IIDRC
Institucional & Industrial Thapna Rombolom Cante

OCTOBER 2026

PANORAMA

ADR in Healthcare

Medical Negligence | Hospital-Contract Disputes | Pharma Licensing Issues



EXCLUSIVE INTERVIEW

Dr. Raghavender GR

Senior Consultant (IPR),
Department for Promotion of
Industry and Internal Trade

EXPERT LENS



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SECTION ONE · WELCOME NOTE

From the CEO's Desk



The oldest contract in medicine is four words long.

First, do no harm. It is older than most constitutions, older than the law of torts, older than the word "hospital" in anything resembling its modern sense. Every doctor you have ever met has agreed to it, in writing or by implication, before they ever touched a patient. It is the shortest, simplest, and most widely signed contract in human history, and it has been working, by and large, for about two and a half thousand years.

The trouble is that modern medicine does not run on four words. It runs on several million of them, spread across supply agreements, hospital management contracts, pharmaceutical licensing deals, procurement tenders, insurance arrangements, and the long grey corridor of consent forms a patient signs without ever quite reading. The oath is still there, somewhere underneath. But by the time a batch of medicine has moved from a third-party manufacturer through two distributors and a state procurement cell into a hospital pharmacy, the original promise has acquired footnotes. And it is in those footnotes that this issue of Panorama lives.

Our panel on ADR in Healthcare, convened on 3 October, spent an afternoon exactly there. Our contributors push further. Aditi Sarkar writes on mediation in medical negligence and the question of whether a settlement can ever really look like justice for a bereaved family. Yashika Datta Wadke argues, I think persuasively, that a healthcare ADR system judged only by its settlement rate is a system that has quietly stopped asking the harder question. Mansij Arya draws the line between what an arbitrator can actually decide in a pharma contract and what belongs, firmly and permanently, to the regulator. Shambhavie Saurabh takes apart a Supreme Court order from September, in the way only a good law student can, and asks whether a referral court should at least say what kind of question it is sending to the tribunal.

A few other notes from the month. Our Relationship Manager Ms Adri Kashyap represented IIDRC at the inaugural of Lex Pax 2.0 at Woxsen University, which is quietly becoming one of the better student mediation competitions in the country. We were Session Partners on the IP and Energy webinar on 30 October, and Supporting Partners on the GADR career talks on the 31st. Somewhere between all of that, we hosted an Open House and high tea, which coincided with Diwali and ended, as all our best meetings do, slightly off topic and slightly over time.

The issue also features our conversation with Dr G R Raghavender, which I will not summarise. It deserves to be read whole. As always, read, argue, and if a piece changes your mind, tell the person who wrote it. They will be delighted.

Hamid

Hamid Baig
CEO, IIDRC
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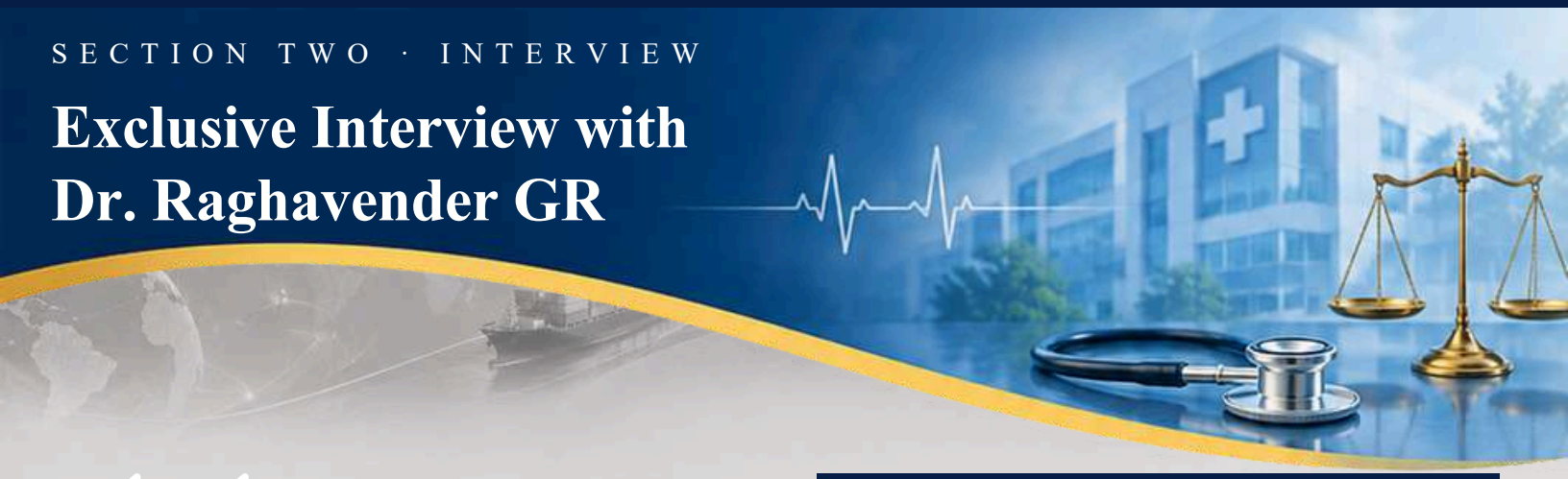
SECTION TWO · INTERVIEW

Exclusive Interview with Dr. Raghavender GR



Dr. Raghavender GR is a retired Joint Secretary to Govt. of India. Currently working as Senior Consultant (IPR) at DPIIT with a distinguished public service career, including roles as Joint Secretary in DIPP, and Dept. of Justice, Ministry of law and Justice, and Director General of NPC. As Registrar of Copyrights, he significantly contributed to the Copyright Amendment Act, 2012, and the Rules, 2013, online filing and registration of copyright implementation. He has been involved in various international treaty negotiations, notably the Beijing and Marrakesh WIPO Treaties, RCEP negotiations, recently concluded India-EU FTA, and FTA/BIPS negotiations with Japan, the UK, Peru, and EFTA. He is an expert in the field on IPR law and emerging technologies. He has been awarded PhD in IPR protection for Text Data Mining and Artificial Intelligence.



Q **Your professional journey has taken you through several important roles in government, legal reform, and intellectual property administration. Looking back, which experience most significantly shaped your approach to law and public policy?**

A One of the most formative experiences was my work on broadcasting policy in the Government of India, particularly on Community Radio Broadcasting, Downlinking Guidelines, Must Carry provisions, broadcast content regulation and the proposed WIPO Broadcasting Treaty. These assignments exposed me to the challenge of balancing public interest, freedom of expression, technological developments and commercial interests.

Equally significant was my M.A. in Development Studies, specialising in Public Policy and Management, at the International Institute of Social Studies, The Hague (2003–04). It deepened my understanding of policy formulation, implementation and institutional coordination. Together, these experiences shaped my belief that effective law and public policy must be pragmatic, consultative and responsive to societal needs, with their true success depending on implementation and institutional capacity.

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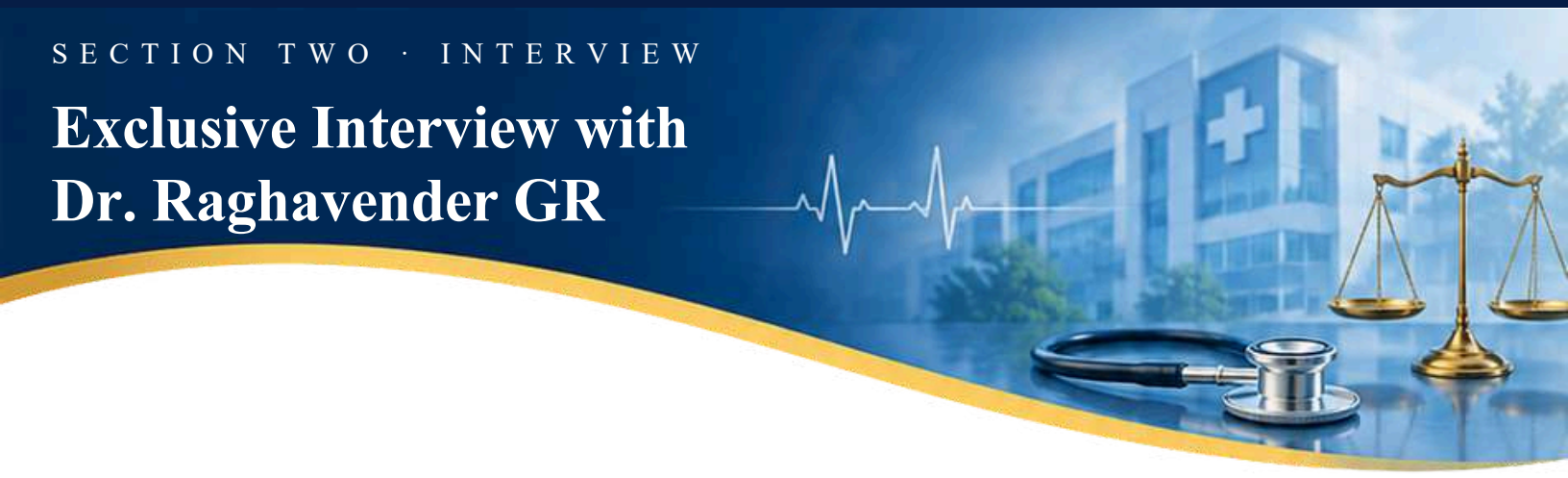

Q **Having worked at the intersection of law, administration, and policy, what has been the most challenging aspect of translating legal provisions into effective institutional practice?**

A One of the most challenging experiences was my involvement in formulating and implementing the Copyright (Amendment) Act, 2012, and the Copyright Rules, 2013. The copyright and creative industries involve diverse stakeholders, including authors, publishers, composers, performers, broadcasters and producers, each with competing interests. Balancing these interests while safeguarding public interest was particularly demanding. This experience also motivated me to pursue LL.B. and LL.M. degrees in Intellectual Property Rights alongside my professional responsibilities.

It taught me that effective legislation requires more than sound drafting. It depends on stakeholder consultation, negotiation, consensus-building and a practical understanding of how legal provisions affect different segments of the creative ecosystem.

Q **You have spent a significant part of your career dealing with risk. What is one risk, professional or personal, that you took which ultimately changed the course of your career?**

A One significant professional risk was pursuing LL.B. and LL.M. degrees in Intellectual Property Rights through private study while continuing my demanding responsibilities in the Government of India. My work in copyright policy made me realise the need to complement administrative experience with a deeper understanding of intellectual property law.

