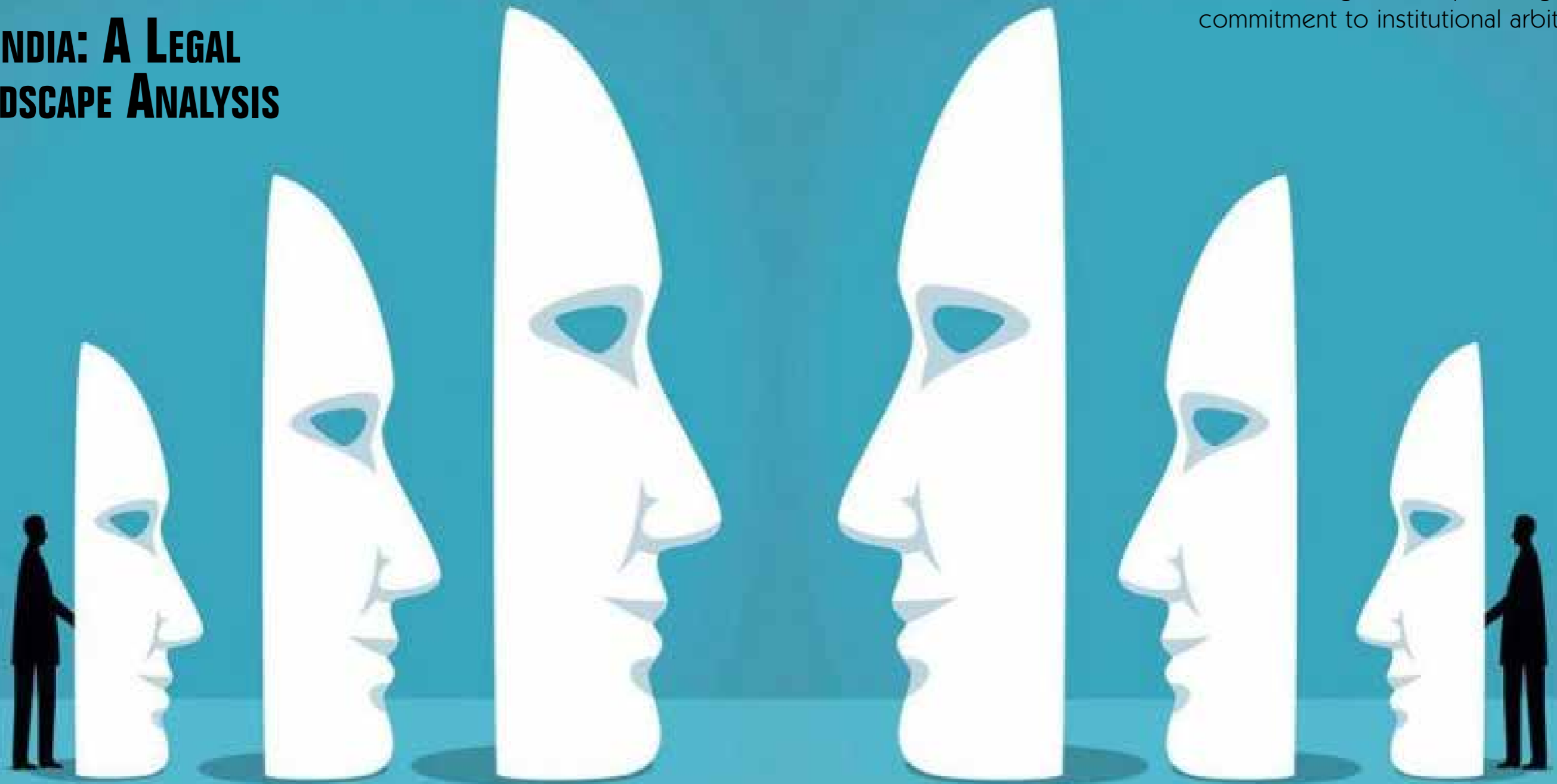


RECENT DEVELOPMENTS SHAPING DISPUTE RESOLUTION

IN INDIA: A LEGAL LANDSCAPE ANALYSIS

Beyond dispute resolution, the Indian legal landscape is marked by the facilitation of e-filing and online hearings, efforts to reduce the backlog of cases, and a growing commitment to institutional arbitration.



Dispute resolution in India has witnessed transformative developments in recent times, setting the stage for a more efficient and effective legal landscape. In this article, we delve into the Mediation Act 2023, which underscores India's commitment to formalizing mediation, and explore the impact of Artificial Intelligence (AI) in mediation. Additionally, we analyze significant updates in the Arbitration and Conciliation Act, shedding light on unstamped agreements, negotiations' effect on limitation periods, pre-referral jurisdiction, and more. The Consumer Protection Act is examined in the context of finality of orders, while the evolving Intellectual property enforcement landscape showcases advancements in protecting IP owners' rights. Furthermore, we provide insights into recent developments in the Insolvency and Bankruptcy Code, concerning the initiation of insolvency process.

