



drishti

Alternative Dispute Resolution (ADR) Mechanisms

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Why in News?

- The National Legal Services Day is celebrated on 9th November to spread awareness for ensuring reasonable fair and justice procedure for all citizens.
- One of the objectives of Legal Services Authorities is to promote settlements of disputes through Alternative Dispute Resolution (ADR) Mechanisms.
- ADR is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone.
- ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved.
- It provides the opportunity to "expand the pie" through creative, collaborative bargaining, and fulfill the interests driving their demands.

- ADR is generally classified into the following types:
 - **Arbitration:**
 - The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties.
 - It is less formal than a trial, and the rules of evidence are often relaxed.
 - Generally, there is no right to appeal an arbitrator's decision.
 - Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.
 - **Conciliation:**
 - A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.
 - Conciliation is a less formal form of arbitration.
 - The parties are free to accept or reject the recommendations of the conciliator.
 - However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.
 - **Mediation:**
 - In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute.
 - The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves.
 - Mediation leaves control of the outcome with the parties.
 - **Negotiation:**
 - A non-binding procedure in which discussions between the parties are initiated without the intervention of any third party with the object of arriving at a negotiated settlement to the dispute
 - It is the most common method of alternative dispute resolution.
 - Negotiation occurs in business, non-profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life.

Advantages of ADRs

- The resolution of disputes takes place usually in private – helping maintain confidentiality.
- It is more viable, economic, and efficient.
- Procedural flexibility saves valuable time and money and absence of stress of a conventional trial.
- This often results in creative solutions, sustainable outcomes, greater satisfaction, and improved relationships.

- The possibility of ensuring that specialized expertise is available on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser.
- Further, it offers greater direct control over the outcome. Personal relationships may also suffer less.

ADR in India

- The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements, and the new Arbitration and Conciliation Act was enacted in 1996.
- Procedure for plea-bargaining was included in the Code of Criminal Procedure in 2005. {Plea-bargaining is best described as a *"pre-trial negotiation between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution."*}
- Lok Adalat or "people's court" comprises an informal setting which facilitates negotiations in the presence of a judicial officer wherein cases are dispensed without undue emphasis on legal technicalities. The order of the Lok-Adalat is final and binding on the parties, and is not appealable in a court of law.

Way Forward

- ADR has proven successful in clearing the backlog of cases in various levels of the judiciary – Lok Adalats alone have disposed more than 50 lakh cases every year on average in the last three years.
- But there seems to be a lack of awareness about the availability of these mechanisms.
- The National and State Legal Services Authorities should disseminate more information regarding these, so they become the first option explored by potential litigants.

For Mind Map