

ALTERNATIVE DISPUTE RESOLUTION

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ABSTRACT

The traditional method of dispute resolution is not only tedious but also expensive and uncustomized. To avoid the unnecessary uproar in the legal system that makes justice a far-fetched dream. Often such a long road in the legal system is seldom traveled by. This gives way to an Alternate Dispute Resolution system that is not only efficiently woven to enable a continuous and robust communication and reconciliation link between the two parties. ADR does away with the ever time-consuming litigation process. The matter is sorted out of court with the involvement of independent private third parties. Alternative Dispute Resolution, regularly referred to as ADR, is a set of methods or techniques that allow parties to a dispute to arrive at an amicable settlement. It comprises of manners by which parties can settle their disparities without a plan of action to litigation. Alternative Dispute Resolution methods are currently widely acknowledged and have been acquiring acknowledgment at the national and global levels. Methods of ADR have been in existence for a long time and were utilized a long time before the refinement of civilization.

INTRODUCTION

ADR includes consistent efforts made by a third party, who is neutral and helps the disputing parties to come to a settlement. The qualification and the expertise of the neutral third party fluctuate concerning the methods of dispute resolution.

Courts are an essential institution, and their significance can't be emphasized enough. However, several numbers of the disputes which arise between people or various organizations are to such an extent that, they can be resolved without the interference of the Juridical System. Such disputes, which don't need the juridical framework, all things considered, need a particular set of formal guidelines to accomplish their objective. Dispute

resolution settles the disputes and conflicts that arise among people or organizations. Thus, the burden of the judiciary is reduced.

The main types of dispute resolution that comes under it are-

- **Mediation-** In this system an individual third party steps to coordinate and communicate and provide a medium for the same. The insurer and the insured find a way of a mutually acceptable outcome. It doesn't tell which party is right or wrong or provides a concrete inclined agreement; instead, it adds a communication structure between the aggrieved parties for redressal.
- **Arbitration-** An arbitrator listens to the argument in a neutral and unbiased way. It collects evidence, decides the outcome of the dispute can be binding or non-binding Arbitration causes less cost as it is time-bound, experts from the fields are appointed so that the matter is categorically solved. Parties can determine their procedure, and the proceedings are held in private.

ADVANTAGES AND DISADVANTAGES OF ADR

Advantages are many, but a system always has both a boon and bane. Even though its time saving and inexpensive, it becomes troublesome and overbearing. Mediators' role is primary this can be good and bad, because if the mediator turns to be on the insurer side, the decision may be affected accordingly.

ADR is primarily free from technicalities that are generally present in the court system. The parties are free willing to discuss opinions without having a fear of the matter being disclosed. There is also no feeling of enmity since the grievances are redressed, and the relationship is also not affected. ADR is more bent towards multi-party disputes. So that all parties can put forward their grievances on the table. A more comprehensive range of doubts and discussions are addressed, so that future interests are also met. A type of case may be complex, which means sit might get sorted as a matter of time and discussion.

GENESIS OF ADR

The 222nd Report of The Law Commission of India through article 39A clearly states that the Constitution has equally provided scope for justice and grievance redressal irrespective of their economic background. Access to justice shall be free from any influence, be it societal, financial, or political. The frequent discrepancies arising during long litigation battles fought in court made way for the arrival of the ADR system of dispute redressal. These reasons prompted the Indian Government to enact Section 89 of the Code of Civil Procedure, 1908, and replace the earlier Arbitration Act, 1940 with The Arbitration and Conciliation Act 1996, by the mandates of the United Nations Commission on International Trade Law (UNCITRAL).

ARBITRATION

Arbitration and dispute resolution in India is governed by The Arbitration and Conciliation Act, 1996. It is a form of dispute resolution where an independent party is appointed to adjudicate the matter. He has to be unbiased and uninclined towards any party so the dispute can be amicably resolved within a time frame. Huge companies fight such battles outside court, avoiding a long litigation process. The arbitral resolution can be binding and non-binding depending upon the scope of the request of trial.



