

October - December 2023

CADRadar

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION



The Centre for Alternative Dispute Resolution's Quarterly Newsletter



Vol V, Issue 2



Table of Contents

- About us **01**
 - Domestic Arbitration
 - International Commercial Arbitration
 - Investment Arbitration
 - Mediation
 - Blog **02**
 - Events @ CADR
 - Achievements **03**
- 01** Blog: Validity of Unstamped Arbitration Agreements
- 02** Upcoming Events
- 03** 3rd RGNUL National Negotiation Competition, 2023

ABOUT US



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

In its attempt to further the objective of providing quality research and information to the ADR fraternity, the CADR team is elated to present the First Edition of the Fifth Volume of its quarterly newsletter, “**The CADR Radar.**” The Newsletter initiative began with the observation that there exists a lacuna in the provision of information relating to ADR to the practicing community. With an aim to lessen this gap, the Newsletter has been comprehensively covering developments in the field of ADR, both national and international. Additionally, the newsletter documents the events at CADR and the achievements of RGNUL students in ADR competitions. The CADR Radar is a one-stop destination for all that one needs to know about the ADR world; a “quarterly dose” of ADR News!

Domestic Arbitration

-Gautam Taneja & Aadit Seth

Calcutta High Court Stresses Consent in Arbitration, Deems Unilateral Clause Problematic

The Calcutta High Court in the case of *M/s. Mehrotra Buildcon Pvt. Ltd. v South Eastern Railway* observed that a party cannot be forced to accept appointment of an arbitrator in case they have disagreed to it. The Bench noted that the Arbitration Act places a strong focus on the parties' consent at all stages of the arbitration procedure, ensuring unanimous agreement on issues such as the arbitration mechanism, conduct, and verdict content. The Act is intended to facilitate consensual conflict resolution through arbitration. The paragraph under consideration, which requires the petitioner to choose from a predetermined list, therefore limiting their freedom of choice, is unilateral. The clause reflects the petitioner's lack of true consent and unrestricted choice, specifically Clause 64(3)(b)(ii) of the Standard General Conditions of Contract (GCC). [Read Judgement.](#)

Supreme Court Decides Arbitration Terms in Unstamped Agreements Are Enforceable

Arbitration terms in unstamped or insufficiently stamped agreements are enforceable, according to a seven-judge Supreme Court bench. Inadequate stamping does not render the agreement void or unenforceable, but it does render it inadmissible in evidence. The Court did, however, point out that it is a correctable flaw under the Indian Stamp Act. This judgement overrules the previous judgement given by a 5-judge bench earlier in the year in *M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors.* [Read Judgement.](#)

Calcutta High Court Upholds ₹1,354 Crore Arbitral Award for Reliance Infra, Highlights Need for Arbitration Reform in India

Calcutta High Court upholds ₹1,354 crore award in favour of Reliance Infra, says India in dire need of arbitration reform. The Court expressed concern that arbitration in India is being burdened by increasing judicial interference at every stage which demotes its standing as a business-friendly destination. The Calcutta High Court, presided over by Justice Shekhar B Saraf, has upheld a ₹1,354 crore arbitral award in favor of Reliance Infrastructure Limited. The award originated from a deal between Reliance Infrastructure and Damodar Valley Corporation for the construction of a thermal power plant. The court expressed concern over the increasing judicial interference at every stage of the arbitration process in India, emphasizing the need for reform. It noted that such interference not only affects the viability of arbitration as a dispute resolution mechanism but also diminishes India's standing as a business-friendly destination globally.

The case involved Damodar Valley Corporation challenging the arbitral award requiring them to pay ₹1,354 crores to Reliance Industries Limited. The court's decision underlined the evolving jurisprudence on interference with arbitral awards, permitting the consideration of the entire record of arbitral proceedings, even if not explicitly mentioned in the award. [Read judgement.](#)

Delhi High Court Stresses Prudent Examination by Arbitral Tribunal for Witness Applications

The Delhi High Court ruled that the tribunal, acting under Section 27 of the A&C Act, should not act mechanically and grant every application. Instead, it is required to thoroughly examine, even on a preliminary basis, the relevance of the planned witness before approving such an application from any party. The Court highlighted that, while the arbitral tribunal is not bound by the procedural norms of the CPC or the Evidence Act of 1872, it must use discretion and make an informed opinion when deciding whether to allow an application requesting Court assistance to examine a witness. [Read Judgement.](#)

Supreme Court Upholds Article 14 Supremacy, Disallows Enforcement of Arbitration Clause Contravening Constitution in Lombardi Engineering Ltd v. State of Uttarakhand

In the case of Lombardi Engineering Ltd v. State of Uttarakhand, Supreme Court upheld the overarching power of article 14 by deciding that in an arbitration agreement a clause which is not in consonance with the constitution cannot be enforced. Further the bench held that while considering an application for appointment of an arbitrator, it can evaluate whether the arbitration terms are manifestly arbitrary and in violation of Article 14 of the Constitution. The court further stated, “For an arbitration clause to be legally binding it has to be in consonance with the “operation of law” which includes the Grundnorm i.e. the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit.” [Read Judgement.](#)

Delhi High Court Affirms Authority to Extend Arbitrator's Mandate Beyond Statutory Time Under Section 29A of A&C Act

In a decision based on Section 29A of the A&C Act, the Delhi High Court upheld its ability to extend an arbitrator's mandate even if the extension application is filed beyond the time for making the award. It was emphasized that Section 29A does not prevent the Court from granting a time extension where one is required, regardless of whether a petition is filed soon after the statutory date in Section 29A(1) or Section 29A(3) of the A&C Act. [Read Judgement.](#)

Tata Motors Awarded ₹765.78 Crore Plus Interest in Arbitration for Singur Plant, Also Granted ₹1 Crore for Proceeding Costs

The arbitral tribunal awarded Tata Motors ₹1 crore to be recovered from the West Bengal Industrial Development Corporation (WBIDC) towards costs for the arbitration proceedings. Tata Motors has received a favorable arbitral award of ₹765.78 crore, plus interest, as compensation for its abandoned Singur plant. The dispute arose from the Left Front government's 2006 land acquisition of nearly 1,000 acres in Singur, allocated to Tata Motors for manufacturing the Tata Nano. Strong opposition from Mamata Banerjee led to anti-land acquisition protests, prompting Tata Motors to relocate the plant to Gujarat in 2008.

