DISPUTE RESOLUTIONS

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Message to the Readers

With the enactment of the long awaited Digital Personal Data Protection Act, 2023 ("**DPDP Act**"), the so far moderately regulated area of cyberspace in India has got a proper protection of its own. Earlier, the Information Technology Act, 2000 ("**IT Act**") and its allied rules, particularly the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (**"IT Rules, 2011"**) laid down provisions pertaining to protection of sensitive personal information and reasonable security safeguards, but its scope and extent was limited.

The essential difference between the DPDP Act and the IT Rules, 2011 is that the latter only sought to protect sensitive personal information[1] whereas the former has assigned a wider definition to the term 'data' and extends protection to not only sensitive personal information but to any information that could be used to personally identify a person.[2]

In recent times, online dispute resolution ("**ODR**") is becoming prevalent both among private parties and the government. However, a lacuna in the DPDP Act is that it provides exemption to the government and state entities from compliance with certain provisions of the DPDP Act. With digital evidence being an acceptable form of evidence and data being recorded online for the purpose of the dispute resolution proceedings and the increasing prevalence of ODR, it is imperative to consider the implications of the DPDP Act on ODR proceedings, particularly by government entities, and on the right to privacy of Indians.

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[1] Para 3, Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

[2] Section 2(t) read with Section 2(h), Digital Personal Data Protection Act, 2023.

The Karnataka government has passed the Karnataka State Dispute Resolution Policy, 2021[3] which emphasizes on the use of ODR mechanism for the purpose of resolution of disputes as follows:

> *"In building technological infrastructure for government disputes,* ***serious commitment and consideration must be given to Online Dispute Resolution (ODR)*** *and building the suitable technological framework required to adopt ODR."*

Recently, the Madras High Court *vide* Notification dated 02.02.2024 has directed that all district courts should follow a hybrid mode for hearing cases.[4] This highlights that there is not much time until ODR becomes the preferred mode of dispute resolution for all courts or governments throughout India in order to ensure speedy disposal of cases and to address the backlog of cases in the courts. SEBI has also issued guidelines for dispute resolution by intermediaries through ODR.[5] All these signify the shift towards ODR by not only private parties but by governmental authorities and institutions as well.

The legal validity of ODR is a settled aspect of law stemming from Section 20 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") that empowers the parties to choose the place of proceeding and there is no bar on choosing a 'virtual space' as the place of proceeding. Further, the validity of electronic documents as evidence is also well settled through Sections 4, 5 and 10A of the IT Act and Sections 65A and 65B of the Indian Evidence Act, 1872 ("**Evidence Act**"). In the case of ***Vitol S.A. vs. Bhatia International Limited***,[6] the Supreme Court of India had asserted the validity of online arbitration emphasizing that it must adhere to some specific conditions to regulate the same.

The Arbitration Act, through Section 42A and Section 75 respectively, emphasizes confidentiality as being one of the core principles of the arbitration and conciliation proceedings. The DPDP Act addresses data protection but lacks a specific reference to ODR. Yet, in case of private ODR institutions, the data could be considered to be protected by virtue of the DPDP Act as the institution would fall under the definition of a 'Data Fiduciary'[7] and concomitant obligations would need to be complied with by the private parties collecting data for ODR proceedings.

However, Section 17 of the DPDP Act provides certain exemptions from the compliance requirements and an extract of the relevant portion is as follows:[8]

> *"17. (1) The provisions of Chapter II, except sub-sections (1) and (5) of section 8, and those of Chapter III And section 16 shall not apply where*
> *(a) the processing of personal data is necessary for enforcing any legal right or claim;*
> *(b) the processing of personal data by any court or tribunal or any other body in India which is entrusted by law with the performance of any judicial or quasi-judicial or regulatory or supervisory function, where such processing is necessary for the performance of such function;*

