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Alternative Dispute Resolution: The best method of Resolving Disputes and getting Justice?

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Alternative dispute resolution (ADR) has become a new divergent pathway for the long and expensive court proceedings which carry out for a few years or till a few generations. In Alternative dispute resolution, the decision is either arrived at in a friendly (manner or adversarial manner either by those parties or by the unbiased third party). Alternative dispute resolution (ADR) has become popular in the mid of 1990s due to the increasing economy and pending cases and disputes which were pending in court for a long time. At first, it was used as a tool to reduce courts backlogs. Alternative dispute resolution (ADR) is now conferred as a quicker and low-cost mode of producing justices compared with the court process. To avoid the bleak side of the arbitrage more elements of court procedure were introduced (like the role of experts, provisional measures). To make Alternative dispute resolution (ADR) more popular it was promoted as a procedure in which the parties can choose their own judge, produce their own law, and by introducing section 89¹ in the code of civil procedure, 1908 and in the Arbitration and Conciliation Act, 1996². This research paper is further divided into three parts the first part contains an introduction to the history of alternative dispute resolution in India and details about Alternative dispute resolution which helps the reader to know about ADR in detail. The second part deals with the different methods of alternative mechanisms present for different levels. The third part deals with goals and interests in Alternative Dispute Resolution.)

Keywords: *quick justice, alternative dispute resolution, act, expert.*

¹ Code of Civil Procedure, 1908, s 89

² Arbitration and Conciliation Act, 1996

INTRODUCTION: HISTORY OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDIA

In the Indian people, you still need joint families with their clans where the caste system was for restricted leave which was divided into Kshatriyas, Brahmanas, Vaishali, and Shudras. Whenever there was a dispute among the people in a family, they used to approach the head of the family, and when there was a dispute between a client or dispute between the members of the clan we used to go to the head of the clan or the village to resolve these matters. A person was appointed unanimously by the community to resolve their problem in the shrine to resolve the problems in trade and cooperation between the people.

Pre-Independence: British rule

Through the British rule, numerous drastic changes were brought into the Indian administration as the British have introduced many legislations. The British raj has introduced the alternative dispute resolution mechanism in India by Bengal resolution act 1772 and Bengal regulation 1772,1780 and 1781, which encouraged the people to enter into arbitration. according to this act, the parties must submit the dispute the arbitrator appointed mutually and the verdict of the arbitrator would be binding on both. Also attracted Indian arbitration act 1899 based on the English arbitration act 1999 only confined to the presidency towns of Calcutta Bombay and Madras which was subjected to much criticism. Because of much criticism and many drawbacks, the arbitration act of 1940 was and was drafted and replaced with the Indian arbitration act 1899 which remained as a comprehensive law of arbitration even after the independence of India till 1996 which also consolidated and amended the loss related to arbitration in British India. In 1937 the Geneva convention was signed and approved by India and apparel legislation was introduced in the form of the arbitration act 1937

The arbitration act 1937 was introduced in India through legislation when India approved and signed the Geneva Convention in the year 1937

Post-Independence:

*The Arbitration (Protocol and Convention) Act, 1937*³ for the enforcement of foreign awards, and *The Arbitration Act, 1940*⁴ for referring disputes to ADR mechanism were present in force in India. Then in 1961, India became a signatory to the *New York Convention*, and *The Foreign Award Act, 1961*⁵ was enacted. After the independence in the year, 1961 India became a member or a part of the New York Convention, and the Foreign Award (*Recognition and Convention*) act 1961⁶ was enacted. The arbitration act 1937 watched for the enforcement of the oversee awards and the Arbitration Act 1940 was for the ADR mechanism which is acting in India.

There are three methods of dispute resolution:

- Traditional Dispute Resolution;
- External Dispute Resolution;
- Hybrid Methods of Dispute Resolution.

Traditional Dispute Resolution: This dispute resolution mechanism authentication method is referred to as the process which includes a jury or the court of law with both parties approaching the court of law or the Jury to resolve their issues naturally this method is more time-consuming and expensive.

Alternate or External Dispute Resolution: the process in which the disputes are settled outside the court with the help of the third neutral party to hear the judgment or the decision made is final and arbitrator's judgment or advisory can be set aside if both the parties agree to it.

Hybrid Methods of Dispute Resolution: as the name suggests this method includes the combination of two or more dispute resolution processes among which Med-Arb is one of the

³ Arbitration (Protocol and Convention) Act, 1937

⁴ Arbitration Act, 1940

⁵ Foreign Award Act, 1961

⁶ Foreign Award (*Recognition and Convention*) Act, 1961

most famous ones where the parties first go through the mediation and then if necessary they go through arbitration.

