MEDIAITION AND CONCILIAITION: DIFFERENCES AND SIMILARITIES AND THE WAY OF USIN G THEM IN THE UK AND IRAN

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الوساطة والتوفيق : الاختلافات وأوجه التشابه وطريقة استخدامها في المملكة المتحدة وإيران

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الملخص:

يعد التحقيق والمقارنة العامة لتسوية المنازعات البديلة (ADR) طرق في النظام القانوني الإيراني والمملكة المتحدة هي الهدف الأول لهذا البحث. و الهدف الثاني هو شرح بعض أشهر طرق لتسوية المنازعات البديلة وخاصة الوساطة والتوفيق. قد تكون هناك أوجه تشابه واختلاف بين كلا النظامين القانونيين لأنهما في مكان مختلف ولهما نظام قانوني مختلف أيضًا. عندما، يشير القانون الإيراني إلى القانون المدني وتشير قوانين المملكة المتحدة إلى القانون العام. يعد استخدام طرق ADR على مستوى عالٍ في المملكة المتحدة حيث سيتم استخدام هذه الطرق بصورة إلزامية للوفاء. في حين أن استخدام طرق ADR في إيران لم يتم تقديره كثيرًا. هذا قد يجعل بعض الجوانب السلبية والإيجابية لكلا نظامين القانونين. كما يمكن جعل بعض الأنواع الجديدة من المشاكل بسبب قدر كبير من الاتصال محليا وعالميا بين البلدان. كلا البلدين المصممين قد يبحثان عن بدائل أخرى من أجل حل النزاعات الناشئة الحالية والمستقبلية. يتزايد معدل النزاعات على مستوى العالم ليس فقط خدم المنازل، وهذا يسبب مشاكل هائلة للمحاكم لاسترداد جميع النزاعات. وبالتالي، فيما يتعلق بتطبيق أنظمة الحلول البديلة لتسوية المنازعات، وخاصة الوساطة والمصالحة في إيران والمملكة المتحدة قد تحتاج إلى أسس جيدة وتقييم مثالي. في إيران، هناك بعض البدائل التي قد تعتمد عليها الأطراف عندما يكون لديهم مشكلة مثل المصلحة والشريعة. الشخص الثالث الذي يتخذ القرار عادة ما ينتمي إلى الاديان والعرف والثقافة وليس القانون. نظرًا لأن نماذج ADR تعمل بشكل جيد في المملكة المتحدة وفي معظم البلدان التي تستخدم فيها نماذج ADR، لذلك سيكون من الجيد للبلدان مثل إيران أن تقتبس خبرتها فيما يتعلق بحل مشاكلها المحلية والدولية من خلال طرق ADR. ومن ثم، نظرًا لعدم استخدام أشكال ADR بشكل صحيح في النظام القانوني الإيراني، فقد اعتمدت على الشريعة والصلح والثقافة لحل المشكلات. تم تلخيص بعض الأفكار لشرح أنسب نظام لتطبيق ADR في إيران. أخيرًا، تم شرح بعض التوصيات وتجارب المملكة المتحدة في هذه الورقة من أجل اقتراح أرضية مناسبة لطرق ADR.

الكلمات المفتاحية: الوساطة، التوفيق، حل النزاع البديل في إيران والنظام القانوني في المملكة المتحدة، تسوية المنازعات.

Abstract:-

Investigate and general comparing of Alternative Dispute Resolution (ADR) methods in Iranian legal system and the UK are the first aims of this thesis. Explaining some of the most popular methods of ADR, especially mediation and conciliation are the second goal. There might be similarities and differences between both of the legal systems as they are in a different place and they have different legal system as well. Since, Iranian law is referring to civil law and the UK laws refer to common law. Using ADR methods are in high level in the UK as these methods are going to be used in a compulsory way of fulfillment. While, utilizing methods of ADR in Iran have not been used much. This might make some negative and positive sides for both of the systems of law. As, some new kinds of problems could be made because of a great amount of communication locally and universally among the countries. Both of the determined countries might look for the other alternatives in order to solve the present and future coming up disputes. The rate of the disputes are increasing globally not only domestics and, that makes massive problems for the courts to recover all disputes. Thus, in terms of applying ADR systems, especially mediation and conciliation in Iran and in the UK might need a good grounds and perfect evaluation. In Iran, some alternatives are there which parties might depend on when they have a problem such as Musalaha and Sharia. Third person who is making the decision is usually belong to the religions, custom and culture rather than the law. Since, ADR forms are working well in the UK and in the most of the countries where using ADR forms, therefore it will be good for countries as such Iran to quote their experience regarding to resolve their domestic and international problems by ADR methods. Hence, as ADR forms are not been used properly in Iranian legal law and they relied on Sharia, Solh, and culture to solve problems. Some ideas have been summarized to explain the most suitable system for applying ADR in Iran. Finally, some recommendations and the UK experiences have been explained in this paper to, in order to propose proper ground for ADR methods.

Key words: Mediation, Conciliation, ADR in Irainan and the UK legal system, Dispute resolution.

Introduction

There is no doubt along with the emergence of life on earth conflict has been begun. In the other words, the history of conflict belongs to our parents, Adam and Eve. From that time parties had tried to find the best solution to solve their disputes. After the age people from different places and different nations had tried for finding the best way for resolving their problems. And when the world became globalized and governments were formed, governments tried to build courts as they are still standing for resolving problems among the people. In today's world, people prefer not to go to court as much as possible to protect their or their relatives eyebrows. In some cases, they may even drop their complaint altogether. Contrary to the general principle of openness of proceedings in public courts, the general rule governing alternative methods of dispute resolution, such as negotiation, mediation, conciliation, etc. as thy are privacy and confidentiality of proceedings. As, in these methods, persons other than the litigants have no right to be present except with the permission of the parties and can not watch the litigation of the parties as in public courts, in addition to publishing the proceedings and disclosing information and documents provided during the proceedings.

