

**LECTURES ON
ALTERNATIVE DISPUTE
RESOLUTION
IN
INDIA**

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P R E F A C E

The primary object of Alternate Dispute Resolution movement is avoidance of vexation, expense and delay and promote of the ideal of access to justice for all. The Alternate Dispute system seeks to provide cheap, simple, quick and accessible justice. Arbitration is the most important mechanism of ADR. As an alternate to regular courts, arbitration is known to the world in general and India in particular from time immemorial. It is accepted by the society and the State.

Alternative Dispute Resolution as the name suggests, is an alternative to the traditional process of dispute resolution through courts. It refers to a set of practices and techniques to resolve disputes outside the courts. It is mostly a non-judicial means or procedure for the settlement of disputes. In its wider sense , the term refers to everything from facilitated settlement negotiations in which parties are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a court room process. It is not intended to replace or supplant the courts of the land but is in addition to the traditional system. It is not an alternative in a restrictive sense. The need for public adjudication and normative judicial pronouncements on the momentous issues of the day is fundamental to the evolution of the laws of the land. Alternative Dispute Resolution is necessary to complement and preserve this function of the courts. It has some instrumental and intrinsic functions; it is instrumental in so far as it enables amicable settlement of disputes through means which are not available generally to courts. It is intrinsic because it enables the parties themselves to settle their

disputes.

In addition to reducing the burden on the courts and providing speedy justice to people, Alternative Dispute Resolution mechanisms have been introduced and are being utilized for a number of other reasons. Alternate Dispute Resolution mechanisms are relatively inexpensive in comparison with the ordinary legal process. The mechanisms, therefore, help litigants who are unable to meet the expenses involved in the ordinary process of dispute resolution through courts. Furthermore, Alternative Dispute Resolution mechanisms enhance the involvement of the community in the dispute resolution process.

Alternative Dispute Resolution mechanisms provide for more effective resolution of disputes as the parties are more involved in the process and the process is swift. Court processes that are traditionally practiced, may not in every case, provide the best approach towards the resolution of disputes. For instance, in the case of matrimonial disputes, which are sensitive in nature, involving both legal as well as emotional questions, the parties are not interested in winning or losing, but in reaching a solution. Inordinate delays which are a part of the ordinary legal process may emotionally affect the parties and cause frustration. The matter may be more effectively resolved, if it is not dealt with in a mechanical and technical manner. The procedures employed in Alternate Dispute Resolution are flexible and informal in contrast to the formal and rigid procedures followed in the ordinary process of dispute resolution in courts of law. These processes thus facilitate access to justice.

One of the foremost advantages of the Alternate Dispute

Resolution is that the dispute remains under the control of the parties themselves and any settlement entered into is their own and does not represent a dictate from an outsider. The process of Alternate Dispute Resolution be it mediation, negotiation or Lok Adalat implies a greater involvement of the disputing parties. The parties are actively involved in the process of dispute resolution and can, therefore, more effectively reach a settlement of the dispute.

Alternate Dispute Resolution process, are not afflicted with the rigorous rules of procedure. No fixed set of rules are employed as such, be it in mediation or negotiation or even in Lok Adalat. In case of arbitration, however, the rules of arbitration institutions, which are fixed, are sometimes applied. In fact, the parties may meet and fix the procedures for themselves with the help of a mediator. It is much easier with more informal procedures to avoid the confusion involved in the usually stringent procedures

Alternate Dispute Resolution processes are sometimes confidential and generally without prejudice. For instance in the case of conciliation proceedings, Section 75 of the Arbitration and Conciliation Act, 1996 specifically provides for the confidentiality of all matters relating to the proceedings. In arbitration agreements also, the parties themselves, often provide for confidentiality of the proceedings and the award.

As Alternate Dispute Resolution is not adversarial and aims for all sides ending up with at least a solution that is acceptable to all the parties involved, disputants can save face, which again is important and indeed vital in relationships. Differences can be eased through this

process and future relationships may be preserved and continued. Particularly in business relationships, the parties may wish to resolve their disputes amicably and carry on their trade in future. In such circumstances, Alternate Dispute Resolution mechanisms such as mediation or arbitration may provide more effective means for the settlement of their disputes.

