

Challenges before ADR (Alternative Dispute Resolution) Mechanism in India

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ABSTRACT

Alternative Dispute Resolution is a generic term used to describe a range of procedures designed to provide ways to resolving a dispute as an alternative to court procedures. This paper discussed various modes of ADR mechanisms exist in India for resolving disputes outside the courts. Arbitration, conciliation, mediation and Lok Adalat technique of Alternative Disputes Resolution has been used by many countries for effective disputes resolution. This paper highlights the reasons behind introduction of ADR mechanism and laws relating to settlement of dispute in India. This paper also highlights various problems in implementation of ADR mechanism in India. These Problems in implementation of ADR mechanism can be solved through creating awareness of rural and urban people.

"I realized that the true function of a lawyer was to unite parties... The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul".

- Mahatma Gandhi

The term "Alternative Dispute Resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a courtroom process.

Alternative Dispute Resolution (ADR) is a term used to describe several different modes of resolving legal disputes. Dispute resolution process tries to resolve and check conflicts, which enables persons and group to maintain co-operation. ADR programs can increase access to justice for social groups that are not adequately or fairly served by the judicial system. They can also reduce cost and time to resolve disputes and increase disputants' satisfaction with outcomes.

Alternative dispute redressal methods are being increasingly acknowledged in field of law and commercial sectors both at National and International levels. Its diverse methods can helps the parties to resolve their disputes at their own terms cheaply and expeditiously. Desire for quick and affordable justice is universal. Right to speedy trial is a right to life and personal liberty of every citizen guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure.

Objectives of ADR:-

The wide range of objectives of ADR are -

- ADR can support and complement court reform.
- ADR can by-pass ineffective or discredited courts.

- ADR can increase satisfaction of disputants with outcomes.
- ADR programs can increase access to justice for disadvantaged groups.
- ADR programs can reduce delay in the resolution of disputes.
- ADR programs can reduce the cost of resolving disputes.

Modes of ADR mechanism:-

There are various modes of ADR mechanisms exist in India for resolving disputes outside the courts. It is the nature of the dispute and relation of the parties which decide the choice of ADR method either by arbitration, conciliation, mediation, Lok Adalat etc. This technique of Alternative Disputes Resolution has been used by many countries for effective disputes resolution. ADR is usually less formal, less expensive and less time consuming then regular trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

The process of Alternative Disputes Resolution be it arbitration, mediation, negotiation or Lok Adalats implies a greater involvement of the disputing parties. The parties are actively involved in the process of dispute resolution and can, therefore, more effectively reach a settlement of the dispute.

"Arbitration is a process used by the agreement of the parties to resolved disputes. In arbitrations, disputes are resolved, with binding effect, by a person or persons acting in a judicial manner in private, rather than by a national court of law that would have jurisdiction but for the agreement of the parties to exclude it"¹.

Mediation: Mediation is a process of alternative dispute resolution in which a neutral third Party, the mediator, assists two or more parties in order to help them negotiate an

¹ Halsbury's Law of England, (4th edn) (reissue) para 1, taken from, Words and Phrases Legally Defined, edited by David Hay, 4th edn., Lexisnexis Butterworth, p 161

agreement, with concrete effects, on a matter of common interest.

Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes parties needs, takes feelings into account and reframes representations. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator.²

It is evident that there exists a fundamental procedural difference between the role of the conciliator and that of a mediator. The conciliator is a more active intervener, and may have an advisory role on the content and the outcome of a dispute. A conciliator may make suggestions, give expert advice and use intervention techniques that not only actively influence the likely terms of an agreement, but also encourage all parties to settle. A mediator on the other hand generally assist the parties to communicate with each other so that they can identify, clarify and explore the issues in dispute before they consider their options to reach a mutually acceptable negotiated agreement.

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement.³

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either binding or non-binding.

Lok Adalat is a unique ADR measure in India. As such, ADR has been, a vital, and vociferous, vocal and vibrant part of our historical past. Undoubtedly, Lok Adalat (Peoples' Court) concept and philosophy is an innovative Indian contribution to the world jurisprudence. It has very deep and long roots not only in the recorded history but even in pre historical era. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fine and familiar fora which has been playing an important role in settlement of disputes. The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society⁴.

The Section 89 of the Civil Procedure Code also provides as to referring the pending Civil disputes to the Lok Adalat. When the matter is referred to the Lok Adalat then the provisions of the Legal Services Authorities Act, 1987 will

apply. Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat .

Reasons behind introduction of ADR mechanism in India:-

Alternative Dispute Resolution in India is an attempt made by the legislators and judiciary alike to achieve the "Constitutional goal" of achieving Complete Justice in India. ADR first started as a quest to find solutions to the perplexing problem of the ever increasing burden on the courts. The reasoning given to these ADR mechanisms is that the society, state and the party to the dispute are equally under an obligation to resolve the dispute as soon as possible before it disturbs the peace in the family, business community, society or ultimately humanity as a whole.