There are restrictions and sometimes prohibitions, both by the parties to the dispute and by some persons involved in the proceedings. However, the general courts of justice are the main authority for dealing with the legal disputes. In the community people are, are not always the only reference. Corruption and weakness of official authorities, or in some cases the existence of cultural traditions or some other reasons, have formed the basis of other structures and activities that exist in almost all countries alongside the formal judicial mechanism and deal with various disputes in traditional or modern forms. These instruments, referred to in official international texts as (ADR) approaches, include all methods that are either specifically referred to resolve specific litigation and to help improve the judicial or administrative status of the case.

numerous of people have been increased everywhere, businesses between governments and the discovery of new technologies etc. have been made many difficulties which might be

difficult for the court to see all the cases. Thus, this paper wants to draw attentions to the quotation by (Prolatio) "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried."[1]

Moreover, people though resolving the problems by the court might need to go *through* many steps and stages before the trial start, also it might take much time and needs too much money. To trace the roots of ADR, we can turn to anthropological and sociological studies of traditional societies for a glimpse of some of the ways early humans may have resolved disputes without the use of fists, clubs, or poison arrows.[2] So although there is now an International Criminal Court for state violations of human and civil rights and criminal prosecutions, in some settings, a form of ADR has been used to create *Truth and Reconciliation Commissions* (e.g. South Africa, Bolivia, Argentina, Liberia) which are often hybrid institutions that seek the “truth” about what atrocities have occurred, but also try to use various forms of narrative, apologies, forgiveness ceremonies and rituals to attempt to “heal” the past, so newly constituted countries can move forward.[3]

There are some methods of ADR as Mediation, conciliation, arbitration etc., which this paper will explain Mediation and Conciliation in particular: differences and similarities and the way of using them in the UK and Iran.

Reaserch Questions

1. How mediation and conciliation are working in the UK and in Iran as well?
2. Which kinds of disputes could be mediate and conciliate?
3. How is the new trends of the Alternative Dispute Resolution.
4. What is the Islamic perspective on mediation, conciliation and other forms of ADR?

History of ADR in Iran and in the UK

Historically, there have been marauds of disputes in human societies. Whereas, there have been different way for resolving conflicts, that have changed and evolved in each era and time.

quarrels were sometimes settled on the basis of force and power in the midst of this. When something happened the fire of war was kindled between the parties ultimately, by the logic of coercion the will of the stronger side was governed. like other aspects of human life, methods of resolving disputes have been changed with the development and progress of societies. Friendly, and peaceful form of resolving disputes had raised that led and helped the modern and civilized people to learn and to resolve their problems not through war and coercion. Instead, disputes should be resolved through dialogue and understanding, or finally through the law.(4)

So, because of overcrowding in state courts as it has been mentioned its consequences, and the benefits that out-of-court dispute resolution has for governments, and especially the parties to disputes, have led to more prosperity and the development and application of new methods of dispute resolution. Conciliation and mediation as two forms of the alternative methods been described as non-judicial methods for resolving disputes in the UK and in Iran. Reconciliation literally means reconciliation and compromise, and in modifying the process by which a third party tries to resolve their dispute amicably to reach an understanding between the parties to the dispute. The main purpose of this article is to examine conciliation and mediation as a non-judicial method of resolving disputes in both countries legal system, with a descriptive and analytical method as it has cited before.(5)

Alternative methods have a long history in the world and has been referred to in general, in some laws in Iran, such as the Dispute Resolution Councils Law, but in particular to Solh and Sharaa and finally have recently entered in Iranian law. Mediation and conciliation are a manifestation of restorative justice in most of the countries legal system. In most of the countries, including the United Kingdom, those methods are used for this purpose. In today's world, people prefer not to turn to the judiciary to protect their eyebrows or that of their relatives. Although, at some point in time, people's trust in the judiciary for litigation disappears or been disappears. It therefore makes perfect sense to prefer to resolve the dispute in a different way by different methods as such mediation and conciliation.(6)People want to solve their problems, but not through the courts however, they prefer solving their problems in way that

can solve their disputes more easily, privacy, cheaper and even faster than the courts. To achieve their right without a doubt the methods along with the method of conciliation and mediation might be the best. However, it is debatable that to what extent these methods are been used in Iran and the United Kingdoms legal system. Moreover, whether the ruling on mediation and conciliation are binding or not in the both cited countries.(7)

Historical aspects of dispute processing have researched by few historians of English law. As a result, the history of ADR have had large gaps in knowledge about ADR process in the UK. The UK tried to use an array of dispute resolution processes which akin to modern-day for instance, adjudication, arbitration, mediation, conciliation and negotiation, and that these processes were available to litigants during the life of a lawsuit on a "dispute processing continuum. In the UK Parliament in March and June 2015 sets two of regulations, to implement the European Directive on ADR.(8) Finally, what is about Iran, Sahar Maranlou cited that, in the Quran many fundamental religious norms could be found for instance, sulh (negotiated settlement), adl (justice), musalaha (reconciliation), salam (peace) and tahkim (arbitration) serve as the basis for the Islamic dispute resolution system.(9)

Alternative Dispute Resolution (ADR) in General

The term of ADR clearly means any procedure, that parties of a dispute are agreed to, in which to assist them in avoiding litigation and finally reach the agreement, for that, parties use the services of a neutral third party.(10) Hence, ADR refers to multiple non-judicial methods to handle conflicts between the parties to a contract. It includes arbitration, mediation, negotiation, and conciliation etc. Alternatives methods are sought on a variety of grounds, that could also be closely associated with one another, and they inter alia may include higher expeditiousness and cost-effectiveness. As compared with the ordinary judicial proceedings ADR methods are partly faster and cheaper and that might make better suited outcomes to the parties and it also might underlying interests and needs of the parties in a more amicable environment. ADR methods might not be enumerated actual alternatives in substance as they are not in any meaningful form, in a competition with the established judicial methods. Similarly, in the discharge of the judicial system's

responsibility alternative approaches can, however, play roles as contrivances that operate as subsidiary or additional processes.(11) In addition, legal experts alike heralded ADR forms as a sensible, cost-effective way for two main aims which the first one is to be away from the kind of litigation and the second one is to keep corporations out of court. Parties believe that litigation might devastates winners almost as much as losers. However, more than 600 large corporations adopted the ADR policy over the next few years by the Center for Public Resources, savings in time and money was considerable report by the rest of those companies. Besides, parties may prefer using ADRs because of one of the primary reasons, which is, ADR procedures are often collaborative unlike adversarial litigation, and parties could be allowed to understand each other's positions. Furthermore, in contrast to the court the parties might come up with more creative solutions to settle disputes. Many American courts have also increasingly advocated for the use of ADR since the 1990.(12)

The growth of ADR Options and its recent developments

There is a perception that ADR options are a relatively recent development with having current attention and publicity. However, it has always been possible to settle a case rather than to go to court, and over a prolonged period the range of alternatives to litigation has developed. Therefore, for the current position, and some insight into what motivates the use of ADR, the following outline of major developments provides a context. The Arbitration Act 1697 (9 & 10 will III c15) is the first English statute relating to arbitration. According to this Act if the case seemed to be going against parties, they must not withdrawing from arbitration right up to the last moment.(13) In addition, with further regulation by statute the use of arbitration been developed by the Victorians. Also, in the UK many fields has been attracted by ADR methods. For example, since the mid1980s there was a great deal of attention amongst the legal and construction professions of the UK construction industry.(14)

To solve disputes more efficiently than the traditional methods of litigation not only does ADR provide an opportunity, but for the involvement of non-lawyers it also provides the increased scope. So, most of the fields such as construction professionals in mediation, conciliation, expert determination and adjudication are

becoming increasingly involved. With the support of the Confederation of British Industry and some leading law firms the Centre for Effective Dispute resolution (commonly known as CEDR) was launched in 1990. (CEDR) is based in London but with regarding to promote and to facilitate ADR options, and in particular mediation, more especially with regard to commercial cases it had a national and international presence. Also, in recognition of, and support for, ADR options steady growth could be clearly seen within the litigation system.

