



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Alternate Dispute Resolution (ADR): Advantages & Disadvantages

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Received 21 April 2022; *Accepted* 10 May 2022; *Published* 17 May 2022

Alternative Dispute Resolution (ADR) is now widely used around the world to deal with conflicts and disputes and to negotiate and plan. The ADR types originally developed in most countries usually support third-party decision-making and as a result tend to be more or less advisable and simpler (for example, resolved ADR types are introduced in multiple locations before mediation). In recent years, however, there has been an increasing emphasis on the most effective forms of ADR based on interest-based or inclusive negotiation strategies and on the principles of choice. The extent to which these most effective ADR methods, such as mediation, acquisition and remedial varies from country to country and may reflect local and community cultural norms, conflict resolution, and negotiation preferences as well as different local approaches and policies applicable to ADR. This article focuses on ADR, the types of ADR have become very popular in many places, with special emphasis on its advantages and disadvantages, as well as the relation of ADR processes to other Indian law.

Keywords: *ADR, negotiations, policies, mediation.*

INTRODUCTION

It means resolving another dispute outside the judicial system. Flexible, economical, and non-compliant. Decisions are always decided by a single arbitrator or arbitral tribunal and the

prize is also known as an Arbitral award. ADR includes mediation, mediation, family counselling, parental counselling, litigation, etc. In the ADR system, stakeholders are free to appoint their own mediator to resolve disputes. Procedures and methods are simple for the ADR machine but ADR is different from JDR. It means a dispute over a matter of fact, a law or policy in which a claim or assertion of a party is made by rejecting, opposing, or denying the other. ADR refers to a different process that helps a team to resolve disputes. ADR offers to resolve all types of issues including civil, commercial, industrial, and family issues, etc., where people can start any type of negotiation and reach an agreement. Typically, ADR uses a neutral external company that helps stakeholders to communicate, negotiate disagreements and resolve disputes. It is a way for individuals and groups to maintain cooperation, and social order and provide an opportunity to reduce hostility.¹

TYPES OF ADR -

Mediation - A neutral person called a mediator hears a dispute and evidence on each side and decides the outcome. Mediation is less formal than court and the law of evidence is often relaxed. In a constructive partnership, the parties agree to accept the arbitrator's decision is final and there is no common right to appeal. In a non-binding settlement, the parties may request a hearing if they do not accept the arbitrator's decision.

Case - conferencing: - when there is a forum the judge or the barrister meets with the parties and their lawyer to try to resolve some or all of the issues before the trial. Stakeholder participation is limited here and is focused on reducing conflict issues.

Collaborative Family law: - it gives divorced couples a way to end their marriage respectfully without going to court and provides them with support, guidance, and protection through specially trained lawyers. If either partner decides to go to court, both spouses should hire new lawyers. This encourages everyone involved to continue the work in order to reach a mutually acceptable solution.

¹ J.G. Merrills, *International Dispute Settlement* (6th edition, Cambridge University Press 2022)

Mediation: - A neutral person called a mediator helps the parties to try to reach an acceptable dispute resolution. The arbitrator does not decide the case but helps the parties to communicate so that they can resolve the dispute on their own. Mediation can be especially helpful when family members, neighbours, or business partners have a dispute. Mediation is voluntary and does not bind the group.

Neutral Assessment: - A neutral person with expertise in a particular subject. Here, the parties' differences and the extent of the power and vulnerability of the dispute, and the provision and evaluation of possible court outcomes in an effort to promote resolution. A neutral examiner may also provide case planning guidance and assistance in resolving an agreement with the consent of the parties.

Parental Integration: - A child-centered process in which a trained and experienced mental health professional or legal professional called a Parenting Coordinator who assists highly conflicted parents to formulate their child-rearing program, with the prior consent of the parties, court, and parenting coordinator can make decisions on his or her behalf. The purpose of parental communication is to help the parent resolve their disputes about their children in a timely manner and to establish a safe, healthy, and meaningful relationship with the child's parents.

Summary Jury - Trial (SJT): - In this process, each side presents its case accurately before the judges. The judge then made a decision that was binding on the party. The judge's summary case gives the parties a preview of the case in a kind manner. But this process is found in limited areas.

Negotiation: - People solve the problem on their own²re and participation is voluntary. It involves both parties negotiating and negotiating to find an agreed solution. It is not binding on the environment.

² Rakshi, P.M. Arbitration Law: An Introduction

Conciliation- It is similar to mediation without the active role of the third party (mediator). In prioritizing the consensus proposal. It is an organized way of bringing the conflicting parties to an acceptable agreement with the facilitator.

The following types of disputes are usually favourable for conciliation:

Commercial, Financial, Family, Real Estate, Employment, Intellectual Property, Insolvency, Insurance, Service, Partnerships, Environmental and product liability.

