Alternative Dispute Resolution with special reference to "Arbitration"

By

CA. (Dr.) Rajkumar Adukia
Author of more than 300 books,
Business Growth and Motivational Coach,
Member IFRS SMEIG London 2018-2020
Ex director - SBI mutual fund, BOI mutual fund
Ph. D , LL.B, LLM (Constitution), FCA,FCS, MBA, MBF , FCMA, Dip Criminology, Dip in IFR(UK) Justice (Harvard) , CSR, Dip IPR, Dip Criminology ,dip in CG , Dip Cyber, dip data privacy B. Com , M. Com., Dip LL & LW
Student of – MA (psychology), MA (Economics), IGNOU PGDCR, PGCAP etc
Chairman western region ICAI 1997, Council Member ICAI 1998-2016

Introduction:

As the supreme law of the country that is the Constiution based on welfare state concept it becomes its prime duty to secure access to justice to its citizens that can be ensure by timely and speedy justice through both judicial as well as non-judicial forums of dispute resolution. In recent years the Alternative Dispute Resolution (hereinafter ADR) comprising of different techniques such as Negotiation, Mediation, Conciliation and Arbitration etc have emerged as the effective tool for amicable solution of dispute.

The ADR was first time introduced via insertion of section 89 into the Code of Civl Procedure, 1908 brought into effect by the CPC Amendment Act 1999 that became effective since 1st July 2002. The section provides for the reference of case pending before courts to the ADR such as

(a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation etc.

The method of Arbitration and Conciliation are addtionally governed by the Arbitration and Conciliation Act, 1996. In addtion to these the supreme court in Salem Advocate Bar Association V Union of India, (2005) 6 SCC 344 approved for Model Civil Procedure Mediation Rules and directed 25 high courts in the country to framed their Mediation & Arbitration Rules. Other provision of CPC, 1908 : Order X Examination of party by the Court; Order 32(A) and Order 23 Rule 3 Compromise of suit

Although these legislation are the basis of ADR there are certain other statutes that advocate for compulsory recourse of either mediation, conciliation or arbitration. These are:

1. The Indian Contract Act, 1872
2. The Negotiable Instrument Act, 1882
3. The Industrial Disputes Act, 1947
4. The Hindu Marriage Act, 1955
5. The Family Courts Act 1984
6. The Motor Vehicle Act, 1988
7. The Legal Service Authority Act 1987
8. The Companies Act, 2013
9. The Companies (Mediation and Conciliation) Rules, 2016
10. The Commercial Courts Act, 2015
11. The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018
12. The Real Estate (Regulation and Development) Act, 2016
13. The Consumer Protection Act, 2019
14. The Consumer Protection (Mediation) Rules, 2020
15. The Consumer Protection (Mediation) Regulations, 2020

Anyone possessing sound mind may faciliate the resolution to the concerned dispute therefore there are no are no rigid formalties prescribed for imparting

role as a dispute resolution providers. Since India follows either court referred ADR or Private ADR, the accreditation is necessary for empanelment with court and tribunal mediation panels. The person can be a certified accredited dispute resolution provider either in the category of Mediator, Conciliator or Arbitrator after successful completion of training course.

Brief history of the Arbitration and Conciliation Act 1996:

Prior to arrival of british to India, the East India Company had enacted several laws of one such act called the Regulation Act, 1787. The act empowered the court to promote the arbitration. Further in 1857 arbitration became the part of Code of Civil Proceudre, 1858 which was later replace in 1882 vide enactment of Code of Civil Procedure, 1882.

In about 1889 an independent act governing the arbitration was passed namely the Indian Arbitration Act, 1899. As with the passing of time more flexibility needed for effectiveness therefore the Code of Civil Procedure, 1882 later in 1908 replace with the Code of Civil Procedure, 1908. The code brought back all the provisions of the Indian Arbitration Act, 1899 and incorporated them in the second schedule appended to the code. However the schedule provision re-enacted under the Arbitration Act 1940- which suffer defect for instance too much intereference of the court at every state of arbitration proceedings. For all this reason there felt a need for arbtration legislation that will have complete freedom from court intervention and make the decision/award final and executable.

