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Alternative Dispute Resolution Mechanisms in India's Labour Law Enforcement System

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ABSTRACT

Alternative Dispute Resolution (ADR) mechanisms are gaining momentum in India's labour law enforcement system. ADR mechanisms provide an informal platform for resolving disputes, which is crucial in labour law disputes where the parties may have an ongoing employment relationship. The traditional court system is seen as time-consuming, expensive, and complicated, leading to a backlog of cases. However, there are challenges in their implementation. The ADR mechanism provides a Win-Win Situation for employers as well as workers, thereby promoting a Harmonious work environment in the workplace. In this paper, the author aims to highlight some of the roles of ADR mechanism in promoting a healthy work environment. Further, discusses the challenges in the implementation of these mechanisms in India.

Keywords: *Gaining momentum, Labour law Disputes, Backlog of cases, Harmonious work , Challenges.*

I. INTRODUCTION

Alternative dispute resolution (ADR) is the procedures by which discourse between the parties are resolved or brought to an friendly conclusion without the involvement of a judicial institution and in absence of any trail. ADR is available to settle any kind of dispute, whether it be civil, commercial, industrial, family, etc. when parties are unable to initiate or carry out meaningful negotiations and come to a mutually agreeable resolution. ADR typically involves the use of an impartial third party to assist the parties in communicating, outlining their disagreements, and resolving the conflict. It's a strategy that helps people and groups preserve harmony, social order, and the chance to lessen animosity. ADR can play a significant role in providing the parties with a comprehensive and fulfilling experience while lessening the load of litigation on the courts. It offers the chance to "expand the pie[2]" via innovative, cooperative bargaining and satisfy the motivations behind their demands.

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[2] It is a negotiation between two parties from Win Loose situation to make it Win Win situation.

 [ISSN 2581-5369]

II. HISTORICAL EVOLUTION OF ARBITRATION IN INDIA: FROM THE VEDIC ERA TO THE PRESENT DAY

In India, arbitration has an extensive history dating back to the Vedic era. In ancient India, there were a few popular courts that coexisted alongside the formal courts. The elders of the village arbitrated arguments about property boundaries. "Brihadaranyaka Upanishad[3]" is only oldest treaties that referenced Arbitration under Hindu Law. Three categories of popular courts are mentioned by Sage Yajnavalkya[4]: "Puga," which are district courts ; "Srenis," which are people in the identical industry or profession; and "Kulas," which are members of a community who handle social issues. These three organizations were the forerunners of India's arbitration courts. These well-liked courts persisted in their prosperity in India till the start of British administration. Only some matters that were left unresolved by the Popular Courts and came as an Appeal against their rulings were admitted by the government courts during British rule. The popular courts had no jurisdiction to hear criminal cases; they were limited to trying civil cases. A category of knowledgeable men from the Community known as the "Panchayat," whose members were referred to as "panchas," used to settle a lot of disputes. The parties were bound by the decision they made.

On July 1st, 1899, India introduced the first Arbitration Act. The English Arbitration Act of 1889 served as the foundation for this Act, while the Indian Arbitration Act of 1899 is only applicable to the presidential city of Bombay, Calcutta, and Madras. This Act was special in that the arbitrators' identity had to appear in the Agreement and they could have been sitting judges at the time. In 1940, during the British government, a new statute, a more precise arbitration Act, came into existence since the Indian Arbitration Act of 1889 was extremely complex, cumbersome, and in need of revisions.

The Act contained a clause that distinguishes between a request to have an award set aside and a determination that the award is void. The fact that different high courts had different requirements for submitting awards was a significant obstacle. One other significant disadvantage was that the 1940 Act contained no provision for the appointment of another arbitrator in the event that the court-appointed arbitrator passed away during the arbitration process. The Act contained no clause that prohibited an arbitrator from terminating the proceedings at any point, causing the parties to suffer significant losses, particularly in cases when the arbitrators behaved dishonestly. It did provide for arbitration outside of court

[3] It is one of the Principal Upanishads and one of the first Upanishadic Scriptures of Hinduism.
[4] Yajnavalkya is a Hindu Vedic sage figuring in the Brihadaranyaka Upanishad.

 [ISSN 2581-5369]

supervision, but it fell short of the intended goal and the process turned more toward litigation as a whole.

The current Arbitration Law is a synthesis of multiple pronouncement and ordinances issued by the Indian government in response to the confrontation presented by the periodic Economic reforms occurring in the nation. Following independence, the UNCITRAL (United Nations Commission on International Trade Law)[5] structure of laws served as the basis for the creation of the Arbitration and Conciliation Act of 1996. The objective was to establish India as a global hub for arbitration while simultaneously modernizing Indian Arbitration Law and bringing it into line with best application worldwide.

