

Evolution of Alternative Dispute Resolution in India: Stepping to Effective Justice System

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Abstract:

Alternative Dispute Mechanism is considered the most important and significant aspect in modern period of dispute settlement. It is an old phenomenon and method to resolve the disputes through amicable settlement. It will help to resolve the dispute without interfering by rigid court procedure and formalities. ADR mechanism prove very useful, vital and more effective in commercial and civil disputes. The complicity of commercial and civil disputes can easily manage through the ADR without interfering by technicalities and complex procedure of law. The nonintervention by advocates and court will make it more effective tool for dispute settlement. It may consider as alternative method of justice delivery system in India.

In this research paper the researcher will try to analysis the ADR system is alternative method of dispute settlement and path for the alternative mechanism of existing complex judicial system. The research will be competed with an objective to explore the study between the conventional method vis-a-vis ADR method of dispute settlement and will conclude by providing some effective solutions that ADR is considered as a primary option in settlement of disputes.

Keywords: ADR, Dispute mechanism, judicial system

Introduction: -

In the civilized society people are interested to get justice in speedy way. The quest for justice has been an ideal that mankind has been aspiring for generations down the line¹. Administration of Justice involves the maintenance of rights within a political community by the means of protection of the innocent; punishment of the guilty along with the satisfactory resolution of disputes.²

But in India, due to overburdened as well as complexity in procedure, judicial system is unable to settled the dispute within a reasonable time. That's why people are hesitating to go in court and wait more and more years for getting relief.

Alternative Dispute Resolution refers to settling of dispute outside the courtroom other than the means of litigation, where the settlement of the case is done by the impartial third party through

¹ V. Vijayasai Reddy: Justice Hurried is Justice Buried, DECCAN CHRONICLE (2020), <https://www.deccanchronicle.com/opinion/columnists/131220/v-vijayasai-reddy-justice-hurried-is-justice-buried.html>. Accessed on 28/4/2023.

² Hon'ble Justice S.B. Sinha, Judge Supreme Court of India, ADR and Access to Justice: Issues and Perspectives, (2021). Accessed on 28/4/2023.

conciliation, mediation, arbitration, Lok Adalat, and negotiations³. With the help of the ADR techniques parties are able to settle their dispute out of the court. With the help of this method to resolve any disputes like commercial, civil, industrial and matrimonial disputes. This method is less expensive as well as promote the amicable settlement, it will help to preserve the relationship between the parties.

Thereby ADR helps in overcoming many challenges posed by judicial proceedings as a method of resolution. To manage the pending cases in the Indian Courts, a review of the court system was undertaken by the Malimath Committee⁴.

The hon'ble Supreme Court of India has been encouraging parties to take up pre-litigation mediation to settle their dispute before they turn to court proceedings. In *Afcons Infrastructure vs. Cherian Varkey Construction*⁵. As the ADR is a vital mechanism for the parties who are willing to resolve through negotiation to avoid the tiresome process of litigation. Section 89 of Civil Procedure Code 1908 powers the court to refer the matters that can settle through ADR, but it is seen that judges are referring the cases to the ADR mechanism⁶.

In ADR mechanism rigorous rule of procedure are not followed for the resolving dispute. However, some guideline provided in Arbitration and conciliation Act 1996 are applied. Otherwise disputing parties are free to take assistance of a mediator and settle their dispute. We can say that it a type of substantive justice not a procedural justice that becomes prominence in ADR.

In India for the modernizing the legal framework and expediting the resolution of civil and commercial disputes, the Parliament passed the Mediation Bill 2023⁷, This revolutionary legislation marks a vital change as well as it is inspiring mediation as the primary avenue for dispute resolution, prior to resorting to the often costly and prolonged traditional court processes⁸.

When the dispute settles through the ADR proceedings, awards are kept private and confidential. Even in the case of conciliation, Section 75 of the Arbitration and Conciliation Act, 1996 states that all the proceedings should be conducted confidentially. This provides the parties ground to resort to such mechanisms⁹.

