RGNUL Student Research Review (RSSR)

Call for Papers

Volume 9, Issue 2

Instrumentalising Arbitration

Innovation, Interaction and Impact

Editorial Board
RGNUL Student Research Review

CALL FOR PAPERS

The RGNUL Student Research Review invites papers and submissions for Volume 9, Issue 2, from academicians, practitioners, legal luminaries and students on the theme titled:

"**Instrumentalising Arbitration: Innovation, Interaction and Impact"**

Serving as a global economic powerhouse, arbitration is not a foreign concept to India as an alternative method of dispute resolution.[1] Modelled after the UNCITRAL Model Law on International Commercial Arbitration, the Arbitration and Conciliation Act of 1996 (the "Act") consolidated previous arbitration statutes. The Act came into effect at a time when the Indian economy was experiencing the effects of globalisation and liberalisation policies and was anticipated to stimulate the market for an expedient and affordable form of alternative conflict resolution through arbitration. It was praised for modernising the legal landscape of Indian arbitration by making it more adaptable to modern needs and foreseeing collaboration between the judicial and arbitral processes while also limiting court intrusion.[2]

However, decades after the Act's implementation, numerous critiques exposing its limitations and bottlenecks have exposed its failures in transforming India's status to that of a global arbitration hub. Indian courts have had a reputation for being interventionist and asserting jurisdiction over arbitration cases that were held overseas. Further, due to the egregious delays in the legal system, India has been generally avoided as a venue for international arbitration. According to the award issued by the ICC tribunal in the White Industries case, the Indian Government was liable for not providing White Industries with "effective means" for asserting claims and enforcing rights.[3]

Ultimately, the landmark Supreme Court decision in BALCO [4] and various proposals to the Act culminated in the 20th Law Commission's Report No. 246. The Arbitration and Conciliation (Revision) Act of 2015 was the main amendment made to the Act over the next few years. By providing specific accommodations, the 2015 Amendments made it clear that institutional arbitration was the preferred mechanism of dispute resolution. The 2019 Amendments also established the Arbitration Council of India ("ACI"), a new and independent statutory body that sets standards for uniform professional conduct as well as grades and

[1] Rajarao, Vidya, and Darshan Patel. 2013, Corporate Attitudes & Practices towards Arbitration in India.
[2] Dholakia, Ashish, et al. "India's Arbitration and Conciliation (Amendment) Act, 2021: A Wolf in Sheep's Clothing?" Kluwer Arbitration Blog, 2021.
[3] Final Award, White Industries Australia Limited v. The Republic of India, 2011.
[4] Bharat Aluminium & Company & Ors. v. Kaiser Aluminium Technical Service Inc. & Ors. (2012) 9 SCC 552.

accredits arbitral institutions and arbitrators.[5]

While the proposed reforms to Indian arbitration law seem to be effective in allaying fears of additional bottlenecks, the issues surrounding a framework regarding institutional arbitration in India continue to hamper India's reputation as a global arbitration hub. In this regard, while the BALCO ruling had given the Indian arbitration sector a newfound sense of optimism, it had also indicated that top-down changes, though perhaps necessary, are far from sufficient.[6] Bottom-up initiatives aimed at raising knowledge, promoting a culture of arbitration, and private ordering are equally important, and neglecting such aspects would lead to unsuccessful outcomes. Private institutions play a significant role in such grassroots activities in the majority of developed jurisdictions. However, India's exceptionalism in ad hoc arbitration has rendered institutions generally unable to carry out these crucial administrative and norm-setting duties required for wider recognition as an arbitration hub.[7]

According to a 2016 NITI Aayog Report, it takes approximately 5 years even for arbitration in the construction industry to be resolved (demonstrating that domestic arbitration is starting to experience similar delays) and an additional 2.5 years in courts for any challenge to an award to be decided.[8] Further, the Union of India and its agencies are the largest litigants in the nation, according to the Law Commission's 2009 findings.[9]

With assistance from the Maharashtra Government, the Mumbai Centre for International Arbitration (abbreviated as "MCIA") was established in 2015 with a set of Rules that best reflect global practices.[10] By instructing parties to an ad hoc international arbitration to contact the MCIA to select an arbitrator, the Supreme Court has also aided in expanding institutional arbitration.[11] Additionally, the Singapore International Arbitration Centre ("SIAC"), frequently involving Indian parties, has created a second liaison office in India. Further, institutions like the London Court of International Arbitration ("LCIA") and the International Court of Arbitration of the International Chamber of Commerce ("ICC") are similarly popular among Indian stakeholders, demonstrating a definite preference for institutional arbitration.

