

# Methods of Alternative Dispute Resolution in India

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**Abstract:** According to the data of NJDG as on 5 August, 2022, there are 42489336 cases are pending in India, in which 10878306 are civil cases and 31611031 criminal cases. All over India 74.14% (23436618 criminal cases) and 74.76% (8132291 civil cases) are pending for more than one year. More than 71400 cases are pending in the Supreme Court of India, in which 56365 cases are civil and 15076 cases are criminal matters. More than 59 lakhs cases are pending in 25 High courts across the country. In Subordinate Courts 4.13 crores cases are pending. At present we have only a single solution of these pending cases that we must enforce Alternative Dispute Resolution Mechanism, so we can recover our judicial system. There is a lot of burden on our judiciary.

**Keywords:** Arbitration, Mediation, Conciliation, Negotiation, Lok adalat, Constitution, Jurisdiction, Settlement, Communication

## 1. Introduction

1.1 Alternative dispute resolution is an indispensable process. It describes several modes of resolving legal dispute. Generally alternative dispute resolution is less formal, less expensive and less time consuming than regular trial. Alternative dispute resolution can be used in almost all contentious matters which are capable of being resolved under law by agreement between the parties. It can be used at local, state, or National level as well as International level.

1.2 The alternative dispute resolution process tries to resolve and check conflicts between the parties to maintain co-operation. It is a term which is used to describe different modes of resolving legal disputes. (1)

1.3 The alternative dispute resolution is a movement, positive approach and attitude towards resolving disputes. It has achieved a crucial position for business operating in the Indian judicial system. (2)

1.4 The Supreme Court of India had said that an independent and efficient judicial system is one of the basic structures of our constitution. The alternative dispute resolution is founded in Indian constitution under article 14 and under article 21 that talks about equality before law and right to life and personal liberty, under article 39A of the Constitution of India. (3) Alternative dispute resolution also tries to achieve equal justice and free legal aid under the directive principles of state policy.

1.5 The goal of alternative dispute resolution is to enshrine the Indian Constitution's preamble that talks about social, economic, political justice equality and fraternity (4). There are several acts which deal with the alternative dispute resolution like Arbitration or conciliation act 1996, the legal service authorities act 1987, Indian arbitration act 1940 that only deals with the domestic arbitration, the Indian arbitration act 1996 its purpose to remove defects and bring out a new arbitration law.

Several countries had approached India that they want to resolve the matter of Jammu and Kashmir through mediation if both the countries agree, the former President of America Donald Trump had said "he wants to resolve the Jammu and Kashmir matter between India and Pakistan if both agree to do so."

## 2. The Code of Civil Procedure 1908

Section 89 settlement of disputes outside the court

- Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties for their observations and after receiving the observations of the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, Lok adalat, mediation.
- Where a dispute has been referred for arbitration or conciliation, the provisions of the arbitration and conciliation act 1996 shall apply.
- Where a suit has been referred to Lok adalat the provisions of sub section 1 of section 20 of the legal services authority act 1987 shall apply.
- Where a dispute has been referred for mediation, the Court shall affect a compromise between the parties and shall follow such procedure as may be prescribed. (5)

## 3. There are following methods of alternative dispute resolution - Mediation, Arbitration, Conciliation, Negotiation and Lok adalat:

### 3.1 Mediation

Mediation is a method of alternative dispute resolution where a third neutral party aims to assist two or more disputed disputants in reaching agreement. It is an easy negotiation process where a third party acts as a mediator to resolve disputes amicably by using appropriate communication and negotiation techniques. It is totally controlled by the parties of the case. The work of mediator is just to ease the parties to reach settlement of their dispute. At the commencement of the mediation process the concerned parties should be present.

There are various stages of mediation

- Opening settlement
- Joint session
- Separate session
- Closing

The mediation received the first time Legislative recognition in India in the Industrial dispute act 1947, in which under

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section 4 of the act, the conciliators charged with the duty of mediating in and promoting the settlement of industrial disputes. The first elaborate training for mediators was conducted in Ahmedabad in the year of 2000 by American trainers, sent by institute for the study and development of legal system. The Chief justice of India formally inaugurated Ahmedabad mediation centre on 27th day of January, 2002. It is the first lawyer managed centre in India.

