



ALTERNATE DISPUTE RESOLUTION AND CONCILIATION IN INDIA

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ABSTRACT

In India we have learned and studied about many acts, laws, amendments have taken place for speedy trials but maximum of them have failed in providing justice to an individual in a better manner and on time. This case is especially in civil matters and others. Therefore for the developing nation like India where we have seen many economic reforms such as Liberalization, Privatization and Globalization, many of the foreign companies have set up their works in India and many Indian firms are also set up in abroad. So any disputes regarding them in India especially in civil matters where courts already have a lot of burden and many of the cases are still pending, for that we need to create a different and special court so that the burden on the courts will be less. Therefore on 4th December 1996 Chief Ministers and Chief Justices of each state came up with the Act which is now known as The Arbitration and Conciliation Act of 1996. The main motive of this act was to lessen the burden on the civil courts in India.

In this paper I will be discussing about the history of ADR in India, how our Indian Judiciary has adopted ADR and what were the challenges faced by them, various forms of Alternate Dispute Resolution. Advantages and Disadvantages of ADR, how ADR is functioning in modern India, what is its role,

what are the duties of a conciliation officer under Industrial Disputes Act 1947, then I will be taking about The Arbitration and Conciliation Act 1996 and what is conciliation how it is different form Arbitration.

INTRODUCTION

"Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser- in fees, and expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough" – Abraham Lincoln

We have learnt, seen and studied in Article 21 of The Constitution of India¹ that state ensures just, fair and reasonable procedure. Therefore, we can say that the sooner the dispute is over, it is better for the parties concerned in particular and society in general. We can say that denial of justice through delaying it is the biggest mockery of law, but as we have seen in the courts that in India. Delay in bringing in the Justice kills the entire Justice Dispensation system. If we talk about Alternative Dispute Resolution mechanisms it has become more crucial for business operating in India as on the other hand the same for the parties doing Alternative Dispute Resolution with Indian Firms. This mechanism was brought as the process of getting Justice through Litigation in Courts is very time consuming. And there are many other reasons like India is a developing country therefore there are many economic reforms within the framework of the rule of law for lessening the burden of courts. ADR are the only alternatives through

¹THE CONSTITUTION OF INDIA BARE ACT - P
M BAKSHI (PAGE NO. 72)



Arbitration, Conciliation, Mediation and negotiation.

If we see Article 21 of The Constitution of India² we can see that Right to speedy trial is a right to life and personal liberty of every citizen of India which is guaranteed under Article 21, which ensures just, fair and reasonable procedure. Every conflict is like a termite, as soon as it gets over it is better for the parties, and if it does not get over soon then it spreads very fast and time and the effort to resolve the conflict increases. Disposal of cases on time is very much required to maintain the rule of law and providing access to justice, which is a fundamental right of every citizen guaranteed under Article 21 of The Constitution of India.

As we have seen that denial of justice through delay in getting justice has been considered and is the biggest mockery of law, due to this people are setting the scores by their own which has resulted more criminal syndicates and mob attacks, violence for Justice in some parts of the Country which has reflected the loss of people's confidence in Justice and Law. In 1996 Indian Legislature and Judiciary has taken some points into consideration to lessen the burden on the courts and accepted the fact that a new effective and efficient mode of delivering Justice should be created. And that was created in the form of Arbitration, Mediation and Conciliation as an Alternative Dispute Resolution (ADR) for civil and commercial matters. Therefore parliament enacted Arbitration and Conciliation Act 1996. The main purpose for enacting this act was for speedy trial in civil matters and commercial dispute by private Arbitration. ADR is also

being referred as a global system as it is not restricted by any territorial Jurisdiction.

HISTORY OF ADR IN INDIA

In India history of ADR is from a long time before the time of Christ. For Example such as panchayat, where group of elderly people in village areas decide the disputes between the villagers which are also common today. The disputants are required to present their problems or case in front of panchayat which will attempt to resolve the dispute between the parties. But the working of panchayat is such that it would be difficult to consider them as mediators, conciliator, an arbitral tribunal or judicial body. But if the facts of any case before the panchayat will disclose a clear legal obligation then it will act as a Judicial Body to decide the rights of the parties and enforce the decision. The parties should understand that the decision given by the panchayat should always be followed irrespective of the source of the decision. If we see from 18th century panchayat decisions has played a very important role in solving the cases and the decisions given by them.

