

LEGAL TECHNICALITIES AND THE USE OF ALTERNATIVE DISPUTE MECHANISMS IN DISPUTE SETTLEMENTS.

By

Zainab Abdulwahab Zubair (Ph.D.)

Lecturer, Faculty of Law, Islamic University in Uganda, Mbale-
Uganda: umutuhrah313@gmail.com or zainab.abdulwahab@iuiu.ac.ug, +256756508823,
+989368852777.

Abstract

Alternative Dispute Resolution (ADR) has gained a remarkable recognition as one of the most effective means of dispute resolution, its unique nature of arresting dispute and attaining justice within the shortest period possible without recourse to court or the application of undue technicalities of law has contributed to its attractiveness. However, its effectiveness in overpowering the intricacies of legal technicalities remains a topic of debate. This study conducts a radical evaluation of ADR in contrast to the technicality of the law, aiming at providing an insight into its implications for legal exercise and coverage. The article starts with an overview of ADR and the growing incidence of legal technicalities in modern-day litigations. It delineates the numerous kinds of ADR, such as; mediation, arbitration, conciliation and negotiation. With the use of analytical and comparative approach, the study investigates how ADR is able to cope with legal technicalities, it illustrates times wherein ADR has successfully resolved disputes while considering the challenges it faces in addressing complex issues of legal dispute. The work tries to bring about a balance between ADR and the technicality of the regulation in cutting-edge legal systems. The article concludes with a forward-searching angle on destiny traits in ADR and legal technicalities, underscoring the importance of non-stop analysis and modeling in the pursuit of effective dispute decision.

Keywords: *Legal Technicalities, Alternative Dispute Resolution, Substantive law, Court litigation*

1. Introduction

The popularity of Alternative Dispute Resolution (ADR) as a technique for resolving conflicts outside the conventional courtroom settings is an indication that disputants are more interested in putting an end to dispute than being engaged in legal battle albeit, attaining justice. Its popularity stems from its capability to offer extra-green, value-effective, and bendy answers as compared to standard litigation¹. However, as ADR gains momentum, questions arise regarding its effectiveness in handling the complexities inherent in legal disputes, particularly those related to the technicalities of the law.

ADR encompasses several methods and strategies used to resolve conflicts without resorting to formal court litigation. Most notable of ADR methods include mediation, arbitration, negotiation, conciliation, and collaborative law¹. ADR has gained powers and earn people confidence and trust due to its ability to provide parties with greater control over the resolution process, promote confidentiality, and foster creative solutions tailored to the parties' specific needs¹. Consequently, bringing healings to parties in dispute.

On the other hand, the adjectival law (technicality of law) refers to the complicated rules, methods, and legal standards that govern lawsuits. These technicalities often serve as significant barriers for individuals seeking resolution through the legal system, leading to delays, increased costs, and sometimes injustices¹. Adjectival law encompasses various aspects, including evidentiary rules, procedural requirements, and jurisdictional issues, which can complicate the resolution of disputes, creating gap to attainment of justice instead of bridging it.

While ADR offers many potential benefits, its effectiveness in addressing legal technicalities remains underexplored. This raises the question of how ADR processes compare to traditional litigation in their ability to navigate and resolve legal complexities. Additionally, it prompts an inquiry into the challenges that arise when applying ADR methods to cases involving intricate legal issues and how these challenges can be mitigated¹.

This study aims to address these gaps by conducting a comprehensive analysis of ADR in comparison to the technicality of the law. Specifically, the study seeks to answer the subsequent questions: How does ADR processes range from traditional litigation in their method to resolving legal disputes? What effects do legal nuances have on the efficacy of alternative dispute resolution techniques? What demanding situations arise while applying ADR to instances involving complicated legal issues, and how can those challenges be triumphed over?

By addressing these questions, this research seeks to offer insights into the position of ADR in contemporary legal structures and offer hints for improving its effectiveness in addressing legal complexities in dispute resolution.

2. The Concept of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) has been described by various scholars as a means of dispute resolution other than court litigation. The question as to whether ADR is a replacement of formal court litigation has raised a number of concerns, this has led some scholars into reframing the term 'Alternative' to be 'Appropriate Dispute Resolution' instead of the word 'Alternative' which could be construed to mean a way of discarding formal litigation and embracing a new and 'different way' of resolving dispute, it is believed that the term Appropriate offers a more suitable term as it suggests a dispute resolution based on the particular and specific need of the kind of dispute in question 'not every dispute or conflict should be handled in same way' rather offering solution to dispute by taking into cognizance the nature of the dispute is what ADR stands for, not a replacement of traditional court litigation¹. Some scholars also refer to it as 'African Dispute Resolution' as the various mechanisms of ADR are akin to African traditional system of dispute resolution¹. ADR offered a versatile and effective way to resolve legal disputes outside of the traditional court setting and has thus, contributed immensely in managing civil disputes, promising efficiency and increasing the perception of justice especially in Africa¹. ADR processes, including mediation, negotiation, conciliation, and arbitration, administrative law, provide parties with flexible procedures tailored to their specific needs¹. These methods offer many advantages over traditional litigation, including cost and time savings, efficiency, confidentiality, and maintaining relationships between parties.¹

