

**Chandrawat
& Partners**

Guide on Arbitration Mediation and Conciliation



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PREFACE

Arbitration, Conciliation, and Mediation are the Alternative Dispute Resolution (“ADR”) for solving civil nature disputes. These are dispute resolution methods to deal on a broad and global scale. Through these methods one can resolve their disputes without access to the regular judicial system, i.e. judicial courts. The Article 39A of the Indian Constitution, 1949 clearly states that:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

So, to implement their orders, the Parliament came up with various ADR methods such as arbitration, conciliation, mediation, etc. to strengthen the judicial system of the country. Not only Constitution, Code of Civil Procedure under Section 89 Order 10 Rule 1-A to 1-C also provides to the parties the option to opt for ADR processes.

In recent years, ADR has gained worldwide recognition among the general public and also in the legal world. It is a cost-effective method to resolve disputes as the trial is the expensive one. ADR procedures are generally more flexible than court procedures. ADR provides a speedier mechanism to resolve a matter in dispute rather than the court system.

Arbitration

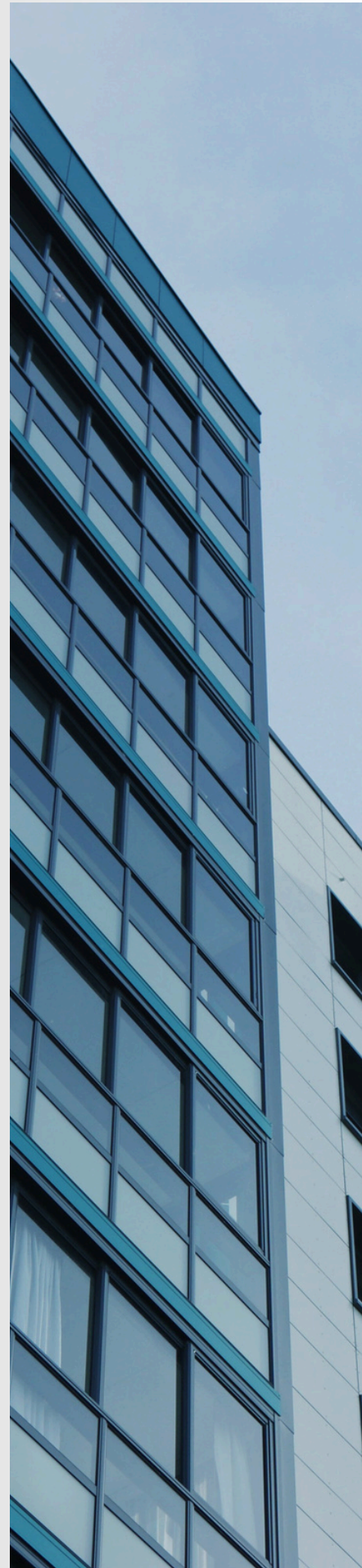
Arbitration is like a court procedure because the parties submit evidence similar to a trial where the third party hears the entire situation and gives his decision which is binding upon the parties. In the case of Collins v Collins, the court held that “An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of some matter or matters in difference between the parties”. An arbitrator listens to the evidence which is brought by both parties and makes a decision which is generally binding upon both parties. Arbitration means getting an arbitral award on an ongoing conflict, by the arbitrator.

In the process of arbitration, the cause is heard and determined between the parties in a dispute before the person selected by the parties or appointed under statutory authority i.e., The Arbitration and Conciliation Act, 1996 (the “Act”). The objective of Arbitration is to settle the dispute which arose between the parties by one or more arbitrators appointed by them by going through the documents and evidence.

Conciliation

Conciliation means settling disputes without litigation. It is an informal process in which the conciliator i.e. third party tries to bring the disputants to an agreement.

