

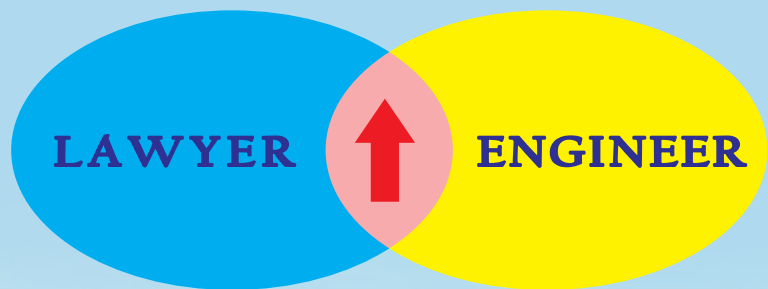
# CONSTRUCTION DISPUTE RESOLUTION

## TRAINING WORKSHOP

CONTRACTORS, BUSINESS PROFESSIONALS, PLANNERS,  
ARCHITECTS, ENGINEERS AND GOVERNMENT OFFICIALS

HIGH TIME, STOP LOSING MONEY,  
TIME & ASSETS LEARN  
THE ART OF DISPUTE AVOIDANCE  
& DISPUTE RESOLUTION  
PRACTICE AS CONCILIATORS,  
MEDIATORS & ARBITRATORS,  
SMALL ISSUES OR MEGA PROJECTS  
DOMESTIC OR INTERNATIONAL

ECONOMIC  
CRISIS  
AND THE  
REKODIK  
DISPUTE



## KISHANGANGA & RATTLE PROJECTS

DELIBERATING ON IWT'S DISPUTE RESOLUTION  
MECHANISM & THE WAY FORWARD



**CHARTERED INSTITUTE OF ARBITRATORS, UK**

CI Arb UK 12 Bloomsbury Square, London WC1A 2LP, UK



**THE INSTITUTION OF ENGINEERS, PAKISTAN**

I.E.P BUILDING, 97 B D-1, GROUND FLOOR, LIBERTY ROUND ABOUT, GULBERG-III, LAHORE  
Ph: 042-35750699, 35754043 Fax: 042 – 35759449 E-mail: [iephqr@gmail.com](mailto:iephqr@gmail.com) Website: [www.iep.com.pk](http://www.iep.com.pk)



## CONSTRUCTION DISPUTE RESOLUTION CONCILIATION AND ARBITRATION WORKSHOP

**Engr. Dr. Javed Yunas Uppal**  
**President, IEP**  
**Addressing the Workshop**

We all know that misunderstandings, disagreements, disputes are events of common occurrences, and many of us can curb them before things get serious and settle them through arbitration when they do. The basic need is a particular mindset and professional training in this field. Construction dispute resolution, ways of conciliation and arbitration are established professional practice these days, specially, when international collaboration is available.

There is systematic knowledge of the subject today, acquiring which, the young professional can, not only serve the construction industry, but can also find a means of employment for themselves. The contractors, business professionals, planners architects engineers and government officials can acquire this knowhow for better organizing these programs.

1. Current and common misunderstanding, disagreements and disputes, and their resolution;
2. Development of a particular mindset for forecasting problems before they became hindrances and amicable handling of differences;
3. Pakistan Engineering Council's rules and procedures on conciliation and arbitration;
4. Introduction of the backup offered by Chartered Institute of Arbitrators, London, United Kingdom
5. Lessons learnt from Construction Dispute Report prepared by Chartered Institute of Arbitrators Pakistan Chapter.

**This way the Institution of Engineers, Pakistan has taken a lead, and has held a half a day, free online video conference CPD Workshop at 1.00pm to 4.30pm PKS on Tuesday 06-July, 2021, and had on board dialogue with international experts from CI Arb, the chartered Institute of Arbitrators, London United Kingdom,**

