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## **CONSTITUTIONAL VALIDITY AND MECHANISM OF ALTERNATIVE DISPUTE RESOLUTION**

Advocate Meet J. Raveshiya

Designation: Advocate, Gujrat High Court

Email: meetjr09@gmail.com

### **INTRODUCTION**

Disagreements are an unavoidable part of human interaction, and society must find constructive and innovative ways to resolve them. Unresolved conflict manifests itself as a dispute. Conflict can plainly be defined as the result of differences that distinguish people and bring personal desires to life. While conflict is inevitable, disagreements are unnecessary.

The Indian Constitution is based on the concept of welfare state. It is the responsibility of the state to ensure that its citizens have access to justice by establishing judicial and semi-judicial dispute resolution frameworks that provide accurate and timely justice while also safeguarding one's constitutional and legal rights. Ignorance, poverty, and other social ills should not be used as excuses for not pursuing justice.

### **CONSTITUTIONAL VALIDITY OF ALTERNATIVE DISPUTE RESOLUTION**

The validity of India's Alternative Dispute Resolution Mechanism is guaranteed by the following constitutional provisions:

#### **Preamble to the Constitution**

Our Preamble expresses this ideology, which guarantees justice in every form, including social, economic, and political justice. Legal Aid Centres, Family Courts, Village Tribunals, Dispute resolution Centers, Commercial Arbitration, Women Centers, Consumer Protection Forums, and other aspects of an efficient alternative dispute resolution mechanism are all referred to as "justice."

The Indian Constitution is the country's fundamental law; it contains provisions that represent a harmonious integration of personal actions with the overall welfare of society in order to achieve justice. The attainment of the common good, therefore, as distinct from the good of individuals, is the essence of justice.

Legal justice is intertwined with social justice. When legal justice is denied, the culture is frequently upset. A legal system is a component of a state that helps to maintain social stability by settling disputes. In a country dedicated to safeguarding citizens' socioeconomic and cultural liberties, it is critical to resolve cases quickly in India, as the courts alone would be incapable of handling the massive backlog. Alternative Dispute Resolution (ADR) mechanisms can be used effectively to accomplish this.

### **Article 21**

Article 21 states that "no one shall be stripped of his life or personal liberty except in accordance with legal procedure." The words "life" and "liberty" should not be interpreted narrowly; they should be interpreted broadly.

The right to a speedy trial is a component of the right to life and personal liberty. The Supreme Court ruled that Article 21 can expand goals as far as the law allows. Article 21 is designed to eliminate the mental anguish, expenses, and burden that a person must bear in litigation, which, when combined with delay, results in a deterioration of the accused's capacity to defend himself, according to this liberal interpretation.

### **Free Legal Aid (Article 39A)**

Article 39-A requires the State to ensure the implementation of a regulatory strategy that enhances justice on the basis of equal opportunities as well as, provides free legal assistance to all citizens, whether through relevant laws or schemes or in any other way, ensuring that no citizen is denied access to justice due to economic or other disabilities.

We can see from all of this that the preservation of justice is a vital function of a state, and that ADR processes aid in this. As a result, many pieces of legislation, namely the Arbitration

and Conciliation Act 1996, Section 89 of the CPC, and the 1987 Legal Services Authority Act, have been enacted to make justice more accessible.

### **ALTERNATIVE DISPUTE RESOLUTION MECHANISM**

Conflict Resolution via Alternative Dispute Resolution (ADR) has developed a new non-adversarial mechanism of dispute resolution. A dispute is essentially a "lis inter partes," and India's justice system has found a substitute to adversarial lawsuits in the form of the Alternative Dispute Resolution Mechanism.

New dispute resolution methods, such as ADR, enable parties to look at the root of a dispute in a more price-effective manner. Furthermore, these mechanisms have the benefit of allowing parties to mitigate prejudice, reclaim a sense of security, find approval of the outcome, settle disputes in a civilized way, and achieve a higher sense of social justice in each case. Dispute resolution is usually done privately and is more feasible, cost-effective, and efficient. Negotiation, collaborative law, arbitration and mediation are the four types of alternative dispute resolution.

### **ARBITRATION AND CONCILIATION ACT, 1996**

#### **Arbitration**

The process of arbitration can start only if there exists a valid Arbitration Agreement or a written correspondence between the parties prior to the emergence of the dispute. The Arbitration Tribunal is made up of a single arbitrator or panels of arbitrators. If a party wants to challenge the arbitration tribunal's jurisdiction, it must do so before the tribunal itself. If the tribunal rejects the request, the party has little recourse except to go to court after the tribunal issues its decision.

