
**ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN THE
ECONOMIC DEVELOPMENT: *INSTANCES BETWEEN INDIA & USA***

by

Vanshika Dhoot

&

Samyak Jain

ABSTRACT

Indeed, disputes are the part of one's daily life but it is hardly possible to approach courts for each and every dispute. We have some alternative methods of solving the disputes which is commonly known as the Alternative Dispute resolution (ADR). ADR mainly embodies four mechanisms known as arbitration, negotiation, mediation and conciliation. The research article for the most part talks about the mechanisms included in ADR and how it plays a vital role in the economic development of the country. The researchers taking further the research discussed some of the instances of arbitration and negotiation between the largest economies in the world i.e., India and United States of America. The instances that took place between the two countries are in different aspects that are trade, defence, environment and climate. The instances mentioned above between the respective countries have a common goal to achieve economic development. The researchers while concluding their research shows how ADR plays a major role in the economic development of the country.

KEYWORDS: Alternative Dispute Resolution (ADR), India, USA and Economic Development.

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REVIEW OF LITERATURE

Paper Citation: Das, Deb Zyoti, Alternate Dispute Resolution (October 10, 2019). Available at SSRN: <https://ssrn.com/abstract=3516476> or <http://dx.doi.org/10.2139/ssrn.3516476>

This paper explains the basics of Alternative Dispute Resolution. The author describes arbitration, negotiation, mediation and conciliation. Also the paper connects ADR and international relations and the future for International Alternative Dispute Resolution.

Paper Citation: Tewari, O.P, The Arbitration & Conciliation Act with Alternative Dispute Resolution, 4th Edition(2005) Reprint 2007, Allahabad Law Agency, Faridabad

This article examines the evolution of Alternative dispute Resolution throughout the years in India and related all the arbitrary laws of England and India. Furthermore, the article gives a detailed analysis of the background of Alternative Dispute Resolution.

Paper Citation: Manoj K Singh, The Future of Arbitration in India: Strengthening the Alternative Dispute resolution, ET, April 17, 2021

This research work analyses about Arbitration and Conciliation Act,1996 and the UNCITRAL framework of laws. The research further talks about how India is the hub of arbitration and how arbitration is developing in today's world

Paper Citation: K Ravi Kumar, 'Alternative Dispute Resolution in Construction Industry', International Council of Consultants (ICC) papers, www.iccindia.org.

This paper describes the history of arbitration, how arbitration was prevalent in earlier days in the form of Panchayats. The author let the reader understand that how arbitration is an old age practice where some wise old men of the community perform such practice.

Paper Citation: Abraham, C, "Importance of Institutional Arbitration in International Commercial Arbitration", Symposium on Need for Speed: International Institutional Arbitration, Federation House, New Delhi, India, November 22, 2008

This article describes a type of arbitration which is institutional arbitration. Furthermore, the article states the importance of institutional arbitration in International Commercial Arbitration. The author in the article also talks about the need of institutional arbitration.

Paper Citation: Dr.Ujwala Shinde, Conciliation as an effective mode of Alternative Dispute Resolving System, 4 IOSR (JHSS)

This paper explains conciliation and states the importance and need of conciliation as a method of dispute resolution.

Newspaper Citation: Surendra Singh, Air India Moves US Court to prevent Devas demand for recovery of \$1.2 billion arbitration awards, The Times Of India (Jan 31, 2022, 02:27 IST)

The above mentioned news article briefs about a arbitrary case where Air India appeals in US Court against a banglore based startup and explains about each and every fact of the case.

Press release : India and US launch the Climate Action and Finance Mobilization Dialogue (CAFMD), ministry of environment, forest and climate change, 13sep, 2021 6:58 PM by PIB Delhi,

This press release is about a green partnership between India and USA. This news is about the deal related to the carbon emissions, the climate change and economic sustainment.