In the context of commercial cases initial interest in the use of ADR in relation to court actions arose. Commercial court ADR {1994} 1 All ER34, requires lawyers to consider with their clients and the other parties concerned the possibility to attempt for resolving the particular dispute, is the practical note issued by commercial court in 1994. This approach could moved on to quite successful take up rates and also improved client satisfaction, however this approach was a little slow to take off. It continued in any defended case, where the claim was for over 3,000 pounds a pilot scheme in Central London County Court offered time-limited voluntary mediation in 1996. As a result, this led to pilot schemes in other country courts, including Exeter, Manchester and Reading to become a model. The foundation for the current approach to country court mediation has been provided by evaluation of these schemes. In the UK Civil Procedure Rules 1998, section 1.1 the encouragement of the use of ADR has been built, that shows the fascinating changes for utilizing ADR. Likewise, it's most overriding objectives are first saving expense and second is dealing proportionately with the case. The parties should consider that some forms of ADR are more appropriate than litigation in 2006 UK Civil Procedure Rules that has been fixed in its protocols. In 2007 ADR was standardized in the country court also, a full-time mediation officer has established in each area. That progressed further and as the court has shown before and as it showed from the Dunnett v Railtrack (2002) case a party who failed to take part in ADR process must be imposed a cost penalty by the courts.(15) However, the defendant's might won the case but they should pay the costs since they had refused to consider what the courts had stated. Furthermore, the parties must be imposed a cost penalty by the court if the parties unreasonably refused to use ADR.(16)

Another evidence that shows the growth of ADR methods is Online Dispute Resolution (ODR) which helps disputants find resolutions to their disputes by use of information and communications technology and is emerging as an increasingly important approach to resolve consumer complaints. Resolving high volume and low cost consumer, e-commerce disputes is one of the reasons which ODR designed for, such as the Internet Corporation for Assigned Names and Numbers (ICANN), ODR has developed to enable its use for complaints about property tax, financial services and complaints to Ombudsman Organizations. According to Fowlie (2011), through the ODR proses most of the ADR options could improve and supplement Also, real and online world disputes might be applied by, and it could be technology-based or technology-assisted. Parties are helped through in technology-based ODR, for instance, blind-bidding systems for arriving at an optimal outcome.(17)ADR forms have been improved in general in particular arbitration form as nowadays the use of arbitration is increasing highly. In Iran two major specialist could be seen by arbitration institutions as cited by Ardeshir Atai (2011). In 2000 the parliament of Iran adopted the Iranian Chamber of Commerce, Industries and Mines established the Arbitration Tribunal pursuant to a law. This institute is independent and it has a power to adjudicate all domestic and international disputes. Another institute which it established in 2004 is Tehran Regional Arbitration Centre (TRAC), which it has the following functions:

1. International commercial arbitration promotion in the region.
2. provision of assistance and coordination of the activities to existing arbitration institutions.
3. provision of assistance to ad hoc arbitration proceedings pursuant to the Arbitration Rules of UNCITRAL.
4. assistance with the conduct arbitration proceedings and enforcement of arbitral awards.(18)

Aims of the Paper

1. What the research is really want to achieve that, how and when is the best time for applying the ADR methods and how to extent the area of ADR?

2. Realize the advantages and disadvantages of mediation and conciliation in Iran and in the UK?
3. To know how are alternative methods working in both mentioned countries.

Objectives

1. The paper focuses on the actions and necessities of mediation and conciliation in the UK and in Iran.
2. Cases, Journal articles, textbooks, etc. been used to explain the nature of both ADR systems.

Methodology

Three core purposes been utilized to describe the methodology of the research and to answer why using this type of methodology is the first one; the second one is, to explain the dissertation limitations and problems; finally, to statement the dissertation limitations and problems.

Research method

To know the way of using ADR methods especially conciliation and mediation as these two are the dissertations main aim. As, that relating to the legal systems but the comparative approach has been very popular, for those who demand to access statutes, cases and academic articles in particular. To acquire a skill of many different jurisdictions the comparative methods help and assist scholars. Also it could be helpful to ask such the questions how law systems in one place is different to the other one. Moreover, a comparative analysis may also been utilized to highlight the differences between law in the books and law in practice. Cite the decisions from variety types of the courts bye allowing the researchers (students) is one of the importance of using comparative methodology. Between the provisions and concepts of the law choosing the best legal systems and explain similarities and differences are so easy via this system. for comparing the both conciliation and mediation methods of ADR in the UK and Iranian legal systems this approach has been used because of the topic by the author.

Ethical Issues

Avoid plagiarism by the author must be taken as it has admitted that this paper is the author works. In addition, other researcher's attempt have to be avoided by the author to escape ethical problems.

Concept of ADR

ADR is an abbreviation that stands for 'Alternative Dispute Resolution'. It refers to all methods of solving disputes, which are alternatives for litigation in the courts. Through the ADR process, decisions will be made and the parties could relay on it, so litigants or potential litigants may resolve their disputes via ADR methods. Less costly, Confidentiality, control of process by parties, Flexibility of process more expeditious etc. are the benefits of the ADR procedures. Also, ADR techniques can be used in many Felds such as in commercial, family cases, labor disputes, divorce actions and also in resolving tax-claims and in other problems that would likely otherwise involve court litigation. ADR's usual mean is dispute resolution, via this process an independent person such as a mediator (an ADR practitioner) helps the parties in dispute to try to sort out the issues between them. Moreover, before the disputes between the parties becomes so vast and tribunal becomes involved, ADR can help parties to resolve their dispute. In addition, ADR can be used for almost any kind of dispute, as it is very flexible for resolving difficulties.

Resolving disputes through ADR methods are different from asking a court or tribunal to resolve disputes. As, it might be beneficial for the parts, when they use ADR to tackle dispute. Although, courts could spend much time considering disputes between the parties that need a tribunal's decision. In contrast to the court ADR, processes can be less expensive. In the other words, solving the disputes in the court can be very expensive then using ADR methods. As if you are represented can still involve hearings and legal costs by the court. The main goal of ADR is that, outcomes must focus on what is important for the parties and the other people involved. Focusing on the legal rights is the tribunals aim regardless of the parties' relationship. While, ADR processes may help parties and other people to maintain their relationship with solving their clashes.

