

Alternate Dispute Resolution (ADR) The Speedy Justice Machinism

Sri. Sadasiva Jena¹ and Dr. Sanjaya Choudhury²

Ph.D. Scholar, Law Department¹

Proffessor and Head, Law Department²

Bhagwant University, Ajmer, Rajasthan

Abstract: *Alternative Dispute Resolution (ADR) is a negotiation-based method of resolving conflicts that differs from traditional adjudication processes. ADR offers the ability to prune the prodigious heap of cases by providing a speedy and cost-effective means of resolving disputes. The introduction of ADR in India is discussed and analysed in this article. Here ADR refers to the process of dispute settlement and represents the idea of making the system of delivering justice more favourable to disputed parties which ensure that cases be settled quickly. Meaning, scope and various kinds of justice delivery systems of ADR are discussed here. The functions of ADR are also mentioned. Various advantages and disadvantages of ADR mechanism are thoroughly stated in this article. Lastly, the article is ended with some suggestions.*

Keywords: Dispute, Resolution, Mechanism, Access, Justice

I. INTRODUCTION

It's a high time to think about providing a platform for the poverty -stricken and disadvantaged who are looking for a quick settlement of their problems through the courts. Impediment in resolving disputes through traditional courts, for any justified cause has adequately negated the basic object for which individual's move before the court. The two important propositions Justice delayed is justice denied and Justice hurried is Justice buried need more attention in order to render/observe social justice to the poverty -stricken, underprivileged and needy people who seek to have their grievance heard in the court of law, we'll have to find out a means to bridge the gap between these two. In this regard, Alternative Dispute Resolution (ADR) methods are urgently needed to supplement the current infrastructure of courts. Apart from improving the efficiency of the judicial system, around the world, initiatives have been introduced to make ADR systems available for settling pending disputes and at the prelitigation stage. Alternative Dispute Resolution (ADR) offers the ability to prune the prodigious heap of cases by providing a speedy and cost-effective means of resolving disputes. Instead than going to court, ADR refers to a form of a number of approaches to resolve a dispute.

Historical background of ADR in India

In India, before the advent of the court, people used to amicably settle their disputes mutually through mediation. Person holding higher standing and reputation in the village usually led the mediation, and it was referred to as a "Panchayat" in the past. The Pancha, also known as the Village Headman (sarpanch), is a person of integrity, quality, and character who is regarded as an unswayed person by the villagers and is aided by the people of same strata. Panchayats' used to hear individual and family disputes, and the disputants used to accept the decisions of the Panchayats'. Similarly, if a dispute arises between two villages, it will be resolved through Mediation, both village residents will accept the decision of such mediation. Disputes in the past rarely reached the courts. They were even resolving intricate civil, criminal, and family conflicts. Even after their disputes were resolved, disputants who used this method of dispute resolution maintained a friendly relationship.

These traditional institutions of dispute settlement began to wither with the arrival of the British Raj, and the British introduced a formal legal system that began to govern. With the introduction of the Bengal Regulations, The Bengal Regulations were created with the intention of encouraging arbitration. After various Regulations relating to arbitration, Act VIII of 1857 mentioned the procedure of Civil Courts, with the exception of those founded by Royal Charter, and



included provisions dealing with arbitration in litigation as well as portions allowing arbitration without the intervention of the court. Following that, the Indian Arbitration Act of 1899, which was modelled after the English act of the same name, was passed. Though it only pertained to the Presidency towns of Calcutta, Bombay, and Madras, it was the first substantive law on the subject of arbitration.

In 1908, the Civil Procedure Code was re-enacted. In terms of arbitration law, the Code made no significant changes. The Indian Arbitration Act of 1899 and some sections of the Civil Procedure Code of 1908 were repealed, and the Arbitration Act of 1940 was passed. It changed and consolidated arbitration law in British India, and it continued in Republican India until 1996 as a comprehensive arbitration law.

Lok Adalats were established in 1982 to settle disputes outside of the courts. On March 14, 1982, the first Lok Adalat was held in Junagarh, Gujarat, and it has since been expanded across the country. Lok Adalats were established as a voluntary and conciliatory body with no legal authority to make decisions. When the Legal Services Authorities Act of 1987 was passed, the Lok Adalats were given legal status.

The previous Arbitration Act of 1940 has been superseded by the new Arbitration and Conciliation Act of 1996 to keep up with the globalisation of commerce. The amendment of the Code of Civil Procedure in 1976 included provisions for the settlement of family disputes. The Special Marriage Act of 1954 and the Hindu Marriage Act of 1955 both include provisions for reconciliation initiatives. The Family Courts Act of 1984 requires the family court to make reasonable attempts to settle between the parties. The insertion of Section 89 to the Code of Civil Procedure, 1908, as part of the 1999 Amendment, is a significant step forward in the Indian Legislature's adoption of the "Court Referred Alternative Dispute Resolution" system.

