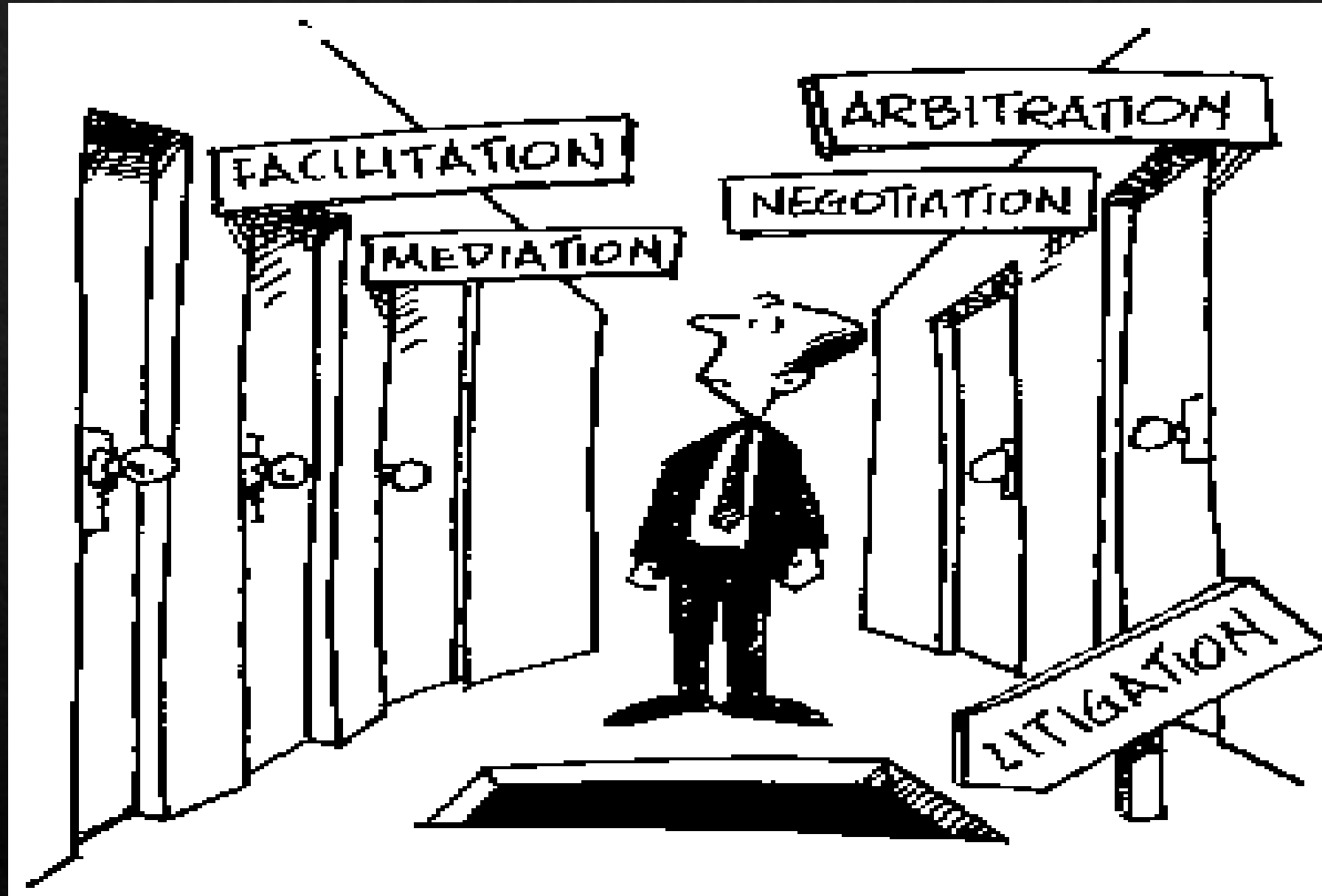


# Salient Features of Alternative Dispute Resolution (ADR)- For Government Officials

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# Why ADR?

In India Lawsuits in Courts move at a pace which would be regarded as unduly slow even in the community of snails.

NITI Aayog –Study - More than 31 million cases pending in Various Courts in India and on an average it takes 21 years for cases to be resolved.

More than 95% of Commercial Disputes in USA/UK are settled through ADR, which refers to resolving of disputes by means other than Court Litigation and less than 5% of cases actually go to Court.

# Recognized ADR Systems:

Arbitration and Conciliation Act, 1996

- ◊ Mediation
- ◊ Conciliation
- ◊ Arbitration

Legal Services Authorities Act, 1987

- ◊ Lok Adalats
- ◊ New Mechanism of : Online Dispute Resolution (ODR)
  - uses technology to facilitate the resolution of disputes
  - e-Arbitration, e-Mediation, e-Conciliation etc. - following ADR procedures online



# Advantages of ADR:

- ◊ Flexibility
- ◊ Party autonomy, participation and co-operation
- ◊ Removes excess burden on Courts
- ◊ Access to expert in the substantive field
- ◊ Economical
- ◊ Expeditious
- ◊ Privacy of proceedings and outcome
- ◊ However, Not all cases can be resolved by ADR (Eg. Constitutional, Criminal non-compoundable Cases)

# Government has Huge Stakes in ADR

- ❖ *The Economic Times* Dt. Jan 13, 2020 -NHAI involved in 180 cases in arbitration at that time, with claims totaling to a staggering figure of Rs. 70,000 crores
- ❖ *The Times of India* Dt. Oct 11, 2019 - “Arbitration Claims Stump NHAI as it stares at Rs. 18,000 Crores Payout.
- ❖ History of Arbitrations in India indicate that several Awards with huge amounts have been passed against the Govt. due to lack of proper handling of the cases.
- ❖ Statement of Objects and Reasons of *Kerala Revocation of Arbitration Clauses and Reopening of Awards Act, 1998* indicates that in respect of its Pilot Irrigation project, the Arbitrators as well as the Govt officials acted in collusion and Awards were passed in an unconscionable manner.