## Participants

**Government Secretaries, Principal Engineers, project Manager = 17**

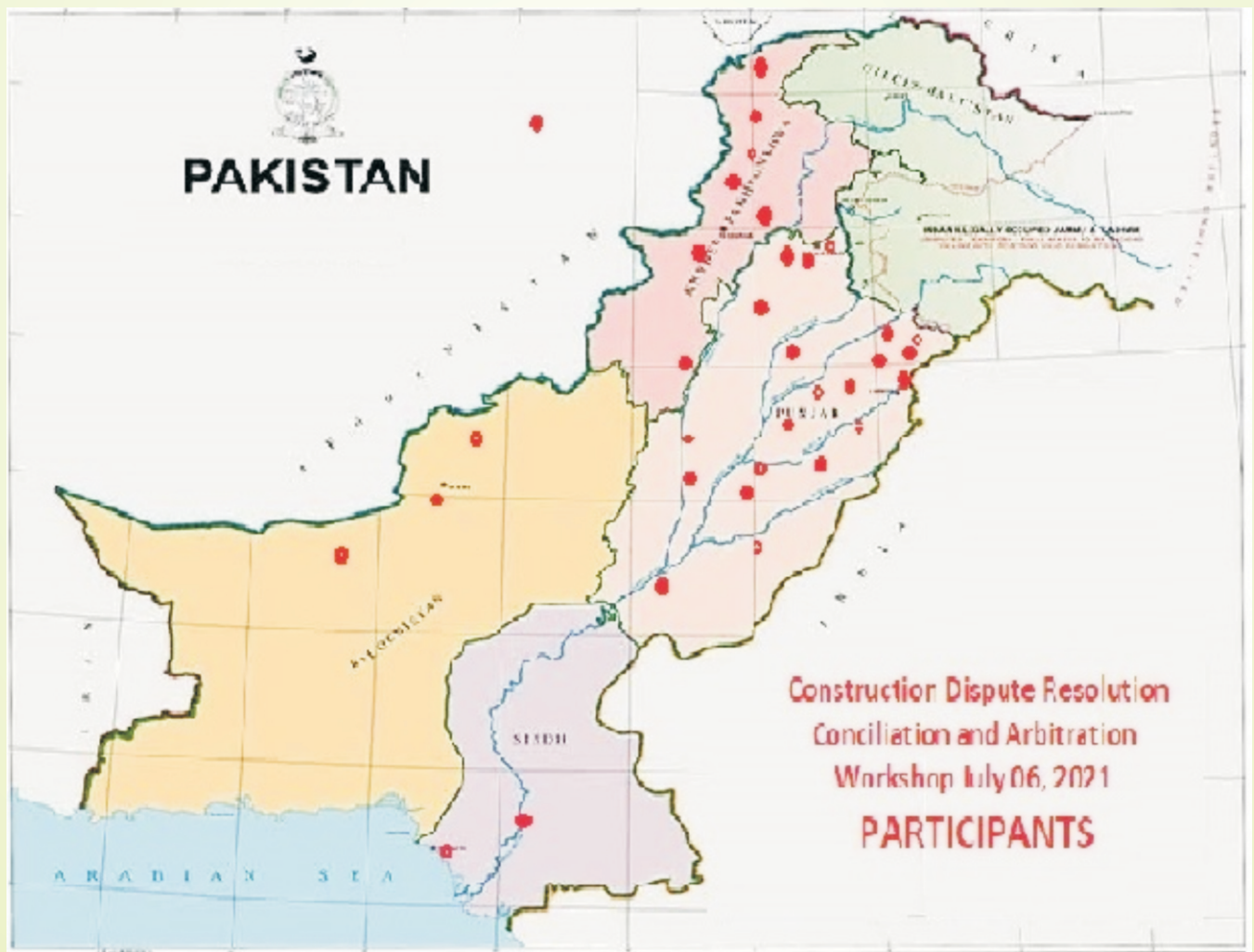
**Contractors = 3**

**Professors Teachers = 14**

**5 Years standing = 110 Fresh**

**Final Year = 16**

Lahore 45	Karachi 18	Islamabad 7	Rawalpindi 9	Peshawar 7	Multan 2	Quetta 2	Faisalabad 4	Sargodha 3
Sialkot 2	Khanewal	Kotadu 2	Sargodha	Risalpur	Kohat 2	Abtabad 2	Hunza 2	Loralai
Daska	Muzafargarh	RahimYar Khan	Sheikhupura 2	Wah	Miranshah	Mardan	Astore	Ranipur
Narowal	Vehari	Bahawalpur 2	Pindi Bhatian	Taxila	Bannu	Mansehra 2	Swat	Overseas
Gujranwala 5	Okara	Taunsa		Ahmadasi	Charsada	Deraismail	Sindh	Australia
Kasur 2	Burewala	Layyah			Khel Bara		Khairpur	





