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EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA: LAWS AND PRACTICES

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ABSTRACT

Alternative disputes resolution is a kind of technique which acts as a means to settle a dispute between two parties outside the ordinary law courts. At present times this system of disputes resolution has been adopted as a tool to help the courts of justice in solving issues without any unnecessary delay. The primary function of courts is to administer justice between the parties who are before it. It is an obligation upon the courts to settle the litigation within a reasonable time period which is a hallmark of effective justice delivery system.

In India, the introduction of ADR in the administration of justice has made significant progress in order to ensure effective settlement of disputes between the parties. There are several alternatives available to the parties to dispute by means of which disputes between them are resolved. It is pertinent to mention here that by the inclusion of ADR practices the pendency of cases before the courts have lessen the burden of courts to a great extent which is a remarkable feature of this mechanism. The concept of ADR has achieved great importance because of historical reasons. It was realized that the regular court practices is not only time consuming but it is expensive as well because of which alternative method of solving disputes came into existence. This system of resolving disputes has been acknowledged not only at domestic level but it has achieved global acceptance too.

The main purpose of ADR is to resolve the conflict in a more effective and expeditious manner. It aims to provide a remedy to an aggrieved party which is cheap, speedy and less formalistic. In this paper the researcher will try to analyze the history of ADR in India and its practices at the

grass root level. This research paper will also make an attempt to highlight the challenges and responses made by the government while introducing ADR in India.

INTRODUCTION:

Alternative dispute resolution (ADR) is a technique through which the disputes can be settled without intervention of court proceeding. The main purpose of existence of ADR is to make available economical, easy, speedy and reachable justice.[1] ADR techniques are non-judicial body in nature which always deals with all controversial issues which can be resolved in the law through conformity among the parties and this idea inspired by most approved faith i.e. justice delayed is justice denied. Alternative dispute resolution has a great importance to the corporate community which needs speedy and transparent method to litigation because it does not have time, patience, resources to waste on time taking justice delivery system. That is why alternative to litigation should be considered as a most important part of policy of the company. It has been shown that arbitration and mediation alternative to the litigation make good business sense and that the inclusion of arbitration and mediation clause in contract will help to ensure that dispute will be dealt with a timely and cost-effective way. In this backdrop, the present paper focuses on the legality of different mechanism adopted for alternative dispute resolution in India.

MEANING OF ALTERNATIVE DISPUTE RESOLUTION:

The term alternative dispute resolution has been explained as a dispute resolution methods that are very small of or alternative to costly and time consuming justice delivery system. The ADR refers to the whole thing which encourages settlement negotiation in which parties are encouraged to discuss without deviation to each other any other lawful method, to arbitration method or mini-trials that is similar to the court proceeding system. This method has planned to handle all the problems of society or to make possible societal development issues within the ambit of ADR. [2].

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[1] Sameer chaudhary, alternative dispute resolution-.https://www.manupatrafast.com last visited (02-10-2019)
[2] *Mr.arvind agrawal , knowing: alternative dispute resolution.* https://www.russianlawjournal.org last visited on (05-10-2019)

Ultimately ADR system wishes to make available inexpensive, easy, rapid and easy to get to justice. ADR method is non-judicial body in nature and suitable for all litigious issues which can be resolved under the law by agreement between the parties.

An alternative which means, that the parties have freedom of choosing alternative to litigation at their own choice. It does not means the choice an alternative court but something which is an alternative to court procedure or something which can operate as court annexed procedure. Dispute must be resolved at minimum possible cost both in the term of money so that more time and more resources are spared for constructive pursuits. There is a legal system in every human society to resolve the dispute and whenever any person gets injured then definitely he will go to the court for his resolution. All the legal systems are trying to attain legal idea that whenever there is wrong there must be a remedy so that no one shall have to take law into his own hands. Court has become overcrowded with litigation and large numbers of cases are pending in the court which ultimately leads to dissatisfaction among the people regarding the justice delivery system and its ability to dispense justice.[3] It is important that this dissatisfaction can be restored and mechanism be adopted which do not have complexities of long drown litigation procedure but be as effective and binding on the parties adopting it.

EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION:

Alternate Dispute Resolution method is not a fresh practice for the people of India. In India this alternative system was practiced from ancient time and at that time arbitration, conciliation and mediation were only the method or alternative to settlement of dispute without intervention of formal legal method. In the ancient and medieval periods disputes were resolved in an informal manner by a impartial third person who was either an elderly person or village chief. Since the Vedic (ancient Hindu scriptures) period, India has been heralded as a pioneer in achieving the social goal of speedy and elective justice through informal resolution systems. The adversarial system of justice, adopted later during the 19th and 20th century, proved to be 'costly and time consuming.' Time is consumed in procedural wangles, technicalities of law and the inability of large numbers of litigants to engage lawyers. These ADR methods are not new; they were in existence in some form or other even before the modern justice delivery system was introduced by

[3] *Avtar singh, law of arbitration and conciliation, 391, 7th Edn. Eastern book company*.

colonial rulers. There were various types of arbitral body, which led to the emergence of the celebrated panhayat's raj (people's rule) system of India, especially in the rural areas. Panchayat decisions were accepted by people and treated as binding. Thus, Lok Adalalat (people's court) created under the panchayat raj was considered very useful. As such, in 1980 the Government of India set up a Committee under the chairmanship of P.N. Bhagwati, a former Chief Justice of the Supreme Court of India. On the recommendations of this Committee, Parliament enacted the Legal Services Authorities Act, 1987 in view of Art. 39A of the Indian Constitution. This Legal Services Authorities Act 1987 implemented in its true spirit the utility of lok adalats (people's courts) for the speedy resolution of disputes. The adage here is that justice delayed is justice denied, and speedy justice has now been accepted as a constitutional guaranteeed.[4] Even though the international community paid attention toward this traditional international mean for settlement of disputes by way of arbitration, conciliation and mediation. It is to be seen that not only in India but also in china, England and United States of America this traditional alternative means for settlement of dispute was existing from long time

Alternative Dispute Resolution has been exposed in India with Trade Dispute Act of 1929.The purpose of Trades Disputes Act of 1929 was to provide a conciliation process to bring settlements of industrial disputes through the creation of the Board of Conciliation and Court of Inquiry. On the other hand, the severe limitations have been imposed to ban strikes and lock outs and the decisions passed by the Board of Conciliation and Court of Inquiry were not binding. This was changed with Rule 81A of the Defense of India Rules which empowered the central government to refer to disputes compulsorily to adjudication or voluntarily to conciliation and enforce the awards. This rule was embodied in the Industrial Disputes (ID) Act of 1947. Today with the backlog of cases in courts across the country slowly being reduced, ADR is increasingly being explored however; ADR in India is still relatively in its infancy stage. India's first arbitration enactment was the Arbitration Act of 1940. However, arbitration under this law was never effective and it ultimately led to litigation as a result of the challenges to the awards[5]. In order to make arbitration more effective, the government enacted the Arbitration & Conciliation Act of 1996 which provides that the award can be challenged only on limited ground and in the prescribed

[4] *Tripathi,the arbitration and conciliation act, 1996,301 , 4th Edn ,Central law publication*

[5] *Malikul S Muhamad, ADR in Indian the USA, https://svym.org/viis_publications last visited on (05-10-2019)*

manner and ultimately, the Act provided a statutory framework for dispute resolution. However, the act only regards civil matters and there is no specific act that pertains to the whole of ADR in India, thus representing a need to improve the current system.

LAWS RELATED TO ADR IN INDIA:

Civil Procedure Code 1908:

Section-89 as well as order 10 rules 1-A to 1-C.Settlement of dispute the court has been inserted by code of civil procedure (amendment) Act 1999 Section 89 of the civil procedure code provided for the settlement of dispute outside the court. It is based on the recommendation made by the law commission of India and Malimath committee. It was suggested by law commission of India that court may require attendance of any party to the suit or proceeding to appears in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt s to settle the dispute between parties amicably. Malimath committee recommends making its obligation for the court to refer their disputes after issues having been framed for settlement through alternative means rather than litigation.

India Arbitration Act, 1899:

The first India arbitration act was passed on 1st July 1899.which was fundamentally based on the British Arbitration Act of 1899 and this arbitration act was applicable only to the presidency towns of Calcutta, Bombay, and Madras.[6] A unique feature in the Act was that the name of arbitrator were to be mentioned in agreement and arbitration can also be a setting judge as was in ***nusserwanjee and ors V. meer mynooden khan Wuleed Meer sudrooden khan Bahador.*** *In case of* ***gojendra Singh V burg***, in this particular case it was held that the award passed in arbitration is nothing but a compromise between the parties and in ***binkurrai lakshamiprasad V gaswantrai Prasad,*** in this case high court said that Indian arbitration act 1899 was very complex, bulk and needed reform.

