



INDIA ADR WEEKDAY 1: BANGALORE

Keynote Address by Hon'ble Mr. Justice S.R. Krishna Kumar, Judge, High Court of Karnataka



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HOST: Good evening everyone. Please, may I request everyone to be seated. Thank you. We've had some excellent exchange of ideas today, throughout the day, and I thank all our panellists for their valuable contribution. May I now invite Mr C. K. Nandakumar, Senior Advocate of the High Court of Karnataka to introduce our distinguished chief guest, Hon'ble Justice Krishna Kumar, for the keynote address. Thank you.

CK NANDAKUMAR: Thank you. I've actually taken a print out after quite some time. I've drawn inspiration from all the preaching about technology and tried to go paperless. Good evening, everybody. Hon'ble Justice S.R. Krishna Kumar. Indeed an honour to introduce you. Friends present here, old and new. Thank you, Neeti for this opportunity, and thank you MCIA for putting together this wonderful event. I see some friends from Singapore and London. There was a Singapore Disputes Week last month. I could not make it for a very important reason we had an ADR Week in Bangalore of our own. And congratulations to those organizers, many of you are here. Planting a firm place in the ADR landscape of technology, in arbitration and the future of such disputes, shareholders' disputes. These are some of the topics and themes that were discussed over the course of the day today. Arbitration conferences or conferences in general are a great opportunity to reorient ourselves, but arbitration conferences in particular are an opportunity to reorient ourselves to this alternate universe which sometimes simply doesn't understand the court process. And the court process for its part is sometimes completely befuddled by what goes on in this alternate universe. There's a very famous saying in the arbitration world that ultimately you may have to go to the state courts for enforcement because that's where you're going to get your money from. So the interplay between the state courts and arbitration is a very vital interplay. This interplay is one that should know its clear boundaries, respect one another, especially in the increasingly complicated world that we live in and scenarios that we see. How much court intervention is acceptable? How detached should arbitration be? I don't have the answers. I hope that Justice Krishna Kumar would have some of them. One of the main concerns that's often pointed out is that conduct of arbitrators or arbitrations, ethics and matters of conduct is something that typically catches the judge's eye, possibly more than the merits of a matter. We do look forward to some very insightful remarks from the bench through Justice Krishna Kumar. That's not to say that he's an outsider. Let me just make that clear. And I'm sure I speak for every member of the Bar present here that he's one of the most popular judges and I'm not saying this just to flatter him. It seems like he's still one amongst us, the manner in which he puts us all at ease. He somehow manages to keep tempers at bay and both parties happy with both in most cases. A truly gifted person. Perhaps a born mediator, one might say. But anyway, I'll skip the bit



1 where I have to make the remark about how, when he was born and how old he is out of
2 courtesy, but Justice Krishna Kumar joined the Bar in 1992. He's had an extensive practice on
3 civil and criminal matters and several other areas. Incidentally, he was appointed a judge five
4 years ago to the date 23rd September, 5 years ago. So, congratulations, it's been a wonderful
5 five year journey. But I can say without any fear of contradiction that he's somebody who's,
6 well aware of the balance that's needed between court intervention and the independence of
7 arbitration. Therefore, if anyone has any remarks or concerns to share, we should all sit up
8 and take notice since it's coming from Justice Krishna Kumar. Without holding him up any
9 further, ladies and gentlemen, Justice Krishna Kumar. Sir.

10

11 **JUSTICE S.R. KRISHNA KUMAR:** Distinguished guests, esteemed colleagues,
12 honourable members of the legal fraternity, ladies and gentlemen, good evening to all of you.
13 It's a profound honour to address you at the Mumbai Centre for International Arbitration in
14 the ADR week. I would like to begin by acknowledging the significant contributions of the
15 MCIA in advancing the field of ADR in India and globally. Since its inception, MCIA has been
16 at the forefront of promoting best practices, fostering innovation, and upholding the higher
17 standards of ethics and transparency in ADR proceedings. MCIA's commitment to creating a
18 world class arbitration institution in Mumbai has not only provided an efficient platform for
19 resolving disputes, but has also played a pivotal role in enhancing India's reputation as a
20 favourable destination for international arbitration. By developing comprehensive rules and
21 guidelines offering state of the art facilities and developing and facilitating capacity building
22 initiatives, MCIA has significantly contributed to elevating the standards of arbitration and
23 mediation services. Their efforts in promoting ethical conduct and transparency serve as a
24 model for other institutions and practitioners in the field.

