

Concept of ADR

As the global population is rising, so are the number of cases in courts of law. Pendency of cases cannot be dealt with unless there are some radical changes in the common law system.

Resolving the disputes, through Courts, though somethings unavoidable, does not provide the most satisfactory solution in all cases. Arbitration, Conciliation, Judicial Settlement, including settlement through Lok Adalat and Mediation, are accepted modes of Alternative Dispute Resolution (ADR).

What is ADR?

Any method of resolving disputes without litigation (outside the courtroom) is known as Alternate Dispute Resolution system. Dispute arises when the parties are unable to agree on some issue or matter. The parties can resolve the dispute either through litigation or through Alternative Dispute Resolution (ADR). ADR is an umbrella term which includes all legally permitted processes of dispute resolution other than litigation¹. Although the settlement of a dispute is certainly not the first thing that parties have in mind, yet when entering into a contract they should be aware that differences, grievances or dispute can arise at any time.

¹ Bryan A. Garner, Black's Law Dictionary (9th edn.).

For the purpose of settling a dispute, the first step to be taken in this regard is the identification of the potential areas of dispute and formulation of a productive method for its prevention².

ADR is favoured because it enables the parties to deal with the cardinal issues in a cost and time saving manner. It gives the parties a leverage to reduce opposition, restore alliance, earn acceptance of result, retrieve control, resolve dispute in an amicable manner, and aims to accomplish justice in each individual case.

The dispute is resolved in a confidential manner making it more practical, economical and effective. The primary objective of ADR system is to minimise the supervisory role of the courts in the arbitration process. It is not possible to completely exclude the court from the ADR proceedings.

The judicial process is meant to provide an effective and impartial mechanism for redressal of grievances. Moreover, intervention by courts becomes necessary in the cases of bias by arbitrators, misconduct of proceedings, etc. ADR is not intended to replace altogether the traditional means of resolving disputes by means of litigations³.

² G.K. Kwatra, Arbitration and Alternative Dispute Resolution (2008).

³ P. Rao & William Sheffield, Alternative Dispute Resolution, 25 (1st edn.).

There are various avenues where ADR systems have been in use since time immemorial:

- **Panchayats:**

Panchayats hear the matter of two parties and tries to settle them. Mostly, panchayats are used in rural areas.

- **Gathering or family council:**

If there any dispute in family then the older members of the family hear the matter of the family and come to a conclusion.

- **Adhikrita & Nripa (courts appointed by kings):**

Kings of states used to select the courts and in that court the matters were heard to fix the problems.

- **Muslim period:**

Judge, known as *Kazee*, used to follow *Hedaya* (meaning guidance) to try to guide the two parties to resolve the matter.

Formal definitions of ADR

There are many definitions of ADR. Some of the accepted ones are as follows:

- ADR typically denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation: a collective term for the ways that parties can settle disputes, with the help of a third party.⁴
- It's a method that usually involves a neutral third party, that is, a skilled helper who either assists the parties of a dispute to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.⁵
- Just like the diversity in causes of disputes, the settlement models are also varied. Alternative Dispute Resolution encompasses a wide array of practices, which are directed towards cost effective and quick resolution of disputes.⁶
- Arbitration is a process for settlement of disputes fairly and equitably through a person or persons or an institutional body without recourse to litigation by the disputing parties pursuant to an agreement.⁷

⁴ Australian Securities and Investment Commission – Complaints Resolution Schemes (6th January 2009) at the wayback machine.

⁵ Tania Sourdin, Alternative Dispute Resolution. P.4.

⁶ See Maneesh Chhibber, 'Do we need more judges? CJI Thakur's plea to the govt raises key question'.

⁷ H. K. Saharay, Law of Arbitration and Conciliation, (Kolkata: Eastern Law House, 2001) P. 3.

