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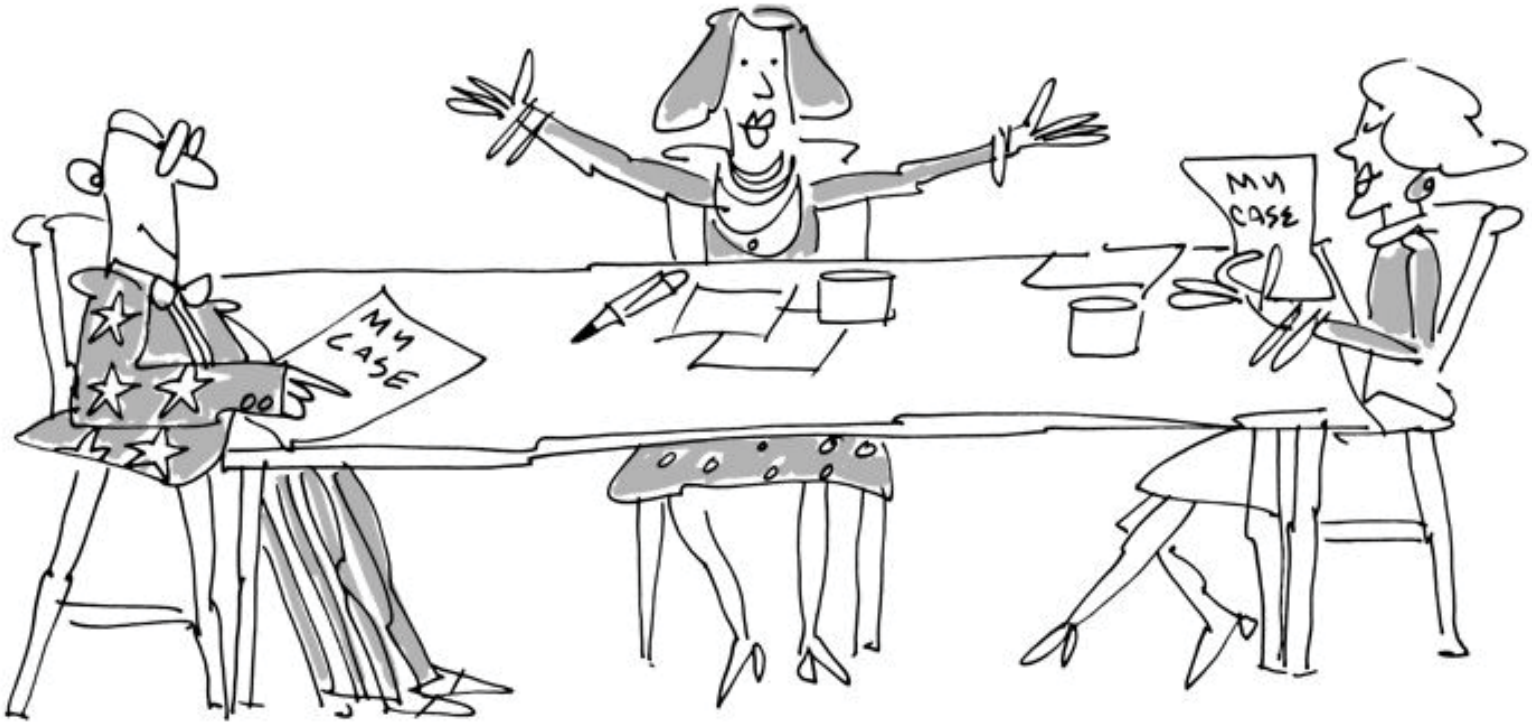

ACADR
ALLIANCE CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

DECEMBER 2021

CONTEMPARARY ISSUES WITHIN THE REALMS OF ALTERNATIVE DISPUTE RESOLUTION

MESSAGE FROM THE PRO VICE CHANCELLOR

I take this opportunity to congratulate the Alliance Centre for Alternate Dispute Resolution, Alliance School of Law, Alliance University, Bangalore for bringing out the inaugural issue of ACADR News Letter 2021. I hope that this nice and noble attempt made by the centre shall encapsulate and present various research activities, events, modern day developments pertaining to ADR tools and techniques in a very analytical and lucid manner.

Congratulations to the entire Editorial Team!

Prof (Dr.) Puneet Cariappa
Pro-Vice-Chancellor, Alliance University
Bangalore

MESSAGE FROM THE DEAN

It is a matter of pride and pleasure that Alliance Centre for Alternate Dispute Resolution, Alliance School of Law, Alliance University, Bangalore has come out with ACADR News Letter 2021. The ACADR Centre has come into existence to contribute in magnificent way to the vision of the Alliance School of Law, Alliance University thereby paving the way for developing human beings who shall be technically sound, socially relevant and emotionally strong by imbibing the requisite skills of alternative dispute resolution methods like active listening, understanding other's point of view, discussions, empathy, rational thinking, solution-oriented approach, analytical understanding, and community interest. I am sure that the ACADR E-Newsletter shall become a force to reckon with thereby providing the academic platform for academicians, lawyers, students, policy makers and other stakeholders concerned to express their views in the form of though provoing research in the area of Alternate dispute resolution tools and techniques which will certainly cement the foundations of such outside court settlement
process in future.

I Congratulate the entire editorial team and wish the centre astounding success in times to come!

Prof (Dr.) Kiran D. Gardner
Professor & Dean, Alliance School of Law,
Alliance University, Bangalore

PREFACE

Over a period of time, we have found that methods like Arbitration, Conciliation, Mediation, and negotiation have been of great help in solving disputes between parties. All these methods of dispute resolution are simple, informal, legally recognised and are of great value. Dispute Resolution through alternative modes is being given a chance by the disputing parties because of the time-consuming tactics and the delay in the courts and thereby giving rise to denial of justice many a tome and opt.

Moreover, Alternative Dispute Resolution (ADR) methods take much less time to solve disputes and are more of an informal way unlike litigation, which is mostly based on the laws made and their procedure. They normally do not require the presence of learned counsels for solving their dispute, i.e. the third person necessary to solve the dispute between parties need not necessarily be a learned counsel. They have thus raised great expectations and hopes in the minds of the litigants for a more satisfactory, acceptable and early resolution of their disputes.

'Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System' try to give a good and detailed overview of the ADR Systems of India in particular and the world over in general. This book will discuss the important aspects of the ADR methods, like judicial intervention, the usefulness of these methods for the resolution of criminal matters, the efficiency of methods, etc. It also covers a comparative analysis of the ADR mechanism in the Indian legal system with foreign laws. This news letter therefore brings out all such time tested tools and tachniques thereby enlightening the reader to have more assimilation of all dimensions of these ADR methods. I hope that the readers shall surely be benifited having been through the thought provoking analytical literature provided herein this edition.

Dr.Rahul Mishra
(Director-ACADR)

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ROLE OF MEDIATION IN MEDICAL MALPRACTICES IN INDIA

Sagarnil Ghosh
Amity University Kolkata

Introduction

In today's contemporary world of medical evolution and prosperity, one aspect which cannot be hidden behind, rather which creates a havoc in medical jurisprudence is medical negligence or actus of medical malpractice. To bring out the connotation in simpler terms, medical malpractice generally involves a kind of fallacy done by a medical practitioner, which in turn make it possible for the patient to convalesce compensation for their due sufferance. A medical practitioner is bound by code of conduct, quality of care and standards while diagnosing their patients, and when any action exceeds beyond those permitted standards, then comes the space for a fallacy . A breach of any of the responsibilities of the medical practitioner, provides the patient the right to sue for negligence. If an aggrieved person wishes to take actions against the negligent act of medical practitioner, then following options can be explored:

a) he may approach judicial or quasi-judicial authority like civil courts, consumer forums for mone tary compensation against the negligent act under constitutional law, law of contract, law of torts or the Consumer Protection Act (CPA).
b) he may file a criminal complaint under the relevant provsions of the Indian Penal Code (IPC).
c) he may approach to the regulatory authorities for disciplinary action against a negligent medical practitioner.

Healthcare Litigation: A Bygone Mechanism

Litigation although being a traditional method of adjudicating disputes, involves a matter of being a less effective mechanism after the invention of ADR , in matters of conflict of interests. Some important deficiecies in the effectiveness of Litigation are as follows:

1. An Antagonistic Atmosphere
2. Enforcement or order/ decree related issues
3. Comparatively high on expenses
4. Lack of flexibility in solutions
5. Matters of compensation are somewhat uncer tain in nature
6. Delays due to procedural flaws

Mediation: An Alternative Recourse

Mediation, because of its unique features, has a lot of ability to deal with tortious matters like, medical negligence or malpractice, and it's gaining base in a lot of nations because of its good track record of raising party satisfaction and lowering costs. Mediation is a voluntary process in which both parties to a dispute agree to engage in an interactive, structured discussion of the issue at hand with the assistance of a trained neutral third party who assists in reaching a resolution.

Mediation aims to improve the chances of closure, establish channels of communication and restore relationships, and find adaptable and realistic solutions to the problem in a timely and cost-effective manner. Therefore, it can be said that the mediation and medicine both has same goal i.e. healing. If disputing parties involved themselves in litigation, either party will win the case.

Mediation's informal atmosphere encourages innovative solutions such as expressions of sorrow, confessions of error, and the implementation of new safety standards. Even if the mediation process fails or the parties decide to end it in the middle, the mediation process will have clarified a number of concerns. As a result, it has been observed that the collaborative and talkative resolution of medical malpractice or negligence matters through the mediation process is far more effective than the combative litigation strategy.

Conclusion

There is a need to revamp India's approach to dealing with medical malpractice. The healthcare sector is burdened even more by the systemic flaws in the litigation process, such as judicial discretion, unclear payments, lengthy delays, and high litigation expenses. In light of this, central government legislation mandating medical mediation may be the best way to address the issue and the parties participated in the mediation will have more control over the process. Education on legal processes would also be one of the most effective ways to combat the current pro-litigation climate and usher in an era of ADR and Mediation.

HOW THE PANDEMIC CHANGED ADR

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In 2020, the world was hit by the Covid-19 pandemic because of which the governments were forced to shut everything down. All the Schools, Institutions, Government Offices, etc. were closed off to the people to curb the spread of the pandemic. But a bigger question arose about the Indian Judiciary. Because of the lockdown imposed the access to justice was not possible for citizens. The Indian judicial system is known to be very slow because of the lack of infrastructure and too much load of cases. The judiciary in the pandemic to solve this problem took a massive leap ahead by starting virtual hearing. But this was not the only massive step taken by the Indian legal system, in the pandemic the Alternate Dispute Resolution (ADR) Mechanisms were also picking up speed.

ADR means an out-of-court resolution by the two parties. It is a very effective method to get the case solved without the delay or hassle of the court. There are many forms of ADR like Mediation, Conciliation, Arbitration, Negotiation, and Lok Adalat. The idea of ADR is not new but it has been present in Indian society for centuries where in the past the elders of a village used to resolve the disputes between people.

Before the Covid pandemic, the ADR cases had a stipulated time limit under Section 29A of the Arbitration and Conciliation Act, where the award was to be awarded within the 12 months starting from the date on which the reference was made to the Arbitration Tribunal. This was a particular concern to the litigators because of the lockdowns. But understanding the hardships faced the Supreme court took Suo Motu cognizance of the matter and ordered that the period of limitation be extended till further orders.

The Covid-19 has brought a new era in the field of ADR. With the help of technology, disputes between the parties can be solved more easily and effectively. In India, two main legislations deal with ADR which are The Legal Services Authority Act, 1987 and Arbitration and Conciliation Act, 1996. Because of the pandemic, Online Dispute Resolution (ODR) has also been popularized which is the term used for ADR when it is through E-mails or any other online mode. The Delhi International Arbitration Centre also announced, because of the lockdowns imposed in-country by the government that it is appropriate to conduct proceedings online and file through online modes following the provisions under Section 19 Determination of Rules of Procedure) of the Arbitration and Conciliation Act. The idea of ODR was also not a new one but it was discussed by the report of United Nations Commissions on International Trade Law's Forty-Fifth session in 2012.

