the courts apart from providing instant justice at the door-step, without substantial cost being involved. If they are successfully given effect then it will really achieve the goal of rendering social justice to the parties to the dispute.

RHETORIC AND REALITY OF ADR MECHANISM

CS (DR.) S K GUPTA
&
CS YASHREE DIXIT

THE PERSPECTIVE

Indian judiciary is one of the oldest judicial system, a world-renowned fact, but nowadays it is also a well-known fact that the Indian judiciary is clogged with long unsettled cases. The scenario is that even after setting up more than a thousand fast track Courts that already settled millions of cases the problem is far from being solved as pending cases are still piling up. To deal with such a situation Alternative Dispute Resolution (ADR) can be a helpful mechanism, it resolves the conflict in a peaceful manner where the outcome is accepted by both parties.

WHAT IS ALTERNATE DISPUTE RESOLUTION

Washington, D.C. mediator and arbitrator Linda R. Singer described ADR as ranging "somewhere between the polar alternatives of doing nothing or of escalating conflict, being less formal and generally more private than ritualized court battles, and permitting the disputants to have more active participation in and more control over the process of solving their own problems."] In short, ADR is characterized by flexibility, informality, and control by the parties to a dispute.

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. One of the most common features of ADR is it resolves the dispute cost-effectively, is less time consuming and produces desired results.The degree to which these characteristics are present in the various ADR techniques depends in part on the influence the third party has on the process and outcome. But all the techniques share these goals: to allow voluntary participation by the disputants in a fair process; to support the crafting of a creative and mutually satisfactory resolution; to enhance the parties' relationships; and to enable the parties to maintain their dignity i.e., to save face.One of the primary reasons parties may prefer ADR proceedings is that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's position. ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose.

To deal with the situation of pendency of cases in courts, ADR plays a significant role in India by its diverse techniques.ADR is also founded on such fundamental rights, articles 14 and 21 which deal with equality before the law and right to life and personal liberty respectively. ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strives to achieve equal justice and free legal aid provided under article 39-A relating to the Directive Principle of State Policy(DPSP).

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

- Less time consuming: people resolve their dispute in a short period as compared to the courts.
- Cost-effective method: it saves a lot of money if one undergoes in the litigation process.
- Free from technicalities of courts: informal ways are applied in resolving the dispute in ADR.People are free to express themselves: without any fear of a court of law. They can reveal the true facts without disclosing it to any court.
- Efficient way: there are always chances of restoring relationship back as parties discuss their issues together on the same platform.
- Prevention of further conflicts: It maintains a good relationship between the parties.
- It preserves the best interest of the parties.
- Going to court can risk making a bad situation worse. That's because the legal system is adversarial – it puts one side against the other, and in the end, there is a winner and a loser. Using mediation, where you talk to each other to find a solution you can both live with, can help preserve an ongoing relationship
- There is a much wider range of outcomes with ADR than with the courts.
- ADR processes are usually more flexible than the court process.

FORMS OF ADR

Alternative dispute resolution (ADR) refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts.The most common forms of ADR are Mediation, Arbitration, Negotiation, Conciliation, Facilitation and Lok Adalats.

MEDIATION

Mediation is more formal but still leaves control of the outcome to the parties. An impartial mediator helps the parties try to reach a mutually acceptable resolution to the dispute. The parties control the substance

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of the discussions and any agreement reached. A typical session starts with each party telling their story. The mediator listens and helps them identify the issues in the dispute, offering options for resolution and assisting them in crafting a settlement.

Mediation can take many forms, depending on the needs of the parties, such as:

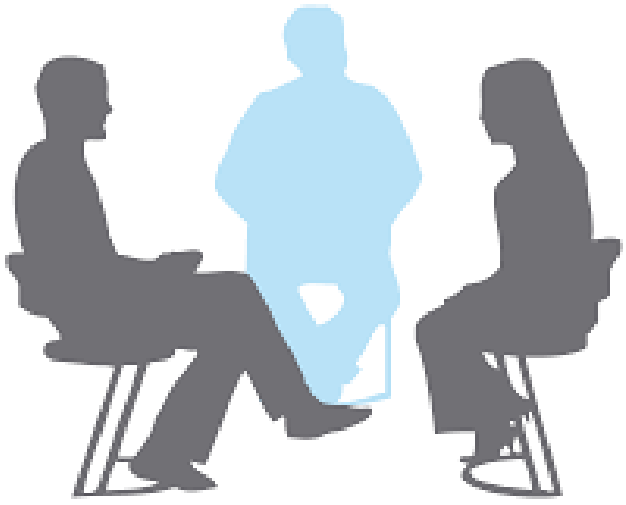
- Face to face – parties directly communicate during the process,
- Shuttle – the mediator separates the parties and shuttles between each one with proposals for settlement,
- Facilitative – the mediator helps the parties directly communicate with each other, or
- Evaluative – the mediator makes an assessment of the merit of the parties' claims during separate meetings and may propose terms of settlement.

Mediation should be considered when the parties have a relationship they want to preserve. So when family members, neighbours or business partners have a dispute, mediation may be the best ADR procedure to use. Mediation is also effective when emotions may get in the way of a solution. A mediator can help the parties communicate in a non-threatening and effective manner. Mediation is available to the parties at any point in the litigation process including through the appeal.

ARBITRATION

Arbitration is the most formal of the ADR procedures and takes the decision making away from the parties. The arbitrator hears the arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are usually relaxed. Each party can present proofs and arguments at the hearing. There isn't, however, any facilitate discussion between the parties. Unlike other forms of ADR, the award is often supported by a reasoned opinion (though the parties can agree that no opinion will issue).

Arbitration can be "binding" or "non-binding." Binding arbitration means the parties have waived their right to a trial, agree to accept the arbitrator's decision is final and, usually, there is no right of appeal of the decision. If there is a binding arbitration clause in a contract, the matter must proceed to arbitration and there is no trial.Non-binding arbitration means the parties can request a trial if they don't accept the arbitrator's decision. Some courts will impose costs and fines if the court decision is not more favorable than that awarded in the arbitration. Non-binding arbitration is increasingly rare.Arbitration is good for cases where the parties want a third person to settle the dispute, but want to avoid the cost of money and time that accompanies a court trial. It is also appropriate where the parties want a decision-maker experienced in the subject of the dispute.



NEGOTIATION

While the two most common forms of ADR are arbitration and mediation, negotiation is usually opted first to resolve a dispute.The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.This form of ADR is often overlooked because of how obvious it is. In negotiation, there is no impartial third party to assist the parties in their negotiation, so the parties work together to come to a compromise. The parties may choose to be represented by their attorneys during negotiations.

CONCILIATION

Conciliation is an informal process in which the conciliator tries to bring the disputants to an agreement. Under the process of conciliation, the intention is to facilitate the settlement between the parties. The parties, however, are not obliged or are not bound by the conciliation, in a sense that negotiations can be carried out until the parties arrive at a mutually pleasing settlement. The process is handled by an impartial individual termed as the conciliator. He is an active participant in the process of conciliation and is involved in discussing the issues, negotiating and bringing about an amicable settlement.

Facilitation

Facilitation is the least formal of the ADR procedures. The Neutral third-party works with both sides to resolve their dispute. Facilitation assumes that the parties want to settle. The negotiation is done through telephone contacts, written correspondence, or via e-mail. Facilitation is sometimes used by judges at settlement teleconferences exploring alternatives to taking the dispute to trial.

LOK ADALATS

The establishment of Lok Adalat system of the dispute settlement system was brought about by the Legal Services Authorities Act 1987 for expediting the system of dispute settlement. In Lok Adalats, disputes in the pre-litigation stage could be settled amicably. The award (decision) made by the Lok Adalats is deemed to be a case of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat (though there is no provision for an appeal against such an award), they are free to initiate litigation by approaching the court of appropriate jurisdiction.

ADR IS ONLY ONE ALTERNATIVE, NOT THE METHOD OF CHOICE

Back in the 1980s, experts and executives alike heralded Alternative Dispute Resolution (ADR) as a sensible, cost-effective way to keep

corporations out of court and away from the kind of litigation that devastates winners almost as much as losers.Most lawyers—and hence the companies they serve—still view ADR as the alternative rather than the primary or preferred method of settling disputes. Such companies see the procedure as a way of settling peripheral, less important disputes, or, as in the electronics case, they simply abandon it when they fail to get the result they want. In any event, they have not decided to make dispute avoidance and early resolution the prime mission of the legal department.

ADR ISN'T REALLY ALL THAT DIFFERENT FROM LITIGATION.

Because few companies have made a serious commitment to ADR as a distinct system, and because there are very few rules governing it, the procedure is often allowed to become a litigation look-alike. Whenever that happens, the cost of ADR begins to approach the cost of the litigation that it's supposed to replace.Without the commitment of top management, ADR quickly turns into litigation-in-disguise. Few companies have made a serious commitment to ADR as a distinct system. The acid test of an organization's dedication to quiet dispute resolution comes when the company is the complainant. In this circumstance, few companies seriously consider negotiation.Few companies consider arbitration when they are convinced they're in the right direction.Rhetoric and Reality of ADR

In most societies, settlement and conciliation is preferred over contentious litigation.Therefore, the current trend to promote settlement is not a new turn but a new twist.The rhetoric promises a cheap,"the production argument", rather than the"quality argument",of directing cases into appropriate, or optimal, dispute resolution processes. Fast, facilitative, interest-based process,conciliation, and a non-contentious procedure, is considered less stressful and less harmful for the future relations between the parties but reality does not always match it.

In other cases, ADR becomes a quasi-trial without the legal safeguards of publicity, reasoned decisions, sufficient opportunities for the parties to argue their case. The argument of saving time and money might be false if the parties make decisions that are not informed, especially if the parties would never enter into an agreement on such terms when having sufficient information.ADR consists of a range of very different procedures, some of which are appropriate for some conflicts in some contexts, while others are not, and vice-versa. In many cases, ADR has often been misunderstood and misused as a tool for enhancing access to justice.

ROLE OF PRACTICING COMPANY SECRETARY IN ADR

Company secretaries not only possess corporate and legal expertise but due to the very nature of the profession, their knowledge is far superior in respect of commercial understanding. They have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner. There is ample opportunity for a practicing company secretary under the Alternate Dispute Resolution structure.

- They can act as Mediators, Arbitrators, Conciliators, and Negotiators in business and commercial disputes
- They can formulate a better strategy in ADR and offer appropriate advice.
- Assist in compliance required under ADR, Process Documentation, advising on procedural aspects.
- Representing clients before the ADR tribunals and assisting in reaching a win-win situation.
- Advising on conflict resolution and dispute management to save time, cost and help in maintaining a cordial business relationship
- Enhancing the satisfaction level of parties by encouraging and helping them to find practical solutions to their disputes
- ADR advocacy to empower society, avoid litigation and reducing the burden of the judiciary.

CONCLUSION

Alternative Dispute Resolution (ADR) refers to an array of methods for resolving legal disputes without resorting to the court system.The court's inability to address the emotional aspects of conflict may be a reason why there has been a growing view, that litigation was meant to become the last resort for parties seeking a dispute resolution. ADR methods continue to grow in popularity. However, ADR does not declare or develop the law, does not happen in full view of the public, and may not even yield a resolution if the process breaks down and may not be a replacement for litigation in every situation.ADR provides a one-time solution that is only binding, if at all, on the current parties for the current dispute. In contrast, court decisions become law, which controls, or prevents, future disputes regardless of the parties involved.

Article

ARBITRATION – SIMPLEST WAY OF RESOLUTION

CS PRATEEK BHANSALI

With the steep growth in the number of laws and the number of cases, the Court system is under great pressure. In order to reduce the heavy demand of Court time, efforts are being made to resolve the disputes by resorting to Alternative Dispute Resolution Methods before they enter the portals of the court.

Arbitration is a method for settling disputes privately, but its decisions are enforceable by law. An arbitrator is a private extraordinary judge between the parties, chosen by mutual consent to sort out controversies between them. Arbitrators are so called because they have an arbitrary power; for if they observe submissions and keep within due bounds their sentences are definite from which there is no appeal. Arbitration offers greater flexibility, prompt settlement of national and international private disputes and restricted channels of appeal than litigation. In the words of Richard Cobden "At all events, arbitration is more rational, just, and humane than the resort to the sword."

ARBITRATION

Arbitration is a process in which a neutral third party or parties render a decision based on the merits of the case. In the Indian context the scope of the rules for the arbitration process are set out broadly by the provisions of the Arbitration and Conciliation Act 1996 and in the areas uncovered by the Statute the parties are free to design an arbitration process appropriate and relevant to their disputes.

The Act is based on the UNCITRAL Model Law (as recommended by the U.N. General Assembly) and facilitates International Commercial Arbitration as well as domestic arbitration and conciliation. India is also party to the New York Convention on The Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("NYC").

