

## **Role of ADR in Modern Economy**

- Gargi Agrawal

At present, I am a Juris Doctor candidate at the Seattle University. The Chartered Institute of Arbitration holds a very special place in my life. I was in India in 2016 when the Institute had held its workshops for Associate and Member level. As I cleared the levels, I got an insight into the alternate dispute resolution (“ADR”) which helped me develop interest in this side of the field. The Seattle Chapter Relaunch was hosted by Davis Wright Tremaine on October 22, 2019. The event has helped me cultivate a sense of belongingness to the members of the ADR fraternity in this part of the world.

The event was focused on ADR mechanism in the present world. During the event, I heard the perspectives of esteemed practitioners from the industry on this topic. Modern economy is influenced by the top companies as they provide jobs to millions of people, raising the standard of living. It is highly important to provide an efficient conflict management mechanism. In order to cater this need, a fair, just and efficient process has to be in place that saves public resources, time and money. ADR provides flexibility and the parties can tailor it as per their needs. The party autonomy under this mechanism enables the clients to decide the place of dispute resolution, governing rules and the adjudicators. The ADR has an edge over the traditional litigation process. The number of ADR cases have increased because the litigation mechanism is time consuming, costly and public. The flexibility in the mechanism itself has attracted commercial shift towards ADR as the parties can decide whether they would like to resolve their disputes through an arbitration or a mediation or a combination of both through Med-Arb clauses. Arbitration can sometimes be much fairer than the litigation as it addresses the issue of conflict of interest and ensures that the arbitrator is neutral. Organizations providing international arbitration help in bringing uniform dispute resolution mechanism for both cross border and domestic commercial disputes.

In past, I have attended multiple arbitrations related to construction and commerce matters. In the event, I was surprised to know that the scope of the arbitration was extended to technology disputes. There has been a fundamental shift in arbitration in the technology dispute and as the global products are coming out issues have cropped up in relation to proof of consent.

My attention was also drawn towards the importance of standard of care that must be taken into consideration while drafting an arbitration clause. There has been an increase in the scalability.

While drafting the clause it is important to take measures to lower the cost of arbitration without compromising on quality of arbitration. This could be done by opting institutional arbitration that would help in systematically carrying out the process. Another important aspect to be taken into account while drafting is that the place of arbitration should be in accordance with the subject matter of dispute. For example, if it is a technology dispute, the place of arbitration should be the one that has good technology laws that could fairly address the minute essentials of the matter.

Some aspects of the discussion invoked my curiosity to the possible consequences and way forward. For instance, technology has great significance in evolving the ADR process. Currently in few jurisdictions, there is computer algorithm and artificial intelligence which adjudicates specific type of cases. If that technology is used in the ADR process, it may boost accountability and transparency and minimize human intervention. At present we have specific parameters through which we detect conflict of interest among humans. My concern is that if the technology is extended to the ADR process, are we prepared to handle the issues that may arise such as manipulation of the decisions of the cases? What if they are computed in a manner that they prima facie appears fair and transparent, but are colorable and in favor to the dominant parties and big companies?

Further, I am happy to learn that there have been attempts to have diversity in the ADR panels. I believe that the hurdles of discrimination on the basis of nationality, race, gender and sexuality can be anticipated and addressed as they are visible. My concern is the systematic discrimination on the basis of age and experience. I find that there is a classic paradox in the industry that in order to gain experience you need to have a job, but in order to be selected for a job you need some experience.

I got a sense that CIArb is addressing this issue by including students and young practitioners as a part of their community. I believe this needs to be actively addressed in two ways. One, is by conducting programs that can help in developing requisite skills i.e. knowledge of the law and functioning of the ADR process. This can be achieved by encouraging reflection exercises, essays and workshops. Second, by developing opportunities to participate and assume leadership roles at micro-levels. This can be done by involving the younger generation with organizing events and panel discussions, internships under the practitioners and networking opportunities.

I am looking forward to attending more such events and learning opportunities and contribute my part at every possible step.