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Impact of Alternative Dispute Resolution (ADR) Mechanisms on ease of doing business in an Economy: Policy for India

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ABSTRACT

Alternative, Amicable or Appropriate Dispute Resolution-like mechanisms have had their presence globally for a long time. Initially, they were used to resolve land disputes or disputes arising out of a war. However, with merchants exploring foreign lands to expand their trade and businesses, development in ADR in the form of Lex Mercatoria was seen. Since then, resolving commercial disputes outside the court has gained popularity because of its time-efficient mechanism, which the municipal courts failed to provide. This paper begins with an explanation of the concept of ADR and its importance as a necessary institution in the business of a country. Thereafter, the focus of this paper has been directed towards the relationship between ADR and its effect on the "ease of doing business" index of a country. Although the ranking is no longer published, the criterion is relevant to make improvements for international businesses approaching a particular country. Providing a comparative analysis amongst countries with different "ease of doing business" rankings and taking into consideration their ADR system, the authors have surfaced-out certain factors responsible for a country with higher ease of doing business rank. Subsequently, the paper highlights the scenario of India and the development of ADR therein. It deliberates upon the challenges faced by the ADR system in India, including lack of confidence in ADR, resistance to change, and requirements of standardization. Keeping the challenges faced by India in the backdrop, along with the best practices implemented in other countries, the paper in the end provides an analysis of the data along with some recommendations as a contribution towards framing a policy for ADR in contemporary India. This would also help in improving the "ease of doing business" environment in relation to ADR administration.

Keywords: Alternative Dispute Resolution (ADR), Lex Mercatoria, Ease of Doing Business, India.

1. 1. INTRODUCTION

Alternative Dispute Resolution (hereinafter referred as ADR) is an alternate method of resolving civil disputes with the support of a legal system. It is an alternative to the traditional method of dispute resolution, i.e. litigation. An efficient judicial system of a country works in consonance with the ADR mechanisms implemented therein. (Lucas, 2014) And if it is done so, it would increase access to justice and subsequently reduce the burden of courts in a country. For cases where financial or commercial transactions are involved, arbitration and mediation have the potential to play an important role in sharing the burden of dispute resolution in the country.

Since there has been an ever-increasing growth in economic globalization – markets, businesses and commercial transactions have become international. Thus, nations are becoming more aware of other legal systems and how

disputes are resolved in other countries. ADR is the most preferred option amongst business companies to enforce contracts and settle disputes privately.

ADR has evolved as a practice and has gained popularity in the commercial world. "Growth in the use of ADR simply reveals that companies are increasingly aware of the fact that contracts often give rise to disagreements about their meaning or performance. There is always a risk that the contractual relationship will be broken off or harmed by the discovery of information that was not known at the time of signing the contract, or by a contract that leads to unforeseen difficulties, or by changes in the environment surrounding the contract, and many other factors." "This inherent problem with any contract can be overcome if parties to the contract agree to anticipate it and try to handle it themselves with the assistance of a neutral third party." (Guillemin, 2011) "ADR acts as a "management tool" for the completion of any business-related contract", thus, contributing towards proliferating trade and commerce in a country."

The Ease of Doing Business (hereinafter referred as EoDB) in a country depends on several factors like the procedure of establishing an enterprise, its construction, requirement of permits, availability of resources, imposition of taxes, a well-established legal system to resolve commercial disputes, enforcement of contracts, insolvency laws etc. The more favourable their nature is towards a business, the easier it is for the individuals to do business in that country. Enforcement of commercial contracts, as well as speedier resolution of disputes under EoDB index would be the scope of this research paper. And, ADR is the most important mechanism supporting the same. Establishing an efficient ADR system in the country would help the Courts contribute towards a better "enforcing contracts" (hereinafter referred as EC) score under the umbrella of EoDB index.

The score measured by the World Bank for providing a *Doing Business* rank to the countries was not merely a publicity boost but had a direct effect on the perception of a country's standard of business transactions. It helped foreign companies and investors to decide whether commercial transactions or investments in a particular economy would be beneficial for their business or not. Amongst different indicators that were quantitatively measured by the World Bank to calculate the *Doing Business* score of an economy, the enforcement of contracts indicator was one of the important integral aspects for the functioning of any company or business in a country. Without an efficient system for enforcing contracts in a country, smaller businesses would succumb to unfair means of resolving disputes by big corporations who would use their financial might in such circumstances. Also, it is possible in an inefficient system that a company decides to let go of the losses that it has incurred, against the huge costs and time that would be taken to litigate the enforcement of a contract. All this might make foreign companies and businesses lose faith in the system's ability to enforce obligations against domestic companies. Hence, it becomes important to understand the relevance of this indicator i.e. enforcement of contracts in the EoDB rank in today's time.(Souza, 2020)

