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Importance of Arbitration and Conciliation in the Present Scenario: With Reference to Anand District of Gujarat State

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ABSTRACT

One of the needs of the hour is the establishment of proper arbitration and conciliation centre wherein the process of the dispute can be settled easily without any long waiting period, as we can see in the normal court process. This will save time, and the court can dedicate its time to resolving the major issues while the less and least disputes can be resolved in the arbitration centre which the court is designating through the medium of Lok Adalat which is part and parcel of arbitration. Again, the parties to the dispute can maintain a cordial relationship rather than have a truculent situation between the parties of the dispute. Every court should try arbitration to resolve disputes which are less grave in nature and save the time of the court. This way, we can reduce the time of the court and also the huge backlog of the court, which is increasing hugely day by day basis.

Keywords: Arbitration, cordial, conciliation, truculent, lok adalat.

I. INTRODUCTION

One of the oldest systems, of dispensation judgement in India is through the process of Arbitration, where the people of the village meeting and the Mukhiya of the village hears the case in front of the villagers and make a fair settlement without causing any kind of damage to the relationship between the parties. This has gradually developed and formed in court. The first incidence of arbitration can be seen in the Bengal regulation, where the provisions for arbitration have been mentioned in it. From the Bengal Regulation, the same has been transferred to the civil procedure code where a separate chapter for arbitration was allotted, and with the development of time, the same was inserted under section 89 of the code of civil procedure code 1908. Below is a brief history of how arbitration and conciliation have emerged² in India.

But with the advancement of time and increasing of cases in the court/ judiciary system and as we are the signatory country of United Nation the UN has made a model law for Arbitration and conciliation so as to dispense the international dispute in trade and commerce through

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² <https://ylcube.com/c/blogs/broadly-speaking-evolution-arbitration-india/> last accessed on 12/02/2023



Figure: 1 History of Arbitration

arbitration. Accordingly, we made arbitration and conciliation act 1940 which governed the whole country. But this law has got many flaws and we amend it many times and finally the amendment act is 2021 with the base law of Arbitration and conciliation act 1996.

This amendment act will help many of the disputing parties to approach the arbitration center or to approach the Lok Adalat/ Arbitration center for resolving their disputes because much wider power is given to the arbitration center for resolving the dispute within the specified period. This again will help the parties to resolve their dispute in lesser time period and don't want to wait for a long time as it used to happen in the court system.

Arbitration can be a booming section in the judicial system as in India there is a huge pile-up of backlog cases and it takes more than 100 years to clean this pile of backlog cases. Under such circumstances its better to go for arbitration as it can be a speedy system for the disposal of matters which can be dealt by arbitration, hence reducing the burden of the court to that extent.

In the year 2015 The Commercial Court Act was introduced which gave a sigh of relief as here every commercial matter which is above 10 crore will be compulsorily be taken in Commercial Court. The establishment of Commercial Court depends upon the respective High Court. They are empowered to establish such number of Commercial Court as per the requirement. The base of Commercial Court Act is based on the Arbitration and Conciliation Act 1996 as amendment from time to time.

Another relief is the as per the Amendment Act of 2021 Arbitration and Conciliation Act has empowered to establish Indian Council for Arbitration which is a welcome sign to give more importance to arbitration, conciliation and Lok Adalat.

The arbitration process³:

The below diagram shows the process of Arbitration that is being conducted in India. The whole process starts with the invocation of arbitration by one the party to the dispute. By notice the parties will appoint the arbitrator.

After the appointment of arbitrator the parties will agree upon the process of conducting the arbitration process and once they agree upon the process the arbitral process will start.

