

DISPUTE RESOLUTION MECHANISM IN CO-OPERATIVE SOCIETIES

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INTRODUCTION

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- An indisputable fact of life is the potential existence of conflict or disputes in any human organization. Co-operative societies are not exempted.
- An indispensable process for making social life peaceful.
- Alternative Dispute Resolution (ADR) is a term used to describe several different modes of resolving legal disputes.
- ADR techniques are in addition to justice through Courts. ADR techniques can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties.
- The goal of ADR is enshrined in the Indian Constitution's Preamble itself, which enjoins the state: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity".

DIFFERENT TYPES OF ADR

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- The different types of dispute resolution usually involve a third party referred to as neutral, a skilled helper who either assists the parties in a dispute or conflict to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.
- The alternative disputes resolution mechanism by the very methodology used, it can preserve and enhance personal and business relationships that might otherwise be damages by the adversarial process. It is also flexible because it allows the contestants to choose procedures, which fit the nature of the dispute and the business context in which it occurs.
- The term “Alternative Disputes Resolution” takes in its fold, various modes of settlement including, Lok Adalats, arbitration, conciliation and Mediation. This technique of Alternative Disputes Resolution has been used by many countries for effective disputes resolution.

Section 91- Maharashtra Co-operative Societies Act, 1960

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➤ In section 91 of the Maharashtra Co-Operative Societies Act, 1960, disputes means,

(1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, [to the co-operative Court] if both the parties thereto are one or other of the following:-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the official Assignee of a deregistered society].

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society [or a person who claims to be a member of the society;]

Section 91- Maharashtra Co-operative Societies Act, 1960

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[(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;]

(e) any other society, or the Liquidator of such a society [or-de-registered society or the official Assignee of such a de-registered society].

Section 91- Maharashtra Co-operative Societies Act, 1960

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[Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society, or refusal of admission to membership by a society to any person qualified therefore [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156,] [or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided.] shall not be deemed to be a dispute for the purposes of this section.]

(3) Save as otherwise provided under [sub-section (2) to section 93], no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Section 93- Maharashtra Co-operative Societies Act, 1960

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➤ In the Maharashtra Co-Operative Societies Act, 1960, Section 93(3) provides that notwithstanding anything contained in this Act, where it appears to the Co-operative Court that there exist elements of settlement, the dispute shall be referred to,

- i. Arbitration or conciliation and the provisions of the Arbitration and Conciliation Act, 1996 shall apply,
- ii. Lok-Adalat and the provisions of the Legal Services Authorities Act, 1987 shall apply
- iii. Judicial settlement, it shall be deemed to be a Lok-Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply
- iv. Mediation and a compromise between the parties shall be made

DIFFERENT TYPES OF ADR

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- In India, the Parliament has amended the Civil Procedure Code by inserting Section 89 as well as Order 10 Rule 1-A to 1-C. Section 89 of the Civil Procedure Code provides for the settlement of disputes outside the Court. It is based on the recommendations made by the Law Commission of India and Malimath Committee.
- On joint reading of Section 89 read with Rule 1-A of Order 10 of Civil Procedure Code, it transpires that the Court to direct the parties to opt for any of the five modes of the Alternative Dispute Resolution and on their option refer the matter.
- Thus, the five different methods of ADR can be summarized as follows: -
 1. Negotiation
 2. Arbitration
 3. Conciliation
 4. Mediation
 5. Judicial Settlement & Lok Adalat

NEGOTIATION

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Negotiation

Negotiation involves two parties discussing and compromising to obtain an agreed solution

Negotiation is usually carried out without legal representatives, but each party can take their own legal representation to assist



Negotiation is not binding

Negotiation Process

- Prepare objectives and strategy
- Discuss and exchange information
- Propose solution
- Bargain and review areas of concession
- Conclude, draft and endorse agreement.

ARBITRATION

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Arbitration

Arbitration involves an independent third party who actually makes suggestions and actually imposes a decision on the parties.