[5] The Arbitration and Conciliation (Amendment) Bill, 2019.
[6] Aragaki, Hiro N. "Arbitration Reform in India: Challenges and Opportunities." The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia Pacific, 2017.
[7] Ibid.
[8] NITI Aayog Press Note, 2016, "Initiatives to Revive the Construction Sector."
[9] Law Commission of India Reforms in the Judiciary, Report No. 230, p. 17, 2009.
[10] Government Resolution No. Misc.-2016/M No. 20/S-19.
[11] Arbitration Case No. 33 of 2014, Sun Pharmaceuticals v. Falma Organis Ltd., Supreme Court.

However, the rise of institutional arbitration in India raises several imperative concerns and questions concerning international investment and commercial arbitration cases.

International commercial arbitration is an alternative way to settle private disputes resulting from international business transactions, allowing the parties to avoid going to court. Control of the proceedings seamlessly shifts from the parties to the arbitral panel in a properly run international arbitration. The parties are initially in total control. They are the only ones aware of the problems at stake, how they plan to establish the facts they rely on, and the legal arguments they intend to make. It is "their" case that will be presented before the arbitral tribunal. Since it is "their" tribunal, the arbitral tribunal owes its very existence to the parties, but as the case goes on, the arbitral tribunal learns more about the issues at stake. It starts making decisions about which facts are relevant and which legal issues are significant. At this stage, the balance of power, in effect, shifts from the parties to the arbitral tribunal. Due to the various legal systems, the applicability of arbitration agreements, therefore, differs by country.[12] Specifically, the New York Convention governs this matter with regard to the enforcement of the award.

Conversely, international investment arbitration becomes paramount as countries increasingly enter into bilateral investment treaties. Globally, foreign direct investment is expanding rapidly. A network of more than 2800 international agreements, known as Bilateral Investment Treaties ("BITs"), provides important legal protections, but many of the multinational corporations making such investments might not be aware of them.[13]

One or more investment treaties have been signed by more than 150 nations. In addition to requiring host nations to offer specific protections for foreign investments, BITs also give investors a strong private right of action against the host government if it fails to uphold these duties. It is crucial to look into the prospect of bringing claims under a BIT as soon as issues arise over government action or inaction relating to an investment.[14] Even if investment-related contracts (such as concession contracts) call for domestic courts to resolve disputes, BIT arbitration is an option. States guarantee specific rights and protections to investors from the other contracting State under a bilateral investment treaty (BIT). These include Protection from Expropriation, National Treatment, Most Favoured Nation (MFN), and Fair and Equitable Treatment, to name a few. In each of these cases, international law provides protection and is

[12] Born, Gary. International Arbitration: Law and Practice. Kluwer Law International, 2021.
[13] Database of Bilateral Investment Treaties, International Centre for Settlement of Investment Disputes.
[14] Born, International Arbitration: Law and Practice.

usually agreed upon by the contracting States. For instance, "Fair and equitable treatment generally involves consideration of the consistency, transparency, fairness and proportionality of governmental measures, as well as prohibitions against arbitrary or discriminatory state action."[15]

In many cases, tribunals give decisive weight to an investor's "legitimate expectations." However, a number of tribunals take a more stringent approach. For example, in *Glamis Gold v. United States*, the tribunal opined that a violation of the fair and equitable treatment standard requires an act that is "egregious and shocking - a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or a manifest lack of reasons."[16] International investment arbitration establishes a guarantee for foreign investors against the expropriation of their investments without due compensation.

