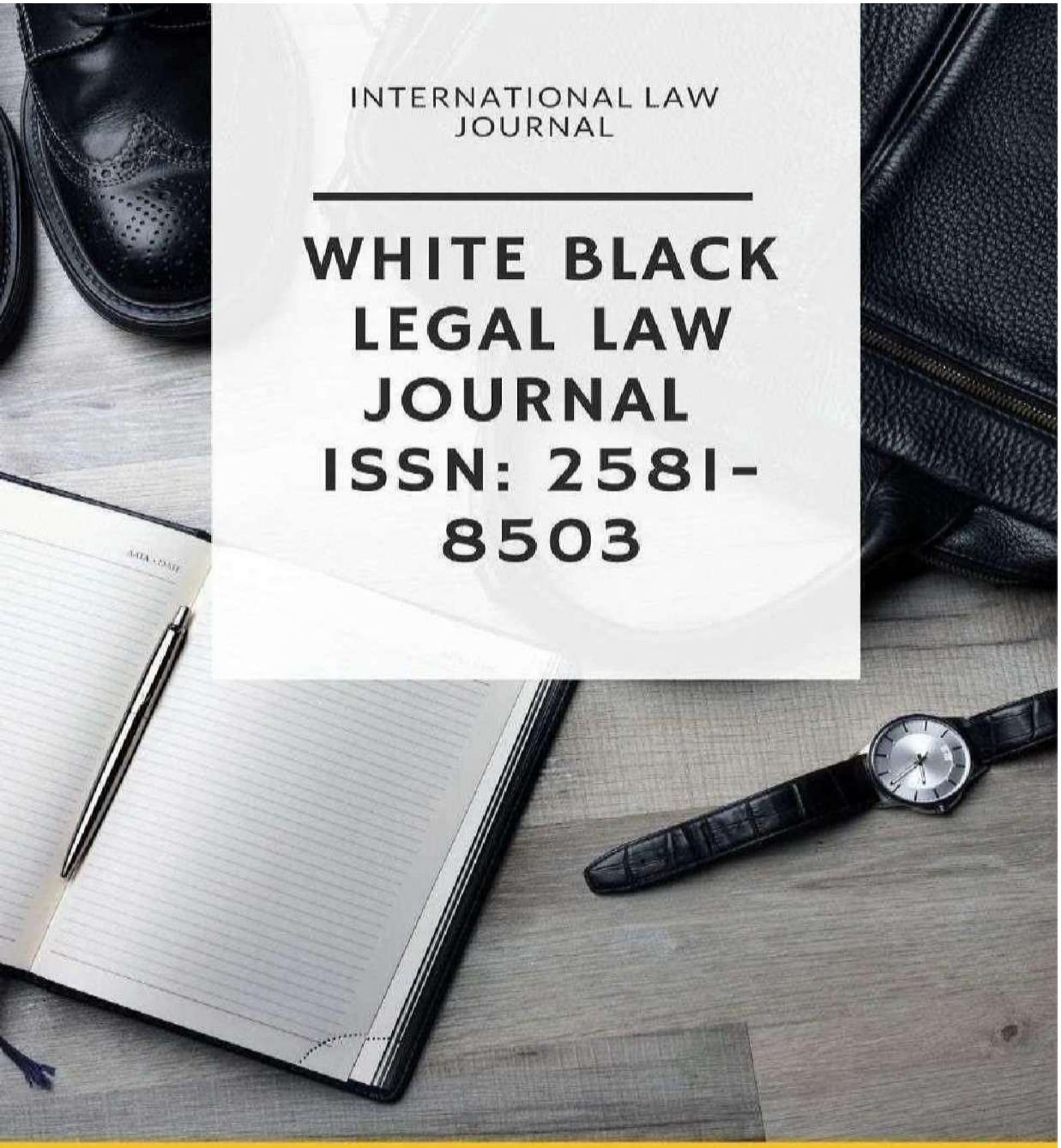

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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COMPARITIVE ANALYSIS: HOW IS ALTERNATIVE DISPUTE RESOLUTION BETTER THAN TRADITIONAL METHODS OF DISPUTE RESOLUTION?

