

ADR

Modern Trend and Best Practices

Foreword by

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Date: 06 Feb 2024

Foreword

It is with great pleasure that I introduce this insightful compilation, *“ADR: Modern Trend and Best Practices.”* In a world marked by rapid change, the field of Alternative Dispute Resolution (ADR) has not only adapted but also flourished, becoming an integral aspect of how societies, businesses, and individuals approach conflict resolution. This book, expertly curated by the editors, brings together a wealth of knowledge, diverse perspectives, and practical insights from academicians, practitioners, and scholars in the realm of ADR. The collective wisdom contained within these pages offers a comprehensive overview of the contemporary trends and best practices that define the landscape of ADR today. As we navigate an era marked by technological advancements, cultural diversity, and an increasing interconnectedness, the relevance of ADR in providing efficient, fair, and innovative dispute resolution mechanisms cannot be overstated. This compilation explores the cutting-edge applications of ADR across various domains, providing readers with a deep understanding of its transformative potential. Each chapter stands as a testament to the adaptability and resilience of ADR methodologies in addressing the challenges posed by a rapidly changing world. From the exploration of online dispute resolution to the examination of ethical considerations, each chapter in this book contributes to a holistic understanding of ADR. It is my hope that this collection serves as both a valuable resource and an inspiration for scholars, practitioners, students, and anyone interested in the evolving dynamics of dispute resolution.

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Quest for Attaining Sustainable Society through Alternative Dispute Resolution: Effectual Mechanism for Sustainable Justice

Dr. Mirza Juned Beg*

“Change means movement. Movement means friction. Only in the frictionless vacuum of a nonexistent abstract world can movement or change occur without that abrasive friction of conflict.” -Saul Alinsky

Abstract

This book chapter provides a comprehensive exploration of the pivotal role of Alternative Dispute Resolution (hereinafter referred as ADR) in the pursuit of a sustainable society. ADR, encompassing methods such as mediation and arbitration, is examined not only as a means of resolving conflicts but as a transformative force contributing to sustainable justice. The chapter critically analyses the theoretical underpinnings of ADR and its practical applications in diverse societal contexts. By adopting an interdisciplinary approach, it navigates through the intricate intersection of ADR, sustainability, and justice, shedding light on how these elements synergistically contribute to societal development. The discourse within the chapter goes beyond conventional views of ADR, emphasizing its potential to foster lasting societal changes. It explores how ADR mechanisms can promote not only dispute resolution but also contribute to broader goals of sustainability, equity, and ethical governance. By unpacking the multifaceted relationship between ADR and sustainable society, this chapter aims to provide a nuanced understanding for scholars, practitioners, and policymakers engaged in the quest for holistic and enduring justice.

Keywords: *Alternative Dispute Resolution (ADR), Sustainable Society, Effectual Mechanism, Sustainable Justice, Societal Development.*

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Introduction

The sky is the limit when it comes to resolving a sustainability dispute. It's arduous to find agreement among countries on sustainable issues. But with advent of alternative dispute resolution, it might be possible. Recent years have seen a major influence on the environment and a corresponding growth in environmental challenges due to an ever-booming global population. With the significantly varied court systems of nations throughout the world, amicable dispute resolution in environmental matters seems like a far-fetched ideal. As a result, there is a need to rethink dispute resolution processes in order to attain the Sustainable Society.

Peace, justice, and robust institutions are necessary for a sustainable society, and the United Nations Environmental Programme (hereinafter referred as UNEP) has considered alternative dispute resolution in environmental disputes as part of access to justice to help achieve these goals. Like any other system, ADR faces obstacles on its path to widespread use. Furthermore, as a type of restorative justice, it is important to consider the ethics of environmental ADR.

As a first step by expanding, Section 2(f) of the Arbitration and Conciliation Act establishes the scope of international arbitration, which includes any person, corporation, or foreign government. The International Chamber of Commerce (hereinafter referred as ICC) on Arbitration and ADR task group made a concerted effort in November 2019, by disseminating a study on 'Resolution of Climate Change Related Disputes.' The authors' goal in writing this study is to explore and balance the environmental ADR's recognized advantages and disadvantages while putting a particular emphasis on sustainable development. After completing the research with deduced and intended objectives, the authors also want to evaluate the efficacy of ADR

on a national and worldwide scale and highlight the applicability of the mechanism in the same domain.