25

26 Today, I would wish to discuss a subject that is of paramount importance to the integrity and
27 effectiveness of ADR, that is ethics and transparency in ADR. As ADR continues to gain
28 prominence globally, and in India, questions about ethical conduct and transparency have
29 become increasingly critical. These concerns are not merely academic discussions. They strike
30 at the very heart of justice delivery, public trust and legitimacy of the ADR mechanisms. In an
31 era where cross border transactions and disputes are the norm, maintaining high ethical
32 standards and ensuring transparency is essential to upholding the credibility of the ADR
33 processes. Upholding the integrity of ADR process is crucial. Ethics and transparency are
34 foundational to any justice delivery system. But in ADR, where processes are offered often
35 private and flexible, these principles become even more vital, and to prevent misuse and to
36 ensure fairness. Parties engage in ADR expecting impartiality and equitable treatment. Ethical
37 conduct by neutrals, if we may say so, neutrals meaning arbitrators, mediators and conciliators



1 is essential for building trust and confidence in the process. The acceptance and enforceability
2 of ADR outcomes hinge on the perception that the proceedings were conducted ethically and
3 transparently. Moreover, adhering to ethical norms aligns domestic ADR practices with
4 international standards, facilitating cross border dispute resolution and enhancing India's
5 reputation as a favourable venue for arbitration and mediation.

6
7 ADR presents a unique ethical challenge due to its inherent characteristics. One significant
8 consideration is the balance between confidentiality and transparency. While confidentiality
9 is the hallmark of ADR, fostering open dialogue and protecting sensitive information, there
10 are instances where transparency is also important, especially in matters involving significant
11 public interest. The flexibility of ADR allows parties to shape the process according to their
12 needs, and it is essential to ensure that this flexibility is exercised responsibly, maintaining
13 fairness and integrity.

14
15 Arbitrators and mediators often navigate complex relationships and must maintain
16 impartiality while facilitating settlements. Their role requires a high degree of ethical
17 awareness to uphold the confidence of all parties involved. Conflicts of interest are an area
18 that warrants careful attention. Arbitrators and mediators are encouraged to disclose any
19 potential conflicts to the parties involved. This practice helps in maintaining the trust and
20 confidence that are essential for effective dispute resolution. While repeat appointments of
21 neutrals with the same party or counsel can be based on trust and familiarity, it is important
22 to ensure that such appointments do not lead to perceptions of partiality. Confidentiality
23 breaches can undermine the integrity of ADR. Protecting confidential information is a shared
24 responsibility, and adherence to confidentiality agreements strengthens the process.
25 Additionally, information obtained during ADR should be used appropriately and solely for
26 the purpose intended within the proceeding.

27
28 Promoting diversity and inclusivity among neutrals can enrich the ADR process by bringing a
29 wider range of perspectives and experiences. Efforts to enhance diversity help ensure that ADR
30 reflects the varied background of the parties involved, contributing to perceptions of fairness
31 and representation. In this context, prioritizing the nomination of women as court appointed
32 arbitrators is an important step towards addressing the long standing criticism that arbitration
33 has been dominated by male practitioners. As highlighted by Honourable Justice B.V.
34 Nagarathna, in a recent ADR week at the Karnataka judicial academy. Promoting women in
35 these roles not only challenges the male preserve of arbitration, but also enhances gender
36 diversity, which is crucial to ensuring that the process is more representative of the society at
37 large. Recently, once again, Honourable Chief Justice Chandrachud has emphasized the