3. Techniques of ADR

Alternative Dispute Resolution (ADR) involved a variety of techniques aimed at resolving disputes other than traditional court proceedings. These strategies are aimed at providing disputants adequate flexibility, efficiency, and the opportunity to tailor the decision-making process to their specific needs and interests. Among the various techniques of ADR are;

3.1. Mediation

Mediation is one of the earliest and traditionally accepted means of dispute resolution. It involves the intervention of an acceptable, impartial third party called a mediator in a dispute in which he/she has no decision-making authority other than facilitating the process of communication and negotiation between the disputing parties in order to reach a mutually acceptable agreement¹. The mediator has no power to impose any decision, but helps the parties explore their interests, identify common ground, and provide options for resolution.¹ The nature of mediation is that it is informal and collaborative, allowing the parties to be flexible with the final outcome and to maintain good relations for some time in the process. A mediator in order to achieve the desired goal of intervention, must work with the parties individually or in groups, to discover the acceptable resolution options open to the parties and come out with proposals that might move the parties closer to the resolution of their conflict. In essence, parties to disputes were only being helped to rediscover the many

options available to them to reconcile rather dwelling in their recent conflicts to tire relationship apart. The satisfaction of parties after a successful mediation process is such that 'allows parties to feel they have received their "day in court" in a way that trials commonly do not¹. Recent developments in mediation include the use of expedited procedures to streamline the mediation process and reduce costs and delays¹

In addition, there has been a strong emphasis on the use of exchange mediation, which focuses on empowering parties to communicate effectively and understand each other's perspective¹.

3.2 Arbitration

Arbitration, just like mediation is the process of dispute resolution involving the intervention of a third-party neutral with the difference that the decision of the third party in arbitration could be binding and enforceable. It is a quasi-judicial process in which a neutral judge or jury listens to arguments and evidence from both sides of the dispute and makes a binding decision¹ this means of resolving disputes is very effective in matters such as labor/management and commerce. Parties who have agreed to refer their disputes of settlement to arbitration, are able to select individual or panel with some expertise and knowledge of the disputed mater in question, although this is not a precondition for an individual to function as an arbitrator. However, arbitrators are usually chosen for their impartiality, objectivity and fairness to evaluate and make judgments about the facts presented before it¹. Opinion of arbitrator is not necessarily binding, except where by mutual agreement the parties had agreed that an opinion will be binding in a particular case. The arbitration award, is generally enforceable in court and binds parties. Recent developments in arbitration include the emergence of online arbitration systems, which facilitate remote dispute resolution and expand access to arbitration offers¹.

In addition, there has been some progress towards the use of international arbitration to resolve cross-border disputes, facilitated by the increasing presence of court rules and the use of arbitral awards¹.

3.3 Negotiation

Negotiation is a direct dialogue between disputing parties with the aim of resolving their differences and reaching a mutually acceptable agreement¹. The presence of neutral third party to help manage the negotiation process is not necessary; instead, the parties can represent themselves or have legal representative to help conduct the negotiation on their behalf. The discussions may be informal between the parties or structured and facilitated by lawyers or other mediators.

Recent developments in negotiation include the use of interest-based negotiation strategies, which focus on identifying underlying interests of the parties and finding ways to achieve

mutual benefit¹ negotiation, is the most flexible form of ADR techniques, it allows parties to fully participate, interact, lay down their differences, collaborate on matters of common interest and come out with solutions which are often sacrifice and compromise of interests for a greater goal by the parties. This method of dispute resolution is most effective where parties have equal bargaining powers. In a situation where unequal power come to play, the weak party may be overwhelmed by the strong with threats and intimidation to impose terms and conditions consequently, frustrating the essence of negotiation which requires mutual acceptance of negotiation terms by the parties. Hence, the best form of negotiation is interest-based negotiation as parties walk away satisfied after the negotiation. Negotiation agreement is not enforceable per se, but it could lead to an action for a breach of agreement.

3.4 Conciliation

Conciliation just like mediation and Arbitration requires the use of third party. The third parties in conciliation process plays a greater role in facilitating decision-making¹. The conciliator helps the parties to identify issues, explore their interests, and find ways to resolve them. While similar to mediation, conciliation is often a more interventionist approach by the third party to guide the parties toward resolution and building a positive relationship between the parties to a dispute. Among the duties of a conciliator is to assist parties to establish communication, clarify their misperceptions, overcome their strong emotions, and build the trust necessary for cooperative problem-solving¹.

Some of the techniques used by conciliators include providing for a neutral meeting place, carrying initial messages between/among the parties, reality testing regarding perceptions or misperceptions, and affirming the parties' abilities to work together. This method designed to help parties begin dialogues, get to know each other better, build positive perceptions, and enhance trust. The conciliation method is often used in conjunction with other methods such as facilitation or mediation¹. Parties are thereafter, encourage to be open to each other and take the necessary steps towards negotiation.