However, in the *Methanex v. USA* case, it was observed that "non-discriminatory regulatory actions by a contracting party that are designed and applied to protect legitimate public welfare objectives including the protection of health, safety and environment do not constitute expropriation or nationalisation except in rare circumstances where those actions are so severe that they cannot be reasonably viewed as having been adopted and applied in good faith for achieving their objectives."[17] In light of this, a violation of these granted protections would give an investor the legal prerogative to bring a case to investment arbitration against the host country. BITs give investors a private right of action—the right to submit an investment dispute with the host government directly to international arbitration.

BITs disputes are governed by the terms of the relevant treaty and international law and not specifically by the law stated in the contracts related to investment. The Government's Compliance with the BIT awards has been generally very good. Further, the awards issued by investor-state arbitration tribunals are enforceable in the 144 countries that are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[18]

In light of these developments trends in the arbitration sector, RSRR seeks to delve into the theme, "Instrumentalising Arbitration: Innovation, Interaction and Impact" to review and analyse the present legal and policy framework in light of the everyday developments in the

[15] Fair and Equitable Treatment - A Sequel UNCTAD Series on Issues in International Investment Agreements II. United Nations, 2013.
[16] Glamis Gold Ltd. v. United States of America, UNCITRAL, 2003.
[17] Methanex Corporation v. United States of America, UNCITRAL, 2005.
[18] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS

sector. The primary objective behind this theme is to provide a platform for legal analysis, insightful commentary, and in-depth analysis that can bridge the gap between pertinent legal developments in the sector and the likelihood of their actual implementation which, in turn, will improve the discourse about such contentious issues.

SUB -THEMES

1. **International Investment Arbitration: Interaction, Innovation and Impact**
   - 1.1. Investor-State Dispute Resolution Mechanism: Derogation from Protection
   - 1.2. Interpretation of Most Favoured Nation Clauses vis-a-vis Substantive and Procedural Provisions
   - 1.3. Negotiations and Renegotiations of 'Mega-regionals'
   - 1.4. Protection from Expropriation and the 'Right to Regulate'
2. **Contours of Public Policy: Scaling the Indian Arbitration Scenario**
   - 2.1. Fraud as a Ground for Arbitrability
   - 2.2. Emergency Arbitration in India
   - 2.3. Two-Tier Arbitration in India
   - 2.4. Limitation Period Issues in Arbitration Proceeding
   - 2.5. Validity of Pre-arbitral Dispute Resolution Clauses
3. **International Commercial Arbitration: Reimagining the Practise**
   - 3.1. New Perspectives on Allocation of Costs in ICA
   - 3.2. International Commercial Arbitration and Technology: Challenges of the New Perspective
   - 3.3. Delocalisation of Arbitral Practice: Against the Principle of *Lex Loci Arbitri*?
   - 3.4. Making a Case for Punitive Damages in ICA.
   - 3.5. Jurisdiction-specific Issues: The Need for Comprehensive Legal Reforms
   - 3.6. Summary Determinations in International Commercial Arbitration
4. **Mapping New Horizons in Dispute Settlement: Latest Trends and Sectors**
   - 4.1. Reconciling Cross-Border Insolvency with ICA
   - 4.2. Industry-specific issues in Arbitration (for e.g., maritime, construction, oil and gas, etc.)
   - 4.3. International Arbitration as an Instrument of Economic Development.

Note: The above-mentioned sub-themes and sub-points are only illustrative and not exhaustive, and the authors are free to write upon any other sub-theme, provided they fall within the broad ambit of this journal's theme.

GUIDELINES

GENERAL GUIDELINES

i. All manuscripts submitted must be original and should not have been published elsewhere to be considered for publication in RSRR.

ii. All manuscripts will be checked for plagiarism. If plagiarism is detected, the Editorial Board reserves the right of rejection without a review of the manuscript.

iii. The manuscript should not contain the name(s) of the author(s), their institutional affiliations, or any other identity markers. The title of the manuscript should indicate the sub-theme that the author(s) have chosen.

iv. Upon submission, every manuscript will undergo an internal review by the Board of Editors. If approved, it is subject to a double-blind peer review process.

v. Authors must note that grammatical and legal accuracy, contribution to literature (originality of content), etc., will be some of the major criteria for analysing the submissions. The responsibility for the accuracy of the facts, opinions, or viewpoints stated in the submitted paper shall rest solely with the author(s).

