

Concept of Negotiation

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ABSTRACT: *Alternative Conflict Resolution (ADR) represents an alternative, discreet means to tackle legal issues that prevents going to arbitration. Mediation, conciliation, arbitration and adjudication are the most general forms of ADR. Negotiation is a non-binding process in which, without the involvement of any third party, negotiations between the parties are initiated with a view to reaching a negotiated resolution of the conflict. It is the most common alternative conflict settlement tool. In industry, non-profit organisations, government branches, court cases, between nations and in personal circumstances such as marriage, divorce, parenting, and daily life, discussions take place.*

KEYWORDS: *Dispute Resolution; Mechanism; Negotiation.*

INTRODUCTION

Alternative Conflict Resolution (ADR) is the mechanism by which disagreements between the parties are resolved or taken to an amicable outcome without the interference of the Legal Institution and without a trail. ADR offers to resolve all kinds of issues, including civil, commercial, industrial and family, etc., where individuals are unable to start any type of negotiation and reach a settlement. In general, ADR uses neutral third parties to help the parties communicate, discuss the differences and resolve the dispute. It is a method that allows individuals and groups to maintain cooperation, social cooperation, and resolve the dispute[1].

ADR is a non-adversarial conflict resolution system, that is, working together cooperatively to find the right resolution for all. ADR will be instrumental in reducing the legal pressure on the courts, thus presenting the parties concerned with a well-rounded and rewarding experience. Via imaginative, constructive negotiation, it offers the chance to "expand the pie" and satisfy the desires driving their demands[1].

There has been a huge rise in the number of cases before the judiciary over the course of time, and such a saddled situation leads to delay and sometimes obstruction of justice, disturbance of social harmony and faith in the judiciary, effectively having a vandalistic impact on society. Therefore, the introduction into the Indian legal system of the ADR process was a great relief for the judiciary and other legal bodies. The Hybrid Conflict Resolution Mechanism is often introduced as an expansion. A hybrid dispute resolution method incorporates components into one of two or three typically distinct systems[2].

Special Master, Mediation-Arbitration, Arbitration-Mediation, Conciliation-Arbitration and other fascinating permutations are also possible in the popular and most commonly adopted Hybrid ADR mechanism. This paper explores the importance of the Hybrid Resolution process in India and abroad, its relative usefulness, its benefits and drawbacks over other ADR mechanisms, etc.[2].

For anyone seeking to settle a conflict, arbitration is always the first alternative. Simply because, in some situations, disagreements will be settled with the sides taking an approach to

'cards on the table' and seeking to reach a solution. If required, professionals in conflict resolution can take instructions and negotiate on behalf of the parties[3].

Bringing a matter to court can be a costly and prolonged procedure when it comes to settling a conflict. Alternative Conflict Resolution (ADR) is now a common method of settling all sorts of conflicts, and many persons look to experts in dispute resolution to help them settle complicated issues without having to go to court[3].

While certain lawsuits eventually have to go to arbitration in order to achieve a favourable settlement for both involved, one or more of the following 4 types of alternate conflict resolution may be used to settle several other conflicts[4].

Negotiation is a form of conflict settlement whereby a dispute between two persons or parties is resolved amicably through various methods by a neutral third party called as a negotiator. In this type of mediation, the negotiator employs multiple negotiation techniques to get the parties to the conflict to a settlement. The primary goal of this method of conflict settlement is to reach a compromise between the parties that is fair and reasonable. The parties negotiate with each other in the conflict before they achieve a desirable result for those concerned[4].

DISCUSSION

Without which civilization will end up in disorder, courts are an important institution. Their significance should not be adequately stressed, since many of the disagreements that occur between persons or organisations are such that they can be settled without the intervention of the judicial authority. Instead, those disputes, which do not include the legal system, need a clear collection of structured rules in order to meet their conclusion. Dispute settlement settles disputes between persons or organisations that emerge. The judicial workload is diminished, in exchange[5].

Alternative Dispute Resolution, also referred to as ADR, is a collection of procedures or strategies that encourage parties to negotiate a friendly settlement in a dispute. It consists of forms in which parties without recourse to arbitration will resolve their disputes. The techniques of Alternative Conflict Resolution (ADR) are now generally recognized and have earned national as well as international attention. ADR modes have existed for a long time and were used long before society was sophisticated[5].

