Alternative Dispute Resolution (ADR) Under International and National Context - An Overview

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Abstract:

Alternative dispute resolution system is being increasingly acknowledged in field of law and commercial sectors both at National and International levels. This paper discussed several International organizations, including the International Chamber of Commerce (ICC) and the United Nations Commission on International Trade Law (UNCITRAL) which facilitate the use of ADR options such as arbitration, mediation and conciliation. This paper highlights the laws, rules and procedures for ADR proceedings by various countries in the World. These efforts are aimed at promoting certainty and consistency in the use of ADR processes and, ultimately, at expanding the options available to parties for the resolution of International commercial disputes. This paper also highlights various modes of ADR mechanisms exist in India for resolving disputes outside the courts.

Keywords: Alternative Dispute Resolution (ADR); UNCITRAL (United Nation commission on International Trade Law); International Chamber of Commerce (ICC); International Center for Settlement of Investment Disputes (ICSID); China International Economic and Trade Arbitration Commission (CIETAC); China Maritime Arbitration Commission (CMAC); Uniform Law Conference of Canada (ULCC)

Introduction:

Alternative Dispute Resolution is a generic term used to describe a range of procedures designed to provide ways to resolving a dispute as an alternative to court procedures. It means it is an alternative to litigation. Alternative Dispute Resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails. ADR had been used by human society since ancient times though it gets wide acceptance and recognition in countries laws recently. ADR methods, in comparison with court litigation, have various advantages though it is not free from different short comings.

Alternative dispute resolution system is being increasingly acknowledged in field of law and commercial sectors both at National and International levels. Its diverse methods can helps the parties to resolve their disputes at their own terms cheaply and expeditiously. Desire for quick and affordable justice is universal. The following are the wide ranges of objectives of ADR are -

- ADR can support and complement court reform.
- ADR can by-pass ineffective or discredited courts.
- ADR can increase satisfaction of disputants with outcomes.
- ADR programs can increase access to justice for disadvantaged groups.
- ADR programs can reduce delay in the resolution of disputes.
- ADR programs can reduce the cost of resolving disputes.

ADR is consensual and aimed at reaching a mutually satisfactory solution. ADR can bring specialized knowledge to the dispute which may be unavailable in conventional domestic courts, although this advantage is less relevant for treaty arbitration in dedicated investment tribunals. As with civil courts of many domestic legal systems, even specialized investment arbitration facilities must adhere to a set of procedural rules, such as those regarding evidence. These can be inflexible, removing control from the parties. While ADR mechanisms vary, they are typically not tied to a fixed procedural framework because they favour practical solutions that require compromise and negotiation. Furthermore, ADR processes are likely to be less expensive than domestic courts or International arbitration because as they are less legalized and do not require the establishment of liability, specialized legal counsel will be un-necessary. In this sense ADR is much more accessible and practical for use by civil society stakeholder groups in the developing world.[1]

ADR processes are often differentiated from each other also by the degree of control the third party neutral has over both the process (the rules of proceedings) and the substance (decision, advice, or facilitation) and the formality of the proceeding. ADR processes are being applied increasingly to diverse kinds of conflicts, disputes, and transactions, some requiring expertise in the subject matter (such as scientific and policy disputes) and spawning new hybrid processes such as 'consensus building' which engage multiple parties in complex, multi-issue problem solving, drawing on negotiation, mediation and other non adjudicative processes (Susskind et al. 1999)[2]

Alternative Dispute Resolution (ADR) sometimes also called "Appropriate Dispute Resolution" is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a non-confrontational way. It covers a broad spectrum of approaches, from

[1] httpsopenaccess.city.ac.ukideprint10341httpsscholarlycommons.law.cwsl.educgiviewcontent.cgireferer=httpsscholar.google.co.in&httpsredir=1&article=1024&context=cwilj

[2] httpwww.pablolinzoain.comwp contentuploads201607Mediation-Arbitration-and-Alternative-Dispute-Resolution-ADR-.pdf

party-to-party engagement in negotiations as the most direct way to reach a mutually accepted resolution, to arbitration and adjudication at the other end, where an external party imposes a solution. Somewhere along the axis of ADR approaches between these two extremes lies "mediation," a process by which a third party aids the disputants to reach a mutually agreed solution.[3]

