



LawPublicus
The Legal Portal

Volume 1 : Issue 9
2021

August, 2021

Email ID: Lawpublicusportal@gmail.com
Website: www.Lawpublicus.com
Address: A18 Dayanand Colony Lajpat Nagar - 4
New Delhi

Disclaimer

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of *LawPublicus* The Legal Portal. The Editorial Team of *LawPublicus* holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of *LawPublicus*. Though all efforts are made to ensure the accuracy and correctness of the information published, *LawPublicus* shall not be responsible for any errors caused due to oversight or otherwise.

FOR *LawPublicus* The Legal Portal

Editorial Team

Editor-in-Chief

Mr. Nikhil Kumar Chawla

Partner - LawPublicus LLP
Senior Corporate Counsel (Litigation)
M/s Investors Clinic Infratech (P) Ltd.
Contact: +91-9654441680
+91-9654030411
Email ID: Nikhilchawla29@gmail.com
Lawpublicusportal@gmail.com

Senior Editor(s)

Dr. Amita Rathi

Associate Professor – JEMTEC Greater Noida
Contact: +91-9999612484
Email ID: Amrita.gn@jagannath.org

Advocate K.S. Rana

Advocate
Contact: +91-9910326424
Email ID: Jyotideeprana@gmail.com

Dr. Payal Jain

Sr. Assistant Professor – IIMT (GGSIPU), East Delhi
Contact: +91-99991733257
Email ID: Payaljain.iimt@gmail.com

Editor(s)

Dr. Vijeta Verma

Assistant Professor – JEMTEC Greater Noida

Contact: +91-9911393623

Email ID: Vijetaverma.gn@jagannath.org

Dr. Prashant Kumar

Assistant Professor – IMRT, Lucknow

Contact: +91-9889109882

Email ID: Prshntkumar6@gmail.com

Dr. Shishma Kushwaha

Assistant Professor – JEMTEC Greater Noida

Contact: +91-9718485919

Email ID: Shishmakushwaha.gn@jagannath.org

Ms. Shivangi Sharma

Assistant Professor – CLS, Gitarattan International Business
School

Contact: +91-9891496247

Email ID: Shivangi.sharma@gitarattanedu.in

Ms. Kriti Sharma

Assistant Professor – GGSIPU

Contact: +91-9891354307

Email ID: Kritisharmaks30@gmail.com

Ms. Yantakshikaa Sharma

Partner - LawPublicus LLP

Career Counsellor

Contact: +91-9711249637

Email ID: Yantakshika@gmail.com

About Us

LawPublicus The Legal Portal is a leading journal of multidisciplinary research. It is a free, peer-reviewed, open-access journal that provides insight into diverse and dynamic legal matters.

LawPublicus is a novel initiative by legal minds. As the its name suggests, it is platform for young minds to ignite their willingness and inventiveness in order to contribute to the field of law through new ideas, opinions and thereby contributing to an informed citizenry.

We hope to provide a forum for young and enthusiastic writers to voice their feelings and research on interdisciplinary approaches. We also have in view to evaluate, explore and deliberate, under the tutelage of seasoned editors and academic experts, on current trends and projections based thereon in legal studies. LawPublicus focuses not only on the scholarly writings but also on numerous other approaches such as discussions, interviews, and debates with experts and qualified & industrial professionals.

We are determined and excited to bring authentic, creative and individual ideas and socially-related problems into attention.

LawPublicus calls for research papers, articles, short notes, book reviews & case commentaries, that are distinctive and unpublished.

With this thought, we hereby present to you

LawPublicus The Legal Portal

**“ADR MECHANISM IN
INDIA”**

Authored By:

Ms. Vanshikha Mahana

*University: University of Petroleum and Energy Studies (UPES),
Dehradun*

“ADR MECHANISM IN INDIA

By: Vanshikha Mahana

“It is the spirit and not the form of law that keeps the justice alive.”

LJ Earl Warren

The concept of Conflict Management through Alternative Dispute Resolution (ADR) has introduced a new mechanism of dispute resolution that is non adversarial. A dispute is basically ‘lis inter partes’ and the justice dispensation system in India has found an alternative to Adversarial litigation in the form of ADR Mechanism.

New methods of dispute resolution such as ADR facilitate parties to deal with the underlying issues in dispute in a more cost-effective manner and with increased efficacy. In addition, these processes have the advantage of providing parties with the opportunity to reduce hostility, regain a sense of control, gain acceptance of the outcome, resolve conflict in a peaceful manner, and achieve a greater sense of justice in each individual case. The resolution of disputes takes place usually in private and is more viable, economic, and efficient. ADR is generally classified into at least four types: negotiation, mediation, collaborative law, and arbitration. (Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation.