1 importance of appointing young lawyers also as arbitrators, ensuring that the talent pool
2 remains diverse and inclusive. This move encourages a dynamic mix of experience and fresh
3 perspectives, helping to foster innovation while maintaining the higher standards of
4 competence. These efforts to enhance diversity go beyond mere representation. They ensure
5 that ADR is continually evolving to meet the needs of a global and multicultural society. By
6 encouraging inclusivity, ADR institutions can strengthen the credibility of the process and
7 ensure it is perceived as equitable and just by all participants. The ethical code of conduct of
8 parties and counsel is equally important. Engaging in ADR with sincerity and in good faith,
9 fosters an environment conducive to open communication and collaboration. Upholding
10 ethical norms enhances the effectiveness and fairness of the process for all participants.
11 Transparency in arbitral proceedings involves ensuring that the parties fully understand the
12 procedures and that there is consistency in their application. Clear communication and
13 openness, openness about the process to contribute to trust and can prevent
14 misunderstandings. While confidentiality is valued for protecting sensitive information,
15 finding the appropriate balance with transparency is important, especially when broader
16 interests are at stake.

17

18 Institutional transparency is also vital. Many ADR institutions like the MCIA have made
19 significant strides in enhancing transparency by providing clear information about their rules,
20 fee structures, and appointment processes. These efforts help parties make informed decisions
21 and enhance confidence in the institutional services. The use of technology, I think one of the
22 sessions was about use of technology. Also in ADR, also introduces new opportunities and
23 considerations. I think much has already been spoken to and discussed, so I will not dilate
24 much on the use of technology.

25

26 Then we come to developing and implementing ethical guidelines is a collective effort
27 involving international frameworks, national initiatives and institutional code of conduct.
28 International standards such as the International Bar Association. IBA Guidelines on conflicts
29 of interest in international arbitration provide valuable guidance for managing conflicts
30 effectively. The UNICITRAL Rules on transparency is a treaty based investor state arbitration,
31 promote openness in proceedings involved involving public interests. In India, the Arbitration
32 and Conciliation Act 2019 Amendment introduced confidentiality, obligations and established
33 Arbitration Council of India to promote ethical practices and standardized the arbitration
34 process. Institutions like the MCIA have been proactive in promoting ethical conduct through
35 comprehensive rules and guidelines. The MCIA Code of Conduct sets ethical standards for
36 arbitrators, including disclosure requirements and guidelines for impartiality. Such initiatives



1 contribute significantly to enhancing the credibility of arbitration proceedings conducted
2 under their auspices.

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4 Training and accreditation are essential for promoting ethical practices. Regular training
5 programs on ethics for arbitration, for arbitrators, mediators, and counsels, enhance
6 awareness and adherence to ethical standards. Leveraging technology responsibly is crucial in
7 modern ADR practices. Using secure platforms ensures confidentiality and data protection.
8 Developing guidelines for ethical use of artificial intelligence in ADR can also help maintain
9 trust in technology assisted processed. Then let's look at promoting procedural transparencies
10 which involves providing clear rules and procedures that are accessible to all parties.
11 Institutions should establish feedback mechanisms that allow parties to share their
12 experiences and suggest improvements. ADR institutions play a vital role in addressing ethical
13 and transparency concerns. They lead in creating and enforcing ethical guidelines, offering
14 resources and training, and promoting best practices. Practitioners, including lawyers and
15 neutrals, have a responsibility to uphold ethical standards and advise clients accordingly. By
16 engaging in ongoing self-assessment and professional development, they clearly contribute to
17 the credibility and effectiveness of ADR. Collaboration among practitioners, institutions, and
18 regulatory bodies, can also strengthen ethical practices and address concerns. International
19 collaboration can help share best practices and mutual understanding in cross border ADR
20 respecting the diversity of updating of legal systems and cultural norms.

21

22 As we conclude this enriching session of the ADR week, hosted by the MCIA, it is evident that
23 ethics and transparency are not merely topics of discussion, but fundamental principles that
24 will shape the future of Alternative Dispute Resolution. Throughout today's event, we have
25 engaged insightful dialogues and shared experiences and explored innovative approaches to
26 address the challenges we face. The collective wisdom and commitment demonstrated here
27 reinforce our shared vision of an ADR landscape that is ethical, transparent, and effective. The
28 challenges of balancing confidentiality with transparency, embracing technology responsibly,
29 and promoting diversity are opportunities for growth and collaboration.