SUBMISSION GUIDELINES

I. Submission Categories

The RSRR invites papers under the following categories:

i. **Articles** (5,000 to 10,000 words)

A comprehensive and thorough analysis of issues related to the theme of the Journal.

ii. **Short Notes** (3,500 to 5,000 words)

A note containing brief, terse and pointed arguments revolving around a specific, current issue or an issue of importance which may not have received due research.

iii. **Case Comments** (2,000 to 4,000 words)

An academic writing that analyses or is a critique of a recent case.

iv. **Legislative Comments** (2,500 to 4,000 words)

A comment that analyses the objective of the legislation and analyses the legal impact of the same.

v. **Normative Law Articles** (3,000 to 5,000 words)

These will explore the opinion of students relating to the specific legislations involved in the theme of the Journal. They seek to bring out a student's view on how a particular legislation or legislative provision should have been drafted to bring out clarity into the law. The authors are welcome to draft amendments (or even a law in its entirety) to the existing laws should they believe that the particular legislation requires some amendments. Arguments must be logical and can take into account aspects such as sociological, political, and economic implications of the law.

II. Instructions for Authors

I. All submissions must be in Garamond, font size 12, spacing 1.5.

II. All footnotes shall be in Garamond 10, single-spaced and should conform to the Oxford University Standard for Citation of Legal Authorities (OSCOLA) mode of citation.

III. Margins: Left 1 Inch and Right 1 Inch, Top 1 Inch and Bottom 1 Inch (A4).

IV. The word limit is exclusive of all the footnotes.

V. Co-authorship is allowed for up to 2 authors.

VI. All submissions must include an abstract of a maximum of 250 words.

VII. All submissions must be accompanied by a cover letter in a separate document stating the details of the author(s).

VIII. All entries should be submitted in **.doc/ .docx** format **only**.

IX. The author(s) bear sole responsibility for the accuracy of facts, opinions or views stated in the submitted paper.

III. Submission Deadline

The deadline for the abstract submission is by 20th December 2022, by 11:59 P.M. (IST).

The deadline for the final paper submission is by **11th February 2023,** by 11:59 P.M. (IST).

IV. Copyright Policy

The RSRR Journal shall retain all the copyrights arising out of the publication. All the moral rights shall vest with the author(s).

For further details, refer to the copyright policy.

ABOUT RGNUL STUDENT RESEARCH REVIEW

The RGNUL Student Research Review ("**RSRR**") Journal is a bi-annual, student-run, blind peer-reviewed flagship journal based at the Rajiv Gandhi National University of Law, Punjab. It was founded with the objective of facilitating arguments in black and white by promoting legal research skills. The RSRR Journal aims to publish comprehensive treatments of subjects (articles) written by law students and professionals and shorter pieces, commonly called notes and comments. Normative law articles also form a major component of the RSRR Journal. They aim to seek the opinion of student researchers and provide the option to draft and/or amend the existing law. Recently, we released Volume 7 Issue 2 of our Journal on the theme "Reassessing the Environmental Rule of Law in India: Bridging Gaps for Survival", for which we had the honour of receiving the Foreword from **Hon'ble Dr Justice D.Y. Chandrachud**. Recently, we released Volume 8 Issue 2 of our Journal on the theme "Unboxing the legal Potential of the Sports and Gaming Industry: Redesigning India's Way of Playing", for which we had the honour of receiving the Foreword from **Justice Dr Mukundakam Sharma**, Former Judge, Supreme Court of India.

Additionally, RSRR also runs its Blog Series, which deals with specific contemporary issues of law. The RSRR Blog Series has been named one of the top 25 Constitutional Law Blogs internationally by Feedspot consecutively for three years. As a part of the RSRR Blog Series, the Excerpts from Experts Blog Series has been initiated, under which professionals and experts are invited to critically analyze and foster academic discussion on contemporary and unexplored legal issues. We have had the pleasure of receiving notable contributions from luminaries such as Prof. (Dr.) Upendra Baxi, Dr Sairam Bhat, Mr Ajar Rab, Ms Radhika Dubey, Mr Aman Singhania, and Mr Abir Lal Dey, among others.

NOTABLE COLLABORATIONS OF RSRR

RSRR has previously collaborated with firms and organisations for various Blog Series as well as past editions of the journal.