When there was Muslim rule in India many laws and principles were incorporated in the Indian Culture. According to literatures and texts Kazis were the designated judicial officers who used to solve the disputes between the parties and individuals. There are many cases and instances where Kazis have given the decisions and decided the cases beyond the law by getting the disputants to agree on the solution that could be arrived by conciliation. Therefore the cases decided by kazi and the decision given by them would be binding on the parties before him.

²Ibid



So we can say that the mechanism of ADR in India was already there from many centuries in the villages even at the time of Muslim rule and empire. But these principles mentioned above cannot be used in modern society for providing justice to the individuals, therefore as the time changes the principles also changes with it as to provide complete justice to the individuals. But the panchayat system is today also followed in India in villages for the Justice as not every individual can come to courts for their small matters. And in India maximum of the citizens are not having such money to afford the court fees and Advocate's fees, nor are the courts in some parts of India near so that every individual with its problem can come. Therefore the need for panchayat system is also necessary in India.

ADR IN MODERN INDIA

As we have also seen that conciliation has also been used effectively in solving the disputes. If we see Industrial Disputes Act 1974 the use of conciliation has been very much prominent and effective. Conciliation has been recognized as an effective method to solve any dispute between workmen and the management of the industry. Industrial Disputes Act 1947 makes conciliation more attractive for disputant parties for the settlement of the disputes between them through negotiation. The conciliation is adopted by Government and before going for litigation, conciliation officer discusses some

set of provisions so that conciliation can be successful.

Some of the sections of Industrial Disputes Act 1947 which talks about conciliation are-

SECTION 2(d) - conciliation officer means a conciliation officer appointed under this act³.

SECTION 12(2) - The conciliation officer should and shall make all the efforts to settle the disputes by conciliation only⁴.

SECTION 12(3) - Any agreement settled in the process of conciliation shall be certified as a fair settlement by the conciliation officer⁵.

This Section talks about the duties of a Conciliation Officer under the Industrial Disputes Act⁶.

SECTION 18(3) - All such settlements given by the officer shall be binding to all the parties to the industrial disputes, and all the parties are invited to participate in the conciliation but prefer to stay away from the conciliation process.

SECTION 33C - The settlement of the dispute in itself is a document and if any breach of settlement by management is a ground for recovery of dues⁷.

The parties in an Industrial Dispute gone for litigation knows that it is a very tedious process and it can be continued beyond the lifetime of some beneficiaries. This is one of the most important factors which have contributed greatly for the success of conciliation in industries.

As we know that any civil dispute regarding Industry or anything else can be continued

³<https://indiacode.nic.in/bitstream/123456789/2169/1/A1947-14.pdf>

⁴<https://indiacode.nic.in/bitstream/123456789/2169/1/A1947-14.pdf>

⁵<https://indiacode.nic.in/bitstream/123456789/2169/1/A1947-14.pdf>

⁶<https://indiacode.nic.in/bitstream/123456789/2169/1/A1947-14.pdf>

⁷<https://indiacode.nic.in/bitstream/123456789/2169/1/A1947-14.pdf>



forever and the Judgement also comes late in litigation process. Therefore one of the major positive thing about conciliation is that the process is very fast it takes time but not as of litigation.

NEED OF ADR IN INDIA

As we have seen that the litigation process consumes very long time for the delivering of Justice to parties and there are lot more ongoing cases already in courts therefore the stress and burden upon them keeps on increasing due to pendency of cases in courts. If we check the statistics we get to know that in India the number of cases have shown tremendous increase in recent years which has resulted in pendency and delays which automatically underlines the need of Alternative Dispute Resolution methods in India. This resolution was adopted by Chief Ministers and Chief Justices of states in a conference which was held on 4th December 1993 under the chairmanship of Late Prime Minister P.V. Narasimha Rao and was presided over by the Chief Justice of India.

The conference which was held said that - "The Chief Ministers and Chief Justices of the states said that they were not in conditions and position to bear entire burden of the Judicial System and the number of disputes should be resolved by any other alternative methods such as arbitration, mediation and negotiation. They said that due to this valuable time and money will be saved and the stress of conventional trial will be avoided.

As we know that India is a developing country with major economic reforms under which the procedure should be very swift for lessening the burden on the courts. There is no other better option, only to strive to develop alternative methods of disputes by

establishing facilities for providing settlement through arbitration, mediation, conciliation and negotiation.

