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Research Paper

Alternative Dispute Resolution-"A Garland Of diverse Mechanisms"

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ABSTRACT
"JusticeDelayedisJusticeDenied"

[1] Indian judiciary is one of the Oldest Judicial System. Many developments are being done inour system to make access to justice much efficient. But still, the courts are logged withnumber of pending cases. To deal with such a situation, ***Alternative Dispute Resolution*** *canbe helpful mechanism; it resolvesconflict between the transacting partiesin a peacefulmannerbyarrivingatanamendablesettlementwhichis acceptedbyboththeparties.*
It resolves disputes of all types including civil, commercial, family, etc. ADR procedures areoften collaborativeand allow the parties to understand each other's position. It aims tomaintain peace and cooperation between parties and prevents hostility among them. Thepurpose of solving dispute through ADR is to lower the burden upon the courts and providecost effective, early access and speedy trial to the cases.In India, ADR is established basedonArticle14and Article21of theConstitution of India.
This article tries to give a good and detailed overview of the Alternative dispute mechanism(hereinafter referred to as ADR) Systems of India in particular and the world over in general.This article zeros in on theimportant aspects of the ADR methods, like the usefulness ofthese methods for the resolution of various legal matters, the efficiency of methods, pros andcons of each of these methods etc. It also covers a comparative analysis of various ADRmechanisms. I hope, this article shall enlighten the layman and all other stakeholdersconcerned in a big way thereby enabling them to unfold new paradigms of ADR methods andresolutions techniques.

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INTRODUCTION

Human Conflicts are inexorable because society is a multifarious web of social relations.Disputes in the same way are inescapable. We cannot avoid disputes but an attempt must bemade to resolve them speedily and inexpensively, so that the precious time of courts is publicis not wasted. Therefore, Dispute resolution is an indispensable process for making social lifepeaceful. It is the sin qua non of social life and security of social order, without which it maybedifficultfor theindividualstocarryon thelifetogether.

Alternate Dispute Resolution is one of the most efficacious mechanisms to resolve legaldisputes in confidential way using different modes.It is free from technicalities of courts;here informal ways are applied in resolving dispute. People is free to express themselveswithout any fear of court of law. They can reveal the true facts without disclosing it to anycourt.

ADR is a bouquet that consists of various techniques being utilized to determine disputesinvolving a structural process with a third party intrusion. It is an attempt to devise feasibleand fair alternative to our conventional judicial system. It can be categorized into threecategoriesnamely:informaltechniques,advancetechniques andhybridtechniques.

Informal methods consist of the following: Forceful private enforcement, escaping, belief inGod's justice, decisionbysociety'srepresentativebody etc.

Advancemethodscanbeclassifiedas:Negotiation,mediationandconciliationandarbitration.

A hybrid dispute resolution method combines elements of two or more traditionally separateprocesses into one like Mediation-Arbitration, Mini trial, Neutral Listener Agreement, Rent ajudgeetc.

In India, laws relating to resolution of disputes have been amended from time to time tofacilitate speedy dispute resolution in sync with the changing times. The Judiciary has alsoencouraged out-of-court settlementsto alleviate theincreasing backlog of casespending inthe courts. Adding to it, the *Arbitration Act*, 1940 was also

repealed and a new and effectivearbitration system was introduced by the enactment of *The Arbitration and Conciliation Act,1996*.

Likewise, to make the ADR mechanism more effective and in coherence with the demandingsocial scenario, the *Legal Services Authorities Act, 1987* has also been amended from time totime to endorse the use of ADR methods. Section 89 of the Civil Procedure Code, 1908providesthatopportunitytothepeople,ifitappearstocourtthereexistelementsofsettlementoutsidethecourtthencourtformulatethetermsofthepossiblesettlementandrefer the same for: Arbitration, Conciliation, Mediation or Lok Adalat. ADR also strive toachieve equal justice and free legal aid provided under Article 39-A relating to DirectivePrincipleof StatePolicy (DPS)
WiththedevelopmentADR,theirmethods,andinordertoimproveaccesstojustice,ADRis an absolutenecessityinthepresentscenario.
Sir Francis Bacon also explained the concept of ADR stating that **"It is generally better todealby speech thanbyletterand by mediation of athirdman thanbyman'sself"**
Therefore, Legal recognition should be given to all ADR methods as they are viable andconvenientandhelp to easetheburden ofthecourts.
This Article will discuss in detail the "Art and Heart" of ADR which is the wide range oftechniques which arepresentand areusedin aneffectiveway.

[2]Aspertheeconomictimes'report,thereare58.94lakhcasespendinginHighCourtsandmore4.10crorecases pending in the district and subordinate courts across the country, as on 21st March, 2022. As per thewebsite ofSupremeCourtofIndiathereare 70,632 casespending, ason 01stApril2022.

HISTORICALBACKGROUNDOFADR

In the ancient period dispute between parties were settled by assemblies of learned men in alocality who knew law. The practise is still prevalent in this contemporary society but itsscope has widened...Earlierit was onlythe work of judiciaryto solve dispute betweenparties. The delay in delivery of Justice was the biggest challenge before the Indian Judicialsystem. But after the evolution of ADR methods, the amicable settlement of disputes becamepossible without the intervention of Court. It enabled speedy justice to the society. It alsohelpedtheJudiciary by reducingitsburden.
ADR is not a new concept for the society. ADR has been a spoke in the wheel of the largerformal legal system in India since time immemorial. The earliest evolution of the concept ofarbitrationcanbetracedbacktothetimewhenKingSolomonsettledthedisputebetweentwo mothers where each one was claiming the right on the baby boy and the issue was whothe truemother of ababy boy was. Intheancient and medieval periods disputes wereresolved in an informal manner by a neutral third person who was either an elderly person orvillagechief.