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[3]Para 5.2.9, Designing Technological Infrastructure: Guiding Principles and Implementation Considerations, Karnataka State Dispute Resolution Policy, 2021. Available at:https://law.karnataka.gov.in/storage/pdf-files/Notification.pdf
[4]R.O.CNo.1166A/2024/Comp4/VC.https://www.hcmadras.tn.nic.in/Notification%20on%20mandatory%20Hybrid%20Mode%20Video%20Conferencing%20in%20the%20District%20Judiciary%20wef%2005022024.pdf
[5]SEBI (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023.
[6]Vitol SA vs. Bhatia International Ltd [2014] MANU/MH/1615 (BOMHC).
[7]Section 2(i), Digital Personal Data Protection Act, 2023.
[8]Section 17, Digital Personal Data Protection Act, 2023.

(c) personal data is processed in the interest of prevention, detection, investigation or prosecution of any offence or contravention of any law for the time being in force in India;
(d) personal data of Data Principals not within the territory of India is processed pursuant to any contract entered into with any person outside the territory of India by any person based in India;……..

……..(2) The provisions of this Act shall not apply in respect of the processing of personal data (a) by such instrumentality of the State as the Central Government may notify, in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, maintenance of public order or preventing incitement to any cognizable offence relating to any of these, and the processing by the Central Government of any personal data that such instrumentality may furnish to it; and……."

Such exemptions are widely phrased and not subject to procedural safeguards of necessity or proportionality. This may permit arbitrary and excessive application of the exemptions and defeat the purpose of the DPDP Act. It is essential that *inter alia* Sections 8(4) (*Protective measures*) and 8(6) (*Notice of breach*) of the DPDP Act are also made mandatory for the government entities/ tribunals to ensure protection of the data obtained by the entities facilitating ODR.

It is a general practice in India that government entities hire external entities for the purpose of processing data, setting up software etc. Such external entities would fall under the definition of 'Data Processors'[9] as per the DPDP Act. Therefore, it is pertinent that the tribunals and government entities that use dispute resolution platforms with the help of external entities are also required to enter into valid contracts as provided under Section 8(2) without being exempted from it. Without proper technical measures, the data is always at a threat of loss though sub-clause (1) and (5) of Section 8 seem to impose obligations on the ODR platforms to provide reasonable safeguards.[10]

Government entities dealing with dispute resolution should also be required to appoint a Data Protection Officer, especially considering that each party to the proceeding would be sharing not only general and publicly available information but also sensitive personal information necessary to substantiate their stance in the case.

The DPDP Act doesn't include the "Right to be Forgotten"[11] as provided under the earlier Personal Data Protection Bill, 2019,[12] thereby impacting the right to privacy of individuals within the ODR platforms that handle sensitive data. Additionally, the absence of clear guidelines raises concerns about data collection, storage, and usage with respect to such entities.

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[9] Section 2(k), Digital Personal Data Protection Act, 2023.
[10] Dinesh Pardasani & Tanya Tikiya, Arbitration: Saving Two Birds (Confidentiality and Personal Data) from One Stone (Cyber Attack), The Viewpoint, Bar and Bench, September 28, 2023. Available at: https://www.barandbench.com/law-firms/view-point/arbitration-saving-two-birds-confidentiality-and-personal-data-from-one-stone-cyber-attack
[11] Ropes & Gray LLP, Unpacking India's Digital Personal Data Protection Act, December 8, 2023. Available at: https://www.lexology.com/library/detail.aspx?g=505cf55a-8bd8-4202-9938-bb999a746faa#:~:text=The%20rights%20are%20similar%20to,forgotten%20as%20the%20GDPR%20does.
[12] Vijayashankar Na, Right to Erasure and Right to Forget.. Are theysame?, November 24, 2022. Available at: https://www.naavi.org/wp/right-to-erasure-and-right-to-forget-are-they-same/

The Srikrishna Committee (2018)[13] observed that the right to be forgotten is an idea that attempts to instil the limitations of memory into an otherwise limitless digital sphere. While we await allied rules to be notified under the DPDP Act, it is essential that these aspects be considered and proper guidelines be issued on the process of collection, storage and usage by government entities that facilitate ODR. Balancing individual privacy and national security becomes crucial.