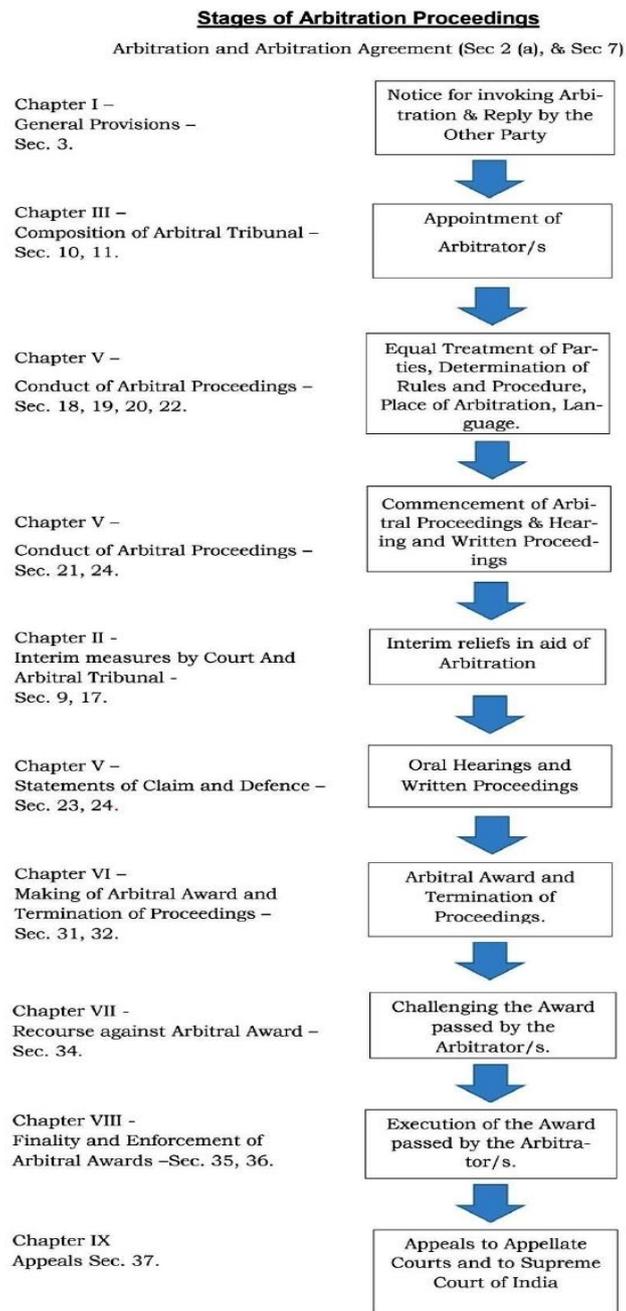


Figure: 2 Arbitration Process

³ <https://smartnet.niua.org/sites/default/files/resources/Arbitration.pdf> last accessed on 12/02/2023

(A) Objective:

As we are aware that the if we go to the traditional way of getting justice through the court system then it will be very difficult to get the justice in due course of time or in lesser time period. Usually, it will take more time to dispense the justice than the other mode of dispensing the justice more particularly the Alternate dispute resolution. By having an alternative dispute resolution center in the system then it will be easy for parties to get the justice in shorter period of time and at the same time maintaining the relationship between the parties without straining the relationship as we can see in the normal court process. Again, the out-come in the arbitration is as far as possible is a win-win situation than the win lose situation as it happens in the normal court procedure.

In an arbitration conciliation and in Lok Adalt the process is a friendly process rather than a stressful process. always there is win-win situation than a win loose situation just like in court system for resolving the dispute between the parties. This is a good sign for the parties to the dispute. Because the stress level of the parties is much low than that of the court system. As all the proceedings are conducted as per the arbitration agreement as decided by the parties and arbitrator. Again, the parties have the option to choose their own arbitrator in an ADHOC system of arbitration process than the judicial process. whereas in Judicial process they don't have option to choose their own judges they will get the judge as the sequences comes.

The purpose of this study is to check which is more beneficial and more speedy system in resolving and how the system works. How the Alternative dispute resolution system can help in reducing the burden of the court and thus delivering the justice in a speedy way and attaining the objective as enshrined in the Constitution of India.

(B) Methods adopted:

The researcher has adopted the method of asking question made through google form through questionnaire method. The questions are close ended questions and has tired to cover all the areas of the research work to an extent. Even the researcher has asked some open ended question to known parties who are working as a advocate and has incorporated their views also in this survey.