The recent award, disclosed in a stock exchange filing, stems from a unanimous decision by a three-member Arbitral Tribunal. Tata Motors can recover ₹765.78 crore from the West Bengal Industrial Development Corporation (WBIDC) with 11% annual interest from September 1, 2016, until recovery. The company is also authorized to claim ₹1 crore from WBIDC to cover proceeding costs. This resolution concludes a lengthy arbitration process, providing Tata Motors significant financial compensation for losses incurred in the Singur project. [Read full report.](#)

Supreme Court Upholds Setting Aside of ICC Award in Antrix v Devas Case, Citing Fraud and Public Policy Issues

Antrix v Devas: Supreme Court upholds setting aside of ICC order that directed Antrix to pay \$560 million. The Delhi High Court, in a case related to the setting aside of an International Chamber of Commerce (ICC) Award of \$562.5 million in favor of Devas Multimedia for a failed satellite agreement, upheld the decision to set aside the award. The dispute arose from the termination of an agreement between Antrix Corporation Ltd. (a commercial arm of the Indian Space Research Organisation) and Devas Multimedia. An ICC tribunal had earlier awarded \$562.5 million to Devas Multimedia for wrongful repudiation of the agreement by Antrix.

The High Court's Division Bench, comprising Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad, supported the Single Judge's decision to set aside the ICC Award. The court cited fraud and conflict with the public policy of India as the grounds for setting aside the award. The Supreme Court had previously affirmed that the relationship between Antrix and Devas was tainted by fraud. The High Court held that the Supreme Court's findings were binding, constituting the ratio decidendi, and that the Single Judge correctly relied on these findings to set aside the ICC Award. The court rejected the argument that the Supreme Court's decision was obiter dicta, emphasizing that even observations not strictly construed as ratio could be binding on the High Court. The court also highlighted the application of the principle of res judicata, rendering the findings of the Supreme Court conclusive in the present case. [Read full blog on SCC.](#)

Validity of Arbitration Agreement Upheld as High Court Rejects Challenge to Foreign Award

An Award Which Blatantly Misapplies The Provisions Of The Contract Law Resulting In A Perverse Interpretation Of The Law, Is Liable To Be Set Aside. the 11 validity of the agreement or the validity of the arbitration clause, the Arbitrator has jurisdiction to decide whether a non-signatory to the representation agreement can be bound by the award. That Agreement was not challenged by either party and is therefore a valid and enforceable Agreement. It is clear and not ambiguous and therefore not subject to interpretation. The award so provided by the learned arbitrator was such that the Respondent first knocked at the doors of the Principal District Judge, Nagpur, but given the fact that, being a foreign award, a District Judge would have no jurisdiction to enforce the same, a learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench, was then approached. The single judge bench held The parties have agreed that the question of leading oral evidence in support of their rival contentions does not at all arise and the pure questions of law are raised, which can be decided on the basis of the documents which are admitted and placed on record. [Read Judgement.](#)

Delhi High Court Reopens Jurisdictional Challenge in Zakir Hussain & Anr. vs Sunshine Agrisystem Pvt. Ltd. Arbitration Case

In the Delhi High Court judgement on 6th October 2023, in the case of Zakir Hussain & Anr. vs Sunshine Agrisystem Pvt. Ltd., held that the application of the petitioners challenging the jurisdiction of the learned Arbitrator had been wrongly dismissed by placing reliance on the judgment of the Apex Court in SBP & Co. vs. Patel Engineering (2005) 8 SCC 618. The jurisdictional issue of arbitrability of the disputes has been raised by the petitioner which requires reconsideration. It is thus, asserted that the Award suffers from patent illegality, is perverse and is liable to be set aside. It is further averred that the record of the Arbitral Tribunal makes it apparent that the petitioners constantly employed tricks and tactics to delay and derail the proceedings. They also made several attempts to challenge the jurisdiction of the learned Arbitrator. The Award has been passed by taking into consideration all the material evidence on record and thus it is not susceptible to challenge under Section 34 of the A & C Act, 1996. [Read Judgement.](#)

Civil Appeal: High Court Upholds Arbitral Award in M/S Unibros v. All India Radio Case, Rejects Section 34 Objection

In the civil appeal for the case of M/S Unibros v. All India Radio, the impugned judgment, a Division Bench affirmed the judgment and order of a learned Single Judge dated 25th February, 2010 whereby an objection of the All India Radio (“respondent”, hereafter) under section 34 of the Act was allowed. The learned Arbitrator had arrived at a just and reasoned conclusion after carefully perusing the materials and evidence on record and in the absence of any perversity or caprice, the courts cannot interfere with the award.

Relying on *Associated Builders vs. Delhi Development Authority*, learned counsel submitted that the arbitrator is the sole judge of the quality and quantity of evidence and the High Court, under section 34 of the Act, cannot act as a first appellate or a revisional court by interfering with arbitral awards in the absence of perversity. [Read Judgement.](#)

Supreme Court Upholds 'Group of Companies' Doctrine, Allowing Arbitration Agreements to Bind Non-Signatories

The Supreme Court's Constitution Bench backed the use of the "group of companies" doctrine, ruling that an arbitration agreement can bind non-signatories. The Court found that non-signatories linked by connections and commercial activity are not considered strangers to the arbitration agreement, underlining its utility in interpreting intents within complicated transactions involving several parties and agreements. [Read Judgement.](#)

International Commercial Arbitration

-Sohum Sakhuja

Paris Court of Appeal Partially Annuls Award, Confirms Position on International Public Policy

A significant decision for the international arbitration community was rendered by the Paris Court of Appeal on 24 October 2023. This decision involved the partial annulment of an award that had previously found the Bolivarian Republic of Venezuela (“Venezuela”) in violation of an investment treaty. The annulment was based on considerations of public policy and the adherence to the applicable standard. The central issue before the Paris Court of Appeal revolved around whether the investors' alleged illegal activities breached international public policy, warranting annulment of the arbitral award as per Article 1520.5 of the French Code of Civil Procedure. The court partially annulled the award, concluding that one of the two described illegal activities constituted a violation of international public order, while the other did not. Through its decision on 24 October 2023 and other recent rulings, the Paris Court of Appeal reiterated its stance on determining violations of international public policy. [Read more.](#)

England Determined as Suitable Forum in ASI case– Deutsche Bank V RusChemalliance LLC

The cases brought by (i) Deutsche Bank, (ii) Commerzbank, and (iii) an anonymized entity against RusChemAlliance LLC (“RCA“), a Russian entity with a direct interest from Gazprom, were collectively referred to as ASI. All three cases were related to proceedings initiated by RCA in Russia, breaching relevant arbitration agreements. The application for ASI was initially rejected for case (i) but granted on appeal, granted initially for case (ii), and denied initially for case (iii). This article primarily focuses on case (i), i.e., the Court of Appeal’s decision in Deutsche Bank AG V RusChemAlliance LLC [2023] EWCA Civ 1144.