2. 2. RESEARCH PROBLEM

Although the EoDB ranking of India has improved gradually but the EC rank has remained the same. The authors have addressed this situation as their research problem because the ease of enforcing contracts in an economy reflects its legal and judicial system. An efficient judicial system must be supported by ADR mechanisms to improve the case management in a country. The case management score for India in the last EoDB ranking was disappointingly 1.5/6.(World Bank Group, 2020)

3. 3. RESEARCH OBJECTIVES

1. To understand the relevance of the EoDB Index and whether it has become obsolete in the present times.
2. To understand how different ADR mechanisms like arbitration and mediation have been established in different countries and how effectively they have disposed of contractual matters.
3. To assess the role of ADR in measuring the EC index which is one of the indices under the EoDB measurement system.
4. To analyse the relation between effective ADR system in a country and its EoDB rank.

4. 4. EASE OF DOING BUSINESS RANKING BY THE WORLD BANK

The goal of EoDB index is to provide a benchmark for policymakers and researchers to discover areas of development and exceptional practices in commercial enterprise regulation. The index aims to bring reforms amongst nation states to create a conducive environment for the development of private sector and an increase in their monetary value.(Arndt et al., 2016; World Bank Group, 2019; Hallward-Driemeier & Pritchett, 2015)

Three economists at the World Bank Group, Simeon Djankov, Michael Klein, and Caralee McLiesh were the

creator of this ranking. This ranking/index was followed by the World Development Report of 2002 (Djankov et al., 2002). The index is based on 10 factors consisting of diverse components of commercial law, including establishing an enterprise, handling permits for construction, electricity, registering assets, getting credit, shielding minority traders, paying taxes, foreign trading, contract enforcing, and resolving insolvency (World Bank Group, 2019).

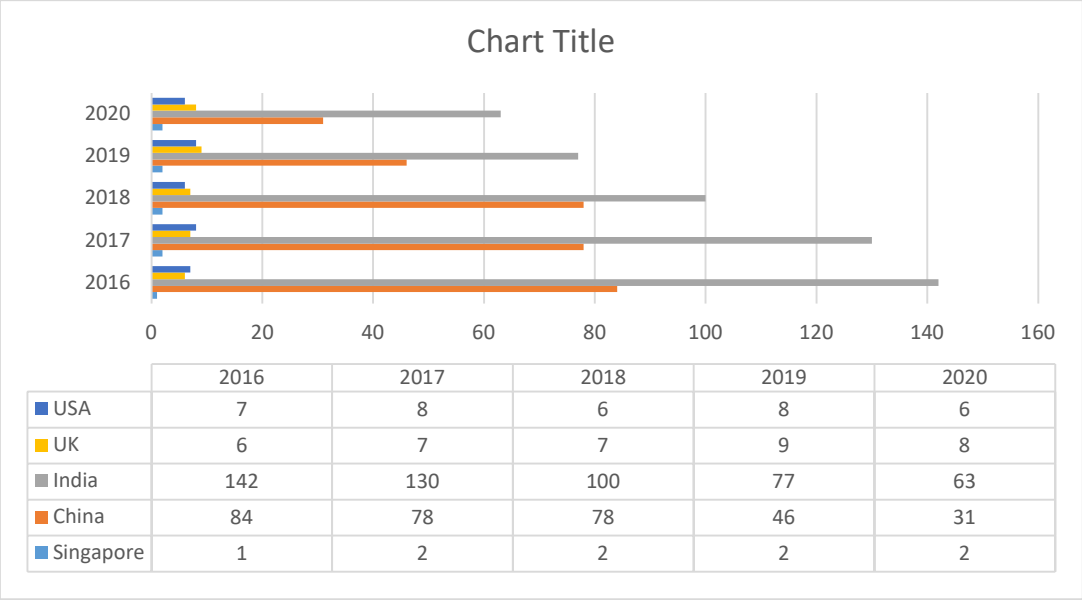
There are certain limitations and criticism faced by this index. Following are some of the major challenges:

- The index does not consider all factors of the business which could influence corporations' decisions, choices and performance, such as macroeconomic stability, quality of infrastructure, size of the marketplace, safety, corruption inside the business, skills of labour, innovation, and culture.
- The index is based on standardized assumptions and eventualities that may not mirror the truth about diversity of various countries. For example, the index assumes that each business is in the biggest metropolis of a country and operate inside the formal sector.
- The index can be influenced by availability of data and other quality issues, viz., inconsistencies, gaps and errors, or biases within the sources and methods used to gather and verify the data.
- The index may create incentives for governments to focus on improving their ratings rather than addressing the underlying issues and needs of their economies. For instance, a few nation states might adopt superficial or artificial reforms that don't have a giant effect at the base level.

