

Monthly Newsletter

UPAAY
♦
18 April 2024



A NON-PROFIT ASSOCIATION DEDICATED TO ADR

Here's how we started...

Upaay was formed by seasoned legal professionals who were part of an Indian delegation of lawyers visiting the United Kingdom on an academic visit from 17-21 April 2023.

We are a dedicated community of legal professionals united by a common passion for promoting justice through Alternative Dispute Resolution (ADR).

As a non-profit association, we strive to redefine the landscape of conflict resolution by harnessing the power of collaboration, empathy, and innovative legal methodologies.

At Upaay, we recognize that the traditional adversarial legal system may not always be the most effective or efficient means of resolving disputes. Our mission is to champion the cause of Alternative Dispute Resolution methods as viable and constructive alternatives to litigation.

What sets Upaay apart is our solitary dedication to education and advocacy. We actively engage in outreach programs, conferences, workshops, and seminars to spread awareness about the benefits of ADR and equip both professionals and the public with the knowledge and skills needed to navigate disputes effectively.

By building bridges between legal professionals, we aim to enhance the accessibility and effectiveness of alternative dispute resolution mechanisms worldwide.

Join us in our mission to transform the way conflicts are resolved, promoting a more harmonious and just society.

Hope you like this month's newsletter.

Upaay Team.

Governing Body 2024-25

Shekhar
Verma



President

Vishal Garg



Vice-President

Avineet S.
Chawla



Secretary

Baljeet
Beniwal

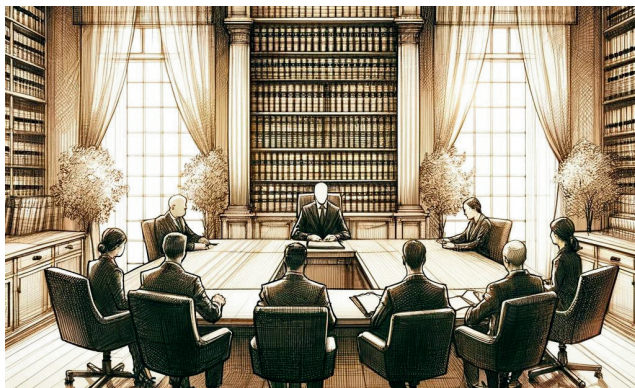


Treasurer

Nine Executive Members

More
about
Upaay





What is ADR?

Alternative dispute resolution (ADR) refers to any method used to resolve disputes outside of the traditional judicial process.

It includes various techniques like mediation, arbitration, and negotiation, which are generally considered to be faster, less formal, and often more cost-effective than traditional court proceedings. These methods are also preferred for their potential to provide more amicable settlements and preserve the relationship between the parties involved.

Alternative Dispute Resolution (ADR) has proven effective in a variety of disputes including Commercial disputes like contract issues and partnerships, Family law cases such as divorce and child custody, Employment disputes including labour wrongful termination and discrimination, Real estate issues related to property sales and leasing, Consumer disputes over product quality and warranties, Personal injury claims to resolve compensation issues, Environmental law disputes concerning regulatory compliance and damage etc.

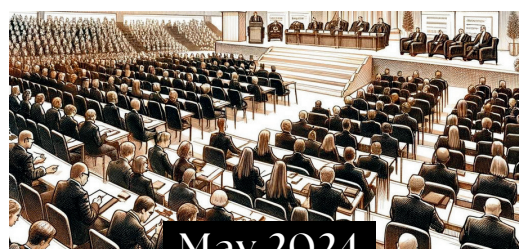


Volunteer Spotlight

We invite you to join us at Upaay, and avail this unique opportunity to harness your legal skills and contribute to the promotion of ADR.

At Upaay, you will collaborate with experienced professionals and make a tangible difference in citizen's lives by promoting alternative dispute resolution. This is a chance to build and develop professional skills in a supportive and impactful environment.

Together, let's educate our community about the benefits of ADR.



Event News

Join us for our upcoming ADR & ODR Convention aimed at exploring Online Dispute Resolution solutions.

The one-day convention will encompass opening session, live real-time demonstrations of currently operative ODR facilities, panel discussions, interactive workshops, networking session followed by dinner.

The convention is being organised in association with Jus Mundi, Jupitice, Webnyay and CADRE ODR.

ADR news from around the world



USA, March 2023: California introduced new legislation aimed at expanding the use of mediation in family law disputes, especially focusing on child custody cases, to streamline proceedings and reduce the emotional toll on families.

India, Sept 2023: Indian Government notifies Mediation Act, 2023.



Australia, October 2023: New South Wales passed a reform requiring mediation before litigation in disputes related to construction and property development, aimed at addressing the high volume of cases in these sectors.

Germany, Feb 2024: A landmark case in Frankfurt established that arbitration decisions could be appealed on substantive grounds in cases involving consumer rights, marking a significant shift in German arbitration law.



