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The Evolution and Development of ADR in India and its Different Kinds

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ABSTRACT

India has a long history of settlement of disputes outside the formal justice delivery system. The concept of parties settling their disputes by reference to a person or persons of their choice or private tribunals was well known to ancient India. Long before the king came to adjudicate and disputes were quite peacefully decided by the intervention of the kulas, srenis, pugas and such other autonomous body. During Mauryans the king was the head of justice there were special courts in the cities and villages presided over by the pradeshika, mahamatras and rajukas. Dharmasteya- is a type of court where civil matters are resolved. In Mughal period most villages resolved their cases in the village courts itself and appeal to the caste courts or panchayats, the arbitration of an impartial umpire (salis). In British period modern arbitration law in India was created by the Bengal regulation law in India was created by the Bengal regulations of 1772, 1780 and 1781 were designed to encourage arbitration. The Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899. It amended and consolidated the law relating to arbitration in British India and remained a comprehensive law on Arbitration even in the Republican India till 1996. In Post-independence 1982 settlement of disputes out of courts stated through Lok Adalats. 2nd round of amendment in 2005 and 3rd round of amendment in 2015 came. It is of various types- mediation, conciliation and negotiation etc.

I. INTRODUCTION

Dispute resolution outside court is not new. Village level institutions played the leading role, where disputes were resolved by elders, comprising council of village (popularly called panchayats) informal way of mediation. ADR is not a new experience for the people of this country also. It has been prevalent in India since time immemorial. Legal history indicates that down the ages man has been experimenting with procedure for making it easy, cheap and convenient to obtain justice. Village level institution where disputes are resolved by elders, comprising council of village (popularly called panchayats). The system was that of monarchy in Ancient India. In earlier times, disputes were peacefully decided by intervention of kulas,

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srenis, parishads before the king came to adjudicate. Gramin head of Grama. Visyapati political head of many villages. Puga or a board of person who belonged to different sects and tribe but lived in same locality. Panchayats were different systems of arbitration. Subordinate to the regular courts of law. Mitakshara, it can say that Kula court consisted of a group of relations near or distant. It is important to note that in ancient India when dispute arises in family it was settled by elders. If they failed to bring about any compromise the sreni or the guild courts used to intervene. Disputes between several guilds were settled by means of arbitration.

During Mauryans the king was the head of justice. There were special courts in the cities and villages presided over by the pradeshika, mahamatras and rajukas. Kantakasodhana looked after criminal matter. In civil cases the Hindu Code of law as envisaged in the Shastras was decision was taken by a body of arbitrators with a system of appeal to the king. Office of minister in charge of law and order was called Vinayasthiti Sthapaka.

Mughal period most villages resolved their cases in the village courts itself and appeal to the caste courts or panchayats, the arbitration of an impartial umpire(salis). Maratha period generally, the Patil and the panchayat used to adjudicate the cases.

British Period modern arbitration law in India was created by the Bengal Regulations of 1772, 1780 and 1781 were designed to encourage arbitration. The Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899. It amended and consolidated the law relating to arbitration in British India and remained a comprehensive law on Arbitration even in the Republican India till 1996. In 1982 settlement of disputes out of courts started through Lok Adalats. First Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat.

India a long history of settlement of disputes outside the formal justice delivery system. The concept of parties settling their disputes by reference to a person or persons of their choice or put tribunals was well known to ancient India. Long before the king came to adjudicate and disputes between persons such disputes were quite peacefully decided by the intervention of the Kulas, Srenis, Pugas and such other autonomous bodies.

Since the ancient time arbitration, conciliation and mediation were the means for settlement of disputes outside the formal legal system. These alternative means were recognised not only in India but also in other parts of the world. Thus, settlement of dispute outside the scope of the formal legal system may be called as an alternative means of settlement of dispute through a mediator is necessarily treated as an alternative means.

It is universally admitted fact that arbitration, conciliation and mediation are efficient alternative means are less expensive and are not time consuming which are in fact very

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important factors for protection of commercial relationship.