Although, the ease of doing business index is a useful tool, it has an imperfect degree of enterprise regulation and institutional quality across nation states. It offers a comparative overview considering some of the aspects of the businesses that can, to some extent, provide the policy and efforts to be given on reforms. However, the criteria can no longer be seen as a complete or definitive evaluation of the overall competitiveness or attractiveness of a nation state for doing business. It ought to be complemented by using other indicators and sources of information that takes into consideration a broader range of factors and views that influence organizations.

"National specificities and diversity of legal traditions must be taken into account, as well as and above all the infinite richness of the cultural, ethnological and sociological foundations influencing dispute resolution on a global level. It is evident that disputes will not be resolved in the same manner in Europe, America, Asia or Africa."

The last *Doing Business* report was published in the year 2020 and in 2021 the World Bank decided to improve its flagship *Doing Business* ranking system and replace it by a new project called Business Ready or B-READY.(B-READY Project, n.d.) Figure 1, as provided below, shows the "ease of doing business" ranking for the USA, the UK, India, China and Singapore from 2016 to 2020. These countries will best provide a comparative scenario for India from the perspectives of both the West and the East.



	2016	2017	2018	2019	2020
USA	7	8	6	8	6
UK	6	7	7	9	8
India	142	130	100	77	63
China	84	78	78	46	31
Singapore	1	2	2	2	2

Figure 1 – Ease of Doing Business rankings of USA, UK, China, Singapore and India from 2016-2020.

EC Score under EoDB Index

Contracts are the base line in every sale or exchange of services or goods and the enforcement of such contracts is the driving force to ensure that the contractual responsibilities are respected and completed by the contracting persons. An effective enforcement mechanism inspires confidence in the enterprise and its financial system. Good enforcement strategies enhance predictability in business relationships and reduce uncertainty by way of assuring traders that their contractual rights can be upheld directly through local courts.(Souza, 2020)

The EC indicator takes into account three significant factors – (1) time, (2) cost invested in resolving a commercial dispute at the local first-instance court, and (3) good practices adopted by the judicial system of an economy (Bank, 2019). The time and cost factors are calculated by the World Bank *via* a standard mechanism wherein the resolution of a model commercial sale dispute is considered in light of the laws and judicial practices in a country. The quality of the judicial processes index assesses whether a particular economy has implemented a set of best practices in its judicial system or not. These best practices are considered with respect to four areas: (1) court structure and proceedings, (2) court automation, (3) case management, and (4) an efficient alternative dispute resolution system (World Bank, 2013).

Enforcing Contracts Ranking from 2016-2020					
	2016	**2017**	**2018**	**2019**	**2020**
USA	21	20	16	16	17
UK	33	31	31	32	34
China	7	5	5	6	5
Singapore	1	2	2	1	1
India	178	172	164	163	163

Table 1 – Enforcing Contracts Rank of USA, UK, China, Singapore and India from 2016-2020.

The World Bank Group provides an economy profile of all the countries which have been considered in its ranking. Table 1 provides the EC ranking for the selected countries from 2016 to 2020. Scores attained by China, Singapore, India, UK and USA for Time, Cost and Quality of Judicial Processes have been provided in the tables given below to substantiate their ranking under the EC Index.

Enforcing Contracts in Shanghai (China) Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
70.1	83.1	91.7

Table 2 – Scores of Time, Cost and Quality of Judicial Processes indices for China.(Economy Profile - China, 2020)

Enforcing Contracts in Singapore Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
96.4	71.1	86.1

Table 3 – Scores of Time, Cost and Quality of Judicial Processes indices for Singapore.(Economy Profile of Singapore Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

Enforcing Contracts in New Delhi and Mumbai (India) Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
0.0	65.2	58.3

Table 4 – Scores of Time, Cost and Quality of Judicial Processes indices for India.(Economy Profile of India Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

Enforcing Contracts in United Kingdom Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
74.0	48.7	83.3

Table 5 – Scores of Time, Cost and Quality of Judicial Processes indices for United Kingdom.(Economy Profile of United Kingdom Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

Enforcing Contracts in New York City (United States) Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
79.5	74.4	83.3

Table 6.1 – Scores of Time, Cost and Quality of Judicial Processes indices for New York City (US).(Economy Profile of United States Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

Enforcing Contracts in Los Angeles (United States) Scores – 2020 (On a scale of 0-100)		
Time	**Cost**	**Quality of judicial processes index**
64.3	52.9	77.8

Table 6.2 – Scores of Time, Cost and Quality of Judicial Processes indices for Los Angeles (US).(Economy Profile of United States Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

