

ALTERNATIVE DISPUTE RESOLUTION IN INDIA

Desire for quick and affordable justice dispensation is universal. In present times, early resolution of a dispute not only saves valuable time and money of the parties to the dispute but also promotes the environment for enforcement of contract and ease of doing business.

The traditional mode of dispute resolution i.e. litigation is a lengthy process leading to unnecessary delays in dispensation of justice as well as over-burdening the Judiciary. In such a scenario, Alternative Dispute Resolution (ADR) mechanisms like arbitration, conciliation and mediation etc. offer better and timely solution for resolution of a dispute. These ADR mechanisms are less adversarial and are capable of providing a an amicable outcome in comparison to conventional methods of resolving disputes.

ARBITRATION AND CONCILIATION ACT, 1996

In India, one of the most popular modes of ADR is arbitration, conducted as per the provisions of the Arbitration and Conciliation Act, 1996.

History of arbitration in India

The first formal statute relating to the subject of arbitration in India was the Indian Arbitration Act, 1899, applicable only to Presidency towns of Madras, Bombay and Calcutta.

Subsequently, after the Code of Civil Procedure, 1908 came into force, the Second Schedule of the said code provided for the recourse to arbitration. Subsequently, above laws laid down the comprehensive legislation relating to arbitration i.e. the Arbitration Act, 1940.

The said Act of 1940 was predominantly based on the English Arbitration Act of 1934 and was in force for the next more than half a century.

The Act of 1940, dealt only with domestic arbitrations while the enforcement of foreign awards was dealt with by the Arbitration (Protocol and Convention) Act, 1937 for Geneva Convention Awards and the Foreign Awards (Recognition and Enforcement) Act, 1961 for the New York Convention Awards.

Internationally, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985 was adopted on June 21st, 1985, containing 36 Articles. The model law was aimed to create uniformity for arbitration related statutes, enacted by the Member Countries.

The UNCITRAL model law enabled the participating nations to consider the said law while enacting Laws pertaining to domestic arbitration in order to have uniformity across various jurisdictions as far as arbitration is concerned.

Enactment of the Arbitration and Conciliation Act, 1996

Globalization and liberalisation of the Indian economy initiated after 1991 had created the ecosystem for facilitating entry of foreign investments in India and there was a need to make comprehensive changes in domestic laws to make them at par with other countries.

The foreign investors, also were looking for the availability of a vibrant and steady alternate dispute resolution mechanism for having the contractual disputes resolved in a cost effective manner.

However, the then prevalent provisions of the Arbitration Act, 1940 were not commensurate to the expectations of the investors, who wanted a more settled and vibrant alternate dispute resolution mechanism.

Indian Parliament, based on the UNCITRAL Model Law on International Commercial Arbitration 1985 enacted the Arbitration and Conciliation Act, 1996 to make its law consonant and consistent with the position existing in the other jurisdictions as far as arbitration is concerned.

The Arbitration and Conciliation Act, 1996 came in force on 22.08.1996.

The key objectives of the Arbitration and Conciliation Act, 1996 were:

- a. Reducing Court intervention
- b. Providing for speedy disposal of the disputes.
- c. Amicable, swift and cost-efficient settlement of disputes.
- d. Ensuring that arbitration proceedings are conducted in a just, fair and effective manner.
- e. Comprehensively dealing with international commercial arbitration and conciliation as also domestic arbitration and conciliation.
- f. Facilitating arbitrator to resort to mediation, conciliation or other procedure during the arbitral proceedings to encourage settlement of disputes.
- g. Provide that every arbitral award is enforced in the same manner as if it were a decree of the court.

Arbitration is a quasi-judicial proceeding, wherein the parties in dispute appoint an arbitrator by agreement to adjudicate the said dispute and to that extent it differs from court proceedings. The power and functions of arbitral tribunal are statutorily regulated.

The Arbitration and Conciliation Act, 1996 is divided into four parts. Part I which is titled "Arbitration"; Part II which is titled "Enforcement of Certain Foreign Awards"; Part III which is titled "Conciliation" and Part IV being "Supplementary Provisions". Apart from these Parts, there are Seven Schedules to the Act.

Amendments to the Arbitration and Conciliation Act, 1996.

The Arbitration and Conciliation Act, 1996 has been amended in the years 2015 and 2019, to enable conduct of arbitration proceedings in India, to be time bound, efficacious and amenable to further litigation only on limited grounds.

The significant amendments include:

Grounds for challenge to arbitrators have been detailed out and specified as per prevalent international standards, to uphold independence and impartiality of arbitrators.

Statutory framework provided for time bound completion of arbitration proceedings.

Interim orders that can be passed by the courts or arbitral tribunals, as the case may be, relating to arbitral proceedings have been detailed out to enable protection of the value of the subject matter of dispute during the pendency of the arbitration proceedings.

The grounds for challenge to arbitral awards clarified to convey that the scope of challenge is intended to be limited. This would enable finality to arbitral awards.

The provision of automatic stay on the enforcement of arbitral awards, as soon an application for setting aside an arbitral award is filed has been done away with and a provision included that a stay on the enforcement of an arbitral award may be granted upon imposition of certain conditions including deposit in case of monetary awards.

Proposed for establishment of Arbitration Council of India (ACI) for grading of arbitral institutes in the country.

Enactment of India International Arbitration Centre Act, 2019

The India International Arbitration Centre Act, 2019 provides for establishment of an institution of national importance, namely the India International Arbitration Centre for creating an independent and autonomous regime for institutional arbitration. It is proposed to develop the Centre as a preferred seat for domestic and international commercial arbitration.

The India International Arbitration Centre shall, inter alia, provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings, maintain panels of accredited arbitrators, conciliators and mediators, both at National and International level or specialists such as surveyors and investigators; provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings; promote research and study, providing teaching and training, and organizing conferences and seminars in arbitration, conciliation, mediation and other

alternative dispute resolution matters. The Chairperson and Part-time Members of the Centre have been appointed.

MEDIATION BILL, 2021

Mediation is another mode of ADR which is more informal and facilitates negotiations between the disputant parties, culminating in a settlement. Thus, mediation, in contrast to arbitration, helps people and businesses in conflict to preserve their relationships, as the settlement arrived at in the process is on voluntary and consensual basis.

Presently, the use of Mediation is confined largely in family matters etc. and in disputes referred by Courts, to court annexed mediation centres. Mediation on voluntary basis or on private basis between the parties is also undertaken but the same is not formalised and structured and there is no express recognition to the settlement arrived at between the parties under law. Thus, parties feel discouraged to participate in mediation process. The aforesaid factors have hampered the growth of mediation as an effective mechanism for dispute resolution and the Mediation Bill, 2021 seeks to address the legal and procedural shortcomings in this regard.

The Mediation Bill, 2021, which would be a consolidated Act for the purpose of mediation in India has been introduced in the Rajya Sabha and was referred to Joint Parliamentary Committee for further consideration. The Joint Parliamentary Committee has made certain recommendations. The recommendations of the Committee are under the active consideration of the Government.