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Alternative Dispute Resolution

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ABSTRACT

This Article provides in- depth knowledge about an Alternative Dispute Resolution (ADR) Mechanism in India. It covers various aspects of the ADR Mechanism, including procedure, landmark cases and relevant Acts (Code of Civil Procedure, 1908, Arbitration and Conciliation Act,1996). Additionally, assessing the strength and weakness of the ADR system. It's a comprehensive exploration for a better understanding of Alternative Dispute mechanisms.

“To practice the process of conflict resolution, we must completely abandon the goal of getting people to do what we want”.

-Marshall B.Rosenberg

Keywords: *Dispute, Arbitrator, Mediator, Settlement, Resolution, Mechanism.*

I. INTRODUCTION

Alternative Dispute Resolution (ADR) is an alternative and substitute method of resolving disputes. ADR refers to a mechanism to resolve the dispute and differences between the parties by modus operandi of settlement through negotiation and mediation. Intrinsicly, ADR is established to reduce the Burden of Courts, Tribunals and resolve the cases effectively and efficiently. Because it delivers a satisfying experience to the parties due to the absence of technicalities. ADR only grants the resolution in the civil matters, matrimonial dispute, family dispute and Business or trade issues not in the criminal matters. For the reason is that the civil matters are settled by the parties whereas the criminal matters are committed against the state. Therefore, Justice in criminal matters should focus on repairing the victim's harm. This Article also explores the Background of ADR, Modes of Settlement under ADR., Challenges in ADR in India -Why it doesn't work, Suggestions for improving ADR mechanism, Conclusion

II. BACKGROUND

Alternative Dispute Resolution (ADR) is not exclusively adopted from foreign countries whereas,, it beforehand exists in India. For the reason is that we all were very prosperous in our culture, rules and Regulations before the advent of Britishers. The ADR system has been prevalent in India from vedic period. The earliest treatise was the *Bhradarnayaka Upanishad*

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comprising *Puga, the Sreni, and Kula*.² A separate and distinct judicial system at the time of *Gupta periods*. During the *Mughal Dynasty*, most of the people of the village resolved the Cases at *Village court* and further appealed to *Caste court* before an *Impartial Arbitrator*. After the emergence of British Rule The first legislation which made provision for arbitration was the Bengal Resolution Act, 1772 and Bengal Resolution Act 1781, which conferred that for resolving disputes having mutual consent of the parties to submit the dispute before the arbitrator and binding by Arbitrator's Decision. Further ADR was incorporated under the section of 89(1) of Code of Civil Procedure, 1908. Section 89(1) says that a duty was conferred upon the court to help the parties to settle the dispute by way of arbitration, mediation and conciliation not through the litigation.

The Indian Arbitration Act, 1899 introduced by the British government This Act is about the submission of written agreement of present and future differences before the arbitrator. Further came, The Arbitration (Protocol and Convection) Act, 1937. After the Post Independence the Government enacted the Arbitration and Conciliation Act, 1996 in an effort to modernize the 1940 Act. In 1978, UNCITRAL Secretariat, the Asian African Legal Consultative Committee (AALCC), the International Council for Commercial Arbitration (ICCA) and the International Chamber of Commerce (ICC) met for a consultative meeting. The result of this meeting is the development of model law on arbitration. The Modern law was adopted on June 21st 1985 by UNCITRAL. This development has an incredible impact on the Arbitration and Conciliation Act, 1996.³

III. MODES OF SETTLEMENT UNDER ADR

Intrinsically, there are four modes of settlement mentioned under section 89(1) of code of civil procedure, 1908. Section 89 (1) ⁴says where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

(a) arbitration;

(b) conciliation;

²<https://www.lawctopus.com/academike/arbitration-adr-in-india/#:~:text=It%20was%20introduced%20in%201982,conciliate%20resort%20and%20negotiating%20effort>

³ <https://viamediationcentre.org/readnews/MzEx/Evolution-and-Codification-of-ADR-mechanism-in-India>

⁴ The code of Civil Procedure, 1908.