Benefits of Alternate Dispute Resolution

The shift to ADR is more time-efficient than the hassle of court cases. Both the parties to the dispute want to resolve it as soon as possible. With the help of technology, the process will be more efficient because the parties and arbitrators in case of Arbitration can have meetings online. in the case of Mediation, it will be possible for the mediator to engage in mutually a reeable terms. It will be more time and money-efficient. Another very benefit ofADR is its flexibility with the mode of hearing. During the pandemic as the cities wereunder lockdown, the only method was video conferencing which can be used as there is no particular mode prescribed under Section 19 but on the other hand, it gives the flexibility of determining the rules of procedure.

The Final is the health benefit, as the cases of Covid are decreasing and vaccination is in the process the world is returning to normalcy but the pandemic is still not fully eradicated. Many European countries have seen the re-emergence of Covid because of the lack of precautions.

Conclusion

The field of ADR because of the Covid pandemic has seen a surge and it has opened new horizons for the field as the technology is being introduced to the field of Indian Judiciary. After the pandemic people want to resolve their disputes without the problems of a court case apart from the expenditure that goes into a full-fledged case and the best way to do that is ADR. Arbitration through online mode has been accepted for a long time and with the hardships brought by the pandemic, it was also introduced domestically and should be followed even after the courts return to normal schedule.

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IMPACT OF COVID-19 PANDEMIC ON ADR

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The unprecedented pandemic and the lockdown imposed to curb it, created a never-before seen situation. With everybody at home but the disputes still pending, it opened a new avenue for resolving the conflict through online method. The parties, the advocates, the judges, the arbitrators, etc. can now access each other in a virtual court or a virtual arbitration tribunal or a virtual mediation centre. The online dispute mechanism (ODR) saw a rise with prolonged lockdown and minimal physical presence. Note1 In ADR, a similar paradigm shift was noticed. At the very instance, ICC has issued Guidance to ensure that the major feature of ADR of cost-effective and faster resolution remains intact with usage of audio-conferencing and video-conferencing for hearings and to ensure security while using such platforms. Even in India, ADR shifted to online mode with online lok adalat, SAMA (Space for Resolution), Indian Council of Arbitration (ICA) and adoption of video conferencing. ADR appoints a different mechanism from formal litigation procedure and its adversarial nature. It can be seen under Arbitration and Conciliation Act, 1996 whereby the tribunal or conciliator is not bound by CPC or IEA4 and the parties can agree on the procedure or the tribunal can conduct the proceeding in any manner. In similar manner, the Legal Services Authority Act, 1987 provides for Permanent Lok Adalats5. The uncodified mediation procedure remains flexible too. The Supreme Court in Re: Cognizance of Extension of Limitation6, extended the limitation period and aided in fast-track arbitration and ADR mechanisms. The change was brought by many institutions with conducting proceedings online, electronic submission of docments, presenting evidences, written statements, oral hearings, virtual crossexaminational and award or negotiated agreement. It ensured that the conflict does remain delayed for months. In turn, it proved as a cost-effective and faster method with help from technology with shift to digital signatures, and electronic records even in ADR. It can be seen in the case Harayana Space v. M/S Pan India, where the apex court acknowledged conducting the proceedings either online or physical or in Bright Simons v. Sprox-il, where the Delhi High Court took note of the signifi-cance of electronic communications and records for applications, filing of reply, statements, etc. The accel-erated virtual (and later on hybrid mechanism) usage of tools, technological medium and techniques have impacted ADR for post-COVID as well. But with virtual hearing in ADR, there are certain embedded lacunas. One of the underlining principles of ADR is the confidentiality which means that everything during the procedure is confidential except the final award or negotiated or mediated agreement reached. This becomes an issue in online forum when privacy can be breached through unauthorized recordings and causing adverse repercussions. This, further, gives rise to cyber security issues with stealing of data, and transmitting it to third-party. Another issue that arises is in regard to availability of technology for virtual ADR. The issues like the dearth of appropriate equipment necessary, connectivity issues and knowledge of the software or platform arises and creates hindrances in the smooth running of the virtual ADR. Even with certain negative impact of virtual ADR, it cannot be ignored or brushed away that COVID-19 had paved a way for parties to move towards virtual or hybrid ADR for disposal of disputes at a speedy rate with flexibility in travelling cost, documentations, and other such lengthy procedures are cut down. What can be clearly discerned and conclued is that as the advancement in technology is escalating, so is the need to adopt ADR to such changes by culminating them within the framework.

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ARBITRATION PROCEDURE & PRACTICES IN INDIA

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Introduction

The procedure of settling question outside the Court is not new. Since quite a while in India social orders have been utilizing non-legal and native techniques to determine conflicts. With the progression of time there is a broad advancement and utilization of Alternative Dispute Resolution (ADR). Arbitration was in practices even under the watchful eye of the arranged law came into power. Settling a question by alluding to an outsider was notable in antiquated and middle age India.

As per Black's Law Dictionary, "Arbitration by and by is the examination and assurance of a matter or matters of contrast between battling parties, by at least one informal people, picked by the gatherings. Obligatory mediation is what happens when the assent of one of the gatherings is implemented by legal arrangement. Intentional mediation is what happens by shared and free assent of the gatherings."

India Adopted the Arbitration & Conciliation Law in 1996. India is additionally involved with the New York Convention (on implementation of arbitration award). Sec 89 of the CPC, 1908 additionally upholds the ADR system and urges gatherings to settle disputes outside the court. The Courts in India additionally completely support arbitration proceedings.

Advantages & Disadvantages of Commercial Arbitration

I. Advantages are as follow:-

1. Goal time, which is almost in every case considerably not exactly the time taken in falling back on conventional dispute resolution techniques.
2. Opportunity of parties to pick the method under which their dispute is to be settled, in this way saving time. This turns out to be especially pertnent in more unpredictable disputes where the parties can set block dates for trial and hearing, which is a major advantage over the court system where trials can continue for as long as to a decade, with numerous adjudicators hearing the dispute at various stages.
3. Ability of parties to select arbitrators with expert knowledge, which is especially valuable in disputes including specialized issue. In court procedures, the parties may end up under the watchful eye of courts which do not have adequate involvement with taking care of business disputes.
2. Absence of an expert mediation bar. This implies that hearings in certain arbitrations are led after court hours, or over the course of the ends of the week for a couple of hours every day, with hear ings spread out more than a while. This issue has been mostly cured by the severe courses of events currently forced by law to finish mediation procedures. There has additionally been expanded specialization among attorneys in mediation as of late.
3. Absence of legitimate record offices in India, bringing about hearings taking altogether more thanthey ought to. This essentially diminishes the expense and time efficiencies of mediation.