(C) Limitation of the study:

- The researcher has taken only one district of Gujarat state. And many people of the state of Gujarat is not that much accustomed with the method of Alternative Method of dispute resolution but still few who know the concept has given their view on the topic.

- As in the state of Gujarat the vernacular language is Gujarati and the researcher has asked the question in the questionnaire in English many may not be able to answer it in English even if they know the answer.
- The researcher has asked only about arbitration and Lok Adalat and not of conciliation. People are aware of the Lok Adalat and not much about the arbitration process.

(D) Literature review:

In one article written by Sumeet Kachwaha in *The Arbitration Law Of India: A Critical Analysis* has stated about the history and origin of arbitration in India and states about the requirement of arbitration and has critically analyzed each section of the act. Even the author has put his own view in the said article and one can consider those points for future reference. The author talks about the non-intervention of the court in the act than that off the old act and is a much relaxation one for the arbitral matter. The point that the author has raised is about the deviation of the model law and the system of our country in resolving the dispute. The Supreme Courts and the High Courts will exercise the administrative part rather than the judicial part in the matter of appointment of arbitrator.

Also talks about the arbitral proceedings and appointment of arbitrator and international arbitration by the author has given his view on the same.

In another article titled *Concept of Arbitral Tribunal* authored by Kanishka Vaish where the author is talking about the arbitral tribunal and its functions. The author has tried to explain the concept of arbitral tribunal and its composition and what all things that has to be taken care off.

In another article titled as *Development and Practice of Arbitration In India – Has It Evolved As An Effective Legal Institution?* Authored by Krishna Sarma, Momota Oinam and Angshuman Kaushik (CDDRL, Corporate Law Group, India) has published a working paper on arbitration.

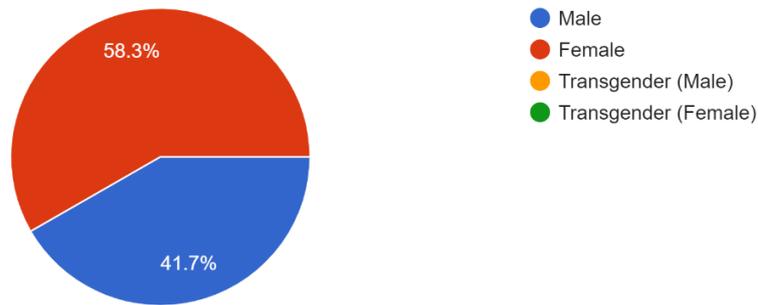
The authors have described about the various types of arbitration process and kinds of it. The authors have particularly dealt with the arbitration and various industries and its effectiveness in the process.

(E) Research:

Here the researcher has asked the following question and the response that the researcher received through the questionnaire are the following one, in the district of Anand.

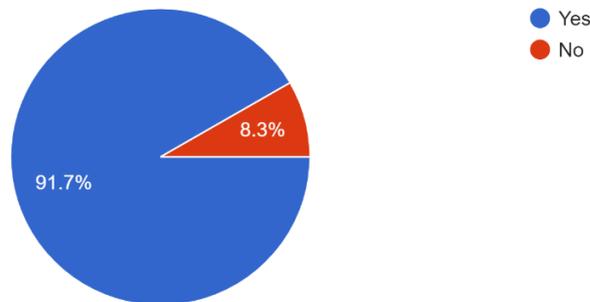
Gender

24 responses



Do you wish to have Arbitration center at Anand?

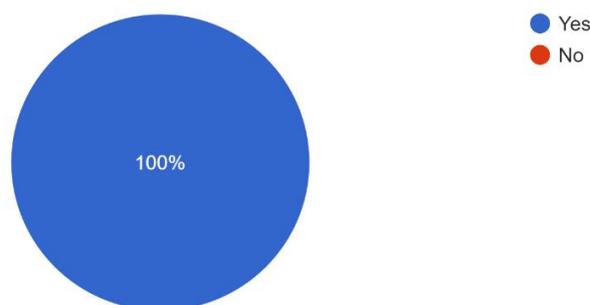
24 responses



Here we can see that only 8.3% of the total people say that they don't need arbitration center in Anand, this may be probably they are not aware of the arbitration process. if we educate these group then we can achieve the 100% target that the people will opt for arbitration if they are aware of the matters and how arbitration will help to resolve the dispute.

