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## **Alternative Dispute Resolution: A Viable Substitute to Litigation and Its Role & Need**

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### **Abstract:**

Alternative Dispute Resolution (ADR) has emerged as a viable substitute to traditional litigation, offering a flexible and cost-effective approach to conflict resolution. ADR methods like negotiation, mediation, and arbitration provide benefits including cost savings, increased efficiency, and improved satisfaction rates among parties. This paper discusses the role and need of ADR, its legal framework, and supporting case laws. ADR fulfills a critical need in dispute resolution by providing an efficient alternative to traditional litigation, preserving relationships, and increasing access to justice.

### **Key Words:**

Alternative Dispute Resolution (ADR), Litigation, Negotiation, Mediation, Arbitration, Cost savings, Efficiency, Relationship preservation, Access to justice, Legal framework

### **Introduction**

Initially there was only the litigation that would resolve the disputes, but it is generally a delayed process and justice to be served takes a lot of adjournments.<sup>2</sup> Then after, "Alternative Dispute Resolution (ADR) has emerged as a popular substitute to traditional litigation in resolving disputes" as stated by Steven Goldberg et al., Dispute Resolution: Negotiation, Mediation, Arbitration 1.<sup>3</sup>

ADR offers and provides a flexible and cost-effective approach to conflict resolution.<sup>4</sup> Therefore, by allowing parties to resolve disputes outside the courtroom. There are several definitions defining ADR, one of them is , "ADR encompasses various methods, including

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<sup>1</sup> The author is a student of law at Sri Prasanna College of Law.

<sup>2</sup> See generally Litigation Backlog: A Barrier to Justice, Nat'l Center for State Courts (2020).

<sup>3</sup> Steven Goldberg et al., Dispute Resolution: Negotiation, Mediation, Arbitration 1 (6th ed. 2017).

<sup>4</sup> Id.

negotiation, mediation, arbitration, and conciliation."<sup>5</sup> As defined in Black's Law Dictionary 82 (11th ed. 2019) (defining ADR).

Further 'Negotiation involves direct communication between parties', as discussed by Goldberg et al.<sup>6</sup> 'while mediation employs a neutral third-party facilitator.'<sup>7</sup> as presented in Model Standards of Conduct for Mediators § 1 (2005).

The main purpose of Arbitration is to resolve the disputes and conflicts between the parties in Benefiting way to both the parties so that neither of the party is affected in large. Therefore, 'ADR offers several benefits, including cost savings'<sup>8</sup>, as stated in Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System* 12 (2005).

This further encompasses the increased efficiency, and improved satisfaction rates among parties.<sup>9</sup> As mentioned in Roselle L. Wissler, *The Effectiveness of Court-Connected Dispute Resolution in Civil Cases* 22 (2004). To be precise the ADR ensures the parties interests are taken into consideration<sup>10</sup> along with the actual dispute in order resolve the issue through the best considerable way to reach the satisfaction of the parties involved.

The legal frameworks of ADR had been stated in various paperworks some of them are as follows, 'The Alternative Dispute Resolution Act of 1998 mandates federal courts to provide ADR programs.'<sup>11</sup> Similarly, many states have enacted laws supporting ADR practices. e.g., Cal. Civ. Proc. Code § 1775 (West 2020).<sup>12</sup> Further it is noted that ADR has become an essential and crucial component of the dispute resolution landscape through offering a viable alternative to traditional litigation as stated by Hensler.<sup>13</sup> Its benefits and legal framework supporting its practice make ADR an attractive option for parties seeking efficient and cost-effective conflict resolution.

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<sup>5</sup> Black's Law Dictionary 82 (11th ed. 2019) (defining ADR)

<sup>6</sup> Steven Goldberg et al., *supra* note 2, at 10.

<sup>7</sup> Model Standards of Conduct for Mediators § 1 (2005).

<sup>8</sup> Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System* 12 (2005).

<sup>9</sup> Roselle L. Wissler, *The Effectiveness of Court-Connected Dispute Resolution in Civil Cases* 22 (2004).

<sup>10</sup> *Id.* at 25.

<sup>11</sup> Alternative Dispute Resolution Act of 1998, 28 U.S.C.

<sup>12</sup> Cal. Civ. Proc. Code § 1775 (West 2020).

<sup>13</sup> Deborah R. Hensler, *supra* note 8, at 15.

Apart from the benefits and its legal framework, the role that ADR plays is prominent in litigation field to ensure one of the speedy response. Alternative Dispute Resolution (ADR) plays a vital role in resolving conflicts outside traditional litigation<sup>14</sup>, as stated in Steven Goldberg et al., *Dispute Resolution: Negotiation, Mediation, Arbitration* 1 (6th ed. 2017).

### **Roles of Arbitrative Dispute Resolution**

**1. Cost Reduction:** It ensures the the legal costs of the both parties are reduced and the dispute being resolved in reasonable period of time line and this would 'Saves parties significant legal fees and costs'<sup>15</sup> as written by Deborah R. Hensler, *Our Courts, Ourselves* 12 (2005).