1. The Mediation Act 2023

The Mediation Act 2023 (notified on September 15, 2023), in India represents a significant advancement in the promotion of mediation as a primary mechanism for resolving disputes. It covers key aspects, including pre-litigation, online, and community mediation, and incorporates conciliation, aligning with global practices. The Act also introduces measures for enforcing domestic mediated settlements within India and establishes the Mediation Council of India to oversee the field, ensuring professionalism and ethical standards.

In the field of Indian arbitration law, significant developments have reshaped the landscape for dispute resolution. These legal determinations cover various aspects of arbitration and provide a comprehensive overview of evolving jurisprudence.

This legislation emphasizes the importance of time limits for mediation, confidentiality, and mediator appointment protocols. While it originally mandated pre-litigation mediation, it now respects the voluntary nature of mediation, making it a voluntary process. Courts have the authority to issue *interim* orders during mediations to protect parties' interests, and mediation communications are inadmissible as evidence in legal proceedings. Legally binding mediated settlement agreements must meet specific criteria, and grounds for challenging such agreements

are limited to fraud, corruption, impersonation, and disputes not subject to mediation.

The applicability extends to mediations within India and certain international mediations involving Indian parties. However, it does not provide for the enforcement of settlement agreements arising from mediations conducted outside India. The Act proposes amendments to existing statutes for compatibility.

The Mediation Act reflects India's commitment to formalizing mediation.

Artificial Intelligence (AI) Mediation: AI plays a crucial role in enhancing mediation by offering data-driven analysis, improving communication, mitigating bias, and ensuring fairness. AI chatbots and virtual assistants simplify communication, especially in cross-border disputes with language barriers. Nevertheless, ethical considerations, including data privacy and confidentiality, necessitate stringent safeguards to complement human mediators and legal professionals rather than replace them. AI may augment the process, though with emphasis on ethics and human involvement.

2. The Arbitration and Conciliation Act 1996.

In the field of Indian arbitration law, significant developments have reshaped the landscape for dispute resolution. These legal determinations cover various aspects of arbitration and provide a comprehensive overview of evolving jurisprudence.

Unstamped Agreements in Arbitration: The Supreme Court's decision highlights that unstamped agreements containing arbitration clauses lack legal enforceability. Courts are required to impound such agreements until the necessary stamp duty is paid and an endorsement obtained. Only then can they proceed with the arbitration process. Agreements without proper stamping lack legal validity until they adhere to the Stamp Act's requirements.

Given the ramifications of its decision, the Supreme Court has recently referred the issue for re-consideration before a seven-judge Bench, which has now heard and reserved judgment on the issue.

The Delhi High Court in a recent judgment elaborated on the procedure following the impounding of an unstamped agreement, providing options for resolution. The options entail either referral to the Collector of Stamps for appropriate proceedings, which may be made time bound by the Court or, undertaking the exercise itself, implying deposit of the deficient stamp duty with the Court, and thereby making the agreement admissible. The latter option be taken recourse to in cases that are deemed appropriate, such as when the deficient amount is not in dispute.

Impact of Negotiations on Limitation Period: The Supreme Court clarified that the limitation period for filing a Section 11 application commences from the date the initial cause of action arises and is unaffected by subsequent negotiations between the parties. Determining the precise "breaking point" when negotiations cease is crucial for calculating the limitation period accurately.

Pre-referral jurisdiction: The Courts' pre-referral jurisdiction under Section 11(6) of the Act is limited, primarily focusing on the existence and validity of an arbitration agreement and the arbitrability of the dispute. The Courts should employ a *prima facie* test to screen out meritless and dishonest litigation, protecting parties from being forced into arbitration.

Period for rendering award: The 12-month time limit provided under Section 29A of the Act for making an award applies only to domestic arbitrations and not to International Commercial Arbitrations. The Court also clarified that this time frame is not a mandatory requirement.

Liability of Third-party Funders: It has been ruled that third-party funders should not be held accountable for arbitral awards or obliged to provide security for enforcement. This underscores that funders, not being signatories to the arbitration agreement, cannot be held liable solely for providing funding.

The Courts have also emphasized the principles for interference with the Award and the limited inquiry in appeal. These developments collectively contribute to a more robust arbitration framework in India, aligning its practices with international standards while ensuring fairness and efficiency in dispute resolution.

