

# All you need to know about Alternative Dispute Resolution (ADR)

## Introduction

Indian judiciary is one of the oldest judicial system, a world-renowned fact but nowadays it is also well-known fact that Indian judiciary is becoming inefficient to deal with pending cases, Indian courts are clogged with long unsettled cases. The scenario is that even after setting up more than a thousand fast track Courts that already settled millions of cases the problem is far from being solved as pending cases are still piling up.

To deal with such a situation Alternative Dispute Resolution (ADR) can be helpful mechanism, it resolves conflict in a peaceful manner where the outcome is accepted by both the parties.

## Alternative Dispute Resolution

The concept of Alternative Dispute Resolution (ADR) mechanism is capable of providing a substitute to the conventional methods of resolving disputes. ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement. Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute. It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.

## Importance of ADR in India

To deal with the situation of pendency of cases in courts of India, ADR plays a significant role in India by its diverse techniques. Alternative Dispute Resolution mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, *arbitration*, *conciliation*, *mediation*, *negotiation* and *lok*

*Adalat*. Here, negotiation means self-counseling between the parties to resolve their dispute but it doesn't have any statutory recognition in India.

ADR is also founded on such fundamental rights, article 14 and 21 which deals with equality before law and right to life and personal liberty respectively. ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice and free legal aid provided under article 39-A relating to Directive Principle of State Policy(DPSP).

## Few important provisions related to ADR

- Section 89 of the Civil Procedure Code, 1908 provides that opportunity to the people, if it appears to court there exist elements of settlement outside the court then court formulate the terms of the possible settlement and refer the same for: Arbitration, Conciliation, Mediation or Lok Adalat.
- The Acts which deals with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 and,
- The Legal Services Authority Act, 1987

## Advantages of Alternative Dispute Resolution

- Less time consuming: people resolve their dispute in short period as compared to courts
- Cost effective method: it saves lot of money if one undergoes in litigation process.
- It is free from technicalities of courts, here informal ways are applied in resolving dispute.
- People are free to express themselves without any fear of court of law. They can reveal the true facts without disclosing it to any court.
- Efficient way: there are always chances of restoring relationship back as parties discuss their issues together on the same platform.
- It prevents further conflict and maintains good relationship between the parties.
- It preserves the best interest of the parties.

# Various modes of Alternative Dispute Resolution

## Arbitration

The process of Arbitration cannot exist without valid arbitration agreement prior to the emergence of dispute. In this technique of resolution parties refer their dispute to one or more persons called arbitrators. Decision of arbitrator is bound on parties and their decision is called 'Award'. The object of Arbitration is to obtain fair settlement of dispute outside of court without necessary delay and expense.

Any party to a contract where arbitration clause is there, can invoke arbitration clause either himself or through their authorized agent which refer the dispute directly to the arbitration as per the Arbitration clause. Here, arbitration clause means a clause that mention the course of actions, language, number of arbitrators, seat or legal place of the arbitration to be taken place in the event of dispute arising out between the parties.

- Initially, applicant initiates an arbitration by filing a statement of claim that specifies the relevant facts and remedies. The application must include the certified copy of arbitration agreement.
- Statement of claim is a written document filed in the court or tribunal for judicial determination and a copy also send to the defendant in which claimant described the facts in support of his case and the relief he seeks from the defendant.
- The respondent reply to the arbitration by filing an answer against the arbitration claim of claimant that specifies the relevant facts and available defenses to the statement of claim.
- Arbitrators selection is the process in which the parties receive lists of potential arbitrators and select the panel to hear their case.
- Then there is the exchange of documents and information in preparation for the hearing called 'Discovery'.
- The parties meet in persons to conduct the hearing in which the parties present the arguments and evidences in support of their respective cases.
- After the witnesses examined and evidences are presented, then there in conclusion arbitrator gives an 'Award' which is binding on the parties.

Now the intricacies of the proceedings vary with the arbitration agreement. For example, there could be a timeline which must be followed. This timeline would be stipulated in the agreement.

Section 8 of *Arbitration and Conciliation Act, 1996* provides if any party disrespects the arbitral agreement and instead of moving to arbitration, moves that suit to civil court, other party can apply the court for referring the matter to arbitration tribunal as per the agreement but not later the submission of the first statement. The application must include a certified copy of arbitration agreement and if courts satisfy with it, the matter will be referred to arbitration.

