



ALTERNATIVE DISPUTE RESOLUTION

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INTRODUCTION

Justice Delivery System plays a very important role in securing the interest of the litigants and in maintaining peace and order in the society. Words of Wisdom from one of the greatest man **LJ Earl Warren** as “It is the spirit and not the form of law that keeps the justice alive”.

ADR is one of the forms evolved as a movement to ease the burden on the courts with pending cases and to give relief to the litigants who were in queue to get justice. It is an informal and non- adversarial method of dispute resolution wherein the parties take the assistance of third neutral party to resolve their dispute in a more cost effective manner. This mechanism is most often preferred by the parties as it avoids the risk of uncertainties and local practices involved in litigation process because no one will ever desire to get into the web of litigation which involves time consuming and a complex procedure. The parties always desire to have quicker and efficient decision which will be more conducive to the preservation of their business relationships too as it ends in the harmony between the parties. ADR has gained broad acceptance in the business and legal communities as it offers an opportunity to the disputing parties to choose their own method, procedure, location, neutral party and cost for resolving dispute. This mechanism is intended to

cover mediation, arbitration, conciliation, negotiation, Lok Adalat which cover the disputes relating to commercial, civil, labor and family where the parties want to conclude their settlement amicably.

The goal behind introducing this mechanism into our legal system is to achieve the constitutional goal of providing complete justice as it acts as a self-reliant management system wherein the people are empowering themselves and securing justice.

NEED OF ADR

Accessibility and affordability to justice are very important challenges to the court litigation procedure. The adversarial method of resolving dispute has faced much criticism because of the huge pendency of cases in the court for years. Resolving the disputes through formal litigation is an endless process where interest of the parties get affected as most of the population in India is illiterate and thus they are unaware of their rights and the court procedures. Most of the people discourage litigation process as it can create a situation for them to become a real loser from a nominal winner. There is one more drawback of the present adjudicating legal system. The paucity of competent lawyers who can be recruited for the judicial post. Pendency of huge cases, high cost, unnecessary delays in delivering justice have great impact on the faith of litigants towards the formal litigation procedure. It is said that “the poor usually gets the raw end of the stick in legal matters”. Richer clients will get better results as compare to poorer clients as stated by **Moore**.



With the emergence of the new element of the commercial sector in the economy, a need was felt to come up with other alternative mechanisms for the consensual dispute resolution as the grievances were not solved within the reasonable time and because of that other parties were not ready to invest in the company. As ADR ensures that their reputation and goodwill will not be affected because of its confidentiality provision and there will be harmony between the parties even after the dispute resolution which will be good for their future working relationship. Thus, other forms of dispute resolution are frequently used by the litigants to get speedier remedy.

Justice Krishna Iyer, depicted the public suffering in his language, “commercial causes should as far as possible be adjudged by Non-Litigative mechanisms of dispute resolution since forensic process, dilatory and contention hamper the flow of trade and harm both sides whoever wins or loses the lis. A legal adjudication may be flow less but heartless. A negotiated settlement will be satisfying, even if it departs from strict law”.

HISTORICAL BACKGROUND

India has a very vast rural background. It's a long and old tradition in India wherein people prefer the alternatives to old litigation in India. The learned members, the elders of the villages and the other bodies such as NYAYA PANCHAYAT used to settle the dispute at the grass root level only even before the advent of the British. These types of settlements were unofficial and always varied from province to province. With the advent of the British legal system in India, these old traditional mechanism to

resolve disputed were vanished and the formal litigation legal system was introduced. After the Independence, it was observed that the system requires some changes to be done as it is not in a position to bear the entire burden of litigation. A very basic objective of any legal system is to deliver justice to its citizens by providing the adequate means of dispute resolution mechanisms. With the increasing population, there is an increase in the pendency of cases in the court which is denying access to justice to most of us.

TYPES OF ADR

The term ADR consist of different types of methods a litigant can adopt to resolve the dispute prior to approaching court procedure. It intended to cover Arbitration, negotiation, mediation, conciliation, lok adalat.

ARBITRATION

Arbitration is a legal process, which is carried outside the court, through a qualified expert known as Arbitrator. It can be chosen by the parties either through court reference or by the way of an agreement known as Arbitration agreement. The Arbitral award given by the arbitrator is binding upon the parties, but an appeal can be made further to the higher court on dissatisfaction by the decision of the arbitrator.

The United Nations General Assembly recommended that all the countries must give due consideration to the treaty International Commercial Arbitration, 1985 in order to ensure uniformity in law. In lieu of that The Arbitration and Conciliation act of 1966 was being enacted to govern the process of Arbitration and conciliation in



India. It includes the dispute mechanism forum for domestic and commercial legal issues. The Supreme Court has emphasized that this act should be interpreted and applied keeping the commercial sense of dispute in mind¹.

MEDIATION

Mediation is flexible and informal techniques of ADR which is facilitated by the parties with the assistance of a skilled, trained and experienced mediator aiming to provide an amicable settlement to the parties. It is a non – binding process wherein the mediator provides the parties with an opportunity to negotiate, converse and to decide about the settlement out of the court. Though it is more formal than the negotiation but less formal than the arbitration and litigation.

Contractual disputes, matrimonial disputes, consumer disputes are best suited for mediation. The Supreme Court of India in its judgment has clearly said that representative suits, election disputes, criminal offences, cases against specific classes of section have been excluded from the scope of mediation².

CONCILIATION

Conciliation is similar to mediation as parties freely consent to appoint a neutral third party known as conciliator to resolve their disputes. The conciliator acts as an interventionist by suggesting potential solution to their parties in order to resolve their disputes. It is non binding procedure where the conciliator does not himself give

the decision but make both the parties to come to a settlement themselves.

