



ADR IN INDIA AND RELEVANT SECTIONS

AUTHOR – DEV KUMAR SHARMA

STUDENT AT INDIA INTERNATIONAL UNIVERSITY OF LEGAL EDUCATION AND RESEARCH, GOA

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Abstract

In this article I would be discussing the significance and effectiveness of ADR in India. It will provide a brief knowledge about different ADR such as arbitration, mediation, conciliation and lok adalats together with pertinent provisions of law regulating these procedures. The benefits of ADR are examined in the article, including its ability to speed up dispute settlement, promotes party autonomy, and lights the load on traditional courts. It also demonstrates the wide range acceptance of it and its success in Indian cases by solving many cases which used to take many years as it would not get hearings for many months. It will also discuss certain challenges that are faced by this system such as lack of awareness and enforcement issues and cultural barriers. In his speech, former Hon. Chief Justice of India said that the idea of alternative dispute resolution (ADR) through Lok Adalats, Gramme Nyayalayas, mediation, and arbitration centres has the potential to change India's judicial system by giving millions of people a place to air their grievances. In order to make India's ADR framework a pillar of its judicial system, the paper finishes by exploring potential future developments and reforms.

Keywords – Alternate dispute resolution (ADR), mediation, Lok adalat, arbitration, conciliation

Introduction- The traditional judicial system frequently struggles to resolve conflicts quickly and affordably in the complicated and fast-paced world of today. In order to resolve disputes outside of the typical courtroom context, Alternative Dispute Resolution (ADR) procedures have become increasingly popular. ADR includes a number of procedures, including arbitration, mediation, conciliation, and Lok Adalats (People's Courts), which provide parties more power over the resolution of their conflict and a cooperative approach. Litigation is a result of human beings' second instinct, which is evolution. Due to flaws in earlier institutions, war and arbitrary rulings gave way to litigation. Because litigation has limitations as well, people have searched for more effective ways to settle disagreements, leading to the development of the alternative dispute resolution (hereafter referred to as "ADR") system. The article will start by giving a thorough explanation of the many

types of ADR, along with their underlying principles, procedures, and primary benefits. It will examine the legal system that oversees alternative dispute resolution in India, stressing pertinent laws and their influence on the ADR industry. The article will also discuss the advantages of ADR, including its potential to hasten resolution, uphold secrecy, maintain relationships, and cut expenses related to protracted litigation.

I. Arbitration-

A. Definition – Arbitration is defined under section 2 of arbitration and conciliation act of 1996 where it says Any arbitration, whether or whether it is not administered by a permanent arbitral institution, is referred to as arbitration." *The submission for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement.*" As



given in the case of *Stockwell v. Equitable Fire & Marine Ins. Co.*

B. Valid agreement- A valid arbitration agreement is given under section 7 of arbitration and conciliation act. In this, "arbitration agreement" refers to the parties' agreement to arbitrate all or specific issues that have arisen or may develop between them about a specific legal relationship, whether or not they are contractual in nature. An arbitration agreement may take the form of a separate agreement or an arbitration clause in a contract. A written arbitration agreement is required. An arbitration agreement is in writing if it is included in a document signed by the parties, or if the parties have exchanged letters, telegrams, telex messages, or other forms of communication in writing (including electronically);

C. Place of arbitration- The location of the arbitration is up to the parties to decide. The arbitral tribunal may meet at any location it deems appropriate for discussion among its participants, for hearing witnesses, experts, or the parties, or for examination of documents, goods, or other property, unless the parties have agreed otherwise. In the absence of any agreement referred to in subsection, the place of arbitration will be chosen by the panel of arbitrators having regard to the situations of the case, including the proximity of the parties.

II. Mediation –

A. Section 89- The provision under Section 89 CPC aims to resolve conflicts between parties, cut down on expenses, and lighten the load on the courts. Its main purpose is to combine judicial and extrajudicial dispute resolution processes and to place alternative dispute processes at the core of the Indian legal system. Alternative Dispute Resolution has become a crucial component of the judicial system to provide quicker and more efficient justice due to the drawn-out nature of litigation, the high costs borne by both parties for the same issue, and the scarcity of adjudicators.

