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How does ADR Mechanism work in Consumer Dispute Settlement & Accidental Claim?

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ABSTRACT

Mediation and conciliation are the non-adjudicative approaches to ADR, which primarily envision a client centric process with the view to air grievances with a neutral third party to facilitate communications. Arbitration, however, “emphasises rights and applications of law,” and an ultimate finality with the decision of the appointed arbitrator. While there are certain key differences with regard to these processes, it seems to be the primary focus of these to increase communication between the parties, offer a degree of privacy and further reduce the burden on the courts. Keeping this in mind, and the fast-paced climate with which many businesses operate, the imperative of having an effective, speedy and private mechanism of dispute settlement is crucial. ADR provides the most viable alternative, keeping in mind the status of civil litigation as it is today.

Keywords: ADR, Consumer dispute, Accidental Claims.

I. INTRODUCTION

Today’s world has become globalised and commercial with the advent of technology. People can now contact each other and settle business deals and disputes when they are sitting at the opposite ends of the world. Most people no longer have the time to go and file papers at the courts and then wait long periods for a hearing. We are rapidly approaching a stage where litigation is being replaced with alternative dispute resolution (ADR), due to the inefficiencies and drawbacks of litigation. India hasn’t quite reached a stage where litigation has been completely displaced by ADR methods, but the legal system is beginning to see the benefits of ADR. This article shall be helpful to give you an overview of the ADR methods and how it is beneficial. Alternative dispute resolution (ADR) refers to a range of dispute settlement methods which help the parties in the dispute to come to a settlement without going to court, or without litigating on the said matter. These methods usually involve a third party, who helps them in settling the disputes. In many cases, ADR methods are used alongside the litigation process as well through court authorisation.

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II. HOW DID THE CONCEPT OF ADR ARISE?

As stated in the 222nd Report of the Law Commission of India,² the Constitution has guaranteed access to justice for all, primarily through Article 39A, which states that everyone must have an equal opportunity of getting justice and this must not be denied to any citizen by reason of economic or other sort of disabilities.

The report further states that 'access to justice' for the common masses in India means access to the courts of law. But even that has been hindered, due to factors like poverty, illiteracy, ignorance, social and political backwardness etc.

In a developing country like India, many people still live in poverty. When their rights get violated, they often do not have the money to fight long battles in the Court. They do not have the money to afford a lawyer. They do not know the legal system and procedures. Therefore, they often think that the court system is an inconvenience.

These kinds of inefficiencies are shared reasons among many countries, which is why ADR is being explored. The courts also have too many pending cases and these cases keep going on for many years which is a tremendous burden to the courts.

These reasons prompted the Indian Government to enact Section 89 of the Code of Civil Procedure, 1908³ and replace the earlier Arbitration Act, 1940⁴ with The Arbitration and Conciliation Act 1996,⁵ in accordance with the mandates of the United Nations Commission on International Trade Law (UNCITRAL).

III. ADR IN CONSUMER DISPUTES

Alternative dispute resolution (ADR) implies privately addressing any issues out of the court with the help of an unprejudiced dispute resolution body. Settling consumer disputes this is simpler, quicker and more affordable than going to court.

The consumer protection Act, 1986 was sanctioned with a goal of giving better affirmation of the interests of buyers and for the smart and straightforward settlement of clients' inquiry. The Act gives convincing, prudent, direct and fast redressal of customers grievances. The Act gives convincing, prudent, direct and fast redressal of clients' complaints, which the basic courts are not prepared to give. This Act is another instance of ADR for the convincing contemplation of consumers' debate. Several reports suggest that consumer Forum have become like civil courts

² <https://lawcommissionofindia.nic.in/reports/report222.pdf>, accessed on 05 May 2023.

³ [89. Settlement of disputes outside the Court]

⁴ An Act to consolidate and amend the law relating to Arbitration.

⁵ <https://legislative.gov.in/sites/default/files/A1996-26.pdf>, accessed on 05 May 2023.

which is as opposed to their point. The ADR have contributed to explain this crisis. But , the Consumer Fora were made for ensuring justice to customers which ADR modes can't be completely trusted with.

ADR can help enterprise to maintain good relationships with consumers and gain a positive reputation in the market. It also promotes competition. But the main advantage of the efficient use of ADR in consumer matters is increased satisfaction of the users that get another option to protect their rights- a process that is fair and appropriate and uses of simpler, cheaper and faster dispute resolution methods.