KINDS OF ARBITRATIONS

The following are the different kinds of Arbitrations found in India:

a. Ad-hoc Arbitration – An ad hoc arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, etc. Provided the parties approach the arbitration in a spirit of cooperation, ad hoc proceedings can be more flexible, cheaper and faster than an administered proceeding.

b. Institutional Arbitration –An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as according to the rules of that institution. It is important to note that these institutions do not arbitrate the dispute, it is the arbitrators who arbitrate, and so the term arbitration institution is inapt and only the rules of the institution apply.

c. Fast track arbitrationFast track arbitration is a method, which is time dependent in the provision of the arbitration and conciliation act. Its procedure is established in a way that it has abandoned all the methods, which consume time, and uphold the simplicity which is the originally the prime purpose of such arbitration.

IMPORTANCE OF ARBITRATION CLAUSE IN INDIA

An arbitration clause is an essential part of a contract which states that all disputes between two parties who entered into a contractual relationship will be settled through the process of arbitration, rather than in the courts.

This is very helpful for both the businesses and consumers by ensuring a cost-effective solution for dispute resolution.

Businesses include arbitration clauses because it allows them to settle disputes quickly and quietly, without going through the often expensive and time-consuming legal system.

The primary importance of including an arbitration clause in a contract before the dispute arises is that once the dispute does arise, one can force the dispute out of the court system, and so that can force the other side to arbitrate. It saves time, cost, and unnecessary harassment of the parties. Thus, having a proper arbitration clause in a contract is very important.

ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019

- The Arbitration and Conciliation (Amendment) Bill, 2019 was passed by Rajya Sabha.
    - The Act contains provisions to deal with domestic and international arbitration, and defines the law for conducting conciliation proceedings.

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

KEY FEATURES OF THE BILL

- Arbitration Council of India: The Bill seeks to establish an independent body called the Arbitration Council of India (ACI) for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.
- Its functions include:
  - Framing policies for grading arbitral institutions and accrediting arbitrators.
  - Making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters.
  - Maintaining a depository of arbitral awards (judgments) made in India and abroad.
- Appointment of arbitrators: Under the 1996 Act, parties were free to appoint arbitrators. In case of disagreement on an appointment, parties could request the Supreme Court, or the High Court, or any person or institution designated by such Court, to appoint an arbitrator.
  - Under the Bill, the Supreme Court and High Courts may now designate arbitral institutions, which parties can approach for the appointment of arbitrators.
  - For international commercial arbitration, appointments will be made by the institution designated by the Supreme Court.
  - For domestic arbitration, appointments will be made by the institution designated by the concerned High Court.
  - In case there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of arbitral institutions.
- Relaxation of time limits: Under the Act, arbitral tribunals are required to make their award within a period of 12 months for all arbitration proceedings.
  - The Bill seeks to remove this time restriction for international commercial arbitrations. It adds that tribunals must try to dispose of international arbitration matters within 12 months.

SIGNIFICANT JUDICIAL DECISIONS:

Anti – Arbitration Injunction

1. The Delhi High Court maintained a consistent approach in as much as:

   (a) interim injunction against arbitration proceedings was refused even though allegations of fraud, bribery and corruption were made (*Republic of India vs. Agusta Westland International Ltd.*, (2019) 257 DLT 171)(b) interference by domestic courts in arbitral proceedings under BIT was held to be permissible only in "*compelling circumstances*" in "*rare cases;*" (*Union of India v. Khaitan Holdings (Mauritius) Limited &Ors.,* 2019 SCC Online Del 6755)(c) only if proceeding initiated were vexatious and/or oppressive, the Court would interfere.

   (*Himachal Sorang Power Private Limited vs. NCC Infrastructure Holdings Limited*, 2019 SCC Online Del 7575) 2. The Bombay High Court refused to stay arbitration proceedings, once the Tribunal had already ruled on its competence.()

Simple Allegation of Fraud – does not vitiate an Arbitration Clause

1. The Supreme Court held that a mere allegation of simple or plain fraud are not sufficient to nullify an arbitration agreement. A two part test has to be followed: (a) whether the plea of fraud permeates the entire contract rendering it void and (b) whether the allegations of fraud touch upon the internal affairs of the parties, *inter se* having no implication in the public domain. (*Rashid Raza vs. Sadaf Akhtar*, (2019) 8 SCC 710)

MODES AND PRACTICES OF ADR IN INDIA

1. Arbitration:

   The definition of'arbitration' in section 2(1) (a) verbatim reproduces the text of article 2(a) of the Model Law-'arbitration means any arbitration whether or not administered by a permanent arbitral institution'. It is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is binding on the parties.

   It is a private, generally informal and non-judicial trial procedure for

adjudicating disputes. There are four requirements of the concept of arbitration: an arbitration agreement; a dispute; a reference to a third party for its determination; and an award by the third party.

2. Mediation:

Mediation is a process in which the mediator, an external person, neutral to the dispute, works with the parties to find a solution which is acceptable to all of them. The basic motive of mediation is to provide the parties with an opportunity to negotiate, converse and explore options aided by a neutral third party, to exhaustively determine if a settlement is possible.

Mediation is negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties.

In India, mediation has not yet been very popular. One of the reasons for this is that mediation is not a formal proceeding and it cannot be enforced by courts of law. **3. Conciliation:**

Conciliation is "a process in which a neutral person meets with the parties to a dispute which might be resolved; a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences".

This consists in an attempt by a third party, designated by the litigants, to reconcile them either before they resort to litigation (whether to court or arbitration), or after. The attempt to conciliate is generally based on showing each side the contrary aspects of the dispute, in order to bring each side together and to reach a solution.

Section 61 of the 1996 Act provides for conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. After its enactment, there can be no objection, for not permitting the parties to enter into a conciliation agreement regarding the settlement of even future disputes.

4. Negotiation:

Negotiation-communication for the purpose of persuasion-is the pre-eminent mode of dispute resolution. Compared to processes using mutual third parties, it has the advantage of allowing the parties themselves to control the process and the solution.

In India, Negotiation doesn't have any statutory recognition. Negotiation is self counseling between the parties to resolve their dispute. Negotiation is a process that has no fixed rules but follows a predictable pattern.

5. Lok Adalats:

LokAdalat was a historic necessity in a country like India where illiteracy dominated other aspects of governance. It was introduced in 1982 and the first LokAdalat was initiated in Gujarat. The evolution of this movement was a part of the strategy to relieve heavy burden on courts with pending cases. It was the conglomeration of concepts of social justice, speedy justice, conciliated result and negotiating efforts.

They cater the need of weaker sections of society. It is a suitable alternative mechanism to resolve disputes in place of litigation. LokAdalats have assumed statutory recognition under the Legal Services Authorities Act, 1987. These are being regularly organized primarily by the State Legal Aid and the Advice Boards with the help of District Legal Aid and Advice Committees.

CONCLUSION

With the introduction of several changes in the law, new case law, governmental impetus and the clear preference for arbitration in resolving commercial disputes, India is exorcising the ghosts of its past. The Amendments have been a long time in coming and put in place several measures to establish that India is indeed, an arbitration friendly jurisdiction. The success of the new provisions and the ultimate ability of India to attract parties as a viable arbitration destination, will depend largely on its practical implementation and the co-operation of parties and courts in its process. The interplay of courts and the tribunal in this regime is crucial and the present amendments attempt to strengthen this relationship. The use of block-chain, artificial intelligence in arbitrator selection and document collation mechanisms, new arbitral institutions streamlining the process and increased prevalence of arbitration across business, arbitration is likely to get more sophisticated and efficient over time. While India is still making progress with developments in the law of arbitration, the present sign of changes in the field makes us optimistic.

ARBITRATION & ALTERNATE DISPUTE RESOLUTION MECHANISM

CS NITIN ARORA

BACKGROUND

It is an undisputed fact that the courts in India are burdened with a lot of legal cases. Accordingly, a lot of time and cost is involved in a settlement of a particular case. With the advent in business, both locally and globally and rise in population it has become imperative for the disputing parties to settle disputes through arbitration and various alternate dispute resolution mechanisms including conciliation, mediation without involvement of the courts. The provisions relating to settlement of disputes through arbitration and alternate dispute resolution mechanisms are set out in this article.

ARBITRATION

The provisions relating to arbitration are enumerated in the Arbitration and Conciliation Act, 1996 ("Act"). This Act is based on United Nations Commission on International Trade Law (UNCITRAL), model law on International Commercial Arbitration and is equally applicable to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. This act repealed the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The major changes as envisaged in the Act are those relating to enforcement of foreign awards in India and reduction of grounds for challenge of arbitral awards and to minimize the role of Courts in the arbitral process.

Part I of the 1996 Act titled 'Arbitration' is general in nature and contains ten chapters. Part II deals with 'Enforcement of Certain Foreign Awards'. Chapter I of Part II deals with New York Convention Awards and Chapter II deals with Geneva Convention Awards. Part III of the Act deals with Conciliation and Part IV of the Act deals with supplementary provisions including seven schedules.

Arbitration is defined under Section 2(1) (a) of the Arbitration and Conciliation Act, 1996 as to mean "any arbitration whether or not administered by a permanent arbitral institution". The term arbitrator is not defined under Arbitration And Conciliation Act but in general parlance arbitrator is a person who is appointed to resolve differences and disputes between two or more parties by their mutual consent, by entering into an arbitration agreement. The person who is appointed must give his consent to act as arbitrator. The appointment of arbitrator is not complete till he has accepted the reference. Further, an arbitrator must absolutely be disinterested and impartial and provide independent judgment.

NUMBER OF ARBITRATORS

Section 10 of the Act provides that the parties are free to determine the

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number of arbitrators provided that such number shall not be an even number. If the parties fail to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

APPOINTMENT OF ARBITRATOR

Section 11 of the Act deals with the provisions related to appointment of arbitrator. According to this section, a person of any nationality can be an arbitrator and the parties can agree on any procedure for appointment of arbitrator or arbitrators. In case there is no agreement between the parties regarding the procedure for appointment, the following rules shall apply-

1) In case of arbitration with three arbitrators, each party shall appoint its own arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

2) If within 30 days from receipt of request by one party from the other party, the party fails to appoint an arbitrator or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the arbitrator shall be appointed, upon request by a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court.

CHALLENGE PROCEDURE

Section 13 of the Act contains the detailed provisions relating to the procedure to be followed for challenge the arbitrator appointed. Sub-section (1) provides that subject to the provisions of sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator. Sub-section (4) states that if a challenge under any procedure agreed upon by the parties is not successful, the arbitral Tribunal shall continue the arbitral proceedings and make an arbitral award but in that case the challenging party has the right to make an application to the court to set aside the award in terms of Section 34 of the Act.

PROVISIONS REGARDING SETTING ASIDE AN AWARD

As per the provisions of Section 34 of the Act, the parties to arbitration can approach the court for setting aside the award on the following grounds:

(a) The applicant party furnishes proof about:

1. Incapacity of the party or
2. Invalidity of an arbitration agreement or
3. The Party was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case or
4. Award is not in accordance with the terms of submission to arbitration in regard to the dispute or it contains decisions on matters beyond the scope of the submission to arbitration or 5. Arbitral Tribunal was not properly constituted or the arbitral procedure was not in accordance with the agreement of the parties.

Or,

(b) The Court finds that:

Subject matter of the dispute was not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India.

FINALITY OF ARBITRAL AWARDS

Section 35 of the Act provides that subject to the provisions of part I (Sections 33 and 34 of the Act) of the Act the award shall be final and binding on the parties and the persons claiming under it respectively.

CONCILIATION

Conciliation is an informal process in which two parties to a dispute refer a particular matter to a third person. The conciliator tries to solve the dispute through mutual discussion between parties but is not empowered to give any decision. Conciliation complements the arbitration process but is not a substitute to arbitration. The Act gives formal recognition to conciliation in India. The Act facilitates the arbitrator to take efforts to arrive at a settlement between the disputing parties through conciliation.

OTHER ALTERNATE DISPUTE RESOLUTION MECHANISMS

MEDIATION: In mediation, the process is a settlement between the disputing parties with the assistance of a neutral third party. The Mediators are not empowered to issue orders. The Mediators help the disputing parties reach a common opinion and settlement. It is similar to conciliation but in conciliation, the conciliator plays a more direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making different proposals for settlement.

NEGOTIATION: Negotiation is a process where parties try to work out a solution that they are both satisfied with, often giving offers and counter-offers to each other without any involvement of a legal counsel.

CONCLUSION

Arbitration and other alternate dispute resolution mechanisms have gained a lot of significance in India for settlement of disputes due to speedy disposal and autonomy granted to the parties to determine the course of proceedings. Further, speedy resolution through arbitration and alternate dispute resolution mechanisms also assist in the ease of doing business in India. The Government of India has also taken various measures for promotion of alternate dispute resolution mechanisms. These measures will surely help in making India a global arbitration hub.

ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

CS AKASHDEEP SINGH

ARBITRATIONBy: In recent years, the juridical work has become more and more enchanting with dispute resolution mechanisms, negotiation, mini-trials settlement, arbitration, settlement and others. Alternative dispute resolution (ADR) is used to define the various different modes available to resolve the legal disputes. It is not feasible for most of the individuals to file law suit and get justice at the right time. In order to solve the difficulty of delayed justice ADR mechanism has been developed.ADR mechanism is progressively recognised in law and commercial sectors. Various approaches of ADR can help the parties to resolve their disputes moderately and actively. ADR methods can be engaged in civil, industrial, family and commercial disputes. The mission of ADR mechanism is preserved in the Indian Constitution's Preamble: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity".

ARBITRATION PROCESS

CASE FIELD

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ARBITRATOR SELECTION PROCESS

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PRELIMINARY HEARING AND SCHEDULING PROCESS

↓

DISCOVERY PROCESS

↓

HEARING/MEDIATION

↓

ARBITRATION HEARING

↓

POST-ARBITRATION BRIEFS

↓

FINAL ARBITRATION AWARDS

1. Case Field- An arbitration case begins when one party submits a Demand for Arbitration
2. Arbitrator selection process- The next step is to find and select an arbitrator on the basis of criteria determined by the parties.
3. Preliminary hearing and scheduling process- The arbitrator organises a preliminary hearing with the parties.
4. Discovery Process- after Preliminary hearing the next step is to examine the issues and procedural difficulties relating to the case.
5. Hearing/Mediation-The parties and arbitrator meet in person to conduct the Hearings.
6. Arbitration Hearing-At the hearing, both parties may confer evidence to the arbitrator. Except for the case which is very complex, this is the only hearing before the arbitrator.
7. Post-Arbitration Briefs-After the hearing takes place; both the parties may come up with additional testimony, as permitted by the arbitrator.
8. Final Arbitration awards- Lastly, the arbitrator close the proceedings on the case and issues a decision, along with an award, if applicable.

THE BENEFITS OF ARBITRATION ARE:

1. It is less expensive and flexible for businesses.
2. It is quicker than lawsuit in Court.
3. Arbitral matters and arbitral awards are mostly non public which implies it can be kept confidential.
4. There are minimal pathways for appeal for an arbitral award.
5. In Arbitral matters the language of arbitration may be selected according to the preference whereas in judicial matters only the official language of the Court will be applied.

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6. When the theme of the dispute is extremely technical, arbitrators to be appointed can be the one who have relevant degree of expertise whereas one cannot choose judge in judicial proceedings.

HOWEVER, THERE ARE SOME DISCREPANCIES IN THE ARBITRATION:

1. Arbitrators may be exposed to pressures from the dominant parties.
2. If the arbitration is mandatory the parties forgo their interests to access to the courts.
3. Since there are minimal pathways for appeal which implies that faulty decision cannot easily be reversed.
4. In some of the arbitration contracts the parties are enforced to pay the arbitrator which is an increased cost in small consumer disputes.
5. Arbitration is thought to be speedier but when there are many arbitrators on the penal, it can lead to delays in hearing dates from multiple arbitrators in long cases.Arbitration awards are not easily enforceable. The party probing for arbitration award must refer to judicial remedies.

For better analysis of Arbitration, we have explanation which will facilitate viable and concrete understanding as below:

BASIS FOR EXPLANATION	ARBITRATION

Structure of Process	Claims/ counter claims, Examination of witnesses, Argument
Nature of Process	Adjudicatory, Directive
Procedure	Procedural rules and rules of evidence
Neutral third party	Adjudicator
Role of Parties/ Advocates	Active only during evidence
Level of formality	Formal

The report of Law Commission of India stated that delay in resolving of disputes is not because of the procedures fixed by the legislations but because of the non-observance of the imperative provisions especially those designed to facilitate the settlement of the disputes.

The term Alternative dispute resolution (ADR) constitutes various modes of settlement of disputes including Arbitration, Conciliation and Mediation. The most commonly used method for Alternative Dispute Resolution is Mediation. Mediation is an amicable way for the dispute settlement with the help of a neutral third party called a 'Mediator'.

In India Section 89 of the Civil Procedure Code lays down the provision of settlement of disputes outside the court based on the recommendations of Malimath Committee and Law Commission of India. Law Commission of India suggested that Court may require attendance of any party or to appear in person for settlement of the disputes amicably. Malimath committee made it mandatory for the court to refer to the dispute for the settlement.It is only when the parties fail to get their disputes settled through any of the alternate disputes resolution mechanism that the suit could be settled outside the court. The Alternative Dispute Resolution (ADR) mechanism as contemplated by Section 89 is:

1. Arbitration'
2. Conciliation
3. Judicial settlement including settlement through Lok Adalat

or

4. Mediation

Arbitration is a technique for resolving the disputes outside the court. Halsbury's Laws of England defined arbitration as: "The process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons (the arbitral tribunal) instead of by a court of law."It is the method in which the third party analysis the evidence in the lawsuit and levy a decision that is legally binding for both the parties and enforceable. There are minimal rights of revision and appeal of arbitration awards. Arbitration can either be voluntary or Mandatory. It has been said that "'Voluntary arbitration' is as voluntary as deciding to hand over one's money to a mugger." Mandatory arbitration can happen only when it comes from statute or can arise from a contract that is voluntarily entered into, and the parties are in unison to hold all the current or future disputes to arbitration without concretely knowing what disputes will occur at any time. Arbitration serves many interests both Public and Private as for the parties it is a prompt process than the constitutional dispute resolution. A speedier process helps in maintaining public peace and safety which can be generated because of long private quarrels. Arbitration is less expensive in comparison to lawful dispute resolution mechanism and also helps judicial system to perform more effectively in other cases.

Conclusion- Arbitration is a way of Alternate Dispute resolution (ADR) mechanism with mutual understanding by the parties which takes place in front of arbitral tribunal. It is generally preferred in case of commercial disputes. Arbitration helps parties to settle their disputes/ conflicts amicably in a viable manner and simultaneously make sure to resolve them with the consent of both the parties. Access to inexpensive and expeditious justice is a basic human right. As mentioned, the legal service start with three A's: awareness, assertiveness and availability.

INSTITUTIONAL ARBITRATION IN INDIA-WAY FORWARD

CS GUNJAN SINGH

ARBITRATION-AN EFFECTIVE MEANS OF ADR

Due to the huge pendency of cases in courts in India, there was a dire need for effective means of alternative dispute resolution. Interminable, time consuming complex and expensive court procedure impelled jurists to search for an alternate forum,less formal ,more effective and speedy for resolution of disputes avoiding procedural claptrap and this lead them to the Arbitration Act, 1940. Other complementary legislations were formed in the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards Act, 1961.

Arbitration under these laws was never effective and led to further litigation as a result of rampant challenges of awards. The Arbitration & Conciliation Act of 1996 (the "Act"), modelled on the UNCITRAL Model Law on International Commercial Arbitration, consolidated the law of arbitration law in India, repealing all three earlier statutes.

Arbitration is a method of resolution of disputes outside the court, wherein the parties refer the dispute to one or more persons appointed as an arbitrator(s) who reviews the case and imposes a decision that is legally binding on both parties. Usually, the arbitration clauses are mentioned in commercial agreements wherein the parties agree to resort to an arbitration process in case of disputes that may arise in future regarding the contract terms and conditions.

AD HOC VS. INSTITUTIONAL ARBITRATION

Article 2(a) of the UNCITRAL Model Law on International Commercial Arbitration defines Arbitration as "Any arbitration whether or not administered by a permanent arbitral institution"

An Ad hoc Arbitration is one which is not administered by an institution and therefore,the parties are required to determine all aspects of the arbitration like the number of arbitrators,manner of their appointment ,procedure for conducting the arbitration etc.

Broadly, it has been accepted that ad hoc arbitration is more effective in cases where parties to a dispute cooperate with each other, and can mutually agree to constitute a tribunal and select arbitrators to resolve their dispute.

Whereas,in an Institutional Arbitration, the arbitration agreement may stipulate that in case of dispute or differences arising between the parties, they will be referred to a particular institution.

In India ,the following are some of the leading institutions dealing arbitration:

- Delhi International Arbitration Centre (DIAC) – New Delhi
- Indian Council of Arbitration (ICA) – New Delhi
- Construction Industry Arbitration Council (CIAC)- New Delhi
- the Mumbai Centre for International Arbitration ("MCIA")
- LCIA India – New Delhi
- International Centre for Alternative Dispute Resolution (ICDAR) – New Delhi
- ICC Council of Arbitration – Kolkata

All these institutions have framed their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions. Such rules supplement provisions of the Arbitration Act in matters of procedure and other details as the Act permits. They may provide for domestic arbitration or for international commercial arbitration or both and the disputes dealt with by them may be general or specific in nature.

Institutional arbitration offers the advantages of providing a clear set of arbitration rules and timelines for the conduct of an arbitration, support from trained staff who administer various stages of the arbitration proceedings, a panel of arbitrators to choose from to decide the dispute, and in some cases, supervision in the form of scrutiny of awards.

Parties in India prefer ad hoc arbitration due to its advantage of being flexible,which enables the parties to decide upon the dispute resolution procedure and may be cost effective where they can avoid administration charges levied by an arbitral institution. A 2013 survey by PricewaterhouseCoopers showed that there was a strong preference for ad hoc arbitration amongst both Indian companies that had experienced arbitration and Indian companies that had no experience of arbitration. Many arbitrations involving Indian parties are administered by international arbitral institutions such as the Court of Arbitration of the International Chamber of Commerce ("ICC Court"), the Singapore International Arbitration Centre ("SIAC") and the London Court of International Arbitration ("LCIA"), despite the presence of arbitral institutions in India.In ad hoc Arbitration, the onus is on the parties to formulate the rules applicable to them. Failure to consider every possible contingency that can arise, might give rise to procedural difficulties. In Institutional Arbitration, the institution, its administrative staff and its rules on the matter are available to provide every assistance. However, the only recourse available to parties entering ad hoc arbitration is to approach the national courts. Approaching courts will result in delay and defeat the very purpose of entering into an arbitration.

Institutional Arbitration is less time consuming and hassle free as all the administrative matters which range from fixation of arbitrator's fee, fixing time limit for disposal of disputes, administrative fees are dealt by administrative secretariat. In Ad-Hoc Arbitration, parties are required to settle these matters with the administrator which can lead to uncomfortable situations and unwanted burden.

Ad hoc system faces inordinate and incessant delays on account of its procedural inefficiencies and lack of co-operation. On the other hand, institutional arbitration confers a specific time limit on the tribunal for disposal of the cases. This prescription of deadline curtails delays and encourages speedy redressal of cases.

Institutional Arbitration also saves both time and money by negating the parties from approaching the court once the award has been passed. Institutional arbitration involves a screening and scrutiny process before the finality of the award is declared. The screening process done by the institution panellists ensures that no injustice has been done in order to save the parties' money and time by preventing the necessity to take award to the court.

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Article

JOURNEY OF ARBITRATION IN INDIA

CS NEHA SETH

In the ancient times, way before the Laws, Judicial Courts and Functionaries got established, people have considered, taking their disputes' resolution to the wise men earmarked with skill and experience, by avoiding violence. It is said that, in the Biblical Theory, King Solomon was the first arbitrator when he settled the issue of who was the true mother of a baby boy. Though its origin is still unknown. Two of the oldest civilizations i.e. Indian civilization and Roman Civilization offer striking examples of the presence of Arbitration. In those times, the disputes were settled by the intervention of Kulas , Srenis(guilds of men following the same occupation) and Parishads (assemblies of learned men who knew the law of land) before king came to adjudicate the disputes.

Today also in most parts of India disputes are being settled by the elders in the village or the panchayats. Now, the question which arises here is, in spite of the establishment of Judicial Systems through Regulating Act of 1773 (In 1774).Why there is still the need in the hearts of the countrymen to solve their disputes through measures of mediation? And its justification comes by the understanding of one simple concept that all the burden of Judiciary is over Courts where they have to follow the strict and rigid procedures by considering all the evidence and statements to ensure proper Justice, due to which the entire process takes enhanced time, energy and money. It has also been seen, due to these factors there are lot of Business Decisions that are delayed due to some pending Commercial Disputes, lot of Partnership Decisions, Joint Venture Decisions goes pending, indirectly affecting our Economy and Growth.Therefore,there comes a need to derive an Alternate Resolution where the functioning could be done in quick,economical and timely manner.And hence ,in 1982 settlement of disputes out of courts started through Lok Adalats. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat and now it has been extended throughout the country.By the enactment of the Legal Services Authorities Act, 1987, which came into force from November 9, 1995, the institution of Lok Adalats received statutory status.