Another advantage of Alternate Dispute Resolution mechanisms is that they can be used at any time immediately after dispute arises or when dispute is pending with the court. In case of commercial relationships, the parties may agree at the time of entering into the contract to resort to any of the Alternate Dispute Resolution mechanisms in case of dispute arises. It can be terminated at any stage by one of the disputants. In Salem Advocate Bar Association, T.N. Vs. Union of India, (2003) 1 SCC 49, Hon'ble Mr. Justice B.N. Kirpal then, Chief Justice of India, observed "In certain countries of the world, where Alternate Dispute Resolution has been successful to that extent, that over 90 percent of the cases are settled out of the court. There is a requirement that the parties to the suit must indicate the form of Alternate Dispute Resolution which they would like to resort during the pendency of the trial of the suit".

The parties are free to choose their mediator or arbitrator. This can lead to the appointment of persons who are familiar with the business or have other relevant expertise and can thus play a role in the effective resolution of the dispute.

The concept of justice undergoes changes keeping in pace with the day to day needs of the progressive society. In

other words, changes in society have their impact on various matters of justice.

If litigants of modest means cannot afford to seek their remedies in the traditional court system, they will be forced to find other means to obtain relief. Some may simply give up out of frustration. Should this come to pass, the civil justice system as we know it will become irrelevant for the majority of the population. Our courts and the legal profession must adapt to the changing needs of the society that we serve.

In situation like this the best method of understanding the strength or weakness of the justice delivery system is that of having a look at the justice adjudication system as a whole. Hence, the study covers not only the system already established but also the developments taking place in various matters. There are several institutions making their own efforts to improve the justice delivery system by opting or suggesting ADR system such as Indian Council of Arbitration, International Centre for Alternative Dispute Resolution, Law Commission of India, Ministry of Law and Justice etc.

The reason why the ADR system has been linked with the adversarial court system for assisting the later one, is that the Constitution of India spells out in its Preamble the basic postulates which the State has to pursue, and embodies in it various provisions, a large number of principles and procedures with regards to the organization and the functioning of justice delivery system by using the adversarial system, which in the contemporary world seems to be on receiving end. The existing bottlenecks in the form of delay, exorbitant expenses, procedural technicalities etc. have accelerated

the need of having a complimentary mechanism with adversarial court system. Though India has seen the initiation of the ADR system in the form of some statutes, still there is a need to have a strong movement for multiplying the efforts for using ADR in various walks of life of human beings. Presently the ADR system in India with the courts has been facing various problems and requires a roadmap for proper utilization. That is why, the present study has been planned with the topic:

The present study is an attempt to provide concrete solution to the problems like delay in justice, expensive nature of justice and technicalities in getting justice etc. by giving a special and due importance to the Alternative Dispute Resolution system, which is the need of the present hour in order to comply with the pervasive need of securing equal access to justice for all. The present study has the aim of establishing such conditions in the society in which there is a security of law and order. The ADR system gives sustenance to the Rule of Law and meaning and significance to the idea of justice. The problems faced by the present adversarial court system and also by the ADR (to some extent) require a research based solution and the present study is an attempt in this regard.

The system of Lok Adalat is no more new to the legal system of India, it has become an effective part of Indian legal system and now is the time to bring such matters under the jurisdiction of Lok Adalat which do not fall under its domain. It is high time for law makers, jurists, lawyers and judges to help modifying the current model law governing Lok Adalat and include such areas under its jurisdiction like business disputes or conflicts where public at large is involved and the matters where government is involved in one or the other way.

It will go a long way in strengthening our diverse, democratic values and rule of Law. The working of Lok Adalat seems to be both fruitful and successful and has achieved those objectives, for which it has been meant. The overall functioning and achievement of Lok Adalat appears to be appreciable though not remarkable. So there is a need to strengthen the system of Lok Adalat in recent context, which in turn, help to realize the Constitutional goals.

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✍️ Authors

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