The DPDP Act does not require the exempted entities/ agencies to delete personal data, after the purpose for processing has been met. Using the above exemptions, on the ground of national security, a government agency may collect data about citizens to create a 360-degree profile for surveillance. It may utilise data retained by various government agencies for this purpose. This raises the question whether these exemptions will meet the proportionality test. For interception of communication on grounds such as national security, the Supreme Court (1996)[14] had mandated various safeguards including: (i) establishing necessity, (ii) purpose limitation, and (iii) storage limitation.[15] The same should be extended to the usage of data by the exempted entities as well.

The absence of a specific legal framework addressing these concerns might result in ambiguities regarding the boundaries of data collection, usage, and storage within ODR platforms, potentially impacting user privacy and confidentiality. It becomes crucial to establish a coherent legal framework that balances the requirements of national security with the protection of individual privacy, especially concerning sensitive data managed within ODR systems. Therefore, it is now opportune that rules and guidelines be issued to mandatetheinstitutions and entities that make use of ODR mechanism to consider and implement measures to protect personal data included in records of the proceedings.

The intertwining of ODR and DPDP Act accentuates the intricate relationship between data protection and modern dispute resolution mechanisms. As technological advancements continue to reshape the legal landscape, navigating the balance between data protection regulations and the evolving nature of ODR processes remains a critical challenge. Establishing equilibrium between transparency, data security, and confidentiality is imperative to ensure the efficiency and integrity of ODR while upholding individuals' digital privacy rights.

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[13] Pg 77, A Free and Fair Digital Economy Protecting Privacy, Empowering Indians: Committee of Experts under the Chairmanship of Justice B.N. Srikrishna. Available at: https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf
[14] Rule 419A, The Indian Telegraph Rules, 1951 issued under Section 7 (2) of the Indian Telegraph Act, 1885.
[15] People's Union for Civil Liberties (PUCL) vs Union of India, Supreme Court of India, December 18, 1996.

LEGAL UPDATES

❖ Supreme Court holds that Arbitral Awards cannot be modified under Sections 34 & 37 of the Arbitration & Conciliation Act

- In the case of ***S.V. Samudram vs. State of Karnataka &Anr.(2024 INSC 17)*** the Supreme Court recently ruled that courts under Section 34 of the Arbitration and Conciliation Act lack jurisdiction to modify arbitral awards. This decision was made while hearing an appeal against a judgment from the Karnataka High Court. The appellant challenged the modification of an arbitral award reducing the awarded amount.
- The case stemmed from a construction contract dispute where the claimant/appellant, unable to complete the work due to alleged delays caused by the state authorities, resorted to arbitration. Despite the arbitrator finding the respondents liable, the Civil Judge modified the arbitral award, leading to dissatisfaction from the claimant.
- The Supreme Court, after hearing arguments from both sides, observed that the lower courts failed to adhere to the statutory provisions under Sections 34 and 37 of the Arbitration and Conciliation Act. The Court reinstated the original arbitral award, directing the state to pay the amount promptly, and emphasized the limited scope of judicial interference in arbitral awards as per legislative intent.

https://www.verdictum.in/court-updates/supreme-court/sv-samudram-v-state-of-karnataka-neutral-citation-2024-insc-17-arbitral-award-modify-1513555

❖ Delhi High Court grants anti-arbitration injunction in international commercial arbitration

