ADR Mechanism in India: Achievements and Challenges

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ABSTRACT

Article 21 of the Constitution ensures just, fair and reasonable procedure. Sooner the disputes are resolved the better for all the parties concerned in particular and society in general. Denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system.

As a mechanism of ADR (Alternative Dispute Resolution), conciliation has acquired statutory recognition in the Arbitration and Conciliation Act, 1996. As against arbitration, it is neither based nor controlled by existence of a prior agreement between the parties. That apart, recourse to conciliation can be held even after parties have resorted to litigation and the case is pending before a Court. Conciliation is a less formal form of arbitration; it does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. Conciliation is an alternative dispute resolution mechanism with the help of conciliator. Conciliator assists the disputing parties to explore potential solutions and find a mutually acceptable solution by lowering tensions and improving communications. Conciliation is an alternative dispute resolution mechanism which has been given statutory recognition by incorporating provisions in Sections 61 to 81 of Part III of the Arbitration and Conciliation Act, 1996.

Mediation has been defined as a private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. In USA, mediation is the most popular form of ADR. Mediation is a process of dispute resolution focused on effective communication and negotiation skills. The mediator acts as a facilitator assisting the parties in communicating and negotiating more effectively, thereby enhancing their ability to reach a settlement. Mediation is a process of dispute resolution in which one or more impartial third parties intervenes in a conflict or dispute with the consent of the participants and assists them in negotiating a consensual and informed agreement. Mediation is a method of dispute resolution wherein a neutral person known as mediator brings the people who have a dispute, together and makes them to talk to each other. However, he makes no binding decisions on the contrary the parties to the dispute themselves ultimately determine whether the process results in a resolution of the dispute. The role of the mediator

KEYWORDS

Arbitration, Conciliation, Mediation, Dispute, Resolution

Introduction

Desire for quick and affordable justice is universal. Right to speedy trial is a right to life and personal liberty of every citizen guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure. “Any conflict is like cancer. The sooner it is resolved the better for all the parties concerned in particular and society in general. If it is not resolved at the earliest possible opportunity, it grows at a very fast pace and with time and the effort required to resolve it increases exponentially as new issues emerge and conflicting situations galore. One dispute leads to another. Hence, it is essential to resolve the dispute, the moment it raises its head.”

Disposal of cases in time is the necessity to maintain the rule of law and providing access to justice, which is a fundamental right of every citizen guaranteed by the Constitution. “Behind almost every human conflict someone feels dismissed, discredited, disenfranchised or disrespected. Unresolved tensions that may have immersed below the surface can resurface and make situations difficult.”

Denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system of the country. This has led to people settling scores on their own, resulting in a growing number of criminal syndicates and mob justice in various parts of the country and reflecting the loss of people’s confidence in the rule of law. In 1996, the Indian Legislature accepted the fact that in order to lessen the burden on the courts, there should be a more efficient justice delivery system in the form of arbitration, mediation and conciliation as an Alternative Dispute Resolution (ADR) options in appropriate civil and commercial matters. Thus, Parliament enacted Arbitration and Conciliation Act, 1996, with a view to provide quick redressal to commercial dispute by private Arbitration. Speedy decision of any commercial dispute is essential for the smooth functioning of business and industry. ADR has been recently referred in many areas as “Appropriate Dispute Resolution” and not as “Alternative”. In fact litigation is being referred as “Judicial Dispute Resolution” or JDR. ADR is also being referred as a global system as it is not restricted by territorial jurisdiction, which is a major hurdle in litigation process.

Various Forms of ADR

There are various forms of ADR mechanisms exist in India for resolving disputes outside the courts. It is the nature of the dispute and relation of the parties which decide the choice of ADR method either by arbitration, conciliation, mediation, Lok Adalat etc. “Arbitration is a process used by the agreement of the parties to resolved disputes. In arbitrations, disputes are resolved, with binding effect, by a person or persons acting in a judicial manner in private, rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it. The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The object of arbitration is settlement of disputes in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties.