#### **Conciliation**

There is no requirement for any prior agreement in the process of Conciliation. Any party can demand the appointment of a conciliator from the other. Each party sends the other a copy of

the statement. The conciliator may ask for more information, meet with the parties, or interact with them verbally or in writing. Parties may even make suggestions to the conciliator for resolving the dispute. When the conciliator believes there are elements of a settlement, he may draught the terms of settlement. The document will be final and binding on both parties if both parties sign it.

### **Mediation**

Mediation, aims to help two (or perhaps more) disputants reach an agreement. Instead of accepting something enforced by a third party, the parties determine the terms of any settlements reached. States, organizations, communities, individuals, or other representatives with a stake in the outcome may be parties to the disputes.

### **Negotiation**

Negotiation is a conversation aimed at resolving disagreements, reaching an agreement on a course of action, bartering for personal or collective gain, or crafting outcomes that satisfy a variety of interests. It is the most common form of ad hoc dispute resolution. Negotiation occurs in a variety of settings, including business, non-profit organizations, federal agencies, legal proceedings, international relations, and personal circumstances such as matrimony, divorce, childrearing, and everyday life.

### **STATEMENT OF THE PROBLEM**

According to 2019 NJDG data, there are as many as 31111546 cases pending throughout the country- 8827748 civil and 22283798 criminal cases. 71.67 percent (6326458) of civil cases and 72.91 percent (16248097) of criminal cases have been pending for more than a year.<sup>1</sup> The legislature has amended Section 89 of the Civil Procedure Code of 1908, requiring courts to investigate the possibility of resolving overdue civil disputes through arbitration, mediation, or Lok Adalat. If the pending case is resolved through some of the ADR mechanisms

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<sup>1</sup> 'National Judicial Data Grid (District and Taluka Courts of India)' (NJDG, 2019) accessed 07 July 2021.

under Section 89 of the Civil Procedure Code, the government encourages the parties by waiving partial court fees.

## **LITERATURE REVIEW**

- **Constitutional Jurisprudence and the Growth of Alternative Dispute Resolution<sup>2</sup>**

(By Jonah Shiny)

The article analyses the Constitutional perspective of ADR and how it comes under the ambit of Article 14, 21 and 39A of the Constitution of India. It identifies the scope and limitations of the enforceability of ADR mechanisms. Some of the limitations include imbalance of power, lack of precedents, lack of enforceability, etc. It is concluded that the ADR movement must be pushed forward at a faster pace. This will significantly reduce the burden on the courts, in addition to providing immediate justice at the doorstep at a low cost.

- **ADR in India: Legislations and Practices<sup>3</sup>**

(By Chaitanya Shashank on January 7, 2015)

The author believes that the rapid settlement of disputes in Lok Adalat has gained widespread public support, giving ADR a new impetus that will undoubtedly reduce the number of cases pending in the courts. There is a pressing need for ADR mechanisms to provide access to justice. If they are successfully implemented, they will truly achieve the goal of providing social justice to the disputants.

- **Constitutional Provisions and Legislations for ADR in India<sup>4</sup>**

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<sup>2</sup> <http://www.legalserviceindia.com/legal/article-706-constitutional-jurisprudence-and-the-growth-of-alternative-dispute-resolution.html>

<sup>3</sup> <https://www.lawctopus.com/academike/arbitration-adr-in-india/>

<sup>4</sup> <https://viamediationcentre.org/readnews/NTI4/CONSTITUTIONAL-PROVISIONS-AND-LEGISLATIONS-FOR-ADR-IN-INDIA>

(By Subhasree Pati)

The author begins with an introduction to Alternative Dispute Resolution and its various facets. It briefly describes various Constitutional and Legal Provisions which supports the ADR mechanism in India. It states that the Constitution of India is based on the concept of welfare state. It refers to cases like Food Corporation of India v. Joginder pal<sup>5</sup> to explain the judicial point of view regarding ADR. ADR was established in India under Articles 21, 14 and 39A of the Constitution. The Arbitration and Conciliation Act, 1996 governs the conduct of arbitration and conciliation proceedings and Section 20 (1) of the Legal Services Authorities Act, 1987 mentions Lok Adalat.

### **RESEARCH OBJECTIVES**

- To check the validity of the Civil Courts' Arbitration process under Section 89 of the Civil Procedure Code.
- To examine litigants', advocates', and judges' attitudes toward the referral under Section 89 of the Civil Procedure Code.
- To determine which ADR mechanism has been used by courts and parties to resolve disputes.
- To understand the Alternative Dispute Resolution mechanism in India.

