



## ANALYZING THE CONCEPT OF ALTERNATIVE DISPUTE RESOLUTION AND IT'S FUTURE IN THE INDIAN CONTEXT

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### Abstract

Alternative Dispute Resolution (hereinafter referred as ADR) is a mechanism to resolve any dispute outside the courts of law. As in the present time, there is a remarkable growth in trade and commerce so in such situation disputes become an indispensable part. Going for traditional method of disputes resolution can take long period of time as well as will be costlier, so to save time as well as money, the mechanism of ADR is adopted. There is a need of ADR at all levels in India as Indian Courts of Law are overburdened with cases resulting into long delays in redressal of disputes and turn out to be a costlier method. Time to time many acts and legislations are introduced in this field but still more awareness is required to be spread about this mechanism amongst people belonging from many sections of the society. Also, post COVID, there is a notable change in every field including ADR as well, as there is a shift towards Online Dispute Resolution. This paper starts with giving an insight into the concept of ADR and further discuss about its genesis in the Indian Legal System. After it, different types of ADR (Arbitration, Mediation, Negotiation, Conciliation and Lok Adalats) prevalent in India are explained. With it, the paper gives informations about the legislations on ADR in India. Further, the paper gives an insight

about the benefits of ADR. Furthermore, the paper discusses the Future of ADR in the Indian Legal. Finally the paper suggests some points to work on and the ways to make the mechanism of ADR more participative and ends with a conclusion.

### Introduction

Alternative Dispute Resolution (hereinafter referred as ADR) is a concept that means resolving a dispute without litigation. ADR means the settlement of any dispute outside the courtroom.<sup>1</sup> In this mechanism, the parties generally meet face to face and work towards resolving a dispute with mutual consensus. In the present scenario, the world has been globalized and the growth in trade and commerce is taking at a mass scale. In such circumstances, disputes become an indispensable part. In order to resolve it, the mechanism of ADR becomes preferable than litigation by the parties. In the 222<sup>nd</sup> Report, the Law Commission of India emphasized the need for justice delivery by the mode of the ADR. In India, normally the concept of dispute resolution is limited to the traditional method of access to courts of law. But there are times when the courts are inaccessible especially for the underprivileged class of the society due to hurdles like poverty, in ordinary delays in delivery of justice, backwardness (both political and social), procedural formalities, illiteracy, and others. In order to overcome these hurdles, ADR was introduced to make justice accessible for all and to achieve our constitutional principles enshrined under Articles 14 and 39-A, as our constitution aims to render justice to masses in all its dimensions i.e. economic, political, and social. It is also observed in the present time that in many cases judiciary has also

<sup>1</sup> Alternative Dispute Resolution, Legal Information Institute [LII], Available at:

[https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)



referred the cases for mediations, out of court settlements rather than going for litigation and encouraged the mechanism of Alternative Dispute Resolution (ADR) in order to save the vested interests of the parties as well as to save the time of the court.

The concept of ADR has its existence in India since time immemorial. Sailing back into the history of ADR, it has its significance in the ancient and medieval periods where disputes were resolved by any third person (who used to be neutral) in an informal manner.<sup>2</sup> *Bhradarnayaka Upanishad* is the earliest known treaty which referred to different types of arbitral bodies i.e. the *Puga* (which used to be a panel of people belonging to a different community but lived at the same place), the *Sreni* (a group of people belonging from different tribe consisting of workers and tradesmen but connected to each other with some way or the other) and *Kulas* (Cluster of people bound by family ties).<sup>3</sup> These individuals were concerned about the social issues of a specific community and all the bodies were in total known as *Panchayats*. The individuals from it were known as *Panchas*, the then authorities, used to manage the disputes under a framework. The decision of these *panchayats* were recognized and had a binding force which was also observed in a case *Vytla Sitanna vs. Marivada Viranna*<sup>4</sup> by the Privy Council. Similarly, we can observe

many instances in history where the concept of ADR was used informally for resolving a dispute. ADR was formally introduced by Britishers and old systems were replaced by a feudal setup. After that, they were no more known by their previous names.<sup>5</sup> There are different types of ADR prevalent in India. They are Arbitration, Mediation, Negotiation, Conciliation, and Lok Adalat. Arbitrations and Mediations are the most preferred ADR mechanisms preferred for the resolution of disputes. Now, let us know the types of ADR in detail.

