CONSTRUCTIVE WAYS FOR DISPUTE RESOLUTION: EMPLOYING ALTERNATIVE DISPUTE RESOLUTION (ADR) TECHNIQUES FOR THE RECLAMATION OF JUSTICE

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Abstract

As the courts are not in a stance to hold up the entire load of the judicial system, multitudinous contentions impart themselves to settlement by alternative methods such as arbitration, conciliation, mediation, negotiation, etc. The Alternative dispute resolution processes not only lay out procedural pliability but also save valuable time & money and eschew the tensity of a conventional trial. Nearly all the discords involving civil, labour, commercial, and family strife, wherein the parties are capacitated to wind up a resolution, can be resolved by an alternative dispute resolution system. Alternate dispute resolution methods have also been evinced to operate in the business environment, principally in respect of disputation comprising intellectual property, securities, real estate, construction projects, joint ventures, partnership differences, personal injury, professional liability, product liability, contract interpretation and performance and insurance coverage. To dwindle the logjam of cases, there is a crucial need to organize and encourage alternate dispute resolution services for the settlement of both national and international conflicts. These services require to be nutrified on sound notions, prowess in their application and comprehensive and contemporary provisions. Although ADR has proven to be an efficacious mechanism as it has provided a congenial atmosphere, a less formal and less complicated forum for copious disputes, due to lack of awareness of its quiddity at the ground root level has abrupted its quantum leap. This paper aims to provide the gist of ADR concerning India by focusing on its purpose, advantages and disadvantages, (fruitful) modes of conflict resolution, highlighting the importance of Lok Adalat, significance and effectiveness of ADR in conflict resolution and ways to overcome the persisting deficiencies.

Keywords: Alternative Dispute Resolution, arbitration, mediation, conciliation, negotiation, Lok Adalat, Mobile Lok Adalats, Online Dispute Resolution, e-ADR.

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Introduction

Predominantly, there are three modes of settlement of disputes, viz. Traditional Dispute Resolution (TDR), Alternate Dispute Resolution (ADR) and Hybrid Methods of Dispute Resolution. Whilst the traditional dispute resolution mode or litigation alludes to the lawsuit before an apt court of law as per the mechanism entrenched, the alternative methods are more pliable and party-centric and encompass arbitration, conciliation, mediation and negotiation. Hybrid- methods are a cross- over betwixt two alternative modes of conflict resolution (Singhania & Partners LLP, 2018).

Alternate Dispute Resolution or external dispute resolution refers to any mode of resolving disputes outward the court which typically encompasses early neutral evaluation, arbitration, mediation, conciliation, and negotiation. As proliferating court queues, mounting litigation costs and time delays carry on plaguing the litigants, hence, more states have begun experimenting and adopting the ADR mechanisms (Legal Information Institute, 2017). Despite the efficacy of the fast-track special courts, the judicial authorities are still clogged with long unresolved disputes. Hence to resolve the problem of piling up pending cases, Alternate Dispute Resolution (ADR) serves as a redemption for justice.

ADR not only truncate the burden on the courts but is indeed a perfect substitute for the conventional methods of resolving disputes. It is a mode that capacitates the parties to maintain social order, and cooperation and provides the opportunity to decrease hostility. There are various ADR mechanisms namely, arbitration, conciliation, mediation, mini-trial, mediation-arbitration, final offer arbitration, private judging, summary jury trial and court-annexed ADR. These techniques have been established on scientific lines in the UK, Canada, Japan, Singapore, France, Australia, South Africa, the USA and China. ADR has not only succoured in cost diminution and swifter resolution of conflicts but also proffered a congenial ambience and a less convoluted and less formal forum for numerous kinds of disputes (Legal Services India, 2019). ADR is a dispute resolution technique that is non-adversarial, i.e., working cooperatively in conjunction to attain the finest resolution for everyone. It lays out the opportunity to “expand the pie” by dint of innovative, collaborative bargaining, and clinch the interests driving their demands.

ADR has evinced to be triumphant in dwindling the backlog of cases at varying tiers of the judiciary hence, it has been contemplated more efficacious, feasible and economic mechanism for resolving disputes (Anonymous, 2018). ADR has its radicles run deep in human chronicle, and they have long played a significant role in cultures across the world. China, where the conventional perspective of disagreement resolution has its fount in Confucian ethics, embraced mediation momentarily.

