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**Session hosted by:  
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**Session theme:  
Role of GenNext in the field of ADR as  
Arbitrators and Mediators**

Transcription of Proceedings



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**Yuet Min:** A very warm welcome everyone to the second session, the third day of the ADR Week India. Today we are very privileged to have a session hosted by CIArb India and the Indian Arbitration forum. My name is Yuet Min. I am a partner at Drew and Napier in Singapore. I am also part of the young MCIA Steering Committee. I should inform everyone before we start that this session is being recorded and transcribed. Today for this first session of day three, we are very honoured to have with us a very distinguished panel of speakers. For this session where we will be discussing the role of Gen-Next in the field of ADR as arbitrators and mediators. The four panelists we have with us. The four speakers we have with us this morning are Mr. Lalit Bhasin who I think needs no introduction. In his 58 years of practice in law, he has won numerous awards and he is also the immediate past president of the Bar Association of India. We also have with us Mr. Lomesh Nidumuri, who is a partner at Hindus Law. He is one of the convenors of the Indian Arbitration Forum who is hosting this session today. Moderating this session for us this morning is Ms. Medha Sachdev. She is a principal associate with Shardul Amarchand Mangaldas & Co. She has about 10 years of experience in litigation and ADR. She will be helping us navigate this session this morning. Last but not least, we have Mr. Shashank Garg, who is a partner at Advani & Co. Mr. Garg is incharge of the Delhi office and he was also ICC YAF regional coordinator for India. Without further ado, I

will hand over the session to the panel and we will also be taking questions along the way. Over to you Medha.

**Medha Sachdev:** Thank you so much. Thank you. Thank you for the wonderful introduction for all of us. It's interesting today that we are discussing about Gen-Next and their role as arbitrators and mediators especially since not very long ago, a typical arbitrator was famously described as pale, male and stale which was meant to be an indication towards the white man of a certain age. Let's not name the age there. So it's been a very short community which has long suffered from lack of diversity. A lot of efforts have been made over the last couple of years to bridge the gap and to make this community more inclusive but have they been sufficient or not is a debate that is still up for being decided. So Mr. Bhasin, I put it to you that as to start this discussion. Is there a need to discuss whether Gen-Next has a role as an arbitrator or mediators in future and who are these Gen-Next young arbitrators?

**Lalit Bhasin:** Thanks Medha. I think it's a very relevant and crucial and critical issue that you have raised. It is what about Gen-Next? I believe you see that we are all those who profess to be in arbitration field of law. I think we are all general practitioners of arbitration. What is required now is a specialization within the overall field of arbitration. We

need specialist arbitrators, specialist in their respective fields such as aviation, maritime, construction work, M&As, mining, IT. At the moment, whether we are retired judges or we are practicing lawyers, we are all general practitioners in arbitration. Yes, we profess to specialize in arbitration but the need of the hour is to have specialization within the overall field of arbitration and as we are answering your question, we as general practitioners particularly there are two or three age groups. One is the age group where I belong to the senior citizen and then have the age group of what COVID says between 45 and 60 or 65 something like that. That is the phase of the actual practicing lawyers in the field of arbitration. But the third is very crucial that the young lawyer the Gen -Next, the next generation. The next generation can achieve this specialization which I spoke about earlier because there is a scope for the law schools to introduce that sort of a specialization and sensitizing the students, the law school students, you see who are in their youth, who can adapt, who can accept, who can show their aptitude in different branches of law and thereafter going for specializations. As Professor Menon, you see one of the pillars of the modern Indian legal education, he said that in the 9th semester and 10th semester, the young law school students should be opened up for specialization particularly in the field of litigation practice and litigation practice according to him includes, you see, very importantly the

arbitration and mediation. What he suggested was that the broad themes of practical training in 9th semester and 10th semester will naturally vary according to the career options of the students. That is where the specialization comes in. Each student and each law school may change every three years on the basis of resources available and students and he suggested that lawyers skill in trial practice which includes arbitration and mediation and avoidance of trial and settlement processes such as mediation those should be encouraged and brought, you see, in the forefront of legal education particularly for the senior students who are in their 9th semester and 10th semester. I am looking not at the young practicing lawyer, I am looking at the law students that is the actual next generation which can carry forward this important mission that I think I must compliment MCIA, CIArb and also India forum of arbitration for taking this brilliant initiative and having full discussion for three days, for the week they are celebrating. My emphasis is that look at the law students, they can bring about the change. Our generation will remain general practitioners in the field of arbitration. We cannot look for therefore the message should go to the law school, the young students and they can bring it forward. Thank you.

**Medha Sachdev:** Thank you, Mr. Bhaisn that was very useful. That is a very nice message that you said that actually the

students who need to be trained and groom to become the Gen-Next arbitrators and mediators. However, very interestingly, very recent survey that the Queen Mary University conducted, asked a bunch of, well not a bunch of, thousands of lawyers across the globe who are these Gen-Next who are the young arbitrators and whether there is inclusiveness for them in the arbitration community and the results, though not dismal but not extremely impressive either. Interestingly, in that report there was no consensus in the respondents as to who is a young arbitrator and what caught my attention to that report and why I am presenting this to the panelists here is that many thought a young arbitrator is one who is 50 years or younger than 50. So, it's interesting because I think people consider that the age of an arbitrator, start the median age is 60 years and above. So 50 years is a young arbitrator as per many. What are your thoughts on it? Sir and then we can leave the question open to the panelists.