- The Delhi High Court recently granted an anti-arbitration injunction in an international commercial arbitration in the case of ***Techfab International (P) Ltd. vs. Midima Holdings Ltd., CS(COMM) 50 of 2024***
- Techfab International (P) Ltd, the plaintiff, had sought a declaration that proceedings conducted by the arbitrator appointed by the Council for National and International Commercial Arbitration, Chennai, were null and void.
- The Court believed *prima facie* that the appointment of the sole arbitrator in Kuala Lumpur by the Permanent Court of Arbitration at the Hague, through CNICA, Chennai, went against the agreed-upon procedure in Article 9 of the Agency Agreement between the parties. According to this agreement, the 'seat' of arbitration should be in India, with the governing law being Indian law, and the parties subject to the jurisdiction of the court in New Delhi.
- The Court emphasized that one fundamental principle of arbitration is that, since it relies on the consent of parties, the agreed procedure for appointing the arbitrator must be strictly followed. Unfortunately, this does not seem to have happened in this case.
- The Court noted that while the arbitration clause allowed for arbitration in any other country following the United Nations Commission on International Trade Law (UNCITRAL), this was contingent upon a mutual agreement by the parties. However, there was no evidence to indicate that such a decision had been reached through mutual consent.

https://www.scconline.com/blog/post/2024/02/05/dhc-grants-anti-arbitration-injunction-in-an-international-commercial-arbitration-legal-news/

❖ **Devas vs. Antrix: Supreme Court rejects ICC arbitral award that directed Antrix to pay $560 million**

- The Supreme Court recently concluded a nearly decade-long legal battle in the case of ***Devas Employees Fund US LLC vs. Antrix Corporation Limited*** and others. The dispute arose from an arbitral award by the International Chamber of Commerce (ICC), which had ordered Antrix Corporation Limited, the commercial arm of the Indian Space Research Organisation (ISRO), to pay over US$ 560 million in damages, plus interest, to Devas Multimedia Private Limited.
- The ICC's arbitral award, issued on 14th September, 2015, had been set aside by the Delhi High Court, citing patent illegalities, fraud, and conflicts with Indian public policy. The legal dispute originated from a terminated agreement between Antrix and Devas, which led to a protracted legal battle and winding up of Devas.
- On 6th October,2023, a Bench of Justices S. Ravindra Bhat and Aravind Kumar refused to interfere with the Delhi High Court's decision, stating that "the impugned order does not call for interference."As a result, the Supreme Court dismissed the special leave petition, effectively ending the legal battle between Devas and Antrix.

https://www.barandbench.com/news/antrix-devas-supreme-court-rejects-icc-order-560-million-arbitration

❖ **Supreme Court ruling emphasizes evidence requirement for arbitral awards in loss of profit claims**

- A recent Supreme Court ruling in the case of ***M/S Unibros vs. All India Radio*** has highlighted the necessity of substantial evidence in arbitral awards for loss of profit claims. The case involved a construction contract dispute that resulted in significant delays. The appellant, M/S Unibros, sought compensation for loss of profit, which was initially awarded by the arbitrator but subsequently challenged. The Delhi High Court remitted the case to the arbitrator for re-consideration, and the award was upheld. However, the High Court rejected the claim on appeal, citing insufficient evidence.
- The Supreme Court emphasized the need for strong evidence to support loss of profit claims arising from contract delays. Claimants must prove the presence of a viable opportunity and demonstrate that timely contract execution could have yielded additional profits. The Court also outlined specific conditions for such claims, including the claimant's status as an established contractor and the presentation of credible evidence.
- The Court expressed dissatisfaction with the arbitration process and warned against ignoring previous judicial decisions. The ruling sets a clear precedent, emphasizing the critical role of evidence in arbitration cases involving loss of profit claims.

https://www.scconline.com/blog/post/2023/11/01/credible-evidence-is-must-to-substantiate-claim-of-loss-of-profitability-in-arbitration-legal-news/

❖ **Calcutta High Court: Arbitration Clause by reference valid even without main agreement**