To keep pace with the globalization of commerce and trade, the old Arbitration Act of 1940 has been replaced by the new Arbitration and Conciliation Act, 1996. This Act was enacted on the basis of and on the lines of the Model Law adopted in 1985, by UNCITRAL, on International Commercial Arbitration. The Arbitration and Conciliation Act, 1996 is divided into four parts. Part I deals with Commercial Arbitration, Part II with Enforcement of Foreign Awards including New York Convention and Geneva Convention Awards, Part III with Conciliation and Part IV with supplementary provisions. Section 2 of the Arbitration and

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Conciliation Act, 1996 defines Arbitration as "Unless the context otherwise requires, (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution and (b) "arbitration agreement" means an agreement referred to in section 7.According to Section 7,Arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them. Section 7(4) defines "an arbitration agreement is in writing, if it contained in- (a) a document signed by the parties"; or (b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide record of the agreement; or (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by other.Arbitration, is a form of Alternative Dispute Resolution (ADR), is a way to resolve disputes outside the courts.Arbitration is allowed over Partnership Matters, all Civil Matters , Construction Projects , Insurance and Time Barred Debts.Whereas Criminal Matters,Guardianship,Matrimonial Matters,Industrial Dispute and Tax Matters are not allowed.

According to this Act, the appointment of either the Sole Arbitrator or an uneven number of Arbitrators,collectively known as Arbitral Tribunal,is done for the resolution of Dispute.Appointment of these Arbitrators is done by the parties to dispute.Arbitration allows the parties to choose their own tribunal. This is especially useful when the subject matter of the dispute is highly technical:arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the case of a construction dispute, or expertise in commercial property law, in the case of a real estate dispute) can be chosen.Further,the Arbitrator shall give his consent to act as an Arbitrator,as well.The decision taken by the Arbitrator is binding on the parties.Wherein,in this Rational Process of Dispute Resolution,Arbitration will give the opportunity of being heard to both the CLAIMANT and the RESPONDENT.Both the parties will be allowed to present their case and evidences,based on which the decision will analytically be taken,that decision will be known as ARBITRAL AWARD.An arbitration award is legally binding on both sides and enforceable in the courts.Mere existence of Arbitral Clause does not bar the Jurisdiction of Civil Courts.The place where Arbitration is taking place is already aforementioned , so that it becomes easier to appoint the case(if not satisfied) to the respective jurisdiction authority.

Having adopted this Amendment and Steps towards resolving disputes through mediation,there has been felt a relief .As there were lot of advantages over litigation that came into being after this.In arbitral proceedings the language of arbitration may be chosen, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied.The time of these proceedings were less in comparison to court verdicts.Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential.Keeping all these factors under illumination,The Government had initiated the efforts furthermore in 2015, with The Arbitration and Conciliation (Amendment) Act, 2015 ("the 2015 Amendment Act") which was the initial step taken to amend The Arbitration and Conciliation Act, 1996 ("the Act"). Now in 2019, to further strengthen and make the arbitration process user friendly, cost-effective and time bound, the Government has introduced the 2019 Amendment Act.

Government has made certain revised measures in the Amendment and came up with the revised Act. Arbitration and Conciliation

(Amendment) Act, 2019 had inserted Part IA, after Part I, which deals with the Arbitration Council of India,whose key functions are framing policies for grading arbitral institutions and accrediting arbitrators,making policies for the establishment,operation, and maintenance of uniform professional standards for all alternate dispute redressal matters,maintaining a depository of arbitral awards made in India and abroad.

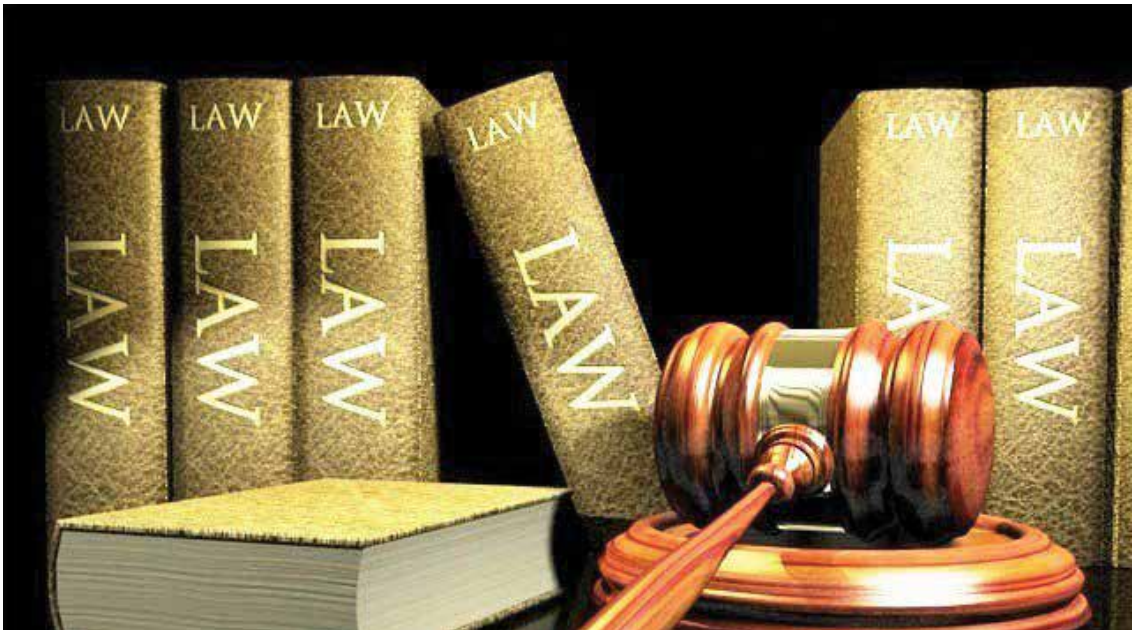
In order to make India a more robust market for foreign investors and a preferred seat for arbitration, two issues which are now sought to be addressed by the 2019 Amendment Act, is that (i)Parties are now required to complete their pleadings within six months from the date of service of written notice to the arbitrator (section 23).(ii)The 2015 Amendment Act had introduced a time-limit of 12 months (extendable to 18 months with the consent of parties) for the completion of arbitration proceedings from the date the arbitral tribunal enters upon reference. One of the provisions introduced by the 2019 Amendment Act was that the 2015 Amendment Act will only have prospective effect i.e. it will only apply to arbitral proceedings initiated after the effective date (i.e. October 23,2015) of the Amendment Act and court proceedings initiated arising out of such arbitral proceedings (section 87).This provision (section 87) overruled the position laid down by the Apex Court in BCCI v. Kochi Cricket Private Limited, wherein, to summarize what the Apex Court held was that both in pending petitions for setting aside of an award which were filed prior to October 23, 2015 and for fresh petitions for setting aside of an award, there would be no automatic stay of an award, unless a separate application was made for such a stay, which the court would have the discretion to grant or refuse coupled with deposit of money and/or security, if any.The 2019 Amendment (section 87) as mentioned above changed this position laid down in BBCI case, and provided that (unless the parties agreed otherwise) the 2015 Amendment Act would apply prospectively to all arbitral and court proceedings commenced after October 23, 2015.

The 2019 Amendment Act overall is clearly an attempt at removing some of the difficulties which were being faced during the conduct of arbitration proceedings and the court proceedings arising under the 2015 Amendment Act. Separate time frame for completion of pleading, increase in role of arbitral institutions, institutional arbitrations as against ad hoc arbitration are all positive changes which should now hopefully give confidence to the international community towards an arbitration friendly India.

Article

THE 2019 AMENDMENT TO THE INDIAN ARBITRATION ACT: A ROAD TO INDEPENDENT RECOURSE MECHANISM FROM ALTERNATE DISPUTE RESOLUTION MECHANISM

CS SHWETA SAXENA



The Arbitration & Conciliation (Amendment) Act, 2019 ("the 2019 Amendment"), which amends the Indian Arbitration & Conciliation Act, 1996 ("the Act"), came into force with effect from 9 August 2019. The Law Minister of India was recently quoted as saying in one of the press releases (after the Bill in support of the 2019 Amendment was introduced in the lower House of Parliament), that the government intended to make India a hub of domestic and international arbitration by bringing in changes in law for faster resolution of commercial disputes and to give a boost to institutional arbitration vis-a-vis ad hoc arbitration and to remove some practical difficulties in applicability of the Arbitration and Conciliation.

The Act seeks to establish an independent body called the Arbitration Council of India (ACI) for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms. Its functions include: (i) framing policies for grading arbitral institutions and accrediting arbitrators, (ii) making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters, and (iii) maintaining a depository of arbitral awards (judgments) made in India and abroad.

The 2019 Amendment is a step in the direction for India to make Arbitration an Independent Recourse Mechanism and not only an alternative to litigation.

The 2019 Amendment introduces Section 11(3A) to the Act whereby the Supreme Court of India and the High Courts shall have the power to designate arbitral institutions, which have been graded by the Arbitration Council of India ("ACI") under Section 43-I (also introduced by the 2019 Amendment). The underlying idea is that instead of the court stepping in to appoint arbitrator(s) in cases where parties cannot reach an agreement, the courts will designate graded arbitral institutions to perform that task (per Sections 11(4)–(6) of the Act, as amended by the 2019 Amendment).The ACI is inter alia entrusted with grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations (Section 43I) which will make Arbitration an Independent Recourse Mechanism to resolve disputes rather than just considering it as an alternative to litigation by companies or parties.

WHAT IS MEANT BY INDEPENDENT RECOURSE MECHANISM ?

Independent Recourse Mechanism is providing free and accessible dispute resolution administered by an independent Arbitral Institution to investigate individual complaints. Arbitration is the out-of-court submission of a dispute to an impartial third party or parties for a binding decision. Alternative dispute resolution (ADR) allows parties to customize their dispute resolution process. Parties can insert the standard arbitration or mediation clause in their contract and can further customize their clause with options that control for time and cost whereas Independent recourse Mechanisms comprises a well-defined set of steps that are designed to enable compliance by which most cases proceed maintaining uniformity of administration and arbitral decision-making and cultivate public confidence in the process. IRM improves transparency, efficiency and innovation in alternative dispute resolution and Fostermeasures that reduce potential escalation, manage, and resolve conflicts, expands the use of dispute resolution processes tailored to the conflict and improves dispute resolution processes in the India and internationally.

In IRM an Arbitrational Institute which is a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that

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institution designated by the parties at the time of agreement. It is pertinent to note that these institutions do not arbitrate the dispute, it is the arbitrators who arbitrate are the most qualified and exceptional arbitrators – possessing judicial capacity, temperament and extensive industry knowledge, experience and acceptability to parties.

WHY INDEPENDENT RECOURSE MECHANISM ?

The 2019 Amendment, albeit aimed at institutionalizing the arbitration scene in India through Independent Recourse Mechanism to the parties, which is nonetheless a welcome move by the government to acknowledge that institutional arbitration is the only way ahead to attract foreign parties to include India as the seat in their arbitration agreement . Through this government prepared a roadmap for making India a robust center for international and domestic arbitration by providing them a recourse mechanism to them which is fair, effective, efficient and economical methods of dispute resolution.

Independent Recourse Mechanism is new way to address a world of disputes as it directly addresses user preferences for a more streamlined, cost-effective, and tightly-managed arbitration process to avoid the high costs of litigation as in IRM, the arbitration agreement may stipulate that in case of dispute or differences arising between the parties, they will be referred to a particular institution having their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions.

Independent Recourse Mechanism will be a way forward in conflict management—as it builds integrity, committed to fair and transparent proceedings and embrace the highest standards of service in every action, expand the use and improve the process of ADR, increase access to ADR for those who cannot afford it, and share knowledge across different cultures.

Now that the 2019 Amendment is here, the grading of Arbitral Institution by Arbitration Council of India and prescribing the qualifications, experience and norms for accreditation of arbitrators as specified in the Eighth Schedule is the foundation of an effective dispute resolution process by way of Independent Recourse Mechanism as a simple, self-guided process-to assist individuals and organizations in developing clear and effective arbitration and mediation agreements.

Independent Recourse Mechanism builds confidence among parties such as Labor, Employment, consumer, Government as they generally don't have any specific agreements having arbitration clasuses and IRM provides them an option to resolve their dispute in a fair, transparent, similar, pre-determined dispute resolution proceedings.

The foremost benefit of opting for Independent Recourse mechanism through an Arbitral Institution apart from helping in the smooth and orderly conduct of arbitration proceedings majorly for parties like Labor, Employment, consumers are:

(i) availability of pre-established rules and procedures which assure that arbitration will get off the ground and proceed to conclusion with dispatch;

(ii) administrative assistance from institutions providing a secretariat or court of arbitration;

(iii) lists of qualified arbitrators, often broken out by fields of expertise;

(iv) appointment of arbitrators by the institution should the parties request it;

(v) physical facilities and support services for arbitrations;

(vi) assistance in encouraging reluctant parties to proceed with arbitration and

(vii) an established format with a proven record.

In detail:

1. A merit of Independent recourse mechanism is that it saves parties and their lawyers the effort of determining the arbitration procedure as once the parties choose the institution, all they need to do is incorporate the draft clause of that institution into their contract. This expresses their intention to arbitrate under the institution's rules, which provide for every conceivable situation that can arise in an international commercial arbitration.

