

IMPORTANCE OF ADR WITH REFERENCE TO ARBITRATION IN COMMERCIAL DISPUTES

Author: Sourabh

Abstract

With the advancement of the society, interpersonal strife has been splintered because it has been said that if cognitive processes exist, there would be multiple points of opinion on the subject. Interpersonal disputes are inevitable as a consequence of the development of society; as a result of this adverse scenario, appropriate techniques for resolving such disputes are necessary. In order to ease the load on the court and guarantee that such necessary circumstances do not emerge in the first place, it is also needed those conflicts be handled for the minimal cost and as fast as conceivable. As the word implies, the primary premise of ADR is to settle differences outside of the regular legal system, hence litigation remains the foundation across the whole procedure of acknowledging ADR. As a byproduct, alternative dispute resolution (ADR) methods have emerged as distinct substitutes to state-created judiciary, garnering the label "alternative." The alternative dispute resolution mechanism is a speedier and least costly method for matters that are recommended for external court resolutions.

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Introduction

Human conflict has been shattered with the development of civilization because it has been asserted that if there are two minds, there would be three points of view on the matter. As a result of society's expansion, human conflicts are unavoidable; as a result of this unfavorable circumstance, effective procedures for settling such disagreements are required. Also required is that disputes be resolved for the least amount of money and as quickly as possible in order to reduce the strain on the judiciary and ensure that such unavoidable situations do not arise in the first place. Since the beginning of time, civilization has recognized the right of every individual to seek redress via the use of courts and tribunals.¹ The typical idea of "access to justice" among the

¹ K.C Jain, " Home Book of American Quotations by Dodd", 46 IJL 156 (1998).

general public is that it refers to access to courts of law. When it comes to the common individual, a court is the place where justice is served. Many hurdles, such as poverty, social and political backwardness, illiteracy, ignorance, procedural formalities, and the like, have made the courts inaccessible to those who need to use them.

To obtain justice through the courts², one must first go through the lengthy and expensive process of litigation, notably in International Commercial Arbitration. This prompted people to consider a way for resolving disagreements harmoniously outside of the courts. In this world, conflict is an inherent element of life, and it is difficult to imagine a human civilization that does not involve it. Disagreements arise as a result of human stress. In light of fundamental human behavior and disposition, it is apparent that disputes are unavoidable in most situations. Conflicts must be addressed and resolved in a fair and equitable manner, because such resolution is required for societal peace, amity, comity, and concord, as well as for the simple access to justice. In light of this, it is critical to have an adequate and effective dispute resolution process in place, which is a requirement for the maintenance of a civilized society and a welfare state, respectively. Arbitration, mediation, conciliation, and negotiation were all options they considered for resolving their differences with the other party. Alternate Dispute Resolution (ADR), refers to a variety of dispute resolution techniques that are often carried out with the assistance of a neutral and independent third party and are intended to serve as alternatives to traditional litigation.³

The underlying rationale of ADR, as the term implies, is to resolve disputes outside of the traditional legal system, and so litigation stays the baseline throughout the entire process of appreciating ADR.⁴ As a result, ADR procedures have arisen as separate alternatives to courts created under state writ, earning the moniker "alternative." For cases that are referred for outside court settlements, the alternative dispute resolution system provides a faster and less expensive solution. As part of the ADR process, the disputing parties are assisted by a neutral person, who is a non-party to the dispute who is unbiased, independent, and impartial and who aids the disputing parties in settling their differences through well-established conflict resolution mechanisms.⁵

² Law Commission of India, 146th Report on Need for Justice –dispensation through Alternative Dispute Resolution, 1908 (April 1994).

³ Scott Peters, *the Indian Arbitrator* 9 (Law House Publication, Calcutta, 2nd edn, 2000).

⁴ Jitendra N. Bhatt, "Round Table Justice through Lok Adalat (People's Court) – A Vibrant ADR in India", 4 IJRAR 14 (1999).