Concept of Alternative Dispute Resolution

ADR is the name given to a pool of mechanisms and methods designed to enable the settlement of legal issues outside of the judicial system. It is often understood to include arbitration, conciliation, mediation, and other “hybrid” methods wherein a neutral third party assists in resolving legal problems in lieu of formal adjudication. There are several reasons why these alternatives to adjudication are supported. In other words, the term ADR refers to any non-traditional conflict resolution methods, including but not limited to arbitration, mediation, conciliation, and negotiation. According to some, potential advantages of ADR include lower transaction costs since ADR procedures can be quicker and less expensive than traditional court proceedings; better ex post compliance with the terms of the resolution; and the creation of resolutions that are more in line with the parties’ underlying needs and interests.

Alternative Dispute Resolution as a part of Access to Justice

In order to create a more adaptable, mutually agreeable, timely, and cost-effective approach that nevertheless provides a legally enforceable resolution while being more accommodating to the stakeholders, these mechanisms deviate from the court adjudication procedure. Therefore, before applying ADR to challenges facing in maintaining sustainable society, it is crucial to comprehend each of its processes. The idea of sustainable justice is included in the widely acknowledged fundamental right of access to justice. Being able to seek and achieve redress for complaints via both official and informal institutions gives individuals and communities the opportunity to seek and obtain justice in concerns

of natural resource governance. An important instrument in the hands of the aggrieved in a rights-based approach to environmental sustainability is access to justice. At the municipal, national, regional, and international levels, there must be more access to sustainable justice. The best method to secure access to justice in this multi-tiered system would be to provide stakeholders ADR procedures at every level, which would be advantageous to both the State and the citizen.

International Norms and International Institutions Supporting ADR Mechanism for Sustainable Society

International laws and international institutions support ADR as a means of promoting sustainable societies. ADR is a process by which disputes are resolved outside of traditional court proceedings, often through mediation, arbitration, or negotiation. International laws, such as the *United Nations Convention on International Settlement Agreements Resulting from Mediation, 2002* provide a framework for the use of ADR in cross-border disputes. This convention encourages parties to consider mediation as a means of resolving their disputes and provides a framework for the recognition and enforcement of settlement agreements resulting from mediation. ADR is an effective method of resolving disputes without resorting to traditional legal processes. International treaties and conventions on ADR play a vital role in maintaining a sustainable society.

Some of the significant treaties and conventions are:

- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958**

The New York Convention is a widely recognized international treaty that provides for the recognition and enforcement of foreign arbitral awards. Its chief objective is to craft recognition of the

rising significance of international arbitration as a way of resolving disputes involving businesses internationally. The main goal of the Convention is to guarantee that international and non-domestic arbitral awards will not be subjected to discrimination. To that end, the Parties are required to make sure that these awards are acknowledged and, for the most part, enforceable in their respective jurisdictions in the same manner as domestic awards. By requiring courts to refuse parties access to court when they violate their agreement to send the case to an arbitral tribunal, the Convention also aims to oblige Parties' courts to give full effect to arbitration agreements and to create sustainable society.

AD • Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred as CEDAW) is a United Nations treaty that aims to eliminate discrimination against women. The convention recognizes the importance of using ADR methods to resolve disputes related to gender inequality. The Convention establishes the framework for achieving gender parity by guaranteeing women's equal access to and opportunities in public and political life, including the ability to vote and run for office as well as in the areas of employment, healthcare, and education. States parties commit to implementing all necessary actions, including exceptional temporary measures and laws, to ensure that women can exercise all of their fundamental freedoms and human rights. This Convention is the first human rights agreement that protects women's freedom to procreate and name, culture and custom as major determinants of gender roles and family dynamics. It upholds the rights of women to obtain, alter, or keep their nationality, as well as the nationality of their offspring. Additionally, states parties commit to taking necessary action against all types of women's exploitation and trafficking. In the

way this Convention provides the mechanism to uphold sustainable society.