International Perspectives on ADR:

The ADR "movement" started in the United States in the 1970s in response to the need to find more efficient and effective alternatives to litigation. Today, ADR is flourishing throughout the world because it has proven itself, in multiple ways, to be a better way to resolve disputes. The search for efficient and better ways to resolve disputes, and the art of managing conflicts, are as old as humanity itself, yet it has only been within the last thirty years or so that ADR as a movement has begun to be embraced enthusiastically by the legal system. More recently, ADR has become institutionalized as part of many court systems and system for justice as a whole throughout the world.

As trade, investment and private business expand throughout the world at an increasing speed, dispute resolution systems face growing challenges. In fact, just as domestic courts have been overwhelmed by the demand on their services arising from expanding economies and social life, so too International dispute resolution is facing the need to develop the appropriate responses. An International Alternative Dispute Resolution system, combining renewed traditional mechanisms with new approaches, is already in place and will no doubt be much perfected in the years ahead.[4]

Alternative, private forms of dispute resolution are deeply rooted in the Western legal tradition. With the dawn of modern International commerce, a number of International commercial dispute resolution mechanisms developed that were effectively independent of traditional sovereign based adjudicatory powers. Both the Law Merchants, which developed from arbitration commissions of merchants organized by the courts, and the Law of Nations (International Law), evolved into uniform bodies of trade customs and practices that were independent of any one sovereign Nation.[5]

International institution for ADR system:

Over the past few decades, International commercial dispute resolution has witnessed substantial change and improvement. A notable feature has been a move away from the traditional court-based litigation model, allowing exploration of other methods and techniques. The United Nations Commission on International Trade Law (UNCITRAL) has played an important role in development of alternative dispute resolution. Since its establishment in 1966, UNCITRAL has made improving International commercial dispute resolution one of its priorities. Two important achievements arising from its efforts are the UNCITRAL Arbitration Rules (1976) and the UNCITRAL Conciliation Rules (1980).

The Arbitration Rules were adopted by UNCITRAL on 28 April 1976 and by the General Assembly of the UN on 15 December 1976. The products of active participation of International experts from various legal, economic and social backgrounds, both have made a significant contribution to the more efficient resolution of International commercial disputes. The Conciliation Rules were adopted by UNCITRAL on 23 July 1980 and by the General Assembly of the UN on 4 December 1980. Like the Arbitration Rules, they are written in plain English and sequentially correspond with the process they describe. They are also concise, consisting of just 20 articles and a short Model Conciliation Clause. [6]

In 1999 UNCITRAL commenced a process of evaluating the 'extensive and favorable experience with the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules' with a view to their future development. UNCITRAL entrusted this work to the Working Group on Arbitration. In relation to conciliation, the Working Group was instructed to consider the development of a model law to support the increased use of conciliation and, specifically, to facilitate the enforcement of settlement agreements and reduce the potential for delay in conciliation proceedings. At UNCITRAL's 35th session (19 to 30 November 2001), the Working Group completed its draft model law on International commercial conciliation. In relation to arbitration, the Working Group was instructed to examine the requirement that arbitration agreements be in writing, the enforceability of interim protection measures issued by arbitral tribunals, and the enforceability of awards that have been set aside in the state of origin. The Working Group is continuing its work on these issues.[7]

International Commercial Arbitration:

There are two primary International Conventions that can assist parties in enforcing ADR awards. The most important of these is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the New York Convention Awards. By signing the New York Convention, countries agree to recognize and enforce arbitral awards rendered in the territory of other signatories. The 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* is the most widely accepted treaty regarding the recognition and enforcement of arbitral awards, providing a solid foundation for International commercial arbitration.