⁵ Ibid

ADR and its Applicability in Commercial Disputes

An improved conflict resolution mechanism in the context of commercial disputes has now been founded as a pressing requirement in the near future. The existing structure of conflict settlement is not an attractive one, particularly because it necessitates an immense portion of time and resources which reduces the disbursement of resources of any commercial enterprise. For this obvious reason, any conflict of a financial existence would prefer not to enter the existing system however, due to an absence of implementation of distinct processes, this occurs and businesses suffer as a result.⁶

Today's court structure is plagued by alarming statistics, prompting the need for an alternative framework to be implemented. Arbitration, mediation, and other adjudication systems or approaches are all classified as alternative dispute resolution (ADR) since they all deviate from the traditional dispute-resolution system of law suits in a court of law. In many industrialized nations such as the United States, France, Canada, the United Kingdom, Australia, and Belgium, for example, the actual use of ADR became more significant.⁷

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In Indian context there are basically four kinds of ADR approaches:

1. Arbitration

Dispute resolution through arbitration was the very first ADR method to be universally understood globally. The UNCITRAL Arbitration Rules first were embraced in 1976 and have since been used to resolve a vast array of conflicts, such as conflicts among personal commercial stakeholders in which no arbitral organization is implicated, shareholder conflicts, Government conflicts, and industrial conflicts conducted by arbitral organizations. The bill passed by the assembly paved the ground for the establishment of arbitration as a vehicle for the settlement of international economic disputes.

The approaches are organized in terms of severity, from the most informal to the most technical. The Arbitration and Conciliation Act of 1996 established legal status for most methodologies, arbitration and conciliation, which are the most basic methods. This protocol was developed in

⁶ Jasmin Joseph, "Alternate to Alternatives: Critical Review of the Claims of ADR", 36 IJL 674 (2006).

⁷ Available at <http://www.wipo.int/edocs/lexdocs/laws/en/pk/pk066en.pdf> Visited on 10/10/2021.

accordance with the 1976 UNCITRAL declaration.⁸ Arbitration is significantly more efficient than lawsuit since it is a less expeditious process that saves a significant number of economical means, which organizations can put to better use in order to achieve their objectives.

2. Conciliation

The Trade Disputes Act, 1929, which established a Conciliation Board, was one of the earliest statutes in India to provide for conciliation. This act was succeeded by the Industrial Disputes Act, 1947, which established a Conciliation Board in Section 5 of the Act. ADR approaches like as conciliation are not as widely used in India as they are in other parts of the world. A conciliation form is needed of all parties to a dispute in Australia, where conciliation is widely used and well accepted. You and the other parties will work together to try to resolve your disagreement with the assistance of an independent expert who is knowledgeable about body corporate law. Conciliation dictates that the participants engaged in the process be required to attend a session where the topics addressed include those particular to conciliation.⁹

3. Negotiation

As long as there is commerce, there will be negotiation, and so ADR tactics are widely used in the commercial world today. Non-litigation dispute resolution is a common and straightforward method of ADR. In this situation, both parties have an attorney on their side, and they discuss terms of any deal, contract, settlement, or dispute to achieve a strategic benefit for their side. Negotiation is a common practice in the commercial world, as many agreements or treaties containing large sums of money must be bargained among two or more parties. These days, this is a necessary talent to have.¹⁰

4. Mediation

One of the biggest potential ADR techniques on the horizon is mediation. The Singapore Protocol on Mediation is in place applies to disputes which are resolved through mediation. Domestically, as well as internationally, Indian legislators have recognized the value of mediation in commercial

⁸ Ashwanie Kumar Bansal, *Arbitration and ADR 67* (Universal Law Publishing Co. Pvt. Ltd., Delhi, 3rd edn, 2004).

⁹ Frank E.A. Sander, *Fitting the Forum to the Fuss: A User Friendly Guide to Selecting an ADR Procedure* 145 (Universal Law Publishing Company Pvt. Ltd., Delhi, 4th edn, 2000).

¹⁰ Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/180576/10/10_chapter%201.pdf Visited on 02/06/2021.

conflicts, as evidenced by Chapter IIIA of the Commercial Courts Act, 2015, wherein Section 12A mandates the use of pre-institution mediation as a resolution in economic conflicts.¹¹

Dispute Settlement through Arbitration

Arbitration is a well-known private legal procedure for resolving disputes between two or more parties in which the parties entrust the dispute resolution process and outcome to a private neutral third party, the arbitrator (or arbitral tribunal), who hears and considers the merits of the dispute and renders a final and binding decision on the merits, known as the arbitral award.