Mahatma Gandhi cited that “I realized that the true function of a lawyer was to unite parties” Hence, undoubtedly the lawyer’s role in promoting non-adversarial dispute settlement mechanisms is very significant.(19) Arbitration, mediation, conciliation, and negotiation are the main ADR techniques. Nonetheless, Lok Adalat stands as another additional method of ADR mechanism in India, which it means people’s court that combines different techniques like mediation, conciliation, and negotiation.(20) Also, as it quoted by Kariuki Muigia that ADR is neither alternative nor complementary in tribunal system, contrary to conventional understanding. As it is usually the first point of reference in any dispute so, it is the mainstream dispute resolution system. Furthermore, Meadow Menkel beleives that appropriate dispute resolution system is ADR indeed and that should be strengthened, as the mainstream and preferred justice system not as an alternative avenue of justice. The mainstream dispute resolution mechanism should be the ADR mechanism for conceptual consistency to the court system.(21)

Appropriateness of ADR

Have the skills to manage disagreements effectively is the only way for individuals, communities and organizations those who have conflict.(22) It is really difficult when there is a problem and you don’t know the best approach to your case and not also know what's right and which options would be the best regarding to solve your problems. Therefore, some researchers believe that ADR should stand for the word "Appropriate". Generally, the created solution by the parties is the best way to any problem, that might be count as one of the principles of effective dispute resolution. Through the ADR process a neutral third party has been allowed to help or facilitate a resolution and that may satisfies the parties needs. The role of the parties is in all ADR methods are more active than in court where the resolution to their dispute is imposed on them by a judge. So, for those who cant live without each other, and they need to have an ongoing relationship as parents, using the ADR devices to resolve their dispute is much better than a courts.(23) While, in some of the circumstances for one parties using ADR may not be appropriate, and it may be even risky. However, in contrast to the court, much wider range of outcomes might be there bye using ADR. If what you want is a change in policy, saying an apology, or an explanation,

ADR methods investigation may be well and more appropriate than a trail. Appropriateness of ADR methods depends on a lot of things as such the urgency of the problem, the cost, the circumstances, the type of dispute etc.(24) Some of the scholars think that to limit some of the damage caused by civil disputes ADR methods might have widely been recognized as possessing the potential power, in recent time. Subsequently, to analyze, manage and resolving disputes both within and outside the usual setting of the court a lawyer's skill-set ideally should include a well-developed ability.

ADR methods are usually considered secondary to the court system. Nevertheless, after the collapse of negotiation when parties directly move to court for resolving their disputes, courts are increasingly urging and insist the parties to explore mediation or conciliation or another types of ADR. For example, in many instances as there is anecdotal evidence courts often refer the parties for mediation, especially in family and commercial disputes. Both Supreme Court and Country Courts have cited that all types of commercial cases must referred to mediation that have mentioned by Supreme Court of Victoria Practice. Correspondingly, with or without the parties consent, under section 26 of the Civil Procedure Act 2005 New South Wales for referring parties in any civil dispute to mediation procedures the courts have been permitted.(25) There are many examples that shows the percentage of resolving disputes via the ADR methods in many countries such as in eastern New York around 2 percent, in Northern California about 11 percent, in Germany about 10 percent and in Europe, 0.5 percent. Finally, as because of the complexity of the modern life the burden on the legal justice system has multiplied. Therefore, negative impacts might occur. As a result of delays by the trail, Italian government paid €600m to litigants. To facilitate early settlement of disputes the current interest in ADR is stimulated, in part, by the potential. Thus, parties might benefited financially and emotionally by early settlement of their disputes.(26)

Amicable Process

In the resolution of civil and commercial disputes, amicable dispute settlement methods play a major role. As compared to litigation ADR, mechanisms present advantages to the parties of the disputes. International Chamber of Commerce (ICC) noted that the

means by ADR rules are “amicable dispute resolution”, that means find a solution to the disputes by third party, he/she helps the parties. As such, an arbitral award under international conventions, as the New York Convention of 1958, ADR is enforceable as a matter of contract to parties, instead of a decision that is enforceable at law.(27) Regarding to reach an amicable settlement in all methods of ADR the Investigator will try to resolve the matter informally with both parties. Hence, amicable way to solve disputes will counted as a recognizable reward of ADR. Since, ADR procedures are less adversarial than litigation. Besides, to induce the parties for resolving their disputes in the amicable manner ADR methods are considered as more likely, for preserving the future business relationship between the parties. As, in the Apple v Samsung (2012) negotiation as one of the ADR forms been used between them for resolving their disputes, that helped them to maintain their business relationships. It is normal to have some disputes between the companies and resolve the dispute without resorting to traditional litigation. Achieving faster and cheaper resolution of dispute is not a sole purpose of ADR. So that the main purpose of ADR method is not just decisions for any given problem it is to achieve "better" resolutions of disputes, or at least to generate a wider range of possible solutions as well. Therefore, it should be note that, ADR is a tool to be used to supplement and to help the system work more effectively and efficiently not a replacement for the traditional litigation.(28)

Different types of Alternative Dispute Resolution

Dispute resolution is an indispensable process for making social life peaceful. Dispute resolution process tries to resolve and check conflicts, which enables persons and group to maintain co-operation. The techniques of ADR, widely accepted all over the world, however they may vary from region to region. This fluctuation depends on the legal framework of a country. Arbitration, Conciliation, Mediation, ombudsman, and negotiation are the methods of settlement that are broadly believed. This paper will examine mediation and conciliation as two common types of ADR in Iran and in the UK.

1. Mediation

One of the most attractive form to solve disputes between two parties is mediation. To help the parties reach a resolution of their

dispute mediation is a structured and facilitated negotiation presided over by a facilitator with the experience, skill, and training necessary. Moreover, to help the parties come to a settlement special negotiation and communication techniques might used by mediator. Based on the facts given through the discussions, in order to structure the meetings and come to a final settlement a third party will involve. When a negotiation reaches a deadlock third-party intervention is used. Also, to restore belief in the possibility of a beneficial resolution mediation is used for the parties, restored relationships, and future dialogue, while leaving control over the decisions are with the parties. Furthermore, to agree on their own solutions to the disputes a neutral third party, the mediator assists the parties. Emotional and hidden factors must deal with it effectively and efficiently by the mediator and assist the parties towards resolution of the disputes.(29) Besides, mediation is a process that devised, confidential and non-binding for the parties to structure a mutually and acceptable resolution.