- (c) judicial settlement including settlement through Lok Adalat: or
- (d) mediation.

(A) Arbitration: It is a type of ADR being carried outside the court. In Arbitration instead of Judges an arbitrator settles the dispute. It has a lot of similarities with the traditional court proceedings but less formal than the court proceedings. Unlike a trial the rule of evidence is much more relaxed during the arbitration (e.g. Hearsay may be admissible in Arbitration). The Arbitrator's decision is obligatory on parties but no appeal lies.

(B) Conciliation: Conciliation proceedings are conducted by an impartial third party (conciliator) who assists the parties to a dispute to arrive at a mutually pleasing settlement. The role of conciliator is interventionist and pro active during the conciliation proceeding. The decision of the conciliator is obligatory on the parties but parties have the right to concede or abdicate the recommendation of conciliation.

(C) Mediation: Mediator is like a referee in a structured process of mediation. Mediator is a neutral person who makes use of specialized communication and negotiation techniques and smoothes the parties in dispute to reach an agreement. The third party doesn't decide the dispute, only acts as facilitator.

(D) Lok Adalat: The Lok Adalat inherent under Legal Services Authorities Act, 1987. In Lok Adalat the dispute and cases pending in court or at pre-litigation could be settled or compromised amicably. The decision of Lok Adalat is obligatory on parties and it is deemed to be a decree of the Civil Court.

IV. CHALLENGES FOR ADR IN INDIA -WHY IT DOESN'T WORK

Was ADR just an institution or agency of government? Due to the lack of success in ADR, proceeding leads to its failure. The main reason is that we believe ADR as the alternative method, not the precursive method to resolve the dispute. Many people do not accept the existence of the ADR mechanism. Yet ADR did not effectively accomplish its goals and lost its basic structure and recognition in the case of Prakash Cotton Mills Pvt. Ltd vs Vinod Tejraj Gowani.⁵ Many Challenges create hindrance in the growth of ADR. The first and Foremost reason is that the ADR mechanism is Highly based on the principle of *Utmost Good Faith*. Nevertheless there is always doubt about the unprejudiced and impartial decision of the arbitrator, conciliator or Lok Adalat as interpreted in Justice K.S. Puttaswamy (Retd.) & Anr.

⁵ Prakash Cotton Mills Pvt. Ltd vs Vinod Tejraj Gowani (2014) 6 ABR 1

vs. Union of India & Ors.⁶ The Government of India developed and gave support in various areas but not to all. Such as ADR which has got limited support. There is a lack of infrastructure and not enough arbitration institutions in India due to lack of funding by the government. The institution of ADR in India is still developing and criticized for ineffective growth due to the lack of accountability and transparency. After the 28 year passing of Arbitration and Conciliation Act,1996, there are no facilities of arbitration institutions in small towns,it creates cost anxiety problems to the parties due to the traveling expenses. Sometimes parties suffer due to unskilled Arbitrator, mediator, negotiator. Main reason is that in India the number of skilled arbitrators and conciliators is very less due to the lack of availability of education and non - availability of educational institutions of such skills. The absence of educational institutions can contribute towards the dearth of knowledge regarding ADR. We are all aware about the fact that the judiciary is the watchdog of democracy and also guardian of the constitution.⁷ The court often interferes in the ADR proceeding to ensure a proper justice but it creates hindrance in ADR proceedings.The Supreme Court in *Garware Wall Ropes Ltd. v Coastal Marine Constructions & Engineering Ltd.*⁸ held that the arbitration agreement is invalid merely because of non-payment of Stamp duty. Due to this complex and old-fashioned approach, the option to resort to ADR has become cumbersome.