The magistrates' court refers all civil disputes involving claims less than 10,000 to arbitration



Arbitration is binding

ARBITRATION

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- Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons – arbitrators, by whose decision they agree to be bound.
- It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.
- Arbitration can be either voluntary or mandatory. Mandatory Arbitration can only come from statute or from a contract that is entered into between the parties.
- Section 89 of the Civil Procedure Code refers to Arbitration as one of the mode of alternative dispute resolution.
- Section 93(3)(i) of the Maharashtra Co-Operative Societies Act, 1960 provides referring disputes to Arbitration where elements of settlement exist.
- In view of the above provisions, if the matter is referred to the Arbitration then the provisions of the Arbitration and Conciliation Act, 1996 will govern the case.

ADVANTAGES OF ARBITRATION

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Advantages of ADR

Often takes less time than
court

generally cheaper than
litigation

Less formal than courts

confidential, unlike a
court, which is usually
open to the public

not adversarial
and therefore
both parties can
come away from
the process
feeling as if they
have won

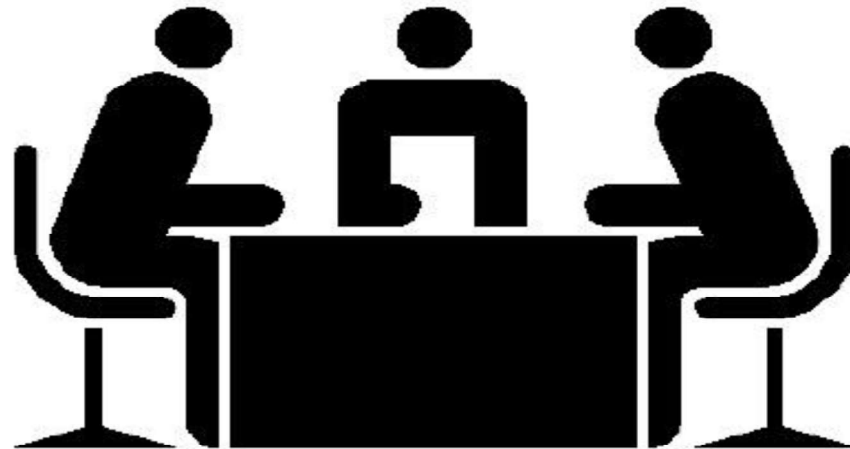
Held at more suitable venues

CONCILIATION

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Conciliation

Conciliation involves a third part, who may make suggestions to the parties.



The decisions are not binding

CONCILIATION

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- Section 89 of the Civil Procedure Code refers to the Judicial Settlement as one of the mode of alternative dispute resolution.
- Section 93(3)(ii) of the Maharashtra Co-Operative Societies Act, 1960 provides referring disputes to Judicial Settlement where elements of settlement exist.
- Conciliation is an alternative dispute resolution process whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences.
- They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bring about a negotiated settlement. It differs from Arbitration in that.
- Conciliation is a voluntary proceeding, where the parties involved are free to agree and attempt to resolve their dispute by conciliation.

CONCILIATION

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- Most commercial disputes, in which it is not essential that there should be a binding and enforceable decision, are amenable to conciliation. Conciliation may be particularly suitable where the parties in dispute wish to safeguard and maintain their commercial relationships.
- Conciliation is a voluntary process whereby the conciliator, a trained and qualified neutral, facilitates negotiations between disputing parties and assists them in understanding their conflicts at issue and their interests in order to arrive at a mutually acceptable agreement.
- The conciliator does not decide for the parties, but strives to support them in generating options in order to find a solution that is compatible to both parties. The process is risk free and not binding on the parties till they sign the agreement.
- Once a solution is reached between the disputing parties before a conciliator, the agreement had the effect of an arbitration award and is legally tenable in any court in the country.

