

## The Concept of Alternative Dispute Resolution in Indian Justice System

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### ABSTRACT

The concept of conflict management through the Alternative Dispute Resolution (ADR) has a new dispute settlement mechanism introduced, which is not in contradiction. An argument is basically "lis inter partes" and Justice in India levy has found an alternative to adversarial litigation in the form of ADR mechanism.

New methods of dispute resolution such as ADR facilitate partners the underlying issues in dispute and economical to treat effectively. Moreover, these methods have to give the benefit of the parties a possibility that hostility, again a sense of control, get the acceptance of the outcome, to resolve conflicts in a peaceful manner and gain a greater sense of justice in each to reduce individual case. Dispute settlement is usually in private and is more profitable, economically and efficiently. ADR is divided into at least four types: negotiation, mediation, collaborative law and arbitration. (Sometimes a fifth type, conciliation, is also included, but for present purposes can be used as a form of mediation to be considered.

**Keywords:** Alternative, Dispute, Resolution, Labor, Panchayat system, Lok Adalat system.

### 1. Introduction

Globalization is a great attraction in the integration of economies and societies from different countries around the world. It was breaking a great tool for the economic barrier and imagines the world as a market for trading.

If the economy and society to integrate undoubtedly leads to the growth in various types of disputes, such as:

- A. Labor disputes,
- B. Trade disputes ,
- C. International disputes, etc.

The remedy is not to avoid these disputes, but in building mechanisms to solve these disputes amicably. It is a sine qua non for growth and for the maintenance of peace and harmony in any society.

**Ubi jus ibi remedium** - This maximum law laid the foundations of the legal system in every human society rightly. It means, if any damage is done to a person who has the right to the court to approach. This legal model, the controversy brought many cases to solve pending that justifies the cliché rightly "justice is delayed denied justice." The trial in a court route over the years, which consume a large amount of money and that, is to destroy lead in business and career. These endless and complex legal procedures have been prompted to seek legal jurists and personalities for an alternative to the traditional justice system. The research was a great success with the discovery of the alternative forum as alternative dispute settlement known which is commonly referred to by the acronym "ADR". ADR is being increasingly recognized in the field of law and business sectors, both nationally and internationally. His various methods have helped the parties to solve their disputes to their low cost and fast conditions.

### 2. At National Level

Benjamin Franklin once said; "When a man is satisfied and solve their problems by arbitration." I think Indian community can answer it correctly, provides an example of the Panchayat system, which is actually not very different from the modern ADR system. In fact, the Panchayat System Mode in India for centuries. It is a process in which a neutral third party is usually a senior person stature and reputation are considered impartial in awarding legally binding decision has been taken. Unfortunately, lost its credibility due to political intervention and the common hatred among people this system. Litigation in India is generally longitudinally and expensive. So there was a considerable amount of effort on the part of legislative and judicial circulated ADR to be made between the companies.

### 3. Contribution of Legislature in ADR in India

India Credit ADR for sticking hits East India Company. There was legal recognition of the Forum under various actions such as:

Regulation Act of 1772 Bengal and Bengal Regulatory Act of 1781, asked the parties available to the appointed mutual agreement refer the dispute arbitrator and whose judgment is binding on both parties. Alternative dispute redressal has legal recognition in India, obtained after the entry into force of the Code of Civil Procedure of 1859, which provided.

Sec. 312 - In relation awaiting a difference costume.

Sec. 312-325 - has established an arbitration procedure.

Sec. 326-327 - scheduled for arbitration without the intervention.

Difference is also under the Indian Contract Act, 1872 as the first except for section 28, acknowledged, provides that any agreement Curb's trial null.

The law Legal Service Authority 1987 brought another fundamental mechanism ADR, with the establishment of Lok Adalat system. The law on labor disputes in 1947 arbitration law recognized as an effective method of dispute resolution. Indian Electricity Act 1910 and A.P Cooperatives Act are in 1964 a few other examples.

The Arbitration Act of 1899 was the first exclusive right to arbitration. Subsequently, the said act was repealed and replaced by the Arbitration Act 1940th. Arbitration Act of 1940 also fails to give the desired results and in achieving their goal of Emanation. Then various recommendations of successive committees and political liberalization in commercial law have acted as a catalyst for the growth of the ADR mechanism. After the liberalization of the Indian economy that has opened the doors to foreign investment; Government of India on the UNCITRAL model has the Arbitration and Conciliation Act 1996 came into force, which repealed the law of 1940th

### 4. Objects Of The Act

**The main objectives of the Act are**

- To cover the full national and international arbitration.
- In order to minimize the role of the courts and deal arbitration as a court order.
- To the concept of mediation introduce.
- Finally, a quick fix and alternative dispute to provide.
- Code of Civil Procedure 1908 carries 89 sections that four methods to resolve disputes out of court.

#### **Various Modes of ADRs**

- Arbitration
- Conciliation
- Lok Adalat
- Mediation.

At the same time the Constitution of India puts arbitration as a Directive Principle of State Policy. Article 52(d) provides that the state should encourage settlement of international disputes by arbitration.

#### **Judicial Effort towards ADR in India**

Indian Courts have also played a significant role in the grading of the ADR mechanism. The apex court has approved the alternative forum in its various decisions.