So, the mechanism ADR was established for lessening the burden of the courts and for swifter process and procedure. Therefore ADR was introduced and now it is being practiced. What are the advantages of ADR in Modern India. Some of the advantages are –

ADVANTAGES

- The Judges which are selected for this resolution and to deal with disputes should know International Business, commercial transactions and they should not be lost in the language of the law. On the other hand parties will be sure that the person chosen will have all the expertise to resolve the disputes to the satisfaction of the parties.
- If we see, then we will get to know that most of the transactions are based or founded on the timings. And on the other hand if the timing is lost then the transaction makes no sense to the parties. Therefore in this situation the remedy can be given will be of a same tone. But the problem is that the remedy acceptable by one party sometimes cannot be accepted by other party. The person who is an expert, who applies ADR should be able to understand these situations and positions of the parties and should guide them towards the procedure to the solution. However it is not expected that the judge who is giving the decision or the judgement would understand such considerations of the parties.
- In the last few decades we have seen that there was increase in International Trade and commerce due to increase in commercial disputes all over the world in which India is not an exception. On the other hand we also know that the growth of ADR mechanism cannot match with the pace of Industrial



growth and modernization. So we can say that the need for Alternate Dispute Resolution is more in business operations in India and for the countries doing business with India.

- Alternate Dispute Resolution is preferred over the conventional way of resolving the disputes. As we know that courts resolve their disputes using binding process by applying legal principles for findings the facts which consumes a lot of valuable time of the court and the parties.
- Alternate Dispute Resolution also encourages the participation of the citizens or the people in the process of dispute resolution, so it creates a legal awareness and on the other hand it respects the rights of others and promotes self-reliant development.
- Alternate Dispute Resolution is having a better advantage that it reduces the hospitality of the parties, gain, and acceptance of the outcome and resolves the Dispute in a very peaceful manner which achieves a greater sense of justice for each individual's case.
- One of the main and strong advantages of Alternate Dispute Resolution mechanism is that the dispute remains under the control of the parties themselves and any settlement in which they have agreed do not represent any dictate from any outsider.
- In this mechanism the parties are directly involved in the process of dispute resolution, therefore they can easily and more effectively reach to any settlement of any dispute arisen.

These were some of the advantages of the mechanism of Alternate Dispute Resolution. Therefore we can say that the need of Alternative Dispute Resolution is not a mandatory mechanism but after seeing the delays and the pendency of the cases in the

courts which have put a burden on them, so for that we need the mechanism or system that is Alternate Dispute Resolution. On the other hand every mechanism or any new law, act or system is enacted or comes into force they have both good and bad side. Above we have seen some of the advantages of this mechanism, now we will see some of the disadvantages of this mechanism.

DISADVANTAGES

- Not every act is perfect, it's a mixture of both, therefore one of the biggest disadvantage of Alternate Dispute Mechanism is that the parties cannot be compelled to go for this mechanism unless they have signed mutual agreement or both the parties have agreed to go for the settlement of the dispute by Alternate Dispute Resolution.
- Just after the enactment of the Arbitration and Conciliation Act 1996, there were some of the rumours that the act has lost its identity and its basic structure and it is no longer an act for which it was enacted.
- The success of Alternate Dispute Resolution is based upon the good faith of the parties and their attorneys, therefore the parties who are unrepresented or uninformed are at a disadvantage of succeeding in Alternate Dispute Resolution.
- If we see any proceedings of Alternative Dispute Resolution or any Judgement we will see that precedents are not given such importance. So the outcome of any dispute is dependent upon the arbitrator or mediator or on any other factors.
- If the mediators and arbitrators are not so qualified or are not having such good knowledge about the mechanism then this can lead to unsuccessful resolution, and on the other hand it can defeat the purpose of this mechanism.



These were some of the disadvantages of this mechanism. But if we do a comparative study of advantages and disadvantages of this system then we will get to know that the balance lies in the favour of advantages.