The Court of Appeal determined that England was the most suitable forum to consider and decide on the ASI request, especially since French courts, while not issuing ASIs, would recognize them. The appellate court disagreed with the Commercial Court's view that an ASI should not be granted if it is not a remedy available under the law of the seat (i.e., French law). [Read more.](#)

Baker Hughes Secures U.S. Enforcement of Arbitral Award Against Pesago Consortium

After winning an arbitration in Ecuador against the Pesago Consortium, Baker Hughes Services International LLC (“Baker Hughes”) obtained an enforceable arbitral award against the Consortium’s two members—Joshi Technological International, Inc. (“Joshi”) and third-party Campo Puma Oriente S.A. Baker Hughes brought the award to Oklahoma and sued Joshi to confirm it in the United States. The district court confirmed the award and granted attorney’s fees with prejudgment interest.

Addressing Joshi's initial argument—that the alleged failure to comply with Article IV deprived the court of subject matter jurisdiction to enforce the award—the Tenth Circuit rejected the Eleventh Circuit's reasoning in *Czarina, LLC v. W.F. Poe Syndicate*. Instead, it sided with the Second, Fourth, and Ninth Circuits, holding that failure to comply with the procedural requirements of Article IV raises a merits issue, not a jurisdictional one. As Joshi did not raise Baker Hughes's failure to comply with Article IV as a merits issue—and did not claim any inaccuracy in the English versions of the agreement and award—the issue was waived on appeal. [Read more.](#)

Madrid International Arbitration Center (CIAM) Approves new Rules for 2024

On 19 October 2023, the Plenary of the Madrid International Arbitration Center (CIAM) approved its new Rules, set to take effect on 1 January 2024. The CIAM's new Rules result from collaborative efforts by CIAM's Chair, José María Alonso, the Best Practices Commission, and the Secretariat, with support from leading international arbitration professionals. These changes aim to enhance the effectiveness and efficiency of arbitration proceedings, focusing on significant improvements to procedural efficiency through modifications that streamline and simplify arbitral proceedings. [Read more.](#)

AIAC Releases Latest Update to Arbitration Rules, Emphasizes Efficiency and Flexibility

The Asian International Arbitration Centre (AIAC) released its latest update to the AIAC arbitration rules, following the 2021 update. Effective from 24 August 2023, the new rules apply to all arbitrations under the AIAC, unless otherwise agreed by parties. This update underscores AIAC's commitment to modernizing its arbitral rules, bringing about improvements in efficiency and cost-effectiveness. Noteworthy changes to the rules and procedures provide parties with greater flexibility, aligning AIAC more closely with global standards, particularly its emphasis on UNCITRAL. [Read more.](#)

Commercial Court Partially Upholds Nigeria's Challenge in Decade-long Arbitration case

In the ongoing case that spans a decade, where Nigeria was previously granted an "unprecedented" extension of nearly three years to contest awards in a London-seated arbitration (refer to our previous post), the Commercial Court has partially upheld Nigeria's challenge under s68 of the Arbitration Act (the 1996 Act) to awards granted in favor of Process and Industrial Developments Ltd (PI&D). The Court determined that the awards were procured through fraud and were contrary to public policy. Despite ruling in favor of Nigeria, the court did not address in the judgment how the awards should be handled, opting to hear arguments from the involved parties on this matter at a later date. [Read more.](#)

Groundbreaking Report on Arbitrator Selection Emphasizes Diversity Considerations

A groundbreaking report on the selection of arbitrators suggests that parties could achieve improved outcomes by adopting more formalized processes and actively considering diversity considerations (refer to “The Usual Suspects: Decision-Making in Arbitrator Selection,”). Presented during Hong Kong Arbitration Week 2023, the report stems from the “Usual Suspects Project,” a collaboration between the Hong Kong International Arbitration Centre and Cortex Capital, supported by Herbert Smith Freehills and other leading law firms. Led by Herbert Smith Freehills alumnus and Cortex Capital founder Dr. Ula Cartwright-Finch, the project aimed to demystify party appointments, including the extent to which diversity is taken into account by key decision-makers. Drawing on detailed interviews with senior arbitration practitioners in Hong Kong and a broader global survey of arbitration community members, the report reveals that selection processes often lack formality, relying on past practices and personal contacts without a systematic written framework to guide participants. [Read more.](#)

LCIA Announces Significant Updates, Including Revised Schedule of Costs

The LCIA announced that it is implementing a series of updates. These updates include a revised Schedule of Costs and updated terms and conditions, both slated to take effect on 1 December 2023. Additionally, the LCIA has revised its policy on the receipt of funds and published an updated Guidance Note for Parties and Arbitrators, integrating the LCIA’s previous three Guidance Notes and offering “best practice” guidance on the application of the 2020 rules in practice. [Read more.](#)

English High Court Rejects Russian Federation’s Jurisdictional Challenge in Yukos case

On 1 November 2023, in *Hulley v Russian Federation* [2023] EWHC 2704 (Comm), Mrs. Justice Cockerill in the English High Court (the Court) dismissed a jurisdictional challenge raised by the Russian Federation (Russia) in proceedings for the enforcement of two arbitral awards issued in favor of the former majority shareholders in OAO Yukos Oil Company (Yukos), totaling over US\$50 billion. The pivotal question was whether Russia was estopped, based on issue estoppel, from re-arguing that it had not agreed in writing to submit the dispute to arbitration, due to previous judgments on the same issue by the Dutch courts in the context of set-aside proceedings for the same awards. The Court rejected the argument that state immunity precludes issue estoppel, determining that the application of issue estoppel is not barred solely because Russia is a state, and not a company or an individual, provided other conditions, specifically identity of issues and finality, are met. Having satisfied all conditions for the application of issue estoppel, the Court held that Russia was precluded from raising a jurisdictional challenge, leading to the dismissal of Russia’s application. [Read more.](#)