Is Arbitration helpful in resolving the cases ?

24 responses

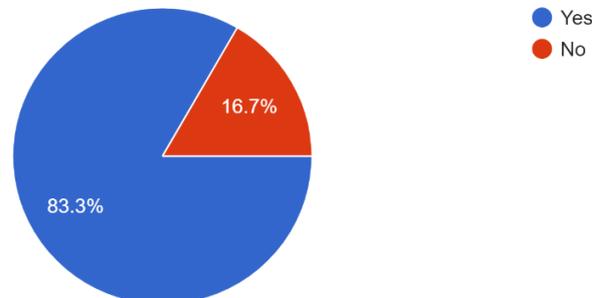


Here the Respondents are of the opinion that the arbitration will help in resolving the dispute

and they will gain something from the arbitration.

Do you think arbitration takes less time to resolve the dispute?

24 responses

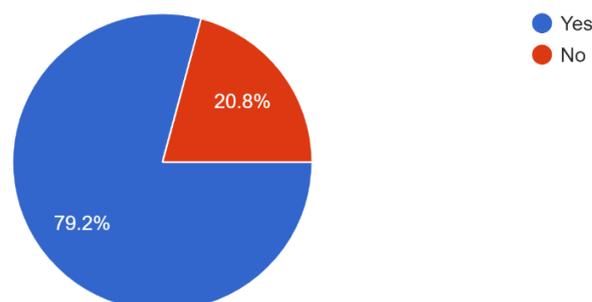


Of the total Respondents 83.3 % agrees that arbitration takes less time in resolving the dispute as there is time bound process as per the arbitration and conciliation act. Whereas the remaining 16.7% are disagreeing that the process will take lesser time to resolve the dispute than lesser time.

This is if put into real practice then the time consumption taken by the court in resolving the dispute will be reduced to a great extent and the number of pending case in various courts will be decreased to a great extent.

Do you know which matters can be taken to Arbitration, Conciliation or to Lok Adalat?

24 responses



Only 20% of the Respondents don't know that which matters can be taken to arbitration. This can be resolved if proper guidance is given to them. The following are the non-arbitral matters which cannot be referred to arbitration-

The well recognized examples of non-arbitrable disputes are⁴:

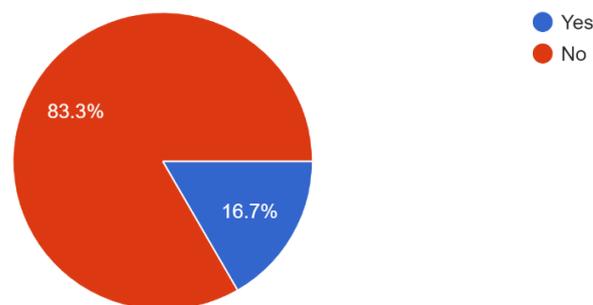
⁴[https://indiankanoon.org/research/topic/9/#:~:text=The%20well%20recognized%20examples%20of,\) %20guardi](https://indiankanoon.org/research/topic/9/#:~:text=The%20well%20recognized%20examples%20of,) %20guardi)

- a) Disputes relating to rights and liabilities which give rise to or arise out of criminal offences
- b) Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody
- c) Guardianship matters
- d) Insolvency and winding up matters
- e) Testamentary matters (grant of probate, letters of administration and succession certificate)
- f) Eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes

Other than the above matters one can approach for arbitration. There is a huge scope for arbitration if the parties wish to take matter before the arbitration for resolution purpose.

Do you agree that arbitration takes long time to resolve ?

