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Alternative dispute resolution and its mechanism: A critical analysis in the light of access to justice in India

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Abstract
Alternative Dispute Resolution (ADR) is a negotiation-based method of resolving conflicts that differs from traditional adjudication processes. ADR offers the ADR offers the ability to prune the prodigious heap of cases by providing a speedy and cost-effective means of resolving disputes. The introduction of ADR in India is discussed and analysed in this article. Here ADR refers to the process of dispute settlement and represents the idea of making the system of delivering justice more favourable to disputed parties which ensure that cases be settled quickly. Meaning, scope and various kinds of justice delivery systems of ADR are discussed here. The functions of ADR are also mentioned. Various advantages and disadvantages of ADR mechanism are thoroughly stated in this article. Lastly, the article is ended with some suggestions.

Keywords: Alternative dispute resolution, arbitration, mediation, conciliation, Lok Adalat, settlement

Introduction
It's a high time to think about providing a platform for the poverty -stricken and disadvantaged who are looking for a quick settlement of their problems through the courts. Impediment in resolving disputes through traditional courts, for any justified cause has adequately negated the basic object for which individual's move before the court. The two important propositions Justice delayed is justice denied and Justice hurried is Justice buried need more attention in order to render/observe social justice to the poverty -stricken, underprivileged and needy people who seek to have their grievance heard in the court of law, we'll have to find out a means to bridge the gap between these two. In this regard, Alternative Dispute Resolution (ADR) methods are urgently needed to supplement the current infrastructure of courts. Apart from improving the efficiency of the judicial system, around the world, initiatives have been introduced to make ADR systems available for settling pending disputes and at the pre-litigation stage. Alternative Dispute Resolution (ADR) offers the ability to prune the prodigious heap of cases by providing a speedy and cost-effective means of resolving disputes. Instead than going to court, ADR refers to a form of a number of approaches to resolve a dispute.

Historical background of ADR in India
In India, before the advent of the court, people used to amicably settle their disputes mutually through mediation. Person holding higher standing and reputation in the village usually led the mediation, and it was referred to as a "Panchayat" in the past [1]. The Pancha, also known as the Village Headman (sarpanch), is a person of integrity, quality, and character who is regarded as an unswayed person by the villagers and is aided by the people of same strata [2]. Panchayats' used to hear individual and family disputes, and the disputants used to accept the decisions of the Panchayats'. Similarly, if a dispute arises between two villages, it will be resolved through Mediation, both village residents will accept the decision of such mediation. Disputes in the past rarely reached the courts. They were even resolving intricate civil, criminal, and family conflicts. Even after their disputes were resolved, disputants who used this method of dispute resolution maintained a friendly relationship [3].
These traditional institutions of dispute settlement began to wither with the arrival of the British Raj, and the British introduced a formal legal system that began to govern [4]. With the introduction of the Bengal Regulations, The Bengal Regulations were created with the intention of encouraging arbitration. After various Regulations relating to arbitration, Act VIII of 1857 mentioned the procedure of Civil Courts, with the exception of those founded by

Royal Charter, and included provisions dealing with arbitration in litigation as well as portions allowing arbitration without the intervention of the court. Following that, the Indian Arbitration Act of 1899, which was modelled after the English act of the same name, was passed. Though it only pertained to the Presidency towns of Calcutta, Bombay, and Madras, it was the first substantive law on the subject of arbitration.

In 1908, the Civil Procedure Code was re-enacted. In terms of arbitration law, the Code made no significant changes. The Indian Arbitration Act of 1899 and some sections of the Civil Procedure Code of 1908 were repealed, and the Arbitration Act of 1940 was passed. It changed and consolidated arbitration law in British India, and it continued in Republican India until 1996 as a comprehensive arbitration law.

Lok Adalats were established in 1982 to settle disputes outside of the courts. On March 14, 1982, the first Lok Adalat was held in Junagarh, Gujarat, and it has since been expanded across the country. Lok Adalats were established as a voluntary and conciliatory body with no legal authority to make decisions. When the Legal Services Authorities Act of 1987 was passed, the Lok Adalats were given legal status.

