



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ADR IN INDIA- AN ANALYSIS

Introduction-Alternate dispute resolution is a method in which disputes are settled outside the court amicably. The aim of alternate dispute resolution is to reduce the burden on traditional court system and bring about a peaceful, inexpensive, satisfactory and swift resolution of disputes between parties.

Features of Alternate dispute resolution are-

- 1)Section 89 of the Civil Procedure Code provides that if there exist a possibility of settlement which may be acceptable to the parties, the court may formulate the parameters of probable settlement and refer the same for Arbitration, Conciliation, Mediation.
- 2)There is active participation of the parties and as ADR does not follow the traditional court procedure, the parties can resolve the dispute by framing their own settlement mutually with the help of a neutral third party who is an expert in the field.
- 3)ADR is fair, flexible, inexpensive and less time consuming than a traditional court procedure.

Different mechanisms of ADR and their analysis are as follows-

1)Arbitration-The Arbitration and Conciliation Act,1996 is the act governing arbitration in India, which was amended in 2015 ,and as the name suggests in arbitration a neutral third party is appointed as arbitrator and the parties submit their dispute through an ‘arbitration agreement’ to

the arbitrator who acts as the judge and his decisions are binding upon the parties and has same impact as that of an order of the court¹.

There has been increasing awareness and use of arbitration in India, especially in commercial contracts. The Singapore International Arbitration center (SIAC) is widely used by Indian parties to settle their disputes.² Several judgements by courts have been delivered that have protected the right of parties and enhanced the significance of arbitration in India. In *Sri Ganesh Engineering Works v. Northern Railways*, the Delhi High court held that if one party is allowed sole prerogative to appoint the maximum number of arbitrators, it will impact the fairness of the proceeding and may have a biased approach towards delivering of justice. However, despite efforts by various stakeholders several cases of arbitration are pending in India. In 2022 more than 48% of arbitration cases were pending for more than a year and nearly 23% cases were pending between two and twenty years.³

Conciliation- It is a non-binding method in which a neutral third party endorses the disputing parties towards reaching a mutually acceptable settlement. The aim of conciliation is to bring parties face to face. Here both parties are required to meet in person, at a common place in the

¹ Dalmia, V.P. (2023) Law of arbitration in india & alternative dispute resolution, Lexology.

Available at: <https://www.lexology.com/library/detail.aspx?g=c74be5b9-f8c1-4d5a-ae87-936d0ca6de8b> (Accessed: 26 March 2024).

² Dalmia, V.P. (2023) Law of arbitration in india & alternative dispute resolution, Lexology.

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³ Rathore, M. (2023) India: Age wise pendency of arbitration cases 2022, Statista. Available at: <https://www.statista.com/statistics/1356526/india-age-wise-pendency-of-arbitration-cases/> (Accessed: 26 March 2024).

presence of a conciliator who helps the party to reach a settlement which is mutual, adequate and fair.

In India Conciliation has been adapted effectively by three -laws The Industrial Disputes Act,1947, The Family Courts Act,1980 and the Code of Civil Procedure 1908.However there is no institutionalization of conciliation, and no professional training is provided to the conciliators and unlike arbitrators, conciliators may not have the necessary training or expertise in the nature of the dispute.⁴

Mediation-In this method of alternate dispute resolution the parties present their dispute to a neutral third party, who does not take the decision on behalf of the parties but provides them with a channel of communication to resolve their dispute. Mediation can be referred to by court or specially provided by the court. In court referred it can be private or contractual. The settlement made by mediation is binding and considered at par with the order of a court.

The Mediation act,2023 was enacted to increase efficiency and reach of mediation by setting up a time frame for settling of disputes, increase confidentiality and enhance its efficiency at par with

⁴ Dalmia, V.P. (2023) Law of arbitration in india & alternative dispute resolution, Lexology.

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international standards by providing for pre-litigation and online mediation⁵ and according to statistics provided by National legal service authority nearly 0.11 million cases have settled by mediation between 2022-2023.

Conclusion-ADR is an effective mechanism to reduce burden on courts and settle disputes amicably, however steps must be taken to improve the awareness among people by improving legal literacy and increasing confidence in ADR.

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- ⁵ Dalmia, V.P. (2023) Law of arbitration in india & alternative dispute resolution, Lexology. Available at: <https://www.lexology.com/library/detail.aspx?g=c74be5b9-f8c1-4d5a-ae87-936d0ca6de8b> (Accessed: 26 March 2024).
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