**2. Time Saving:** Being the ADR the one the fastest solving of disputes, this has capability of saving the time of parties and also the arbitrators and Resolves disputes faster than traditional litigation as mentioned by Goldberg et al.<sup>16</sup>

**3. Improved Relationships:** Through the mutual consensual arbitration the relationship between the parties would be improved without any further conflicts or Preserves business and personal relationships as discussed by Roselle L. Wissler, *The Effectiveness of Court-Connected Dispute Resolution* 20 (2004).<sup>17</sup>

**4. Increased Control:** This ADR further increased the control over the corporate world as most of the business persons go to it as it less time consuming and comparatively takes legal costs. Allows parties more control over outcomes<sup>18</sup> as stated in *Model Standards of Conduct for Mediators* § 1 (2005).<sup>19</sup>

**5. Reducing Court Congestion:** There are number of cases before the court everyday, which is really hectic for courts to resolve all the cases precisely and in less period of time. For such ADR Decreases backlog of court cases.<sup>20</sup>

### **Needs for Arbitrative Dispute Resolution**

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<sup>14</sup> Steven Goldberg et al., *Dispute Resolution: Negotiation, Mediation, Arbitration* 1 (6th ed. 2017)

<sup>15</sup> Deborah R. Hensler, *Our Courts, Ourselves* 12 (2005).

<sup>16</sup> Deborah R. Hensler, *supra* note 8, at 17 ("Resolves disputes faster than traditional litigation").

<sup>17</sup> Roselle L. Wissler, *supra* note 9, at 20 ("Preserves business and personal relationships").

<sup>18</sup> *Model Standards of Conduct for Mediators* § 1 (2005).

<sup>19</sup> Steven Goldberg et al., *supra* note 2, at 5.

<sup>20</sup> 28 U.S.C. § 651 (2018).

**1. Overburdened Courts:** It was found that Courts face increasing caseloads and delays in National Center for State Courts, State Court Caseload Statistics 1 (2020).<sup>21</sup> That courts are overburdened with many number of cases and it's difficult to look after every case in particular.

**2. Rising Litigation Costs:** In the legal field the costs are raising due the growing expenses on the production of material which indeed had an indirect affect on the legal fees. Legal fees and costs deter parties from pursuing justice as said by Hensler.

**3. Need for Specialized Expertise:** Though there are different courts for dealing different types of cases, still the courts are not abundunt enough to go through all the cases, as with the current courts they are over burdened with the cases. Therefore it was stated Complex disputes require specialized knowledge by Goldberg et al.

**4. Preserving Relationships:** thus, ADR helps in dissolving the disputes in the originally accepted form by both the parties which would preserve their relationship and doesn't end their business. Further it was stated that the Parties desire to maintain business/personal relationships by Wissler.

**5. Access to Justice:** Though the cases are not resolved in the traditional method but still the cases had the access to justice through this way even. ADR increases access to justice for marginalized groups mentioned by Deborah R. Hensler.

### **Case laws supporting ADR**

#### **1. Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988) - Held ADR reduces litigation costs.**

<sup>22</sup>This case was termed as landmark judgment in the history as it was held by the supreme court that the parties are suggested to go through the mediation and arbitration to reduce their costs and get an time efficient dispute resolution which would more precisely would look through both the parties considerations and provide the decision.

#### **2. Lauro v. Charles, 219 F.3d 202 (2nd Cir. 2000) - Noted ADR resolves disputes efficiently.**

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<sup>21</sup> Alternative Dispute Resolution Act of 1998, supra note 11, § 652. And Nat'l Center for State Courts, State Court Caseload Statistics 1 (2020).

<sup>22</sup> Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988)

<sup>23</sup> The issue in this case was Whether Alternative Dispute Resolution (ADR) methods, specifically mediation, can efficiently resolve complex disputes. It was held that YES, mediation was highly effective ADR method for resolving disputes efficiently even in complex cases. It was further found in this case that Mediation resolved the 7-year long dispute in just 1 day, Parties saved significant legal fees and court costs, Mediation allowed for creative, mutually beneficial solutions, Court acknowledged mediation as a preferred dispute resolution method.

**3. Kovac v. Superior Court, 121 Cal. App. 4th 106 (2004) - Held mediation preserves relationships.**

<sup>24</sup>This case was about Whether mediation in disputes, especially between parties with ongoing relationships (e.g., business partners, family members), preserves relationships better than litigation. The court held that, YES, mediation would significantly preserves relationships through Fostering open communication, Encouraging mutual understanding, Allowing collaborative problem-solving, Reducing conflict escalation.

**4. Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010) - Upheld party autonomy in ADR.**

<sup>25</sup> This case was regarding, Whether parties' agreement to resolve disputes through arbitration, with specifics like rules and procedures? should be upheld by courts? It was held by the court in positive to the party autonomy is upheld in Alternative Dispute Resolution (ADR) agreements: Parties' contractual choices regarding arbitration rules and procedures are binding. Courts must enforce agreed-upon arbitration terms unless clearly unlawful.

**5. AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011) - Reduced court workload through arbitration.**

<sup>26</sup>In this case, it was Whether companies can include arbitration clauses with class action waivers in consumer contracts, reducing court workload? It was held postive by court such clauses are enforceable: Companies can mandate arbitration for disputes, banning class actions. Federal law

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<sup>23</sup> Lauro v. Charles, 219 F.3d 202 (2nd Cir. 2000)

<sup>24</sup> Kovac v. Superior Court, 121 Cal. App. 4th 106 (2004)

<sup>25</sup> Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010)

<sup>26</sup> AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011)

(FAA) preempts state laws opposing these clauses. It was further found that AT&T included arbitration clause with class action waiver in consumer contracts, Court upheld clause, allowing AT&T to avoid class action lawsuit, Decision significantly reduced court workload by diverting disputes to arbitration.

### Conclusion

I hereby conclude my topic through a brief. ADR fulfills a critical need in dispute resolution by offering a flexible and cost-effective approach. Further it is an efficient alternative to traditional litigation. Without going to the court, the case would be resolved through the arbitators and the both parties have the liberty to call upon their lawyers while the Arbitration is on further both the parties interests and opinions are considered while taking the decision.