ADR ADVANTAGES

It may be used at any time while the case is pending before a court of law. It can be used to reduce the number of cases and resolve disputes between parties. It can provide a better solution to a dispute faster and at a lower cost than litigation. It helps keep confidential disputes confidential and promotes intelligence and a real business solution. ADR procedures take only one day or a few days to reach an agreement. The ADR systems are flexible and are not bound by strict rules. Freedom of the parties to litigation is not affected by ADR cases. Even a failed ADR system is never a waste, in terms of money or time spent on it because it helps stakeholders to enjoy each other after resolving problems. ADR may be used with or without an attorney. The lawyer however plays a very useful role in identifying disputes, setting out the strong and weak points of the case, and providing advice during the negotiations and the full presentation of his client's case. ADR procedures help to reduce the workload of the court and thus help the party to focus on the case or dispute by following the correct ADR procedure. ADR procedures allow parties to choose their own mediator. ADR enables the team to overcome waste of time in the preparation of detailed evidence and attendance at the hearing. There is no criticism of ADR processes.

DISADVANTAGES OF ADR

Enforcement of the arbitral award is made only in court. There may be a chance for the wrong award if you do not qualify. There is no power to issue summonses to examine witnesses and to take evidence with an oath. There are very limited ways to appeal. Findings may be limited.

There is a shortage of examples. Lack of anti-retroviral testing. The arbitrator will not have the power to provide remedies to the court.

ESSENTIAL ADR-RELATED PROVISIONS³

Section 89⁴ of the Civil Procedure Code, 1908 gives that opportunity to the people, if it appears in court there are conditions for arbitration out of court and the court formulates the terms of the possible decision and refers to the same: Mediation, Conciliation, Mediation or Lok Adalat.

The Rules for Dispute Resolution the alternative is: The Arbitration and Conciliation Act, 1996 and Legal Services Authority Act, 1987

HYBRID ADR

Med-Arb: it means two techniques when utilised for solving disputes and differences in mediation, a neutral person mediates, and if fails the decision is binding by way of arbitration.

Concilio-Arb: in this method, two techniques were used for the ambiguous settlement of the dispute. The conciliator is the third neutral party whose work is only to assist a party to come to a conclusion. but if the conciliator fails to conciliate then parties can adopt arbitration as the best resolution mechanism.

Court Annexed Arbitration: it is a form of arbitration by a court.it is initially non-binding in nature but it will become binding if neither the party seeks a rehearing by a judge then the court can order arbitration.

Michigan mediation: this process is evolved by the law course in Michigan US. It is about mediation and arbitration in which a panel mix the parties, and the lawyer, to seek an agreed settlement after the proposal has been given the award pronounced by the arbitrator is binding on the parties.

³ *V.K. Dewan & Co. v Municipal Corporation Of Delhi* (1999) VAD Delhi 671

⁴ Civil Procedure Code, 1908, s 89

Early neutral evaluation: it is developed in California. It means the dispute can be solved by a neutral evaluator and that particular evaluator can meet the party at the early stage to make a confidential assessment of the disputing party to help them define the issue and to promote arrive at a settlement.

Mediator director negotiation: the mediator conducts the discussion between the parties which is less formal than mediation. It is a process of blending between mediation and negotiation.

Medalla: it is a binding dispute settlement. If mediation fails then the arbitrator who ⁵had induced the parties to mediation to consider the final offer made by the parties during mediation and give his binding decision.

Mini-Trial: it is a non-binding settlement procedure where disputing present with summaries of their cases before their executives who are competent to take decisions and who are assisted by a neutral third party. The executives assess the strengths, weaknesses, and various prospects of the cases, and then they negotiate the settlement with the assistance of a neutral advisor.

Rent a judge (Private Judging): it is a process introduced by law into certain jurisdictions in which disputing parties mutually approach the court and request to appoint a retired judge as a referee for whom they pay the fee, before whom they present their case in an informal proceeding. The referee judge gives his decision which is enforceable by the court.

Summary-jury trial: this process is an adaptation of the mini-trial in which cases are presented to mock juries who make findings that indicate to the parties the likely reaction of a real jury to the issue and which help them to engage realistically in settlement negotiation.

Expert Determination: this process is followed in a dispute of technical nature and the dispute is resolved by an expert nominated, whose decision is to be final and binding on the party. In this process, an expert need not follow the rules of arbitration and litigation.

⁵ Chander and Khera, Arbitration Law References

High low Arbitration: this process is used in the USA to refer to a process in which parties agree to adjudication but limit the parameters of the final award.

CONCLUSION

In conclusion, Alternative Dispute Resolution (ADR) is very good for gaining rights and justice. This is because Alternative Dispute Resolution is illegal to solve the problem because the costs are very cheap, fast, informative, easily accessible, provide reconciliation between the parties, less legal action involved and they are not enemies. In other Dispute Resolutions, each dispute that occurs will be resolved through good practice. This is because in Alternative Dispute Resolution they have provided any solutions to the problems. Because Dispute Resolution allows both parties to go to court. However, both parties should ask whether the person will usually be a lawyer or another professional. Otherwise, the parties must also agree to be bound by this decision. Therefore, Other Dispute Resolution Many offer benefits to their customers because Alternative Dispute Resolution is among the minor issues to resolve all disputes.