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Concept of Alternative Dispute Resolution in Legal System in India

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ABSTRACT

"Justice delayed is justice denied"

Every person in society has the right to get justice quickly. The Constitution of India envisages a society in which social, economic and legal justice is available to all individuals based on equality. In the current judicial system, legal recognition has been given to some such methods of justice by which people can get quick and cheap justice. These methods are placed under the method of alternative dispute resolution.

Prevention of an alternative system of handling disputes means that method, which is different from the traditional system of justice. It has many arrangements. When the Indian Constitution provides for a well-organized justice system, what do justice administrators need to think about any other alternative system?

Necessity is being felt around the world about the resolution of disputes by alternative arrangements. The burden of litigation and pending litigations is being increased daily on the court. The courts are finding themselves unable to get justice to the parties on time. Lakhs of litigations are pending in various courts in our country. This problem is not only in our country but in most of the countries of the world. The only way to reduce the burden of litigants on the courts is that we should seriously consider settling the disputes by alternative arrangements.

1. Introduction

At present, providing quick and cheap justice in front of the prevailing judicial system in the country is the biggest problem and challenge today. India is second in the world in terms of population, but is far behind in terms of education, employment and income, due to which a lot of arguments arise. The number of pending promises in the courts increases by ten to eleven per cent every year, while the rate of disposal of promises is four to five per cent, due to which the problem of getting quick and cheap justice is becoming increasingly serious and worrisome. The number of judges in the courts is decreasing.

Courts have been set up by the state to settle disputes arising between individuals. Courts follow a certain procedure in the disposal of cases which, due to excessive technical, complex and expensive, do not resolve the promises for many years. After years, if the aggrieved party gets justice, then it is equal to not getting justice. Mr PN Bhagwati, former Chief Justice of the supreme court, had said the truth about the Indian judicial system that "our judicial system is overcrowded with an excessive burden of work and is on the verge of a breakdown". In this judicial system, poor and helpless people are deprived of getting justice. Therefore, as an alternative to the current judicial system for the resolution of disputes, some such methods of justice have been given legal recognition by which.

As a result of the globalization of the world economy, international trade and capital investment is expanding and with the emergence of the new world trade system, the need for effective, infallible and fast options for settlement of business disputes is being felt. From time to time, a large number of domestic and foreign investors and businessmen have been saying about the boring and unsatisfied way of resolving the dispute in India and have been demanding for early settlement of the dispute. In such a situation, alternative dispute resolution can be a good medium to settle against the traditional judicial system.

2. Development of alternative dispute resolution system:

The alternative dispute resolution began in America in the last century. This further developed in the year 1940, but the broad basis of the alternative dispute resolution movement was formed in the year 1970. It was implemented on a priority basis in the US in 1980. As a result of its success in the US, its process was accepted by many countries, including Britain, Canada, Australia, Hong Kong, South Africa, New Zealand, Japan, China and India. In developed countries, more than 70 per cent of the claims are settled through the method of alternative dispute resolution. By this, the courts are buried under the burden of litigations, independent of that, they settle the constitutional, criminal and other complicated litigation. Some time ago the Chief Justice of India had expressed the view that all civil suits should be disposed of by way of alternative dispute resolution and the courts should save their precious time, in settling the complex cases of the constitutional nature of the suit.

Two decades ago, Howard University professor Frank Sander presented at the Pound Conference the principle of a multifaceted court according to which multifaceted courts are those that, when a dispute comes to court for settlement, there should not be only one method of justice. According to him, a different method of consent should be accepted by the court of law in place of the traditional way of settling disputes, such as arbitration, conciliation and mediation etc. which are collectively called Alternative Dispute Resolution.

The methods of alternative dispute resolution are not different from the way of providing justice in India. The parties

were well versed in Indian antiquity by agreeing to refer a person of their choice to settle their disputes with consent. The peaceful settlement of disputes was done by the clan chiefs before the kings came here to adjudicate the matter. The matter was also settled by the Kulas, Rangas, Gana and Parishad or other independent bodies. Before the British system of justice, the system of Nyaya Panchayat was down to the lower level here.[i]

3. Settlement of disputes outside the court:

According to section 89 (1) of the Code of Civil Procedure, 1908, when the court finds that such elements of a favourable settlement are present in the dispute, it may be acceptable to the parties, then the court shall, by filing the terms of the settlement, form the formula, Submit it to him for trial and after receiving such a test from the parties, the court may refer the terms of the possible settlement as a formula again and refer to the settlement in any of the following ways –

(A) Arbitration
(B) Conciliation
(C) Judicial settlement including settlement through Lok-Adalat
(D) Mediation

When a dispute is directed for arbitration or reconciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the dispute was directed under the same Act for settlement. It is necessary to have a written agreement between the parties to direct the dispute arbitral tribunal.[ii]

When the court directs a dispute to the Lok Adalat, the court shall make such reference only following the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987 and about that dispute referred to the Lok Adalat other All provisions will apply.