[6] *Rao p.c& William Sheffield, alternative disputes resolution pg.34, pub. Universal law publishing co.pvt.Ltd.*

The Arbitration (protocol and convention) act 1937:

The Arbitration (protocol and convention) Act 1937 was passed with the intention of giving effect to the protocol and enabling the convention to become operative in India. The Geneva Protocol on Arbitration Clauses 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927has been implemented in India by the Arbitration (Protocol anConvention) Act, 1937.[7]

The Arbitration Act of 1940:

During the colonial rule the more definite arbitration act was passed on fourteenth march 1940 which came into effect from first July 1940, named as Arbitration Act 1940. This is only one act which was extended to whole of India including Pakistan and Baluchistan. In the few cases it has been noticed that the arbitration act 1940, distinguish between arbitration an application for setting aside an arbitral award and one for a decision that is a nullity. [8]The Act implies that it does not legally exist aside and contemplates that an application for setting aside an award may be made under the section 30 and an application of that is nullity under section 33. Further it was also observed that the said act fail in recognizing that the arbitration will fail in case of non existence and invalidity of an arbitration agreement. The arbitration act 1940 was not covered to shortcoming which was containing in personal or private contract and the rules providing for awards also differed from one high court to another high court. The lack of provision prohibiting an arbitrator form resigning at any time in the course of the arbitration proceeding exposed the parties to heavy loses particularly where the arbitrator acted with mala fide intention. It was also seen that if an arbitrator appointed by the court dies during the arbitration proceeding, there was no other provision in the said act for appointment of a new arbitrator which was also seen as a major flaw in the act 1940.

Arbitration and Conciliation Act, 1996:

This Act, 1996 was based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. General Assembly of the United Nations had recommended that every country should take into consideration to that Model Law in

[7] *Rao P.C & William Sheffield, alternative disputes resolution pg.34, pub. Universal law publishing co.pvt.Ltd.*

[8] **Error! Hyperlink reference not valid.** *visited on (19-09-2019)*

view of non-uniformity of the law of arbitration procedures and particular necessity of the international commercial practices. Also, recommended the practice of the said Rules in those matters where a disagreement arises in the context of international commercial relations and the parties try to find out a friendliness settlement of issue by assistance of conciliation. These rules play an important role for the foundation of a combine legal framework for the just, fair and effective settlement of disputes which arise in international commercial relations.

A report was prepared by the law commission of India on the basis of the Act, 1996 and suggested several amendments. Arbitration and Conciliation (Amendment) Bill, 2003 was in the Parliament on the basis of the recommendations of the commission. But the Standing Committee of Law Ministry thinks that the courts have much interference in certain provisions of the Bill. The Arbitration and Conciliation Act, 1996 which deals with the domestic arbitration. The Act was amended in 2015 and further amendments have been made in 2019.

The Arbitration and Conciliation (Amendment) Bill, 2015 was introduced in the Parliament by the Government of India to amend the Arbitration and Conciliation Act, 1996 to make arbitration procedure a suitable a suitable mode of settlement for commercial disputes and to become India as a centre of international commercial arbitration. The main purpose to amend the Act to make a clear difference between domestic and international commercial arbitration with respect to the definition of the court. As far as domestic arbitration is concerned, the definition of "court" has same meaning as was in the Act of 1996. However, the word court with respect to international commercial arbitration which means only High Court of the competent jurisdiction.[9] Therefore, district Court will have no jurisdiction and consequently the parties can seek their effective and quick determination of any dispute directly through the High Court which is better to deal with the commercial dispute.

Proviso to section 2(2) has been added by amendment which envisages that subject to the agreement to the contrary, section 9(interim measures), section 27(taking of evidence) and section 37(1)(a), 37(3) respectively, shall also be applicable to international commercial arbitration, even in the circumstances that the seat of arbitration is not in India, meaning thereby that that the recent law has tried to strike a balance between the situations created by the judgment of ***Bhatia***

[9] *https://en.wikipedia.org/wiki/Arbitration_and_Conciliation_Act_1996 last visited on(24-09-20190)*

International and Kaiser. Now, section 2(2) states that Part-I shall be applicable where the place of arbitration is in India and that the provisions of sections 9, 27, 37(1) (a) and 37(3) shall apply to international commercial arbitration respectively even if the seat of arbitration is not in India unless the parties to the arbitration agreement have agreed to the contrary.