Parliament to Review Law Commission's Proposals for Arbitration Act 1996 Amendment

The King's announcement on 7 November confirmed that Parliament would be reviewing the Law Commission's recommendations for amending the Arbitration Act 1996 (the Act) in the upcoming parliamentary session. Subsequently, on 21 November, the draft Arbitration Bill (the Bill) was presented to Parliament, with an initial reading in the House of Lords. A second reading is scheduled for 19 December 2023. As expected, the Bill is introduced under the Law Commission's special parliamentary procedure for "uncontroversial" bills, expediting the scrutiny process. If the process proceeds smoothly, the legislation could receive Royal Assent in early-mid 2024. The Bill introduces a new temporal scope for the default rule, stating that it will apply to all arbitration agreements, regardless of their date, except for arbitrations or court actions already initiated before the legislation takes effect. [Read more.](#)

Singapore High Court Denies stay in Cryptocurrency case, Emphasizing Waiver

Singapore's High Court has rejected a stay in a cryptocurrency case in favor of SIAC arbitration. Users of the Singapore-based cryptocurrency platform, Terraform, filed a representative action following a significant decline in the value of their tokens. The defendants sought a stay of the claims in favor of arbitration. The Court determined that, although there was prima facie evidence of an arbitration agreement in the parties' web-based contract, the defendants had taken steps in the litigation that amounted to a waiver of their jurisdictional objection. This judgment underscores the importance of carefully designing website architecture to ensure that online terms, including arbitration clauses, are effectively brought to the attention of users. It also highlights the need for a thoughtful litigation strategy when seeking a stay of proceedings. [Read more.](#)

Hong Kong Court Denies Leave to Appeal Construction Award on Points of Law

In a rare instance, a five-judge bench of the Court of Appeal in *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10 has affirmed the application of transnational issue estoppel in international commercial arbitration. This prevents parties from re-litigating points previously determined by the seat court on jurisdiction. The Republic of India attempted to resist the enforcement of a foreign award obtained by Deutsche Telekom in Singapore, mainly on the ground that the tribunal lacked jurisdiction. The arbitration was seated in Geneva, Switzerland, and the Singapore court heard the matter as an enforcement court. The seat court had already dismissed India's application to set aside the award, upholding the tribunal's jurisdiction and the validity of the award. The Singapore courts had to decide whether India was precluded from re-litigating those points determined by the seat court. [Read more.](#)

English Commercial Court Annuls Portion of LCIA Award in Palmat NV v Bluequest Case

In the recent case of Palmat NV v Bluequest Resources AG [2023] EWHC 2940 (Comm), the English Commercial Court annulled a portion of an award issued in an LCIA arbitration under s68 Arbitration Act 1996 (the 1996 Act), granting interest to Bluequest Resources AG (Bluequest) on its arbitration and legal costs, despite Bluequest not having claimed interest on these sums. However, the Court declined to uphold other challenges made by the award debtor, Palmat NV (Palmat), under s68, alongside Palmat's challenges to the tribunal's jurisdiction under s67 of the 1996 Act. [Read more.](#)

Singapore Court Upholds Transnational Issue Estoppel in Rare International Commercial Arbitration Case

In a rare instance, a five-judge bench of the Court of Appeal in *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10 has affirmed the application of transnational issue estoppel in international commercial arbitration. This prevents parties from re-litigating points previously determined by the seat court on jurisdiction. The Republic of India attempted to resist the enforcement of a foreign award obtained by Deutsche Telekom in Singapore, mainly on the ground that the tribunal lacked jurisdiction. The arbitration was seated in Geneva, Switzerland, and the Singapore court heard the matter as an enforcement court. The seat court had already dismissed India's application to set aside the award, upholding the tribunal's jurisdiction and the validity of the award. The Singapore courts had to decide whether India was precluded from re-litigating those points determined by the seat court. [Read more,](#)

Investment Arbitration

-Megha Bhartiya

Portugal Ordered to pay €23 Million to post Office

The Portuguese company CTT Correios de Portugal SA which is primarily engaged in providing courier services, informed the Securities Market Commission (CMVM) that they were notified of the Arbitration Court's order to the State to pay 23.6 million euros to CTT along with late payment interest in compensation for the impact of the Covid-19 pandemic. The proceedings were initiated by the company two years ago in June and the primary concern of the company was to seek compensation for the losses it had suffered due to the impact of the pandemic as well as the unilateral extension of the concession contract in 2021. [Read more.](#)

Goldman Sachs sues Malaysia in London Arbitration Court

Goldman Sachs, one of the biggest United States investment banks, sued Malaysia in the London arbitration court. This happened as tensions rose over a settlement deal concerned with the role of Goldman Sachs in the multibillion-dollar corruption scandal at state fund 1MDB. In 2020 the bank had agreed to pay \$3.9bn to settle Malaysia's criminal probe concerning its role in the scandal. Despite this, the deal has been shrouded with disputes and thus Goldman filed for arbitration at the London Court of International Arbitration. Abdul Ghani, the chairman of Malaysia's 1MDB task force described the bank's decision as "premature," since the "parties are still considered to be in the amicable good faith discussions stage." Authorities in both the countries state \$4.5bn was stolen in the corruption scam in a scheme that span across the globe and implicated former Malaysian Prime Minister Najib Razak as well as Goldman executives and officials elsewhere. [Read more.](#)

India may drop Local Remedies Clause in new BITs as UK Trade pact Nears

India has decided to shift away from the previous 2016 model bilateral investment treaty (BIT) approach in discussions with the UK as the both the countries seek to reduce the time for settling investor-state disputes in a new treaty. The change in stance is for "strategically important countries" with which India is seeks to establish stronger economic integration post exiting the Regional Comprehensive Economic Partnership (RCEP) which was largely led by China. India has so far favoured 'local remedies' to resolve investment-related legal disputes instead of independent international arbitration. [Read more.](#)

Pakistan Inches Closer to Signing Landmark Trade Agreement with GCC

Pakistan and Saudi Arabia have arrived at a consensus on the investment modalities, effectively paving the way for the ratification of a free trade agreement with the Gulf Cooperation Council (GCC). This development has been in talks and has been anticipated for longer than the past decade. The final discussions with the GCC's negotiator were led by Interim Commerce Minister Gohar Ejaz in Riyadh. The objective was to settle the investment segment of the FTA, an important step before the GCC Foreign Ministers' meeting in Doha, where the FTA with Pakistan was expected to be approved in its finality. [Read more.](#)