II. Disadvantages are as follow:

1. Court impedance. Truly, this was a critical inconvenience of arbitration disputes in India however this has been helped somewhat with ongoing legislative measures and judicial decisions. Be that as it may, in the restricted conditions where legal intercession is allowed, it keeps on being an issue fundamentally because of the extreme build-up of cases, and the time taken to discard matters, regardless of whether on merits the result is supportive of pro-arbitration.
2. Absence of an expert mediation bar. This implies that hearings in certain arbitrations are led after court hours, or over the course of the ends of the week for a couple of hours every day, with hearings spread out more than a while. This issue has been mostly cured by the severe courses of events currently forced by law to finish mediation proce dures.There has additionally been expanded special ization among attorneys in mediation as of late.
3. Absence of legitimate record offices in India, bringing about hearings taking altogether more than they ought to. This essentially diminishes the expense and time efficiencies of mediation.

Types of Arbitration

1. Institutional Arbitration: Institutional Arbitration is a specific body with a perpetual focus taking an interest and performing the function of helping and overseeing in the arbitral interaction as given by the principles of the foundation. These organizations offer authoritative help to the parties. Institutional arbitration simply gives the stage to the interaction. parties notice in their mediation condition of the agreement whether they need to choose institutional arbitration or ad hoc arbitration.

2. Ad hoc Arbitration: An ad hoc arbitration is one that is not regulated by an organization. The parties are required to decide all of the aspects of the arbitration, like the quantity of judges, way of their arrangement, the methodology for arrangement, strategy for leading the arbitration. Ad hoc arbitration is not directed by others. The actual parties need to make their own game plan for choice of a referee, assignment of rules, the pertinence of law, strategy, and regulatory help. These procedures are less expensive, adaptable, and quicker than the Institutional mediation and cost less charges.

3. **Domestic and International Arbitration:** Domestic Arbitration happens in India. The arbitration is a topic of the agreement and benefits of the disputes are totally administered by Indian law and the reason for activity emerges completely in India. The two parties are from the domestic country and all the procedure of the arbitration are acted in their own country or constantly occupant, or home country. International Commercial Arbitration alludes to the arbitral continuing which happens either in India or outside the country or when the parties or subject matter of the arbitration have a place with a foreign party. The worldwide business arbitration has its arrangement of rules on the use of the matter. Different overall sets of laws have their own particular guidelines for domestic & international arbitration.On the off chance that under arbitration arrangement it is referenced, the arbitration is to be regulated by arbitral establishment, the standards of that foundation become part of the intervention provision by suggestion. The principle of arbitral court incorporates ability to decide the acceptability, importance, materiality, and weight of any evidence.

Rules of procedure in arbitration

There are no such principles on the method for directing the mediation/arbitration procedures. The parties are allowed to concede to the technique to be trailed by the arbitral councils in directing its procedures. In the event that no such technique concurred by the parties, the council is approved to lead the procedures in such a way it considers appropriate. The arbitral court is explicitly not bound to apply any provisions of the Civil Procedure Code 1908 and the Evidence Act, 1872.

Evidence

The parties are allowed to concede to the rules of gathering & submitting evidence/confirmations. On the off chance that they are not getting concede to these issues, the court has the optional ability to decide how proof might be accumulated and submitted to it. The arbitral council can take both narrative and oral proof on record. While considering proof court needed to notice the essential standard of normal equity.

Arbitration agreements

1. **Substantive/formal prerequisites:** The substantive and formal necessities of an arbitration arrangement are contained in section 7 of the Arbitration Act. An arbitration arrangement should be recorded as a hard copy, and should be contained in one of the following:

1. Documents signed/endorsed by the parties.
2. A trade of correspondence which gives a record of the arrangement.
3. A trade of explanations of guarantee and guard containing an undisputed acknowledgment of the arrangement.

2. Separate arbitration understanding: The law does not order a different arbitration arrangement. An arbitration understanding can either be via a different arrangement, as a provision in a bigger arrangement or can be joined via reference to a report containing a viable mediation proviso or arrangement. To fuse a mediation provision by reference,the reference to the next record should obviously show an expectation to fuse the intervention statement into the agreement; an overall reference to an alternate archive will not consolidate a discretion contion.

Place of arbitration

The parties are allowed to concede to the spot of arbitration according to their accommodation. On the off chance that neglected to endless supply of arbitration, the arbitral court will decide the spot of arbitration considering the conditions of case including accommodation of the parties.

Statement of guarantee and protections

The claimant needs to express the realities supporting their case, raise the focuses at issues and help or cure tried to the respondent inside the timeframe specified by the parties or dictated by the arbitral court and the respondent answers recording an answer against the mediation case of petitioner that indicates the important realities and accessible guards to the statement of case. A party can alter or enhance his case and safeguard all through arbitral procedures, except if the court considers it unacceptable to permit the change or supplement in regard of the deferral in making it.

Arbitrators

The parties are allowed to concede to the quantity of arbitrators, in spite of the fact that there should be an odd number. Nonetheless, mediation arrangements that accommodate a significantly number of referees are not consequently invalid. Around there, the named referees can choose a managing arbitrator bringing the council up to a lopsided number of mediators, either toward the beginning of procedures or when there is a distinction of assessment between them. On the off chance that the considerably number of mediators concur and give a typical honour, there is no disappointment of procedures and their basic assessment will win. On the off chance that the gatherings do not indicate the quantity of authorities, the arbitral council will comprise of a sole arbitrator.

Qualification & characteristics of Arbitrators

An arbitrator does not need to be authorized to rehearse in India, and the law perceives those unfamiliar qualified attorneys and specialized expert, among others, can fill in as mediators. Referees are delegated as concurred by the parties and the parties are allowed to decide their qualifications & ethnicity. Compliant with the passing of the Arbitration and Conciliation (Amendment) Act, 2021 (2021 Amendment),no qualifications & attributes of arbitrators or mediators are recommended by resolution. The 2021 Amendment deletes Schedule VIII of the Arbitration Act, which appeared to, in addition to other things, limit the capacity of unfamiliar qualified attorneys from going about as referees in India. For instance, Schedule VIII seemed to endorse prerequisites like least insight, information on Indian laws, etc., as preconditions for people to be named as arbitrators. he 2021 Amendment Act, experience, and principles for the accreditation of arbitrators will be indicated by guidelines passed by the Arbitration Council of India (section 43J, Arbitration Act).