4. Advantages and Disadvantages of ADR Compared to Traditional Court Litigation

Alternative Dispute Resolution (ADR) has several advantages over traditional litigation that makes it an attractive choice for parties involved in legal disputes. First and foremost, ADR techniques, which include mediation and arbitration, are typically quicker and less expensive than litigation¹. By preventing the prolonged court processes through the use of one of the ADR techniques, time and money is also saved. ADR mechanisms possess certain attributes which makes it very attractive in handling various types disputes, such attributes as informality, flexibility, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost-effective management of disputes¹, this is in addition to the prospect opened to the parties to manipulation over the decision procedure¹. Unlike litigation, where courtroom schedules and legal tactics are very rigid, ADR permits parties to tailor the resolution of their disputes in a manner that addresses their particular wishes and interests.

They can choose the mediator, arbitrator, or conciliator, and also schedule a time table at their conveniences.

Another important gain of ADR is its ability to hold relationships between parties¹. Formal litigation may be intimidating and unfriendly, because it is grounded in an adversarial process, which does not ensure fairness and satisfaction for disputants consequently, leading to strained relationships as succinctly put by a Nigerian lawyer thus; 'when the judge proclaims a winner, that is the beginning of the real conflict.'¹ This clearly explain the aftermath of litigation, instead of bridging the existing gap in relationship it leads to total collapse and breakdown of such at the instance of court's verdict. ADR strategies on the other hand, emphasize cooperation and communication, fostering an extra-positive environment for achieving agreements and maintain further cooperation even after settlement.

A key benefit of ADR is confidentiality¹. Many ADR technics provide room for privacy, thereby, stopping sensitive information from becoming a public report. This inspires parties to be more open and sincere at during negotiations, leading to greater success in dispute resolution.

In addition, ADR encourages parties to think creatively and explore alternative solutions that may not be available through traditional litigation¹. By focusing on the underlying interests and needs of the parties rather than legal circumstances, ADR can lead to agreements that better meet everyone's goals.

However, with all these advantages, ADR has limitations and potential weaknesses. For example, although ADR decisions are typically binding, they can be difficult to enforce compared to court decisions¹. Consequently, if one party does not voluntarily comply, the other parties may need to resort to court to enforce the ADR decision.

Furthermore, the ADR process may lack the formal procedural safeguards found in formal litigation, raising concerns about fairness and due process¹. Moreover, without strict adherence to legal guidelines and standards, there may be a risk of mismanagement or bias.

In some cases, there may be a power imbalance between the parties involved in ADR, giving rise to perceptions of lack of fairness and equality¹. Parties with greater sources or criminal know-how might also have a bonus, doubtlessly undermining the integrity of the process.

Lastly, despite its usefulness, ADR isn't always a success in resolving disputes, particularly those related to complex laws or statistics¹.

5. Global Trends in the Use of ADR Mechanisms

In the recent years globally, the desire to turn towards the use of ADR mechanisms in resolving disputes as compared to the use of formal court litigation is on the rise, this desire is driven by a number of factors which among others, includes the desire for faster, more

cost-effective dispute resolution and the increasing recognition of the limitations of traditional litigation¹. This tendency is evident not only in law but also in trade, international relations, and local conflicts. A survey carried out in Liberia, 2009 shows that only 3 percent of criminal and civil disputes were referred to a formal court for settlement. Over 40 percent of the disputes were resolved through informal mechanisms while the remaining 55 percent went to no forum at all. This includes cases where claimants felt the need to take justice into their own hands, often with violent consequences¹. The massive backlog of cases and lack of trust in the formal litigation process which is heavily weighed down with undue legal technicalities is another strong factor that dissuade people from seeking justice in courts. Many judges or magistrates have over 100 cases per day on their dockets, which can take many years get to trial and months to have a motion heard. Disputants often express frustrations at the 'come today come tomorrow' syndrome and mounting legal fees for professional representation with each futile court appearance.¹

Consequently, courts and legal systems around the world are increasingly encouraging the use of ADR mechanisms as a means of reducing the flow of cases and resolving disputes more quickly¹. Many courts have implemented mandatory mediation or mediation provisions that encourage parties to discuss ADR prior to post-litigation. In addition, judges often refer cases to mediation in order to facilitate resolution and conserve judicial resources¹.

ADR is seen to be also gaining attraction from agencies and multi-national Companies (MNCs) for a more efficient and cost-effective means of resolving conflicts. Contracts typically contain clauses for arbitration or mediated dispute settlement, meaning that ADR is used to maintain business relationships and reduce harm. Moreover, MNCs often use ADR mechanisms to resolve cross-border disputes, which avoids complications and uncertainty in court.¹

ADR is more effective in diplomatic resolution of conflicts inside and between governments in international relations. Diplomacy, negotiation and mediation are often used to clear up disputes over territories, create agreements, and resolve human rights issues, among others. International establishments consisting of the United Nations and the International Court of Justice are actively advocating and promoting the effective use of ADR between states to promote the resolution and settlement of disputes.