INTRODUCTION

As a matter of fact, misunderstandings and disputes are very common in day-to-day life and are nearly impossible to avoid while entering into a contract or deal. In these times when everyone's life is puzzled and also no one wants to invest a lot of time and money in dispute resolution. Here, Alternative Dispute Resolution mechanism comes into role, the methods included in the world-wide known acronym ADR makes it easy and feasible for people to resolve their disputes. In today's era when everyone is in hurry and doesn't want to get involved into time taking formal court proceedings then they opt for an informal, less expensive and expeditious justice. ADR is widely used because of its special feature of confidentiality. The pendency of court cases and damaged economic relationships drive people towards the process of Alternative Dispute Resolution (ADR) which is also known as External Dispute Resolution (EDR). Even Micro-small and medium industries and governmental deals/pacts are done with the help of tools of ADR. Looking into a broader use of the tools of alternative dispute resolution we can see that it also plays a major role in the international or we can say external relations of a country. Countries work and grow with each other in a cordial and peaceful manner but to achieve the goal of reciprocation of benefits, disagreement is also a factor. While building up a harmonious relationship government of the respected countries disagree in the view of protecting their national interests. Disagreement leads to disputes and conflicts and to resolve these conflicts nations opt for alternative dispute resolution. Alternative dispute resolution has its four arms which are: Arbitration, mediation, negotiation and conciliation and resolving the disputes in the matter of international affairs arbitration and negotiation play a vital role. Dispute is like a tumor the longer it takes to be resolved the worsened it get and to resolve the dispute expeditiously one has to skip the time taking court proceedings and dive in the alternative methods of resolving it.

ALTERNATIVE DISPUTE RESOLUTION AND ITS BACKGROUND

The word 'dispute' means 'disagreement,' and the word 'resolution' means "the action of solving something." Alternate dispute resolution is a form of agreement Alternative Dispute Resolution includes substitute methods of helping people/nations in this context to resolve legal problems before going to court or as directed by the court.¹ As the preamble of our constitution says that each and every citizen should be provided social, economic and political justice and also Article 39a ensures that the citizen of our nation enjoy free legal aid. Right to speedy trial is the basic right of a person and to ensure that one must experience inexpensive and speedy justice and for that government or the judiciary is also promoting the alternate ways of dispute resolution.

It was said by a historian from Britain that "arbitration was something which as an ordinary feature of the ancient Indian life and prevailed through all works and ranks of people to a much larger extent than what was prevalent in England."² Earlier in India when courts were

¹Das, Deb Zyoti, Alternate Dispute Resolution (October 10, 2019). Available at SSRN: <https://ssrn.com/abstract=3516476> or <http://dx.doi.org/10.2139/ssrn.3516476>

²Tewari, O.P, The Arbitration & Conciliation Act with Alternative Dispute Resolution, 4th Edition(2005) Reprint 2007, Allahabad Law Agency, Faridabad, pp. 2- 4

not there or there was no judiciary the disputes were resolved by an experienced old person or a group of experienced people. In those times, panchayats were formed to solve the problems of people. It is a myth that British people have given us the method of resolving disputes. The disputes resolved through someone experienced is the form of arbitration in the times when there were separate rulers in our country. The British people didn't only establish the courts or introduced the codes in our country one more concept came with them and that was the concept of alternate dispute resolution. We can see the instances of binding arbitration in the Bengal Resolution Act, 1772 and the Regulation Act, 1771.

In addition to that, at the time of British Rule section 312 to 327 of the code of civil procedure, 1859 talked about the arbitrary laws but later in 1882 these arbitrary provisions were repealed.

Furthermore, in the year 1899 with the influence of English legislation The Indian Arbitration Act, 1899 was sanctioned to introduce Alternative Dispute Resolution mechanism in India. The amendment of 1908 in CPC gave the power to the judiciary to refer to the ADR mechanism in section 89 read with second schedule. Later, The Indian Arbitration Act, 1899 was replaced by The Arbitration Act, 1940.

In the case of **M/S Guru Nanak Foundation v. M/S Ratan Singh & Sons**, it was held that the Arbitration Act, 1940 is unsuccessful to fulfil the motive of the provisions of act and it is making the court proceeding more complex.³

Finally, Arbitration as a method of alternative dispute resolution has been around for a long time. The Arbitration and Conciliation Act 1996 has been modelled on lines of the UNCITRAL (United Nations Commission on International Trade Law) framework of laws with the idea to modernize Indian arbitration law and bring it in line with the best global practices and also make India a global hub for arbitration.⁴

Alternative Dispute Resolution can be classified into four types:

- **Arbitration:**

Arbitration has a long history in India. In ancient times, people often voluntarily submitted their disputes to a group of wise men of a community, called the 'panchayat' for a binding resolution.⁵ There are two types of arbitration practices which are ad hoc arbitration and institutional arbitration. Ad hoc arbitration is very prevalent in India but institutional arbitration is still not making an impact on the arbitration industry.

Ad hoc Arbitration:

In Ad hoc arbitration no institution like ICC, LCIA, DIAC or DIFC gets involved, the parties have to ascertain all the aspects of the process of arbitration like the parties have to lay out the selection of the arbitrator, the procedure, the rules and every other aspect needed. The parties can also choose to work on the rules of any arbitrary institution without getting the

³M/S Gurunanak Foundation v. M/S Rattan Singh & sons, (1981) 4 SCC 634.