Collaborations for RSRR Journals		
Journal	Collaborator	About The Collaborator
Volume 6, Issue 1: "Healthcare in India: Tracing the Contours of a Transitioning Regime"	In association with Arogya Legal and Medical Students Association of India.	**Arogya Legal** is a firm of specialists who advise on laws that apply to health-focused businesses such as pharma, medical device, food and cosmetics, which operate in a highly regulated environment. **MSAI**-India is India's first and largest internationally represented medical students' organization, comprising over 20,000 medical students across the country. It is a non-government organization for and by medical students of India registered in New Delhi under the Societies Act of 2014.
Volume 7, Issue 1: "Protecting Consumers in the 21st Century: Broadening the Outlook"	In association with Saikrishna & Associates.	**Saikrishna & Associates** is a Tier-1 full-service Firm having focused Intellectual Property, Telecommunication Media & Technology, Corporate Law & Competition Law verticals backing up the Firm's other practice areas.

Collaborations for RSRR Blog Series		
Blog Series	Collaborator	About The Collaborator
Emerging Technologies: Addressing Issues of Law and Policy	In association with Ikigai Law	**Ikigai Law** is an award-winning law firm. They have a market-leading regulatory, policy and commercial-law practice for technology and innovation-led businesses.
Right to Privacy and the Legality of Surveillance	In association with The Centre for Internet & Society	**The Centre for Internet & Society** is a leading non-profit organisation that undertakes interdisciplinary research on the internet and digital technologies from policy and academic perspectives. The areas of focus include digital

		accessibility for persons with disabilities, access to knowledge, intellectual property rights, openness The areas of focus include digital accessibility for persons with disabilities, access to knowledge, intellectual property rights, openness etc.
Regulating E-Sports: Paving the Road Ahead	In association with Ikigai Law	**Ikigai Law** is an award-winning law firm. They have a market-leading regulatory, policy and commercial-law practice for technology and innovation-led businesses.
Digital Healthcare in India	In association with Nishith Desai Associates	**Nishith Desai Associates** has earned the reputation of being Asia's most Innovative Law Firm – and the go-to specialists for companies around the world looking to conduct business in India and for Indian companies considering business expansion abroad. They have conceptualized and created state-of-the-art Blue-Sky Thinking. They are a research and strategy-driven international firm.
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Corporate Governance: Is India Ready?	In association with Argus Partners (Solicitors & Advocates)	**Argus Partners** is an Indian law firm with offices in Mumbai, Delhi, Bengaluru, Kolkata and Ahmedabad. The Firm, the Partners and the associates have a rich domestic and international experience and have been recognised and awarded by several publications.

CONTACT US

For any queries, contact **submissionsrslr@rgnul.ac.in**

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ABOUT RAJIV GANDHI NATIONAL UNIVERSITY OF LAW

Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, thereby fulfilling the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization. The University acquired approval from the Bar Council of India (BCI) in July 2006. In May 2015, the University became the first and the only NLU to get accreditation by the National Assessment and Accreditation Council (NAAC) with an 'A' grade. In 2018, RGNUL was among the four NLUs granted autonomous status by the University Grants Commission. The University has been ranked among the top 10 law schools in India under the National Institutional Ranking Framework (NIRF) by the Union Ministry of Human Resource Development, Government of India.

RGNUL is a member of a number of professional organizations of national and international stature like the Asian Law Institute (ASLI), Singapore; Commonwealth Legal Education Association (CLEA); Forum of South Asian Clinical Law Teachers (FSACLT), Goa; Indian Economic Association (IEA); Indian Institute of Comparative Law (IICL), Jaipur; Indian Institute of Public Administration (IIPA), New Delhi; Indian Law Institute (ILI), New Delhi; Indian Political Science Association (IPSA); Indian Society of Criminology (ISC), Madras; Indian Society of International Law (ISIL), New Delhi; Institute of Constitutional and Parliamentary Studies (ICPS), New Delhi; International Association of Law Schools (IALS), and International Law Students Association (ILSA), United States of America, Legal Information Institute of India (LII of India), Shastri Indo Canadian Institute (SICI).