Mediation has prompted to whatever disputes. What is fair or right is not a mediator's duty to determine it also if the case is litigated a mediator should not renders any opinion on the merits or chances of success. To bring the two disputing parties together by defining issues and limiting obstacles the mediator acts as a medium to communication and finally settlement. Unless the parties consent to it, the mediation does not create binding agreements. Additionally, the Mediator has no say in the outcome at all. Undouble, in mediation process the chances of success will be high, If the mediator is a person with expertise and experience. For instance, about 95% of mediators case have been successful in resolving disputes that stated by Interesting Statistic in the United States. The mediator terminates his activities when the parties insist on their positions and the mediator fails to persuade the parties to compromise and the parties refer their dispute to the final method, which is often court.(30)

While ADR forms are not been used much in Iranian legal system. However, in Iranian law and culture Mediation and other ADR methods have been a part for years. In Islam, resolving disputes through mediation and settlement (solh) is advised and also promoted. According to Iranian law, a judge have to try to resolve disputes through mediation and only if these efforts fail, should the

judge continue to adjudicate the dispute. Mediation became a prominent example for resolving disputes, after 2012 in the UK, with the establishment of non-governmental organizations mediation used for most of the disputes, which, unfortunately, with all the measures taken in Iran, this shortcoming still persists.(31) 'United Nations Convention on International Settlement Agreements Resulting fro Mediation' was adopted on 20 December 2018, this Convention is also known as the "Singapore Convention". On 7 August 2019, Iran also joined the convention. Although a specific method of enforcement has not prescribed in this convention, also on the conditions to be fulfilled it nevertheless has provided guidance by a state to enforce a settlement agreement resulting from mediation. Similarly, according to this convention, under the conditions laid down and in accordance with rules of procedure of the member states, the settlement agreements which are intended to be binding by the parties shall be enforced. On 12 September 2020 the convention came into force and parties allowed to avoid the prolonged and somewhat inefficient methods including litigation for recognition of settlement agreements and also instead directly have their settlement agreements enforced.(32)

2. Conciliation

One of the other crucial methods of ADR is Conciliation, whereby the parties to a dispute in order to resolve their differences use a conciliator, who meets with the parties separately. Moreover, the parties do this by improving communications, lowering tensions, providing technical assistance, exploring potential solutions, interpreting issues, and finally bring about a negotiated settlement. In conciliation process, it is free and voluntary proceeding, for parties to involve and attempt to resolve their dispute by conciliation. Through this process parties allowed to define the time, as the process is flexible, also the parties could be able to structure and content of the conciliation proceedings. Not all actions that taken are public. Moreover, the parties are interest-based; therefore, the conciliator should take into account the parties' legal positions and their commercial, financial and /or personal interests. In some legal systems, mediation and conciliation used interchangeable, as such in Indian context.

Consequently, as it has cited before conciliation is one of the methods of resolving disputes through which the parties seek to end their dispute by seeking a satisfactory solution for both parties. An impartial third party, called the conciliator, tries to negotiate the parties to the dispute and its solutions, and in the end, resolve the dispute with the consent of the parties. In conciliation manner, the neutral third party can encourage the parties to meet and negotiate directly, just as it can merely pass information to the parties. What is important is till they arrive and sign the agreement the process is risk free and not binding on the parties. Also, in most commercial disputes, the cases are amenable to conciliation when it is not essential that there should be a binding and enforceable decision. The following types of disputes are usually conducive for conciliation:

Commercial, financial, family, real estate, employment, intellectual property, insolvency, insurance, service, partnerships, and environmental and product liability etc. The mechanism of Conciliation is also adopted for settling various types of disputes apart from commercial transactions such as consumer protection, labor disputes, antitrust matters, service matters, taxation, excise etc.(33)

As a method of resolving disputes, there have been divisions about conciliation. Division of judicial conciliation and non-judicial conciliation or compromising is counted as one of the most important divisions, such as mediation. Any settlement that takes place outside the jurisdiction of the judge ore all the settlement that takes place in the absence of a judge is called a non-judicial settlement. Non-judicial settlement have no uniform rules, and like other alternative methods of resolving disputes this type of settlement is divided into institutional (organizational) and case-by-case (settlement) conciliation. When settlement made in court, judge involves in whole process in a judicial settlement and certifying the settlement between both sides of the disputes. In the new Civil Procedure Code 79, as the former Code of Civil Procedure, approved in 1972, the provisions related to the conciliation and in particular the judiciary and the duty of the judge in this case, as well as the manner of implementing the conciliation are set. Pursuant to Article 178 of the Code of Civil Procedure of the General and Revolutionary Courts in Civil Matters (terminated by this law at any stage of the civil proceedings) and leading to Article 18 of the same law, the law is between the parties,

in a notary public office or in becomes a court. It may take place outside the court, in which case the compromise is informal.(34)

Unless expressly stipulated by the parties, conciliation generally is not deemed binding in Iranian jurisdiction. As an official document should a conciliation settlement agreement which is intended to be binding by the parties be notarized then it can be enforced immediately in a manner similar to enforcing official documents in Iran. Equally, an ordinary and non-official settlement agreement even if it is binding per its terms, with general principles of enforcing contracts could only come into effect in line, that requires resorting to courts so as to first authenticate the agreement and subsequently have the parties to abide by it. Conciliation is a more formal process compare with mediation in Iranian law. Likewise, the cost of conciliation is higher than the mediation as it could typically involve the engagement of parties' legal representatives. Finally, in the process of bringing the two parties together the conciliator will take a more interventionist role.(35)

Main International differences between mediation and conciliation

Many have said that mediation and conciliation are synonymous and they use interchangeable. Some have said that mediation and conciliation are separate, and they are different. Here are some differences between them.

1. In the form of commissions while the ritual of institutional conciliation is organized institutional mediation is unorganized.
2. In contrast to conciliation, there is no contract between the parties in mediation process. This contract is called a "compromise contract" to establish a conciliation commission.
3. In mediation, to form third party needs subjects of international law (individuals, governments and organizations), while, commissions will replace them in the conciliation procedure.
4. On contrary to the mediation process conciliation is more formal and inflexible. By presenting new proposals the mediator can continue to mediate if the mediator's offer is not accepted, while the conciliator because he has done his own research on the facts and is discussing issues behind the

scenes with the parties, Provides only a formal report with results and suggestions.(36)

5. There is increasing use of mediation as that shows by the evidence from ADR providers. For instance, over 70% of cases referred for mediation do settle at mediation that reported by CEDR on its website (www.cedr.com).(37) Conciliation is most often used in family and employment cases and it is tends to be court-driven in England and Wales.
6. Conciliator can't she/he himself settle or impose his opinion on the parties of the dispute directly, that point shows the main differentiates of conciliation from judicial proceedings and/or arbitration. The power is given to the conciliator is just to assist, try and to achieve an amicable resolution for or between the parties.

