Alternative dispute resolution system: India's mechanism

Dr. Sudhir Kumar Jain[1*] and Vinay Kumar Pathak[2]

[1] Head & Dean, Faculty of Law, AKS University, Satna, Madhya Pradesh, India

[2] Assistant Professor, Faculty of Law, AKS University, Satna, Madhya Pradesh, India

Correspondence Author: Dr. Sudhir Kumar Jain

Received 6 Jan 2022; Accepted 10 Mar 2022; Published 21 Mar 2022

Abstract

Alternative Dispute Resolution (ADR) mechanisms have the potential to replace more traditional approaches to conflict resolution. ADR promises to handle any form of dispute, including civil, business, industrial, and family disputes in which parties are unable to initiate negotiations and come to a resolution. A neutral third party is typically used in ADR to facilitate communication, conflict resolution, and discussion between the parties. It is a technique that allows people and groups to uphold societal order and cooperation and offers the chance to lessen hostility. in ADR to facilitate communication, conflict resolution, and discussion between the parties. It is a technique that allows people and groups to uphold societal order and cooperation and offers the chance to lessen hostility.

Keywords: lok adalat, arbitration, mediation, and conciliation

Introduction

One of the longest legal systems in the world is the one in India. However, it is also widely known that Indian courts are overburdened with protracted unresolved cases, making Indian courts increasingly ineffective at handling pending cases. The situation is that despite the establishment of more than a thousand fast track courts that have already resolved millions of cases, the issue is still far from being resolved as backlogs of unresolved cases continue to grow.

To handle such a circumstance Alternative Dispute Resolution (ADR) is a useful tool for resolving disputes amicably so that both sides can agree on the result.

The term alternative dispute resolution (ADR) applies to various methods of resolving conflicts outside of court. Arbitration, impartial review, and mediation are examples of common ADR procedures. Compared to conventional judicial proceedings, these procedures are typically more private, informal, and stress-free.

ADR frequently hurries up resolution and reduces costs. Parties in mediation have a significant say in how their own conflicts are resolved. This frequently leads to original solutions, enduring effects, higher happiness, and strengthened relationships. ADR, with its variety of techniques, plays a major part in India in dealing with the situation of cases that are pending in Indian courts. Alternative Dispute Resolution mechanisms give the Indian justice scientifically created tools that aid in lightening the load on the courts. Arbitration, conciliation, mediation, bargaining, and Lok Adalat are just a few of the different forms of dispute resolution offered by ADR. Negotiation in this context refers to self-counseling between the parties to settle their disagreement; however, there is no legal definition of negotiation in India.

Articles 14 and 21, which deal with equity before the law and the right to life and personal liberty respectively, are also the foundations of ADR. The goal of ADR is to uphold the preamble-guaranteed social, economic, and political fairness as well as the integrity of the community. Equal justice and free legal assistance are other goals pursued by ADR in accordance with Article 39-A of the Directive Principle of State Policy. (DPSP).

An alternative to litigation

The word "alternative dispute resolution," also known as "ADR," is frequently used to refer to a broad range of conflict resolution processes that are either an alternative to or a substitute for formal court procedures. The word can be used to describe anything from mini-trials that closely resemble judicial proceedings to arbitration systems, to assisted resolution talks in which parties to a dispute are urged to directly bargain with one another before engaging in any other legal process. Processes intended to ease interpersonal conflict or assist with community development problems can also be categorized under ADR. ADR processes can be broadly divided into three categories: bargaining, conciliation/mediation, and adjudication. Without the involvement of a third party, direct discussion between disputing parties is encouraged and made easier by negotiation tools. In that they insert a third party between the disputants, either to resolve a particular conflict or to mend their relationship, conciliation and mediation processes are very similar. Conciliators and mediators may help guide and organize a settlement or simply enable conversation, but they do not have the power to determine whether or not a settlement is acceptable. Systems of arbitration permit a third entity to determine how a disagreement should be settled. It's critical to differentiate between binding and non-binding ADR options. Programs for negotiation, mediation, and conciliation rely on the parties' desire to come to a mutual arrangement and are not legally enforceable. Arbitration agreements can be legally enforceable or not. Similar to how a judge would rule, binding

