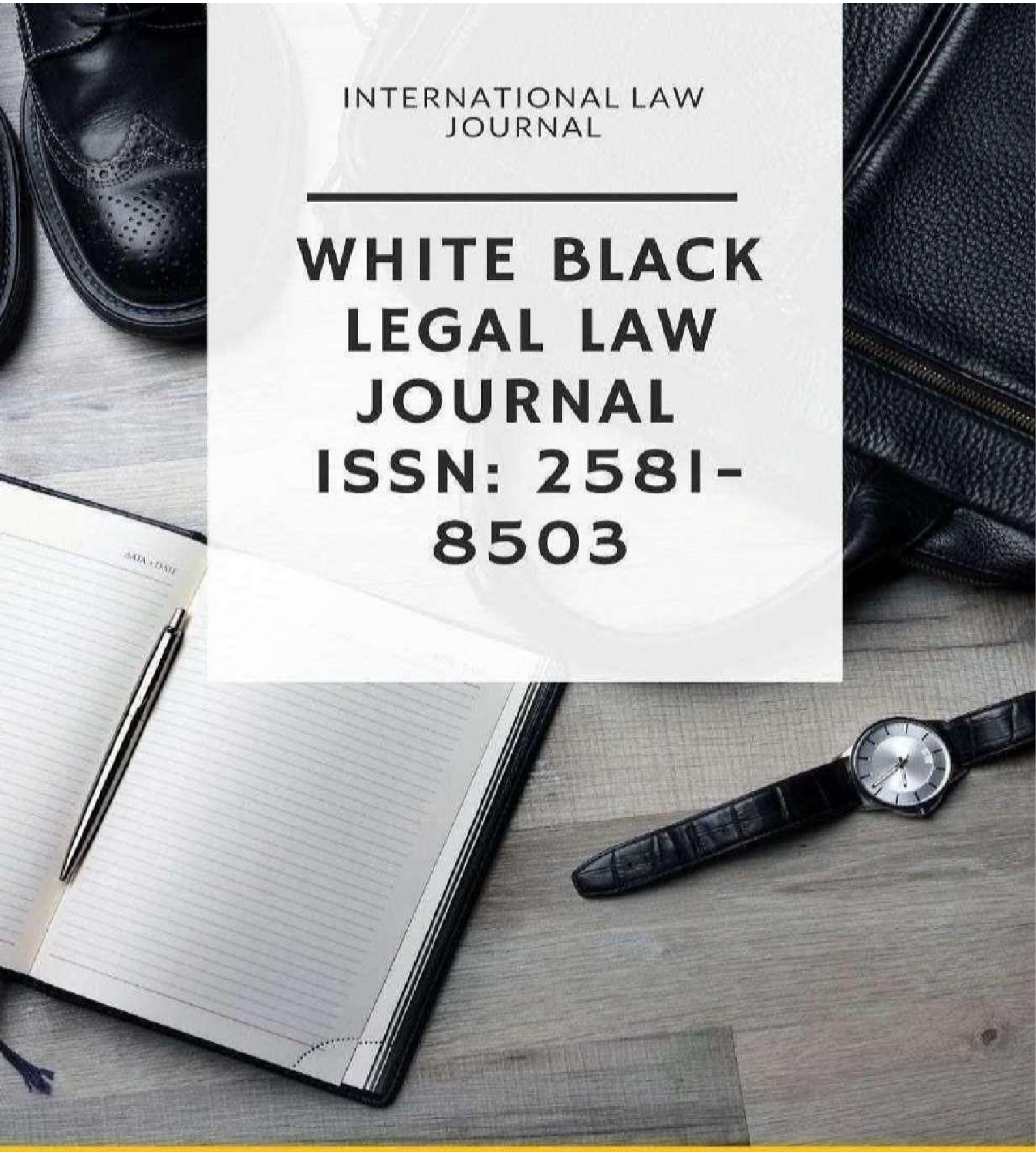

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"FINANCIAL MARKET DYNAMICS IN THE SELECTION OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS"