The previous Arbitration Act of 1940 has been superseded by the new Arbitration and Conciliation Act of 1996 to keep up with the globalisation of commerce. The amendment of the Code of Civil Procedure in 1976 included provisions for the settlement of family disputes. The Special Marriage Act of 1954 and the Hindu Marriage Act of 1955 both include provisions for reconciliation initiatives. The Family Courts Act of 1984 requires the family court to make reasonable attempts to settle between the parties. The insertion of Section 89 to the Code of Civil Procedure, 1908, as part of the 1999 Amendment, is a significant step forward in the Indian Legislature's adoption of the "Court Referred Alternative Dispute Resolution" system.

Meaning and scope of ADR

Alternate Dispute Resolution, or ADR, is an initiative aimed at developing technology that can serve as a substitute for traditional dispute resolution methods. A choice between two options is referred to as an alternative. It does not imply the selection of an alternative court, but rather anything that can function as an alternative to court procedures or as a court-announced method. ADR is not a substitute in the strict sense. ADR is essential to supplement and preserve the court's functions [5].

According to *Black's Law Dictionary* Alternative dispute resolution or ADR refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation [6]." ADR, according to Halsbury's Laws of England [7], is a term for the procedures of settling disputes without resorting to litigation, and encompasses mediation, conciliation, expert determination, and early neutral assessment. As a result, the term ADR refers to a multitude of approaches for resolving conflicts without adjudication. It even covers the method of negotiation in which two parties resolve a problem amongst themselves without the help of a third party by communicating with one another. It may also include processes such as conciliation and mediation, in which a neutral third party is involved. As a result, it is a system for resolving conflicts and disputes that relies on private, consensual resolutions between parties, with or without the intervention of a neutral third party.

In Food Corporation of India v. Joginderpal Mohinderpal [8], the Supreme Court observed – "We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situations, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating sense that justice appears to have been done."

The scope of ADR does not apply to all law cases. ADR is a process which may be used in addition to or along with or even independent of the judicial system. ADR is not intended to supplant of litigation [9]. It provides alternatives to traditional dispute settlement. There are still a handful of significant areas, such as constitutional law and criminal law, where court decisions remain the exclusive source of information [10]. Since the techniques used in ADR are not the ones applied in adjudication, ADR is extra-judicial in character [11]. The main objectives of ADR are resolution of disputes in a speedy manner and at lesser cost. Since it is an amicable way of settling disputes, building better relationship between parties is another objective [12].

The Law Commission of India has stated that the cause of judicial delays is not an absence of clear procedural laws, but rather their faulty execution, or even complete non-observance [13]. The Law Commission of India stated explicitly in its 14th Report that the delay is due to the non-observance of many of the legislation's critical provisions, particularly those intended to expedite the disposition of proceedings [14].

The key objective of the ADR movement is to eliminate vexation, expenditure, and delay while also promoting the notion of "equal access to justice" for all. The ADR system aims to deliver justice that is inexpensive, simple, fast, and accessible. ADR is not the same as the traditional judicial process. Disputes are resolved with the help of a third party, and the proceedings are kept simple and, for the most part, handled in the way agreed upon by the parties. ADR encourages the resolution of disputes quickly with minimal time, skill, and money spent on the decision-making process, while maintaining the secrecy of the subject matter.

Various means and modes of justice delivery mechanism of ADR

The five different methods of ADR can be summarized as Follows.

1. Arbitration.
2. Conciliation.
3. Mediation.
4. Negotiation.
5. Judicial Settlement.
6. Lok Adalat.
7. Ombudsman.

Arbitration

Arbitration one of the modes of alternative dispute resolution facilitates out of court settlement of disputes by referring their problems to the arbitrator or arbitrators, as being appointed by the concerned parties to the dispute [15]. Its nature can be that of a statutory, Institutional, Contractual or even ad-hoc [16]. It is a non-judicial, private, and mostly informal trial procedure for settling disputes. The notion of arbitration comprises four requisite namely an arbitration agreement between two or more parties, a subsequent dispute or disputes among the parties, a referral to a third party for adjusting the dispute and an amicable way to resolve the issues raised as a cause of the

dispute or disputes, concluded by a third party award [17]. In arbitration, a neutral third party assigned by the parties to the dispute or conflict settles the referred conflict between the said parties. It is similar to a court-based settlement, but it involves less formalities and the arbitrator is chosen by the parties. It exists with a well-established, less time-consuming procedure that is very effective in settling various types of disputes, including international business conflicts. Arbitration is presently the most potent legally binding and enforceable alternative to judicial proceedings [18]. The scope for appeal and review against an arbitration award is limited. Arbitration differs from both judicial proceedings and mediation.