Furthermore, technological advances have facilitated the adoption of online dispute resolution (ODR) structures, enhancing its growth and accessibility. Thus, allowing parties to resolve disputes remotely, without the need for physical presence in a courtroom or mediation center. This has particularly benefited individuals and businesses in remote areas or those unable to travel to attend proceedings are able to resolve their differences from homes.

6. Legal Technicality: Navigating Complexity in Legal Proceedings

The technicality of legal system refers to the complicated guidelines and processes that are present in procedural law as in way and manner through which actions regarding dispute settlement are instituted or resolved within formal courts settings.

The technicality of the law consists of a massive spectrum of complicated policies, methods, and crook standards that govern legal complaints.¹ These technicalities are designed to ensure equity, consistency, and predictability in the control of justice. However, strict adherence to these technicalities often poses exquisitely demanding situations, leading to delays, increased fees, and functionality injustices as may tantamount to shutting justice itself.¹

These technicalities range from evidence rules, dictating what evidence are admissible in a court, procedural requirements, outlining the steps parties need to follow at some point in litigation etc. However, navigating these complexities of legal technicalities can be a daunting exercise for individuals seeking justice in court. The tedious and cumbersome nature of legal system was reported in the following word by Ernest, U. where he stated; 'it is easier for one to pass through the mouth of a lion than go through the . . . legal system.'¹ This statement simply explains the rigid and rigorous nature of adjectival law, making it almost impossible to access justice.

Strict adherence to procedural guidelines may lead to cases being brushed off on technical grounds, even when noticeable issues are at stake. Similarly, evidentiary hints may have an effect on the admissibility of crucial proof, potentially tipping the scales of justice. Jurisdictional problems may additionally complicate subjects with the aid of figuring out which court docket has authority over a particular case, adding layers of complexity to the litigation matter.

Legal technicalities are maintained to ensure fairness and consistency of the legal system, however, the desire to maintain consistency is shrouded with a lot of criticisms, and some argue that an over-reliance on technicalities can cause injustices, specifically, for people without legal know-how or sources to navigate complex legal tactics successfully. However, valid the above statement may be, it can also not be denied that inflexible adherence to technicalities can obstruct the pursuit of justice and erode public self-assurance of the judiciary. Therefore, what is appropriate is maintain a healthy balance between flexibility and strict adherence to technicalities of the law.

Legal representation can be specifically challenging for individuals representing themselves in criminal proceedings, called pro se litigants¹ without the guidance of legal advice, seasoned se litigants can also struggle to recognize and follow complicated procedural regulations and evidentiary requirements, placing them at a disadvantage.

One aspect of the technicality of formal litigation is the whole process of procedural policies that govern how legal disputes are initiated, processed, and resolved.¹ These principles dictate the right outline for court filings, the cut-off dates for filing documents, and the procedures for undertaking hearings and trials. Failure to adhere to these procedural requirements can result in cases being dismissed or delayed, creating obstacles for parties seeking justice.

Furthermore, rules of evidence play a vital function in formal court cases by way of determining what proof is admissible in courtrooms and how it is to be provided.¹ These guidelines govern problems including rumor, relevance, authentication, and privilege, among others. Adhering to evidential rules can be difficult for litigants, especially when seeking to pursue complex legal issues without the assistance of law counsel.

While legal technicalities provide a framework for choice-making, there's also a detail of discretion involved in their utility.¹ Judges and different legal authorities frequently have leeway in interpreting and making use of procedural rules and evidentiary standards. This discretion can cause variations in outcomes and perceptions of fairness.

Technological improvements in legal practice offer the ability to address challenging situations posed by procedural technicalities of law¹. Online platforms and artificial intelligence tools are able to help streamline procedural duties, automate document preparation, and provide steering to litigants seeking legal assistance.

The reliance on legal technicalities within the justice system help facilitates public perceptions of fairness and accuracy of the law¹. However, when technical rules of courts are perceived as excessively complex or arbitrary, it could erode self-belief in the management of justice. Moreover, excessively high-profile instances wherein legal technicalities result in unexpected or debatable outcomes can further undermine public consideration of the legal system. Critiques of the strict reliance on legal technicalities concentrated on the abilities of those rules to impede access to justice and undermine the pursuit of equity and justice¹ they argued that over reliance on legal technicalities can bring about injustices, particularly to individuals who lack adequate legal knowledge to resolve the legal issues effectively.

Some jurisdictions have implemented reforms geared toward streamlining techniques and reducing heavy reliance on technicalities, while others have embraced technological improvements to enhance the right to access justice and mitigate the impact of complicated legal procedures.