Hence the Arbitration and conciliation Act of 1996 vide incorporating the law commission recommendation and the UNCITRAL model law and rules was enacted

The brief Composition of the act is as under:

- Total parts IV

- Total section 87
- Total schedules Seven
- Definition section 2 (1) (a) to (j)

- Part-I contains general provisions on arbitration.
- Part-II deals with enforcement of certain foreign awards.
- Part-III deals with conciliation.
- Part-IV contains certain supplementary provisions.

Recent amendment in the arbitration act

- The most recent effort was the enactment of the **Arbitration** & Conciliation (Amendment) **Act** 2021 effective since 4th november 2020
- An ordinance was passed on 4th november 2020 namely the Arbitration and Concliation (amendment) ordiance 2020
- Later the said ordinance was repealed by the **Arbitration** & Conciliation (Amendment) **Act** 2021 effective retrospectively since 4th november 2020
- It is said that such amendment was pass *to address the concerns raised by stakeholders after the enactment of the Arbitration & Conciliation (Amendment) Act, 2019*
- the two changes introduced by the 2020 Amendment were Section 36(3): Additional grounds for an unconditional stay on enforcement & Amendment to Section 43J of the Act
- The act specifies that a stay on arbitral award can be provided (even during the pendency of the setting aside application) if the court is satisfied that:
  (i) the relevant arbitration agreement or contract, or
  (ii) the making of the award, was induced or effected by fraud or corruption. This change were effective from October 23, 2015.

- the 2019 Amendment had disqualified foreigners (such as a foreign scholar, or a foreign-registered lawyer, or a retired foreign officer) from being an accredited arbitrator under the Act.
- This was because of the limitations imposed by the Eighth Schedule to the Act, that was introduced by the 2019 Amendment.
- The Eighth Schedule specified the qualifications, experience, and norms for accreditation of arbitrators and these norms were largely biased in favour of Indian lawyers, cost accountants, government officers, etc.
- For instance The requirements under the schedule include that the arbitrator must be:
  (i) an advocate under the Advocates Act, 1961 with 10 years of experience, or
  (ii) an officer of the Indian Legal Service, among others.
- The 2020 Amendment directly addresses that concern by removing the Eighth Schedule altogether from the Act and replacing it with "*the regulations*."

The Code of Criminal Procedure 1973 (CRPC) -

Traditionally the ADR Mechanism was not available to the cases of criminal nature but the law commission of India in its 142nd report stated that it is desirable to infuse life into reformative provisions embodied in section 360 of Cr.P.C and the Probation of Offenders Act, 1958. Today CRPC allow compromise and settlement in criminal case by use of plea bargaining, Lok Adalat and Mediation.

Section 320 (Compounding of offences) -

- There are certain offences which can be compromised between victim and the offender. This process of reaching of compromise without wasting court's time is called compounding.

- At present there are 56 compoundable offences : 43 without the permission of the court and 13 with the permission of the court. It should be noted that only the victim has the right to compound the offence

Chapter XXIA (Ss. 265A - 265L) Plea Bargaining –

- The 2006 amendment in CRPC 1973 added the new chapter XXIA on plea bargaining, it refers to pre-trial negotiations between the defendant usually conducted by the counsel and prosecution during which the accused agrees to plead guilty in exchange for certain concession by prosecutors.

The process ADR in India is divided into two one is court referred and other is private, although both advocate for prior consent of disputing parties, the later is certainly more flexible to opt for.

It truly depict the voluntary nature of ADR as the party themeselve to decide where to go for recourse of their dispute. There are numerous ADR instituions and facilitators which are further classfied into two that is Ad hoc and Institutional meaning adminstered and not administered.

For instance Ad hoc Arbitration means which is not administered by any forum and the parties are generally required to terms of procedure, appointment etc. whereas on the other hand insitutional arbitration means the process of which is governed by the respective guidelines, rules prescribed by such institution/forum.

You are just one goggle search away from the Mediation, conciliation & Arbitration institution.

With the development of ADR in country there is certainly increase in the institutions faciliating dispute resolution and therefore in the arbitration insitutions or forum that increases their competition.

