

Study Session 3

Unit-III Alternative dispute resolution Mechanisms (ADR)

Study Session Outline

- I. Alternative Dispute Resolution Mechanisms (ADR)
- II. Common forms of ADR
- III. Conciliation
- IV. Negotiation
- V. Mediation
- VI. Legal Methods- Adjudication-
- VII. Arbitration

Formal Study Session of 2 hrs is required

INTRODUCTION

Dear learners, welcome to the third unit. This unit deals with the Alternative dispute settlement Mechanisms (ADR). While dealing with the ADR, it first discusses the common features of ADR. Then goes to discuss about the common forms of ADR such as conciliation, Negotiation, Mediation and along with their basic characteristics. Finally, the unit discusses about the legal Method of dispute settlement focusing on the judicial method and Arbitration

Learning Outcomes of study unit three

Upon completion of this unit students will be able to
After completing this unit, the learners should be able to;

- Define alternative dispute resolution mechanisms
- Identify the common forms of alternative dispute resolution mechanism
- Explain the Legal method of Dispute settlement Mechanisms

Unit -3 Alternative Dispute Resolution Mechanism

3.1 Alternative Dispute Resolution (ADR)

ADR is a process by which disputes are solved outside of the formal courts process. ADR is often considered as a complementary or alternative way of adjudication because it supports the formal adjudication process by minimizing the courts case load. Alternative dispute resolution mechanisms include but not limited to Arbitration, mediation, Conciliation. (Cervenak, 1998). Generally, the Alternative means of dispute adjudication process are also categorized in to political and legal means. The political means include conciliation, negotiation, inquiry mediation. Whereas the other category includes adjudicational legal means such as arbitration. (Choudree, 1996).

1.2 Common Characteristic of ADR Approaches

Even though the ADR means of dispute settlement vary from one to the other, they share certain common characteristics which made them to be opted by many parties to disputes. Those common characteristics of ADR also distinguish them from the formal regular dispute adjudication mechanisms (Ricken, 2012). Some of the common characteristics of ADR are listed below.

Informality: The judicial process is more formal than ADR. Hence, the ADR process are not complicated and adhere a more flexible approach than the formal dispute adjudication process. Flexibility includes that they may not be written, may not strictly adhere to certain rules and procedures of evidence. This characteristic makes them preferred more than the formal dispute settlement organs. And enhances a wider access to justice for parties to a dispute.

Application of Equity: Equity is an important component based on which cases under ADR are solved. Equity is more important than application of laws. This makes the ADR mechanisms more sensible and accommodate the demands of parties in equitable manner. Under the regular court systems, we see strict application of laws, whatever the outcome might be. Whereas ADR systems rely on equity and tries to accommodate the demands of the disputants. This shows us application of laws may not always result in a just and equitable decision. This quality gives ADR more preferred methods of dispute settlement.

Direct Participation and Communication between Disputants: Parties to ADR are engaged in the whole process from the very beginning. They get engaged in all decision making, and there is direct communication and discussion between the disputants. Direct participation and dialogue between parties to the dispute may open the door for creative ways of solving the disputes and end the disputes amicably. The participation and dialogue of parties to the dispute also help in the smooth enforcement of the decision.

1.3 Common forms of ADR

Common forms of ADR in civil matters include;

- Conciliation,
- Negotiation
- Mediation,
- Arbitration,

1.3.1 Conciliation

Conciliation is a process of settling of mostly civil matters. Under conciliation, parties to a dispute set up a panel of conciliators on a temporary or permanent basis to deal with the dispute. (Malcolm D. Evans, 2010, pp 566) in terms of authority of decisions, and binding effect of the decision, the verdicts or outcomes of conciliation doesn't legally bind parties to the conciliation.

1.3.2 Negotiation

Is a process of dispute settlement which is believed to be more effective than the other ADR mechanisms because, the parties in negotiation don't involve a third party to mediate them. parties directly and so closely discuss their differences and suggest possible solutions directly in between themselves. Parties to the dispute have direct control over the process without involving third party. Thus, it is recommended that they start negotiations on the issues that they both can accept very easily leaving the contentious issues behind or to be discussed later.

Regarding the binding nature of the outcome of the decision, negotiation, similar to conciliation, doesn't have legally binding effect on the parties to the negotiation. Here, the moral and trust established by the parties to the process of ADR is given much attention in terms of binding the parties.

3.3.3 Mediation

Mediation is a process often considered as an extension of negotiation. Mediation involves third parties in the process. and involves third party. If the third party does no more than inspire the parties to continue negotiations or simply act as channel of communication the role is described as one of 'good offices. The mediator actively participates in mediating the process, advance fresh ideas, interpret terms and serves to channel the proposal of each party. ((Malcolm D. Evans, 2010, pp 566).

Mediation is often considered as a process by which third party proposes a solution which the parties couldn't bring by themselves. Most of the time we use mediation in diplomatic and political processes.

The outcome of the decision in mediation doesn't have a legally binding effect on the parties to the mediation.

3.4 Legal Methods

3.4.1 Adjudication

Dear learners, the legal method of dispute settlement is usually included under the formal justice system. Court based adjudication is among the legal methods of dispute adjudication mechanisms. The final decisions given by courts have legally binding effect on parties.

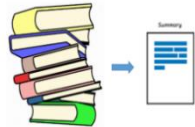
Adjudication which takes such forms as arbitration and judicial settlement, is defined as a method of dispute settlement where dispute adjudication institutions are established by law either on a permanent or ad hock basis, and employ proscribed rules and procedures in order to solve the disputes. (International Adjudication, 2009). The following forms of adjudication will be briefly discussed under this unit.

3.4.2 Arbitration

Arbitration is among the oldest methods of dispute resolution mechanisms especially in international trade. Under this method parties freely select panel of arbitrators. The parties when they select the arbitrators, they also intend to be legally bound by the decisions of then panel of arbitrators or individuals. Those panel of arbitrators or individuals evaluate the disputes and give their decisions. The decisions given through arbitration, commonly known as arbitral award is

legally binding. Arbitration is also sometimes categorized under the legal method of dispute settlement because the decisions has binding effect on the parties.

Dear learners, you will discuss about Adjudication as a legal dispute settlement method in a bit more detail under the following unit.



Unit summary

Dear learners, this unit has briefly discussed the alternative means of dispute settlement mechanisms. Alternative Dispute settlement Mechanism include Mediation, Conciliation, Negotiation and Arbitration. Even though arbitration is categorized under the ADR mechanism, by verdure of its binding character, it is often categorized under the category of legal/Adjudication mechanism of dispute settlement mechanism.

In terms of their contribution to amicable way of dispute settlement, the ADR mechanisms are very helpful and they are preferred ways of dispute settlement mechanisms in terms of convenience. Parties can save time, energy, and resource by resorting to the ADR.

The Legal process of dispute settlement is a way that is mostly referred to as formal way of solving disputes, most of the time by using the courts of law. The outcome of using such mechanisms are 'win-loose'. Parties who rely on the formal court-based adjudication relatively incur more cost that the cost incurred on ADR, both parties doesn't accept the decision of the legal method equally, that means post decision hostility is highly likely in using the legal method than the ADR.

Self-Review Questions

1. Discuss Alternative dispute Resolution Mechanism
2. What are the common forms of Alternative Dispute Resolution Mechanism?
3. Explain aspects that influence informal justice system
4. How is Adjudication different from ADR?