

**CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION,
RGNUL, PUNJAB**

**ISSUE 11 | VOLUME 2
NOVEMBER 2020**

NEWSLETTER

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FROM THE DESK OF THE VICE CHANCELLOR

Centre for Alternative Dispute Resolution (CADR) at Rajiv Gandhi National University of Law, Punjab was established in 2018. The Centre was established to promote students' and researchers' interest in Alternative Dispute Resolution Mechanism constituting dispute resolution methods such as



Arbitration, Negotiation, Mediation and Conciliation. In recent times ADR mechanisms have become a crucial part of Indian justice delivery system. On account of being speedy and economical, these dispute resolution methods have become widely accepted, both nationally and internationally. With this in mind, the CADR endeavors to promote and develop the necessary scholarship among students with respect to the same. The ultimate objective is to emerge as a platform for students to further their interests in the field. A strong team of teachers and students are actively working towards achieving this end. Since its inception, the Centre has seen tremendous success in the form of numerous student run activities including the CADR Blog, the CADR monthly Newsletter, Seminars by distinguished luminaires in the field, and various competitions organized by the Centre, inter alia.

It brings me immense joy to remark that this edition of the Student Newsletter marks one year of its inception. The monthly Newsletter has been comprehensively covering various dimensions and latest developments in the field of ADR's at national and international level. I hope that the student community and each one concerned will make the best out of the Newsletter and contribute its bit to the ever-growing scholarship on Alternative Dispute Resolution.

Professor (Dr.) Anand Pawar

VICE-CHANCELLOR, RGNUL, PUNJAB

FROM THE DESK OF THE REGISTRAR

As the Co-ordinator of the Centre for Alternative Dispute Resolution (CADR), Rajiv Gandhi National University of Law, Punjab, I am glad to share that CADR is constantly striving towards lessening the gnawing gap between the theoretical and practical aspects of Alternative Dispute Resolution Mechanisms.

CADR aims at practical learning in the field of Alternative Dispute Resolution through seminars, capacity-building sessions, essay writing competitions, blog, inter alia. The Centre has successfully conducted numerous activities including Credit Courses on various aspects of Arbitration, Webinar Series, various National and International Mediation Competitions in collaboration with leading Law firms in the Country and abroad. The CADR Newsletter is one such an attempt as an example.

The current edition of the CADR newsletter has marked successful one year since its inception. Since its inception, the newsletter has comprehensively covered developments in the field of ADR at National and International levels. The newsletter exhaustively covers national news, international trends, awards, events happenings in the world of ADR, upcoming events and recent publications.

At this stage, it becomes crucial to acknowledge and appreciate the regressive and vast readership attained by the newsletter in the past one year. The success of a newsletter immensely depends upon its acceptance by the readers, and for this very acceptance of the CADR Newsletter, I have immense gratitude due to all the concerned readers. With continued support from the readers, I am sure that the newsletter will reach promising heights and gain the confidence of the students, scholars, teaching fraternity, professional and all stakeholder readers.

Good wishes.

Professor (Dr.) Naresh Kumar Vats

COORDINATOR, CADR AND REGISTRAR, RGNUL, PUNJAB



NEWSLETTER

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION (CADR)

ARBITRATION

INTERNATIONAL NEWS

1. NEW AMENDMENT ATTEMPTS TO IMPROVE SINGAPORE'S POSITION AS INTERNATIONAL ARBITRATION HUB

The Singapore Parliament passed the International Arbitration (Amendment) Act, 2020 in October. It is the first amendment since 2012 and aims to deal with the changes in the Arbitration landscape. Singapore has seen a rise in multi-party arbitrations which could be delayed if the parties cannot agree on a mechanism to appoint the arbitral tribunal as

the International Arbitration Act did not provide for any default procedures to appoint arbitrators where more than two parties are involved. The Amendment Act contains provisions regarding the same among other changes. For other key features,

[Read more](#)

2. VICTORIAN SUPREME COURT CONFIRMS THE LIMITS OF “REASONABLE OPPORTUNITY” ENTITLEMENT

The Victorian Supreme Court in the case of *Full Joy Foods Pty Ltd v. Australian Dairy Park Pty Ltd*, affirmed the well-established position of a party's entitlement to a “fair opportunity to

present its case” in Australia. The court explained that the aforementioned entitlement does not require an arbitrator to guarantee the party takes the best advantage of the opportunities presented to it during the course of the arbitration.