AUTHORED BY - DAYA ANN THOMAS
Student
School of Law
CHRIST (Deemed to be University)

ABSTRACT

One of the main purposes of human interaction is dispute resolution for living well in a society. Traditional methods like litigation might be lengthy and often tiring for which we need to evolve to new methods like mediation, negotiation and arbitration. The cost and approach towards the cases in tradition may also be a burden. This research paper aims to provide insights on how alternative dispute resolution methods may be approachable and attentive. This paper intends to communicate the definitions of negotiation, mediation and arbitration. Here it is also found how effective the alternate dispute resolution can be when compared to the traditional ways like litigation. It is also discussed about the fairness, its availability and capability to enter and exit the proceedings, the nature of the process, presence of external help and its confidentiality, and certain formal and informal norms, rules, regulations and also its opportunity to recognize the parties and the values they possess.

As we have heard "*Justice delayed is justice denied"* and *"Justice hurried is justice buried".* There is a very thin line between delayed and hurried justice where the process of alternative dispute resolution plays its most crucial role. These processes are an emerging trend in the era coming up with varied amicable, reliable, inexpensive and expeditious resolution of conflict. Through this, we aim to prove that alternative dispute resolution is better and more effective than traditional means of dispute resolution.

WHAT IS ADR?

The resolution of disputes outside court includes various techniques of alternative dispute resolution in which there are no ordinary court proceedings and the final decisions are not to

be made by the judges but there will be a third who acts as a mediator who takes a neutral stand on the issues raised and helps both parties to resolve the conflict in a very peaceful and structured manner. These days, you can see high usage of such dispute resolution mechanisms as its informal and less complex and less expensive and provides a sense of clarity. In general, ADR does not have any specific accepted or defined structure to carry out its proceedings. But it does have some fundamental principles and values like confidentiality and atmosphere of acceptance which is to be followed through out the session.

ADR is a set of practices and techniques that aims to:

1. Permit legal disputes to be resolved outside the court for the benefit of the disputants;
2. Reduce the cost of conventional litigation and the delays to which it is ordinarily subject;
3. Prevent legal disputes that would otherwise likely be brought to the courts[1]

While choosing alternative methods of dispute resolution, parties would like to have a form of private resolution where their major concerns will be personal and particular. The rudimentary part of a problem or dispute arises when the one against whom the complaint is raised has not satisfactorily addressed the issues for which the complainant is not pleased. In ADR, it often addresses the issues raised by both the parties and conclude into an amicable solution favoring anyone. While in traditional legal system, only one of the parties are happy with the given verdict and that may even lead to a sense of grudge and enmity between the parties.

CORE CONCEPTS

People has been always in search of various amicable solutions to the aroused disputes throughout the history till date. It is not limited to people but across all the nations, organizations, and cooperations, where they will have their own methods of dispute resolution. Even though Alternative Dispute Resolution can be used for various dispute settlements, it is highly advised to use them in informal settings like family disputes, private contracts, internal problems in an organization.

At the primary level, the parties may use primary methods like negotiations, bargaining, advise of a third party i.e., mediator to resolve the matters. At the secondary level, the parties select a

[1] Jethro K. Lieberman & James F. Henry, *Lessons from the alternative dispute resolution movement*, 53 The University of Chicago Law Review 424 (1986).

method of hybrid resolution which may include the med-arb, where a verdict is given after the negotiation. Mini trials is another way of putting it across where they attract evidences and grieved parties. At this level, parties often take advises from experts, lawyers, look thoroughly through the evidences submitted and be prepared. The process and methods of ADR are recognized through its nature and control over the issues and the extend of formality of the proceedings.

These methods of ADR include ‘arbitration, mediation, conciliation and negotiation.