Conciliation

Conciliation is a private, informal process in which a neutral third person helps disputing parties to reach an agreement [19]. Apart from arbitration, conciliation is also an alternative dispute resolution process aiming to resolve the dispute by assigning a conciliator. The role of conciliator is to meet both the parties separately in order to resolve their said dispute or disputes. Conciliation attempts target's on displaying both the parties the different aspects of dispute including the pros and cons of the dispute, effects of the dispute on both the parties so to resolve the dispute and bring the concerned parties together [20]. It is a procedure in which the parties, with the help of a neutral third person or persons, carefully identify the problems in dispute, explore possibilities, consider alternatives, and find a mutually agreeable settlement that fulfils their interests. Typically, the conciliator would conduct an independent investigation into the disagreement and write a report outlining the technique of dispute resolution. The parties are then free to negotiate by concluding a final settlement in accordance with the Conciliator's report and can be initiated with or without any alteration or alterations agreed upon by the concerned parties. As a result unlike arbitration, the report prepared by the conciliator in relation with the settlement of dispute would not be binding upon the parties.

Mediation

Mediation is the process of resolving conflicts amicably between parties with the assistance of a mediator. The primary aim of mediation is to provide the parties a solution by creating an opportunity to negotiate, discourse and explore different ideas by seeking the help of a third party in order to assess whether or not a resolution is feasible. A mediator is a neutral third party who has no authority to make binding decisions but who uses a variety of procedures, strategies, and skills to assist the parties in reaching an amicable settlement without going to court [21]. The primary goal of mediation is to give the parties an opportunity to negotiate, communicate, and explore ideas with the help of a neutral third party in order to assess whether or not a resolution is feasible [22]. The parties are free to analyse the law and the facts, including to err in what is law, fact, or important, and to walk away without making a choice if neither of them likes the settlement offered [23].

Between mediation and conciliation, there is a minor difference. While the third party, neutral intermediary, referred to as the mediator, plays a more active role in meditation by offering independent compromise formulas after hearing both parties, the third neutral intermediary's role in conciliation is to bring the parties together in a frame of mind to forget their animosities and be prepared for an acceptable compromise on terms midway between the positions taken before the conciliation proceedings began.

Negotiation

Negotiation is the simplest form of ADR, where the participants normally start talking without the involvement of a third party. The primary goal of this mode is to resolve disputes through a discussion on the views and issues of the respective parties. It is one of the fundamental steps for settling disputes. The parties to a dispute can, on their own motion start a process of negotiations through correspondence or through one or two mediators aiming to seek a mutually acceptable solution for their concerned issues [24]. Negotiation has the advantage of allowing the parties to work out their differences through face-to-face discussion. Negotiations have another advantage of saving time, and hence time counts in favour of the negotiation process. Negotiation does not have any statutory status in India. In this process of Negotiation there are no set rules but a predictable pattern is followed.

Judicial Settlement

Judicial Settlement as mentioned under Section 89 of the Civil Procedure Code can also be utilized as a means of alternative dispute resolution. Indeed, no hard and fast rule has been established for such an alternative mode of settlement. The phrase Judicial Settlement, on the other hand, is defined under Section 89 of the Code. Of course, the Legal Services Authorities Act, 1987 will apply if there is a Judicial Settlement. In a Judicial Settlement, the concerned Judge seeks to reach an amicable settlement between the parties. If an amicable solution is sought and reached at the instance of the judiciary in a given case, the settlement is deemed to be decree under the Legal Services Authorities Act, 1987. Every Lok Adalat award is regarded to be a Civil Court decree, according to Section 21 of the Legal Services Authorities Act of 1987.