7. Components of Legal Technicalities

Legal technicalities embody various aspects of the law, which include evidential rules, procedural necessities, and jurisdictional issues¹. The words 'legal technicality' is generally taken to represent, ordinarily, a strict adherence to the words of statutes to determine the

spirit of justice¹. These technicalities may be highly complicated and may require specialized knowledge to apprehend and applied successfully. It is imperative that a healthy legal system must meet the eight fundamental conditions internationally recognized for the safeguard of impartiality in the application of the law, that is:

- I. a system of rules;
- II. promulgation and publication of the rules;
- III. avoidance of retroactive application;
- IV. clear and intelligible rules;
- V. avoidance of contradictory rules;
- VI. practicable rules;
- VII. consistency of rules over time and
- VIII. congruence¹

The above summarized into three essential attributes of the rule of law as: 'the laws must be general; equal and certain and applied via procedural law.

7.1 Rules of Evidence

Evidentiary rules govern the admissibility of evidence and proof in court proceedings; this plays a crucial role in figuring out the final consequences of any legal disputes¹. These rules ensure that the most consistent and relevant proof is considered by the court, while additionally protecting parties from unfair or prejudicial evidence. For example, rules of evidence are regulated with issues consisting of hearsay, relevance, authenticity, and privilege of the information. Resolving evidentiary rules can be very difficult for litigants, particularly in situation where complex legal principles are involved¹. Pro se litigants, who represent themselves in court docket without legal representation, regularly fight to conform with these rules because of the complexity.

7.2 Procedural Requirements

Procedural law defines the steps and tactics that parties must follow at some stage in legal lawsuits¹. These rules govern numerous factors of the litigation procedure, including court filings, cut-off dates, the behavior at hearings and trials, and the presentation of proof.

Failure to adhere to procedural rules can result in instances where hearings are disregarded or delayed, hence, creating obstacles for parties in search of justice¹. Pro se litigants are mainly liable for procedural pitfalls due to their lack of legal illustration.

7.3 Jurisdictional Issues:

Jurisdictional matters arise while determining which court has the authority to hear a selected case¹. These issues may be complicated and contain questions of geographical location of either litigants or subject matter, and the type of legal issue to be entertained.

Resolving jurisdictional matters often requires legal understanding and can result in procedural delays and multiplied litigation fees¹. Jurisdictional disputes may be tough in instances involving more than one party, different legal claims, or disputes spanning one-of-a-kind jurisdictions.

8. Examples of How Legal Technicalities Can Affect Proceedings in Courts

Legal technicalities, involves a number of rules, procedures, and ideas, having a profound impact on legal suits. These intricacies can substantially have an impact on legal decision, timelines, and expenses, making them a crucial factor in the legal panorama. Understanding and solving these technicalities is critical for lawyers and parties involved in legal disputes to ensure truthful and just outcomes.

Procedural rules dictate how legal proceedings are conducted and are designed to ensure fairness and performance. Failure to stick to these rules can lead to case dismissal or delays, hindering administration of justice. While commenting on the implication of strict and blind adherence to legal technicalities, His Lord Justice Niki Tobi JSC¹ (as he then was) notes thus:

‘A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. ***A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent’s case***¹. In other words, he holds and relies tenaciously unto the rules of Court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent’¹.

Therefore, technicality becomes a matter of ‘mere technicality’ where a party places absolute reliance on unwarranted legalism to becloud or drown the merits of a case and escape from his legal liability.¹ Consequently, where a procedural irregularity is curable at the instance of the court without causing any injustice to the adverse party, for instance, an amendment would be readily granted to rectify the anomaly and restore normalcy if the Court is satisfied that the mistake in question, being sought to be corrected, is honest, genuine and not one which will overreach and unduly encumber the adverse party¹.

However, the issue becomes a difficult one where the irregularity in application of the adjectival law is a substantial one, that is, an irregularity that goes to the root of the proceedings or process thereby rendering the whole process to be incompetent. For instance, the failure to commence proceedings with a valid writ of summons is deemed to be an irregularity that goes to the very root of the matter, therefore any order emanating from such proceedings is liable to be set-aside as incompetent and nullity because, ‘it clearly borders on the issue of jurisdiction and the competence of the Court to adjudicate on the matter’.¹ Jurisdictional matters determine which court has the authority to pay attention to

a selected case. Challenges to personal jurisdiction or territorial jurisdiction in a dispute can result in delays or dismissal of the case.

It is a legal principle that parties are bound by their pleadings, where pleadings have been made, no contradictory oral evidence could be admitted, consequently, parties are precluded from departing from their pleadings if such departure is substantial and amounts to irregularity that could go to the root of the departing party's case since such has the potentiality to overreach and do injustice to the other party.

Substantive technicalities contain the application of strict rules of proof in criminal cases. As a matter of criminal law, the onus of establishing the crime liability of a defendant is on the prosecution. This requirement is to protect the defendant from being arbitrarily deprived of fundamental human rights and freedoms. Therefore, failure to show all elements in a statement of criminal defenses can bring about destructive outcomes for the parties concerned. In criminal matters, the burden of proof is always on the prosecution. The required standard of proof in any criminal litigation or in any trial where commission of an offence is in issue is the proof beyond reasonable doubt. That is, the burden of proof required to discharge the burden of proof of specific elements in a criminal trial is proof beyond reasonable doubt. This is because it is presumed that the defendant is innocent until proven otherwise. If, however, the prosecution failed to establish the burden of proof beyond reasonable doubt, any iota of doubt cast in the mind of the court would automatically lead to the resolution of the matter in favor of the defendant¹.