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3. “INTERIM-INTERIM” INJUNCTION REFUSED BY THE HONG KONG DISTRICT COURT

In *Fenn Kar Bak Lily v. So Shiu Tsung Thomas*, Hong Kong’s district court has refused to grant an “interim-interim” injunction to restrain the arbitrator from acting in arbitration on the ground that there was already another identical application before the court scheduled for hearing and that it was not urgent to grant the injunction.

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4. ISSUE OF LAW ARISING IN THE COURSE OF ARBITRAL PROCEEDINGS UNDER S. 45 DETERMINED BY THE ENGLISH HIGH COURT

The English High Court in its recent decision, *The Eternal Bliss*, has determined an issue of law concerning liquidated damages in the context of a shipping contract. This came after the case was referred to the court by the parties under

S. 45 of the Arbitration Act, 1996 regarding two questions of law that came up in the arbitration proceedings. This is a rare invocation of Section 45 which allows the Court to determine a point of law during the course of arbitral proceedings if agreed upon by all parties or on the application of a party with the permission of the tribunal.

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5. NIGERIA GRANTED EXTENSION OF TIME TO CHALLENGE USD 6.6 BILLION AWARD FOR FRAUD BY THE ENGLISH HIGH COURT

The English High Court in *The Federal Republic of Nigeria v. Process & Industrial Developments Limited* has granted Nigeria an extension of time to challenge an arbitral award of USD 6.6 Billion in damages and USD 4 Billion in costs and interest in favour of Process & Industrial Developments Limited. The court established that the final award was obtained through fraud and that Nigeria’s conduct to investigate the fraud in the intervening period between the Final award and the current proceedings was reasonable.

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6. HALLIBURTON V. CHUBB: UK SUPREME COURT CLARIFIES ENGLISH LAW ON ARBITRATOR’S APPARENT BIAS

The UK Supreme Court in *Halliburton Company (Appellant) v. Chubb Bermuda Insurance Ltd.*, has clarified how the arbitrator's apparent bias will be evaluated by the English Courts and has refined the test in the context of arbitration. Even though the arbitrator's challenge in the aforementioned case did not succeed, the court through its judgment has re-emphasised the significance of the arbitrator's impartiality in English-seated arbitration. This case was also important for a number of arbitral institutions as they were given permission by the Supreme Court to intervene and submissions were made by the LCIA, ICC, CIArb, LMAA and GAFTA. The two main issues before the Supreme Court were:

- a. Whether and to what extent an arbitrator is entitled to accept appointments in multiple arbitrations relating to the same or overlapping matters and where there is only one common party, without this resulting in an appearance of bias; and
- b. whether and to what extent the arbitrator could accept multiple appointments in this way without providing disclosure.

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7. SUPPLEMENTAL ARRANGEMENT CONCERNING MUTUAL ENFORCEMENT OF

ARBITRAL AWARDS ENTERED INTO BY MAINLAND CHINA AND HONG KONG

The Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland China and the Hong Kong Special Administrative Region was signed by the Chinese Supreme People's Court and the Hong Kong Department of Justice on 27 November 2020. The Supplemental Arrangement modifies and supplements the existing Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR which came into effect on 1 February 2000.

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8. EXTENSION OF TIME FOR A SET ASIDE APPLICATION MADE SEVEN DAYS AFTER THE STATUTORY DEADLINE DECLINED BY THE HONG KONG COURT

On 13 November 2020, the Hong Kong Court of First Instance passed its judgment in *A v. D* where it refused to grant an extension of time to the applicants to apply for setting aside an arbitral award on the ground that the applicants failed to give any satisfactory explanation for the delay in making the application. The court further ruled that, even after considering the merits of the application, there were no possibilities of persuading the court to exercise

its discretion in granting the time extension sought by the applicants.

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NATIONAL NEWS

1. ARBITRATION AND CONCILIATION (AMENDMENT) ORDINANCE, 2020: WHAT'S NEW?

On 4th November 2020, the President of India promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2020 (the "Ordinance"). The Ordinance seeks to amend the Arbitration and Conciliation Act, 1996. Firstly, a proviso has been added to Section 36 of the Arbitration and Conciliation Act. According to this proviso, an unconditional stay would be granted by the court if there is a prima facie case of an award being induced by fraud or corruption. Secondly, substitution has been made in Section 43J. Lastly, the eighth schedule of the Act has been omitted.