- In the recent case of ***Power Mech Projects Limited vs. BHEL***, the Calcutta High Court ruled that the absence of an arbitration clause in the main agreement is inconsequential when it explicitly integrates another agreement with an arbitration clause. The decision is supported by Section 7(5) of the Arbitration and Conciliation Act, which permits the inclusion of arbitration agreements through reference.
- In this case, the respondent issued a tender notice, leading to a letter of intent and a work order, both containing the same arbitration clause. The final contract lacked an arbitration clause. Disputes arose, and the petitioner invoked the arbitration clause from the initial documents. The respondent raised objections based on the absence of an arbitration clause in the final contract and the unstamped status of the initial documents. The petitioner argued that the arbitration clause from the initial documents was incorporated by reference into the main agreement.
- The Court ruled that the non-stamping of the initial documents was not an issue since the final contract was duly stamped, and the entire transaction was part of the same correspondence. The Court cited Section 35 of the Indian Stamps Act, which deems the entire contract duly stamped if one letter is properly stamped.
- Regarding the absence of an arbitration clause in the final contract, the Court held that the main agreement's specific reference to the letter of intent and the work order effectively incorporated the arbitration clause from those initial documents into the final contract.

https://primelegal.in/2023/10/24/when-the-primary-agreement-expressly-refers-to-another-agreement-that-has-an-arbitration-clause-it-doesnt-matter-if-the-main-agreement-doesnt-either-the-calcutta-high-court/#:~:text=involving%20M%2Fs.-,Power%20Mech%20Projects%20Limited%20and%20M%2Fs.,S

https://www.livelaw.in/pdf_upload/msrichandroyalvauthorisedofficerhindujaleylandfinanceltd-500276.pdf

❖ **Gujarat High Court invalidates arbitral awards by NBFCs**

- The Gujarat High Court in the case of ***M/S Rich and Royal vs. Authorised Officer, Hinduja Leyland Finance Ltd*** has nullified three arbitral awards where non-banking financial companies (NBFCs) unilaterally appointed sole arbitrators aligning with the Supreme Court's interpretation of Section 12(5) of the Arbitration and Conciliation Act, 1996.
- Justice Bhargav D Karia highlighted that a person with an interest in a dispute is ineligible to act as an arbitrator or appoint another arbitrator. The arbitration clauses allowed the NBFC to unilaterally appoint a sole arbitrator, contradicting the Supreme Court's decision regarding Section 12(5) of the Act.
- The Court recognized exceptional circumstances and bad faith on the part of the NBFC, allowing the petitioners to invoke remedies under Articles 226 and 227 of the Indian Constitution.The Court noted violations of natural justice and procedural issues in the conduct of the arbitrator, rendering the arbitration proceedings unsustainable.
- The impugned awards were quashed, granting the NBFC the liberty to initiate fresh proceedings in accordance with the law, setting aside all three Special Civil Applications.

https://primelegal.in/2023/10/27/gujarat-high-court-has-set-aside-three-arbitral-awards-as-the-process-was-impaired-from-the-inception-by-respondent-nbfcs-unilateral-appointment-of-sole-arbitrator/

DoPT MUMBAI AND CHENNAI

Nani Palkhivala Arbitration Centre (NPAC) regularly conducts training sessions for bureaucrats and other government officers. NPAC had recently executed two intensive 5-day programmes on arbitration and conciliation for government officials organised by the Department of Personnel and Training ("**DoPT**"). The first programme was conducted at Mumbai for the personnel of the Mumbai Port Trust between 30th October and 3rd November, 2023 and the second programme forsenior civil servants who hold pivotal positions in the government was conducted at Chennai between1st December and 5th December, 2023. This highly focused training module has been developed and is being imparted to educate and build essential capacity amongst officers on legal frameworks and best practices relating to arbitration and to handle any arbitration proceedings with ease.

The training program at Chennai commenced with a formal inauguration ceremony presided over by Mr. Justice K.N. Basha, Senior Advocate Mr. N. L. Rajah, Mr. R. Anand, and Mr. K. Balaji.