Without a certain procedure or proceedings, both mediation and conciliation may be conducted completely informally, UNCITRAL (United Nations Commission on International Trade Law) prepared the UNCITRAL Conciliation Rules and it is accepted in 1980 by the General Meeting of the United Nations Organization via a Resolution No.35152. Subsequently, most arbitration institutes and organizations provided their certain regulations concerning conciliation including "ICC, ADR Rules and Mediation Procedures, 2005", and also "LCIA (London Court of International Arbitration) Mediation Procedure, 1999", and finally, Rules of the Mediation Institute of the Stockholm Chamber of Commerce 1999"

General advantages and disadvantages of mediation and conciliation

There are numerous advantages and a few disadvantages to mediating a dispute. This paper will shows some of the important advantages and disadvantage of mediation and conciliation one by one. Some of the main advantages and disadvantages of mediation been mentioned below:

1. Main advantages of the mediation Process

1. Compared to litigation Mediation can be carried out relatively quickly and taking on average between 1 to 2 days.

2. The willingness to achieve a negotiated solution of the parties will clearly demonstrates both parties are agree to mediation.
3. As mediation process is flexible, the parties will access to a wide range of outcomes whereas in litigation that outcomes are not available. For instance, in the court one party will usually ordered to pay money to the other party, while the parties come to their own agreement in mediation process and other things can be taken into account.
4. In a non-confrontational environment mediation can allow each party to hear the opposing view.
5. In mediation process in order to assist a commercial settlement each of the party can bring other matters outside of the contract itself into the mediation via the mediator.
6. Mediation is a confidential process that means anything discussed at mediation is considered without prejudice.
7. Seeing the case through trial is much costly than seeing the case in mediation process.
8. To both parts of the disputes settlements reached in mediation process are more agreeable than the court judgments. Since by each of the parties any settlement arrived at through negotiation is necessarily agreed to voluntarily, fulfilling the obligations under the agreement are more likely by the parties than obligations imposed by a court.
9. Own mediator could be chosen by the parties as they have the freedom to choose. In the other words, in the field of the dispute an expert can be selected who has experience rather than just someone who has technical and procedural know-how.
10. Mediation means having control over time, cost and privacy process at all the procedures.
11. Even if a settlement is not reached, mediation might assist in clarifying, narrowing issues, and fostering climate of openness, collaboration and cooperation as well.
12. There is less stress in mediation process than arbitration and litigation.

13. The parties can communicate their disputes directly.
14. Avoidance of publicity and confidentiality are the two other advantages of this process.

2. Main Disadvantages of Mediation process

As mediation process has some advantages, that will be usual to have some disadvantages as well as such:

1. A resolution as the result is not guaranteed in mediation process, as it is not compulsory, and all parties must be agree.
2. If one or both parties are withholding the information mediation can be a big problem.
3. If one of the parties required public disclosure mediation may not be appropriate.
4. Whole process will be waste of time, effort and money, when there is an unwillingness of one or both of the parties to cooperate.
5. The cost of mediation will have been wasted if the dispute cannot be resolved by the mediator.
6. During the mediation process there is the possibility that information may be given away that could benefit the other party.
7. Anything can be mediated with mediation. It means that erythrism could be mediated as such a dispute over a water bill.
8. Utilizing the services of an unskilled mediator can contribute to an unproductive resolution.
9. In the mediation process there is the possibility that a settlement between the parties may not arise, since the decision is at the discretion of the parties.
10. Since they are not based on any legal principle, mediation process is not support by any judicial authority and the formality is absent in any procedures.

Similar to mediation process there might be also some advantages and disadvantages of conciliation process such as

1. Main advantages of conciliation process

1. Conciliation process is a flexible process, since it is informal.
2. In the disputed field the conciliator is often an expert.
3. In contrary to the litigation like any other form of ADR conciliation proceeding is economical.
4. If an satisfaction with the proceeding happen there will be the liberty by the both sides to approach the court of law.
5. The conciliation process as a general is bendable with a time and date set to suit the parties, and if the parties are not happy with the outcomes, they can reserve the right to go to court.
6. If the parties are entrenched it will be more suitable, also, conciliation is a cheap process.
7. It is carried out without prejudice and confidentiality so that, if there is not any achievement reasons for this are been kept between the involved parties.
8. Conciliation is most often used as a preventative, once a dispute is ongoing and it appears as though it may end up in court the assistance of a mediator or arbitrator is often sought. As soon as a dispute looks like it may occur, a conciliator will be appoint typically.
9. Throughout the process it has committed to maintenance of confidentiality and thereafter, of the dispute, all the exchanged information, the offers and counter offers of solutions might be kept.

2. Main Disadvantages of Conciliation process

1. Upon the parties to the dispute the process is not binding.
2. For appeal there is no avenue.
3. To the parties conflict there might not achieve a settlement.
4. There is no decision is guaranteed at the end, as the process is not legally binding.
5. Between the parties little or no check on power imbalances and via conciliation process parties may have limited bargaining authority.

6. Only the matters with concern money and the matters, which are civil in nature, could be resolve by the conciliator. Therefore, they cannot make authoritative injunctive orders.
7. Depending on his popularity the neutral party for his time and expertise will charge a fee, these fees may be substantial.
8. The conciliation relies on the parties accepting the authority of the conciliator and also wanting to achieve a resolution is counted as the main downside to conciliation.

Disputes that could be Mediated

Most kinds of civil (noncriminal) disputes could be mediate that would otherwise go to arbitration or court. There are so many dispute candidates for mediation as such disagreements over contracts, leases, employment problems, small business ownership and divorce. Also, there are few examples of people who could use mediation for resolving their problems, for instance unmarried partners who are separating and need to divide their property and house, neighbors fighting over who will maintain a common fence, or two small businesses squabbling over customer lists. Some of the other types of disputes often settled through mediation include:

1. consumer vs. merchant
2. landlord vs. tenant
3. neighbor vs. neighbor
4. spouse vs. spouse • employee vs. employer
5. homeowner vs. contractor
6. business partner vs. business partner

Mediation process is not just for disputes that could otherwise be brought to the court. Even if neither party has legal grounds to sue the others, many kinds of interpersonal disputes can be mediated. Such, roommates arguing over who is responsible for household maintenance, siblings who can't come to an agreement on who should care for an aging parent, or coworkers who just can't seem to get along with each other even if they have no legal claims they can use mediation to work things out. Also, such as destruction of property or verbal harassment as some of the nonviolent criminal matters can be mediate.(38)

Islamic jurisprudence and Iranian legal systems view on mediation and conciliation

