

Hindrances in Progressive of Alternative Disputes Resolution in India

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Abstract: *In the Indian legal system arbitration dispute resolution proved to be a beneficial tool in reducing the excessive pressure on the Indian legal system. It proved to be helpful in many ways like cost-effectiveness, parties bringing forward their own terms and conditions and quicker decisions. Arbitration and conciliation act was introduced in 1996 and amended in 2015. Though moving towards modernization still arbitration in India has not grown properly as well as it is not fully accepted because of many reasons. Lack of awareness, working style, governmental interference and court intervention. There is no proper institutional ADR dealing. There are several factors responsible which hindered the growth of ADR mechanisms in India.*

Keywords: Arbitration, conciliation, mediation, institutional, mechanisms, Hindrances, awareness

1. Introduction

Hindrances in development of ADR in India:

- 1) Inefficient proper laws:
Law makers in India need to do effective study considering arbitration to find out for easy resolutions. There is need for more comprehensive and procedural law apart from arbitration and conciliation act 2019.
- 2) Court intervention in arbitration proceedings
Courts interference must be reduced while arbitration proceedings are going on and after concluding. Section 34 of arbitration and conciliation act 1996 (1) covers the right to challenge the arbitral award, which should be limited. Courts should not unnecessarily interfere in the fair trial process of such proceedings.
- 3) Availability of skilful knowledgeable and globally recognised arbitrators:
With the development of foreign industrialisation and marketing there is a need for creative minds, excellent and skilful arbitration dealing.
There are very few institutional arbitration platforms in India that are globally recognised. So they need upliftment in this area.
- 4) Cost effective and timely completion of proceedings:
The arbitration process requires many months to deal with the arbitration disputes and sometimes they seem to be expensive, so it is not possible for each party to afford such dealings.
- 5) Ignorant Indians:
Indians are still ignorant and there is a lack of interest in Alternative dispute resolution. They still believe in court proceedings for effective resolution. With the increase of modernization there is a need to make them aware about ADR benefits so that they can have access to justice.
- 6) The rules and practices followed are often outdated and ineffective:
Many Institutions like ICC, SIAC, LCIA are government controlled. New Delhi International arbitration centre and Arbitration Council of India have members from the government. So all the practices followed by them till date seem to be ineffective and traditional. So there is a need for new legislation and Reforms in this field.
- 7) Judicial attitude towards arbitration in general:
If arbitration matters entangled in court then it gets

- delayed. For example section 34 of Arbitration and Conciliation act, 1996 deals with a challenge to an arbitral award the same may take forever to decide. Even in the judgement of BCCI(2) sec. 87 of the act was introduced by legislation, later on it was struck down by Hindustan Construction Corporation Limited versus Union of India(3). A lot of time was wasted in it.
- 8) Failure in working style:
There is a need to upgrade the Indian judicial system and administrative background. There is a lack of Advanced Technologies like sound proof caucus rooms, audio video recordings, video conferencing etc.
- 9) Parties fault in delaying arbitration proceedings by initiating Court proceedings before or during such proceedings.
- 10) Lack of Legislative support for institutional arbitration in India.
- 11) Lack of Governments support for institutional arbitration and in providing solid platforms for the resolution of disputes.
- 12) Overlapping efforts of different laws.

To overcome such problems various recommendations are as follows:

- a) Increasing Awareness-
Seminars and workshops should be organised and people should be encouraged to opt for arbitration for efficiently resolving their disputes. Law Schools in India should organise competitions, moot courts, seminars, briefing of law students related to alternative dispute resolution should be done. As well as law firms must build their own networks amongst future arbitration or ADR lawyers.
- b) Courts encouragement in alternative dispute resolutions and less interferences -
In fact, we have regressive judgement by the Supreme Court for example in ONGC versus Saw pipes Limited(3).
- c) Most of the arbitrators in India are adhoc which is a major reason why arbitration mechanisms in India are not efficient and robust. Owing to a busy schedule of litigation lawyers in India it is unlikely for Indian lawyers to actively participate. So there is a need for proper infrastructure and good Institutions which are established on permanent ground.

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d) Proper skillful training to lawyers, students and practitioners is required and is a need of hour.

2. Conclusion

Unfortunately the Indian legal system could not wholeheartedly embrace ADR mechanisms due to the lack of our mass interest. The facts and figures show that the success of ADR in the USA is due to a strong initiative taken by the bar. In India we don't find many non litigating lawyers therefore there is a lack of proper understanding of ADR mechanisms due to lack of training in these techniques of amicable settlement of disputes . There is a lack of awareness because India needs conferences like SIAC and ICC. All the lawyers, practitioners and other members are encouraged to become full-time arbitration lawyers and we should welcome foreign lawyers to do Arbitration in India to achieve great heights in this field.

References

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- [2] Board of Control of cricket in India vs Kochi cricket Private Limited (2018) SCC 287.
- [3] (2019) SCC online 1520
- [4] (2003) 5 SCC 705