### 3.2 Arbitration

It cannot exist without valid arbitration agreement to the emergence of dispute. In this process parties of the case refer their dispute to one or more persons called arbitrators. The arbitrators' decision is bound on the parties of the case and such decision is called "award". The fair settlement of disputes outside the court without any unnecessary delay and expense are the major objects of the arbitration.

Procedure of Arbitration-

- a) The applicant files a statement of claim that reveals the relevant facts and remedies and is accompanied with the certified copy of the arbitration agreement.
- b) Such a statement of claim is filed in the court or tribunal for the judicial determination of the dispute in writing and a copy of such claim is sent to the defendant.
- c) The dependent replies to the arbitration by filing an answer against the claim of the Claimant that reveals the relevant facts to the statement of claim.
- d) The parties of the dispute receive the list of potential arbitrators and select the panel for the hearing of their case.
- e) The documents and information are exchanged in preparation for the hearing, which is called Discovery.
- f) At the stage of hearing parties present in person and present the evidence and do arguments in sport of their respective cases.
- g) After examination of the witnesses, evidence which were presented, the arbitrator gives an award, which is binding on the parties of the dispute.

Landmark judgements on arbitration

#### **Rashid raja versus sadaf akhtar-**

In this case a three member bench of Supreme Court held that mere "simple allegation" of fraud will not vitiate the effect of arbitration agreement, whether the allegations of such fraud touch upon the internal affairs of the parties. (6)

#### **The Oriental insurance company limited and others versus dicitex furnishing limited-**

The Supreme Court held that an aggrieved party can invoke an arbitration clause on the basis of no objection certificate or discharge voucher. the court observed that the court requires the existence of the arbitration dispute. (7)

#### **Uttarakhand purva sainik Kalyan nigam limited versus Northern coal field limited-**

In this case the court held that the legislative intent of the arbitration act is partly autonomy and minimal judicial

interference in the arbitration proceeding. The court observed that the issue of limitation should be decided by the arbitrator because it is a issue of jurisdiction under section 16 of the arbitration act. (8)

#### **Oil and natural gas Commission versus collector of Central excise and customs 1992-**

The Supreme Court directed that disputes between the government departments and public sector must be solved by the process of arbitration. (9)

#### **Brahmani river pellets limited versus kamachi industries limited-**

In this case the parties had agreed for Bhubaneswar as the venue for arbitration proceedings. the court of Bhubaneswar shall have the jurisdiction to deal with the matter. the Supreme Court held that the High Court of Madras had no jurisdiction to entertain under section 11 (6)of the arbitration and conciliation act 1996. (10)

### 3.3 Conciliation

It is a form of arbitration; Conciliation is a process that facilitates an amicable resolution between the parties of the case. The conciliator of the parties meets with them separately to settle their dispute, minimising tension between them and improving communication between them. The prior agreement in conciliation is no need, as it cannot be forced on a party who is not intending for conciliation. According to section 62 of the arbitration and conciliation act 1996. The parties cannot enter into a conciliation agreement before the dispute has arisen.

#### **Procedure for conciliation**

- a) The party who initiates conciliation shall send a written invitation to conciliate to the other party of the case and identify the subject matter of the dispute.
- b) The concilalkate proceeding will not be commenced if the other party rejects the invitation to conciliate. The parties of the case are also permitted to engage in the conciliation process even while arbitral proceedings are on. It is speedy in resolving disputes. Any dispute which is settled in equivalent to a degree and enforceability of a court, and not appealable.

3.4 negotiation- negotiations is a non binding procedure, in which parties are invited without intervention of any third party with the object of arriving at a negotiated settlement to the dispute. It is a famous method of alternative dispute resolution; it occurs in non profit organisations, government branches, business, legal precedence among Nations and in personal situations like marriage, divorce, parenting and everyday life. It has the advantage of allowing the parties themselves to control the process and the solution. In India there is no statutory recognition for negotiation. In the negotiation, a predictable pattern is followed because there are no fixed rules. It is self counselling for the resolution of disputes between the parties. It is a dialogue intended to resolve disputes, to produce an agreement upon courses of

actions to bargain for individual or collective advantage or to craft outcomes to satisfy various interests.

