

ano 04 - n. 08 | julho/dezembro - 2022
Belo Horizonte | p. 1-264 | ISSN 2596-3201
R. Bras. Al. Dis. Res. – RBADR

Revista Brasileira de
ALTERNATIVE DISPUTE RESOLUTION

RBADR

FORUM
CONHECIMENTO JURÍDICO

Sumário

Editorial.....	11
----------------	----

Editorial.....	13
----------------	----

DOCTRINA

ARTIGOS

Negotiation for human beings: what, why and how?

Akshay Verma	17
I Introduction.....	18
II What is negotiation?	19
III Why do humans negotiate?	23
IV Principled negotiation.....	25
V How to negotiate?	29
VI Conclusion.....	35
References	37

Navigating the practicalities of achieving diversity in arbitration

Animesh Anand Bordoloi, Natasha Singh	39
Introduction.....	40
Part I: the quest for diversity: a question for legitimacy?	41
Part II: outline of existing hurdles	44
Part III: towards a novel solution	53
Conclusion.....	56
References	58

Resolving disputes with an healing effect: the practice of mediation in India

Anirban Chakraborty, Shuvro Prosun Sarker	61
Introduction.....	61
[I] Why to choose mediation	63
[II] Evolution of mediation in India.....	66
[III] Development of Mediation Institution in India.....	78
[IV] Existing challenges and future of mediation in India.....	80
References	83

The Singapore Convention in the framework of the investor-state dispute settlement system

Anna Karoliny Fonseca Cometti, Valesca Raizer Borges Moschen	85
Introduction.....	86
1 The crisis of the investor-state dispute settlement system	87
2 The reform of the uncitral system.....	90
3 Mediation as a suitable solution for investor-state dispute settlement	91

4	First lines on the Singapore convention	96
5	The Singapore convention and the investor-state dispute settlement.....	98
	Conclusion.....	100
	References	102

Scope of counterbalancing public policy and execution of foreign arbitral awards in India

Anuttama Ghose, SM Aamir Ali, Aparajita Mohanty	105	
1	Introduction.....	105
2	Doctrine of Public Policy: Meaning and Interpretation.....	106
2.1	Meaning and Scope	107
2.2	International Public Policy vis-à-vis Domestic Public Policy: Study of the Comparative Jurisprudence.....	108
2.3	Global Perspectives on Substantive and Procedural Public Policy	110
3	Scope of Section 34 of the Arbitration and Conciliation Act, 1996 (India): Setting aside an Arbitral Award	112
3.1	Overview of the Statutory Provision.....	112
3.2	Distinction between Domestic and Foreign Awards	114
4	Disjunct between Theory and Practice: Public Policy and Indian Arbitration through Judicial Interpretations	115
5	Recent Developments of Arbitration Laws in India	117
6	Transnational Public Policy: Need of the hour	118
7	Conclusion	120
	References	121

A victim-sensitive approach towards victim – offender mediation in crimes: an analysis

Golda Sahoo	123	
	Introduction	125
	Main text	126
	Historical Development of Victim Offender Mediation.....	126
	Best practices of VOM Programme in different jurisdiction.....	126
	Role of victim-offender mediation in the criminal context	135
	Guiding principles for Victim-Sensitive approach towards VOM	140
	Final considerations.....	143
	References	145

Audiências de conciliação e mediação por videoconferência no Estado de São Paulo: benefícios e desvantagens segundo relatos empíricos dos conciliadores e mediadores judiciais

Heitor Moreira de Oliveira, Paulo Cezar Dias	147	
1	Introdução	148
2	Método.....	150
3	As audiências/sessões de conciliação e mediação por videoconferência	151
4	Resultados e discussão.....	154
4.1	O uso da videoconferência na visão dos conciliadores e mediadores judiciais	155
4.2	Pontos benéficos.....	158
4.3	Pontos desfavoráveis.....	161
4.4	As sessões virtuais de conciliação e mediação no pós-pandemia	179
5	Conclusão.....	182
	Referências.....	184

Future of Dispute Resolution and Investment in BRICS

Naazish Fatima	187
Objective and scope of research	188
Research methodology	188
Introduction.....	189
Understanding the unfair arbitration scenario: why the stance taken by BRICS is important?	189
Abundance of investment treaties with inherent biases	191
Bias and arbitration	192
BRICS: Growth showing need for a robust legal system.....	193
Understanding the factors behind legal system BRICS countries.....	195
Protection clauses in BITs of BRICS	198
Why are the BRICS nations apprehensive yet pushing for reform?.....	198
Towards the development of a comprehensive arbitration mechanism for BRICS.....	199
Proposed features of a fairer system of dispute resolution	200
Role of BRICS in bringing forth the change	201
Measures taken towards the promotion of fairness in Arbitration by BRICS nations ...	201
Final considerations.....	207
References	208

'Mediation' as an Alternative Dispute Settlement Mechanism under the Consumer Protection Act 2019: An Analysis

Sangeeta Taak, Rajiv Gandhi	211
1 Introduction.....	211
2 History of Mediation.....	212
2.1 Dispute	213
2.2 Types of Mediation	214
2.2.1 Court – Referred Mediation.....	214
2.2.2 Private Mediation	214
3 Difference Between Mediation and Arbitration	214
3.1 Voluntary Process	216
3.2 Control of the parties	216
3.3 Active participation of parties	216
3.4 Cost and time efficient	216
3.5 Convenient to the parties	216
3.6 Ensures fair process	216
3.7 Confidentiality	217
3.8 Amicable settlement of disputes	217
3.9 Final settlement of all the disputes in full/ comprehensive	217
3.10 Win-win deal for the disputed parties-more chances of compliance	217
3.11 Refund of court fees	217
4 Role of Mediators	218
5 Mediation under Section 74	218
6 Provisions under the Consumer Protection Act, 2019	220
6.1 Establishment of Mediation Cell.....	221
6.2 Empanelment of Mediators	221
6.3 Nomination of mediators from panel	222
6.4 Duty of mediator to disclose certain facts	222
6.5 Procedure for mediation.....	222
6.6 Settlement through mediation.....	223
6.7 Recording settlement and passing of order.....	223
6.8 Limitation of Mediation	223

7	Conclusion.....	224
	References	225

Patent Dispute settlement through Arbitration and the public policy concerns

Sawmya Suresh, Jayadevan S Nair	227
Introduction	227
Patent	228
Introduction to patent	228
Patent dispute settlement mechanism	230
Dispute settlement through Arbitration	233
Disadvantages of arbitration	236
Public policy concerns in arbitration	237
Settling patent disputes through arbitration	239
Public policy concerns in patent arbitration	240
Arbitration of patent disputes and public policy concerns	241
Party autonomy and arbitration in patent disputes	242
Neutral third party as an arbitrator in a patent dispute	243
Patent cases are multi-jurisdictional in nature	244
Patent dispute and confidentiality in the dispute settlement mechanisms	245
Hybrid ADR mechanisms as a patent dispute settlement mechanism.....	245
Conclusion and suggestions	246
References	247

A Modernized Pathway to Institutionalization and Privatization of Mediation in India

Yonghwan Chung, Saloni Kumari	249
I Introduction.....	249
II Characters of Indian Mediation programs	251
III Proposed Models of Institutionalization	258
IV Conclusion.....	260
References	261

INSTRUÇÕES PARA OS AUTORES	263
----------------------------------	-----