MEDIATION

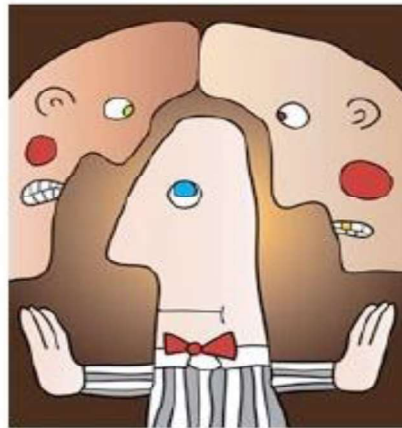
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Mediation

Mediation involves an impartial third party who listens and directs discussion but does not suggest outcomes.

Mediation is voluntary

All parties have their say



Atmosphere is informal

Mediation is not binding

MEDIATION

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- Section 89 of the Civil Procedure Code refers to Mediation as one of the mode of alternative dispute resolution.
- Section 93(3)(iv) of the Maharashtra Co-Operative Societies Act, 1960 provides referring disputes to Mediation where elements of settlement exist.
- Mediation settlement is a voluntary and informal process of resolution of disputes.
- It is a simple, voluntary, party centered and structured negotiation process, where a neutral third party assists the parties in amicably resolving their disputes by using specified communication and negotiation techniques.
- Mediation is a process where it is controlled by the parties themselves.
- The mediator only acts as a facilitator in helping the parties to reach a negotiated settlement of their dispute.

MEDIATION

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- In the mediation process, each side meets with a experienced neutral mediator. The session begins with each side describing the problem and the resolution they desire, then the mediator separates them into private rooms, beginning a process of “Caucus Meeting” and thereafter “joint meetings with the parties”.
- The end product is the agreement of both the sides. The mediator has no power to dictate his decision over the party.
- There is a *win – win situation in the mediation.*
- The chief advantages of the mediation are: -
 1. The agreement which is that of the parties themselves;
 2. The dispute is quickly resolved without great stress and expenditure;
 3. The relationship between the parties are preserved; and
 4. The confidentiality is maintained.

JUDICIAL SETTLEMENT



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- Section 89 of the Civil Procedure Code refers to the Judicial Settlement as one of the mode of alternative dispute resolution.
- Section 93(3)(iii) of the Maharashtra Co-Operative Societies Act, 1960 provides referring disputes to Judicial Settlement where elements of settlement exist.
- But there are no specified rules framed so far for such settlement.
- It has been provided therein that when there is a Judicial Settlement the provisions of the Legal Services Authorities Act, 1987 will apply. It means that in a Judicial Settlement the concerned Judge tries to settle the dispute between the parties amicably.
- If at the instance of judiciary any amicable settlement is resorted to and arrived at in the given case then such settlement will be deemed to be decree within the meaning of the Legal Services Authorities Act, 1987.
- There are no written guidelines prescribed in India as to judicial settlement.

LOK ADALAT

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- It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations.
- Lok Adalats accept even cases pending in the regular courts within their jurisdiction.
- Section 89 of the Civil Procedure Code provides as to referring the pending Civil disputes to the Lok Adalat.
- Section 93(3)(iii) of the Maharashtra Co-Operative Societies Act, 1960 provides referring disputes to the Lok Adalat where elements of settlement exist.
- When the matter is referred to the Lok Adalat then the provisions of the Legal Services Authorities Act, 1987 will apply. So far as the holding of Lok Adalat is concerned, Section 19, 21, 22 of the Legal Services Authorities Act, 1987 provides as under: -

Section 19 Legal Services Authorities Act, 1987



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➤ Section 19 Organization of Lok Adalats :

- 1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluka Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
- 2) Every Lok Adalat organised for an area shall consist of such number of:-
 - (a) serving or retired judicial officers; and
 - (b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluka Legal Services Committee, organising such Lok Adalat.
- 3) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of –
 - (i) any case pending before it; or

Section 19 Legal Services Authorities Act, 1987



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- (ii) any matter which is falling within the jurisdiction of, and is not brought before any court for which the Lok Adalat is organised : Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.
- If any matter is referred to the Lok Adalat and the members of the Lok Adalat will try to settle the dispute between the parties amicably, if the dispute is resolved then the same will be referred to the concerned Court, which will pass necessary decree therein. The decree passed therein will be final and binding to the parties and no appeal will lie against that decree.
- On the flip side, the main condition of the Lok Adalat is that both parties in dispute have to be agreeable to a settlement. Also, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process.