All provisions of the Legal Services Authorities Act, 1987, when the court refers to a dispute for judicial settlement, the appropriate institution or person and such institution or person who shall be the same as the Lok Adalat, for judicial settlement Will apply if the dispute was referred to the Lok Adalat under the provisions of this Act.

When courts refer a dispute to mediation, the court will enter into an effective agreement between the parties and implement certain procedures as provided.

Of course, Section 89 has to be read with Rule 1-A of Order 10, which runs as follows: -

Order 10 Rule 1-A. The direction of the Court to opt for any one mode of alternative dispute resolution *-After recording the admissions and denials, the Court shall direct the parties to the suit to opt for either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.*

Order 10 Rule 1-B. Appearance before the conciliatory forum or authority*--Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.*

Order 10 Rule 1-C. Appearance before the Court consequent to the failure of efforts of conciliation -*Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it*[iii]*.*

Thus, the five different methods of ADR can be summarized as follows: -

1. Arbitration
2. Conciliation
3. Judicial settlement
4. Mediation
5. Lok Adalat

(1) Arbitration:

Arbitration is a method of Alternative Dispute Resolution (ADR) where the parties direct their dispute to one or more persons called arbitrators whose parties are bound to accept their decision. It is a process in which a third party observes the evidence of the suit and gives a decision that both parties are bound by. The decision which is given is called an arbitral award which cannot be reviewed and appealed. Arbitration is not the same as judicial proceedings and mediation.

Arbitration can be either voluntary or mandatory. Of course, mandatory Arbitration can only come from s statute or from a contract that is voluntarily entered into, where the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur.

Arbitration can be of the following types:

1. Personal Arbitration or Domestic Arbitration
2. Statutory Arbitration
3. International Arbitration
4. Institutional Arbitration
5. Ad-hoc Arbitration

Advantages of Arbitration

1. Lack of traditional technology
2. The arbitration process is not fast and cumbersome
3. The arbitrator in the arbitration process shall be appointed with the consent of the parties.
4. Technical expertise in the Arbitration procedure
5. Personal checking of content by Arbitrator in an Arbitration process
6. It is possible to maintain confidentiality in the arbitration process
7. Process less expensive
8. The parties may revoke the authority of the mediator on certain grounds.

However, there are some disadvantages of Arbitration,

1. The arbitrator may be subject to pressures from the powerful parties.
2. If the Arbitration is mandatory and binding, the parties waive their rights to access the Courts.
3. In some arbitration agreements, the parties are required to pay for the arbitrators, which add cost, especially in small consumer disputes.
4. There are very limited avenues for appeal, which means that an erroneous decision cannot be easily overturned.
5. Although usually thought to be speedier, when there are multiple arbitrators on the penal, juggling their

schedules for hearing dates in long cases can lead to delays.

6. Arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies.

(2) Conciliation

Part 3 of the Arbitration and Conciliation Act, 1996 provides for an alternative way of resolving disputes by conciliation. This method is a method of arbitration and an additional procedure for resolving the dispute by the court. It is also called alternative settlement of disputes. In Part 3 of the Arbitration and Conciliation Act, 1996, comprehensive arrangements were made by the parties to settle their disputes by conciliation. In this Act, the legal provision related to reconciliation is included for the first time and the reconciliation process has been given constitutional recognition by the Parliament.

Conciliation generally means the settlement of disputes without litigation. Conciliation is a process in which negotiations continue between the parties to the dispute through the conciliator's partner. The basis of conciliation is the rules of the United Nations Trade International Commission Conciliation Rules[iv].