From the data provided above the time or number of days taken to enforce a contract in India at the first instance is the biggest concern and it presses upon the need of an efficient system of alternate dispute resolution mechanisms. The score of India in quality of judicial processes is also not encouraging. In India's 2020 Economy Profile, it was observed although the laws of India provide for time limitations in a civil case, however in more than 50% of the cases such limitations are not adhered. Also, the maximum number of adjournments that can be given in a civil case are set by the law but since they can be further granted on reasons of unforeseen and exceptional circumstances, even these rules are adjusted in more than 50% of the cases. There are other shortcomings in the system as well, like lack of case management tools for the judges as well as the lawyer, also the electronic automation of court proceedings is lagging behind.(Economy Profile of India Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020)

Since 2008 India has been successful in achieving two major reforms for the purpose of enforcing contracts easily; in 2017, "…by creating dedicated divisions to resolve commercial cases"(World Bank Group, 2017) and in 2018, "… by introducing the National Judicial Data Grid, which makes it possible to generate case measurement reports on local courts"(World Bank Group, 2018). However, these reforms did not make much of an impact in the ease of enforcing contracts ranking of India in 2020. In 2021, the World Bank didn't release the Ease of Doing Business Index. It discontinued the index after 18 years of publication on allegations of data being rigged, influenced by the political entities. Even though the ranking has not come up, the commercial transactions and establishment of businesses in India has not stopped. The criterion of being able to carry out a business easily in a country would always be taken into consideration by commercial parties before making any investment or entering into a commercial contract. Therefore, it is still important to make a conducive environment in India for "ease of doing business" and also an easy enforcement of contracts. In 2020, the e-filing of cases came into effect for Delhi District Courts (Official Website: Delhi District Courts, n.d.) which is another step in the direction of improving the quality of judicial processes. Similarly in Mumbai, for commercial matters, the case can be filed electronically.(Official Website of High Court of Bombay, n.d.) Court automation is a process wherein once the matter is electronically filed, the litigant gets the case number in exchange along with the next date of hearing in the court. However, such automation has not yet been implemented even in the apex court.

Role of ADR in the Enforcement of Contracts and Case Management

The case management score under the EC index is measured by six components which includes:

- If any of the relevant civil procedure laws or regulations include deadlines for at least three of the following important court proceedings: (i) process service; (ii) initial hearing; (iii) defence statement filing; (iv) conclusion of the evidence period; (v) expert testimony filing; and (vi) final judgment submission. If such time standards are accessible and followed in more than 50% of instances, they receive a score of 1; if they are available but not followed in more than 50% of cases, they receive a score of 0.5; and if there are no time standards or fewer than three of these significant court events, they receive a score of 0.
- If there are any laws governing the maximum number of adjournments that may be given, whether adjournments are legally restricted in unanticipated or extraordinary events, and whether these regulations are adhered to in over 50% of cases. If all three requirements are satisfied, the score is 1, 0.5 if only two of the requirements are satisfied, 0 if only one requirement is satisfied, or 0 if none of the requirements are satisfied.
- Does the competent court have any publicly accessible performance measurement data that may be used to track the status of cases in the court, keep an eye on how well the court is performing, and make sure deadlines are met? If two out of the four reports listed below are made publicly available, the score is one. (i) The court's time to dispose a matter and provide report; (ii) the number of cases that are resolved to the number of new cases that are filed; and (iii) an overview of all cases that are pending, broken down by type of case, life cycle of case, last action taken, and next allocated motion; and (iv) a progress report for a single case that gives an overview of the case's progress. If there is just one report available, or none at all, a score of 0 is given.
- Whether a pretrial meeting is one of the case management strategies employed in actual proceedings before the appropriate court and whether the pretrial conference covers at least three of the following topics: (i) scheduling, which includes when motions and other paperwork must be filed with the court; (ii) case complexity and expected trial duration; (iii) potential for settlement or alternative dispute resolution; (iv) witness list exchange; (v) evidence; (vi) jurisdiction and other procedural matters; and (vii) focussing on the most important issues. If a pretrial conference is held in the appropriate court and at least three of these occurrences are discussed, the score is 1; if not, it is 0.
- Judges in the appropriate court may utilize an electronic case management system for the following four purposes at least: (i) accessing laws, rules, and case law; (ii) automatically creating a schedule for hearings for every case on their docket; (iii) notifying attorneys via email, for example; (iv) tracking the status of a case on their docket; (v) viewing and managing case documents (motions, briefs); (vi) helping to draft judgments; (vii) semiautomatically creating court orders; and (viii) viewing court orders and judgments in a specific case. If judges have access to an electronic case management system for at least four of these uses, they receive a score of 1; if not, they receive a score of 0.
- Whether attorneys are permitted to use an electronic case management system for a minimum of four of the following purposes: (i) accessing forms that need to be filed with the court; (ii) accessing laws, regulations, and case law; (iii) receiving notifications (like emails); (iv) monitoring the progress of a case; (v) viewing and managing case documents (motions, briefs); (vi) filing briefs and documents with the court; and (vii) viewing court orders and decisions in a specific case. If there is an electronic case management system that attorneys may use for at least four of these uses, it receives a score of 1; if not, it receives a score of 0.