30

31 I extend my deepest gratitude to the organizers, speakers and participants who have made this
32 event a resounding success. Your dedication and passion for advancing ADR inspires
33 confidence in the path ahead. The MCIAs efforts in facilitating such a platform have been
34 instrumental in fostering a community committed to excellence and integrity. As we move
35 forward, let us carry the insights and connections we have gained into our professional
36 endeavours. By upholding the higher standards of ethics and transparency, we not only
37 enhance our individual practices, but also contribute to the greater good of society by ensuring



1 that justice is served fairly and effectively. Together we can shape a future where ADR stands
2 as a beacon of fairness, efficiency and trust. Let us continue to collaborate, innovate, and lead
3 by example, reinforcing the values that are essential to the success of alternative dispute
4 resolution. Thank all. Thank you so much to all of you for your engagement, your contributions
5 and your commitment. Thank you.

6

7 **HOST:** Thank you, Justice Krishna Kumar for your presence today, and for your insightful
8 address. Since you mentioned having a large pool of arbitrators, I'm pleased to inform that
9 MCIA has done over 40% of appointments as first time arbitrators and I'm pleased to be part
10 of the young MCIA. May I now invite Mr. Pramod Nayar, Senior Advocate High Court of
11 Karnataka, for his concluding remarks. Thank you.

12

13 **PRAMOD NAYAR:** Thank you, everyone. Thank you Justice Krishna Kumar, for your
14 keynote address. For those of you who practice in Karnataka, Justice Krishna Kumar is known
15 for having one of the most popular courts. There are judges who walk the extra mile to do
16 complete justice for parties. I think Justice Krishna Kumar does it for [UNCLEAR]. He doesn't
17 walk the extra mile. He probably runs a full marathon. And he sits well into lunch time, he sits
18 well after court hours. And he makes sure that everyone, litigant, lawyer alike, who needs his
19 court, leaves with the assurance that they have received a full hearing, a full consideration of
20 the case, and that justice has been done. I wouldn't be surprised sir, if there are statistics which
21 show that probably your judgments must be the ones that are the least challenged before an
22 appellate court. Thank you very much for your concluding address. And I think every theme
23 that was touched upon in the keynote address, ethics and transparency, need to further
24 enhance diversity. We need to harness technology, especially AI, and the need for cross border
25 cooperation and learning are all themes that we will fully explore in the various sessions that
26 unfold during the Arbitration Week.

27

28 I know that I'm standing between you and dinner, so let me just make a couple of observations
29 and then propose a couple of agenda items for MCIA and every other Indian Arbitral
30 Institution to help take the arbitration movement further. India got its first Chess
31 Grandmaster in 1988. This year we've got a total of 85. What does that have to do with the
32 arbitration? I think what that has to do with the arbitration is, in 2011 or 2012, when the first
33 International Arbitration Conference was organized in Bangalore. Neeti, I'm not sure whether
34 you were formerly with the LCIA endure or whether you were interning at that point in time,
35 but I know that Neeti, Ajay Thomas, many of the members of the LCIA Court were working
36 the phones, were sending emails to make sure that we could have 50 to 60 people attend an
37 arbitration conference in Bangalore. In a few months back when the SIAC held its event in



1 Bangalore, the number of people on the waiting list and the number of regrets that they sent
2 exceeded 300 simply because the room could not accommodate the number of people who
3 wanted to come and hear and discuss about recent developments in arbitration. That's how
4 the field has grown from 2011 or 2012 to 2024. And therefore, whilst we've made the journey
5 from one Grandmaster in 1989 to 85 now, and yesterday I think, there was the news that India
6 has won both the women and men's chess championships. I think it's also a theme which
7 resonates across the world.