(3) Judicial settlement;

All provisions of the Legal Services Authorities Act, 1987, when the court refers to a dispute for judicial settlement, the appropriate institution or person and such institution or person who shall be the same as the Lok Adalat, for judicial settlement Will apply if the dispute was referred to the Lok Adalat under the provisions of this Act.

There are no written guidelines prescribed in India as to judicial settlement. But in America, ethics requiring judicial settlement has been enumerated by Goldschmidt and Milford which are as under:

Judicial Settlement Guidelines[v]:

The following are guidelines for judicial settlement ethics:

1. Separation of Functions:

Where feasible, the judicial functions in the settlement and trial phase of a case should be performed by separate judges.

2. Impartiality and Disqualification:

A judge presiding over a settlement conference is performing judicial functions and, as such, the applicable provisions of the code of judicial conduct, particularly the disqualification rules, should apply in the settlement context.

3. Conference Management:

Judges should encourage and seek to facilitate settlement in a prompt, efficient, and fair manner. They should not, however, take unreasonable measures that are likely under normal circumstances to cause parties, attorneys, or other representatives of litigants to feel coerced in the process. The judge should take responsibility in settlement conferences.

4. Setting Ground Rules on Issues Such as Confidentiality, Disclosure and Ex Parte Communications:

In settlement conferences, judges should establish ground rules at the onset, either orally or in writing, informing parties and their attorneys of the procedures that will be followed. The rules should include ground rules governing issues such as confidentiality, disclosure of facts and positions during and after conferences, and ex parte communications.

5. Focusing the Discussions:

A judge should use settlement techniques that are both effective and fair, and be mindful of the need to maintain impartiality in appearance and fact.

6. Guiding or Influencing the Settlement:

The judge should guide and supervise the settlement process to ensure its fundamental fairness. In seeking to resolve disputes, a judge in settlement discussions should not sacrifice justice for expediency.

7. Sanctions or Other Penalties Against Settlement Conference Participants:

A judge should not arbitrarily impose a sanction or other punitive measures to coerce or penalize litigants and their attorneys in the settlement process.

(4) Mediation:

Mediation is an alternative process to disputes in addition to the judicial process of handling disputes. In which the third independent person, the mediator, prepares them to agree on an agreement for their common interests with their cooperation. There are no complications and legal difficulties in this process. In this process, mutual differences are eliminated or reduced.

Mediation is a rapid process. In this, the dispute is settled in a short time. In this process, solutions are obtained, in which the problem is displayed. The solution obtained in this process is the decision of both parties. The entire process remains confidential. Parties get success in maintaining their long-term hits and legal relationships. In comparison to regular litigations, there is a reduction in expenses in this process. Not only the parties, but the court management also saves a lot from the expenses[vi].

(5) Lok Adalat:

In 1980, the Committee for Legal Aid Enforcement Scheme was set up for the Committee for Implementing Legal Aid Schemes (CILAS). Units called Lok Adalat was established by this committee. The Lok Adalats were given constitutional status under the Legal Service Authorities Act, 1987 by the Indian Parliament.

Lok Adalat is the link between court and arbitration. In the Lok Adalat, the present and retired court judge plays the role of adjudicator. The procedure adopted by the Lok Adalat is similar to the arbitration process. Here the courts themselves go to the litigants and provide treatment to the litigants. Decisions taken by the Lok Adalat are effective only after confirmation by the local district court. The main purpose of Lok Adalat is to reduce the burden of the court. Lok Adalat is a forum where voluntary efforts are made between the parties to resolve disputes. The Lok Adalat provides speedy and painless justice in villages and cities, it works especially for the weaker section of the society. Its award is considered to be similar to a decree[vii]. It is executable by the Civil Court.[viii]

4. Conclusion:

"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 the private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul".

--- Mahatma Gandhi

After enforcement of the Arbitration and Conciliation Act,1996, in some places, ADR setting up of the ADR centres are proposed and it is being equipped with the trained lawyers and staffs. On account of misconception and malpractice, thousands of cases are filed every day with the misconception of lawyers and parties, as a result, precious time of the Courts is lost in dealing and adjudicating such cases. Now it is high time to take a policy decision and determine criteria and qualifications for acting as negotiator, mediators, counsellors, arbitrators and conciliators, who should be nominated to various boards in the ADR's centres. As in India, this branch of supplementary/ Alternative Dispute Resolution system is in a nascent stage because of the modern techniques tactics used in this system.

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