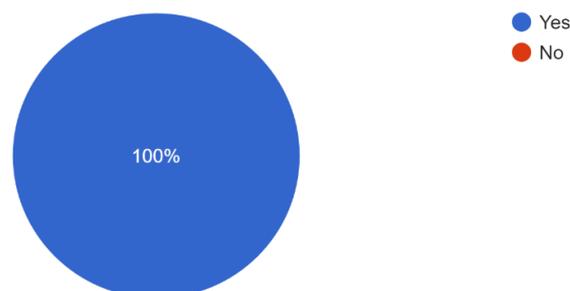
24 responses



83% of the Respondents says that arbitration takes lesser time than the conventional system of dispensing the justice. And they are in support of arbitration.

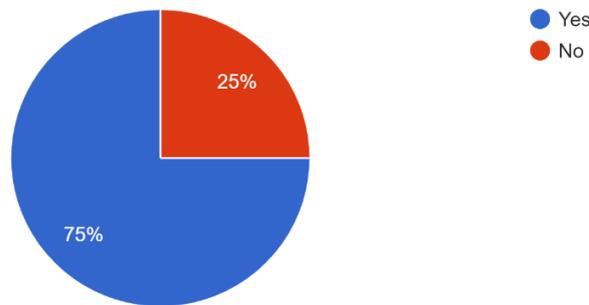
Does Arbitration makes helpful to the parties ?

24 responses



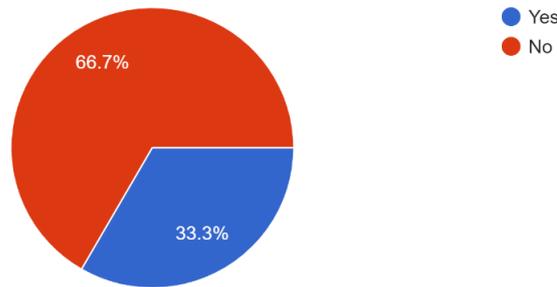
All the Respondents are agreeing with the matter that arbitration is helpful for resolving the dispute as there is a win – win situation than the traditional court resolving method.

Parties generally prefer to arbitration than to court?
24 responses



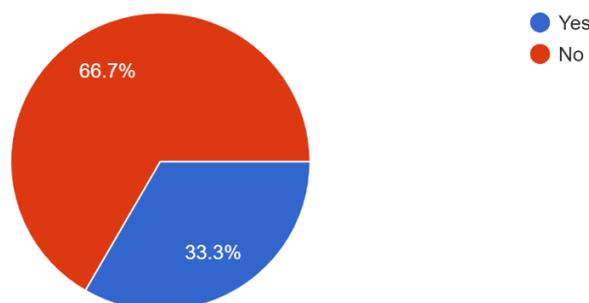
Here we can see that 75% Respondents agree that they will prefer to arbitration than to court as in arbitration they matter will be dissolved easily and stress level is very much lesser than the conventional system of dispensing the justice.

Parties have no faith in arbitration resolution ?
24 responses



Here we can see that the Respondents who have said no i.e. 66.7% in facts says that they have faith in the arbitration while the remaining 33.3 % doesn't have faith in arbitration resolution. Here we can see that the parties are in dilemma as we can see the above question that all most all the Respondents are ready to prefer to arbitration. Once they prefer to arbitration then they will have faith in it.

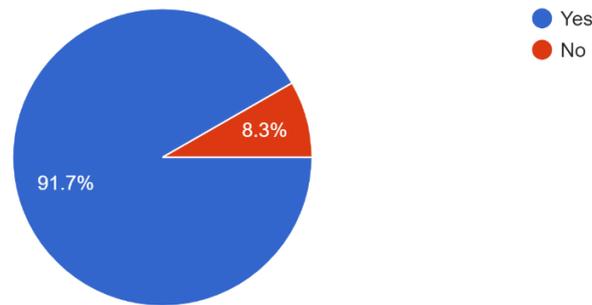
Do you think arbitration is costly than judicial system resolution ?
24 responses



As compared to the normal judicial process the process of arbitration is less costly. Which in turn will help the parties to go for arbitration. Again if the parties to the dispute go for the Lok Adalat then the cost for dispensing the case will be much lower than the normal court process and speedy disposal of the case.

Can an advocate or any expert person in his/her field can become a Arbitrator?