2. Another merit of the draft clause is that it is revised periodically by the institution, drawing on experience in conducting arbitrations regularly and approved by arbitration experts, taking account of the latest developments in arbitration practice. This ensures that there is no ambiguity in relation to the arbitration process through independent recourse mechanism. On the other hand, ambiguous arbitration clauses in ad hoc arbitration compel parties to seek court intervention in order to commence or continue the arbitration.

3. Another merit of independent recourse mechanism relates to selection of the arbitrators. In institutional arbitration, the arbitrators are selected by the parties from the institution's panel of arbitrators. This panel comprises of expert arbitrators, drawn from the various regions of the world and from across different vocations. This enables selection of arbitrators possessing requisite experience and knowledge to resolve the dispute, thereby facilitating quick and effective resolution of disputes.

   Whereas in ad hoc arbitration, the appointment of arbitrators is generally based on the parties' faith & trust in the arbitrators and not necessarily on the basis of their qualifications and experience. Thus, an incompetent arbitrator may not conduct the proceedings smoothly and this could delay dispute resolution, lead to undesirable litigation and increased costs.

   However, it is pertinent to note that the parties do not appoint the arbitrators. They only select and nominate the arbitrators for appointment by the institution, which may refuse to appoint a nominated arbitrator if he lacks the requisite qualifications or impartiality or independence, in order to avoid its reputation being tarnished. Consequently, a party whose nominated arbitrator was refused appointment, being dissatisfied, may turn hostile and refuse to participate or attempt to stall the arbitration.

4. Another merit of institutional arbitration is that the parties and the arbitrators can seek assistance and advice from the institutional staff, responsible for administrating international

commercial arbitrations under the institutional rules. Thus, doubts can be clarified or a deadlock can be resolved without court intervention. Whereas in ad hoc arbitration, the parties would be compelled to approach the Court, in order to take the arbitration forward and consequently, the perceived cost advantage of ad hoc arbitration would be negated by the litigation expenses. Also, the institutional staff constantly monitors the arbitration to ensure that the arbitration is completed and an award is made within reasonable time and without undue delay.

One of the advantages of arbitration is that it provides for final & binding determination of the dispute between the parties. In other words, no review or appeal lies against an arbitral award to ensure finality. This involves an inherent risk that mistakes committed by the tribunal cannot be corrected, whereby one party would inevitably suffer. However, some institutional rules provide for scrutiny of the draft award before the final award is issued and some provide for a review procedure. The latter entitles the dissatisfied party to appeal to an arbitral tribunal of second instance, which can confirm, vary, amend or set aside the first award and such decision in appeal is considered to be final and binding upon the parties. Contrasting this to ad hoc arbitration where there is no opportunity for appeal or review and the parties have to be prepared to suffer for the mistakes of the arbitrators, this is a redeeming feature of institutional arbitration as it allows the parties a second chance of presenting their case and also permits the rectification of mistakes made by the tribunal of first instance. It also serves as a check on the actions of the arbitrators and restrains them from making arbitrary awards.

It is also perceived that national courts tend to grant enforcement of awards made in institutional arbitration, though doubts have been raised, since international arbitration institutions enjoy worldwide recognition and their professional expertise adds to the certainty and finality of the proceedings. Courts are more likely to even enforce an award obtained in default of the other party, which they would refuse had it been obtained in ad hoc arbitration, in view of the strict arbitration procedures followed by these institutions. One of the criticisms of institutional arbitration is that, parties need to comply with the procedural requirements, resulting in unnecessary delays in the arbitration. One may argue that such requirements, in fact, avoid delay. For instance, the ICC draws up the terms of reference, criticized as being time consuming and unnecessary, containing provisions to ensure that default of a party does not stall arbitration. In default of a party in ad hoc arbitration, the other party may seek court intervention to compel the defaulting party to commence or continue the arbitration and this may result in longer delays, than that involved in complying with these procedural requirements, intended to ensure smooth and effective dispute resolution.

Whereas in ad hoc arbitration, the appointment of arbitrators is generally based on the parties' faith & trust in the arbitrators and not necessarily on the basis of their qualifications and experience. Thus, an incompetent arbitrator may not conduct the proceedings smoothly and this could delay dispute resolution, lead to undesirable litigation and increased cost.

Some of the prominent Arbitral institutions in India which can be selected as Independent Recourse Mechanism are:

- Delhi International Arbitration Centre (DIAC) – New Delhi
- Indian Council of Arbitration (ICA) – New Delhi
- Construction Industry Arbitration Council (CIAC)- New Delhi
- LCIA India – New Delhi
- International Centre for Alternative Dispute Resolution (ICDAR) – New Delhi
- ICC Council of Arbitration – Kolkata

Some of the prominent International Arbitral institutions which can be selected as Independent Recourse Mechanism are:

- London Court of International Arbitration (LCIA)
- ICC International Court of Arbitration
- Singapore International Arbitration Centre (SIAC)
- Hong Kong International Arbitration Centre (HKIAC)
- international centre for alternative dispute resolution
- BBB National Programs
- TrustArc
- Insights Association
- JAMS Foundation
- Verasafe EU

Indicating signals of the evolution of international arbitration, as a response to the need to keep up with a globalised legal and financial market, is not an easy task. It is not an easy task because of the different ways evolution is perceived by different circles. For some, a wind of change in international arbitration would signify a major institutional reform, such as the creation of specialised arbitral tribunals or the creation of free zone jurisdictions. For others, a wind of change could be seen as any element that shapes the international arbitration culture, such as the analysis of how market forces influence the needs of arbitration users.

In whichever way someone views development in arbitration, the underlying force triggering such change is, inevitably, the way arbitration users and arbitration viewers assess its functions. The continuously emerging needs of this dispute resolution field are clearly connected to economic, legal and political concerns that strive for an effective response.

ARBITRATION CLAUSE- CONDITION TO FURNISH PRE-DEPOSIT FOR INVOKING ARBITRATION

CS VAIBHAV GUPTA

INTRODUCTION

It is the speedy and effective settlements of dispute which are the two most important attributes for the proper functioning of the justice delivery system and also important with respect to the faith of the business entities upon such system. Considering such a scenario, arbitration has emerged as an efficient alternative to the public justice delivery system. However, considering the number of legal issues involved in the arbitration system as well the moot point of discussion in the present article is that a clause in the arbitration agreement entrusting either of the party, invoking the arbitration upon arising of a dispute inter se the parties, to deposit a particular amount as "pre-deposit" before invoking the arbitration is reasonable or unreasonable.

PRE-DEPOSIT CLAUSE

In number of contracts containing the arbitration clause, it is often found that there is a pre-condition of depositing of certain percentage of the claimed amount for invoking the arbitration clause and appointment of arbitrator. For reference of the readers, few of such pre-deposit clauses are reproduced as under:-

"In case the party invoking the arbitration is the contractor, the reference for arbitration shall be maintainable only after the contractor furnishes to the satisfaction of Engineer- In charge a case security fee deposited @ 3% of the total amount claimed by him. The sum so deposited by the contractor shall on the termination of the arbitration proceedings be adjusted against the cost and any amount awarded against the contractor. The remaining amount shall be refunded to the contractor with in one month from the date of award."

"It shall be an essential term of this contract that in order to avoid frivolous claims the party invoking arbitration shall specify the dispute based on facts and calculations stating the amount claimed under each claim and shall furnish a "deposit-at-call" for ten percent of the amount claimed, on a scheduled bank in the name of the Arbitrator by his official designation who shall keep the amount in deposit till the announcement of the award. In the event of an award in favour of the claimant, the deposit shall be refunded to him in proportion to the

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amount awarded w.r.t. the amount claimed and the balance, if any, shall be forfeited and paid to the other party."

An argument in favour of the said pre-deposit clauses could be raised that the said clauses are entered into between the parties by signing the contract. Another argument could be raised in favor of such clauses is that the said clauses are put in force in the arbitration agreement in order to deter frivolous claims being raised by either of the parties. But the basic question which needs to be answered is that whether such clauses would defeat the very object of the arbitration and whether such clauses are arbitrary to the principles enshrined in the Indian Contract Act.

PRE-DEPOSIT CLAUSE AND OBJECT OF ARBITRATION

The first and the paramount principle of the arbitration is 'fair', 'speedy' and 'inexpensive' trial. Unnecessary delay or expense would frustrate the very purpose of the Arbitration. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with the legislation i.e. the Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. Second most important object of the arbitration is the settlement of the disputes outside the court without the payment of the heavy usual court fee amount for invoking remedy before the trial courts. As such, if party to a arbitration dispute has to pay a fixed amount as pre-deposit before invoking the arbitration clause, the same would not only defeat the very object of the arbitration process but would also create another forum where heavy court fee amount would be required to be deposited in case a party wishes to invoke the arbitration.

PRE-DEPOSIT CLAUSE AND FRIVOLOUS CLAIMS

There is no exception to the fact that the courts across the legal system are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of the justice system. Such a tendency can be curbed by the courts by adopting an institutional approach which penalizes such behavior. A strong message can be conveyed by imposing heavy costs where such frivolous and groundless filings are being made. Thus, in the present context of the issue, it is also open for the arbitrator to dismiss a frivolous claim along with imposition of exemplary costs. As such, it can be rightly said that the imposition of pre-deposit clause has no nexus to the filing of the frivolous claims. If the claim succeeds the claimant would get its amount and if he does not succeed the same can be dismissed and further cost can be imposed if the claim is found to be frivolous.

PRE-DEPOSIT CLAUSE AND CONTRACT OF ADHESION

It is the settled preposition of law that a standardized contract offered to the other party by the state or its instrumentality on essentially "take it or leave it" basis without affording realistic opportunity to bargain and on which the other party has to sign on the dotted lines of the contract is nothing less than a contract of adhesion and is not binding inter se the parties. Such a contact is against the principles of equal bargain and meeting of minds as are enshrined under the Contractual law jurisprudence. Such types of contractual terms are unfair and unreasonable that shocks the conscience of the court. They are opposed to public policy and requires to be adjudged void. As such, in case of contracts which have pre fixed formats and the other party only has to sign on the dotted lines of such pre fixed formats, such clauses would certainly amount to a contract of adhesion and by applying the doctrine of severability, the said pre-deposit clauses can be declared as void being beyond the scope of the object to be achieved under the Arbitration principles.

PRE-DEPOSIT CLAUSE AND SUPREME COURT

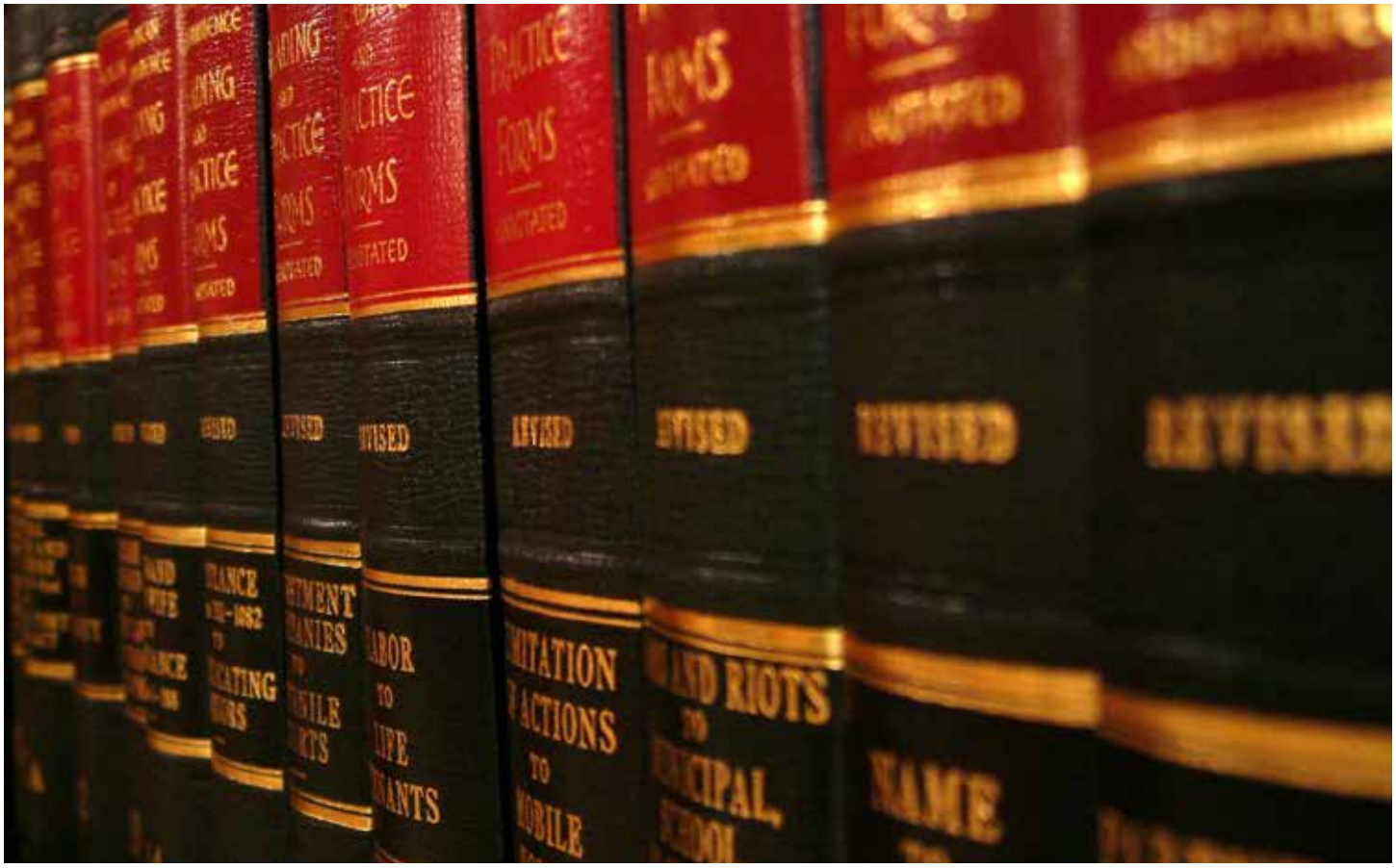
The Hon'ble Supreme Court recently in *M/S Icomm Tele Ltd. v. Punjab State Water Supply & Sewerage Board & Another, 2019 (4) SCC 401* struck down the validity of a pre-deposit clause on the ground that usage of such clauses to invoke the arbitration clause makes the arbitral process ineffective and onerous. The Hon'ble Supreme Court while relying on number of judgments however did not agree on the argument pertaining to the contract of adhesion, however in clear words held such clauses to be defeating the very object of the principles upon which the whole system of arbitration and conciliation was termed upon. The Hon'ble Court further held that alternative dispute resolution needs to be encouraged because of high pendency of cases in courts and cost of litigation. Any requirement to deposit a certain sum would be clog on the process of Alternative Dispute Resolution as it would make the arbitration process expensive.