- **UN Convention on Biological Diversity (CBD), 1992**

Convention on Biological Diversity (hereinafter referred as CBD) is an international treaty that aims to protect biodiversity and promote the sustainable use of natural resources. The convention recognizes the importance of using ADR mechanisms to resolve disputes related to biodiversity and sustainable development. Three worldwide environmental accords, including the CBD of the United Nations, resulted from the 1992 Rio Earth Summit for creating better sustainable society. Every party must have a national biodiversity strategy and action plan in accordance with the CBD. In order to achieve the Sustainable Development Goals and keep global warming to 1.5 degrees, nature is essential. We must adopt a strong global biodiversity framework that tackles the main causes of nature loss in order to protect both the planet and our own health and wellbeing.

- **International Bar Association (IBA) Guidelines on Conflict of Interest in International Arbitration, 2014**

The International Bar Association (hereinafter referred as IBA) Guidelines provide a framework to address conflicts of interest in international arbitration. The IBA Guidelines on Conflicts of Interest concentrate on the circumstances under which an arbitrator ought to decline appointment and when they ought to reveal any conflicts of interest. They often don't mention an arbitrator's possible disqualification in detail. Nevertheless, although not being legally binding, the Guidelines have gained a great traction in light of the growing number of cases challenging arbitrators and their decisions due to arbitrator's bias or conflicts of interest. Courts and arbitral tribunals typically see the Guidelines as offering pertinent standards for determining the impartiality and independence of a challenged arbitrator.

- **United Nations Convention on International Settlement Dispute Agreements Resulting from Mediation (Singapore Convention), 2018**

The Singapore Convention was adopted in 2018 and provides a framework for the enforcement of settlement agreements that arise from mediation in international commercial disputes. It will guarantee that an agreement struck by the parties is enforceable and binding in line with a streamlined and expedited process. Instead of having to enforce the settlement agreement as a contract in accordance with each country's domestic procedure, businesses seeking enforcement of a mediated settlement agreement across borders can do so by applying directly to the courts of nations that have signed and ratified the treaty. International treaties and conventions on ADR are essential for maintaining sustainable societies by providing effective means of resolving disputes and promoting peaceful relations between nations and individuals. Several international institutions also support ADR for sustainable societies, including:

- **International Centre for Settlement of Investment Disputes (ICSID)**

International Centre for Settlement of Investment Disputes (hereinafter referred as ICSID) is a World Bank-affiliated institution that provides a forum for the resolution of investment disputes between foreign investors and states. ICSID promotes the use of ADR as a means of resolving disputes in a timely and cost-effective manner.

- **International Chamber of Commerce (ICC)**

The International Chamber of Commerce (hereinafter referred as ICC) promotes ADR through its International Centre for ADR, which provides mediation and arbitration services for international commercial disputes. The ICC also develops rules and guidelines for the use of ADR in international disputes.

International Mediation
The International Mediation
is a non-profit organization
as a means of resolving
accreditation for mediation
of mediation.

United Nations Commission
(UNCITRAL)
United Nations Commission
referred as UNCITRAL
ADR in international commercial
developed a Model Law
which provides a framework
disputes.
international laws and institutions
ADR as a means of resolving
societies. ADR can help
with traditional court
beneficial outcomes for all

Legal Framework and
Society through ADR
several laws in India relating
living. Some of them include
The Arbitration and Conciliation
main legislation governing
provides a legal framework
of both domestic and international
and proper governance

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- **The Commercial Courts Act, 2015**

This Act establishes specialized commercial courts for the resolution of commercial disputes in India. It encourages the use of ADR methods, such as mediation and settlement, before resorting to formal litigation to sustain the living standard of the society.

- **The Indian Mediation and Conciliation Act, 1996**

This Act specifically deals with the process of mediation and conciliation in India. It aims to encourage the amicable settlement of disputes through mediation, providing a structured procedure for the same for the promotion and maintenance of the sustainable society.

- **The Legal Services Authorities Act, 1987**

This Act provides for the establishment of legal services authorities at both the national and state levels in India. These authorities promote and facilitate ADR methods, such as mediation and arbitration, for the resolution of disputes for the protection and preservation of the sustainable society.

Additionally, various state governments in India have their own laws and regulations concerning ADR, which may include provisions for mediation, conciliation, and other alternative dispute resolution methods. It's important to consult with legal professionals or refer to the specific laws and regulations for a comprehensive understanding of ADR in India.