**Lalit Bhasin:** You are asking for my thoughts?

**Medha Sachdev:** Everybody's thought. Yes Sir starting with you Sir.

**Lalit Bhasin:** Okay. My thoughts are that no 50 is not the correct age. I again emphasize that this Next Gen for me would be the law students and not the young lawyers who are

practicing and young according to you would be upto the age of 50. You see, we have retired judges who retire at the age of, in High Court in 62 and Supreme Court 65. They are always already accustomed to certain way of law practice whether as judges they hear the lawyer and then earlier they were practicing, therefore they cannot bring about any major change. I may be an FCI Arb but still I consider myself as a general practitioner in the field of arbitration. If some case comes to me saying maritime law or aviation law, I will be able to do it but am I doing justice to the system that there should be proper specialized panel of arbitrators, not just confined to judges and lawyers. The other experts should also be roped in. That is where the Next-Gen when you talk off, do not consider only the lawyers, the young law students also. I think we have two broad basis to bring in more specializations to make arbitration and particularly mediation more effective. You need trained arbitrators, trained mediators and for training you need specializations.

**Medha Sachdev:** That's very well said Mr. Bhasin and to come and coming from you, it's actually very valuable that people of a certain generation, people who have been used to and accustomed to a certain process will bring that process into arbitration as well. Perhaps it's time to widen the scope. May I please ask Mr. Nidumuri for his opinion please?

**Lomesh Nidumuri:** Yeah. Thanks so much Medha. So, I mean, I did hear your thoughts on this age bracket of 50. I am in my forties. I would like to believe that people in their forties also are next generation in that sense. I do, subscribe to the views that Mr. Bhasin made. I think he made a couple of excellent points. The first thing is when you are looking at next generation, I don't think that should be pigeonholed into any kind of an age bracket because it would really depend on the nature of specialization that you are bringing into in that particular area of arbitration. For instance, if it is a very technical or a niche area of arbitration that you are talking about. For instance, technology you could have somebody in their thirties who started their own company and who has excellent knowledge in so far as software code is concerned, so it's not necessary that somebody in their forties or fifties only should be considered as an expert in that field. Whereas of course, when it comes to a lawyer, the parameters may be slightly different only because as lawyers we also groomed, not just to know the technical aspects of it but also in so far as the conduct of arbitration, how do you really control and conduct an arbitration. That's where your experience and your forte really comes into play. That is why maybe the age bracket shifts a little more when it comes to lawyers. As I mentioned earlier, the glass barriers have been broken. Gone are the days when you are looking at your forties and fifties. I know excellent distinguished colleagues of mine

in their thirties who are doing exceedingly well as arbitrators. A lot of them have even chosen to be only an arbitrator and not even an arbitration counsel and that is a level of specialization that you are looking at people who say that I will not act as an arbitration counsel at all. I will only act as an arbitrator but of course I can think of handful of them who have done it Anish Wadia and few other people who have done it. I think that is a level of sophistication that's going to come into the market. Mr. Bhasin spoke about specialization across the fields. I would think that even between the arbitration practice itself there would be specialization between somebody who would say I will act only as an arbitrator and somebody who may say that I will act both as an arbitrator and as a counsel or somebody who may say I will act only as an arbitration counsel.

**Medha Sachdev:** That is very interesting. Mr. Garg we can have your thoughts as well.

**Shashank Garg:** On the lighter side, taking sue from what Mr. Bhasin said, I fell everybody who has not been vaccinated is in the Gen-Next, that is below 45 but a very pertinent point both Mr. Bhasin and Lomesh pointed out, why should we have any sort of demarcation even if it is 30, 35, 40, 45. We look at what is the eligibility to be a judge in our Country. A 22 year old law graduate is eligible to appear in a judicial

examination and become a judge in many jurisdictions, such as judge in Haryana where original jurisdiction has absolutely no pecuniary limit. These young judges would be deciding cases worth hundreds of crores. So why should there be a mental block when it comes to arbitrators with respect to their age? We often hear this very famous term age is just a number. That is usually used for people who are old who want to hide their age and never used to empower somebody who is younger to say age is just a number. It doesn't matter whether you are 25, 30, if you have the relevant expertise and if parties have confidence in you why should your age matter when we are appointing you as an arbitrator or a mediator but there are a lot of cultural and mental blocks which I think today while we discuss this further, we will come across and try and find some solutions.

**Medha Sachdev:** That's interesting, you mentioned the mental blocks and that's often spoken about when it comes to generational diversity. That there are these mental blocks that people hold against the people of certain age and there maybe lack experience. Maybe there will be an impact on the quality of decision making et cetera. Both you and Mr. Nidumuri as young arbitrators, did you face any difficulties, any such biases or prejudices against you because of your age if when you acted as an arbitrator or even as an arbitration

counsel. The parties come around and say well you are too young for our case.

**Shashank Garg:** Lomesh, may go first.

**Lomesh Nidumuri:** Thanks. I mean, the biases were there, maybe subconsciously it is rooted in people when they see somebody a lot younger appearing either as an arbitration counsel or acting as an arbitrator. There is a kind of a subconscious kind of a bias which is there rooted in people but I think the trend has changed largely now. People do recognise that there is quality of advocacy that can come from somebody who is much younger. People have opened up their horizons. People opened up their avenues to say that there is a lot of value that somebody much younger can bring to the table. Let me make a distinction here. In so far as arbitration counsel is concerned, arbitration is actually an excellent forum for youngsters to stand up against senior advocates or much more senior members of the bar. The reason is it is not a jurisdiction under Article 226 of the Constitution of India where there is some kind of a discretion on whether to grant a stay or not to grant a stay. Arbitration is all about hard facts. It's about evidence. It's your ability to read the evidence. It's your ability to lead the right evidence, the right witnesses and it's the ability to cross examine the witness. These are skills that come to the forte and usually