## Events Proceedings

Item	Description
1. Introduction on Current and common misunderstanding, disagreements and disputes, and their resolution in construction by Barrister Mian Sheraz Javaid.	Mian Sheraz to started the conference, introduced the agenda for the day, introduced CIArb Pakistan and MKC, and introduced all panellists.
2. Pakistan Engineering Council's rules and procedures on conciliation and arbitration by Dr Javed Uppal President IEP.	Dr Uppal introduced the PEC rules, the extent to which the rules were really being used in industry, and the extent to which these were compatible with international guidelines, best practices, whether they provided comfort to international organisations, and if these rules only suited for domestic organisations?
3. Lessons learnt from Pakistan's First Construction Dispute Report prepared by MK Consultus LLP Pakistan in collaboration with Currie and Brown UK.	Nasir Khan described the Pakistan's construction disputes Report as prepared by Currie & Brown, need of this report, the reason behind it, changing the landscape of Pakistan's construction industry.
4. Introduction of Chartered Institute of Arbitrators, London, United Kingdom by Tom Cadman Deputy Director General CIArb.	Tom Cadman introduced CIArb as its global standing, with chapters in many countries and now in Pakistan as well. He described the role of CIArb in preparing chartered professionals for undertaking alternative dispute resolution both domestically and internationally
5. Courses offered by CIArb, introduction about different pathways to train and become Associate, Member and Fellow of CIArb by Dr Paresh Kathrani Director Education CIArb. and Margareta Hanna Head Education	Dr Paresh Kathrani described CIArb pathways – the golden thread, the need for consistency in arbitration practitioners and users, and how were the courses of CIArb globally recognised etc. Margareta Hanna described various courses offered by CIArb and steps to become chartered arbitrator.
6. Panel Discussion & Q&A	Mian Sheraz opened the floor for a panel discussion and Q&A with all speakers. A number of questions were raised and explanations given.



## Disputes Bear Heavy on Both Sides

- Construction disputes, when not resolved in a timely manner, become very expensive – in terms of finances, personnel, time, and opportunity costs.
- The visible expenses (e.g., attorneys, expert witnesses, the dispute resolution process itself) alone are significant.
- The less visible costs (e.g., company resources assigned to the dispute, lost business opportunities) and the intangible costs (e.g., damage to business relationships, potential value lost due to inefficient dispute resolution) are also considerable, although difficult or impossible to quantify.
- If the construction disputes not able to reach the agreement between two parties, either mutually or arbitration, it will be litigation case.



## Panelists



### **Tom Cadman**

Location: London, England, United Kingdom

Work: Director of Governance and Legal Services @ Chartered Institute of Arbitrators

Non Executive Director @ Civil Mediation Council Limited

Non Executive Director @ The Wesley Trust

Education: 2020 - 2022 Master of Business Administration @ Henley Business School

1999 - 2002 Bachelor of Arts @ UCL

Skills: Restructuring, Charities, Charity Law, Legal Assistance, Legal Writing, Commercial Litigation, Property Law, Negotiation, Legal Advice, Fundraising, Strategic Planning, Compliance, Commercial Law, Legal Research, Legal Compliance, Event Management, Legal, Corporate Law, Dispute Resolution, In House Legal, Company Law, Governance, Budgetary Management, Legal Advisory, Management



### **Nasir Khan MBE FCIArb**

Nasir has 20 years' experience of delivering large infrastructure projects. He is an engineer, chartered surveyor and legally qualified with a complex dispute resolution portfolio spanning quantum, delay and engineering issues. In 2020, Nasir was awarded MBE for his services to the Muslim community raising Fairness, Respect, Equality, Diversity and Inclusion awareness. The Course Director, Nasir Khan, is the Head of Contract Solutions at Currie & Brown where he advises clients on procurement, claims, expert witness, dispute avoidance, management and resolution. He utilises his 20 years' experience of

delivering large infrastructure projects as an engineer, chartered surveyor, chartered procurement, and being legally qualified he has developed a unique skillset delivering a complex projects portfolio where he has led large and complex claims on quantum, delay and engineering issues spanning various industries including energy, utilities, property, oil & gas, manufacturing, ports, highways and rail infrastructure. Nasir has Fellowship of various institutions, lectures on commercial dispute avoidance and resolution and regularly acts as an expert, mediator, adjudicator and arbitrator. In 2020, Nasir was awarded MBE for his services- to equality, diversity and inclusion.



### **Dr Paresh Kathrani**

Dr Paresh Kathrani is the Director of Education and Training at the Chartered Institute of Arbitrators (CIArb). He is based at the CIArb Headquarters in London, United Kingdom, where he directs CIArb's global membership and non-membership courses. Paresh has nearly two decade's experience working in law. He has collaborated on international projects funded by the European Union, including with partners in North Africa, and was also the Law Liaison Tutor on the University of Westminster's transnational educational partnership with the Westminster International University in Tashkent (Uzbekistan). He has led several law modules, including Criminal law and

Public, Constitutional and Administrative Law, and has also worked with doctoral students. Paresh's research focusses on technology, artificial intelligence and its use in legal education and practice. He has written and spoken extensively on technology in law, and has been invited to speak at events, including at the Council of Bars and Law Societies of Europe (CCBE) in Brussels. He was part of a project funded by the European Union looking at the use of natural language processing in triaging legal cases. He is interested in the ethical implications of emerging technologies in dispute avoidance, management and resolution.