Court Assistance

Nearby sub-ordinate courts can assist councils in arbitration procedures. This incorporates the force of providing interim order and arrangement of arbitrator if the parties cannot concur on the arrangement of mediator. In the party makes any default, will not give evidence or blameworthy of scorn of arbitral procedures will be dependent upon punishments or discipline by the order of the court on the portrayal of arbitral council.

Conclusion

Even subsequent to having an edge over the ad hoc form of arbitration in India the parties do not lean toward the institutional arbitration. There are sure reasons why these organizations are not acquiring fame, there is need to change the construction these foundations are working in India. The 2019 Revision Act is a stage forward in advancing the institutional arbitration in India alongside smoothing out and defeating a portion of the difficulties looked after the establishment of the 2015 Alteration Act. This article concluded that the above all else significant advance in the arbitral proceedings is the discretion statement which will be perseveringly outlined while settling on the mediation condition or arbitration arrangement. Mediation upholds the party's self-governance. During the outlining of the mediation conditions, parties need to choose the arrangement of the arbitrator or mediator, number of referees, rules appropriate in the arbitration. After the last arbitration award, it is implemented by the law relevant in such jurisdiction of the arbitration. Notwithstanding, there are as yet certain provisos in the Amendment Act 2019, which did not mull over certain suggestions by the Board quite on fusing the International Bar Association (IBA) Rules on Evidence. There is far to go while managing the degree, creation, working of Arbitration Council of India (ACI). India has laws and guideline with respect to discretion however there is need for executing something similar.

CONSUMER DISPUTES AND MEDIATION: A VIABLE SOLUTION?

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Indian consumer courts are burdened by an excessive workload of unresolved disputes, the lack of an effective and efficient consumer redress system, leading to a lack of consumer confidence in the system of administration of justice. Additionally, consumers, especially those with low incomes, find it difficult and expensive to resolve disputes because most of their claims are of low value. For a long time, alternative redress mechanisms for consumer disputes have been the subject of discussion due to the enormous pendency of cases before the National, State commission and the District Forum. Therefore, there was a need to have other dispute resolution mechanisms to hold consumers accountable, which was encouraged by the implementation of the Consumer Protection Act of 2019 ("CPA)" and the Consumer Protection (Mediation) rules 2020. The CPA pioneered the concept of mediation as a redressal tool for the resolution of consumer disputes. Consumer court parties now have the option of using mediation as a redress mechanism for their disputes, at any time after the claim has been acknowledged U/S 74 to 80 of the CPA contain provisions relating to "mediation" as an alternative dispute resolution tool, the objective of which is to provide a legal basis for the resolution of consumer disputes via mediation, making the process less burdensome, simple and fast. In addition, the mediator appointed by the National or State Consumer Disputes Redressal Commission or the District Consumer Disputes Redressal Forum would help the parties identify problems by reducing misunderstandings, clarifying priorities and exploring areas of compromise. In practice, this approach may not be as feasible for consumers who are the primary stakeholders in this scenario. This is because such change is a step back from progress. When a complaint is filed, the consumer generally goes to court when an agreement has not been reached between the parties and the mediation procedure would constitute an obstacle to the successful conclusion of the legal procedure.While the mediation process would help reduce the burden on consumer dispute resolution forums, there is a good chance that the opposing party involved is unwilling to pay damages, as they still want better bargaining power. Also, people supported this change as it would reduce the percentage of vague cases, but as of now the percentage of such cases is low and there are already provisions in the law to dismiss such silly and troublesome complaints, as well as compensatory fees. It can be concluded that since there are certain advantages for both consumers and the courts when using mediation to resolve consumer disputes, there are also disadvantages that outweigh those mentioned above. All stakeholders must be duly recognized; otherwise a good decision can result in a bad one. There are consumer activists, like Y.G. Murlidharan, who thinks it would not be helpful to instil mediation as a dispute resolution mechanism in consumer disputes. According to him, "Mediation should not be mandatory, because it deprives someone of his rights. The preamble to the consumer protection law says it is informal, without technical details from the civil court; that's why it's called 'Consumer Dispute Resolution Forum' ". Additionally, there are some areas where consumer dispute mediation cannot be applied, such as medical malpractice cases. Mediation is a dispute resolution mechanism that could somehow be useful in resolving cases where claims for damages are high, but in reality this method cannot help much with property or property complaints, faulty services and when the problem is resolved or passes away. However, the ADR mechanism is proving useful internationally. One of the best examples here is that of the European Union, when the EU was founded, 28 countries created an open market for the free movement of goods, services and people with currency to boost international trade and traders and consumers can resolve their disputes without going through the courts in order to find a solution easily, quickly and economically.It can be concluded that there are advantages for both the consumer and the courts when: Mediation is used to resolve consumer disputes; there are also drawbacks that outweigh them as mentioned above. All interested parties must be duly recognized otherwise, a good play may turn out bad.

NON FUNGIBLE TOKENS AND ALTERNATIVE DISPUTE RESOLUTION- AN INDIAN PERSPECTIVE

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Introduction

Non- Fungible Tokens are assets in the digital world which hold value because of their uniqueness or 'one of a kind' nature. They can be contrasted with fungible assets like cash, which have an inherent fixed value. Recently, with Facebook rebranding to Metaverse, there has been a revival of interest in the NFT market. In this article we will look at the position of NFTs in India and whether they can come under the purview of ADR(Alternative Dispute Resolution).

The position of NFTs in India

Like cryptocurrencies, there are no express laws in India nor are there any RBI guidelines regulating the NFT marketplace. When an NFT is acquired, its holder does not get a copyright over the original item, but merely owns a replica of it.[1] This may be compared to buying a music album, where the owner can enjoy the music but not reproduce and sell it. Therefore there may be an infringement of Intellectual Property rights where an NFT is created without the permission of the original copyright holder or where illegitimate copies made and sold.[2]

What issues in India can be solved through Alternative Dispute Resolution?

