



RESOLUTION IS JUSTICE!

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MODELS OF ALTERNATIVE DISPUTE RESOLUTION

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Introduction

Dispute resolution is an important mechanism in order to make social life stable. When civilization began and when people started interacting with each other, the basis of their rights gave birth to the dispute between them. To resolve the dispute between them, a mechanism was required. Dispute resolution mechanism aims to settle and manage disputes, facilitating cooperation between individuals and groups. Thus, it can be argued that it is the stability that people require socially, without which it can be difficult for individuals to carry on with life together. Commercial transactions are increasing in today's world. All trade can involve disputes, and effective trade must have the means to resolve disputes other than force them. In trade, if two traders are in a dispute over the price or quality of the delivered products, they will normally turn to a third party whom they trust. In the modern world this process is known as arbitration, international commercial arbitration takes formal action at international level as a dispute settlement mechanism between the parties during international trade i.e. when two countries trade with each other.

What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is a term used to describe the various ways in which legal disputes are resolved. The business world as well as common people are discovering that it is impracticable for many individuals to file lawsuits and seek timely justice. The Courts are backlogged with case files resulting in a year or more delay for the parties to hear and resolve their cases. In response to this question of delayed justice, the ADR Mechanism was created.

Alternate dispute resolutions approaches are gradually being recognized at both national and international level in the field of law and commercial sectors. The diverse approaches can help parties settle their conflicts efficiently and expeditiously on their own terms.

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In addition to the trials, alternate conflict resolution strategies are in character. Alternative conflict resolution techniques can be used in almost all contested matters, which can be settled by agreement between the parties according to statute. Alternative conflict resolution methods can be used in different dispute types, in particular; legal, economic, industrial and family disputes. Alternative dispute resolution strategies provide the best solution with respect to trade disputes to aid the country's economic development.

The aim of justice is to provide redress for the aggrieved and helpless. If, after the death of the petitioner or if the subject matter exhausts, the courts delay the trial and give justice, it cannot be termed as punishment. The alternative dispute resolution process is being implemented because a mechanism was required that worked effectively and offered a friendly and speedy solution to people's disputes. As the name suggests, ADR is an alternative to the conventional court-led dispute resolution procedure. It is the method of dispute settlement as an alternative to the standard judicial process.

Such approaches are appropriate for reform and implemented to improve the judicial system in developing countries. The alternative dispute resolution system has been adopted by many countries like India. The adoption of ADR in India is a major step by lawmakers and the judiciary towards achieving the "Constitutional Target" of complete justice in India.

Given the huge number of cases pending, governance and administrative oversight of the judiciary by manual processes has become extremely difficult. The Supreme Court stated emphatically that somehow this matter must be addressed: 'An impartial and effective judicial system is among our Constitution's core components... It's indeed our statutory role to check that a bottleneck of cases are reported and that measures are made to expedite case disposition.' By the very technique used, the alternative dispute resolution system will maintain and strengthen personal and business relationships which the adversarial process might otherwise be harmful. It is also versatile because it requires the contestants to choose procedures that stipulate the essence of the conflict and the market sense in which it takes place.

Methods of Alternative Dispute Resolutions

The word “Alternative Dispute Resolution” includes various negotiation mechanisms including, Lok Adalats, Arbitration, Conciliation, and Mediation in its fold. Several countries have used this Alternative Dispute Resolution strategy for successful dispute resolution. Mediation is the most common sort of alternative dispute resolution. In addition to this, some had defined mediation as the most appropriate method for resolving disputes. Mediation as a tool for resolving disputes is not a new concept. To put it simply, mediation is a friendly dispute settlement involving a neutral third party who serves as a facilitator and is called a’ mediator. ADR is usually less formal, less expensive and less time consuming than traditional trials. ADR can also give people a greater opportunity to decide when and how to settle their conflict. Arbitration, Conciliation, Mediation, Judicial Settlement, and Lok Adalat are the most commonly used ADR processes in civil proceedings. Section 89 of the Code of Civil procedure allows for the out-of court resolution of disputes. It is founded on the Law Commission of India’s and the Malimath Committee’s suggestions. The Law Commission of India advised that the Court may encourage any party to a suit or action to attend in person in order to find an amicable resolution of the disagreement.

The Malimath Committee recommended that it be made compulsory for the Court to refer the conflict to arbitration through Arbitration, Conciliation, Mediation, Judicial Arbitration via Lok Adalat, after the issues have been framed. The case could only proceed further if the parties refuse to resolve their differences through any of the alternative dispute resolution approaches.

The different methods of ADR can be summarized as under: –

1. Arbitration;
2. Conciliation;
3. Mediation;
4. Judicial Settlement;
5. Lok Adalat.

Arbitration

Arbitration, a type of alternative dispute resolution (ADR), is a strategy for resolving conflicts

outside of the court system in which the parties to a disagreement refer it to one or more people, known as arbitrators, to whom they intend to be bound by their judgement. It is a method of dispute settlement in which a third person examines the evidence in the case and renders a legally enforceable decision for both parties. Arbitration awards have limited right of review and appeal. Arbitration is not the same as civil and mediation proceedings. Arbitration can be optional, or mandatory. Clearly, mandatory arbitration can only come from a law or arrangement that is mutually signed where the parties agree to arbitrate all current or future disputes without necessarily knowing what disputes will ever occur. In India, if the matter is referred to Arbitration then the provisions of the [Arbitration and Conciliation Act, 1996](#) will apply.