**Mian Sheraz Javaid FCI Arb, BSc, MSc, FCInstCES, FPD**

A "non-traditional" construction lawyer in Pakistan who began his professional career as a civil engineer. Skilled and dynamic leader with 17+ years of demonstrated capacity in all aspects of construction litigation and contract drafting/negotiation, alternative dispute resolution (ADR), Mediation, Adjudication, Neutral Evaluation, Arbitration, licensing, and other construction issues. Mr. Javaid's core area of expertise is dispute avoidance with special emphasis on the role of Dispute Resolution Advisor (DRA) for commercial entities involved in large to medium scale

construction projects both in private and government sector, devising the right procurement method for a construction project along with the appropriate standard form of contract and training & development of the enterprises both public and private sector to equip for dispute avoidance and standard forms. Mr. Javaid was admitted to the Punjab Bar Council, Lahore Pakistan as an advocate in 2003, as an Advocate High Court in 2005 and has recently been admitted as a Barrister in England and Wales. Mr. Javaid is a Partner of MK Consultus Limited.



**Margaretta Hanna Abdou - Head of Education at CI Arb**

Avocate and Associate at Reed Smith LLP London, UK

Ms Hanna Abdou is an associate at Reed Smith LLP specialised in international dispute resolution. Her practice focuses on international commercial and investor-state arbitration, specifically in construction and other commercial dispute matters. Ms Abdou is also familiar with related litigation regarding enforcement and annulment of arbitral awards and the implementation of conservatory measures. She is a member of ArbitralWomen.

Prior to joining Reed Smith LLP, Ms Abdou has gained extensive experience as a contract lawyer at Siemens, France where she practised public and private contract law, as well as pharmaceutical law. Ms Abdou also gained significant experience in environmental management at the French railway company (SNCF) which gave her a broad knowledge of French and European environmental law.



**The Chartered Institute of Arbitrators** is a professional organisation representing the interests of alternative dispute resolution practitioners. Founded on 1 March 1915, it was granted a royal charter by Queen Elizabeth II in 1979.

**Training**

The Chartered Institute of Arbitrators (CI Arb) offers world-renowned, face-to-face, virtual and online training in alternative dispute resolution (ADR) to anyone who wants to achieve a CI Arb qualification in avoiding, managing and resolving disputes.

**Training with us offers:**

A highly experienced in-house support team, who are happy to help every step of the way.

State of the art virtual classroom environments, incorporating dynamic classroom tools.

Leading practitioners and academics in the field of ADR as specialist tutors.

High-quality training materials designed directly by experts.

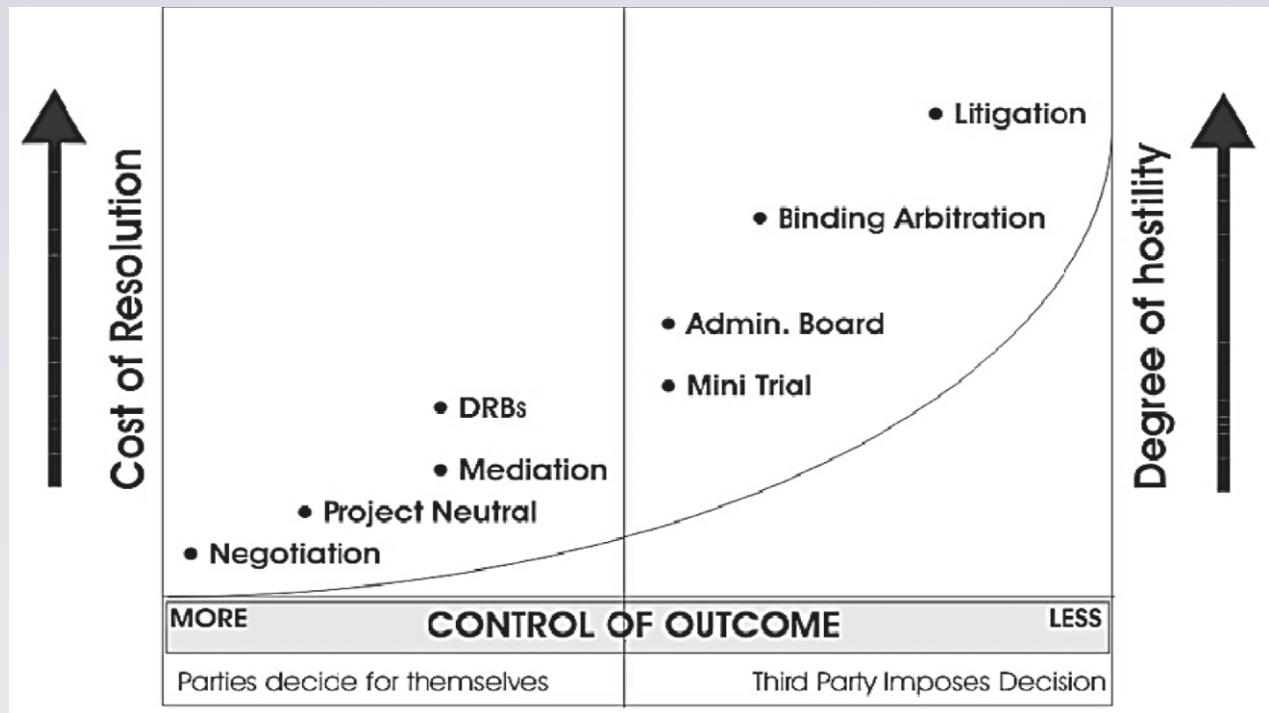
Membership and non-membership courses for all levels of experience.