arbitration results in a third party decision that the parties to the dispute must abide by even if they don't concur with the outcome. Non-binding arbitration results in a third-party judgment that the parties are free to disagree with. Making a distinction between required and optional procedures is also crucial. In some legal systems, disputants must first engage in negotiation, conciliation, mediation, or arbitration before filing a lawsuit. A previous deal between parties may also stipulate that ADR procedures be used. The decision to submit a disagreement to an ADR process in a private process is completely up to the parties involved. In Appendix A: Taxonomy of ADR Models from the Developed and Developing World, these types of ADR and a number of combinations are further discussed. The Guide refers to circumstances or programs that may impact or include different kinds of ADR using the general word "ADR," but whenever feasible, it specifically refers to bargaining, conciliation, mediation, or arbitration.

ADR's significance in India

ADR, with its variety of techniques, plays a major part in India in dealing with the situation of cases that are pending in Indian courts. Alternative Dispute Resolution mechanisms give the Indian justice scientifically created tools that aid in lightening the load on the courts. Arbitration, conciliation, mediation, bargaining, and lok Adalat are just a few of the different forms of dispute resolution offered by ADR. Negotiation in this context refers to self-counseling between the parties to settle their disagreement; however, there is no legal definition of negotiation in India.

Articles 14 and 21, which deal with equity before the law and the right to life and personal liberty respectively, are also the foundations of ADR. The goal of ADR is to uphold the preamble-guaranteed social, economic, and political fairness as well as the integrity of the community. Equal justice and free legal assistance are other goals pursued by ADR in accordance with Article 39-A of the Directive Principle of State Policy. (DPSP).

Several significant ADR-related clauses

a) Section 89 of the Civil Procedure Code, 1908 gives individuals this chance. If the court determines that there are aspects of a settlement that can be reached outside of court, the court will devise the conditions of a potential settlement and send it to Lok Adalat, Arbitration, Conciliation, or Mediation.
b) The Arbitration and Conciliation Act of 1996, as well as, are the laws that deal with alternative dispute resolution.
c) The 1987 Legal Services Authority Act
d) Effective method: As parties discuss their problems together on the same stage, there is always a possibility of mending fences.

It keeps the parties' positive relations and avoids further dispute.

It protects the parties' best interests.

Alternative Dispute Resolution Can Be Used to Resolve Conflicts.

ADR procedures are frequently employed in a variety of civil conflicts involving people and/or groups. These arguments may touch on the following subjects:

- Divorce and families
- Housing
- Neighborhood
- Environment
- Employment
- Business
- Problems with consumers
- Personal harm

In some nations, alternative conflict settlement is also used in certain criminal cases, like youth crime.

Several significant ADR-related clauses

Section 89 of the Civil Procedure Code of 1908 gives individuals this chance. If the court determines that there are aspects of a settlement that can be reached outside of court, the court will create the conditions of the potential settlement and send it to Lok Adalat, Arbitration, Conciliation, or Mediation.

The Legal Services Authority Act of 1987 and the Arbitration and Conciliation Act of 1996 are the statutes that deal with alternative dispute resolution.

Advantages of alternative conflict resolution include:

- Shorter dispute resolution times than through the courts
- Cost-effective approach: pursuing lawsuits results in significant financial savings.
- It is devoid of court-related formalities; instead, disputes are settled informally here.
- People can articulate themselves without worrying about facing legal repercussions. Without disclosing it to any judge, they can disclose the actual details.
- Effective way: As parties debate their problems together on the same platform, there is always a possibility of mending fences.
- It protects the parties' best interests, stops further dispute, and upholds good relations between the parties.

Different forms of arbitration under alternative dispute resolution

Without a legally binding arbitration agreement in place before a conflict arises, the arbitration procedure is impossible. In this method of conflict settlement, the parties designate one or more arbitrators to hear their case. The arbitrator's ruling, known as the "Award," is binding on the parties. Getting a fair settlement of a disagreement outside of court without needless cost or delay is the goal of arbitration.