AUTHORED BY - ANUPRIYA RAVINDRAKUMAR PRASAD
ENROLLMENT NUMBER- R115223030
SAP ID- 500123294
SEMESTER & PROGRAM: LL.M, SEMESTER 2
SCHOOL OF LAW, UPES
(APRIL, 2024)

INTRODUCTION-

Since the onset of the Global Financial Crisis in 2007-08, the global financial services industry has undergone extensive regulatory scrutiny and reform to mitigate systemic risks and ensure market stability. Despite these regulatory efforts, the resolution of disputes within the financial sector through alternative means remains relatively underexplored. In India, while significant amendments have been made to the Arbitration and Conciliation Act of 1996 in 2015 and 2019, their application within the financial sector remains largely untested1. The banking sector in India holds paramount importance in the nation's economic landscape, driving growth, investment, and financial inclusion. However, to fortify this crucial sector, it is imperative to adopt efficient mechanisms for addressing commercial disputes and resolving issues related to loan defaults, restructuring, and settlements. Recognizing the value of international best practices in dispute resolution, India has embraced the UNCITRAL Model Law on International Commercial Conciliation, reflecting a commitment to aligning with global standards. India's journey towards embracing alternative dispute resolution mechanisms has witnessed significant milestones, with the enactment of the Mediation Act of 2023 marking another stride forward.

This legislation establishes a robust legal framework to promote and facilitate mediation across a

[1] Dhananjay Kumar, Abhishek Mukherjee & Misha Patel, *Overhaul of the ARC Framework – Need of the Hour*, India Corporate Law Blog (2021).

broad spectrum of disputes. Delving into the rationale behind advocating for mediation specifically within India's banking industry, explores the key provisions of the Mediation Act, and assesses its profound implications for the sector. Existing alternative dispute resolution mechanisms within the banking sector include schemes and enactments such as the Centre for Alternative Dispute Resolution in Banking and the Banking Ombudsman Scheme operated by the Reserve Bank of India.[2] Regulatory authorities also actively promote alternative dispute resolution through mechanisms like Consumer Mediation Cells, Lok Adalat's, and specialized tribunals. However, mediation emerges as a particularly compelling option for resolving banking disputes due to its voluntary, non-adversarial nature and emphasis on confidentiality. Mediation offers several advantages within the banking context, including confidentiality, which enables parties to discuss sensitive financial matters privately. This confidentiality is especially critical during negotiations for loan settlements or restructuring. Additionally, mediation's flexible and collaborative approach allows for the crafting of tailored, mutually acceptable solutions, particularly pertinent in scenarios involving One Time Settlements (OTS) and loan restructuring. The provisions of the Mediation Act extend the enforceability of such settlements, lending them credence akin to a court decree under the Civil Procedure Code.

BACKGROUND AND SIGNIFICANCE-

The Indian Arbitration & Conciliation Act of 1996 underwent significant revisions by the Parliament aimed at expediting dispute resolution processes and promoting their broader application across various sectors. However, despite these revisions, the financial services industry remains largely untouched by structural changes to expand the scope of arbitration. Traditionally, financial entities have leaned towards litigation and administrative adjudication, citing the perceived advantages of court proceedings, including greater judicial powers and the public nature of the proceedings, which can exert pressure on defaulters. This reliance on litigation is rooted in a misconception regarding the efficacy and power of arbitral tribunals. Contrary to popular belief, arbitral tribunals possess ample authority to grant appropriate remedies, and the confidential nature of arbitral proceedings can help financial entities mitigate adverse impacts on stock prices and investor confidence.

