

## Dispute Resolution Practices in USA, Australia and UK/EU

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### Abstract

*The research aims to highlight and discuss the different modes of settlement of disputes in today's populated and overcrowded societies. The research has shown that due to expensive, time consuming and rigid process of formal justice system (court litigation) USA, Australia, UK and even European Union countries have preferred informal justice system (Alternative Dispute Resolution) for disputants to opt for their solutions. The informal dispute resolution system (Alternative Dispute Resolution) prevailing in modern countries like USA, Australia and UK is full of benefits and most probably the main reason for their progress and development also, and the study has shown that the system is working successfully in these countries, therefore, it can be applied anywhere even in the developing countries as well because this system is more sustainable in any form than the formal justice system (court litigation).*

### Key Words:

ADR, Dispute Resolution,  
Formal, Informal,  
Settlement.

### Introduction

Historically speaking, the need to resolve disputes through reciprocal settlement has been working in the earliest societies, various societies in their geographical boundaries have been trying to resolve their disputes through limited, native and common values and behaviors parallel to the official and legal systems. However, multiple reasons, have triggered the renaissance of Alternative Dispute Resolution where there are laser-like focus and intensity around the globe to intensify and maximize the ADR mechanism for dispute resolution. The political, social and economic feelings have visibly opened up the space for the Revival of Alternative Dispute Resolution in their own typical way (Barret 2009), as this process has bestowed a new authority rather a legal requirement to support reaching of settlements at the stage i.e., before trial, during trial or even after conclusion of trial stages (Gould, Nicholas 2012). After trial, Alternative Dispute Resolution is suitable only in civil matters.

Any individual who is aggrieved can approach to courts, and the courts will not be willing to modify the legal rules in the form of compromise or arbitration. The Panchayat system went into decline with the advent of British Colonial rule. which shows that the courts were established to replace the existing less formal system in India and perhaps this may have been the case in other parts of the world. In United States Alternative Dispute Resolution methods have been used since early colonial period. During the British days, commercial arbitration was common in New York Michael (McManus & Silverstein. B 2011).

### Research Objectives

The main objective of this research is to study and examine the processes of dispute resolution in USA, Australia, UK and European Union.

### Research Question

The study has answered the following research questions:

1. What are alternatives to litigation for resolution of disputes in USA, Australia and UK
2. Reasons for success of dispute resolution peacefully

### Research Methodology

The methodology used for research is explanatory. Both primary (Statues, Rules, Policies etc.) and secondary sources (books, journals, websites and newspapers etc.), have been used which are suitable for this research.

## **Limitations of Study**

The research study is limited to three countries mainly USA, Australia, and UK, a brief concept of EU has been given and all the research has been studied from English Literature Review.

## **Results**

The results discovered from study answer fully to the research objectives and research questions along with the reasons of peaceful way of life, peace of mind, success of justice system are due to peaceful informal dispute resolution process opted from people and encouraged by States in well developed countries specially USA, Australia, UK and European Unions.

## **Dispute Resolution in Modern Countries**

### **United States of America**

Abraham Lincoln, was in favor of Alternative Dispute Resolution, he said this is the only way to reduce the burden of cases from court, through this process parties are satisfied because they settle their disputes by their own. In litigation the winning party is also a losing party in terms of expenses, lengthy process of litigation etc. (weblink).

The emergence of current Alternative Dispute Resolution development was discussed in the lecture of Roscoe Pound in 1906 to the American Bar Association whereby deep thinking for reforms of judiciary were advocated. He submitted the concept of justice in an informal way and each dispute cannot be resolved or settled through law. His thoughts were supported by many other thinkers also (Auerbach 1983).

In the 20<sup>th</sup> century, in USA, the government started to introduce the informal legal system because they realized that their rights were infringed through legal justice system. The American Arbitration Association (AAA) was designed in 1926, to assist the arbitrators and parties. During 1970s, the Age Discrimination Act, 1975 was enacted to settle the disputes of age discrimination in federal workplaces. In 1976, Warren Burger, a former chief justice, arranged a Roscoe Pound Conference in which the alternative dispute settlement processes were discussed in detail. At Universities and law schools, the subject of Alternative Dispute Resolution was introduced and taught and in 1995, Martindale-Hubbell (publisher, Wikipedia), published a reference book of Alternative Dispute Resolution for practicing experts by providing information to the people relating to Alternative Dispute Resolution services. Now Alternative Dispute Resolution has become very much popular in the United States which is applied at all levels of United States.