For this reason the 2019 amendment introduced in the Arbitration and Concliation Act 1996 led for the establishement of Arbitration Counicil of India who shall provide grading of arbitral institution based on criteria such as infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations. Although it does it mean that the arbitral institution be governed by such council and are certainly operate on voluntary basis. One can rightly conclude this is indeed a positive step taken for streghthing the ADR and improving the quality of dispute resolution.

WEBSITES

1. ODRways (Online Mediation) - http://odrways.com
2. Mediate India - www.mediation.com
3. Indian Institute of Arbitration and Mediation - www.arbitrationindia.com
4. Camp Mediation - www.campmediation.in
5. ASSOCHAM International Council of Alternate Dispute Resolution (AICDR) - www.assocham.org
6. Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC) - www.bimacc.org
7. Centre for Advanced Mediation Practice - www.ciac.in
8. Delhi Dispute Resolution Society (DDRS) Department Law Justice & LA Government of Delhi - http://delhi.gov.in/wps/wcm/connect/doit_ddrs/DELHI+DISPUTES+RESOLUTION+SOCIETY/Home

9. International centre for Alternate Dispute Resolution (ICADR) - http://icadr.nic.in
10. ODRways (Online Mediation) - http://odrways.com
11. Online Consumer Mediation Centre - http://onlinemediationcenter.ac.in
12. Algeria Centre de conciliation et d'arbitrage de la Chambre algerienne de commerce et d'industrie Contact: cabinetharoun@yahoo.f
13. Australia Australian Centre for International Commercial Arbitration (ACICA), Website: www.acica.org.au
14. Australian Commercial Disputes Centre (ACDC) Website: www.acdcltd.com.au
15. Institute of Arbitrators & Mediators Australia (IAMA) Website: www.iama.org.au
16. LEADR Association of Dispute Resolvers Website: www.leadr.com.au
17. Austria Anwaltliche Vereingung fur Mediation und cooperatives Verhandeln (AVM) Website: www.avm.co.at
18. Argentina Comision de Arbitraje, Camara Argentina de Comercio, www.cac.com.ar
19. Bahrain Bahrain Chamber for Dispute Resolution (BCDR) Website: www.bcdr-aaa.org
20. Belgium Brussels Business Mediation Center (BBMC) Website: www.bbmc-mediation.be
21. Cepani Belgian Centre for Mediation and Arbitration Website: www.cepani.be
22. Chambre d'arbitrage et de Mediation, Website: www.arbitrage-mediation.be
23. Benin Centre d'Arbitrage de Mediation et de Conciliation du Benin
24. Brazil Camera de Arbitragem Empressarial, Website: www.camarb.com.br
25. IBRAMAC, Recife, Website: www.ibramac.org

26. Burkina Faso Centre d'Arbitrage, de Mediation et de Conciliation de Ouagadougou de la Chambre de Commerce, d'Industrie et d'Artisanat, Website: djibobintou@yahoo.fr
27. Canada ADR Chambers, Website: www.adrchambers.com
28. ADR Institute of Canada, Website: www.adrcanada.ca
29. Canadian Commercial Arbitration Centre (CCAC), Website: www.ccac-adr.org
30. Cameroon Association pour la promotion de l'arbitrage en Afrique (APAA), www.apa-afrique.org
31. Chile Arbitration and Mediation Center of the Chilean-American Chamber of Commerce, Website: www.amchamchile.cl
32. 34. Santiago Chamber of Commerce, Website: www.camsantiago.com
33. 35. China Beijing Arbitration Commission, Website: www.bjac.org.cn
34. 36. China Council for Promotion of International Commerce (CCPIT)
35. China International Economic and Trade Commission (CIETAC), Website: www.cietac.org
36. Shanghai Commercial Mediation Centre, Website: www.scmc.org.cn
37. Colombia Centro de Arbitraje y Conciliacion Camara de Comercio de
38. Bogata, Website: www.ccb.org.co
39. Congo Centre national d'arbitrage, de conciliation et de mediation (CENACOM), Website: cenacomdrc@yahoo.fr
40. Croatia Croatian Chamber of Trade and Crafts, Suzana.Kolesar@hok.hr
41. Croatian Mediation Association and Mediation Centre, Website: humanrights.uconn.edu
42. Cyprus Cyprus Mediation Association, Website: www.cymedas.com
43. Cyprus Arbitration & Mediation Centre, Website: www.cyprusarbitration.com.cy
44. Czech Republic Association of Mediators of the Czech Republic, Website: www.amcr.cz