Negotiation is this study of subject; those persons who work in negotiation are called negotiators. The union negotiators, leverage buyout negotiators, hostage negotiators, or peace negotiators are professional negotiators. Negotiation is a most common method of alternative distribution.

Essentials of negotiation-

- a) In negotiation there is the possibility of achieving wide ranging solutions and of maximising joint gains.
- b) Negotiation is a communication process.
- c) Negotiation resolves the conflicts between the parties of the dispute.
- d) The parties can retain control over procedure.
- e) Negotiation is a voluntary exercise.

### 3.5 Lok adalat

Lok adalat is called people's court, which is presided over by a sitting or retired judicial officer, social activists or member of the legal profession as the chairman. Lok adalats are conducted by the national legal service authority (NALSA) along with other legal service institution on regular intervals for exercising such jurisdiction. Any case may be referred to the lok adalat, which is pending in the regular court or which has not been brought before any Court of law. The order of Lok adalat shall be final and shall be to a degree of a Civil Court. The order of lok adalat is not appealable in the court of law. lok adalat takes no fees from the parties of the case and it follows the rigid procedure. It disposes the cases fastly. It totally depends on the parties to the case. If both the parties agree for the transfer of the case to the Lok adalat, then such case shall be transferred and heard by the lok adalat. In lok adalat parties to the case are persuaded to come to a conclusion for the settlement of dispute outside the regular court.

The legal service authorities may on the receipt of an application from one of the parties at a pre-litigation stage, refer such matter to the Lok adalat and notice will be issued to the other party. It hears the suit of recovery and claims. Lok adalat has no jurisdiction to deal with cases of non compoundable offences. It decides the cases of compoundable nature. It analyzes the casualness of facts and law.

Advantages of Alternative Dispute Resolution-

- a) As parties discuss their issues together on the same platform that gives an opportunity of restoring the relationship between them.
- b) The alternative dispute resolution preserves the interest of the parties.
- c) It maintains good relationships between the parties and prevents them from further conflict.
- d) There is no fear of court of law, so parties can disclose the true facts and also express themselves.
- e) It doesn't follow the technicalities; it follows the formal ways in resolving disputes.
- f) It saves a lot of money from litigating

- g) It consumes less time than other regular courts of law.
- h) It is so flexible which reduces the stress of a conventional trial.

ICADR- in a conference that was held in New Delhi on 4th December 1993 under the chairmanship of the Prime Minister and presided over by the Chief justice of India, a Resolution was adopted by the Chief ministers and Chief justices of the states. The chief ministers and Chief justices were of the opinion that courts are not in a position to bear the entire burden of the justice system and that a number of disputes lent themselves to resolution by alternative modes such as mediation, arbitration and negotiation. they emphasized the desirability of disputants taking advantage of alternative dispute resolution which provided procedural flexibility and saved money, and valuable time and avoid the stress of conventional trial, there is no better opinion but to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of dispute through mediation, arbitration, negotiation Conciliation and lok adalat etc. (11)

### Committee of Supreme Court

The Supreme Court formed a committee to draft mediation law that will give legal sanctity to disputes settled through mediation. It was a suggestion to the government from the apex court. The panel will recommend a code of conduct for mediators who are legal experts. (12)

### References

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- [4] Preamble of the Constitution of India.
- [5] Section 89 of the Code of Civil Procedure, 1908.
- [6] Judgement dated 4 September 2019 in Civil appeal number 7005 of 2019.
- [7] Judgement dated on 13th November 2019 in civil appeal number 8550 of 2019.
- [8] Order dated 27th November 2019 specially leave petition (c) number 11476 of 2018.
- [9] 1995 Supp (4) SSC 541.
- [10] Judgement dated 8 August, 2019 in Civil appeal number 5850 of 2019.
- [11] The international centre for alternative dispute resolution (ICADR).
- [12] See The economic times- Supreme Court form a committee to draft mediation law, will send to the government by Ajmer Singh on January 19, 2020.