Any party to a contract that contains an arbitration clause may exercise it either directly or through their approved agent, who will then submit the disagreement for arbitration in accordance with the terms of the arbitration clause. Here, the term "arbitration clause" refers to a section that specifies the process, language, number of judges, and location where the arbitration will be held if a disagreement arises between the parties.

The process to be used

A statement of claim outlining the pertinent facts and available

options are first submitted by the petitioner to start the arbitration process. The arbitration agreement's verified copy must be included with the application.

- The claimant describes the facts supporting his case and the relief he wants from the defendant in a written statement of claim that is submitted to a court or panel for judicial decision and includes a duplicate for the defendant.
- The respondent responds to the arbitration by submitting an explanation that details the pertinent facts and accessible arguments against the claimant's arbitration claim.
- The procedure by which the parties choose the tribunal to hear their case is known as "arbitrators selection." They do this after receiving profiles of prospective arbitrators.
- The sharing of papers and material in advance of the trial known as "Discovery" is the next step.
- The hearing is conducted in person, at which the parties give the arguments and supporting proof for their respective claims.
- After the witnesses have been questioned and the proof has been given, the arbitrator then renders a "Award" that is legally enforceable on the parties.
- Now that there is an arbitration deal, the specifics of the procedures change. For instance, there might be a deadline that needs to be met. The deal would include a deadline for this.

According to Section 8 of the Arbitration and Conciliation Act of 1996, if one party disregards the arbitration agreement and files a lawsuit in civil court rather than through arbitration, the other party may ask the court to refer the case to the arbitration tribunal in accordance with the agreement, but not after the submission of the first statement. If the judges are satisfied with the application and certified copy of the arbitration agreement, the case will be sent to arbitration.

Mediation

The goal of mediation, an alternative dispute settlement method, is to help two or more disputants come to a conclusion. A third party serves as a mediator in this simple and straightforward party-centered negotiation process, which uses effective communication and negotiation tactics to settle disputes peacefully. The partners have complete authority over this procedure. The sole purpose of the mediator's role is to assist the parties in resolving their conflict. The mediator does not enforce his opinions or determine what a just resolution should be.

Mediation procedure

- Opening remarks,
- a joint session,
- a separate session, and
- a closing remarks

The mediator must guarantee that both sides and their attorneys are present before the mediation procedure can begin.

- He first provides all the information about his nomination in the opening statement and states he is unconnected to both sides and has no stake in the disagreement.
- By asking both sides to present their cases and present their points of view without disruption during the joint session, he collects all the information and gains an understanding of the facts and problems surrounding the disagreement.
- The mediator attempts to handle the parties' interruptions and outbursts during this session while fostering and promoting dialogue.
- The next step is a distinct session where he attempts to comprehend the conflict at a deeper level and collects specific information by speaking privately with both sides.
- The mediator frequently probes the parties' respective cases' facts and points out their arguments' advantages and disadvantages.
- The arbitrator begins outlining issues for resolution and coming up with alternatives for compromise after hearing from both parties.
- When mediation negotiations fail to produce an accord, the mediator will employ various Reality Check techniques, such as:

Best complement to a negotiated agreement

It is the greatest result that either side could have envisioned. It's an appropriate circumstance as each party considers what their ideal case scenario would entail.

Most likely substitute for negotiated agreement

The middle ground is necessary for a discussion to be effective, and the mediator will determine this after taking into account both sides. Depending on the circumstances of the discussion, the outcome in this case is not always in the middle but slightly to the left or right.

Negative replacement of negotiated agreement

It represents the worst scenario that either side can imagine could occur during negotiations. Examining the option outside of mediation—specifically, litigation—and talking about the repercussions of failure to reach a settlement, such as how it will affect the parties' relationships or businesses—might be useful to the parties and facilitator. The worst and most likely scenarios should always be taken into account, as individuals don't always get the finest results.