As the name suggests, ADR, in plain terms, is nothing but an alternate approach to arbitration to settle conflicts between persons or organisations. Nowadays, because of the enormous resources needed for lawsuits, people choose alternate types of dispute settlement to resolve matters that do not need judicial jurisdiction to participate[6].

A non-binding process in which negotiations between the parties are conducted for the purpose of reaching a negotiated resolution of the conflict without the involvement of any third party. It is the most common alternative conflict settlement tool. In industry, non-profit organisations, government branches, court cases, between nations and in personal circumstances such as marriage, divorce, parenting, and daily life, discussions take place[6].

The Regulations 2015 of the Alternative Conflict Settlement for Customer Disputes (Competent Authority and Information) refer only to consumer contracts where a trader is in a consumer contract and does not apply to business-to-business contracts. For example, laws would apply if a customer buys a TV from a trader. However, if a garage ordered a TV from a trader to use in a waiting room, laws will not apply[6].

The pre-eminent form of conflict settlement is negotiation-communication for the purpose of convincing-. It has the advantage of having the parties themselves to manage the mechanism and the solution, opposed to systems using mutual third parties[6].

Negotiation takes place where, by dialog and without an impartial third party, parties settle their disagreement[6].

Because of how obvious it is, this type of ADR is often ignored. There is no neutral third party in arbitration to support the parties in their negotiation, so the sides negotiate together to find a consensus. During talks, the parties can opt to be represented by their lawyers[7].

Negotiation resembles mediation very closely. More commonly, however, it is referred to as a procedure in which the parties to the conflict settle themselves. Bargaining is also used in the negotiating process. And if the bargaining process requires a third party negotiator, his role will be limited to inducing the parties into the negotiating process[7].

Negotiation is a conversation aimed at settling conflicts, producing a consensus on courses of action, bargaining for individual or group benefit, or producing results to satisfy diverse desires. It is the main alternate conflict settlement process[8].

In industry, non-profit organisations, government branches, court cases, between nations and in personal circumstances such as marriage, divorce, parenting, and daily life, discussions take place. The study of the subject is called the philosophy of negotiation. Many who professionally work in meetings are considered negotiators. Professional negotiators, such as union negotiators, leverage buyout negotiators, peace negotiators, hostage negotiators, are often qualified, or can function under other names, such as ambassadors, lawmakers, or broke[8].

ADR's approach is an attempt to design a sustainable and equitable solution to our conventional justice system. It is a fast-track justice dispensing scheme. There are different methods of ADR, i.e. Arbitration, consultation, conciliation, arbitration-mediation, mini-justice, private judging, arbitration of the final bid, ADR annexed to the court and summary jury trial[9].

Such approaches have been developed in the United States, United Kingdom, France, Canada, China, Japan, South Africa, Australia and Singapore on scientific lines. ADR has arisen in these countries as an important movement that has not only helped to reduce the expense and time it takes to settle conflicts, but also to create a comfortable environment and a less formal and less difficult venue for different forms of disputes[9].

"The Arbitration and Conciliation Act, 1996" was thus established. The arbitration and conciliation regulation is exactly the same as in developing countries. In terms of this Act, conciliation has been granted constitutional sanction as a way of settling disputes. In addition,

the current Act further promises the arbitrators' freedom and impartiality, independent of their nationality. Several amendments were made under the new Act of 1996 to expedite the arbitration process. This legislation has created trust among international parties involved in investing in India or in joint ventures, foreign investment, technology transfer and foreign partnerships[10].

The value of ADR is that it is more versatile and prohibits the courts from finding redress. In conciliation/mediation, at any point in time, participants are free to withdraw. It has been shown that by ADR, settlement of conflicts is easier and cheaper. There are no tense relationships between the individuals concerned in ADR; rather, they sustain the continuing friendship between themselves[10].

CONCLUSION & IMPLICATION

In its 129th article, the Law Commission and the Malimath Committee suggest that it be mandatory for the courts to refer disputes for arbitration by other means other than litigation. The reforms introduced by the 2015 Arbitration and Conciliation (Amendment) Act took the Indian arbitration system closer to international norms and to the UNCITRAL International Commercial Arbitration Model Rule. In the case of conflicts by or against the Government, Section 80 of the CPC allows for a mandatory notice of 60 days to the opposing party before lodging a lawsuit before the Court.

The notification is meant to encourage the parties, outside the court, to discuss the prospect of resolving the disputes. In India, mediation centers have been designated around states. The Family Courts in India concentrate specifically on the arbitration by mediation of family-related issues.

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