3. The Consumer Protection Act 2019

Finality of orders and the interference by the Supreme Court in Special Leave Petitions (SLP): the Supreme Court examined both the Acts (the Act of 1986 and the Act of 2019) and



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held that the provisions regarding appeals are *pari materia*. The remedy of appealing to the Supreme Court is only available for orders passed by the NCDRC in its original jurisdiction or as the court of first instance (original orders). No further appeal is permissible against orders passed by the NCDRC in the exercise of its appellate or revisional jurisdiction. A party aggrieved by an order of the NCDRC has an alternative remedy to approach the High Court, invoking its writ jurisdiction or supervisory jurisdiction, as the case may be. The Supreme Court should not entertain petitions seeking special leave, as doing so would short-circuit the prescribed legal procedure.

4. The Intellectual Property – enforcement landscape

In the past year, India's intellectual property enforcement landscape has seen a clear trend toward strengthening protection for IP owners. Courts have increasingly favored trademark owners by granting injunctions in cases involving deceptively similar use, adoption, packaging, and more.

In pharmaceutical cases, a stricter standard for similarity and potential consumer confusion has been established, emphasizing caution. Trademark owners' liberty to expand their product ranges has also been endorsed, as long as it doesn't harm the original owners.

Courts have also addressed issues related to social media influencers, emphasizing responsible brand usage and copyright/trademark infringement. They've clarified the responsibilities of intermediaries and the importance of statutory rules over internal policies. An e-commerce platform (intermediary) can only be held liable if it has actual knowledge of infringing activity and doesn't take action to stop it. Safe harbor provisions in the Information Technology Act, 2000, protect intermediaries from liability if they don't initiate, select, or modify third-party information, data, or communication links and act with due diligence.

Dynamic injunctions are used to combat online piracy, and measures to deal with unknown infringers and rogue websites have been introduced.

Patent laws are adapting to cover works generated by artificial intelligence. The Court emphasized that even with one patent infringement established, injunctions can be secured.

Courts have set prerequisites for maintaining *quia timet* actions in patent infringement cases, requiring specific allegations and substantial evidence.

The abolishment of the Intellectual Property Appellate Board (IPAB) in India has reinstated High Courts' authority to review decisions, leading to legal clarifications across IP litigation, prosecution, and related principles. These developments reflect a more protective stance on intellectual property rights in India.

5. The Insolvency and Bankruptcy Code 2016

In a recent order, the Supreme Court has raised doubts about the validity of its earlier ruling in the case of Vidarbha Industries Power Limited v. Axis Bank Limited. In the Vidarbha Judgment, it was established that the

Adjudicating Authority should consider the corporate debtor's viability and overall financial health when adjudicating a petition under Section 7 of the Code. The judgment emphasized that the mere existence of a financial debt and a default in payment, grants the financial creditor the right to initiate corporate insolvency resolution proceedings, but the Adjudicating Authority must exercise discretion.

Conversely, in *Innoventive Industries Limited v. ICICI Bank* (being prior in time) held that when a corporate debtor defaults on a financial debt, the adjudicating authority only needs to examine records from the information utility or evidence presented by the financial creditor to confirm the default.

Considering concerns that the Vidarbha Judgment may weaken the essence of the Code, the Supreme Court has chosen to revisit its decision.

Concluding remarks

Beyond dispute resolution, the Indian legal landscape is marked by the facilitation of e-filing and online hearings, efforts to reduce the backlog of cases, and a growing commitment to institutional arbitration. The legal

framework is adapting to modern needs, emphasizing efficiency, fairness, and accessibility.

While the challenges of a growing caseload and complex legal issues persist, India's legal system is actively embracing change and modernization, reinforcing its role in delivering justice and supporting the ease of doing business.

In conclusion, the legal terrain in India is dynamic and responsive to the evolving needs of a rapidly changing world, and these developments collectively contribute to a more robust legal framework that aligns with international standards.

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A Senior Solicitor at Dua Associates with over 37 years of experience, Shiraz is a highly regarded advocate, with a proven track record in her practice areas of Dispute Resolution-Litigation & Arbitration, Intellectual Property, White-Collar Crimes and International Trade. Shiraz has been recognized as an Elite Leading Individual lawyer for her Dispute Resolution – Litigation and International Trade practices by leading global ranking guides. She has also been recognized by Benchmark Litigation's Asia-Pacific Top 100 Women in Litigation 2022 and named a Litigation Star – Commercial Transactions and Intellectual Property in '21, '22 and 2023.

Shiraz has been listed in Forbes India Power list 2020, 2021 & 2022 as one of the top individual lawyers in Litigation and International Trade/ Anti-Dumping practice areas. Further, she has been included in the prestigious ALB's Super 50 Dispute Lawyers in Asia 2021 and among the Top Dispute Lawyers in India for 2023. She also features in the 2022 Rankings by Legal Era as a leading lawyer in Dispute Resolution -Litigation & Arbitration and White-Collar Crime. Shiraz has been identified as among India's top lawyers and included in India Business Law Journal's (IBLJ) prestigious A-List for 2021 and 2022- 23.

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