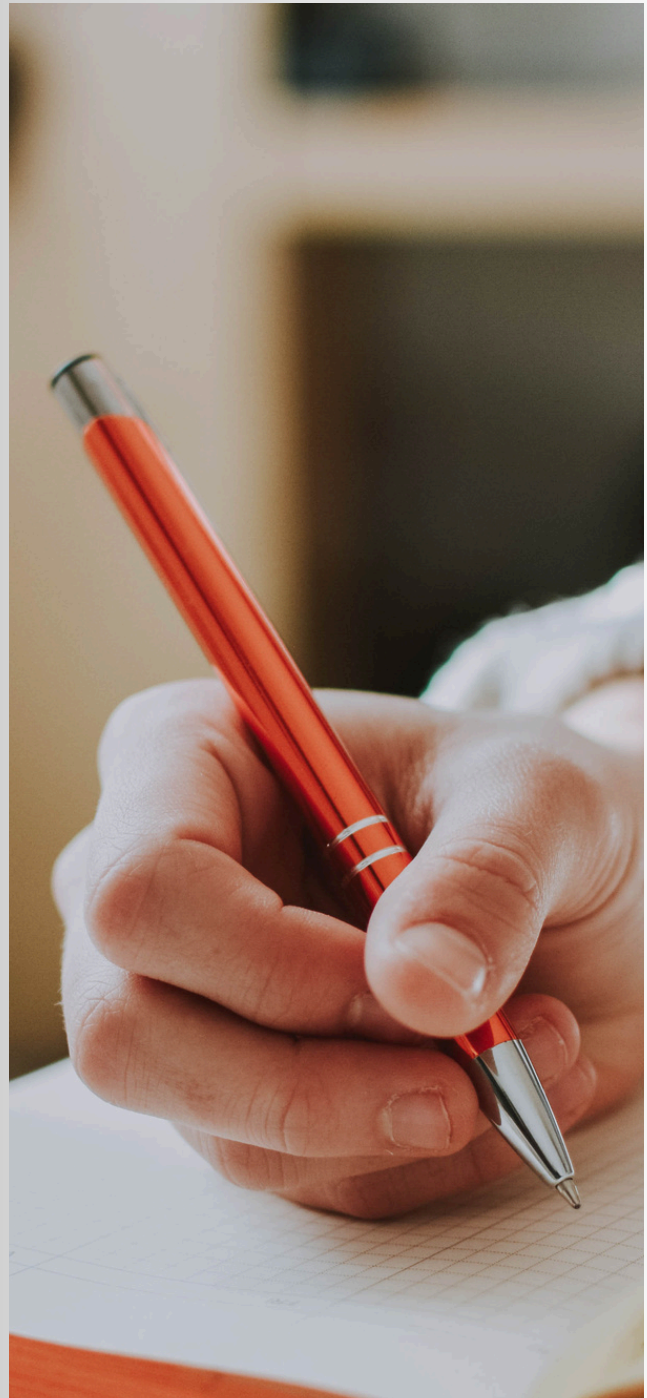
The conciliator adopts his method to resolve the dispute and the steps taken by him are not strict. There is no need for an agreement like an arbitration agreement. The acceptance of the settlement is needed by both parties.



Mediation

Mediation is one of the alternative dispute resolutions which are voluntary and informal processes for the resolution of disputes. Mediation is a process that is under the control of the parties. The mediator acts as a middle person who helps to come to a negotiated common point of their dispute.

They are trained professionals who assist the parties in dispute to meet at a common place where they can discuss their issues and can try to negotiate to reach at a common output. A mediator uses a special kind of conversation and communication to resolve the party's dispute. It is not to convince the mediator but to come up with a common solution which is acceptable by both parties



INDIAN ECONOMIC OVERVIEW



India has made significant progress in promoting ADR mechanisms as effective means for resolving commercial disputes. These methods have gained popularity in India due to their efficiency, cost-effectiveness, and ability to provide quicker resolutions compared to traditional litigation processes. Here's an overview of the Indian economic landscape of ADR.

Arbitration:

Arbitration in India is primarily governed by the Act, which was amended in 2015 to align with international standards and promote arbitration as a preferred method of dispute resolution.

The economic impact of arbitration in India has been positive. By providing a robust framework for resolving commercial disputes, arbitration has attracted foreign investment and contributed to improving the ease of doing business.

Conciliation:

In India, conciliation is governed by the Act. The Act provides a legal framework for conducting conciliation proceedings and gives the conciliator wide discretion in facilitating negotiations and settlement discussions.

While conciliation is not as widely utilized as arbitration in India, it has gained recognition as a cost-effective and efficient method for resolving disputes, particularly in the context of commercial and contractual matters. As with arbitration, conciliation contributes to a favorable economic environment by reducing the burden on courts and fostering efficient dispute resolution.

Mediation:

Mediation is a voluntary and confidential process that involves a neutral third party (the mediator) assisting the disputing parties in reaching a mutually acceptable resolution. In India, mediation gained statutory recognition with the enactment of the Commercial Courts Act, of 2015, which introduced court-annexed mediation. Additionally, the Mediation and Conciliation Project Committee ("MCPC") has been instrumental in promoting mediation in India.

Mediation has seen significant growth in recent years due to its emphasis on party autonomy, flexibility, and the potential for creative problem-solving. It offers an opportunity for businesses to resolve disputes amicably, preserve relationships, and reduce litigation costs. The Indian judiciary has actively encouraged mediation as a means of reducing the backlog of cases and promoting access to justice. The success of mediation in India is contributing to a positive economic climate by fostering quicker dispute resolution and reducing the burden on the court system.