Section 21,22 Legal Services Authorities Act, 1987



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➤ No appeal lies against the order of finality attached to such a determination is sometimes a retarding factor for however be passed by Lok Adalat, only after obtaining the assent of all the parties to dispute. In certain situations, permanent Lok Adalat can pass an award on merits, even without the consent of parties which is binding no appeal is possible.

➤ Section 21 Award of Lok Adalats :

1) Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court and in case court-fee paid shall be refunded back.

➤ Section 22 Powers of Lok Adalats :

1) The Lok Adalat or Permanent Lok Adalat shall have the same powers are as vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit.

CASE LAWS

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➤ **In Chirag Infra Projects Pvt. Ltd. vs. Vijay Jwala Coop. Hsg. Soc. Ltd. and Ors** on March 12, 2021

➤ The 1st Respondent- the society residing 20 tenements resolved to go in for redevelopment on 7th September 2014 .

➤ A Development Agreement was made on 16th December 2015.

➤ Barring Respondent 2 with his wife, all 19 remaining members vacated their premises back in November 2018.

➤ The Municipal Corporation of Greater Mumbai declared the building in the 'C1' category, i.e., as unsafe and unfit for human habitation on 16th June 2018 and a no objection certificate from MHADA was received on 2nd August 2019.

➤ The Respondent 2 urged that the building was meant for persons from the lower income group and, therefore, permission from the Social Welfare Department was a requirement. Since, this is not obtained, the entire agreement is illegal, null and void.

➤ The Bombay HC said that it is not demonstrated anywhere how the SWD has the power or authority in law over development projects .It is not shown that the SWD has the power to veto, stop or stall any development or re-development project.

CASE LAWS

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- Between 16th December 2015 and today, the Petitioner has spent a total of about Rs. 6.20 crores and the building has not been demolished only because Respondent 2 has not vacated.
- Finally, the Petitioner has invoked arbitration on 5th October 2020 and then filed the Petition.
- The Bombay HC has said that “It is simply not possible for a member of the society to disobey, disavow or flout openly taken decisions of the general body of the very society of which he claims to be a member...The 2nd Respondent will bend the knee to the law and to judgments of this Court and will subject himself to the discipline of the Cooperative Societies Act.”
- The Bombay HC has directed Respondent 2 to vacate its premise by 30th April 2021, non compliance of which the Court Receiver will proceed to forcibly take possession of it.

CASE LAWS

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- **Rajawadi Arunodaya Co-op. Housing Soc. Ltd. and Ors. Vs. Value Projects Pvt. Ltd. and Ors** decided on 15.03.2021
- In 2012, the Petitioner-the society, decided to have their building with 20 residential flats and several shops redeveloped.
- In April 2013, signed a development agreement with Respondent-the developers.
- In January 2015, the residents vacated their premises and were promised new homes by October 2017.
- The Respondent in August 2017 set a new deadline of June 2019. But by September 2019, the proposed 13 storied new building was not ready entirely.
- The Petitioner finally filed a petition due to the non-payment of dues, the delays in project completion, non payment of transit rent for many months and some flats being mortgaged without Petitioners consent.

CASE LAWS

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- In September 2020, the Respondent too filed a cross- petition before the Bombay HC seeking pre-determination status quo of the agreement and directions to not be ejected from project as well as claiming Rs. 20 crore as bank gurantee to secure its claim that had been spent till date.
- The Petitioner and Respondent invoked arbitration.
- The HC dismissed Respodnents plea for interim relief and appointed a sole arbitrator
- The HC has given time till April 19, 2021 to remove itself, its equipment and material from the site and deliver posession to the Court receiver.
- The Respondent may seek other suitable reliefs in arbitration.

FAMOUS SAYING

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“I realized that the true function of a lawyer was to unite parties... The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul”.

--- Mahatma Gandhi

"Better than a thousand hollow words is one word that gives peace“

---Gautam Buddha