It is a fundamental requirement of a fair hearing for a judge to sit and hear both parties to litigation, this would help the judge to watch their demeanor, honesty or integrity, manner etc. this is necessary for the judge to ensure coming out with a correct verdict, a judge who is absent during any of the proceedings cannot be seen as passing a correct verdict¹.

Legal technicalities therefore, ensured that procedural equity and consistency is achieved while administering justice, however, its overreliance has attracted grievances in the justice system. Critics argue that this reliance can cause injustices for people, hinder the pursuit of justice, and undermine public self-assurance in the criminal device. However true these assertions may be, there is need for a balanced method that upholds procedural integrity while additionally ensuring that criminal justice methods remain on hand, equitable, and just for all.

9. Recent Developments and Trends of ADR in Administration of Justice

Recent trends in the legal system have generated serious discussions about the role of legal technicalities in modern legal proceedings. These trends have precipitated jurisdictions worldwide to reassess their legal structures, implement reforms, and embody technological

improvements to cope with diverse challenges. Here, we discover a number of important traits and trends in this regard, among which is the use of ADR mechanism.

ADR mechanism which encompasses mediation and arbitration, as alternatives to traditional litigation has won peoples' confidence as being flexible, less time consuming and above all party autonomy. These mechanisms offer parties a quicker and lesser antagonistic manner to solve disputes, decreasing the reliance on formal legal complaints and technicalities¹. Furthermore, online dispute resolution platforms have emerged as a promising avenue for resolving legal disputes outside of the traditional court setting. These systems help to facilitate negotiations, mediations, and arbitrations, presenting parties with a handy means of resolving their conflicts¹.

One of the recent developments in ADR is the emergence of hybrid forms of dispute resolution, this method allows the combination of some of the elements of different ADR mechanism to resolve a single dispute directed towards addressing the specific needs of parties¹. These hybrid approaches permit the integration of various aspects of ADR mechanisms such as mediation, arbitration, and collaborative law to provide parties with a more tailored and flexible dispute resolution process. Consequently, parties are at the liberty of benefitting from single dispute settlement the advantages inherent in the various ADR mechanisms. Hybrid approaches seek to optimize outcomes and enhance parties' satisfaction with the resolution process.

Moreover, technological improvements have played a large role in shaping the latest developments in ADR. The introduction of online dispute resolution (ODR) structures has revolutionized the way disputes are resolved, mainly in cases where parties are geographically dispersed or decide on faraway proceedings¹. ODR systems offer various services, which include online negotiation, mediation, and arbitration, making it less complicated for parties to get access to dispute resolution services from everywhere with a web connection. These systems often contain features such as steady communication channels, document management structures, and video conferencing abilities to facilitate successful and transparent dispute resolution approaches. By embracing hybrid approaches, leveraging technology, addressing cultural considerations, and adopting interdisciplinary perspectives, ADR practitioners can enhance the effectiveness and accessibility of dispute resolution processes, ultimately promoting greater satisfaction and confidence in the ADR system.

In summary, the global inclination towards the use of ADR mechanisms reflects a growing recognition of the effectiveness of ADR in resolving disputes across various contexts. Whether in legal, business, international, or community settings, ADR offers parties a flexible, efficient, and often less adversarial means of resolving conflicts.

While Legal technicalities continue to be a fundamental element of formal court cases, shaping the way disputes are resolved and justice is run. This off course, help in preserving order and fairness, however, the complexities and capability calls for the need for ongoing evaluation and variation inside the legal system. As technology evolves and societal values change, it becomes more and more critical to reconsider and reform legal processes to make certain it remains available, efficient, and equitable for all.

10. Challenges and Limitations of ADR in the Face of Legal Technicalities

Alternative dispute resolution (ADR) techniques, provide parties with an alternative to standard litigation for resolving disputes. However, ADR is faced with a number of challenges and barriers, particularly in addressing legal technicalities.

The complexity of legal issues offers a considerable challenge for applying alternative dispute resolution (ADR) strategies correctly. Cases involving multiple legal technicalities, together with those regarding exclusive rights, company governance, or international exchange law, require a deep understanding of intricate legal ideas and rules.

In intellectual property disputes, for instance, the interpretation of patents, copyrights, and trademarks frequently involves tricky legal nuances that may be hard for mediators or arbitrators without specialized knowledge¹. Similarly, corporate governance disputes may contain complicated regulatory frameworks and intricate contractual agreements that require a high degree of legal acumen to resolve successfully¹.

The use of ADR in criminal disputes settlement is faced with a lot of criticisms, scholars such as Owen Fiss and some others argued that the use of ADR in settlement of disputes involving violation of public norm is akin to privatization of matters of public interest and the removal of courts and “passive umpire” judge from public arena and institution in favor of pure private resolution and settlements, this is a threat to public law and protection of public institutions.¹ This concern is genuine, because criminal offences are offences against the state and not purely a violation of individual rights per se, therefore, settlement of such dispute through ADR mechanism is a way of demining state autonomy in ensuring and preserving public order and security through criminal law.

