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EMPOWERING TIMES



THINKING ALOUD

Desperately seeking justice...
a cry unheard
Jay

PODIUM

Dr Bharat Nain
Arbitrator & Executive
Coach



WE RECOMMEND

FAQs on Arbitration in India
Dr Bharat Nain &
Dr Aditya Nain

Dear Reader,

Since its inception in 1940, arbitration law in India has gone through a sea of change. The present arbitration law of 1996 aims at garnering interest among the business community to ensure addressal of commercial disputes in the best possible manner.

Arbitration as a method of Alternative Dispute Resolution (ADR) has been around for a long time. Though changes in law have made arbitration a popular alternative to litigation, it has to be kept in mind that most arbitration in India is ad-hoc in nature. Presently, India lacks institutions which are at par with organizations of international repute and therefore, the future of arbitration in India lies in using technology to encourage, strengthen and expedite dispute resolutions to ensure we make it to the US\$ 3 trillion mark and beyond.

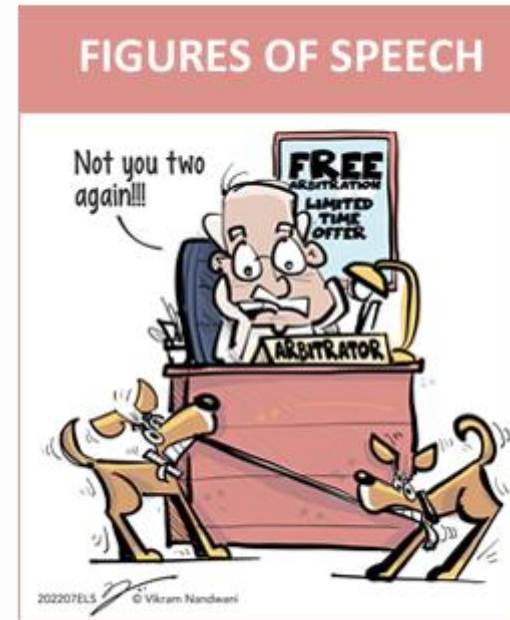
ET this month looks at *'Role of Arbitration in dispute resolution in India.'*

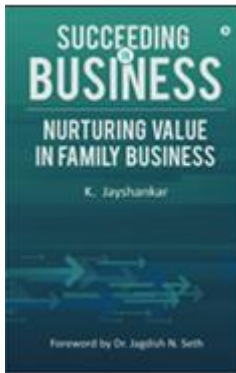
In the **Thinking Aloud** segment, **Jay** gives us a quick download on the dismal state of the Indian judiciary system and drives home the message that ADRs are the need of the hour. On the **Podium**, **Dr Bharat Nain**, Arbitrator & Executive Coach, shares some of the challenges that needs addressing to strengthen India's stance on arbitration and explains how technology can aid in some way. In the **We Recommend** section, we review **Dr Bharat Nain's & Dr Aditya Nain's** book - FAQs on Arbitration in India, which is a ready reckoner of the arbitration process in India.

In **Figures of Speech**, **Vikram's** toon settles disputes for all!

Please also [Click Here](#) to check out our Special issue of ET, which is a collation of selected themes that were featured over the years highlighting the changing landscape of the business world. This special edition has been well received and can be [Downloaded Here](#) for easy reading and is a collector's item.

As always, we value your opinion, so do let us know how you liked this issue. To read our previous issues, do visit the Resources section on the website or simply [Click Here](#). You can also follow us on [Facebook](#), [Twitter](#) & [LinkedIn](#) - where you can join our community to continue the dialogue with us!





Out Now!

Succeeding in Business: Nurturing Value in Family Business

What makes some family businesses grow from strength to strength? How do you ensure that value is created and not destroyed when a business passes hands from one generation to the next in the Indian context? How can old families incorporate new ideas to revitalize themselves? Is there a role for professional management in Indian family business?

*This book offers answers to the vexatious issues that families face in their growth journey. The pointers provided can be used as a guide for nurturing the business and to leverage the traditional strengths that family businesses possess. As a counsellor and trusted advisor, the author, **K. Jayshankar (Jay)**, has had a ring-side view of how family businesses have functioned. The practical insights drawn from his experience of four decades has been combined with conceptual elements to become a valuable primer for a family that wishes to succeed in the competitive marketplace that is India.*

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THINKING ALOUD

Desperately seeking justice ... a cry unheard Jay

It is often said that the courts of India are living testimony to the old saying that the 'Wheels of justice grind slow but grind fine'. But it begs two questions. One, why should it grind so slowly when everything else in the twenty-first century moves at electronic pace? Second, by grinding so slowly, isn't justice denied to the deserving - more so in the case of those who lack the means for a long judicial fight?

