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Alternative Dispute Resolution: Types, Benefits and Drawback

PINKI KRISHNARAO CHURAD¹

ABSTRACT

This paper examines the various methods of Alternative Dispute Resolution (ADR) as an effective and efficient alternative to traditional Court-based litigation in India. It provides a means for disputing parties to reach an amicable settlement with the assistance of a neutral third party. ADR is applicable to a wide range of matters, including industrial, family disputes, civil, commercial, where negotiation between disputing parties may be challenging or unsuccessful. In ADR, the neutral third-party acts as a facilitator to assist the parties communicate effectively, discuss their differences, and work together to find a mutually agreeable solution. The paper delves into the four primary modes of ADR. Negotiation the most informal mode, involves direct communication between disputing parties to approach mutually acceptable agreement. Meditation, a voluntary process facilitated by a neutral third party, aims to help parties in finding common ground and crafting a solution. Arbitration a more formal process, entails presenting the dispute to a neutral arbitrator or panel of arbitrators whose decision is binding on the parties. Conciliation, a blend of meditation and arbitration, allows the conciliator to propose solutions while maintain the voluntary nature of the process. Furthermore, the research explores the legal framework and institutional support for ADR in various jurisdiction. Legislative provisions and Court rulings impacting the integration and acceptance of ADR are evaluated, highlighting the commitment of governments to embrace ADR as an important part of the justice. While ADR presents various advantages, the paper also addresses some challenges and criticism. Ensuring the enforceability of ADR agreements, dealing with power imbalances between parties and guarding against potential misuse are important consideration in enhancing the credibility and effectiveness of ADR.

Keywords: ADR, its need, laws on ADR, benefits, drawbacks, case laws.

I. INTRODUCTION

It is a well-known fact that the current Judicial System in India is extremely expensive and time-consuming nature. The lengthy delays in litigation have destroyed the faith of the common people in the judicial process, leading to a lack of confidence in the traditional courts. As a

¹ Author is an Assistant Professor at G H Rasoni Law College, Nagpur, India.

result, alternative remedies for dispute resolution have emerged, with Alternative Dispute Resolution (ADR) mechanisms gaining popularity because of their ability to provide more affordable and faster justice. Let's delve into the details of why ADR is being preferred by disputing parties:

Cost-effectiveness: Traditional litigation can be financially burdensome for disputing parties. The costs associated with court fees, attorney fees, stamp fees and other expenses can quickly add up. On the other hand, ADR methods, such as mediation and negotiation, conciliation are generally more cost-effective, as they involve less formalities and streamlined processes, reducing overall expenses compare to Court process.

Expediency: The delays in the judicial system can be frustrating for parties seeking a resolution to their disputes. Court system are often crowded, leading to significant waiting periods before cases are heard. In contrast, ADR processes, particularly mediation and arbitration, offer more expeditious outcomes. Parties can schedule sessions promptly, and the resolution can be achieved in a relatively short time frame.

Flexibility and Informality: ADR methods provide more flexibility and informality compared to court proceedings. This informal method encourages open communication and fosters cooperative problem-solving, which can lead to more satisfactory outcomes for the parties involved.

Confidentiality: ADR processes often offer greater confidentiality, which can be particularly important in sensitive matters. Confidentiality safeguards the parties' privacy and can help maintain business relationships and personal reputations as well.

Preservation of Relationships: Litigation can create a confrontational environment that may strain relationships between the parties involved. ADR allows for a more collaborative approach, promoting understanding and potential resolution without damaging the long-term relationship between the disputing parties.

Customized Solutions: ADR methods permit the disputing parties to design their solutions, tailored to their unique needs and interests. This flexibility can result in more creative and mutually beneficial resolutions that may not be possible within the constraints of the court system.

Less Adversarial Approach: Traditional litigation often positions parties against each other as adversaries, leading to a win-lose mentality. ADR, on the other side, encourages cooperation and focuses on finding win-win solutions, which can be more satisfying for all parties involved in dispute.