24 responses



According to the latest amendment act of arbitration and conciliation act any expert can become an arbitrator which is mentioned in schedule 4 of the act. Only 8.3% disagree with this fact and rest all are aware of the fact that any expert in his/her field can become an arbitrator.

As per the latest amendment of arbitration and conciliation act under schedule 8 any member who is holding such qualification or experience can become an arbitrator. The following are the qualification-

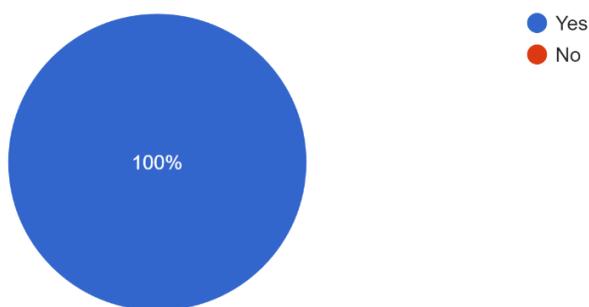
- An advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate;
- A chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of experience;
- A cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of experience;
- A company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of experience;
- An officer of the Indian Legal Service;
- An officer with law degree having ten years of experience in the legal matters in the Government, autonomous body, public sector undertaking or at a senior level managerial position in private sector;

- An officer with engineering degree having ten years of experience as an engineer in the Government, autonomous body, public sector undertaking or at a senior level managerial position in the private sector or self-employed;
- Autonomous body, public sector undertaking or a senior level managerial position in a private sector, as the case may be.

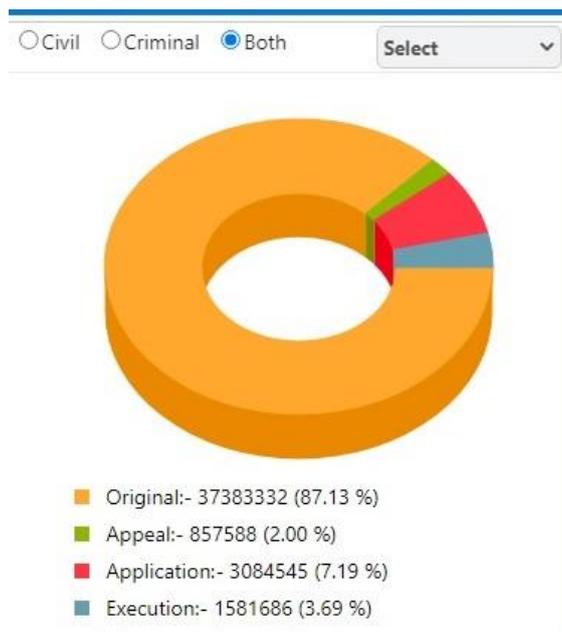
As per the mentioned any person who has been qualified from the above category then he/she can become an arbitrator.

Does Arbitration help in reducing the case log that is there in our judicial system?

24 responses



Pending case status as on 11/02/2023 in various courts of India⁵

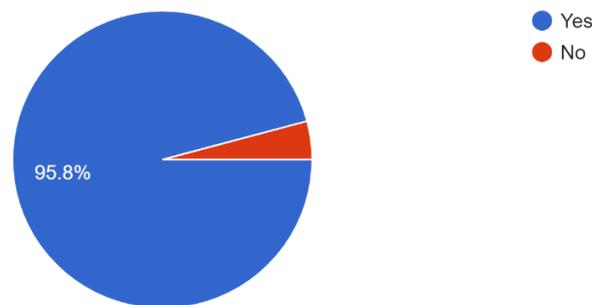


⁵ <https://njdg.ecourts.gov.in/njdgnew/index.php> last acceded on 11/02/2023

If parties agree for arbitration, then these figures can be reduced to a great extent and the parties can resolve the dispute in an amicable way rather than in a win loose way with all the mental stress and trauma. Arbitration, conciliation and Lok Adalat can help in reducing these figures. If the courts sit to dispense the case then it will take more than 400 years from this date provided that if we stop taking any new case/suit from this date onwards, which practically is an impossible thing in our country. Every day, every hour, every minute the crime is happening in our country and is increasing in an increasing rate. People should be educated for this so that they can take the matter before the arbitration, conciliation or to Lok Adalat for the resolution of their dispute rather than taking the matter before court of Law for resolution.