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2. PETITIONS CANNOT BE DISPOSED OF EX-PARTE WITHOUT GIVING AN OPPORTUNITY TO THE RESPONDENT TO PRESENT ITS CASE: DELHI HIGH COURT

In *New Morning Star Travels v. Volkswagen Finance Pvt. Ltd.*, the Hon'ble Delhi High Court has held that petitions under Section 9 of the

Arbitration and Conciliation Act, 1996 cannot be disposed of without giving the respondent a reasonable opportunity to present its case. In this case, the petition under Article 227 was filed under extraordinary circumstances. This was because the learned District Judge (Commercial Court) of Karkardooma Courts has disposed-off sixteen petitions filed by the Respondent under section 9 of the Act. These petitions were disposed of on the very first day of the hearing, without issuing any notice in the petitions to the petitioner.

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3. INDIAN PARTIES CAN CHOOSE A FOREIGN SEAT OF ARBITRATION AND CAN ENFORCE THE FOREIGN ARBITRAL AWARD IN INDIA

In *GE Power Conversion Pvt. Ltd. v. PASL Wind Solutions Pvt. Ltd.*, the Gujarat High Court has held that the parties can select a foreign seat of arbitration and thereby, can enforce the foreign arbitral award. The Court held that the impugned award was final as per the Curial Law and was enforceable.

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4. CONDITION REQUIRING PETITIONER TO MAKE A PRE-DEPOSIT OF AN AMOUNT FOR INVOKING ARBITRATION WOULD FALL FOUL OF THE LAW DECLARED BY THE SUPREME COURT: KERALA HIGH COURT

In *Lite Bite Foods v. Airport Authority of India*, the Kerala High Court relied on the Supreme Court's decisions in *Perkins Eastman v. HSCC (India) Ltd.* and *ICOMM Tele Ltd. v. Punjab State Water Supply Board*. The Court held the impugned clause to be illegal.

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5. THE CENTRAL GOVERNMENT SEEKS MORE TIME FROM THE DELHI HIGH COURT TO DECIDE ITS FUTURE COURSE OF ACTION WITH RESPECT TO THE VODAFONE JUDGMENT

The Centre has requested for more time from the Delhi High Court to decide whether the Government of India will be challenging the Vodafone arbitration award or not. The Additional Solicitor General has claimed that the delay is because the decision has to pass through the committee formed by the Cabinet.

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6. NOTHING CONTAINED IN SECTION 13(1) OR SECTION 13(2) OF THE COMMERCIAL COURTS ACT CURTAILS THIS RIGHT OF APPEAL: KERALA HIGH COURT

In *Pranathmaka Ayurvedics v. Cocosath Health Products*, the Kerala High Court decided the scope of section 8 and section 13 of the

Commercial Courts Act, 2015. The Court has clarified that the right to appeal under section 13(1) of the Commercial Courts Act is not independent. It held that “the parameters of Section 37(1) of the Arbitration Act alone which have to be looked at in order to determine whether an appeal against an order under Section 9 of the said Act is maintainable or not.”

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INVESTMENT ARBITRATION

1. INDIANA RESOURCES TO BEGIN ARBITRATION AGAINST TANZANIA GOVERNMENT IN 2021

ASX-listed Indiana Resources expects to begin arbitration with the Government of Tanzania over the illegal expropriation of the Ntaka Hill nickel project and other breaches of the UK-Tanzania BIT in Q1, 2021. In the Request for Arbitration, the claimants had proposed that the arbitral tribunal consist of three members and nominated Doak Bishop as their arbitrator panel member.

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2. BOLIVIA RATIFIES THE UNITED NATIONS CONVENTION ON TRANSPARENCY IN TREATY-BASED INVESTOR-STATE ARBITRATION

Bolivia becomes the seventh State Party to the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the "the Mauritius Convention on Transparency". Bolivia joins Australia, Cameroon, Canada, the Gambia, Mauritius and Switzerland as a State Party to the Convention. Twenty-three states have signed the Convention.

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3. THE AUSTRIAN SUPREME COURT IN A LANDMARK JUDGMENT, ESTABLISHED 2 IMPORTANT PRINCIPLES

In its landmark decision the Austrian Supreme Court established two important principles for arbitral tribunals seated in Austria – (a) That the conduct of hearings via video-conference – despite a party's express objection – lies within the arbitral tribunal's discretion (b) That a negative non-verbal reaction (in this case: eye-rolling) of an arbitrator to a verbal pleading of a party does not justify the conclusion that the arbitrator is biased.

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4. FIRST FOREIGN ARBITRATION INSTITUTION STARTS BUSINESS IN CHINA

The WIPO Arbitration and Mediation Shanghai Service, the first business

organization of foreign arbitration institutions in China, has begun handling cases in 2020. It was not until July 2019 that China formally allowed foreign arbitration institutions to set up business organizations in mainland China to carry out arbitration activities. The organization's business covers arbitration and mediation in cases concerning foreign-related intellectual property disputes in China.