The training sessions were conducted by a stellar panel of experts comprising eminent legal practitioners and scholars. Mr. N. L. Rajah, Mr. Justice K. Kannan, Mr. V.S. Jayakumar, and Mr. Murari led modules on contract laws. Mr. Ganesh, Mr. Rishikesh Raja, Mr. Thriyambak Kannan, Mr. Shreyas Jayasimha, Mr. Sriram Venkatavardhan, Mr. Saai Sudharsan Sathiyamoorthy, and Mr. Adith Narayan shared their rich expertise on arbitration law, its procedures and best practices. Mr. Justice Akbar Ali, Ms. Renu Gupta, Ms. Deepika Murali, Mr. Jawad, and Mr. Justice K. Chandru provided insights on administrative law, the Evidence Act, 1872 principles relating to mediation and landmark Supreme Court rulings. The collective expertise and experience of the tutors greatly benefited the attendees.

Mr. N.L. Rajah highlighted the essentials of the law of Contracts and Legal Service Act, 1987, gave a brief insight into principles of natural justice, the rule of law and promissory estoppel. He explained various landmark cases relating to each topic. He further elaborated on the termination of contracts, the conditions for termination and the consequences.

Justice Kannan provided an overview of Article 299 of the Indian Constitution and its importance. He provided a brief on the Sale of Goods Act, 1930, Insurance laws, bank guarantees and key elements for a contract to be considered valid. GST Neutralization was also one such topic that was discussed in detail during the session, along with Damages and Compensations (Section 73 and Section 74 of the Indian Contract Act, 1872).

Justice Akbar Ali outlined key principles of administrative law and judicial functions. He discussed the difference between judicial functions and quasi-judicial functions. He explained the concept of procedural fairness, and the most important aspect of bias, the types of bias and how it's related to administration in day-to-day activities. This session covered the salient principles of administrative law, which helped the participants gain clarity on fair administrative procedures. Mr. Murari discussed principles for the award of damages in contracts and liquidated damages. This strengthened understanding of remedies in contract law.

Mr. Ganesh Chandru discussed the differences between ad-hoc and institutional arbitration, as well as the stages of arbitration. He explained the New York and Geneva Conventions, the United Nations Commission on International Trade Law ("**UNCITRAL**") Model, and pointers on the adoption of the UNCITRAL Model by India in the field of arbitration. He delved into the stages of arbitration and explained the importance of an arbitration agreement. This provided context on arbitration frameworks.

Mr. Rishikesh Raja offered insights into drafting arbitration clauses and provisions for institutional arbitration. Interim Relief under Section 9 and Section 17 and the differences between 'venue', 'place' and 'seat' with reference to Section 20 of the Arbitration and Conciliation Act, 1996("**Abitratrion Act**") were discussed. Additionally, points to enhance contract drafting skills and the importance of contracts were highlighted. Mr. Thriyambak Kannan had an interactive session where he provided real-life case examples about arbitration proceedings. He also discussed precautions for site engineers and legal managers to properly maintain records and the role of expert witnesses in departmental proceedings.

Mr. Shreyas Jayasimha covered emerging trends in arbitration law and Section 34 of the Arbitration Act. Justice K. Chandru, former Judge of the Madras High Court explained landmark Supreme Court rulings on arbitration, imparting insights into judicial precedents. Mr. Jawad discussed mediation, highlighting its benefits and why it should be made mandatory before resorting to arbitration. He explained how mediation differs from arbitration, effective mediation techniques, and why people should try mediation.

Mr. V.S. Jayakumar discussed contract interpretation and application of terms, enabling the application of contract law principles. There were discussions on the *kompetenz-kompetenz* principle and interpretation of contracts using *Noscitur a sociis and Ejusdem generis* ('the term in a statute is to be recognized by the associated words').

