



# RESOLUTION IS JUSTICE!

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## ALTERNATIVE DISPUTES RESOLUTION SYSTEM

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### INTRODUCTION:

Indian judiciary is one of the oldest but efficient judicial system, known by the world. But the current situation of Indian judiciary became inefficient to deal with the increasing number of pending cases.

- Over 42 lakh cases were pending in High Courts until January 31, and nearly 57,000 in the Supreme Court until December 1, 2018, data presented in Lok Sabha show.<sup>2</sup>

### Background:

- According to National Judicial Data Grid (NJDG), 40% of the cases are more than five-year-old. In the Supreme Court, more than 30% of pending cases are more than five years old.

- A 2009 law commission report said it would take 464 years to clear pending cases. Which was increased by today.

- The biggest reason behind this situation were –
- Unfulfilled vacancies: - around 40% in High Court.
- Around 20% posts are vacant in subordinate courts.
- Insufficient sanctioned strength, which means the total number of judges present in High Court and Supreme Court were very low.<sup>3</sup>
- The second biggest reason for the pending cases is of those cases which are small disputes but people refer to go to courts directly for those small matters to get the solution.

This increases the tendency of pending cases. To solve this problem the concept of Alternative Dispute Resolution System was introduced.

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<sup>2</sup> PENDENCY IN COURTS: NATIONAL JUDICIAL DATA GRID DATA, <https://blog.nextias.com/pendency-in-courts-national-judicial-data-grid-data>, Nov, 2022.

<sup>3</sup> Rishabh Saxena, Alternative Dispute Resolution (ADR), blog ipleaders ( May 09, 2017), <https://www.google.com/amp/s/blog.ipleaders.in/adr-alternative-dispute-resolution/%3famp=1>.

### **Meaning of Alternative Dispute Resolution.**

As the name already suggest that it is a dispute solving mechanism. It is a means of settling a dispute, conflicts without any courtroom trial i.e. working together co-operatively to reach the solution which suits everyone without involving the burden of litigation of courts.

The three important words ADR consist the meaning:-

- *Alternative:* The word “*alternative*” in general term means “*another possibility of choice or availability of one or more possible choices.*”
- *Disputes:* The word “*disputes*” means “*disagreement, conflicts or quarrel.*” In Hindi it is term as “*VIVAD.*”

Disputes maybe between countries, states, different people, individually or collectively.

- *Resolution:* It means to resolve, or a firm decision to do or not to do something. It is a formal statement of opinion or a decision to take an action.
- *System:* System means procedure, methods. A set of principles or procedure according to which something is done; an organized scheme or method. In Hindi it means “*PRANALI.*”

ADR usually solve civil disputes between individuals, groups, organizations. They maybe related to –

- ✓ Family
- ✓ Housing
- ✓ Neighborhood
- ✓ Environment
- ✓ Consumer disputes etc.

But some countries use ADR in criminal matters also.

### **What are the advantages of ADR?**

1. This system of ADR is cheap and less time consuming as compared to courtroom litigation.
2. Less complicated procedures than technical works of courts.
3. People freely express themselves, their problems, views without any hesitation.

4. Often get creative solutions, better results, great satisfaction and improved relations.

### **Kinds of ADR.**

Alternative Disputes Resolution is classified into following types :-

Arbitration:- Arbitration is a type of ADR that take place outside the court, in front of “*Arbitral Tribunal*” of their own choice. The procedures are less formal than a trial and rules of evidence were relaxed. Here, the matter is taken to the arbitrator instead of a judge. The arbitrator listens the arguments from both the sides, understands their issues, considered the evidence and then give the decision.

Arbitration is of two types:-

In binding arbitration, the decision of arbitrator is final while in non-binding arbitration, if the parties are not satisfied by his decision, then they pursue the court. But the decision of arbitrator is often binding in nature that means, generally there is no right to appeal of an arbitrator’s decision. It is regulated by Arbitration and Conciliation Act, 1996<sup>4</sup>.

Conciliation:- It is an ADR procedure which is less formal than Arbitration. A non-binding procedure, where an impartial third party (conciliator) assist the party to reach in a mutual satisfactory agreed settlement.

