

An Introduction of Alternative Dispute Resolution System

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A dispute resolution system outside of the court which includes variety of processes that help parties to resolve disputes without a trial is the Alternative Dispute Resolution (ADR). The disputes between the parties are settled or brought to an amicable way without interference of judicial procedure. The system of ADR was introduced to reduce the excessive burden on the Indian judiciary, the Arbitration and Conciliation Act, 1996. Arbitration, mediation and conciliation are considered as methods of ADR. It desire to settle disputes peacefully in a shorter time with more efficiency and it is expressly provided in the Directive Principles of States Policy under the Indian Constitution, that India being a welfare state aims at providing speedy and effective justice to all its citizens.

Historical Evolution of ADR System in India:

The system of ADR is not new to India. The Hindu law reveals that in 'Brhadaranayaka Upanishad', Yajnavalkya testifies to the prevalence of arbitration in the Vedic period and existence of three primary arbitral bodies. The concept of "Panchayat" and arbitrators called "Panchas" which involved the informal proceedings and free from cumbersome technicalities. The same principles are presently governed by our legislation. The Bengal Regulation Act of 1772, Bombay Regulations Act, 1799 and Madras Regulations Act, 1802 were the arbitral laws in India in force during British rule.

All the above stages connotes that the origin of ADR could be traced to the origin of political institutions. The difference between the ancient and the modern system of ADR is that the ancient system recognized as the system of administration of justice but the modern era it is well known as an alternative system for administration of justice to solve the disputes in speed as well as amicable.

The Characteristics of ADR Approaches

Informality, Direct Participation and Communication between Disputants, and Application of Equity are the main features of the ADR system. Amicable and impartial approach of neutral person with the parties to the dispute may solve the issues between them out of the stringent technical court proceedings.

Applicability:

All types of matters including civil, commercial, industrial and family etc. can solve in amicable way. The neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute. It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.

Alternative Dispute Resolution (ADR) Mechanisms is the system working together co-operatively to reach the best resolution for everyone and an system works to reduce the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved. It involves the creative, collaborative bargaining and fulfill the interests driving their demands.

Types of ADR

- **Arbitration:** It involves a voluntary and flexible method where parties choose the arbitrator (s) of their own choice. The award of arbitration is binding. The dispute is submitted to an arbitral tribunal. No rules of evidence are often required. There is no right to appeal arbitrators' decision and very little scope for judicial intervention in the arbitration process.
- **Conciliation:** It is a method where parties try to improve and reconcile their relation with each other in the presence of a conciliator who helps the parties in the process. An impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. The parties are free to accept or reject the recommendations of the conciliator. In this system parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.
- **Mediation:** It is an informal way of resolving disputes where a neutral facilitator called mediator helps parties to come to a mutual agreement as to settlement of disputes. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves.
- **Negotiation:** This technique requires parties to be ready and cooperative in settling the dispute in the presence of an unbiased third party called negotiator. Negotiation occurs in business, non-profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life.



Significance of ADR in India

ADR plays a significant role in India by its diverse techniques and deal with the situation of pendency of cases in courts of India and in reducing the burden on the courts. 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 system is a system to ensure the social-economic and political justice and maintain integrity in the society enshrined in the preamble. And also strive to achieve equal justice and free legal aid provided under Article 39-A relating to Directive Principle of State Policy (DPSP). It is good system for speedy disposal of disputes but there seems to be a lack of awareness about the availability of these mechanisms.

Less Time Consuming: people resolve their dispute in short period as compared to court
Cost effective method: it saves lot of money if one undergoes in litigation process. It is free from technicalities of courts; here informal ways are applied in resolving dispute. 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.
Efficient way: there are always chances of restoring relationship back as parties discuss their issues together on the same platform. It prevents further conflict and maintains good relationship between the parties. It preserves the best interest of the parties

Section 89 of the Civil Procedure Code, 1908 provides that opportunity to the people, if it appears to court there exist elements of settlement outside the court then court formulate the terms of the possible settlement and refer the same for: Arbitration, Conciliation, Mediation. The Acts which deals with Alternative Dispute Resolution are:

- Arbitration and Conciliation Act, 1996 and,
- The Legal Services Authority Act, 1987

Major challenges in ADR and Solutions

1. Lack of effective support by the government: Government has taken an effective initiation to for effective implementation and encourages the system.
2. Lack of credible arbitral institutions: Government has established the arbitral institution with proper infrastructure.
3. Lack of awareness among the parties: With help of governmental and non-governmental institution it is necessary to bring the awareness among the people.
4. Lack of active and mindset bar and bench: It is require the active participation of legal professionals like Advocates and judges.
5. Lack of skilled professionals in the field of ADR: Skilled and trained professionals with communication skills are required to amicable settlement of disputes

Conclusion

As discussed in the Guide, ADR programs can serve as useful vehicles for promoting many rules of law and other development objectives. Properly designed ADR programs, undertaken under appropriate conditions, can support court reform, improve access to justice, increase disputant satisfaction with outcomes, reduce delay, and reduce the cost of resolving disputes. In addition, ADR programs can help prepare community leaders, increase civic engagement, facilitate public processes for managing change, reduce the level of community tension, and resolve development conflicts.