Despite the avowed proclamation of every government, and incumbent chief judicial officer, to clear the backlog of cases, there is no end in sight.

Exhibit 1 is the data on pending cases in India's courts: reportedly over 4.7 Crores (and counting), of which 73,000 were in the Supreme court. Exhibit 2 is the shocking data that 1,05,560 of these cases are over 30 years old! And, these are 2021 figures. Some more evidence on offer: the overall Judge-to-population ratio is 21 (considerably less than other nations). Besides, there is 34% vacancy of Judges in the 25 High Courts of India; the situation in the lower courts is of course far more dismal.

I will leave it to the judicial reforms experts to go into the root cause - and there have been many committees who have submitted reports in this regard. All of them say the obvious that there is an acute shortage of judges, procedures and processes are archaic, infrastructural challenges abound, etc. Indeed, it does appear that the winds of progress of this new century have given wide berth to the vital judicial arm of the State, which is still stuck in the colonial period in many ways.

What then is the right alternative? Wise and serious counsellors who understand the futility of the long-drawn judicial toil will always advise parties in conflict to take the more reasonable way out of the quicksand of enervating litigation. The Alternative Dispute Resolution (ADR) mechanism is slowly emerging as a worthwhile route to those who understand the ineffectiveness of the formal judicial track. The current Chief Justice of India, Justice NV Ramana, has emerged as a strong votary of this route, and has publicly raised the profile of this option

at every forum.

The ADR approach (chiefly Arbitration, Conciliation and Mediation) resonates well in the traditional context of rural India where Panchayats have always been seen as a forum for quick remedy to small, local disputes. The distinct nature of local community relationships is a big advantage for settling minor disputes, as community pressure is a powerful force to create compliance to the verdict of the Panchayat. The converse is the regressive outcome when local bodies refuse to appreciate, or even accept, modern legal requirements, and stick with customs that have no relevance to today's times. The notorious Khap Panchayats of northern India, are a case in point, as their mindsets are frozen in time, and refuse to adhere to modern legal tenets.

The Lok Adalat has also emerged as another channel for quick redressal of limited issues. From the early experimental days in Gujarat in 1982, this forum has grown rapidly after the statutory recognition in 1987. A relatively inexpensive channel, with procedural flexibility, it attempts to redress contentious matters through swift resolution between the parties, especially when it relates to minor disputes, be it commercial, civil or criminal (to a very narrow extent).

While Mediation and Conciliation are good channels of dispute redressal, Arbitration is the preferred route for settling many commercial tangles. While global deals often take this route as a default one, in India, greater awareness needs to be generated. Why bleed and die as a result of thousand cuts in an Indian court, when you can get a considered result from a qualified and fair third party (the Arbitrator) within a reasonable period (often less than a year). Studies show that a High Court judge - inundated with cases - is able on an average to hear a case for anything between 2 to 15 minutes in a day (depending on the location of the Bench). Contrast this with the speed with which an Arbitrator can announce his Award after hearing (and understanding the nuances) of a commercial case. Keep in mind, many commercial matters need a grasp of the subject in hand, and since the parties to a dispute can choose their Arbitrator (or a panel of arbitrators, as the case may be), it is highly likely that a person with the right background or specialisation, is selected with mutual agreement - rather than dragging a matter to its judicial grave, before a generalist judge. Additionally, a qualified Arbitrator need not be a legally qualified - and hence, procedures need not be wrapped in legalese.

However, as is too well known, deep seated acrimony and pompous egos often over-ride sane thought, and matters are still referred to the clogged judiciary. Battling long drawn out cases - and airing dirty linen in public - is still often chosen over a closed door, rational, confidential and expeditious conclusion of business disagreements. Hence, the need to create awareness of the advantages of the ADR process. Further, there is a conscious move to create International Arbitration and Mediation Centres in India, with Mumbai, Hyderabad and Delhi (apart from others) promoting this option (instead of incurring higher costs by going overseas). In fact,

India's first International Maritime Arbitration Centre is gearing up in Gandhinagar, Gujarat, as maritime matters have been taken up in the past at Singapore.

Of course, the ADR is not applicable in all cases. The Arbitration and Conciliation Act, 1996, has specified the areas where the law applies. Suffice it to say that there is enough ground one can cover for the benefits of these methods to accrue to contending parties.

On another note, the Indian avatar of Judge Judy, Aap Ki Kachcheri...Kiran ke Saath, ran out of steam after 3 seasons, unlike the 25 years' run that Judy Sheindlin had in America. Perhaps it is time now to revive this format of ADR and bring Kiran Bedi back - anything to clear the numbing backlog that has stupefied our courts!