The laws pertaining to arbitration were consolidated, strengthened, and amended into the Arbitration and Conciliation Act, 1996. The Act's goal was to amend and unify the laws governing both domestic and international commercial arbitration, enforce foreign arbitral awards, provide a fair and efficient arbitral process; Minimize the role of the courts as supervisors in the arbitration process. The government of India made changes in the Arbitration and Conciliation Act, 1996 in 2015 and once more in 2019. The intention was to establish Arbitration as a preferred means of resolving business conflicts once more, establishing India as a center for international commercial arbitration.

III. A DETAILED STUDY OF MEDIATION PRACTICES AND THE ROLE OF CIVIL COURTS

Currently, there are three ways to start mediation in India: first, by including it in a contract's Dispute Resolution Clause and using Institutional or Ad-hoc mediation; secondly, by having the court refer the matter under Section 89 of the Code of Civil Procedure, 1908 (the "CPC") or under specific laws such as Section 37 of the Consumer Protection Act, 2019 after the case is filed in court; and thirdly, by making pre-suit mediation mandatory under Section 12A of the Commercial Courts Act.

In contrast to arbitration and conciliation, mediation is not ruled by a single national law. Section 89 of the CPC, 1908, which included ADR in the civil procedure, was a major footstep toward assimilate ADR. This provision gives Civil Courts the power to send civil disputes to mediation when it seems to the court that there are components of arrangement that might be admissible to the parties.

[5] It is an international legislative structure that provides set of requirement on international commercial arbitration conduct and management.

 [ISSN 2581-5369]

The two key cases that gave mediation in India a boost were Salem Advocate Bar Association[6] and Afcons Infrastructure Ltd. and Others[7]. By ensuring that justice is administered more quickly, the Apex Court created a Committee in the Salem Advocate Bar Association case to aid in the better implementation of Section 89. This Committee drafted the Model Rules, 2003, which several High Courts have used as a model to draft their own mediation laws. Furthermore, in the historical case of Afcons Infrastructure Ltd. and Others., the Court of Last Resort analyzed Section 89 of the CPC, 1908, and found that, except in certain recognized eliminated categories of cases, the civil court should always refer distress to the ADR procedure based on the general language of Rule 1A of Order 10 of the CPC. It went on to say that when a case isn't suitable to refer to any of the ADR procedure, the court has to put down the reasons for not using any of the settlement action specified in Section 89 as soon as possible. As a result, in accordance with Section 89, a hearing will take place after the pleadings are filed to discuss using an ADR process; however, not every situation will necessitate doing so.

IV. THE ROLE OF CONCILIATION IN MODERN DISPUTE RESOLUTION

A non-adjudicatory alternative dispute resolution (ADR) procedure called conciliation is used to settle disputes between parties. It is an optional, private dispute resolution process that aims to help the parties concerned communicate, understand one another, and come to a consensus. A conciliator, who is an impartial third party, helps the parties in conciliation come to a mutually agreeable resolution. As a facilitator, the conciliator assists the parties in identifying and delving into the contentious issues, comprehending[8] one another's viewpoints, and locating points of agreement. Certain protocols and guidelines, which may change based on the jurisdiction or the relevant laws, regulate conciliation. Legislation such as the Arbitration and Conciliation Act rules the Conciliation process in India.

A different approach to settling disputes outside of court is conciliation, which is covered in Part 3 of the Arbitration and Conciliation Act 1996.The Section 62 of the Act deals with the start of conciliation procedures. One party must write the other party an invitation before the process can start. The invitation must be accepted by the other party in order for the conciliation process to continue. After 30 days of sending out the invitation, it will be considered non-accepted if no response is obtained. Selecting a conciliator comes next, after the parties have decided to proceed with conciliation. Conciliator appointments are governed by Section 64. The parties may designate a single conciliator if they so choose. Each party will designate a

[6] Salem Advocate Bar Association, Tamil Nadu vs Union of India. Writ Petition (civil) 496 of 2002.
[7] Afcons Infrastructure ltd & others vs Cherian Varkey Constructions (SC). Civil Appeal 6000 of 2010.
[8] Means include, comprise or encompass.

 [ISSN 2581-5369]

conciliator if both parties agree on two. If there are three conciliators, each party will designate one, and the parties may decide to designate a third conciliator to serve as the presiding conciliator by mutual agreement.