UK, July 2023: The UK government launched a pilot project in London to use arbitration in resolving small claims disputes under £10,000, aiming to reduce the burden on the courts and provide quicker resolutions for both parties.

Sudan, Jan 2024: Exhaustive Mediation & Negotiation attempts are underway to end the year-long Sudanese Civil War.



Germany has also enacted a draft Bill for the Modernisation of German Arbitration Law in April, 2024.

India, April 2024: Indian SC has given its verdict in Delhi DMRC and DAMEPL case exercising rare curative jurisdiction.

Italy, April 2024: Arbitration Tribunal rules that Juventus must pay Cristiano Ronaldo nearly €10 million plus interest in deferred wages that dates back to the 2019-20 season.

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Mediate,
don't
litigate.



Hon'ble Mr. Justice D. Y. Chandrachud
CJI 14.04.2023 New Delhi (while giving a message to Union Govt. to de-log Courts).



Get involved..

Whether you're experienced in ADR or have insights from recent cases, your knowledge will significantly impact our readers and the broader legal community.

This is an excellent opportunity to enhance your professional profile, share your expertise, and join a network of like-minded professionals committed to fostering peaceful and effective dispute resolution.



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Along with rule of law, you have to have an independent judiciary in the country. I think that these are very important factors which along with the growing economy will matter a lot in promoting arbitration, in promoting alternative dispute resolutions and of course in inviting the investments and the rise of the business or startups in one country.

Hon'ble Mr. Justice Surya Kant, Judge, Supreme Court of India
16.01.2024 Kuala Lumpur (giving the keynote at Asian International Arbitration Centre (AIAC)).

ADR assisted dispute resolution: latest success stories...

New York, USA - June 2023: A long-standing patent dispute between two major tech companies was resolved through mediation, avoiding a potential billion-dollar lawsuit. The parties reached an innovative licensing agreement that benefited both sides, showcasing ADR's role in fostering creative business solutions.

London, UK - January 2024: Arbitration helped settle a major cross-border financial services dispute involving over \$500 million. The confidential and speedy resolution maintained the financial stability of the involved entities and preserved important international business relationships.

Tokyo, Japan - September 2023: A significant international trade dispute was amicably resolved through arbitration, involving several Asian electronics manufacturers. The agreement on product standards and trade practices has set a new benchmark for the industry.

New Delhi, India - July 2023: A mediation session averted a potential multibillion-rupee litigation between a real estate developer and a consortium of investors. The settlement included a revised project timeline and funding arrangements, stabilizing the market and protecting jobs.

Chennai, India - October 2024: An international arbitration case involving a joint venture between an Indian manufacturer and a European conglomerate was resolved, securing a partnership worth several hundred million euros. The arbitration ensured minimal disruption to ongoing operations and preserved international relations.

Mumbai, India - May 2023: Mediation successfully resolved a high-stakes dispute between two leading pharmaceutical companies over patent rights, preventing a protracted legal battle and encouraging a collaborative agreement for future research and development.

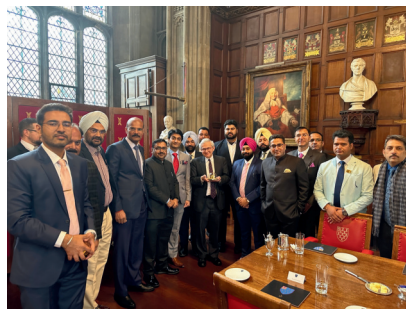
Frankfurt, Germany - March 2024: A commercial arbitration panel efficiently resolved a high-profile dispute over automotive supply contracts affected by global supply chain disruptions. The decision helped prevent further financial losses and facilitated a quicker recovery for the involved parties.

Bangalore, India - February 2024: Arbitration facilitated a swift resolution to a major IT outsourcing contract dispute involving over ₹300 crore. The arbitration panel's decision allowed both parties to resume normal business operations with adjusted contract terms, maintaining critical technology services.

Sydney, Australia - November 2023: Mediation resolved a multi-million dollar real estate dispute between a large developer and a group of investors. The settlement included terms that allowed for the continuation of the development project, benefiting the local economy and stakeholders.

Kolkata, India - December 2023: A significant dispute involving the shipping industry was resolved through arbitration, addressing claims exceeding ₹200 crore related to cargo damage and contractual liabilities. The resolution was crucial for maintaining trade flows and operational efficiencies in the sector.

Upaay in the making...



Some recent judgements...

Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd. [(2022) 10 SCC 1] & Yamini Manohar v. T.K.D. Keerthi [2023 SCC OnLine SC 1382]

Section 12-A of Commercial Courts Act, 2015 regarding Pre-Institution Mediation and Settlement held to be mandatory.

B.D. Vivek v. Union of India, Writ Petition Civil No. 1364 of 2023

SC issued notice on a writ petition challenging the constitutionality of Section 3G of the National Highways Act, 1956. The petition critiques Section 3G(5), which mandates government-appointed arbitration for disputes over compensation for land acquisition, alleging it violates Article 14 of the Constitution.