ADRDURINGBRITISHPERIOD

The British East India Company opened their first trading Centre at Surat, Gujarat in 1612.This was as per the deed of right Mughal Emperor Jehangir granted to them. Their first majorinterferencewiththeinternalpoliticsofIndiawaswhentheysupportedMirKasim,aminister of Bengal, militarily to sabotage Siraj-ud-Daula, the Nawab. On 23rd June, 1757, theNawab was defeated by a joint military action of Robert Clive's troops and those of MirKasim in a battle at Plassey.

And this was the turning point where the British formally entered the political arena of Indiaand began to play a direct role in the administrative supremacy. They managed to bring undertheir administrative control most of the princely states of India either by direct annexationusing force or by giving military support. They brought Punjab also under their control in1849.

1. [3]Supakar,Dr.Shraddhakara.(1986).LawofProcedureandJusticeinAncientIndia.NewDelhi:Deep&Deep Publication.

Along with Punjab, the North West Frontier Province, which is now under Pakistan, was alsobrought under them. And in those stateswhere a legitimate heir apparent to the crown wasnotavailable,theywerebroughtundertheBritishrule.

Judicial administration was changed during British period. The current judicial system ofIndiais verycloseto thejudicialadministrationas prevailed duringBritishperiod.
The system of alternate dispute redressal was found not only as a convenient procedure butwas also seen as a politically safe and significant in the days of British Raj.

[4]However,withtheadventoftheBritishRajthesetraditionalinstitutionsofdisputeresolution somehow started withering and the formal legal system introduced by the Britishbegan to rule. ADR in the present form picked up pace in the country, with the coming of theEast India Company. Modern arbitration law in India was created by the Bengal Regulations.TheBengalRegulationsof1772,1780and1781weredesignedtoencouragearbitration.

Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit thedispute to the arbitrator, appointed after mutual agreement and whose verdict shall be bindingonboththeparties.Hence,therewereseveralRegulationsandlegislationthatwerebroughtin resulting considerable changes from 1772.

[5]After some other provisions from time-to-time Indian Arbitration Act,1899 was passed,based on the English Arbitration Act of 1889. It was the first substantive law on the subject ofarbitration but its application was limited to the Presidency - towns of Calcutta, Bombay andMadras. Act, howeversuffered from many defects and was subjectedto severe judicialcriticisms.
The Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899 andsection 89 and clauses (a) to (f) of section 104(1) and the Second Schedule of the Code ofCivilProcedure,1908.ItamendedandconsolidatedthelawrelatingtoarbitrationinBritish

1. [4]NripendraNathSircar,LawofArbitrationinBritishIndia(1942),p.6citedin76'thReportofLawCommissionofIndia, 1978, p. 6, para1.14

1. [5]AlternateDisputeResolution,inRao,P.C.andSheffield,William.(1997)AlternativeDisputeResolution:Whatitisand How itWorks,NewDelhi:UniversalLawPublishing Co., p.79.

IndiaandremainedacomprehensivelawonArbitrationeveintheRepublicanIndiauntil1996.

ADRPOST-INDEPENDENCE
Bodies such as the panchayat, a group of elders and influential persons in a village decidingthe dispute between villagers are very common even today. The panchayat has, in the recentpast, also been involved in caste disputes. In 1982 settlement of disputes out of courts startedthrough Lok Adalat's. The first Lok Adalat was held on March 14, 1982 at Junagarh inGujarat and now it has been extended throughout the country.By the enactment of the Legal Services Authorities Act, 1987, which came into force fromNovember 9, 1995, the institution of Lok Adalat'sreceived statutory status. To keep pacewith the globalization of commerce the old Arbitration Act of 1940 is replaced by the newArbitration and Conciliation Act, 1996.

[6] "Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner isoften a real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunityofbeing agood man. Therewillstillbebusinessenough."-AbrahamLincoln [37]

[7]**'ADRAGARLANDOFDIVERSEMECHANISMS'**

ADRcanbebroadlyclassifiedintotwocategories:court-annexedoptions(Mediation,Conciliation)andcommunity-baseddisputeresolution mechanism(Lok-Adalat).
ThefollowingarethemodesofADRpracticedinIndia:

1. Arbitration
2. Conciliation

3. Meditation

4. Negotiation

5. LokAdalat

ARBITARION:

The dictionary meaning of 'arbitration' is the process of solving an argument between peopleby helping them to agree to an acceptable solutionArbitration is a part of the Alternative Dispute Resolution mechanism that benefits partieswhowanttoavoidthenormallengthyrecoursetothelocalcourtsforsettlementofdisputes.It is in fact a legal technique for the resolution of dispute outside the courts, wherein theparties to a dispute refer it to one or more persons namely arbitrator(s) by whose decision (the"award")theyagreeto bebound.

Many disputes like consumer complaints, family disputes, construction disputes, businessdisputes can be effectively resolved through ADR. It can be used in almost every kind ofdisputewhich can befiled inacourtasacivildispute.

[7] "I realized that the true fiction of a lawyer was to unite parties… A large part of my time during the 20 years ofmy practice as a lawyer was occupied in bringing out private compromise of hundreds of cases. I lost nothingthereby-noteven money, certainlynotmy soul."
–Mahatma Gandhi

ADVANTAGESOFARBITRATION:

ArbitrationispreferredovertraditionallitigationbecauseArbitrationisgenerallylessexpensive than litigation. It provides for faster resolution of dispute through flexible timescheduleand simpler rules.

A Court is burdened with a number of cases taken up for hearing every day. An arbitratorconducts only the proceedings referred to him by the parties which allows the arbitrator topass sound judgments.

Thearbitrationlegalprocessismoreconfidentialthanatrial.