Expertise of Neutrals: In ADR, parties have the option to choose experienced and knowledgeable neutrals, such as mediators or arbitrators, who have expertise in the relevant area of law or industry. This can lead to more informed and efficient resolution of disputes.

Due to these significant advantages, ADR mechanisms have emerged as a preferred option for resolving disputes, especially when parties seek cost-effective, timely, and less adversarial alternatives to traditional litigation. Many legal systems now encourage or mandate ADR processes before allowing cases to proceed to court, further promoting the use of ADR as an effective and beneficial means of resolving disputes.

II. TYPES OF ADR MECHANISMS

Alternative Dispute Resolution (ADR) is generally classified into the following types -

- Arbitration
- Mediation
- Conciliation
- Negotiation
- Lok-Adalat

(A) Arbitration -

Arbitration may be defined as a “mechanism for the resolution of disputes which take place usually pursuant to an agreement between two or more parties, under which parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed other consideration, after a fair hearing such decision being enforceable by law.”²

From the above definition, it may be inferred that arbitration is a process of dispute resolution where parties involved in a dispute agree to have their matter resolved with the help of neutral third party, known as the arbitrator or arbitral tribunal, rather than going to court. This process is governed by an Arbitration Agreement, which is a contractual arrangement entered into by the disputing parties, either before or after the dispute arises.

The key points about arbitration are:

Purpose: The main purpose of arbitration is to resolve disputes in a fair and equitable manner, avoiding the need for traditional litigation in court.

Neutrality: The arbitrator or arbitral tribunal is an impartial neutral third person chosen by the

² Bernstein, Handbook of Arbitration Practice, p.13 (1998), 3rd ed.

parties involved in the dispute. Their role is to consider the evidence and arguments presented by both sides and issue a binding decision called an arbitration award.

Flexibility: Arbitration can be conducted in various forms, such as ad-hoc arbitration (non-institutional), contractual arbitration (included in a specific agreement), institutional arbitration (administered by an arbitration institution), or even mandated by statute in some jurisdictions i.e. statutory arbitration.

Enforceability: Arbitration awards are generally enforceable under international conventions, making them legally binding on the parties involved.

Benefits: The primary advantages of arbitration include its efficiency, convenience, cost-effectiveness, and privacy. It offers a faster resolution process compared to traditional litigation and is particularly useful in international commercial disputes, where parties from different jurisdictions may prefer a neutral forum.

Voluntary Agreement: For arbitration to take place, both disputing parties must agree to it in advance through an Arbitration Agreement. This agreement outlines the terms and conditions under which the arbitration will be conducted.

Non-Appealable: In most cases, arbitration awards are final and binding. There are limited grounds for challenging an award under Arbitration and Conciliation Act, primarily related to procedural irregularities or serious errors of law.

Role of National Courts: While arbitration is an autonomous process, national Courts play a supportive role, such as enforcing arbitration agreements, appointing arbitrators, and facilitating the process when necessary.

(B) Mediation –

Mediation is a voluntary and informal process for resolving disputes worldwide. It involves a simple, party-centered, and structured negotiation process facilitated by a neutral third party, known as the mediator. The mediator assists the disputing parties in finding an amicable resolution by using specific communication and negotiation techniques.

In mediation, the process is entirely controlled by the parties involved. They willingly participate in the mediation and have the freedom to express their perspectives, interests, and concerns. The mediator's role is that of a facilitator who guides them and encourages communication between the parties.

Unlike a judge or arbitrator, the mediator does not make decisions or impose settlements on the parties. The mediator remains impartial and does not impose their own view of what a fair

settlement should be. Instead, they assist the parties in exploring various options, understand each other's positions, and work together to find a resolution that satisfies both parties' interests.

Mediation is widely used in different areas of dispute, including family matters, commercial disputes, workplace conflicts, community issues, and more. Its voluntary and collaborative nature makes it an attractive alternative to traditional litigation, as it preserves relationships between parties, allows for creative solutions, and empowers the parties to have more control over the outcome of their dispute. The confidentiality of mediation proceedings also encourages open communication and contributes to its effectiveness as a dispute resolution method.