India, UAE Discuss Bilateral Investment Treaty

As per the Union Commerce Ministry, India and the UAE discussed a bilateral investment treaty that may eventually lead the UAE to invest in India's renewable energy, health, semiconductor and asset monetisation sectors. Both countries discussed a bilateral investment treaty that could see the UAE invest in India's renewable energy, health, semiconductor and asset monetisation sectors. The High Level Joint Task Force on Investments also assessed the progress of creation of a mechanism to fast track the investments by India into the UAE. [Read more.](#)

India and UK FTA: Efforts on to also Finalise Dispute Settlement in Investment pact

As part of their efforts to ensure that the investment agreement gets finalized concurrently with the Free Trade Agreement (FTA) in goods and services, which was in the advanced stages of discussion, India and the UK moved closer to a shared understanding on dispute settlement, the most contentious aspect of the Bilateral Investment Treaty (BIT) currently under negotiation, sources have stated. A source stated, "Most of the issues in BIT have been settled. There are some areas left like Investor-State Dispute Settlement (ISDS) that need more work. But both sides have changed their stance during the current negotiations and become more flexible. The UK is attempting to be more accommodative in its demand for international arbitration and may allow local remedies to be tried first with certain caveats. The concern around the 'exhaustion of local remedies' clause in ISDS is related to the time it takes to settle disputes in India and needs to be addressed. You cannot make investors to wait for ten years." [Read more.](#)

Wolters Kluwer Takes over European Investment Law and Arbitration Review

On 5 December 2023, Wolters Kluwer Legal & Regulatory U.S. today announced that it had taken over the European Investment Law and Arbitration Review. The same would be integrated on Kluwer Arbitration, along with offering it as a separate publication on Kluwer Law Online and in print. This would provide both arbitration professionals and academicians an easy access to the journal. The European Investment Law and Arbitration Review is also the first and the only journals that is solely devoted to the rapidly developing field of European Investment Law and Arbitration. [Read more.](#)

Mediation

*-Swastika Saha Chowdhury
and Mustafa Topiwala*

The Mediation Act 2023 came to Force from October 2023

The Mediation Bill, which was introduced in the Rajya Sabha in 2021, received the President's assent and became an Act in September 2023, and came into force from October 9, 2023. The Act brings out several notable developments in the ADR field. It officially recognizes online as well as institutional mediations in India, and lays down well-established procedures for conducting mediation sessions. The Act also provides for the setting up of a Mediation Council under the constitution of the Act, which amongst several other functions, can regulate and train mediators. The Act's failure to provide for the execution of mediated settlement agreements from international mediations held outside of India is a prominent flaw. The clauses pertaining to temporary reliefs and mediator appointment are among the other characteristics that allow for excessively inconsistent interpretation, particularly in comparison to the regulations outlined in the Arbitration and Conciliation Act of 1996. [Read more.](#)

The IBA Mediation Committee Hosted a Webinar on Mediation and Arbitration

The IBA Mediation Committee hosted a webinar on 4th October 2023, chaired by a transactional lawyer, a panel of mediators, an arbitrator and in-house counsels from US and Europe. They discussed how mediating parties should conduct and prepare in light of how M&A sessions progress. Attendees got the opportunity to understand the mechanism and functioning of multi-faceted of M&A's complex disputes and how they may be resolved through mediation. [Read more.](#)

The Thailand Arbitration Centre Conducted Their 13th Mediation Course

THAC (Thailand Arbitration Centre) conducted the 13th Mediation Course which provided delegates with a minimum of 40 hours of training to become a Civil/Commercial Mediator. The course was taught by international experts in mediation and the completion would lead to the delegates gaining full accreditation as Civil/Commercial Mediators which met international standards. The course is recognised by the Civil Mediation Council, UK (CMC) and certified by International Mediation Institute (IMI). [Read more.](#)

SAMA Organised a Indian Mediation Week Hackathon 2023

SAMA (a leading Online Dispute Resolution (ODR) institution) organized a 3-week long Indian Mediation Week Hackathon 2023 as part of the Mediation Awareness Program Initiative (MAP Initiative) with the aim to solve the problem of access to justice. The IMW Hackathon brought together engineers, technologists, lawyers, designers, business professionals, and students to improve the present legal services and to increase access to justice through the use of innovative technologies. [Read more.](#)

The Mediation and Conciliation Act came into Effect on 29th December 2023

The new federal law - Mediation and Conciliation Law concerning civil and commercial disputes came into effect on 29th December, 2023. This law assigns responsibility for creating online platforms for mediation and conciliation as well as mediation and conciliation centers within the Court of First Instance's territorial jurisdiction to the Federal Judiciary or local judicial authority. They will also publish relevant regulations to control how these centers are run. [Read more.](#)

Nagaland State Legal Services Authority Conducted a 40-hours Training Session for Mediation

Judicial Officers and Advocates were empanelled as mediators on 17th November 2023, under Nagaland State Legal Services Authority, who have successfully completed “40 hours Mediation Training Programme” organised by the Mediation and Conciliation Project Committee, from 31st October 2023 to 4th November 2023. The notification was published as an announcement by the Mediation Monitoring Committee of the Hon’ble Guwahati High Court. [Read more.](#)

The 5th New York Arbitration Week took Place from 13th-17th November 2023

The New York International Arbitration Center (NYIAC) and the New York Branch of the Chartered Institute of Arbitrators (CIArbNY) took place in person from November 13–17, 2023. In celebration of New York Arbitration Week’s fifth year, the theme of New York Arbitration Week 2023 is “New York, New York: A Celebration of New York Law and Arbitration”. The theme aimed to highlight the deep and multifaceted connection between international arbitration and New York City by including a variety of topics that focus on New York’s connection not only with the practice of international arbitration but also with numerous global jurisdictions. [Read more.](#)

The Indian Institute of Arbitration and Mediation conducted a 55-hours Training Session for Professional Mediation

The Indian Institute of Arbitration and Mediation conducted a Professional Mediator Training Program which was conducted for 55 hours (7 days) in hybrid mode as the enactment of the Mediation Act will lead to different standard for mediation, in general and the profession of a mediator. The programme aimed to enhance the understanding and ability to negotiate and to resolve disputes- qualities which serve as the foundation for the professions of mediators and negotiators. [Read more.](#)

