

# *Alternate Dispute Resolution System:*

## *an introductory article*

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### INTRODUCTION

The first thing we are taught in life is to respect, friends, family, ourselves and all in the society. This entire cycle of respect gives us the terminology of rights and duties and to have these in place JUSTICE came into light. This is the origin of law in our society in laymen's term but law is much more than this, and one of its aspects is equality before law, which is the foundation of this entire brief.

We all are equal before law<sup>1</sup>, have equal opportunities irrespective of caste, creed, sex, religion, etc<sup>2</sup> but this is in the world but outside the court. What about the equality inside the court room?

The present condition of Indian legal system is not in curtain, we all know its realities and it becomes worse when the so called wealthy classes jumping over all these hurdles directly go to Mr. Justice and have justice in their hands. This is when the Jesus comes- Alternative Dispute Resolution System. It provides justice to the unprivileged and underprivileged with all the solutions of the above if not all then most.

ADR is nothing but the simplified way of doing the complex done in the court outside the court.

*"The justice dispensing system in India has come under great stress for several reasons, chief of them being the huge pendency of cases in courts underlining the need for Alternative Dispute Resolution (ADR) methods. The Government of India thought it necessary to provide a new forum and procedure for resolving international and domestic commercial disputes quickly."*

These are the introducing lines of the International Centre for Alternate Dispute Resolution.

### ORIGIN IN INDIA

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1 Article 14 of the Indian Constitution

2 Part III Fundamental Rights, The Constitution of India

Any method of solving disputes other than litigation is Alternative Dispute Resolution system<sup>3</sup>. Need is the mother of all inventions, in India it gets a bit altered to *misery* and becomes misery is the mother of all changes. The overburden judiciary, the longest living cases- pending even after the death of both the parties, the traditional methodology of solving cases, making it more and more time consuming, the excessive fees of lawyers which increases with each hearing and the inflation of the market make it even more difficult to manage with the current system- these are the diseases whose medication came as ADR.

The main objective is to provide equal justice equally. The road to be travelled was to overcome all the above mentioned problems.

The oldest form of ADR in India is the Lok Adalat. In 1952 the law ministers and law commissions started talking about the need of an alternate resolution system and in the 1960s guidelines with the Legal Aid Boards, Societies and Law, as well as departments came in action. But it was in the 1980 only when a national level committee came in force with its chairman the then chief justice of India Honorable P. N. Bhagwati.

And the Legal Services Authorities Act, 1987 was introduced which was then enforced on 9<sup>th</sup> November, 1995, the reason of celebrating Legal Services Day on 9<sup>th</sup> of November every year. Hence constituted on 5<sup>th</sup> December, 1995 with the amendments of Amendment Act of 1994, headed by Honorable Justice R. N. Mishra, the then Chief Justice of India.

### APPLICABILITY OF ADR

The scope of ADRS depends upon the country in which it is being applied and the traditions of the society. Explaining this with the help of an example of India and Singapore, where in India ADRS is mainly used for resolution of civil matters but in Singapore the use of arbitration in marine disputes is very often and they do have a separate entity as Marine Arbitration. The success of marine arbitration in Singapore is due to the fact that it deals with a lot of export and import business which definitely leads to innumerable marine cases which if resolved in courts will only hamper the flow of the business involving corporate houses who are always interested in a middle way. Likewise in India ADR is not a substitute of judiciary but acts as a helping hand in its work as it cannot be used in Constitutional matters and matters of serious criminal causes over here.

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3 By Law Information Institute.

Hence ADRS is an extra judicial authority which can be applied in all matters depending upon the place of usage including civil, commercial, industrial, financial disputes and family disp

### TYPES OF ALTERNATE DISPUTE RESOLUTION SYSTEM

In this there exists two main types, the one being adjudicatory and the other one being non adjudicatory. The first one is binding in terms of decisions on the parties, for examples arbitration and the second one i.e. non adjudicatory which is of non binding nature. A good example of this is mediation.

### FORMS OF ADR IN INDIA

The various forms of ADR include mediation, arbitration, conciliation, negotiation and its traditional forms in India has Lok Adalat and Nyaya Panchayat.

While the two most common forms of ADR are arbitration and mediation, negotiation is almost always attempted first to resolve a dispute. It is the preeminent mode of dispute resolution. Negotiation allows the parties to meet in order to settle a dispute. The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.

