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ADR: NOT AN END TO LITIGATION

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INTRODUCTION

The mood, manner and ambience in which litigation is being done are such that bring about rife, bitterness and a winner-loser atmosphere. Notably, the entire gamut of Alternative Dispute Resolution (ADR) with its tripartite offspring emanated and was developed overtime owing to the defect and inefficiency of the art of litigation as represented majorly in lengthy delays, overcrowding of the court rooms and high legal fees.

Thus, there emerge the introduction of ADR which is a sine qua non in the pursuit and attainment of justice. It is however instructive to note that the emergence of Alternative Dispute Resolution mechanisms does not in any way bring to end, cessation the art of litigation.

This chapter seeks to address the topic in context by probing the meaning of ADR; its branches, benefits and concluding on the note that as all embracing the concept of ADR is, it is however not an end to litigation.

MEANING OF ADR

Alternative Dispute Resolution (ADR), as it is widely and fondly called, depicts a process or technique that act as a means for disagreeing parties to come to an agreement short of litigation\(^1\). It is basically an alternative to a formal court hearing.

The term ADR could also mean external dispute resolution, that is, ways and methods of resolving dispute outside the judicial process\(^2\). It should be noted that ADR is becoming popular due to the increasing caseload of traditional courts and their numerous defects.

Alternative Dispute Resolution is a platform which seeks to put cessation to disputes, injustices and societal-ills in a friendly, faster, easier, less expensive manner and with high degree of privacy.

BRANCHES OF ADR

In every kind of civilization, pursuit of justice is intuitive. Every society strives to attain this through its legal system\(^3\). The judiciary in most parts of the world is however bedevilled with a challenge of dispensing justice in a speedy manner and, considering this in relation to the constitutional provision of citizen’s secured right to justice\(^4\), there is the need for an alternative process. Hence, ADR has evolved as a global necessity to assist in conflict management and judicial reform.

Significantly, the major branches of ADR are;
- Arbitration

\(^1\)Wikipedia  
\(^2\)Ibid  
\(^3\)Anurag, K (2005) Role of Alternative Dispute Resolution Methods in Developed Society, India Institute of Management, India  
\(^4\)Ibid
• Negotiation
• Mediation

It should be well noted that these ADR platforms have got their different features, strength and weaknesses. However, they are all aimed at settling disputes speedily, out of litigation and in a less formal setting.

Notably, ADR is generally not binding as resort could be made to a law court when one or all parties are dissatisfied\(^5\). However, an alternative dispute resolution of whatever form will become binding where the parties to the dispute concede to give up their right of access to court.

**ARBITRATION**

Arbitration can simply be defined as the official process of settling an argument or disagreement by somebody who is not involved\(^6\). It connotes a type of alternative dispute resolution where parties argue their case/matter before a neutral body called ‘Arbitrators’ who may not necessarily be lawyers and who afterwards reach specific decisions\(^7\).

The process of arbitration can commence only if there exists a valid arbitration agreement between the parties prior to the emergence of the dispute\(^8\). For instance, the contract regarding which the dispute exist must either contain an arbitration clause or must refer to a separate document\(^9\) signed by the parties containing the arbitration agreement.

Jurisdiction, tribunal composition, etc and other procedural essentials are some of the vital factors in the constitution of an arbitral panel. It should be noted that over time various legal instruments and bodies have evolved in the dispensation of justice in an arbitration proceeding\(^10\).

At this juncture, it must be said that arbitration is more of what is obtainable in a conventional court system except that it is faster, friendly and more flexible. Ipso facto, previously decide matter by the tribunal are usually brought to fore in a bid to argue a particular case and to serve as persuasion to the current tribunal panel\(^11\).

Significantly, agreement to arbitrate disputes rather than litigate them is common and prevalent in commercial transactions, contract, employment, medical care, etc. At this level of dispute resolution, advocates are relaxed, less formal, as it is not adversarial. The tribunal is often headed by a president.

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\(^5\) Joanne Banker, Introduction to Law, Second Edition
\(^6\) Oxford Advanced Learners' Dictionary, 6\(^{th}\) edition
\(^8\) www.abanet.org
\(^9\) Bilateral Investment Treaty (BIT)
\(^10\) ICSID Convention, International Chamber of Commerce, etc
NEGOTIATION

According to the Oxford Advanced Learners’ Dictionary\textsuperscript{12}, negotiation means formal discussion between people who are trying to reach an agreement (on peace, trade, war negotiations, etc).