Higher values on the index, which has a range of 0 to 6, denote a more effective and qualitative case management system. (Doing Business Archive - Enforcing Contracts Methodology, n.d.)

The calculation for the case management score considered only the court of first instance (Doing Business Archive - Enforcing Contracts Methodology, n.d.). In India, the first instance courts have the maximum number of pending cases per judge, therefore, reducing the life cycle of a case in the long run is of paramount importance for the judicial system (State of the Judiciary - A Report on Infrastructure, Budgeting, Human Resources and ICT, 2023). This pressure on the first instance courts can be reduced if a fraction of these cases can be resolved outside the court through an alternate means, i.e. via ADR methods.

ADR or Alternative Dispute Resolution-like mechanisms have had their presence globally for a very long time.

Initially, they were used to resolve land disputes or disputes arising out of a war. However, with merchants exploring foreign lands to expand their trade and businesses, development in ADR in the form of *Lex Mercatoria* was seen. Since then, resolving commercial disputes outside the court has gained popularity because of its time-efficient mechanism, which the municipal courts failed to provide. ADR has an important role to play in the administration of justice in a country by providing access to justice, reducing the burden of courts, and therefore aiding the system in its case management. However, it should be taken into account that "ADR may not be suitable, where there is a need to establish a clear precedent or public ruling, where there is an excessive power imbalance, where the parties are not committed to negotiating and resolving the dispute, where negotiation may be perceived as a sign of weakness, or where the parties cannot trust each other to abide by the terms of a settlement…" (Lucas, 2014).

An ADR system needs to have a few fundamental components in order to function. These components include: (1) determining the true motivations driving lawyers and judges to use alternative dispute resolution (ADR); (2) providing sufficient authorization for ADR; (3) proficient attorneys; (4) skilled judges and administrators of courts with a favorable state-level court infrastructure; (5) a sufficient number of trained neutrals. (Welsh & McAdoo, 1998) ADR may be employed in effect due to the courts' growing workloads of criminal and juvenile cases. ADR can offer an alternate method of settling and diverting civil matters, allowing judges to use their time more wisely (p. 11). Authorization for ADR can either be purely voluntary or court directed. Purely voluntary process will reduce the chances of parties opting for ADR as a dispute resolution mechanism. A statutory law in place, may provide discretionary powers to the court to direct the parties for ADR in cases suitable for the same.

Arbitration is a private procedure outside of the judicial system in which opposing parties agree to resolve their disputes by designating an impartial arbitrator to make a decision (Fiadjoe, 2004, p. 27). The legal system in each country governs arbitration, which produces legally enforceable decisions. In order to maintain neutrality, consistency, and efficiency, the parties usually agree to use an established arbitral organization with a set of rules that acts as a buffer between them (Shah & Gandhi, 2011). In comparison to litigation, it is more party centric and provides them with confidentiality.

With mediation, a third party who is impartial actively guides the negotiation process in an informal, consensual, and extremely adaptable manner. While the parties maintain complete authority over the process, the mediator assists the parties in identifying concerns, finding solutions, and considering other options. Mediators are frequently senior attorneys, reputable tradespeople, or local elders who are chosen for their expertise in the subjects pertinent to the conflict. Though jointly agreed upon, a mediated resolution is not legally binding nor upholdable from the outside. While conciliation is a related procedure where a neutral third party may offer suggestions or opinions on possible settlements, mediators will not offer solutions to the parties. In complex cases, where both parties are open to compromise, and when preserving or mending a long-term relationship is the goal, mediation and conciliation can be helpful. However, because the process is flexible and consensual, participants may leave at any time, and there are no set norms of procedure, this could lead to unpredictability. (Fiadjoe, 2004)

A new strategy called online dispute resolution (ODR) involves conducting traditional ADR processes like mediation and arbitration online (Albornoz & Martin, 2012, p. 6). ODR is applicable to both domestic and foreign conflicts, but it is especially well-suited to low-value disputes between parties who are sufficiently geographically far from one another to make in-person appearances prohibitively expensive, as well as disputes resulting from e-commerce transactions (Albornoz & Martin, 2012, pp. 7-8). With technology, ODR can assist parties in reaching a mutually agreeable and transparent resolution, or it can serve as a platform for dialogue that may involve an impartial third party (Fowlie, Rule, & Bilinsky, 2013, p. 51). When a party uses assisted or automated negotiation, technology helps them resolve their differences by posing queries, offering suggestions, or putting up a system or compensation bid without the need for a human mediator. A more traditional ADR procedure with a human mediator or arbitrator is carried out online in online mediation or arbitration. Some of the private companies that run these processes are Modria, CyberSettle, SmartSettle, Juripax, and the Mediation Room. (Albornoz & Martin, 2012; Fowlie, Rule, & Bilinsky, 2013) In Latin America, business-to-business and business-to-consumer conflicts are resolved through the use of ODR. Though there is currently no clear legal framework for online dispute resolution (ODR), there is a lack of trust in online transactions, and there is inadequate ICT infrastructure, ODR seems to offer prospects for speedy and affordable conflict settlement. (Albornoz & Martin, 2012)

