

ALTERNATE DISPUTE RESOLUTION MECHANISM

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INTRODUCTION

Equal justice for all is a cardinal principle on which the entire system of administration of justice is based. It is so deep rooted in the body and spirit of common law as well as civil law jurisprudence, that very meaning which we attribute to the word 'justice' embraces it. The greatest challenge to the justice delivery system is the delay in the disposal of prohibition and cost of litigation. Experience has shown that adjudication of disputes through courts, while unavoidable, does not, in every case, provide a satisfactory or amicable solution.

Alternative Dispute Resolution or ADR mechanism evolved to provide solution to legal disputes and to do complete justice to the parties in conflict. It is a voluntary process that is gradually gaining legal recognition. ADR is at present a movement world-over to find an answer to never ending litigation. The state, society, and the parties to the dispute are equally under an obligation to the dispute are equally under an obligation to resolve the dispute before it disturbs the peace in the family, business, community, society, or ultimately humanity as whole. In a civilised society, the rule of law should prevail and principles of natural justice should apply and complete justice should result. Arbitration, mediation and conciliation are accepted modes of alternate dispute resolution mechanism. Certain kinds of disputes, as matrimonial disputes, family disputes with neighbour and several kinds of petty civil and criminal cases, which form a substantial percentage of pending litigation, can be better and more satisfactorily resolved by organized and institutionalized process of mediation or conciliation through senior citizens. These possess may often allow for a greater consideration of local sensitivities and customs.

FORMS OF ALTERNATE DISPUTE RESOLUTIONS

Let us now examine various kinds of alternate dispute resolution mechanism in detail:

1. Arbitration

In simple words arbitration is adjudication over disputes between parties by a judge who has been agreed upon by the contending parties to decide the matter. The parties are permitted to agree upon the procedure to be followed for such arbitration. In India the specific law governing arbitration is the Arbitration and Conciliation Act, 1996. Arbitration may be ad hoc or institutional.

An ad hoc arbitration is arbitration agreed to and arranged by the parties themselves without recourse to any institution. The proceedings are conducted and the procedures are adopted by the arbitrators as per the agreement or, with the concurrence of the parties. It can be domestic,

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international or foreign arbitration. In cases of disagreement on the appointment of an arbitrator under an ad hoc arbitration cases, section 11 of the Arbitration and Conciliation Act empowers the Chief Justice of High Court or the Chief Justice of India, as the case may be, to appoint the arbitrators. The Chief Justice is also empowered to designate any person or institution to take necessary steps for the appointment of arbitrators. The scheme made by Chief Justice may designate a person by name or ex-officio or an institution, which is specializing in the field of arbitration. Then New provision has really given recognition to the role of arbitral institutions in India².

There are two kinds of arbitrations Specialized Arbitration and Statutory Arbitration.

Specialized arbitration is arbitration is conducted under auspices of arbitral institutions, which have framed special rules to meet specific requirements for the conduct of the arbitration in respect of disputes of particular type.

Statutory arbitration is arbitration conducted in accordance with the provisions of certain special Acts.

Following are the advantages of arbitration-

1. Speedy disposal of cases
2. More efficacious than ordinary court litigation
3. Ensures party autonomy
4. Procedural technicalities are absent.

2. Conciliation

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

Section 61 states that conciliation shall apply to disputes out of legal relationships whether contractual or not , and to all proceedings relating thereto. Unless excluded by any law these provisions will apply to every such dispute while being consolidated.

According to section 62, a party can take initiative and send invitation to conciliate under this part after identifying the dispute.

² www.jgls.edu.in

The advantages of resolving disputes by conciliation are as follows-

1. The parties and the third neutral party sit together to resolve the issues.
2. The matter is selected at the there should and for all possible appeals permitted by law
3. Execution is done simultaneously with the settlement.
4. It offers a more flexible alternatives, for a wide variety of dispute, small as well as large.
5. The parties need not seek recourse to the formal judicial system.
6. Drastically cuts down the cost of litigation and the time involved. The early disposal of the case will reduce the hidden and unproductive costs like traveling to courts and loss of work-days for the parties.
7. It is committed to maintenance of confidentiality throughout the proceedings and thereafter regarding the information exchanged the offers and counter offers and the settlement arronciliation and even after the settlement. This feature is of particular significance to the parties who are required to continue their relationship despite the dispute , as in case of dispute arising contacts, family relationships, family properties or disputes between members of any business or other organisation.
8. There is reduced scope for corruption or bias.