The Uttarakhand Judicial Academy Conducted Training Sessions on Mediation

The Uttarakhand Judicial Academy conducted training programmes on mediation for advocates, mediators, and judges. The training programme for the advocates happened in one phase and the refresher course for the mediators have happened in two phases as of yet. The training programmes for the judges have happened in six phases with the last phase concluding on 15th December 2023 and lasting for 40 hours. [Read more.](#)

The 'Year End report 2023' by the Government Focused on Mediation and Arbitration

The Government released the 'Year End Report 2023' where it focused on mainly three points. The first was the Mediation Act, 2023 and its role as a pivotal reform towards providing comprehensive recognition to mediation. The second was the Arbitration Council of India established for the purpose of inter-alia framing policies governing the grading of arbitral institutions and recognizing professional institutes' providing accreditation of arbitrators. The third was the release of the handbook titled 'A Guide to Alternative Dispute Resolution' on 'Constitution Day'. [Read more.](#)

'An African organization Attempts Mediation to Resolve Sudanese crisis

An African regional organization that had been involved in attempts to mediate the Sudanese crisis over 9th and 10th December 2023, announced that it had obtained a pledge from the warring parties to carry out a truce and convene political talks with the goal of settling the dispute. According to an IGAD statement, during discussions on Saturday in Djibouti, Sudan's army chief Abdel Fattah al-Burhan, who was the currently chair of the Intergovernmental Authority on Development (IGAD), agreed to meet alone with Mohamed Hamdan Dagalo, also known as Hemedti, the commander of the Rapid Support Forces (RSF). [Read more.](#)

Validity of Unstamped Arbitration Agreements

-Ribhu Sehgal & Kshitij Prakash

BACKGROUND

Indo Unique Flame Ltd. (hereinafter referred to as "Indo Unique Flame") executed a subcontract Work Order with N.N. Global Mercantile Pvt. Ltd. ("NN Global") on the 28th of September 2015, pertaining to the transportation of coal. Pursuant to Clause 9 of the Work Order, NN Global provided a Bank Guarantee to Indo Unique Flame. Clause 10 of the Work Order included an arbitration provision. In light of certain disputes arising from the principal contract, Indo Unique Flame invoked the Bank Guarantee issued by NN Global. Subsequently, NN Global initiated a Civil Suit before the Commercial Court in Nagpur. Simultaneously, an application under Section 8 of the Arbitration Act, 1996 was submitted, seeking the referral of the disputes to arbitration.

On the 18th of January 2018, the Commercial Court rejected the Section 8 application under the Arbitration Act, 1996, asserting that the Bank Guarantee constituted an independent contract. In response, Indo Unique Flame filed a Writ Petition challenging the Commercial Court's decision.

On the 30th of September 2020, the Bombay High Court granted approval for the Section 8 application under the Arbitration Act, 1996. The court held that concerns about the non-stamping of the Work Order could be raised during Section 11 proceedings under the Arbitration Act, 1996 or before the Arbitral Tribunal at the appropriate juncture. The High Court set aside the Commercial Court's order from the 18th of January 2018.

An appeal was subsequently filed before this Court, where NN Global argued that the lack of stamping on the subcontract, as per the Maharashtra Stamp Act, 1958, would render the arbitration agreement 'unenforceable'. In this context, a three judge bench of the Court raised doubts about the validity of previous decisions, particularly in *Garware*, which was endorsed in *Vidya Drolia*, asserting that such arbitration agreements were non-existent in law.

The Court concluded that an arbitration agreement, being separate and distinct from the underlying commercial contract, would not be invalidated, rendered unenforceable, or deemed non-existent. The court also held that the non-payment of stamp-duty would not invalidate even the underlying contract because it is a curable defect.

Consequently, reconsideration of this matter was sought from the Constitution Bench, consisting of K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy, and C.T. Ravikumar, JJ. In a 3:2 majority decision, it was held that unstamped arbitration agreements lack legal validity. While KM Joseph, Aniruddha Bose, and C.T. Ravikumar, JJ. constituted the majority, Ajay Rastogi and Hrishikesh Roy, JJ. dissented, asserting that unstamped arbitration agreements remain valid at the pre-referral stage.

During the consideration of a curative petition, the 5-Judge Bench, comprising Dr. DY Chandrachud, C.J. Sanjay Kishan Kaul, Sanjiv Khanna, B R Gavai, and Surya Kant, JJ., referred the matter to a 7-Judge bench to adjudicate on the issue of unstamped arbitration agreements.

APPLICATION OF LAW

The seven-judge bench comprising CJI Chandrachud and Justices Kaul, Khanna, Gavai, Kant with J.B. Pardiwala and Manoj Misra heard arguments about the NN Global judgement over 11-12 October 2023. The bench also renamed the case “In Re: Interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899.” The Court took due note of the Stamp Act, 1899, Arbitration & Conciliation Act 1996 and The Indian Contracts Act, 1872.

The Court took note of Section 35 of the Stamp Act, which renders instruments which are not duly stamped inadmissible in evidence. However, Section 42 of the Stamp Act, an instrument is admissible in evidence once the payment of duty and a penalty (if any) is complete. After the payment of the appropriate amount under the appropriate description in Schedule I and the penalty (if any), the Stamp Act provides for the certification of such payment by an endorsement by the appropriate authority. Once an instrument has been endorsed, it may be admitted into evidence, registered, acted upon or authenticated as if it had been duly stamped.

The Court also differentiated between the in-admissibility of something and invalidity of something in law. Section 2(g) of The Indian Contracts Act, 1872 makes agreements not enforceable law void whereas the admissibility of a document, on the other hand, refers to whether the same can be introduced as evidence either written or oral. Hence, an instrument or agreement can be valid yet still be inadmissible, hence drawing out the distinctive nature of both the terms. Section 35(no instrument chargeable with duty shall be admitted in evidence, unless it is duly stamped) explicitly makes the document inadmissible and not void.

The Doctrine of Severability has been present in India since the very incorporation of the Contracts Act. The separate nature of the arbitration agreement from the underlying contract is one of the cornerstones of arbitration law. This separate nature is drawn out from the contractual freedom that is entered upon by the parties themselves to resolve disputes before an arbitration tribunal rather than court litigation.

The Bench said that the burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court.