Lok Adalat

In India, the Lok Adalat system is a distinctive process. It means "people's court." It is a framework in which the parties make a concerted attempt to reconcile their issues through conciliation and persuasion [25]. For settling problems between parties, it comprises tactics such as negotiation, mediation, and conciliation. 1908 Lok Adalats were given civil court powers under the Code of Civil Procedure. Lok Adalats were given legislative status by the Legal Services Authorities Act of 1987, and the Lok Adalat's award is regarded a civil court decree. The decision is final and binding on both parties. During the pre-litigation stage or while the dispute is pending in court, parties can bring any dispute to Lok Adalats for a peaceful resolution. An application may be referred to Lok Adalats by the State Legal Services Authority or the District Legal Services Authority.

Ombudsman

The Ombudsman is a public sector entity that is usually established by the legislative institution of government to monitor the executive branch's administrative activity [26] According to Black's Law Dictionary ombudsman is an official appointed to receive, investigate and report on private citizen's complaints about the government [27]. The expression 'ombud' means a commissioner or a delegate or an agent. Ombudsman is a Scandinavian word meaning officer or

commissioner [28]. The notion of an ombudsman growth has led in Sweden and the "Ombudsman Hysteria" [29] spread to many other nations, resulting in the concept's widespread adoption in countries such as England, Denmark, Finland, and Norway.

They can be appointed by any government organ, including the legislative, judicial, and executive branches, and their primary responsibility is to mediate conflicts and investigate complaints brought before them through recommendations or alternative dispute resolution techniques. They frequently investigate issues of poor governance, corruption, poor service, and mismanagement, among other things.

The Lokpal and Lokayukta are the Indian Ombudsmen, whose status is guaranteed by the Lokpal and Lokayukta Act, 2013. The 'Lokpal' is in responsibility of dealing with complaints from ministers or secretaries in the Central and State governments, while the 'Lokkayukta' is in responsibility of complaints from other government officials. Besides, in India recently various Banking Ombudsman Schemes have been developed to handle complaints and grievances about banking services. Their goal is to bring all system participants into the ombudsman framework, ensuring an effective and low-cost grievance redressal method for both banking and non-banking services.

Functions of ADR

ADR plays a crucial role in Indian Legal System by using a manifold approaches to deal with the condition of cases pending in Indian courts. The various functions of ADR are given below.

1. The Indian judiciary receives scientifically and systematically established techniques through the Alternative Dispute Resolution system, which serves to lessen the burden on the courts. The goal of alternative dispute resolution (ADR) is not to completely replace the old legal system, but to provide litigants with another option.
2. ADR is a method of resolving conflicts in a neutral and peaceful manner. ADR can be considered as an important part of the judicial reform process, symbolising the "access to justice approach."
3. Articles 14 and 21, which deal with equality before the law and the right to life and personal liberty, respectively, are also the foundations of ADR. The goal of ADR is to promote social, economic, and political justice while maintaining the society's integrity, as stated in the preamble.
4. ADR also aims to promote equal justice and free legal aid under Article 39-A of the Directive Principle of State Policy (DPSP).
5. ADR can be considered as a win-win situation in which no one loses and no one wins.

Advantages of ADR

The ADR method is a non-binding alternative to formal judicial procedures brought before the courts pursuant to statutory provisions. These methods provide a significant means for the common man to obtain speedy justice. The following are some of the many benefits of the ADR system.

