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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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EXPLORING THE EVOLUTION OF ADR: FROM ANCIENT TO MODERN PRACTICES

AUTHORED BY - ASROV RABIDEBPRADHAN ARYAVANS

1. Abstract

Alternate Dispute Resolution (ADR) has gained momentum as a method for resolving disputes outside traditional court processes. This paper examines various forms of ADR, including Arbitration, Conciliation, Mediation, and Lok Adalat, highlighting their advantages and emerging issues in their implementation. Despite efforts to make ADR more flexible, challenges such as lack of trained mediators, infrastructure, and regulation persist. The paper emphasizes the importance of ADR in achieving fair and efficient dispute resolution, ultimately contributing to social harmony and peace.

Keywords: Alternate Dispute Resolution, ADR, Arbitration, Conciliation, Mediation, Lok Adalat, challenges, Implementation.

2. Introduction

The origins of arbitration trace back to ancient India, where the institution of Town Panchayats prevailed. The decisions rendered by Panchas, collectively as Panchayat, were revered as they were believed to embody the voice of God, demanding unwavering obedience. Over time, this divine allocation of justice through Panch Parmeswar underwent significant transformations in response to societal changes and the evolution of human civilization.

However, alternate dispute resolution (ADR) methods, including arbitration, are not immune to criticism. While some view ADR as a futile endeavor, others see it as a tactical maneuver to gauge the minimum concession the opposing party would accept. The mounting backlog of cases in traditional courts has undermined their efficacy, prompting a reconsideration of avenues for redressal. In India, rapid economic development has exacerbated caseloads, exacerbated delays and hindering timely resolution. Consequently, ADR mechanisms have become increasingly vital for businesses operating in India and those engaging with Indian counterparts.

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ADR, as a substitute for adversarial approaches like litigation and confrontation, is a burgeoning trend driven by a shift towards a more constructive and cooperative attitude in resolving disputes. This paper aims to explore the various methods of ADR adopted in India and the emerging challenges within these modalities.[1]

Through a comprehensive examination, we will delve into the landscape of ADR in India, analysing its effectiveness and shortcomings. From arbitration to mediation and other forms of dispute resolution, each method offers unique advantages and faces distinct hurdles. By shedding light on these complexities, we seek to contribute to the discourse surrounding ADR in India and offer insights for policymakers, legal practitioners, and stakeholders seeking to navigate this evolving landscape.

3. What is Alternate Dispute Goal?

The term "alternative dispute resolution" (ADR) encompasses a wide range of methods used to resolve disputes outside of traditional court proceedings. These methods vary from facilitated settlement negotiations, where parties are encouraged to directly negotiate with each other before resorting to formal legal action, to arbitration systems or mini-trials that mimic courtroom proceedings. ADR also includes processes designed to manage community tensions or address community development issues.

ADR systems generally fall into three categories: negotiation, conciliation/mediation, and arbitration. Negotiation systems facilitate direct communication between disputing parties without the involvement of a third party. Mediation and conciliation, on the other hand, involve a neutral third party who assists disputants in resolving their differences. While mediators and conciliators may help facilitate communication and structure a settlement, they do not have the authority to impose decisions on the parties. Arbitration, meanwhile, empowers a third party to determine the resolution of a dispute.

It's essential to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation are typically non-binding, meaning that the parties are not obligated to accept any proposed settlement. In contrast, arbitration can be binding, where the arbitrator's

[1] Sourdin, T., 2014. Alternative Dispute Resolution (ADR) Principles: From Negotiation to Mediation. Available at SSRN 2723652.

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decision is legally enforceable, akin to a court ruling, or non-binding, where the parties can reject the decision.

Furthermore, ADR processes can be either mandatory or voluntary. Some legal systems require parties to engage in negotiation, mediation, or arbitration before pursuing court action, either by statute or as part of a contractual agreement. In voluntary processes, the parties have the discretion to submit their dispute to ADR or proceed directly to litigation.