IV. ADR MECHANISM IN CONSUMER DISPUTE RESOLUTION

The chief steps towards taking resort to alternative dispute resolution mechanism in India can be followed back as right on time with respect to the Bengal Regulation Act, 1772 which gave that in all instances of addressed records, parties are to are to present the same to mediators whose choices are respected as ultimate decision and ought to be last and left unchallenged. The Regulation Act, 1781 further conceived that judges should recommend the parties to present an inquiry to generally agreed individual and no reward of a go between could be set aside except if there were two witnesses that authority had submitted gross blunder or was inclined towards a party. A recommendation shockingly was made to the Second Law Commission by Sir Charleswood to suit a uniform law as for discretion. The Code of Civil Procedure was then settled as requirements be in 1859. Indian Contract Act, 1872 also sees attentiveness understanding as an exceptional case to Section 28, which envisions that any understanding in limitation of cure through legitimate techniques is void. Afterward, the Arbitration Act, 1899 was in likewise sanctioned to apply to the Presidency towns to encourage settlement of inquiries out of court. The Arbitration Act, 1940 repealed and supplanted the past Act of 1899. Exactly when India transformed into a state signatory to the convention on assertion under the Geneva Convention and remembering the ultimate objective to offer effect on the equivalent, the Arbitration (Protocol and Convention) Act was passed. Later, India likewise turned into a signatory to the New York Convention and to give impact Foreign Awards (Recognition and Enforcement) Act, 1961 was passed. After liberalization of Indian economy in the 1990's Arbitration and Conciliation Act, 1996 was requested which supplanted the past Act of 1940 and accomplished radical changes in the law of assertion and familiar thoughts like Conciliation with an assurance of the convenient settlement of issues/problems/debates of primarily business.

V. CASE LAWS

- National consumer disputes redressal commission, in its judgment *Aftab singh v emaar mgf land limited & anr*⁶, discussed in length the issue "Whether the Arbitration Act mandates Consumer Forums, constituted under the Consumer Protection Act, 1986 ("the Consumer Act"), to refer parties to arbitration in terms of a valid arbitration agreement, notwithstanding other provisions of the Arbitration Act and the Consumer Act?"
- **In *A. Ayyasamy vs A. Paramasivam***⁷, Justice D.Y Chandrachud had held that certain category of disputes as a matter of public policy are assigned to the public fora and those are excluded from public fora and authoritatively opined that forum will not be barred to entertain complaint under the consumer act, has observed as under: -

"Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration".

- **The Supreme Court of India in *Fair Air Engineers Pvt Ltd & Anr vs. N.K. Modi***⁸, while holding that the consumer forum was judicial authority, inter alia observed that "It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words 'in derogation of the provisions of any other law for the time being in force' would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e. to avail of right of civil action in a

⁶ III(2017)CPJ270(NC)

⁷ (2016) 10 SCC 386

⁸ AIR 1997 SC 533

competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy".

- **The Supreme Court of India in the case of *Booz Allen and Hamilton Inc. v SBI Home Finance Limited*⁹** explained the conceptual framework of what kinds of disputes are arbitrable and non arbitrable. "Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is in arbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes." The courts are required to draw a line between what is arbitrable and what is not arbitrable by ensuring that sensitive matters of public interest falls within the principle jurisdiction of the Courts and disputes between private parties can be freely choose to do arbitration rather than litigating their differences. Supreme court in its various decisions has interpreted section 3 of the consumer protection act and held that the act is enacted with the object to provide for better interest of the consumers and for this purpose consumer councils has been established so that the interest of the consumer can be protected by providing for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. The court in *Aftab Singh (Supra)*, further held that consumer act was envisaged as a special social legislation to protect consumer rights. Unlike other legislations that create dispute resolution mechanism between level players, this legislation established a level-playing field between unequal players i.e consumers and large Corporations.

VI. ARBITRATION IN CAR ACCIDENT INJURY CLAIMS

When you are injured in a car accident, you expect the insurance agency to pay reasonable remuneration for your medical expenses, cash based costs, and torment and languishing. When negotiation fails, arbitration might be a good option for settling your settlement dispute with the insurance agency. Arbitration is a method of alternative dispute resolution where an impartial individual is picked to hear the two sides of a disagreement and decide an outcome.

Arbitration often comes into picture when car accident claims are in dispute, regardless of

⁹ (2011) 5 SCC 532

whether under your own auto strategy, or with the to blame driver's insurance agency. Indeed, numerous strategies require intervention for settling first-party guarantee questions, which means debates with your own insurance agency.

In a car accident case, an arbitrator will decide a number of key questions. Do you recoup cash harms from the other driver? Assuming this is the case, what amount do you recuperate? Mediation ordinarily spares the gatherings time and cash, contrasted with prosecuting a case. What's more, much like a court judgment, all parties are bound by the arbitrator's decision.

