



ALTERNATIVE DISPUTE RESOLUTION: A GUIDE TO RESOLVING DISAGREEMENTS AND BRINGING ABOUT CULTURAL ADAPTATION

Vansh Saha

Kumaon University, Nainital

ABSTRACT :

Alternative Dispute Resolution is the procedure for settling disputes without going into the long and costly litigation, ADR is usually more cost effective. They are highly utilized in cases such as labor disputes, matrimonial disputes, personal injury cases.

The main objective of writing this academic paper is to provide contrast between pre existing methodologies of dispute resolution and ADR, to propose ADR in same sense as other methodologies of dispute resolution since ADR is still thought about as an secondary option, however it has every potential to become the primary option. This paper further delves to research on Cultural Adaptation via ADR mechanisms.

The Judiciaries around the globe are grappling with huge amounts of cases to be heard before them, the Indian Judiciary being the oldest of all judicial systems is no exception to the grappling of cases that are pending before itself, it is estimated that about thirty million cases are still pending and the numbers still going up. With this venerability of our judicial system the role of ADR becomes more and more predominant. ADR can be an easy mechanism to resolve conflicts in very civilized and coherent manner, where the output is win- win for both conflicting parties.

INTRODUCTION :

In a bustling city, neighbors Alice and Bob clashed over a shared garden. Alice loved vibrant flowers, while Bob adored lush vegetables. Their conflict peaked when Alice's roses shaded Bob's tomatoes. Mediation suggested splitting the garden, but strict boundaries failed as pests from Alice's flowers invaded Bob's crops, and the dividing hedge's roots spread wildly.

A second mediation proposed integrated planting, mixing flowers and vegetables. Skeptical, they agreed. Surprisingly, the garden thrived; marigolds protected tomatoes, and basil enhanced roses. Their former feud seemed silly as they laughed together, realizing cooperation brought a more beautiful and bountiful garden.

From the above story it is evident that human is not a social animal, but a sociable one. From prehistoric times to modern era there has been a significant shift in the conduct of human behavior, and his interactions with others, which may even result into disputes. In earlier prehistoric times there was the rule of brute force, but in modern era we have "rule of law", which revolves around the cornerstone of supremacy of law. In fact the search for viable alternative to violence gave birth to antecedents of Alternative Dispute Resolution (ADR).

Deliberation is the core of the Alternative Dispute Resolution, where two conflicting parties try to reach out to each other and attempt to reach of final ground that both can adhere to it. It can also be done with other methods such as consensus building where a third party commences the investigation, that has brought about the matter for closure. And the community has to give its approval and make sure that all members are duly satisfied.

ADR is often deemed to be a modernist or a contemporary way of dispute negotiation. To contrary its *fons et origo*¹ lies in way deeper in history of mankind.

Aristotle famously stated "Man is by nature a social animal", in his work "Politics". While Confucius emphasized the importance of social harmony and the roles and responsibilities individuals have within their families and communities. This is due to the notion that people have varying level of comprehending and this varying level of comprehending and as a result or output of doing things gave rise to the word "conflict". Ancient Indian epics such as Ramayana and Mahabharata showcases methods of resolving conflicts.

In Ramayana Angada the son of Bali approached Ravana for having a peaceful negotiation, similarly in Mahabharata Krishna undertook to negotiate between the Pandavas and Kauravas.

In other words ADR refers to those methods of dispute negotiation which are a viable substitute for litigation in court of law. Alternative Dispute Resolution (ADR) encompasses a variety of processes designed to resolve conflicts without resorting to litigation. These methods include negotiation, mediation, arbitration, and conciliation. ADR processes are generally less formal, more cost-effective, and faster than traditional court proceedings. They

¹ Fons et origo – The source and origin of something.

enable parties to find mutually acceptable solutions outside of court, often with the assistance of a neutral third party. Mediation and conciliation involve facilitators who help guide parties toward a resolution, whereas arbitration involves an arbitrator who renders a binding decision.²

OBJECTIVES OF ADR MECHANISMS :