The five primary methods of ADR are arbitration, conciliation, mediation, judicial settlement, and Lok Adalat. Each method offers unique benefits and considerations, catering to the diverse needs and preferences of disputing parties.

I. Arbitration

Arbitration, a form of alternative dispute resolution (ADR), offers a method for resolving disputes outside of traditional court proceedings. In arbitration, the disputing parties refer their case to one or more arbitrators, whose decision they agree to accept as binding. It involves an impartial third party reviewing the evidence and rendering a decision that is legally binding and enforceable by both parties. Unlike litigation or mediation, arbitration typically involves fewer avenues for appeal.[2]

Arbitration can be either voluntary or mandatory. In voluntary arbitration, the parties agree to submit their dispute to arbitration either through a prior agreement or by mutual consent. On the other hand, mandatory arbitration may arise from a contractual obligation or a statutory requirement, where parties are compelled to resolve their disputes through arbitration.

The advantages of arbitration include its potential for speed, cost-effectiveness, and flexibility, particularly for businesses. Arbitral proceedings are often faster than court litigation and can be tailored to accommodate the specific needs of the parties involved. Additionally, arbitration offers a level of confidentiality and allows parties to choose the language of proceedings, unlike court proceedings where the official language of the court is automatically applied.[3] Moreover, the

[2] Menkel-Meadow, C., 2015. Mediation, arbitration, and alternative dispute resolution (ADR). *International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd*.
[3] Mistelis, L., 2004. International arbitration-corporate attitudes and practices-12 perceptions tested: Myths, data and analysis research report. *American Review of International Arbitration*, *15*, p.525.

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limited avenues for appeal in arbitration can lead to finality and certainty in the resolution of disputes.

However, arbitration also has its drawbacks. Arbitrators may face pressures from powerful parties, potentially compromising their impartiality. Mandatory arbitration clauses can limit parties' access to the court system and their ability to seek legal recourse. Additionally, the costs associated with arbitration, including arbitrator fees, can pose a barrier to smaller parties, particularly in consumer disputes. Moreover, the limited avenues for appeal mean that incorrect decisions may not be easily overturned, and the involvement of multiple arbitrators can lead to scheduling delays in complex cases.

Despite these limitations, arbitration remains a popular choice for resolving disputes, offering a balance between efficiency and fairness for parties seeking alternative means of dispute resolution.

II. Conciliation

Conciliation serves as an alternative dispute resolution process where disputing parties engage a conciliator to facilitate resolution. The conciliator meets separately with each party to address their differences, aiming to ease tensions, improve communication, interpret issues, provide technical assistance, explore potential solutions, and ultimately reach a negotiated settlement. Unlike arbitration, conciliation is voluntary, allowing parties the freedom to agree on resolving their dispute through conciliation.[4] This process offers flexibility, enabling parties to determine the timing, structure, and content of the conciliation proceedings, which are typically conducted in private.

Conciliation proves effective in various types of disputes, including business, financial, family, land, intellectual property, bankruptcy, and insurance matters. Beyond business transactions, conciliation is also employed to resolve disputes in employment, government service, antitrust, consumer protection, taxation, and customs-related issues.

In essence, conciliation provides a collaborative approach to dispute resolution, guided by a neutral conciliator who facilitates communication and negotiation between parties to achieve a

[4] Shamir, Y., 2016. Alternative dispute resolution approaches and their application.

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mutually acceptable outcome.[5] This process offers parties the opportunity to resolve their differences amicably, without the need for formal court proceedings, fostering a more cooperative and efficient resolution process.