3. Mediation

Mediation is the negotiation associated by a third part. It is a private, voluntary, informal, non-binding and cost effective process which provides an environment for constructive communication.

As per the order X, rule 1-A of the Code of Civil Procedure, 1908 after recoding admission or denial of documents the Council is under an obligation to direct the parties to opt for any of the four modes of alternative dispute resolution including mediation. A wide nature of disputes, including matrimonial, Labour, motor accidental claims, eviction matters between landlords and tenants, complaints under section 138 of Negotiable Instrumental Act 1881, petitions under section 125 of the Code of Criminal Procedure 1973, or any compoundable offence can be referred for mediation.

Mediation is a process of empowerment³. The core value in mediation is that the process provides the parties with an opportunity to negotiate, converse and explore options aided by a neutral third party, the mediator, to exhaustively determine if a settlement is possible. It is a process of empowerment of the parties to control their destiny in their dispute.

There is no rigid framework of rules for mediation. It is a very flexible process. A person who is accepted to both the parties would serve as mediator. He is perceived as neutral, capable of

³ www.legaldictionary.net

understanding the issues involved in the dispute, and knowledgeable enough about the mediation process along with a sense of time and attitude to resolve the problem.

It is important to decide on the on the cost of the mediation at the beginning itself. The mediator should indicate the possible cost and obtain the consent of parties to share the cost equally. If not the cost of mediation itself would become an issue of conflict to be mediated between the mediator and the parties.

4. Lok Adalats-

The LokAdalat (people's court) were established by the government to settle disputes through conciliation and compromise⁴. A LokAdalat accepts those cases which are pending in the regular courts within their jurisdiction, which could be settled by conciliation and compromise. There is no court fee. If the case is already filed in regular court, the fee paid will be refunded if the dispute is settled in LokAdalats. Procedural Law and Evidence Act 1872, are not strictly followed while assessing the merits of the claim by LokAdalat.

The main condition for recourse to a LokSabha is that both parties in dispute should agree to reach a settlement. The decision of the LokSabha is binding on the parties to the dispute and its order is capable of execution through the legal process. No appeals lies against order of the LokAdalat. LokAdalat is very effective in settlement of money claims. Disputes like partition suits, damages, and matrimonial cases can also be easily settled before the LokAdalat.

Significance of LokAdalat-

In the context of the ever-increasing number of cases, the cases the court system is under great pressure. If there was a permanent mechanism or machinery to settle matters at pre trial stage, many matters would not find way to courts⁵. In order to reduce heavy demand on court time, cases must be resolved by resorting to ADR methods before they enter the portals of courts. The significance of LokAdalat as an ADR mechanism is evident from the large number of Third Party claims referred by Motor Accidental Claim Tribunal (MACT) that it has settled. Except matters related to offences, which are not compoundable, a LokAdalt has jurisdiction to deal with all matters. Matters pending or at pre trial stage, provided a reference made to it by a court or by the concerned authority or committee, when the dispute is at pre trial stage and not before the Court of law, can be referred to LokAdalat. The concept of LokAdalat has be gathered from systems of panchayats, which has roots in the history, and culture of India Use of ADR mechanism is therefore also an attempt for decentralization of justice.

⁴ www.iprhelpdesk.edu

⁵ www.legalmatch.com

Conclusion-

The Necessity and utility of ADR is unquestionable. Resolution of disputes is an essential characteristic for societal peace, amity, comity and harmony, and easy access to justice. In the past the privileged and powerful sections of society had performed the function of resolving disputes and dispensing justice. In the light of India's socio-economic conditions, the state has a duty to ensure that the operation of legal system promotes justice on the basis of equal opportunity. ADR has emerged as an alternative, complimentary and supplementary mechanism to the existing process of litigation in the tradition courts that is inexpensive, expeditious, less cumbersome and also therefore less stressful for everyone involved.