Many States of USA have adopted the Model State Administrative Procedure Laws (Vertesy, Laszlo 2013). Accordingly, most of the civil disputes are resolved without instituting a suit and most suits are settled outside courts without commencement of trial (California). Alternative Dispute Resolution (ADR) is considered to be the protector of the US judicial system because more than 30 million cases are submitted in State courts and almost one million cases in the Federal Courts annually for settlement through Alternative Dispute Resolution processes (Find Law website).

Alternative Dispute Resolution in administrative matters, is very commonly used in USA. The Administrative Procedure Act, 1946 offered an alternative to litigation in administrative disputes (section. 2). The Administrative Dispute Resolution Act, 1996 also provided modern concept of Alternative Dispute Resolution methods; the said Act provides, "Each agency shall adopt a policy that gives reports for the application of alternative means of dispute resolution and management of cases", (section. 3); and for supporting this policy, "each organization shall (1) refer with the nominated organization to expedite and inspire that organization for the use of alternative dispute resolution", and (2) "observe some other means for resolving disputes in connection with formal and informal settlements".

### **Australia**

In Australia, Alternative Dispute Resolution processes are very popular in civil courts (King. M, et.al 2009). There is a good practice in courts and tribunals to prefer and resolve the disputes through this process so they refer the matters for Alternative Dispute Resolution. Sometime they take consent of parties and sometimes use their discretion. With respect to cost, Mediation is the mainly used process of Alternative Dispute Resolution in civil matters (French B 2007).

In Australian, most the societies adopted a number of Alternative Dispute Resolution processes on the basis of relationship. The process of arbitration has an extensive and historic root. Conciliation and Arbitration Act 1904, established Commonwealth Court of Conciliation and Arbitration, the function of this department was to hear the complaints regarding employer/employee. In 1956, the Commonwealth Court of Conciliation and Arbitration was divided into two institutions i.e., (i) Conciliation and Arbitration Commission and (ii) the Industrial Court,

subsequent a High Court case (CLR 1920), for an arbitral body (judicial power) was declared to be an unconstitutional.

During 1970s, the advisory procedures were very common (Sourdin, T (2009)). In Australia, Alternative Dispute Resolution (informal dispute resolution) is acceptable in civil litigation processes and many Alternative Dispute Resolution programs are in process in the courts (King M, Freiberg A, Batagol B and Hyams R 2009). There is a very common practice in courts and tribunals refer the matters to one or more Alternative Dispute Resolution processes, with or without consent of parties. Mediation is useful alternative to litigation, especially for civil disputes (French B 2007). Proper legislation has been introduced for making mediation compulsory for the dispute resolution (Statutes of Australia).

In 1975, the Institute of Arbitrators and Mediators (old name Institute of Arbitrators) was established with the purpose to serve the society for the promotion of arbitration, mediation and conciliation in commerce and industry to promote dispute, and these processes are free, confidential, controlled, less time consuming, and flexible (community Act 1983). From 1984 to 1990, same legislation was passed which referred the matter to arbitration subject to the condition, parties give their consent to follow it.

According to report (2004) of Federal Court, the settlement rate of disputes referred for mediation in the year of 1987 to 1988 was 55%. Most of the cases referred for mediation were from trade, intellectual property, taxation, workplace relations, bankruptcy and admiralty etc. After 1997, Courts had jurisdiction to refer the cases for mediation even without the approval of parties, before this, the practice was totally changed (Australia Act, 1976).