Internationally, banks and financial institutions prefer arbitration as the primary mode of dispute

[2] Sucheta Dalal, *Banking Ombudsman is not working*, MoneyLife (2014).

resolution due to the expertise offered by arbitrators. Statistics from institutions such as the London Court of International Arbitration (LCIA) and the American Arbitration Association (AAA) indicate a significant involvement of financial sector entities in arbitration proceedings. Notably, as much as 32% of arbitrations at LCIA and 58% at AAA involve financial sector entities either as claimants or defendants. Arbitration offers several advantages to financial sector entities, including the ability to select favourable governing legislation, appoint adjudicators, expedite resolution, and achieve cost-efficient solutions for consumer disputes. [3]However, the accessibility of arbitration for financial sector entities is hindered by a judicially created negative list of inarbitrable disputes. To address this, structural changes to institutionalize the arbitration process are necessary. Arbitration, as a component of Alternative Dispute Resolution (ADR), facilitates the resolution of disputes outside the court system. It involves submitting disputes to one or more arbitrators, whose decision, known as the "award," is binding on the parties involved. However, not all disputes are arbitrable, as determined by the Hon'ble Apex Court in BoozAllen and Hamilton Inc. v SBI Home Finance Ltd.[4] Certain disputes fall outside the scope of arbitration, including criminal offences, parental issues, and bankruptcy proceedings.

In India, arbitration and conciliation are widely practiced forms of ADR, with mediation, negotiation, and judicial resolution also available under Lok Adalat. While other sectors have long embraced arbitration clauses, the financial services industry has traditionally favoured litigation. However, since the mid-2000s, there has been a noticeable increase in banking and finance disputes being resolved through international arbitration, a trend reflected in major arbitral institutions' casework reports. The banking and finance sector consistently ranks among the top three industry sectors in the LCIA Annual Casework Reports, comprising a significant percentage of cases. The decision to opt for arbitration over litigation depends on various factors, but the growth in arbitration's popularity can be attributed to its ability to offer tailored solutions, expedited resolution, and confidentiality, all of which are valued by financial sector entities. While the financial services industry in India has traditionally favoured litigation, there is a growing trend towards utilizing arbitration for dispute resolution, both domestically and internationally. Structural changes to institutionalize arbitration practices and address inarbitrable disputes are necessary to further promote arbitration's use and ensure its effectiveness within the financial sector.

[3] LCIA Annual Casework Report 2019.
[4] Booz Allen and Hamilton Inc. v. SBI Home Financial Ltd. (2011) Civil Appeal No. 5440/2002.

OVERVIEW OF THE LEGAL AND REGULATORY LANDSCAPE FOR DISPUTE RESOLUTION IN INDIA'S FINANCIAL SERVICES SECTOR-

The spectrum of financial services disputes in India encompasses a wide array of issues, ranging from securities violations and banking disputes to insurance grievances, antitrust allegations, and insolvency claims. This diversity reflects the multifaceted nature of the financial sector and the complexities inherent in its operations. Presently, India's approach to resolving financial disputes is fragmented and piecemeal, with various regulatory bodies overseeing different aspects of the industry. For instance, the Securities and Exchange Board of India (SEBI) regulates securities and capital markets disputes, while the Reserve Bank of India (RBI) adjudicates banking issues. Similarly, the Competition Commission of India (CCI) investigates antitrust violations, and the Insurance Regulatory and Development Authority (IRDA) oversees the insurance and reinsurance sector. In the realm of banking disputes, the RBI's Integrated Ombudsman Scheme provides a mechanism for consumers to address grievances with banks and non-bank entities. [5]However, the process has been criticized for its inefficiency, with a significant number of complaints being rejected or unresolved due to procedural hurdles. In the digital payments sphere, the RBI has introduced an online dispute resolution (ODR) mechanism for failed transactions[6], but its scope is limited, and unresolved disputes must ultimately be escalated to the Integrated Ombudsman, leading to prolonged resolution timelines. For debt recovery, laws such as the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) and the Insolvency and Bankruptcy Code (IBC) provide avenues for banks and financial institutions to recover dues. However, the effectiveness of these mechanisms has been questioned, with low success rates and significant creditor losses.[7] In securities and capital markets, investors can file complaints through platforms like SEBI's SCORES, but the lack of adjudicatory powers for SEBI often results in lengthy and ineffective dispute resolution processes[8]. Similarly, the IRDA's Integrated Grievance Management System (IGMS) for insurance disputes lacks the authority to adjudicate claims, leading to increased transaction costs for policyholders. The CCI's jurisdiction over antitrust allegations is limited to cases of gross violations,