- Ad Hoc Arbitration is one where the parties who are in dispute are the ones to decide the proceedings without going to an Arbitral institution. In case one of the parties is reluctant to appoint an arbitrator. Section 11 of The Arbitration and Conciliation Act 1996 will be invoked by the other party then the CJI shall decide who will be the arbitrator.
- Institutional arbitration is one where a neutral party is ready to administer the arbitration. The rules are formulated by the Institutions keeping in mind the type of cases and the possible probable situations that might as well arise.

MEDIATION

Mediation is a method of dispute resolution, where an amicable decision arises with the help of a 3rd party known as a mediator without a plan of action to the court. It is an intentional or voluntary process, and dissimilar to arbitration, it is more flexible; in this manner, the parties to the dispute are under no obligation to consent to the settlement. Thus an agreement taken through Mediation will be authoritative and binding upon the parties, just as long as they agree to it. There might be occasions where parties are encouraged to adhere to Mediation; nonetheless, under such conditions, the outcome is up to the parties. Thus, Mediation is where the parties are in complete control over their final settlement. Here, the mediator only acts as a facilitator and doesn't interfere in the decision of the particular dispute. Subsequently, it is a mutually beneficial settlement.

In this system of dispute resolution, the neutral party provides a medium of communication and dispute resolution. One of the few characteristics of this type of dispute resolution is that the mediator is not allowed to give an outcome of the dispute or give concrete form. The solution is given mutually, and the agreements are generally non-binding. Parties are in significant control of the mediation process and it is strictly confidential and is kept private to the parties. The parties can even go for trial if they are not satisfied with the mediation process.

Other forms are conciliation, negotiation, and lokadalats that may be minutely drawn out from the dispute resolution.

CONCLUSION

The Mechanism of Alternate dispute resolution is extremely fascinating to work and research. For a well-rounded and satisfying experience that is less tedious and time-consuming and cost-effective, one should resort to the Alternate Dispute Resolution as a scope to grant easy justice, which can also be non-binding on the parties if they don't wish for it same. Accessibility is one such factor that is not guaranteed in court as it both occupies huge time and live space and money that everyone is not willing to put.

Alternative Dispute Resolution is an excellent method for getting justice. Alternative Dispute Resolution is easy to determine the issue or dispute since the cost is not more, quicker, more

expertise, accessible, give conciliation between parties, fewer formalities in the procedure, and less adversarial. In Alternative Dispute Resolution, each contention that happens will get resolve with appropriate steps. This is because Alternative Dispute Resolution has done allow ways to take care of the issues. In Alternative Dispute Resolution, it permits both parties to the dispute to ask a 3rd party to go to court. But both parties should ask a lawyer or an expert in the legal field. Other than that, the parties likewise should consent to be bound by this judgment. Alternative Dispute Resolution giving an advantage to its clients since Alternative Dispute Resolution is between minor issues for settling all contentions.

Alternative Dispute Resolution can resolve outside the court. Every decision whom the judge makes will not offer hostility toward the parties. Alternative Dispute Resolution gives more pressure, particularly in conciliation. Alternative Dispute Resolution plays a more interventionist role and takes recommends a potential solution to the disputes.

The informality and sensible nature of Mediation is likewise a significant factor. This is an industry that is inherently informal, unregulated, and open to innovative and creative reasoning. The structure and organization of Mediation are likewise inherently informal and creative, limitlessly desirable over the stuffy formality of the courts.

Mediation and arbitration are in some cases confused for each other. In Mediation, a neutral arbitrator listens to the proof and shreds of evidence and decides on a particular dispute. Mediation is the method where the mediator listens to both the parties to a conflict and afterward encourages the parties in dispute to discover a solution that works for them. Eventually, the solution that is reached can consider several different elements. Every individual can set their own needs and priorities.