The ‘*conciliation*’ means “*assisted bargaining process.*” The conciliator after hearing both the parties, comes up with a suggestion, proposal or solution and then tried to persuade them. The parties are free to accept or reject the proposal or the suggestion of conciliator and if both the parties agrees over the settlement, it shall be final and binding on both.

Mediation:- Mediation is a facilitating process in which an impartial third party (mediator) by using communication and negotiation techniques, tries to facilitate in resolving the disputes of the parties. The mediator does not decide the dispute but help the parties to communicate and comes up with an outcome by themselves. The mediation is one of the best means of ADR in solving family disputes.

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<sup>4</sup> Arbitration and Conciliation Act, 1996, Act No. 26 of 1996, Act of Parliament, 1996 (India).

### **Who can be the mediator?**

- Any person who undergoes the required training of 40hrs by the Mediation and Conciliation Project Committee of the SC.
- He also needs to have at least 10 mediations resulting in a settlement and at least 20 mediations in all to be eligible as a qualified mediator.

There is no appeal or revision in a mediation case and all the disputes get finally settled.

- 1) Negotiation: - It is also a non-binding procedure but a suitable formula for dispute resolution. In negotiation the discussions between the parties are taken place without any third party with only objective of negotiation settlement. Negotiation is most common method of ADR which occurs in business, governmental branches, among nations, and also in personal matters such as marriage, divorce, parenting etc.
- 2) Lok Adalat: - It is a form where disputes whether they are pending cases in court of law or at pre litigation stage are settled or compromised. It is covered under Legal Services Authorities Act, 1987. We can call the justice system of Lok Adalat as participatory justice where both the people and judges participate to resolve the disputes by mutual consent or by discussion.

The decision made by the Lok Adalat is deemed to be a degree of civil court and it is binding and final, no appeal against such decision are made before court of law. Although parties are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case.<sup>5</sup>

All proceedings of Lok Adalat shall be deemed to be a judicial proceeding within the meaning of section 197, 219, 228 of IPC and Lok Adalat shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of CrPC<sup>6</sup>.

### **Provision related to ADR in India:-**

- 1) Section 89 of CrPC, 1908 provides the opportunity to the people, to solve the disputes outside the court through Arbitration, Conciliation, Mediation and Lok Adalat.<sup>7</sup>

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<sup>5</sup> Legal Services Authorities Act, 1987, Act No. 39 of 1987, Act of Parliament, 1987, (India).

<sup>6</sup> Indian Penal Code, section 197, 219, 228, Act No. 45 of 1860, Act of Parliament, 1860, (India).

<sup>7</sup> Criminal Procedure Code, section 89, Act No. 5 of 1908, Act of Parliament, 1908, (India).

2) The acts deal with ADR are-

- i. Arbitration and Conciliation Act, 1996 which was amended by Lok Sabha and the new Arbitration and Conciliation (Amendment) Act, 2021 came into force to check the misuse by ‘fly-by-night operators’ who take advantage of the law to get favorable awards by fraud.
- ii. The Legal Services Authority Act, 1987.

The recent changes over ADR are-

- In July 2022, there was a recommendation of substantial changes to the Mediation Bill, 2021 by the parliamentary Standing Committee on Law and Justice.<sup>8</sup>
- Also, Niti Aayog in recent report of “*The Future of Dispute Resolution*” discussed the concept of *Online Dispute Resolution* – The evolution, its significance and the present status of India. ODR refers about the usage of Information and Communication Technology tools by which the parties resolve their dispute.

**Conclusion:** - By the above explanation about ADR, we clearly understand the meaning, nature and the usage of ADR and now we understand that ADR has proven its success in clearing the backlog of cases in various levels of judiciary but still there seems to be a lack of awareness about the mechanism of ADR. The National and State Legal Services Authorities should spread more information regarding these. As we know the future of dispute resolution revolves around Information and Communication Technology innovations which is efficient and accessible for every section of society to solve their disputes. ADR is one of the most important legal institutions for solving disputes that will succeed greatly in future.

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<sup>8</sup> Arbitration and Conciliation (Amendment) Act, 2021, Act of Parliament, 2021 (India).