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A Brief Overview of Alternative Dispute Resolution Mechanisms in India

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ABSTRACT

Alternative Dispute Resolution is a powerful legal mechanism which is adequate to provide alternative process to resolve the disputes without approaching the traditional legal framework. Based on the Law Commission of Malimath Committee, it is a quasi-judicial proceeding which supplements the legal setup but doesn't supplant, it reduces the stress of court systems with higher pendency of cases. In the complexities of modern life-style, disputants want judgements as quickly as possible. ADR is a flexible, cost-effective and time-saving remedy for resolution of civil, commercial, industrial, insurance and family disputes between parties generally through compromise and has been extended to compoundable criminal issues too. Arbitration, Conciliation, Negotiation, Mediation, Lok Adalat, etc. are the several types of ADR techniques. Sec 89 of CPC provides for judicial settlement of dispute outside the court via arbitration, conciliation, or settlement through Lok Adalat or mediation. If the court finds any elements of settlement in the parties to dispute, it refers the case to appropriate ADR mechanism. The most important principles of ADR techniques are independency, judicial equality, confidentiality, co-operation, impartiality and Natural justice.

This research article gives a brief glimpse Alternative Dispute Resolution techniques in India with its points of merit and demerit.

***Keywords**: Arbitration, Conciliation, Mediation, Lokadalat, Arbitrator.*

I. INTRODUCTION

The country's judicial system is the formal segment of the democratic framework which assures legal certainty by protecting the rights of the peoples by resolving the disputes. The traditional mode of dispute resolution i.e. litigation is a lengthy process leading to unnecessary delays in dispensation of justice as well as over-burdening the Judiciary.[2] Thus, a need was felt for an alternative system for the resolution of disputes without any high costs and extreme delays.

The alternative system doesn't replace the court system but is a cost and time effective remedy for adjudication of disputes. Here the disputes are adjudicated with the help of an impartial,

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[2] ALTERNATIVE DISPUTE RESOLUTION IN INDIA, Department of Legal Affairs, https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf

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neutral third-party chosen voluntarily by the parties in disputes according to their will or the parties themselves. The resolution of the disputes is cost and time effective and focusing to maintain the cordial relations between the parties in disputes.

Though ADR is flourishing in India, some factors like, insufficient framework, absence of experts, lack of knowledge about ADR etc. issues in the application of ADR. In spite of such hurdles, in recent past, the ADR system in India has undergone anew renovatory advancements for enhancing the efficiency. For instance, the Arbitration and Conciliation (Amendment) Act, 2019 came up with certain significant changes to the procedure of arbitration in India, for example, the nomination of arbitrators and the extent for concluding the arbitration.

The Covid-19 pandemic had resulted in prolonged resolution of disputes, burdening the already outstretched court proceedings. ODR-Online Dispute Resolution and was introduced through a high level committee constituted by NITI Aayog, having the potential to reduce the burden on the court and efficiently resolve several categories of cases. It may also be integrated to support the judiciary through technology integration in court-annexed Alternate Dispute Resolution (ADR) centres, via e-lokadalats and also be introduced within Government departments for internal disputes.[3]

II. Historical background

The dispute resolution institutions can be traced long back to the days of texts like Shrutis- The Vedas and Smritis- Manusmriti, Brihaspatismriti, Naradasmriti, Yajnavalkyasmriti. The Brihadaranyaka Upanishad talked about various arbitral bodies like, kulas, srenis and pugas. The epic- Ramayana[4] depicts, before the war between Ram and Ravana, Lord Ram sent Lord Hanuman, Angad to convince Ravana to avoid the war as a form of conciliation. In Mahabharata[5] too, Shri Krishna acted as a mediator (Shantidoot) between the Pandavas and Kauravas proposing different settlements to avoid the war. Kautilys's Arthashastra provides for the resolution of disputes through mediation or arbitration preferring conciliation, through the four methods of Dispute resolution: *Sama, Dama, Danda and Bheda.*

In India, during the ancient and medieval times, the 'Dharmapeeth','Dharmasabha','Nyaya Panchayat', 'Panch system', 'Jat panchayat', etc. procedures were followed in the nagar or villages, some of which are still used in some rural and tribal societies in India and have a very close resemblance to the modern-day ADR system. The elders of top communities, experts,

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[3] NITI Aayog, NITI Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice, PIB Delhi (Nov. 29, 2021, 6:18 PM), https://pib.gov.in/PressReleasePage.aspx?PRID=1776202.

