



An Analytical Study On Current Trends And Effectiveness Of A.D.R. In India

PATADIYA UDAY BHUPENDRABHAI

Research Scholar

Department of Law

Swaminarayan University, Kalol (GUJARAT), INDIA

ABSTRACT: Right to speedy trial is the fundamental right guaranteed under the Part III of the Indian Constitution to every citizen. The primary objective of ADR was to provide a solution for the increasing burden of the courts. It was an initiative taken by the Legislature and judiciary to restraint on the situation and achieve a “Constitutional goal” for achieving justice. To deal with the situation of pendency of cases in courts of India, ADR plays a significant role in India by its different mechanism. Due to this pendency of cases in court, the hearing of the cases is delayed and justice is not delivered in a short span of time. Now, ADR is legally accepted which also has binding nature sometimes. The future of dispute resolution revolves around the ICT innovations and new ideas to make dispute resolution efficient and accessible for every section of the society. ODR can play an important role in this aspect.

Key Words: Arbitration, Conciliation, Dispute Resolution, Lok Adalat, Mediation,

INTRODUCTION:

Right to speedy trial is the fundamental right guaranteed under the Part III of the Indian Constitution to every citizen. Due to inadequacy of courts, lengthy and tedious process of trial and cost for litigation, pendency of cases in courts, etc. has raised the need of alternatives to litigation. Alternative Dispute Resolution (ADR) is for that ADR is the different way where people can resolve their problems without any court trial, before court trial and mid of the trial to save their time and money. Arbitration, Conciliation, Mediation, Lok Adalat, etc. considered as an alternative dispute resolution mechanism. Mostly It has been observed that people can be saved valuable time and money by using ADR instead of court trial in India.

A.D.R. affords parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in court trial. In contrast to court litigation, the parties themselves may select the most appropriate decision-makers for their dispute. ADR gives parties in dispute the opportunity to work through disputed issues with the help of a neutral third party person. Dispute resolving through ADR is basically faster and less expensive than going to court.

If we look at the data of pending cases due to insufficient number of judges and lengthy judicial proceedings in India, there are nearly 5.1 crore cases pending in lower courts, district courts and high courts. Alternative dispute resolution strategy is progressively recognized in various fields of legal and corporate sectors both at the National and International levels as well.

CONCEPT OF ADR:

The Constitution of India is structured on the concept of welfare and wellbeing of the people, and the state must provide justice to the aggrieved party by judicial or non-judicial forums of dispute resolutions that ensure timely and effective justice and enforcement of fundamental rights for every individual of the state. The primary objective of ADR was to provide a solution for the increasing burden of the courts. It was an initiative taken by the Legislature and judiciary to restraint on the situation and achieve a “Constitutional goal” for achieving justice. The Preamble of the Indian Constitution ensures the State secure social, economic, and political justice to all the citizens of the State.

The institution of Panchayats are proud tradition of dispute resolution based on consensus and conciliation in India. The remnants of which are still found in our social system is the symbol of indigenous administration, which covered not only dispute resolution, but also other aspects of public administration.

As a matter of fact, ADR has a long tradition in many countries and India too has an age-old tradition of settlement of disputes through mediation and conciliation. In ancient India, Panchayats continued as forum of settlement of disputes in rural India. Arbitration, mediation, judicial settlement, lok adalat and conciliation are modes of alternative dispute resolution mechanism. Certain kinds of disputes such as matrimonial disputes, family disputes, disputes with neighbours, particularly in rural areas, and several other categories of civil and criminal cases, which form a substantial percentage of pending litigation, can be better and more satisfactorily resolved by the processes of mediation or any other mode of ADR.

The different modes of Alternative Dispute Resolution are as follows:-

1. Arbitration
2. Conciliation
3. Mediation
4. Judicial settlement
5. Lok adalat.

1. ARBITRATION, Arbitration, a method of alternative dispute resolution (ADR), is a mechanism for the resolution of disputes outside to the courts, where the parties to a dispute refer it to one or more persons as their arbitrators, by whose decision they agree to be bound. In India, the law governing arbitration is the Arbitration and Conciliation Act, 1996 based upon the UNCITRAL Model Law on Arbitration of the year 1985.

2. CONCILIATION, Conciliation is an alternative dispute resolution process whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bring about a negotiated settlement. Conciliation is a voluntary proceeding, where the parties involved are free to agree and attempt to resolve their dispute by conciliation. The process is negotiable. Through the conciliation the following types of cases majorly disposed successfully – Commercial, Family, Real Estate, Partnership, Employment, etc.