what happens is with due respect I mean, there are senior advocates who spend a lot of time reading the brief and who are excellent but you also come across situations where they do not have enough time to prepare. That is where somebody who is much younger, somebody in the thirties or forties can really take on a senior advocate and do really well in the arbitration sphere. Whereas in the court, it has his own old baggages of its own British colonial culture of seniors and the whole biases which I don't want to talk about. Those things are always there which are not there in an arbitration. I think it really works to your advantage. In so far as bias against a young arbitrator, I think yes, the bias against a young arbitrator is a lot more. I would say then an arbitration counsel because arbitrator is somebody who is going to decide the case. Let's assume a situation where you have two senior advocates appearing for either sides and you are a young arbitrator in your thirties or forties and you have somebody in the fifties or sixties. I think one is the initial bias is going to be that this guy is a youngster. This person, guy or a girl is a youngster. Will he or she be able to render the right award in this particular matter? Will they be able to conduct the arbitration proceedings properly? That initial bias will always be there but I think the moment they realize that you are firm as an arbitrator, two you are fair as an arbitrator, three you have the right principles of integrity and values and four that you have sufficient

knowledge in order to understand the case and to pass a reasoned award and five that you have requisite patience to deal with the parties. I think immediately you garner the respect of the parties who are appearing before you and even the senior advocates that appear before you.

**Medha Sachdev:** That's very interesting. If I can just put another question back at you for the description that you just gave. You spoke about how if the party is able to get some sort of respect for the young arbitrator, they would be willing to go ahead, but in the manner in which the appointments are made of the arbitrators, not very often you get a chance to interact with the parties ahead of the appointment. Not certainly in a manner that you can show these skills and invite confidence and respect from the parties. Often that is where the ball drops for young arbitrators. That is where looking at the list of panelists parties often just the names that they haven't heard, they are very wary of selecting them. They are very wary of going ahead with them. Even if an institution is to say impose, if not impose, at least suggest or push a young arbitrator on the parties, they would often be very wary of it. There have been instances where technical criteria were picked up by parties to have them disqualified or remove the arbitrators. There have been instances in ICC and other such institutions as well. In that light, how does a young arbitrator deal with this limitation?

**Lomesh Nidumuri:** I mean the limitations are always going to be there Medha. So, it's a mindset of the people that needs to change. It will take some time for it to change and institutions also I think I have taken a great step forward in making sure that the younger arbitrators are being appointed as arbitrators. That trend is also changing. But obviously we are nowhere close to what the international standards are and the average age of arbitrators in the country is definitely on the higher side and that needs to come down. And the more the younger arbitrators really take on the mantle, the more they are able to prove their metal. The more, the confidence at parties also have the younger arbitrators will be in a position to handle a complicated arbitration. That's always a ripple effect that happens over a period of time. The younger arbitrators just need to have a lot of patience and just trust their own abilities and just proceed with the arbitration.

**Medha Sachdev:** If I can have Mr. Garg thoughts and then we can go to Mr. Bhasin for his valuable thoughts.

**Shashank Garg:** Medha as far as I am concerned, my experience has been very heartening and very positive in this regard. So, speaking purely from my own experience with appointments done in Section 11. Delhi High Court has been very progressive. So it's Bombay High Court and some other jurisdiction that I

hear, where judges in Section 11, have been appointing the younger lawyers in disputes. Now when we talk about parties choosing the young arbitrator as Lomesh is pointing out, it's a free market. One will really have to break that mental block for the parties. There is nothing that can be done other than parties really feeling the need, really finding out that a person in his early thirties, early forties is capable to handle a complex dispute. We can't really change that, but as far as appointments through Court and Institutions are concerned, I think we have seen trend wherein even international institutions like MCIA, DIAC et cetera have been appointing young lawyers as arbitrators. High Courts have been appointing young lawyers as arbitrators. So think the future is really bright. The opportunities are coming in and the young arbitrators also have a huge responsibility. They must upgrade their skills from time to time so that these are not just philosophical questions when the responsibility is actually put on them, they are able to perform upto the mark.

**Medha Sachdev:** Mr. Bhasin if we can have your thoughts as well.

**Lalit Bhasin:** Yeah. I think there is a slight divergence of views so far as I am concerned because we are speaking about lawyers, young lawyers straightaway being arbitrators. I think that is not the correct approach. First lawyers have to

establish themselves as lawyers in the field of arbitration appearing for parties and all that. You can't think of a young lawyer just becoming an arbitrator straightaway. Once he makes a mark in the profession before the Courts and before the arbitral tribunal as a young lawyer appearing regularly then there is no question of bias. Then he will be recognized for his own merit, age does not come in there. We have so many people here. Lomesh spoke about Wadia and then there is Nakul Dewan and all those. All young people but they don't claim to be good arbitrator straightaway because they have been good successful young lawyers and their talent has been recognized by the Courts. As Shashank rightly said, the Section 11 judges are appointing but they don't appoint someone because he is a young lawyer. They appoint someone as arbitrator whom they know, he can be a good arbitrator because he is frequently appeared before them in arbitration matter. Therefore, what I feel is that there is a bias and Medha you would be interested and there is a bias against women arbitrators and women mediators. In my experience, now which is about 60 years. I have not seen many women lawyers or otherwise as arbitrators. There is a big gap particularly in India, I don't see anyone coming up in the field and that possibly is not because of lack of effort on the part of the ladies. They do deserve that recognition. There is the question of some sort of bias comes in which is most unfortunate because our lady lawyers are second to none and they can be actually very good mediators

because they inspire confidence by very nature of things but they have not been given their due under the Indian arbitration scenario or mediation scenario. There is definitely a bias for young ladies not coming up as they may be good lawyers but somehow when the question of choosing the arbitrators or mediators is concerned, they are not considered. There is some inherent bias there.

**Medha Sachdev:** Thank you Mr. Bhasin. That's actually true and yes, Mr Nidumuri please.

**Lomesh Nidumuri:** I think I hundred percent agree with Mr. Bhasin. I don't think the approach should be that is generation next. We are all excited about the generation next. Let's all make them arbitrators. I think that's not something that I am sure Shashank views are also the same. I don't think that something that we should all rush into. Obviously being an arbitrator is a very very responsible job. You are substituting the role of a judge. You need to have the requisite experience and the skills to deal with an arbitration. Let me also point out that just because you are a great arbitration counsel need not necessarily mean that you will make an excellent arbitrator or even a mediator. There are requisite skills that are required for you to be an arbitrator. You may draft your petition really well. You may draft your claim statement really well but when it comes to

actually drafting an award, you cannot afford to make any kind of a mistake. I mean lawyers do make mistakes here and there when it comes to drafting pleadings, but you cannot afford to do that when you are determining the rights of a party. That is where I think little bit of experience definitely helps and some kind of technical skill set that institutions like the various institutions that are there and including IAF. That's one of the philosophy on which the IAF is also there is to ensure that we create the next generation of arbitration lawyers who also aspire to become arbitrators. We want to create that whole eco space in the country where people also take up the profession of arbitrators itself a lot more seriously and have the requisite skills to do it. I think that's very important. It's important that we don't rush into it just for the sake of it. It's important that we create the requisite technical sort of expertise and that the right kind of training also to groom the next generation to take on the mantle of arbitrators.

**Medha Sachdev:** That's very interesting.

**Shashank Garg:** Can I just close the loop by clarifying what I said. And I think what Mr. Bhasin and Lomesh have made the same points but when I say young lawyers are to be appointed or are being considered for appointment as Mr. Bhasin rightly said. This is not akin to appointing somebody like a local

commissioner who obviously the judges appoint LCs looking at a young lawyer or an LR giving them some sort of financial help. Very rightly said. I think the responsibility of an arbitrator is huge especially given the fact that the scope in 34 is so narrow. So you are almost giving somebody the role of a judge who in this quasi-judicial authority would be writing an award which is very unlikely to be interfered with unless you go horribly wrong. Therefore, you need somebody who obviously has the basic skill set. I think we all agree on that there cannot be a straightaway becoming an arbitrator sort of a journey or mission. The idea should be to transition from a practitioner who is doing specialized arbitration to an arbitrator. As Lomesh pointed out, that may also be not everybody's cup of tea or everybody may not want to do that. People may just want to remain successful practitioners. So we have to consider all these factors.

**Medha Sachdev:** That's right. There is a question that what are the skill sets of an arbitrator that one must possess? How do you determine that you have now achieved a certain experience that would make you viable as an arbitrator? Is it attending certain courses like CIArb offers a course to become a Fellow with them and that they teach arbitration writing as one of the last examination et cetera. Is that a skillset that one must possess? Is it something else? How do we put, for many younger arbitrators wanting to be the next arbitrator in the

audience, what would you say are those skill sets that one needs to acquire in their journey as an arbitration counsel?

**Shashank Garg:** We should start with Mr. Bhasin. We are all learning from him.

**Medha Sachdev:** Absolutely.

**Lalit Bhasin:** I start again with the law school. You see all this as has been explained very eloquently by our other eminent panelist here. You can't suddenly become an expert. Getting expertise is an evolution, evolutionary process. When should that process start? It should start with the law school because I firmly believe that the students of law who are the future lawyers have to be prepared for a special role in the administration of justice. They have to be prepared and moulded to be good advocates, good judges, good legislators, good arbitrators and good mediators so that they are able to and this is important, understand not only the legal rule but also their socio, economic and political backgrounds in which they are framed. They should also be able to understand judicial, legislative and administrative institutions that and their true role to the society. They should be able to understand a lawyer's skill, not only of investigating. That is what Lomesh rightly highlighted and investigating, interviewing and negotiating but also helping counselling and

mediating and also to understand not only the theory and mechanism of dispute settlement resolution but also take part, this is important, take part in providing access to justice through non judicial dispute resolution mechanism like arbitration and mediation. That is how you will build up this institution of arbitration and mediation. If you start from the law school, that responsibility has to be given to the law school so that they can evaluate the aptitude or the inclination of the law students for particular specialization and inculcate in them this need to have a specialization so that administration of justice can be done in a very effective way. Because litigation has failed totally. People are not looking at arbitration and mediation. Arbitration also in India has yet to take off for so many reasons including that it is monopolized by retired judges and lawyers and all those things and we have too many laws and all that but more importantly mediation seems to be the answer and you do need trained mediators who inspire confidence. That is where the role of our lady lawyers and jurists and all that comes in because they can be really very successful mediators. As we have seen in the Delhi High Court Mediation Centre, it is being, I can't say manned by, it is womened by, many eminent young ladies who are delivering this helping in this noble cause.

**Medha Sachdev:** Mediation and arbitration both. Right Sir. If Mr. Garg and Mr. Nidumuri can share their thoughts.

**Lomesh Nidumuri:** Should I go or Shashank or would you like to go ahead.

**Shashank Garg:** Yes please go ahead. I will follow.

**Lomesh Nidumuri:** Ok. There are two aspects of this Medha, one is you are talking about a future of generation next in the field of ADR as arbitrators and as mediators. I think when it comes to mediation, since your question is what are the skills that are required. I think the first rule of mediation is to unlearn what you have learnt as a lawyer. For that you need some kind of technical training that is required for lawyers to unlearn what they know. Otherwise you cannot act as a mediator unless and until you forget about what it is to act as a lawyer in a particular manner. I think that really comes with training. You can't just today decide that I am going to be a mediator and then sit and mediate disputes between the parties. Some may be innately good at doing it and maybe doing it well. But I do believe that there needs to be some kind of a certification that is a minimum requirement for somebody to act as a mediator and for younger members of the Bar who are interested in becoming mediators, they should really look at getting those kind of technical trainings from various

institutions that are there. That is in so far as mediation is concerned. Second point is in so far as arbitrator is concerned, I think we all agree that there is a certain level of experience that is needed for somebody who is an arbitration counsel to act as an arbitrator. There are excellent courses that are offered by CIArb and few other institutions. I think that should definitely be sort of a starting point for somebody who is looking to be an arbitrator to take those courses because these are one of those very few courses where the lawyers actually go through the grind of writing an award because writing an award is a different skill set altogether as I pointed out earlier. You can't just give those gibberish and keep it a very repetitive pleading like what we do as lawyers. You have to be extremely clear about your structure of award. What is it that you are going to put right on top, what is the analysis, what are the issues, how do you crystallize it and how do you conduct an arbitration. That's also very important. Particularly in today's times where a lot of things have gone virtual, you should also be having the requisite technical skills also to ensure that you are able to keep with the times. On another point of what I have is and I think this is more at the policy level that is something that the Government of India may consider at some point of time is to have some kind of a qualification, kind of a course centrally or maybe it is at the state level where people have to pass an exam just like you have solicitors exam

in the UK. You have the IRB exam where you have to pass that in order to become an IRB. Maybe have something like that for India as well to ensure that there is a minimum standard that is maintained. Otherwise there is no way to gauge standards today because it is all based on let's try this particular arbitrator, let's find out what the market information is. If he or she is good will get more mandates. Those 2-3 mandates may actually get messed up in the meantime. And as Shashank said, there is very limited scope for appeal also and the parties will be left in the lurch. I think it's important to keep that base level of credibility and technical competence in the market and that has to evolve over a period of time.

**Medha Sachdev:** Thank you, that was very useful, Mr. Garg, if we can have your views?

**Shashank Garg:** Mr. Bhasin and Mr. Lomesh has already covered the aspect of skill set that is needed for the Gen-Next arbitrators and mediators. Let me just point out some things that you could do to acquire that skill set and which would be some relevance to the younger audience. I think many initiatives across the globe have been taken to upgrade the skill and to absorb these young practitioners into the world of arbitration. Young MCIA is one such example. We have all the leading institutions across the globe including the LCIA which has a young arbitrators' group. ICC has YAF. ICSID has

Young ICSID. There are mentoring schemes run by ICCA, Indian Arbitration Forum recently started an essay competition for younger lawyers and law students and offered mentoring from some of the IAF members and internships. So, these are some of the areas that a young student and even a young lawyer should look at in order to get some sort of basic orientation and exposure to the world of arbitration because some of these events, some of these conferences, like the one we are holding today are extremely useful and one will only get to know if you are involved in those circles. Moving on, I am sure masters is a way out, CIArb courses are a way out to learn those technical skills, a very important skill of award writing which is essential part of the CIArbs Fellow course. Unfortunately in India, we do not have any such course other than obviously the course offered by CIArb that anyone who wants to be an arbitrator or who is planning to start his practice as an arbitrator can learn the art of award writing. As Lomesh was saying, I think we all need to learn then unlearn and then relearn. This was in fact a statement made by Chief Justice of India three years ago in a conference where all the arbitrators or arbitration counsels were present saying that just because you are a former judge does not make you a good arbitrator. There are a lot of skill sets. There are a lot of new things that you need to learn before you perform the function of an arbitrator. That level of

consciousness is therefore, the experienced lot. I am sure the younger lot has to follow the same principles as well.

**Medha Sachdev:** Right. If I can just add to that because I know a lot of questions have come on. What can be done by younger arbitrators? There is a very interesting opportunity that is coming up in across the world called Tribunal Secretaries. I know CIArb is doing a lot in that field and that I feel is akin to being a law clerk with a judge. So it gives you immense exposure, immense learning experience to be sitting with an arbitrator and learning from there, assisting them in administrative or maybe sometimes even putting papers together, understanding what thought processes go while writing and award. That can be a very useful avenue for young practitioners looking to become arbitrators. With that I am moving on because I know time is running out. I will quickly ask last couple of questions and you can take on the audience questions. To improve the scenario and I know we have spoken much about, there has been a lot of headway made and not limiting young arbitrators to be that of students but many people like yourselves to improve the scenario for you to become arbitrators, to become the usually appointed arbitrators as opposed to judges because I know in India and I am sure you will agree, the first go-to person for an arbitrator is a retired judge. Those are the names that everybody first wants to explore and only then do they move on

to counsels that to senior counsels and then maybe the list goes to younger practitioners. Who or where do you think the change should begin with to change the mindset, to change the whole process. Because like Mr. Nudumuri in the very beginning pointed out for specialized disputes where experts are required. Very often you will find younger practitioners to be more useful as arbitrators or at least one of the arbitrators on the tribunal, if not the only sole arbitrator. Where can we start? Is arbitration institution the right place to start? Is a regulation or rule required for this? Do we have to change the mindset with parties? Yourselves as practitioners would you change the thought of the parties come with when they come to you for suggestions. Where do we start?

**Lalit Bhasin:** Yeah. You have hit the nail on the head when you mentioned about institutions and all that. In India, we do not have good institutions which inspire confidence except that the MCIA. We always give an example of this MCIA but then that is just one institution. Why arbitration has failed to take off in India is also primarily due to the fact that we do not have good institutions of arbitration. Now by institutions of arbitration, I do not mean that they should be just centres of having arbitration proceedings or even suggesting or appointing arbitrators. I think it should be an integral part of every institution to provide training programs to the young and emerging lawyers particularly what you call the Gen-Next,

I think there should be programs, training programs courses to be conducted by these institutions other than apart from what they are doing as good institutions. In India of course we don't have but take example of the LCIA or the ICC or SIAC or American AAA and all that. They are all doing great job, not just in the field of arbitration but strengthening the entire system by having these training programs and courses. Therefore, in India we lack also what is called an arbitration bar. As I said, we are all general practitioners. Today I will appear in an arbitration matter as a counsel or I may be an arbitrator. Tomorrow I will be appearing before the High Court, trying to argue some matrimonial matter and all those things may be do not have a designated arbitration bar as we have in the other jurisdictions. That is what is important for us to develop. Secondly, as again rightly pointed out contemporaneous developments what are taking place all over the globe because arbitration is not just now domestic arbitration, arbitration is now international arbitration, multi-dimensional arbitration, multi-party arbitration. What are the contemporaneous developments? And that can only be provided by a good institution who have the wherewithal so that they can share it with the young and emerging lawyers or arbitrators or mediators. That's my take on that.

**Lalit Bhasin:** Thank you Mr. Bhasin. You are absolutely correct. Mr. Nidumuri, if we can have your thoughts.

**Lomesh Nidumuri:** Yeah. I think it starts really with the mindset which we spoke about earlier. Secondly, I think what is also important is to increase your pool and pace of arbitrators and where are your next arbitrators going to come from. I mean, all this talk is great. We are going to say generation next. We are going to be very good et cetera but ultimately you need to create that pool of arbitrators who can be appointed for future disputes. If you don't create that then everything is just meaningless. The third point which I wanted to make is if you are looking at some institutions like ICC, the average age as of 2018, I have the statistics here was the appointment age was 56 and with only 35% less than the age of 50. And ICC for instance has taken a lot of initiative in ensuring that the age is drastically reduced. I know SIAC, for instance, is also making those steps to ensure that the age is reduced. While measures are happening, again I come back to the same point that you need to really increase your pool of arbitrators, because while you are saying we are going to reduce the age and we are going to give more opportunities to the younger arbitrators but where are your arbitrators? If you don't have your pool of arbitrators ready to take on the challenges which are required of you to be a really good arbitrator, then you really lost the plot. The start should be increase your pool of arbitrators and at the same time do everything else that is required right from institutional

changes and Shashank also spoke about some of the younger forums what they are doing right from YSIAC to YMCIA and all the other forums which is to really give the younger power and the students, the requisite skill and the tools to become arbitrators.

**Shashank Garg:** You are absolutely right sir and in fact merges well with what Mr. Bhasin just said. To identify this pool of arbitrators, we need to have maybe a list, maybe a group may either be arbitrations bar. It may be institution which has a panel of arbitrators because often when parties come to a counsels for suggestions of names, we refer to the panelists on the panelists of various institutions like ICC or LCIA. That is usually the reference point. That is what is lacking in India for young arbitrators or even otherwise for arbitrators. A lot is dependent on word of mouth and word of mouth then limits and enables repeat appointments and repeat appointments are a certainly a barrier for opportunities for the younger arbitrators.

**Lomesh Nidumuri:** Sorry. Just one more point. Sorry. And that is something that we at the India Arbitration Forum but also aspiring to do this. The forum is essentially bunch of law firm partners and younger practitioners have come together who have forgotten their defenses. I mean, you could be opposing each other in matters. You may have argued against each other

tooth and nail in matters but we have just come together with the sole objective of actually improving the arbitration echo space in the country and to also create the next pool of arbitrators. It is work in progress. Obviously there is a lot more that we need to do and that is where we can really benefit from working with Mr. Bhasin and the other reputed practitioners in the country to make sure that we really drive home the message to the younger members also that the future is bright and so far as arbitration is concerned, also the fact that there are opportunities for you to act as an arbitrator and a mediator in the country. Sorry Shashank, please go ahead.

**Medha Sachdev:** Very important point. It's very important for the youngsters to see that there are opportunities to be able to work towards them. Mr. Garg, if we can have your thoughts as well.

**Shashank Garg:** So in fact IAF and CIArb both are institutional neutral entities and both are in the space of creating those best practices, inculcating those best practices, not just within the Gen-Next but for anybody who is now interested in arbitration. Initiatives by IAF and CIArb are the things that everybody should watch out for. Now coming back to your question Medha, quickly on institutional arbitration as well as ad-hoc arbitration. There is a slight difference.

Institutional arbitration as put by Lomesh. If there is a good pool of arbitrators, institutes have already started the trend of appointing younger arbitrators. What happens when we are looking at an ad-hoc arbitration and as you said, when parties come for a suggestion, the counsel would usually not name somebody really young. This brings me to the same point I made. It's a free market Medha and you can't choose a judge. You will have to go to the relevant court as per the jurisdiction but you do have a choice when you are choosing your arbitrator and every party wants to exercise that judiciously. Therefore, what we really need to do is break that mental block, increase the level of confidence within the parties to appoint these GenNext younger arbitrators. Because if you keep forcing them, there is a very easy way out. Parties would simply put a clause which will say that the arbitrator must be a former judge of a High Court or Supreme Court. What do you do then? So it has to be a comprehensive effort. It has to be inclusive sort of growth in the minds of the parties as well as all the stakeholders.