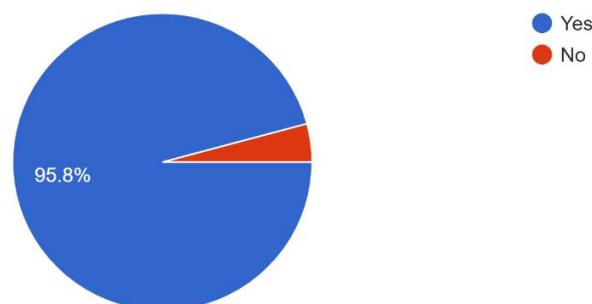
Will Arbitration make a change in resolving dispute between parties?

24 responses



As an advocate/ party will you suggest for arbitration?

24 responses



II. FINDINGS

On analysis we can say that it is better to have the dispute taken to the arbitration than to the conventional system of court process. This will help the parties to the dispute to resolve the matter in an amicable way rather than to have a stressful situation that who will win the case/suit. Again, the toilsome that is there in the normal court procedure is reduced and can go for a win-

win situation rather than win-loose situation. People are aware of the alternative mode of dispute resolution but they have get more knowledge about the pros and cons of the system. They only know the pros and cons of the judiciary system. They had to make believe that this too is a process of judicial for the betterment of people. This will help the people to achieve the one of the key concept contained in our preamble – to dispense the case in a speedy and in a friendly way- alternative dispute is the only method where the parties can get this.

The following data for disposal of suits related to arbitration in civil criminal and other matters for the whole Anand District⁶

Total case pending in Anand District is as follows⁷ –

Civil cases	15295
Criminal cases	31881
Total cases	47176

Civil cases

Sr. No	Particular	Total Case	Percentage%
	Original	365	31.12
	Execution	564	63.87
	Appeal	9	8.57
	Application	35	4.18
	Total	973	32.45

Criminal

Sr. No	Particular	Total Case	Percentage%
	Original	2073	24.11
	Execution	NIL	
	Appeal	75	45.45

⁶

https://njdg.ecourts.gov.in/njdgnew/?p=disposed_dashboard&get_year=2022&state_code=24~17&dist_code=18
last accessed on 21/06/2022

⁷ https://njdg.ecourts.gov.in/njdgnew/?p=main/index&state_code=24~17&dist_code=18&est_code=undefined
last accessed on 22/06/2022

	Application	381	24.05
	Total	2529	24.44

Both criminal and civil

Sr. No	Particular	Total Case	Percentage %
	Original	2438	24.95
	Execution	564	63.87
	Appeal	54	31.11
	Application	416	17.18
	Total	3502	26.24

III. CONCLUSION AND SUGGESTIONS

From the above research work we can conclude that arbitration is an important aspect in today's era as it can reduce the work load of the court and help the parties in settling the dispute in an amicable way rather than having a tension full time till the hearing of the case which is a lengthy and is an intricate process. While on the other hand the arbitration process is simple and less time-consuming process. it saves the time and energy of the parties to the dispute unlike the conventional system of dispensing of justice.

Suggestions:

- Acquaintance of arbitration process should be made known to the parties from the conventional system.
- What type of matter can be taken to arbitration should be taught to parties this will help them in resolving the dispute easily.
- More weightage should be put on arbitration for matters that are coming up to courts which can be easily settled in arbitration process.
- Encouragement should be made to take that matter which are arbitrable one to arbitration/Lok Adalat/ mediation center and resolve the dispute.
- Training orientation programme should be developed at each court at various level so that the advocates can handle the cases/ suits that are brought to arbitration easily without any hurdles in the system.

- The court itself should sometimes prefer that the matter should be taken to arbitration and try to help the parties to the dispute to agree on this.
- The role of advocate should be done more in the case of arbitration because advocate plays an important role in convincing the parties to dispute. They should tell the pros and cons to the parties about the alternative mode of dispensing the dispute.
