



REPORT

CERTIFICATE COURSE ON LAW OF ARBITRATION
AND CONCILIATION

POST GRADUATE DIPLOMA IN MANAGEMENT

Organised by

HAL MANAGEMENT ACADEMY

in association with

CENTRE FOR ENVIRONMENTAL LAW, EDUCATION,
RESEARCH AND ADVOCACY

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
BENGALURU

**Dates: 18th and 21st January,
2021**

Day 1: 18th January, 2021

Session 1: Introduction to Alternate Dispute Resolution

Prof. (Dr.) Sairam Bhat, Professor of Law and Coordinator, CEERA, NLSIU

The first day of the two-day certificate course on “Law of Arbitration and Conciliation” began on 18th January, 2021, at the HAL Management Academy, Bangalore. The first session of the day was presided over by Prof. Sairam Bhat who steered the session with a conversation with the participants on their understanding of litigation and alternate dispute resolution.

He started his session by discussing the importance of law and the role of the judiciary in a democratic nation. Prof. Bhat went on to discuss how the Indian judiciary is not only entrusted with the burden of dispute resolution and but with the interpretation of legislation and administrative actions. The advent of Public Interest Litigation (PIL) and the increase in workload for the judiciary was also discussed. In this context Prof. Bhat explained the need for Alternate Dispute Resolution as a more cost effective and time saving method for dispute resolution.



Prof. Bhat further talked about the history and evolution of Alternate Dispute Resolutions systems. He talked about the false notion of alternate dispute resolution systems being a gift of the West and how the ancient system of *Panchayat* predated some of the western concepts by giving the example of *Dharmashastra* which had a



documented history of various dispute resolutions and settlements. He further explained how these developments led to arbitration finally being codified in the Arbitration and Conciliation Act, 1996 and the recent 2019 Amendments to the Act.

Further, he gave an overview of the three main types of Dispute Resolution under the 1996 Arbitration and Conciliation Act i.e. Arbitration, Conciliation and Mediation and delineated the differences among these modes of dispute resolution.

Prof. Bhat furthered the course by explaining in detail each of the three main types starting with Mediation. Mediation is a very informal method of dispute resolution as opposed to Arbitration and Conciliation. He further explained that there is no straight-jacket formula as to the procedure of mediation as it is highly informal. The use of mediation as a strategy for dispute resolution by the Family Courts was also mentioned by Prof. Bhat, along with the example of how the Hon'ble Supreme Court recently formed a committee to mediate between the protesting farmers and the Central Government on the newly enacted farm laws.

The discussion further moved to Conciliation as Prof. Bhat explained how conciliation is semi-formal as it is most often used in labour disputes to settle disputes between the employers and employees as the government sends representatives to solve the dispute. The conflicting parties are bound by the award in conciliation.

Speaking on arbitration, Prof. Bhat explained how arbitration is the most formal method of alternate dispute resolution. It involves the appointment of arbitrators, their qualification, certain procedures to be followed and hence arbitration is the most formal method of dispute resolution. He further explained how an award passed by the arbitrators stands on an equal footing to the orders or decrees of traditional courts of law.

The session then briefly included the role of tribunals in dispute resolution. In this context, Prof. Bhat gave a few examples of different tribunals across the country like National Green Tribunal (NGT), National Company Law Tribunal (NCLT), administrative tribunals and Consumer Dispute Redressal Forums.

The discussion was further steered towards contractual disputes and the role arbitration plays in instances of breach of contracts. Prof. Bhat explained the importance of arbitration clauses in commercial contracts. He further explained in detail by giving the example of employment contracts, how arbitration clauses operate and by giving different scenarios of arbitration. He then went on to state why arbitration is preferred

over regular courts. Cases of breach of contracts take a long time to get resolved in regular courts hence arbitration is preferred.

Appointment of arbitrators was also discussed as the professor explained how arbitrators are appointed only after mutual agreement regarding the arbitrator by both the disputing parties. It was further explained that the nature of disputes is also a crucial factor in the appointment of arbitrators as technical understanding of the matter in dispute is necessary in most cases. It was also explained that if there is arbitration clause in the contract, the parties to the contract cannot bypass arbitration and directly move to the court. Courts can be approached only after arbitration takes place. However, the High Courts do have a supervisory jurisdiction conferred on them by Article 227 of the Indian Constitution which can be used by the High Court to supervise over arbitrations.