Quest for attaining Sustainable Society through ADR

The world population has been growing at an exponential rate in recent years, which has had a major influence on the environment and increased the number of environmental challenges. In environmental disputes, amicable resolution may seem like a pipe dream given the wildly disparate legal systems of countries around the globe, and as a result, in order to realize the Sustainable Development Agenda, it is necessary to reinvent conflict resolution

cedures. As part of its efforts to promote access to justice, the United Nations Environment Programme has addressed alternative dispute resolution in environmental disputes, in line with Goal 16 of the Sustainable Development Agenda, which calls for peace, justice, and strong institutions. ADR plays a crucial role in maintaining a sustainable society. Here are some ways ADR contributes to sustainable development:

- ADR techniques such as mediation, conciliation, and negotiation promote peaceful conflict resolution. They help parties resolve disputes amicably, reducing the likelihood of violent conflicts that undermine peace and stability in communities.
- ADR is less time-consuming, less expensive, and less stressful than going to court. It saves parties the financial and emotional costs of lengthy litigation, enabling them to focus on more productive activities.
- ADR encourages parties to engage in dialogue and collaborate to find mutually beneficial solutions. Parties are more likely to comply with the agreements they reach through ADR because they have participated in the process and are more invested in the outcome.
- ADR empowers people to take charge of their disputes and resolve them in ways that make sense for their unique situation. It provides a forum for people to express their concerns and find ways to meet their needs without relying on external authorities or systems.
- Environmental and natural resource disputes are becoming more complex and require innovative solutions that promote sustainable resource management. ADR can help parties resolve such disputes, avoiding unnecessary litigation and promoting sustainable resource management practices.

ADR's primary methods which are arbitration, mediation, conciliation, and negotiation have been successfully used by several countries to settle environmental issues. Furthermore, this real-world application has assisted in identifying the obstacles that must be removed in order to provide improved outcomes. The majority of the obstacles and flaws in the adoption of ADR may be attributed to a single problem i.e., a lack of acceptability due to a lack of awareness. The trial-and-error process of member states at all levels adopting ADR procedures holds the key to solving this issue. ADR processes have shown to be successful on a worldwide scale and are crucial to achieving the 2030 Sustainable Development Agenda as well as the Sustainable Development Goals. **Albert Einstein** correctly noted:

"We cannot solve problems using the same kind of thinking we used when we created them."

Thus, alternative dispute resolution holds the key to the future of justice.

ADR has the potential to promote sustainable development by promoting peace and stability, saving resources, encouraging dialogue and collaboration, empowering people, and facilitating sustainable resource management. It is an essential tool for building sustainable communities and promoting social justice.

Conclusion

ADR mechanisms prioritize the inclusion and participation of all stakeholders, including marginalized and vulnerable communities. These mechanisms are intended to build consensus and understanding among parties involved in disputes and create sustainable outcomes that benefit all stakeholders. ADR mechanisms in India favor promoting sustainable development outcomes by balancing economic, social, and environmental interests. The legal framework and policies that underpin ADR in India uphold and protect human rights, especially those related to

access to justice, fair treatment, and due process of law. There is a conscious effort in India to educate the public about the benefits of ADR and encourage its use over traditional litigation processes. Sustainable society framework and policies strive to integrate traditional and modern approaches to dispute resolution while maintaining the principles of equity, fairness, and impartiality.

ADR mechanisms are an essential part of the legal framework and policies to uphold sustainable societies. Their emphasis on inclusivity, participatory approach, and protection of human rights aligns well with the principles of sustainable development and provide a lasting solution to the challenges of resolving disputes in a complex and changing world. The four basic modes of ADR such as arbitration, mediation, conciliation, and negotiation have all been used successfully by different countries to settle environmental issues. Additionally, this practical application has made it easier to identify the obstacles that must be removed in order to get better outcomes. The majority of ADR adoption obstacles and problems can be linked to a single problem of lack of awareness and, consequently, lack of acceptability. This issue can be solved by member states adopting ADR procedures through a trial-and-error process at all levels. In order to achieve the Sustainable Development Goals and subsequently the 2030 Sustainable Development Agenda, ADR mechanisms have demonstrated their usefulness on a worldwide scale. We cannot fix issues using the same sort of thinking that we used to create them, as Albert Einstein aptly observed. Therefore, alternative dispute resolution is crucial to the future of justice.

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