**Medha Sachdev:** Absolutely sir and like you said courts have already started encouraging younger practitioners that ought to give some sort of confidence in the minds of parties that there is scope for younger arbitrators as well. Since we only have 10 minutes left, I think it's now time to go to audience questions. I do have a bunch of more questions.

**Shashank Garg:** I think Mr. Bhasin is saying something. Sir you are on mute.

**Lalit Bhasin:** Yeah. I am tempted to say something about the ad-hoc arbitration what Shashank just mentioned. The answer for arbitration to succeed in India will be that there have to be good institutions. Ad-hoc arbitration will not be the answer because I have seen and that is the mindset. We are not talking about the mindset of the arbitrators or the mindset of parties, the disputing parties. I have seen and I have experienced that people saying the party saying, look here that we appointed someone as our nominee. He has decided against us. Now that sort of approach when you have an arbitral tribunal where one party nominates, other party nominates, then they do so. The mindset has to change and that mindset will not change easily. Therefore, the best answer is to institutionalize arbitration. That is the answer. Ad-hoc arbitration will not make arbitration take off in India. It will be a total failure.

**Medha Sachdev:** Absolutely sir. Often, we hear parties saying let's have a CJI so that when the award goes to the court, it will be a different eye that will be looking at the award and a different way maybe more favour. Okay. So we take up the questions. Let's start with the first one that we have here.

It says as a norm, preferred arbitrators are usually baby boomers, retired judges or senior advocates. The current scenario Gen-Next or GenY have avenues open for arbitration. What about GenX advocates who want to diversify their careers and plan to become arbitrators? How should they go about it? I think we did cover a lot on what needs to be done. I feel this has been answered. So we will move on to the next question please. If any of the panelists have anything to say, please feel free to jump in.

**Lalit Bhasin:** I have only one thing to say. I am just leaving the meeting.

**Medha Sachdev:** Thank you so much for your valuable time and all your thoughts.

**Shashank Garg:** I was just saying they should look at the CIArb and IAF website and most of their answers would be found there. There are courses. There are things that they could do to transform their relevant practice to dispute resolution practice.

**Medha Sachdev:** Agree. Many companies are trying to open online mediation platforms for resolution of disputes and upon failure to start arbitration. Do you feel that online arbitration platform will empower younger arbitrators to stick

with the arbitration deadline of timely submission of application and have the arbitrator to give a reasoned award within the timeframe devised by the Arbitration Act? Well, if any of you want to take this.

**Lomesh Nidumuri:** Yeah. I think the online arbitration system, the lot of them have indeed started. I think it's a good platform for youngsters also or some of the younger arbitrators to take on some of these disputes because some of these disputes are not super complicated also. It may be something that is within their comfort zone as well because for the younger arbitrator to suddenly handle a thousand crore construction dispute may not be up their alley but these are disputes which are not so complicated. It may actually be in their interest to sign up for some of these institutions where they can act as an arbitrator and also pass the award within a reasonable period of time and most of these are documents based arbitrations. You don't really need the requirement of conducting trial et cetera, though of course there are exceptions and you do conduct it. I think it does provide an excellent platform.

**Medha Sachdev:** Absolutely. In fact, ICC also has recently suggested this to its national committee that when you are appointing arbitrators as if it's a less complicated case go ahead with younger arbitrators. That encouragement is

certainly happening world over. What are the prospects of international arbitration seated in India by 2030? Well, that's a very interesting question. Mr. Garg we can have your thoughts on it.

**Shashank Garg:** I think for the last 10 years we have been hearing this in conferences can India have become a hub of international arbitration. What is the role of institutions? What is the role of judicial pronouncements? What is the role of other stakeholders? We have debated this a lot but the takeaway from all these debates and what we have been seeing is that judicial pronouncement in the last decade or so have been very progressive. Supreme Court and many High Courts have been giving out very arbitration friendly judgments. The interference that used to be the norm is completely now doing away with. There is a huge amount of reluctance in interfering with an award unless it's perverse on the face of it. The scope as legislative amendments have reduced the scope in 34 has been redefined, reshaped and has been made really narrow. As far as international arbitrations are concerned, the Supreme Court time and again in execution petitions have shown has frowned upon any delays, imposed huge costs in parties dealing execution et cetera. So I don't see a reason why in next 10 years India cannot be a preferred seat of arbitration. There is a lot to be done. The impression created is of 40-50 years which cannot be erased in 10 years but we have come a

long way. In the next 10 years, if everything goes right and if the legislature and the judiciary follows the same trends and path and uses international practices, I don't see a problem. In 2030, we would be as successful as our neighbouring jurisdictions such as Singapore and Hong Kong et cetera. Lomesh anything you would like to add?

**Lomesh Nidumuri:** Just a couple of points, Shashank. I agree with you completely but there are a couple of things that we need to do better. One is to improve our legislative eco space. I think the drafting of legislations. We have come a long way from 2015. I mean prior to that, we had a lot of backlog. 2015, we have carried a lot of those forward in the positive way. 2019, we have made amendments and there are further amendments that are needed in the Arbitration Act. Hopefully that should come through. I do see a lot of confidence even foreign investors to have the seat of arbitration in India. I think that trend is also changing. Though I must add a note of caution that it's not changed dramatically. A lot needs to be done.

