

## **A REVIEW ON ALTERNATIVE DISPUTES RESOLUTION IN CONSTRUCTION INDUSTRY**

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***ABSTRACT:*** *Disputes have become an endemic feature of the Indian construction industry. If they are not resolved promptly they can escalate causing schedule delays, lead to claims that require litigation proceedings for resolution and destroy business relationships. The competitive nature and contractual complexity inherent within construction can aggravate the incidence of disputes. Research over the last two decades has revealed that factors such as scope changes, poor contract documentation, restricted access, unforeseen ground conditions, and contractual ambiguities are contributors of disputes. While this is widely known, disputes still prevail over such issues. One of the greatest challenges facing the construction industry during the last couple of decades has been how to resolve disputes arising in construction contracts' in a timely and efficient manner with minimal financial costs, without hindering the pre-planned end results on a construction project.*

***Keywords-*** Dispute, Construction, Contract, Causes of Dispute, Dispute Resolution

### **I. INTRODUCTION**

The provision of effective dispute resolution is the core concern of domestic as well as international legal system. The aim of devising mechanisms to afford effective dispute resolution is to ensure that disputes are solved through effective and efficient means for the benefits of the disputants and the society in general. So as to attain this core objective, states and the international community have been searching various ways of resolving dispute than insisting on the traditional way of resolving dispute through court litigation which is mostly ineffective and inefficient.

Now days, therefore, Alternative Dispute resolution has got wide acceptance to resolve dispute due to its perceived advantages. Needless to say, even court officials, who used to consider ADR as taking of court power, recognized the need of ADR as a choice to settle dispute. Pre-trial conference and compulsory (court ordered) arbitration might be an indication for this. Alternative Dispute Resolution is a generic term used to describe a range of procedures designed to provide ways to resolving a dispute as an alternative to court procedures. ADR had been used by human society since ancient times though it gets wide acceptance and recognition in countries 'laws recently. ADR methods, in comparison with court litigation, have various advantages though it is not free from

different short comings. In this chapter issues in relation with the meaning of ADR, its historical development, its comparative advantages and disadvantages will be dealt. The short comings of court litigation also enumerated to show the rampant problems of litigation.

## II. WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

ADR is composed of different words: Alternative, dispute and resolution. Thus to clearly understand or define the phrase it is paramount important to understand each words separately thereof.

- The word “Alternative” as to the definition given as “thing that you can choose to or have out of two or more possibilities”.
- The other element of ADR is “dispute” defined as “any contract question or controversy that must be settled beyond the jobsite management”.
- The other element of ADR is “Resolution” defined as “the act of resolving or settling a problem, dispute, etc”.

## III. MERITS AND DEMERITS OF ADR

### *Merits*

- **Reduction of Cost and Time:-**

One of motivations for ADR system is to reduce the cost and time involved in solving disputes. If a new dispute resolution system can reduce costs and achieve outcomes that are just as good as those under previous system, it make the new system desirable. Law suits are expensive, some times the cost goes even the extent of making the victory of a party insignificant or exceeding of the amount of judgment.

- **Improve or Maintain the Relationship:-**

In situations where the disputants have an ongoing relation , ADR system allows them to work through their difficulties in a productive way that does not destroy their relationship. After acrimonious litigation, disputants rarely want to put the past behind them and work cooperatively. The dispute resolution system may provide process that will not leave people to work together angry and frustrated with either the result or the process itself. In the ADR process the disputants could rather learn information that will allow them to work more effectively in the future.

- **Satisfactory Outcome:-**

Regardless of the process used, the solution must solve the problem that exists. ADR procedures tend involve the parties with the view to achieving settlement. ADR procedures create a formal setting to bring parties together for serious attempt at resolving a problem .A dispute resolution process must move parties towards workable, durable and easily implement able outcome. ADR procedures help to afford chance that the parties can make real progress on the case and that the parties can communicate more fully and frankly through a third party.

- **Deal with Emotion:-**

The ADR process will give disputants an outlet to discuss their frustrations. They will get the chance of venting emotions in non-threatening environment. This will help the disputants be satisfied with the outcome. ADR provides for effective and neutral methods or factors for achieving maximum impact on the process, strategy, and tactics to words

resolution. A disputant will be ready to deal with the issues when he or she is satisfied that other person has listened to his or her point of view.

- **Avoid Future Disputes:-**

An ADR system can yield us techniques that can resolve disputes effectively and without damaging relationships. The process used for a dispute at hand can provide a framework to deal with anticipated disputes. In the future or recurring disputes, the system may help to take advantage of the resolution in the past to avoid guidance for the future, and to learn from experience.

**Demerits**

- **In balance of power**

The benefit of voluntary negotiating agreement may be undermined where there is a serious imbalance of power between the parties –in effect, one party is acting less voluntarily than the other.

- **Lack of legal expertise**

Where a dispute hinges on a difficult point of law, an arbitrator may not have the required legal expertise to judge.

- **No system of precedent**

There is no doctrine of precedent, and each case is judged on its merits, providing no real guidelines for future cases.

- **Enforcement**

The decision not made by the court may be difficult to enforce. Don't forget that other ADR scholars take easily enforcement of compromise in ADR process as one of the advantages of the system.

#### IV. TYPES OF ADR

The types of Alternative Dispute Resolution, however, can be categorized into three categories based on the procedures we follow in each dispute resolution mechanism. These categories are formed by considering the kind of work product resulting from ADR and how the parties participate. The categories of ADR procedures are agreement, decision and advice.

**Procedure of agreement-** negotiation, mediation, facilitation and mini-trials are all procedures of agreement. The work product or result from these procedures is based on the agreement of those who take part. If there is no agreement, there is no outcome. Participants in ADR process of agreement are actively involved in working together to create an outcome that is superior to any outcome that they could individually create. Specific procedures of agreement include; negotiation, mediation, facilitation, partnering and mini-trial.

**Procedure of decision** –Arbitration is dominant procedure of decision. The work product or result from this procedure is based on the decision of an outsider about how the dispute is to be resolved. The outsider's job is specifically to render that decision. Participants in this process may be collaboratively involved to design the process or to ensure its efficiency. However, when it comes to taking in the ultimate decision process, the participants' roles are not collaborative but competitive and limited to putting forward facts and argument.

**Procedure of Advice** –neutral case evaluation or early neutral evaluation, non-binding arbitration, fact finding or investigation, and expert opinion are all procedures of advice; the work product or result from these procedures is intended to inform or advise the participants.

#### CONCLUSION

A construction project is commonly acknowledged as successful when the aim of the project is achieved in terms of predetermined objectives that are mainly completed the project on time, within budget and specified quality in accordance with the specifications and to stakeholders' satisfaction. The survey reveals a level of desire among the respondents towards the drafting of dispute resolution clauses, thus steps should be taken by the local construction industry for proper drafting of these clauses and publicizing their importance.

In the other two contractual methods, provision of a neutral and binding arbitration, the contractors with the help of the governmental authorities, in view of the owners' prejudice, could seek to establish an autonomous body, similar to the Dispute Avoidance and Resolution Team (DART) in the United States. This body could help in providing neutrals and decisions in referred arbitrational cases, besides developing and publicizing alternate dispute resolution (ADR) methods. The contractors have to take a ram step in the establishment of contractual methods for DAR, by insisting on their use in the contract documents, as they reveal a strong need to avoid and resolve disputes.

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