[4] Ramayan - Valmiki Ramayan: Yuddha kand; Sarga 41

[5] Mahabharat - Udyoga Parv {Part 6 (Bhagwat-yana Parv)}

authorative persons of the villages acted as arbitrators, negotiators or mediators based on values, norms, morality and ethics to promote harmony and peace in society. In the Muslim period, Tahkeem was the term used for the Arbitration whereas Hakeem was used for the arbitrator.

ADR started to take proper shape during British rule. The Britishers introduced formal courts systems and codified legal framework in India. The first comprehensive legislation for arbitration in civil disputes was passed in India based on the English Arbitration Act of 1889, called the Indian Arbitration Act, 1899, but it was criticised for being deficient and was subjected to various judicial criticisms. It was criticised for many judicial loopholes and over the time period other subsequential legislations were framed to extent the sphere of ADR. The 1899 Act was replaced by the Arbitration Act, 1940. Today, section 89 of the CPC provides for methods of arbitration, conciliation, mediation and Lok Adalat to resolve disputes.

III. Overview of ADR techniques in India

(A) Arbitration

Arbitration is a method of dispute resolution that has emerged to settle disputes between the parties in a timely, efficient and amicable manner. The Supreme Court of India ruled in the case of Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd[6] that arbitration is a time and money efficient way to settle disputes. The parties may directly get into arbitration or the court may refer the parties in dispute to the arbitration. The arbitration is mainly presided over by the arbitrator and the decision is given by him which is binding and can be challenged. The arbitrator is selected as the neutral third person who may be an expert in the field of arbitral issues. The parties are bound by the time limit and rules that are fixed by the arbitrator within which the dispute must be settled.

The sub-section (2) of section 11 of the Arbitration and Conciliation Act, 1996 provides that, the parties to an arbitration agreement are free to agree on the procedure for appointing the arbitrator or arbitrators. However, in situations like failure to act as required, or failure to reach an agreement expected, or failure to perform any function the party may request the Supreme court or, as the case may be, the High Court or any person or institution designated by such court to intervene and appoint an arbitrator. Therefore where Parties are free to decide or include a clause for the appointment of an arbitrator in their agreement, the power of Chief Justice to appoint an arbitrator is limited to specific situations and mostly arises in cases of institutionalized arbitrations.

[6] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd (2011) 5 SCC 532 (India)

The Indian Arbitration Act, 1899 was the first formal step taken in the direction of Arbitration in India during the British administration. A comprehensive ruling to Arbitration was the Arbitration Act, 1940 dealing with domestic arbitrations. After Independence, in the year 1996, the Government of India enacted Arbitration and Conciliation Act, 1996, to accentuate domestic as well as international arbitration. This Act has also has its roots originated from the UNICITRAL Model Law on International Commercial Arbitration, 1985 & the UNCITRAL Arbitration Rules, 1976. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.[7]

The famous landmark case of 'Guru Nanak Foundation v. Rattan Singh'[8], also provided encouragement for the Arbitration and Conciliation Act of 1996 as the Court observed and pointed out many inefficiencies in 'the Arbitration Act, 1940, expressing that, "the way in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep".

(B) Conciliation:

Conciliation is the adjudication of a dispute in a voluntary and non-binding manner, where an unbiased third party i.e. conciliator assists in settling disputes between the parties to arrive at mutually acceptable resolution. One of the major benefits of opting conciliation is that it's nature is flexible i.e. the parties decide whether to participate in the conciliation process or not. It facilitates maintenance of amicable relationship between the parties. Also the conciliation process is inexpensive compared to the other judicial procedures.