There is a level of finality to the arbitration process. Because it cannot be appealed, bothparties can moveon following theoutcome.

DISADVANTAGES OFARBITRATION:

JustlikehowacoinastwosidesArbitrationalsohasitsowndisadvantages.Someadvantages itself becomedisadvantages in somesituations.

Aswealreadydiscussedthatarbitralawardcannotbeappealedbyeitheroftheparties.Thisis an advantage as well as disadvantage in Arbitration. Since there is no appeal, even if onepartyfeels thattheoutcomewas unfair, unjust,orbiased,theycannotquestionit.

SinceArbitrationitselfiscost-efficientitwon'tbehelpfulifminimalmoneyisinvolved.

Unlike a typical court here in arbitration there is no scope for cross-examination. Arbitratorsrelyon documentsprovided bytheparties.

In litigation court there are certain rules of evidence laid down for accepting evidence whichis notthecasein Arbitration.[8]

[8]https://www.upcounsel.com/what-are-the-advantages-and-disadvantages-of-arbitration

ANOVERVIEWOFTHEARBITRATIONANDCONCILLIATIONACT,1996:

The Arbitration and Conciliation Act, 1996 contains the law relating to arbitration. This ActcameintoforceonJanuary25th 1996.ThisactgivestheprovisionsforInternationalCommercialarbitration,domesticarbitrationandalsoenforcementof foreignArbitralawards. It is based on the UN model law so as to equate with the law adopted by the UnitedNations Commission onInternationalTradeLaw(UNCITRAL).

ThemainobjectofArbitrationActistoregulatelawrelatingto-

- DomesticArbitration
- InternationalCommercialArbitration
- EnforcementofForeignArbitralAward

TYPESOFARBITRATION ININDIA:

DOMESTIC ARBITRATION: Domestic Arbitration as the name suggests is that type ofArbitration, which takes place in India, wherein both the parties belong to India and theconflict has to be decided in accordance the substantive law of India. The term 'domesticarbitration' has not been defined in the Arbitration and Conciliation Act, 1996. However,when reading Section 2 (2) (7) of the Act 1996 together, it is implied that domestic arbitrationmeans an arbitration in which the arbitral proceedings must necessarily be held in India, andaccordingto Indian substantive and procedural law, and the cause of action forthe disputehascompletelyariseninIndia,orintheeventthatthepartiesaresubjecttoIndianjurisdiction.
INTERNATIONAL ARBITRATION: The arbitration that takes place within the territoryofIndiaoroutsideIndiaorithasanyelementwhichhasforeignoriginistermedasInternational Arbitration. The facts and circumstances of the disputes between the partiesdecidethatofwhich originthelawshouldapply to thedispute.
Generally,inIndiatheArbitrationprocessesareclassifiedintothree:[9]

- Institutionalarbitration
- Adhocarbitration
- Fasttrackarbitration

9SKChowdary &KHSaharay-ArbitrationLaw-EasternLawHouse,32ndEdition199

INSTITUTIONAL ARBITRATION refers to the arbitration process which is carried out byan arbitration institution. These institutions have their own set of rules and give a frameworkfor the arbitration to settle the dispute between the parties. The parties have the choice ofspecifying, in the arbitration agreement, to refer the differencesto be determined by anelectedarbitralinstitution.
AD HOC ARBITRATION refers to the process in which the parties mutually arrange thearbitration for the settlement of the dispute. The parties are free to submit their own set ofrules and procedures asthey don't have to follow any set guidelines of anyarbitrationinstitution.Theessenceoftheadhocarbitrationis thegeographicaljurisdiction.
FAST TRACKarbitrationisthe remedy tothe lengthy and tediousprocessof arbitration.The time is the main essence of fast-tracks arbitration. In this process, all the methods whichconsume time in an arbitration process have been removed and the process is made muchsimpler. The arbitration process is also called private process as it is not similar to the courtproceedings ittakesplaceprivately.

PROCESS OFARBITRATIONIN INDIA:

Arbitrationarisesduetodisputebetweenparties.So,tostartarbitrationtheremustbeanarbitrationclauseintheagreement entered into by theparties.
Thefollowingsteps areinvolvedinanArbitration:

- Thepartiesmusthaveenteredintoanagreementcontainingarbitrationclause.Arbitration clause in simple words states that in case any dispute arises between theparties,itmustberesolved throughtheprocessof arbitration.
- Section 21 of the 1996 Act states that a notice is to be given by the aggrieved party tothe opposite party invoking the arbitration proceedings. It is in line with the principlesofnaturaljustice.
- Aftertherespondentreceivesnoticefromtheaggrievedpartyaboutthecommencement of arbitration, both the parties will appoint an arbitrator according tosection11 of the1996 Act.[10]

10AshwiniKBansal–ArbitrationProcedure andPractise–LexisNexis,1stEdition2009

- According to section 23 of the 1996 Act both the parties draft their statement of claimswhich contains all the documents which they think are relevant to the case and also all theevidences proving their statements.
- Thereafter, the arbitral tribunal will hear both the parties and examine evidences. Thetribunalwilldecidewhetherdocumentsproducedareadmissibleornot.
- After hearing both the parties and examining all the issues a final award will be given bythe arbitrator. This award shall be made in writing and shall be signed by all the membersoftheTribunal.Thisaward shallbefinaland binding onboth theparties.

Neither of the parties can appeal the award before arbitral tribunal however, they canchallengeitin thecourt.

- Aftertheawardispassedithas tobeexecutedaccordingtosections 35and36oftheAct.

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[11]The ArbitrationandConciliationAct,1996,No.26Acts ofParliament,1996(India).