8

9 Davinder Singh, the Chair of SIAC had a very pertinent point which is that, the question now
10 is no longer whether there are enough Indian practitioners who can competently practice
11 arbitration both as counsel and arbitrators, but whether there are enough arbitrations in the
12 world for this massive influx of really qualified competent Indian arbitration practitioners who
13 are knocking at the doors of institutions, asking for their first arbitrator appointments. You
14 see them increasingly acting as counsel in arbitrations, not only in India but across the world.
15 And that's actually a very good problem to have as Indian practitioners. So that's one
16 observation that I wanted to make.

17

18 Two very quick proposals or suggestions that I would make for MCIA India and for everyone
19 else. Probably something to be discussed during India ADR Week, and later as well.
20 Sometimes many of these conferences, many of these ADR Weeks, et cetera, end up being a
21 little bit of crib fest about certain controversial judicial decisions. Nothing wrong with that. I
22 think it's important to critically evaluate and analyse judicial decisions. But why don't we think
23 about finding a solution for that? There is a wonderful inspiration that we could probably take
24 some inspiration from. There is a document which is called, which crystallizes the
25 interpretation of the New York Convention, which is the inspiration for the Indian Arbitration
26 Act of 1996. Part 2 of the 1996 Act is essentially the New York Convention. There's
27 jurisprudence from all across the world, which has been crystallized in a book called, "The
28 Guide to the Interpretation of the New York Convention." Why can't we produce a guidebook
29 for judges who interpret arbitration awards? So the contours of interpretation, the contours
30 under Section 34, what is permissible, what falls outside the boundaries of Section 34, Section
31 37, et cetera is something that would go a long way in harmonizing the growth of Indian
32 arbitration law. It will probably be a force for the good in making sure that you have more
33 consistency in arbitral decisions, right from the commercial court all the way to the Supreme
34 Court. That's probably one agenda item that I would very humbly propose to the MCIA.

35

36 The second, and this is probably one of the most important themes of the recently concluded
37 Bengaluru ADR Summit, which is the need for training and capacity development. How to



1 draft a good arbitration clause? How to run an arbitration efficiently in the most efficient
2 manner, with minimal cost and in the fastest possible way? How to draft a good and
3 enforceable arbitration award? You have wonderful talent, and it's a wonderful initiative that
4 the Supreme Court has developed over the last few months, which is to appoint young
5 arbitrators. But how many of those arbitrators are actually trained in writing a good arbitration
6 award And isn't that something that we really need to focus on? It's very good; that's one side
7 of the equation. But we also need to make sure that they have these skills and the ability to
8 deliver when they are appointed to a number of these domestic and international arbitrations.

9
10 So therefore one more agenda item that I would add to your list is to have some sort of a
11 mentorship scheme. We've had a number of pledges in the arbitration world. We've had the
12 arbitration pledge to increase the number of women arbitrators who are appointed across
13 arbitral institutions. That's proved to be incredibly successful, and it's continuing to be even
14 more successful as the years pass, including in India. There's also now the India opportunity,
15 which was launched a couple of years back. So may I propose a mentorship pledge where a
16 senior arbitration practitioner takes under his fold or her fold a number, a minimum number
17 of four trainees. Typically people who would be less than ten years of experience, to train them
18 in being good arbitration counsel and being good arbitrators. Share with them precedents of
19 good procedural orders after redacting all confidential information. Provide templates of good
20 arbitration awards. Provide templates of what makes for a good claim statement, a good
21 statement of defence, et cetera. And I think that knowledge sharing and that mentorship is
22 something which this generation probably has a responsibility to impart to the next generation
23 of arbitration practitioners. All of us have been incredibly lucky to ride the wave of the growth
24 in Indian arbitration. I think we can pay that on forward.

25
26 So with that let me invite you once again to dinner, which is next, and to another four days of
27 serious deliberations over India Arbitration Week. And I think the highlight this year is
28 probably for the first time a cricket match in New Delhi. So for those of you who are interested
29 in donning your whites, then there's a cricket match happening at the end of this week. So look
30 forward to seeing many of you at many of these events over the next few days. Thank you very
31 much. And thank you very much Justice Krishna Kumar.

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33 **HOST:** Thank you, Mr. Nayar. May I now invite everyone to join us for dinner.

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~~~END OF SESSION ~~~

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