In the case of *K. Srinivas Rao v D.A. Deepa*,³ the Supreme Court has held that mediation is an avenue that must be exhausted in matrimonial disputes. The procedure followed for such proceedings is generally as per the rules provided by respective High Courts, but that does not prevent a Family Court from laying down its own procedure.⁴

(C) Conciliation –

Conciliation is also a dispute resolution process which involves settling disputes without resorting to Court litigation. It is a voluntary method where an independent third party or persons, selected by the parties with mutual consent, are appointed to facilitate the resolution of the dispute through consensus. The conciliator employs persuasive techniques similar to mediation to encourage the disputing parties to reach settlement.

In conciliation, the conciliator's role is to facilitate communication between the parties, identify common ground of dispute, and explore possible solutions to it. The conciliator does not impose decisions or make binding judgments, instead, they help the parties in finding a mutually acceptable resolution.

The process of conciliation focuses on fostering cooperation, understanding, and compromise between the disputing parties. The conciliator helps the parties to see the strengths and weaknesses of their positions and encourages them to reach an agreement that meets their respective interests.

Conciliation is commonly used in different types of disputes, such as labor and employment conflicts, family disputes, commercial disagreements, and community matters. It offers a less adversarial and more cooperative approach to resolving conflicts, promoting relationship preservation and cost-effective resolution. Like other alternative dispute resolution (ADR) methods, conciliation empowers the disputing parties to actively participate in the decision-

³ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

⁴ Family Courts Act 1984, §.9 and 10(3), No. 66, Acts of Parliament, 1984 (India)

making process and reach a resolution that best suits their needs. The voluntary and consensual nature of conciliation makes it a valuable tool in the realm of dispute resolution.

In the HALSBURY'S LAWS OF ENGLAND⁵, the terms „arbitration“ and „conciliation“ have been differentiated as under:

“The term arbitration“ is used in several senses. It may refer either to a judicial process or to a nonjudicial process is concerned with the ascertainment, declaration and enforcement of rights and liabilities, as they exist, in accordance with some recognized system of law. An industrial arbitration may well have for its function to ascertain and declare, but not to enforce, what in the parties, and such a function is non- judicial. Conciliation is a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of a conciliation board an arbitrator”

Gone are the days when arbitration was considered to be a more cheap and efficacious remedy. Now the situation is completely reversed. Arbitration proceedings have become too technical and expensive. In this context, reference may be made to judgment of the Supreme Court of India. In *Guru Nanak Foundation V. Rattan Singh & Sons*⁶, it was observed: “Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal more effective and speedier for resolution of disputes avoiding procedural claptrap and this led to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an exception challenged in the courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the court been clothed with” legalese“ of unforeseeable complexity.”

Confidence, trust & Faith are some essential ingredients of conciliation. This effective means of ADR is often used for domestic as well as international disputes. Some Significant difference is there while using it for domestic or international disputes.

(D) Negotiation –

Negotiation is indeed a form of alternative dispute resolution (ADR) where there is no third-party intervention with the authority to impose a resolution on the parties involved. Participation in negotiation is voluntary, and the process aims to reach a settlement through direct

⁵ Halsbury's Laws Of England, 4th Ed, Vol. 2, paragraph 502.

⁶ *Guru Nanak Foundation v. Rattan Singh & Sons*, AIR 1981 SC 2075

communication and discussion between the disputing parties.

Essential points of negotiation as an ADR method are as follows:

Voluntary Participation: In negotiation, the parties involved in dispute willingly engage in the process without any external compulsion.

Non-Binding Procedure: Negotiation is a non-binding process, meaning that disputing parties are not obligated to accept any proposed resolution unless they voluntarily agree to it.

No Imposition of Resolution: Unlike arbitration or Court litigation, where a third party makes a binding decision, negotiation allows the parties themselves to determine the outcome of the dispute.

Direct Communication: Negotiation involves direct communication between the parties involved in dispute, allowing for open discussions and an opportunity to understand each other's perspectives.