LANDMARKJUDGMENT ONARBITRATION:

BHATIAINTERNATIONALVSBULKTRADINGS.A.&ANR ((2002)4SCC105)

This case is of momentous significance in the field of arbitration as it empowers the Indiancourts to intervene in international commercial arbitrations held outside India irrespective ofthe proper law governing the arbitration agreement. The extent of intervention extends fromthe grant of interim measures and the appointment of arbitrators to the vacatur of an awardresultingfromsucharbitrations.

BRIEFFACTSOFTHE CASE:

Bhatia International (appellant) (Indian party) and Bulk Trading SA (respondent) (Foreignparty) entered into a contract with an arbitration clause providing for arbitration as per therulesof the International Chamber of Commerce (ICC). A sole arbitrator wasappointed bythe ICC on request of the respondent and the parties agreed for arbitration to be held in Paris.Thereafter, the respondent filed an application underSection 9 of the Act in the DistrictCourt, Indore, for obtaining an order of injunction restraining the appellant from transferringits business assets and properties located in India. The appellant (Indian party) contended thatPart 1 of the Act containing Section 9 applies only to arbitrations conducted in India. Hence,an appeal was made to the Supreme Court for deciding whether an Indian court can provideinterim relief under Section 9 in cases where an international commercial arbitration is heldoutsideIndia.

ISSUE: Whether Indian Courts have power to grant interim relief under section 9 of theArbitrationand ConciliationAct1996?

JUDGMENT:[12]

In this case the Supreme Court found that Part 1 applied to International Arbitrations, despitethe fact that it seemed to apply to only domestic arbitrations. Nevertheless, the court held thatPart 1 applied to international arbitrations unless the parties expressly or impliedly excludedtheprovision.ThiscasehasgivenIndiancourtstheopportunitytointerveneinaforeign

[12]See Bhatia International, 4 S.C.C. 105, at 32; see also The Arbitration and Conciliation Act, No.26 of 1996,(Aug. 16, 1996), available at http://keralamediation.gov.in/AC%20Act.pdf. (Part 1- Arbitration- Chapter 1: 2.Definitions. - (1) In this Part, unless the context otherwise requires, . . .f) "International commercial arbitration"means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, consideredas commercial under the law in force in India and where at least one of the parties is- (i) An individual who is anational of, or habitually resident in, any country other than India; or (ii) A body corporate which is in corporateinany on n try otherthan India;

award as it were an Indian award. Essentially, Bhatia International case granted courts theauthority to claim jurisdiction over international arbitration agreements and set aside arbitralawards fromforeign-seated panelswhen suchadisputeinvolved an Indian party.[13]

CONCILIATION

In simple words conciliation is a process of settlement of disputes outside the court. In thisprocess a third party called the 'conciliator' is involved to assist the parties to a dispute inreaching a mutually agreed solution. The conciliator is appointed by the consent of both theparties. The conciliator may express his opinion about the merits of the dispute to help thepartiesreachasettlement.Theconciliatordoesnottakeanydecisioninthismatter.Conciliation is one of the non-

binding procedures i.e., the outcome is not binding on theparties.
ThePart3oftheArbitrationandConciliationAct,1996,pertainstoprovisionswithrespecttoConciliation fromsection 61 to Section 81.

DIFFERENCEBETWEENARBITRATIONAND CONCILIATION

1. Arbitration is a method used to resolve disputes where both the parties present theircase to an arbitrator who pronounces a decision and enforces such decision. Whereas,conciliation involves a neutral third party who assists the parties to arrive at a mutualagreement.
2. Thedecisionofthearbitratorissimilartoajudgmentgivenbythecourt.Aconciliator,however, does havetherightto enforcethedecision.
3. In order to settle the disputethrough arbitration prior agreement isrequired whereastosettlethedisputethroughconciliationprioragreementis notrequired.
4. An arbitrator is a neutral party and is not allowed to suggest parties regarding thealternatives.Whereas,conciliatorcangivesuggestions,consideralternativestoresolvethedispute.

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ADVANTAGESANDDISADVANTAGESOFCONCILIATION:

ADVANTAGES:

- Conciliation is an informal process with simple procedures and can be availed bylaymantoo.
- The selection of the conciliators depends upon the parties. The parties can chooseconciliator on the basis of their availability, experience in particular field, previoustrackrecordsof thecases,knowledgein subjectarea.
- Conciliationiscosteffectiveandaffordablecomparedtocourtlitigation.
- Theprocessofconciliationisprivateinnaturehencethedocuments,evidencessubmittedarehighly confidential.

DISADVANTAGES:

- Conciliatorisnotalegallyqualifiedpersonforresolvingdisputes.Hisdecisionisnotbindingupon theparties.
- As the procedure isinformal andnon-bindingthereis high possibilityof deliveringinjustice.
- Sincethedecisionisatthediscretionoftheparties,thereisapossibilitythatasettlementbetweentheparties may notarise.

[14] Bhatia International v. Bulk Trading [2002] 4 SCC 105 [Supreme Court of India]. 13 Art. 1 (2)

UNCITRALModel Law 1985. 14 9: "A party may, before, or during arbitral proceedings or at any time after the making ofthe arbitralawardbut before itis enforced... applyto acourtforaninterimmeasure ofprotection

PROCESS OFCONCILIATION:

- **COMMENCEMENTOFCONCILIATION PROCEEDINGS:**

Section 62 of the Arbitration and Conciliation Act (Hereinafter, referred to as Act)talks about commencement of the conciliation proceedings.In order to begin theproceedings either of the parties must send a written invitation to the other party. Theproceedings will start only if the other party accepts such invitation. If the other partydoesnotgivereplywithin30days itshallbeassumedthatinvitationis notaccepted.