[3] httpbiblioteca.cejamericas.orgbitstreamhandle2015721Alternative-Dispute-Resolution Approaches.pdfsequence=1&isAllowed=y
[4] httpicsidfiles.worldbank.orgicsidICSIDBLOBSNewsLettersDC12.pdf
[5] httpsdigitalcommons.law.buffalo.educgiviewcontent.cgiarticle=1438&context=buffalolawreview
[6] httpscsbweb01.uncw.edupeopleeverspclassesBLA361Intl%20LawAdditional%20ResearchContractual%20Dispute%20Resolution%20in%20Intl%20Trade.ssrn.pdf
[7] Working Group on Arbitration, *Settlement of Commercial Disputes: Possible Uniform Rules on Certain Issues Concerning Settlement of Commercial Disputes — Conciliation, Interim Measures of Protection, Written Form for Arbitration Agreement*, UN Doc A/CN.9/WG.II/WP.108 (20–31 March 2000).

The enforcement of arbitral awards has been the subject of intergovernmental effort as well, with a large number of countries becoming parties to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the "New York Convention." Another International convention regarding the enforcement of arbitral awards is of importance in Latin American countries. The Inter-American Convention on International Commercial Arbitration combines elements of an earlier draft convention and the New York Convention. While it differs from the New York Convention in some respects, it seeks the same objectives in similar ways. Both conventions deal with the issue of enforcing an arbitral award. The Inter-American Convention follows the New York Convention in limiting the grounds on which a party can object to the enforcement of a foreign arbitral award by putting the burden of proof on the party opposing enforcement to prove the defectiveness of the award. [8]

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) is the second major International ADR enforcement convention. However, the ICSID Convention only applies to awards rendered by ICSID, whose jurisdiction is limited to disputes between states and foreign investors. Awards rendered pursuant to the ICSID Convention are automatically binding on the parties and are subject to appeal only within the structure provided by the ICSID Convention.[9]

The International Chamber of Commerce (ICC) Rules on Arbitration:

In the International Chamber of Commerce (ICC) context, "ADR" stands for "Amicable Dispute Resolution" given that the ICC'S ADR Rules exclude arbitration, which is covered under the separate ICC arbitration rules. The ICC ADR Rules can be modified by agreement of the parties subject to the approval of the ICC. Broader than the former Conciliation Rules, the new ADR Rules apply to both domestic and International business disputes. Also, the new ICC Rules envisage that ADR can be used not only as a replacement for or prelude to arbitration, but also during arbitration or litigation if the parties agree.

The ICC plays an important role in the settlement of International business disputes. The ICC is particularly well known for its International commercial arbitration rules supported by the institutional mechanism of the International Court of Arbitration. In addition, the ICC also supported conciliation as a mechanism for the settlement of International business disputes from its inception in 1923. ICC conciliation was actually more popular than arbitration prior to World War II.**[10]**

However, International commercial arbitration became increasingly popular and, as a result, ICC conciliation has been very much underused in recent decades. Various editions of the ICC Optional Conciliation Rules (the Conciliation Rules) had been offered for adoption by parties since 1923. The final version of the Conciliation Rules issued in 1988 was applicable to all business disputes of an International character, used a sole conciliator and gave the conciliator great freedom in the conduct of the conciliation process. On July 1, 2001, the ICC scrapped its Conciliation Rules and replaced them with its more generic ICC ADR Rules.

The most recent amendments to the ICC Rules of Conciliation and Arbitration entered into force on January 1, 1988. In particular, the ICC Conciliation Rules were extensively revised both to promote the initiation of conciliation and to refine the process. Reference to the ICC Conciliation Rules in the event of a contractual dispute between parties should be established by the inclusion of a clause to that effect in the contract. The ICC proceeds on the basis that resort to conciliation are optional unless the parties have otherwise agreed. There is some inflexibility involved because the ICC Conciliation Rules, unlike the UNCITRAL Conciliation Rules, do not contain a general provision that permits the disputants to agree to vary or delete any of the ICC Conciliation Rules when the process is implemented.[11]

Modes of ADR mechanism for settlement of International disputes:

Alternative dispute redessal methods are being increasingly acknowledged in field of law and commercial sectors both at National and International levels. Its diverse methods can helps the parties to resolve their disputes at their own terms cheaply and expeditiously. Arbitration, mediation, Conciliation, Ombuds is the major modes of ADR mechanism for settlement of International disputes. Alternative dispute redressal techniques can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties. Alternative dispute redressal techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. It may be readily recognized that some of the methods mentioned are not unknown to international dispute settlement, perhaps in a less structured manner and more as the result of practice than of a formal definition. The question to be kept in mind is whether these methods will be transplanted into International dispute settlement in order to facilitate similar goals as in domestic experiences.