3. MEDIATION, Mediation is a simple, voluntary, party centred and well-structured negotiation process. In dispute a third party person as mediator assist the parties of disputes to best possible way of resolving their dispute. The mediator person only act like a facilitator in helping the parties to reach a negotiated settlement of their dispute. The mediator in person doesn't make any decisions and does not impose his view of what should be a fair way of dispute settlement. In the mediation process, each side meets with an experienced neutral mediator. The session begins with each side describing the problem and the resolution they desire – from their point of view. Once each sides' respective positions are aired, the mediator then separates them into private rooms, beginning a process of "Caucus Meeting" and thereafter "joint meetings with the parties". The end product is the agreement of both the sides. The mediator has no power to dictate his decision over the party.

4. LOK ADALAT, Lok adalat is promoted as a People's Court. It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations. The first Lok Adalats was held in Una aim the Junagadh district of Gujarat State as far back as 1982. Lok Adalats accept even cases pending in the regular courts within their jurisdiction. Section 89 of the Civil Procedure Code also provides as to referring the pending Civil disputes to the Lok Adalat. When the matter is referred to the Lok Adalat then the provisions of the Legal Services Authorities Act, 1987 will apply.

IMPORTANCE OF ADR:

To deal with the situation of pendency of cases in courts of India, ADR plays a significant role in India by its different mechanism. Alternative Dispute Resolution mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, arbitration, conciliation, mediation, negotiation (judicial settlement) and lok adalat. Here, negotiation means self-counselling between the parties to resolve their dispute but it doesn't have any statutory recognition in India.

ADR is also founded on such fundamental rights, article 14 and 21 which deals with equality before law and right to life and personal liberty respectively. ADR's objective is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice

and free legal aid provided under article 39A relating to Directive Principle of State Policy in Indian Constitution. In any form of ADR People are free to express themselves without any fear of court of law. They can reveal the true facts without disclosing it to any court.

EFFECTIVENESS OF ADR IN RECENT ERA:

The methods for resolution outside courts were initiated at early ages. The early Aryans were of the opinion to resolve the disputes through wisdom, reason, and prudence. This was the pillar for mediation which is used till now. During the 1960s in the US, community mediation was initiated to solve racial and integration issues. Later, it became applicable to family, neighbour issues that were personal. It was then noted that through mediation a high rate of settlement can be obtained if it gets separated from the legal bureaucracy. From the 1980s, private entities initiated resolving their conflicts through mediation after observing its cost-effective and time-saving methods. During the Pre-British rule in India, Mahajans, an impartial, respectful businessman were resolving the disputes by mediation between the merchants. Mediation was legally recognized in India in the Industrial Disputes Act, 1947. Arbitration was recognized in 1879. It also got a place in Civil Code Procedure under Section 89. Later, Legal Services Authorities Act, 1987 was legislated to constitute a National Legal Service Authority which was given a duty to encourage the settlement through arbitration, conciliation, mediations, etc. In 1996, the Arbitration and Conciliation Act was enacted. The major cause for the rise of ADR is the pending cases in the courts. The courts have to deal with lots of cases, therefore, there are plenty of pending cases before the court. Due to this pendency, the hearing of the cases is delayed and justice is not delivered in a short span of time. Now, ADR is legally accepted which also has binding nature sometimes. In the early period, the parties communicated and met in almost all the sessions but now, after a joint session the parties are separated.

The Indian Legal System has a huge number of pending cases due to an increase in offenses and the long procedures used by the court to solve a case. It is very important to lower the burden of cases by not dragging petty issues before the court and handling such cases outside the court. ADR plays a very important and effective role in Indian society. It has undoubtedly a positive effect on Indian society as it helps to resolve disputes quickly and at less cost. There are certain cases that individuals can solve through settlements. This is important as it saves time and money and also the relation between the parties. In courts, one party wins and the other loses due to which all the consequences are faced by the losing party which builds the enmity between the parties but through ADR methods, both the parties understand each other's conditions and come to a mutual settlement.

Alternate Dispute Resolution is a panacea to almost all disputes which can be settled outside the court in an amicable manner. It is used since ages and through histories by innumerable countries and its people in an informal manner to address any conflict. In contemporary times, the uses of ADR have rather increased in an institutionalized manner by countries to address any problem arising out of international trade and business.

Unfortunately, the picture of the Indian legal system at present appears gloomy. In order to cope up with 1.3 billion population and provide them the inherent right of access to justice, can be done through ADR systems with more strength. The accelerated pressure upon the judicial system is to an extent reduced with empowering ADR system. ADR is the best suited option for the future of Indian dispute resolution and its ever growing economy.

The covid-19 pandemic has a sweeping effect on how ADR functions in India at present. ADR has been potentially transformed into ODR (Online dispute resolution). ODR though a branch of ADR has emerged as the most preferred mode of dispute resolution outside courts. Traditionally, communication both verbal and non-verbal in dispute resolution has existed without technology and required the physical presence of parties in a pre-identified, designated physical space. However, the developments in ICT and increased access to the internet has brought into question this assumption that effective communication and thereby dispute resolution, necessarily requires physical congregation.

In India, the judiciary has been leading the way. There have been several pivotal initiatives through the eCourts Mission Mode Project whose impact will percolate both vertically and laterally. However, to make dispute resolution far more effective, there is a need for an efficient framework that resolves disputes before they approach the courts. This Committee is concerned with creating one such framework, which builds on past efforts and takes a leap towards truly achieving the ideal enshrined in our Constitution - 'access to justice' for all. The current ecosystem and preparedness has been very promising. For instance, the judiciary has been unequivocal in its support for ODR both in terms of judges vocally recognizing its potential and in terms of the judicial decisions that have set the foundation for future ODR integration (such as the recognition of online arbitration or electronic records as evidence). The Executive, in the form of Government Departments and Ministries have also been leading the way.

RECOMMENDATION:

From this research it is known that the prevalence of ADR in India and the number of disputes disposed through it is increasing day by day. That is, the awareness of ADR is increasing among people. Public also want their disputes to be resolved quickly and efficiently. But the prevalence of ADR is not being used in a way that can be called noteworthy.

Following are the suggestions to increase the effectiveness of ADR.

- Increase public awareness and education about the benefits and processes of ADR. This can be achieved through campaigns, workshops, and including ADR modules in legal education.
- Establish standardized training and accreditation programs for ADR practitioners to ensure high-quality mediation and arbitration services. This will enhance the credibility and effectiveness of ADR mechanisms.
- Strengthen the legislative framework supporting ADR. Amend existing laws to provide clearer guidelines and enforcement mechanisms for ADR agreements and awards.
- Implement mechanisms to monitor and evaluate the effectiveness of ADR processes regularly. This can help in identifying areas for improvement and ensuring that ADR continues to meet the needs of its users effectively.
- Leverage technology to facilitate ADR processes, especially in remote areas. Online dispute resolution (ODR) platforms can make ADR more accessible and convenient.

CONCLUSION:

Some of Alternative Dispute Resolution methods such as mediation and Lok Adalats are developing on the right track and are achieving their objectives to a great extent, after they were institutionalized. It is also seen that various statutory interventions made with the objective of laying down legal framework for ADR in India, have had no impact in resolving disputes amicably. It is also found that alternative dispute resolution mechanisms, if properly manned could become very effective in resolving disputes of any kind, ranging from commercial to family disputes or from traffic offences to intellectual property disputes.

Towards the end making ADR more effective in India, it is proposed that a national policy of ADR may be formulated giving a broad framework of modes of dispute resolution through alternative means with the objective of effective settlement of disputes of both domestic as well as international character. This would also help us to develop a dispute resolution culture conducive to the acceptance and development of the philosophy underlying ADR.

Currently, the dispute resolution framework in India is facing many long-standing challenges including the lack of efficiency and access. Due to delay in the disposal and high pendency in the traditional courts and tribunals, dispute resolution in India involves a high expenditure of time and resources. This has an adverse effect on the ease of doing business in India. The future of dispute resolution revolves around the ICT innovations and new ideas to make dispute resolution efficient and accessible for every section of the society. ODR can play an important role in this aspect. Through easily accessible and user-centric processes, ODR can offer curated dispute resolution solutions for businesses, thereby enabling entrepreneurs to enforce contracts efficiently. Further, it can also provide an accessible mode of dispute resolution to masses which will eventually reduce the burden on the traditional court system.

REFERENCES:

1. Sanjay Rawat: Future of ADR in India.
2. Prof. K. N. Chandrasekharan Pillai: ADR: Status/Effectiveness Study
3. Ashwini M. etc.: Rise of ADR Stepping towards efficient justice system.
4. <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/>
5. <https://www.legalserviceindia.com/legal/article-8265-adr-system-in-india-a-brief-historical-background.html>
6. Hon'ble Justice S. B. Sinha: ADR and Access to Justice: Issues and Perspectives