The religion of Islam, as a religion of peace and tranquility has placed the greatest emphasis on resolving people's differences through peace and compromise. This approach is mentioned in many hadiths, narrations and verses of the Holy Quran. There are some examples as such:

1. Verse 10 of Surah Al-Hujurat says: The believers are one brother, so make peace between your brothers. And fear God so that you may be shown mercy.
2. Verse 35 of Surah An-Nisa 'says about resolving the differences between husband and wife and peace between them: And if you are afraid of the differences between the two, send a ruling from his people and a ruling from his people. If both want reconciliation, God puts it between them. Indeed, God is All-Knowing, All-Aware.
3. Verse 9 of Surah Al-Hujurat says about resolving the differences between the two opposing groups and inviting them to peace and reconciliation: And if two groups of believers fight with each other, establish peace between them. And if one of them transgresses the other, fight the oppressors to submit to God's command. If they do, make peace between the two groups with fairness and justice. Indeed, God loves the seekers of justice.
4. The Prophet of Islam has said about the hereafter reward of those who strive for peace and reconciliation: Whoever steps to establish peace and reconciliation between two people, may the angels of God greet him and grant him the reward and reward of the Night of Power. Becomes.
5. Amir Momenan Ali (AS) said about those who try to create peace and reconciliation: The most worthy people are those who work harder to create peace and reconciliation among the people.

Iranian law is based on Islamic guidance and Iranian constitution as such: In the Iranian legal system, which according to the constitution, the realization of the right and the handling of

grievances is one of the duties of the judiciary and the judiciary, the mediation method seems to be appropriate for public participation in resolving disputes. Because while reducing the volume of criminal cases and encouraging people to peace and reconciliation, if in the end, the conciliation institution does not succeed in establishing and establishing peace between the parties, the right to go to justice is not taken away. Therefore, there is no doubt that the method of mediation is inconsistent with the constitution.(39)

ADR in Iran and in the UK legal Systems

In Iranian civil law, despite of the long history with ADR methods, the existence of provisions on conciliation and other alternatives, recourse to these methods has not been welcomed by litigants. Referral of disputes, sometimes in the form of an independent contract and sometimes as a condition during the main contract been accepted. Likewise, referral conditions may include voluntary transfer to ADR or mandatory appointment. The ADR Methods refer to methods that have replaced litigation and are intended to resolve disputes promptly by private individuals. In Iran, alternative methods of settlement do not play an important and decisive role in resolving disputes, so that it is clear that individuals choose the courts to solve their disputes. The reason for this is the lack of the necessary of the legal framework, the anonymity of ADR in society. Belief in the ineffectiveness of alternative methods of settlement in enforcing rights and resolving disputes, as well as the efficiency of courts and the strict implementation of court rulings and orders. Considering that in Islam too, there is an emphasis on amicable settlement of disputes and alternative methods are in accordance with the rules of Sharia, and considering the existing density in the courts of justice and the resulting problems, it is suggested to use the capacity of methods.

ADR in resolving an important part of litigation, planning and bedding must be done. The most important action in this regard is to introduce more and more of these methods in society and to clarify the benefits of using them, to provide the necessary grounds for the establishment of active arbitration institutions and so on. Given that in most of the ADR methods, dispute ends with the agreement of the parties and the right to go to court is not waived by the parties, making the use of these methods mandatory will not be in conflict

with legal rules and regulations. Therefore, it is suggested that by passing the necessary laws, the use of ADR methods be made mandatory before going to court or, where appropriate, during court proceedings. Enforcing the use of ADR methods should be done especially in the case of disputes in which the possibility of amicable settlement of the dispute is high. The enactment of laws on dispute resolution procedures and the setting of rules for resolving disputes in these procedures is a prelude to make them mandatory. However, forcing ADR devices to be used should be done in such a way that the parties to the dispute are not deprived of their right to go to court, and if it is not possible to resolve the dispute through these methods, the courts should begin judicial proceedings immediately.(40)

Dispute settlement (ADR) methods in general, and conciliation and mediation in particular, have been overshadowed by trade disputes for several years as legal support for ADR techniques could be clearly seen by common law countries. ADR 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 ADR Principles and Practices, and some laws relating to ADR in general were also given attention in UK. Lord Woolf's report on 'Access to Justice' it 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.(41)

Through mediation and other alternative methods to encourage litigants, British Courts have shown a growing tendency in recent years, before or even after litigation. Furthermore, in the United States, in addition to alternatively, the regulations and laws passed, of which the implementation of the (UNCITRAL) International Trade Agreement is a principal example. In the UK law this provision could be `understood evidently. However, as a general position in the UK there is no legal compulsion for the ADR methods. Though, for the parties it is not compulsory to refer ADR in the UK when the dispute arise, but methods of ADR have been respected very much and as it might be seen in many cases the methods can be seen as

compulsory for the parties as such in some circumstances non refusing ADR methods might make a sanction. Such as, in the case of Dunnett v Railtrack (2002) As Railtrack won the case completely from Dunnettm but without getting their costs since they refused ADR methods deprived of any reasonable reasons.(42) Moreover, Halsey v Milton Keynes General NHS Trust might be the other crucial example to show the ADR methods as compulsory for the parties in the UK.(43)Besides, parties should be encouraged by the court to use ADR ways according to the Article 1.4 of CPR. Also, the distinction has been made by the court in order to shows orders the parties for compulsory mediation and orders which direct the parties to attempt mediation. However, for the parties when they fail to attempt the ADR methods that might be punishable, even if there is a succeeds in the action and it may adversely affect its entitlement to cost. For that look at the case of Hurst v. Leeming (2001). Therefore, about all the ADR process the parties have to be careful. All that mentioned reasons who's that the UK futures of ADR methods might become compulsory soon.(44)Finally, it can clearly be seen that use of ADR methods in the UK has progressed further than the usage of ADR approaches in Iran.

Mediation and Conciliation in International Law

It is true that the overshadowed is there by arbitration methods on conciliation and mediation as two forms dispute settlement. Nonetheless, great potential to resolve investor-State disputes could be seen by conciliation and mediation methods. Therefore, in recent times the disparity is changed slowly and the interest has grown in the use of conciliation and mediation by investor-State in particular. Over the arbitrators' binding decisions unlike arbitration, in which the disputing parties have no certainty, to reach a voluntary and agreed settlement the willingness and cooperation of the parties are to aspects that conciliation and mediation depends on. Under domestic law or in states that have ratified the Singapore Convention on Mediation a settlement agreement resulting from a mediation or conciliation process may potentially be enforced, an innovation in global clash resolution, that may rise interests in investor-State about mediation and conciliation.