Mechanisms for commercial ADR that are less commonly utilized include:

- Expert determination is the method of resolving a disagreement without the need for negotiation, instead by appointing an impartial qualified professional to rule on technical issues. There is no opportunity for appeal, and the expert's ruling is final. This method is applied to disagreements that are solely technical or that include valuation.
- An impartial technical expert who conducts an initial evaluation of the facts, supporting documentation, or legal contentions and provides an analysis on the issue at hand is also a necessary component of early neutral evaluation. Although the expert's assessment is not legally binding, it does provide the parties with an unbiased assessment of their respective positions and some direction regarding the likely course of events in case the matter is taken to court. It can serve as a foundation for future negotiations, assist the parties in defining the issues at hand and evaluating their respective views and chances for settlement, and help the conflict move past pointless stages.
- Stakeholder dialogue is a mediation-related practice that seeks to hear from a variety of stakeholders as opposed to only the parties in dispute. It is generally used when there are a lot of parties involved, like in big construction projects or matters involving environmental protection that affect a lot of people.
- Dispute resolution boards are mostly utilized in the construction industry. They involve unbiased expert panels that are established at the start of a project and remain active all the way through to assist, prevent and settle conflicts. Although decisions made by these boards are not always legally binding, the vast majority of issues that are brought before them are settled.
- When other complaint-handling procedures have failed, ombudspersons are a form of arbitrator that are often utilized in the public sector and for addressing customer complaints in regulated businesses. Although they are rarely utilized in conflicts between businesses, they can be used in workplaces to address employee internal grievances. A common procedure is to offer mediation. (Lucas, 2014)

Putting into effect a harmonious functioning of the aforementioned methods along with the traditional ADR mechanisms would benefit the management of cases in a country. This would help in having an efficacious system for the enforcement of contracts while reducing the burden of courts. Since the ultimate goal is to keep the business transaction intact, a dialogue with both the parties which best suits their commercial goals would reduce the chance of litigation.

Institutions of ADR are also of great importance when it comes to providing support to the judicial system of a country in case management. The International Centre for Dispute Resolution (ICDR) and The American Arbitration Association (AAA) are primary arbitration centres of the USA, which administer many arbitration cases across numerous sectors and industries (Davidson & Rushton, 2021). According to the Annual Report of 2020, the AAA-ICDR administered 9,398 cases, and ninety seven percent of the cases were resolved without court intervention.(AAA-ICDR Foundation, 2020) JAMS (Judicial Arbitration and Mediation Services, Inc) is another fundamental arbitration institution in the US, which presents custom designed answers for complex disputes (Davidson & Rushton, 2021). According to its internet page, JAMS treated 17,500 disputes in 2019, with a high rate of resolution and satisfaction of parties. Notable instances dealt by each institutes include disputes of T-Mobile US Inc. v. Sprint Corp., Crystallex International Corp. v. Venezuela, Apple Inc. & Qualcomm Inc., Citigroup Inc. v. Abu Dhabi Investment Authority, and Mattel Inc. v. MGA Entertainment Inc.

In Europe, the International Chamber of Commerce (ICC) is the main institution for international business arbitration, with over 800 registered cases in 2020 and a high rate of decision and enforcement (ICC, 2021). The London Court of International Arbitration (LCIA) is the second most popular European organization, with over 400 instances filed in 2020 and a diverse panel of arbitrators (LCIA, 2021).

The Singapore International Arbitration Centre (SIAC), which is the leading arbitration institution in Singapore and one of the best centres in Asia. The SIAC has an experienced worldwide panel of over 500 arbitrators from over forty jurisdictions with professional in numerous sectors and industries (SIAC, 2021). In Singapore, one of the leading mediation centres is the Singapore International Mediation Centre (SIMC), which offers mediation and other dispute resolution services for cross-border commercial disputes. The SIMC was established in 2014 as part of Singapore's efforts to become an international dispute resolution hub. The SIMC has a panel of over 70 mediators from over 15 countries with experience in various industries and sectors. According to its website, the SIMC has handled over 100 cases since its inception and has an 80% success rate for dispute settlement. (ibid.)