M/s Arif Azim Co. Ltd. vs. M/s Aptech Ltd., Arbitration Petition No. 29 of 2023

SC confirmed the applicability of the Limitation Act, 1963, to the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996

Lombardi Engineering Ltd v. State of Uttarakhand [2023] (SC) 958

Supreme Court held that an arbitration agreement clause, inconsistent with the Constitution of India, cannot be enforced. Court applied Kelsen's theory of Grundnorm - Constitution is the supreme source of law. All agreements must comply with the Constitution.



S.V. Samudram v. State of Karnataka, 2024 LiveLaw (SC) 14

The Supreme Court has underscored that modifications to an arbitral award during the adjudication of petitions under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, are not permissible. This affirmation reinforces the Act's intent to maintain the integrity of the arbitration process.

NBCC (India) Limited vs. Zillion Infra Projects Pvt. Ltd., 2024 LiveLaw (SC) 246

The Court clarified that a dispute cannot be referred to arbitration based on an arbitration clause in a separate contract unless the main contract explicitly incorporates this clause. This decision reverses previous High Court findings and stresses the importance of clear contractual agreements regarding dispute resolution methods.

Cardinal Energy Ltd. vs Subramanya Ltd., COMM ARB PET (L) NO.2603 OF 2024

Avitel Post Studioz Limited & Ors. v. HSBC PI Holdings (Mauritius) Limited, 2024 LiveLaw (SC) 267

Supreme Court allowed the enforcement of a foreign arbitral award, asserting that the assessment of arbitral bias should align with international rather than domestic standards. This ruling promotes a narrower interpretation of public policy, enhancing the credibility and predictability of international arbitration in India.

Gaurav Rice Industries v. The Haryana State Coop. Supply and Marketing Fed. Limited, FAO-CARB No. 58 of 2023

PHHC ruled that an arb. award should not be deemed patently illegal simply because the arbitrator accepted a claim in full when the resp. did not submit a w.defense or provide evidence against the claim.

Anju Jain v. M/s WTC Noida Development Company Pvt Ltd, 2024 LiveLaw(Del) 439

Delhi HC clarified that specifying 'seat' in an arbitration clause is not essential for determining the court jurisdiction over arbitration-related proceedings.

Sushil Kumar Mishra vs. State Of U.P. And Another 2024 LiveLaw (AB) 44

Allahabad HC ruled that District Judge, acting under Section 34 of the Arbitration and Conciliation Act, 1996, lacks authority to modify an arbitration award.



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Legal News

BRINGING YOUR STORIES TO LIGHT



Stories of impact: this month's story is about how Punya & her parents found their silver lining in mediation & ADR

In the bustling city of Chandigarh, the once joyful home of Kavya and Dilpreet had become a battleground. The sounds of laughter that filled their modest apartment had been replaced by the weighty silence of estrangement. The heart of the conflict was the custody of their eight-year-old daughter, Punya, who drew pictures in her room of happier times.

After years of marriage, differences and misunderstandings had taken their toll. Kavya, a school teacher, and Dilpreet, a small business owner, found themselves at a crossroads, facing the harrowing prospects of a divorce. Their disagreements had escalated, and the local court was their next inevitable destination. But before stepping into the courtroom, they decided to try mediation, a suggestion from an old family friend.

The mediator, Mrs. Jain, was a gentle but firm older woman with decades of experience in resolving family disputes through compassion and understanding. In her small, book-lined office, she welcomed Kavya and Dilpreet. Initially, the air was thick with tension, but Mrs. Jain's warmth slowly melted the ice.

Over several sessions, she guided them through their communications, helping them to express their fears, hopes, and frustrations. Kavya shared her worries about Punya's future and her own financial stability, while Dilpreet expressed his fear of losing his connection with his daughter. Punya, too, was gently brought into a session, her wishes heard, which centered around seeing both her parents happy and being part of both their lives.

It was during these heartfelt sessions that Kavya and Dilpreet were reminded of the love that had initially brought them together. They began to see each other not as adversaries but as partners in the upbringing of their daughter.

They laughed for the first time in months when Punya, in her innocent wisdom, suggested that they all go for ice cream like they used to.

Through Mrs. Jain's guidance, they crafted a joint custody arrangement that prioritized Punya's emotional and physical well-being. They agreed to flexible schedules, shared holidays, and even joint attendance at school events. The mediation sessions helped them reconstruct a new type of family relationship based on mutual respect and understanding.

Years later, as Punya grew into a confident young girl, she often reflected on her parents' decision to choose mediation. She saw her friends' parents go through bitter divorces, and she felt grateful for the harmony that her parents had managed to maintain. Kavya and Dilpreet, too, found that their decision to mediate had not only preserved their parental bonds but had also salvaged their friendship.

The success of their mediation became a testimony in their community, inspiring other families to consider this path of understanding and compromise. In the end, the love for their daughter and the respect for their shared past had guided them to a peaceful present and a hopeful future.

Thank you for reading!

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