In past years it has been witnessed that settling the disputes by the alternative means such as arbitration, conciliation and mediation and its scope have been considerably increased in the business field. Several developed and developing countries have adopted and recognised the alternative dispute resolution for resolving the international commercial disputes.

In view of increasing importance of alternative means for settlement of disputes, it has become necessary to train the person for this purpose and impart expertise in this field as skilled persons are required to perform under the system of alternative disposal of disputes. Thus with the object to give statutory recognition to alternative means of settlement of disputes the necessity of an organization was felt. On 4th December 1997 the Chief Ministers of States and the Chief Justices of the High Courts met in New Delhi to discuss at length the alternative means of disposal of disputes as well. Under this system there is procedural flexibility and also it is time and money saving besides the absence of tension of regular trial.

In this context the legendaries of various fields i. e. , commercial, administrative and legal unanimously constituted an institution to be called. International Centre for Alternative Dispute Resolution-ICADR. This institution was established in Delhi on 31st May, 1995and registered under the Society Registration Act, 1960. It is an autonomous non-beneficial institution. The chief object of this institution is to inculcate and expand the culture of alternative dispute resolution. However, other objects of the International Centre for Alternative Dispute Resolution.

II. ALTERNATIVE DISPUTE RESOLUTION: WHY NEEDED

Undoubtedly, Alternative Dispute Resolution (ADR) is a modern concept which has been developed to settle dispute amicably and speedily specifically relating to commercial transaction/contract.

Introduction of ADR in modern judicial system is the need of the hour to deal efficiently, economically and to further expeditious.

1. ***Amicable settlement of disputes***. -It has been settled now that ADR provides a friendly settlement of disputes. In business it is a prudent approach to have a competitor not a rival. In business; wisdom do not have scope for enmity. It is clear that a healthy competition brings improvement and it also effects cost of service or commodities in every sphere. In present scenario even criminal matters are settled amicably. It would be relevant to mention the concept of plea bargaining in the Code of Criminal Procedure 1973 has been incorporated. Meaning

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thereby that in term compromise the compensation can be offered by accused to the complainant and the Court of Law put its seal of approval and pass the order accordingly.

2. ***Speedy disposal of dispute***-Alternative Dispute Resolution provides speedy trial disposal of dispute. Under this system there is no much scope of adjournment, stay or lengthy session of arguments etc.

3. ***Economical settlement of dispute***-It delivers economical solution/settlement of dispute. In other words litigation expenses and exorbitant counsel's fees could be avoided by invoking settlement of dispute by means of conciliation and mediation.

4. ***A time saving management***-Alternative Dispute Resolution is also known as dispute management. This is a time saving device, wherein dispute is being settled without following the cumbersome procedure of ordinary litigation.

5. ***Legal recognition***-This system has been recognized in the Indian Statutes. For instance- now Civil Procedure Code, 1908 Order XXXII-A Rule 3 contains scope for compromise and the decree evolved from that compromise is not appealable.

6. ***Globalization of commercial activities***-At present time the globalization of commercial activities is being campaigned not only in India but also in other countries like U. S. A, U. K, Germany and France etc.

7. ***Advent of multi-national corporations***-A number of multinational corporations are coming to invest and establish their business and also settling up their infrastructure. These corporations have dynamic approach toward business activities. Therefore in case of dispute arising they should be provided with machinery which deals with machinery which deals and resolve dispute amicably and speedily. Hence, ADR is the only tool to settle dispute in question quickly and economically.

8. ***Industrialization***-No doubt that in recent past we have witnessed a great magnitude of industrialization across the globe and India is not an exception to it. Thus, the reasons for adoption of ADR cannot be postponed indefinitely. It is submitted that on account of aforesaid reasons the need of ADR cannot be simply overlooked at threshold. Once commercial transaction carried out it is natural to develop some conflict and differences and approaching ordinary court of law will be a herculean task specifically in Indian Judicial System. Hence, ADR way to come out which settling dispute is a most economical and conducive manner. However, in a broad perspective ADR is not only confined to settlement of commercial dispute, even civil and criminal matter are settled by instrument of Lok Adalat, Nyaya Panchayats and Panchayats in India.

