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Alternative Dispute Resolution System in India : Mechanism and Challenges

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ABSTRACT

Alternative Dispute Resolution (ADR) Mechanism plays a pivotal role in the legal system. ADR gives people an involvement in the process of resolving their dispute as an alternative to Court procedures. It typically denotes a wide range of dispute resolution processes. It is often quicker than judicial proceedings and helps to erase burdens on the Courts. This research paper highlights the reason behind introduction of ADR mechanism and law relating to settlement of dispute in India. This research paper also highlights various problems in implementation of ADR mechanism in India. These problems of implementation of ADR can be resolved by creating awareness of rural and urban people.

1. Introduction

The term "Alternative Dispute Resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanism. Dispute resolution is an indispensable process for making social life peaceful. It is a set of methods or techniques that allow parties to a dispute to reach an amicable settlement. It consists of ways in which parties can settle their disputes without recourse to litigation. The parties can get their disputes settled with the help of a third party. ADR is a mechanism of dispute resolution that is non-adversarial i.e. working together co-operatively to reach the best resolution for everyone. The dispute may be civil in nature, commercial, industrial and also it may relate to family or matrimonial cases. Sec 89 of the Code of Civil Procedure 1908 provides for methods of ADR to settle the disputes pending before the Courts. Consent of the parties is compulsory to refer a case for arbitration in absence of an arbitration agreement and conciliation. But, in case of judicial settlement, Lok Adalat or mediation, consent of the parties is not compulsory.

2. Nature of ADR :-

The concept of ADR is not a new one to the Indian society. Rather it has been rediscovered as informal justice mechanism. The process of ADR is simple in nature, cheap, easy, speedy and result oriented in disposal of the cases. The ADR techniques are extra judicial in character. The ADR consists of various alternatives techniques and forms – Arbitration, Conciliation, Negotiation, Mediation, judicial settlement. Such techniques aims at rendering justice expeditiously. The mechanism of ADR system and reconciliation between the parties is judicious application of techniques. All these techniques are employed amicably in dispute resolution. Therefore, the ADR systemis an 'art of settlement'

3. Objectives of ADR :-

The wide range of objectives of ADR are as follows :-

a) ADR can support and compliment Court reform.
b) ADR can by-pass ineffective or discredited Courts.
c) ADR can increase satisfaction of disputants with outcomes.
d) ADR programs can increase access to justice for disadvantaged group.
e) ADR programs can reduce delay in the resolution of disputes.
f) ADR programs can reduce the cost of resolving disputes.

4. Various modes of ADR mechanism :-

ADR modes are now widely accepted and have been gaining recognition at the national and international level. The following are the various modes of alternative dispute resolution methods and each process has its advantages.

1] Arbitration :-

In arbitration, parties refer their dispute to an impartial third person called arbitrator. The object of arbitration is to obtain fair settlement of dispute outside of Court without necessary delay and expense. The decision of an arbitrator shall be binding on both the parties. Their decision is called as an 'arbitral award'. Generally, there is no right to appeal on arbitration decision. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration may either be 'binding' or 'nonbinding'. Binding arbitration means the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Non-binding arbitration means the parties are free to request a trial if they do not accept the arbitrator's decision.

2] Conciliation :-

Conciliation is less formal than arbitration. In conciliation, the parties to a dispute come to a settlement with the help of a conciliator. Conciliator meets with the parties separately to settle their disputes. He assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. This process does not require an existence of any prior agreement. The parties are free to accept or reject the recommendations of the conciliator. If both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

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3] Mediation :-

Mediation is another dispute resolution in which neutral third party called the 'mediator' assist the parties to resolve dispute amicably by using appropriate communication and negotiation techniques. It is an easy and uncomplicated party centred negotiation process. The mediator has no power to impose an outcome with the parties. Mediator only acts as a facilitator so that the parties may reach settlement of their dispute. Mediation leaves control of the outcome with the parties.

4] Negotiation :-

It is the most common method of alternative dispute resolution. It is a non-binding process. Here, the discussions between the parties are initiated without the intervention of any third party. The object is to bring the parties of the dispute to a settlement. Negotiation occurs in business, non-profit organisations, govt. branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting and everyday life.