The matter of non-arbitrable offences was first elucidated in the case of Booz-Allen & Hamilton Inc vs Sbi Home Finance Ltd. & Ors[3], where it was held that disputes involving 'Rights in Rem' or a right enforceable against the public at large are non- arbitrable.[4]. On the other hand, disputes involving 'Rights in Personam' or against a particular party would be arbitrable. With reference to Intellectual Property rights, it was held in the case of A. Ayyasamy vs A. Paramasivam & Ors[5] that issues relating to patents, trademarks and copyrights would not be arbitrable. An important note here is that this case primarily dealt with the matter of fraud and this statement delivered by the court prohibiting arbitration was merely its obiter. This position was clarified in the case of Lifestyle Equities CV v. QD Seatoman Designs Pvt. Ltd. delivered by the Madras High Court. It held that the 'non- arbitrable' nature of the Intellectual Property Rights in the Ayyasamy case was merely a learned opinion of the court and was not binding.[6]

Interplay of NFTs and Alternative Dispute Resolution

Looking at these above cases we can say that where an individual license to produce an NFT is issued by the official copyright holder it is a personal commercial contract that willcome under 'Rights in Personam'. As laid down by the Booz- Allen judgement, such cases should fall within the ambit of ADR. The position becomes trickier when we look at the scopeof ADR in cases of maintaining the copyright of the original holder. In the recent case of Golden Tobie (P) Ltd. v. Golden Tobacco Ltd.[7] given by the Delhi High Court, the court reading Section 8 of the Arbitration and Conciliation Act, 1996 held that the issue is arbitrable when only the personal trademark agreement between the parties is infringed, and the Trademark Act[8] is not infringed per se.[9] Hence with NFTs, where the Copyright Act[10] itself is breached the issue may not be under the purview of ADR, but in case of breach of individual copyright, where there is a dispute on a personal agreement related to the matter of copyright between two parties, the issue should be resolvable through Alternative methods.

Conclusion

In this article we have very briefly described the scope of ADR in relation to NFTs. With the digital world growing at a fast pace, the NFT and crypto market is bound to increase exponentially. India has to be ready to deal with this surge which will arrive soon, and clear guidelines regarding the scope of ADR will greatly help in this endeavor.

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[8] The Trade Marks Act,1999, No.47, Acts of Parliament, 1999(India).
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WHY DISPUTE RESOLUTION MATTERS IN TELECOMMUNICATION INDUSTRY?

Amity Law School, Noida

Introduction

Disputes are all around us and when it comes to the Telecom Industry, there are several disputes as well that need to be resolved in a timely manner. There comes the need for alternative dispute resolution for the Telecom Industry. We all are aware that unresolved disputes and conflicts can have an adverse impact socially and financially both. Disputes affect individuals, communities, organizations, government, and the economy and thus it is crucial to prevent disputes and resolving them at an early stage benefits the economy. Thus, all the processes that are used to address disputes collectively are together termed as Dispute Resolution. It comprises of all dispute resolution methods and different approaches used from early resolution through to formal and informal methods of dispute resolution.

The Telecommunication Industry is experiencing a major transformation in the recent years as caused by privatization, liberalization and technological changes. The recent trends have impacted the telecommunication industry dramatically and brought a change in how the sector functions. The number of service providers have increased gradually in the recent years and the range of services they offer has increased substantially. New business models and commercial arrangements have also emerged in place of the old ones. The earlier era of the Telecommunication Industry only focused on the plain old telephone service which has not shifted to an era now which now has various service providers that provide information and communications technology (ICT) services using Internet Protocol, wireless and Broadband technologies. Most of the disputes taking place are necessary by-products of these changes, as interests that are established now are clashing with traditional ones. Policy-makers and regulators are also now realizing how effective dispute resolution is a progressively significant objective of telecommunications policy and regulation. Dispute resolution is important in all sectors to avoid unnecessary conflicts and losses. Failure to resolve disputes effectively can lead to a delay in the introduction of new services and infrastructure , it can block or reduce the flow of capital from investors. The other impacts it can have can be limit competition which can lead to higher prices and lower service quality and also adverse effect on the general economic and social development.

In the telecommunication industry, dispute resolution is at arelatively early stage. With a lot of development in technology and convergence, the dispute resolution paradigm is also evolving by introducing alternative methods for resolving disputes. The recent trends allow telecommunications regulators to endeavour into new dispute resolution methods. This put forwards that the regulators need to re-evaluate their roles in resolving disputes.

The Telecom Regulatory Authority of India (TRAI) that was established by TRAI Act, 1997 which was passed by the Parliament on 20th February 1997. The establishment of TRAI started from when grant of the first set of cellular licenses was started. The Telecom Dispute Settlement and Appellate Tribunal (TDSAT) was established under Section 14 of the Telecom Regulatory Authority of India Act to adjudicate the disputes and dispose of the appeals to protect the welfare of the service providers and consumers of the telecom segments.

Telecom Regulatory Authority of India (TRAI) plays a crucial role in regulation of Telecommunication industry in India. As there is a drastic increase in private service providers, it has become requisite for TRAI to work in the best interests of the consumers as well as service providers.

Conclusion

Attracting investments and economic development is increasingly important and for that successful dispute resolution is required. Dispute resolution mechanisms are required to be as speedy and time efficient as the networks and technologies are these days. The appellate tribunal and official dispute resolution mechanisms are important as they act as a basic guarantee that sector policy will be executed. All the key industry players have an incentive for resolving disputes constructively as the environment demands so because the policy makers and regulators need to use minimal regulatory intervention. This is where alternative dispute resolution comes into picture.

Some disputes can be enormously destructive to the Telecommunication Industry and thus, effective dispute resolution is important for successful deployment for the modern information structure. It is necessary to encourage investment and foster competition in the Telecommunication Industry. Alternative Dispute Resolution is the most suitable way to reach out to the billions of people who were served inadequately and thus were on the wrong side of the digital divide.