In India, the mechanism of conciliation is governed by specific legislation such as the Arbitration and Conciliation Act, 1996. Part III of the Act deals with conciliation.[9] The provisions of this part applies to all conciliation proceedings rising from disputes with legal relations, irrespective of the fact, they are contractual in nature or not. The process of conciliation begins with one party sending an invitation in writing to another party to conciliate an issue, identifying the substance of the dispute. If the other party agrees then the conciliation process can commence. It is a highly confidential process as the hearings do not take place in an open courtroom.

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[7] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India)
[8] Guru Nanak Foundation v. Rattan Singh, (1981) 4 SCC 634 (India)
[9] Dr Avtar Singh, Law of ARITRATION AND CONCILIATION 515 (Abhinandan Malik 11th ed. EBC 2021)

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As every coin has two sides, there are some demerits of conciliation, like it does not possess the same legal authority as that of a court proceeding. The decision of the conciliator is not binding legally. The procedure of conciliation is too informal and casual. There is no guarantee that the conciliation procedure will conclude successfully and may conclude without the parties settling their disputes.

(C) **Mediation:**

Mediation is another voluntary and interaction based technique of ADR, which is more informal and aids negotiations between the disputant parties which may end up in an amicable settlement (binding). Mediation is a process by which disputing parties engage the assistance of a neutral third party to act as a mediator.[10] The concept of mediation received legislative recognition in India for the first time in the Industrial Disputes Act, 1947.[11]

Thus, in comparison to Arbitration, Mediation helps individuals or businesses in dispute to maintain their relationships for future collaboration, as the final agreement concluded in the mediation process has voluntary and mutual interest. In contemporary times, Mediation is being opted mainly in family-related, property, industrial or business matters etc. and in disputes referred by Courts to legal mediation centres.

However, there are some disadvantages of mediation, due to no recognition and interference of the law, the parties in dispute may refrain from participation in the mediation process. It is a non-binding procedure hence the parties may quit the agreement anytime according to their will leading of wastage of time and money. The above-mentioned factor has hampered the growth of mediation as an effective mechanism for dispute resolution and the Mediation Bill, 2021 seeks to address the legal and procedural shortcomings in this regard.

The provisions of the Mediation Act, 2023 enable and recognise settlement of compoundable offences in terms of the provisions contained therein. Section 6 of the Mediation Act, 2023 enables the court to refer for mediation, if deemed appropriate, any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties. However, the outcome of such mediation shall be further considered by the court in accordance with the law for the time being in force.[12]

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[10] Dr Avtar Singh, Law of ARITRATION AND CONCILIATION 582 (Abhinandan Malik 11th ed. EBC 2021)
[11] Mediation Training Manual for Awareness Programme, Mediation and Conciliation Project committee Supreme Court of India, https://cdnbbsr.s3waas.gov.in/s3ec0594ef7214c4a90790186e255304f8/uploads/2024/04/2024042668.pdf
[12] Government of India at forefront to promote Alternative Dispute Resolution Systems, Ministry of Law and Justice (Feb. 08 2024 12:04PM), https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003844#:~:text=The%20enabling%20legal%20framew

(D) **Negotiation:**

The term negotiation in derived from a Latin expression 'negotiari' meaning ' to carry on business' or ' do business'. Negotiation in another eminent technique of ADR in India, wherein two or more parties having varied interests and want to come on a mutual basis in an acceptable manner through self-counselling. It lays down a fresh ground for future relationship between the parties. Before the process of negotiation the parties may consult a lawyer to get a brief description of their rights and responsibilities concerning the matter of negotiation. In this both the parties reach a conclusion by identifying common interests, potential solutions and compromises that satisfies or favours both the parties.

It helps to maintain the positive and healthy relation between both the parties through collaborative approach and creative problem-solving. It depends upon the will and choice of the parties for negotiation, without any formal rules, laws and expenses. There is no third-part involved in the negotiation and generally the party-members act as negotiators i.e., it is a private and confidential dispute resolution. It safeguards the freedom of the parties.

However, there are some disadvantages of negotiation as there is a possibility that strong parties in the negotiation may get more advantage as compared to the weaker party in negotiation leading to an unfair agreement. Also, due to absence of third party the parties in negotiation may not come to a mutual base wasting time.