Accelerated Membership (ARM) and Fellowship (ARF) assessments for experienced professionals.

A global network of branches to deliver our training wherever you are in the world.



## Cost of Dispute Resolution & Degree of Hostility



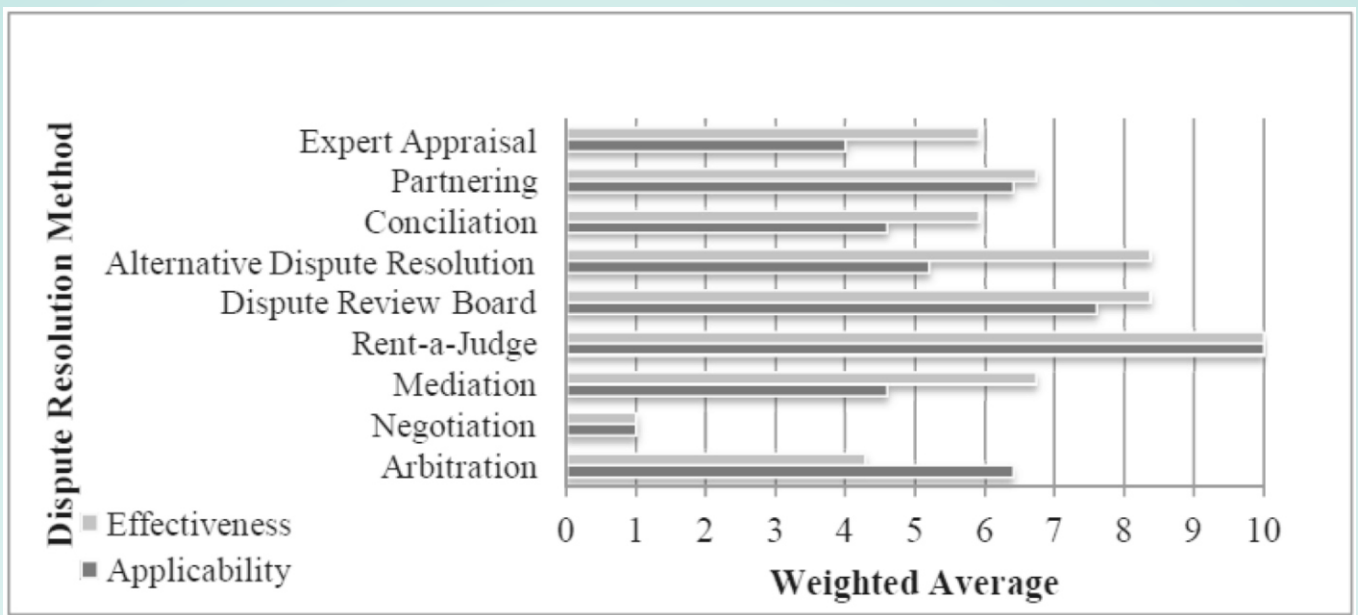
## Major Dispute Resolution Methods

Following are some of the major dispute Resolution Methods employed:

1. Rent-a-Judge
2. Dispute Review Board
3. Partnering
4. Arbitration
5. Mediation
6. Conciliation
7. Expert Appraisal
8. Negotiation



## Applicability & Effectiveness of the Methods



### Conciliation and Arbitration

- Disputes rarely get settled before resorting to the arbitration in Pakistan.
- The Engineer and the Dispute Boards are rarely appointed in an independent manner. Employers often impose their preferred choices.
- The constructors simply proceed to fulfill the formalities to take the disputes before an independent conciliation or arbitration tribunal.
- Conciliation or arbitration tribunal is held by the Pakistan Engineering Council, provided the contracts says so.
- Otherwise Courts appoint conciliators or arbitrators tribunal.