Section 8 deals with "reference of parties to the dispute to arbitration", was amended and which mandates any judicial authority to refer the parties to arbitration relating to an action brought before it and it is a subject matter of arbitration agreement. Section 9 dealing with 'Interim Measures' was also amended. The amended section envisages that if the Court passes an interim measure of protection under the section before commencement of arbitral proceedings, then the arbitral proceedings shall have to commence within a period of 90 days from the date of such order or within such time as the Court may determine. Also, that the Court shall not entertain any application under section 9 unless it finds that circumstances exist which may not render the remedy under Section 17 efficacious.

MODES AND PRACTICE OF ADR:

Alternative dispute resolution is kind of method where an independent person assist citizens in dispute, strive to the issues among them. An ADR aid disputant to settle their dispute outside the courtroom and it is very flexible and can be used for almost any kind of dispute.

Kinds of alternative dispute resolution practice are as follows –

Arbitration:

The term arbitration has been incorporated under section2 (1) precisely reproduces the book of article 2(a) of the exemplary legislation. The arbitration which means any arbitration whether or not comes under the stable arbitral body. As for as arbitration is concerned, it is kind of system in which the parties mutually submitted their dispute to an arbitral tribunal then tribunal will makes a decision on the dispute that shall be binding in nature so that it is binding on the parties. The arbitration is not a purely judicial procedure but it is a kind of non judicial trial procedure for adjudicating disputes. There are four requirement of the concept of arbitration-an arbitration agreement, a dispute, a reference to a third party for its determination and an award by the third party. This is very important to know that the forum chosen by the parties with an intention that it

must act judicially after taking into account relevant evidence before it and the submission of the parties. If the forum chosen is not require to act judicially, the process it is not arbitration.

Mediation/conciliation:

Mediation and conciliation are not binding procedure in which an impartial third party, assist them to both the parties to disputes in reaching a consensual consented in settlement of the conflict. The conciliation and mediation are the identical words.[10] in both the method s a prosperous conclusion of proceeding result in jointly consented settlement of dispute between the parties though in some jurisdiction conciliation is treated as distinct from , mediation in as much as the mediation the emphasize is extra constructive function of the impartial third person.

Negotiation:

Negotiation is a kind of non binding method involving direct interaction of the disputing parties in which the parties approach to other with offer of a negotiated settlements on the basis goal judgment of each other's position. A trade off of others interest not involve in dispute is not rare and willingness to reach at a negotiated settlement on the part of the both the parties are compulsory nature of negotiation.[11]

Lok Adalat:

The concept of Lok Adalat for the first time has been introduce in the state of Gujarat in 1982.The main purpose to introduce this concepts was to reduced huge burden which was on the court due to increasing fresh litigation and large numbers of cases pending in the court. Lok Adlat is an appropriate method to resolve the dispute without intervention of court proceeding so that it has been recognized as a statutory body under the legal service authority act, 1987.

Legal service authorities Act, 1987: The Legal Services Authorities Act, 1987 was brought into force on 19 November 1995.[12] The object of the Act was to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are

[10] *RAO P.C & William Sheffield, alternative disputes resolution pg.34, pub. Universal law publishing co.pvt.Ltd.*

[11] *Ibid.*
[12] *ADR in India: legislation and practices https://www.lawctopus.com last visited on (28-09-2019)*

not denied to any citizen. The concept of legal services which includes Lok Adalat is a revolutionary evolution of resolution of disputes. Though settlements were affected by conducting Lok Nyayalayas prior to this Act, the same has not been given any statutory recognition. But under the new Act, a settlement arrived at in the Lok Adalats has been given the force of a decree which can be executed through Court as if it is passed by it. Sections 19, 20, 21 and 22 of the Act deal with Lok Adalat. Section 20 provides for different situations where cases can be referred for consideration of Lok Adalat. Delhi High court has given a landmark decision highlighting the significance of Lok Adalat movement in the case of ***Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board and Others*.**[13] The court passed the order giving directions for setting up of permanent Lok Adalats.

CONCLUSION:

To conclude, alternative dispute resolution is a substitute to conventional court system whereby dispute between parties is resolved without intervention of court proceeding. In countries like India, where billions of cases are pending in the court which ultimately leads to frustration amongst the people about the court system and its capacity to dispense justice so that the peoples are scared and losing their confidence in the technique of justice delivery system. This is very important that this faith need to be restored and process adopted which don't have the complexities of lengthy proceedings but are as useful and binding on the parties adopting it. It is therefore pertinent to mention that ADR is neither intended to replace nor supersede the existing legal system but are proving instrumental in reducing the extra-burden which is on court in India.

[13] *AIR 1999 Del 88.*