Balancing official responsibilities with lectures, reading and examinations required considerable personal commitment. However, it strengthened my contribution to policy formulation and legislative reforms and shaped my journey as an IPR professional, researcher and academic. It reinforced my belief in stepping outside one's comfort zone to continue learning and growing professionally.

Q **After decades of professional experience, is there a belief you held early in your career about law, governance, or justice that your experience has since changed?**

A Early in my career, I believed that sound legal provisions and well-drafted government policies were the principal foundations of effective governance and justice. My experience in broadcasting policy, copyright administration and legislative reforms gradually changed this perspective. I realised that good laws alone cannot ensure good governance; their effectiveness depends on implementation, institutional capacity, stakeholder participation and balancing competing interests with the larger public good. Law must also evolve with technological advancements and changing societal needs.

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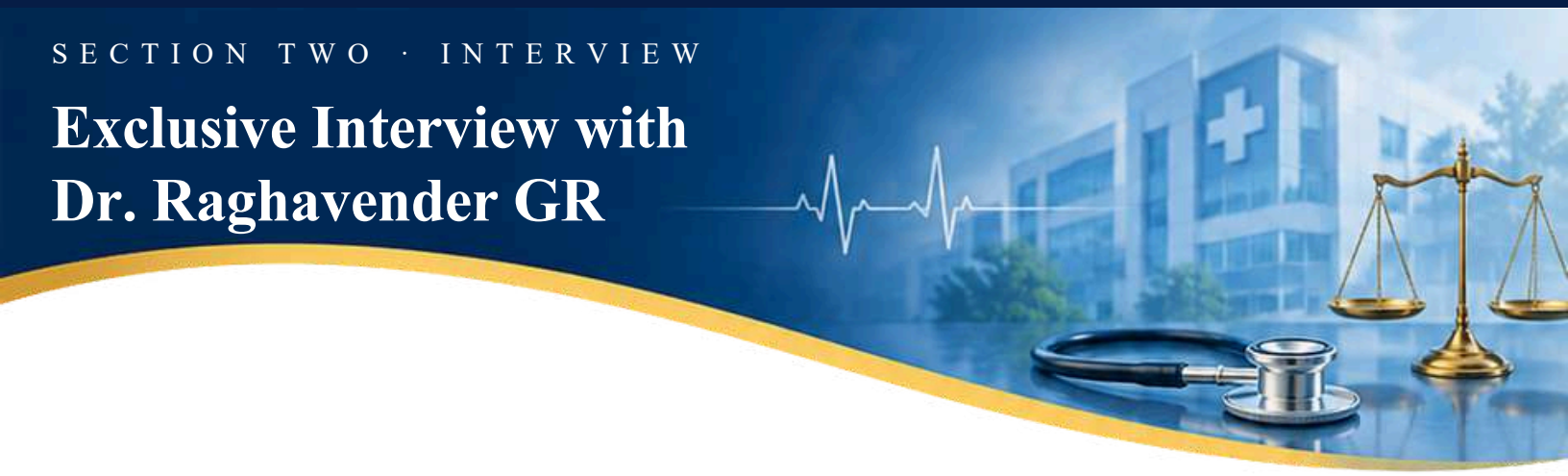

Q **What is something you strongly believed at the beginning of your career that you no longer believe today?**

A I once believed that well-drafted laws and sound government policies were sufficient to ensure effective governance and justice. Experience taught me that their success depends on effective implementation, monitoring, institutional capacity and stakeholder participation. Today, I believe the true test of good governance lies not in how well a law is framed, but in how fairly and effectively it works in practice.

LEGAL REFORM, GOVERNANCE & DISPUTE RESOLUTION

Q **During your tenure in the Department of Justice, you were involved in initiatives concerning justice delivery and legal reform. From your experience, what are the most persistent institutional barriers to making justice more accessible and efficient in India?**

A During my tenure in the Department of Justice, one persistent challenge was the gap between judicial reform initiatives and their implementation. Addressing judicial pendency required coordination with the Judiciary and State Governments, strengthening judicial capacity and improving infrastructure in district and subordinate courts.

I was involved in initiatives including action research, court procedure reengineering, promotion of ADR and the Centrally Sponsored Scheme for judicial infrastructure. We also introduced web-based monitoring platforms such as the Nyaya Vikas Portal, Gram Nyayalaya Portal and Enforcing Contracts Portal. These experiences highlighted that the key barriers include institutional coordination, infrastructure deficiencies, human-resource constraints and the need for technology-driven monitoring and accountability.

INTELLECTUAL PROPERTY, INNOVATION & COMMERCIAL DISPUTES

Q **Your work in copyright administration and intellectual property policy has involved balancing the interests of creators, businesses, and the wider public. What lessons from this experience can inform the resolution of complex commercial and contractual disputes?**

A My experience in copyright administration has taught me that complex commercial disputes often arise around intellectual property ownership, licensing, assignment, royalties, revenue-sharing and contractual obligations. Resolving them requires looking beyond narrow legal interpretations and considering the commercial realities and legitimate expectations of all parties.

Early identification of issues, transparent contracts, proper documentation and a fair assessment of economic interests are essential. Mediation and arbitration can help preserve commercial relationships, protect intellectual property rights and achieve equitable outcomes without disrupting creative and business activities.

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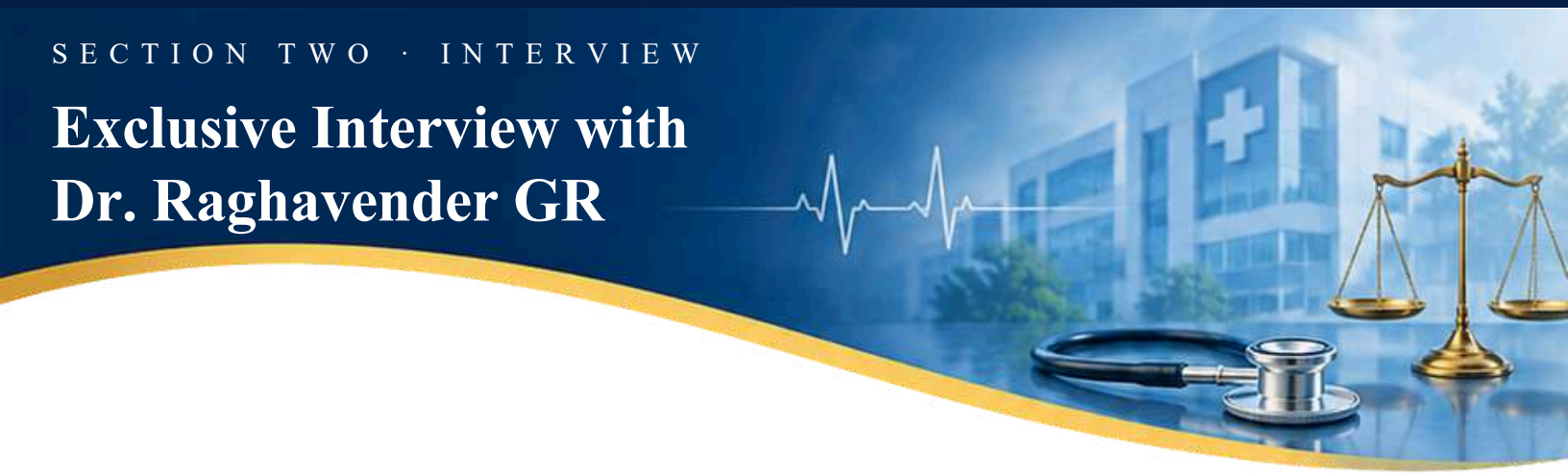

Q **Intellectual property disputes often involve technical questions, commercial confidentiality, and rapidly changing technologies. Does this make these disputes suited to arbitration and mediation?**

A Yes, intellectual property disputes, particularly those involving emerging technologies and pharmaceutical patents, are well suited to arbitration and mediation, subject to the nature of the dispute and applicable statutory requirements. Issues involving artificial intelligence, digital technologies, SEPs and technology licensing often require technical expertise, confidentiality and flexibility.

Arbitration offers specialised expertise, procedural flexibility and enforceable outcomes, while mediation can facilitate solutions in patent licensing, royalty determination and technology transfer. In pharmaceutical disputes, it is important to balance patent protection with public health and access to affordable medicines. The choice of ADR must, however, respect statutory rights, public interest and third-party interests.

Q **How do you think India protects its innovation while ensuring that intellectual property rights serve the wider public interest?**

A India's approach is reflected in its National Intellectual Property Rights (IPR) Policy, 2016, guided by the vision of Creative India, Innovative India. It seeks to strengthen IP awareness, encourage innovation and creativity, improve institutional mechanisms and promote commercialisation.

At the same time, India's IPR framework recognises that intellectual property rights are not absolute. Patent protection must coexist with public health safeguards and access to affordable medicines, while copyright must reward creators and preserve legitimate exceptions for education, research and public access. The objective is to encourage innovation without restricting competition, knowledge dissemination or public welfare.

ADR IN HEALTHCARE: POLICY & PUBLIC INTEREST

Q **The healthcare sector brings together public interest, commercial contracts, technological innovation, and individual rights. Drawing on your experience in law and policy, what principles should guide the development of effective dispute resolution mechanisms for this sector?**

A Healthcare dispute resolution should be guided by fairness, accessibility, transparency, confidentiality, accountability and protection of public interest. Since these disputes involve patient rights, professional ethics, commercial interests and public health, mechanisms must address the concerns of all stakeholders.

India can draw upon pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, and consider a suitably adapted institutional approach for healthcare disputes. Specialised mediators with knowledge of medical law, healthcare regulations and professional ethics, supported by time-bound procedures and safeguards for patients, could encourage early settlements and reduce adversarial litigation.