Alternative Dispute Resolution in India was founded on the Constitutional basis of Articles 14 and 21 which deal with Equality before Law and Right to life and personal liberty respectively. These Articles are enshrined under Part III of the Constitution of India which lists the Fundamental Rights of the citizens of India. ADR also tries to achieve the Directive Principle of State Policy relating to Equal justice and Free Legal Aid as laid down under Article 39-A of the Constitution. The Acts which deal with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. The Section 89 of the Civil Procedure Code, 1908 makes it possible for Arbitration proceedings to take place in accordance with the Acts stated above.⁵

The possibility of a justice-delivery mechanism in the Indian context and the impediments for dispensing justice in India is an important discussion. Delay in justice administration is the biggest operational obstacle, which has to be tackled on a war footing. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution.

The Arbitration and Conciliation Act, 1996:-

The Arbitration and Conciliation Act, 1996 was passed on the basis of the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. It's had been recommended by General Assembly of the United Nations that all countries should 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 the international commercial arbitration practices.

The proceedings relating to Conciliation are dealt under sections 61 to 81 of Arbitration and Conciliation Act, 1996. This Act is aimed at permitting mediation conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes. This Act also provides that a settlement agreement reached by the parties as a result of conciliation

² <http://en.wikipedia.org/wiki/Conciliation>

³ <https://www.usaid.gov/sites/default/files/documents/1868200sbe.pdf>

⁴ <http://www.dca.nic.in/cir/anr2gc1099.html>

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http://www.fdrindia.org/goldpublications/AlternativeDisputeResolution_PR.pdf

proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.

Problems in implementation of ADR mechanism in India:-

- 1) **Attitudes:-** First and foremost, there is a need to change our traditional approach to resolving disputes, even a need to change our basic attitudes. The spirit of ADR mechanisms is to create a WIN-WIN situation, but the attitude to people is changing it into a WIN-LOSE situation, which is not very different from litigation. Our attitudes require readjustment; we need to re-adjust to the spirit of ADR, and adhere to its underlying philosophy, which is that of utmost good faith of the parties.
- 2) **Create clients interests:-** A satisfactory settlement typically is in the client's interest. It is the inability to obtain such a settlement, in fact, that impels the client to seek the advice of counsel in the first place. The lawyer must consider not only what the client wants but also why the parties have been unable to settle their dispute and then must find a dispute resolution procedure that is likely to overcome the impediments to settlement.
- 3) **Legal education:-** A serious effort to provide cheaper methods of resolving disputes will require skilled mediators and judges, who are trained to play a much more active part in guiding proceedings towards a fair solution. For law schools, there is a need to recognize that the demands of the marketplace have forever changed the dynamics of dispute resolution. Law schools train their students more for conflict than for the arts of reconciliation and accommodation and therefore serve the profession poorly. At the same time, students need to enhance their skills as negotiators and arbitrator. Law students also need to understand the suitability and advocacy issues in ADR at more sophisticated levels and to understand the important keys to problem solving.
- 4) **Poor communication:-** Poor communication between the parties is the main obstacle for settlement procedure. The relationship between the parties and their lawyers may be so poor that they cannot effectively communicate. Neither party believes the other. An inability to communicate clearly and effectively, which impedes successful negotiations, is often, but not always, the result of a poor relationship.
- 5) **Ignorance:-** Ignorance is one of the major reasons for the failure in implementation. Ignorance of the existing provisions of law is the main factor. Legislators have made the necessary laws, but have never thought of implementing them at the grass- root level. They do not help in building up the awareness of those laws, so that people will utilise them. Most of the educated elite are also unaware of the availability and possibility of such mechanisms in India.⁶

All these problems are not permanent in nature. They all have solutions. A need for instilling awareness is imperative to bring in a change in the attitudes. The urban sector which has a higher literacy rate could be reached by inserting slides in movie theatres, having advertisements in television channels

and newspapers, conducting periodical seminars and having a dedicated helpline.

Conclusion:-

In the light of above discussion, it can be concluded that ADR is being used not only to resolve actual disputes but also to prevent future potential disputes between parties. It can be observed that Alternative dispute redressal techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. The goal of Constitution to give chief, speedy and accessible justice fulfilled through the Alternative Dispute Resolution technique like arbitration, conciliation, mediation, Lok Adalat etc. The Problems in implementation of ADR mechanism can be solved through creating awareness of rural and urban people. Legal education and law schools should focus on the arts of conciliation and negotiation and not merely on litigation. Lawyer client interests should also be molded towards a primary focus on ADR failing which the recourse should be towards litigation.

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