The conciliator has the authority to ask both parties to submit written declarations that include all pertinent case facts. The conciliator must receive written statements from both parties. It is also necessary for the parties to exchange written statements with one another. The conduct of the conciliation proceedings is outlined in Sections 67(3) and 69(1). The conciliator may choose to communicate verbally or in writing with the parties. They have the option of meeting with each party individually or collectively. The procedures will be designed to take into account the unique facts of each case. Section 68 of the Act discusses the possibility of requesting administrative support. If needed, the parties or the conciliator may turn to a third party or organization for support. However, in order to provide such administrative support, the parties' consent is needed.

V. UNDERSTANDING THE ROLE OF ADR IN LABOUR LAW ENFORCEMENT IN INDIA

Dispute resolution through alternative dispute resolution (ADR) processes is faster than through traditional court procedures. This is particularly important when it comes to labour law disputes because the parties need a speedy resolution to keep the workplace running smoothly. ADR procedures are less expensive than conventional[9] judicial proceedings. The parties may avoid paying a large amount of money for court proceedings, such as other costs and legal fees.

ADR procedures offer a non-formal forum for conflict resolution. This makes the parties feel less uncomfortable and intimidated[10], which increases the likelihood that the disagreement will be resolved. Parties benefit from confidentiality when using ADR procedures. Without having to worry about the matter becoming public knowledge, the parties are free to discuss the disagreement and reach a mutually agreeable solution. The parties are free to choose whether or not to use alternative dispute resolution (ADR) procedures. This guarantees that all parties are willing to collaborate and are dedicated to finding a solution. ADR procedures are flexible and can be custom made to the particular demands of the parties. This guarantees that the involved parties can come up with a solution that suits them.

ADR procedures provide the parties a chance to maintain their relationship. In labour law disputes, where there may be an ongoing employment relationship between the parties, this is especially important. The following are a few instances of ADR procedures employed in India's

[9] Based on or in accordance with what is generally done or believed.
[10] Feels frightened and lacks confidence because of the people they are with or the situation they are in.

 [ISSN 2581-5369]

labour law enforcement: Lok Adalat is a non-official forum for conciliation and mediation-based dispute resolution. India has used Lok Adalats to settle labour law disputes. Labor Courts, these non-official forums serve as a means of settling conflicts pertaining to wage payment, dismissal, and other labour-related matters. Industrial Tribunals, these quasi-judicial[11] organizations hear cases involving labour disputes and render decisions. Voluntary arbitration is one ADR method for resolving industrial disputes that is provided by the Industrial Disputes Act, 1947. The National Industrial Tribunal was founded in 1969 with the purpose of hearing and resolving labour-related disputes. The Tribunal may render decisions that are legally enforceable against the parties. Located in several Indian states, Mediation Centers offer a forum for the settlement of conflicts via conciliation and mediation.

VI. AN EXAMINATION OF THE CHALLENGES FACED IN IMPLEMENTING ADR MECHANISMS

Although ADR mechanisms are now a crucial instrument for enforcing labour laws, their implementation still faces obstacles. These are a few of the difficulties: ADR procedures and their advantages are not well known to many employees and employers. ADR procedures must be promoted and made more widely known in the field of labour law enforcement. Some parties might be against ADR processes and instead favour going through the legal system. This might be the result of thinking that court proceedings are more efficient or of having less faith in the ADR process. The ADR industry needs to train more mediators, arbitrators, and conciliators, among other professionals.

In order for ADR mechanisms to be successful, they need institutional support. The establishment of centers for mediation, arbitration, and conciliation is necessary in order to offer institutional support. The alternative dispute resolution (ADR) mechanism will fail and the parties will have to waste more time on the adversarial system [12]if they are unwilling to settle their differences through mutual agreement, despite the best efforts of the mediator, arbitrator, and negotiator. It will further postpone the resolution of the dispute. Regarding the ADR's final award, nothing is certain. Everything relies on the parties' intentions and behaviour. At every stage of the process, such as selecting the arbitrator or the applicable law, both parties must reach a consensus. The matter will go back to court if the parties cannot agree.

[11] Has powers and follows procedures similar to that of a court of law.
[12] It assumes that most appropriate method to get truth of a matter is through cut-throat process to decide facts and application of law without error.