Common Method: Negotiation is the most common and widely used method of ADR. It can occur informally or through formal negotiation sessions facilitated by legal representatives or mediators.

Flexible and Informal: The negotiation process is flexible and informal, allowing disputing parties to explore various options and creative solutions to reach an agreement.

Preserves Relationships: As a collaborative approach, negotiation often helps maintain or even improve relationships between the parties involved.

Negotiation is employed in a wide range of disputes, including business negotiations, contract disagreements, labor and employment disputes and interpersonal conflicts. It is a valuable method of dispute resolution due to its voluntary nature, the parties' direct involvement, and the potential for reaching a mutually satisfactory resolution without the need for formal adjudication or intervention from a third party.

(E) Lok-Adalat –

Lok Adalat is an alternative dispute resolution system developed in India and established under the Legal Services Authority Act of 1987. The act outlines the powers and functions of Lok Adalat. The preamble of the act underlines its purpose, which is to provide free and competent legal services to the weaker sections of society at large, ensuring equal access to justice for all citizens, regardless of economic, social or other disadvantages. The goal is to promote justice on the basis of equal opportunity.

Lok Adalat offers a fast and cost-effective way of resolving disputes. They are particularly effective in settling money claims and cases such as matrimonial disputes, partition suits, damages. This effectiveness is due to the high potential for compromise and finding mutually acceptable solutions in these cases.

The primary advantage of Lok Adalat is their ability to provide speedy justice with reduced expenses. By encouraging parties to engage in constructive dialogue and compromise, Lok Adalat play a crucial role in promoting amicable settlement of dispute.

Overall, Lok Adalat significantly contributed to enhancing access to justice for the weaker sections of society and reducing the burden on the formal judicial system in India. Through the approach of voluntary participation by the parties and the focus on equal opportunities for justice, Lok Adalats have emerged as a valuable and efficient method of resolving disputes in the country.

The Apex Court, emphasizing the importance of Lok Adalats has observed:⁷ “Lok Adalats have been created to restore access to remedies and protections and alleviate the institutional burden of the millions of petty cases clogging the regular courts. Experience has shown that not only huge numbers of cases are settled through Lok Adalats, this system has definite advantages, some of which are listed below:- (a) speedy justice and saving from the lengthy court procedures; (b) justice at no cost; (c) solving problems of back-log cases, and (d) maintenance of cordial relations.”

Lok Adalats are organized and conducted by the State Legal Services Authority, District Legal Services Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee. Each of these legal services authorities has the jurisdiction to organize Lok Adalats for specific areas within their respective regions.⁸

In conclusion, the broader implementation and effectiveness of Lok Adalat can be achieved through increased public awareness of its advantages and willingness of the people to opt for this alternative dispute resolution (ADR) mechanism. To strengthen Lok Adalat, introducing more provisions and innovative strategies is important, particularly by empowering permanent Lok Adalat and positioning them as a supplementary form of litigation for individuals who may face barriers in accessing the formal court system. By promoting Lok Adalat as accessible, reliable and efficient platform for resolving disputes, we can foster a culture of trust and cooperation, ultimately leading to a more inclusive and responsive justice system that caters to

⁷ Madhya Pradesh State Legal Services Authority v. Prateek Jain and Another, (2014) 10 SCC 690

⁸ Legal Services Authorities Act, 1987, No. 39 Act of Parliament, 1987 (India).

the needs of all segments of society.

III. CONSTITUTIONAL PROVISIONS FOR ADR IN INDIA

- **Article 14 - Right to Equality:** Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws. ADR mechanisms, such as arbitration and mediation, provide an equal opportunity and equal protection for all parties to resolve disputes in a fair and non-discriminatory manner. The principle of equality ensures that individuals have access to justice without any discrimination.
- **Article 21 - Right to Life and Personal Liberty:** Article 21 of the Indian Constitution protects the right to life and personal liberty. ADR methods, like mediation and conciliation, aim to provide speedy, timely and efficient resolution of disputes, ensuring that individuals right to justice is protected and disputes are to be resolved without unnecessary delays.
- **Article 39A - Equal Justice and Free Legal Aid:** Article 39A of the Indian Constitution is a Directive Principle of State Policy (DPSP) that emphasizes the state's obligation to ensure equal justice and free legal aid to those who cannot afford to defend themselves in Court. ADR aligns with this constitutional provision by offering accessible and cost-effective dispute resolution options.⁹

Food Corporation of India v. Joginderpal,¹⁰: In this case, the Supreme Court emphasized that arbitration must be simple, less technical, and more responsive to the actual reality of situations.

