



ADR & mediation: Streamlining conflict resolution

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Abstract

In contemporary legal and interpersonal contexts, the conventional adversarial approach to conflict resolution is often fraught with complexities, delays, and escalating costs. To address these challenges, ADR mechanisms, particularly mediation, have emerged as efficient and constructive means for resolving conflicts. This abstract explores the efficiency of conflict resolution through ADR, with a focus on mediation.

This research paper delineates the fundamental principles of ADR, emphasizing its departure from the traditional litigation model and its emphasis on collaborative problem-solving. ADR techniques, including negotiation, mediation, arbitration, and conciliation, offer parties the opportunity to actively participate in crafting mutually acceptable solutions, fostering a sense of empowerment and ownership over outcomes.

It also examines the specific benefits of mediation within the ADR framework. Mediation, as a facilitative process guided by a neutral third party, encourages open communication, promotes understanding, and facilitates creative problem-solving. It highlights the efficiency of mediation in terms of time and resource allocation. By averting prolonged litigation processes, mediation reduces case backlogs, alleviates strain on judicial resources, and expedites dispute resolution. It also underscores the versatility of mediation across diverse contexts, ranging from commercial disputes and family conflicts to community disagreements and international negotiations. Its adaptability to varying cultural norms, legal systems, and complex issues underscores its universal applicability and efficacy in fostering durable resolutions.

Keywords: Alternative dispute resolution (ADR), arbitration, negotiation, mediation and conciliation

Introduction

The concept of Alternative Dispute Resolution (ADR) system is competent to providing an alternative to the traditional approaches of settling disputes. ADR provides to resolve every form of subjects comprising civil, business, industrial and family etc., where people aren't being capable to begin every type of negotiations and attain the resolution. Alternative Dispute Resolution (ADR) is considered as non-adversarial methods of dispute resolution that comprises functioning considerably to find the best solutions for every people. ADR can play a vital role in lessening the load of litigations on the judiciary while giving the comprehensive and rewarding experiences for the third parties.

ADR is regularly hailed as the best approach for conflict resolution. Many judges, advocates, and academics strongly carry it because of its capability to establish deals without detracting from the burdened legislative system.

In India, the important modes of ADR comprise arbitration, negotiation, mediation, and Lok Adalats. The basic goal of ADR as the expression itself proposes is to resolve disputes of all sorts outside the conventional legal mechanism i.e. courts. There are wide spectrums ranging from the purely consensual mode of resolution of dispute to the executive procedures such as arbitrations, conciliations or negotiation [1].

Mediation is an important part of ADR, which is a very ancient practice that has been expanded for contemporary usage. ADR can provide compelling alternatives to litigation which is always costly and hurting to business associations whilst providing restricted creative problem solving opportunities. Mediation has been utilized as an approach of dispute resolution since time began. Mediation is considered as an effectual dispute resolution approach,

which assists a litigant to resolve their dispute willingly and cordially with the help of a third party termed as 'Mediators'. The mediators by their capabilities assist the parties to resolve their dispute.

At present, mediation in India may be: (a) court referred (courts might refer cases to mediation, (b) private, or (c) as provided under a specific statute (like the Commercial Courts Act, 2015, the Consumer Protection Act, 2019, or the Companies Act, 2013). A Mediation service is offered by private ADR centre or mediation centre, as well as centre set up by judiciary. According to the survey of NLSA, India had 464 ADR centre, 570 mediation centres, 16,565 mediators, and nearly 53,000 cases were settled via mediation process in 2021-22.

In *M/S. Afcons Infrastructure Limited vs. M/S Cherian Varkey Construction Limited* [3] widened the scope of obligatory mediation to refer disputes to ADR. It held that in the be short of agreements related to Arbitration & Conciliation, the court might refer the case to other ADR methods, comprising mediation, without the party's permission.

In *Perry Kansagra vs. Smriti Madan Kansagra* [4] case, the Court listed different forms of clashes where ADR might be a better option than going to court. This includes case comprising commerce and contract and money claim that come from contract. ADRs are also concerned the superior ways to resolve particular performance disagreements among the insurer and insured or banker and customer than litigations.

Characteristics of ADR

Alternative Dispute Resolution (ADR) in India encompasses several distinctive characteristics tailored to the country's

legal, cultural, and socio-economic context. Here are some key characteristics of ADR in Indian disputes:

Diverse Legal Landscape: India has a diverse legal landscape, with a blend of statutory law, customary practices, and religious laws governing different communities and regions. ADR mechanisms are designed to accommodate this diversity and provide flexible solutions that align with the needs and preferences of parties from varied backgrounds.

Legislative Framework: ADR in India is supported by a robust legislative framework, including statutes such as the Arbitration and Conciliation Act, 1996, which governs arbitration proceedings, and the Mediation Rules, which regulate mediation processes. These laws provide clarity and guidance on the conduct, enforcement, and recognition of ADR outcomes.

Court-Annexed Mediation: Indian courts actively promote ADR through court-annexed mediation programs. These programs encourage parties to explore mediation as a means of resolving disputes before proceeding to trial. Courts may refer cases to mediation at various stages of litigation, offering parties an opportunity to reach amicable settlements with the assistance of trained mediators.