1. Parties arguing their claims in the Courts must follow the procedural requirements provided in the statutory enactment, and judicial officers must follow the current statutory rules and regulations. However, there is no such obligation under the ADR system when settling the issue.
2. This ADR process is available at all times, both before and after the case is filed. Even though the case has been filed and is awaiting trial in a court, the parties have the option of using ADR to resolve the dispute.
3. These ADR mechanisms are always more effective and efficient in resolving conflicts and they cost less and take less time. Because the neutral person, whether arbitrator, conciliator, or mediator, always helps to construct the conclusion in the shortest possible time, these procedures are non-adversarial and produce faster results [30].
4. For adjudicators, reliable information is a must-have tool. Due to the unwillingness of parties to share embarrassing information, judicial proceedings are stalled. ADR helps to overcome this flaw in the judicial system. The truth may be difficult to discover if a person is forced to stand in the witness box and is publicly chastised. An informal discussion across the table can be more efficient in gathering information.
5. The parties can choose neutrals who are specialists and have subject area expertise through ADR procedures, which is the finest and most crucial benefit of ADR in attracting parties. The only stipulation is that everyone involved in the settlement must adapt their roles to the ADR criteria.
6. Without the assistance of a lawyer, an ADR settlement can be reached. On the negotiation table, the parties are given a full opportunity to present their case. The most significant advantage of ADR approaches is that it takes only a day or two to reach an amicable settlement.
7. The confidentiality of ADR processes encourages participants to be more open and innovative in their solutions. Conciliators or Mediators are third-party neutrals. They are obligated not to reveal the material information to anyone who is not a party to the conciliation or otherwise involved in any way. As a result, secrecy is maintained throughout the conciliation procedure [31].
8. The conciliation process is always carried out with both parties present. Both litigants are allowed complete freedom to air their grievances on the negotiation table during conciliation and in front of the Mediator, removing any irritation, mistrust, or distrust, as well as the possibility of corruption or bias [32].
9. The conciliation and mediation procedures are non-binding, and the parties have the right to withdraw at any moment.

Disadvantages of ADR

However, the Arbitration has some drawbacks, which can be stated as follows.

1. The powerful parties may pressurize the arbitrator.
2. The parties may lose their interest to move to the court if arbitration becomes mandatory and binding.
3. Some arbitration agreements require the parties to pay the arbitrators, which increases the costs, especially in small consumer disputes.
4. An improper decision is unlikely to be reversed because there are few alternatives for appeal.
5. When a panel has a large number of arbitrators, organising their calendars for hearing dates in prolonged cases might cause delays, regardless of the fact that it is usually considered to be faster.
6. Arbitration awards on their own are really not legally

binding. To enforce an arbitration award, a party must take legal action.

Conclusion and suggestions

Large sections of the population of India believe the dispensation of justice in regular court is very inefficient and inconvenient. So it is the need of the hour that the law of arbitration should be developed, promoted and applied to decrease the judicial pressure upon the regular courts as the regular courts are really overloaded with complexities and disputes. It enables people to participate in the course for deciding their conflicts which are impossible in the general, public and adversarial justice system.

The ADR movement must be accelerated. The load on the courts will be decreased by this process and the people will get instant relief very easily and also economically. We can easily achieve the object of justice by dispensing it to the parties in any conflict if it is successfully implemented. Some suggestions are given below to improve the mechanism of ADR.

1. The first step is to raise public awareness and popularise the methods. In this sense, NGOs and the media play an important role. By organizing seminars, workshops, and other similar activities, it can easily be carried out. The purpose of the ADR literacy programme and awareness camp should be to change the way all disputing parties, advocates, and judges think about ADR.
2. Court-annexed mediation and conciliation will necessitate personnel and infrastructure, both of which will be funded by the government.
3. The relevance of ADR training programmes cannot be overstated. State-level judicial academies can help achieve this goal by acting as a facilitator or an active participant. In this respect, a university, in association with other institutions, should teach ADR professionals. Comprehensive training programmes are required for those who like to become facilitators, mediators, or conciliators will need extensive training. The judicial officers and judges should also be trained in this regard.
4. Under Indian justice system in every district under each state, Mediation Centres should be established with an object to mediate all disputes. It would be great initiative under the justice delivery system. Efficient members of the mediators from the local places would run these centres.
5. To determine the disputes beyond the court, more ADR centres should be established. ADR will help the common people to attain the object of social justice which is the main and important ingredient of judicial process [33].
6. An appeal can be filed against the award or an award can be postponed. "Justice delayed is justice denied." ADR will lose its basic and integral authority, if it is not implemented in proper and real spirit. The parties must be bound by the award, and appeal should not be allowed unless the award was acquired fraudulently or against public policy.
7. Appropriate and proper guidance may be issued by the court to adopt the ADR mechanism. In the different stages of this mechanism the courts may be authorised to negotiate. However, these aims never become successful and fruitful unless appropriate infrastructure and institutional framework are established.
8. The concept of ADR mechanism should be expanded beyond the urban areas. The common people particularly from the rural areas should be engaged in this system because they are not well acquainted to this.

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