### Types of ADR

- (i) **Arbitration:** Arbitration is a mode to settle a dispute between two parties who out of mutual consent appoint an arbitrator (a third party) who in order to settle the dispute gives a solution that is binding on the parties. It is a mechanism of resolving a dispute outside the courtroom resulting in saving resources as well as time.<sup>6</sup> The solution given by the Arbitrator is called "Award". Arbitration is one of the much-needed mechanisms in the era of globalization where parties or entities need a favorable, reasonable, and less time-consuming mode of dispute resolution. Hon'ble Supreme Court has categorized the disputes falling outside the category of arbitration as non-arbitral disputes in a judgment *Booz Allen and Hamilton Inc V. SBI Home Finance Ltd*<sup>7</sup>. Those matters are:
- Disputes relating to Criminal Offences

<sup>2</sup> Krishna Agarwal, RUSSIAN LAW JOURNAL Volume II (2014) Issue 2 Page No. 64

<sup>3</sup> Page 55, Role of Alternative Dispute Resolution as a Mechanism for Administration of Justice <http://hdl.handle.net/10603/190313>

<sup>4</sup> *Vytla Sitanna vs. Marivada Viranna* (AIR 1934 PC 105)

<sup>5</sup> Deepa Praveen Patil, S.A.Shah Department of Law, Shivaji University "A Study On Alternative Dispute Resolution Mechanism With Special Reference To

Districts Of Kolhapur Sangli Ratnagiri" Available at: <http://hdl.handle.net/10603/111472>

<sup>6</sup> Jagdeep Singh Bakshi, Arbitration law in India: Everything you want to know, The Statesman (May 21, 2019 8:04 pm) Available at: <https://www.thestatesman.com/india/arbitration-law-in-india-everything-you-want-to-know-1502757528.html>

<sup>7</sup> *Booz Allen and Hamilton Inc V. SBI Home Finance Ltd* (2011) 5 SCC 532



- Family Law matters
- Matters related to guardianship,
- Matters related to insolvency and winding up
- Matters related to Eviction proceedings
- Matters related to Patents, Trademarks, and copyrights
- Matters related to Anti-trust/ Competition Laws
- Matters related to Bribery/ Corruption Laws
- Matters related to Fraud

ii) **Mediation:** Mediation is a type of ADR in which the parties discuss their disputes in front of a third party who is trained and impartial and he/she helps them in reaching out to a solution. It can be a formal or informal meeting for the settlement of any dispute. Mediation is very effective in reducing the time in resolution of any dispute and also reduces the expenses in comparison to litigation.<sup>8</sup> In the case of mediation, both parties are in a win-win situation as a solution is taken out with the consent of both the parties. The process of mediation legally gained its legal recognition in India in the Industrial Dispute Act, 1947. Parliament brought an amendment in the year 1999, the Code of Civil Procedure Act. Section 89 of CPC allowed the courts to refer a matter into Arbitration, Mediation, Conciliation, or Judicial Settlements through Lok Adalats. In it, the consent by the parties was mandatory. Under rule 5 (f) (iii), courts were allowed to refer a matter into mediation even the parties do not agree to it.<sup>9</sup>

iii) **Negotiation:** The genesis of the term negotiation is from two Latin expressions which are “negotiates” (the past participle of

the term “negotiare” i.e. to carry on business) and “Negotium” (which means not leisure). Negotiation is a procedure to settle a dispute between two or more involved parties or their lawyers without the help of any third party. The procedure of negotiation is the primary mode of ADR. It aims to resolve a dispute by the mode of exchange of issues and views. Negotiation is considered to be the most economical mode of dispute resolution.