Power imbalances between parties can similarly complicate ADR lawsuits instances. For instance, parties with extra sources and legal know-how may exploit legal technicalities to benefit an unfair advantage or intimidate the other party into accepting destructive phrases in the course of negotiations. This can cause unequal consequences and undermine the equity and integrity of the ADR system¹.

For example, in business disputes between a big enterprise and a small business, the organization's greater resources and access to legal knowledge can also permit it to manipulate legal technicalities to its benefit, putting the smaller party at a disadvantage¹.

Similarly, in employment disputes, employees may additionally face demanding situations in maintaining their rights towards employers with extra bargaining power and legal assistance¹.

Another crucial challenge of ADR is its power of enforcing its outcome. The enforceability of awards on account of ADR, especially arbitration, can pose challenges in complex legal issues, especially in international disputes. Unlike court judgments, awards might also face hurdles in enforcement, mainly because acceptance and enforcement proceedings are required in multiple jurisdictions.

In worldwide arbitration, for example, the New York Convention affords a framework for the recognition and enforcement of arbitral awards across more than one jurisdiction¹. However, legal technicalities, including the failure to properly constitute the arbitration tribunal or the violation of public policy, can hinder the enforceability of awards, leading to extended and expensive enforcement lawsuits¹.

In addition to the above demanding situations, other factors, which include cultural variations, language obstacles, and the complexity of procedural rules in ADR proceedings, can similarly complicate the decision in complicated legal cases. Moreover, lack of transparency and responsibility in a few ADR techniques may additionally boost concerns about the equity and legitimacy of the effects.¹

11. Suggestions for Improving the Effectiveness of ADR in Overcoming Legal Technicalities

11.1 Specialized ADR Panels

Establishing specialized ADR panels composed of professionals in specific legal regions can drastically enhance the effectiveness of ADR in addressing legal technicalities. These panels can offer parties with access to informed neutrals who possess the know-how to capture and remedy disputes concerning complicated legal issues.

For example, in the United States, specialized arbitration panels exist for resolving disputes in technical fields and production, maritime regulation, and highbrow belongings (American Arbitration Association, n.d.). These panels include arbitrators with specialized skills and experience within the applicable legal challenge, enabling them to successfully overcome the intricate of legal technicalities correctly.

11.2 Improved training and education

Providing quality education and schooling to mediators and arbitrators on legal technicalities and other areas of legal system is critical for enhancing the effectiveness of ADR approaches. Continuing education applications may help to increase awareness of unique legal subjects or procedural rules applicable to ADR proceedings, equipping neutrals with the necessary abilities and information to handle complex cases.

For example, offering a specialized training for arbitrators and mediators, especially in subjects like evidence, procedural fairness, and legal ethics. These programs ensure that ADR practitioners stay up-to-date on legal trends and are well-gearred up to effectively address legal technicalities.

11.3 Flexible Procedures

ADR carriers ought to adopt flexible procedures that allow each case's precise legal issues. This may also encompass making an allowance for limited discovery, professional testimony, or the use of legal advisors to help parties to successfully overcome the technicalities in the course of ADR proceedings.

12. Summary and Conclusion

Legal technicalities by implications are to ensure rules of law, maintain certainty, predictability and stability in the administration of justice. To attain justice therefore, procedural rules must be obeyed. The position of the Courts therefore, is to ensure compliance to these rules, non-compliance cannot be tolerated without repercussions. This is because, laws are made to be followed. To avoid the backlash of undue technicalities of law, disputes which are not complex in nature should be referred to ADR for settlement. Courts can also play a proactive role in promoting ADR by incorporating it into case control protocols and judicial endorsement. Actively referring cases to ADR and inspiring events to explore ADR alternatives before pursuing litigation can help alleviate court congestion and promote more successful dispute resolution methods:

By exploring (ADR) and the technicalities of law in the contemporary legal systems, the research uncovered a myriad of implications, challenges, and suggestions. Our analysis has illuminated the intricate approaches wherein various legal technicalities, inclusive of procedural rules, evidentiary requirements, and jurisdictional issues, can appreciably impact legal complaints, while also showcasing how ADR strategies provide possibilities to successful resolve those complexities.

Throughout our examination, we have underscored the significance of reaching a sensitive stability among ADR and the technicalities of regulation. While ADR offers flexibility and performance in resolving disputes, it has to perform within the framework of legal principles and procedural requirements. ADR approaches should uphold fairness, transparency, and adherence to legal requirements, even when presenting parties with powerful ways of resolving their disputes.

By promoting ADR perspectives, imparting education and resources, and incentivizing its use, legal structures can empower people and groups to resolve their conflicts successfully and efficiently. ADR can complement traditional litigation with the aid of alleviating court congestion, lowering fees, and maintaining relationships among events.

