EDITORIAL NOTE

*Divyansh Sharma**

It gives us immense pleasure to announce the release of this issue of the *NUJS Journal on Dispute Resolution* ('JODR'). Founded with the longstanding support from the Indian Mediation Week ('IMW'), JODR seeks to produce quality scholarship in the field of dispute resolution.

The evolution of the Indian legal framework over the past decade has brought to light the profound importance of scholarship on critically unregulated issues. Notably, legal literature has been instrumental in shaping legislative policy and judicial decision-making, such as in the historic ruling of *Navtej Johar v. Union of India*, where the Supreme Court of India sought support from various articles in the NUJS Law Review to bolster its stance on non-discrimination and privacy. Such reliance is a testament to the significance of student-run academic journals in the Indian legal landscape. JODR is glad to be a part of such a vibrant student-led academic community.

Over the last few years, India has witnessed a remarkable shift in the field of dispute resolution, with increasing importance and focus on Alternative Dispute Resolution ('ADR'). Chief Justice N.V. Ramana recently spoke at the India-Singapore Mediation Summit on '*Mediation for Everyone: Realizing Mediation's Potential in India'* and emphasized the importance of making mediation mandatory in order to reduce the backlog of cases and save costs and time. Much in line with this pleasant realisation of the potency of ADR, the Indian dispute resolution framework is on a journey of resplendent transformation. The importance of meaningful literature to inform contemporary debates has become more pronounced at this time than any other.

This issue of JODR comprises five manuscripts. With quality contributions on the less discussed issues such as the Early Neutral Evaluation in India to the oft-debated ones such as Double Hatting in international arbitration, the issue has been carefully curated by the Editorial Board keeping in mind the highest standards of academic literature.

In the first manuscript titled *Mandatory Pre-Litigation 'Commercial' Mediation: Turkey's Lessons for India*, Mr. Abhijeet Shrivastava makes a definitive case for mandatory pre-litigation mediation in commercial disputes in India. The article first posits policy and juridical justifications for this collaborative dispute resolution mechanism. Thereafter, a comparative analysis is undertaken between the legislative frameworks regarding mandatory litigation in India and the Republic of Turkey. The study reveals that the framework under the Commercial Courts Act in India lacks on multiple grounds when compared to its international counterparts. Turkey's efforts to mandate mediation were backed by extensive efforts to institutionalise mediation and impart professional training to mediators to ensure quality control and optimise public faith in the process. Noting this, the article makes a case for incorporating these changes in India and analyses the practical problems associated with the current regulations governing the area.

Thereafter, Mr. Abhik Chakraborty, in his note, *Multiple Arbitrations Arising from a Single Agreement: Perhaps Undesirable, but Certainly Lawful?*, critiques the Delhi High Court

*Divyansh Sharma, Editor-in-Chief, NUJS Journal on Dispute Resolution, 2021-22.

ruling in *Gammon India v. National Highways Authority of India.* The note analyses the ruling from the perspective of the principle of party autonomy and then discusses the associated practical problems surrounding enforcement of arbitral awards on the ground of 'public policy' in India. The reliance of the Delhi High Court on the previous Supreme Court ruling of *Dolphin Drillings* has also been argued to be questionable in this piece. Ultimately, the author calls for balancing the interests of party autonomy with the genuine problems that arise as a result of multiple arbitrations arising under a single contract.

The next piece by Mr. Adhiraj Lath, *Hang up the Double Hat: Safeguarding Legitimacy in Investment Arbitration*, delves into the question of whether double-hatting of arbitrators and counsels in investment arbitration compromises independence and impartiality, the two imperative pillars of both civil and common-law adjudication processes. The article comprehensively lays down its contestations with the practice of double hatting, such as that of issue conflicts, and draws out the differential impact of these conflicts in investment arbitration *vis-à-vis* commercial arbitration. It also suggests appropriate safeguards that can be implemented to avoid the conflicts originating in double hatting and help preserve the legitimacy of investment arbitration.

In the next manuscript, *International Mediation in Trademark Keying Disputes*, K. Prajna Kariappa invites us to consider trademark keying from an intellectual property perspective and question whether such disputes can be categorized as international commercial disputes. The paper discusses the suitability of mediation as an effective dispute resolution mechanism and deliberates upon the applicability of the Singapore Mediation Convention to such disputes. In this attempt, the author comprehensively studies the background of the Convention and its relevant features that make its adoption for trademark disputes viable. The piece argues that the procedural flexibility of the Singapore Mediation Convention allows the parties to advantageously use the instrument to enforce their mediated settlements.

The last manuscript by Ms. Mehak Kumar and Mr. Abhinav Gupta, *Early Neutral Evaluation: A Case for Incorporation as an Alternative Dispute Resolution Mechanism in India*, makes a definitive case for Early Neutral Evaluation ('ENE') mechanism as a compulsory step before initiation of civil proceedings. The paper details the procedure of ENE and comprehensively outlines its advantages. It distinguishes this mechanism from mediation and studies the qualifications under which ENE mechanism can be justified under the framework of European Convention of Human Rights. Thereafter, noting the rampant pendency of civil cases in the country, the authors make a compelling case for the adoption of ENE in India. Based upon the analysis in the initial parts, the authors finally propose a model to adopt ENE procedure under the Civil Procedure Code of India.

This issue of JODR follows the high scholarship standards that we started out with. We express utmost gratitude to our Board of Advisors, our Vice-Chancellor Prof (Dr.) N.K. Chakrabarti, JODR's Faculty Advisor, Mr. Atul Alexander, as well as all the authors who contributed to our issue with their invaluable literature. We hope you find the contributions in the following pages stimulating and insightful.