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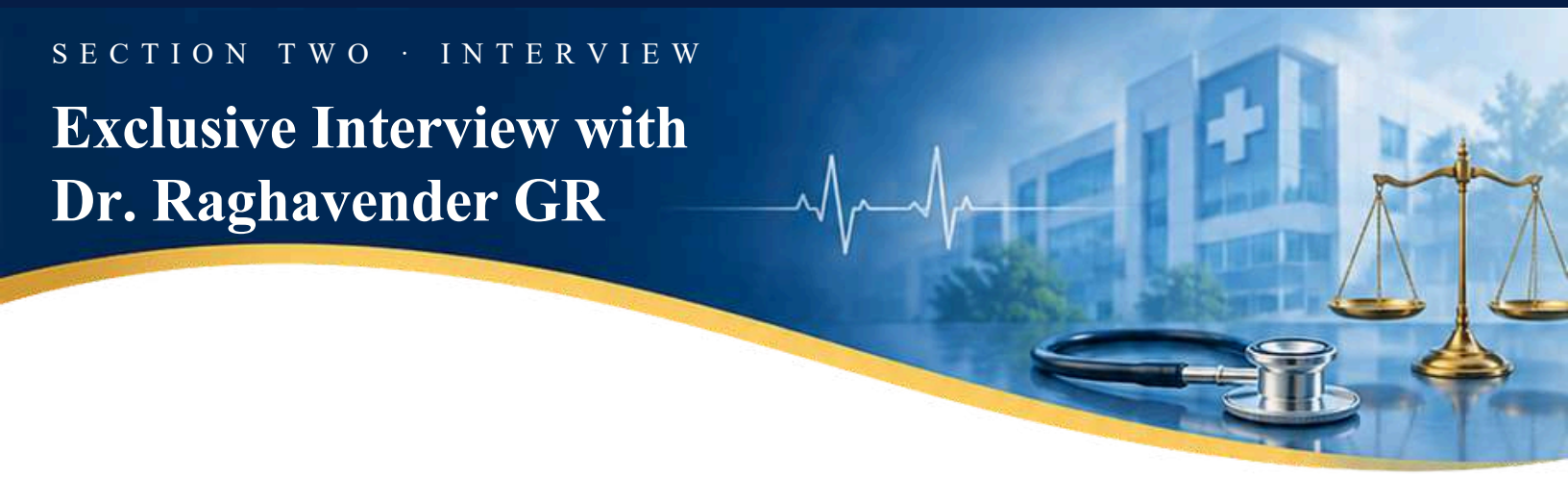

Q **How can India's legal and institutional framework better support ADR in healthcare disputes, making it a more trusted and accessible option for resolving conflicts between patients, healthcare providers, and pharmaceutical companies?**

A India needs a structured, credible and accessible institutional framework for healthcare ADR, with greater emphasis on mediation. This could include specialised healthcare mediation centres, trained mediators with expertise in medical law and patient rights, and clear procedures ensuring confidentiality and time-bound resolution.

It is equally important to ensure impartiality, transparency and safeguards against unequal bargaining power, particularly in medical negligence and patient safety matters. ADR should complement, not replace, existing judicial and statutory remedies, while offering a faster and less adversarial means of resolving disputes.

TECHNOLOGY, INTERNATIONAL COOPERATION & THE FUTURE OF LAW

Q **What can India learn from international cooperation and comparative legal approaches when developing its own dispute resolution ecosystem?**

A India can draw upon international best practices while adapting them to domestic legal and institutional requirements. The establishment of the India International Arbitration Centre (IIAC) reflects India's ambition to become a preferred destination for international commercial arbitration.

Institutions such as SIAC and ICC offer valuable lessons in institutional independence, professional case management, neutrality, specialised arbitrators and time-bound procedures. International cooperation and capacity-building can further strengthen mediation and other ADR mechanisms, helping India develop a credible and internationally trusted dispute resolution ecosystem.

Q **How might artificial intelligence change the way disputes are resolved in the coming years?**

A Artificial Intelligence can make dispute resolution faster, more cost-effective and accessible. Under the eCourts Mission Mode Project, Phase III, India has already envisaged the use of AI and emerging technologies for translation, transcription, legal research and case management. AI can also assist with evidence analysis, identifying precedents and facilitating online mediation and arbitration.

However, AI must remain an assistive tool rather than a substitute for human judgment. Its use must ensure transparency, accountability, confidentiality, data protection and fairness in the administration of justice.

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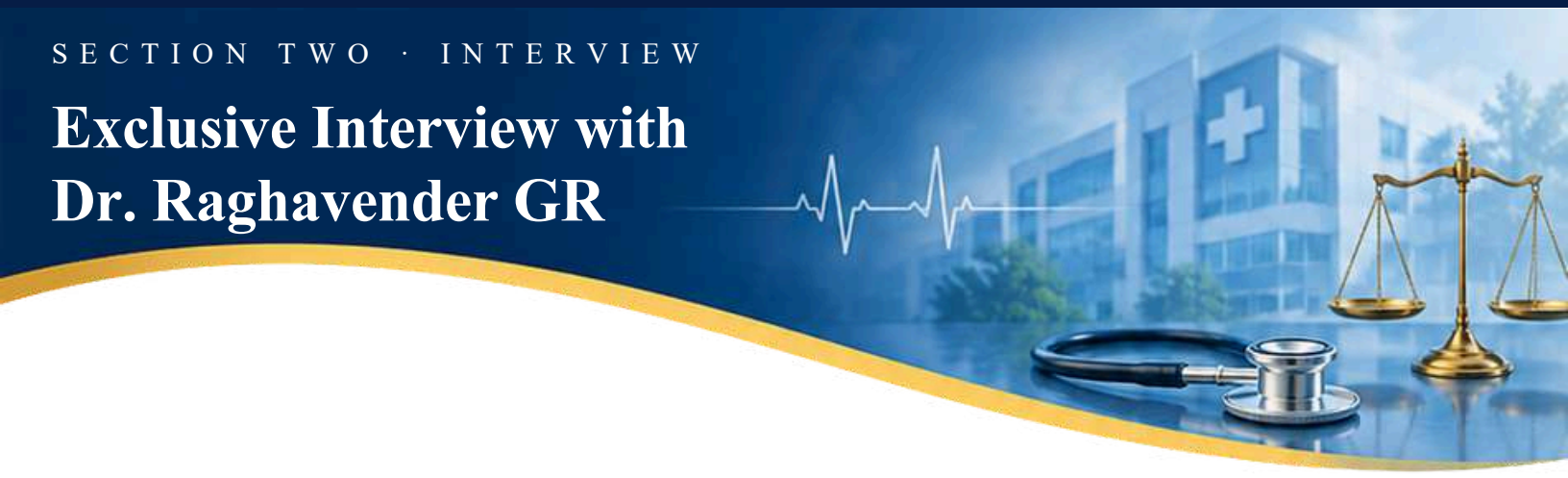


THE ROAD AHEAD

Q **What one change would you most like to see in India's justice delivery system over the next decade?**

A I would like to see a transition towards a citizen-centric, technology-enabled and time-bound justice delivery system, where access to justice is not determined by financial means or geographical location. This requires reducing judicial pendency, strengthening the judge-to-population ratio, improving court infrastructure, expanding e-Courts and AI-enabled technologies, and promoting mediation and other ADR mechanisms.

Institutional accountability and coordination between the Judiciary, Central Government and State Governments are equally important. The success of judicial reform should ultimately be measured by how quickly, affordably and fairly an ordinary citizen receives justice.

Q **Looking ahead, what role do you see ADR playing in making India's healthcare system more accountable, accessible, and responsive to the needs of patients and healthcare providers?**

A ADR, particularly mediation, can play an increasingly important role in making India's healthcare system more accountable, accessible and responsive. Healthcare disputes extend beyond medical negligence and patient rights to pharmaceutical patents, licensing, pricing and access to generic medicines.

ADR can help balance pharmaceutical innovation and patent protection with public health priorities and access to affordable medicines. Specialised healthcare mediation centres, trained mediators and appropriate legal safeguards can facilitate quicker and less adversarial resolution. Ultimately, ADR should complement the formal justice system and help balance innovation, commercial interests, patient rights and access to quality healthcare.

SECTION THREE · EVENTS

AAI Series Webinar on ADR in Healthcare



Webinar Overview

The Institutional & Industrial Dispute Resolution Centre (IIDRC), as part of its flagship AAI Webinar Series, successfully convened a panel discussion on 3rd October 2026 on the theme "ADR in Healthcare: Medical Negligence, Hospital-Contract Disputes & Pharma Licensing Issues." The session was conceptualised to examine the growing complexity of disputes within the healthcare sector and explore the role of alternative dispute resolution in facilitating efficient, fair and sensitive outcomes for patients, healthcare professionals and institutions.



Expert Perspectives Shared

The panel comprised a distinguished group of legal practitioners and industry professionals, including Adv. Mr. Sundarajan, Ms. Surabhi Lal, Mr. Ashok Dhingra, Ms. Misha Kumar and Mr. Satyam Singh Rajput. The discussion was moderated by Dr. Rishabh Gandhi, Advocate, Arbitrator and former Judge, whose experience in arbitration, dispute resolution and healthcare law guided the exchange of perspectives.

The discussion offered a comprehensive examination of the legal, commercial and human dimensions of healthcare disputes. Particular attention was given to the challenges surrounding medical negligence claims, including prolonged litigation, criminal proceedings against medical professionals and the need to balance patient rights with safeguards for healthcare providers. The panel also examined disputes arising from hospital management and commercial contracts, pharmaceutical licensing arrangements, and the broader implications of contractual disagreements on healthcare delivery and public access to medical facilities.

Drawing from their professional experience, the speakers highlighted the importance of distinguishing disputes that are suitable for arbitration from those requiring statutory or judicial intervention. The discussion underscored the value of mediation in addressing sensitive patient–provider disagreements and the potential for specialised healthcare arbitration in resolving commercial disputes involving hospital operations, procurement, biomedical equipment and pharmaceutical arrangements. The panel further emphasised that effective dispute resolution in this sector requires an understanding of both the applicable legal framework and the technical context in which healthcare services operate.

Concluding Reflections

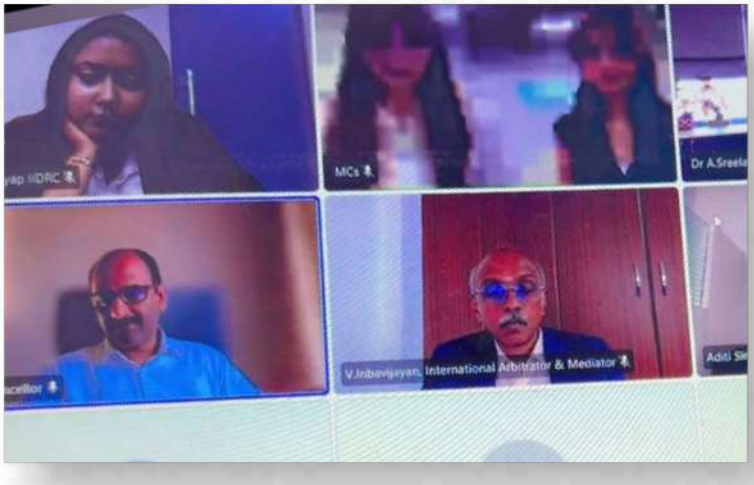
The session also brought attention to the importance of rebuilding trust between patients and healthcare professionals, strengthening institutional accountability, and ensuring that dispute resolution processes remain accessible, proportionate and responsive to the interests of all stakeholders. A key takeaway was that litigation should not become the default response to every healthcare disagreement, particularly where appropriate ADR mechanisms can offer a more timely and constructive resolution.