As a mechanism of ADR (Alternative Dispute Resolution), conciliation has acquired statutory recognition in the Arbitration and Conciliation Act, 1996. As against arbitration, it is neither based nor controlled by existence of a prior agreement between the parties. That apart, recourse to conciliation can be held even after parties have resorted to litigation and the case is pending before a Court. Conciliation is a less formal form of arbitration; it does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. Conciliation is an alternative dispute resolution mechanism with the help of conciliator. Conciliator assists the disputing parties to explore potential solutions and find a mutually acceptable solution by lowering tensions and improving communications. Conciliation is an alternative dispute resolution mechanism which has been given statutory recognition by incorporating provisions in Sections 61 to 81 of Part III of the Arbitration and Conciliation Act, 1996.

Mediation has been defined as a private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. In USA, mediation is the most popular form of ADR. Mediation is a process of dispute resolution focused on effective communication and negotiation skills. The mediator acts as a facilitator assisting the parties in communicating and negotiating more effectively, thereby enhancing their ability to reach a settlement. Mediation is a process of dispute resolution in which one or more impartial third parties intervenes in a conflict or dispute with the consent of the participants and assists them in negotiating a consensual and informed agreement. Mediation is a method of dispute resolution wherein a neutral person known as mediator brings the people who have a dispute, together and makes them to talk to each other. However, he makes no binding decisions on the contrary the parties to the dispute themselves ultimately determine whether the process results in a resolution of the dispute. The role of the mediator
Disadvantages

Everything is the mixture of black & white, and nothing is perfect, so the Alternate Dispute Resolution Mechanism is not an exception to this general rule. Parties cannot be compelled to go in for ADR unless they sign an agreement or mutual- 
agree to resolve their disputes by ADR. “Arbitrators were frequently and strongly attacked as partial and immature 
in resolving the disputes. Probably many persons involved in 
the legal world are blissfully ignorant of the Alternative meth-
ods, or even have a prejudice against them.”

Nearly one and half decades after the enactment of the Ar-
bidation and Conciliation Act, 1996 (hereinafter “the Act”), 
there are whispers in the air that the Act has lost its basic 
structure and identity and is no longer what its legislators 
tended it to be. Success of ADR depends upon the good 
faith of the parties and their attorneys; however, unrepresent-
ed and/or uninformed party are at disadvantage of succeeding 
in an ADR. ADR does not any precedent value. Usually in ADR 
proceedings, precedents are not given much importance. The 
outcomes of ADR can vary, depending on arbitrator / mediator 
and other factors. Poor mediator / arbitrator (qualifications, 
style and attitude) can result in unsuccessful resolution, and 
can defeat the purpose of ADR. However, looking at the ad-
vantages as against the disadvantages of ADR, the balance lies 
in favour of advantages.

Conclusion

Indian courts suffer from a serious backlog of cases, which 
is mainly due to less number of judges and insufficient infrastruc-
ture which is unable to handle the caseload. India being a de-
voping country, going through major economic reforms with-
in the framework of the rule of law, for expeditious resolution 
of disputes and lessening the burden on the courts, alternative 
mechanisms for resolution (ADR) are the only alternative through 
abridation, conciliation, mediation and negotiation. By virtue of 
Code of Civil Procedure amendment in the year 2002, Section 89 
has been included, which gives importance to mediation, concili-
ation and arbitration. This section makes it obligatory on the part 
of the Court to refer the matter for settlement either before the 
Lok Adalat or other methods enumerated in that section. Now 
it has become an international phenomenon to resolve commer-
cial disputes through arbitration and not through normal judicial 
system. Majority of the persons do not want to become involved 
in the lengthy and expensive proceedings, whereas, it is fast, cost-
effective, and it is also conclusive. In addition to reducing the burden 
of cases, ADR mechanism is much faster. ADR mechanism has been introduced and are being 
utilized for a number of other reason. Alternative Disputes Reso-
lution 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 or-
dinary process of dispute resolution through Courts. Furthermore, 
ADR mechanisms enhance the involvement of the community in 
the dispute resolution process.