Since the Western Zhou Dynasty, the post of a mediator has been incorporated in all governmental administrations. India used a framework of arbitration (Panchayat) wherein the arbitrator (Panch) was granted a phenomenal position that his verdicts were permanent. In Bangladesh, during the British period, in 1870, the Panchayat system was authorized to administer and govern the arena for its group. This structure was used to settle trivial conflicts within their area, and the paramount conflicts were sent for judicial procedures. The goals of ADR are to assuage court overcrowding, ameliorate community engagement in the conflict resolution procedure, facilitate access to justice and lastly, provide a more pragmatic conflict resolution technique.

Objectives of ADR

- To bestow more constructive dispute resolution
- Economizing costs of handling conflicts
- Pruning the number and frequency of disputes
- Proffering disputants an outlet to discuss frustrations
- Resolving conflicts swiftly
- Retaining healthy correlations with stakeholders
- To disband court congestion and to avert inessential costs and delay
- Attaining outcomes that are firm and enforceable
- Establishing procedures that are whippy enough to tackle an array of conflict types in an apt mode
- Circumventing protracted conflicts by furnishing a mechanism to deal with future conflicts as they emanate (Lawyers & Jurists, 2015)

The Pros and Cons

Merits of Alternative Dispute Resolution

- **Economical method of conflict resolution:** Attorneys and expert witnesses are quite exorbitant. Litigating a case can cost hefty whereas ADR incurs fewer costs.
- **Less time-consuming:** ADR offers to resolve the dispute expeditiously without much delay.
- **Unimpeded from technicalities of courts**: ADR programs are not rigid.
- **Averts further dispute and maintain a harmonious relationship between the parties:** ADR can be used to lessen the magnitude of contentious issues between the parties (Anonymous, 2021).
- **Safeguard the best interest of the parties** (Saxena, 2017)**:** ADR permits the parties to work in conjunction with a neutral arbitrator or mediator so that the conflict can be resolved swiftly and the transacting parties are contended by the inference.
- **Confidentiality:** Generally, the resolution of conflict takes place in private which succours in maintaining confidentiality and thereby safeguarding the reputation and privacy of the parties involved.
- **Expertise:** The prospect of warranting that specialized prowess is available on the tribunal in the person of the arbitrator, mediator, conciliator, or neutral adviser.
- **Practical solutions custom:** ADR oftentimes upshots in sustainable outcomes, creative solutions, improved relationships, and greater satisfaction.
- **Elasticity of procedure:** Procedural pliability saves valuable time and money and truancy of stress of a conventional trial
- **Safeguard relationships and reputations:** It offers considerable direct control over the consequence. Personal relationships may also suffer less (Anonymous, 2018)

Demerits of Alternate Dispute Resolution

- **Dearth of power to set up legal precedents:** The remedies established or granted to parties cannot be binding for future cases which implies ta hat remedy for one can't be taken as a guiding stone for another.

- **No guarantee:** With an exception of arbitration, ADR mechanisms don't always give rise to a resolution. This is implicit that even after spending time and money, one can still end up opting for litigation.
- **Lack of awareness:** Unfamiliarity with the procedure is an element causing obstacles in ADR (Anonymous, 2021).
- **Probability of bias:** The anticipation of prejudice, though trivial, or a conflict of interest or at least the appearance of impropriety, may result in a neutral in ADR getting a good deal of repeat business from the same institution (Raj. R, 2012).
- **Stalling:** In far too many cases, ADR is simply used as a stall tactic that costs one's time and money without any actual progression of the case (Caufield & James LLP, 2021).
- **Unfairness:** The major downside is that dispute resolution may not always be just. For example, there can be prejudice in the arbitration proceeding as each party hires its arbitrator. In the negotiation process, the party with the most leverage generally gets its way. In ADR, there are cases wherein one party wins unjustly (Calkins Law Firm, 2020).

Modes of Conflict Resolution

Conflict Resolution is conceptualized as the procedures and techniques entailed in lubricating the harmonious ending of dispute and retribution (Inam Ul Haq., 2015). Not all conflicts, even those in which proficient intervention exists, result in resolution. Conflict resolution mechanisms are classified into two prime sets:

- **Adjudicative Processes:** It encompasses arbitration or litigation wherein the arbitrator, judge or jury ascertains the denouement.
- **Consensual Processes:** These encompass mediation, negotiation, and conciliation wherein the parties endeavour to reach an agreement.