- **APPOINTMENT OFCONCILIATORS:**

Section 64 of the Act talks about appointment of conciliators. After the parties haveagreed to go for conciliation the next step is to appoint the conciliators. If the partiesagree they can appoint a sole conciliator. If the parties agree upon appointing twoconciliators,each party shallappointoneconciliatoreach.

- **SUBMISSIONOFWRITTENSTATEMENT TOTHECONCILIATOR:**

Itisnecessarythatboththepartiesmustfileawrittenstatementeachtotheconciliator,Narrating their setof facts.

- **CONDUCTOFTHECONCILIATION PROCEEDINGS;**

Sections67(3)and69(1)oftheActtalksabouttheconductofconciliationproceedings. The conciliator may talk to the

parties separately or together as a roundtableproceeding. Findingan amicablesolution isimportantattheend.

- **ADMINISTRATIONASSISTANCE:**

Section 68 of the act talks about the administrative assistance. The parties may seekadministrativeassistancefromanyrecognizedinstitutionifnecessary.Forsuchassistanceconsentof thepartiesisrequired.

[15]AvtarSingh,LawofArbitrationand Conciliation,(Lucknow:Eastern BookCompany)2007 Pg.436

EGOTIATION:

The word "negotiation" is from the Latin expression, "negotiatus", which means "to carry onbusiness". "Negotium" means literally "not leisure".Negotiation is the simplest means forredressalofdisputes.Itisanon-binding,Equalizationprocesswhichinvolvesdirectinteraction of the disputing parties wherein a party offers a negotiated settlement drawn on anobjective evaluation of both parties The parties engage in the dispute with each other untilthey reach a desirable outcome for all involved. The aim of negotiation is the settlement ofdisputesbyexchangeofviewsandissuesconcerningtheparties.Awell-conductednegotiation may allow both sides to win by making the sum for both sides greater than eithercould possess alone. In the language of academics this is called "synergy Negotiation can beusedeithertoresolveany existingproblemorafuturerelationship.

In this mode, the parties begin their talk without the interference of a third person.If there isunderstanding,Goodcommunication,Objectivity,Willingnessandelementofpatiencebetweentheparties,thismode ofredressalofdisputeismostsuitable.InIndia,StillNegotiationdoesn'thaveany statutoryrecognitioni.e.through wayoflegislation

ADVANTAGESOF NEGOTIATION:

- Itcanopenwidenewareasofinterestobothpartiesbyandhelpsthemmaintainahealthyrelationship.
- Itis swift,economical,uncomplicatedandprivate
- Itimprovescommunicationmaximizingtheodds ofapositiveoutcome
- Incourtproceedingsthejudgedecides.Innegotiationthedecisionisinthehandsoftheparties.
- Itallowspartiestotailorthedecisiontotheirownneeds.Theyhavegreatercontroloverprocedureand finaloutcome.
- Itis Voluntaryandnon-bindingbasedtechnique[16]

[16]"Negotiation-Mode Of Alternative Dispute Resolution (ADR)" Article by Ranganath"ComparativeanalysisofADRmethods"bySTA law firm

DISADVANTAGESOFNEGOTIATION

- Thepartiestothedisputemaynotcometoasettlement.
- Lackoflegalprotectionofthepartiestotheconflict.
- Imbalanceofpowerbetweenthepartiesispossibleinnegotiation.

STAGESOFNEGOTIATION

Theprocessincludesfollowingstages:

1. **PREPARATION:**Theprocessofnegotiationbeginswiththesignalofcommunication from one party to the other showing a willingness to bargain. Thisstage involves ensuring the important facts of the dispute and its situation in order toclarifytheposition of both the parties.
2. **DISCUSSION:** Once it has been established that negotiation is the appropriate courseof action the further arrangement shall be made in that course with the other partyincluded.Thearrangementincludes:

- outliningthescopeofnegotiation
- formingatimetableas towhetherornotthatwillbeafixed durationofnegotiation
- ensuringthat all theinterestedpartiesareidentifiedandhavebeenconsulted
- Choosingalocationwhichisfeasibletoboththeparties.

3. **CLARIFICATIONOFGOALS**:Clarificationisoneofthecrucialpartsofnegotiation process as without it, the misunderstanding and disagreementsare likelyto continue which main result to cause problems and barrier in reaching a beneficialoutcome.

4. NEGOTIATETOWARDSAWIN-WIN OUTCOME:

This stage focuses on which can be termed as Win-Win outcome wherein both theparties may have the satisfaction that they have gained something positive through theprocess and boththeparties may feelthattheirpointhas been considered**.**

AGREEMENT:

Aproperagreementcanbeachievedonlywhenboththepartiesunderstandeachother's pointof viewandinterestareconsidered simultaneously.[17]

5. **IMPLEMENTATIONOFCOURSEOFACTION:**Onceagreementisreachedapropercourseofacti onhastobeimplementedsothatthedecisioncanbecarriedout.

QUALITIESANDSTRATEGIESOFANNEGOTIATOR:

- A good negotiator must know his subject thoroughly. He should remain faithful to the factsandcollectdata.Heshouldattacktheproblemafteridentifyingtheissues.Successfulnegotiator should never be intimidated. He should be patient and should analyse every detailproperlywithgreatprecaution.Heshouldalsohaveplanningskill.Asenseofhumour anda positive attitude are necessary, as they make both the parties feel comfortable with eachother.He shouldalwaysemphasize onbalance andshouldnot make concessionsuntil theend.
- Theentiresuccessofthenegotiationdependsonthestrategiesthenegotiatoruses.Aneffective communicator with skills of comprehending the problem must be there. Suitablelocation has to be picked for negotiation. . The best alternative to Negotiated settlement andthe Worst alternative to Negotiated Settlement are considerable points a negotiator mustdetectand discussatallstages.