References

- Aguilera RV, Filatotchev I, Gospel H and Jackson G, 'An organizational approach to comparative corporate governance: Costs, contingencies, and complementarities.' *Organization Science* (2008) 19(3).
- Akeredolu v Abraham & Ors* (2018) LPELR- 44067 (SC).
- Bathija S, 'Cultural Considerations in International Alternative Dispute Resolution'. *American University International Law Review* (2019) 34(2).
- Bingham LB, 'The arbitration model and civil justice reform: Historical and institutional perspectives.' *Harvard Negotiation Law Review* (2014)19.
- , 'The power of negotiation: Mediating legal disputes' *Columbia Law Review* (2017)117(3).
- Born GB, 'International arbitration: Law and practice (2nd ed.)'. *Kluwer Law International* (2014).
- Boulle L, 'Mediation: Principles, process, practice'. *LexisNexis Butterworths* (2016).
- Brett JM and Ors, 'Negotiating globally: How to negotiate deals, resolve disputes, and make decisions across cultural boundaries' *John Wiley & Sons* (2014).
- Bush RA and Folger J P, 'The promise of mediation: Responding to conflict through empowerment and recognition' *Jossey-Bass* (2018).
- Cohen A, 'The hidden rules of evidentiary procedure' *Harvard Law Review* (2018)131(6).
- Cotter T. F. (2016). The complexity of intellectual property law. *Journal of Legal Analysis*, 8(1), 1-36.
- Dau-Schmidt KG and Harris SL, 'Employment arbitration in the United States: Changing the forum and the law' *Berkeley Journal of Employment & Labor Law* (2004) 25(1).
- Fisher R, Ury W and Patton B, 'Getting to yes: Negotiating agreement without giving in' *Penguin* (2011).
- Frenkel DG and Stark S, 'Hybrid justice: The theory and practice of combining formal and informal justice in hybrid legal systems' *Cambridge University Press* (2017).
- Galanter M, 'Why the "haves" come out ahead: Speculations on the limits of legal change' *Law & Society Review* (1974) 9(1).
- Grace MT, 'Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms' *Vermont Law Review* (2009) (34) 563.
- Greene J, 'The promise of legal technology: Empowering the unrepresented' *Yale Law & Policy Review* (2018) 37(3).
- Hansford TG and Gomez BT, 'Estimating the Effects of Legal Factors in Federal Criminal Cases: A Case Study of Cocaine Sentencing' *Journal of Law, Economics, and Organization* (2010)26(2).
- Hazard GC Jr. and Tait AA, 'Jurisdictional conflicts in the multi-court system: A comparative analysis' *Stanford Law Review* (2018)70(3).
- Hoffman D, 'The discretion illusion: An analysis of judicial decision-making in complex legal systems' *Stanford Law Review* (2020)72(1).

Ibrahim M, 'The role of conciliation in resolving construction disputes: A critical analysis' *International Journal of Law in the Built Environment* (2018)10(3)

Ikemson v State (1998) 1 ACLR 80 and *Bozin v State* (1998) 1 ACLR 1

Katsh E and Rifkin J, 'Online dispute resolution: Resolving conflicts in cyberspace' *John Wiley & Sons* (2017).

Koutrakos P 'Online dispute resolution in international law: An assessment of the state of the art' *Journal of International Dispute Settlement* (2020) 11(2).

Marcus P, 'Procedural fairness and the rule of law' *Oxford Journal of Legal Studies* (2017)37(4).

Menkel-Meadow C, 'Beyond legal rights: Towards new legalities?' *Modern Law Review* (2016) 79(1).

Mitchell A, and Munro A, 'The legal and ethical challenges of corporate governance' *Journal of Business Ethics* (2016)137(3).

Mnookin RH, 'The psychology of procedural justice: A review and critique' *Journal of Legal Studies* (2018) 47(2).

Moore CW, 'The mediation process: Practical strategies for resolving conflict' *John Wiley & Sons* (2014).

Moser M and Leach J, 'Enforcing arbitral awards in the People's Republic of China: A commentary on Chinese arbitration law in light of the 1958 New York Convention' *Asian-Pacific Law & Policy Journal* (2008) 9(2).

Nana Tawiah v. Kwesi Ewudzi 3 WACA 52.

Olusegun FA, 'The Implications of Legal Technicality on Rule of Law and Administration of Justice' <https://oer.biu.edu.ng/blog-post/the-implications-of-legal-technicality-on-rule-of-law-and-administration-of-justice-olusegun-femi-akeredolu> accessed 24th April 2024.

Redfern A and Hunter M, 'Redfern and Hunter on international arbitration (6th ed.)' *Oxford University Press* (2019).

Roberts JE, 'Access to justice: Rethinking the role of legal technology' *Yale Law & Policy Review* (2019) 38(2).

Susskind R and Oestreicher R, 'The future of the professions: How technology will transform the work of human experts' *Oxford University Press* (2019).

Tyler TR, 'Pro se representation in court: An empirical study of procedural justice in litigated versus settled outcomes' *Law & Society Review* (2016) 50(4).

Uwazie E, 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability' *Africa Security Brief* (2011) 16