IV. CASE LAWS

The Court highlighted the importance of achieving justice and fair play in arbitration proceedings.

Salem Advocate Bar Association v. Union of India,¹¹: In this landmark judgment, the Supreme Court recognized the significance of Lok Adalats in providing speedy and amicable dispute resolution. The court held that Lok Adalats play a crucial role in achieving the constitutional goal of ensuring justice for all.

*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*¹²: In this case, the Supreme Court emphasized the importance of mediation as an effective means of dispute

⁹ India Const. arts 14,21,39A.

¹⁰ *Food Corporation of India v. Joginderpal*, 1989 AIR 1263

¹¹ *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

¹² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

resolution and encouraged parties to adopt mediation to resolve their disputes amicably.

Suresh Chandra v. Daulat Ram, (2005) 2 SCC 717: In this judgment, the Supreme Court observed that the main objective of ADR mechanisms is to promote conciliation and settlement of disputes between parties, reducing the burden on the formal judicial system.

(A) Legislations Supporting ADR in India:

The Arbitration and Conciliation Act, 1996: This legislation governs domestic as well as international arbitration and conciliation proceedings in India. It provides a legal framework for the resolution of commercial disputes through arbitration and conciliation.

Case Laws - Bharat Aluminium Co. v. Kaiser Aluminium Technical Services¹³, In this landmark case, the Supreme Court emphasized the importance of minimal judicial intervention in arbitration proceedings. The court held that the judiciary should adopt a hands-off approach and ensure that the arbitration process remains effective and efficient. This case reaffirmed the pro-arbitration stance of Indian courts.

The Legal Services Authorities Act, 1987: This legislation establishes legal services authorities at various levels to provide free legal aid and ensure access to justice for economically weaker sections of society. It empowers these authorities to organize Lok Adalats for amicable settlement of disputes.

Case Law: State of Punjab v. Jalour Singh¹⁴, In this case, the Supreme Court upheld the significance of Lok Adalats in resolving disputes and reducing the burden on the formal court system. The court recognized Lok Adalats as an essential tool for providing affordable and accessible justice.

The Mediation and Conciliation Project Committee (MCPC) Scheme: This scheme, introduced in 2005, aims to promote mediation as an effective method of dispute resolution. It provides a panel of trained mediators to facilitate settlement of disputes through mediation.

Case Law: Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd¹⁵, In this case, the Supreme Court highlighted the importance of mediation as an alternative to litigation. The court encouraged parties to resort to mediation for amicable settlement of disputes, emphasizing its effectiveness in reducing litigation time and costs.

The Commercial Courts Act, 2015: This Act seeks to expedite the resolution of commercial

¹³ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services*, (2012) 9 SCC 552.

¹⁴ *State of Punjab v. Jalour Singh*, (2008) 2 SCC 660

¹⁵ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd*, (2010) 8 SCC 24

disputes in India. It mandates pre-institution mediation as a prerequisite before filing commercial disputes in designated commercial courts.

Case Law: Salem Advocate Bar Association v. Union of India¹⁶, In this judgment, the Supreme Court recognized the significance of ADR mechanisms, including pre-institution mediation, in providing speedy and cost-effective resolution of disputes. The court emphasized the need for parties to explore mediation as an alternative to traditional litigation.

(B) Advantages -

The ADR system offers numerous advantages over traditional litigation, making it a preferred mode for resolving disputes. Some of the advantages of ADR are as follows:

Flexibility and Speed: ADR processes can be initiated at any time during the dispute resolution process, providing disputing parties with the flexibility to select when and how to resolve their issues. Compared to Court proceedings, ADR offers a speedy resolution of dispute, avoiding the lengthy delays often associated with litigation.