### **SIGNIFICANCE OF THE RESEARCH**

An effort is made in this research paper to examine the “Constitutional Validity and Mechanism of Alternative Dispute Resolution.” It strives to ascertain whether the India has been efficient at establishing and using the ADR mechanism. If not, what have been its limitations and what India can do to overcome them. This research is better appreciated by the judges, advocates, legal organisations, Bureaucrats, and Members of the Legislature, Academicians and Law Student and at last, towards whom the entire the task is dedicated, the public at large.

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<sup>5</sup> AIR 1989 SC 1263

## **HYPOTHESIS**

- The parties are uninformed about the various ADR processes.
- Neither the lawyers nor the judges have adequately explained the ADR referral process to the litigants.
- The stakeholders have not implemented Section 89 in its entirety.

## **RESEARCH METHODOLOGY**

The empirical mode of research has been used in the research. The research is based on qualitative and quantitative approach to review the available secondary data. It is a descriptive analysis of the legal provisions and instruments in relation to the theoretical aspects of the topic in order to gain ground-level information about the “Constitutional Validity and Mechanism of Alternative Dispute Resolution” and its impacts on the judicial and dispute resolution community. Quantitative methodology has been used to evaluate the present status of Section 89 of the Civil Procedure Code's implementation, as well as the mindset/views of litigants, advocates, and judges regarding referrals under Section 89 of the Civil Procedure Code. The research is based on secondary data such as books, articles, published reports and various research papers and other online sources.

## **ANALYSIS AND CONCLUSION**

The Constitution places a significant value on alternative dispute resolution. The state has a legal obligation to enact legislation that creates an alternative dispute resolution forum. The legislature and various legislations have recognized this in the regard of the acceptance of the Alternative Dispute Resolution Method.

There is a strong desire to develop a new method of access to justice. Alternative dispute resolution methods are said to be versatile, affordable, quick, and less conventional in nature, making them a viable alternative to having a court of law adjudicate. Aside from legal proceedings, there is an alternative solution for the parties in the case of a small disagreement. The ADR framework acts as a stepping stone for everyone on the path to justice. India is

approaching a ray of hope in the form of judicial equality. The ADR movement must be carried forward at a faster pace.

If the ADR framework is efficiently implemented, it would immensely alleviate the workload on the judiciary, in addition to providing immediate door-step justice without incurring significant costs.



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## **BIBLIOGRAPHY**

- The Constitution of India, 1950.
- The Arbitration and Conciliation Act, 1996.
- The Industrial Dispute Act, 1947.
- Grievances Claims and Disputes: Assessing the Adversary Culture (1980-1981) 15 Law & Society Review 525 at 527.
- The Rajasthan State Road ... vs Krishna Kant Etc. on 3 May, 1995 AIR 1715, 1995 SCC (5) 75.
- Avtar Singh —Law of Arbitration and Conciliation PP 397-398, 7 Edition, Eastern book Company, Lucknow.
- P.N. Bhagwati on the need to create adequate and effective delivery system of justice in Chapter VI of —Social Justice – Equal Justice P.33
- Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution System.
- Sujay Dixit, Alternative Dispute Resolution Mechanism, Legal Services India. Accessed on 07 July 2021. <http://www.legalservicesindia.com/article/224/ADR-Mechanism-in-India.html>
- Rachit Garg, Legal and Constitutional Provisions Regarding ADR, IPleaders. Accessed on 07 July 2021. <https://blog.ipleaders.in/legal-constitutional-provisions-regarding-adr/>
- Dr. Marisport, Resolving Pending Cases through Alternative Dispute Resolution under Section 89 of Civil Procedure Code: A Case Study. <https://doj.gov.in/sites/default/files/GNLU.pdf>
- Subhasree Pati, Constitutional Provisions and Legislations for ADR in India. Accessed on 07 July 2021. <https://viamediationcentre.org/readnews/NTI4/CONSTITUTIONAL-PROVISIONS-AND-LEGISLATIONS-FOR-ADR-IN-INDIA#:~:text=Alternative%20Dispute%20Resolutions%20was%20founded,to%20Life%20and%20personal%20Liberty.&text=Arbitration%20or%20Conciliation%20proceedings%20are,Arbitration%20and%20Conciliation%20Act%2C%201996.>
- Madhubhushi Sridhar, LexisNexis Butterworths, Alternative Dispute Resolution: Negotiation and Mediation, at 1, (1<sup>st</sup> Ed. 2006).

- Ivneet Walia, Alternate Dispute Resolution and The Common Man, (Feb. 28, 2009), <http://www.legalserviceindia.com/article/l312-Alternate-Dispute-Resolution-And-The-Common-Man.html>