

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
LOK SABHA
UNSTARRED LOK SABHA QUESTION NO. 23
TO BE ANSWERED ON MONDAY, JULY 22, 2024 / 31 Ashadha, 1946 (Saka)
“Arbitration and Mediation in Contracts of
Domestic Public Procurement”**

23 Shri Manish Tewari:

Will the Minister of Finance be pleased to state:

- (a) the rationale behind the Ministry's 'Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement,' which only allows arbitration as a method of dispute resolution for contracts not exceeding Rs. 10 crore;
- (b) the mode of dispute resolution shall be used for contracts exceeding Rs. 10 crore;
- (c) the details of the money that the Government spend in matters where the mode of dispute resolution is through arbitration through courts and litigation;
- (d) whether the Government spend more on arbitration or litigation, if so, the details thereof along with a comparative analysis; and
- (e) the details on how the Ministry respond to the arguments made by organizations such as the Arbitration Bar of India, which claim that the notification will harm the arbitration infrastructure and further increase the burden of pending cases on the courts?

**ANSWER
THE MINISTER OF STATE FOR FINANCE
(SHRI PANKAJ CHAUDHARY)**

- (a)&(b) The Ministry's 'Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement' are based on unsatisfactory experience of arbitration in respect of high value contracts where the Government (or a Government entity or agency, such as a public sector enterprise) is a party. However, the guidelines are flexible and continue to permit arbitration for high value disputes after application of mind by the Ministry or the undertaking concerned. Moreover, Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act, 2023 and/ or negotiated amicable settlements for resolution of disputes. Where these methods are not successful, the matter should be adjudicated by the competent courts.

- (c)&(d) The requisite data is not maintained by the Government in form and manner sought. However, the information regarding expenditure on litigation in courts has been compiled and is at Annexure. A sample study of National Highway Authority of India and NTPC has informed that more than 60% of the arbitration awards are challenged in the courts. In all these cases, Government is compelled to spend both on arbitration as well as on litigation.
- (e) Government cases with disputes of value less than Rs 10 crore, those high value disputes where Ministries/ undertakings choose to have arbitration beyond the norm and the disputes not involving Government will continue to be resolved through arbitration. Hence these Guidelines will not adversely impact the arbitration infrastructure. Moreover, since a large number of high value disputes used to go to court after the arbitration, even before these guidelines were issued, the pending court cases are not likely to significantly increase.

Annexure

S. No.	Financial Year	Expenditure incurred (Rs.)
1.	2018-19	50,85,65,984/-
2.	2019-20	60,40,71,128/-
3.	2020-21	58,01,97,187/-
4.	2021-22	48,37,38,253/-
5.	2022-23	54,35,49,015/-