The session stands as a testament to IIDRC's continued commitment to fostering informed, industry-specific conversations and promoting the effective use of alternative dispute resolution in addressing contemporary legal and commercial challenges. Through discussions of this nature, IIDRC seeks to contribute to a more specialised, accessible and responsive dispute resolution ecosystem.

SECTION THREE · EVENTS

IIDRC at Woxsen University Lex Pax 2.0 Inaugural event

Strengthening Institutional Engagement and Collaboration



The Institutional & Industrial Dispute Resolution Centre (IIDRC) was invited by the School of Law, Woxsen University, to be part of the inaugural event of Lex Pax Mediation Competition 2.0, an initiative aimed at promoting mediation as an effective means of dispute resolution and encouraging practical engagement with Alternative Dispute Resolution (ADR) among aspiring legal professionals. IIDRC was represented at the occasion by Ms. Adri Kashyap, Relationship Manager, who attended the inaugural event on behalf of the Centre.

Lex Pax Mediation Competition 2.0, organised by Woxsen University's School of Law, brought together the academic and professional dimensions of mediation through a competitive platform designed to develop students' negotiation, communication and problem-solving skills. The initiative sought to familiarise participants with the practical application of mediation, encourage collaborative approaches to conflict resolution and strengthen awareness of ADR as a credible avenue for resolving family, corporate and commercial disputes. IIDRC's presence at the inaugural event reflected its continued engagement with academic institutions and its commitment to supporting initiatives that nurture the next generation of dispute resolution professionals. The interaction also provided an opportunity to strengthen its association with Woxsen University and engage with an academic environment that places emphasis on experiential learning and professional development.

The association carries particular significance in the context of shared efforts to advance ADR education and promote greater interaction between academic institutions and professional dispute resolution bodies. The competition brochure also recognises IIDRC among its institutional collaborations and identifies internship opportunities with the Centre, reflecting the potential for meaningful academic and professional engagement between the two institutions.

Through its participation, IIDRC reaffirms the importance of building strong institutional relationships with universities and supporting platforms that bridge classroom learning with practical exposure. Such collaborations play an important role in developing awareness, encouraging professional mentorship and preparing young legal professionals to contribute meaningfully to the evolving dispute resolution landscape.



IIDRC looks forward to strengthening its association with Woxsen University and continuing to support initiatives that advance mediation, promote ADR education and create opportunities for future practitioners to engage with the field.

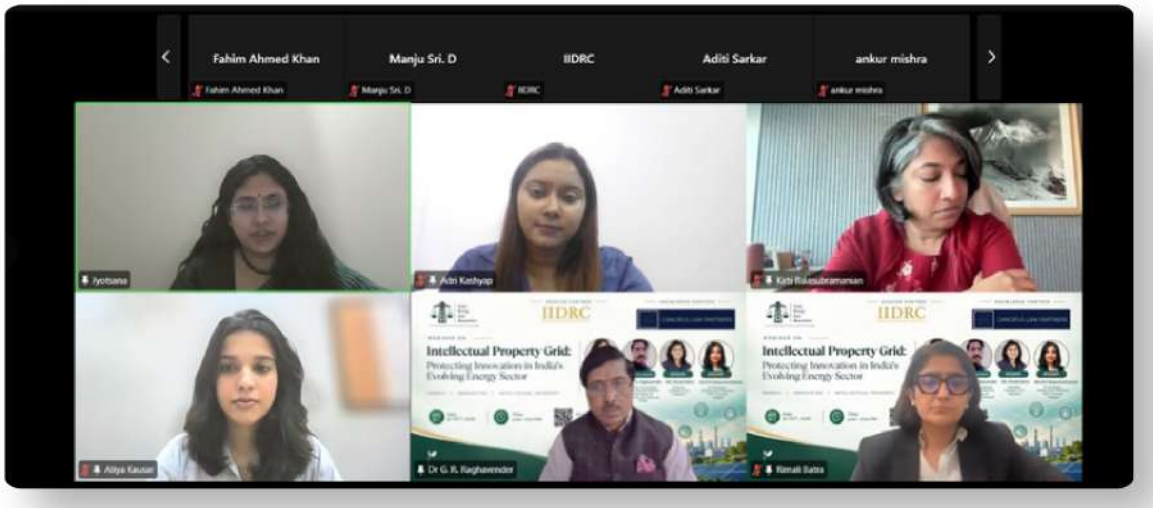
SECTION THREE · EVENTS

Intellectual Property Grid: Protecting Innovation in India's Evolving Energy Sector Webinar

The Institutional & Industrial Dispute Resolution Centre (IIDRC), as the Session Partner, collaborated in the webinar titled "Intellectual Property Grid: Protecting Innovation in India's Evolving Energy Sector," held on 30th October 2026, as part of the ADR Across Industries knowledge series. The session brought together legal and industry perspectives to examine the evolving intellectual property landscape in India's energy sector, particularly the challenges surrounding innovation, technology transfer and the commercialisation of clean-energy technologies.

The panel comprised with Dr. Raghavender GR. Ms. Rimali Batra and Ms. Kirti Balasubramanian, who shared their perspectives on the legal and commercial dimensions of intellectual property in the energy sector. The discussion was structured around key developments in patent protection, licensing, technology transfer and the broader implications of intellectual property rights for India's energy transition.

The deliberations examined the relationship between patent ownership and India's energy security, including foreign intellectual property dependence, indigenous innovation and barriers to developing and commercialising domestic clean-energy technologies. Particular attention was also given to India's intellectual property framework, research and development incentives, university–industry collaboration, compulsory licensing, patent pools and open-source innovation.



The discussion further explored emerging challenges concerning Standard Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) disputes, particularly in relation to smart meters, electric vehicle charging infrastructure and technical standards. The speakers also addressed the role of technology transfer and licensing agreements in facilitating domestic manufacturing, the transfer of technical know-how, local research and development, and capacity-building within the clean-energy sector.

Other significant themes included the impact of licensing fees and restrictive contractual terms on market access, the implications of patent thickets and trade secrets for emerging energy businesses, and the importance of freedom-to-operate assessments and intellectual property risk management. The discussion also considered the need to balance international intellectual property obligations with foreign investment, domestic innovation, affordability, technology transfer and India's climate commitments.

As Session Partner, IIDRC's association with the webinar reflects its continued engagement with contemporary legal and commercial developments across specialised industries.

The session stands as a testament to the value of interdisciplinary engagement in shaping a balanced and effective intellectual property framework, while supporting innovation and India's evolving clean-energy ecosystem.

SECTION THREE · EVENTS

IIDRC Open House



The Institutional & Industrial Dispute Resolution Centre (IIDRC) hosted an engaging Open House and High Tea, welcoming its Campus Ambassadors and distinguished guests to its campus for an afternoon of interaction, learning and meaningful conversations. The gathering provided an opportunity for the Campus Ambassadors to meet the IIDRC team, gain a closer understanding of the Centre's work and initiatives, and explore the diverse opportunities within the field of alternative dispute resolution.

The Campus Ambassadors had the opportunity to interact with members of the IIDRC team, exchange ideas and seek guidance on their academic and professional journeys. The conversations extended to career pathways, professional development and the evolving landscape of ADR, allowing the students to gain practical insights and advice from professionals working within the dispute resolution ecosystem. The informal setting encouraged open discussions and helped strengthen the connection between IIDRC and its student representatives.



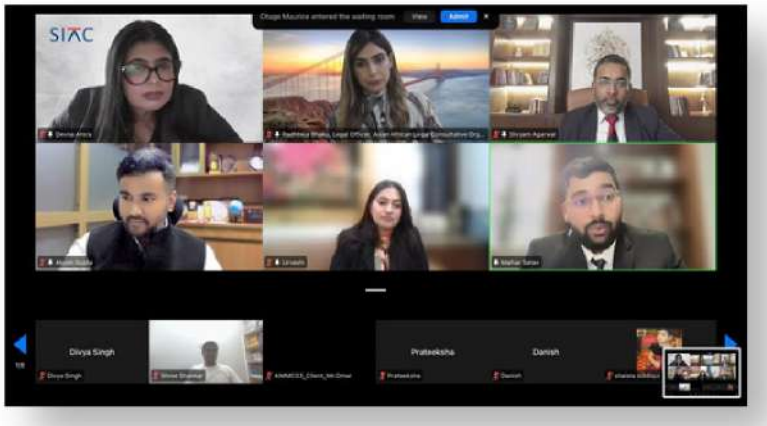
The gathering was further enriched by the presence of **Mr. S. P. Singh Chawla**, Founder of Corplit and a long-standing friend of IIDRC. His presence added a special touch to the occasion, reflecting the value IIDRC places on nurturing lasting professional relationships and welcoming familiar faces back to its campus.

With Diwali just around the corner, the Open House carried a festive spirit throughout the afternoon. Over high tea, guests enjoyed lively conversations, shared experiences and warm interactions, bringing together professional learning and the joy of the festive season. The gathering offered a welcome opportunity to connect beyond formal meetings and celebrate the relationships that continue to shape the IIDRC community.

Through initiatives such as the Open House, IIDRC seeks to create meaningful engagement with aspiring legal professionals, encourage mentorship and strengthen its wider network of students, practitioners and institutional associates. The afternoon was a reflection of IIDRC's belief that building a stronger ADR ecosystem begins not only with professional initiatives but also with conversations, shared learning and lasting connections.

SECTION THREE · EVENTS

Charting Your Course in ADR: Voices from Institutions, Academia and Practice





The Institutional & Industrial Dispute Resolution Centre (IIDRC) participated as a Supporting Partner in the webinar organised by the Global Association for Dispute Resolution (GADR) under its #YoungGADRCareerTalks initiative on 31st October 2026. Titled “Charting Your Course in ADR: Voices from Institutions, Academia and Practice,” the session aimed to provide emerging legal professionals and students with perspectives on career opportunities in alternative dispute resolution, bringing together voices from institutional arbitration, legal practice and academia.