iv) **Conciliation:** Conciliation is a form of ADR where any third party or parties is/are appointed with the mutual consent of both the parties and the dispute is resolved by that third party by bringing the parties to an agreement. The essential ingredients of conciliation are Confidence Trust & Faith. This form of ADR has a less formal nature. The basic difference between Conciliation and Arbitration is: “Conciliation” is a procedure where parties or entities, with the help of a dispute resolution professional (the conciliator), examine issues to come to an agreement whereas “Arbitration” is a procedure where the parties or entities to a dispute present arguments, points, and evidences to a dispute resolution professional known as the arbitrator (a neutral third person appointed by mutual consent of both the parties) and the decision made by the arbitrator is binding on both the parties.

v) **Lok Adalat:** Lok Adalat is a type of ADR which serves as a forum where the pending cases or disputes in the courts of law are resolved or the disputes are settled at the pre-litigation stage through conciliations and negotiations methods. Under the Legal

<sup>8</sup> Mediation in India, Available at: <https://www.mediate.com/articles/mediation-in-india-articile.cfm>

<sup>9</sup> Akanksha Mathur December 28, 2017, How Does The Mediation Process Work – Steps and Procedure, Ipleaders Intelligent Legal Solutions Available at: <https://blog.ipleaders.in/mediation-in-india-process/>



Service Act, 1987 statutory status is given to Lok Adalats. By the provision under this act, the decision or award made by the Lok Adalat is regarded to be a decree of a civil court and is last and authoritative on all the parties and no appeal in any courts of law can take place against the award. Also, in Lok Adalats the parties directly interact with the judge and it is not possible in the regular litigation in courts of law. In the event, when the parties are not fulfilled with the grant of the Lok Adalat there is no provision of appeal but the parties can opt for litigation by filing a case in the competent court of law as out of their right to litigate. When a matter is filed in Lok Adalat, there is no court fee payable.<sup>10</sup>

### Legislations on ADR in India

There are different legislations on ADR in India. Given below is the list of legislations:

- Lok Adalats are governed by the Legal Service Act, 1987
- Arbitration and Conciliation Act, 1996 (The law on Arbitration in India is based on English Common Law and the basis of derivation of this act is from UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules of 1976<sup>11</sup>)
- Section 89 of the Code of Civil Procedure, 1908, as amended in the year 2002 introduces mediations, conciliations, and pre-settlement of disputes.

### Benefits of Alternative Dispute Resolution

- Litigation in the present time is quite costly so in this situation, the ADR mechanism

saves money as well as resources of the parties.

- The ADR mechanism saves time of the parties as courts in the present time takes a comparatively long time to settle any dispute. Also, when after the decision, damages are to be paid, there is depreciation in the value with passage of time.
- By it, parties can resolve their disputes even by their mutual consensus. In this case, both the parties are in a win-win situation.
- By it, the parties can minimize the interventions of courts.
- It increases the satisfaction level among the parties.
- It can preserve the relationship between the two parties and also it avoids the scope for any future conflict.
- It reduces the burden of the courts as courts of law in India are overburdened with pending cases.
- By it, the parties can avoid technicalities of the courts and can also disclose their views freely without any kind of fear of the court.
- Even in ADR, the final result or decision can be kept confidential by the parties, which is not possible in the case of a judgment.
- Early and cost-effective resolution of disputes can build up a good relationship between a lawyer and his/her client.