VARIOUS FORMS OF ALTERNATE DISPUTE RESOLUTION

There are various forms of Alternate Dispute Resolution system in India for resolving disputes outside the courts. It only depends on the nature of the dispute of the parties which decides the choice of Alternate Dispute Resolution method that are arbitration, conciliation, mediation and Lok Adalat. These methods we will be discussing one by one in brief –

- **ARBITRATION** - This is the process used by the agreement of the parties for resolving the disputes. In arbitration the disputes are resolved with binding effects of the parties by the persons acting in judicial manner in private and not acting by a national court of law. To start the process of Arbitration there should be a legal and valid Arbitration Agreement between the parties before the emergence of the dispute. Under Section 7 of The Arbitration and Conciliation Act 1996, it is clearly mentioned that the agreement must be in written form and not in oral form⁸. The main object of Arbitration is to settle the dispute in a convenient way and in inexpensive and in private manner so that the parties may not become the subject of future litigation.
- **CONCILIATION** - The Conciliation has been given a statutory recognition under The Arbitration and Conciliation Act 1996. In conciliation the parties do not need to prepare

any sought of agreement as prepared in Arbitration. On the other hand Conciliation can be held even after parties have resorted to litigation and the case is even pending before the court. We can say that conciliation is a less formal form of Arbitration. Conciliation is an Alternate Dispute Resolution mechanism with the help of a conciliator. Conciliator helps to find a mutual solution for both the parties which is acceptable by lowering tensions and improving communications between them. Under Sections 61 - 81 of part III of The Arbitration and Conciliation 1996, conciliation has been given statutory recognition.

● **MEDIATION** - It is a private, informal dispute resolution process. In this a neutral third person known as mediator helps the parties in solving disputes and to reach into an agreement. Outside India in United States of America mediation is the most followed process and most popular form of Alternate Dispute Resolution. This process is mostly focused on effective communication and negotiation skills. In this process mediator acts like a facilitator for the parties in communicating and negotiating more effectively for reaching into a settlement. In Mediation one or more third parties intervene into a dispute with the consent of the participants and assists them in negotiating in an informed agreement. Mediator brings the people together who have a dispute and makes them to talk to each other. On the other hand mediator does not make any binding decisions on the parties. The role of Mediator is only to communicate with the parties in the hope that they can find their own ways to settle the dispute.

⁸THE ARBITRATION AND CONCILIATION 1996 BARE ACT - LAW LITERATURE PUBLICATION 2020 (PAGE NO. 07)



- **LOK ADALAT** - It is constituted under National Legal Services Authority Act, 1987 and it is pursuant to the constitutional mandate under Article 39-A of The Constitution of India, which already contains various provisions for settling the disputes between the parties. This concept is not new. It's a very old concept which has been given a statutory basis now. The main unique feature of Lok Adalat is that the settlement of the disputes are done without going through the complexities of the courts. Under National Legal Services Authority Act 1987, Lok Adalat has been given a statutory status under Chapter VI of the said Act. The chapter contains provisions for organizing the Lok Adalats, the powers and functions and effect of the award made by Lok Adalat. Under Section 19 of National Legal Services Authority Act 1987, it is clearly mentioned that anybody can get its dispute referred to Lok Adalat for its settlement through mediation or conciliation⁹. When any dispute is settled before Lok Adalat the award given is in the form of decree of a civil court, it binds both the parties with its decree. National Legal Services Authority Act does not allow the parties for filing an appeal to any court on such award given except if there is no fraud. In Lok Adalats the Justice done is very fast and is free of cost. If we see, maximum of the Indian Population does not approach courts for Justice as they take a lot of time, much money is invested and Justice done is late due to other pending cases. Therefore Lok Adalats can be another form of mechanism for the Judicial Institution, as it can help in reducing backlog of the cases, which keeps on increasing day by day and

time to time. On the other hand Lok Adalats can settle both the civil cases and Criminal cases.

JUDICIAL APPROACH TOWARDS ADR IN INDIA

If we talk about the role of judiciary regarding Alternate Dispute Resolution in India we can see that judiciary in its nature is very protective about its supervisory role in the Alternate Dispute Resolution System. The higher courts and higher judiciary in India has always looked upon the arbitral tribunal as subordinate court have treated them as such. In **F.C.I. v. JOGINDERPAL MOHINDERPAL**¹⁰, case the judiciary believed that the judicial power of the state is exclusively vested with judiciary, therefore it is necessary for them to exercise its supervision over the functioning of the arbitral tribunal. In **UNION OF INDIA v. G.S. ATWAL & CO.**¹¹, in this it was held that judiciary on some occasions has been extremely over protective about the freedom of the arbitral tribunal, but on the other hand a subordinate court is having and is empowered to decide on its jurisdiction. But this decision was changed after the commencement of The Arbitration and Conciliation Act 1996. **SECTION 16** of The Arbitration and Conciliation Act 1996¹², talks about the "competence of arbitral tribunal to rule on its jurisdiction" which clearly mentions that it empowers the arbitral tribunal to decide on its Jurisdiction. But on the other hand Judiciary is also happy to see and let the arbitrators to decide the matters at the first glance or instance, but it would not

⁹COMMERCIAL'S THE LEGAL SERVICES AUTHORITIES ACT 1987 BARE ACT (PAGE NO.12)

¹⁰(1989) 2 SCC 347

¹¹(1996) 3 SCC 568

¹²THE ARBITRATION AND CONCILIATION 1996 BARE ACT - LAW LITERATURE PUBLICATION 2020 (PAGE NO. 12)



allow the arbitrators to go beyond the supervision of the courts.