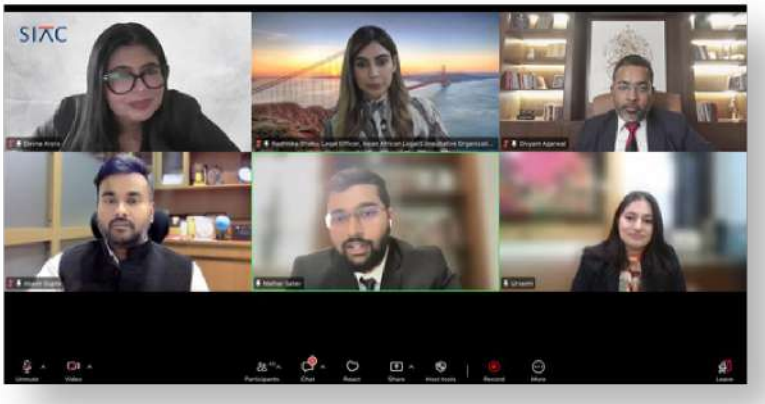
The expert panel comprised Ms. Devna Arora, Deputy Head (South Asia), Singapore International Arbitration Centre; Mr. Divyam Agarwal, Equity Partner, JSA Advocates & Solicitors; Dr. Akash Gupta, Associate Professor and Assistant Director, CADR, JGLS, and Arbitrator and Mediator; and Ms. Radhika Bhakoo, Legal Officer, Asian African Legal Consultative Organization (AALCO) and former Legal Consultant to the Government of India. The discussion was moderated by Mr. Malhar Satav, Observer, UNCITRAL Working Group III (ISDS Reform), and Associate at Arbitration Lab, London.

The webinar brought together diverse professional perspectives to explore the evolving landscape of careers in dispute resolution. With representation from a leading arbitral institution, private legal practice, academia and an international intergovernmental organisation, the panel offered participants an opportunity to understand the varied professional pathways available within the ADR ecosystem. The theme also highlighted the importance of recognising the distinct roles played by institutional frameworks, legal practitioners, researchers, academics and international organisations in advancing dispute resolution.

The session underscored the multidisciplinary nature of the ADR field and the range of opportunities available to young professionals seeking to build careers in arbitration and mediation. By bringing together experienced voices from different segments of the dispute resolution community, the initiative sought to bridge the gap between academic learning and professional practice, while encouraging greater engagement with the field among aspiring practitioners.

IIDRC's association as a Supporting Partner reflects its continued commitment to promoting ADR awareness, facilitating professional engagement and encouraging the next generation of dispute resolution practitioners. Its participation in initiatives such as #YoungGADRCareerTalks reinforces the importance of collaboration between institutions, academia and the wider legal community in strengthening the ADR ecosystem.

The webinar served as a valuable platform for connecting emerging professionals with established voices in dispute resolution, while highlighting the diverse opportunities and pathways shaping the future of the ADR profession.



SECTION THREE · EVENTS

Celebrating the Spirit of Diwali: A Festive Gathering at IIDRC

The festive spirit of Diwali found its way into the IIDRC workplace as the team came together for a joyful celebration filled with traditions, laughter and shared moments.

The gathering brought together members of the IIDRC team to mark the occasion through a series of engaging activities and festive traditions. The celebration commenced with the symbolic lighting of diyas, as the team members placed the lamps around an intricately arranged floral rangoli. The moment reflected the essence of Diwali, the triumph of light, positivity and togetherness.

Adding to the festive energy, the gathering featured interactive games and recreational activities that encouraged participation, friendly competition and plenty of laughter. The celebrations also offered an opportunity for colleagues to step away from their usual routines, connect beyond their professional roles and enjoy the occasion together.







The brightest moments are not always marked by the work we do, but by the memories we create together.

A thoughtfully arranged festive spread brought everyone together around the table, creating space for conversations, shared laughter and the simple pleasure of celebrating as a team. Beyond the festivities, the occasion served as a reminder that strong professional relationships are built not only through shared goals and collective efforts, but also through meaningful interactions and experiences beyond the workplace.

At IIDRC, the celebration was a reflection of the people and relationships that contribute to its growing institutional journey, reinforcing the value of a collaborative, connected and positive work environment.

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SECTION FOUR· Expert Lens on ADR News

Expert's Lens | A GOOD LAWYER KNOWS THE LAW BUT A GREAT LAWYER KNOWS WHEN NOT TO LITIGATE!



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Dr. Abhimanyu Chopra is a Partner in the Litigation and Disputes team at AZB & Partners. He has over 15+ years of experience in handling civil, commercial and criminal disputes, domestic and international arbitrations (both institutional and ad hoc), Insolvency and Bankruptcy Law, IPR, Telecom, Gaming and Competition Law. He regularly represents HNIs, leading banks and financial institutions, private equity funds and various multinational companies before all major fora in India. He also holds a double PhD specializing in Cyber and Constitution law.

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Beyond his legal practice, Dr. Chopra has authored two books and over seventy published articles in various niche areas of law. He is also the creator of the official apps for the Delhi High Court and its Mediation Centre.

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Simran Bhat is a senior associate in the dispute resolution team at AZB & Partners, New Delhi. She has over 7 years of experience in international commercial arbitrations and domestic arbitrations (both institutional and ad-hoc), civil and commercial litigation. She represents national and international clients on a wide variety of construction disputes, commercial disputes, white collar crimes and regulatory investigations. She regularly appears before the Supreme Court of India, various High Courts, company law tribunals etc. Simran graduated from University School of Law and Legal Studies, GGSIPU in 2016.

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"The obligation of our profession is, or has long been thought to be, to serve as healers of human conflicts."

--Warren E. Burger, Annual Report on the State of the Judiciary, February 1984

PREFACE

Traditionally, the legal profession in India has equated a successful litigator to be one that speaks with roar, swings arms and wins in Court. Indian Law Schools teach students how to draft causes of action, understand statutes and win arguments in Court. The more judgments you win, the higher your position as a lawyer. However, rarely do we stop to ask whether lawyers are taught to solve disputes or fight them.

An effective lawyer will know whether to refer a dispute back to the Court or to an arbitrator. They will know whether to refer a dispute to an Arbitrator/Arbitral Tribunal or whether to settle the dispute via negotiation with a Mediator/Conciliator at a mediation centre.

Courts are essential for protecting rights and shaping the law, so this article shouldn't be read as an argument against litigation. But as an experienced litigator, I can assure you that learning to mediate makes its immense value clear. Lawyers need a mindset shift to recognize mediation as a core skill. Ultimately, the Lawyers of tomorrow will be measured based on how effective they are at solving disputes, not just fighting.

This article will look at and maybe attempt the reader to consider:

- The difference between what a client is entitled to and what they actually want.
- The new framework set out in the Mediation Act, 2023 ("Mediation Act") and
- The changes needed in the profession to make this framework actually effective.
- Changing the traditional role of a Litigator

Imagine a dispute occurs between two companies that have had a supply relationship for 15 years. The client instructs their lawyer to commence litigation. The lawyer can identify the breach, calculate damages and create a strong argument. However, the client may not want to terminate the relationship. They may just want to be paid what they are owed, ensure they have ongoing supply and improve their terms. Although we can determine whether they were in breach of contract, we cannot change the dynamics of their relationship.

Similarly, in Intellectual Property disputes, obtaining an injunction may provide instant protection. However, negotiating a licence, undertaking or market restriction will often be a more commercially viable option.

Although it may be that a client is entitled to pursue certain actions, in many instances it will not be in their best interest. We are not referring to situations where a party can or cannot litigate until their last breath. However, it is vital that lawyers can listen to their client and determine what they are really looking for, whilst also considering the commercial risks in a clear fashion. This is exactly what Mediation teaches.

Not every lawyer needs to be an accredited Mediator. However, they should know enough to advise their client whether a dispute is suitable for mediation. They should be able to prepare their client for mediation and know when they are close to reaching a settlement. This will make them a better litigator.

THE MEDIATION ACT - STILL TO BE FULLY IMPLEMENTED?

The Mediation Act is a big step forward in legislation. It provides a bespoke framework for mediation, acknowledges pre-litigation and online mediation, creates a framework for enforcing settlement agreements and envisages mediation institutions and service providers, regulated by the Mediation Council of India ("Mediation Council").

However, there are a few aspects we should consider.

<u>Implementation Issues</u>

The Mediation Act has been implemented in stages. Only specific provisions have been brought into force. These mainly relate to the Mediation Council and creating the institutional structure.

Whilst the creation of the Mediation Council is an important step (August 27, 2026), this does not mean the Mediation Act will be fully implemented. Until we have institutions, standards, training and an effective enforcement mechanism in place, we are unlikely to see it have any real impact.

<u>Risk of becoming too prescriptive</u>

Mediation is a very flexible, confidential and party led process. If

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it becomes too prescriptive and requires strict adherence to forms, it can start to resemble the very things we are trying to avoid in Litigation. Whilst some regulation is needed to make it credible, it shouldn't hinder the process.

Success

Ultimately, a reality is that Mediation is not suitable for every dispute. If there is a large imbalance of power, there is a risk of coercion, or the dispute involves a public interest or non-negotiable right then adjudication may be required. If we are measuring Mediation's success based on how many settlements we achieve, we could put pressure on parties to settle disputes that shouldn't be settled. We need to make sure we are achieving fair, voluntary and sustainable results.

THE REAL ISSUE - THE PROFESSION

The greater issue is not the legislation. There is a perception at the Bar that a settlement means you have a weak case or have failed. However, this is not true. A settlement achieved through informed negotiation is often the strategically best outcome, a win-win of sorts.

From our experiences of working in Litigation and Institutional Mediation, we have learnt that the outcome of a dispute depends heavily on how the parties approach it. Just because a Mediation fails doesn't mean one had a weak argument and just because it succeeds doesn't mean we had a strong argument. Often the hardest part of the process is getting the parties to look past their position and see what they really want and specially in the Indian context, where parties and clients are more emotion driven, a parameter strongest at home as compared to our foreign counterparts.

A lawyer attending mediation to simply repeat their pleadings and highlight the other party's weaknesses means they have completely missed the opportunity. Persuasion is not about proving the other party wrong but giving them enough confidence to consider a realistic solution and then work towards it.

If we can include Negotiation and Interest Based dispute resolution as part of legal education, include Mediation as part of Continuing Professional Development for Advocates and include assessing which Dispute Resolution method is appropriate as part of initial client consultations, not as a mechanical checklist, but as part of responsible advice, it will be a complete gamechanger.



CONCLUSION

The Mediation Act provides us with a framework, processes and enforceable settlements. However, we cannot create Lawyers that are willing to change how they solve disputes without changing the profession.

Ultimately, we should not be measuring how many Mediations are taking place or how many settlements are being achieved but whether we are solving disputes effectively. This means that we are achieving fairer, sustainable and cheaper outcomes for the parties.

