CONCEPT OF ADR IN INDIA

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Abstract

Alternative Dispute Resolution (ADR) is a powerful mechanism for providing efficient and cost-effective justice, with the capacity to significantly reduce case backlog. This alternative approach not only expedites legal proceedings but also offers an economically efficient avenue for dispute resolution. In the Indian legal system thousands fast fast-track courts, have successfully resolved millions of cases, and the persistent challenge of pending cases continues to escalate. This situation underscores the complexity of the issue, as the backlog persists despite proactive measures, necessitating a critical examination of the factors contributing to the sustained accumulation of unresolved cases within the Indian judicial system. In addressing such a circumstance, ADR arises as a beneficial method, that facilitates the resolution of conflicts in a conciliatory manner, wherein the resultant outcome is mutually accepted by both parties involved.

Keywords: *Arbitration, Arbitration Act 1940, Dispute Redressal, Section 89, Code of Civil Procedure.*

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INTRODUCTION

The first lawyers, Mahatma Gandhi and Abraham Lincoln, advocated for and promoted a culture of settlement. They suggested that instead of going to court, people should settle their disputes. This practice has undergone a significant transformation, progressing from the point where village elders would gather beneath banyan or neem trees to settle disputes to the point where it is now officially recognized by law. They also supported the creation of regional language courts and the implementation of the Alternative Dispute Resolution[1] system.

A dispute is a common occurrence in life. It is not good or bad. In the course of our daily routines, we frequently encounter various Disputes with individuals in diverse settings, irrespective of time or location. To resolve all disputes, we need patience and calmness. However, what is important is how we deal or manage it. Negotiation techniques are often central to resolving conflict and as basic strategies these have existed for thousands of years. ADR encompasses a spectrum of mechanisms for settling disputes that facilitate the resolution of conflicts between involved parties without resorting to court litigation. There are several types of disputes like civil, commercial, Industrial, and family disputes which are settled by the ADR techniques. The ADR mechanism has worked smoothly in business disputes, Banking, construction contracts, partnerships, joint ventures, intellectual property rights, insurance claims, personal injury cases, contract enforcement, product liability, and professional negligence, etc. In situations where individuals encounter difficulties in initiating negotiations and achieving settlements, ADR is commonly applied.

CONCEPT OF ARBITRATION

Aristotle once observed, "man is a social animal by nature" meaning who cannot afford to live alone. No individual is known to have developed normally without interaction with others. People learn social habits and acquire social qualities through their interactions with fellow human beings. In human behavior, every human has their own way of doing things, this is because people have diverse levels of understanding and the creation of doing things has made man invent the word "conflict" In earlier times no one knew how to solve conflict, but our ancient scriptures do throw light on the methods of solving conflicts. In Ramayana Angada son of Bali approached Ravana to opt for the path of peaceful settlement and even in Mahabharata lord Krishna endeavored to mediate between the Pandavas and Kauravas.

[1] Hereinafter referred as ADR

Arbitration is considered different modes of settlement including, arbitration, conciliation, mediation, negotiation, and Lok Adalat. it is considered as International Commercial Arbitration, wherein two parties hailing from distinct nations engage an international arbitrator. This engagement occurs either through mutual consent or by involving an arbitration institution, facilitating the resolution of their dispute by the established procedures. The importance of ADR processes has increased recently. substantially, primarily in response to the escalating number of commercial market disputes. This heightened importance is attributed to ADR's reputation for providing a swift, cost-effective, and efficient means of dispute resolution.

CONCEPT OF ARBITRATION AGREEMENT

In general, the arbitration agreement forms the basis for arbitration. It is an agreement to resolve present or future disputes through arbitration This arbitration agreement has two fold results,

I. A contractual provision wherein the involved parties agree to resolve any disputes arising from the contract through the process of arbitration. (arbitration clause); or
II. A contractual clause wherein the parties involved consent to the utilization of arbitration as the method of resolving any disputes that may arise from the contractual agreement. (submission agreement).

Essential Elements

Written agreements for arbitration are required, while verbal agreements are not legally binding. A contract or a separate arbitration agreement can both include an arbitral clause as part of a written arbitration agreement.