In *Guru Nanak Foundation V / S Rattan & Sons* Court he stated that "endless, time-consuming, driven complex and costly to seek trial lawyers for an alternative forum, less formal, more effective and faster for the settlement of disputes, avoiding procedures grumble ... "

The realization of such concepts as free and easy process of the apex court in several cases also sponsored in the up gradation redressal of alternative dispute mechanism helped. One of the biggest step of machine development lines, the validity of the "courts Fastrack" system referred Brijmohan v/s UOI maintenance was.

Fastrack court system has done wonders in the number of cases to disposal. These courts have disposed of 7.94 lakh cases of 15.28 lakh cases transferred to the 52.09% rate and recent statistics show that the number of pending cases has been reduced to 6 lakh.

Another important step for the growth of ADR services in India is the creation of institutions such as:

- IIAM - Indian Institute of Arbitration and Mediation
- ICA - Indian Council for Arbitration
- ICADR – International Centre for Alternate Dispute Resolution.

These institutions offer trade services, mediation, conciliation, arbitration, settlement conferences, etc. They can also help you find gaps in the laws ADR existing and recommended reforms to overcome them.

## 5. At International Level

The history of alternative forum for the settlement of international disputes can return back to the Renaissance period, active as Catholic popes as an arbitrator in the conflicts between European countries. One of the most successful examples of this mechanism is the international mediation of former President Jimmy Carter of the United States in Bosnia. ADR has achieved fruitful results, not only in international politics but also in the world of international affairs in the resolution of trade disputes between the many corporate houses as composition of a continuous commercial dispute between General Motors Co. and Johnson Matthey Inc. which was, as in recent years in US District Court in progress.

The biggest springboard into the international ADR field is the adoption of UNCITRAL [United Nations Commission on International Trade Law] model on international commercial arbitration. An important feature of this model is that, in order to harmonize perfectly to call for universal use the concept of arbitration and conciliation. UN General Assembly also recommended that countries adopt Member ours in sight for ADR mechanism with uniform laws.

Other important international agreements on arbitration are

- The Geneva Protocol on Arbitration Clauses of the 1923rd
- The Geneva Convention on the enforcement of foreign award 1927
- The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

In India Part III of Arbitration and Conciliation Act, 1996 provides for International Commercial Arbitration. Another step in strengthening the international commercial arbitration is the establishment of various institutions such as

- ICC – International Court of Arbitration of the International Chamber of Commerce. Arbitration and mediation centre of World Intellectual Property Organization.
- AAA – International centre for dispute resolution of the American Arbitration Association and others have explored new avenues in the ADR field.

## 6. Alternate Dispute Resolution Mechanism

### Arbitration

It is one of the cardinal alternative dispute resolution mechanisms in machinery. To whom the dispute with one or presented more arbitrators appointed by the parties correctly. They give their judgment in the form of "arbitration", which is legally binding on the controversial parts. Arbitration is often in business, but many unknown, that is

*Oldest method of dispute resolution, which had been anchored in ancient history.*

### Mediation

It is a non-binding process in which a third called "mediator" helps the parties to reach an agreement, called into question. "Mediation of technical term in international law, which means the intermediary of a neutral and friendly between two warring States or on the eve of war with each other, to obtain its good offices to restore or peace."

### **Reconciliation**

This mechanism is binding neither on the parties. It is a process, called a third party for the "Council" by the separated parts controversial meets to resolve their differences. He is not yet ruling has no Awards.

It is also called "shuttle diplomacy". Most mediators consider it as a specific type of mediation practice. Part III of the Arbitration and Conciliation Act of 1996 provides for this mechanism.

### **Lok Adalat**

Lok Adalat is also called "the people's court". It was in Legal Services Authority Act established in 1987 by the government to facilitate the economic and rapid settlement of pending cases in the mediation and compromise. This forum is very effective in the management of monetary claims, partition suits, matrimonial matters, etc.

### **Ombudsman**

This is an external body appointed by the government to sound management mishaps . It is a mechanism by which the damage may bring relief to prevent abuse of discretion on the part of state authorities claim. Sweden was the first country to adopt Managing Director of Finland, Denmark, Norway, New Zealand, Australia and the Scandinavian countries in 1809 followed this institution.

### **Negotiation**

It is passing through the parties interact with one another to deny a non-binding dispute settlement procedures and try to work out without the intervention of a third party solution. The importance of synthetic transaction can be set by law in the words of former US President John F. Kennedy - "We are trying to negotiate with the fear, but we should not negotiate to fear."

### **Collaborative Law**

It is a voluntary dispute settlement procedure are represented by the parties of their own lawyers to contest , to facilitate discussion in accordance with an agreement . It has been an effective mechanism in the context of divorce and family law. Collaborative Law is practiced internationally in countries such as USA , UK and the list goes on with the inclusion of countries like France , Germany, Austria , Australia , Scotland , Switzerland , Hong Kong , etc.

## **7. Conclusion**

To develop alternative dispute resolution at the national and international levels quickly, which provides simpler methods of conflict resolution? Rising trend of ADR services can be easily derived from the growth of the "arbitration clause "in most contracts. There was a significant increase in the number of law school courses, diplomas, seminars, etc. focused on alternative dispute resolution and to streamline its effectualness when processing a wide range of disputes in society.

Finally, the importance of the ADR mechanism can be put right in the words of former US president Abraham Lincoln - " endangering convince your neighbors discourage litigation , if you can show them how the nominal winner is often a real loser , in fees , costs , loss of time ... "

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