A lawyer with an understanding of Mediation will not abandon the courtroom. They will be in a better position to determine when they truly need to go to Court. Ultimately Lawyers should be measured based on how effectively they can help their clients move past their disputes. Thus, making a good lawyer a greater lawyer.

SECTION FIVE · ARTICLES

Mediation in Medical Negligence Claims in India: Balancing Patient Rights and Access to Justice.



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INTRODUCTION

The healthcare industry is growing rapidly, and therefore the pressure on the medical practitioner is increasing and from this negligence cases occur throughout India. This can be one of a reason where patients feeling they are not being treated properly as most doctors are overburdened with the patient and long working hours. There can be communication issues that delay treatment and issues with medication. Originally, medical negligence cases were dealt with by the conventional judicial and consumer dispute-resolution mechanisms like the consumer commission and civil courts. However, there are criminal courts in India dealing with medical negligence cases. More parties are opting to use mediation for resolving disputes because it is flexible, accessible, save time, offer privacy and complete within fixed timeframe.

In the case of Indian Medical Association v. V.P. Shantha 1 , it was noted by the Supreme Court that medical services are covered under consumer protection and, therefore, the patient can seek remedies. Under Rule 4(a) of the Consumer Protection (Mediation) Rules, 2020, it is stated that claims of negligence that have caused serious injury or death will not be referred to mediation.

The purpose of this article is to consider if mediation is a method that can aid with providing access to justice in negligence cases whilst ensuring patients' rights are protected.

LEGAL FRAMEWORK IN INDIA:

Medical practitioners maintain direct physical contact with patients during treatment as they are specialised in this area. Often, their treatment will lead to improvement in the individual's health or issues. Sometimes there are issues with the treatment, and the patient suffers repercussions. Usually, the complainant will have to provide evidence to show negligence. This causes issues for physicians. In the cases of Kanhaiya Kumar Singh and Calcutta Medical Research Institute, the NCDRC has decided that medical negligence must be proven and cannot be assumed. It is the complainant's responsibility to prove negligence and deficiencies in service. In the case of Jacob Mathew v. State of Punjab, the Supreme Court has stated that res ipsa loquitur is a principle of evidence which helps place the onus of proof. It will only apply in civil cases. In criminal negligence cases, it will only have limited application during trials. A conviction cannot be made solely on res ipsa loquitur. Decisions on the type of case to bring will usually depend on:

(i) What type/extent of negligence occurred.
(ii) What the patient/representative wants to achieve through legal proceedings.
(iii) Who is responsible for the negligence (individual/institution).

Consequences of legally cognisable medical negligence are:

(i) Criminal liability.
(ii)Financial liability.
(iii) Disciplinary action.

The judicial system aims to provide compensation for those suffering from medical negligence and prevent further harm. Under Section 37 of the Consumer Protection Act, 2019, a Consumer Commission may refer an appropriate consumer dispute to mediation if it appears that it can be resolved. This will follow the exclusions and process.



POTENTIAL BENEFITS OF MEDIATION

Mediation can have many advantages if parties decide to opt for mediation instead of the traditional court. They will be able to negotiate between themselves in a manner that addresses their respective interests. It offers confidentiality, so parties don't have to worry about sharing personal and medical-related information, which can be very sensitive in a medical dispute. As these matters can be very sensitive, parties need to be able to communicate and express their views. A neutral third party is there to help facilitate a clear understanding. Parties will have a fair opportunity to express their concerns due to being in an impartial and fair environment. Both parties will work together to reach an acceptable outcome. They may also work together to negotiate compensation and any other terms they agree on.

3.1 Patient rights

Patient rights play an important role when it comes to their treatment and having proper knowledge of the treatment they are undergoing; there are several rights: (i) the right to information; (ii) the right to informed consent; (iii) the right to privacy; (iv) the right to access medical records; and (v) the right to appropriate legal remedies. Government hospitals do grant rights related to accessing case records.

3.2 Cases on Medical Negligence

In the case of Samira Kohli v. Dr Prabha Manchanda , the Supreme Court recognised and emphasised the importance of valid and informed consent in medical treatment. It also mentions that treating a diagnosed area does not authorise a different procedure. There is an exception which states that when the patient's life is in danger and for the preservation of their health, delay would be unreasonable. This case also talks about party autonomy and the need to consider patient rights with respect and inform them about medical treatment. Kusum Sharma v. Batra Hospital , in this case, the Supreme Court considered the principles governing medical negligence, the importance of patient protection and a claim for compensation arising from alleged negligence in medical treatment.



In this case, Jacob Mathew v. State of Punjab , the Supreme Court emphasises the difference between civil medical negligence and criminal medical negligence. In the criminal medical negligence requires a higher degree of negligence and its nature is more serious than ordinary civil negligence. Mediation can be a great alternative to solving disputes, but criminal medical negligence can't be handled by mediators and goes against the statutory framework; only civil and consumer-related matters can be dealt with by mediation. Mediation helps the parties to choose a medium where they are able to express their issues and concerns and solve their disputes without pressure for settlement.

RECOMMENDATIONS

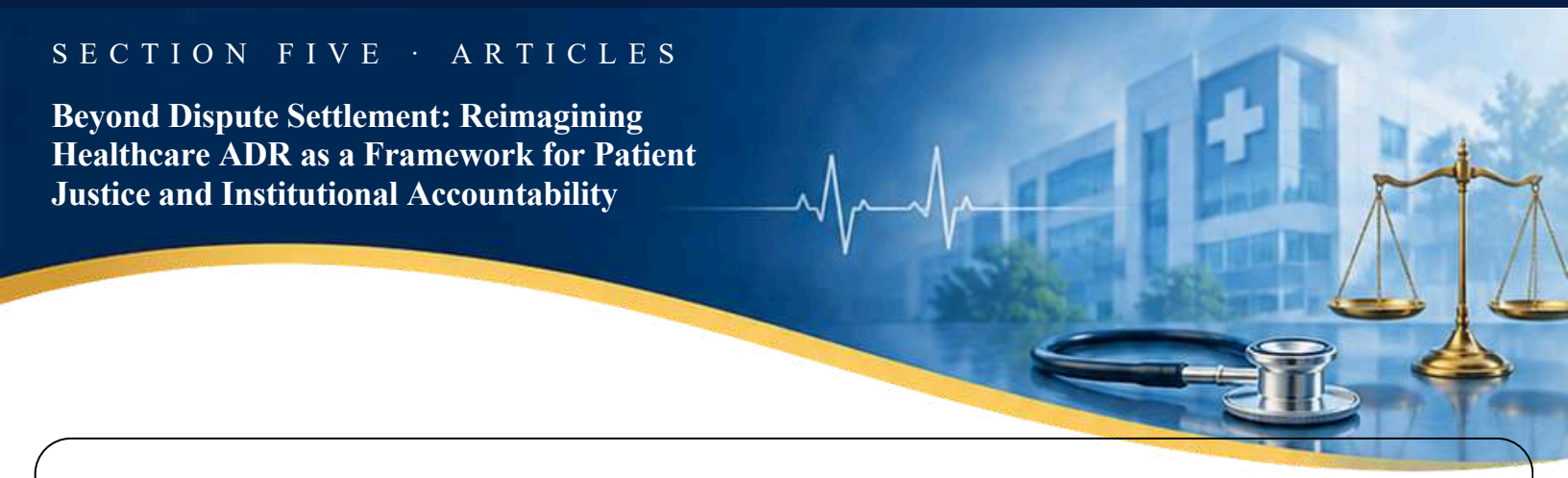
In India, there is a need for patient-centred safeguards, which help the patient by giving them information about their legal rights and how they can solve their disputes through settlement. This will give the patient an idea of the mediation process and its benefits. There is a need for a specialised trained mediators who have knowledge of medical negligence-related issues, and that will help with the terminology in medical-related fields, such as terminology that medical experts will have a certain knowledge of. The main aim is to bring out communication and fair settlement between both parties, where they get a fair chance to explain their side of the issue and settle their disputes voluntarily, without any pressure on the patient that they need to abandon their legal claims.

CONCLUSION

Mediation is one of the alternative ways to resolving disputes outside court and can be settled among the parties, and in India, solving medical negligence cases through mediation can be a potentially effective mechanism for resolving suitable disputes over a longer period of time. Mediation can help both parties to communicate with each other and try to put their views forward, which helps to resolve the misunderstanding and helps the parties to come up with a mutually agreed settlement agreement. Mediation will only be appropriate in civil and consumer-related disputes. It has a limitation that the mediation can't handle serious criminal medical negligence related disputes as the nature of these disputes are sensitive in nature and neither of the parties wants to negotiate in this case. Patients do have certain rights, and informing them before treatment will help the patient to make an informed decision, and by informing them of settlement voluntarily, they will feel less pressure and not abandon their legitimate claims. Mediation acts as a mechanism for solving medical negligence-related issues with legal remedies and proper professional accountability among the parties.

SECTION FIVE · ARTICLES

Beyond Dispute Settlement: Reimagining Healthcare ADR as a Framework for Patient Justice and Institutional Accountability



This article has been authored by:

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INTRODUCTION

Healthcare disputes differ from ordinary commercial disagreements because their outcomes can affect bodily autonomy and human dignity, and can leave a patient permanently disabled or dead. Disputes over medical negligence, inadequate informed consent, delayed treatment or hospital billing therefore go beyond compensation. They raise the question of whether the patient has an effective remedy and whether the professionals involved met their duties, and they may point to changes the institution needs to make. Litigation is still needed where liability has to be formally established and evidence tested, or where legal rights must be enforced. But it is costly and slow, and its adversarial nature makes it a poor first step for every kind of complaint. Alternative Dispute Resolution (ADR), especially mediation, can promote communication and lead to agreed solutions without every dispute going through a full trial. A settlement does not always mean justice has been served, though: a patient in financial difficulty might accept poor compensation, and an institution might settle a claim without dealing with the root cause of the harm.

This article argues that healthcare ADR should be judged by whether it gives fair redress and holds institutions accountable, with its effect on litigation volume counting for less. That requires a framework that can separate disputes suitable for consensual resolution from those that need adjudication, investigation or regulatory intervention.



INDIA'S LEGAL FRAMEWORK: THE SCOPE AND LIMITS OF ADR

The remedies under the Consumer Protection Act, 2019 are meant to address deficiencies in service, and sections 74-81 set up consumer mediation procedures. In Indian Medical Association v. V.P. Shantha, the Supreme Court acknowledged that certain medical services can fall within the scope of consumer protection law, on the conditions specified in its own judgment. This framework matters because it shows that patient complaints can involve enforceable legal rights and do not depend on institutional goodwill.