## **Ad hoc and Institutional Arbitration**

- An ad hoc arbitration is that which, the parties themselves determine the aspects of the arbitration mutually, such as the procedure for conducting the arbitration number of arbitrators, manner of their appointment, etc.
- In institutional arbitration, there are institutions available in the country which administer arbitration cases. The parties choose to submit the arbitration to the administration of any of these institutions.
- Pakistan Engineering Council is one such institution. It has devised 'Rules of conciliation and arbitration'.



**“Shall we decide among ourselves how to resolve our conflicts,  
or shall we go to an institution for this purpose”**

## **Pakistan Engineering Council**

Pakistan Engineering Council, the Statutory Regulatory body entrusted to regulate the engineering profession of Pakistan has undertaken among others, the standardization of "country specific" documents to regulate and streamline the award, execution of engineering consultancy services, procurement of works and resolution of disputes arising between the contracting parties.



'PEC Rules of Conciliation and Arbitration' is one such document prepared by a team of experts comprising Employers, Constructors and Consultants and Legal Advisors in line with the advice by Planning Commission, Govt. of Pakistan. The use of this document provides an equitable and just basis for settlement of disputes pertaining to construction and consultancy contracts expeditiously.



## Applicability of PEC Rules

The Rules are applicable for all construction and engineering services (consultancy) contracts executed in Pakistan irrespective of their source of financing and/or nationality of the constructors/consultants (engineering service providers).

2. The rules apply only when in the contract, reference to “PEC Rules of Conciliation and Arbitration” for arbitration, is made.

3. In the event, the parties seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with Pakistan Engineering Council (PEC) Rules of Conciliation.

4. Any dispute, controversy or claim arising out of or relating to a Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the PEC rules of Arbitration in-force.



## Procedure Flow

One party sends an invitation to the other party for conciliation.  
The other party accepts.

The parties agree on one sole conciliator or one each, and a third to mediate between the two.

The parties request PEC to appoint their selected conciliator/s or appoint PEC's own conciliator/s.

Each party submits to the conciliator the statement of dispute, the stand point, with supporting documents and evidences, a copy forwarded to the other party. Representatives and assistances of each parties are designated.

The conciliator/s work with impartiality, fairness and justice, conduct proceedings, make proposal, with or without techno legal assistance of PEC, and arrives at a settlement that is mutually agreed.

For arbitration, the party, as Claimant will submit a request to PEC for Arbitration, including nature and extent of claim and sought for remedy.

PEC gives notice to the other party as Respondent.  
The parties indicate their representatives and assistants of their choice.

A sole arbitrator or arbitrators in odd numbers are suggested by the parties and approved by PEC, or appointed by PEC.

Arbitrators need to be professional engineers.  
The impartiality of the arbitrators is challengeable, on evidence.

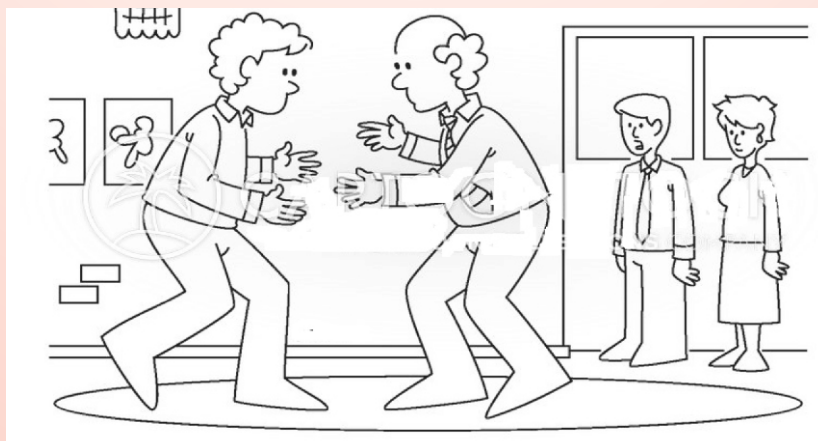
## **SOPs Practiced by Individual Bodies such as NHA**

- NHA, custodian of the Highway assets, is engaged in hundred of billion rupees contracts and disputes also huge in terms of claims.
- The contracts are based on FIDIC-IV in line with the standard form of bidding documents prepared by Pakistan Engineering Council.
- The contracts turned into disputes because of the absence of any standard procedures to deal with such cases.
- The SOPs have now been formulated to ensure transparency and best possible results for NHA.



## **Domestic and International Arbitration**

- 'Domestic Arbitration' means an arbitration relating to a dispute arising out of legal relationship, where none of the parties is an individual who has a nationality of, or is habitually residing outside country.
- While domestic dispute resolution provides an alternative to a court disposition, in international dispute resolution scenario, there is no ready court or law to turn to.
- Thus, Alternative Dispute Resolution is even more important in international disputes.
- Also, while international arbitration is more established, international mediation may be an ideal solution.