[5] Banking Ombudsman Scheme, 2006.
[6] Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *ODR: The Future of Disputes Resolution in India*, Vidhi Centre for Legal Policy (2020).
[7] Rajat Sethi, *An alternative approach to a Code of Conduct for the Committee of Creditors in an IBC Process*, NLS Business Law Review (2021).
[8] SEBI complaint redress system, SCORE.

and individual consumer disputes are often excluded from its purview. To promote international financial services, India has established International Financial Services Centres (IFSCs) under the Special Economic Zones Act. However, the jurisdictional framework for dispute resolution within IFSCs remains uncertain, highlighting the need for a dedicated mechanism to address disputes within these specialized zones. While India has various mechanisms in place to address financial disputes, there are significant challenges related to efficiency, jurisdiction, and effectiveness that need to be addressed to ensure timely and equitable resolution for all stakeholders involved.

EXAMINING THE BOUNDARIES AND EXTENT OF ARBITRABILITY OF DISPUTES WITHIN THE FRAMEWORK OF INDIAN LEGISLATION-

Section 7 of the Arbitration Act, 1996 defines an arbitration agreement but does not expressly enumerate the types of disputes suitable for arbitration. [9]This lack of specificity becomes crucial as Sections 34(2)(b)(i) and 48(2)(a) in conjunction with Section 57(1)(b) allow for the setting aside or refusal of enforcement of arbitral awards where the dispute is deemed incapable of settlement through arbitration. Interestingly, while Article II of the New York Convention, 1958 emphasizes that disputes subject to arbitration agreements must be "capable of settlement by arbitration," this requirement is absent in Section 7 of the Arbitration Act, 1996. Consequently, a discrepancy arises where arbitration agreements in India may cover disputes "incapable of settlement by arbitration," leading to potential challenges in enforcing resultant arbitral awards.

Though the Indian judiciary has established a negative list of "inarbitrable" disputes, the absence of this phrase in the statute creates uncertainty, deterring financial entities from opting for arbitration. The uncertainty arises from potential inconsistencies between arbitrators and courts in determining the arbitrability of certain disputes. For instance, while disputes related to virtual currencies may be considered arbitrable by arbitrators, courts may view them as inarbitrable due to concerns about promoting money laundering. Despite the lack of legislative intent behind the omission of the phrase, the Mediation Bill, 2021 seeks to rectify this by explicitly listing disputes unsuitable for mediation. To understand the concept of arbitrability, examining judicial decisions that have developed the

[9] Arbitration and Conciliation Act, 1996, s7.

negative list of disputes is instructive. In the Booz Allen case, the Indian Supreme Court categorized disputes pertaining to criminal offenses, corporate winding-up, guardianship, and eviction as inarbitrable due to their public nature and involvement of third-party rights. Subsequently, the Vidya Drolia case expanded this test to include disputes expressly or impliedly non-arbitrable, those involving third-party rights, and disputes integral to the sovereign and public interest functions of the State. [10]This broad interpretation has significant implications, potentially rendering a wide range of financial services disputes inarbitrable based on vague terms like "sovereign," "public interest," and "third-party rights." For instance, banking and antitrust cases, as sovereign functions of the State, may be deemed inarbitrable, while securities violations and insurance claims involving third-party rights may face similar challenges. Despite the Delhi High Court's stance in the Satpal Singh Bakshi case supporting party autonomy in arbitration[11], the Supreme Court's decision in the Vidya Drolia case, which impliedly excluded arbitration under the Recovery of Debts and Bankruptcy Act, 1993, raises concerns about the flawed test for arbitrability of financial disputes. In cases where governing legislation does not expressly exclude arbitration, arbitral tribunals should be allowed to arbitrate disputes, respecting party autonomy. Understanding international developments in the arbitrability of financial disputes can inform proposals for enhancing the Indian arbitral practice.

ENHANCING FINANCIAL SERVICES ARBITRATION: LESSONS FROM INTERNATIONAL JURISDICTIONS-

In the realm of international arbitration, the absence of explicit provisions regarding the arbitrability of disputes within the UNCITRAL Model Law on International Commercial Arbitration, 1985 has led to a unilateral determination of the subject matter of arbitrable disputes. This issue becomes particularly significant when considering the choice of seat of arbitration, especially in the context of international financial disputes[12]. For instance, many international financial institutions are inclined to choose the UK Arbitration Act, 1996 as the governing law due to its exemptions and relaxations tailored for financial sector entities.

A comparative analysis of jurisdictional developments in financial services arbitration across mature

[10] Vidya Drolia v. Durga Trading Corporation, AIR 2020 SC 10.
[11] HDFC bank v. Satpal Singh Bakshi, 2013 (135) DRJ 566(FB).
[12] Harshad Pathak & Pratyush Panjwani, *The Arbitrability Doctrine and Tribulations of Tribunalisation*, 10 Indian Journal of Arbitration Law 72 (2021).

and emerging arbitration jurisdictions such as the US, UK, Singapore, and Hong Kong reveals tailored approaches to address the specific interests of financial institutions. For example, the US Financial Industry Regulatory Authority (FINRA) and the Singapore Financial Industry Disputes Resolution Centre (FIDReC) have instituted specialized arbitration frameworks for securities and financial law-related disputes. These frameworks streamline appointment processes and encourage arbitration as the primary mode of dispute resolution for financial disputes. In Singapore, the Court for International Arbitration (SIAC) serves as a single-point arbitral institution for all categories of international disputes, including those within the financial services industry. [13]Similarly, Hong Kong's Financial Dispute Resolution Scheme (FDRS), 2014, established the Financial Dispute Resolution Centre (FDRC) as a specialized body for financial consumer arbitration, thereby widening the scope of arbitrability for financial disputes. Furthermore, international standard-setting organizations like the International Chamber of Commerce (ICC), International Swaps and Derivatives Association (ISDA), and the Panel for Recognized International Market Experts in Finance (PRIME Finance) have developed specialized arbitration rules tailored to derivatives, project finance, asset management, and regulatory matters. These rules incorporate features such as unilateral arbitral appointment clauses, emergency arbitrator services, summary procedures, and ease of award enforcement, catering to the specific needs of financial institutions.

While there cannot be a one-size-fits-all approach to financial services arbitration, adopting key traits desired by financial institutions from litigation, as an exceptional measure, can significantly deepen the role of arbitration as a preferred mode of dispute resolution in the financial industry. Through the incorporation of specialized arbitration frameworks and the adoption of best practices from international jurisdictions, India can enhance its arbitration landscape to better serve the needs of the financial services sector.

ENHANCING ARBITRABILITY IN FINANCIAL SERVICES DISPUTES-

The recent interpretation of the "inarbitrability" test in the Vidya Drolia Case has paved the way for considering newer subject matters that can be deemed arbitrable. Despite historical preferences for litigation among banks, financial institutions, and other entities in the financial services sector,

[13] SIAC Annual Report, p 17, 2019.

addressing this resistance requires systemic categorization. Several categories of financial sector disputes can be made arbitrable, thereby deepening the inclusion of arbitration as a mode of dispute resolution:

1. Insurance Claims: In events of default in insurance payments, policyholders often face challenges in seeking recourse through civil courts. Mandatory arbitration of insurance disputes can expedite the claims process and increase industry confidence, especially considering the complexities involved in insurance policies and the lack of definitive stances from regulatory bodies like the Insurance Regulatory and Development Authority of India (IRDA).
2. Securities Default: While certain disputes between brokers and investors are already arbitrable, grave matters concerning securities violations are often adjudicated administratively by regulatory bodies like the Securities and Exchange Board of India (SEBI). Allowing arbitration for such disputes can preserve confidentiality and lead to expeditious resolution, particularly for cases with significant market-wide impact.
3. Antitrust Violations: Arbitral tribunals may not be well-suited to adjudicate matters concerning antitrust violations, which are often complex and involve public interests. However, certain aspects of antitrust disputes, such as personal injury and compensation matters, can be made arbitrable to expedite resolution and reduce the burden on specialized forums like the Competition Commission of India (CCI) and the National Company Law Appellate Tribunal (NCLAT).
4. Banking & Recovery Disputes: Despite being common internationally, arbitration is not prescribed as a mode of dispute resolution by the Reserve Bank of India (RBI) for banking and recovery disputes. The RBI could consider allowing banks and financial institutions to refer such matters to arbitral tribunals to expedite recovery and settlement, thereby addressing delays and uncertainties associated with traditional legal processes.
5. Insolvency Claims: While a blanket prohibition on arbitrating insolvency disputes may be legally sound, it poses practical challenges, especially considering the significant delays in adjudicating such claims. The Supreme Court's stance on the arbitrability of insolvency petitions may need reassessment, particularly regarding pre-insolvency disputes or avoidance claims. Allowing arbitrators to decide on asset recovery alongside the restructuring process can expedite resolution and aid in successful asset recovery.

By expanding the scope of arbitrability in financial services disputes and addressing specific categories of disputes, India can enhance its dispute resolution landscape, promote efficiency, and instil confidence in the financial services sector.

ADDRESSING CHALLENGES IN INDIAN ARBITRATION PRACTICE: STRATEGIES AND REFORMS-

1. Rethinking Arbitrability- Emphasizing Legal Remedies and Relief: Instead of focusing solely on legal rights, arbitrability should be determined based on the relief or remedy sought in the dispute. This approach offers flexibility and allows for a case-by-case assessment of whether arbitration is suitable, as demonstrated in the Rakesh Malhotra Case. By considering individual facts and circumstances, parties and arbitrators can trust and opt for arbitration more confidently.
2. Broadening Arbitration Mandate- Embracing Statutory Frameworks: Statutory arbitration can make disputes arbitrable even without an arbitration agreement in the governing contract. Provisions like Section 18(3) of the Micro, Small & Medium Enterprises Development Act, 2006, which allows institutional arbitration, can serve as models for promoting mandatory arbitration in the financial sector. Such measures can expedite resolution and provide an alternative to administrative bodies or courts.
3. Enhancing Recognition and Enforcement of Foreign Arbitration Judgments: Automatic recognition of arbitration-related judgments, irrespective of reciprocity, can streamline enforcement processes. Similar to the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments, 2019, such provisions can save time, costs, and efforts associated with retrials in Indian civil courts.
4. Facilitating Adapted Procedural Norms for Financial Sector Entities: Financial entities often require expeditious dispute resolution to prevent financial losses. Amendments to the Arbitration Act, 1996 can provide exemptions or special provisions for these entities, such as emergency arbitrator services and unilateral arbitrator appointments. Such measures can promote party autonomy and efficiency in dispute resolution.
5. Promoting Arbitration Adoption by Financial Sector Regulators and Self-Regulatory Professional Institutes: Financial regulators and professional institutes can play a significant role in promoting institutional arbitration. By referring disputes to arbitration and encouraging

their members to opt for institutional arbitration, these bodies can deepen the use of arbitration in the financial sector.