III. Mediation

Mediation is a voluntary and informal method of resolving disputes, where a neutral third party assists parties in reaching a mutually acceptable solution. Unlike arbitration or litigation, mediation is entirely controlled by the parties themselves, with the mediator acting solely as a facilitator.[6]

In mediation, each party meets with an experienced mediator to discuss their perspectives on the issue at hand and their desired outcomes. The mediator then conducts separate meetings, or "caucus meetings," with each party to explore their interests and concerns in private. Following these private discussions, the mediator brings the parties together for joint meetings to facilitate constructive dialogue and negotiation.[7]

Throughout the process, the mediator does not impose decisions or opinions on the parties but instead guides them towards reaching their own agreement. The ultimate goal of mediation is to achieve a win-win outcome where both parties feel satisfied with the resolution.

This collaborative approach to dispute resolution allows parties to maintain control over the outcome and preserves relationships, making mediation an effective and preferred option for resolving conflicts in various contexts, including business partnerships.

IV. Lok Adalat

Lok Adalat, also known as people's courts, have gained prominence as a government-initiated mechanism for resolving disputes through conciliation and compromise. These legal institutions serve as dispute settlement forums established by the community itself, aimed at achieving civil justice through structured discussions.[8]

[5] Hirata, H., 2017. Balance of Various Values in the Conciliation. *Jogelméleti Szemle*, (3), pp.112-117.
[6] Kumar, A., 2021. *Alternative Dispute Resolution System in India*. KK Publications.
[7] First, A., 2017. A New Agreement to Mediate: Guidelines for Ethical Practice in the Digital Space. *Harv. Negot. L. Rev.*, *23*, p.405.
[8] Whalen-Bridge, H. ed., 2022. *The Role of Lawyers in Access to Justice: Asian and Comparative Perspectives*. Cambridge University Press.

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The concept of Lok Adalat was first introduced in Una, Gujarat in 1982, and has since expanded across India. Lok Adalat have jurisdiction over cases pending in regular courts within their jurisdiction, and Section 89 of the Civil Procedure Code provides for the referral of civil disputes to Lok Adalat.[9] Once a case is referred to a Lok Adalat, the provisions of the Legal Services Authorities Act, 1987 apply.

Under the Legal Services Authorities Act, Lok Adalat are empowered to settle disputes through compromise or settlement agreements reached through mediation. This legal framework ensures accessibility to justice and promotes the amicable resolution of disputes through community-driven mechanisms.

4. Arising Issues in Different Methods of ADR

The different sorts of issues creating in various methods of Alternate Dispute Goal are been talked about underneath:

1) Emerging Issues in Arbitration as a method of ADR

Indian arbitration in India faces several significant challenges that hinder its smooth operation and effectiveness. Some of these challenges include:

- Overburdened judicial system: The Indian judiciary is overwhelmed by a large number of cases, causing delays in resolving arbitration-related matters. This backlog often leads to significant delays in enforcing arbitral awards, defeating the purpose of arbitration as a swift dispute resolution method.
- Lack of specialized arbitration benches: Arbitration cases in India are typically handled by regular courts that may lack specialized knowledge in arbitration law and practice. This can result in inconsistent decisions and delays in resolving disputes as judges need time to familiarize themselves with arbitration intricacies.
- Judicial intervention and excessive court control: Indian courts have been criticized for interfering excessively in arbitration proceedings. Challenges to arbitral awards and court intervention in arbitrator appointments undermine the autonomy and finality of arbitration, adding to delays and costs.
- Limited availability of skilled arbitrators: India suffers from a shortage of qualified arbitrators, particularly in specialized sectors like construction and international arbitration. This scarcity affects the quality and efficiency of arbitration proceedings,

[9] Patil, G.B., 2012. Lok Adalats in India: Issues and Perspectives. *NUALS LJ*, *6*, p.101.

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making it difficult for parties to find suitable arbitrators for their disputes.