1. **Efficiency** - Provides quicker resolution of conflicts as compared to traditional litigation, since conventional ways like litigation may drag upto years of legal battles.
2. **Cost Effective** - Reduces expenses related to court processes.
3. **Less Adversarial** - Promotes a cooperative and amicable approach to resolving conflicts since both conflicting parties are in a mood to negotiate through mediator.
4. **Confidentiality** - It ensures private and confidential proceedings, since court case may bring privacy at stake of parties involved.
5. **Relationship Preservation** - Maintain and potentially strengthen relationships between disputing parties, which litigation gives out outright obliteration of negotiation, which may derail personal or corporate relationships.
6. **Flexibility** - It offers adaptable processes tailored to the specific needs of parties involved unlike judicial remedies.
7. **Judicial Relief** - It reduces the pendency of number of cases that go upto courts for further litigation.
8. **Control** - Gives greater control to parties over resolution and outcomes unlike in litigation.

LEGISLATIVE ENACTMENTS RELATED TO ADR IN INDIA³

- **ARBITRATION AND CONCILIATION ACT, 1996**

The liberalization and globalization of Indian economy took place in year 1991, which facilitated the entry of foreign investments in the country and there rose a need to push for comprehensive changes in domestic laws to set up a benchmark as compared to other countries. Even foreign investors were of the view that there should be a vibrant and stable alternative dispute resolution mechanism for having contractual conflicts resolved in a cost effective manner.

Arbitration Act, 1940 was not at par with the expectations and demands of investors. So the Indian parliament, on the basis of UNCITRAL Model Law on International Commercial Arbitration 1985, enacted Arbitration and Conciliation Act, 1996 to make law more consonant and consistent with position pre-existing in other jurisdictions. It was amended in 2015 and 2019 to enable arbitration proceedings in India to be time bound and efficacious and amenable to litigation only on limited grounds.

- **INDIA INTERNATIONAL ARBITRATION CENTRE ACT, 2019**

It provides for the creation of an institution of national importance, namely India International Arbitration Centre for an independent and autonomous regime for institutional arbitration. It shall provide for conciliation, meditation and arbitral proceedings both at national and international level.

- **MEDIATION BILL, 2021**

Mediation is another form of ADR which is more informal and brings about negotiations between disputant parties, as an output it gives a form of settlement. Thus, mediation, in contrary to arbitration helps parties in dispute to uphold their relationships since the settlement is arrived on the voluntary and consensual basis.

In 2021 the Mediation Bill was introduced in Rajya Sabha and was further referred to joint parliamentary committee for its consideration, and recommendation of joint parliamentary committee is under the consideration of government.

CONVENTIONAL METHOD (COURT PROCEEDINGS) VERSUS ALTERNATIVE DISPUTES RESOLUTION

1. Litigation promotes adversarial attitudes because of its confrontational nature, while ADR emphasis on problems solving and often resulting in higher satisfaction as an outcome of collaborative approach.
2. Litigation follows a rigid legal framework, which might not always align with cultural practices thereby which may lead to discernment of injustice among cultural groups while ADR respects cultural values which increases its legitimacy and acceptance.

² Reference -

https://www.law.cornell.edu/wex/alternative_dispute_resolution

<https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/about-opia/what-is-public-interest-law/public-interest-work-types/alternative-dispute-resolution/>

³ Reference -

<https://legallaffairs.gov.in/arbitration>

3. Litigation being constrained by legal precisions and laws leads to less flexibility in the resolution, while ADR allows for a more creative and flexible solutions that can be specifically arranged for the needs and interested of parties involved.
4. Litigation being of adversarial nature leads to complete breakdown of of relationships, while ADR encourages dialogue and corporation which can help maintain or even improve relationships post dispute.
5. In litigation the decision making power is vested in the judge which potentially disappoints parties who have less control over the outcome, while ADR empowers parties by directly involving them into negotiation process and decision making.
6. Litigation leads to the making of legal precedents and jurisprudence, while ADR provides more adaptive and individualized solutions.

From the above stated contradictions it is evident that ADR can be implied as the primary method for dispute resolution because of its cost effectiveness, the respect to cultural values, involvement of disputant parties which gives more legitimacy to the decision achieved by ADR. Thereby it should be the primary method as compared to conventional methods.