GOVERNING RULES AND LAWS



The governing laws for arbitration, conciliation, and mediation in India are as follows:

Arbitration:

The primary legislation governing arbitration in India is the Act. The Act is based on the "UNCITRAL" Model Law and provides a comprehensive framework for conducting domestic and international arbitrations. The Act was amended in 2015 to align with international standards and promote arbitration as a preferred method of dispute resolution.

Conciliation:

The legal provisions for conciliation in India are also governed by the Act. Part III of the Act deals with conciliation and provides a framework for the conduct of conciliation proceedings.

Mediation:

Mediation in India is governed by various laws, both general and specific to certain sectors. The primary legislation applicable to mediation is the Act. However, the Commercial Courts Act, of 2015, introduced court-annexed mediation for commercial disputes.

LICENSES AND QUALIFICATIONS REQUIRED



In India, the qualifications and licensing requirements for mediators, conciliators, and arbitrators are governed by different statutes and institutions. Here is a general overview of the qualifications and licensing for each role:

Mediator: In India, mediation is primarily governed by the Civil Procedure Code ("CPC") and the Rules framed by various High Courts. Currently, there is no specific licensing requirement for mediators.

However, certain qualifications and criteria are generally expected to become a mediator. These may include:

- a. **Legal background:** Many mediators are lawyers or legal professionals with a thorough understanding of the law and legal procedures.
- b. **Training and certification:** Completion of mediation training programs recognized by the High Courts, Bar Councils, or other authorized institutions can enhance the mediator's credentials.
- c. **Experience:** Mediators often gain practical experience by observing or assisting in mediation proceedings before taking on independent cases.



Conciliator:

Conciliation in India is mainly governed by the Act. The Act does not mandate any specific licensing requirement for conciliators. However, certain qualifications and experience are typically expected for individuals serving as conciliators. These may include:

- a. **Legal or technical background:** Depending on the subject matter of the dispute, a conciliator may be expected to have relevant legal or technical expertise.
- b. **Training and accreditation:** Completion of conciliation training programs conducted by recognized institutions or professional bodies can enhance the conciliator's qualifications.
- c. **Experience:** Prior experience in dispute resolution, negotiation, or mediation can be valuable for a conciliator.

Arbitrator:

Arbitration in India is primarily governed by the Act. The Act does not prescribe specific qualifications or licensing requirements for arbitrators. However, the Supreme Court of India and various High Courts have laid down certain qualifications and criteria for appointment as an arbitrator. These may include:

- a. **Legal or technical expertise:** Arbitrators are often expected to have expertise in the subject matter of the dispute, such as commercial law, construction, or engineering.
- b. **Independence and impartiality:** Arbitrators must be independent and impartial, without any conflicts of interest that may compromise their neutrality.
- c. **Experience:** Prior experience in arbitration proceedings, legal practice, or relevant industry experience can enhance an arbitrator's qualifications.

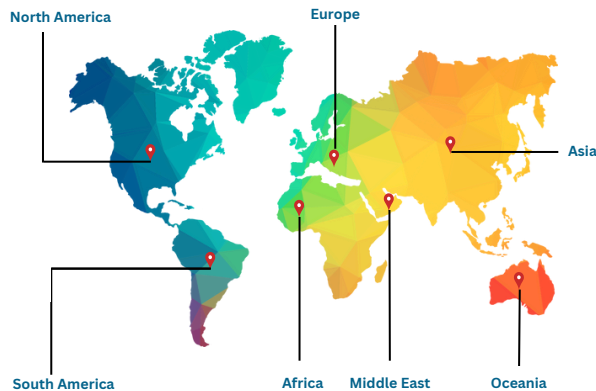
HOW WE CAN HELP?



As a consulting firm, Chandrawat & Partners can play a valuable role in assisting parties involved in arbitration, mediation, and conciliation processes in India. Here are some ways the firm can provide our expertise and support:

- **Advisory services:** Offer expert advice on the various aspects of arbitration, mediation, and conciliation, including the legal framework, procedural requirements, and best practices.
- **Process management:** Assist parties in managing the entire dispute resolution process effectively. This may involve helping them understand the procedural steps, preparing documentation, coordinating with the relevant institutions or mediators/arbitrators, and ensuring compliance with legal requirements and timelines.
- **Case evaluation:** Conduct an assessment of the dispute, including a review of the legal and factual aspects, to provide parties with a realistic evaluation of their case.
- **Mediation support:** The firm has a wide network of law professionals who can always help in better solving the issues related to ADR.
- **Arbitration support:** Assist parties in preparing their case for arbitration by conducting legal research, gathering evidence, drafting pleadings, and presenting arguments.

SERVING CLIENTS WORLDWIDE



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