Negotiation

Negotiation can be defined as a resolution of a legal dispute by the aggrieved parties on their own, without the aid of a certified mediator. While the outcome of negotiation depends on the quality of the parties of the dispute and, it also depends the methods and techniques used for communicating and negotiating. It is highly depended on the abilities of one to negotiate and communicate what they want out of the while process and being successful. Negotiating power is not meant for everyone so the success rate of negotiation is often questionable. Also there is high chances of parties being dishonest which will not help in giving a favorable outcome.

Judicial Conciliation

Judicial conciliation is when a neutral party facilitates a settlement between the parties of dispute. The judicial conciliator’s role is to guide the parties to arrive at an amicable solution. This the most preferred form of ADR over litigation due to several advantages. It is way quicker and less expensive than a full-fledged trial proceeding. It enables the parties to have complete control over the situation whether to settle or carry on with the proposed solutions. Most importantly it ensures that parties have good relationships with each other towards the end of the process. Judicial Conciliation is often preferred when there is a question of confidential. Always the effective participation of the conciliator helps to come up with creative solutions which can help the parties to interpret and raise demands beyond their thinking capacity.

Mediation

Mediation is a voluntary process where a neutral third party, known as the mediator, facilitates communication between parties in dispute to help them reach a mutually agreeable solution. Unlike litigation, which offers a formal legal process, mediation offers a more informal and flexible approach to resolve conflicts. The main key principles are voluntariness, neutrality,

confidentiality. Some of the benefits of mediation includes efficiency, preservation of relationships and creative outcomes.

Arbitration

Arbitration is another form of dispute resolution where there will be an arbitrator present, who will be authorized to make a final decision binding on the parties. The grounds for arbitration rounds must be set by both the parties on a voluntary basis. The procedures and methods used depends on the parties and the arbitrator and some basic principles includes impartiality and independence of the arbitrator and zealous nature of the parties. The zeal of the parties to each other is the key and fun of this method of alternative dispute resolution. Arbitration at some level has similar principles to the courts, such as deciding a case may rest upon the evidences submitted.

But there can be a clear demarcation on how Arbitral methods are distinguished from traditional court proceedings:

- Freewill of the parties
- Confidentiality
- Willingness to cooperate
- Mutual respect and value to each other
- Neutrality, impartiality of the arbitrator

COMPARITIVE SYSTEM OF THE ADR INDICATORS

Typical indicators	Negotiation	Judicial conciliation	Mediation	Arbitration
Free entrance to the ADR procedure	+	+	+	+
Free exit from the ADR procedure	+	+	+	+
Venue of the procedure out of court (public, private)	+	-	+	-
Private nature of the procedure	+	-	+	-

Conciliatory nature of the procedure	-	+	+	-
Mandatory participation of a third party along with the parties to the dispute	n/p	-	+	+
Mandatory participation of a third party along with the parties to the dispute (intermediary) aimed at assisting the parties in resolving the dispute without a court decision	n/p	-	+	-
The intermediary is not authorized to make a binding decision for the parties	n/p	-	+	+
The intermediary is not authorized to make a binding decision for the parties	n/p	-	+	-
The final decision on the case is based on formal and informal norms and rules	+	-	+	-
The final decision on the case is made exclusively by the two parties, without participation of a third party (judge,	+	-	+	-

conciliator, mediator, arbitrator				
The case did not go to court	+	-	+	-
The agreement concluded by the parties (conciliation, mediation, arbitration) is the final act of dispute resolution	n/p	-	+	-
The intermediary gets a fee from the parties to the dispute	n/p	-	+	+
The intermediary is required to have legal education	-	+	-	+
Mandatory execution of the final decision	-	+	-	+
Low time-consuming expenses on the dispute resolution procedure	+	-	+	-

(+) – yes, (-) – no, (n/p) – not provided[2]

COMMUNICATION

The main reason for arousal of dispute is lack of communication which maybe caused due to lack of trust. ADR methods encourage to build a sense of trust and willingness to carry forward the issue in a sensible manner. Some ground rules are set by both the parties and the mediator in the very beginning of the session which has to be abided and respected. Whereas in litigation, we have to follow strict court rules where there is no room for individual virtues. The presence of a neutral advisor, often called a mediator helps a lot in bringing amicable solutions favoring

[2] Oksana Melenko, Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis, 7 EUR. J. L. & PUB. ADMIN. 46 (2020).

meeting the demands of the ends without incurring much losses by both parties. As there is no judge present in ADR mechanisms, the case is presented to the representatives with the authority to settle. More over whatever said and heard during the proceedings will be confidential and the parties refrain from disclosing the details to any outsider. Mediation allows to learn about their intimate facts of the parties which they may not be fine in sharing in a courtroom.

