

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.

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

ARBITRATION AND CONCILIATION ACT, 1996

- In India, one of the modes of ADR is arbitration, which is governed by the Arbitration and Conciliation Act, 1996.

The Arbitration and Conciliation Act, 1996 governs the arbitral proceedings in India.

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 vogue, the Second Schedule of the said code provided for the regime of arbitration. The aforesaid statutes, which formed the basis of arbitration in India, subsequently gave way to the detailed legislation relating to arbitration, titled the Arbitration Act, 1940.

The said Act of 1940 was predominantly founded on the English Arbitration Act of 1934 and remained on the statute book 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.

The English Act of 1934 was replaced twice subsequently by other statutes keeping in view the changing landscape of arbitrations. The India Act of 1940 however did not undergo consequent changes.

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 said model law was aimed to create uniformity and synonymy for arbitration related statutes, prevalent across the world.

The UNCITRAL model law enabled the participating nations to consider the said law while enacting domestic arbitration related provisions in order to enable uniformity being maintained across the globe as far as arbitration law is concerned.

Enactment of the Arbitration and Conciliation Act, 1996

- Globalization and liberalisation of the Indian economy had created the ecosystem for foreign investments to come into India after the year 1991.

The investors, however before investing in India were looking for a vibrant and steady alternate dispute resolution mechanism to be available to get disputes relating to their investments in India adjudicated quickly and at a lesser cost.

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

India, based on the UNCITRAL Model Law on International Commercial Arbitration 1985 thereafter passed the Arbitration and Conciliation Act, 1996 to make its law contemporaneous to the worldwide existent position as far as arbitration is concerned.

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

The said Act of 1996 was based on the UNCITRAL Model Law on International Commercial Arbitration 1985 and the UNCITRAL Conciliation Rules, 1980.

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

- a. Minimisation of supervisory role of courts
- b. Providing speedy disposal of the disputes.
- c. Amicable, swift and cost-efficient settlement of disputes.
- d. Resolving the dispute by a formal award.
- e. Ensuring that arbitration proceedings are just, fair and effective.
- f. Comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation.
- g. Permit an arbitrator to use mediation, conciliation or other procedure during the arbitral proceedings to encourage settlement of disputes.
- h. 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 differs from court proceedings. The power and functions of arbitral tribunal are statutorily regulated. Arbitration is accordingly essentially a voluntary assumption of an obligation by contracting parties to resolve their disputes through a private tribunal.

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 provided to the Act of 1996.

Recent 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 making 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 conditions including deposit in case of monetary awards.
 - Proposed notification of the establishment of Arbitration Council of India (ACI) for grading of arbitral institutes in the country.

MEDIATION BILL, 2021

Another mode of ADR can be said to be mediation, which is more informal and facilitates negotiations between the disputant parties which may culminate 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 has been referred to a Joint Parliamentary Committee for further consideration.