45. Denmark Danish Centre for Conflict Resolution, Website: www.konfliktloesning.dk
46. Danish Institute of Arbitration, www.denarbitra.dk
47. Egypt Cairo Regional Centre for International Commercial Arbitration (CRCICA), www.crcica.org
48. England Academy of Experts, www.academy-experts.org
49. ADR Chambers, www.adrchambers.co.uk
50. ADR Group, Website: www.adrgroup.co.uk
51. ADR Services, Website: www.adrs.co.uk
52. Chartered Institute of Arbitrators, Website: www.ciarb.org
53. Civil Mediation Council, Website: www.civilmediation.org
54. Dispute Mediation, Website: www.disputemediation.co.uk
55. In Place of Strife, www.mediate.co.uk
56. Finland Finnish Bar Association Mediation Board, Website: www.asianajajat.fi
57. France Arbitration Chamber of Paris, Website: www.arbitrage.org
58. Centre de Médiation et d'Arbitrage de Paris (CMAP), Website: www.mediationetarbitrage.com
59. European Centre for Financial Dispute Resolution, Website: www.euroarb.org
60. Germany Centrums fur Verhandlungen und Mediation (CVM), www.c-v-m.org
61. Deutsche Gesellschaft fur Mediation (DGM), www.dgm-web.de
62. German Association of Business Mediation (DGMW), www.dgmw.de
63. Mediation fur Juristen, www.wegweiser-mediation.de
64. Greece ADR Center, www.adrcenter.gr/mediation
65. ADR Point, www.adrpoint.gr/en/businesses/adr-point
66. Hellenic Mediation & Arbitration Centre, Website: www.hellenic-mediation.gr

67. Hong Kong Hong Kong International Arbitration Centre (HKIAC), Website: www.hkiac.org
68. Hong Kong Mediation Centre, Website: www.mediationcentre.org.hk
69. Hungary Budapest Attorney Mediators' Society, www.mediacio.net
70. India Delhi Mediation Centre (DMC), Website: www.delhimediationcentre.gov.in
71. Bangalore International Mediation, Arbitration & Conciliation Centre, Website: www.bimacc.org
72. Indian Institute of Arbitration & Mediation, Website: www.arbitrationindia.com
73. Indonesia Pusat Mediasi Nasional (PMN), Website: www.pmn.or.id
74. Indonesian National Board of Arbitration, Website: www.bani-arb.org
75. Ireland Mediators' Institute of Ireland (MII), Website: www.themii.ie
76. Mediate Ireland, Website: www.mediateireland.com
77. Italy Concilia LLC, www.concilia.it
78. Milan Chamber of Commerce, www.mi.camcom.it
79. Resolutia, www.resolutia.it
80. Israel Israeli Institute of Commercial Arbitration, Website: www.borerut.com
81. Mediate in Israel, mediationinisrael.com
82. Japan Niben Arbitration and Mediation Center, Website: www.niben.jp/english/arbitration.html
83. Japan Commercial Arbitration Association (JCAA), Website: www.jcaa.or.jp/e/
84. Japan International Mediation Centre, Website: www.jimc-kyoto.jp
85. Japan Intellectual Property Arbitration Centre, Website: www.ip-adr.gr.jp
86. Kenya Dispute Resolution Centre, Website: www.disputeresolutionkenya.org
87. Suluhu Mediation Centre, Website: www.suluhumediation.org