The Mediation Act of 2023 aims to create a statutory framework for mediation, covering institutional arrangements and mediated settlement agreements. It is, however, necessary to be exact about when the Act came into effect. The notice issued on 9 October 2023 brought only the specified provisions into operation. Before treating the Act as a complete and operational framework, one has to verify which provisions apply and what further commencement notices have been issued. Statutory recognition of mediation also does not make every healthcare dispute capable of settlement.

The difference between private agreements and statutory remedies is just as important. In Emaar MGF Land Ltd. v. Aftab Singh, the Supreme Court examined the connection between arbitration agreements and consumer remedies and ruled that the consumer could use the statutory remedy in the circumstances before it. Though the case was about real estate, it shows how important it is to keep statutory consumer remedies available in suitable cases. Similarly, V. Kishan Rao v. Nikhil Super Speciality Hospital rejected a rigid requirement for expert medical evidence in every medical negligence claim. 6 These rulings show that the procedures in place should help patients access justice and not add further obstacles.

MEDIATION AND ARBITRATION: WHY THE DISTINCTION MATTERS

Mediation is especially useful for healthcare disputes such as disagreements about billing, delays in receiving medical



records, poor communication, or requests for explanations and corrective action. Because it is flexible, the outcomes can go beyond monetary compensation to include refunds or new payment arrangements, along with agreed improvements to administrative procedures. When the parties take part voluntarily and have sufficient information, grievances can be settled without the financial and emotional strain of long-running litigation.

Even where an agreement is consensual, bargaining power may be unequal. Medical professionals may have better technical knowledge and easier access to medical records, and they often have legal representation, while patients may be coping with disability or bereavement and still paying medical bills. An agreement can therefore appear voluntary and still be unfair in reality. Patients need access to the relevant records and enough time to consider the proposed terms, as well as independent legal or medical advice where required. Otherwise, mediation could end up being a way of securing cheap settlements rather than reaching fair outcomes.

Arbitration has a different role to play. It can be suitable for commercial disagreements such as those relating to hospital procurement, insurance arrangements, pharmaceutical supply contracts and agreements concerning healthcare technology, provided the dispute is legally arbitrable. The Arbitration and Conciliation Act, 1996, provides the principal statutory framework governing arbitration and conciliation in India. Yet it is costly, and its confidentiality and the potential imbalance in bargaining power make it a poor fit for many patient-facing negligence claims. It should not automatically take the place of any statutory remedies or procedures needed to look into serious misconduct. The right approach is to match the route to the dispute: mediation for consensual grievances, arbitration for suitable commercial disputes, and adjudication or regulatory investigation where authoritative findings and public accountability are required.

COMPARATIVE ANALYSIS: INTERNATIONAL EVIDENCE AND ITS LIMITS

The United Kingdom offers an institutional example in NHS Resolution, which handles clinical negligence claims and promotes learning from patient-safety incidents. The organisation's annual report for the financial year 2025-26, released on 9 July 2026, states that 84 per cent of clinical negligence claims were settled without formal legal action. While this figure shows the value of collaborative settlement, it does not prove that all claims were mediated or that settlement had a positive effect on patient safety. What matters more is that early resolution has been paired with data-driven learning and institutional improvement.

The United States has the University of Michigan Health System's disclosure-and-offer scheme. A retrospective study published in 2010 found reductions in the number of new claims, the number of lawsuits, the time taken to reach a resolution and liability-related costs following the introduction of the programme. 10 The study, however, admitted that its design did not allow it to establish causation and that its findings may not apply to other healthcare systems. The evidence thus calls for a cautious approach to early disclosure and fair compensation, rather than an assumption that disclosure programmes always prevent litigation.

These examples are relevant to India because they show the potential benefit of linking individual dispute resolution with organisational learning, and no system could be transferred unchanged. When adapting them, differences in financing and institutional capacity, as well as in access to legal representation, must be taken into account. International experience supports a principle but offers no universal formula: early resolution is most defensible when it stays transparent enough for accountability and independent enough to protect patients.

CRITICAL ANALYSIS: WHEN SETTLEMENT BECOMES A SUBSTITUTE FOR JUSTICE

The first problem is unequal bargaining power. A patient may lack the medical knowledge to judge whether the injury was due to negligence or whether the suggested compensation properly reflects its effects, while a hospital may hold extensive records and have specialist advisers. A neutral mediator cannot overcome this imbalance just by being impartial. Genuine consent requires access to the relevant information, enough time and suitable independent help. Without them, a settlement reflects the patient's inability to pursue a claim and not a fair evaluation of the dispute. The second problem is confidentiality. Confidential negotiations can promote open and frank communication and help safeguard sensitive medical information. On the other hand, too much secrecy might hide repeated safety failures

and leave other patients exposed to similar harm. The answer is to draw a principled line between confidential negotiations and the obligations to report, to carry out lawful investigations and to make disclosures to regulatory authorities, without disclosing the settlement talks in full. Patient privacy and public accountability need to be reconciled, because the two can coexist.

The third problem is that compensation and institutional reform are separated. A hospital can compensate a patient without investigating why the injury happened or changing the procedure that caused it. Although the particular case may be settled, the institutional risk remains. That is why settlement rates alone are not enough to show success. A healthcare ADR framework should also look at the fairness of outcomes and compliance with settlements, and at whether identified safety concerns lead to proper corrective action.

A settlement-centric approach is therefore structurally flawed, because it treats the dispute as a closed transaction between two parties even though the original failure could affect future patients. ADR cannot be expected to replace every investigative or regulatory process, but it should be designed so that settling an individual complaint does not prevent proper scrutiny of wider risks.



TOWARDS A RIGHTS-BASED FRAMEWORK FOR INDIA

India ought to take a differentiated approach that links dispute resolution with enforceable safeguards. For ordinary administrative complaints and disagreements about bills there should be accessible, time-limited grievance procedures as well as voluntary mediation. For claims relating to medical negligence, mediation may take place if informed consent is given, the relevant records are available and patients have the chance to get independent advice. Commercial arbitration should remain available in appropriate cases concerning healthcare contracts without automatically cancelling the statutory consumer remedies.

Serious allegations involving professional misconduct, suspected criminal behaviour or systemic failures in patient safety must still be dealt with by the relevant investigative and regulatory procedures. A settlement should not automatically stop legitimate scrutiny. Healthcare institutions should also assess ADR on indicators other than the number of cases settled, such as compliance with settlement terms, patient satisfaction, accessibility, the time taken to reach a resolution and the implementation of corrective actions. Anonymised reporting can help organisations learn from experience while respecting their confidentiality and privacy duties.

Reform has to work at the level of concept as well as procedure: healthcare ADR should be seen as part of accountable healthcare governance, and cutting legal costs is only one of its aims. The criterion for its success must be whether patients obtain fair redress and whether organisations properly respond to the failures the disputes expose.

CONCLUSION

ADR can make healthcare dispute resolution more accessible and more responsive, but to be legitimate it needs more than efficiency. Mediation can help with explanation and negotiated compensation, and arbitration can settle suitable commercial disputes. Neither should replace adjudication where authoritative findings are needed, or regulatory action where public safety is at stake.

India ought to establish a rights-based approach in which consensual resolution and institutional accountability support each other. The best sign that healthcare ADR is working is whether patients secure meaningful remedies and healthcare institutions become safer and more accountable as a result. The number of disputes settled tells us much less.

SECTION FIVE · ARTICLES

Arbitration In Drug Manufacturing, Distribution And Procurement Contracts: Drawing The Line Between Commerce And Regulation



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Before a medicine reaches a patient, it travels down a long, fragmented supply chain. It starts with third-party manufacturers operating under loan-licence agreements, moves through distributors, and eventually gets bought up by hospitals or State medical corporations through competitive tenders. Because every single link in this chain relies on a contract, the potential for friction is massive. Issues like failed batches, product recalls, late payments, supply shortages, and sudden terminations are incredibly common. While arbitration is usually the default way to settle these fights, a thorny legal question remains: in a sector wrapped tightly in strict statutes and price controls, which disputes can an arbitrator actually rule on?

I. The Practical Advantages of Sector-Specific Arbitration

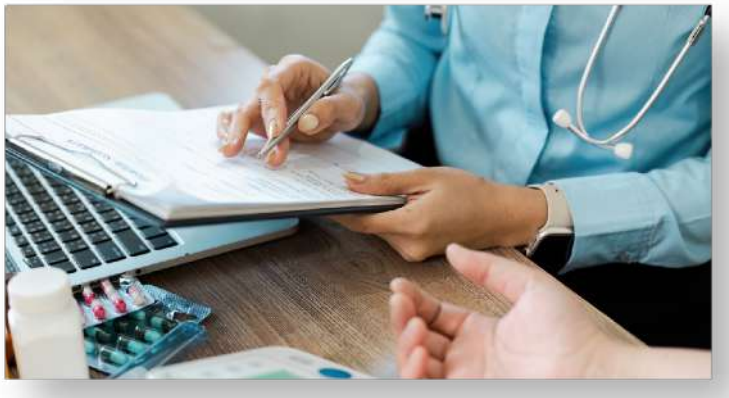
Given the high-stakes commercial risks and technical complexities of the pharmaceutical industry, traditional litigation is rarely ideal. Quality-related disputes frequently hinge on intricate manufacturing standards, stability metrics, and batch documentation—matters far better evaluated by specialized experts than generalist courts. Furthermore, arbitration shields sensitive proprietary assets, such as chemical formulations, process mechanics, and vendor pricing, from public disclosure. The framework also grants parties the autonomy to designate the legal rules, seat, and panel qualifications. In cross-border licensing and international supply networks, arbitral awards carry the distinct advantage of smoother international enforcement compared to foreign court judgments.

II. The Arbitrability Boundary

Indian law treats disputes about rights in personam as arbitrable and those about rights in rem as reserved for courts. The Supreme Court refined this into a fourfold test in Vidya Drolia. A subject matter is not arbitrable where it relates to actions in rem; affects third-party rights or has erga omnes effect; relates to inalienable sovereign and public-interest functions of the State; or is expressly or by necessary implication non-arbitrable under a statute. 2 The Court cautioned that the test must be applied with care, and that doubt at the referral stage should be resolved in favour of arbitration.