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5. US DISTRICT COURT REFUSES RECOGNITION AND ENFORCEMENT OF ICC AWARD AGAINST AND IRAQI STATE-OWNED OIL COMPANY

In *OGI Group Corp. v. Oil Projects Co.* of the Ministry of Oil, Baghdad, Iraq, the US District Court in Washington, DC granted a motion to dismiss recognition and enforcement proceedings brought against Oil Projects Company of the Ministry of Oil, Baghdad, holding that the court lacks personal jurisdiction over the respondent and is not the proper venue for a petitioner to seek enforcement.

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6. EGYPT FOUND IN BREACH OF INVESTMENT TREATY IN CEMENT ARBITRATION CASE BUT DODGES DAMAGES

The International Center for the Settlement of Investment Disputes (ICSID) has dismissed claims brought against the Egyptian government by Spanish cement group Cementos La Union, despite finding Egypt in breach of a bilateral investment treaty. Cementos, a majority shareholder in Arabian Cement Company, was seeking damages from the government for what they said was a failure to provide enough gas and electricity supplies for a cement plant it was due to open in Egypt.

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MEDIATION

1. A TALLAHASSEE COURT ORDERED MEDIATION IN THE HOT YOGA SHOOTINGS CASE

The Leon County Circuit Court of Tallahassee ordered for mediation to take place between the parties involved, i.e. family members of the deceased individuals and the Hot Yoga Studio situated in Leon County on the 3rd of November, 2020. The negligence claim for lack of adequate security which led to the shooting in question must first go through mediation between all the concerned stakeholders, as per the Court. The deadline for the mediation process has been set as 15th of January, 2021.

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2. SCOTLAND'S LARGEST LANDLORD ASSOCIATION IS PROMOTING TIMELY COMMUNICATION AND MEDIATION BETWEEN TENANTS AND LANDLORDS

The Scottish Association of Landlords (SAL) has been constantly urging tenants and landlords to make use of free mediation services considering the tough times caused due to the pandemic. SAL even laid down a set of guidelines which both of the concerned parties should adhere to for ensuring successful mediation in a manner which is conducive for the tenants (by avoiding eviction) as well as landlords (reducing rent-levels in a manner which reflects short term troubles).

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3. JAMAICAN COURTS HAVE TAKEN THE DECISION OF MOULDING THE JUSTICE SYSTEM AROUND MEDIATION

On the 13th of November, 2020, the Justice Minister of Jamaica Delroy Chuck announced the Government's intention of strengthening the use of Mediation Act and Restorative Justice Act for settling minor cases as well as certain complex disputes. The Minister envisions amendments to the abovementioned statutes to ensure greater dependence on ADR Mechanisms such as Mediation and

Negotiation rather than Litigation owing to a large backlog of cases.

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4. THE BAR ASSOCIATION OF JACKSONVILLE, FLORIDA HAS ANNOUNCED CONTRIBUTION OF MEDIATION SERVICES FOR DIFFERENT DISPUTES

On the 6th of November, 2020, the Jacksonville Bar Association announced its programme wherein it would send Bar Members who were certified State Supreme Court Mediators to resolve various kinds of disputes that the Courts were not able to hear due to COVID-19. The same has been announced to work in synergy with the mediators already engaged holistically in ADR and not to compete with them.

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5. THE GREEK POLICE FORCE HAS CONSTITUTED AN UNARMED POLICE UNIT TO MEDIATE WITH PROTESTOR RALLIES

The Greek Police on the 17th of November, 2020 announced a special unarmed Police Unit which has been entrusted with the task of mediating, managing and ring-fencing low to medium risk protest rallies. This unit is responsible for maintaining peace and security

and avoids the possibility of escalation and tension in the public.

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6. JAMMU & KASHMIR HIGH COURT CONCLUDED A TRAINING SESSION ON VIRTUAL MEDIATION FOR THE PURPOSE OF INCREASING THE JUDICIAL SYSTEM'S EFFICIENCY

The 40-hour training session, meant for judicial officers of Jammu, Kashmir and Ladakh, wound up on the 22nd of November 2020. At the valedictory session, Chief Justice of J&K High Court Gita Mittal laid stress upon the necessity of imparting education on mediation, instilling compassion and ingraining a strong sense of justice so as to increase the judiciary's effectiveness.

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