Additionally, reforms such as decreasing grounds for refusal of enforcement, defining "public policy" objectively, establishing a central institutional arbitral body, and training specialized arbitrators in financial markets can further enhance the effectiveness of arbitration in resolving financial disputes. Removing non-arbitrability as grounds for lack of enforcement and delineating a positive list of arbitrable disputes can streamline the arbitration process and prevent unnecessary delays and challenges.

EXPLORING THE BENEFITS OF ARBITRATION FOR FINANCIAL SERVICES DISPUTES-

The reluctance of financial institutions to adopt international arbitration has been attributed to various factors such as cultural practices, inertia, and standardized documentation, like the litigation default in ISDA Master Agreements. However, it's crucial to examine the potential advantages of arbitration over litigation and assess whether the reasons for preferring litigation are unavailable in arbitration. Additionally, understanding the specific features of arbitration and litigation that are most relevant to financial transactions and disputes is essential.

Key Attributes of Arbitration for Financial Disputes-

a. **Expertise:** Unlike litigation, where judges are assigned, arbitration allows parties to select arbitrators with expertise in resolving disputes. This is particularly valuable in complex financial disputes where specialized knowledge is essential, leading to more informed decisions and potentially saving time and costs.
b. **Neutrality:** Concerns about bias or lack of expertise in local courts can make parties reluctant to litigate in their counterparty's jurisdiction. Arbitration offers a neutral venue, allowing disputes to be resolved in a jurisdiction unrelated to either party, thereby ensuring fairness.
c. **Flexibility:** Arbitration provides parties with significant procedural flexibility to tailor proceedings to their specific needs. This includes choosing the seat of arbitration, venue, language, procedural rules, and other aspects, enhancing efficiency and accommodating diverse requirements.

d. **Speed and Cost Efficiency:** While arbitration is sometimes criticized for not being faster or cheaper than litigation, parties have more control over the timing and nature of proceedings in arbitration. Options like expedited proceedings can expedite dispute resolution and reduce costs compared to lengthy court processes.

e. **Confidentiality:** Arbitral proceedings are generally confidential, offering parties the opportunity to avoid negative publicity or the disclosure of sensitive information. While the scope of confidentiality may vary, parties can agree on confidentiality, ensuring privacy.

f. **Finality:** Arbitral awards are generally final, with limited grounds for appeal. This certainty in the resolution of disputes saves time and costs compared to the potentially lengthy appeals process associated with litigation.

g. **Enforceability:** Arbitral awards enjoy widespread enforceability under the New York Convention, with 168 State parties recognizing them as binding. This ease of enforcement provides parties with confidence in the enforceability of awards, enhancing the effectiveness of arbitration as a dispute resolution mechanism.

Some financial institutions may perceive arbitration as lacking advantages over litigation in London and New York regarding expertise and neutrality, as judges in these jurisdictions possess specialized knowledge and courts are chosen as neutral venues. However, emerging market counterparties' reluctance to agree to English or New York courts may make arbitration a more acceptable alternative. Furthermore, following the UK's exit from the EU, the enforceability of English court judgments in the EU is uncertain, while arbitral awards remain enforceable across EU countries. Additionally, some financial institutions may view the flexibility of arbitral procedure as less advantageous compared to streamlined procedures in English or New York courts. Despite this perception, established institutional arbitral rules, such as those from LCIA, SIAC, and HKIAC, provide clearly defined procedures in a user-friendly manner, potentially more efficient than court litigation. Confidentiality and finality attributes of arbitration may not be desirable for certain financial disputes, as some institutions prioritize predictability and consistency in interpretation, possibly leading to concerns about arbitration's lack of transparency. The perceived disadvantages of arbitration, including confidentiality, limited grounds for challenging awards, and absence of precedent, contrast with London and New York courts, which establish binding precedent and allow appeals. Some limitations of arbitral proceedings, such as difficulties with joinder and consolidation in multiparty disputes and non-arbitrability of certain financial disputes, may deter financial

institutions from choosing arbitration. These concerns, while valid, have been addressed in recent developments in arbitral law and practice, necessitating careful consideration by financial institutions when selecting between arbitration and litigation clauses. Fully understanding these options is essential for making informed decisions regarding dispute resolution mechanisms.