Prof. Bhat ended the session by briefly discussing the role of international arbitration in commercial matters and the nature of such dispute resolutions processes.

Session 2: Arbitration: Law and Policy in India

Prof. (Dr.) Sairam Bhat, Professor of Law and Coordinator, CEERA, NLSIU

Prof. Bhat commenced the session by continuing on the subject of arbitration. The advantages of arbitration were discussed which also included a short question and answer session with the participants on what according to them were the advantages of arbitration as compared to regular courts. A few advantages of the process that were discussed included less time in dispute resolution, choice of arbitrators, choice of law, cost saving, flexible procedure, confidentiality of matters, expert decision making.

Prof. Bhat further went on to explain the need for arbitration and other alternate dispute resolution systems. He talked about how Government being the biggest employer in India had a lot of disputes to be settled with contractors, bidders, its own employees and other such disputes. Arbitration helped in speedy adjudication of the disputes. Prof. Bhat further talked about how arbitration can resolve a dispute and at the same time keep the business relations between the parties intact through an example of dispute arising in relation to joint ventures.

Further with the help of PowerPoint presentation, a problem question was posed to the participants with regard to the procedure of appointing arbitrators. How to appoint arbitrators when both parties do not agree on any one single person being appointed as the arbitrator? Prof. Bhat brought the session to a close by giving some food for thought to the participants on what matters can be arbitrable and what matters are not arbitrable.

Day 2: 21st January, 2021

Session 1: Foreign Awards and International Commercial Arbitration

Mr. Vikas Mahendra, Partner, Keystone Partners.

At the outset, Mr. Vikas Mahendra gave a brief overview the role of arbitration in dispute resolution by giving a practical example. He then went into the foundational concepts of international commercial arbitration. While deliberating on this theme, he explained the difference between the concepts venue of arbitration and seat of arbitration. It was explained that while the former has no legal implication whatsoever, the latter does. Venue refers to the geographical place where the arbitration proceeding is proposed to be conducted and the seat refers to the law of the country which will be applicable to the proceedings of arbitration.



In the discussion pertaining to the seat of arbitration, Mr. Mahendra posed a question to the participants with respect to why disputes between Indian entities are often based on a select list of seats for arbitration – popular seats being Singapore, Hong Kong, Paris, London. To this query it was opined that because these seats or legal systems carry a sense of familiarity as they most often belong to the common law system. And since the Indian legal framework is based on common law principles, the understanding of the law and application of it is easier for Indian entities/parties. Furthermore, since these legal systems are said to be developed, it is easier to rely on such frameworks

Following this, Mr. Mahendra deliberated upon the difference between Ad hoc arbitration and Institutional Arbitration. While the former is not administered by any institution, in the latter form of arbitration, there is the intervention of administering institution such as the International Chamber of Commerce, The London Centre for Institutional Arbitration, the Mumbai Centre for Institutional Arbitration, he also discussed the advantages of choosing an administering institution; some of the advantages being reputation, recognition, credibility, creating checks and controlling mechanisms, appointments are faster and ensuring accountability in concluding arbitrations successfully.

Mr. Mahendra then proceeded to discuss the role of courts in the arbitration process. He mentioned that the role of the courts is evident in the appointment of arbitrators, in granting urgent relief, providing interim measures in disputes, taking evidence and in the appointment of emergency arbitrators.

Following this, Mr. Mahendra ventured into the difference between Indian and international arbitration with specific reference to the advantages of the latter over the former in terms of procedure and outcomes. He mentioned that in International Arbitration, neutrality and independence is best served as the third person-chairman, usually of a neutral nationality. Furthermore, the procedure followed in international arbitration is a lot stricter and arbitrators ensure economical time management by not being recalcitrant to the parties. Other distinguishing characteristics of international arbitration that were discussed include the novel method of bulk hearing dates in International Commercial Arbitration, faster and efficient methods in document discovery, document production request, transcription and costs are strictly calculated.