The Family Law Reform Act 1995, which came into force in Australia in 1996, was in great favour of the use of mediation to resolve the issues after separation, relating to the care of children. Then in July 2006, the law was amended, and it was required through this amendment that the process be initiated before litigation in this way the parents are also required to make genuine efforts for settlement of their dispute through ADR procedure and they also should present an affidavit to this effect, before the trial is initiated. However, exemptions can be accepted such as the risk of family or child abuse or some other urgent matter (Rhoades, H. 2010). The amendment of 2006 to family law also required to establish 65 non-government Family Relationship Centres. The purpose of this amendment was to keep away the parents' and children from courts by way of providing inexpensive Federal Dispute Resolution services (McManus & Silverstein. B 2011). National Mediator Accreditation System (NMAS) was recognized for an industry which has trust in deliberate submission by mediator's organizations. An independent authority in industries which is called the 'Mediator Standards Board', who is liable for increasing as well as upholding the National Mediator Accreditation System (Sourdin, a report 2008) Contribution of legal professions in the progress of Alternative Dispute Resolution (ADR) is also appreciable. In 1986, Alternative Dispute Resolution Committees were established by North South Wales Law Society, State and Territory Law Societies and Bar Associations to guide and train the people in dispute resolution processes and practice of ADR (LEADERS' Report). In Australian Courts, Alternative Dispute Resolution has become an essential part of dispute resolution, in different forms. However, the courts had to face some problems for introducing Alternative Dispute Resolution in courts but they are under force to use this method for being compulsory process. In district Courts and Supreme Court of South Wales many matters have been forwarded for processes of Alternative Dispute Resolution even without the consent of parties. The Courts of Western Australia has well settled system of pre-trial dispute resolution in district courts. In family disputes many forms for dispute resolution such as mediation, conciliation, counselling, information sessions have been offered (Sikiotis. A. M 2001).

Australian Courts provide a number of dispute resolution procedures. The purpose is to find the solution through these processes. Alternative Dispute Resolution can be enabled through procedural laws regulating civil trials. Protocols can inspire Alternative Dispute Resolution before and after the action (Sander FEA and Goldberg S.B 1994). Compliance is confirmed in case of dispute resolution statements by the parties (CPC, 2005, Australia). The rules of procedure in courts could simplify the procedures after starting the proceedings (Preston B. J, 2008). In process of Conciliation, the parties, with the support of conciliator, observe the main points of conflicts, explain the alternatives to dispute and attempt to resolve the disputes. The role of conciliator is an advisory role for settlement of the dispute, he can also give an expert opinion to the parties but that is not necessary for the parties to accept that opinion (NADRAC 2003), and if the parties don't agree on the opinion of conciliator then they are offered another mode for dispute resolution which is Mediation and if parties agree to avail this procedure, then mediator, can settle the disputes of parties according to their own settlement agreement and if the parties failed to settle their dispute through mediation, then the proceedings are sent back to fix the trial before another court. The mediator submits a written report to the court and gives his opinions regarding disputes between disputants (Land & Env. Act 1979). In some matters an impartial evaluator is required to resolve the matters and he makes his efforts to lessen the points of dispute separately with respect to fact and law (Land & Env. Rules 2007).

## **UK/European Union**

Alternative Dispute Resolution began in UK in 1990, and the family and community mediation center were established in UK in 1993, but in commercial mediation, no serious attention was given for the promotion of Alternative Dispute Resolution (ADR Principles and Practices), and some laws relating to Alternative Dispute Resolution in general were also given attention in UK.

Lord Woolf's report on 'Access to Justice' was published in 1996 which promoted mediation. Although he stopped short of making mediation compulsory (The Government response 2012), Woolf is of the view that court litigation should be the last option for people and mediation should be preferred firstly, in case of failure, the parties can go for formal proceedings (court litigation) for settlement of their disputes (Genn, H. 2010).

The Family Law Act, 1996 clearly describes that parties can't take legal support for representation in proceedings relating to family matters if they had attended the proceedings of mediation, even if a mediator thought it not a proper matter for mediation (Chan, Y. C., 2007). In 1999, the Lord Chancellor provided criteria Alternative Dispute Resolution personals, including their training session, quality, transparency in system and access to justice and then in 2010, Family Mediation Council in England and Wales introduced a Code of Practice for those persons who were dealing with Family matter.