- There may be communication between two or more agents of parties to try and come to a mutually acceptable solution by way of bargaining. Thus, it mainly involves communication for the purpose of persuasion.⁸

Role of ADR in India

In a vast country like India, disputes and conflicts dissipate valuable time, effort and money of the society. To establish a welfare society, it is of utmost importance that there should be not be any conflict. It is therefore imperative that any conflict, which raises its head, is nipped in the bud. There is a lacuna between the filing of cases and their disposal and till the time final decision comes, there is a state of uncertainty. However, peace is the *sine qua non* for development.

To get out of this maze of litigation, alternative methods of dispute resolution are considered the best. India has a long tradition and history of such methods being practiced in the society at grass roots level in the form of Panchayats. The other alternative method being Lok Adalat where justice is dispensed summarily. Methods like negotiation, mediation and conciliation are being increasingly used to resolve disputes.

⁸ Stephen Goldberg, Frank Sander and Nancy Rogers, *Dispute Resolution: Negotiation, Mediation and Other Process*, Second edition, (London: Little, Brown and Company, 1992) p. 17.

Alternative Dispute Resolution has many illustrious examples in various fields like fraud cases, family matters, money related cases and other civil cases. Nowadays, IPR cases are also being dealt with through ADR. An example is as follows:

- **Balaji Coke Industry Pvt. Ltd. v. Maa Bhagwati Coke Gujarat Pvt. Ltd.⁹**

The contract between the parties stated that the arbitration would take place at Kolkata. Both parties entered into a High Seas Sale Agreement (HSSA) where it was specified that coal would be supplied to the Respondent at Gujarat and Clause 14 of the contract provides that the sale contract would be “subject to Kolkata jurisdiction”. Disputes arose and application was filed under section 9 of Arbitration Act in Gujarat. Seeking injunction to restrain the other-side from disposing of the materials. Then the respondent party approached the Supreme Court with a petition under Section 25 CPC for transfer of the application filed by petitioner to Calcutta High Court.

The supreme Court said that the parties knowingly and voluntarily agreed that the contract arising out of HSSA would be subject to Kolkata jurisdiction. So, the application under Section 9 of the Arbitration and

⁹ 9 SCC 403 (2009).

Conciliation Act, 1996 in the Gujarat court was asked to be transferred to the High Court at Kolkata.

Advantages of ADR

The main advantages of ADR are:

- **Speedy relief**

An estimated backlog of 25 million cases and reported delays in some urban areas in excess of twenty years, currently demoralize and undermine the effective enforcement of the substantive civil and commercial rights¹⁰.

Backlog and delay have broad political and economic implications for Indian society. If India fails to face and meet these challenges, it will not be able to realize its legal commitment to democratic and liberal economic policies.

All concur that this crisis calls for the express adaptation of practical ways out. In cases such as motor accident claims, the victims may want the compensation to be paid without delay to facilitate medical and other expenses. In matters such as these, ADR mechanisms like Lok Adalats can help victims obtain speedy relief.

¹⁰ Status of Pending Cases in Subordinate Courts- 2, 27. See: Annual Report of Ministry of Law and Justice 2003-2004.

- **Economical**

Alternative Dispute Resolution mechanisms are relatively inexpensive in comparison with the ordinary legal process. These mechanisms, therefore, help litigants who are unable to meet the expenses, involved in the ordinary process of dispute resolution through courts. Furthermore, ADR mechanisms enhance the involvement of the community in the dispute resolution process.

- **Simple mode of operation**

The procedures employed in Alternative Dispute Resolution are flexible and informal in contrast to the formal and rigid procedures followed in the ordinary process of dispute resolution in courts of law. These processes thus facilitate greater access to justice¹¹.

- **More co-operative and less competitive**

ADR provides for direct participation of the disputants rather than being run by lawyers and judges. Most ADR practices are based on an integrative approach. They are more co-operative and less competitive than adversarial courts-based methods like litigation. For this cause, ADR tends to produce less malice and animosity between parties.

¹¹ Rubin, J. Z., Pruitt, D. G., & Kim, S. H. (1994).