⁴Manoj K Singh, The Future of Arbitration in India: Strengthening the Alternative Dispute resolution, ET, April 17, 2021, <https://economictimes.indiatimes.com/small-biz/legal/the-future-of-arbitration-in-india-strengthening-the-process-of-alternative-dispute-resolution/articleshow/82114707.cms?from=mdr>

⁵K Ravi Kumar, 'Alternative Dispute Resolution in Construction Industry', International Council of Consultants (ICC) papers, www.iccindia.org, at pg2

institution involved. Also, if both the parties do not agree to the rules or the outcome or any other aspect of the procedure then they can opt for the institutional arbitration.

Institutional Arbitration:

In an Institutional arbitration any specific institution gets involved and takes over the arbitration process. Each institution has its own set of rules which provide a framework for the arbitration, and its own form of administration to assist in the process.⁶ Also, the dispute is arbitrated by a panel of arbitrators and not the institution itself.

- **Mediation:**

Mediation is the most preferred and thriving in alternative dispute resolution. In mediation two parties hire a mediator with common understanding. The mediator looks into the dispute and then suggest some options to resolve the dispute. The suggestions of the mediator are not binding in nature and its all upon the parties whether they want to go with the options suggested by the mediator or not. Parties voluntarily choose mediation as the option and also in some provisions related to mediations known as the Alternative Dispute Resolution and Mediation Rules 2003 (ADR Rules) and many other legislations talk about choosing mediation as a process of dispute resolution. In some cases, court directs the parties to go through the mediation process. Earlier, mediation was only used for domestic disputes (disputes between husband and wife or separation of brothers and sisters, etc.) but nowadays mediation is used by the commercial or corporate industry on a large extent.

- **Negotiation:**

In negotiation the parties discuss, compromise and comes on an outcome feasible to each other in order to resolve the dispute. It engages only the parties interested and they structure the procedure as per their needs. If we see all the types of Alternative Dispute Resolution out of every procedure the procedure of negotiation is the most flexible and party oriented. In comparison with arbitration and mediation, negotiation does not involve any third governing party. Also, negotiation can be done with two or more parties unlike mediation and arbitration. As mentioned before there is no third party is involved in this process the outcomes of negotiation are mostly positive.

- **Conciliation:**

Conciliation means „the settling the disputes without litigations“. It is a process in which independent person or persons are appointed by the parties with mutual consent by agreement to bring about a settlement of their dispute through consensus or by using of the similar techniques which is persuasive.⁷ Conciliation is a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of a conciliation board an arbitrator”.⁸

ROLE OF ADR IN ECONOMIC DEVELOPMENT

⁶ Abraham, C, “Importance of Institutional Arbitration in International Commercial Arbitration”, Symposium on Need for Speed: International Institutional Arbitration, Federation House, New Delhi, India, November 22, 2008

⁷Dr.Ujwala Shinde, Conciliation as an effective mode of Alternative Dispute Resolving System, 4 IOSR (JHSS) PP 01, 01 (2012).

⁸Ibid.

India being a nation full of natural resources and having a diversified major economy is the centre of attraction for national and international investors. On the path to become a developed country our nation is expanding economically and building international relations. Also, the country offers a vast legal market and a sturdy dispute landscape but the slow and time taking court proceedings discourage the international investors to get involved in the legal procedures. Seeing into the issue Alternative Dispute Resolution plays a vital role in our economic development. Alternative Dispute Resolution is a feasible option for the commercial industry. The most opted ADR mechanisms are arbitration and negotiations.

Alternative Dispute Resolution plays a major role in building International Relations. As dispute is an inevitable side of international relations. To a feasible extent the countries maintain relations with each other in a coordinated and peaceful manner but the dispute arises between the countries in order to safeguard its national interests. Nowadays, these disputes are resolved with the help of ADR.

As ADR offers multi-dimensional mechanisms to resolve the dispute which leads to sustainment of economical relations and ultimate satisfaction.

INSTANCES OF ADR BETWEEN INDIA AND USA

As mentioned above that the mechanism of ADR plays a role in forming international relation too, some instances of ADR (arbitration and negotiation) being a part of international relations are discussed below:

- **Trade:**

Adhering to the fact that India and USA are world's largest economies, in 2018 these two countries entered into a trade deal after years of negotiation. Once the later president of USA, Mr. Donald Trump addressed India as the "tariff king" because of the high import duties imposed by India. In the list of trading partners of India, the position the top two positions are acquired by USA and China respectively.

In accordance with the commerce ministry's data US transcended China in becoming India's topmost trading partner. In 2021-22 the exports and imports increased in comparison with the preceding fiscal year. The expansion of the US-India economic relations is a result of negotiation which held between both the countries in the meeting for bilateral trade.