- Lack of institutional support: While India has some established arbitral institutions, the overall institutional infrastructure for arbitration is underdeveloped. This results in a lack of standardized procedures, administrative support, and specialized rules, affecting the credibility and efficiency of arbitration.
- Inadequate enforcement of arbitral awards: Despite being a signatory to the New York Convention, India faces challenges in enforcing both domestic and foreign arbitral awards due to complex procedures and occasional court battles.
- Public policy considerations: Indian courts have broad discretion to set aside arbitral awards deemed contrary to public policy. However, the interpretation and application of this exception vary, leading to uncertainty and potential abuse.
- Cost and time considerations: Arbitration in India can be time-consuming and expensive due to lengthy proceedings, court intervention, and involvement of senior counsel. This can discourage parties, especially smaller businesses, from opting for arbitration.
- Efforts are underway to address these challenges, including legislative reforms like the Arbitration and Conciliation (Amendment) Act, 2019, aimed at streamlining the arbitration process and promoting institutional arbitration. However, more progress is needed to ensure a robust and efficient arbitration ecosystem in India.

2) Emerging issues looked by Mediation as a method of ADR

The different issues that are emerging in the Mediation cycle are as per the following:

- Absence of Uniform Legislation: In January 2020, the Supreme Court emphasized the urgent need for a consistent law governing mediation in India. It established a committee to draft such legislation, aiming to give legal validity to mediated settlements. This uniform law should ideally make mediation mandatory before resorting to courts or arbitration. This shift would transform mediation from an optional to a primary step in dispute resolution. Such legislation would also address concerns about the enforceability of mediated agreements. Even in significant cases like Ayodhya, initial attempts at mediation lacked binding force, dissuading parties from embracing it fully. A comprehensive law would provide legal backing and procedural guidance, akin to how the Arbitration and Conciliation Act revolutionized arbitration.
- Reluctance and Lack of Awareness: Mediation hasn't gained significant traction within the legal community. To promote its use, judges should be educated about its benefits

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through training sessions and seminars. Similarly, public awareness campaigns, supported by both the Judiciary and the Executive, can highlight the advantages of mediation. Lawyers should also be encouraged to recommend mediation to their clients.

- Infrastructure and Quality Control: The increased emphasis on mediation will strain existing mediation centres, potentially delaying resolution. To address this, mediation practice should be professionalized, incentivizing individuals to become full-time mediators. Incorporating mediation into legal education, as proposed by the Bar Council of India, can bolster the mediator pool. Additionally, establishing a regulatory body for quality control is crucial, ensuring mediators undergo regular training and accreditation.
- Inconsistencies in Existing Laws: There's ambiguity surrounding the terms "mediation" and "conciliation," with some legal interpretations treating them synonymously. This inconsistency extends to Section 89 of the Civil Procedure Code, which suggests a distinction between the two. Further, the introduction of Section 12A in the Commercial Courts Act, 2015 mandating mediation with exemptions, adds to the confusion. A uniform law is needed to resolve these inconsistencies and provide clarity in the mediation process.

3) Arising Issues in Conciliation as a method of ADR

Despite the availability of conciliation services through Lok Adalat and Conciliation Committees in India, several issues persist.

Firstly, India generally lacks mandatory mediation like early neutral evaluation used in the United States, which can be particularly beneficial when imposed soon after litigation is initiated. Conciliation processes in India require the consent of both parties or a request from one party and a court decision deeming the matter suitable for conciliation.

Secondly, the scope of disputes that may be referred to Lok Adalat is limited to car accidents and family matters.

Thirdly, the conciliation process typically involves lawyers rather than the disputing parties themselves. This is particularly problematic in cases where the government is the opposing party, as counsel often claims to lack authority to negotiate settlement terms.

Fourthly, current conciliation processes do not require the parties to meet and present before entering either traditional litigation channels or alternative options. The absence of requirements

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for meetings or joint statements allows opposing sides to remain isolated from each other.

Fifthly, Lok Adalat themselves have experienced backlogs, and some defendants agree to conciliation as a means to further delay the case process. Lastly, there is no set time or stage within the litigation process at which a decision is made, by the courts, the parties, or otherwise, regarding the referral of the case to some form of alternative dispute resolution.