Arbitration: Arbitration is private adjudication in which a non-governmental neutral party hears presentations by the disputants and makes a decision that is legally binding on them. Arbitration agreements may declare in advance a willingness to arbitrate a class of disputes that may arise in the future.

The countries with a long history of International commercial arbitration, the Arbitration Rules play a useful cross-pollination role. As the Arbitration Rules represent the best features of the common law and the civil law, they introduce the parties to new ways of

[8] httpsscholar.smu.educgiviewcontent.cgiarticle=2634&context=til
[9] Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159.
[10] International Chamber of Commerce, online at <http://www.iccwbo.org>. See generally Craig, Park and Paulsson, *supra*, footnote 15; Schafer, Verbist and Imhoos, *supra*, footnote 28.
[11] Conciliation As A Mechanism For The Resolution Of International httpsir.lawnet.fordham.educgiviewcontent.cgiarticle=1280&context=ilj

addressing legal issues, and techniques that can be employed in improving their own domestic systems. According to the experience of the Arbitration Rules in International tribunals and private arbitrations, the sensible level of discretion afforded to the arbitral tribunal as well as their International and neutral nature make the Arbitration Rules one of the best approaches to resolving International trade law disputes. They have proven to be practical and flexible enough to meet the enormously different needs of parties in particular disputes.[12]

Mediation: In mediation, a neutral third party helps both sides to reach an agreement that each side considers to be acceptable. It can be either evaluative, in which the mediator gives an assessment of the legal merits of a case, or facilitative, where the mediator focuses on assisting the parties in defining the issues. Where mediation is successful, meaning that an agreement is reached, parties can subsequently decide to formalize the agreed solution in a binding contract.

A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration.

Conciliation: In conciliation the third party adopts a more interventionist role in bringing the two parties together and in suggesting possible solutions. Conciliation involves building a positive relationship between the parties to a dispute. A third party or conciliator (who may or may not be totally neutral to the interests of the parties) may be used by the parties to help build such relationships. A conciliator may assist parties by helping to establish communication, clarifying misperceptions, dealing with strong emotions, and building the trust necessary for cooperative problem-solving.

The term mediation now tends to include conciliation and may also encompass fact-finding as well as ombudsmen. Ombudsmen are independent office holders who investigate and make decisions regarding complaints from the public relating to mal administration, often using mediation as part of their dispute resolution procedures.[13]

Ombuds: The ombudsperson is not an authoritative or final decision maker but is "a confidential and informal information resource, communications channel, complaint-handler and dispute-resolver." Some public agencies and corporations in the United States appoint an ombuds person to serve as a kind of high level complaint desk, with the power to receive disputes and complaints, an informal power to investigate, and the power to persuade or induce changes in position through public embarrassment.[14]

ADR system in various countries:

ADR is now widely used. The national courts of England and Wales are required to undertake case management by encouraging the parties to use ADR if the court considers it appropriate to resolve the case and parties are now encouraged to seek non-court settlements where possible in order to reduce costs and delay. Similar in other jurisdictions, resulting in the increasing popularity of ADR relative to standard civil adjudication in both common law and civil law systems. China in particular has a long tradition of employing mediation as a means of resolving disputes. ADR, especially mediation, has enjoyed broad support as an effective means of dispute settlement in the International context by a number of commentators. The UN Charter expressly refers to ADR techniques including conciliation and mediation, in addition to judicial settlement, as a peaceful way of resolving disputes between states.

