

UNIT - I
(GENERAL)

1. ALTERNATE DISPUTE RESOLUTION SYSTEM

(MEANING, APPLICATION, USEAGE, COURTS Vs ADRS
NEEDS/ADVANTAGES AND DISADVANTAGES OF ADRS)

(MOST IMPORTANT)

SYNOPSIS:

- A. *Meaning***
- B. *Application***
- C. *Usage***
- D. *ADRS Vs Court***
- E. *Notice under 80 CPC***
- F. *Need for Alternative Dispute Resolution System in India***
- G. *Advantages***
- H. *Disadvantages***
- I. *Section 89 of CPC - Settlement of disputes outside the Court (Special Proceeding - Arbitration, Conciliation, Lok Adalat or Mediation) (Sec. 89)***
- J. *ADRS in criminal cases***
- K. *Types of ADR in Criminal Cases***

A. MEANING:

‘Alternative dispute resolution’ (ADR) is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their dispute in a way that is less formal and often more consensual than what is done in the courts.

B. APPLICATION:

‘Alternative dispute resolution’ includes the following forms of settlement of disputes -

- i. Arbitration
- ii. Conciliation
- iii. Mediation
- iv. Judicial settlement conferences,
- v. Fact-finding bodies,
- vi. Ombudsmen,
- vii. Lok Adalats,
- viii. Consumer Redressal Forums,
- ix. Industrial Conciliation and Adjudicative Machineries
- x. Other alternative dispute systems

C. USAGE:

Alternate dispute resolution system has been used in appropriate cases.

- i. Arbitration and negotiation have become common ways to resolve difficult international business disputes;
- ii. Mediation and arbitration are now commonly used to settle labor-management disputes that often used to seem like intractable situations, marital disputes and other family/domestic disputes.
- iii. International mediation has been used to resolve complex international and ethnic conflicts, with varying degrees of success;
- iv. Consensus building has become a popular process for dealing with public-policy disputes, especially intractable environmental disputes.

D. COURTS Vs ADRS (UNDER CPC) [FORMAL(COURT) AND INFORMAL (ADRS) METHODS OF SETTLEMENT OF DISPUTES]:

Since the Courts and other judicial authorities are overloaded with numerous cases, there is delay in disposal of such cases. Delay defeat justice. So, the judiciary had to evolve alternative methods of settlement of small disputes, where question of law or huge financial involvements are not there.

In the last two decades, much importance is given to alternate dispute systems, but it does not mean that the justice delivery system by Courts of law have failed. Even now, all complicated cases involving questions of law, lengthy

evidence, production of numerous documents as exhibits, examination of witnesses, etc., could be tried only in Courts of law and the alternate dispute system are not equipped with either enough manpower with legal acumen or other facilities for detailed enquiry and trial.

Therefore, the alternate dispute resolution systems are only supplementary and complimentary to the existing regular judicial system and can never be the substitute for it. Only small disputes can be quickly and without much expenses be settled through the alternate dispute resolution system. It has both advantages and disadvantages.

Salem Advocate Bar Association Vs Union of India 2010:

In this case, originally, the challenge was to declare the provisions of the Code of Civil Procedure (Amendment) Act, 1999 and Code of Civil Procedure (Amendment) Act, 2002, as unconstitutional.

However, the question of Judicial Impact Assessment is an important issue, which is covered by way of general direction given by this Court vide Order dated 7th November, 2006, as well as Order dated 5th January, 2007.

Judicial Impact Assessment (JIA) is a process whereby the government can anticipate the likely cost of implementing a legislation through the courts and help deliver timely justice to litigants.

The Supreme Court held that the Judicial Impact Assessment issue was not there in the original writ petition. In any event, the issue specifically needed statistical data, which exercise is required to be undertaken in an appropriate proceeding.

In the circumstances, keeping that issue open, the writ petition was disposed of. However, realising this structural imbalance in the judicial system, the Supreme Court gave a direction to the government to make JIA an essential component of the Financial Memorandum of legislative proposals.

The Government, in turn, appointed a task force to recommend a methodology and infrastructure for institutionalising JIA in the law-making process.

The committee headed by Justice N.J. Rao recently submitted its report to the government which is likely to come before the apex court for appropriate orders in the pending matter before it.