**Medha Sachdev:** That's right. Okay. Moving on. There are a lot of questions of law students who want to know what they can do. I think we have covered them. Any of you have missed it, please go back to our recording. The panelists have given a lot of suggestions on what steps can be taken by you and which

organizations to go to for courses. There is a question by a non-lawyer who says that kindly share your views and observations on appointment of arbitrators who have not attended law school but are experts in their own field. So Mr. Nidumuri, we know that there has been an eighth schedule that was going to be included in the Arbitration Act but now has been omitted maybe for more amendments. It did speak about professionals with 10 years or more of experience in different non-law backgrounds as well who can then become arbitrators. But What else would you want to say to the gentleman?

**Lomesh Nidumuri:** Yeah that's right Medha. I think that's an excellent question. That is also theme of what we spoke earlier. The fact that arbitrators need not be restricted only to just the lawyers who are practicing in the arbitration space. I think a lot of institutional arbitrations what they are doing is they are empanelling a lot of experts. They do have a panel of experts depending on the area of practice that this particular person belongs to. They have those empanelled experts and depending on the nature of this dispute they do reach out for them. If the gentleman who has asked the question intends to take his career forward as an arbitrator. He will be advised to also get himself empanelled in a lot of these arbitration institutions because usually what happens is if you are an expert, it's very rare that you will act as the sole arbitrator. It's not usually the case. We do find that

typically with three panel arbitrators that's because there is usually somebody else either an arbitration practitioner or a retired judge who will bring with him or her, the requisite experience of how to conduct the arbitration as well. If he or she who asks the question wants to improve their skills in so far as how to conduct the arbitration, again it goes back to all those courses which are available on how to draft an arbitral award and et cetera where they can actually get those technical skills as well to feel a lot more comfortable in handling a sole arbitration as well.

**Medha Sachdev:** Thank you. And then there is another question very interesting. How do law firms deal with conflicts, if a law firm partner is being appointed as an arbitrator?

**Shashank Garg:** No, it would be again, it would be governed by Schedule V and Schedule VII which has been adopted from IBA guidelines on Conflict of Interests. So, I think it is exactly the same way as you would do for a matter conflict check. The same things would happen. If a law firm partner has been appointed as an arbitrator in what capacity has been appointed whether in his individual capacity. What is his role with the partnership et cetera will be some of the factors but otherwise same eligibility criteria as Schedule V and Schedule VII.

**Lomesh Nidumuri:** I just have one point on this, Medha. I can share my own personal experience. I think I would have lost more than 6 to 10 mandates to act as an arbitrator because of conflict situation and the problem is conflict as per the Schedule, is not just conflict in so far as my matter is concerned. It could be any other matter that law firm would have handled. If you have 50-60 partners sitting across, then the chances of you getting conflicted out is very easy. That really comes back to the point that a lot of foreign arbitration practitioners who were earlier with law firms who want to focus their practice maybe a lot more on arbitrations, actually have quit law firms so that they do not get into these situations.

**Medha Sachdev:** That's true. There is a question on tribunal secretary opportunities. Please look into CIArb website. There is a lot of information on that.

**Shashank Garg:** Even HKIAC has a course on tribunal secretaries.

**Medha Sachdev:** So those will give you the information. Apart from counsel, I feel availability of material in the field of arbitration available for young lawyers should be more open and accessible. Almost everything important is being behind the pay walls I believe. I think it's to do with

confidentiality and perhaps lack of arbitration awards being there. If there is any thought from the panelists on this.

**Shashank Garg:** I was not able to follow it. Lomesh has been able to decipher it.

**Medha Sachdev:** Even I wasn't. Maybe.

**Lomesh Nidumuri:** I wasn't able to. I really want Shashank to take the lead on this.

**Medha Sachdev:** let's move on then. Okay, well there was a question for Mr. Bhasin. He is not here. We will move on. How arbitrators looking at online arbitration procedures?

**Shashank Garg:** There is plenty, we have discussed. IAF has come out with guidelines to conduct arbitration online. Many institutions have come out with their practice note on virtual hearings even in domestic regime. There is plenty already there if ones look out what are the practices, what are the measures and what other precautions to be taken and how. Especially, recording of evidence et cetera, how it is to be done on a virtual mode. It is now plenty in the public domain.

**Medha Sachdev:** Right. Is it allowed neutral and lawyers can go for marketing? I don't know. I think we can move on. How can

students. Again, there are a lot of questions. How can students become arbitrators? Is LLM one of those ways? And I think Mr. Garg did mention LLM is certainly one way to achieve the skill set but there are many other courses. Please go back to our recording and there will be enough more information on that. I think with that we have finished all our questions and in time just four minutes over the clock. Thank you so much.

**Shashank Garg:** Thank you so much Medha.

**Lomesh Nidumuri:** Thank you Medha. Thank you Shashank.

**Yuet Min:** Thank you everyone. For what I feel is was a most enlightening session. I think speaking from personal experience, the landscape is surely still less than ideal for young practitioners and for women nowadays. But I think if there is a time for us to make our mark, I think this is the time. I would like to invite everyone also to join us for three other sessions we have today at 12 noon, 3:00 PM as well as 6:00 PM Indian standard time. We do look forward to having everyone with us again and thank you again to a very distinguished panel and for all the insights that you have shared with us over the course of the past hour. Thank you Medha, for really going through all the Q&A questions. I really appreciate everyone spending time with us today. Thank

you everyone again and we look forward to seeing everyone again.