The judicial system proffers resolutions for many divergent kinds of conflicts. Some disputants will not reach concurrence through a collaborative process. Some conflicts require the coercive power of the state to effectuate a resolution. Mayhap more significantly, most people opt for a proficient attorney when they get entangled in a conflict, especially if the conflict entails perceived licit wrongdoing, legal rights, or threat of lawful action against them.

Litigation: It is the most ubiquitous type of judicial conflict resolution. It is commenced when a litigant institutes a lawsuit against another. In litigation, the proceedings are immensely formal and are governed by regulations, such as the law of evidence and procedure, which are instituted by the legislature. Denouements are ascertained by an unprejudiced judge and/or jury, established on the applicable law and factual questions of the case. The court's decision is binding, not advisory; nevertheless, both parties have the prerogative to appeal the verdict to a higher authority. Typically, judicial conflict resolution is adversarial in nature (Anonymous, 2005).

Alternative Dispute Resolution/Extrajudicial Dispute Resolution:

ADR entails a set of practices and techniques pivoted at permitting the resolution of legal conflicts outside the courts (Mnookin, 1998). As escalating costs of litigation, proliferating court queues, and time deferments subsist to scourge litigants, many states have commenced experimenting with ADR mechanisms. The well-established tenet of ADR is that it uses a third party to resolve the conflicts between the transacting parties. One of the chief impetus parties may opt for ADR techniques is that, unlike adversarial litigation, ADR mechanisms are oftentimes collaborative and permit the parties to comprehend each other stance. The prime impetus for resolving conflict via ADR is to reduce the burden of the courts and proffer early access and speedy trial for cases that are more severe in nature (Anonymous, 2021).

Types of Alternative Dispute Resolution (ADR)

Arbitration

It is the mode wherein the conflicting parties get the dispute resolved by dint of the involvement of a third person (or more persons) but without recourse to a Court. The resolution of conflict is transpired by the discernment of the third person (or more persons) who are referred Arbitrators. The parties entrust credence to the acumen of the arbitrator and exhibit their keenness to abide by his judgement. The quintessence of arbitration is consequently hinged upon the precept of keeping the conflict away from the ordinary Courts and thereby enabling the parties to swap by a domestic tribunal. It is, thence, a referral of the disputed matter to the discernment of one or more persons between the conflicting parties (ICSI, 2012).

Herein, a neutral person known as "the arbitrator" hears dissensions and considers evidence from each side and then determines the upshot. Arbitration is comparatively less courtly than a trial and the rules of evidence are oftentimes relaxed. In binding arbitration, parties concur to embrace the arbitrator's decision as concluding, and generally, there is no prerogative to appeal. In the case of nonbinding arbitration, if the parties do not embrace the arbitrator's judgement, they may request a trial (NYC, 2017).

Advantages of Arbitration:

- **Enforceability:** As compared to court verdicts, arbitral awards are usually easier to enforce
- **Confidentiality:** The conflicts that are subjected to arbitration are not let out to the public, and are treated with privacy
- **Liberty to choose Arbitrator:** The parties have the prerogative to select an arbitrator to tackle their conflict
- **Time-Saving:** As juxtaposed to litigation, arbitral proceedings eventuate at an expeditious tempo, ergo, it saves time for both parties
- **Flexibility:** As compared to litigation, arbitral proceedings are pliable and more economically feasible

Disadvantages of Arbitration:

- There is a very constricted avenue for appeals
- If arbitration is obligatory according to the contracting parties, then their prerogative to approach the court is set aside

Mediation

Mediation is a structured mechanism wherein the mediator succours the disputants to attain a negotiated resolution of their dissensions, it is typically a discretionary procedure that outturns in a signed agreement that explicates the future conduct of the parties. The mediator applies various techniques and skills to facilitate the parties to resolve but is not authorized to proffer a verdict (ICSI, 2012). Herein, a neutral person (mediator) assists the parties in endeavouring to attain a mutually acceptable settlement of the conflict. The mediator doesn't clinch the case, but succours the parties to liaise so they can endeavour to resolve the conflict themselves (Pratap, 2021). The mediator doesn't take sides or determine who was right or wrong in the past rather he facilitates people pivoting on the future and

making their own decisions. Mediation can be chiefly constructive in business, family, and neighbour conflicts or where the people involved desire to preserve their relationship. Mediation may be ill-suited if a party has an appreciable dominance in control or power over the other (Kurian, 2021).