Mr. Mahendra then basic concepts of challenging an arbitral award and enforcing an award and the difference between the two. As the former pertains to raising concerns or oppositions with regard to the validity of the award, the latter is about bringing the award into force. In deliberating upon these topics, he also briefly enumerated various grounds for challenging arbitral awards which inter alia include incapacity to contract, invalid arbitration agreement, error apparent on the face of it, award which shocks the conscience of the court and patently illegality.

On a concluding note, Mr. Mahendra briefly covered the importance of the New York Convention on the Enforcement of Arbitral Awards and the UNCITRAL Model Law on arbitration.

Session 2: Fundamentals and Recent Amendments to the Law of Arbitration in India.

Prof. (Dr.) Sairam Bhat, Professor of Law and Coordinator, CEERA, NLSIU; Mr. Rohith Kamath, Consultant, CEERA, NLSIU; Ms. Madhubanti Sadhya, Teaching Associate, NLSIU; Mr. Raghav Parthasarathy, Teaching Associate, NLSIU

The final session of the course was conducted in four parts by team members of CEERA. The first part was presided over by Mr. Rohith Kamath who deliberated on arbitration in the realm of international investment treaties and bilateral investment treaties. He gave a broad overview of the meaning of these treaties and how arbitration proceedings pertaining to disputes arising from such treaties are typically conducted. He then briefly covered the role of arbitration in international trade disputes and mentioned the importance of various clauses in international trade contracts and treaties such as the most favoured nation clause, the national treatment clause and the fair and equitable treatment clause. He then ventured into a discussion relating to cooperative society arbitrations with few examples of the same.

In the second part of the session, Ms. Madhubanti Sadhya discussed about the power of arbitral tribunals to grant interim relief. She first gave the participants an introduction to the meaning of interim relief/measures by distinguishing them from final orders, judgements or decrees of the courts. Interim relief typically refers to relief that parties to a dispute may seek during the course of a dispute before the court. In an arbitration

proceeding, interim relief may be sought after the setting up of the tribunal and before the passing of the final award by an application being made by either party to the dispute. She discussed in detail three broad categories of interim reliefs that an arbitral tribunal may pass i.e. Injunctions, Declarations and orders for Specific Performance. By giving examples of the same, Ms. Sadhya concluded this part of the session.

In the third part of the session, Mr. Raghav Parthasarathy has a detailed discussion on what may be arbitrable and what matters cannot be subject to resolution through arbitration. By posing questions to the participants, he discussed why certain matters cannot be subject to arbitration. He stated that in matters where there is a larger public interest involved, arbitration cannot be an effective mode of dispute resolution as an arbitration proceeding is brought into motion by the consent of only the parties to an arbitration agreement. He covered in brief matters relating to consumer rights, insolvency and bankruptcy petitions, matrimonial disputes, tenancy disputes, criminal matters and probate cases. In this backdrop, Mr. Parthasarathy concluded this part of the session by leaving it open to the participants to identify various kinds of legal matters and determine whether they can be arbitrable or not.



In the final part of the session, Prof. Sairam Bhat deliberated on the various types of arbitration such as foreign arbitration, domestic arbitration, commercial arbitration and non-commercial arbitration. He explained the basic differences between these concepts with examples. Following this, Prof Bhat briefly touched upon the issues and challenges

that arise in enforcement of arbitral awards and legal lacunae relating to the same. On a concluding note, he discussed instances where arbitration has not been a successful mechanism for dispute resolution.

Following this concluding session, a Learning Assessment was conducted to test the aptitude of the participants based on the sessions conducted. The Learning Assessment included 30 objective based questions covering various themes and topics discussed over the course of the 4 sessions of the programme.

Valedictory Session

The two-day course on the Law of Arbitration and Conciliation for the PGDM students of HAL Management Academy was concluded on a formal note with a valedictory session graced by the Chief Guest Prof. Sudhir Krishnaswamy, Vice Chancellor, NLSIU; the Guests of Honour, Shri Srikanth Sharma, GM, HAL, Shri P. S. Bhupati, Chief Manager (Design) HAL; Prof. (Dr.) Sairam Bhat, Professor of Law and Coordinator, CEERA, NLSIU. In the valedictory session, the guests delivered short speeches, addressing the students and audience. On a concluding note, the participants were distributed certificates and the best performers as identified on the outcome of the learning assessment were awarded prizes for their outstanding performance. On this note, the programme came to an end.