The main types of ADR are as under:

- Voluntary Arbitration;
- Compulsory Arbitration. Other Types of Arbitration
- Ad-hoc Arbitration;
- Institutional Arbitration;
- Statutory Arbitration;
- Domestic or International Arbitration.

Conciliation

It is a form of alternative dispute resolution in which the parties to a dispute hire a conciliator to help them resolve their issues individually. They do this by reducing conflicts, strengthening coordination, identifying problems, offering technical assistance, discussing possible solutions and bringing about a negotiated settlement. In this manner, it is a bit different from Arbitration.

It is a consensual process in which the parties involved are free to reach an agreement and try to resolve their disagreement through conciliation. The method is versatile, which helps the parties to determine the time, duration and content of the conciliation procedure. Those proceedings are seldom public. These are interest-based, as the conciliator must take into account not only the legal positions of the parties but also their; economic, financial and/or personal interests when negotiating a settlement. In the Indian sense, the terms conciliation and mediation are

synonymous. Conciliation is a cooperative mechanism through which the conciliator, a qualified and professional neutral, facilitates negotiations between the disputing parties and assists them in recognizing their differences and desires in order to reach an arrangement that is mutually acceptable. Once a settlement has been found before a conciliator between the parties to the conflict, the resolution has the effect of an arbitration award and is legally tenable in any court in the country. Many trade disputes, in which it is not necessary that a binding and enforceable decision should take place, are subject to conciliation. Conciliation may be especially appropriate where the parties to the conflict seek to preserve and sustain their commercial relations.

Mediation

Today, mediation is a voluntary and informal method of dispute resolution throughout the world. It is a simple, voluntary, party-centered and structured negotiation process in which a neutral third party helps parties resolve their disputes friendly through the use of specified communication and negotiation techniques. Mediation is a process where the parties are themselves in control of it. The mediator's role is strictly that of a facilitator, assisting the parties in reaching a negotiated settlement of their disagreement. The mediator takes no decisions and does not enforce his opinion on what should be a fair settlement. Both sides meet with an experienced neutral mediator during the mediation process. The session starts with each side explaining the issue from their point of view, and the remedy they seek. Once the respective views of each party is discussed, the mediator then splits them into private rooms, initiating a "caucus conference" process and then "joint meetings with the parties." Both sides agree to the limit. The mediator does not have the power to dictate his decision regarding the party. Mediation allows a conflict to be handled swiftly, with minimal stress and expense, while still preserving the parties' relationship and maintaining anonymity.

Judicial settlement

Section 89 of the Code of Civil Procedure also refers to judicial settlement as one of the alternative modes of resolution of disputes. There are, of course, no specific rules for such settlements framed up to now. The term "Judicial Settlement" is however specified in **Section 89**

of the Code. It was provided that the provisions of the Legal Services Authority Act, 1987, would apply when there is a judicial settlement. This means that the Judge concerned, seeks to settle the dispute between the parties in a legal settlement amicably. Such settlement shall be deemed to be an agreement within the scope of the Legal Services Authority Act, 1987, if any friendly settlement is resorted to and reached in the case at question. Section 21 of the Legal Services Authorities Act, 1987 specifies that each Lok Adalat award shall be deemed a Civil Court decree. India has no written guidance on judicial settlement

Lok Adalat

The idea that is gaining popularity is that of Lok Adalats or the courts of the people as formed by the government to settle disputes through conciliation and compromise. It is a judicial body and a dispute settlement organization established for social justice by the citizens themselves, based on the settlement or agreement obtained through formal negotiations. The first Lok Adalat was conducted as far back as 1982 in Una village of Junagadh (Gujrat). Adalats also recognize cases within their jurisdiction which are pending in regular courts. Section 89 of the Code of Civil Procedure also provides for the appeal to the Lok Adalat of pending Civil disputes. When the matter is referred to the Lok Adalat then it will follow the provisions of the Legal Services Authorities Act, 1987. The holding of Lok Adalat is governed by Section 19 of the Legal Services Authorities Act, 1987.

Conclusion

People now have a new way to settle their conflicts thanks to the emergence of alternative dispute resolution systems. The rapid resolution of conflicts in Lok Adalat has gained widespread public support, giving ADR a fresh impetus that will undoubtedly lower the number of cases pending in the courts. There is a pressing need for ADR mechanisms to provide access to justice. The ADR movement must be encouraged to evolve at a faster pace. This will significantly lessen the burden on the courts, in addition to offering immediate justice at the doorstep at a low cost. If they are implemented fully, they will truly achieve the purpose of providing social justice to the disputants.