Advantages of Mediation:

- Mediation proceedings are confidential
- Parties have full control over the resolution
- The process settles the conflict expeditiously
- The correlation between the parties is not overly vitiated
- Comparatively less tensity than arbitration and litigation

Disadvantages of Mediation:

- Dearth of support from any judicial authority in its conduct
- There is the likelihood that a resolution between the parties may not stem as judgement lies at the volition of the parties
- Absence of formality: Since mediation proceedings are not rooted in any legal tenet, they lack procedural formality

Negotiation

It has been explicated as any sort of direct or indirect communication wherein the parties who have contradictory interests discuss the kind of collective measure which they might take to manage and eventually settle the conflict between them. Negotiations may be used to settle an already prevailing complication or to set down the spadework for a future relationship between two or more parties. Negotiations permit the parties to concur on an upshot that is mutually satisfactory (Department of Justice Canada, 2017).

It is the most elastic and informal ADR technique. It entails parties endeavouring to reach an agreement on matters in conflict directly or by the dint of solicitors. Herein, two or more parties enter into negotiation to reach a compromise that gratifies everyone. Negotiation is a distinctive genus of ADR employed by private individuals involved in a legal conflict (Freeman Solicitors, 2019). It is a non-binding mechanism in which discourses between the parties are instituted without the interposition of any third party to attain a negotiated resolution to the conflict. Negotiation prevails in non-profit organizations, businesses, legal proceedings,

government branches, among nations and in personal matters such as parenting, marriage, divorce etc.

Advantages of Negotiation:

- ❖ Brisk settlement as compared to litigation
- ❖ Since it is an informal process, it is comparatively pliable
- ❖ It occurs in a private environment
- ❖ It succours in maintaining a harmonious correlation between the parties to the conflict

Disadvantages of Negotiation:

- ❖ Dearth of the legal protection of the disputants
- ❖ The disputing parties may not come to a resolution
- ❖ Polarity of power between the parties is probable in negotiation

Conciliation

It is an informal mechanism wherein the conciliator (the third party) strives to fetch the disputants to an agreement. The conciliator does this by improving communications, slacking apprehensions, deciphering issues, exploring potential solutions, proffering technical assistance and yielding a negotiated settlement (ICSI, 2012).

Conciliation has been employed to settle conflicts on questions about the law, the relevant facts, or the amalgamation of both. It can be used in the resolution of conflicts that involve “non-justiciable” or “non-arbitrable” matters and is usually not impeded by jurisdictional confronts. Conciliation is applied, even when there are apposite founts of law that can be exerted, because the disputing parties may covet to assuage the repercussions of the legal tenets concerned by executing a conciliatory approach that pivots on attaining an equitable panacea.

The rudimentary attribute of conciliation is the non-binding nature of the conciliator’s recommendations. The de facto recommendations are not binding on the disputing parties because they are fundamentally permitted to embrace or dismiss the recommendations. Nonetheless, if a settlement agreement is made between the parties based on these propositions, this agreement in and of itself is binding (Reif, 1990).

Upsides of Conciliation

- The conciliator is usually a specialist in the disputed field
- If unsatisfied with the proceeding, the disputing parties have the autonomy to approach the court
- As compared to litigation, the conciliation proceedings are informal, flexible and economical

Downsides of Conciliation

- There is no channel for appeal
- The procedure is not binding upon the disputing parties

Comparative Analysis of the ADR Mechanisms (STA Law Firm, 2019)

Basis	Arbitration	Mediation	Negotiation	Conciliation
The pith of the Proceedings	Legally Binding	Not Legally Binding	Not Legally Binding	Not Legally Binding
Neutral Third Party	Adjudicator	Facilitator	Facilitator	Facilitator/Evaluator
Confidentiality	As established by law	Based on trust	Based on trust	As established by law.
Level of Formality	Formal	Informal	Informal	Informal
Crux (Kumari, 2020)	It is a quasi-judicial adjudicatory procedure wherein the arbitrator(s) appointed by the Court or by the parties decide the conflict between the parties.	Mediation is a negotiation procedure and not an adjudicatory procedure. Herein, the mediator facilitates the procedure. Parties participate directly in their dispute settlement and determine the terms of resolution.	Herein, the dispute is resolved cordially by an unbiased third person called a negotiator, utilizing divergent stratagems. The chief objective of negotiation is to attain an agreement that is fair and acceptable to the parties.	Conciliation is a mode of settling the conflict, wherein an independent individual assists the parties to arrive at a negotiated resolution.