Upholding the age long rule of Special Law prevailing over General Law, the Court stated that the Arbitration Act would have primacy over both - The Stamp Act and The Indian Contracts Act. The Court in its earlier decisions gave primacy and was more favourable to The Stamps Act since the priority was to collect revenue at the cost of the Arbitration Act.

Apart from these, it is also pertinent to note the law in other jurisdictions -

U.K.

Section 7 of the United Kingdom's Arbitration Act, 1996, provides that an arbitration agreement which forms or was intended to form a part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement. The language provides that an arbitration agreement would survive even when the other agreement (of which the arbitration agreement is a part of) does not or its existence is questionable.

U.S.A.

The Supreme Court of the United States, in *Buckeye Check Cashing, Inc v. Cardegna et. al*, noted that according to the federal arbitration law, an arbitration clause in a contract can be separated from the rest of the contract and if there is a challenge to the validity of the contract, except for the arbitration clause itself, the arbitrator will decide on the matter first.

CONCLUSION

The Court held the following:

Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable. Non-stamping or inadequate stamping is a curable defect.

An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists.

Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal. The decisions in *NN Global* (5 Judge bench) and *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66, were overruled. Further, Paragraphs 22 and 29 of *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.*, (2019) 9 SCC 209 were overruled to that extent.

Hence this judgement brought a close to the 'Unstamped Arbitration Agreement' saga for the foreseeable future. This also marks a mohair step towards the progress of India towards an 'Arbitration Hub' since this judgement not only promotes arbitration but is also an example of a harmonious construction between conflicting provisions which also re-assures one's trust in the Indian Judiciary System.

Events @ CADR

Upcoming Events

RGNUL General Intra Mediation Competition



In order to let the scholars of RGNUL have a taste of how mediation proceedings are carried out, The Centre for Alternative Dispute Resolution brings its exciting General Intra Mediation Competition. The Centre through this Competition aims to educate the participants about the importance of the skill of mediation in solving disputes. The Competition will seek to inculcate in scholars the skills of dispute resolution where propositions mimic the legal hurdles and obstacles between two parties that lead them to use mediation as a worthy option. The participants will seek to hone their communication, analytical and logical reasoning and decision making skills.

6th RGNUL Sports and Entertainment Law Mediation Competition (SEMC), 2024

After the successful organization of V RGNUL SEMC, The Centre for Alternative Dispute Resolution is all geared up to welcome eager scholars around the nation to yet another season of mediation battle where participants showcase their brilliancy through excellent negotiating and mediating skills. Interesting yet mind-boggling propositions await them, that will push the participants to go the extra mile and present their prowess before an all-stars jury composed of eminent advocates, academicians and other legal luminaries. The 6th edition of the competition will delve into the intricacies and conundrums that the field of Sports and entertainment laws faces but with a twist. The event would no doubt be the one that did not go unheard of.



Ongoing Events

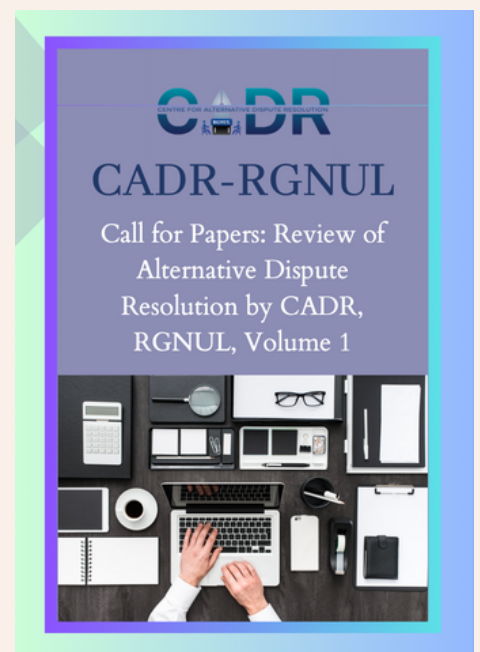
4th Surana & Surana RGNUL International Arbitral Award Writing Competition, 2023



The 4th edition of the Surana & Surana RGNUL International Arbitral Award Writing Competition, 2023 caught the attention of bright minds and received numerous submissions. Arbitral awards require the participant to mull over the dispute at hand and deeply analyze the intricacies of the issue. The award must be clear and concise yet defined in its decision. The event closed its submission stage on 14th November, 2023 and the results will be declared in January, 2024. The dedication and preparation of the participants with top scores will be rewarded with prizes worth Rs. 50000.

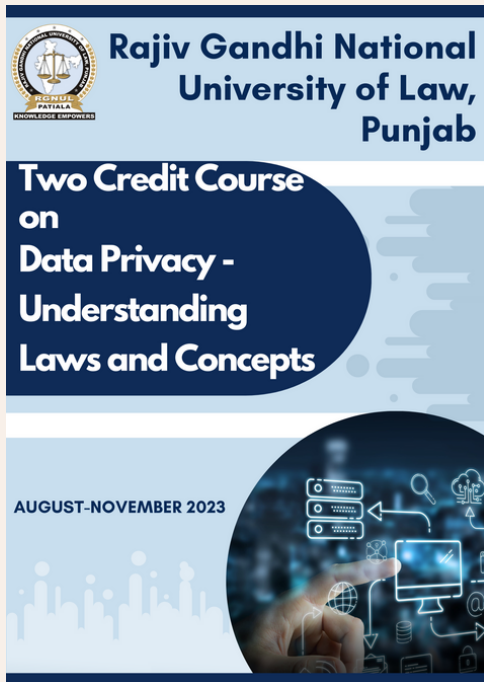
Review of Alternative Dispute Resolution (RADR)

Diverse and intricate Submissions were invited to be featured in the Review of Alternative Dispute Resolution (RADR) on the theme "Navigating the Expanding Role of Mediation and Arbitration in Dispute Resolution". The first volume of the RADR will feature ground-breaking articles, essays and case comments on the issues pertaining to niche areas like Domains of Mediation, International Commercial Arbitration, Investment Arbitration, etc. The RADR will be presented as the flagship law review journal of RGNUL's Centre for Alternative Dispute Resolution that attracts attention of worthy scholars, academicians and professing advocates and gives them the deserving stage to display their caliber in testing the changes in the field of alternative dispute resolution.