Alternative Dispute Resolution mechanism (ADR) is not a re-
placement of litigation, rather it would be used to make our 
traditional court systems work more efficiently and effectively. 
We have to formulate effective Alternative Dispute Resolution 
mechanisms to ease the present burden of judicial functioning. 
The backlog of cases is increasing day by day, however, judiciar-
ial alone is not responsible for the same. It must be noted that the 
backlog is due to inadequate justice process through Arbi-
tral process. So the arbitral justice system has co-extensively 
remained with the legal system but without much expected success.”

Advantages

Over the last few decades, there is significant increase in in-
ternational trade and commerce which has in turn resulted in 
considerable increase in the number of commercial disputes, 
and India is not an exception. However, growth of dispute 
resolution mechanisms could not be at the same pace as the 
industrial growth, modernization, and improvement of the 
socio-economic circumstances. Thus, Alternative Dispute Reso-
lution mechanisms have become more crucial for businesses 
operating in India as well as those doing businesses with Indi-
an firms. There are various reasons for which ADR is preferred 
over the conventional way of resolving the disputes. Courts 
resolve disputes via a binding process by applying legal and 
equitable principles to findings of fact. Any Court system is 
governed by strict rules of pleading and of evidence. With a 
backward-looking approach, the outcome of Court efforts 
depends largely upon discovering the truth about something 
that occurred in the past. Subject to rigid procedural and ev-
diency rules, Courts provide legal answers to questions of 
entitlements and of rights. ADR encourages the participation of people in the process of 
dispute resolution thus; it creates legal awareness and respect 
for rights of others and promotes self-reliant development. ADR 
processes have the advantage of providing parties with the op-
portunity to reduce hostility, regain a sense of control, gain ac-
ceptance of the outcome, resolve conflict in a peaceful manner, 
and achieve a greater sense of justice in each individual case. The 
resolution of disputes takes place usually in private and is more 
viable, economical, and privacy-preserving than public. There are advantages of the Alternative Dispute Resolution process is that the dispute 
remains under the control of the parties themselves and any set-
tlement entered into is their own and do not represent a dictate 
from an outsider. The process of Alternative Disputes Resolution 
be it arbitration, mediation, negotiation or Lok Adalats implies a 
greater involvement of the disputing parties. The parties are ac-
tively involved in the process of dispute resolution and can, there-
fore, more effectively reach a settlement of the dispute.

Lok Adalat is constituted under National Legal Services Au-
thority Act, 1987, pursuant to the constitutional mandate in Article 39A of the Constitution of India, which contains vari-
ious provisions for settlement of disputes, including Lok Ada-
lats. The concept of Lok Adalat is not a new phenomenon, but an 
ancient concept is given now statutory basis. One of the unique 
features of Lok Adalat is that dispute are settled summar-
arily without going through the complexities of legal pro-
cedings of the routine Courts.

In 1987 Legal Services Authorities Act was enacted to give a 
statutory status to the institution of Lok Adalat. Chapter VI of 
the Act contains provisions providing for organization of Lok 
Adalats; the power and functions of the Lok Adalat and the ef-
flect of the award made by the Lok Adalat. Under section 19 of 
this Act, anybody can get his dispute referred to Lok Adalat for 
its settlement through mediation and conciliation. Once a com-
promise or settlement is arrived at before the Lok Adalat, then 
the award based thereon, acquires the force of a decree of a 
civil court. If it attains finality and binds the parties to the dispute. The Act forbids filing of appeal to any court against such an 
award except on the ground of fraud. In Lok Adalats, justice is 
dispensed with free of cost and it is faster. The majority of the 
Indian population dislikes approaching the regular Court to re-
solve their disputes, reason being illiteracy, economic condition 
and lengthy procedures to be followed. Therefore, Lok Adalats 
could be a boon as an additional mechanism to the judicial in-
istution, thereby reducing the backlog of cases, which keeps on mounting day by day. The Lok Adalats can settle all civil cas-
es and compoundable criminal cases.

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