United Nations Commission on International Trade Law (UNCITRAL) is the core legal body within the United Nations system in the field of International trade law. UNCITRAL was tasked by the General Assembly to further the progressive harmonization and unification of the law of international trade. The UNCITRAL is a body of member and observer states under the auspices of the United Nations. It drafted the UNCITRAL Model law on International Commercial Arbitration in 1985. Agreements, which cite the UNCITRAL Arbitration Rules, may be bound to this form of dispute resolution. Legislation based on the UNCITRAL Model Law on International Commercial Arbitration has been enacted in Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bermuda, Bulgaria, Canada, Chile**,** in China: Hong Kong Special Administrative Region, Macau Special Administrative Region; Croatia, Cyprus, Egypt, Germany, Greece, Guatemala, Hungary, India, Iran, Ireland, Japan, Jordan, Kenya, Lithuania, Madagascar, Malta, Mexico, New Zealand, Nigeria, Oman, Paraguay, Peru, Philippines, Korea, Russian Federation, Singapore, Spain, Sri Lanka, Thailand, Tunisia, Ukraine, within the United Kingdom of Great Britain and Northern Ireland: Scotland, Bermuda, United States of America: California, Connecticut, Illinois, Oregon and Texas; Zambia, and Zimbabwe.[15]

In the ***United States***, mandatory pre-dispute contractual commitments to arbitrate a wide variety of consumer, health care, securities, and employment disputes have been sustained by the United States Supreme Court against claims these clauses violate due process or other constitutional rights to trial for disputes. Similarly, thus far many European courts have held that assignment to some form of ADR does not violate Article 6 of the European Convention on Human Rights, granting basic hearing rights for human rights cases. Arbitration has, thus far, been the mode of choice for resolving International commercial, investment, and trade disputes, such as in the public law settings of the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT) and the International Centre for the Settlement of Investment Disputes (ICSID), and the more private International law settings of the International Chamber of Commerce or the London Court of Arbitration. Arbitration has also been deployed in new forms of disputes developing under both domestic and international intellectual property regimes. Various forms of mediation and arbitration are also being used increasingly to resolve transnational disputes of various kinds (political, economic, natural resource allocation, and ethnic violence) and are employed by international organizations such as the United Nations and the Organization of American States, as well as

[12] Reynolds, 'The Role of the Solicitor' (1988) 54 *Arbitration* 85–92; Hellings, 'Arbitration: An Advocate's View' (1988) 54 *Arbitration* 78, 78–85, cited in Herrmann, above n 4, 91.
[13] G Slapper and D Kelly, *The English Legal System*, 10th ed. (London: Routledge Cavendish, 2009) at 378
[14] httpsdigitalcommons.law.buffalo.educgiviewcontent.cgiarticle=1438&context=buffalolawreview
[15] httpwww.fdrindia.orgoldpublicationsAlternativeDisputeResolution_PR.pdf

multinational trade and treaty groups (NAFTA, the European Union, and Mercosur) and nongovernmental organizations in human rights and other issue related disputes (Greenberg et al. 2000).

Domestic experiences are also most relevant to these developments. ADR has become a favored approach to dispute settlement in the United States for the past twenty-five years and in Britain and other countries more recently. Besides the classic methods of negotiation, conciliation, mediation and arbitration, ADR includes a variety of other methods developed in the context of those domestic experiences.[16]

In ***Japan***, long-standing cultural attitudes and historical political influences have resulted in a preference for non-adjudicative forms of dispute settlement, primarily conciliation/mediation, for domestic civil disputes. By the 1980s, however, it was found that conciliation/mediation was rarely used as a method for the settlement of International commercial disputes involving a Japanese party, with the disputants preferring International commercial arbitration.[17]

Yet, by the 1990s ***Japan*** saw a growing use of med-arb for the settlement of International commercial disputes, whereby conciliation/mediation is used during arbitration and not before or instead of arbitration. The rules of the major Japanese International commercial arbitration bodies permit med-arb, which is used with frequent success. The new arbitration law in Japan, enforce in 2004, permits one or more of the arbitrators to attempt to settle the dispute if the disputing parties provide their written consent, thereby effectively allowing the arbitrators to use med-arb.[18]

The main institutions that handle International commercial arbitration in the ***People's Republic of China*** are the China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC).[19] The legal system of the China has been deeply affected by the competing philosophies of Confucianism and the legalist school of thought. Chinese dispute settlement methods still reflect the Confucian tradition, which emphasizes hierarchy, social harmony and maintaining relationships through compromise. Thus, mediation/conciliation has been favored historically for dispute settlement over adjudicative means. In the domestic context, conciliation/mediation of disputes and mediation by the courts during litigation has long been used in the PRC and, although the rate of litigation has increased in the current era of economic reform, the government continues to support conciliation/mediation.[20]

In ***Canada*** August 2004, the Uniform Law Conference of Canada (ULCC) created a Working Group to draft uniform legislation to enact the Model Law on International Commercial Arbitration (MLICC). The Uniform [International] Commercial Mediation Act was adopted by the ULCC in 2005 with the recommendation that it be adopted by jurisdictions in Canada.