Completed Events

Two-Credit Course on Data Privacy



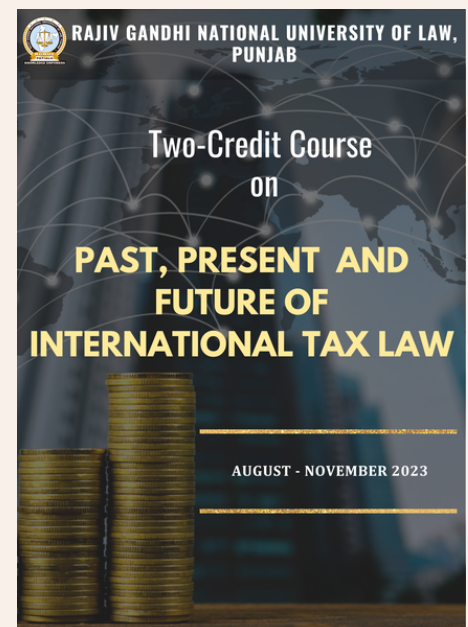
The Two Credit Course on Data Privacy, that marked its successful end on 19th November, 2023, saw over 170 eager participants that got the opportunity to delve deep into the intricacies of Data Privacy laws around the globe. The Course was led by the key Resource person, Harshad Tekwani, who, coupled with his diverse experience, led the charge to educate scholars about the nuances of Indian statutes that regulated the Data privacy in the Nation. Scholars got to learn about the expanse of the IT act, Digital Personal Data Protection Bill, etc.

The Course was graced by the presence of Yash Shailesh Bajaj as its guest lecturer who enriched the participants with his expertise. The participants were awarded the Certificate of Completion after successfully clearing the assessment test.

Two-Credit Course: Past, Present and Future of International Tax Law

7th November 2023 marked the end of the exciting credit course that propagated important insights on the ever-developing scope of International Law. The course saw over 100 participants and spanned over a duration of more than 3 months. The credit course had Ms. Nikky Jhamtani and Mr. Prashant Meharchandani as its lustrous guest lecturers who provided the students with their treasured knowledge on International Taxation Law.

The course had Ms. Purna Peshori as its primary resource person who led the charge of the eventful sessions that would have assuredly developed a penchant for International Taxation Law in the interested scholars. Certificates awarded to students upon completion of the course.



3RD RGNUL NATIONAL NEGOTIATION COMPETITION, 2023

The Centre for Alternative Dispute Resolution is proud and ecstatic to inform that the third Edition of CADR's Flagship National Negotiation Competition was organized successfully. The event saw a lustrous participation of whopping 30 teams from all across the nation. The three-day event was marked by strategic and well-crafted negotiation sessions formulated on a nerve-wracking proposition that tested the spirits of the participants. Moreover, the jury for the event consisted of reputed and experienced members of the legal fraternity. The competition was divided into three rounds: Preliminary rounds, Semifinals and Final round. As one round gave the way to another, the qualifying teams lessened but the excitement and zeal only rose. The event marked an end with the Final rounds and the Award ceremony where the team representing the National Law Institute of India University, Bangalore were crowned as the winners of the competition. The award for the Best negotiating Pair of the Preliminary rounds went to the team representing Army Law Institute, Mohali. The Centre is extremely thankful for the momentous participation and wonderful completion of the 3rd edition of the Competition.



2ND RGNUL ARBITRATION ESSAY WRITING COMPETITION, 2023

The Centre for Alternative Dispute Resolution finds extreme pleasure in rejoicing for the completion of the 2nd RGNUL Arbitration Essay Competition, 2023. The Competition was organized by the CADR under the aegis of Centre for Trade and Investment Law CTIL, Ministry of Commerce and Industry, Government of India. The CTIL was established in 2016 to provide analysis of legal issues pertaining to international trade and investment law. The essay Competition witnessed more than 80 submissions where scholars displayed their profound knowledge on the field of Investment Arbitration. The submissions went through rigorous review process. The submission by Natasha Singh of NALSAR, Hyderabad, titled "Between Roles: Reassessing the Regulation of Double Hatting in Investment Arbitration" was adjudged as the best submission and the winner was awarded with a coveted Internship opportunity with CTIL along with a stipend of INR 10,000. Mathanki Narayanan of JGLS, Sonipat and Anirudh Raghav S.U. of NLSIU, Bangalore came up as the 1st and the 2nd Runner Ups respectively and were felicitated with an Internship with CTIL. The Centre thanks all participant and individuals involved in making the Competition a resounding success.



2ND RGNUL ARBITRATION ESSAY WRITING COMPETITION, 2023

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

In collaboration with:

**Centre for Trade and Investment Law
Ministry of Commerce and Industry,
Government of India**

Achievements

Students of Rajiv Gandhi National University of Law bring Laurels to the University, bagging top positions at ADR Competitions



The team comprising Ritwik Sharma, Himani Khullar, and Gurmander Singh from the Batch of 2027 emerged as **WINNERS** in the **3rd International Mediation Competition, 2023**, hosted by Newcastle University, UK and Lex Erudites, India from the 1st December to 3rd December, 2023. We congratulate the team for the achievement and wish them best for their future endeavours!

The team comprising Niyati Jain and Ria Bansal from the Batch of 2026 emerged as **SEMI-FINALISTS (Negotiators Category)** in **Samanvay International Mediation Competition** hosted by HPNLU. We congratulate the team and wish them all the best for their future endeavours!



The team comprising Nidash Prashar and Ayushmaan Puri from the Batch of 2027 emerged as **SEMI-FINALISTS** in **Vidhikta 2.0: National Client Counselling Competition** organised by CNLU, PATNA. We congratulate the team and wish them all the best for their future endeavours!

PATRON-IN-CHIEF

Prof. (Dr.) Anand Pawar
Vice-Chancellor (Officiating) and Registrar
RGNUL, Punjab

FACULTY CO-ORDINATORS

Dr. Gurmanpreet Kaur
Associate Professor of Law

Dr. Wazida Rahman
Assistant Professor of Law

STUDENT CO-ORDINATORS

Jotsaroop Singh
Convener

Rachit Somani
Convener

Rohan Gajendra Pratap Singh
Editor-in-Chief

Hrishabh Khatwani
Deputy Convener

CONTENT CURATORS

Mehvish Alam

Gautam Taneja

Aadit Seth

Sohum Sakhuja

Ribhu Sehgal

Kshitij Prakash

Megha Bhartiya

Mustafa Topiwala

Swastika Chowdhary

DESIGN EDITORS

Vanshika

Karthikey Tripathi

For more information: <https://www.rgnulcadr.in/>

Follow us:

