



ALTERNATIVE DISPUTE RESOLUTION FOR EFFICIENT JUSTICE DELIVERY SYSTEM IN INDIA

Chintamani Rout

Associate Professor (Former Head), Department of Law, Nehu, Shillong, India

Abstract: The Indian judicial system faces a significant backlog of cases and slow delivery of justice due to a lack of infrastructure and inadequate staff. As a response to this challenge, alternative dispute resolution (ADR) approaches such as arbitration, mediation, negotiation, and Lok Adalats have emerged as an imperative mechanism of dispute resolution. ADR provides a non-adversarial and cost-effective approach to resolving disputes outside of traditional court proceedings. The main objective of ADR is to expedite the process of resolution and to maintain positive relationships between parties. ADR fosters a culture of dispute resolution that is timely, efficient, and fair, thereby reducing the burden on the traditional court system. This paper highlights the need for a new mechanism of dispute resolution in India and discusses the historical background and advantages of ADR compared to traditional court proceedings. The paper concludes by emphasizing the benefits of ADR in alleviating the backlog of cases and re-establishing the trust of people in the justice system.

Keywords: Dispute, Resolution, Alternative Dispute Resolution, Arbitration, Mediation, Negotiation, Lok-Adalats, Justice Delivery System, Backlog, Fair Resolution, Cost-effective.

INTRODUCTION

In a rapidly developing society multiplicity of human needs results in conflict of interests, which is further compounded due to the lack of discipline in litigation, due to this the judicial mechanism, finds it extremely difficult to cope up with its enormous case load. Litigation particularly civil litigation in India is notoriously known for pendency of cases. Government of India Statistics indicates that a total of 23.9 million cases are pending in various courts of India.¹

Majority of Indian Courts are flooded by adjournments, revisions, appeals, and cross appeals on an average a civil case takes anything from about 5 to 8 years for its final disposal & causes are not wanting when cases have lingered in courts for 15 to 20 years.

The workload of Indian Judiciary increased by leaps and bounds and has now reached a stage of unmanageable magnitude, which has in fact led to a large backlog of cases².

In Surjit Singh's Case³, the Supreme Court expressed its anguish for such long delay, as the particular case was lying pending in the civil court at Patiala with no sight of its finalization. It was in fact the commonman's disgust for traditional court litigation' which led to the evolution of alternate methods of dispute resolution.

To quote, Mr. Justice V.R. Krishna Iyer ⁴“ Interminable, time consuming, complex and expensive



court procedure impelled jurists to search for an alternate forum, less formal, more effective and speedy for resolution of dispute avoiding procedural clap trap led to the Arbitration Act.

THE CONSTITUTION OF INDIA PROVIDES FOR THE RIGHT TO SPEEDY JUSTICE

The Preamble to the constitution of India, as well as Directive principals enumerated under Art – 39(A), of Indian Constitution Promise to secure socio, economic, political justice and equality of status and opportunity to all citizens. However all things said and done the ground reality is that, the Indian judicial system, has not on one but several occasions fallen short of fulfilling such promises.

PURPOSE OF ADR MECHANISM

Alternate Dispute Resolution, is a procedure for settling a dispute by means other than litigation, such as arbitration, mediation or mini-trial⁵.

1 <http://Pib.nic.in/archieve/ireling/Iyr2002/rjan 2002/r070/20022.html>

2 Arbitration And Alternate Dispute Resolution, Dr. N.V.Paranjape, Third Edition

3 Surjeet Singh & Others vs. Harbans singh& Others, AIR 1996 SC 135 4 Judge Supreme Court of India.

The purpose of ADR is to resolve the conflict in a more cost effective and expedited manner, while fostering long term relationships. ADR is in fact a less adverse means, of settling disputes that may not involve courts. ADR involves finding other ways (apart from regular litigation) which act as a substitute for litigation and resolve civil disputes, ADR procedure are widely recommended to reduce the number of cases and provide cheaper and less adverse form of justice, which is a lesser formal and complicated system. Off late even Judges have started recommending ADR to avoid court cases.⁶

HISTORICAL BACKGROUND OF DEVELOPMENT OF ADR

Alternate Dispute Resolution has become an indispensable need for today's world. Our Court's are already overburdened by arrears which appear to be insoluble in near future, Cases are increasing in courts in a super fast speed and the courts have proved to be helpless in rendering speedy justice in majority of the pending cases, so much so that: A resolution had been adopted by the Chief Minister and the Chief Justices of The High Courts on 4th of December 1993, declaring that the courts were not in a position to bear the entire burden of the justice system and that a number of disputes would be better settle, if resolved by alternative modes like; Arbitration, Mediation and Negotiation,

Alternate to dispute resolution need to have procedural flexibility in order to save time, money and avoid miseries and delays associated with conventional trial, under the scheme of ADR the litigants are in fact encouraged to resort to alternative dispute resolution, so that the actual court systems would be left with a smaller number of important disputes that demand judicial attention.

The closing years of the 20th century witnessed a world wide change, towards the growing trend of resolving problems of disputants; it was during this time that the popularity of ADR methods as a good substitute for conventional judicial convention gained popularity.

ADR as a mode of dispute resolution has been quite popular with the business community, Due to globalization of economy and competitive market policy; there has been a tremendous increase in trade, commerce and industry, which has resulted in a surge in disputes pertaining to commercial transactions and



businesses. Business community and industrial entrepreneurs cannot afford to indulge in protracted litigation and thus prefer to get their disputes settled through ADR.

To Quote, Mr. Justice A.M. Ahmadi⁷, While we encourage ADR Mechanisms, we must create a culture for settlement of disputes through these mechanisms, unless members of bar encourage their clients to settle their disputes through negotiation such mechanism cannot succeed. Thus to summarize the above discussion ADR shall be instrumental in tackling the menace and monstrosity of what is known as Docket Explosion –“, An unmanageable upsurge in the number of pending cases, before regular courts⁸.

VARIOUS TYPES OF ALTERNATE DISPUTE RESOLUTION

Arbitration alone is not ADR; ADR maybe through the following modes of ADR:

- **Negotiation:** Is a non-binding procedure, in which discussions between the parties are initiated without the intervention of any third party, with the sole objective of arriving at a negotiated settlement of a dispute.
- **Conciliation/Mediation:** A non-binding procedure in which an impartial third party, i.e. the conciliator or the mediator, assists the parties to a dispute in reaching a mutually satisfactory and agreed settlement of disputes.
- **Mediation/Arbitration :** A Procedure which combines conciliation and mediation at a subsequent stage in instances where the dispute is not settled through either conciliation/mediation within a period of time agreed in advance by the parties to arbitration.
- **Mini Trial:** A Non-binding procedure in which the disputing parties are presented with summaries of their cases, so as to enable them to assess the strengths, weaknesses and prospects of their case and then an opportunity to settle it is explored.
- **Arbitration:** Is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an award) on the dispute, that is binding upon the parties.
- **Fast Track Arbitration:** A form of Arbitration in which the arbitration procedure is rendered in a particularly short time and that too at a reduced cost.
- **Lok Adalats :** Besides the above, Lok Adalats are also doing well as a mode of alternate dispute resolution system.
- **Tribunals:** Tribunals are similar to a court without the ritual or formality, there are number of specialized tribunals which bear the name of their specialization, e.g.; Employment Tribunal, Immigration Tribunal
- **Ombudsman:** Ombudsman is a person with special powers to investigate cases in certain areas such as health, pensions or in instances where there may be a dispute particularly if a government body is involved. An ombudsman can only recommend as to how a dispute may be resolved, however his/her recommendations cannot be enforced.

⁷ Former Chief Justice of India

⁸ DK Sharma “Lok Adalat The Mission-2002 AIR Journal, Pg-97

THE MAIN OBJECTIVES OF ADR ARE AS FOLLOWS

- i. To comprehensively cover international commercial arbitration and conciliation as also domestic



arbitration and conciliation; ii. To make provision for an arbitral procedure it is fair, efficient and capable of meeting the needs of the specific arbitration:

- iii. To provide that the arbitral tribunals remain within the limits of its jurisdiction; iv. To ensure that the arbitral tribunal remains within the limits of its jurisdiction;
- v. To minimize the supervisory role of courts in the arbitral process; vi. To permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;
- vii. To provide that every final arbitral award is enforced in the same manner as if it were a decree of the court; viii. To provide that a settlement agreement reached at by the parties as a result of conciliation proceeding will have the same status and effects as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and ix. To provide that for the purpose of enforcement of foreign awards, every arbitral award made in a country to which one of the two international conventions relating to foreign arbitral awards to which India is a party applies will be treated as foreign award.

SCOPE OF ADR

Under ADR, a dispute maybe settled out of court and that too without litigation; however ADR system applies to only those disputes, as have arisen out of a legal relationship which may or may not be contractual.

ADVANTAGES OF ALTERNATE DISPUTE RESOLUTION

- **Speed:** ADR is far quicker than the traditional litigation methods of going to courts, certain types of ADR supply very quick solutions, and ensure that the legal system can operate more quickly with lesser damage.
- **Economy of Cost:** ADR proceedings tend to be less formal and expensive than traditional litigation, more particularly because, in most cases ADR processes are successful in avoiding the expenses incurred for engaging court barristers or solicitors.
- **Expertise:** In ADR, experts are frequently used, in matters where judges are unlikely to have expert knowledge.⁹
- **Restores good Relations between disputing parties:** An ADR system brings, both parties to terms without damaging their good relations, and is in fact quite instrumental in restoring their relations to a position, as had existed before the creation of such dispute.
- **ADR System is Devoid of Corruption :** ADR system is free from corruption, which is on and off found and of whose existence there is always a likely apprehension in any of the traditional justice systems.
- **Free from Prejudice:** Since both parties to ADR come to terms on mutually agreeable terms & that too out of their own free will, without having any fear of consequences of winning or losing the system on a whole is quite free from prejudice.
- **Confidentiality:** ADR process maintains confidentiality and is not open to public at large. And thus consequently saves the parties from the fear of any adverse publicity.
- **Option of Withdrawing from Some Kinds of ADR is Always Open:** ADR reserves the freedom



of parties to withdraw from conciliation without prejudice to their legal position, inter-se at any time during the commencement of such proceedings.

- **ADR is a Flexible and Independent Dispute Resolution System:** ADR is a very flexible and independent system of dispute resolution, which is free of any statutory or custom ridden procedural law.
- **Choice of Decision Maker :** The Choice of selecting the mediator and the arbitrator lies with the parties and they are free to appoint any mutually agreeable, expert to adjudicate over any issue in dispute.
- **ADR Helps in Clearing Bottle Necks in Litigation :** ADR mechanism is quite instrumental in clearing bottlenecks, within the domestic judicial system

COMMON MODES OF ALTERNATE DISPUTE RESOLUTION AND THEIR IMPORTANCE

Importance given to ADR in Indian Context can be gauged from the fact that civil procedure Code, 1908 has laid down that the cases must be encouraged to go for ADR.¹⁰ After due deliberation and several trials Arbitration and Mediation emerged as the most common modes of ADR, though Conciliation and Negotiation also comprise of ADR, they are however seldom used.

ARBITRATION AS A MODE OF ALTERNATE DISPUTE RESOLUTION

Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding¹¹.

Arbitration at its core is a form of dispute resolution, which comprises of a private judicial determination of a dispute by an independent third party. It is considered as a private dispute redressed process which is widely encouraged for promoting twin motives of overcoming high pendency of cases and reducing the cost of litigation. The prominent feature of the system is that, instead of filing a case in court, the parties can refer their case to an arbitral tribunal whose decision is binding and is termed as an award.

MEDIATION AS MODE OF ALTERNATE DISPUTE RESOLUTION

Mediation is basically negotiations carried out with the assistance of a neutral third party; however recommendations of a mediator are not binding. In true sense of the term mediation is a method of nonbinding dispute resolution involving a neutral third party, who tries to assist the disputing parties to reach a mutually agreeable solution.¹²

NEGOTIATION AS MEANS OF ALTERNATE DISPUTE RESOLUTION

Negotiation is the most common mode by which parties resolve their disputes without ever coming to the notice of third parties. Everyday several disputes are being resolved through negotiations.

Negotiation consists of a mutual discussion by the parties of their dispute or difference, with a view to find out as to how to their best can they settle their disputes & differences.

In true sense of the term negotiation entails bargaining, which is some what similar to an agreement between disputing parties.

During the course of negotiation each party endeavors to obtain the best possible solution in its favor, and with a view to accomplish this, each of them puts forward the minimum it is prepared to accept in settlement of mutual claims or the limits of the maximum which it is prepared to concede.



In Instances where either party adheres to its demand or concession which it is prepared to make and the other party does not accept such demand or concession, then in such a situation there is a breakdown of negotiation.

However on the other hand where the parties agree on mutually acceptable terms, then in such situation the dispute shall be deemed to have been resolved.

LOK- ADALAT AS A MEANS FOR ALTERNATE DISPUTE RESOLUTION¹³

The Lok-adalat is an old form of adjudicating system that prevailed in ancient India and its validity has not been taken away even in modern days, the word Lok-Adalat means people's Court, this system is based upon the Gandhi an Principles. It is one of the components of ADR Systems, as the Indian courts are over burdened with backlog of cases and regular courts take years together to settle even petty cases, LokAdalat therefore provides alternative resolution or device for expeditious and inexpensive justice. The LokAdalat system was introduced in India at the beginning of the 1980's starting from the state of Gujarat, the Lok Adalat System evolved as a means of alternate Dispute resolution.

Though meant to settle disputes at grass root level, in traditional manner, yet it became popular as an ADR mechanism for improving access to justice and for alleviating institutional burden of regular law courts.

In essence Lok-adalats provide an efficient, cost effective and assessable form of equitable justice it is in fact in total contrast to inaccessible and inefficient dispensation of justice by formal law courts.

CASE LAWS WHERE JUDICIARY HAS RULED IN FAVOUR OF ALTERNATE DISPUTE RESOLUTION IN E. VENKATAKRISHNA VS INDIAN OIL CORPORATION LTD.¹⁴

It was held that, when ever there is an arbitration clause in a contract, aggrieved parties must have recourse to the provisions of the Arbitration Act and that being a complete code in itself, parties cannot approach High Court, with a petition under Art- 226.

IN SITANNA VS VIRANNA

The Privy Council affirmed the decision of panchayat, and Sir John Wallis observed that the reference to a village panchayat is the time honored method of deciding disputes. It avoids protracted litigation and is based on the ground realities verified in person by the adjudicators and the award is fair and honest settlement of doubtful claims based on legal and moral grounds.¹⁵

IN PT THOMAS VS. THOMAS JOB¹⁶

It was held, that the experiment of Lok-Adalat as an alternate mode of dispute settlement has come to be accepted in India as a viable, economic, efficient and informal one.

IN OIL AND NATURAL GAS COMMISSION VS. CCE¹⁷

In one of the orders passed in this judgment it was recorded that the cabinet secretary has issued instructions to all departments of Government of India as well as PSU'S that all disputes "regardless of type, should be resolved amicably by mutual consultation or through good offices of empowered agencies of the government through arbitration and recourse to litigation should be eliminated.

IN BHASHEER VS. KERALA STATE HOUSING BOARD¹⁸

Hon'ble Justice K.Padmanabhan Nair. J opined that, it must be ensured that in developing countries most of the cases are resolved by ADR mechanism of Arbitration, Conciliation and Mediation.



IN SALEM ADVOCATE BAR ASSOCIATION TAMIL NADU VS. UOI¹⁹

It was held that, keeping in mind the law delays and the limited number of judges which are available, it has now become imperative that resort should be had to ADR, with a view to bring an end to litigation at an early date. In this very case it was highlighted, that ADR mechanism contemplated by Section 85 of CPC²⁰ is arbitration, conciliation, judicial settlement including settlement through Lok Adalat and mediation.

IN DECO MICA LTD VS UOI²¹

Here in it was held that ADR is inevitable in one form or the another, in view of global unquestionable phenomenon because court of law some times becomes suit for life, litigation in the present set up and mechanism has become expensive and time consuming and dispensation of justice has become slow. It is reported that out of 192 Countries, which are members of UN, 133 Countries have successfully implemented ADR in one form or the other, with encouraging and rewarding success.

15 AIR 1934 SC 105

16 AIR 2005 SC 3575

17 1995 Supp (4) SCC 541

18 AIR 2005 Ker 64

19 AIR 2003(1) SCW 4627

20 Civil Procedure Court

21 2002(144) ELT 18 (Guj)

CONCLUSIONS

The ADR system thus provides the parties to a dispute to opportunity to resolve their dispute outside the court. Parties who do not wish to go through the lengthy and formal process of court proceedings may opt for this method of resolving disputes. It is advantages on many levels. Nevertheless ADR is gaining extreme popularity as it does relieve the courts from the cumbersome litigations, and taking in to account its various advantages. The law and legal system should appeal the reasons of people in a common sense observation of facts and not in a way of legal principle. It is this spirit that has led to the evolution of ADR Mechanism for the dispensation of justice with efficacy and steadfastness.

The efficiency of Arbitration, Conciliation, Lok- Adalats, Mediation, Negotiation as a means of providing quicker, faster, cheaper, efficient and some what agreeable settlement, in a private atmosphere, without publicizing the issue has made the Alternate Dispute Resolution system a hot favorite amongst both litigants as well as corporate, The popularity and acceptability of the system is quite evident from the fact that, now even courts of law are seriously encouraging this concept.

The growing burst in the establishment of a number of mediation of conciliation centers at various High Courts and Lower Courts stands as a testimony to the success of this overtly popular phenomenon.

Thus it would not be wrong to summarize that "In true sense of the term Alternate Dispute Resolution has emerged as a life saving pill for our ailing judicial system, ADR by dealing with simple cases has in fact spared to the regular courts, some extra time to deal with more technical and complex judicial matters, and by doing so it has in fact been quite successful in achieving its desired purpose of relieving the regular courts of their growing backlog of cases.



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