Lok Adalats (People's Courts)

Lok Adalat is one of the indispensable alternate dispute redressal techniques. It is a forum wherein conflicts unresolved in the court or at the pre-litigation juncture are resolved amicably/compromised. National Legal Services Authority (NALSA) along with other legal services institutes organizes Lok Adalats. The State/District Legal Services Authority or the Supreme Court/High Court/Taluk Legal Services Committee may conduct Lok Adalats at places and intervals and for exercising jurisdiction and for areas as it deems fit. Every Lok Adalat conducted for an area comprises several serving or retired judicial officers and other individuals of the area as may be stated by the agency organizing. Usually, a Lok Adalat comprises a judicial officer as the chairman and an advocate and a social worker as members. Matters such as criminal (compoundable offences) cases, family/matrimonial disputes, land acquisition cases, bank recovery cases, workmen's compensation cases, labour disputes, etc. are being taken up in Lok Adalats (Anonymous, 2020). The Lok Adalat have similar powers as are bestowed in a Civil Court under the Code of Civil Procedure (1908) (Change, 2016). The judgement of a Lok Adalat is considered to be a decree of a Civil Court. Every award made by a Lok Adalat is ultimate and binding on all the disputing parties. No appeal lies to any court against the award of the Lok Adalat. If the parties do not contend with the Lok Adalat's award, though there is no provision for an appeal against such an award, they are free to institute litigation by approaching the court of appropriate jurisdiction by filing a case by following the requisite process, in the exercise of their prerogative to litigate. When a matter is instituted in a Lok Adalat, there is no court fee payable. If a pending matter before the court is referred to the Lok Adalat and is resolved thereafter, the court fee initially paid in the court on the petition/complaint is reimbursed back to the parties. The individuals settling the cases in the Lok Adalats are called the Members, they only have the role of statutory conciliators and do not possess any judicial role; thus, they can only coax the parties to conclude resolving the conflict outside the court in the Lok Adalat and shall not compel any of the parties to resolve or compromise cases either directly or indirectly. The members succour the parties impartially and independently in their endeavour to attain an affable resolution to their conflict.

Mobile Lok Adalats which have gained momentum over the past years are conducted in various territories and travel from one location to another to settle conflicts to facilitate the efficient settlement of disputes (National Legal Services

Authority, 2020). It primarily aims to bring about justice at the doorsteps. Also, the nifty e-Lok Adalats have gained momentum in many places.

Online Dispute Resolution

It utilizes technology to facilitate dispute resolution between the parties (Singh, 2021). The application of technology simplifies and expedites the procedure, and significantly truncates costs. Although ODR holds a colossal flair to provide for effective resolution of the dispute, its integration into the mainstream conflict settlement ecosystem poses various impediments such as issues regarding infrastructure, digital literacy, and a dearth of awareness about trust in ODR services, privacy and confidentiality concerns.

Merely integration of technology in the conflict settlement procedures (such as virtual scheduling) is not ODR. The application of technology to actual conflicts (such as video conferencing and digital circulation of files) can constitute an Online Dispute Resolution. ODR is also more than just e-ADR for it can encompass the settlement of conflicts via automated dispute resolution or AI/ML tools. Howbeit, e-ADR forms a subset of ODR. E-ADR refers to the application of technology in alternative dispute resolution processes. From exemplars seen around the globe, in its first juncture, ODR shares its rudiments with ADR techniques such as arbitration, mediation and negotiation. To this magnitude, most of the early ODR efforts have mirrored ADR procedures via aggregated application of simple ICT tools (Sekhri Gaurav, 2020).

Conclusion

Indeed, ADR has proven lucrative in clearing the backlog of cases at numerous tiers of the judiciary but there seems to be a dearth of awareness about the availability of these techniques in many areas. Awareness can be brought by holding webinars, workshops and seminars to change that of the disputants, advocates and judges. Compulsory practical training in ADR practices must be part of the university curriculum. Also, the technical issues of ADR must be given dire attention. "Law's costly-take a pint and agree": not everyone can afford litigation, therefore, judicial officers must be trained to identify the cases and encourage them to be solved outside the courts.

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