B. Mediator rules – The mediator or conciliator who will mediate between the

parties to a lawsuit may be chosen by agreement of the parties. He will be chosen to serve as a mediator or conciliator in such situation.

1. The court will select one or more mediators or conciliators from the panel of mediators or conciliators if the parties cannot agree on the nomination of a mediator or conciliator.

2. Each group of parties shall designate a mediator or conciliator if the parties are unable to agree on the name of a single mediator or conciliator.

3. When the parties agree on a single mediator or conciliator, he need not come from the panel of mediators or conciliators and need not meet the qualifications, but he should not fall under any of the disqualifications.

4. When there are more than two sets of parties with disparate interests, each set shall designate a representative, who shall choose the sole mediator or conciliator; in the absence of agreement among the nominees in this regard, the Court shall appoint a sole mediator or conciliator.

C. Panel of mediator- For the purpose of selecting mediators or conciliators in matters brought on its original side, the High Court shall create a panel of mediators or conciliators. Within three months of these Rules going into effect, this panel must be published on the High Court's notice board. The High Court Bar Association will be handed a copy of the panel of mediators and conciliators.

1. Within three months of the start of these Rules, the District Judge in each District shall prepare a panel of mediator/conciliators for the purpose of appointing mediator/conciliators to mediate between parties in the litigation filed on the initial side. Following clearance from the High Court, this panel will be posted on notice boards at various Courts.

2. Before empanelling the panel, the individuals whose names are on it must provide their assent

3. An Annexure including information about the qualifications of the mediators and

conciliators, as well as their professional or technical expertise in various disciplines, must be submitted with the panel of names of mediators and conciliators.

III. **Lok adalat-** One of the alternative dispute resolution processes is Lok Adalat, a forum for the amicable resolution of legal issues and cases that are pending in court or in the preliminary stages of litigation. The Legal Services Authorities Act, 1987 conferred legal status for Lok Adalats. According to the aforementioned Act, the award (judgement) given by the Lok Adalats is deemed to be a decree of a civil court, is final and enforceable against all parties, and no legal recourse against such an award exists. Despite the fact that there is no provision for an appeal against such an award, if the parties are not happy with the Lok Adalat's decision,

A. **Fee and conciliators-**

1. When a case is filed before a Lok Adalat, there is no fee for court due. The court money initially paid in the court on the complaints/petition is also reimbursed to the parties if a case that is currently before the legal system is referred to the Lok Adalat and resolved later.

2. The individuals who decide cases in Lok Adalats are known as Members of the Lok Adalats; they are only permitted to act as statutory conciliators and do not have any judicial authority; as a result, they are only able to persuade the parties to reach an agreement to resolve the dispute outside of court in the Lok Adalat and are not permitted to press or otherwise force any of the individuals to reach an agreement or settle cases or matters, either directly or indirectly.

B. **Cases which Lok adalat takes-**

1. Any case which is pending in any court of India can be taken in Lok adalats.

2. Any issue which is not taken into any court

3. Any case which can be likely taken into court in future this cases can also be taken into lok adalats

But one thing had to be made sure is that the case should not be a non compoundable offence because such cases cant be settled in lok adalats

C. **Levels of lok adalat-**

1. At statutory level- A sitting or retired judge of the High Court, a sitting or retired judicial officer, and either one or both of the following: a member of the legal profession; a social worker interested in the implementation of legal services schemes or programmes. These benches would make up the Lok Adalat, which would be organised by the Member Secretary of the State Legal Services Authority.

2. At high court level- The secretaries of the legal profession; a social worker fascinated in the administration of legal aid schemes or programmes. The High Court Legal Services Committee would establish benches of the Lok Adalat, each bench consisting of a High Court judge who is either currently serving on the bench or has retired, as well as one or both of the following: a member

3. At district level - .The Secretary of the District Legal Services Authority, which is organising the Lok Adalat, would set up benches of the Lok Adalat, each bench consisting of a sitting or retired judge, a member of the legal profession, a social worker interested in implementing legal services schemes or programmes, or a person involved in paralegal activities in the area, preferably a woman.