**“Shall we play within the ring or out of the ring?”**

## Pakistan Frequently Loses International Arbitration

Instances:

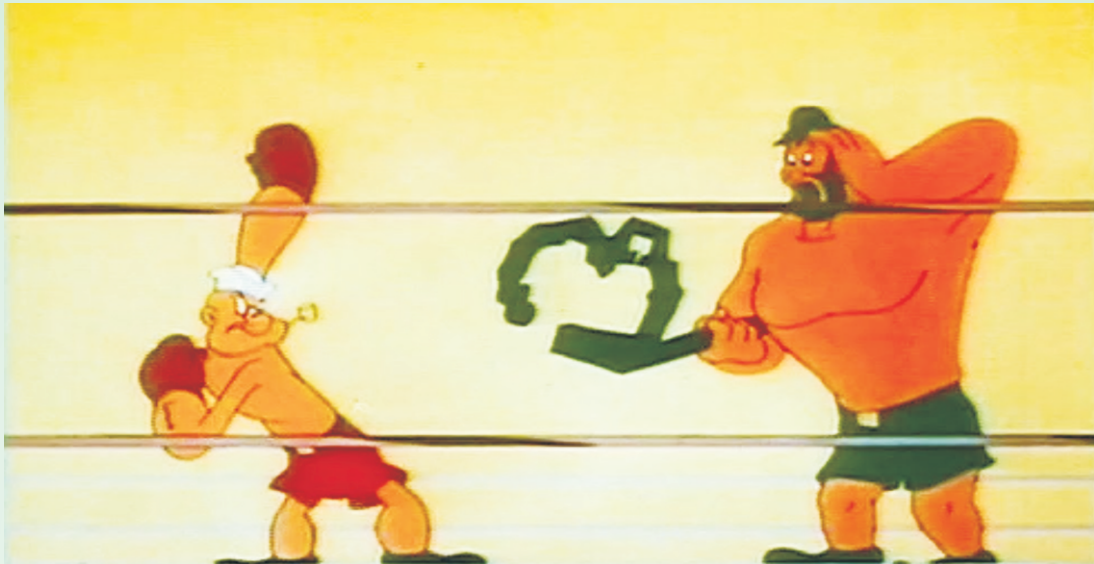
- World Bank's International Centre for Settlement of Investment Disputes (ICSID) rental power case by Karkey Karadeniz Elektrik Uretim of Turkey.
- London Court of International Arbitration (LCIA) 9 local power producers case against Pakistan for breaching contractual obligations.
- International Court of Arbitration case of Kishanganga hydropower project.
- Neutral expert decision in the matter of Baglihar hydropower project.
- ICSID case of the Reko Diq arbitration, by Chilean and Canadian mining firms, appears against Pakistan, allowing an out-of-court settlement before it gives a final determination.
- The International Court of Justice (ICJ) Kulbhushan Jadhav allowing consular access and to ensure effective review and reconsideration of his conviction and sentences.





## Why Pakistan Loses International Arbitration

- Inability to evolve a uniform law for the standardizing of contracts and the choice of arbitral frameworks.
- Bypassing procurement rules on the premise of saving time or foreign policy objectives. Examples are recent Chinese, Turkish and Qatari firms.
- Inability to develop its own specialized pool of experts in arbitration and contract writing despite a recent rise in the number of cases