(E) **Lok Adalat:**

The word Lok Adalat, if freely translated means "people's court"[13]; they are doorways of access to justice for the poor, downtrodden and the needy ones. It is an old form of adjudication system in India and has prevalence in contemporary times too. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.[14] The mechanism of Lok Adalat is designed to dispense justice by providing a speedy supplementary forums to the parties with disputes. These Lok Adalats are presided over by serving or retired judicial officials as well as other persons having knowledge about public utility services; they are prescribed by the state or national legal service authority.

Matters related to public utility services and some of the compoundable criminal offences under law are subjected to be resolved in Lok Adalats; the disputes are either referred through courts to Lok Adalats or parties directly make an application to Permanent Lok Adalats. After

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[13] Dr Avtar Singh, Law of ARITRATION AND CONCILIATION 565 (Abhinandan Malik 11th ed. EBC 2021)

[14] Lok Adalat, NALSA, https://nalsa.gov.in/lok-adalat

admission of disputes, the Lok Adalats proceed to hear the case and dispose of the matter by reaching a settlement or compromise in an expeditious manner[15]. In any case, if the parties are unable to reach a compromise and the Lok Adalat deems that matter needs more determination, it can refer the matter back to the courts for adjudication.[16]

There are various advantages of Lok Adalat over normal courts of law due to which it is deemed to be advantageous. Firstly, there isn't any court fees to file a matter in Lok Adalat and hence it has been a strong incentive for the poor to approach the Lok Adalats for finality of their disputes. The parties can interact directly through their counsels which is not possible in a regular court of law allowing them to conciliate both party interests and pass awards which are binding and acceptable to both parties. However there are some shortcomings of Lok Adalat. The enforcement of the decrees cannot be carried out by the Lok Adalat and it rests with the civil courts. The jurisdiction of Lok Adalats is limited to compoundable crimes. This removes crimes such as that of petty theft other small crimes from the purview of Lok Adalats.

(F) Judicial Settlement:

The Code of Civil Procedure (Amendment) Act , 1999, introduced- Sec 89 of CPC provides for judicial settlement of dispute outside the court via arbitration, conciliation, or settlement through Lok Adalat or mediation. Here the court after finding elements of settlement refers the disputes between the parties to appropriate ADR technique (aforementioned mechanisms) according to the nature of disputes, rather than commencing the trial or after first trial

IV. Conclusion

ADR is not a new development in the sphere of judiciary but has been in existence in India since time immemorial. The ADR mechanism gained more prominence with the arrival of proper legal framework introduced by the Britishers through Indian Arbitration Act, 1899, whivh was later replaced with the Arbitration Act, 1940. After Independence, various changes and amendments were introduced to strengthen the ADR mechanism through acts like, The Legal Services Authorities Act, 1987, The Arbitration and Conciliation Act, 1996, Mediation Act, 2023, etc. In 2009, the 222nd Report of the Law Commission of India emphasized the need of Alternative Dispute Resolution mechanisms in India.

The preamble which is the part of Indian Constitution provides for Justice- social, economic

[15] Marc Galanter, JK. Krishnan, *Debased Informalism: Lok Adalats and Legal Rights in Modern India*, Beyond Common Knowledge: Empirical Approaches to the Rule of Law, pp. 96-141 (2003); S*tate of Punjab vs. Jalour Singh*, 2008 (2) SCC 660 (India).
[16] Ibid

and political. Justice is the foundation of society and access to justice is the prime objective of legal system of the country. For this motive, the Government and Judiciary branch has been at the forefront of promoting Alternative Dispute Resolution Systems in India through various legal frameworks to lessen the litigation and thereby reducing the stress of cases on courts.

The prime objective of ADR mechanisms is to provide affordable, simple, speedy and attainable pathway to attain Justice. ADR mechanisms including arbitration and mediation are less adversarial and are capable of providing a better substitute to the conventional methods of resolving disputes. The use of ADR mechanisms is also expected to reduce the burden on the judiciary and thereby enable timely justice dispensation to citizens of the country.

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