4. At taluka level- A social worker involved in the uplift of the weaker sections who is interested in the implementation of legal services schemes or programmes, or a person engaged in paralegal activities in the area, preferably a woman, would make up each bench of the Lok Adalat, which would be created by the secretary of the Taluk Legal Services Committee, which is organising the Lok Adalat.

IV. **Problems faced by ADR system**

A. The ADR system in India, while holding great potential, faces several challenges that hinder its widespread adoption and effectiveness. Here are some key problems faced by the ADR system in India:



B. Lack of Awareness and Understanding: One of the primary challenges is the limited awareness and understanding of ADR mechanisms among the general public. Many individuals and businesses are not aware of the benefits and processes involved in ADR, leading to a reliance on traditional litigation as the default option.

C. Cultural Barriers and Mindset: India's diverse cultural landscape poses challenges to the acceptance and effectiveness of ADR. Traditional attitudes and a preference for adversarial litigation can make it difficult for parties to embrace a cooperative and consensual approach to dispute resolution.

D. Limited Institutional Framework: While legislation exists to govern ADR processes in India, the institutional framework for ADR is not as developed as the traditional court system. This can lead to inconsistent practices, a lack of standardized procedures, and varying levels of expertise among ADR practitioners.

E. Enforcement Issues: Even when parties reach an agreement through ADR, challenges may arise during the enforcement phase. In some cases, parties may disregard or delay implementing the agreed-upon terms, leading to additional conflicts and frustration.

F. Limited Use in Certain Areas of Law: ADR mechanisms are more commonly employed in commercial disputes, but their usage in other areas of law, such as family disputes or criminal cases, is relatively limited. Expanding the scope of ADR to encompass a broader range of legal issues remains a challenge.

G. Resistance from Legal Professionals: Some legal professionals may be resistant to the growth of ADR due to concerns about potential loss of business or unfamiliarity with ADR processes. This resistance can impede the integration of ADR into the legal profession and hinder its widespread adoption.

H. Resource Constraints: The availability of skilled mediators, arbitrators, and conciliators can be limited, particularly in certain geographical areas or specialized fields of law. This scarcity of qualified professionals can lead

to delays and challenges in accessing ADR services.

I. Lack of Uniformity and Standardization: While ADR processes are governed by legislation, there can be inconsistencies in the application and interpretation of ADR rules and procedures. The absence of a standardized framework across different ADR forums can create confusion and uncertainty for parties involved in dispute resolution.

J. Addressing these challenges requires concerted efforts from stakeholders, including awareness campaigns, capacity building programs, specialized training for ADR practitioners, and the promotion of ADR as a viable alternative to traditional litigation. By overcoming these hurdles, the ADR system in India can further evolve and contribute to the efficient and accessible resolution of disputes in the country.

V. **Conclusion –**

The general public's ignorance and lack of comprehension of ADR procedures continues to be a major obstacle. To empower people and organisations to make wise decisions and accept alternative conflict resolution techniques, efforts must be taken to educate people and organisations about the advantages and procedures of ADR.

Another hurdle to the acceptability of ADR is culture and thinking. A cooperative and collaborative approach to conflict resolution must replace traditional attitudes and a predisposition for combative litigation. Campaigns to raise awareness, cultural sensitization, and the encouragement of a cooperative mentality in society can all help with this. To increase parties' trust in the ADR system, enforcement difficulties must also be addressed. To prevent further disputes and annoyance, mechanisms for enforcing ADR agreements and prompt execution of agreed-upon provisions must be reinforced.

The development and acceptance of ADR in India will be aided by its expansion to include a



larger variety of legal concerns, such as family conflicts and criminal cases. Stressing the advantages of ADR in these areas can aid in overcoming opposition and encourage its use as a viable and effective dispute settlement technique. As a possible substitute for traditional litigation, India's ADR system provides parties more control, effectiveness, and accessibility in settling disputes. The full potential of ADR in India will be unlocked by overcoming the obstacles of awareness, cultural hurdles, institutional development, enforcement, and increasing its use in many legal fields, allowing it to play a crucial role in delivering effective and accessible justice for all.

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