SUCCESS OF ADR

It is often seen that ADR mechanisms are more successful and supported than court judgements. It can be understood through various scenarios:

Firstly, all the litigation methods are characterized by a 'winner take all' attitude. Here one of the parties must take all the burden and liability only through which the issue can be resolved. ADR, on the other way, participants are not restricted to any ends and can be open which will lead to more possible better solutions. These creative solutions are often better and more novel than any courtroom-imposed decisions. Suppose if there is breach of trust in a contract by both parties at some point. ADR mechanisms will let them to negotiate and renegotiate for the claims, while the court could have awarded only one of the parties the benefit.

Secondly the direct involvement of the parties can often resolve the issues on the best interest rather than the self interest of a hired lawyer. ADR is also structured but inclusive of changes according to the interest of the parties.

Thirdly, ADR mechanisms permit more realistic approach towards whether the offers and counter offers are in good faith. Where as in litigation, the litigants often bluff on unwanted information which will lead to vialing away the precious time of the court.

Fourth, the use of a private neutral permits to analyze data and concepts involved in the dispute whereas the judge in a court may not be interested in looking into such information. The private neutral may also be chosen on the fact whether he is knowledgeable of the presented facts and data.

According to the Supreme Court, interim remedies may be approved in order to facilitate the arbitration process rather than to thwart it. The court additionally concluded that the arbitral

tribunal, not the Court, should handle resolving the dispute's core issues; the Court cannot do so under the pretense of awarding an intermediate measure. In this instance, the questions were: Can a disagreement between parties be brought to arbitration? and how should an arbitration clause be worded in a contract? In this instance, the Supreme Court decided from voicing an opinion on the merits of the disagreement. If the Court is to ascertain the parties' intention, it must do so by interpreting the phrases in a clear, broad, and unrestricted manner. In this instance, it was further decided that the court's authority to issue an interim injunction is limited to "for the purpose" of arbitration proceedings, and that the court should not impede them.[3]

Regarding the unique features of an arbitration agreement, the Court further noted in the aforementioned case that an arbitration agreement is a contract between the parties stating that, in the event of a disagreement, the matter will be resolved by an arbitrator chosen by the Court, an umpire chosen by them, or both. The Supreme Court has also noted that it must be determined if the case's facts and circumstances provide a clear determination of the existence of an agreement to submit the dispute to arbitration. In turn, this is dependent upon the parties' desire to be gathered from the relevant documents and surrounding circumstances.[4]

NEW YORK CONVENTION - "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" (1958)

1. Recognition and Enforcement of Arbitral Awards (Article III)

   Article III mandates that each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. This reduces the risk associated with arbitration by ensuring that awards are respected and enforced across borders, making arbitration a reliable alternative to litigation.

2. Arbitration Agreements (Article II)

   Article II requires contracting states to recognize written agreements where parties undertake to submit to arbitration all or any differences that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. Courts of contracting states are required to refer the parties to arbitration when there is

[3] J&K State Forest Conservation *vs.* Abdul Karim Wani, AIR 1989 SC 1498
[4] M. Dayanand Reddy v. A.P. Industrial Infrastructure Corpn. Ltd., AIR 1993 SC 2268

an existing arbitration agreement, preventing litigation over issues that are subject to arbitration agreements.

