

EDITORIAL NOTE

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The *NUJS Journal on Dispute Resolution* (JODR) aims to provide a forum for discussion and debate on national as well as international developments in the field of dispute resolution. In the last one decade, India has exhibited growing acceptance of alternative methods of dispute resolution as a medium for resolving disputes. This has resulted in energised activity in this field and raised pertinent questions of practical as well as legal import. The journal seeks to strike a balance between practical and academic contributions on issues which form the forefront of contemporary legal discourse.

JODR is the result of an embedded longing of the founders and coordinators of the Indian Mediation Week (IMW). IMW is recognised as India's largest student-run Access to Justice Campaign, spread across the country and supported by the Ministry of Law and Justice, Government of India and Supreme Court Mediation and Conciliation Project Committee (MCPC). The inaugural edition of the JODR could not have been published at a more auspicious time for the IMW as its headquarters the NUJS Mediation Clinic, which is also India's first student-run Mediation Clinic, celebrates its second-year anniversary this month.

The subject of alternate dispute resolution mechanisms is one which is a fascinating confluence of sweeping and extensive public international norms and national legislatures. This blend is often a source of controversies as national court interpretations of international norms often tends to vary heavily due to multiple factors such as the nation's public policy perspectives, developmental issues, applicable civil laws etc. The last few years have witnessed a wide spectrum of such issues being tested in courts. In such a case, scholars in their pursuit of achieving a uniform law generate huge volume of academic debate and scholarship on the subject. Consequently, there is an innate need to make available an avenue for academic writing that can contribute to the ever-increasing rich arbitral jurisprudence and ignite interest of readers to this discipline. JODR recognises this need and aims to be a well-endowed medium for a constructive and critical dialogue between researchers, industry professionals and scholars related to this field.

While keeping in mind the objectives of this journal, in this issue we are proud to present six articles that comprehensively highlight spouting areas of debate in the field of alternative dispute resolution and investor-state dispute resolution. The editorial team has painstakingly selected each one of the articles keeping in view the highest standards of legal scholarship. We believe that this issue provides a fascinating and insightful read that will stimulate critical academic thought and push the frontiers of academic literature

Authors Ajar Rab (Partner, Rab & Rab Associates LLP) and Aniket Singh (Associate, Rab & Rab Associates LLP) in the article "*Revamping Arbitrator Immunity: A Case for Reconsidering Section 42-B of The Arbitration & Conciliation Act, 1996*", address major lacunae in the law on arbitral immunity in the existing legal framework in India. The paper begins with a conceptual understanding on arbitral immunity discussing its roots and purposes and how its scope varies across various jurisdictions. The authors then explore the idea of qualified immunity as provided under Section 42-B of the Arbitration and Conciliation (Amendment) Act, 2019. The analysis undertaken leads the author to argue that "good faith"

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standard under Section 42-B is bounded by uncertainty and lack of meaning. After giving theoretical basis and evidentiary data to elaborate on the subject, the authors provide a draft provision which in their opinion should replace Section 42-B

In the article titled *“To Domesticate Creatures Of Contracts: Decrypting The First Draft Of Code Of Conduct For Adjudicators In Investor-State Dispute Settlement”*, authors Altamash Kadir, Mallika Dandekar and Ritika Dhabaria delve into the current contestations in the first draft of a Code of Conduct for Adjudicators which was recently released by the secretariats of ICSID and UNCITRAL. The paper adeptly identifies the key ethical and contested issues that the draft code addresses. In doing so it provides a conceptual analysis of the twelve articles that form the code while offering normative critiques from a historical as well as a contextual perspective. The authors argue that though the adoption of the draft is a step in the right direction, it has certain manifest limitations that restricts its theoretical and functional application.

The article *“Winning The Battle But Losing The War: Challenges To Enforce Investment Arbitral Awards In India”* discusses the state of enforcement of investment arbitration awards against India made pursuant to Bilateral Investment Treaties. Taking an empirical approach towards the subject authors Anuraag Mitra (Advocate, Kolkata High Court) and Anushri Maskara (LLM Candidate, Duke University School of Law, USA) make a definitive case for bringing enforcement of investment awards within the realm of the Arbitration & Conciliation Act, 1996. Further, the authors highlight the inadequacy of the current framework by exploring the reasoning of the judiciary on the subject. They adeptly contextualise the understanding of regulatory mechanism for enforcement of treaty award in India in the current context, recognizing the need of revisiting India’s commercial reservation to the New York Convention.

Ragini Agarwal, in her article *“Judiciary’s Role In Settling Challenges To Arbitral Awards: A Case For Vigilance”* invites us to question if the limited power of review under Section 34 of the Arbitration & Conciliation Act, 1996 is exploited by the judiciary. After having outlined the precise contours of the standard as enshrined in Section 34, the author examines the authority of the court with respect to Section 34 applications from the lens of the Hodgkinson principle. The author argues that the arresting absence, of definition and specificity attendant to terms rudimentary to the criteria of public policy and patent illegality enables the courts to often transcend beyond the intended scope while dealing with Section 34 subject matter.

Authors Souvik Bhadra (MCI Arb, Co-Founder, Ashlar Law) and Nupur Jalan (Advocate, High Court of Bombay) in their article titled *“Alternative Dispute Resolution In Tenancy Disputes –Walking The Tightrope”* contemplate the issue of arbitrability of tenancy disputes in India primarily inspired by recent judgement of the Supreme Court of India in the case of *Vidya Drolia v. Durga Trading Corporation*. The authors begin by tracing the trajectory of tenancy laws in India and its evolution over the years. They then quite artfully embark upon a discussion of arbitrability of tenancy disputes by separately categorizing tenancies as the ones governed by rent legislations, contractual arrangements, with valid arbitration agreement and finally the Transfer of Property Act, 1882. Through this paper, the authors not only propose a comprehensive overhaul of the current system governing the arbitrability of tenancy disputes but also lay down a detailed structure of the proposed Draft Model Tenancy Act, 2019 as a solution to the existing confusion.

The Journal concludes with Shweta Sahu (Senior Associate, International Litigation and Dispute Resolution Team, Nishith Desai Associates) and Nikita Pattajoshi (Assistant Professor (Law), National Law University, Odisha) who in their article titled “*Mediation: The New Trump Card In Commercial Dispute Resolution?*” make a definitive case for mediation as a method of dispute resolution for commercial matters. They opine that in comparison to arbitration, mediation has been underused often because of the lack of necessary enforcement mechanisms of mediated settlement agreements. To that end, they succinctly analyse the features of the recently adopted Singapore Convention on Mediation and conclude that implementation of a legislation in India on similar lines will be a step in the right direction as it shall create a common level playing field in mediation in India.

The inaugural edition of the JODR offers a curated collection of analytical articles that will allow one to ponder upon in a wide multitude of topics of dispute resolution, now, and in the foreseeable future, indicative of the change and constancy that defines this resplendent field. There are several people who have played a tremendously important role in ensuring the success of this endeavour. Above all, we must express our gratitude to our Board of Advisors, our Vice-Chancellor Prof (Dr) NK Chakrabarty, JODR’s faculty advisor Mr. Atul Alexander, as well as the authors whose contributions appear in the following pages. We hope that you will find the contributions to this issue stimulating and insightful.