Arbitration is different car accident claim mediation, with the fundamental variation being that an arbiter just attempts to encourage a goals between the parties. The mediator is no authority to rule for either side, while the arbitrator has that power.

(A) Arbitration clause in Auto Insurance Policies

Auto insurance policies are a contract between the insurance agency and the policyholder. Because arbitration is faster and less costly than courtroom war, many types of contracts, including insurance policies, require arbitration for settling disputes.

The most common reason why someone could need an arbitration hearing after a car accident is if the insurance companies cannot come to a fair resolution that both parties are satisfied with. If you are not satisfied with the resolution from the insurance company, but you do not want to file a lawsuit against the other party, you are able to resolve the claim through arbitration.

There are 2 kinds of arbitration, binding and non-binding

- Binding Arbitration - that is arbitrator's decision is final and with no appeal.
- Non-Binding Arbitration - means both parties can accept Arbitrator's judgement, or either party can reject decision and file a law suit.

(B) Insurance Companies tend to mandate binding arbitration in car insurance policies

If you can't settle your claim and your policy has an arbitration clause, you have 2 choices:

- Give up and walk away with nothing.
- Tell the adjuster you want to submit your claim to binding arbitration.

Technically, the insurance company couldn't stop you from filling a lawsuit, but their lawyers would show up in the court waving the arbitration clause in your contract.

Your lawsuit would almost definitely be dismissed. Worse, because you should have known better than to disregard the arbitration clause, you could be ordered to pay the insurance agency's fees.

Arbitration can be a decent option for resolving settlement dispute because it can save you time and money. If you live in no-fault insurance state , you may be required to arbitrate your car accident settlement disagreement.

(C) Case laws

- **In Nagaraju v Oriental Insurance Company**¹⁰, the Supreme Court while upholding the case of *Skandia Insurance Co. Ltd. v KOKILABEN*,¹¹ observed that "The exclusion term of insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damaged caused to the vehicle. In this case, the appellant was owner of the insured truck which was covered by a comprehensive insurance policy issued by Oriental Insurance Company covering risk to the limit above two lakhs. The truck sustained major damage in an accident with a gas tanker the repairs of which amounted to Rs. 8,7000/-. At the time of the accident the truck was carrying nine persons while the policy did not cover use for carrying passengers in the vehicle except employees not exceeding 6 in number. The Supreme Court observed that the presence of nine persons had not contributed in any manner to the cause of accident and also the claim did not relate any injuries to those nine persons. The claim is primarily for damage caused to be insured vehicle, which not have been denied in the present case.
- **Sky park Couriers v Tata Chemicals, II**¹² In this case, the National Consumer Disputes Redressal Commission has referred the present dispute to Justice *V.C. Tulza Purkar*, retired Judge of Supreme Court of India when both sides agreed for consensual adjudication. The records of the case were transmitted to him with a direction that the award will be sent to the commission after the arbitration proceedings are completed so that final orders can be passed by the Commission in accordance with the award. The Commission has given three months to complete the award
- **Manju Gupta v National Insurance Company**,¹³ In this case, Manju Gupta of 3 years old lost her two legs in the motor accident. A claim petition was filed for Rs. 2.21 Lakhs. During the pendency of the disputes the Lok Adalat was held at this place. The father of the claimant settled the case at Lok Adalat for Rs. 30,000/- and the insurance company immediately paid the money and filed the settlement petition at Motor Vehicle Accidents Claims Tribunal. This issue has been reported in the local new paper. The

¹⁰ (1996) 4 SCC 647

¹¹(1987) 2 SCC 654

¹² II (2000) CPJ 6(SC)

¹³ 1994 ACJ 1036

High Court of Allahabad had taken suo-moto note of the issue and directed the Tribunal to send the records to the High Court. The High Court awarded Rs. 1,10,000/- as compensation. The High Court also observed that according to order 32 Rule 6 & 7 a claim petition cannot be referred to Lok Adalat without Tribunals permission. In this case, no permission was taken from the claims tribunal. But the preceding officer of the tribunal was chairing the Lok Adalat at that time.

VII. CONCLUSION

In conclusion we can state that ADR can help enterprise to maintain good relationships with consumers and gain a positive reputation in the market. It also promotes competition. But the main advantage of the efficient use of ADR in consumer matters is increased satisfaction of the users that get another option to protect their rights- a process that is fair and appropriate and uses of simpler, cheaper and faster dispute resolution methods.