88. Luxembourg Centre de Mediation du Barreau de Luxembourg, Website: www.centre-mediation.lu
89. Malaysia Kuala Lampur Regional Centre for Arbitration (KLRCA), Website: www.rcakl.org.my
90. Malaysian Mediation Centre (MMC), www.malaysianbar.org.my
91. Mexico Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), Website: www.arbitrajecanaco.com.mx
92. Centro de Arbitraje de Mexico (CAM), Website: www.camex.com.mx
93. Morocco Chambre de Commerce et d'industrie d'Agadir, Website: www.ccis-agadir.com
94. Mongolia Mongolian National Arbitration Center, Website: www.mongolchamber.mn
95. Netherlands Netherlands Arbitration Institute, Website: www.nai-nl.or
96. Amsterdam ADR Instituut, www.adrinstituut.nl
97. Netherlands Mediation Institute, Website: www.nmi-mediation.nl
98. New Zealand The Arbitrators' and Mediators' Association of New Zealand (AMINZ), Website: www.aminz.org.nz
99. Nigeria Lagos Court of Arbitration, Website: www.lagosarbitration.org
100. Negotiation and Conflict Management Group
101. Regional Centre for International Commercial Arbitration, Website: www.rcicalagos.org
102. Northern Ireland Mediation Northern Ireland, Website: www.mediationnorthernireland.org
103. Norway Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce, Website: www.chamber.no
104. Panama Arbitration Centre of the Pamama Chamber of Commerce, Website: www.panacamara.com/cecap/

105. Philippines Philippine Mediation Center (PMC), Website: www.pmc.org.ph

106. Poland Business Mediation Centre (BMC), Website: www.mediacja.org

107. Court of Arbitration of the Polish Chamber of Commerce, Website: www.sakig.pl

108. Portugal Arbitration Centre of the Portuguese Chamber of Commerce and Industry, Website: www.centrodearbitragem.pt

109. Romania Centrul Regional de Facilitare si Negociere, Website: www.rfnc.ro

110. Russia League of Mediators, www.arbimed.ru

111. Scotland Core Solutions, Website: www.core-mediation.com

112. Scottish Mediation Network, Website: www.scottishmediation.org.uk

113. Singapore Singapore International Arbitration Centre (SIAC), Website: www.siac.org.sg

114. Singapore Mediation Centre (SMC), www.mediation.com.sg

115. Slovenia Zavod Rakmo: Center for Mediation and Conflict Management, Website: www.mediacija.com, www.rakmo.si

116. European Centre for Dispute Resolution, Website: www.ecdr.si

117. South Africa Arbitration Foundation of Southern Africa (AFSA), Website: www.arbitration.co.za

118. Commission for Conciliation, Mediation and Arbitration (CCMA), Website: www.ccma.org.za

119. South African Association of Mediators (SAAM). Website: www.saam.org.za

120. Centre for Mediation in Africa, www.up.ac.za

121. South Korea Korean Commercial Arbitration Board (KCAB), Website: www.kcab.or.kr

122. Spain Arbitraje y Mediacion (ARyME), Website: www.aryme.com
123. Consolat de Mar, Website: www.consolatdemar.org/ENG/consolat.htm
124. Corte de Arbitraje de Madrid, Website: www.camaramadrid.es
125. Tribunal Arbitrajo del ICAV, Website: www.tav.icav.es
126. Sweden SCC Mediation Institute, Website: www.sccinstitute.com
127. Stockholm Arbitration and Litigation Center, www.salc.se/en
128. Switzerland Mediale, www.medialegeneve.ch
129. Swiss Chambers Arbitration Institution, Website: www.swissarbitration.org
130. Tunisia Centre de conciliation et d'arbitrage de Tunis, Website: ccat@gnet.tn
131. Thailand Thailand Arbitration Centre, www.thac.or.th
132. United Arab Emirates Dubai International Arbitration Centre (DIAC), Website: www.dubaichamber.com
133. Abu Dhabi Global Markets Arbitration Centre, Website: www.adgmac.com
134. Uruguay Conciliation and Arbitration Centre of the Chamber of Commerce of Uruguay, Website: www.intracen.or
135. Venezuela Centro de Arbitraje de la Camara de Caracas, Website: www.arbitrajeccc.org
136. Vietnam International Arbitration Centre
137. Zimbabwe Commercial Arbitration Centre, email arbitrationcentre@zol.co.zw

Hoping you find this article informative and useful, to find out more of such information stay tuned to my next article.

Thank you!