"The United States and India are negotiating on a wide range of trade concerns. India was negotiating on the dispensation of high duties on the products of steel and aluminium which the country imports from USA, recommencement of the export benefits under GSP. In September 2020, the Commerce and Industry Minister Piyush Goyal stated that all the disputes which were there before entering into the trade deal between India and USA were settled and the trade deal will be signed in the near future but the deal didn't materialize. At the time of Joe Biden's administration, the trade relations are not that much tensed. Still, both of the countries are negotiating on some of the issues which are listed below:

1. India's tariff scheme:
2. Tariff on steel and aluminium
3. Retaliatory tariff
4. Direct Service Tax
5. U.S. Generalised System of Preferences (GSP)

6. Services
7. Agriculture
8. Investment

- **Defence:**

The two nations have signed defence contracts worth more than \$20 billion since 2008. India is aspiring for more technology-sharing and negotiating for co-production initiatives, while the United States desires more reforms in India's defence offsets policy and higher FDI caps in its defence sector.

- **Instances of disputes regarding Arbitration Awards**

Air India Moves US Court to prevent Devas demand for recovery of \$1.2 billion arbitration awards:

Air India has recently appealed in a US Court against Devas Multimedia, arguing that a recent change in ownership of airline prevents demands for recovery of arbitration awards (\$1.2 billion) given to the Indian startup by international courts over the cancellation of a satellite deal with Isro's commercial arm Antrix.⁹ Devas Multimedia, a Bengaluru based company is right now under the dominance of a liquidator and is going through the liquidation proceedings. It's on the district court of New York that either it disposes the case or ascertain the remaining issues of the case filed by the airlines. Matthew McGill, who is the counsel for Devas Multimedia, stated that the company has already seize hold of assets reasonably valued at more than \$ 30 million owned by Air India. After the decision of Supreme Court of liquidating the company, the Devas counsel Matthew McGill said "The decision by the Supreme Court does not change anything also the court cannot rewrite the facts" and he also said "A better approach for the Modi Government would be to return to the negotiating table, and continue with the settlement talks".¹⁰

- **Environment:**

There were on and on deliberations regarding the environment, sustainable development and the economic development by the two of three largest countries responsible for the highest carbon emission. India ranked third after U.S.A and China in the countries responsible for the highest carbon emission. After all the deliberations U.S.A and India launched the "Climate Action and Finance Mobilization Dialogue (CAFMD)". The CAFMD is set in motion at the leaders' summit on climate in April 2021 by Prime Minister Narendra Modi and President Joe Biden. Speaking at the launch, Shri Bhupendra Yadav (Union Minister of Environment, Forest and Climate) said that the dialogue will not only strengthen India-US bilateral cooperation on climate and environment but will also help to demonstrate how the world can

⁹Surendra Singh, Air India Moves US Court to prevent Devas demand for recovery of \$1.2 billion arbitration awards, The Times Of India (Jan 31, 2022, 02:27 IST)http://timesofindia.indiatimes.com/articleshow/89231193.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst.

¹⁰Ibid.

align swift climate action with inclusive and resilient economic development, taking into account national circumstances and sustainable development priorities.¹¹

After the launch a bilateral meet held where both the countries discussed a wide range of climate issues relating to COP26, Climate Ambition, Climate Finance, Global Climate Initiatives as well as International Solar Alliance (ISA), Agriculture Innovation Mission for Climate (AIM4C).

CONCLUSION

The time has gone where we resolve a dispute with that time taking and expensive traditional approach, now as per the modern era and advanced mechanisms of dispute resolution we can grow so much economically. Rather than sticking to the old litigation procedures we can opt for alternative dispute resolution mechanism in order to achieve expeditious justice. We can practice ADR in mainly four forms as mentioned above. Arbitration and negotiation are two most commonly practised forms of ADR. Nowadays, ADR plays a vital role in the business community whether its national or international. The procedure of ADR is so feasible and beneficial that people should now put a clause of alternative dispute resolution in the agreements before entering into any contract. The ADR laws should be now more strengthened in an effort to achieve better trade relations which will ultimately contribute in the economic development of the countries. As per the study there are many instances where we can use negotiation to built strong international relations and use arbitration to resolve the disputes between the countries.



Indian Journal of Contemporary Legal and Social Issues

¹¹India and US launch the Climate Action and Finance Mobilization Dialogue (CAFMD), ministry of environment, forest and climate change, 13sep, 2021 6:58 PM by PIB Delhi, <https://pib.gov.in/PressReleasePage.aspx?PRID=1754590>.