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Era of Change from Offline to Online Litigation: ADR & ODR

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Alternative dispute resolution being the modern technique for the settlement of the dispute is used by maximum people today. It is so because this process is less time-consuming and cheap. At present people want their settlement to be fast i.e. on time because of this fewer people go to as court takes years before coming to a decision for and this outside court settlement procedure is fast as settlement is done on time. This study discusses the process of alternative dispute resolution, why people choose it, the problems individuals encounter when moving from ADR to litigation, and how successful this process is at this terrible period of covid-19, and how ODR helped to overcome this tough period of the pandemic. As there is no geographical jurisdiction as there is in courts, we can claim that ADR is admissible internationally. This is also one of the main reasons for ADR's rapid growth. The desire for swift and inexpensive justice is widespread. It also covers encounters with organizations, individuals, and business people who have used Alternative Dispute Resolution as a means of resolving their differences.

Keywords: *adr, odr, litigation.*

INTRODUCTION

Conflict resolution through alternative dispute resolution has provided a new non-adversarial dispute resolution procedure. Alternative Dispute Resolution (ADR) is a system for tackling issues that can be utilised instead of established methods. ADR can be used to resolve a variety of conflicts, including civil, commercial, industrial, and familial issues, in which participants

are unable to initiate or complete any type of discourse. A neutral third party is frequently used in ADR to help the parties communicate, clarify their differences, and resolve their conflicts. It is a method for individuals and communities to maintain cohesion, social order, and the ability to reduce animosity. Because of its varied approaches, ADR plays a critical role in resolving the status of ongoing cases in Indian courts. The Indian judiciary receives scientifically established approaches through the Alternative Dispute Resolution process, which serves to reduce the strain on the courts. Arbitration, conciliation, mediation, negotiation, and Lok Adalat are all forms of alternative dispute resolution. Negotiation, in this context, refers to the parties' self-counselling to resolve their differences; however, it is not legally recognised in India.¹

ADR is also embodied under Articles 14 and 21, which deal with equality before the law and the right to life and personal liberty, respectively. As stated in the preamble, the purpose of ADR is to promote social, economic, and political justice while safeguarding the integrity of society. Under Article 39-A of the State Policy Directive Principles, ADR also aspires to promote equal justice and free legal help (DPSP).²

LEGAL PROVISIONS OF ADR IN INDIA

1. In 1987, the Legal Service Authority Act was passed to give effect to out-of-court agreements.
2. The purpose of the arbitration and conciliation legislation of 1996 was to give effect to out-of-court settlements.
3. The Code of Civil Procedure section 89 and rule 1A-1C in order 10 was inserted after the Code of Civil Procedure Amendment Act 1999, making it mandatory for courts to

¹ Anubhav Pandey, 'All you need to know about Alternative Dispute Resolution (ADR)' (*IPleaders*, 9 May 2017) <<https://blog.ipleaders.in/adr-alternative-dispute-resolution/>> accessed 12 June 2021

² Nitasha Ailawadi, 'Access To Justice Through Alternative Dispute Resolution' (*The Law Mentor*, 14 April 2020) <<https://www.thelawmentor.org/post/access-to-justice-through-alternative-dispute-resolution>> accessed 12 June 2021

ask parties to agree to one or more alternative dispute resolution methods if there are elements of the settlement.

4. After the Criminal Law Amendment Act of 2005, Chapter XXIA of the Code of Criminal Procedure was added. The topic of plea bargaining is discussed in this chapter. Plea bargaining is a type of pre-trial arrangement in which the defendant agrees to plead guilty in exchange for certain concessions from the prosecution. CODE OF CRIMINAL PROCEDURE OF 1908

Sakharam Bandekar was the first instance, which occurred in 2007. “In instances where the maximum sentence is seven years in jail, the accused has the option of plea negotiating. It is not authorised, however, in circumstances where the crimes are perpetrated against women or children under the age of 14, or where the crimes have a negative impact on the victim's socioeconomic situation.”

ADR MECHANISM

The ADR Mechanism is non-adversarial, meaning it works together to obtain a resolution. Parties can now settle disputes outside of court with the aid of a third party after the Alternative Dispute Resolution Act was passed.

It is divided into the following categories:

- **Arbitration**

The case is referred to an arbitral tribunal, which makes a decision that is usually binding on both parties. An arbitral tribunal has no right of appeal in the majority of situations. The procedure of the Arbitration and Conciliation Act of 1996 governs it.