Canada, there was slight legislative movement by mid-2006. Nova Scotia adopted its Commercial Mediation Act in 2005 based on the MLICC and the ULCC uniform act. It is interesting to note that Nova Scotia did address the application of its act to med-arbs, excluding the act from applying to mediations conducted in the course of arbitration under the Commercial Arbitration Act unless the parties to the mediation agree otherwise. The enacting legislation is silent on the med-arb provisions in Nova Scotia's International commercial arbitration statute. [21]

Today, a number of non-governmental adjudicatory organizations exist for the resolution of commercial disputes. These organizations provide a mechanism for the resolution of commercial disputes concerning a wide variety of subject matter. For example, the International Chamber of Commerce (ICC), based in Paris, ***France***, administers a significant portion of International arbitrations, particularly cases which involve complex commercial transactions. Other similar organizations include the London Court of International Arbitration and the Arbitration

Institute of the Stockholm Chamber of Commerce (SCC), the World Intellectual Property Organization (WIPO) based in Geneva, Switzerland, also established an arbitration center. This center could be of particular interest in the context of disputes arising on the Internet due to its incorporation of computer technology into its arbitral procedures. The American Arbitration Association also administers both National and International commercial disputes.[22]

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[16] httpicsidfiles.worldbank.orgicsidICSIDBLOBSNewsLettersDC12.pdf

[17] Yoshiaki Nomura, "Some Aspects of the Use of Commercial Arbitration by Japanese Corporations" (1986), 33 Osaka U. L. Rev. 47 at pp. 47, 55 and 60- 61 ;Young, *ibid.*, at pp. 342-43 http://www.jseinc.org/en/tomac/conciliation/ conciliationrules.html

[18] Thirgood, *ibid.*, at pp. 180-84; Yasunobu Sato, "The New Arbitration Law in Japan: Will It Cause Changes in Japanese Conciliatory Arbitration Practices?" (2005), 22 J. Int'l Arb. 141; *The Commercial Wayto Justice: The 1996 International Conference of the Chartered Institute of Arbitrators* (The Hague, Kluwer Law International, 1997), p. 213 at p. 217.

[19] httpsera.library.ualberta.caitems7189fd0a-62b9-4a1f-9d2c-c32efb0d5e29view6eeb7e89-3144-454f-88ca-51d1fafdeef7CBLJ_45_1_20.pdf

[20] Jingzhou Tao, *Resolving Business Disputes in China*, 1st ed. (The Hague, Kluwer Law International, 2005) at 1,012-1,013; Reif, *supra*, footnote **1,** at p. 630.

[21] Uniform Conference of Canada, Civil Section, *Activities and Priorities of the Department of Justice in Private International Law*, Report of the Department of Justice Canada 2006 (Edmonton, August 20-24, 2006), online at <http:// www.ulcc.ca/en/poam2/DojActivitiesPrivateIntlLaw_2006_En.pdf>, at para. 82.

[22] httpsdigitalcommons.law.buffalo.educgiviewcontent.cgiarticle=1438&context=buffalolawreview

Alternative Dispute Resolution (ADR) and India:

Alternative Dispute Resolution in India is an attempt made by the legislators and judiciary alike to achieve the "Constitutional goal" of achieving Complete Justice in India. ADR first started as a quest to find solutions to the perplexing problem of the ever increasing burden on the courts.