1717 "If two friends ask you to judge a dispute, don't accept, because you will lose one friend; on the otherhand,iftwostrangerscomewiththesamerequest,acceptbecauseyouwillgainonefriend"-SaintAugustine "SkillsandValues:AlternativeDisputeResolution:Negotiation,Mediation,CollaborativeLaw,andArbitration" – ArbitrationLawreview

[18]MEDIATION

[19]Mediation can be defined as a voluntary process of dispute resolution where a neutral thirdparty (the mediator) with the use of effective and specialized communication and negotiationtechniques aids the parties in arriving at an amicable settlement without recourse to the courtof law. The mediator helps the parties find common ground and assists with drafting asettlement agreement. He interprets concerns, relay information between the parties, frameissues, and define the problems. He helps the parties to explore their choices and ultimatelyhelpcontroltheoutcomeand results.

Amutualagreementtakenviamediationisbindinguponthepartes.

In India, mediation is legitimised by Section 89 of the Civil Procedure Code, 1908 whichstates that the court can refer the parties to mediation or arbitration if there is existence ofelementsinasettlementwhichshouldbeacceptabletothepartiesinvolved.IndustrialDisputes Act, 1947 is the first legislation which gives legal recognition to the mediation.Section 4 of this Act speaks about "appointment of an independent and impartial mediator"fortheprocessof mediation.

ADVANTAGES OF MEDIATION:

Mediation is a cost-effective, confidential and swift way of resolving a dispute.Mediationsput dispute resolution into the hands of the disputing parties. Parties have their voluntaryparticipation in the mediation process. The mediator has to act impartially and neutrally. Theresponsibility for defining the problem, settingtheagenda and agreeing the solution restswith the people in the dispute.No court rules or legal precedents are involved in mediation.Therelationshipsbetween thepartiesarealsopreserved in this process.

19 *"Consilia omnia verbispriusexperiri, quamarmissapientemdecet"* which means that an intelligent manwouldprefer negotiationbeforeusingarms

[20]PROCESS OFMEDIATION

1) COVENINGTHEMEDIATIONPROCESS

[21]The convening of the mediation is often the most difficult and challenging part of themediationprocess.

a) Reference to the ADR by the court :The court is required to direct the partiesto opt for any of the five modes of alternative dispute resolution and to referthecase

2) INTIATIATIONOFMEDIATIONPROCESS

Themediatorgivesanintroductionamonghimandalsorequeststhepartiestointroducethemselves to gain rapportandtrust.

a) OPENINGSTATEMENTS

Themediator's openingstatementisintendedtoexplaintotheparties-

- Theconcepts,processesandstagesofmediation,
- Theroleofthemediator,advocatesandpartiesand
- Theadvantagesandgroundrulesofmediation.Thedoubts regardingthesearealsoclarified.

3) SETTINGTHEAGENDA:

Itinvolvessettingdowntheorderinwhichnegotiationistoproceedandgivesthepartiesastandardusingwhichtheycanindividuallyevaluatetheprogress ofthenegotiations.

4) FACILITATIONOFNEGOTIATIONANDGENERATIONOFOPTIONS:

a) **JOINTSESSION**:Thepurposeofthejointsessionis togatherinformation.

[20]www.adrservices.comwww.lawshelf.com

[21]https://vakilsearch.wordpress.com/2011/01/15/procedure-to-be-followed-during-a-mediation/ http://mediationbhc.gov.in/PDF/concept_and_process.pdf

- The mediator provides an opportunity for the parties to hear and understand eachother's perspectives, relationshipsandfeelings.
- At the completion of the joint session, the mediator may also suggest meeting eachpartywith their counselseparately.

b) **SEPARATE SESSION**:

- The separate sessions are meant for the mediator to understand the dispute at a deeperlevel.
- It helps the mediator to understand the underlying interests of the parties, identifyareas of dispute, differential priorities and commoninterests, and to shift the partiestoamood of findingmutually-acceptablesolutions.

- Themediatoroffersoptionswhichhefeelsbestssatisfiestheunderlyinginterestsoftheparties.

REACHINGASETTLEMENT:

- Byhelpingpartiestounderstandtherealityoftheirsituationandgive uprigidpositions,themediatorcreatescreativeoptionsforsettlement.
- Incasenegotiationsfail,thecaseissentbacktothe referralcourt.

CLOSING:

- Oncethetermsofthesettlementhavebeenagreedto,thepartiesarereassembled.The parties, with the mediator's aid, write down the terms of the settlement and signtheagreement. The settlement has the binding nature of a contract and is enforceablein a court of law. In case no settlement is reached between the parties, the case isreturnedtothereferralcourt
- The proceedings of the mediation are kept confidential and cannot be revealed even tothecourt.[22]

[22]"Anintroduction toAlternativeDisputeResolution"-AnupamKurlwal

LANDMARKJUDGEMENTRELATEDTOMEDIATION

SalemBarAssociationv.Unionof India(2003) 1SCC 49

BRIEF FACTS:

Acommitteewasformedtoensurethatthe1999and2002AmendmentstotheCivilProcedure Code are effectively implemented and result in quicker dispense of justice. II. Thereport was submittedinthree parts, (a)Consideration of various grievances (b) Draft Rulesfor ADR and mediation (c)Casemanagement conferences IIIWrit Petitions were filedchallenging the Amendments made to the Code of Civil Procedure by way of Amendment 46of 1999 and Amendment 22 of 2002. . The validity of this report and the amendments waschallengedbeforetheCourt,inthematter.

MAIN ISSUE: Whether the 1999 and 2002 Amendments to the Civil Procedure Code wereconstitutionallyvalid?

JUDGEMENT: The attention of the Hon'ble Supreme Court was drawn to Section 89 of theCodeof CivilProcedure.