Emphasis on Mediation: While arbitration is commonly used for commercial disputes, mediation has gained prominence as a preferred method for resolving a wide range of disputes in India. Mediation is viewed as a voluntary, confidential, and non-adversarial process that empowers parties to actively participate in finding mutually acceptable solutions to their disputes.

Enforceability of Settlements: ADR outcomes, including mediated settlements and arbitral awards, are enforceable under Indian law. Parties can seek enforcement of mediated agreements through the courts, ensuring that ADR processes result in legally binding and enforceable resolutions.

Types of mediation

Statutory: There are different forms of cases that are needed by laws to endure the mediation processes. Labor clashes and domestic (family laws) dispute are two prime examples. In India, on the other hand, these types of mandatory mediation are rare.

Court ordered: A lot of jurisdictions in India requires some type of ADR before a case might be resolved via the traditional judicial processes. Immediately a case is filed, the parties are offered the number of ADR alternatives. They should, unless exempted by the Court, choose and pursue one of these options. The Court maintained the lists of mediators capable and experienced advocates selected by the Court who are available to the parties. For parties who elect this option, the Court will employ mediators and designate the date by which the mediation should be done. The outcome of the mediation are secret the Court will not understand what occurred at the mediation, unless certainly, the agreements are reached ^[5]. If the agreements are reached, that agreements are enforceable as the judgment of the Court.

Contractual Mediation: The parties to the contract, as part of the terms of their agreements, might comprise the mediation clauses as a system to resolve conflicts. Even if binding arbitrations are a much more usual contractual term since it will always result in the resolution, mediation can be a successful instrument to settle contractual clashes before they blossom into a protracted battle.

Transformative Mediation: In transformative mediation, the mediator focus on engaging and empowering disputant to settle their conflicts and urging them to perceive each other's requirements and interest. At its usually yearning, the procedures intend to alter the parties and their association via the way toward procuring the capabilities they have to roll out helpful development.

Legal provisions

Legal provisions for Alternative Dispute Resolution (ADR) and mediation vary across jurisdictions, but there are common themes and legislative frameworks that support these processes. Here are some key legal provisions typically found in many jurisdictions

Legislative Enactments and Acts: Many countries have specific legislation or acts that govern ADR and mediation. These laws outline the procedures, rights, and responsibilities of parties involved in ADR processes. For example: The United States has the Uniform Mediation Act, which provides a legal framework for the confidentiality, enforceability, and conduct of mediation.

Singapore has the Singapore Mediation Act, which empowers parties to enforce mediated settlement agreements as court orders.

India has the Arbitration and Conciliation Act, which incorporates provisions for mediation as a form of ADR and sets out the legal framework for conducting mediations.

Court Rules and Procedures: Courts often have rules and procedures in place to encourage or mandate parties to engage in ADR, including mediation. These rules may require parties to attend pre-trial conferences or mediation sessions before proceeding to trial. Court-annexed mediation programs are common examples of this approach ^[6].

International Conventions and Treaties: Some countries are signatories to international conventions or treaties related to ADR and mediation. These agreements may establish guidelines for cross-border mediations, recognition and enforcement of mediated agreements, and the promotion of ADR practices globally. Examples include the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation) and the UNCITRAL Model Law on International Commercial Mediation.

Professional Standards and Codes of Conduct: Professional organizations and bodies often develop standards and codes of conduct for mediators. These standards may cover mediator qualifications, ethical considerations, confidentiality requirements, and best practices for conducting mediations. Adherence to these standards may be mandatory or voluntary depending on the jurisdiction.

Government Policies and Initiatives: Governments may implement policies and initiatives to promote ADR and mediation as preferred methods for resolving disputes. This could include funding mediation programs, establishing mediation centers, providing incentives for parties to engage in ADR, and integrating ADR into public sector dispute resolution processes.

Enforceability of Mediated Agreements: Legal provisions may address the enforceability of mediated agreements, ensuring that parties have a mechanism to enforce the terms of their settlement if necessary. This may involve provisions for converting mediated agreements into enforceable court orders or providing mechanisms for enforcement through alternative means, such as arbitration.

Conclusion

ADR and mediation play a pivotal role in the resolution of disputes in India, offering a versatile and culturally sensitive approach to conflict resolution. The characteristics of ADR and mediation in India underscore the country's commitment to fostering accessible, efficient, and equitable dispute resolution mechanisms that cater to the diverse needs and preferences of its populace.

Through a combination of legislative frameworks, court-annexed programs, and dedicated mediation centers, India has embraced ADR as a mainstream method for resolving disputes across various sectors and communities. The emphasis on mediation, in particular, reflects a recognition of its potential to facilitate constructive dialogue, preserve relationships, and yield mutually acceptable solutions.

In addition, the enforceability of ADR outcomes under Indian law provides parties with assurance that mediated agreements and arbitral awards are legally binding and enforceable, instilling confidence in the efficacy of ADR processes. ADR and mediation in India represent a dynamic and evolving landscape, characterized by innovation, adaptability, and a commitment to justice. By leveraging the strengths of ADR mechanisms and promoting a culture of collaboration and consensus-building, India continues to advance its objectives of reducing court backlogs, enhancing access to justice, and fostering a more harmonious society.

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