The Supreme Court in *Bihar State Mineral Development Corporation* v. *Encon Builder Pvt. Ltd.*[2], held the following as the four essential elements of an arbitration agreement:

I. There must be a distinction in the present or future regarding the matter being discussed,
II. The parties must intend to use a private tribunal to settle these disputes,
III. The parties need to provide written consent to be bound by the tribunal's decision,
IV. *Ad idem*, or mutual understanding, is required from the parties involved.

In *K.K. Modi* v. *K.N. Modi*[3], the Supreme Court held that the following attributes must be present in an arbitration agreement:

[2] 2003 (7) SCC 418
[3] AIR 1998 SC 1297

1) The arbitration agreement must specify that the tribunal's decision will be binding on the parties involved,
2) The tribunal's authority to decide the parties' rights must either come from their consent, a court order, or a statute that clearly states that the process is arbitration,
3) The agreement must provide for the arbitral tribunal to determine the substantive rights of the parties,
4) The tribunal will impartially and judicially determine the rights of both parties, owing an equal obligation of fairness towards both sides,
5) The parties must intend for their agreement to refer their disputes to the tribunal to be enforceable by law; and
6) The agreement must indicate that the tribunal will decide a dispute that has already been formulated at the time when the reference is made to the tribunal.

It needs to be determined whether the existence of an arbitration agreement to refer the dispute to an arbitrator can be clearly ascertained from the facts and circumstances of the case. This determination depends on the intention of the parties as discerned from the relevant documents.

In *Rukmanibai* v. *Collector*[4], the Supreme Court has stated that it must be determined whether the parties have agreed to submit the dispute to an arbitrator. If such an agreement exists, it will be considered an arbitration agreement. There is no specific form required for this agreement.

In *M.M.T.C Ltd* v. *Sterlite Industries Ltd.*[5], Supreme Court held that an arbitration agreement cannot be held invalid on the ground that the arbitration agreement specify an even number of arbitration.

Supreme Court in the case of *SBP Co.* v. *Patel Engineering Ltd.*[6] while overruling *Konkan Railway Corporation Ltd.* v. *Mehul Construction Co.*[7], held that the appointment of an arbitrator is a judicial function and not an administrative function and it also held that the Court need not merely confine itself to the existence of the arbitration agreement or the existence of the condition for the exercise of the respective court's power but may also go into preliminary questions such as limitation and the stale nature of the claims, accord, and satisfaction, qualifications of the arbitrator, etc.

[4] AIR 1981SC 479
[5] (1996) 6 SCC 716
[6] AIR 2006 SC 450
[7] (2000) 7 SCC 201

In *Mahanadi Coalfields Ltd.* v. *IVRCL AMR Joint Venture*[8] the Supreme Court ruled that for an arbitration agreement to be valid, it must clearly state the parties' commitment to resolve disputes through arbitration. Simply using words like "arbitration" or "arbitrator" in a clause is not enough to create a binding arbitration agreement if it requires additional consent from the parties to proceed to arbitration.

NON-ARBITRATION DISPUTE

1) Disputes related to rights and liabilities arising from criminal offenses, and
2) Disputes related to marriage, including divorce, judicial separation, restitution of conjugal rights, and child custody,
3) Matters related to guardianship,
4) Insolvency and winding up matters,
5) Testamentary matters

Statutory provisions relating to ADR

Section 89 of the Civil Procedure Code was incorporated to facilitate an amicable, peaceful, and mutual settlement between parties, thereby minimizing the need for direct court intervention. In countries all over the world, especially the developed few, the majority of legal disputes are resolved out of court. Section 89 CPC: If the court determines that there are potential settlement terms that the parties may agree to, the court will draft those terms and provide them to the parties for their review. Upon receiving the parties' input, the court will then adjust the terms as necessary.

Section 89 and Order X Rule 1A of CPC Inserted by Amendment Act 1999 with effect from July 1, 2002 Order X Rule 1A makes it mandatory on the part of the Court to direct the parties to opt for any of the modes of settlement outside the Court as specified in Section 89 (1)

There are various important judgments for the cases which involve section 89 of CPC. Its validity upheld by the Supreme Court in *Salem Advocate Bar Association* v. *Union of India*[9] In the first case, the validity of Section 89 was upheld given its laudable object.

