

ADR AND ITS TYPES

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INTRODUCTION

The development of technology has led to the globalization and commercialization of today's globe. Now, even those who are located on opposite sides of the globe can communicate with one another and resolve conflicts and business agreements. The majority of individuals no longer have the time to visit the courthouse, file papers, and then wait for a hearing for hours on end. Due to the inefficiencies and disadvantages of litigation, we are quickly moving toward a point where alternative dispute resolution (ADR) is replacing it. This article shall be helpful to give you an overview of the ADR methods. The development of technology has led to the globalization and commercialization of today's globe. Now, even those who are located on opposite sides of the globe can communicate with one another and resolve conflicts and business agreements. The majority of individuals no longer have the time to visit the courthouse, file papers, and then wait for a hearing for hours on end. Due to the inefficiencies and disadvantages of litigation, we are quickly moving toward a point where alternative dispute resolution (ADR) is replacing it. Though ADR techniques have not yet totally replaced litigation in India, the country's legal system is starting to recognize its advantages. You can use this article to get an overview of the ADR procedures and their types.

ALTERNATIVE DISPUTE RESOLUTION AND ITS TYPES?

Alternative dispute resolution (ADR) refers to a variety of conflict resolution techniques that assist the parties in the disagreement in resolving outside of court or through litigation. These techniques typically engage a party who is not involved in a dispute and thereby aid in the dispute-resolution process. ADR techniques are frequently utilized in conjunction with the litigation process with court approval.

ORIGIN

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According to www.lawcommissionofindia.nic.in, Article 39A of the Indian Constitution ensures that everyone has an equal opportunity to obtain justice and that this opportunity cannot be denied to any person based on their financial situation or any other form of disability. According to the research, "access to justice" for the general public in India refers to having access to the legal system. However, even that has been hampered by issues like poverty, illiteracy, ignorance, social backwardness, and governmental ineptitude, among others. Many people still live in poverty in a developing nation like India. When their rights are violated, they frequently lack the resources to wage protracted legal battles. They lack the resources to hire a lawyer. They lack knowledge of the laws and court processes. As a result, individuals frequently perceive the legal system as a hassle. ADR is being investigated since many nations have these kinds of inefficiencies. The courts are also overburdened with cases that are still outstanding and taking a long time to be resolved. In response to the recommendations of the United Nations Convention on International Settlement Agreements ..., the Indian Government adopted Section 89 of the Code of Civil Procedure, 1908, and replaced the earlier Arbitration Act, 1940 with The Arbitration and Conciliation Act, 1996 [Legislative Department ... (UNCITRAL)].

WHAT ARE THE BENEFITS OF ADR?

Less expensive and Saves time: Since, the parties themselves opt for ADR by mentioning the clause in their contract which is considered to be a separate clause from all other clauses of the agreement and survives even if the contract is repudiated by one or both the parties due to the doctrine of separability, the parties are generally co-operative during the proceeding of ADR and hence this results in faster results. During the normal course of court hearings, one or both parties exploit the process by using technicalities of the proceedings and thereby keep delaying the results. Though this is also possible to some extent in ADR, the chances are very minimal and therefore this is also the reason which results in faster results. Faster results thereby help parties to save the cost of litigation and hence ADR is a very less expensive process that also saves a lot of time for the parties.

Flexible paradigm: ADR offers a very flexible paradigm from the very outset as it allows the parties to choose whether to opt for ADR or not in the first place. Parties are offered various options concerning ADR such as the place of ADR, its mode of it et cetera. The parties can

even choose the person who will be administering the process of ADR in most cases and hence, it creates all the way more convenient and flexible paradigm for the parties.

WHAT ARE THE DISADVANTAGES OF ADR?

Fewer chances of Enforcement: The award under the ADR is very difficult to enforce. In cases of multi-party disputes which belong to different jurisdictions, the award of the tribunal administering the ADR proceedings may not be binding upon the other parties due to the different rules/laws/statutes in their respective jurisdictions.

Inefficient to solve complex cases: In cases where there are many complexities involved, the ADR may prove to be an inefficient mode of dispute resolution as in most cases it is not equipped to check the veracity of the facts and issues involved.

TYPES OF ADR

There are various types, some of which are discussed below-

ARBITRATION

The Arbitration and Conciliation Act, of 1996 governs arbitration in India. A party or parties are chosen to decide the dispute in this type of conflict resolution. They perform a neutral function. The decision of the arbitrator, which is essentially a finding of the case's merits, is referred to as the "arbitration award" and this impartial third party is known as the "arbitrator." The informal nature of the arbitration process makes it possible for disputes to be settled quickly and peacefully while also costing the parties less money. As a result, parties often decide to arbitrate disputes when they arise, particularly in the business world. An arbitration agreement must be created before the start of the arbitration process. The terms and circumstances of the arbitration process are outlined in this agreement. Through this agreement, it is decided how the procedure will be made more affordable, and effective, how the rules of evidence will be implemented, etc. The parties must be able to enter into contracts under Sections 11 and 12 of the Indian Contract Act of 1972 for this agreement to be enforceable. Arbitral decisions are final and binding on the parties, and there is little room for challenge.

There are also non-binding arbitrations where the party may ask for a trial if it disagrees with the arbitrator's ruling.

MEDIATION

A third impartial party helps two or more disputants come to a resolution during mediation. The mediator is the name given to this third party. To thoroughly inform one party of the perspective of the other party through discourse and empathy, the mediator must effectively communicate with both parties and employ appropriate negotiation strategies. The parties are in charge of this procedure. The mediator is not permitted to predict how the conflict will turn out, which is one of its qualities. The answer is provided jointly, and agreements are typically non-binding. The mediation procedure is mostly under the parties' discretion, and it is completely private. It must be noted that developing relationships, not coming to a decision, is the primary goal of the mediation process. There is more of a chance for future commerce between the parties as the parties settle their disagreements amicably.

NEGOTIATION

A mutually acceptable resolution or compromise is sought through cooperation between the parties during negotiation, which is also a type of dispute resolution. The parties have the option of having their lawyers represent them throughout the negotiations. In India, negotiation is not formally acknowledged. The way negotiation is conducted is not predetermined.

However, there are a few characteristics of Negotiation –

- It is a medium that provides a channel of communication to all the parties involved in disputes
- It has opted on choice bases and its decision has no binding power upon the parties.

CONCILIATION

In conciliation, a third person, known as the conciliator, speaks to each side separately to facilitate conversations between the parties for the parties to reach a mutually agreeable resolution. The Arbitration and Conciliation Act, of 1996 governs conciliation in India as well. For conflicts arising out of legal connections, whether or not they are contractual, Section 61

provides for conciliation. In India, arbitration and conciliation are governed by The Arbitration and Conciliation Act, 1996|Legislative Department ...However, many loopholes in it need to be amended to utilize the benefits of arbitration and conciliation.

CONCLUSION

Other techniques for resolving disputes include medical arbitration, mini-trials, summary jury trials, etc. But in India, the most widely employed ADR methods include arbitration, mediation, and Lok Adalats, among others. ADR is gradually gaining favor among parties around the globe, yet litigation is still very common in India. ADR is now viewed as essential due to the advancement of various ADR techniques and efforts to increase access to justice. Given their viability and convenience, all ADR techniques, including negotiation, should be legally recognized. This would lessen the strain on the legal system.