At last, there is one more important reason for the failure of ADR mechanism is Inapplicability in Criminal Cases. It is only limited to small and petty crimes like matrimonial cases, trade and commercial disputes, family disputes and motor vehicle cases. Because a criminal Act is considered as an act or offense against the state. Therefore it is the responsibility of the state not the private person. Whereas the ADR is the dispute resolution body not the body of punishment for offense.

V. SUGGESTIONS FOR IMPROVING ADR MECHANISM

The number of cases and pendency of cases is very high in India due to lack of resources such as human resources and infrastructure, it is not possible for few agencies or institutions to control it. We need to enhance the capacity of the system in an efficient and effective manner by delegation and implementation. Government should take huge steps to change and implement the ADR mechanism.

⁶ K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2017) 10 SCC 1, AIR 2017 SC 4161

⁷ Constitution of India, 1950.

⁸ The Supreme Court in *Garware Wall Ropes Ltd. v Coastal Marine Constructions & Engineering Ltd* 2019 SCC OnLine SC 515.

- Firstly, there is a huge need for awareness amongst the people. Government should hold webinars, seminars, and workshops related to the ADR mechanism.
- Government should focus on the infrastructure and build ADR tribunals, Arbitration institutions in every district of the state in India, even in small towns or villages.
- There must be a proper educational and training institutes for the legal professionals, (arbitrator, negotiator, Mediator or conciliator) which give proper training and develop the skills of the ADR professionals.
- Government should offer more vacancies for the ADR, if there is a large number of ADR professionals it can speed up trials. It leads to resolution of legal disputes, both qualitatively and quantitatively, and also promotes timely dispensation of justice.
- A well-structured law could potentially enhance the success of ADR. Government should formulate strict and exhaustive laws that are dedicated only to the ADR like IPC, CrPC. There are existing laws, status regarding the ADR but have not been successful in achieving the intended objectives.
- Expanding the scope of ADR to include Criminal Cases leads to speedy and gratifying outcomes. ADR should not only be limited to minor, petty or matrimonial issues, but should also be applicable in Criminal Cases.

While it's true that ideally, everyone should be able to make rational judgments and resolve conflicts independently, ADR serves as a valuable tool in many situations. Even in well-functioning establishments or families, disputes can arise that may benefit from a neutral third party's assistance. ADR methods like mediation or arbitration can provide a structured approach to resolving conflicts efficiently and fairly, often saving time and costs compared to traditional legal proceedings.

Alternative Dispute Resolution (ADR) serves as a valuable mechanism to resolve conflicts outside of traditional court litigation. While individual rational judgment is important, ADR methods like mediation and arbitration provide structured processes for parties to reach mutually acceptable solutions with the assistance of a neutral third party. Even in well-managed establishments or families, having ADR mechanisms in place can offer an efficient and cost-effective way to address disputes and maintain harmony. The elements of motivation, coordination, and action remain essential, and ADR can complement these efforts by providing a formalized framework for conflict resolution when needed.

Motivation, coordination, and action are indeed crucial elements in preventing conflicts, but

having ADR mechanisms in place doesn't diminish their importance. ADR can complement these efforts by offering a formalized process for conflict resolution when needed, promoting understanding and reaching mutually acceptable solutions without escalating the situation.

In essence, while proactive measures like motivation, coordination, and action are essential, having ADR mechanisms as a backup can enhance conflict resolution processes and contribute to maintaining harmony within establishments and families.

VI. CONCLUSION

ADR is less complex than litigation. It is a very quick and inexpensive procedure to resolve or settle the dispute in a very short period of time. But it only restricts the petty cases, whereas criminal matters should also look into it. The Indian government established various institutions, including the Mumbai Centre for International Arbitration, Indian Council of Arbitration. These institutions play an important role to develop the ADR mechanism and also provide training to the ADR professionals. The ADR mechanism faces various defiance such as lack of infrastructure, lack of transparency. As per my opinion, the Government should take various steps towards the improvement of ADR system by increasing the ADR institutions and increasing the number of ADR professionals, to speed up the ADR proceedings and resolving the pending disputes.