ABOUT ALTERNATIVE DISPUTE RESOLUTION (ADR)

It is a process in which a dispute which has been arising between both the parties will be resolved in a friendly or in an advisory manner, by both the parties sitting together or by appointing a third neutral party who has been chosen mutually by themselves, who has a piece of expert knowledge on their topic of the dispute to give them an expert or a value judgment which will help in satisfying both the parties, which will help in settling the dispute between them without involving the court which helps in reducing the burden on the courts but by the methods of negotiation and dialogues. It offers to resolve all kinds of topics which includes civil, commercial, industrial and family, etc. But the recent 154th report of the Law Commission of India ⁷which is suggested including the concept of clear bargaining in the Indian criminal jurisprudence where it will allow the plea bargaining for the east where the maximum year of Jail is of 7 years where the offenders as and committed any offense against the woman or child who is below 14 years of age.

TYPES OF ALTERNATIVE DISPUTE RESOLUTION

Arbitration: Arbitration is a process in which the disputed parties settle the dispute or the conflict outside the court with the help of a media with the help of an arbitrator who is mutually appointed and gives a final award after listening to both sides of their argument which will be legally binding on both the sides of the parties unenforceable in the court of law. Arbitration is mostly used to solve commercial or trade disputes, especially international trade or communication transactions. The process of arbitration was introduced in India with the Indian contract act of 1872⁸.

Mediation: mediation is also the same process as an arbitration where the disputes are settled outside the court but here the third neutral person is known as a mediator who uses

⁷ Law Commission of India, *The Code of Criminal Procedure Code, 1973* (Law Com. No. 154 1996)
<<https://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>> accessed 25 February 2022

⁸ Indian Contract Act, 1872

specialized communication and negotiation techniques to resolve the disputes of the body parties through negotiation. The primary focus will be on the needs rights and the interest of the body parties. Mediation has a properly structured timetable and is dynamic. Mediation is non-binding in nature. Negotiation: negotiation is a process in which both the parties come sit together without the intervention of the 3rd party where they negotiate with each other with the help of dialogues and try to reach the beneficial outcome over the dispute or the conflicting issue this method is more effective as it doesn't hamper the relationship between both the parties by not involving the 3rd party negotiation basically occurs in an organization marriages divorce at the time of hostage.

Conciliation: It is a process in which the disputed parties approach a third party who is known as a conciliator the work of the conciliator is to meet the disputed parties separately to discuss a problem what they are having and to meet them together and attempt to resolve their disputes through identifying the differences between them this is done to lowering tensions improving communications exploring the parties potential and finding out a method which is mutually accepted by the disputed parties this method is different from arbitration as consideration is not legally standing and she Sikhs no evidence or witnesses and makes no award. Lok Adalat: it is also known as the people scored. Lok Adalat is an Indian innovative idea which is contributed to the world jurisprudence which is based on Gandhian principles. It was brought into Indian administration through the legal service authority act of 1987 which was first started in Gujarat in the year 1982 and slowly spread all across the country, the cases which are involved are civil cases matrimony, and petty offenses which are pending in the court. Basically, the settlement of disputes is done by the Panchayati head. Nyaya panchayat: it is a body that delivers justices at the village level in the Panchayati Raj system present in India the justice is delivered by the five elected representatives known as punches who is headed by sharp points where there is no need for the presence of a lawyer to present the case and the judge to hear the judgment. The main Moto of setting up this institution was to provide fast and speed justice with less cost involved here then I punch it can only reward the culprit to pay a certain amount of fine but cannot arrest him or send him to jail.

LITERATURE REVIEW

While doing my research article on alternative dispute resolution mechanisms articles from Supreme Court cases and a few books on ADR have played a very important role and collecting the information about my topic getting an in-depth knowledge of how ADR is helping different forums resolve their dispute without approaching the court. But alternative dispute resolution: [Professor (Ms.) S.K.Verma, Professor S.C. Srivastava, & Ms. Geeta Obrai, 2002] gave me a brief about alternative dispute resolutions position in India at different levels. It also gives a detail about the tribunal system in India along with the name of the status and for what trip journal it is applicable it also explains in detail the lower level that is the village level how the disputes are resolved especially the alternate dispute through Lok Adalat and Nyaya panchayat and the capacity of panchayats in each state. And also says the advantages and the goals of the alternate dispute resolution system in India.

ANALYSIS

Importance and role of Alternative dispute resolution (ADR)

To deal with the present situation in India where they are a total of 44 million pending cases in the Indian courts, Alternative dispute resolution (ADR) plays a crucial role in India by its contrasting techniques. Alternate dispute resolution (ADR) mechanism has provided away develop a scientific technique which is helping the courts in reducing their burden through the various methods involved in this system which are mentioned above.