Therefore while seeing the Judicial Approach towards Alternate Dispute Resolution in India we can say that Courts want this mechanism but they won't allow to go beyond their supervision but on the other hand they are also happy to see and they are letting the arbitrators decide the matters on the first instance. Now it is to be seen if the new legislation which limits the scope of Judicial Review changes the position or not.

ARBITRATION AND CONCILIATION ACT 1996

As we have discussed earlier also that this act was enacted on 4th December 1996 under the chairmanship of late Prime Minister P.V. Narasimha Rao and was presided over by the Chief Justice of India. The main aim for enacting this act was to lessen the burden on the courts and for speedy trail. This act is an attempt by the Parliament to take a good and better approach to alternative dispute resolution in India. If we check the history we can see that domestic and international arbitration were dealt separately under different legislations. The domestic arbitration were dealt by the Arbitration Act 1940 and on the other hand foreign arbitral awards were classified on the basis of New York and Geneva Conventions and these were governed by the Foreign Awards (Recognition and Enforcement) Act, 1961 and the Arbitration (Protocol and Convention) Act 1937. This act was cast in terms of the UNCITRAL Model Law on International

Commercial Arbitration¹³ and it seeks to break form the regulated and supervised forms of Alternate Dispute Resolution as it has been in existence in India. Through this Act the need to provide flexibility to the parties in legal relationships to decide themselves the mode for the settlement of the disputes was finally recognized. On the other hand there has been many major changes in arbitration, therefore conciliation has received more recognition then arbitration. There are several other provisions which clearly states or seek to settle certain issues that have been of great contention in front of the Supreme Court of India.

All the acts have their own features which make them different from each other. Here are some of the salient features of The Arbitration and Conciliation Act 1996 –

- **SECTION 5** of this Act clearly mentions and states that - no judicial authority shall intervene except where so provided in this part¹⁴, it means that there is only limited judicial intervention.
- **SECTION 8** of this Act clearly mentions and states that - it is the duty of the court that where the suit is filed upon any application on this behalf, it should refer the parties to arbitration with accordance with the arbitration agreement between the parties¹⁵.
- **SECTION 31(7)** of this act clearly mentions and states that - the powers of the arbitrators to award the interest from the date of the

¹³UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 1966

¹⁴THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 7)

¹⁵THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 8)



cause of action till the date of the satisfaction of the award¹⁶.

- **SECTION 17** of this act clearly mentions and states that - the courts should empower the arbitrators to give interim order measures for the protection of the subject matter to ensure that the award given is satisfactory¹⁷.
- **SECTION 16** of the act clearly mentions and states that - the courts should empower the arbitrators to decide on their jurisdiction¹⁸.
- **SECTION 36** of the act clearly mentions and states that - the courts should make equivalent the arbitral award as the decree of the court¹⁹.
- **SECTION 37(3)** of the act clearly mentions and states that - court should limit the number of statutory appeals from the award given to one²⁰.

Although the basic premise of the court is to strike down certain actions of the arbitrators because they were not empowered to act in a certain manner to decide on certain matter. On the other hand the act clearly specifies that the arbitrators should be empowered in these areas. Although by granting more powers to the arbitrators, the act also imposes some of the duties upon them to give reasons for their awards, unless the parties specifically agrees that no reason should be

given. This is clearly mentioned under section 31(3) of the act²¹. On the other hand this will make the arbitrators open to criticism from the courts who have till now not refused to interfere in most of the cases.