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Podium

Dr Bharat Nain

Arbitrator & Executive Coach



Dr Bharat Nain is an Arbitrator and Founder-Director of an Executive Search firm - United Resource Consultants. He is a non-judicial corporate professional with over 40 years' experience. Dr Nain is an Engineer & an MBA holder, has completed his Fellowship in International Arbitration from the Singapore Institute of Arbitrators, and has a Membership from the Chartered Institute of Arbitrators, London.

In addition, Dr Nain is a Marshall Goldsmith Executive Coach. Alongside practicing as an arbitrator, Dr Nain is passionate about demystifying arbitration and has a non-legal, business-centric approach to the subject. Click [here](#) to know more about the book he has authored - FAQs on Arbitration in India. His passion is nurturing, facilitating & empowering youth.

ET: At the outset, please share with our readers what is Arbitration & Mediation?

Why is this an important part of addressing disputes in legal matters?

BN: Globally, in the sphere of business, one of the most widely practiced and decisive forms of Alternate Dispute Resolution (ADR) is Arbitration.

Briefly, Arbitration is a form of ADR in which the parties to a contract attempt to resolve their disputes - without having to approach the courts - through an arbitrator, whose job is to listen to the disputing parties, consider the documentary evidence presented, examine experts, and adjudicate on the dispute at hand. The arbitrator understands the contract, since the contract is king in arbitration, takes the perspectives and arguments of both sides into consideration, and issues a legally binding 'award' that contains specific actions meant to be carried out by the parties involved, leading to the resolution of the dispute(s) at hand.

One way in which we like to think about arbitration is that it is an ADR for the parties, to resolve disputes of the parties, with the aid of an arbitrator decided by the parties, employing procedural rules agreed between the parties.

Mediation is an ADR method in which the disputing parties - assisted by a mediator - voluntarily attempt to reach an amicable settlement to resolve their dispute. Like arbitration, mediation too does not involve approaching courts. However, unlike arbitration, mediation is non-adversarial. Nevertheless, it may be held in a non-formal manner - by reducing unnecessary protocols and complications - since it aims to amicably resolve the dispute at hand rather than adjudge a winner and a loser. While mediation is typically carried out through a professional mediator, the parties may choose to come to an agreement themselves without the help of a third-party mediator.

Arbitration and mediation are alternate dispute resolution modalities not only to resolve disputes in legal matters but in any sphere of activity where there is a contract between 2 or more parties. A lesser-known area of arbitration and mediation is in the resolution of family disputes linked to property and assets which are increasing all around us.

ET: It has been seen that foreign companies entering business contracts with Indian companies prefer a foreign arbitration centre. What are some of the challenges that needs addressing to strengthen India's stance on arbitration?

BN: International companies entering into business contracts with Indian companies prefer an international arbitration centre because the ecosystem of institutional arbitration in India is still comparatively sketchy when compared to its global counterparts. A large majority of arbitration in India is conducted through the ad-hoc modality which as the name suggests, can be comparatively unstructured without the institutional support and center of excellence kind of advantage that institutional arbitration provides. Whilst the Government of India is aware of this and is wanting to promote institutional arbitration, the reality on the ground is that the complete eco-system to support arbitration in totality, besides institutional arbitration, has a long way to go yet. The irony is that we as a nation have excellent world class arbitration professionals, but the concept of institutional arbitration has yet to take root.

ET: The pandemic has already changed the way judicial hearings are being conducted across the world. How has technology impacted arbitration in India?

BN: The pandemic has brought winds of change in arbitration like in all other spheres of business. One saw that

the High Courts in India and even the Supreme Court of India use technology and conduct online hearings. Similar developments have been observed in arbitration also. The challenges that need to be addressed are the adaptation of technology by some of the smaller counsels and legal firms servicing the arbitration domain. It has been clearly established that adaptation of technology to promote arbitration as an online dispute resolution methodology can be effective in a large number of cases and is very useful in cutting down overall time and costs in dispute resolution.

ET: From your experience please share a few examples of how arbitration has been used to resolve commercial disputes.

BN: Arbitration is increasingly a preferred mode of dispute resolution for a commercial and contracts dispute. Some of the well-known examples that come to mind immediately are the VODAFONE tax dispute that was settled through international arbitration, the CAIRN dispute linked to oil and gas drilling which got settled through international arbitration.

India is currently undergoing a massive infrastructure increase in the construction of highways across the country. All contract disputes linked to the National Highway Authority of India, NHAI, are being resolved through arbitration.

ET: 5. You have been a strong advocate of arbitration in India and the current Chief Justice of India has been a major proponent of this process too. Please tell us about your book called 'Arbitration in India'.