## Significance of Documentation

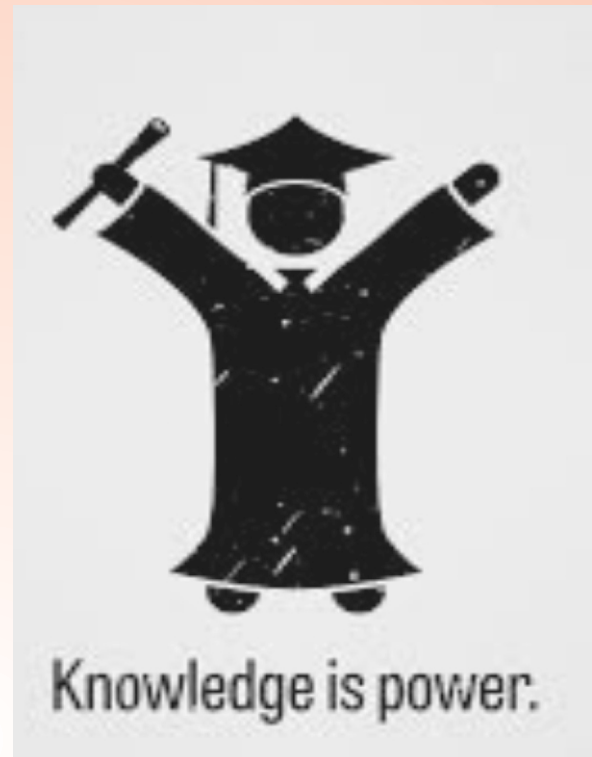
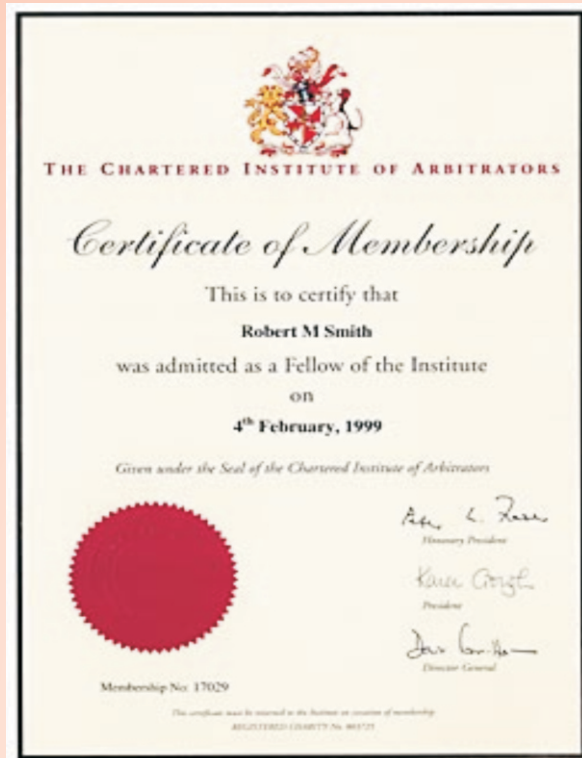
The party has to provide the tribunal with evidence on which his case is relied upon.

- Relevant documents only to support the case may be provided that simplifies and accelerates the procedures.
- Document disclosure is a stage when the party can request the production of documents from the other or any party.
- Document review is conducted to establish and build a properly structured case strategy.
- During the hearings, the documents need to be presented in a convincing manner.



- **Training from British Chartered Institute of Arbitrators**

It is right time, we gain high degree of proficiency in dealing with arbitration to get onto highly paid levels, to help reduce delays and fiscal losses in construction and to serve the imminent cause of the country's need.



### **Introduction Courses**

These beginner courses are delivered online, virtual, or face-to-face for those seeking foundational knowledge in alternative dispute resolution, construction adjudication, mediation, domestic or international arbitration.

A multiple choice test can be taken after training has been completed and, if passed, allows the candidate to apply to become a CI Arb Associate (ACI Arb).



### **Pathways**

For those without any prior knowledge, seeking a deeper understanding or wanting to practice, CI Arb offers different Pathways in domestic or international arbitration, construction adjudication or mediation.

The Pathways consist of three modules each. Passing Module 1 enables an individual to apply to become a CI Arb Member (MCI Arb). Passing Modules 2, 3, and a peer interview opens up eligibility for Fellowship of CI Arb (FCI Arb).

## Accelerated Routes and Diplomas

Those with experience in ADR and who meet the entry criteria can be assessed under the Accelerated Route programmes with a view to becoming Members (MCIArb) or Fellows (FCIArb) of CIArb.

Alternatively, individuals who meet the entry criteria can apply for one of our intensive Diploma programmes to deepen knowledge of either international commercial arbitration or international maritime arbitration.

## Development Courses

CIArb offers a range of eModules and an audiobook in discrete themes of dispute avoidance and resolution.

These non-membership options cover discrete parts of dispute avoidance and resolution, enabling those interested to go deeper into chosen subjects.

## A Guide to Arbitration Award Writing

This eModule considers the technical matters of grammar, sentence structure and formatting, and ensures the award is clear, concise, and free from errors or ambiguities. It takes individuals through analysing the facts and legal issues in an arbitration, with a view to preparing an award. It is set out in three main parts, as there are normally three drafts of the award, and a scenario is included to apply the knowledge attained. Videos from an experienced tutor and arbitrator, Dr Karen Akinci FCIArb, are also included and there are a number of interactive activities to support the learning.



## Negotiation Skills for the Pandemic and Beyond

This two day virtual course, will cover the strategies of negotiation within the context of emerging issues arising from the pandemic. The course date will be confirmed at a later date.



### Expression of Interest

**If you are interested, both physical and online choice is available, Please let us have your particulars on given email address or WhatsApp:**

**Name:**

**PEC Registration (Optional):**

**Email:**

**Occupation:**

**Town:**

**Course Interested in:**

**Physical or Online:**

**Email: [javed.uppal@gmail.com](mailto:javed.uppal@gmail.com)**

**Whatsapp: 03004107717**