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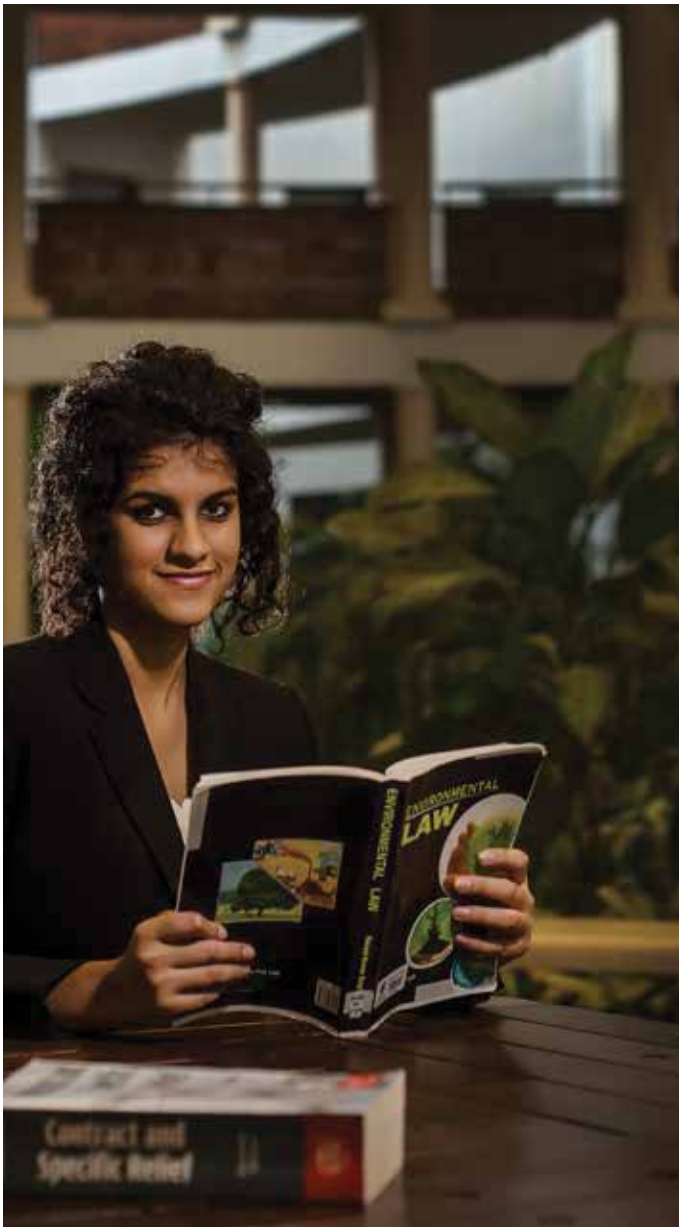

EVENTS SECTION- PAST EVENTS OF ACADR

Special Lecture (two hours duration) on "ADR Methods in 21st Century with special reference to India"

Dr. Rahul Mishra organized a Special Lecture (two hours duration) on "ADR Methods in 21st Century with special reference to India", delivered by distinguished Prof. (Dr.) Ashok R. Patil, Professor of Law & Chair Professor (Consumer Law and Protection) Faculty Co-coordinator, Centre for Child and the Law Faculty Advisor for Legal Services Clinic, National Law School of India University, Bangalore (NLSIU) on 30th of October 2018 at Alliance School of Law, Alliance University, Bangalore.

▶ *ADR Boot Camp, 2019*

ADR Boot camp was organized by ACADR centre , Alliance School of Law, Alliance University, Bangalore from 28th March 2019 to 30th March 2019. Practical sessions on different aspects of ADR Mechanisms were taken by master trainers like Shri. Ratan .K.Singh, Advocate & Arbitrator, Director-India Chartered Institute of Arbitrators (CIArb), UK Chairman-India: Society of Construction Law, UK Member: CII Task Force on Arbitration, Mr. Jonathan Rodrigues, a certified civil and commercial mediator listed with the Indian Institute of Corporate Affairs (IICA) for the western region, under the aegis of the Ministry of Corporate Affairs (Govt. of India), an
accredited and empanelled mediator with the Indian Institute of Arbitration and Mediation (IIAM), certified in cross-border disputes at the Prague Summer Mediation Academy, for which he bagged a scholarship at Charles University, Prague, Czech, co-founder and partner at The PACT. He served as a continental advisor with the SCMA (London), a former advisor to the World Mediation Organisation (Berlin), a member of the Young Mediators Initiative (YMI, Hague) and Mr. Nisshant Laroia, a Partner at The PACT and a graduate of Gujarat National Law University, an Accredited Mediator at The Indian Institute of Corporate Affairs (IICA), Government of India, Accredited mediator at Indian Institute of Arbitration and Mediation (IIAM) and a Certified Cross-border mediator & Scholar, PSMA, Charles University, Prague, Accredited Mediation Advocate, SCMA London and an Associate Grade Arbitrator, CIArb, London. Practical nuances of these techniques were shown to the students by role plays.

▶ *Mediation Training Program*

The Alliance Center for Alternative Dispute Resolution conducted a Two-day Mediation Training Program (25.11.21 to 26.11.21) to impart knowledge in the field of mediation to the students and the faculty of law. The Centre invited advocate Mr. Firdosh Kassam Karachiwala, a master trainer for the mediation training program.

UPCOMING EVENTS IN ADR - ROUND THE GLOBE

- The ICC International Commercial Mediation Competition is a globally-renowned moot that hosts 100+ mock mediation sessions over seven days to name a winning team. In 2022, the 17th ICC Mediation Competition, will take place from 7 to 15 February online. The event gives students the opportunity to put theory into practice and to interact with some of the world's top mediators while offering the professionals the opportunity to engage and shape the next generation of mediators and mediation users through guidance, feedback and support.

- The NLIU-MCA is pleased to announce the seventh edition of the NLIU-Justice R.K. Tankha Memorial International Arbitration Moot, to be held virtually from 10th of March to 13th of March , 2022. The competition will be organized virtually through video conferencing. The details of the platform shall be notified later.