This rule fits pharma contracts like a glove. Look at the standard commercial breakdowns. A distributor wants their invoices paid. A manufacturer gets a bad batch of active ingredients. A buyer gets shorted on a delivery, or a company demands an indemnity payout after a recall. These are all rights in personam. But what if a regulatory body steps in to wield its statutory power over a drug? That is where the arbitrator's authority stops dead in its tracks. The exercise of statutory power over the product is different. Under the Drugs (Prices Control) Order, 2013, the National Pharmaceutical Pricing Authority fixes ceiling prices for scheduled formulations and monitors the prices of non-scheduled ones. An overcharging demand raised by the Authority is a regulatory act of the State, and the manufacturer's remedy lies in review and writ proceedings, not before a private tribunal. The same applies to the grant, suspension or cancellation of a manufacturing licence under the Drugs and Cosmetics Act, 1940.

In the real world, actual disputes are rarely black and white; they usually blur these lines. Take a scenario where a manufacturer's license gets suspended after an unexpected regulatory inspection, causing their customer to pull out of the supply deal. The regulator's decision itself is completely off-limits for an arbitrator. However, deciding whether the customer was legally justified in breaking the contract, figuring out who pays for the stuck inventory, and calculating the damages—those are purely commercial issues. A tribunal can easily sort them out without ever having to pass judgment on the government's official order. Counsel should frame claims accordingly, because a claim that asks the tribunal to pronounce on the validity of the regulatory act invites an objection at the referral stage or in a challenge to the award.



III. Public Procurement and Government Tenders

Sourcing contracts with state entities present a unique set of legal hurdles. State medical corporations and public healthcare facilities typically procure pharmaceuticals through standardized tender frameworks containing standard arbitration clauses. Common disputes regarding outstanding payments, liquidated damages, or price variations remain strictly contractual and fully arbitrable. Conversely, an administrative decision to blacklist or debar a supplier constitutes an exercise of public-law power, which must be challenged through writ jurisdiction instead. Consequently, aggrieved suppliers must adopt a two-pronged strategy from the very beginning: pursue arbitration for the financial recovery and initiate writ proceedings against the debarment.

Tender dispute clauses require meticulous scrutiny during the drafting phase. Provisions granting one party—or its designated officer—the absolute right to appoint a sole arbitrator are highly vulnerable under Section 12(5) of the Arbitration Act. The Supreme Court has firmly established that such unilateral appointment mechanisms to be ineligible. Proceeding under a tribunal constituted through this flawed method means the final award faces a severe risk of being set aside, rendering years of legal proceedings entirely useless.

IV. Arbitration Alongside Mediation

Pharmaceutical relationships are often long-term. A manufacturer and its distributor, or a hospital and its supplier, may need to keep trading after the dispute, and this is where mediation earns its place. For commercial suits of specified value, pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 is mandatory unless urgent interim relief is sought, and a suit filed without it is liable to be rejected. Parties with a valid arbitration clause will go to arbitration rather than court, but the policy signal is clear: Indian law expects commercial parties to attempt settlement. The Mediation Act, 2023 reinforces this. It permits voluntary pre-litigation mediation and makes a mediated settlement agreement, once signed and authenticated by the mediator, enforceable like a court decree.

The Arbitration Act likewise allows a tribunal, with the parties' agreement, to encourage settlement and to record agreed terms as an award. A multi-stage clause that moves strictly from talks to mediation, and then to arbitration, works beautifully here. The draft needs to state clearly that government regulatory orders are completely outside the arbitrator's reach. It also must ensure that the mediation phase never delays emergency court filings. This leaves you free to seek immediate freezes—like stopping a distributor from selling off dangerous, recalled inventory or legally forcing a supplier to keep shipping your goods.

V. The Cross-Border Dimension

When dealing with imported raw ingredients, licensing deals, or cross-border R&D, you generally need a neutral venue and a trusted arbitration institution. India is a signatory to the New York Convention, meaning foreign awards are enforceable here—though they can still be blocked on the public-policy ground. If a foreign award looks like it forces a company to do something that Indian drug laws explicitly forbid, it will hit a brick wall during enforcement. Because of this, both legal counsel and tribunals must constantly keep local regulatory boundaries in mind throughout the case.

VI. Conclusion: Strategic Drafting and Risk Mitigation

The efficacy of pharmaceutical arbitration ultimately depends on how well a contract accounts for the overarching regulatory framework. Securing an enforceable process requires a four-fold approach. First, the dispute resolution clause must cleanly segregate purely commercial claims from statutory public-law matters. Second, parties should specify an institutional forum and require that at least one arbitrator possesses specialized technical or sector-specific expertise. Third, incorporating a structured, time-sensitive mediation tier—while expressly preserving the right to seek interim relief—prevents premature escalation. Fourth, confidentiality provisions must explicitly encompass proprietary formulations, batch data, and pricing structures. While the judiciary remains broadly supportive of alternative dispute resolution, the strict judicial scrutiny applied to arbitrability tests means precise drafting is non-negotiable. A well-crafted clause that respects the boundary between commercial autonomy and statutory regulation offers the strongest protection against jurisdictional challenges.



SECTION FIVE · ARTICLES

The Referral Before the Condition: Pre-Arbitral Consultation and Judicial Scrutiny in Finecure Pharmaceutical Ltd. v. Spirit Pharmaceutical LLC (2026)



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INTRODUCTION

On 30 September 2026, the Supreme Court allowed a petition under Section 11(9) in Finecure Pharmaceutical Ltd. v. Spirit Pharmaceutical LLC and appointed a sole arbitrator, leaving the parties' objections—including compliance with the pre-arbitral consultation requirement—to be raised before the tribunal. The order offers limited reasoning on the clause's character. It does not say whether the condition was mandatory, directory, or capable of waiver. That silence is the subject of this comment. My argument is narrow. The Court was not obliged to rule on the clause's character at the appointment stage, and it was right not to conduct a mini-trial. But the order gives no indication of how the Court understood the condition it was delegating. The key is to distinguish objections that go to the tribunal's jurisdiction from those concerning the admissibility or ripeness of the claim.



II. Facts and Judgment

Finecure, an Indian manufacturer, and Spirit, a US distributor, signed a Manufacturing and Supply Agreement and an Exclusive Relation Agreement on 11 March 2022. Clause 16 of the MSA, read with Clause 17 of the ERA, provided for a sixty-day amicable consultation period before a dispute could be referred to arbitration in New Delhi under Indian law. A payment dispute arose in 2024. Finecure claimed USD 1,583,567.53 was outstanding. It issued a default notice on 3 October 2024, a termination notice on 14 October 2024, and an arbitration notice on 18 October 2024. 4 Spirit did not respond. The Court allowed the petition and appointed an arbitrator on 30 September 2026, expressly leaving the consultation objection open.

III. Legal Analysis

A. Jurisdiction versus Admissibility: The Missing Distinction

The most important issue the Finecure order leaves unaddressed is whether non-compliance with a pre-arbitral consultation clause is a question of jurisdiction or admissibility. The distinction matters because it determines who decides, when, and with what consequences. A jurisdictional objection attacks the tribunal's power to hear the dispute at all. An admissibility objection concedes that the tribunal has power but argues that the claim is not yet properly before it—for example, because a contractual step has not been taken. Indian scholarship has noted that courts have largely not weighed in on whether non-compliance with procedural pre-arbitral requirements bears on jurisdiction or admissibility. The practical difference is significant. If non-compliance is characterised as jurisdictional, it may affect the tribunal's authority to proceed, subject to the applicable law and the terms of the arbitration agreement. If it is an admissibility objection, the tribunal may possess jurisdiction while the claim remains premature. The distinction therefore affects how the objection should be decided, rather than automatically determining the fate of any eventual award.

The Finecure clause frames the sixty-day consultation period as a condition for making the reference, not as a limitation on the arbitrator's authority once appointed. That framing suggests admissibility rather than jurisdiction, though the

point is arguable.

B. What the Delhi High Court Has Said

The Delhi High Court has addressed pre-arbitral consultation requirements in recent decisions. In Orix Corporation India Ltd. v. Peters Surgical India Pvt. Ltd. (7 May 2026), the Delhi High Court held that a contractual requirement for mutual discussion was directory and that the absence of such discussion did not prevent the appointment of an arbitrator. The dispute concerned a vehicle lease, and the decision should therefore be applied to Finecure by analogy, not treated as conclusive on the interpretation of its particular clause. In Jhajharia Nirman Ltd. v. South Western Railways, the Court considered a more elaborate multi-stage mechanism—including conciliation and a Dispute Adjudication Board—and treated it as directory in the circumstances, including the need for urgent adjudication. These decisions support a context-sensitive approach rather than a universal rule. In Jhajharia Nirman, the Court treated the particular multi-stage mechanism as directory in its circumstances; Orix took a firmer position on mutual-discussion clauses. Neither decision establishes that every pre-arbitral consultation clause is directory. Their relevance to Finecure lies in showing why the clause's wording, structure, and practical operation matter when assessing non-compliance.

C. What the Court Left Open

The Court expressly left compliance with the consultation requirement to the arbitrator. That approach is consistent with the limited referral-stage inquiry described in the order. The Court itself framed its inquiry as "confined to the prima facie existence of an arbitration agreement." It made no finding on scope or on the consultation condition. The criticism, then, is not that the Court was legally obliged to decide the clause's character. It is that the order gives no separate reasoning on how the consultation objection should be characterised. A referral court that briefly notes the nature of a disputed precondition does not conduct a mini-trial. It simply identifies what it is delegating.





IV. Critical Analysis and Recommendation

The case for the Court's restraint is strong. Whether consultation happened, and whether it was adequate, are questions of fact and contractual interpretation. The arbitrator is better placed to answer them. The case against is also worth stating. A condition precedent is part of what the parties agreed to. If courts routinely refer without saying what kind of condition they are delegating, the agreed procedure can become decorative.

The distinction between jurisdiction and admissibility gives the recommendation a clearer foundation. Referral courts should first ask whether the alleged non-compliance, if established, would affect the tribunal's authority or merely the readiness of the claim for adjudication. That assessment should turn on the clause's wording, its place within the dispute-resolution mechanism, and the consequences the contract attaches to non-compliance. Where the record does not permit a reliable determination without resolving disputed facts, the court should leave the issue to the tribunal, while identifying the question for early consideration. For consultation clauses that regulate the sequence of dispute resolution rather than expressly limit arbitral authority, admissibility may be the more persuasive characterisation, but it should not be an automatic presumption.

V. Conclusion

The Court in Finecure was right not to undertake a merits-intensive examination of the consultation objection. What the order lacks is any indication of how the Court understood the sixty-day clause it was delegating. The answer to the research question is that referral courts should identify the nature of a disputed precondition, apply the contractual terms and relevant authorities, and decide whether the issue can be resolved at the referral stage or should be left for early determination by the tribunal. Referral is not wrong because questions remain. It is weaker when the court never says what kind of question it is leaving behind.

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