Mediation is also an informal alternative to litigation. Mediators are individuals trained in negotiations, which bring opposing parties together and attempt to work out a settlement or agreement that both parties accept or reject. Mediation is used for a wide gamut of case-types ranging from juvenile felonies to government negotiations. It has also become popular in stock broking matters these days.

Arbitration is a simplified version of a trial involving limited discovery and simplified rules of evidence. The arbitration is headed and decided by an arbitral panel. To comprise a panel, either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third. Arbitration hearings usually last between a few days to a week, and the panel only meets for a few hours per day. The panel then deliberates and issues a written decision, or arbitral award. Opinions are not public record. Arbitration has long been used in labor, construction, and securities regulation, but is now gaining popularity in other business disputes as well.

Its oldest form as mentioned earlier is Lok Adalat that is applied by the Legal Services Authorities Act, 1987 which is behind the establishment of Legal Aid, Lok Adalat and Permanent Lok Adalat in India. It gives the clear demarcation of authorities at different levels – at the

national level, the National Legal Services Authority whose patron- in – chief is the Chief Justice of India, at the state level is the State Legal Services Authority with the High Court’s Chief Justice as its patron in chief and similarly the District an Taluka Legal Services Authority having the highest judge and legal officer respectively as their patron in chief.

The various sections which fulfilling its formation:

- Section 12 provides for legal aid i.e. free legal advice and assistance to the underprivileged and unprivileged classes.
- Section 9(5) talks about the institution of Lok Adalats by the Legal Service Authorities.
- Section 20 deals with the money back policy of the Lok Adalats i.e. the concept of refundable fees after the case has been decided, resolved or not.
- Furthermore the sections 19 to 21 have deals with the concept, jurisdiction, matters and authorities of judgment which includes the sanction of a judicial officer either serving or retired can see into the matters of Lok Adalat.

The other laws leading to ADRS promotion in India includes The Arbitration and Conciliation Act, 1996 and Geneva Protocol and Geneva Convention, 1937. In addition to this the 1991 decision of financial socialism brought the change in India. Among others is the case of Abdul Hasan & National Legal Services Authority v. Delhi Vidyut Board & Others<sup>4</sup> that showed its importance.

And then its newest type is in the form of International Treaties. India signed the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) on 10<sup>th</sup> June, 1958. In 1958, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was drafted to aid in the enforcement in domestic courts of awards granted in foreign countries. As of August 2007, there were 142 countries participating in the convention and India is a part of it.

### BOTH SIDES OF ADR

Its qualities including flexibility which gives the parties choice of the place and time & arbitrators and even they can decide on a specialist of that matter to be a part of the procedure for expert advice if needed. But also values the knowledge of the lawyers in the subject matter concerning law. Another advantage is time factor where it can easily resolve a case in 2-3

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4 AIR 1999 Delhi 88

meetings & at the same time it is not time constraint, because it deals with the willingness of the parties.

It plays important part in CPC<sup>5</sup> giving the judges a power to transfer the case to ADR if they find a chance of resolution through it. One more significant factor of ADR is that the proceedings of the judiciary and the method of Alternate Dispute Resolution can both be done in the same time frame. The section 30 of the Arbitration and Conciliation Act, 1996 further gives parties the freedom of shifting to non-binding methods of ADR if the common point has not arrived by the binding methods between the parties.

But a high fee charged by the arbitrators acts as a disadvantage and is the reason behind the shifting of people from arbitration to mediation as a solution. Although the issue of money has almost been removed by the law as the authorities have fixed the fees of arbitrators in various fields to avoid any conflict of facts.

### CONCLUSION

It is said by the first Prime Minister of India, Late. Shri Jawahar Lal Nehru that, “Whatever we have and whatever we had comes from our past”. The glorious the past the glorious the future or the miserable the past the miserable the future or vice versa will be a wrong explanation. It actually means that the less we had in past the more we try to get it in future, the poor we are the richer we want to be. Same is the case of Alternative Dispute Resolution System in India the more rigid we were or are the more flexible we want to be, the less the equality in justice the more we want it to be equal.

The method which starts when the parties start talking about the matter together so it is a method of bringing the enemies together and towards friendship without a grievous decision but a mutual consideration can never be put down on any disadvantage as it will always fall short to its purpose, the purpose of a justice owned and friendly India.