CULTURAL ADAPTATION THROUGH ADR

Cultural adaptation through alternative dispute resolution (ADR) is the process of modifying and tailoring ADR methods such as mediation, arbitration, and negotiation to incorporate and respect the cultural values, practices, and norms of the disputing parties. This adaptation aims to enhance the accessibility, relevance and effectiveness of dispute resolution by ensuring that the processes are culturally sensitive and accepted by all parties involved.

In my opinion this approach involves :

1. Embedding local customs, rituals and traditional decision making methods into ADR processes.
2. Conducting Proceedings in native language.
3. Engaging community leaders and elders.
4. Application of local and indigenous laws.
5. Focus on relationships and harmony.

EXAMPLES OF ADR FACILITATING CULTURAL ADAPTATION

- **INDIA – LOK ADALATS⁴**

Lok Adalats , or people’s court , are a traditional form of ADR in India, rooted in the ancient practice of resolving the disputes of through village councils , otherwise known as Nyaya Panchayats. They involve local leaders and respected community members. The process is less formal as compared to conventional courts, which gives it a more flexible and culturally attuned approach. It handles civil cases such as matrimonial disputes, property issues, etc. The Lok Adalats have reduced the backlog of cases in the Indian judiciary and gave a more economically viable alternative. It had even further the cause of social justice by listening to grievances of disadvantaged groups such as SC, ST, and OBC.

- **RWANDA – GACACA COURTS⁵**

Gacaca courts were established to deal with the crimes of 1994 Rwandan genocide. They were based on pre-colonial Rwandan methods of resolving disputes. It focused on reconciliation and community healing, reflecting the cultural importance of social harmony.

- **NEW ZEALAND – MĀORI DISPUTE RESOLUTION⁶**

The disputes are resolved in Marae (Māori communal meeting places). The restorative justice is achieved by Hui (meetings) and Whānau (family) involvement, which is reflective of Māori values of collective responsibility. This led to enhancement of culture and the acceptance of judicial system among Māori communities, which gave rise to more meaningful resolutions.

CONCLUSION :

In end, the mixing of Alternative Dispute Resolution (ADR) mechanisms into negotiation methods presents a valuable possibility to increase the effectiveness, inclusivity, and reputation of justice systems. The use of ADR in numerous contexts—including Lok Adalats in India, Gacaca courts in Rwanda, and Māori dispute decision in New Zealand—demonstrates how these methods can provide flexible, cost-effective, and culturally touchy

⁴ Reference -

<https://www.latestlaws.com/articles/origin-and-evolution-of-lok-adalat-system-in-india-182053>

⁵ Reference –

<https://www.yalejournal.org/publications/loosening-the-knots-of-intractability>

https://assets.cambridge.org/97805211/93481/frontmatter/9780521193481_frontmatter.pdf

⁶ Reference-

<https://www.minterellison.co.nz/insights/the-korero-continues-recognition-of-tikanga-maori>

<https://maorilawreview.co.nz/2023/09/tikanga-maori-in-aotearoa-new-zealand-law-he-poutama/>

alternatives to traditional courts and lawsuits. Lok Adalats in India utilize network-based practices to solve disputes efficaciously, which now not only facilitates reduce the load at the formal judiciary however additionally fosters extra network involvement and pride with the justice process. Similarly, the Gacaca courts in Rwanda, rooted in conventional justice mechanisms, played a critical function in post-genocide reconciliation by selling restorative justice and social harmony. Māori dispute decision in New Zealand incorporates indigenous values and traditions, ensuring that justice techniques are culturally respectable and get adherence from all thought the legitimacy of the decision achieved. These examples highlight the capability of ADR to bridge the distance among formal criminal structures and the specific desires of various communities. By integrating conventional and network-based practices, ADR fosters extra participatory and restorative types of justice, meant to greater sustainable and harmonious outcomes. Therefore, it's far clear that ADR need to be embraced and similarly developed as a cornerstone of modern justice systems. Making ADR a number one technique of dispute resolution can create greater adaptive and inclusive negotiation structures that better serve various populations, ensuring that justice remains applicable, truthful, and accessible to all.