In 2007, through the Tribunals, Courts and Enforcement Act, 2007, informal resolution of administrative disputes was introduced in United Kingdom, the Act provided for alternative methods of dispute resolution in matter which were filed in the tribunals, but the results (Wade, William and Forsyth, Christopher 2014) are not very encouraging albeit in First-tier Tribunals. The use of ADR in administrative disputes is slowly emerging in European Union countries. The European Union has issued instructions (Directive 2009) to cater for informal dispute resolution (Alternative Dispute Resolution) in consumer disputes and other matters. Though, the use of informal methods in administrative disputes, is left to the choice of the member countries, where the outcome is mixed one. In 2011 in England and Wales, the fundamental review of family justice reconfirmed that mediation was the desired attitude dealing with differences following the relationship and that judges should preserve the power for ordering the parties to join mediation session (Final report, London 2011). In 2013, the Children and Families Bill, was discussed in the House of Commons, where parents involved in dispute would be required to study mediation in detail for the settlement of dispute.

Cornhill, the then Lord Chief Justice of England mentioned that consented agreement made voluntary appreciation deprived of the directive imposed by a court and the parties experienced freedom from fear, danger, imprecision, value restrained with the court process and avoids complete failure. Thus, settlement is a type of Alternative Dispute Resolution. The Lord Chancellor declared that Alternative Dispute Resolution will be applied in all proper matters. All the Departments should explain the provisions of Alternative Dispute Resolution in their agreements and the procedures of Alternative Dispute Resolution to resolve their disputes. In Government disputes, Federal Government itself will decide the procedures of Alternative Dispute Resolution which will be according to the circumstances. Departments will improve flexibility will be ensured in agreements especially in financial issues to make settlements possible as many disputes occur but can't be pursued properly (Sarat, A. 1985). Gallanter describes that lawyers at lower level deal with construction disputes mostly in UK (Gallanter, M. 1983).

Presently, before going into litigation, three modern Alternative Dispute Resolution processes for dispute resolution have been discovered and lastly, mediation is preferred by the court. Schapiro. M (1981) was of the view that the fit process for the dispute resolution between the parties is the informal and non-binding process which can result in successful solution of dispute.

In fact, mediation is only a facilitative process, and the difference between dispute resolution and imposition of judgment has not been discussed in detail. In 1995, (Green and Mackie 1995) declared negotiation, mediation and conciliation as three components for dispute resolutions, while adjudicative processes like court litigation, arbitration as well as adjudication, depends on the court, arbitrator and adjudicator having powers and authority to impose their decisions on the parties.

Med-Arb is a peer dispute resolution process, first of all, parties try to settle their clashes through mediation, if the parties fail to resolve their dispute through this process, then they opt for second process i.e., arbitration. The parties enter into this process of settlement of dispute through an agreement which is mentioned as multi stage dispute resolution provision or in other way i.e., Med-Arb, this process combines the benefits with mediated settlement of disputes (Newman. P 1999). Dispute Resolution Adviser with the help of 3<sup>rd</sup> person makes suggestions to parties for the settlement of disputes, and this concept was given by Clifford Evans, in 1986, who named it as an 'independent intervener' (Wall. C 1992). The parties pay to the independent intervener equally and the verdict will be compulsory until any one of the parties opt another procedure (arbitration) for dispute resolution.

## **Conclusion**

From the study, it is very much clear that resolution of disputes through peaceful and amicable processes (instead of court litigations) is much popular in the developed countries (USA, Australia and UK) which have also given the detailed rules of procedure for settlement of disputes without involvement of court, and developing countries like Pakistan and India can utilize this knowledge and these practices prevailing in USA, Australia and UK can be made quite practicable in our justice system because people in Pakistan feel embarrassing from lengthy, expensive and fruitless (in some specific matters) processes of litigation and when they involve themselves instead of institution (agencies), then the chances of enmity results from generations to generation. The main Alternative Dispute Resolution processes which in this study have been explored are negotiation, mediation, conciliation and the last option of parties in case of failure of all alternatives, is arbitration which is although an outdated procedure of dispute resolution but still is a choice of people. It has also been concluded that the main purpose of all types of Alternative Dispute Resolution is same only the procedure is different and separate. The outcome of this system is very positive, and Alternative Dispute Resolution (ADR) processes can reduce the burden of cases on the courts. From overall discussions and study, it can explicitly be stated that Alternative Dispute Resolution (ADR) processes are that it is low cost, speedy, private, confidential proceedings, flexible and the most important benefits is that decisions are taken by parties themselves which causes their satisfaction in future also.

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