In all likelihood judicial administration in the country is expected to see some welcome changes of far-reaching significance in the near future.

E. NOTICE UNDER 80 CPC:

(Please Refer Page No. 234)

F. NEED FOR ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN INDIA:

1. ADRS deals with the situation of large number of pendency of cases in courts of India.
2. ADR plays a significant role in India by its diverse techniques.
3. Alternative Dispute Resolution System provides scientifically developed techniques to Indian judiciary and this helps in reducing the burden on the courts.
4. ADRS provides various modes of settlement including, arbitration, conciliation, mediation, negotiation and lok Adalat. Among the above, negotiation which is self-counseling between the parties to resolve their dispute have no statutory recognition in India.
5. ADRS is also founded on fundamental rights namely Article 14 (equality before law) and Article 21 (right to life and personal liberty).
6. The need for ADRS's is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble.
7. ADRS also strive to achieve equal justice and free legal aid provided under article 39-A relating to Directive Principle of State Policy(DPSP).
8. The need for ADRS is that it is an inexpensive and speedy remedy and hence disputes can be easily settled.

9. The procedure adopted in ADRS is flexible. The civil court procedure contemplated by CPC and rules of Indian Evidence Act need not be strictly applicable in ADRS proceedings. So cases are quickly settled in ADRS.
10. The persons heading the ADRS need not be learned persons in law. Even technically qualified persons can head the ADRS proceedings.
11. There is not much publicity for ADRS proceedings. Confidentiality can be maintained in ADRS cases.

G. ADVANTAGES:

The following are the **advantages** of Alternative Dispute Resolution System:

1. Alternative Dispute Resolution System is held in private and hence there is no publicity. So, confidentiality is maintained.
2. The Alternative Dispute Resolution System are informal, as simple procedure is followed.
3. The Alternative Dispute Resolution System are relatively quick and hence there is no time delay.
4. The expenses of conducting conciliatory proceedings are minimum and very low when compare to Court proceedings.

5. Since there are no lengthy proceedings, as in trial in Civil Court, there is time and money saving.
6. In technical matters, the person conducting any of the Alternative Dispute Resolution System can be a technical person and hence his settlement is better than that of a Civil Court Judge.
7. Since there is consent by both the parties to the dispute, the settlement effected in the Alternative Dispute Resolution System is generally final and enforceable.
8. It is based on more direct participation by the disputants, rather than being run by lawyers, judges, and the State.
9. In most ADR processes, the disputants outline the process they will use and define the substance of the agreements. This type of involvement is believed to increase people's satisfaction with the outcomes, as well as their compliance with the agreements reached.
10. Most ADR processes are based on an integrative approach. They are more cooperative and less competitive than adversarial court-based methods like litigation.

H. DISADVANTAGES:

1. The person conducting the Alternative Dispute Resolution System may not be a legally qualified person and hence he is not as competent as of a Judge and hence his settlement may not have quality as that of a Judgement of a Court.

2. Since simple procedure is followed in Alternative Dispute Resolution System, there is high probability of injustice creeping in the proceedings and the settlement.
3. Some critics question the legitimacy of ADR outcomes, charging that ADR provides 'second-class justice'.
4. ADR encourages compromise. Compromise can be a good way to settle some disputes, but it is not appropriate for others. In serious justice conflicts and cases of intolerable moral difference, compromise is simply not an option.

I. SECTION 89 OF CPC - SETTLEMENT OF DISPUTES OUTSIDE THE COURT:(SPECIAL PROCEEDING - ARBITRATION, CONCILIATION, LOK ADALAT OR MEDIATION) (Sec. 89)

1. The Court may refer a case to Arbitration, Conciliation, judicial settlement (Lok Adalat) or mediation, if there is a possibility for settlement which is acceptable to the parties.

In such a case, the Court shall refer the case after formulating the terms of settlement and observation by the parties.

2. It is based on the principle that the parties should exhaust remedies provided under contract before going to the Civil Court directly.

Under Sec. 89, the Court is not compelled to refer cases for arbitration, but if there is a possibility of settlement by arbitration, the Court may refer such disputes for arbitration or conciliation.