CONCLUSION

In my view, such clauses are totally arbitrary in nature. The whole principle upon which the concept of arbitration was made was to provide an alternate forum from the usual forums available to a claimant for settling the disputes. It is not only the alternate forum which was created by the process of arbitration but also a go bye was given to the usual lengthy process in terms of time consumed in the court, pendency of cases, heavy court fee amount etc. Such clauses would not only discourage the claimant to file their genuine claims but will also defeat the justice delivery system as regards the commercial contracts are concerned.

SEAT VS. VENUE – CONTEXT OF INDIAN ARBITRATION LAW

CS BRAJESH TIWARY



INTRODUCTION

Every arbitration, international or domestic, ad-hoc or institutional, has a place. Section 20 of the Arbitration and Conciliation Act, 1996 ("The Act") deals with 'Place of arbitration'. According to sub-section 1 of section 20, theparties are free to agree on the place of arbitration.Otherwise, as per section 20(2), arbitral tribunal shall determine the place of arbitration having regard to the circumstances of the case including convenience of the parties. According to Section 20(3), notwithstanding such determination, the arbitral tribunal may,unless otherwise agreed by the parties,meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

In this article, an attempt has been made to analyse how important is the wording of the arbitration agreement vis a vis the intention of the parties, as regards choice of place of arbitration.

SIGNIFICANCE OF PLACE OF ARBITRATION

Place of arbitration assumes great significance, particularly in the context of international commercial arbitration, as it is the place which determines the applicable laws and jurisdiction of courts,unless otherwise agreed to by the parties. Place, in the context of arbitration, international or otherwise,may be the juridical seat or a mere venue as well. For example, in an international commercial arbitration, where parties have chosen any place in India as the place of arbitration under section 20(1), hearings may be necessitated and conducted outside India under section 20(3). In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the arbitral tribunal under section 20(3), but it would not have the effect of changing the seat of arbitration which would remain in India.

As per section 2(2) of the Act, Part I of the Act shall apply where the place of arbitration is in India.

It may be noted that Part I of the Arbitration and Conciliation Act 1996 deals with 'Arbitration'. Therefore, when the place of arbitration is outside India, Part I of the Act stands excluded. However, as per proviso to Section 2(2) - subject to an agreement to the contrary, certain provisions (sections 9, 27 and clause (a) of sub-section (1) and subsection(3) of section 37) of part I of the Act shall also apply to international commercial arbitration, even if the place of arbitrationis outside India.

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It is pertinent to note that this proviso was added after the Bhatia International and Balco judgements (discussed in later paras) vide the amendment Act of 2015.

Therefore, in view of the above, if Parties so want, they have to specifically exclude applicability of Part I of the Act of certain provisions thereof, in case of a foreign seated arbitration.

For the sake of reference, according to section 2(1)(f) of the Act – 'international commercial arbitration' means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is :

(i) a foreign national, or habitually resident outside India; or

(ii) a body corporate incorporated outside India; or

(iii) an association or a body of individuals whose central management and control is exercised outside India; or

(iv) the Government of a foreign country;

JUDICIAL EVOLUTION OF CONCEPT OF SEAT VIS A VIS PLACE OF ARBITRATION

The 'Seat vs. Place' saga has been subject matter of judicial scrutiny in many cases. Following are the prominent decisions in this regard.

In Bhatia International vs Bulk Trading S. A., it was held by the ápex court that Part I is to apply also to international commercial arbitrations which take place out of India, unless the parties by agreement, express or implied exclude it or any of its provisions.

In Bharat Aluminium Co vs Kaiser AluminiumTechnical,theSupremeCo urt held that, in a foreign seated international commercial arbitration, part I of the Act shall not have any application. It was concluded that Part I of the Arbitration Act, 1996 is applicable only to all the arbitrations which take place within the territory of India.

In Enercon (India) Limited and others v. Enercon GMBH, the Supreme Court held that the location of the Seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings.

In Union of India v. Hardy Exploration and Production (India) INC, it was held that When a "place—is agreed upon, it gets the status of seat which means the juridical seat. When only the term "place—is stated or mentioned and no other condition is postulated, it is equivalent to "seat—and that finalises the facet of jurisdiction. But if a condition precedent is attached to the term "place—, the said condition has to be satisfied so that the place can become equivalent to seat.

In BGS SGS SOMA JV v. NHPC Ltd., it was held that a place of arbitration, regardless of its designation as venue / seat / place is the juridical seat of arbitration, unless there are significant contrary indicators.

In Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., it was held that the moment the seat is designated, it is a kin to an exclusive jurisdictionclause.

Therefore, from the above decisions, two things mainly emerge –(i) place is seat if no contrary intention is evident. (ii) Place determines jurisdiction unless contrary intention of the parties is evident.

BRIEF ANALYSIS OF DECISION IN –MANKASTU IMPEX PRIVATE LIMITED VS AIRVISUAL LIMITED

MankastuImpexPrivateLimited vs AirvisualLimiteddecidedbythe ápex court in March 2020 is the latest development in this realm.

In this case, clause 17 of the MoU entered into between the parties governed the law and dispute resolution.

"Clause 17"providedas under:-

17. GoverningLaw and Dispute Resolution:

17.1 This MoU is governed by the laws of India, without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction.

17.2 Any dispute, controversy, difference or claim arising out of or relating to this MoU, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered in Hong Kong.

The place of arbitration shall be Hong Kong.

17.3 It is agreed that a party may seek provisional, injunctive, or equitable remedies, including but not limited to preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding.

The decisión came in a petition which was filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator under Clause 17.2 of the Memorandum of Understanding between petitioner-Company incorporated in India and respondent-incorporated under the laws of Hong Kong.

RATIO OF THE DECISIÓN –IT WAS HELD THAT:

The words in Clause 17.1 "without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction" do not take away or dilute the intention of the parties in Clause 17.2 that the arbitration be administered in Hong Kong. The words in Clause 17.1 do not suggest that the seat of arbitrationis in New Delhi. Since Part-I is not applicable to "International CommercialArbitrations", in order to enable the parties to avail the interim relief, Clause 17.3 appears to have been added. The words "without regard to its conflicts of laws provisions and courts at New Delhi shall have the jurisdiction" in Clause 17.1 is to be read in conjunction with Clause 17.3. Since the arbitration is seated at Hong Kong, the petition filed by the petitioner under Section 11(6) of the Act is not maintainable and the petition is liable to be dismissed. (Para 26).

CONCLUSION

It is evident from the above discussion that a great deal of care is required to draft the arbitration agreement, particularly when it comes to choosing the place of arbitration. In case of internatrional comercial arbitration, such care assumes even greater importance and has to be dealt with very meticulously keeping in view the judicial precedents and the intention of the parties to the arbitration agreement.

SINGLE TRIBUNAL TO ARBITRATE ROW OVER INTER-STATE WATER DISPUTES IN INDIA

CS (DR.) ANURAG SINGH

Arbitration in Inter-State water disputes (Cauvery River Water Dispute) depict the historical developments spread over a period of 150 years. The first of the constitutional documents was the Government of India Act, 1858. The Government of Madras was directly administered by His Majesty, the Crown of England through the office of the Secretary of State in Council at London. Madras enjoyed its patronage. The Princely State of Mysore under its Maharaja was subject to the suzerainty of the British Crown. However, with an extension of cultivation areas by the aforesaid two states, disputes relating to the sharing of the waters of the Cauvery, arose and took a serious turn. Madras took up the matter with the Government of India. The British Government involved the princely state of Mysore in a series of developments in the name of negotiations. In 1892, rules were drawn by the British Government known as "Rules Defining the Limits within which No New Irrigation Works are to be Constructed by the Mysore State Without Previous Reference to the Madras Government". It was described as an agreement between the then British province of Madras and the princely state of Mysore. In view of this agreement, the government of Mysore - required the prior consent from the government of Madras in respect of any construction proposed to be made, including any new irrigation reservoirs across the rivers named therein. The princely state of Mysore approached the then British Province of Madras for permission to construct a dam near Mysore, since then known as the Krishna Raja Sagara Dam (KRS). The province of Madras did not grant its consent. Several meetings were held between the two States. Sir M. Visweswarayya represented Mysore between 1901-1910. This led to the reference of the dispute to arbitration in 1913.

The award rendered by the Arbitrator in 1914 was accepted by Mysore1. Even this was opposed by Madras, which appealed against the decision to the Secretary of State of India. Following an intervention by the Secretary of State, an agreement was reached between Madras

1 Sharad S Javali, Water Disputes over Inter - State Rivers: The Indian Experience, Christ University Law Journal, 4, 2 (2015), pp 164-167.

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

and Mysore in 19242. As a result, the Krishna Raja Sagar dam was constructed in 1929 by Mysore and the Mettur dam in 1934 by Madras province. After independence, further developments took place subsequently including the merger of princely states, the disputes contines. The state of Mysore (now Karnataka) contended stating that the agreements were not valid and enforceable. The clause concerning "limit flow" contemplated the release of water by Mysore from KRS to be far in excess of the true requirements of Madras (now Tamil Nadu). In 1974, the water-sharing agreement of 1924 between Mysore and Madras lapsed3. A reference dated 02-06-1990 was made by the central government under the Inter State Water Disputes Act, 1956 to a tribunal set up for the adjudication of the Cauvery Water Dispute, based on a complaint submitted by the State of Tamil Nadu under the Act, for implementation of the pre-constitutional Agreements of 1892 and 1924. After listening to the petitions, on 25 June 1991, the Cauvery Water Disputes Tribunal (CWDT) passed an interim order4. However, Karnataka delayed implementing the interim order sensing public outrage in the State against the decision. Following a plea by Tamil Nadu, the Supreme Court ordered Karnataka to release 30 thousand cubic feet of water immediately to save the rice crop in Tamil Nadu. The order was ignored by Karnataka. In 1998, then-Prime Minister, Atal Bihari Vajpayee, convened a meeting, first of the chief secretaries of the three States and the Union Territory in the Cauvery river basin. Meanwhile, the CWDT continued its work and in February 2007 and delivered its final verdict on the dispute. To implement its decision, the tribunal recommended that a Cauvery Management Board (CMB) be set up by the Union government. Not satisfied with the tribunal's verdict, the disputing parties filed Special Leave Petitions (SLPs) under Article 136 of the Indian constitution in the Supreme Court against the tribunal's order. The settlements through the arbitration tribunals continue till Supreme Court in 2018 passes its verdict5. In this case, the Supreme Court also invoked Article 14 of the Berlin Rules.36 The Berlin Rules were adopted in August 2004. Under article 14 of the Berlin Rules, while determining an equitable and reasonable use, the States shall first allocate water to satisfy vital human needs. However, protest from public continues after the Supreme Court verdict.