LANDMARK CASES ON ADR

1. Amazon.Com NV Investment Holdings LLC v. Future Coupons Private Limited & Ors.

Amazon filed an arbitration claim against Future Coupons Pvt, Ltd. ("FCPL") and Future Retail Ltd. ("FRL") under the Rules of the Singapore International Arbitration Centre (SIAC Rules) in accordance with the Shareholder's Agreement (FCPL SHA). The arbitration took place in New Delhi, India. On October 25, 2020, an emergency award was made. Since FRL and FCPL did not comply with the emergency award, Amazon filed an enforcement action in the Delhi High Court. In this case, the Supreme Court considered the following issues in an appeal against the ruling of the Delhi High Court's Division Bench:

i) Whether the Arbitration & Conciliation Act contemplates an emergency arbitrator's award, and whether an emergency arbitrator's award is an order under Section 17 of the A&C Act.
ii) Whether an appeal under Order 43, Rule 1(r) of the Civil Procedure Code against an order enforcing an emergency arbitrator's order under Section 17(2) is maintainable.

The Court determined that the concept of an emergency arbitrator is based on party autonomy because the law gives the parties complete freedom to select an arbitrator or an arbitral institution. In addition, the emergency arbitrator serves as an arbitrator for all purposes. The order of the emergency arbitrator is binding on the parties but not on the subsequently formed arbitral tribunal, which has the authority to reconsider, modify, terminate, or annul the emergency arbitrator's order/award. Finally, it was determined that the order issued by the emergency arbitrator is an order under Section 17(1) of the Act and is enforceable as a Court order under Section 17(2) of the Act.

2. PASL Wind Solutions Private Limited V GE Power Conversion India Private Limited

In PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited (PASL Wind Solutions), a three-judge bench of the Supreme Court of India definitively resolved whether two Indian parties can choose a foreign seat of arbitration. The case involved two Indian companies, one of which was a subsidiary of a French company. Disputes arose because of a settlement agreement signed by GE Power Conversion India Private Limited (GE) and PASL Wind Solutions Private Limited (PASL). The settlement agreement called for disputes to be resolved through arbitration under the International Chamber of Commerce's Rules of Conciliation and Arbitration, with the seat in Zurich, Switzerland. PASL agreed to arbitrate its disputes with GE under the settlement agreement. The parties agreed that Indian law would govern the dispute, which was reflected in PASL's request for arbitration and the terms of reference to arbitration. In the landmark ruling, the Supreme Court of India held that two Indian parties have the right to agree on a foreign seat of arbitration. The Supreme Court also stated that in such instances, the arbitral award would be treated as a foreign award enforceable under Part II of the Arbitration and Conciliation Act 1996. The court also determined that two Indian parties are entitled to interim relief from Indian courts in support of arbitration, even if the arbitration is held outside of India.

3. Bharat Sanchar Nigam Ltd & Anr v. M/S Nortel Networks India Pvt Ltd s

The Supreme Court held in Bharat Sanchar Nigam Ltd & Anr. vs. M/s Nortel Networks India Pvt. Ltd. that the period of limitation for filing an application under Section 11 would be governed by Article 137 of the Limitation Act, 1963, i.e., three years, and that the period of limitation would begin to run from the date of failure to appoint the arbitrator. The Hon'ble Bench has also recommended that Parliament alter Section 11 of the Arbitration Act to include a time restriction for filing an application under Section 11. The Hon'ble Supreme Court's recommendation illustrates that Indian courts support speedy resolution of arbitration cases.

CONTEMPORARY DEVELOPMENTS IN ADR

1. Arbitration and Conciliation (Amendment) Act, 2021 made two major changes in the act:

(i) Allowed to have automatic stay on awards, which court has prima facie evidence that the contract on which the award was based was affected by "fraud" and "corruption"

(ii) 8th Schedule was omitted which qualified experience, regulations, and norms should be followed for accurate mediation and arbitrators.

2. The High Court of Delhi in 2021, held that an Emer gency Arbitrator is an 'arbitrator' under Section 2(1)(d) of the Indian Arbitration and Conciliation Act, for all purposes and an order passed by the emergency arbitrator in an order under Section 17(1) of the Act.

3. The Supreme Court of India in the case of PASL Wind Solution Pvt. Ltd. v. GE Power Convention Pvt. Ltd. had held that parties to an arbitration have the right to decide on the procedural as well substantive laws to be followed.

4. The Supreme Court held in the case of Indus Biotech Pvt. Ltd. v. Kotak India Venture had held that after a petition under Section 7 of the Insolvency and Bank ruptcy Code is admitted, any application thereafter under Section 8 of the Indian Arbitration and Concil iation Act, will not be maintainable.

5. The Supreme Court recently had held that there is concurrent jurisdiction of 2 courts under 2(1)e of the Act, namely between the court where the cause of action arose and the court of the seat of arbitration. Choice of the seat is an expression of the autonomy of the party and gives an exclusive jurisdiction of the seat of the court.

6. The Supreme Court of India in the case of Inox Renewables Ltd. v. Jayesh Electricals had held that once the seat of arbitration is changed by mutual agreement, the courts at the new seat shall be vested with exclusive jurisdiction.

7. The Supreme Court of India had held that the period of limitation of 90 days for filing an appeal under section 34 of the Act commences from the date of receipt of a signed copy of the arbitral awards by the parties.

8. The Supreme Court in 2021 had held that the issue of novation of agreement cannot be determined by the courts in the limited prima facie assessment of whether the parties have entered into an arbitration agreement.

TESTIMONIAL SECTION

Vibhuti V. K. (Co-ordinator, ACADR, Alliance School of Law, Alliance University, Bangalore)

The internship at ACADR was very insightful. Interns were assigned a topic for research papers and mentors for guidance. The mentors constantly encouraged, supported and shared their knowledge with all the interns from time to time. The mentors provided students with a clear understanding of their assignments and expectations. It's a great opportunity for interns to enhance knowledge in the realm of up-and-coming alternate dispute resolution. The internship was a worthwhile experience.

Ishanee Raul (Co-ordinator, ACADR, Alliance School of Law, Alliance University, Bangalore)

ACADR strives to be a front-runner in providing more than adequate resources for imparting knowledge relating to the ADR realm. It has conducted Bootcamp and workshops for the same. Recently, we had a mediation workshop which was conducted for two days. This shows the level of dedication towards the centre. It has been a great opportunity to be a part of the centre under the guidance of our mentors. The enthusiasm with which the members have contributed is seen in the events, books and newsletters which are to be published.

CATCHING MOMENTS - MEDIATION WORKSHOP, 2021












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