- **Mediation**

Mediation is a process for resolving disputes. A mediator is a third-party neutral who helps warring parties reach a mutually advantageous agreement. The mediator does not offer a solution to the issue at hand.

- **Conciliation**

A neutral third-party conciliator supports the disputing parties in achieving a mutually acceptable resolution in this non-binding technique. A process that is less formal and non-binding. Only when there is an agreement on the identical subject brought for settlement is the conciliator's decision binding. The Arbitration and Conciliation Act of 1996's procedure governs it.

- **Negotiation**

Negotiation is a non-binding method in which the parties debate the issue without the involvement of a third party with the goal of reaching an agreement. This technique is carried out by offering counselling or by bargaining between the parties. It is by far the most used method.

ADVANTAGES OF ADR

1. It reduces the burden on the judiciary as the cases are solved by other methods outside court without the intervention of the judiciary
2. The resolution of dispute usually takes place privately that helps to maintain confidentiality and secrecy of the parties.
3. ADR mechanism helps to dispose of disputes on time.
4. ADR is an economical procedure.
5. Put the parties in control
6. Focus on the issues
7. Flexible and creative
8. Preserve relationship
9. Produce good results

10. Keep private disputes private

11. Produce good results- for example, settlement rates of up to 85%

INTRODUCTION TO ODR

When it comes to ODR, it stands for Online Dispute Resolution and is quite similar to alternative dispute settlement in that it uses the internet as a forum for conflict resolution. As we all know, we live in a dynamic world that changes constantly, and our law must change with it. Prior to the 1990s, there was no need for online dispute resolution, but nowadays, with the rapid growth of the information and technology sector, as well as the current covid-19 pandemic situation in which we are all cooped up in our homes, all legal institutions are scrambling to keep up parties are opting for online dispute resolution mechanism.

In this scenario, we can deduce that the online dispute resolution process is based on the legal adage that "justice delayed is justice denied," which states "justice delayed is justice denied" when justice is not provided on time.

Massive advancements in information and communication technology in the twenty-first century resulted in large-scale online cross-border contacts and e-commerce activities, resulting in e-disputes such as e-stalking, e-purchase, hacking, privacy invasion, domain name disputes, and the sale of commodities, among others, which necessitated the creation of a dispute resolution system.

According to Hon. Arthur M. Monty Ahalt(ret.) **"Online dispute resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or combination of all three."** In this way, we may argue that online dispute resolution is a subset of alternative dispute resolution that arose because of technological advancements in a fast-paced environment.

ODR & ITS SUPPORT

- **Indian Constitution** - Article 21 states that no one's life or personal liberty may be taken away unless in accordance with legal procedures. In a historic ruling, India's Supreme Court ruled that the right to a quick trial is an integral aspect of the right to life or personal liberty.
- **Civil Procedure Code** - After the Code of Civil Procedure Amendment Act of 1999, section 89 (settlement of disputes outside court) and rules 1A-1C, Order X was inserted, judges were required to call for the parties to agree to one or more alternative dispute resolution methods if there were elements of the settlement
- **Indian Evidence Act, 1872** - What if an agreement reached over e-mail is not accepted as evidence in a court of law. Sections 65-A and 65-B were included, for this reason, making electronic evidence as a secondary copy admissible in courts of law if the requirements set forth in section 65-B are met.
- **Information And Technology Act, 2000** - The information and technology Act 2000 was enacted in India to facilitate E-commerce and grant legal status to E-transactions, based on the UNCITRAL modal law of E-commerce. Electronic records and signatures are legally recognised under Sections 4, 5, 10-A, 11-15 of the Act.
- **Arbitration And Conciliation Act, 1986** - The Arbitration and Conciliation Amendment Act 2015 extended legal recognition to arbitration agreements entered into through electronic communication, which is a great step toward promoting successful Online Dispute Resolution.

ADVANTAGES OF ODR

1. Time and cost management - this is a cost-effective method and saves lots of time for parties.
2. Trust and confidence - this method enables trust and confidentiality as only parties to the dispute are present.
3. Communication through video conference
4. It maintains secrecy

5. It is an easy process
6. Easy to access
7. Data storage

ROLE OF ADR AND ODR DURING COVID-19 (DISPUTES FACED BY B2B AND B2C AND IMPACT OF COVID-19 ON JUSTICE DELIVERY SYSTEM)

The covid-19 pandemic has a great impact all over the world. While writing this we have a total of 2,67,63,409 confirmed cases in India and we are in the top 3 most affected countries of the world from coronavirus. As the world health organization said that corona will not go anywhere and we have to live with it. Working under this concept of “**this is new normal**”.