5] Lok Adalat :-

Lok Adalat was introduced in 1982 and the first Lok Adalat was initiated in Gujarat. Lok Adalat as the name itself suggest means peoples Court. It is a party's justice in which people and Judges participate and resolve their dispute by discussion, persuasion and mutual consent. Lok Adalats have been given statutory status under The Legal Services Authorities Act, 1987. The Lok Adalats are presided over by members of Lok Adalat. These are organised by the State Legal Aid and the Advice Boards with the help of District Legal Aid and Advice Committees. The focus in Lok Adalats is on compromise. When compromise is not reached, the matter goes back to the Court. But if compromise is reached, the decision of Lok Adalat is called as 'award'. Such award is enforced as a decree of a Civil Court. It is final and binding on the parties. No appeal against such award lies before any Court of law.

5. Challenges in Implementation of ADR mechanism in India :-

Some of the problems which are faced during implementation of ADR system are discussed below :-

1] Attitudes :-

First and foremost, there is a need to change our traditional approach to resolve disputes, even a need to change our basic attitudes. We need to redefine what actually the word 'win' means. What our clients want is only to win the case. It means one party is going to win and the other going to lose. But the spirit of ADR mechanism is to create a WIN-WIN situation, but the attitude of people is changing it into a WIN-LOSE situation. Our attitudes require readjustment ; we need to readjust the spirit of ADR and adhere to its underlying philosophy, which is that of utmost good faith of the parties.

2] Lawyer and Client interest :-

Lawyers and clients often have a divergent attitudes and interests concerning settlement. A satisfactory settlement typically is in the clients 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 in likely to overcome the impediments to settlement.

3] Poor communication :-

Poor communication between the parties is another problem in settlement procedure. The relationship between the parties and their lawyers may be so poor that they cannot effectively communicate. No parties believe on each other. Inability to communicate clearly and effectively which impedes successful negotiations, is often, but not always, the result of a poor relationship.

4] Lack of knowledge :-

Ignorance of the existing provisions of law is one of main reasons for failure in implementation of ADR mechanism. Many necessary laws have been made by the legislators but no one go at the grass-root level to implement them. People are generally ignorant about legal terminology and the opportunities available in ADR mechanism which helps in resolving the disputes between the parties.

5] ADR procedures are flexible and unconfirmed. This makes it extremely difficult to quote and use precedents as directives.

6] ADR procedures were introduced to lessen the burden of the Courts. But since there is an option to appeal against the finality of the arbitral award to the Courts, the object of ADR system is not fulfilled i.e. to lessen the burden of the Courts.

All the above problems have solutions. Efforts can be made to bring awareness for the active implementation of ADR.

6. Suggestions for improving mechanisms :-

1] Many people are unaware about the ADR mechanisms. So the knowledge relating to ADR must be given to such people via mass communication like T.V, radio, internet, programs, etc. This will help the people to opt various ADR bodies over Courts.

2] The ADR mechanism need to be carried forward with greater speed. This will definitely reduce the burden of the Courts.

3] Legal education and law schools should focus on the arts of conciliation and negotiation and not merely on litigation.

4] Courts are sanctioned to give directives for the adoption of ADR mechanisms by the parties and for that purpose the Court has to play crucial role by giving guidance. But these goals can be achieved only when requisite infrastructure is provided and institutional framework is put to place.

5] Each Court must have Arbitration and Mediation Centres. This will ensure that the disputes capable of being resolved through ADR methods be taken first over ADR bodies. If parties fail to arrive to settlement, then only the matter be taken to the Courts.

6] There is a need for imparting specialized training to lawyers, mediators, arbitrators, conciliators, members of legal aid committees, judicial officers and all other ADR practitioners and ADR neutrals in ADR techniques.

7. Conclusion

In the light of above discussion, it can be concluded that ADR, as the name reveals, is nothing but an alternative method to settle disputes that exist between parties to litigation. At present, due to the vase resources required for litigation, people prefer alternative dispute resolution methods to settle matters which do not require the intervention of judicial authority. As a result, alternative dispute resolution mechanisms have become more crucial for resolving the matters in dispute. Sec 89 of the CPC 1908 encourages settlement of disputes out of the Court in case where it appears to the Court that there exist an element of a settlement which may be acceptable to the parties by using ADR mechanisms. The provision prompts the Courts to seek the assistance of the ADR mechanisms while the case is still pending before the Court. The only object of this provision is to reduce the burden of the Courts. ADR ease the present burden of judicial functioning. The backlog of cases is increasing day by day, however, judiciary alone is not responsible for the same. Lack of judicial officers and lack of basic infrastructure are also responsible for it. Moreover, the lawyers have to play a crucial role and they should not forget that dispute is a problem which needs to be solved rather than contested.

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