In India, the quest for justice has been an ideal, which the citizens have been aspiring for generations down the line. Our Constitution reflects this aspiration in the Preamble itself, which speaks about justice in all its forms: social, economic and political. Justice is a constitutional mandate. The possibility of a justice delivery mechanism in the Indian context and the impediments for dispensing justice in India is an important discussion. Delay in justice administration is the biggest operational obstacle, which has to be tackled on a war footing. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution.

Alternative Dispute Resolution in India was founded on the Constitutional basis of Articles 14 and 21 which deal with Equality before Law and Right to life and personal liberty respectively. These Articles are enshrined under Part III of the Constitution of India which lists the Fundamental Rights of the citizens of India. ADR also tries to achieve the Directive Principle of State Policy relating to Equal justice and Free Legal Aid as laid down under Article 39-A of the Constitution. The Acts which deal with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. The Section 89 of the Civil Procedure Code, 1908 makes it possible for Arbitration proceedings to take place in accordance with the Acts stated above.

The Arbitration and Conciliation Act, 1996 was passed on the basis of the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. It had been recommended by General Assembly of the United Nations that all countries should give due consideration to the said Model Law in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of the International commercial arbitration practices. It has also recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek on amicable settlement of that dispute by recourse to conciliation. These rules are believed to make a significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in International commercial relations.

Lok Adalat is a unique ADR measure in India. As such, ADR has been, a vital, and vociferous, vocal and vibrant part of our historical past. Undoubtedly, Lok Adalat (Peoples' Court) concept and philosophy is an innovative Indian contribution to the world jurisprudence. It has very deep and long roots not only in the recorded history but even in pre historical era. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fine and familiar fora which has been playing an important role in settlement of disputes. The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society[23].

The Section 89 of the Civil Procedure Code also provides as to referring the pending Civil disputes to the Lok Adalat. When the matter is referred to the Lok Adalat then the provisions of the Legal Services Authorities Act, 1987 will apply. Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat .

Conclusion:

On the basis of available literature we can conclude that the concept of Alternative Dispute Resolution system is important for the dream of ideal welfare state for all countries around the World. Alternative dispute resolution (ADR) consists of a variety of approaches to early intervention and dispute resolution. It can observed that Alternative dispute redressal techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. Several International organizations, including the International Chamber of Commerce (ICC) and the United Nations Commission on International Trade Law (UNCITRAL), are now taking steps to establish an infrastructure of laws, rules and procedures which recognizes ADR clauses and settlements reached in ADR proceedings. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) is the major International ADR enforcement convention for foundation of International commercial arbitration. Most of the countries like United state, Canada, United Kingdom, china, Japan, France, New Zealand and Australia taking leading role for propagate, popularized and applicability of ADR system more effectively in their countries and take effective steps to facilitate the use of ADR options such as arbitration, mediation and conciliation etc. Alternative Dispute Resolution in India is an attempt made by the legislators and judiciary alike to achieve the "Constitutional goal" of achieving Complete Justice in India. It can be seen that with the spread of ADR programs in the developed and developing world, creative uses for and designs for ADR systems are proliferating.

[23] http://www.dca.nic.in/cir/anr2gc1099.html

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8) Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159.
9) G Slapper and D Kelly, The English Legal System, 10th ed. (London: Routledge Cavendish, 2009)
10) Yoshiaki Nomura,"Some Aspects of the Use of Commercial Arbitration by Japanese Corporations"(1986),33 Osaka U. L. Rev. 47 at pp. 47, 55
11) Yasunobu Sato, "The New Arbitration Law in Japan: Will It Cause Changes in Japanese Conciliatory Arbitration Practices?" (2005), 22 J. Int'l Arb. 141;
12) The Commercial Way to Justice: The 1996 International Conference of the Chartered Institute of Arbitrators (The Hague, Kluwer Law International, 1997), p. 213 at p. 217.
13) Reynolds, 'The Role of the Solicitor' (1988) 54 Arbitration 85–92; Hellings, 'Arbitration: An Advocate's View' (1988) 54 Arbitration 78, 78–85, cited in Herrmann, above n 4, 91
14) Jingzhou Tao, Resolving Business Disputes in China, 1st ed. (The Hague, Kluwer Law International, 2005) at 1,012-1,013; Reif, supra, footnote **1,** at p. 630.
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