Singapore Convention has signed by fifty-four States at 20 August 2021, Iran (Islamic Republic of) was one of

them.(45)Moreover, Iran is the only government that has exercised its right under Article 8 of the Convention at the time of writing and Iran has made a detailed reservation at the time of signing.(46)As alternative means of international dispute settlement conciliation and mediation are listed in Article 33 of the Charter of the United Nations 1. When with the task of examining the legal methods of conciliation and mediation Unesco entrusted the International Association of Legal Science, this investigation was intended to fit into a wider framework of studies as means of eliminating tensions and disputes, some of those frameworks have already appeared.(47) Furthermore, among these in collaboration with the International Sociological Association in 1957 by Unesco, the volume on The Nature of Conflict, has been published, by providing a broad survey of trends of research, it has prepared the ground in the sphere of social psychology and sociology dealing with tensions and social conflicts. In assessing the causes and the directions of such tensions and conflicts the great development showed and to a certain extent, the devices which can be employed to alleviate them. An important place has been occupied by conciliation and mediation among these devices, and Mr. Elmore Jackson's conclusions in his book entitled Meeting of Minds, a Way for Peace through mediation was taken into consideration. These conclusions are based upon a comparison of those employed to settle international conflicts with techniques of solving labor disputes.(48) Some scholars believe that since the mid-nineteenth century in the form of bilateral and multilateral agreements mediation has become commonplace today. For instance, If a dispute arises between the signatory countries (the Ottoman state and the European states) according to the Article 2 of the 1856 Paris Convention, they will settle disputes through mediation. At the Hague Peace Conferences (1899 and 1907), the foundation of the mediation rite was laid. The 1907 Convention states that before resorting to force states must resolve their disputes amicably.(49) The use of conciliation is going to be rise day after day even for solving political disputes between states. Historically, in international disputes conciliation has been a relatively new method of political settlement, not even mentioned in the Covenant of the League of Nations or the 1907 Hague Convention. In 1909 treaty this method was first envisaged between the United States and Canada and then by the US with France and Britain in 1911.(50)

The need to develop a mediation, conciliation and other ADR models in Iranian judicial system

Dispute Resolution Councils, as an institution with a restorative approach, had decent activities and results in the country's judicial system in the field of dispute resolution, peace and conciliation, and closing cases. One of the most important benefits of forming these councils is to create broad convergence among council members. This popular institution has been able to bring people together from different social and age groups, among those with education in various fields and from different employees in diverse fields, away from any social classification, and an institution is great to create a completely popular people. Carefully in the official statistics provided on the performance of these councils, it can be said that if the public institution were not created, the country's judiciary would certainly face major challenges due to the large number of incoming cases. The successful work of dispute resolution councils has reduced the volume of cases filed with the judiciary, expanded public confidence in the judiciary, shortened the litigation process, and provided for the realization of the rights and consent of the people. If this successful process spreads, it will create a culture of peace and reconciliation in society and change attitudes and social behavior. The continuation of this movement also creates an opportunity for the country's judiciary to improve the quality of the trial by changing the existing structures and to pay serious attention to facilitate people's access to a fair and easy trial.(51)

Due to an increasing number of cases in the courts, the Iranian legislature realized that ADR methods initiatives were needed. As a result, the legislature formed bodies (shoraye hale ekhtelaf) to mediate and arbitrate small claims before they reached the court system. The members of these bodies can be non-lawyers and are often members of other professions (engineers, accountants, etc. these court-annexed bodies, which need not to follow the formalities of the civil procedure code, that have helped the Iranian judiciary better manage its overwhelming caseload. Recently, the Iranian legislature has formalized the mediation process for criminal cases in the new criminal procedure code. Pursuant to this code, a judge is allowed to postpone a criminal proceeding for three months, and direct the parties to mediate their claim. In addition, the law

recognizes privately held institutions that can undertake mediation matters.(52) Due to the importance of time and cost in oil and gas contracts, due to the direct dependence of the country's revenues on them, designing a more efficient model for resolving disputes has been a necessity of the new model of oil contracts. Perhaps one of the obvious differences between the new model and the contracts reciprocity, which has resulted in a long-term trade relationship with oil companies, is predictable alternative methods, arbitration methods and court for resolving disputes, new model has made oil contracts necessary; because the occurrence of differences in the contractual relationship twenty years old is very high and due to the complexities of the previous relationships, the use of expertise are necessary to solve rows. Thus, the composition of the method expertise and arbitration in an integrated process can provide a complete and unambiguous process.(53)

Bugs and drawbacks

It is ok that conciliation and mediation are a bit similar. However, there are some differences between mediation and conciliation in terms of using them and also terminologically. Therefore, conciliation and mediation terms cannot be used interchangeably to describe the same process in same countries and by some commenters. Accordingly, both methods of ADR cannot be used to describe the same process. Mediation is the terms that is more commonly used now in the UK to describe ADR by third party facilitation in civil and commercial disputes. While, conciliation is most commonly uncounted in family and employment disputes.(54) According to some scholars, conciliation management is a higher method than mediation and the role of the conciliator in resolving the conflict is more active than mediation.(55)

Conclusion

From the study, it is clear that resolution of disputes through peaceful and amicable processes (instead of court litigations) is much popular in the developed countries (USA, Australia, UK) and etc. which have also given the detailed rules of procedure for settlement of disputes without involvement of court. Developing countries can utilize this knowledges. These practices prevailing in USA, Australia and UK that can made quite practicable in justice

system because people in these countries 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. Iran and the UK are using both methods of ADR relaying on different sources. Source of using ADR methods in Iran is Islam and the source of ADR methods in the UK is law.

The outcome of this system is very positive, and ADR processes can reduce the burden of cases on the courts. From overall discussions and study, it can explicitly be stated that ADR processes are low cost, speedy, private, confidential proceedings, flexible and the most important benefits is that decisions are taken by parties themselves that causes their satisfaction in future also. Mediation and conciliation are the two methods that been used globally and the rate of using the is increasing regularly and that shows their development.

Recommendation

1. Making an appropriate law ground for using ADR. Since, the law ground for utilizing ADR in some countries are suitable for a mandatory system such as in Italy and Australia, voluntary system as in the UK, and hybrid system as in the USA.
2. Supporting the ADR process by the law, the court and the government's constitution.(56)
3. The spirit of human rights should be taken into account especially when ADR forms apply.(57)
4. The need to establish legal institution to care about using ADR and comparative studies in order to choose the most appropriate system.
5. ADR methods should be studied in developing countries law schools.
6. Adopting in an international convention to apply ADR formulas as the New York Convention 1958.(58)
7. Governments should rise the awareness of people in the ADR methods benefits.

8. Giving more position to mediation and conciliation as the use of them are going to be increasing daily.

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