In the second case *Salem Advocate Bar Association* v. *Union of India*[10] it was held that instead of the Court formulating and reformulating the terms of the settlement, the Court should only briefly

[8] MANU/SC/0958/2022
[9] AIR 2003 SC 189.
[10] JT 2005(6) SC 486

state the dispute between the parties, which is called as 'Summary of dispute' and not 'the terms of settlement'

The Arbitration and Conciliation (Amendment) Bill, 2021: It seeks to amend the Arbitration and Conciliation Act, of 1996

The key feature of the Bill

⇒ Arbitration Council of India (ACI)

The Bill seeks to structure an independent body called the Arbitration Council of India, it aims to promote the dispute resolution mechanism such as arbitration, mediation negotiation, conciliation, and Lok Adalat. The functions include,

- Framing policies for the arbitral institutions,
- Implementing policies for the establishment and maintenance of uniform professional Standards.

⇒ Composition of ACI

The ACI includes a chairman who is either a judge of the Supreme Court, a judge of the High Court, or the Chief Justice of the High Court, or any eminent person with expertise in the field of arbitration proceedings.

⇒ Appointment of Arbitrators:

The Arbitration and Conciliation Act allows parties to choose their own arbitrators. If there is a disagreement between the parties about the appointment, they can seek the assistance of the Supreme Court, High Court, or any person or institution authorized by the Court to appoint an arbitrator.

⇒ Modes of settlement under ADR

a) Arbitration
b) Conciliation
c) Mediation
d) Lok Adalat

⇒ Arbitration

Section 2(1)(a) of the Act defines ADR. ADR offers an alternative to litigation in courts and brings benefits such as flexibility and confidentiality. According to the Black Law Dictionary,

ADR is a method of resolving disputes involving two parties and a neutral third party, whose decision is binding on both parties.

⇒ Conciliation

A neutral third person, referred to as a conciliator, mediates disputes and helps parties come to a mutually agreeable resolution as part of the conciliation process. The Conciliator, who has been appointed for this role, may offer their advice to help the disputing parties come to a compromise. To put it another way, the settlement represents a compromise between the parties.

⇒ Mediation

Within the realm of mediation, a neutral third party, referred to as a "mediator," plays a pivotal role in assisting disputing parties to arrive at a mutually agreeable resolution. Rather than rendering a decision, the mediator facilitates communication between the involved parties, enabling them to navigate and resolve the conflict independently. Eligibility to serve as a mediator is contingent upon the completion of a requisite 40 hours of training, as stipulated by the Supreme Court's Mediation and Conciliation Project Committee (SC). Additionally, to attain accreditation as a qualified mediator, an individual must have concluded a minimum of 20 mediations overall, with at least ten of these resulting in a successful settlement.

⇒ Lok Adalat

Lok Adalat, colloquially known as the 'People's Court,' is presided over by a sitting or retired judicial officer, social activist, or member of the legal profession serving as the chairman. The National Legal Service Authority (NALSA), in collaboration with other Legal Services Institutions, orchestrates Lok Adalat periodically to exercise their jurisdiction. Cases currently under consideration in regular courts or disputes that have not yet been presented before any judicial forum can be referred to Lok Adalat. The procedural aspects are characterized by the absence of court fees and a streamlined process, contributing to expeditious proceedings. If a matter initially filed in a regular court is subsequently referred to Lok Adalat and successfully resolved, the original court fees paid upon filing the petition are refunded to the involved parties.

Advantages of ADR

- Less time consuming
- Cost-effective method
- Least complicated procedure, free from technicalities of courts

- People have the freedom to express themselves without fear of legal repercussions.
- It is an efficient way to potentially restore relationships, as parties can discuss their issues together on the same platform.
- It helps prevent further conflict and maintain a good relationship between the parties

CONCLUSION

In this article, the author highlights arbitration as an effective and efficient method for resolving disputes. After reviewing various opinions and comments, the author observes that arbitration is deeply rooted in the Indian mindset. With legal amendments, case law interpretations, government support, and a preference for arbitration as a dispute resolution method, it is evident that there is an increasing reliance on arbitration, especially in international business due to the globalized economy and heightened competition. People are choosing arbitration over lengthy and costly court proceedings. Consequently, alternative dispute resolution mechanisms, such as arbitration, play a critical role for businesses in India and those dealing with Indian firms. The analysis also emphasizes the supervisory role of courts in ensuring the legal validity of arbitration awards, even after decisions are made by arbitrators or neutrals.