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III. METHODS OF ADR

It is to be noted that ADR has several methods. However, the principle of natural justice is required to be followed while adopting any method under ADR. A negotiator or mediator may follow more than one method depending upon nature of dispute and strategies. Although, the methods of ADR are as under.

1. ***Arbitration***-It is a determining of a dispute referred to a person called on arbitrator, but an arbitrator is appointed by a third party when dispute referred to that party/person.
2. ***Negotiation***-It is a method of settlement of dispute with or without the assistance of a third person.
3. ***Mediation***-It is a method to achieve a conciliation solution of dispute.
4. ***Conciliation***-It is a process recognized under the law which is to be achieved by a conciliator.
5. ***Mini trial***-It is a method when conflicting parties approach the senior executives to adjudicate the dispute.
6. ***Expert appraisal***-Under this method an expert of relevant field is appointed to investigate and furnish non-binding opinion.
7. ***Neutral evaluation***-It is a non-binding evaluation carried out in a reasoned manner.
8. ***Hybrid arbitration***-This method is an appropriate combination of conciliation and mediation. It is to be made clear that goal and nature of dispute decides the type of process to be followed. It means that the disputing parties have first, to admit their requirements and thereafter choose the appropriate Alternative Dispute Resolution method.

IV. MERITS & DEMERITS OF ADR

The ADR process has the merits as under:-

1. ADR process can be initiated at any time, whenever disputing party takes recourse to ADR.
2. It can provide more expeditious and less expensive settlement of dispute.
3. It promotes conducive and amicable mechanism.
4. ADR programmes are not rigid.

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5. No lawyer's assistance is mandatory, it does not mean that role of lawyer is diminished.
6. ADR concept reduces the work load of the regular Courts of law.
7. ADR helps in confining dispute as a private matter.
8. ADR can be used to reduce the gravity of contentious issues between the parties.

There is no method which do not have its own demerits. In other words particular ADR method may not suit the requirement of the parties. In over all ADR has the following demerits-

1. Unfamiliarity of process is a factor causing obstruction in ADR.
2. In case of unequal position of the parties, the weaker party may not be willing to submit to ADR process, may prefer Court's protection.
3. Investment of time and energy in ADR.
4. Lack of binding effect of solution arrived after exercise of ADR process.
5. Disputes relating to right of parties and title could not be decided by means of ADR because in such matter the decision arrived at after ADR process lacks enforcement.
6. Practically ADR process is slow as before initiation of said process consent of the party concerned is to be obtained.

V. INDIAN STATUTES AND ADR

The ADR mechanism has been statutorily recognized in Order 32-A Rule 3 of Code of Civil Procedure, 1908 which contains scope of compromise between the parties, is not appealable.

Section 12 of the Industrial Dispute Act, 1947 deals with conciliation as the pre-condition for collective bargaining. Similarly Section 23 of the Hindu Marriage Act, 1955 recognised the necessity for ADR. However, Family Courts Act, 1984 shows a greater emphasis on ADR rather conciliatory approach for settlement of matrimonial dispute. The present Arbitration and Conciliation Act, 1996 makes provision for settlement of disputes/differences by means of ADR mechanism.

In 1984 the Himachal Pradesh High Court evolved the technique to dispose of the cases pending in subordinate courts by conciliation, with the view to reduce the arrears of cases. Notably, this technique was in the nature of the Michigan Mediation method. The Law Commission of India in its 77th and 131st reports suggested setting up of mediation centres across the country at least at the State and district levels to reduce the backlog of pending cases

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in High Courts and District Court. In December, 1993 the resolution to this effect was passed in the conference of Chief Justices and Chief Ministers.