CONCILIATION

The Arbitration and Conciliation Act 1996 provides for recognition of conciliation in commercial disputes. If we see Part III of the Act, it provides for conciliation of disputes which arise out of legal relationships²², and if we see Section 61 of the Act it is clearly mentioned it doesn't matter that it is contractual or not but to all the proceedings²³. This Act clearly applies on commercial arbitrations and conciliations. From the understanding of Section 61 the parties and individuals need to understand that if only legal obligations may be the subject of the conciliation, then can the differences of the opinions that may have an impact on the relationship between the parties can be the subject matter of the conciliation?. Therefore if the subject matter of the dispute is the legal obligation of the parties so the choice of the Alternate Dispute Resolution mechanism is clearly available, therefore the parties can choose either Arbitration or Conciliation it completely depends on them. On the other

¹⁶THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 18)

¹⁷THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 12)

¹⁸THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 12)

¹⁹THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 21)

²⁰THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 22)

²¹THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 18)

²²THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 03)

²³THE ARBITRATION AND CONCILIATION ACT 1996 - LAW LITERATURE PUBLICATION BARE ACT 2020 (PAGE NO. 27)



hand there is no doubt that conciliation can be used in the place of arbitration therefore the parties can be happy with the settlement in place of an award. We should see that conciliation has one of the special characteristic that is it can completely go into the root of the difference, that means conciliation can solve the major problems faced by the parties which have made them to disagree with each other.

Conciliation is a less formal form of Arbitration. Under conciliation it doesn't matter to have an agreement for getting justice. Like in Arbitration we have seen that parties should sign a mutual agreement before commencing with the proceedings. In conciliation any of the party can request the other party for appointment of any conciliator. In conciliation parties must submit statements to the conciliator for the description of the general nature of the dispute and the points at issue. Both the parties send a copy of statement to the other. The conciliator can or may request for the further details or can ask to meet the parties, or he can directly communicate with the parties orally or in writing. On the other hand parties can even submit any suggestions for the settlement of the dispute to the conciliator.

If conciliator thinks that even one element of settlement is present in the dispute then he may draw up the terms of settlement and will send it to the parties for the settlement or for their acceptance. And if both the parties sign the settlement document, then it shall be final and will be binding on both.

In **TARAPORE & CO. V. COCHIN SHIPYARD**²⁴, in this case The Supreme Court of India held that under Section 61 of The Arbitration and Conciliation Act 1996 a phrase "arising out of" is widely used under this section and should not be read in restrictive nature. In **RENUSAGAR POWER CO. LTD. v. GENERAL ELECTRIC COMPANY**²⁵, in this case the decision given by the court was same as given in the above case. In **STATE OF ORISSA v. DAMODAR DAS**²⁶, in this case court interpreted the word "dispute" and said that any dispute or differences arisen between the parties on unequivocal denial of claim as the result of which the claimant acquires the right to refer the dispute to arbitration.

Therefore after seeing both arbitration and conciliation we have got to know that for many instances conciliation is best suited for disputes more than Arbitration. So now we will be seeing the comparison between Conciliation and Arbitration.

We have seen that Conciliation is different from Arbitration and therefore it is better suited under some situations those are -

1. The decisions of the parties which are non-legal relationship or obligation, these types of situations cannot be arbitrated.
2. Some of the decisions are somehow based upon the unrestricted rights of the parties which affect the relationship between them.
3. In some disputes there are operational issues which cannot be solved by arbitration and it affect the relationship between the parties.
4. In the end, result of conciliation, the settlement is done and it is not imposed in the form of order or decree.

²⁴(1984) 2 SCC 680

²⁵(1984) 4 SCC 679

²⁶(1996) 2 SCC 216



5. Due to conciliation the possibility of better compliance increases in a better manner.
6. As we have seen in arbitration or in litigation the outcomes of disputes are not certain and due to that more unwarranted expenses are increased. But in conciliation the outcomes are easily accepted by the parties.
7. If there is no result of the dispute in conciliation it does not closes the doors for arbitration and litigation until the settlement is signed by the parties.

These were some of the situations where we can say that conciliation is very much better then arbitration.

CONCLUSION

After seeing both Arbitration and Conciliation I have reached to the point that Conciliation has been more successful in India by a system which we call it as "Lok Adalat". Although the mechanism brought by our Parliament is of very much use and we can say that yes it is achieving its main goal which is to lessen the burden on the courts. On the other hand Alternate Dispute Resolution is both good and bad but it is based on the citizens how to treat it because every law has its advantages and disadvantages, no law or act has escaped from it. But the need is as the country and the society is changing so amendments should be made ontime so that there should be no difficulty in providing Justice to the citizens.

In the end I will only say that by seeing above some of the advantages and disadvantages of Alternate Dispute Resolution and by comparing Arbitration with Conciliation, I will say that yes conciliation is more effective in providing timely Justice and is a better process then Arbitration.