Section 89³ of the civil procedure Code, 1908 governs both the mediation and conciliation. This section only deals with the court referred mediation. Further, section 12 (a)⁴ provides for conciliation as a viable means of resolving disputes in the labor sectors.

The Supreme Court observed that —the policy of law emerging from Industrial Disputes Act, and its sister enactments is to provide an alternative dispute – resolution mechanism to the workmen, a mechanism, which is speedy, inexpensive, informal and unencumbered by the plethora of procedural Laws and appeals and revisions applicable to civil courts⁵.

NEGOTIATION

Negotiation is a voluntary non-binding process where the parties have the control over the procedure and the decision without the assistance of any third party unlike other forms of ADR. It does not have any legal recognition. It is self counseling and has no uniform rules but there are possibilities of reaching to an amicable solution.

LOK ADALAT

It is a new innovative contribution to our Indian legal system. It has jurisdiction to settle any dispute pending before any court as well as matters at pre-litigative stage. It's

¹ Konkan Railways Corp. Ltd. V. Mehul Construction Co., (2000) 7 S.C.C 201.

² Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd (2010) 8 S.C.C 24.

³ It was inserted 2002 amendment.

⁴ The Industrial Dispute Act, 1947, No. 14, Acts of Parliament, 1992.

⁵ Rajasthan State Road Transport Corporation V. Krishna Kant (1955) 5 S.C.C 75.



a very fast process as the parties can directly interact with the judge.

Lok adalat is very affective in settlement of money claims like partition suits, damages and matrimonial cases. The main objective of lok adalat is to compromise and the award given by the lok adalat is binding and cannot be made subject to appeal. The award is enforced as a decree of a civil court. An amendment was made in 2002 in The Legal Services Authority Act, 1987⁶ to establish permanent lok Adalats.

The National Legal Services Authority was constituted under National legal Services Authority Act, 1947 for framing effective and economical schemes for legal services, legal aids and speedy justice through lok adalat.

FAILURE IN ADR

ADR is not a solution for all the disputes and it has its own limitations.

Power imbalances: - ADR is not suitable for all those cases wherein one party is under the pressure of another party because of the economic position or of some business relationships between them as the weaker party may require court's protection. This process focuses more on settlement between the parties instead of giving recognition to their legal rights.

Limits on arbitral award: - In Arbitration, an arbitrator cannot order any party to do or refrain from doing something. Arbitrators can only resolve disputes that involve money. ADR processes cannot be used where the dispute is regarding systematic

injustice, discrimination, violation of human rights or serious frauds.

No guaranteed resolution: - ADR does not always leads to resolution between the parties. It might happen that inspite of investing time and money in this process, the parties may turn to the same court procedure. Since ADR consists of confidential provision, it cannot set precedents and will have no educational and deterrent value.

ADR mechanism will not be suited wherein the parties want to enforce their particular right or requires to consider the precedent by an authority. Where the party is of the opinion that he has a very strong case will not approach this mechanism rather will force the other party to get his right enforced through court of law.

SUGGESTIONS

Our legal system should provide such a platform to the litigant which helps them to end their dispute harmoniously. Though ADR is much more advantageous to the old conventional justice delivery system as it saves the time and money. The rising pendency of cases, expensive litigations may cause injustice to the poor people who are often exploited by the richer.

AWARENESS:-

Most of the people In India are unaware of their legal and constitutional rights and the court procedure thus the government should take some steps to organize some legal aid programmes, seminars ,workshops, camps, publication through media, local cable television, radio, pamphlets, brochures' and

⁶ The Legal services Authority Act, 1987, No. 39, Acts of Parliament, 1987



newspapers etc. about the concept and benefits of ADR mechanism.

LEGISLATURE:-

Legislature should make such a law which give legal recognition to all the forms of ADR mechanisms so that their decisions becomes binding on the parties and the burden on the courts can get reduced. Section 34 of Arbitration and Conciliation act, 1966 should be amended as it allows the parties in dispute to make further appeal in case of dissatisfaction. It has been observed that there is paucity in the infrastructure and the manpower which is acting as a hindrance in the proper implementation of the ADR mechanism. Government should take some concrete steps to allocate proper funding for the ADR mechanism so as to broaden the scope of this mechanism in the future.

LAW INSTITUTIONS

University should inculcate ADR as a compulsory subject in their courses so that the students can pursue their carrier as an expert in this field. Moreover, the professor should also be trained with specific skills of all ADR mechanisms. To enhance the landscape of ADR mechanism, institutions should teach law students about the process and the advantages of the ADR so that they will pursue their carrier as legal practitioner in this field. There is need to work upon the qualifications of the third neutral party as they should be trained mediators.

CONCLUSION

An ADR mechanism is necessary to give effective remedy to the disputing parties. Though most of the people prefer ADR mechanism but it will take more time to get into the roots of Indian legal system

whereby people will start preferring it as a primary mode of dispute resolution rather than as an alternative to it.

The researcher answer in affirmative, and deduce that alternative dispute resolution mechanism is more favorable than the court redressed mechanism, if executed with strong administrative set up, trained judges and skilled mediators with efficacious case management this is said on the basis of the analysis of the data collected and examined by the researcher. All over the country the recent trend is shifted from litigation to alternative dispute resolution to some extent, which is very practical submission which if implemented can narrow the workload of civil courts by half. Thus, it becomes the bounded obligation of the bar to take this back-breaking task of implementing ADR on itself so as to get matters settled without going into the warren of judicial procedures and technicalities.