Ms. Deepika Murali and Ms. Renu Gupta dealt with topics like the applicability of the Civil Procedure Code, 1908 ("**CPC**") and Evidence Act, 1872. They explained the essentials of Section 19 and determination of rules of procedure with case laws. The application of CPC and arbitration interplay along with Section 80 and Section 89 was discussed. Article 32 and Article 226 and the types of Writs (Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto, and Public Interest Litigation)were also discussed in order to help understand constitutional provisions for upholding justice.

Mr. Sriram Venkatavardhan, Mr. Saai Sudharsan Sathiyamoorthy, and Mr. Adith Narayan discussed the interplay between arbitration and insolvency/bankruptcy laws. They covered aspects like operational debt, financial debt, and the governing adjudicatory bodies.

The vast experience of the attendees in terms of public administration, law enforcement, policy-making, and international engagement added significantly to the quality of discussions and exchange of insights over the training duration.

These sessions by NPAC with their emphasis on practical training serve as a medium for knowledge transfer to achieve the vision of improving dispute resolution in administrative departments by building strong legal capabilities in civil services to establish fair and efficient arbitration ecosystems.

14th ANNUAL INTERNATIONAL CONFERENCE ON "RECENT ADVANCES AND DEVELOPMENTS IN GLOBAL ARBITRATION"

NPAC successfully organized and hosted the 14th Annual International Conference on "Recent Advances and Developments in Global Arbitration". The Conference was held on the 1st and 2nd of September 2023 at 'Shangri-La's-Eros Hotel 'in Delhi and proved to be pivotal in bringing together a diverse array of experts, enthusiasts, and eminent figures in the field of arbitration from across the globe. The event took place with a Fireside Chat on the first day and the Conference on the second day.

On the first day, the theme for the Fireside Chat was "The Holy Grail of Excellence in Legal Services" and the legal experts explored the pertinent question: "What is the Way Forward for India?" wherein Hon'ble Mr. Justice Vibhu Bakhru, Ms. Pallavi Shroff, Mr. V.K. Rajah SC, Mr. Gaurav Pachnanda SA, and Mr. Alex Taylor engaged in a candid exchange of ideas. On the second day, there were four panels with legal luminaries and scholars discussing contemporary dispute areas and its impact on evolution of arbitration in India.

The'Fireside Chat':

The panel began with a discussion on Indian High Courts' modernization efforts post the establishment of commercial courts.

Justice Bakhru aptly highlighted the significant shift in jurisdiction that occurred in 2021 when intellectual property matters, previously under the purview of the Intellectual Property Appellate Board, returned to the ambit of High Courts. This transition prompted a pressing need for dedicated rules and the integration of automation tools to ensure a seamless and efficient resolution process.

Ms. Pallavi Shroff added to the conversation by shedding light on the Delhi High Court's pragmatic hybrid approach in adapting to these changes. The discussion then transitioned to the topic on training for commercial judges in India. It was underscored that unlike some international counterparts, India lacks a specialized recruitment process for these judges. The prevalent roster system at the district-level commercial courts, devoid of specific criteria, was contrasted with Singapore's approach, which places a strong emphasis on recruiting judges with commercial expertise.

The challenges posed by external entities in the resolution process were thoroughly examined, emphasizing the need for a nuanced approach to manage such complexities effectively. Participants exchanged perspectives and best practices to address the intricacies associated with third-party intervention, ensuring a comprehensive understanding of its impact on arbitration proceedings.

The conversation then pivoted towards India's aspirations in the realm of arbitration. Mr. Gaurav Pachnanda emphasized the importance of India first becoming arbitration-friendly before delving into the specifics of arbitration provisions. The discussion on skill gaps by Ms. Pallavi Shroff touched upon disparities in advocacy styles and technology usage. Mr. Rajah, in emphasizing the efficiency of arbitration, brought attention to high-value dispute challenges in India, such as backlogs and government litigation, necessitating a paradigm shift in approach.