The China International Economic and Trade Arbitration Commission (CIETAC), that's the leading arbitration

organization in China and one of the most distinguished around the globe. According to its annual report of 2020, the CIETAC dealt with 3,053 new cases in 2020, a mild growth from 2,962 in 2019. The general quantity in dispute for all cases turned into RMB 112.9 billion (CIETAC, 2021). The CIETAC also reported that it had a high rate of resolution and customer satisfaction. In China, one of the prominent mediation centres is the China Council for the Promotion of International Trade (CCPIT) Mediation Centre, which offers mediation and other dispute resolution services for domestic and international commercial disputes. The CCPIT Mediation Centre was established in 1987 as part of the CCPIT, which is a national foreign trade and investment promotion agency. The CCPIT Mediation Centre has a panel of over 200 mediators from various regions and fields of expertise. According to its website, the CCPIT Mediation Center has handled over 1,000 cases since its inception and has a high rate of resolution and customer satisfaction. (CCPIT Mediation Center, 2021)

The New Delhi International Arbitration Centre (NDIAC), is the flagship arbitration group in India established through an Act of Parliament in 2019. The NDIAC pursuits to promote institutional arbitration and make India a hub for arbitration cases. According to its website, the NDIAC has treated 12 cases from the beginning, with a complete amount in dispute of INR 1.5 billion. The NDIAC additionally stated that it has resolved most of its cases within six months and has obtained effective feedback from the parties.(NDIAC, 2021) NDIAC also offers mediation and conciliation in cross-border disputes.

Impact of Quality of Judicial Process on Ease of Doing Business

In the 2020 economy profile report of India, the **quality of judicial processes** index received a marking of 10.5 out of an index of 0-18 (Economy Profile of India Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020). There are 4 categories under the quality of judicial processes index and these categories received the scores **2.5/3 for alternate dispute resolution**, **4.5/5 for court structure and proceedings**, **1.5/6 for case management** and **2/4 for court automation** (Economy Profile of India Doing Business 2020 Indicators (in Order of Appearance in the Document), 2020). Even though the alternate dispute resolution category met the index requirements, it does not mean that ADR is fruitfully utilised in the country because the case management score is extremely low. It implies that there are procedural difficulties even in alternate dispute resolution mechanisms and that is why it does not have a positive impact on the case management (Singh, n.d.) of the judicial system. For instance, even though the arbitration law of India directs the court to dispose of the petition under S. 34 within one year, however it does not provide with the consequences if such time limit is not adhered to (2018 SCC (9) 47, n.d.). This allows parties to cause delay in the arbitral proceedings or in the enforcement of an award by filing petitions before the court to set it aside.

The ADR score under "quality of judicial process" index is calculated by assessing the following six components:

- Whether domestic arbitration concerned with commercial disputes is regulated by a consolidated statute or a chapter or portion of the relevant procedure code that covers almost all of its components. If the answer is affirmative, 0.5 is given; if not, 0 is.
- Whether arbitration may be used to settle any type of business or commerce related disputes, excluding those involving bankruptcy, public policy, consumer rights, employment matters, and intellectual property. If the answer is affirmative, 0.5 is given; if not, 0 is.
- Whether first instance courts will enforce arbitration agreements in over fifty percent of the cases. If the answer is affirmative, 0.5 is given; if not, 0 is.
- Whether consensual mediation, or conciliation are accepted methods for settling business related conflicts. If the answer is affirmative, 0.5 is given; if not, 0 is.
- Whether or not a consolidated statute, or chapter, or section of the relevant civil procedure code covers almost all aspects of voluntary mediation, conciliation, or both. If the answer is affirmative, 0.5 is given; if not, 0 is.
- If there are any financial incentives (such as reimbursement of court fees, an income tax credit, or the like) for parties to consider mediation or conciliation. If the answer is affirmative, 0.5 is given; if not, 0 is.

Higher values on the index, which has a range of 0 to 3, indicate that there are greater number of alternative dispute resolution procedures available. (Doing Business Archive - Enforcing Contracts Methodology, n.d.)

The first and fifth component in the ADR score requires whether domestic commercial arbitration or voluntary mediation and conciliation are governed by a consolidated law, a consolidated chapter or a section of the

applicable procedural law for civil disputes (Gunarya et al., 2021). The USA (The Federal Arbitration Act (USA), 1925), the UK (Arbitration Act, 1996), China (Arbitration Law of the People's Republic of China, 1994), Singapore (Arbitration Act, 2001), as well as India (The Arbitration and Conciliation Act, 1996), have a consolidated law for governing arbitration, conciliation and even mediation via the recent Act (The Mediation Act, 2023). Although, in the UK (Cortes, 2015) there isn't any exclusive mediation law for the parties but a framework for the same is provided by the Civil Procedure Rules (Mediation in England and Wales, 2022). In the USA, Congress adopted the Alternate Dispute Resolution Act in 1998 which directed the Federal trial courts to recognise and implement ADR methods, and also granted judges the authority to refer a matter for mandatory ADR procedures, including mediation (Polsinelli, 2019). But if we look for an exclusive statute for mediation in the USA, then some of the states have adopted the Uniform Mediation Act which was approved in the year 2002 by the American Bar Association. In China (People's Mediation Law of the People's Republic of China, 2010) and Singapore (Mediation Act, 2017), parties have certainty of a statutory mediation law in the country.