BN: Our book on Arbitration - FAQs on Arbitration in India is aimed at the corporate and business community to bring awareness that arbitration as a dispute resolution modality is simple where most of the parameters for the procedural aspects of arbitration can be decided BY parties, FOR the benefit of the parties or after discussion between THE parties.

A very little-known fact is that parties themselves can decide the powers to be given to the arbitral tribunal which effectively translates into a dispute resolution procedure that is party friendly and not merely in the hands of lawyers and the judicial fraternity.

A unique feature of the book is that it is in the FAQ format having a total of approximately 250 FAQs and has been written in simple English without any legalese.

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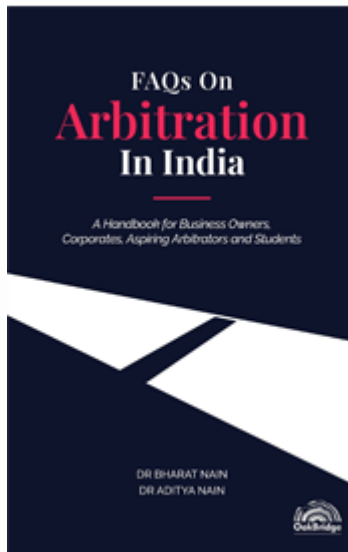
Mumbai Roti Bank, a non-profit, food rescue organization initiated by Roti Foundation, Mumbai, bridges the gap between hunger and excess food. Started in December 2017 under the able mentorship of former Director General of Police, Maharashtra, Mr. D. Sivanandhan, the organization aims to eliminate hunger, malnutrition and food wastage, many meals at a time. Help make a difference by calling +91 86555 80001 to donate food or by making a contribution.

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We Recommend

FAQs on Arbitration in India Dr Bharat Nain & Dr Aditya Nain



Have you ever found yourself reading legal articles or even trying to understand courtroom situations in the news that left you lost in thoughts just because of the endless use of legal jargons? The legal environment is not particularly classy as seen in the Netflix courtroom series - Suits. In fact, the thought of the Indian legal system might just leave a bad taste in the mouth!

Well, interpreting the world of law can baffle some of us and be daunting at the same time. However, to ease the challenges in understanding corporate law, arbitration expert, Dr Bharat Nain and investment consultant, Dr Aditya Nain, have put together a book, FAQs on Arbitration in India. Dr Bharat Nain is a trained professional arbitrator and is enthusiastic about demystifying arbitration offering a solution driven approach to arbitration. Dr Aditya Nain is an expert in investments and has delivered courses in philosophy and logic in universities for over a decade. The two authors have put their combined years of knowledge into the arbitration subject and has published this book in a Q&A format, which is easy and simple to

navigate.

The read stresses upon the expensive and long nature of corporate disputes that can run over years and can weigh down on productivity and profits. The go-to solution is Alternative Dispute Resolution (ADR) and the widely practiced, decisive form of ADR is arbitration. Most business owners settle disputes by directly approaching lawyers, who often, are unaware of arbitration. When all fails, litigation might be the way out, but not before trying out arbitration and mediation processes. As a primer, the book is divided into various categories. Starting out at the basics of arbitration, the process and steps, the parties involved and the importance of contracts, the concept of mediation and challenges in this arbitration process, the book succeeds in spreading nuggets of knowledge of corporate law. A complete procedural arbitration flowchart given in the book helps understand the process better.

The arbitration scenario and process are quite different when compared to global benchmarks and best practices. Arbitration in India has a long way to go before it reaches a maturity stage. Nevertheless, the authors are hopeful that arbitration will indeed emerge as the go-to solution for corporate and civil disputes, if speed, flexibility, and cost are important considerations.

The authors ensure that the objective of this book is achieved - to make it simple for readers to understand corporate arbitration laws, the way they work and how the whole corporate legal system is tied together through easy dispute solving mechanisms. One would have wished to see examples (like case studies as we know it when examining law) of India Inc., where meditations - with reasons - led to a happy ending rather than full blown out situations. But the authors are silent in this regard ensuring to meet the objective of the book. The read is a good primer for those who aspire to become arbitrators. For others, especially students, this book will surely help you understand and clear the foggy, terrifying world of arbitration law.

Click [here](#) to get a copy of the book.

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THROUGH THE LENS



Bird watcher, **Rupesh Balsara** spots the Chestnut-crowned Warbler which is an altitudinal migrant that breeds at high elevations in the Himalayas, eastwards to central China. These birds occasionally move with mixed flocks and are found in natural habitats which are sub-tropical or tropical moist lowland forests. Warblers have a mixed diet of insects and fruits.

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