# Mediation

- ◊ Assisted negotiation of dispute- Facilitated by Mediator
- ◊ Mediator appointed by parties or by the court
- ◊ Mediator is not permitted to impose an outcome on the parties
- ◊ No binding order/decision
- ◊ Need for a Comprehensive Legislative Framework

# Conciliation

- ◆ Amicable dispute settlement
- ◆ Assistance of a Conciliator, who plays a pro-active role by evaluating the issues and provides his opinions & advice including proposals for Settlement.
- ◆ Many Government Departments /Authorities involved in Pilot Projects looking at a settlement of a majority of their Cases through Conciliation as arbitration is turning out to be a long-drawn process.



# Lok Adalats

## ◆ Lok Adalat

- National Level Lok Adalats are held at regular intervals where on a single day Lok Adalat Benches (with Retd and sitting Judges) sit in all the Courts –from Supreme Court till the Taluk Levels in respect of pending cases.
- Judges play an active & evaluative role to facilitate settlements between parties.

## ◆ Permanent Lok Adalats

- Constituted for settlement of cases relating to Public Utility Services
- Jurisdiction limited by the Pecuniary Value of the Dispute



# Arbitration- A Commercial Man's Way to Justice

- ◆ Dispute referred to an Arbitral Tribunal/Arbitrator by parties with Consensus-Ad-idem
- ◆ Necessity of Arbitration Clause in Agreements
- ◆ The person who has an interest in the outcome of the decision of the dispute cannot be an Arbitrator and cannot have the power to appoint a Sole Arbitrator.
- ◆ Generally informal and flexible Procedure
- ◆ Power to Order Interim Measures
- ◆ Arbitrator gives a binding decision – an “Award”
- ◆ Minimal Judicial Interference

# Types of Arbitration

## ◆ Institutional Arbitration

- Institution with permanent character assumes the functions of administering arbitral process
- e.g. International Chamber of Commerce (ICC)

## ◆ Statutory Arbitration

## ◆ Ad Hoc Arbitration

Contd.....

## ◆ Institutional Arbitration

- time-bound arbitration
  - stricter rules of procedure
  - reduced span of time makes it more cost effective
- 
- ◆ appointment of arbitrators, case management services,, conduct of the arbitral proceedings, scrutiny of awards, etc. by institution.
  - ◆ clear set of arbitration rules and timelines for the conduct of an arbitration
  - ◆ support from trained staff who administer various stages of the arbitration proceedings
  - ◆ a panel of arbitrators to choose from to decide the dispute
  - ◆ In some cases, supervision in the form of scrutiny of awards

# Contd...

## ◆ Ad Hoc Arbitration

- parties are required to determine all aspects
- more flexible,
- ◆ gives parties greater control over the arbitration process, the flexibility to decide the procedure
- ◆ more effective in cases where parties to a dispute cooperate with each other, and can mutually agree to constitute a tribunal and select arbitrators to resolve their dispute.
- ◆ May be vulnerable to the risk of dilatory tactics, which increases delays and costs as once a dispute reaches arbitration, it is likely that parties no longer want to cooperate
- ◆ where parties do not have sufficient knowledge regarding arbitral proceedings, institutional arbitration is decidedly preferable.



# Failure by the Government and its agencies to use Institutional arbitration:

- ◆ general conditions of contract used by the Government and PSUs often contain arbitration clauses, but these clauses usually do not expressly provide for institutional arbitration
- ◆ government policy on arbitration requires a relook if institutional arbitration is to become the norm, particularly for disputes valued at large amounts
- ◆ For instance, if the government, being the biggest litigant, were to adopt institutional arbitration as regular practice, the sheer volume of cases moving to arbitral institutions would provide a powerful impetus to institutional arbitration.



# Inflated -Unconscionable Claims against Government

- ◆ Newspaper report- -One builder had made claims to the tune of Rs. 8,199 crores in respect of a project whose cost was Rs. 629 crores.
- ◆ Several unscrupulous litigants are making a business out of Arbitration, with inflated claims against Government and Statutory Authorities
- ◆ State 's Interest need to be protected by the Officials by properly presenting the best evidences in support of the case of the Government before the Arbitral Proceedings .
- ◆ The assistance that the lawyers receive from the staff of the concerned Govt. Dept., invariably determine the outcome of the Arbitral proceedings.

# Your Responsibility

- ◆ Focus of everyone so far has been only bring about a regime which can make India –An Arbitration Hub and improve the Ease of Doing Business in India
- ◆ But study is required to be made as to how the Government has been faring in the Arbitration Proceedings and other Alternative Commercial Dispute Resolution.
- ◆ Though in a Different Context Samuel Gompers said: “Do I believe in Arbitration? Yes, I do, but not in the arbitration between the lion and the lamb in which the lamb is in the morning found inside the lion.”
- ◆ Onus is on you --Officers to ensure that Govt does not continue to be a Lamb in its Commercial Disputes.

# Reference Material:

- ◆ Inaugural Speech by Hon'ble Mr.Justice V.Ramasubramanian, Judge, Supreme Court of India on the topic "Government, Government Departments & Statutory Corporations in Arbitration" for the Web Lecture Series of the MBA Academy, the Madras Bar Association.

Full speech: <https://www.youtube.com/watch?v=DnaZUrcTWLA&t=1782s>

- ◆ Report of the High Level Committee to Review the Institutionalization of Arbitration Mechanism in India- Chairman-Justice B. N. Srikrishna
- ◆ Law Relating to Arbitration and Conciliation Act, 1996, PC Markanda