The technique of ADR is an effort to design a workable and fair alternative to our traditional judicial system. It is a fast track system of dispensing justice. There are various ADR techniques viz. arbitration, mediation, conciliation, mediation-arbitration, mini-trial, private judging, final offer arbitration, court-annexed ADR and summary jury trial.

These techniques have been developed on scientific lines in USA, UK, France, Canada, China, Japan, South Africa, Australia and Singapore. ADR has emerged as a significant movement in these countries and has not only helped reduce cost and time taken for resolution of disputes, but also in providing a congenial atmosphere and a less formal and less complicated forum for various types of disputes.

The Arbitration Act, 1940 was not meeting the requirements of either the international or domestic standards of resolving disputes. Enormous delays and court intervention frustrated the very purpose of arbitration as a means for expeditious resolution of disputes. The Supreme Court in several cases repeatedly pointed out the need to change the law. The Public Accounts Committee too deprecated the Arbitration Act of 1940. In the conferences of Chief Justices, Chief Ministers and Law Ministers of all the States, it was decided that since the entire burden of justice system cannot be borne by the courts alone, an Alternative Dispute Resolution system should be adopted. Trade and industry also demanded drastic changes in the 1940 Act. The Government of India thought it necessary to provide a new forum and procedure for resolving international and domestic disputes quickly.

Thus "The Arbitration and Conciliation Act, 1996" came into being. The law relating to Arbitration and Conciliation is almost the same as in the advanced countries. Conciliation has been given statutory recognition as a means for settlement of the disputes in terms of this Act. In addition to this, the new Act also guarantees independence and impartiality of the arbitrators irrespective of their nationality. The new Act of 1996 brought in several changes to expedite the process of arbitration. This legislation has developed confidence among foreign parties interested to invest in India or to go for joint ventures, foreign investment, transfer of technology and foreign collaborations.

The advantage of ADR is that it is more flexible and avoids seeking recourse to the courts. In conciliation/mediation, parties are free to withdraw at any stage of time. It has been seen that resolution of disputes is quicker and cheaper through ADR. The parties involved in ADR do not develop strained relations; rather they maintain the continued relationship between themselves.

ARBITRATION AND CONCILIATION ACT, 1996

Part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

ARBITRATION:

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement

must be in writing. The contract, regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defence in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or panels of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

Once the period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

CONCILIATION

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The

conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator.

When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

Note that in USA, this process is similar to Mediation. However, in India, Mediation is different from Conciliation and is a completely informal type of ADR mechanism.

MEDIATION

Mediation, a form of alternative dispute resolution (ADR) or "appropriate dispute resolution", aims to assist two (or more) disputants in reaching an agreement. The parties themselves determine the conditions of any settlements reached— rather than accepting something imposed by a third party. The disputes may involve (as parties) states, organizations, communities, individuals or other representatives with a vested interest in the outcome.

Mediators use appropriate techniques and/or skills to open and/or improve dialogue between disputants, aiming to help the parties reach an agreement (with concrete effects) on the disputed matter. Normally, all parties must view the mediator as impartial.

Disputants may use mediation in a variety of disputes, such as commercial, legal, diplomatic, workplace, community and family matters.

A third-party representative may contract and mediate between (say) unions and corporations. When a workers' union goes on strike, a dispute takes place, and the corporation hires a third party to intervene in attempt to settle a contract or agreement between the union and the corporation.

NEGOTIATION

Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution.

Negotiation occurs in business, non-profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life. The study of the subject is called negotiation theory. Those who work in negotiation professionally are called negotiators. Professional negotiators are often specialized, such as union negotiators, leverage buyout negotiators, peace negotiators, hostage negotiators, or may work under other titles, such as diplomats, legislators or brokers

LOK ADALAT

“While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach”.

It roughly means "People's court". India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, where by mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they think fit. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

There is no court fee and no rigid procedural requirement (i.e. no need to follow process given by Civil Procedure Code or Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts.

Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party.

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the

award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent.

All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

Lok Adalat (people's courts), established by the government, settles dispute through conciliation and compromise. The First Lok Adalat was held in Chennai in 1986. Lok Adalat accepts the cases which could be settled by conciliation and compromise and pending in the regular courts within their jurisdiction.

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat.

Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat.

Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases.

Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.