The Hon'ble Supreme Court observed that the provision of Section 89 of the Code of CivilProcedure has been inserted to ensure that all the cases which are filed in the courts need notnecessarily be decided by the courts. The Hon'ble Supreme Court opined the need to promoteAlternate Dispute Resolution. It therefore, considered Section 89 to be a welcome step. It wastherefore suggested by the Hon'ble Supreme Court, that a Committee be constituted so as toensure that the amendments made to the Code of Civil Procedure become effective and resultinquicker dispensation ofjustice.

.[23]

[23][23]2019SCCOnlineSC315(2010)8SCC24(2003)1SCC49
Article on "India: Mediation : Current Jurisprudence And The Path Ahead" By Geetanjali sethiCase analysisinBharatiLaw review 2016

[24]LOKADALAT

The Lok Adalat is a significant mode of alternative dispute resolution mechanism. It is an oldform of adjudicating system prevailed in ancient India which is still relevant even today. It isinterestingtonotethattheLokAdalatsystemsettlesdisputesbywayofnegotiation,persuasion,mediationandconciliation withtheactivelyinvolvementoftheadvocates,judges, eminent social workers and concerned parties. So, it is worthy to say that Lok Adalateffectively works to implement the views of our nation's father Mahatma Gandhi as he said,*"I had learned the true practice of law. I had learnt to find out the better side ofhumannature and to enter hearts, I realized that the true function of the lawyer was to unite partiesgiven asunder. The lessen was so indelibly burntinto me that the large part of my timeduring the twenty years of my practice as a lawyer was occupied in bringing about privatecompromises of hundreds of cases. I lost nothing thereby, not even money, certainly not mysoul also."*. As, it is a known fact that the Indian courts are over burdened with the backlog ofcases and the regular courts are to decide the cases involve a lengthy, expensive and tediousprocedure. In such situation, the emergence of Lok Adalat is a ray of hope for needy ofjustice. [25] The Lok Adalat system has got its statutory recognition under the **Legal ServicesAuthorities Act, 1987** (for brevity 'the Act'). The preamble of the said Act emphasizes thatthe Lok Adalat's should be constituted to provide economical and competent legal services totheweakersections ofthesocietytoperformConstitutionalobligationonbehalfoftheState.

The meaning of the term 'Lok Adalat' in literally is 'People's Court' because the termcomprises two words namely 'Lok' and 'Adalat', Lok stands for the people and Adalat meansthecourt. So, itismeantpeople'scourt.[26]

[24]
Articleon"India:Mediation:CurrentJurisprudenceAndThePathAhead"ByGeetanjalisethi

[25] Anurag K. Agarwal, "Strengthening Lok Adalat Movement in India," AIR 2006 Jour 33. 44. AbrahamLincoln – "Discourage litigation persuade your neighbours to compromise whenever you can. Point out to themthe nominal winner is often a real loser; in fees, expenses and waste of time. As a pacemaker, the

lawyer has asuperioropportunityofbeing agood person", SeeSupra note9, 34.

[26]N.C. Jain, "Legal Aid, Its Scope and Effectiveness of the Legal Aid Rules in This Regard," AIR 1996 Jour185.

JURISDICTIONOFLOK ADALAT:

Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlementbetweenthepartiesto adisputein respectof-

i. Anycasependingbeforeanycourt.

ii. Anymatterwhichis notbroughtbefore,anyCourtandstillataPre–litigativestage.

iii. It can compromise and settle even criminal cases, which are compoundable under therelevant laws. Lok Adalat's do not have the statutory power to entertain any case ormatterrelatingto an offencenotcompoundableby law.

ORGANIZATION OFLOKADALAT:

ATTHESTATEAUTHORITYLEVEL–

The MemberSecretaryofthe StateLegal ServicesAuthorityorganizingtheLokAdalatwould constitute benches of the Lok Adalat, each bench comprising of a sitting or retiredjudge of the High Court or a sitting or retired judicial officer and any one or both of- amember from the legal profession; a social worker engaged in the upliftment of the weakersectionsandinterestedintheimplementationoflegalservices schemes orprogrammes.

AT HIGHCOURTLEVEL-

The Secretary of the High Court Legal Services Committee would constitute benches of theLok Adalat, each bench comprising of a sitting or retired judge of the High Court and any oneor both of- a member from the legal profession; a social worker engaged in the upliftment oftheweakersectionsandinterestedintheimplementationoflegalservicesschemesorprogrammes.

ATDISTRICTLEVEL-

The Secretary of the District Legal Services Authority organizing the Lok Adalat wouldconstitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicialofficer and any one or both of either a member from the legal profession; and/or a socialworker engaged in the upliftment of the weaker sections and interested in the implementationof legal services schemes or programmes or a person engaged in para-legal activities of thearea,preferably awoman.

AT TALUKLEVEL-

The Secretary of the Taluk Legal Services Committee organizing the Lok Adalat wouldconstitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicialofficer and any one or both of either a member from the legal profession; and/or a socialworker engaged in the upliftment of the weaker sections and interested in the implementationof legal services schemes or programmes or a person engaged in para-legal activities of thearea,preferably awoman.

NATIONAL LOKADALAT

National Level Lok Adalats are held for at regular intervals where on a single day LokAdalats are held throughout the country, in all the courts right from the Supreme Court till theTaluk Levels wherein cases are disposed of in huge numbers. From February 2015, NationalLokAdalatsarebeingheld on aspecificsubjectmatterevery month.

