



## **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B.**

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE : BAL803**

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# Lecture-1



## LECTURE 1: ADR: Concept and Development

Dispute resolution is nothing but resolving a matter of dispute between two or more parties. There are many processes for dispute resolution and Alternative Dispute Resolution (ADR) is one of them. Therefore we can say that ADR is a mechanism which is used to resolve the dispute between the parties.

### Meaning of ADR:-

The concept of Alternative Dispute Resolution (ADR) denotes the process in which disputes are addressed and settled outside of the courtroom. In other language, ADR refers to the ways in which disputes are resolved without litigation. The processes of ADR are generally more expeditious and less pricey. As a matter of fact, ADR is used in disputes, which have the potential of leading to litigation. Such disputes may involve labor disputes, personal injury accusations, and divorce actions.

### Kinds of Alternative Dispute Resolution:-

There are several kinds of Alternative Dispute Resolution through which the disputes can be resolved. These are:-

- **Mediation:-** This kind of ADR makes use of an unbiased third party known as a mediator. The mediator does not have the right to decide any outcome of a dispute or compel the disputing entities to agree upon the same. The mediator working with the disputing entities tries to reach a mutual solution, which is usually non-binding. The mediation can be mandated by the courts if necessary, but the entire procedure remains voluntary, offering the disputing entities the chance to deny the agreement. Mediation is totally confidential and the entities can control the process. The disputing entities can even go for litigation after mediation if they do not agree to the agreement.
- **Arbitration:-** This kind of ADR is somewhat like a non-formal trial and makes use of an unbiased third party. A decision is issued by the chosen third party after it hears each side. According to what the disputing entities have agreed upon, this decision is non-binding or binding. If binding, this decision is considered to be final and can be legally enforced. Irrespective of the arbiter is a practicing facilitator, the process of arbitration is not considered formal since many evidence rules do not apply here.
- **Negotiation:-** This kind of ADR does not involve any unbiased third party for assisting the disputing entities to come to a negotiation. The entities work together and reach a compromise. During negotiations, the disputing entities can get their lawyers to represent them.
- **Conciliation:-** Conciliation is a process in which a third party assists the parties to resolve their disputes by agreement. A conciliator may do this by expressing an opinion about the merits of the dispute to help the parties to reach a settlement. Hence, conciliation is a compromise settlement with the assistance of a conciliator.

### Development of ADR:-

The process of arbitration is not alien to India. It always had been practiced since time immemorial. In India, people believed in resolving disputes within the four walls because this was somewhere considered as an element to protect their dignity and personality in the society. Hence, the mechanism gained significance in India since Ancient times.

#### ➤ Ancient India:-

In ancient India when there was Kulas, people used to live in joint families with their clans and when there was caste system prevalent in the society. The disputes among the kulas were resolved by the head of the family, clan or Kula. Likewise, when there was common trade, corporations or Shrenis among the people, they used to appoint person to resolve the disputes within the Shrenis.

### ➤ **Pre-Independence: British Rule:-**

During the British rule in India, many legislations were introduced and a drastic change came in the administration of India. In 1772, the courts were empowered to refer disputes to arbitration either at the request of the parties or by its own discretion. Then after a decade, in 1859, The Code of Civil Procedure was enacted, sections 312 to 327 of the act mentioned arbitration but in 1882 the sections relating to arbitration was repealed.

In 1899, The Indian Arbitration Act, 1899 was enacted to give effect to alternate dispute mechanism in India. The act was based on the English legislation.

Then in 1908, CPC was again amended and section 89 with second schedule gave wide powers to the courts to refer the disputes to ADR mechanism. Then, The Indian Arbitration Act, 1899 and section 89 read with second schedule of The Code of Civil Procedure were two effective legislation to deal with arbitration.

Thereafter, in 1937 Geneva Convention was signed and adopted by India and a parallel legislation was introduced in the form of *The Arbitration (Protocol and Convention) Act, 1937*. In 1940, The Indian Arbitration Act 1899 and section 89 with second schedule of CPC was repealed and replaced by *The Arbitration Act, 1940*.

In local levels Panchayats were very effective in resolving the disputes in villages in India.

### ➤ **Post Independence Era:-**

The Arbitration (Protocol and Convention) Act, 1937 for the enforcement of foreign awards and The Arbitration Act, 1940 for referring disputes to ADR mechanism were presently in force in India. Then in 1961, India became signatory to the New York Convention and The Foreign Award (Recognition and Convention) Act, 1961 was enacted.

In 1981, in M/S Guru Nanak Foundation vs. Rattan Singh & Sons, the Supreme Court described the Arbitration Act, 1940 in off-quoted passage. It observed that “the way in which the proceedings under the act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the act have become highly technical and accompanied by unending prolixity, at every stage providing a legal trap to the unwary.”

In 1985, the UNCITRAL model law was adopted and signed by India on International commercial arbitration.

In 1996, finally The Arbitration (Protocol and Convention) Act, 1937; The Arbitration Act, 1940 and The Foreign Award (Recognition and Convention) Act, 1961 was repealed and consolidated in a single piece of legislation following the UNCITRAL model law, the act was called the Arbitration and Conciliation Act, 1996. to make the act more effective and efficient Section- 89 with Order- X (Rule- 1A to 1C) was re-introduced in CPC in 2002. The act of 1966 was amended twice in 2015 and 2019. However, to deal with ADR mechanism we have a consolidated, single, effective, efficient and a good piece of legislation.