Negotiation entails an attempt to settle dispute through the mechanism of making both parties come to a reasonable understanding. The success of such negotiation between the parties and their lawyers brings about settlement.\textsuperscript{13} This also is in a peaceful, friendly and faster manner.

The process of negotiation requires no formalities. It can place at any time but legal practitioners are often desirous of having it before filing a law suit.

MEDIATION

This method of Alternative Dispute Resolution is related to negotiation because it involves discussion and negotiation of issues in contention with the assistance of a neutral person, the Mediator\textsuperscript{14}. It is instructive to echo that the mediator does not decide the disputed issues but rather tries to get the parties to come to an agreement.

The primary role of the mediator is to facilitate communication between the parties\textsuperscript{15}. Mediation connotes a process of facilitated negotiation among two or more parties, assisted by a third-party neutral, to resolve disputes, manage conflict, plan future transactions or reconcile interpersonal relations and improve communications\textsuperscript{16}.

Mediation as an alternative form of dispute resolution is a context driven process. The context of the mediation influences the behaviour of the mediator who will adapt his strategy accordingly. Thus, when analyzing the mediation process and the role of the mediator, one must take cognizance of other conditions in order to achieve a consistent picture of the whole mediation process\textsuperscript{17}.

Mediation as one of the platforms of ADR is commonly accessed in family law disputes and labour problems\textsuperscript{18}. As a form of alternative dispute resolution mechanism, mediation plays a central role when dealing with international disputes or conflict\textsuperscript{19}. It is a good mechanism for the peaceful settlement of conflicts\textsuperscript{20}.

\textsuperscript{12} Sixth Edition
\textsuperscript{13} www.abanet.org
\textsuperscript{14} Ibid
\textsuperscript{17} Houston, A. (2000) Why Do They Do It Like This? An Analysis of the factors influencing behaviour in international conflicts. Journal of Conflict Resolution, Vol. 44, No. 2
\textsuperscript{18} Nigerian Labour Congress (NLC) on Strike Action
\textsuperscript{20} Ibid
BENEFITS OF ADR

Some advantages of alternative dispute resolution were fashioned out by Arthur Mazirow\textsuperscript{21},

- ADR brings about speedier resolution.
- It is less costly.
- Exclusionary rules of evidence do not apply.
- There is a high level of confidentiality, as it is not a public hearing.
- Less exposure to punitive damages.
- It is more informal than litigation (wearing of robes, wigs, etc).
- The process is less adversarial than litigation and this helps in maintaining business relationships between the parties.

It should however be noted that as much as ADR is a blessing to the judicial process of achieving justice, it has some flaws:

- Unknown bias and competency of the arbitrator can affect the process.
- An arbitrator must make an award based upon broad principles of justice and equity and not necessarily on rules of law or evidence.
- Except in certain circumstances, non-signatories of an arbitration agreement cannot be compelled to arbitrate.

…NOT AN END TO LITIGATION

Peace is a sine qua non for development. Disputes and conflicts dissipate valuable time, effort and money of the society\textsuperscript{22}. It is honorable, lovely and profitable for there to be no conflict in the society, but this is realistically not possible. However, when it arises, it should be nipped in the bud.

Thus, the arduous, time consuming and almost eternal process of the judiciary led to the emergence of an alternative; ADR and it has birthed variants of ADR methodical approaches\textsuperscript{23}.

Any conflict could be equated with a cancer and as such, the sooner it is resolved, the better for all the parties concerned and the society in general\textsuperscript{24}. If it is not resolved at the earliest possible opportunity, it will grow at a very fast pace and with time the effort needed to be exerted in resolving it increases exponentially.

It is pertinent to state that the assertion that the utilization of ADR obstructs and hinders the floodgate of legal briefs for practicing lawyers in the country is nothing but a mere misconception as not all matters could be resolved alternatively. For instance, criminal proceedings both in the northern and Southern part of the country (operating penal and criminal codes respectively) cannot be resolved alternatively by any of the ADR platforms. Also, with respect to electoral matters, ADR cannot be employed. Thus, ADR is not an end to litigation.

\textsuperscript{21} Real Estate Arbitrator, Mediator, California (2008)
\textsuperscript{22} Anurag, K. (2005) Role of ADR Methods in Development of Society. India
\textsuperscript{23} Arbitration, Mediation, Negotiation
\textsuperscript{24} Anurag, K. (2005) Role of ADR Methods in Development of Society. India