The mediator examines the parties' perspectives on the potential results of the lawsuit. The mediator can also help the parties and their attorneys reach an accurate understanding of the best, worst, and most likely outcomes of the dispute through litigation. This will enable the parties to acknowledge reality and to develop reasonable, comprehensible, and workable proposals.

Conciliation

Although conciliation is a type of adjudication, it is less official. Through the use of a conciliator who talks with each party individually to resolve the conflict, it is possible to facilitate an amicable settlement between the parties. Conciliator meets individually with each party to ease tension,

enhance dialogue, and understand the dispute in order to facilitate a negotiation. Prior consent is not required, and parties who are not interested in mediation cannot be compelled to participate. In that regard, it differs from adjudication.

In reality, the parties cannot reach a conciliation arrangement before a conflict has materialized. The party requesting conciliation shall provide a written notice of the request for conciliation under this section to the other party, setting forth the nature of the disagreement in brief. When the other party receives the offer to mediate in writing, conciliation proceedings will start. There will be no conciliation if the other declines the offer.

The aforementioned clause makes it very clear that a conciliation agreement must be a temporary arrangement reached only after a disagreement has arisen. Even while the arbitration procedures are ongoing, the parties are allowed to participate in mediation (section 30) bitration and Conciliation Act of 1996's Section 62, which states:

- The party requesting conciliation shall provide a written notice of the request for conciliation under this section to the other party, setting forth the nature of the disagreement in brief.
- When the other party receives the offer to mediate in writing, conciliation proceedings will start.
- There will be no conciliation if the other declines the offer.
- The aforementioned clause makes it very clear that a conciliation agreement must be a temporary arrangement reached only after a disagreement has arisen. Even while the arbitration procedures are ongoing, the parties are allowed to participate in mediation (section 30).

The Lok Adalat

The Lok Adalat is referred to as the "People's Court," and its head is typically one of three people: a social activist, a member of the legal profession, or a current or deceased judge. Lok Adalats are held regularly by the National Legal Service Authority (NALSA) and other Legal Services Institutions to exercise this authority. Any disagreement that is ongoing in normal court or that hasn't been brought before a judge can be referred to Lok Adalat. The protocol is observed strictly and there are no court fees, which speeds up the process. The court money that was initially paid in the court when the case was submitted is also returned to the parties if any issue that is currently ongoing in court is referred to the Lok Adalat and is later resolved.

The judge and parties communicate directly, which is not feasible in traditional courts. Whether a case that has been lingering in normal court for a long time can be moved to Lok Adalat relies on the parties' agreement. The people making the decisions only serve as statutory conciliators; they can convince the parties to settle their differences in the Lok Adalat rather than in a court of law. Upon receiving a request from one of the parties at the pre-litigation stage, the Legal Services Authorities (State or District) as the case may be, may send such matter to the Lok Adalat, for which notification would then be given to the other party. There is no authority for Lok Adalats to handle instances of non-compoundable offenses.

Conclusion

It is a well-known truth that there are many cases lingering in Indian courts as a result of a dearth of facilities and human resources. In India, there are currently over four crore petitions waiting in different tribunals. Unbelievably, a few of these have outstanding cases for over ten years. This demonstrates how stressed out the Indian justice system is. According to data from 2022, there are currently over 4.7 billion cases pending in tribunals at all levels of the legal system. 12.4% of them are ongoing in the High Court, and 87.4% are in lower tribunals. Alternative Dispute Resolution (ADR) is a wonderful way to achieve fairness, to sum up. Alternative Dispute Resolution makes it simple to fix problems because it is very affordable, quick, expert, accessible, and provides conciliation between parties. It also involves less ceremony and is less combative.

References

1. "International Commercial Arbitration" by Gary Born. Kluwer, 2009.
2. A Systems Approach to Conflict Management, Lynch, J. "ADR and Beyond." Negotiation Journal. 2001;17(3):213.
3. Makkie, Karl J. (ed.). ADR in action: A Handbook of Dispute Resolution. Routledge, 1991.
4. "Getting to Yes." By William Ury, Roger Fisher, and Bruce Patton. Penguin Group, 1981.