Section 89 of the Code of Civil Procedure also mentions judicial settlement as an alternative mode of dispute resolution. However, there are currently no specific rules governing such settlements. Judicial settlement is specified in Section 89, where it is provided that the provisions of the Legal Services Authority Act, 1987, would apply when a judicial settlement occurs. This means that the judge involved seeks to amicably settle the dispute between the parties through a legal settlement. Any friendly settlement reached in such cases would be considered an agreement within the scope of the Legal Services Authority Act, 1987. However, India currently lacks written guidance specifically addressing judicial settlement.

5. Judicial Settlement

Section 89 of the Code of Civil Procedure, 1908 mentions judicial settlement as one of the alternative methods for resolving disputes, although there are no specific rules established for such settlements yet. Judicial settlement is described in Section 89, where it is indicated that the provisions of the Legal Services Authority Act, 1987, would be applicable in cases of judicial settlement. This means that the judge involved aims to amicably resolve the dispute between the parties through a legal settlement.[10] Any friendly settlement reached in such cases would be considered an agreement under the Legal Services Authority Act, 1987. According to Section 21 of the Legal Services Authorities Act, 1987, every Lok Adalat award is treated as a decree of a Civil Court. However, India currently lacks written guidance specifically addressing judicial settlement.[11]

6. Conclusion

In conclusion, alternate dispute resolution (ADR) methods such as arbitration, conciliation, mediation, and Lok Adalat offer valuable alternatives to traditional court processes for resolving

[10] Singla, S., 2021. Judicial Intervention in Mediation Settlements. *GNLU L. Rev.*, *8*, p.292.
[11] Roy, C., 2023. Alternative dispute resolution and its mechanism–A critical analysis in the light of access to justice in India.

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disputes. These methods have gained momentum due to their potential to provide fair, efficient, and cost-effective solutions while reducing the burden on overburdened judicial systems. However, despite their benefits, ADR mechanisms in India face various challenges that hinder their effective implementation.

The challenges include the lack of trained mediators, infrastructure, and regulation, limited scope of disputes eligible for ADR, reluctance among parties to engage in ADR, and backlogs in ADR institutions. Additionally, inconsistencies in existing laws, judicial intervention, and inadequate enforcement of arbitral awards pose significant obstacles to the smooth functioning of ADR mechanisms

7. Recommendations

To address these challenges and enhance the effectiveness of ADR in India, several recommendations can be proposed:

- Capacity Building: Invest in training programs to develop a pool of skilled mediators and arbitrators with expertise in various sectors. Establish specialized training institutes and certification programs to ensure quality and professionalism in ADR proceedings.
- Legislative Reforms: Enact comprehensive legislation to govern ADR processes, addressing inconsistencies and providing clarity on procedures, rights, and obligations of parties. Introduce mandatory mediation provisions in relevant laws to promote ADR as a primary method of dispute resolution.
- Infrastructure Development: Improve the infrastructure of ADR institutions by investing in technology, facilities, and administrative support. Establish dedicated ADR centres across the country to reduce backlogs and ensure timely resolution of disputes.
- Public Awareness: Launch awareness campaigns to educate the public, legal professionals, and businesses about the benefits of ADR and the availability of ADR mechanisms. Encourage parties to consider ADR as a viable option for resolving disputes and promote a culture of collaboration and consensus-building.
- Institutional Support: Strengthen existing ADR institutions and establish new ones to provide institutional support, standardize procedures, and ensure compliance with best practices. Foster collaboration between ADR institutions, legal professionals, and government agencies to promote the adoption of ADR as a mainstream method of dispute resolution.

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- Enforcement Mechanisms: Enhance the enforcement of arbitral awards and mediated settlements by streamlining procedures, improving coordination between ADR institutions and courts, and raising awareness among judicial officers about the importance of upholding ADR outcomes.

By implementing these recommendations, India can overcome the challenges faced by ADR mechanisms and build a robust and efficient dispute resolution ecosystem that promotes social harmony, fosters economic development, and ensures access to justice for all stakeholders.

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