3. The Court can exercise its jurisdiction under Sec. 89, only if there is chance of compromise between the parties.

If the defendant is willing to compromise, but the plaintiff is not and wants a decision in the suit on merit, then the Court cannot compel the parties to reach an amicable settlement outside the Court.

4. In all cases where the disputes are referred for Arbitration or Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for Arbitration or Conciliation were referred for settlement under that Act.
5. In all cases where the disputes are referred to Lok Adalat, the Court shall refer it as per the provisions of sub-section (1) of Sec. 20 of the Legal Services Authority Act, 1987 and the provisions of that Act shall apply to the dispute.
6. In cases where the disputes are referred for judicial settlement, the Court shall refer it to a suitable institution or person deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply.

7. In cases where the disputes are referred to mediation, the Court follows the prescribed procedure and effects a compromise between the parties.
8. If the parties do not arrive at a settlement in the above proceedings outside the Court i.e., through alternative dispute system, then the case is referred back to the Court which shall determine the case by regular trial of the suit in the prescribed manner.

J. ADRS IN CRIMINAL CASES:

In recent days, Alternative Dispute Resolution system is made applicable even to the criminal matters.

Doubts are expressed upon the application of ADR in criminal justice. In reference to the criminal justice, the term ADR encompasses a number of practices. These are not considered part of traditional criminal justice such as victim/offender mediation; family group conferencing; victim offender-panels; victim assistance programs; community crime prevention programs; sentencing circles; ex-offender assistance; community service; plea bargaining; school programs.

K. TYPES OF ADR IN CRIMINAL CASES:

Mediation is the '**most sought after form**' of ADR, where the issue of criminal justice is concerned. Mediation is followed in **anticipatory bail, small offences etc.**,

a. Plea bargaining:

1. Plea bargaining is a form of ADR, provided in CrPC **for deciding the punishment**. It is an **agreement** in a criminal case between the prosecution and the defence. Here, the accused **changes his plea from not guilty to guilty** in return for an offer by the prosecution or when the judge has informally made the accused aware that his **sentence will be minimized**, if the accused pleads guilty.
2. In other words, it is an **instrument of criminal procedure** which **reduces enforcement costs** (for both parties) and allows the prosecutor **to concentrate on more meritorious cases**.

b. Community Dispute Resolution Programmes (CDRP):

CDRP seek to **dispose of minor conflicts** that have not been disposed off and are clogging criminal dockets.

c. Victim-Offender Panels (VOP):

VOP developed as a result of the **rise of the victims' rights movement** in the last two decades and in particular to the **campaign against drunk driving**.

d. Victim Assistance Programs (VAP):

Established the **Crime Victim's Fund**, which is supported by all fines that are **collected from persons who have been convicted of offenses against the State**.

e. Private Complaint Mediation Service (PCMS):

It is prevalent in USA. It provides the **mediation as an alternative to the formal judicial process of handling criminal misdemeanor disputes between private citizens.**

f. Other forms of ADRS:

In USA, apart from the above programmes, mechanisms of sentencing circles, **ex-offender assistance, community service, school programs, and specialist courts** are also available.

These programmes point towards a gradual **shift from deterrence to reparation**, as a mode of criminal justice in some nations. In a nutshell, they show the application of **restorative justice.**

Criticism against the applicability of ADR in Criminal Disputes:

There have been **several criticisms** against the applicability of ADR in criminal disputes, which make ADR techniques **unlikely to succeed.** The victim-offender mediation considered to be **highly emotionally charged.**

Further, mediation is **argued to be successful** where there is a **moderate level of conflict.** Further, the offender may feel to be under **pressure to reach an agreement**, rather than genuinely seeking to repair the harm done.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *'Encouragement of alternative dispute resolution mechanism is a clear proof of failure of justice delivery system by the courts of law' - Discuss.*
2. *'The Alternative Dispute Resolution is not an alternative to the formal judicial system but only a supplement to it' - Comment.*
3. *What is meant by Alternative Dispute Resolution System? What are the alternative dispute resolution system presently available in settling disputes?*
4. *State the concept of Alternative dispute resolution system. What are the alternative dispute resolution system presently available in India.*
5. *Write Short Note on - Alternative Dispute Resolution System.*