Meaning and scope of ADR

Alternate Dispute Resolution, or ADR, is an initiative aimed at developing technology that can serve as a substitute for traditional dispute resolution methods. A choice between two options is referred to as an alternative. It does not imply the selection of an alternative court, but rather anything that can function as an alternative to court procedures or as a court announced method. ADR is not a substitute in the strict sense. ADR is essential to supplement and preserve the court's functions.

According to Black's Law Dictionary Alternative dispute resolution or ADR refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation." ADR, according to Halsbury's Laws of England, is a term for the procedures of settling disputes without resorting to litigation, and encompasses mediation, conciliation, expert determination, and early neutral assessment. As a result, the term ADR refers to a multitude of approaches for resolving conflicts without adjudication. It even covers the method of negotiation in which two parties resolve a problem amongst themselves without the help of a third party by communicating with one another. It may also include processes such as conciliation and mediation, in which a neutral third party is involved. As a result, it is a system for resolving conflicts and disputes that relies on private, consensual resolutions between parties, with or without the intervention of a neutral third party.

In *Food Corporation of India v. Joginderpal Mohinderpal* the Supreme Court observed – "We should make the law of arbitration simple, less technical and more responsive to the actual realities of the situations, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating sense that justice appears to have been done.

The scope of ADR does not apply to all law cases. ADR is a process which may be used in addition to or along with or even independent of the judicial system. ADR is not intended to supplant of litigation. It provides alternatives to traditional dispute settlement. There are still a handful of significant areas, such as constitutional law and criminal law, where court decisions remain the exclusive source of information. Since the techniques used in ADR are not the ones applied in adjudication, ADR is extra-judicial in character. The main objectives of ADR are resolution of disputes in a speedy manner and at lesser cost. Since it is an amicable way of settling disputes, building better relationship between parties is another objective.

The Law Commission of India has stated that the cause of judicial delays is not an absence of clear procedural laws, but rather their faulty execution, or even complete no observance. The Law Commission of India stated explicitly in its



14th Report that the delay is due to the no observance of many of the legislation's critical provisions, particularly those intended to expedite the disposition of proceedings.

The key objective of the ADR movement is to eliminate vexation, expenditure, and delay while also promoting the notion of "equal access to justice" for all. The ADR system aims to deliver justice that is inexpensive, simple, fast, and accessible. ADR is not the same as the traditional judicial process.

Disputes are resolved with the help of a third party, and the proceedings are kept simple and, for the most part, handled in the way agreed upon by the parties. ADR encourages the resolution of disputes quickly with minimal time, skill, and money spent on the decision-making process, while maintaining the secrecy of the subject matter.

Various means and modes of justice delivery mechanism of ADR The five different methods of ADR can be summarized as Follows.

1. Arbitration.
2. Conciliation.
3. Mediation.
4. Negotiation.
5. Judicial Settlement.
6. Lok Adalat.
7. Ombudsman.

Arbitration

Arbitration one of the modes of alternative dispute resolution facilitates out of court settlement of disputes by referring their problems to the arbitrator or arbitrators, as being appointed by the concerned parties to the dispute. Its nature can be that of a statutory, Institutional, Contractual or even ad-hoc . It is a non-judicial, private, and mostly informal trial procedure for settling disputes. The notion of arbitration comprises four requisite namely an arbitration agreement between two or more parties, a subsequent dispute or disputes among the parties, a referral to a third party for adjusting the dispute and an amicable way to resolve the issues raised as a cause of the dispute or disputes, concluded by a third party award. In arbitration, a neutral third party assigned by the parties to the dispute or conflict settles the referred conflict between the said parties. It is similar to a court-based settlement, but it involves less formalities and the arbitrator is chosen by the parties. It exists with a well-established, less time-consuming procedure that is very effective in settling various types of disputes, including international business conflicts. Arbitration is presently the most potent legally binding and enforceable alternative to judicial proceedings [18]. The scope for appeal and review against an arbitration award is limited. Arbitration differs from both judicial proceedings and mediation.

Conciliation

Conciliation is a private, informal process in which a neutral third person helps disputing parties to reach an agreement. Apart from arbitration, conciliation is also an alternative dispute resolution process aiming to resolve the dispute by assigning a conciliator. The role of conciliator is to meet both the parties separately in order to resolve their said dispute or disputes. Conciliation attempts target's on displaying both the parties the different aspects of dispute including the pros and cons of the dispute, effects of the dispute on both the parties so to resolve the dispute and bring the concerned parties together. It is a procedure in which the parties, with the help of a neutral third person or persons, carefully identify the problems in dispute, explore possibilities, consider alternatives, and find a mutually agreeable settlement that fulfils their interests. Typically, the conciliator would conduct an independent investigation into the disagreement and write a report outlining the technique of dispute resolution. The parties are then free to negotiate by concluding a final settlement in accordance with the Conciliator's report and can be initiated with or without any alteration or alterations agreed upon by the concerned parties. As a result unlike arbitration, the report prepared by the conciliator in relation with the settlement of dispute would not be binding upon the parties.

