

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

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BILL

to provide for alternate dispute resolution

WHEREAS the State is required to ensure inexpensive and expeditious justice;

AND WHEREAS an alternate dispute resolution system can facilitate settlement of disputes without resort to formal litigation;

It is hereby enacted as follows:—

1. Short title, extent and commencement.— (1) This Act may be called the Alternate Dispute Resolution Act, 2016.

(2) It shall extend to such area or areas as the Federal Government may, by notification in the official Gazette, determine in this behalf.

(3) It shall come into force on such date or dates as the Federal Government may, by notification in the official Gazette, appoint and different dates may be appointed for different provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

- (a) 'Alternate Dispute Resolution (ADR)' means a process in which parties resort to a method of resolving the dispute other than by adjudication by Courts and includes arbitration, mediation, conciliation, neutral evaluation and dispute resolution through *Panchayat*;
- (b) 'ADR Centre' means the ADR Centre notified by the Federal Government for the purposes of this Act;
- (c) 'arbitration' means a process by which parties submit a dispute to the decision of a Neutral person or persons appointed by mutual consent or under a statutory provision;
- (d) 'award' means an arbitration award;
- (e) 'Court' means a Court of original jurisdiction and includes a Civil Court, Family Court and such other Courts and Tribunals and quasi-judicial fora as may be notified by the Government for the purposes of this Act;

- (f) 'Government' means the Federal Government;
- (g) 'High Court' means the High Court concerned;
- (h) 'mediation' means a structured process in which a Mediator facilitates and encourages communication and negotiation between the parties, and seeks to assist them in arriving at a voluntary mutually satisfactory agreement;
- (i) "Conciliation" means a process in which a neutral person encourages the parties to resolve their civil or commercial disputes voluntarily including by advising on possible solutions and terms of settlement;
- (j) 'Neutral' includes an arbitrator, conciliator, evaluator and mediator or any other impartial person who is included in the panel or *Panchayat*;
- (k) '*Panchayat*' means the conciliatory body by whatever name called including *Musalihat Anjuman* or *Jirga* constituted by any law for the time being in force;
- (l) 'panel' means the panel of Neutrals notified under section 4;
- (m) 'prescribed' means prescribed by rules made under this Act;
- (n) 'rules' means the rules made under this Act;
- (o) 'Schedule' means a Schedule annexed to this Act; and
- (p) "Settlement" means the agreement reached between the parties as a result of successful ADR, other than an award.

CHAPTER I CIVIL MATTERS

3. Reference to ADR.- (1) The Court shall refer every civil matter mentioned in the Schedule for ADR except where—

- (a) the parties do not agree for ADR;
- (b) the Court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through ADR; or
- (c) an intricate question of law or fact is involved.

(2) Before referral to ADR, the Court may frame issues with the consent of the parties for facilitating the settlement of the dispute.

(3) This section shall not apply where *ex-parte* proceedings are subsisting against the defendant or the respondent:

Provided that even if such proceedings are set aside, the case shall not be referred to ADR unless the Court, keeping in view the stage of the proceedings of the case or any agreement of the parties, decides otherwise.

4. **Panel of Neutrals.-** (1) The Government, after consultation with the High Court, shall notify in the official Gazette a panel of Neutrals for each district from amongst lawyers, retired Judges of superior and subordinate judiciary, retired civil servants, social workers, *ulema*, jurists, technocrats and experts and such other persons of repute and integrity having such qualifications and experience as may be prescribed.

(2) The Government may, in the like manner as provided in sub-section (1), amend the panel by adding or modifying any entry therein or omitting any entry therefrom.

(3) The Government may not remove a Neutral once he is seized of the matter referred to him unless both parties agree on his replacement.

5. **Appointment of Neutrals.-** While referring the matter for ADR, the Court shall appoint a Neutral or any other person agreed upon by the parties:

Provided that where the parties neither agree on a Neutral nor any other person, the Court shall appoint a Neutral in its discretion.

6. **Appearance of parties.-** Upon referring the matter for ADR, the Court shall direct the parties to appear before the Neutral on the date and time fixed by the Court.

7. **Reference to ADR before legal proceedings.-** (1) If the parties agree on ADR before initiating the proceedings in the Court, they may make an application to the Court or an ADR Centre or a *Panchayat* for resolution of their dispute through ADR.

(2) On receipt of an application under sub-section (1), the Court or ADR Centre, as the case may be, shall refer the matter to a Neutral or such other person as may be agreed upon by the parties. In case application is made to a *Panchayat*, the *Panchayat* shall entertain the matter for resolution of the dispute.

(3) The provisions of this Act shall *mutatis mutandis* apply to the proceedings under this section.

8. ADR proceedings.- (1) The parties to the dispute shall take part in the ADR proceedings in person or through duly authorized representatives or attorneys.

(2) A Neutral appointed by the Court or an ADR Centre to whom the matter is referred for mediation or conciliation shall dispose of the matter within a period of thirty days:

Provided that the Court may for sufficient cause extend this period for further fifteen days on a request made by the Neutral.

(3) If the matter is referred to an Arbitrator, he shall complete the process within sixty days:

Provided that the Court may for sufficient cause extend this period for further thirty days on a request made by the Arbitrator.

(4) The Court may, from time to time, give such directions as it deems fit regarding the conduct of the ADR and the same shall be binding on the parties and the Neutral.

(5) Any party who fails to attend or who requests an adjournment in any ADR proceedings or fails to comply with a deadline stipulated either by the Court or by the Neutral or does any other act which has the effect of delaying the ADR proceedings, shall be liable to pay costs to the other party as may be determined by the Neutral.

9. Settlement and award.- (1) If as a result of the mediation or conciliation a settlement is reached between the parties, the Neutral shall record such settlement, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the settlement.

(2) If the settlement relates only to part of the dispute, the Court shall pass order in terms of such settlement, while adjudicating upon the remaining part.

(3) The Arbitrator on determination of the dispute shall render a written award, duly signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the award.