Similarly, the creation of Haryana from the undivided Punjab in 1966 threw up the problem of giving Haryana its share of river waters. To enable Haryana to use its share of the waters of the Sutlej and its tributary Beas, a canal linking the Sutlej with the Yamuna, cutting across the state, was considered. The Eradi tribunal headed by Supreme Court Justice V Balakrishna Eradi in 1987 recommended an increase in the shares of Punjab and Haryana to 5 MAF and 3.83 MAF respectively. After failing to make headway, it moved the Supreme Court in 1996, seeking directions to Punjab to complete the work on the Sutlej Yamuna Link. In 2002, and again in June 2004, the court directed Punjab to complete the work in its area. Supreme Court in March 2016 started hearings into a presidential reference to decide on the legality of the Punjab Termination of Agreements Act, 20046. But in early 2017, Punjab returned land—on which canal was to be constructed—to the landowners. The Supreme Court on September 3, 2019, gave four more months to Punjab, Haryana, and the Centre to find an amicable solution to break the deadlock between the two states over the Sutlej-Yamuna Link Canal. The issue is still pending7.

Since the British period there have been many disputes in India over sharing of river waters. After Partition and Independence the sub-continent and India in particular has continued to witness the disputes over rivers some of which have taken very aggressive and violent turns with huge agitations by people and governments on opposite sides. It is this potential for conflict over the water sharing that had led the Founding Fathers of the Constitution to consider and debate the issue in the Constituent Assembly and later on in the Parliament. Hence a lot of steps have come to be taken to ensure equitable distribution of water between the states through various principles and mechanisms including constitutional and legislative mechanisms and provisions8.

CONSTITUTIONAL PROVISIONS FOR WATER

Water is one of the most significant substance on earth. All plants and animal must have water for survival. Water is not a commercial product like any other, but rather a heritage that must be protected, defended and treated as such9.Article 246 of the Constitution deals with the subject matter of laws to be made by Parliament and by the Legislatures of the States.Subject of "water" is a matter at Entry 17 of List –II, i.e. State List. This Entry is subject to the provisions of Entry 56 of List –I, the Union List. The specific provisions in this regard are:

List - I Union List Entry 56: Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.List - II State List Entry 17: Water that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List - I.

Article 262 of the Constitution deals with adjudication of water disputes. The provisions in this regard are:Article 262 (1): Parliament may, by law, provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.Article 262 (2): Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).The Central Legislation so far enacted under the above Constitutional provisions consists of 4 Acts, three under Entry 56 of List –I namely, the "River Boards Act 1956", "Betwa River Board Act 1976" and "Brahmaputra Board Act 1980" and 4th one under Article 262, namely, the "Inter-State River Water Disputes Act, 1956"10. The River board contemplated the exercise of control by the central government and invoked procedures

2 Iyer, Ramaswamy R (2003). Water Perspectives, Issues, Concerns, Delhi: Sage Publication, p 45-46.

3 Supra Note 2.

4 "Cauvery Water Disputes Tribunal", Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India. Available at http://mowr.gov.in/acts-tribunals/current-inter-state-river-waterdisputes-tribunals/cauvery-water-disputes. Accessed on March 28, 2020.

5 "The State of Karnataka by its Chief Secretary Versus The State of Tamil Nadu by its Chief Secretary & Ors CIVIL APPEAL NO. 2454 of 2007 decided on 16 February, 2018.

6 In Re: The Punjab Termination Of Agreement Act, 2004, Special Reference No. 1 Of 2004, decided on

7 **Satya Prakash,** SYL dispute: SC gives four more months for negotiated settlement, The Tribune, New Delhi, September 4, 2019.

8 Constituent Assembly Debates in V.M. Valsalan, (1997) Inter-State Water Disputes in India, Central Board of Irrigation and Power),pp 19- 20.

9 European Commission Water Framework Directive (2000) in Modern Economic Regulation: An Introduction to Theory and Practice by Christopher Decker (2015) Cambridge: Cambridge University Press, p 359.

10 Available at http://cwc.gov.in/sites/default/files/constitutional-provisions-and-central-water-laws.pdf assessed on March 27, 2020.

of arbitration in the event of disputes between states.

Judicial Interpretation of the Water and River Rights

There is no provision under fundamental rights about right to water in the Constitution of India. However, Constitutional Jurisprudence has developed Indian higher judiciary as domestic Water Jurisprudence. Fundamental human right to water has evolved basically through judicial interpretations, not through legislative actions. An early precedent in this sense was Francis Coralie Mullin v Administration, Union Territory of Delhi11. The Supreme Court of India, in its judgment held that the right to live guaranteed in any civilized society implies the right to water, decent environment, and the right to live with human dignity and all that goes along with it. Federal management of groundwater began with the decision of the Supreme Court in M.C. Mehta V Union of India12mandating the Central Government to act and address various aspects of problems related to ground water and establish Central Ground Water Board as a ground water authority. In Narmada BachaoAndolan Vs. Union of India13 the Supreme Court uphold the Indian government's decision to construct over 3,000 dams on the river Narmada but considered the importance of Right to safe drinking water as well and held that "water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India. In an important ruling of A.P. Pollution Control Board II v. Prof. M.V. Nayudu14, the Indian Supreme court held that safe drinking water is the first importance in any country. The court referred here India's participation in the UNO water conference and opined that, the "Right to access to safe drinking water is fundamental to life. The court further held that under Article 21 there is a duty on the State under to provide clean drinking water to its citizens. In Hinch Lal Tiwari V Kamla Devi and others15, the Supreme Court held that the material resources of the community like ponds, forests and hillocks and mountains etc., are bounty of nature. They are responsible for maintaining ecological balance all over. Therefore, they need to be protected for proper and healthy environment which enables people to enjoy quality of life which is the essence of the guaranteed right under Article 21 of the Constitution of India. The two cases, both heard in the High Court of Uttarakhand, India by the same bench of two Judges, are MohdSalim v. State of Uttarakhand and others16 and LalitMiglani v. State of Uttarakhand and others17designate the rivers Ganga, Yamuna, and their tributaries and glaciers as juristic persons. Due to the deterioration of the condition of the rivers and the need for their overall development, the Court exercised its parenspatriae18 jurisdiction and granted legal personhood to the rivers. The Advocate General of the State of Uttarakhand, the Director of NAMAMI Gange Project, and the ChiefSecretary of the State of Uttarakhand, were designated persons in loco parentis19 of the rivers.Giving rivers legal rights means the law can see rivers as legal persons, thus creating new legal rights which can then be enforced. When rivers are legally people, does that encourage collaboration and partnership between humans and rivers, or establish rivers as another competitor for scarce resources?20However, the Supreme Court stayed these rulings a few months later, and by doing so rendered them a paper tiger21.

WATER DISPUTES IN INDIA CONCERNING INTER-STATE WATERS

Water dispute regarding river health and its water management is dealth by the Article 262 of the Constitution of India and it establishes tribunal to settle the disputes regarding inter-state disputes. Some of the disputes concerning such rivers date back to the 19th century and relate to a period when (British) India was governed by enactments prior even to the Government of India Act, 1919. Some relate to the period when British India was governed by the Government of India Act, 1919 or the Government of India Act, 1935. Sections 130 to 133 of the Act of 1935 made detailed provisions as to inter-Provincial, etc., disputes concerning water. The relevant provisions applied to "States" also, i.e., to those Indian States, which may ultimately join the contemplated federation. Any Province or State whose interests were perpetually affected in respect of water supplies from a natural source, owing to the action of another Province or State, could complain to the Governor General.The Indus and its tributaries had been always a source of dispute among the concerned Provinces, from the early years of the 20th century. The root cause was the apprehension of the Punjab Province, and of Sind (which was then a part of Bombay Presidency), about the availability of adequate waters for the Bhakra Project of the Punjab and the Sukkur Project in Sind. Disputes arose, and the Central Government appointed a Committee in 1935, (the Indus Committee or the Anderson Committee). The Committee comprised eight experts, namely, six Chief Engineers of the concerned Provinces or States, and two independent Engineers, including the Chairman of the Committee, Sir. John Anderson. The basin Provinces/States were Punjab, Bombay (Sind), North West Forntier Province, Bahawalpur, Khairpur and Bikaner. The Committee submitted its recommendations in the same year (1935) and these were accepted by the Government of India22.In the draft Constitution, the corresponding provision (articles 239 – 242 of the Constituent Assembly draft) contained propositions substantially similar to those contained in Sections 130 – 133 of the Government of India Act, 1935, except that the President was substituted for the Governor General and the reference of a dispute was to be by the President to the Supreme Court under the latter's advisory jurisdiction. For simplicity and effectiveness, Dr. Ambedkar recast the whole scheme. Article 242A (as revised by him), was in the same form as present article 26223.

Many such disputes have been adjudicated after the commencement of theConstitution, by Tribunals constituted under Article 262 of the Constitution, read with the Inter-State Water Disputes Act, 1956.The

11 AIR 1981 SC 746.
12 (1997) 2 SCC 411.
13 [2000] 10 S.C.C. 664
14 2001(2) SCC 62
15 (2001) 6 SCC. 496.
16 Writ Petition (PIL) No.126 of 2014.
17 Writ Petition (PIL) No.140 of 2015.
18 According to the doctrine of parenspatriae, the State as the guardian, has the power and authority to protect the rights and interests of those who are unable to do so themselves. Courts have also been seen to act as guardians of persons non sui generis. The doctrine has also been recognised as imposing a duty upon the State to protect non-human entities.
19 In loco parentis'—when used to refer to a person, implies that the person so addressed has been appointed—in place of a parent.
20 Dr. Erin O'Donnell, (2018) Legal rights for rivers: Competition, collaboration, and water governance, New York: Routledge, p 21.
21 Mathur, Nayanika. 2015. Paper Tiger: Law, Bureaucracy and the Developmental State in Himalayan India. Cambridge: Cambridge University Press, p 18.
22 A Background Paper on Article 262 and Inter-State Disputes Relating to Waterprepared for the Commission by Shri P.M. Bakshi, available at http://legalaffairs.gov.in/sites/default/files/Article%20262%20and%20Inter-State%20Disputes%20relating%20to%20Water.pdf assessed on March 28, 2020, para 5.4, p 8.
23 9 Constituent Assembly Debates in V.M. Valsalan (1997), Inter-State Water Disputes in India, New Delhi: Central Board of Irrigation and Power, pp 19-20.

River Board Act 1956 provides for proactive initiatives of basin-States to develop inter-State rivers and the Interstate Water Dispute Act provides for dispute resolution. The two Statutes together with The State Recognition Act 1956 form part of an Inter-related schema to recognise the cultural diversity of the subcontinent and the need for economic development. That the three Acts were the product of the same historical movement is not accidental.Since the State Recognition Ac, a number of special commissions have been appointed by the union to enquire into the relation between the union and the states. The commission on the Centre-State relations reporting in 1988 (Sarkaria Commission) considered the wisdom of reordering jurisdiction over water and rejected the idea of water becoming a federal subject. the National Commission on Integrated Water Resources Development Plan set up specifically to inquire into integrated water resources development in the nation when reporting in 1999 categorically argued against the alteration of judicial over water24. The main tribunals established after independence are The Godavari Water Disputes Tribunal, The Narmada Water Disputes Tribunal, The Vamsadhara Water Dispute Tribunal, The Ravi- Beas Water Tribunal, The Krishna Water Dispute Tribunal andThe Cauvery Water Disputes Tribunal. These tribunals not only guided the State Governments regarding the inter-State water disputes but also manages the water availability to the states throughout the year protecting the river health. The Article 262 of India's Constitution provides for barring the Supreme Court's jurisdiction over interstate river water disputes. Accordingly, the Interstate River Water Disputes Act 1956 bars the jurisdiction of the Supreme Court or any other court over interstate river water disputes. Yet, the Supreme Court has had to engage with interstate river water disputes on several occasions. The Supreme Court25, though forced to engage with the subject, it has always been with an intent to interpret or give effect to tribunal awards. This appears to be true until the unprecedented Cauvery decision in the February 2018, in which the Court modified the Cauvery Water Disputes Tribunal award26. Further in State of Karnataka v. State of T.N.27(Cauvery Water Dispute Case), State of Karnataka gets additional 14.75 TMC of water in light of availability of groundwater in Sate of Tamil Nadu.Stressing upon the importance of the matter for water management, the Court said:

"in view of the acute scarcity of the water resources and the intensely contested claims of the States, it is expected that the allocations hereby made would be utilized for the purposes earmarked and accepted and no deviancy is shown in carrying out the verdict of this Court."

This additional water is mandated to be used for the growing city of Bengaluru. This verdict needs to be seen as inter-sectoral reallocation from the agricultural sector to the urban-industrial sector, rather than a reallocation among the States.On the other hand, there is increasing recognition of restoring and maintaining river health that is steadily declining due to over-extraction, constructions of dams and diversion channels. This affects the flow regime that includes the water and the sediment flow, which in the process affects the aquatic biodiversity, as also losing its capacity to provide the supporting services (like soil formation) to the terrestrial ecosystem28.