As a result, arbitration is an adjudicatory ADR procedure. The basic goal of arbitration is to have a private judge resolve the disagreement in a timely and convenient manner outside of the traditional litigation process. The parties are free to negotiate on how their conflicts will be settled, and the courts' involvement is limited.¹²

Arbitration, unlike litigation, is a voluntary procedure, and the existence of an arbitration agreement is a requirement for the process to begin. However, once the parties have entered the arbitral procedure, they cannot opt out unilaterally and must accept a binding ruling on the merits. The Arbitration and Conciliation Act, 1996 governs arbitration in India.

Arbitration and its Various Forms

In practice, the following are some of the most common types of arbitration:

a) Ad-hoc Arbitration:

This is a type of arbitration in which a dispute can be referred to arbitration even if no arbitral agreement exists. Disputes are referred to such arbitration as they arise and amicable solutions are sought. It has been determined to be suitable for both international and domestic arbitration.

b) Domestic Arbitration:

It occurs when both parties to the arbitration are Indian citizens and the arbitration takes place within India's borders. In domestic arbitration, the substantive law of India governs and influences all arbitration proceedings.

¹¹ J.C. Seth, "ICC Dispute Board and Arbitration", 45 (Kamal Law House, Calcutta, 7th edn, 2006).

¹² Available at www.legalserviceindia.com. Visited on 05/06/2021.

c) International Arbitration:

When one of the parties to the arbitration is a foreign national or the subject matter of the arbitration is located, registered, or administered by a foreign national authority. The contracting parties' choice of law governs the laws that apply in international arbitration.¹³

Conclusion

The research paper comes to the conclusion that arbitration is an effective method of handling economic disputes. Arbitration must be chosen over the traditional litigation procedure as a means of resolving disputes.

Apart from that, ADR is preferred over other conflict resolution approaches since it allows the parties to be freer and more flexible when it comes to logical decision-making and resolving conflict among the parties. Despite the fact that arbitration is becoming more widely accepted in various legal systems around the world, there are also several obstacles to overcome. Several barriers and challenges such as lack of awareness, knowledge and a very little encouragement by the legal fraternity stood in the way of the introduction of Arbitration as an effective conflict resolution method.

ADR is viewed negatively by some critics as a method that is both slower and more expensive than traditional litigation. The general idea among those who are opposed to the idea of arbitration is that it requires a great deal of effort to be effective and that the possibility of inaccuracy is significant at the end of the process; nevertheless, the reality is different. In terms of proximity towards democracy, arbitration is not as far as it seems, yet it is safer than all the alternatives in general. For its operational generalizations, arbitration is also the most effective means of resolving controversial lawsuits stemming from defective commercial transactions in the long run.

Suggestions

The researcher makes the following recommendations in response to the aforementioned research:

1. Despite finding that alternative dispute resolution can be a "lifesaver" in commercial conflicts and advocating for its use, the researcher acknowledges that there are several difficulties such

¹³Ibid

as lack of knowledge, lack of promotion and lack of awareness etc. must be taken into account in order to make it more accessible.

2. Currently, many countries around the world, including India, lack basic awareness of alternative dispute resolution (ADR) practice and its benefits. Organizing workshops for the development and public consciousness of arbitration education is something they have just recently begun. This challenge can be handled by doubling the frequency of programs, seminars, and conferences offered, as well as providing ongoing encouragement for young students to acquire an interest in the field of organized commercial arbitration.
3. The field of arbitration is one of the most promising areas for ADR development in India.
4. The courts should also discuss the advantages of alternative dispute resolution (ADR) and recognize that the position of judges in the Indian legal system should not be hijacked by arbitration.
5. Even though alternative dispute resolution (ADR) raises issues such as a lack of standardization in court action and the possibility of unfair bargaining power, it would be preferable for ADR practitioners to have institutions whose responsibility it is to enforce their ethical behavior, which is extremely important for the practice of alternative dispute resolution.