Important provisions related to Alternate Dispute Resolution (ADR)

Arbitration and Conciliation Act, 1996 - which provides arbitration and conciliation process which helps the process helps in settling the disputes outside the court.

Legal Service Authorities Act 1987 - which helps in providing legal services to the backward section of the country present in each and every state.

Code of Civil Procedure, 1908, Sec 89 - this section provides power to the court where it refers the parties to look for an alternative method if they find there is an element of settlement that can be accepted by both the parties.

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

Faster: alternative dispute resolution provides a faster judgment as compared with a normal court judgment as the court proceedings take a lot of time to come to a proper judgment.

Cost: cost in all in alternative dispute resolution is comparatively very low as compared to the amount involved in the court judgment as the amount must be paid to the lawyer which is usually very high at times.

Confidential: normally every court proceeding will be recorded and be registered whereas in this method there will be no registration of the proceedings between the birthday parties.

Less Procedural Complexity: procedural complexity of alternative dispute resolution is very low because the dispute is either solved by the parties themselves or a 3rd party is involved but in the case of courts they have many cases that would have to be solved before them therefore it takes a long part-time to solve or to establish a proper judgment.

Helps in maintaining relationships: the relationship between both the disputed parties won't get hampered because they both come to a mutual decision in the case of alternative dispute resolution, whereas in the court decision will be tilted towards one party

Participative in nature: in this matter, both parties will be taking an active role in putting forward the points and drawing a mutual decision that will be satisfying the border sides.

THE PRESENT SITUATION OF ALTERNATE DISPUTE RESOLUTION

With the present growth in the economy and with the major economic reforms the alternate dispute resolution has to gain its movement term and acceptability among the people and have come up the ladder in the judicial system to a very crucial place been handling various

cases of different forums as an alternative to the regular court proceedings. Which are discussed below:

The Press Council of India: the press council of India was formed in year 19 the breast council of India was formed in the year 1966 by the parliament it is a self-regulatory watchdog of the press which operates under the press council act of 1978 it also maintains the standards and the freedom off the press. The main function of this council is to arbitrate the press for the violation of the rules and for the violation of ethics. The popularity of this council is increasing year by year which resulted in an increase in cases per annum.

Debt Recovery Tribunal (DRT): the debt recovery tribunal has been set under the recovery of debts and bankruptcy in the year 1993 with the main object to of recovery of the loans which are due to the banks and to the other financial institutions. It is a quasi-judiciary authority that has 22 branches across the country day around 8000 cases pending in this tribunal.

The Central Board of Excise and Customs: it has been established in the year 1855 by the British government to look over the custom loss in India and collect revenue it is one of the oldest government departments in India which looks over the cases pending in the Supreme Court and in the lower courts.

Income Tax Appellate Tribunal: it is a quasi-judiciary authority that is set up under the Income Tax Act of 1961 it functions under the supervision of the jurisdictional High Court. Here the appeals are filed by the taxpayers who don't agree with the assessment passed by the authorities.

GOALS AND INTEREST OF ALTERNATIVE DISPUTE RESOLUTION

Non-Interference of Court: the basic goal of alternate dispute resolution is to resolve the dispute or the conflict between the parties without approaching or with non-involvement of the legislation or the court.

Compromise: The main rule of the ADR system is to compromise the parties through a properly planned negotiation where they both come to a mutual understanding.

Fairness: fairness is not only in the final decision but is carried out throughout the process of the negotiation.

Satisfaction: the main and primary goal of the ADR system is to satisfy the parties through the judgment given by them.

Standard: the basic standard of the ADR system is to provide a quick and cost-effective trial with less procedural work.

Confidentiality: in this system confidentiality is maintained between the parties as no recordings of the statements are done which is done in normal court proceedings.

Communication: communication plays an effective role in this system because the problems between the parties are resolved through dialogues.

Win-Win Objective: the main objective of the system is to satisfy both the parties and to cause no harm to either side.

CONCLUSION

Through this article, we have come to know the evolution of alternate dispute resolution and its roots in India and different types of alternate dispute resolution mechanisms available in solving the disputes and how effective they are as compared with the normal legal proceeding as they required a lesser amount of time and money as compared to the present legal system and not only that their efficiency and the scope in the backward regions of the Indian localities places i.e. the rural villages. And you also see through the changing time and the economic growth how different forums and tribunals have been set up to solve the problems relating to the income tax customs and debt recovery which will help in providing quick justice to the party parties which are mutually acceptable by the parties.