Ms. Pallavi Shroff advocated for an enabling environment in the profession by talking about the diversity within the profession. Liberalization and BCI regulations were briefly touched upon, with Mr. Gaurav Pachnanda emphasizing on increased professional exchange.

In conclusion, the Fireside Chat encapsulated a multifaceted narrative, touching on modernization, strategic training, efficiency, diversity, and the imperative to learn from global counterparts. These components were identified as pivotal for India's journey towards achieving excellence in legal services. The exchange of ideas and insights underscored the dynamic nature of the legal landscape in India and the commitment of legal professionals to navigate challenges and leverage opportunities for continuous improvement.

Highlights from the Conference:

The conference shed light on various facets of arbitration, from the influence of Artificial Intelligence (AI), to the intricacies of construction arbitration, historical evolution of intellectual property rights jurisdiction, challenges faced in construction arbitration and the challenges posed by third-party involvement. The discussions among legal experts and practitioners in India and the global arena, focused on arbitration being taken to a global scale, particularly in the context of commercial disputes.

Following the inaugural session of the Conference, Justice K.V. Vishwanathan's address on the role of Artificial Intelligence (AI) in arbitration set a profound tone for the day's discussions. Justice Vishwanathan began by navigating through the intricacies, capabilities and limitations of AI. He then suggested that amendments to the Arbitration and Conciliation Act and the Contract Act might be imperative to accommodate the growing use of AI in arbitration proceedings.

The subsequent session, chaired by Justice Navin Chawla, delved into “Contentious Issues in Construction Arbitration”. Justice Chawla provided a comprehensive overview of common challenges in construction arbitration, covering a spectrum of issues including arbitrator appointments, contract interpretations, defect claims, limitations, consequences, damages, and remedies. Notably, the session highlighted the intricate nature of construction disputes, with a particular emphasis on time-related challenges and project delays.

Ms. Ankit Khushu's contribution to the session focused on the pivotal role of experts in construction arbitration. She advocated for early involvement of experts and strategic decision-making in expert appointments, emphasizing their ability to bring objectivity and independence to the resolution process. Mr. Amba Prasad spoke about the importanant role played by experts in ascertaining faults and in navigating complex construction issues.

Following these insightful sessions, Mr. Mark McNeill's presentation on the “Increased Internationalization of Tax Disputes” brought attention to the complex intersection of taxation and international arbitration. Mr. McNeill raised essential questions about the role of taxation in international arbitration, citing prominent cases as examples. He spoke on the absence of explicit tax laws governing arbitration agreements and the need for reconsideration of prevailing rules, particularly in the UK.

Mr. V. Niranjan touched upon the issue of estoppel to non-signatories in arbitration agreements, stressing its relevance in the evolving landscape of arbitration. This discussion highlighted the possibility of complexity in consideration of the expanding scope of arbitration and the potential involvement of non-signatories in disputes.

One of the focal points of discussion of the final panel session chaired by Mr. Tejas Karia and comprising Mr. Alipak Banerjee, Ms. Anushka Sharda, Mr. Atul Sharma and Mr. Zal Andhyarujina revolved around the transformative impact of Artificial Intelligence (AI) on arbitration. The panel explored how AI is shaping the landscape of arbitration, from streamlining procedures to enhancing the efficiency and objectivity of decision-making. Delving deeper, they discussed the potential roles of AI in legal processes, ranging from legal research and drafting to case management. The stance that AI should play a supportive role, not supplanting the core function of human decision-making which remains the prerogative of human judges, was maintained.

In conclusion, the Conference, marked by enlightening and informative sessions, was a grand success. Participants were provided with a view of recent advances and challenges in global arbitration. The discussions reflected the dynamism of the arbitration legal landscape. Attendees left the event with enriched perspectives and a deeper understanding of the multifaceted dynamics at the crossroads of various fields of law and arbitration. The Conference not only showcased the current state of global arbitration but also laid a foundation for continued exploration and evolution in the field.