On the other hand, Water disputes on International basins need to be resolved through international treaties. There is no enforceable law, in this regard. Various conventions, such as the Helsinki Conventions, the Berlin Conventions, etc., were available for drawing some ideas in this regard. In the year 1997, the United Nations adopted the "Convention on the Law of the Non-navigational Uses of International Watercourses 1997". After the requisite number of countries accepted this, it has assumed a legal standing, and has come into force from August 2014. However, its legal force can be used only where the Nation-States which are party to the dispute have accepted the Conventions. India, Pakistan and China have not accepted the conventions. Bhutan and Bangladesh had supported these, and may have accepted these. As per these conventions, the Utilization of an international watercourse is to be made in an equitable and reasonable manner taking into account all relevant factors and circumstances29, thus the interference of the International Court of Justice is minimum in the case of India.

WATER MANAGEMENT BY INTER LINKING OF RIVERS AND INTER-STATE WATER DISPUTES

The judgment of the Supreme Court of 27 February 2012 finally disposes of two writ petitions of 2002 on the inter-linking of rivers (ilr). In this judgment the Supreme Court directs the executive government to implement the project and to set up a special committee to carry out that implementation; it lays down that the committee's decisions shall take precedence over all administrative bodies created under the orders of this court or otherwise; it asks the union cabinet to take all final and appropriate decisions, and lays down a time limit of 30 days ("preferably") for such decision-making; and it grants "liberty to the learned amicus curiae30 to file contempt petition in this court, in the

24 Radha D'Souza, Nations vs. People: InterState Water Disputes in Indias Supreme Court in Water and the Laws in India byRamaswamy R Iyer (ed.), (2009) New Delhi:SAGE Publications India, pp 64-65.

25 The State of Karnataka vs. State of Tamil NaduCivil Appeal No. 2453 OF 2007 with State of Kerala vs.State of Tamil NaduCivil Appeal No. 2454 of 2007 decided on February 16, 2018.

26 As per Section 6(2) of Inter State River Water Disputes Act, 1956 "The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court". Further, Chapter 8, Machinery for implementation of Final Decision/ Orders of the Tribunal mentions that "an Inter- State forum to be called "Cauvery Management Board" shall be established for the purpose of securing compliance and implementation of the final decision of the Cauvery Water Disputes Tribunal".

27 (2018) 4 SCC 1.

28 Nilanjan Ghosh, "Making e-flows central to water conflicts", The HinduBusinessline, June 27, 2018, available at https://www.thehindubusinessline.com/opinion/columns/making-e-flows-central-to-water-conflicts/article 24272384.ece assessed on March 28, 2020.

29 SALMAN M. A. SALMAN, The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law, available at https://www.internationalwaterlaw.org/bibliography/articles/general/Salman-BerlinRules.pdf assessed on March 27, 2020.

30 one (such as a professional person or organization) that is not a party to a particular

event of default or non compliance of the directions contained in this order. Detailed planning of this mega-project is being undertaken by National Water Development Agency (NWDA) in 1982. This agency was to carry out studies for water resources development based on the National Perspective Plan and for maintaining the water management i.e. basin water balances and possibilities of storages, links and transfers. The NWDA was carrying out these studies and preparing reports (and continues to do so), but none of these became a project, nor was there anything called the "Inter-Linking of Rivers Project"31. The aim of this project is to transfer the water from surplus river basins to the water scarce western and southern regions of India in order to mitigate the drought conditions prevailing in these regions and also to divert the surplus water in the eastern regions of India. Under this project, 30 links and some 3000 storages will connect 37 Himalayan and Peninsular rivers. The project has been proposed in order to fulfil the very idea of interlinking the water surplus Himalayan Rivers with water scares western and peninsular India. This proposal of interlinking of rivers comprises of two components, namely Himalayan and Peninsular Component. The Himalayan component will transfer almost 35 cubic km water, and the peninsular component will transfers around 140 Km 3 water through a network of 14,900 km long canals32. The Himalayan Component is being proposed with 16 river links. It has two sub-components-the first will transfer the surplus waters of the Ganga and Brahmaputra to the Mahanadi basin, then from Mahanadi to Godavari, Godavari to Krishna, Krishna to Pennar and Pennar to Cauvery basins. The second component will transfer surplus water from the eastern Ganga to the western parts of the Ganga, and then to Sabarmati river basins. This transfer of surplus water has the potential (if executed) to mitigate the floods in the eastern parts of Ganga basin, and to eradicate the water scarcity of the western parts of the basin33. The Central Government in 2002, the National Democratic Alliance (NDA) government announced the project of Inter-linking of rivers. Those projects (a total of 30 links, each one a project, and involving in all more than 60 dams, perhaps closer to 80) were to be properly examined, evaluated and approved or rejected, as the case may be, but the UPA government clearly indicated its lack of enthusiasm for the project in its common minimum program. After the judgement of the Supreme Court, it was argued that as the Constitution recognises interstate rivers and provides for a central role in relation to them, but it makes no reference to inter-basin transfers and includes no enabling provision for central intervention to bring them about and judiciary cannot interfere in inter-state transfer cases as restricted by Article 262 of the Constitution. Although this case was filed Amicus Curiae referring the address of Dr. A.P.J. Abdul Kalam, the then President of India, on the eve of the Independence Day inter alia, related to creating a network between various rivers in thecountry, with a view to deal with the paradoxical situation of floods in one part of the country and droughts in other parts. In other words, it related to the inter-linking of rivers - and taking of other water management measures34. Although,

the Inter-State River Water Disputes (Amendment) Bill, 2019 was introduced in Lok Sabha on July 25, 2019 by the Minister of Jal Shakti, Mr. Gajendra Singh Shekhawat (it has not yet converted into the Act). According to the Act, the Union Government is planning to set up a Disputes Resolution Committee (DRC), to resolve the dispute relating to Inter-state water disputes amicably.The DRC will seek to resolve the dispute through negotiations, within one year (extendable by six months), and submit its report to the central government. If a dispute cannot be settled by the DRC, the central government will refer it to the Inter-State River Water Disputes Tribunal. Such referral must be made within three months from the receipt of the report from the DRC. Under the Act, the decision of the Tribunal must be published by the central government in the official gazette. This decision has the same force as that of an order of the Supreme Court. The Bill removes the requirement of such publication. It adds that the decision of the Bench of the Tribunal will be final and binding on the parties involved in the dispute. The Act provided that the central government may make a scheme to give effect to the decision of the Tribunal.Under the Act, the central government maintains a data bank and information system at the national level for each river basin35. But, transfer of water is bound to be unacceptable as no state is likely to transfer water to another foregoing possible future use of such water.

CONCLUSION

It is estimated that around 263 million people live in drought prone area of about 108 m. ha., which works out to 1/3rd of the total Indian geographical area. Thus, more than 26% of total population of the country face the consequences of recurring droughts, on a wide spectrum of social concerns. India has been endowed with considerable water resources through numerous small and large rivers. Some of the larger Indian Rivers like the Indus or the GangaBrahmaputra-Meghna are international rivers. These and most of the other rivers are the inter-State rivers. Of the total geographical area of India, approximately 95% of the area is under international or inter-State rivers Three - Ken-Betwa, Damanganga-Pinjal, Par-Tapi Narmada - have reached the stage of preparation of detailed project reports, and one (Polavaram), though included in the inter linking of rivers project, was separately taken up by the Andhra Pradesh government on somewhat different lines but is the subject of cases in the Supreme Court by Orissa and Chhattisgarh. The water resources development of these rivers takes place within the legal framework of development of the inter-State rivers and the concerning states should resolve the dispute through alternate dispute redressal agenices instead of moving to the Court.

litigation but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question

31 Ramaswamy R Iyer, River Linking Project: A Disquieting Judgment, Economic and Political Weekly, Vol. 47, No. 14 (APRIL 7, 2012), p 33

32 Note on interlinking of rivers projects in the Country Details and status, available at http://nwda.gov.in/upload/uploadfiles/files/Note-on-interlinking-of-rivers-projects-in-the-Country.pdf assessed on March 28, 2020.

33 N. Rath, "Linking Rivers: Some Elementary Arithmetic," Economic And Political Weekly, July 2003.

34 In Re : Networking Of Rivers with WRIT PETITION (CIVIL) NO. 668 OF 2002, WRIT PETITION (CIVIL) NO. 512 OF 2002.

35 The Inter-State River Water Disputes (Amendment) Bill, 2019.

Article

WOMEN'S DAY: REALLY A CELEBRATION REQUIRED?

CS ASHI JAIN

This beautiful creation of the God! The angel on the earth makes our life a wonderful experience all together. Imagining life without a woman is quite hard-hitting. This angel shakes the cradle with one hand the earth with the other hand. The fact that all the great people of the world are born from the womb of a woman and it is a woman from whom those great people have taken their initial teachings. And that is the reason we have always emphasized upon giving the due respect to women in their life. And that is why women's day is celebrated with so much of zeal and it has spread throughout the world.\

Today's woman is leading a life which is catering to various domains starting from family to profession to social arenas and lot more. She performs multiple roles while being in a single body. But in essence, what is the real role of woman here on earth? Is it to be a successful professional or a prominent leader of a country as we all insist on gender equality? Is it just to get married? Have children? Or just be the creation of God and be the motivating engine and facilitator of life here on Earth.

I've seen this time and again, be it celebrities or just the next door neighbour. The woman is often considered as playing multiple roles – She is a daughter, a sister, a girlfriend, a lover, a wife, a daughter-in-law, a sister-in-law, a mother, an aunt, a granny. And with these multitudes of roles you might want to add her function-based roles, she is a friend, philosopher, teacher, nanny, nurse, housemaid, entrepreneur, manager, business executive and many many more.

On one side you will see a Sudha Murthy who chose subtler professions over a fulfilling IT career and on the other a Indira Nooyi running giant corporations.

The average woman is still juggling housework, motherhood with that of corporate positions. The average woman still gets off a bus where she is manhandled rather than raise voice for her rights. The average woman still gets left out of social bonding over a fag or a pint and probably gets left out of crucial decisions as well.

IS THIS WORTH TO CELEBRATE????

Keeping in view the modern day roles played by women, she has eternal love to nurture her family and at the same time she is devoted towards her ambitions. She sacrifices and overlook her health while upbringing her children but she never say a word , never take a single day holiday even when suffereing from illness. That is why, women is symbolic to ultimate energy and power and In India, we celebrate navratri, this nine day long festival itself shows "Naari Shakti".

However, how strong women is from inside and outside but women still face many challenges in her daily life. She juggles throughout her life since morning to evening from family to workplace. On the other side, rape cases, domestic violence, dowry are increasing day by day and women are not safe even at home.

This is irony of nature where we need to educate world to respect women who brings life into this world. More and more efforts should be taken towards removing gender diversity and accept equality of women along with men which should start from our home first. Let the work and responsibilities to be distributed equally and respect women in essence. Then the celebration of women's day shall no more required and then every day would be substituted by equality day.

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

COMPANY SECRETARIES BENEVOLENT FUND

MEMBERS ENROLLED AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND FROM NIRC DURING THE PERIOD 07/03/2020 TO 31/03/2020

REGION NIRC	LMNO.	NAME	MEMB NUMBER	CITY
1	14438	MR. HITESH KAKANI	ACS - 48047	BHILWARA
2	14443	MR. SANGAM LAL	ACS-54144	NEW DELHI
3	14447	MR. KUNAL KUMAR SINGH	ACS-50153	GURGAON
4	14452	MR. MAHAVEER CHHAPARWAL	ACS - 39798	BHILWARA
5	14456	MR. SUDHIR MUKHEEJA	ACS-61620	NEW DELHI
6	14465	MS. BHARTI MALIK	ACS-54518	KARNAL

Members & Students' Connect to NIRO

We are pleased to enlist the dedicated email IDs for various queries/ issues, if any for reference of members and students:-

Sr. No.	Purpose	Email ID
1.	Matters related to Members (Except PCH updation)	chairman.nirc@icsi.edu
2.	PCH Updation requests	arun.rawat@icsi.edu
3.	Oral Tuition Classes	vinay.baisoya@icsi.edu

Team

Northern India Regional Council

CORRIGENDUM

Please refer to our March, 2020 issue of Newsletter wherein the author of the Article on the Topic Women's Day: Really A Celebration Required??? was inadvertently mentioned as CS Dipanshu Gawdi. Kindly note the correct name of Author as CS Ashi Jain and the article is reprinted with her name in this issue.

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Company Secretaries of India
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NORTHERN INDIA REGIONAL COUNCIL

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PODCAST MESSAGE
For the benefit of CS Students
on
How to Overcome
These testing time of Pandemic Lockdown

Objective

- To Continue Academic Progress
- A Self-Directed learning mode
- To Create Awareness on the basic precautions

Invest this special time at home and take benefit of the Initiative by NIRC Team

Click at link to listen http://tiny.cc/jrlsmz

HAPPY LEARNING!

With Best Regards
CS Suresh Pandey
Chairman, NIRC-ICSI

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CSBF
COMPANY SECRETARIES BENEVOLENT FUND

What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

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