### Future of ADR in India

There is a pendency of 33.84 million cases at the district level judiciary and 4.57 million cases at high courts.<sup>12</sup> In addition to it, there is a vacancy of 35.6% judges at high courts

<sup>10</sup> <http://www.legalserviceindia.com/legal/article-1823-lok-adalat-alternative-dispute-resolution-mechanism-in-india.html>

<sup>11</sup> Jagdeep Singh Bakshi, Arbitration law in India: Everything you want to know, The Statesman (May 21, 2019 8:04 pm) Available at:

<https://www.thestatesman.com/india/arbitration-law-in-india-everything-you-want-to-know-1502757528.html>

<sup>12</sup> 'E-Courts Services'

[https://ecourts.gov.in/ecourts\\_home/](https://ecourts.gov.in/ecourts_home/) accessed 29 October 2020



and 21.4% judges at district level judiciary.<sup>13</sup> Courts in India at the present time are overburdened and it becomes difficult to get timely redressal of any dispute. Litigation in the present time is also quite expensive. In order to resolve a matter in less time and in a cost-effective manner, ADR is the best solution. Also, courts are supporting the ADR mechanism and are promoting out of court settlements. Even this can be reflected in a judgment *Salem Advocate Bar Association v. Union of India*<sup>14</sup> where the Supreme Court of India was having a strong stance towards pro-mediation. With the passage of time, the people of India are getting aware of the benefits of ADR and now parties themselves look forward to it. These are many matters in the present time which are solved by Arbitrations and Mediations. Even there are many international matters resolved through the mechanism of ADR. In India, many institutions have been set up which provides training to ADR professionals especially Arbitrators and Mediators to gain expertise over their fields of interest. Pre COVID in India (also in the other countries), generally these procedures took place by physical means, but post-COVID, the situation is changing. There is a shift towards resolving the disputes online and the E-Arbitrations and E-Mediations processes are prevalent. Many E-Arbitration centers are opened and started its functioning.

In some context, it can be said to be beneficial for everyone as it saves a lot of time and resources involved in any particular arbitration or mediation. Even court proceedings are taking place through the mode of Video Conferencing and it is observed that this is a cheap and easily fixable mode for litigation. All these procedures taking place can be said as the future of dispute resolution as we have all technological resources which can be easily utilized. Even there are times when the court identified the need for Online Dispute Resolution. Hon'ble Mr. Justice N.V. Ramana stated that online dispute resolution can be used to resolve disputes related to family, commercial, consumer, and business successfully.<sup>15</sup> In the cases, *Trimex International v Vedanta Aluminium Ltd*<sup>16</sup> and *Shakti Bhog v Kola Shipping*<sup>17</sup>, the validity of online arbitration was recognized by the court. On the other hand, as there is an evolution in the system, it has been little difficult for many people to evolve from the traditional pattern to a new pattern. There can be different reasons for facing such difficulties like lack of sound knowledge of latest technology, lack of confidence to work on a new pattern, etc. But people are trying their best to evolve towards the new normal during this pandemic. Even in this pandemic, in Chhattisgarh and Karnataka, e - Lok

<sup>13</sup> As per the statistics released by the Department of Justice on 1 May 2020, 385 out of 1079 positions were lying vacant in the High Courts. See Department of Justice, 'Statement Showing Sanctioned Strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts (as on 01.05.2020)' accessed 29 September 2020

<sup>14</sup> *Salem Advocate Bar Association v Union of India* AIR 2005 (SC) 3353

<sup>15</sup> Justice N.V. Ramana, 'Delay reduction at different tiers of the court system, pre-trial settlement (use of conciliation procedures for dispute resolution) – The experience of the Supreme Courts of Shanghai Cooperation Organization (SCO) countries' accessed 20 May 2020, See also 'Justice Ramana Tells SCO to Harness Technology To Resolve Disputes' (India Legal, 21 June 2019) accessed 29 October 2020

<sup>16</sup> *Trimex International v Vedanta Aluminum Ltd* 2010(1) SCALE574

<sup>17</sup> *Shakti Bhog v Kola Shipping* (2009) 2 SCC 134



Adalats were organized successfully.<sup>18</sup> This can be said as an example of such evolutions. Similarly, many new techniques will be implemented and adopted in the coming days to fulfill the demand of the time and in order to move forward towards a progressive future.