By facilitating the enforcement of arbitral awards, the New York Convention promotes the use of ADR methods over traditional litigation, especially in cross-border disputes where enforcement of court judgments can be complex and uncertain.[5]

UNCITRAL Model Law on International Commercial Arbitration

1. Recognition of Arbitration Agreements (Article 7)

   The Model Law recognizes arbitration agreements in writing, ensuring that parties' intentions to arbitrate are clear and enforceable. It also allows parties to decide on the form and content of their arbitration agreement, promoting flexibility and autonomy in choosing arbitration as their preferred method of dispute resolution.
2. Recognition and Enforcement of Arbitral Awards (Articles 35-36)

   The Model Law ensures that arbitral awards are recognized as binding and enforceable, similar to court judgments. Recognition and enforcement of awards can only be refused on limited grounds, such as incapacity of the parties, invalidity of the arbitration agreement, or if the award is contrary to public policy. This provision aligns with the New York Convention, facilitating the global enforceability of arbitral awards and promoting arbitration as a reliable ADR method.
3. The Model Law emphasizes the importance of party autonomy in the arbitration process, allowing parties to customize procedures and select arbitrators with relevant expertise. By limiting judicial intervention in the arbitration process, the Model Law ensures that disputes are resolved efficiently and without unnecessary delays.[6]

INDIAN CONTEXT

The Arbitration and Conciliation (Amendment) Act, 2015[7], introduced timelines for the completion of arbitration proceedings, such as the mandate under Section 29A to complete arbitration within 12 months, which can be extended by another 6 months with the parties' consent.

[5] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, https://www.newyorkconvention.org
[6] Model Law on International Commercial Arbitration, 1985, UNCITRAL
[7] Arbitration and Conciliation (Amendment) Act, 2015, ACT 33 OF 2015

While Court cases in India can take years or even decades due to a backlog of cases and procedural delays. The Indian judiciary faces significant delays due to the high volume of cases and limited resources.

Under Section 42A of the Arbitration and Conciliation Act, 1996, specifically mandates the confidentiality of arbitration proceedings, providing legal support for private dispute resolution. There is no legal provision for confidentiality in litigation, making it less attractive for parties concerned about privacy.

The Arbitration and Conciliation Act, 1996, allows parties significant autonomy to decide the procedure under Sections 19 and 20, promoting flexibility and control. While in judicial process, the court controls the litigation process, with strict adherence to procedural and evidentiary rules, limiting the parties' ability to influence the process.

The Mediation Rules under the Civil Procedure Code (CPC) Section 89 encourage mediation and settlement, promoting a less adversarial approach to dispute resolution.

The outcome of court judgments is typically win-lose, which can deepen conflicts between parties. Under the Arbitration and Conciliation Act, 1996, arbitration awards are enforceable in the same manner as a court decree under Section 36.

ARBITRATION IN SPORTS LAW

There is a rising trend of globalization and commercializing all around us which is also reflected in the field of sports. This has also given a rise to disputes among each of the sports which made it necessary for a dispute resolution forum. Each of the nations have their own cultural and philosophical way of dealing with every activity. Every nation is unique in terms of rules, legal systems, principles, jurisprudence, when the discussion is about sports law which is seen as the pride and color of nation adds up to the value and enthusiasm of its citizens. All the differences of opinions must come in accordance when we represent it in an international forum. All the forces join their hands and recognize each of their values which forces them to find a unifying body to resolve all the aroused disputes across the nations. This is how the Court for Arbitration for sports emerged.

CONCLUSION

Hereby we can conclude by stating some points like, all modes of alternative dispute resolutions support and frame each other. Both parties take each step forward on a mutual agreement and respect. There is no obligation for either party at any time of the proceeding to continue this forward which enables the parties to choose ADR mechanisms over litigation. Even after the first stage, i.e., negotiation attempts to be failed, parties can always move forward to other methods of ADR like mediation, or arbitration. Moreover, it is clearly seen that Alternative dispute resolution mechanisms have more success rate than the traditional means of resolution. Litigation is a tedious and lengthy process whereas ADR is steady and fast. ADR mechanisms are known to effective because of its low cost and peaceful approach to parties.