## Mediation

Mediation is an Alternative Dispute resolution where a third neutral party aims to assist two or more disputants in reaching agreement. It is an easy and uncomplicated party centered negotiation process where third party acts as a mediator to resolve dispute amicably by using appropriate communication and negotiation techniques. This process is totally controlled by the parties. Mediator's work is just to facilitate the parties to reach settlement of their dispute. Mediator doesn't impose his views and make no decision about what a fair settlement should be.

## *THE PROCESS OF MEDIATION WORKS IN VARIOUS STAGES. THESE ARE,*

- Opening statement
- Joint session
- Separate session and,
- Closing

At the commencement of mediation process, the mediator shall ensure the parties and their counsels should be present.

- Initially in the opening statement he furnishes all the information about his appointment and declares he does not have any connection with either of parties and has no interest in the dispute.
- In the joint session, he gathers all the information, understand the fact and issues about the dispute by inviting both the parties to present their case and put forward their perspective without any interruption.

In this session, mediator tries to encourage and promote communication and manage interruption and outbursts by the parties.

- Next is separate session, where he tries to understand the dispute at a deeper level, gathers specific information by taking both the parties in confidence separately.
- Mediator asks frequent questions on facts and discusses strengths and weaknesses to the parties of their respective cases.
- After hearing both the sides, mediator starts formulating issues for resolution and creating options for settlement.
- In the case of failure to reach any agreement through negotiation in mediation, mediator uses different Reality check technique like:

### ***Best Alternative to Negotiated Agreement (BATNA)***

It is the best possible outcome both the party come up with or has in mind. Its suitable situation as each party thinks about their most favorable scenario looks like.

### ***Most Likely Alternative to Negotiated Agreement (MLATNA)***

For a successful negotiation the result always lies in the middle, mediator after considering both the parties comes up with most likely outcome. Here result is not always in the middle but little left or right of the center depending on negotiation situation.

### ***Worst Alternative to Negotiated Agreement (WATNA)***

It the worst possible outcome a party has in their mind for what could happen during negotiation.

It may be helpful to the parties and mediator to examine the alternative outside the mediation(specifically litigation) and discusses the consequences of failing to reach agreement like: effect on the relationship of the parties or effect on the business of the parties. It is always important to consider and discuss the worst and most probable outcomes, it's not always people get the best outcome.

Mediator discusses the perspective of the parties about the possible outcome at litigation. It is also helpful for the mediator to work with parties and their advocates to come to a proper understanding of the best, worst and most probable outcome to the dispute through litigation as that would help the parties to acknowledge the reality and prepare realistic, logical and workable proposals.

# Conciliation

Conciliation is a form of arbitration but it is less formal in nature. It is the process of facilitating an amicable resolution between the parties, whereby the parties to the dispute use conciliator who meets with the parties separately to settle their dispute. Conciliator meet separately to lower the tension between parties, improving communication, interpreting issue to bring about a negotiated settlement. There is no need of prior agreement and cannot be forced on party who is not intending for conciliation. It is different from arbitration in that way.

*Actually, it is not possible for the parties to enter into conciliation agreement before the dispute has arisen. It is clear in Section 62 of The Arbitration and Conciliation Act, 1996 which provides,*

- The party initiating conciliation shall send to the other party a written invitation to conciliate under this part, briefly identifying the subject of the dispute.
- Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
- If the other rejects the invitation, there will be no conciliation proceedings.

Above provision clearly states conciliation agreement should be an extemporary agreement entered into after the dispute has but not before. Parties are also permitted to engage in conciliation process even while the arbitral proceedings are on (section 30).

# Lok Adalat

Lok Adalat is called 'People's Court' presided over by a sitting or retired judicial officer, social activists or members of Legal profession as the chairman. National Legal Service Authority (NALSA) along with other Legal Services Institutions conducts Lok Adalats on regular intervals for exercising such jurisdiction. Any case pending in regular court or any dispute which has not been brought before any court of law can be referred to Lok Adalat. There is no court fees and rigid procedure followed, which makes the process fast. If any matter pending in court of referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court when the petition filed is also refunded back to the parties.

Parties are in direct interaction with the judge, which is not possible in regular courts. It depends on the parties if both the parties agree on case long pending

in regular court can be transferred to Lok Adalat. The persons deciding the cases have the role of statutory conciliators only, they can only persuade the parties to come to a conclusion for settling the dispute outside the regular court in the Lok Adalat. Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats do not have any jurisdiction to deal with cases of non-compoundable offenses.