CONCLUSION-

The Parliament made significant amendments to the Arbitration Act, 1996 in 2015 and 2019, aiming to expedite the arbitration process and reduce court intervention. However, increased judicial scrutiny of arbitral awards has somewhat undermined these objectives. To minimize court intervention and expedite the resolution process, it is crucial to address ambiguities in the existing framework. Despite the passage of financial governance regulations in recent years, none have impacted dispute resolution. Structural changes to the legislation are needed to expand the application to include financial service entities. Financial sector disputes are heavily litigated at both court and administrative levels in the country. Mandating arbitration for these disputes can enhance the inclusion of arbitration as a mode of commercial dispute resolution. Embracing arbitration as the primary mode of dispute resolution could position India as a global arbitration hub. While progress has been made, more work is required before India can achieve this status comparable to cities like Singapore or London. Becoming an arbitration hub is a gradual process requiring government action, judicial and legislative support, and a conducive business environment. Establishing a reliable organizational architecture and a well-planned roadmap are essential. A robust institutional structure will emerge once an effective mechanism is in place, requiring genuine collaboration among entities, the government, clients, specialists, and investors. To enhance India's position as an arbitration center and improve the ease of doing business, a solid foundation is necessary. This would ensure resilience and endurance, potentially positioning India as a preferred destination for arbitration. Despite the slow but steady interest shown by financial institutions in international arbitration, there are still reasons why litigation may be preferred. However, recent developments in arbitral practice aim to address these limitations, and ongoing dialogue between arbitration providers and financial services institutions is crucial to ensure that international arbitration meets the needs of users effectively.

SUGGESTIONS-

1. Enhance India's appeal to investors by improving ease of doing business and enforcing arbitral awards.
2. Proactively build international market trust by refraining from appealing well-justified panel decisions.
3. Advocate for reduced court involvement in arbitration proceedings for expedited dispute resolution.
4. Encourage financial service providers to incorporate arbitration clauses in their agreements to streamline dispute resolution processes.
5. Collaborate with arbitration institutes to develop specialized arbitration mechanisms tailored to the unique needs of the financial sector.
6. Advocate for regulatory reforms that support the use of arbitration in financial services and address any legal barriers to its adoption.
7. Encourage financial service providers to participate in arbitration-related seminars and workshops to stay updated on best practices and developments in the field.

REFERENCES-

1- Dhananjay Kumar, Abhishek Mukherjee & Misha Patel, *Overhaul of the ARC Framework – Need of the Hour*, India Corporate Law Blog (2021).

2- Sucheta Dalal, *Banking Ombudsman is not working*, MoneyLife (2014).

3- LCIA Annual Casework Report 2019.

4- Booz Allen and Hamilton Inc. v. SBI Home Financial Ltd. (2011) Civil Appeal No. 5440/2002.

5- Banking Ombudsman Scheme, 2006.

6- Deepika Kinhal, Tarika Jain, Vaidehi Misra & Aditya Ranjan, *ODR: The Future of Disputes Resolution in India*, Vidhi Centre for Legal Policy (2020).

7- Rajat Sethi, *An alternative approach to a Code of Conduct for the Committee of Creditors in an IBC Process*, NLS Business Law Review (2021).

8- SEBI complaint redress system, SCORE.

9- Arbitration and Conciliation Act, 1996, s7.

10- Vidya Drolia v. Durga Trading Corporation, AIR 2020 SC 10.

11- HDFC bank v. Satpal Singh Bakshi, 2013 (135) DRJ 566(FB).

12- Harshad Pathak & Pratyush Panjwani, *The Arbitrability Doctrine and Tribulations of Tribunalisation*, 10 Indian Journal of Arbitration Law 72 (2021).

13- SIAC Annual Report, p 17, 2019.