The second component of the ADR score is concerned with the arbitrability of the subject matter. In India (Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., 2011; Vidya Drolia v. Durga Trading Corpn., 2021), USA (Stolt-Nielsen S.A. v Animal Feeds Int'l Corp., 2010; Celsius Mining LLC v Mawson Infrastructure Grp. Inc. (In re Celsius Network LLC), 2024), UK (Premium Nafta Products Ltd. (20th Defendant) & Ors. v. Fili Shipping Co. Ltd. & Ors., 2007; Fulham Football Club (1987) Ltd. v. Richards, 2011), Singapore (Anupam Mittal v Westbridge Ventures II Investment Holdings, 2023) as well as China (Zui Gao Fa Zhi Min Zhong, 2020), all kinds of commercial disputes are arbitrable in nature.

Even though India meets the components under ADR score satisfactorily and had a score of 2.5/3 in 2020, its utilization is not sufficient enough to improve the case management and subsequently EoDB in the country. Regrettably, alternative dispute resolution (ADR) in its current form all too often transforms into a private judicial system that resembles litigation and is more expensive than what it is meant to avoid. These days, ADR procedures at many organizations commonly include a lot of additional work-load in terms of paperwork, inquiries, depositions, legal professionals, courtroom journalists, testimony from experts, media coverage, and verdicts that are excessive and go beyond contractual boundaries. (Carver & Vondra, 2004)

5. 5. ANALYSIS AND CONCLUSION

The EoDB Index was formulated for the purpose of incentivising the countries with respect to development and improvement in their business environment. And it largely showcased the reality of an economy to build upon new business policies for the country. Until 2020, it held relevance for the fact that countries were motivated to improve their ranks on a global level. For India, between 2016 and 2020, its EoDB ranking improved remarkably from 142nd to 63rd, showcasing the government's efforts to make the business environment more conducive to investment and growth.

Despite the overall improvement in the ranking, the EC index has remained a significant challenge for India. As of 2020, India ranked 163rd out of 190 economies in the EC category, indicating that contract enforcement remains one of the weakest areas in the Indian business environment. Indian courts are burdened with a massive backlog of cases, leading to significant delays in contract enforcement. It often takes years to resolve a commercial dispute. ADR has an important role to play in improving the score on quality of judicial process index of an economy. The speed of enforcement of any contract within an economy depends on the average time taken by a court to conduct the proceedings and the execution of the decree. The time or number of days for the same can be reduced by establishing special courts or alternate dispute resolution mechanisms. Such special courts and ADR mechanisms would reduce the burden of local first instance courts in the country and help in managing cases efficiently.

In India, Article 21 read with Article 39A of the Constitution provides constitutionality to the system of ADR (Law Commission of India, 2009). ADR will have a positive impact on the enforcement of contracts in India, only when ADR proceedings are streamlined so as to ensure that arbitration, conciliation and mediation like mechanisms are really an alternate means to resolving disputes and not litigation-in-disguise. Taking lessons from US, UK, China and Singapore, the following suggestions may be incorporated as a policy framework for improving the enforcement of contracts in India:

1. Implementing a greater number of specialized commercial courts and promoting ADR mechanisms more aggressively can help reduce the backlog and speed up contract enforcement.

2. Encouraging the use of arbitration, mediation, and conciliation can help resolve disputes outside the traditional court system, easing the burden on courts and speeding up the resolution process.
3. Digitizing court processes to improve the speed and efficiency of contract enforcement, similar to China's model.
4. Introducing reforms to streamline court procedures, reduce complexity, and eliminate unnecessary delays is crucial. This includes increasing the number of judges and improving court infrastructure.
5. Implement targeted reforms to address these challenges.

Upon analysing the data collected for this paper, it is evident that the most prominent reason for an inefficient system of enforcement of contracts in India, is unwarranted delay, for one reason or the other. And, ADR has a high scope of improving the delay in the system provided there are certain and predictable ADR laws in the country along with specialised institutions to conduct international arbitration and mediation. The fact that the burden of courts in India has not reduced (World Bank Group & Group, 2020) indicates that ADR is not being utilised at the ground level to its full potential. Factors affecting ADR in a country like India and how it impacts the economy might be a thought for another paper, however for now there is a need for a cultural shift in the dispute resolution process. Promoting ADR can create that shift in how disputes are resolved in India. As businesses and individuals become more accustomed to resolving disputes through ADR, there will be less reliance on the court system, leading to overall improvements in the Enforcing Contracts index. ADR can also foster better business relationships, as parties often reach amicable settlements without the adversarial nature of court proceedings.

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