Cost-Effectiveness: ADR is generally less expensive than going to Court. It eliminates the need for extensive legal representation and formal court procedures, thereby reducing overall costs for the parties involved in dispute.

Amicable Resolution: ADR promotes amicable mechanisms for resolving disputes. By encouraging communication and negotiation, it creates an environment where parties involved can work together to find mutually beneficial solutions, preserving relationships and minimizing animosity.

Informality: ADR processes are very less formal than Court proceedings, which can be intimidating for some individuals. Parties can express themselves more freely, leading to better communication and understanding between them.

Voluntary Participation: ADR is a voluntary process, meaning parties participate willingly. This voluntary aspect increases the chances of cooperation among the parties and compliance with any settlement reached.

Reduced Workload on Courts: By diverting cases to ADR, the burden on the regular Courts is reduced, allowing them to focus on more complex and contentious matters. This helps in the efficient functioning of the judicial system in India.

Confidentiality: ADR procedures offer a level of confidentiality that is often not present in

¹⁶ Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344

Court proceedings. This allows parties to discuss sensitive issues openly, without fear of public exposure. This is one of the advantages of ADR system.

Preservation of Relationships: ADR aims to preserve relationships between parties, especially in cases where they have ongoing or future business dealings. By finding collaborative solutions, ADR can help maintain cordiality between disputing parties.

Creative Solutions: ADR encourages creative problem-solving and allows parties to explore different options for resolution, not just monetary compensations. This can lead to more satisfactory and tailored outcomes for both parties.

In summary, the ADR system provides a range of advantages, including flexibility, cost-effectiveness, amicable resolution, informality, and the preservation of relationships. Its voluntary nature and confidentiality also contribute to its effectiveness in resolving disputes and minimizing the burden on the traditional court system.

(C) Disadvantages -

The ADR system, while offering various benefits, also comes with certain disadvantages. Some of the key disadvantages of ADR are as follows:

Unfamiliarity and Awareness: Many individuals and businesses may not be familiar with ADR methods, leading to hesitation in adopting them. Lack of awareness among some people about the benefits and processes of ADR can hinder its widespread use.

Unequal Bargaining Power: In cases where there is a significant power imbalance between the parties, the weaker party may be reluctant to submit to ADR. They may prefer the formal court system, where legal protections may be perceived as more robust.

Non-Binding Nature: One of the drawbacks of ADR system is that any solution arrived at through the process is not legally binding unless the parties involved voluntarily agree to make it so. This lack of enforceability can sometimes lead to non-compliance with the agreed-upon resolutions.

Limited Scope for Certain Disputes: ADR system may not be suitable for all types of disputes, particularly those involving fundamental rights, title to property, or complex legal issues. In such cases, disputing parties may seek recourse in the formal court system.

Time-Consuming Consent Process: Before initiating ADR process, all parties must agree to participate voluntarily. Obtaining consent from all parties can be time-consuming and may delay the resolution process.

Lack of Judicial Guidance: In ADR, the parties themselves are responsible for reaching an

agreement. There is no judicial authority to provide guidance or make decisions, which could be seen as a main drawback in complex cases where legal expertise is required.

Inadequate Compliance Mechanisms: While parties involved in dispute may reach a resolution through ADR, there may be limited mechanisms to enforce compliance with the agreed-upon terms, which could lead to difficulties in case of non-compliance.

Potential Abuse: In some cases, parties may attempt to use ADR system to delay or evade the resolution of a dispute, leading to potential abuse of the process.

V. CONCLUSION

While ADR offers various advantages, including efficiency and cost-effectiveness, it also has its some drawbacks. Unfamiliarity, non-binding nature, limited scope, and potential abuse are some of the challenges that need to be considered when opting for ADR as a dispute resolution method. Parties must carefully assess the suitability of ADR system for their specific dispute and be aware of its limitations before choosing this alternative approach.