PERMANENTLOKADALAT

The other type of Lok Adalat is the Permanent Lok Adalat, organized under Section 22-B ofThe Legal Services Authorities Act, 1987. Permanent Lok Adalats have been set upaspermanent bodies with a chairman and two members for providing compulsory pre-litigativemechanism for conciliation and settlement of cases relating to Public Utility Services liketransport,postal,telegraph etc.[27]

PROCEDUREAT LOKADALAT:

- Here,the applicationcanbe filedbythe boththe partiestodispute ortheycanverballyexpresstheirwillingnesstothecourttoreferthemattertoLokAdalat.
- Any party can also file an application for referring the dispute to Lok Adalat after thecourthearing alltheparties,iftherearechancesforsettlement.
- Lok Adalat while deciding the matter under the Legal Services Authority Act, 1987shall deal the matter with utmost care, expedition to arrive at a compromise betweenthepartiesandshallbeguided bytheprinciples of naturaljustice.

[27]"Tothepoorthecourtsareamaze,ifhepleadstherealllhislife,Lawissolordly,Andloathtoendhiscase,Withoutmoney paidin the presents, Law listenethtofew."Pier'sPlowman

- When no compromise or settlement is accomplished, the matter shall be referred backto the court.Then the case will proceed in the Court from the stage immediatelybeforethereference.

Further no Court Fee is required to be paid by the parties. The parties can be representedby a legal counsel hired by them but in case, due to some reasons if they cannot afford alegalcounselthemselves then,acounselcanbeprovidedbytheLegalAidCommittee.

AWARDPASSED BY LOKADALAT:

Every award of the Lok Adalat shall be deemed to be a Decree of a Civil Court and shall befinal and binding on all the parties to the dispute, and no appeal shall lie to any court againsttheaward.

ANOVERVIEWOFTHENATIONALLEGALSERVICESAUTHORITYACT,1987:

[28]The National Legal Services Authority (NALSA) has been constituted under the LegalServices Authorities Act, 1987 to provide free Legal Services to the weaker sections of thesociety. The Chief Justice of India is the Patron-in-Chief and the Senior most Hon'ble Judge,SupremeCourtof IndiaistheExecutiveChairman of theAuthority.

Public awareness, equal opportunity and deliverable justice are the cornerstones on which theNALSA is based. The principal objective of NALSA is to provide free and competent legalservices to the weaker sections of the society and to ensure that opportunities for securingjustice are not denied to any citizen by reason of economic or other disabilities, and toorganize Lok Adalats for amicable settlement of disputes. Apart from the abovementioned,functionsofNALSAincludespreadinglegal literacyandawareness,undertakingsocialjusticelitigationsetc.

[28]https://nalsa.gov.in/lok-adalat

LANDMARKJUDGMENT:

Citation:

AIR 2014SC1863

Court:

SUPREMECOURTOFINDIA

Judges:

K S RADHAKRISHNAN & A K SIKRIBRIEFFACTS:

This case was filed by the National Legal Services Authority of India (NALSA) to legallyrecognize persons who fall outside the male/female gender binary, including persons whoidentifyas"third gender".

DECISION:

Here, the court had to decide whether persons falling outside the male/female gender can belegallyrecognized as"third gender".

The court referred to an "Expert Committee on Issues Relating to Transgender" constitutedunder the Ministry of Social Justice and Empowerment to develop its judgement. This was alandmark decision where the apex court had legally recognized "third gender" for the firsttime and discussed the matter at length. The court held that the persons belonging to "thirdgender" are equally entitled to fundamental rights and citizenship under the

constitution.Further, it directed state governments to develop mechanisms to realise the rights of "thirdgender"persons.

[29]https://translaw.clpr.org.in/wp-content/uploads/2018/09/Nalsa.pdf

CONCLUSION:

Withtheadventofthealternatedisputeresolution,thereisnewavenueforthepeopletosettle their disputes. The settlement of disputes in Lok Adalat quickly has acquired goodpopularity among the public and this has really given rise to a new force to ADR and this willno doubt reduce the pendency in law Courts. There is an urgent need for justice dispensationthroughADRmechanisms.MorepeopleshouldsettletheirdisputesthroughADRmechanisms which in turn will reduce burden on courts and ensure sound administration ofjustice.

The ADR movement needs to be carried forward with greater speed. This will considerablyreduce the load on the courts apart from providing instant justice at the door-step, withoutsubstantial cost being involved. If they are successfully given effect then it will really achievethegoalof rendering socialjusticeto theparties to thedispute.

SUGGESTIONS:

- The courts are authorized to give certain directives for the ADR adoption by theparties and for that purpose court has to play an important role by way of givingguidance.

Theinstitutionalframework mustbebroughtaboutatthreestages, whichare:

- Awareness can be brought about by holding seminars, workshops, etc. ADR literacyprogram has to be done for mass awareness and awareness camp should be to changethemindsetof allconcerned disputants, thelawyers and judges.
- In this regard training of the ADR practitioners should be made by some Universitytogether with other institutions. Extensive training would also be necessary to beimpartedtothosewhointendtoactasafacilitator,mediators,andconciliators.
- The inflow of cases cannot be stopped because the doors of justice cannot be closed.Butthereisanurgentneedtoincreasetheoutfloweitherbystrengtheningthecapacity of the existing system or by way of finding some alternative mechanism suchasADR.
- The major lacuna in ADR is that it is not binding. One could still appeal against theaward or delay the implementation of the award. "Justice delayed is justice denied."Theveryessenceof ADRislostifitis notimplementedinthetruespirit.Theaward

shouldbemadebindingonthepartiesandnoappealtothecourtshouldbeallowedunless itisarrived atfraudulentlyor if itagainstpublicpolicy.

[30] K. Gupteshwar, "The Statutory Lok Adalat: Its Structure and Role," 30 JILI, 174 at 177-178 (1988). 48.

ShirajSidhva,"Quick, Informal,Nyaya,"LEXETJURIS, 39 (1988)