

## Alternative Dispute Resolution in India and Role of CAs

**M**ahatma Gandhi had said: *"I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realised that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul."* Conflict is a fact of life. It is not good or bad. However, what is important is how we manage or handle it. Mahatma Gandhi showed us a way to do so, and as such, supported and practiced the spirit behind Alternative Dispute Resolution, which is gaining increasing popularity among various stakeholders in India because it expeditious and cost effective feature as compared to formal litigation in the courts of law. Alternative Dispute Resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails. It is an alternative to the formal legal system, which has been present in India even before independence.

'Justice Delayed is Justice Denied,' so truly said William E. Gladstone, British Statesman and Prime Minister (1868-1894) and this emphasises the need of the ADR. It is estimated that around 3 crore cases are pending at different courts across the Country and it is believed that the Justice in its true sense is done only if it is timely delivered. A speedy resolution to disputes would significantly contribute to the growth of trade, as well as to the economy. Even in non commercial matters, speedy resolving of disputes will help in peaceful living.

There are various methods of resolving the disputes like negotiation, mediation, conciliation, arbitration or through court proceedings. Section 89 (1) of Code of Civil Procedure, (CPC) 1908 also provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement other than the court proceedings.

The present Arbitration and Conciliation Act, 1996 is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration. Arbitration can be ad-hoc or institutional which may be domestic, international or foreign.

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties and it is considered the most flexible and considerable mechanism. Almost all types of commercial and trade disputes in the nature of civil disputes as well as the international disputes can be resolved through the process of ADR mechanism.

Some major benefits of ADR include: 'party autonomy,' 'flexible and practical procedures,' 'timely and cost effective,' 'confidentiality,' and 'ease of enforcement.'

The Chartered Accountants with their core competence in providing business advisory services, are in an

advantageous position of correctly appreciating the commercial back-ground of disputes or differences and thereby can provide effective services as arbitrators to the user bodies in resolving disputes faster and also in a cost effective manner. Under the Arbitration & Conciliation Act, 1996, the chartered accountants can play a very effective role in 'drafting of arbitration agreement,' and in representing either of the party (plaintiff or the defendant) to the dispute in the arbitral proceedings. They can also be effective on assisting arbitrator in drafting Arbitral Award and assisting the client in preparing submissions to arbitrator. The CAs can also be very useful as an arbitrator and as a member of Arbitral Tribunal. They can offer very crucial services by assisting trade and industry associations in setting up Alternate Dispute Redressal (ADR) mechanism.

The chartered accountants, by virtue of their training and skill sets, also have a crucial role to play in international commercial arbitration as well. In this area, they can help clients in the process of selecting an arbitration institution and also act as an arbitrator for international commercial disputes. They can be effective in determining the procedural law to be applied, drafting commercial trade agreements and drafting arbitration clauses in international contracts and or arbitration agreement considering the arbitration rules promulgated by various international institutions.

Appreciating the larger role of members in ADR Mechanism, the ICAI is imparting requisite knowledge and expertise in the field of arbitration and related areas through a specialised Certificate Course on Arbitration which is conducted by its technical committee on Economic, Commercial Laws & WTO. The course comprises Seven Modules dealing with various aspects of arbitration. Apart from comprehensive theoretical aspects, intensive training on the practical and procedural aspects with case studies and mock proceedings are also organised. The duration of the Course is 40 hours spread over six days. The participants are trained and guided to gain rich experience from eminent faculties. After the six days intensive training the participants are required to qualify the Evaluation Test for getting the Certificate and inclusion of their names in the ICAI Panel of Arbitrators.

The ICAI maintains a Panel of Arbitrators which is widely known and being promoted amongst National and State Chambers of Commerce, apex organisations, judicial and quasi-judicial bodies and apex regulators which seek the services of these Professionals. Presently there are about 450 Chartered Accountants on the ICAI Panel of Arbitrators. The user bodies can save time, energy, cost and resources by appointing CAs as arbitrators and derive maximum benefits of the ADR Mechanism in its true sense.

**-Editorial Board**

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