This pandemic is paving a new path for the functioning of India's courts. Courts have adapted to the new scenario by providing video conferencing to hear urgent matters, eliminating the need for parties to wait for conventional courts to reopen. This allows for timely justice and the ability for people to seek relief. However, this approach is only applicable to a limited percentage of patients, and the epidemic is unlikely to abate for some time. During this pandemic, arbitration is becoming a more popular method of resolving business-to-business and business-to-consumer conflicts. While arbitral proceedings have mostly been unaffected by global lockdown, they are not immune to its impacts.³

Arbitration allows parties to tailor the arbitral procedure according to their agreement, resulting in the most appropriate method for resolving disputes at the period of Covid-19. Parties may now agree to hold all hearings through video conferencing, for example. If the parties are unable to reach an agreement, the arbitrator has the authority to handle the proceedings as he or she sees fit.

³ Ila Kapoor & Ananya Aggarwal, 'Covid lockdown: When you can't litigate and arbitrate' (*Financial Express*, 6 May 2020) <<https://www.financialexpress.com/opinion/covid-lockdown-when-you-cant-litigate-and-arbitrate/1949366/>> accessed 14 June 2021

From the notice of arbitration to the statement of claims and witness affidavits to written submissions, all filings in arbitration are filed by email. Long and thorough documents are submitted to the opposing party and the arbitral tribunal using a file share link. As a result, the need for printing and couriering hard copies to different parties, which would cause a problem during the lockdown, may be easily eliminated using these e-services. Email is used to communicate with the opposing party, arbitral tribunal, or arbitral institution.

One of the most important advantages of arbitration for B2B is the opportunity to conduct all sessions through video conference. This aspect of arbitration has grown increasingly essential because of travel restrictions. Although this is limited to specific instances, courts have begun to convene sessions through video conferences.

CHALLENGES FACED BY THE PARTIES OPTING FOR ADR OVER CIVIL LITIGATION

There are always two sides to a coin, if anything has its advantages, and then it may have some disadvantages as well. There are many disadvantages or we can say challenges faced by any party to a contract embracing Alternative dispute resolution instead of the traditional and time-consuming civil litigation.

- It is impossible to predict whether a disagreement will be settled. With the exception of arbitration, alternative dispute resolution processes do not usually result in a resolution. Arbitrator rulings are final; with a few exceptions, an arbitrator's decision cannot be challenged; in the civil action, however, the party has the right to appeal in most situations unless the case is banned. A court's decision, on the other hand, can be appealed to an appellate court on a number of legal grounds and for a range of alleged procedural flaws.
- Arbitrators can only decide money-related issues. They are unable to issue injunctions, which require one party to do or refrain from doing anything.
- Depending on the arbitrators or mediators chosen, the impartial mediator or arbitrator will charge a fee for his or her services. The parties usually agree to split the costs,

however, depending on the contract conditions and state law, the prevailing party may be awarded fees and expenses. A judge, on the other hand, does not charge any fees.⁴

- The court may, in rare instances, order non-binding or judicial arbitration. This implies that if a party is unhappy with the arbitrator's judgement, they can request a trial from the court within a certain term following the arbitrator's ruling. If that party does not get a more favourable outcome at trial, they may be required to pay the opposing party a penalty or fees. There is no scientific rule that can be used to determine whether litigation or alternative dispute resolution should be used. All parties involved must analyze and properly examine each situation. It's critical that both parties are informed of all of their alternatives.

CONCLUSION

The basic goal of the law is to achieve justice. Now, it is the right time to transform the way justice is delivered. Because everyone realizes that disagreements will continue to arise, the best we can do is modify the way they deal with them as we have no clue when this pandemic is going to over.

Using Online Dispute Resolution is the most cost-effective way to resolve conflicts. We may claim that Online Dispute Resolution has a wide range of applications, but in India, we need to learn more about its legal ramifications. Why should a court, with everyone using the internet more and more in their lives, refrain from employing the most up-to-date technologies in case proceedings? Justice is a requirement in today's world. Everyone should be able to obtain justice at a reasonable cost. Our government, and we the people, should make certain that justice is served to all who require it. India requires an effective system for implementing ODR except using old offline modes.

⁴ Mark Albright, 'The Advantages And Disadvantages of ADR' (*Albrights Toddard*, 21 September 2012) <<https://www.albrightstoddard.com/advantages-disadvantages-adr/>> accessed 16 June 2021