The concept of ADR found a well structural place in the Arbitration and Conciliation Act, 1996 which is based on United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules, 1980. the said provisions have universal familiarity for settlement of domestic as well as international commercial disputes/differences.

By the virtue of the CPC (Amendment) Act 1999 a new Section of 89 was incorporated in the Code of Civil Procedure, 1908. Sub-section (1) of Section 89 of the Code, 1908 states that "where it appears to the Court that there exist s the element of settlement which may be acceptable and give them to the parties, the court shall formulate the terms of settlement and give them to the parties, the court may formulate the terms of a possible settlement and refer the same for:

a) Arbitration;

b) Conciliation;

c) Judicial settlement including settlement through Lok Adalats; or

d) Mediation.

Settlement upon reference-

When the parties come to a settlement upon a reference made by the Court for mediation and the parties want the same, there has to be some public record of the matter in which the suit is disposed off and, therefore and, if necessary, proceed to execute it in accordance with law. [1]

Now, it has been realized that formal legal system will not be capable to deal with the entire burden of pending cases, therefore, the present system deserves drastic change for the sake of the wondering litigants. Thus, it is high time to take recourse to ADR mechanism.

VI. DIFFERENCES BETWEEN ADJUDICATION AND ADR

Adjudication	***ADR***
• While adjudication looks to past i.e., factual aspect of dispute. • Relationship between parties not focused.	• Whereas this process looks to future. • ADR process focuses on relationships between the parties.

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• It seeks to set up liability or fault • It results in laying down generalrule • Important role assigned to advocate appearing on behalf of the party.	• It seeks to reform the relationship. • Whereas it results in custom based solution. • Whereas in ADR clients play the role.

VII. ADR: KNOWING THE PROBLEM AT HAND

It is the most essential to know the problem at hand and for purpose of initiating ADR process, knowing the problem is a pre-requisite. This fact can be achieved by holding interview of the parties. Thus, ascertainment of the problem can be done while establishing communication between the counselor and parties. Because ADR is a process of interpersonal communication a successful communication can only yield to successful ADR result.

Interpersonal "communication"- the expression "communication" means exchanging views and feelings. Generally, it is witnessed that party submitting to ADR may not be skilful in communication and projecting disputed points; therefore counseling is necessary process, which commences after the client is thoroughly interviewed and counselor is equipped with whole information to deal with the problem. The client cum aggrieved person needs guidance. A client's interview is more than just a commercial conversation and social work and psychology are substantially connected to the process, which has to last with counseling.

However objectives of interpersonal communication are:-

a) Reception;

b) Understanding;

c) Acceptance;

d) Action.

Chief Process of ADR

1) ***Arbitration***- it is a private adjudication of disputed matter by intervention of a neutral third party, who has been conferred power to make binding arbitral award. It is a process in which the disputed matter is submitted to the arbitrator constituting an arbitral tribunal which passes a reasoned arbitral award binding on the parties.

2) ***Conciliation***-it is a non-binding process in which an impartial person settles the dispute amicably and makes recommendations pertaining to dispute. Such person is called "conciliator".

3) ***Mediation***- in the process the intervention of a third party assists the conflicting parties to find out a solution to their problem.

4) ***Negotiation***-in this process the intervention of a third party is not there. Whereas disputants take their own initiative across the table to settle their disputes.

5) ***Mini trial***- it is a non-binding process in which disputants make presentation of their case in a summarized manner to evolve the opportunity to negotiate the disputed matter with the help of a neutral advisor. This process is also called "case presentation".

6) ***Expert's appraisal***- it is a non-binding process in which an expert makes investigation and submits his opinion to the parties.

7) ***Hybrid arbitration***-in this process arbitration is combined with another kind of ADR involving mediation and conciliation.

8) ***Fast Track Arbitration***-it is a process in which time bound arbitration takes place.

