EDITORIAL NOTE

The concept of alternative dispute resolution ("ADR") mechanisms or out of the court settlements is not new to India. Arbitration, one of the most popular methods of dispute settlement, was also prevalent in India under different names and forms. Disputes pertaining to land, property and family matters were routinely settled by the village elders or Panchayats.

A series of statues were enacted both prior and post-independence to institutionalize arbitration as a viable mechanism for dispute settlement in India. However, it was only in 1996 with the enactment of The Arbitration & Conciliation Act ("1996 Act"), that India got a comprehensive legislation in place to regulate arbitration. Modelled on the UNICTRAL Model Law on International Commercial Arbitration, the 1996 Act aimed at providing a speedier & cost-effective dispute resolution mechanism, minimizing the judicial intervention, introducing enforceability of arbitral awards and encompassing concepts such as conciliation and international commercial arbitration. Though the 1996 Act came as a groundbreaking development for India, it was soon criticized as its loopholes were felt with time. The main criticisms surrounding the 1996 Act stemmed from the interventionist role of the judiciary in both domestic and international arbitration matters.

In in order to address the lacunae of the 1996 Act, the Act has been amended thrice in the last decade - in 2015, 2019 and 2021. These amendments have brought noteworthy changes to the Indian arbitration landscape in the form of time-bund provisions, mandatory referrals by the judiciary, bolstering the authority of the Arbitral Tribunal, restriction on automatic stay on arbitral awards, among others.

In Volume 9, Issue 2 of the RSRR Journal, the Editorial Board has aimed to cover the developments in the arbitration law landscape

and the challenges that continue to act as roadblocks for India in its path towards becoming a hub of arbitration. An attempt has been made to suggest how the institutionalization of arbitration can be enhanced in India by taking policy measures. In furtherance of its objective and to generate novel legal literature marking this transition, RSRR invited contributions from all stakeholders, including, NGOs, corporations, governments, academic researchers, professors, students among others.

The article on the applicability of constructive res judicata on India seated arbitrations, delves into the conflict between the Code of Civil Procedure, 1908 ("CPC") and the 1996 Act, wherein the former talks about the applicability of res judicata to all civil and criminal matters, while the latter excludes the applicability of the entire CPC itself. The article specifically deals into whether the principle of constructive res judicata, a subset of res judicata, is applicable to arbitral proceedings or not. Constructive res-judicata states that where a party had an opportunity to bring a claim against the other party and it failed to do so, the claim would be presumed to have been abandoned and barred from being brought up in further proceedings. The article provides instances where the Courts have applied this principle to arbitration matters and underscores the need for recognizing these principles in law to ensure certainty and their universal applicability.

The article on the challenges posed by Web3, delves into the new age issues that have arisen with the evolution of Web3 or the decentralized web. The article provides how Web3 technologies and use cases are disrupting major industries that involve financial transactions and human interaction, like finance, marketing, gaming, and the legal industry due to the need of rule of law. In order to tackle these issues, the article argues that the scope of international arbitration should be broadened to encompass issues rising due to Web3. Further, international arbitration should be remodelled in a manner which ensures legal ease and encourages the Web3 stakeholders to approach ADR mechanisms.

The article on the pre-arbitration dispute settlement clause discusses the lack of legal recognition to the pre-arbitration dispute settlement agreements and the diverse positions of courts of law in India regarding their enforceability. While the majority view of the courts has been inclined towards the mandatory adherence of the pre-arbitral clauses, the minority view favours their voluntariness and advocates that the same cannot be enforced. A decision of the Supreme Court is awaited, which clears the contrary stance of courts.

The primary objective behind this theme has been to provide a platform for legal analysis, insightful commentary, and in-depth analysis that can assess the issues plaguing the arbitration law landscape of India and suggest policy measures to enhance the same.

On behalf of the entire Editorial Board of the RGNUL Student Research Review Journal, I am glad to present Volume 9, Issue 2 of the journal.

Kavya Jha,
Editor-in-Chief
RSRR