### **Making the Mechanism of ADR more Participative**

After going through the detailed information about this mechanism, we can say it is very beneficial. Still, there are sections of the society that are not well informed as well as are not familiar with the mechanism of ADR and depend on the traditional pattern of dispute resolution i.e. through courts of law. Especially, among the backward and unprivileged masses of India, there is less awareness about this mechanism. So, to make ADR more participative among them, we need to spread awareness through various mediums. Such mediums can be newspapers, electronic media, street plays, hoardings, campaigns (in different forms like rallies, announcements), etc. Overall, this should be kept in mind that all these mediums are adopted in such a manner (like language, dialects, etc.) that the message reaches them. Even highlights of this mechanism can also be given in the subjects at school level so that the coming generation can at least know about it and in the future, they can draw comparison between the traditional mode of litigation and mechanism of ADR and finally make the most appropriate choice. In addition to it, there is a need to promote ADR in non-commercial cases as well, as ADR in India is prevalent in maximum commercial matters. With it, we also need to work on the

development of ADR institutions in India. At present, there are very few such institutions available to resolve disputes. Such institutions are required at every level so that masses of every place belonging to every section of the society can look forward to resolving their dispute through them. From time to time, funding those ADR institutions are also required in order to keep them updated, well maintained so that they can resolve dispute of the masses timely in a best possible and cost-effective manner. It is also on the part of the legal professionals to aware their clients about the mechanisms of ADR and encourage them as well as help them in settlement of their disputes out of the courts of law. This can help them in building up a good relationship with his/her clients as well as can also help the legal professionals in saving their time which can be utilized to work on other matters.

### **Conclusion**

In the present time, the increase in disputes is resulting to increase in cases in the courts of law and it further leads to delay in getting justice as the courts in the present time are already overburdened with cases as discussed in one of above the paragraphs. Also, there are some limitations to the traditional mechanism of dispute resolution (lack of proper communication between the two parties being one of the major limitations) so in this situation, we need to implement the mechanism of ADR as soon as possible. Though in the case of commercial matters the mechanism of ADR (especially arbitration) is adopted for the redressal of disputes but there is also a need to broaden the scope of it. To make this technique more adoptive,

<sup>18</sup> Mustafa Plumber, 'First 'Virtual Lok Adalat' Held In Karnataka', (Live Law, 15 July 2020)

<<https://www.livelaw.in/news-updates/firstvirtual-lok-adalat-held-in-karnataka-159924>> accessed 29 October 2020.



initiatives have been taken at various levels. Mediation centers are set up in courts and the court endeavors to settle a matter through mediations. From time to time, different committees have been formed and different amendments and legislations have been introduced to broaden the scope of ADR but these all initiatives are only successful if parties to any dispute by themselves look forward to resolving the disputes through ADR at the pre-litigation level or at any other level. This is because until, the parties do not make up their minds towards resolving their dispute through the ADR mechanism, such initiatives are of no use. Even if they are forced to go for the same, the result will of no value as in such condition mutual consent to a decision can never be drawn. So, in such condition, the masses themselves will be playing a big role. Also, it is required to spread awareness amongst the masses regarding this mechanism and how can it be beneficial for them as many people in the country are unaware of this concept. Apart from all these, there is a change in the medium of ADR post COVID. Things are going on through virtual mode and it has many strengths and weaknesses. In this condition, it becomes very important for the professionals and to some extents parties as well to have a sound knowledge of the latest technology as this has become a new normal in our day to day lives. Though we are expecting for situations to be normal but the present pattern will altogether have an impact. Moreover, keeping all the discussed points in mind we need to look forward towards this mechanism at a large level (though many of us are looking forward to) and make it the future of dispute resolution in India so that we may secure justice in less time and in a cost-effective manner as the

right to get speedy justice is every individual's fundamental right.

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