Arbitration and conciliation Act 1996 did not mitigate the issues arises in current situation that's way in 2014 the Law Commission Report suggested several modifications in this Act, same is accepted by the, and thus, the Arbitration and Conciliation (Amendment) Act 2015 came into effect in 2015, intending to expedite the arbitration procedure, restrict judicial interference, facilitating quick contract enforcement, easy recovery of monetary claims, decreasing the pendency of cases in courts, to judicial interference, facilitating quick contract enforcement, easy recovery of monetary claims, decreasing the

³ Tala Esmaili and Krystyna Gilkis, Alternative Dispute Resolution, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/alternative_dispute_resolution Accessed on 30/4/23

⁴ By Alliance Centre for Alternate Dispute Resolution (ACADR), Alliance School of Law, Alliance University, Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System, (2021) Accessed on 30/4/23

⁵ 2010 (8) SCC 24

⁶ Rituparna Padhy, Analysing Section 89 of CPC, LAW TIMES JOURNAL (2019) Accessed on 1/5/23

⁷ <https://indiacorplaw.in/2023/08/harmonious-dispute-resolution-unveiling-indias-mediation-bill-2023.html> visited on 7/9/2023

⁸ Ibid

⁹ Section 75. Confidentiality. —Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement

pendency of cases in courts, in order to encourage foreign investment. Even though the Act of 2015 provided new and improved provisions, it failed to promote institutional arbitration in India.

Again the year of 2019, In 2019, the Arbitration and Conciliation (Amendment) Act 2019 was implemented with the intention of fostering institutional arbitration in India. To encourage institutional arbitration, the Act gave sole authority to arbitral institutions designated by the Supreme Court or the High Court to select arbitrators. It tackles certain shortcomings that occurred due to the Act of 2015.

It also provided for the confidentiality of proceedings, easing of time limitations, and time-bound completion of written submissions, etc. The establishment of the Arbitral Council of India to promote alternative dispute resolution systems by framing policies, grading arbitral institutions, and accrediting arbitrators, as well as making policies for the establishment, operation, and maintenance of professional standards for all alternate dispute systems and maintaining a depository of arbitral awards produced in India and abroad. The next Amendment Act was introduced in March 2021 with a retrospective effect from November 2020.

The Amendment Act of 2021 provides that where it is prima facie established that the arbitration agreement or contract on which the award is based or the award was influenced or obtained by fraud or corruption, the court shall stay the order indefinitely with a retrospective effect from October 2015 that may give rise to greater confusions.

The arbitration mechanism in India has a long way to go due to the lack of proper implementation of the 1996 Act along with the Court's discrepancy in allowing the Tribunal to rule on its matters. However, with change in time, the government is now promoting arbitration via constant amendments to the legislation. Individuals are now aware that the litigation process is expensive, lengthy and stressful whereas arbitration focuses on the emotional quotient of the parties and tries to improve relationships, mitigate stress, and settle disputes without much hassle.

As observed by the Supreme Court in the case of *Union of India vs. Singh Builders Syndicate*¹⁰, 'It is unfortunate that delays, high costs, and frequent and sometimes unnecessary court interruptions at various stages are seriously hampering the growth of arbitration as an effective dispute resolution process.' The court opined that an immediate solution to the problem is essential to save arbitration as it has come close to offering a proper alternative to the traditional judicial system. Therefore, India now has to focus on improving institutional arbitration as well as strengthen domestic arbitration by promoting and establishing several arbitration centers.

Currently, India has established arbitration centers only in few major cities such as Delhi, Chennai, Bangalore & Kolkatta. However, at times it is noticed that people are hesitant to put their faith in a non-traditional method of settling legal disputes. At times, arbitration can also be viewed as a private judicial system accompanied by several procedures like the traditional legal system which may unnecessarily complicate the arbitral proceedings. The legislators in India need to observe the problems and make necessary changes to the current legislation. Most importantly, the Judiciary needs to support the arbitration system by minimizing its interference and adjudicate arbitral matters only when necessary. India has not yet lost its race to the United Kingdom in the aspect of arbitration hence, it is time to strengthen the domestic arbitration system to increase the confidence amongst the people and lessen the burden of the Courts.

¹⁰ CIVIL APPEAL NO. 3632 OF 2007

Conclusion

At the end researcher came to the conclusion that various modes of Alternative Dispute Resolution (ADR) systems as discussed above, hold many similarities as well as differences. These methods provide diverse techniques, which help a party to a dispute to amicably settle their dispute. These modes of dispute resolution are now widely accepted and applied in numerous areas of dispute. Through this mechanism, needy people get justice as early as possible and it is the alternate mode of effective justice.