 [ISSN 2581-5369]

VII. THE EVOLUTION AND IMPACT OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE UNITED STATES

In the early 1900s, states started to actively pursue structured alternative dispute resolution (ADR) as a substitute for suits. More than a dozen states approved Modern Arbitration Laws in the 1920s, and the Federal Arbitration Act was passed by Congress as a federal equivalent. The characteristics of American arbitration were greatly enhanced by each of these laws by granting legal validity, enforceability, and revocation to agreements to arbitrate future disputes in the same manner as a contract, closing the court to Parties to Arbitration agreements by enforcing them to abide by their terms, Giving judges the authority to uphold arbitration verdicts, Giving judges the authority to designate arbitrators and to expedite[13] arbitration in other ways when one party has not carried out the terms of the arbitration agreement. Although these were all encouraging developments, the most novel was the one that was expressed permission for the enforcement of ADR remedies by courts.

Lawyers and business owners came to understand the value of giving non-governmental voices a say in ADR-related policymaking after statutory ADR systems were passed. The American Arbitration Association ("AAA") was established in 1926 to provide arbitrators guidance and parties regarding ADR techniques and trustworthy protocols. Using the group's combined knowledge of people working in the field, AAA created and published guidelines on the appropriate techniques for mediation. With time, AAA has emerged as the leading entity in the US for business arbitration development and promotion.

As an alternative to the court system, alternative dispute resolution (ADR) gained traction during the 20th century. State and federal governments started using ADR in various programs at the governmental level. For example, in order to address allegations of age discrimination in federal workplaces, the Age Discrimination Act of 1975 was administered by the Department of Health, Education, and Welfare in the 1970s. The Department sought the assistance of FMCS to conciliate objections under the new law, a procedure that was standardized in 1979, in order to expedite prompt resolutions of the matters. Academic legal experts began to show a great deal of interest in the application of ADR in a number of fields during the 1980s. An American Bar Association survey conducted at the start of the twenty-first century revealed that most law schools offered extracurricular competitions and other ADR-related programs.

Arbitration is used today in the legal profession in the United States at all levels. For the purpose

[13] Make action or process happen sooner or be accomplished more quickly.

 [ISSN 2581-5369]

of providing individuals and businesses with mediation, negotiation, and arbitration services, law firms frequently hire retired judges or AAA[14] certified attorneys with ADR expertise. As a result, alternative dispute resolution (ADR) has solidified as a legal system in the US. In the US, alternative dispute resolution (ADR) takes many different forms: from highly structured, quasi-judicial proceedings to casual, conference room discussions. ADR provides American clients and practitioners with a wide range of alternatives for obtaining non-litigation relief in all of its forms. There are three broad categories can be used to classify the different types of ADR that are available in the US: adjudicative, assessing, and enabling.

The adjudicator or decision maker in an adjudicative alternative dispute resolution (ADR) process is a quasi-judicial facilitator known as the "neutral." For parties who are unwilling to negotiate but would rather avoid formal litigation, this involvement by an outside, unbiased third party is frequently desirable. Furthermore, even though decision-making through the American legal system "always results in a binding adjudicative ADR can yield a number of outcomes, including "binding, non-binding, or counsel. In the second type of ADR, known as evaluative ADR, parties to a dispute give their side of the story and get input on the advantages and disadvantages of their arguments and claims. The parties are frequently unwilling to talk about a settlement at this point in the proceedings, so an evaluation helps put each party's bargaining power, both to demolish[15] unrealistic expectations and to reinforce certain beliefs. The neutral in ADR neither makes a legally binding ruling nor truly "reaches the merits" of a dispute. Rather, a neutral mediator acts more as a guide or mediator between the parties, promoting communication, compromise, and discussion. Conciliation, consensus building, and mediation are the three types of facilitative ADR that are most frequently used.

VIII. CONCLUSION

In India, ADR procedures are now a vital tool for enforcing labour laws. They offer a more rapid, economical, and effective means of settling conflicts. However, there are obstacles to their implementation, such as a lack of knowledge, the need to build capacity, a lack of institutional support, the intricacy[16] of labour laws, and an imbalance of power. To make sure that ADR procedures are successful in settling conflicts and defending the rights of employees, it is imperative to address these issues. Employers and employees should be made aware of the advantages of alternative dispute resolution (ADR) procedures through awareness campaigns. Establishing centers for conciliation, arbitration, and mediation should give institutional

[14] AAA stands for American Arbitration Association.
[15] Means to put an end to or to destroy something.
[16] A quality of being complex or elaborately detailed.

 [ISSN 2581-5369]

support. It is important to train mediators, arbitrators, and conciliators through capacity building. Simplifying the laws and increasing their accessibility for both employers and employees can help reduce the complexity of labour laws. Finally, by giving workers access to legal aid and making sure that alternative dispute resolution (ADR) processes are impartial and fair, the power disparity between employers and employees can be reduced.

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 [ISSN 2581-5369]

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 [ISSN 2581-5369]