Additional advantage of the ADR

1. The alternative means of dispute redressal can be invoked at any time, even if the matter is pending in the Court of Law. Similarly, it can be, terminated at any time except in case of compulsory arbitration.
2. The disputes can be resolved comparatively more economically and speedily. Disputes can be maintained as the personal subject-matter. Sometime disputes are resolved within one or two days' time because the procedure adopted by the mediator is controlled and consented by the parties.
3. The system of alternative means of dispute redressal can be followed without seeking legal assistance from the advocate-lawyers.
4. This system effectively reduces the work- load of the court.
5. Finally, this system provides flexible provides flexible procedure as strict procedure of law is not applicable to alternative means of dispute redressal.

Importance of Alternative means of dispute redressal

Negotiation-it is the simplest means for redressal of disputes. In this mode, the parties begin

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their talk without inference of any third person. The aim of negotiation is the settlement of disputes by exchange of views and issues concerning the parties.

Need for negotiation- undoubtedly, negotiation is the dominant factor in settlement of dispute. In process of negotiation the important step is beginning of dialogue between the conflicting parties in presence of negotiator.

Essential ingredients of negotiation-

1. It is a Interpersonal communication process
2. It settles the dispute
3. It is a voluntary process
4. It is a non-binding mechanism
5. It is a controlled process
6. It has capability to achieve wide ranging solution.

Hurdles to negotiation-

1. Lack of communication- A skilled person is needed to avoid misunderstanding due to lack of skillful communication.
2. Lack of negotiating skill- A negotiator has to make a neutral approach to the problem.
3. Poor information- For successful negotiation accurate information is required.

Difference in understanding problem-the negotiating parties may not well-informed regarding problem in hand; it would make the negotiation process a great failure.

4. Improper representation- If the representatives of the party concerned is not well informed regarding problem in hand, it would make the negotiation process a great failure.
5. Non-awareness of authoritative rulings-if the negotiator is not aware of authoritative rulings of the Supreme Court or High Courts, it may lead to failure of negotiation.

What is Lok Adalats?

"The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and its validity has not been taken away in the modern days too. The word Lok Adalat means people court. "

Lok Adalat is another alternative to Judicial Justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which

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are pending in courts and also those, which have not reached the courts by negotiation, conciliation and by adopting persuasive, with the assistance of specifically trained and experienced Members of a Team of Conciliators.

Award of Lok Adalat shall be final

The Lok Adalat pass the award with consent of the parties therefore, there is no need either to reconsider or review the matter again and again, as the award passed by the lok adalat shall be final. Even in Section 96(3) of C. P. C that "no appeal shall lie from a decree passed by the court with the consent of the parties".

Lok Adalats award as good as court decision

According to the supreme court the award of Lok Adalats stood same footing as a decision of the Court. The court further held that decision passed by the Lok Adalats is the decision of the court itself.

Lok Adalats and ADR

Merely making law is not sufficient in absence of necessary infrastructure to secure justice to poor litigants. Further, the society is to be educated and trained to avail the benefit of free legal aid.

The supreme court in Hussainara Khatoon v. State of Bihar, observed that-

"today unfortunately in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system in bring about changes in [2]their life conditions and to deliver justice to them. The poor in their contact with the legal system[2].

Recent cases on ADR

- Ssangyong Engineering and Construction Company Limited v National Highways Authority of India (NHAI) Supreme Court of India, 08 May 2019
- Campos Brothers Farms v Matru Bhumi Supply Chain Private Limited and others Delhi High Court, 02 May 2019
- Jamia Millia Islamia v Airwaves Engineers Private Limited Delhi High Court, 02 May 2019
- Betamax Limited, represented by its Director Veekram Bhunjun v State Trading Corporation, represented by its General Manager and another Karnataka High Court,

2. AIR 1979 SC 1369

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VIII. CONCLUSION

Alternative dispute resolution is a panacea for everyone who wants to seek justice and want to settle their dispute especially when there is a lack of communication between parties. And both the parties need a person who has good knowledge of facts as well as law and who can understand what both party needs. It is cost efficient, time saving, and easy to solve and accessible.

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