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Alternative Dispute Resolution in India- An Analysis

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ABSTRACT

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. The constitution of India ensures people to render justice to all. Alternative dispute resolution is a process to achieve the justice in a effective manner. In this article an attempt is made to analyse the ADR mechanism in India.

KEYWORDS Constitution, Arbitration, Conciliation, Mediation and justice

Introduction-

Alternative Dispute Resolution (ADR) in India is not a new concept. It was in existence even under the Vedic period.ADR system was a part of our culture. The people living in village used to resolve their disputes through the village pramukhs or village panchayats. Gradually ADR system is increasingly adopted in the national and International arena. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. It helped parties to resolve their dispute easily and expeditiously. It is less expensive and convenient to settle the disputes. ADR mechanism gained popularity despite there is formal forums for adjudication methods available in the country. There are wide scopes by which parties can resolve their disputes on their own way. In ADR process Justice is dispensed with by means of arbitration, mediation, conciliation, negotiations

Constitutional perspective-

The founding father of Indian constitution intended to create an egalitarian society, where justice social, economic and political shall prevail. Article 21 of the constitution provides that, no person shall be deprived of his life and personal liberty except in accordance with the procedure established by law. The procedure established by law means it must be just, fair, and reasonable. If justice is delayed, legal service is not made feasible for poor and indigent, it may amount to unjust law in our democratic polity. Article 39-A of the constitution provides for free legal aid to the indigent person and the state provides amicus curiae in appropriate cases. Today about more than two and half crores of cases are pending in Supreme Court, high Courts and in subordinate courts. We do not have sufficient judges to deal with back log cases. It means at least few crore people are directly involved in litigation failed to secure fair justice. The alternative dispute resolution is a best step towards this end to secure justice.

Arbitration-

Arbitration is an adjudicatory dispute resolution process by a private forum, governed by the provisions of the Arbitration and Conciliation Act 1996. The said Act makes it clear that there can be reference to arbitration only if there is an `arbitration agreement' between the parties. If there was a pre-existing arbitration agreement between the parties, the court can refer it for arbitral proceeding under section 7 of CPC. Such agreement can be by means of a joint application or a joint affidavit before the court, or by record of the agreement by the court in the order sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under section7 of the Code; and on such reference, the provisions of Arbitration and Conciliation Act will apply to the arbitration. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration by invoking sections 8 or 11 of the Arbitration and Conciliation Act 1996.An exchange of statement of claim and defence in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement. Any party to the dispute can start the process of appointing arbitrator and the other party may accept such appointment. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal. The Arbitration Tribunal has power to pass the award, which is like the order of the court. If the award is not impartial a party can appeal to the principal civil court of original jurisdiction for setting aside the award. Once the period of appeal for setting aside an award is over, the award is binding on the parties and is considered as a decree of the court. This is most effective method of ADR mechanism which can be enforced by the court.

Conciliation-

Conciliation is an easiest and less formal form of arbitration. This process any prior agreement between parties is not required. Any party can appoint a conciliator and the other party may accept. If a party rejects an offer to conciliate, there can be no conciliation. Generally single conciliator is preferred but there is no bar to appoint more than one. In case of multiple conciliators, all must act with common understanding. The Parties to dispute may submit statements to the conciliator regarding the nature of the dispute and the main points of issues involved. The appointment of conciliator/s is provided in section 64 of Arbitration and Conciliation Act. If both parties do not agree for conciliation, there can be no `conciliation'. Each party has to submit a copy of the statement to the other. The conciliator may request the parties to submit further details on the issues. Parties may even submit suggestions for the settlement of the dispute to the conciliator. If it appears to the conciliator that, both the parties may accept the terms of settlement and then he may send it to the parties for their acceptance. If both the parties agree to accept and sign the settlement document, it shall be final and binding on both the parties.

Mediation-

Mediation can be defined as a process to resolve a dispute between two or more parties in the presence of a mutually accepted third party, the mediator. The mediator through confidential discussion attempts to help the parties in settling their dispute. The biggest advantage of mediation is that the

entire process is strictly confidential. Mediation saves time and financial and emotional cost of resolving a dispute. Another advantage is that the emotions and feelings between parties are preserved causing minimum stress. The mediator has a significant role in formulating and reformulating issues of agreement and disagreement. The mediator can resolve multiple disputes by adopting this method. A properly conceived mediation ensures wide access to justice for all sections of the people. Mediation not only saves time and money but also brings peace in the society.

Lok Adalat-

Etymologically, Lok Adalat means "people's court". As discussed India has had a long history of resolving disputes through the mediation. The current system of Lok Adalats is an improvement on that traditional principle. Lok Adalats does not have jurisdiction on matters related to non-compoundable offences. It does not follow rigid procedural requirement i.e. no need to follow the rule of Civil Procedure Code or Indian Evidence Act. This approach makes the process very fast and easy to resolve disputes and Parties can directly interact with the judge. If any case is pending in a regular court any party to the litigation can approach the court to settle the dispute through Lok Adalat. If the court deems fit, the court may transfer the case to Lok Adalat, after giving an opportunity of being heard to the other party. All proceedings of a Lok Adalat are deemed to be judicial proceedings and deemed to be a Civil Court. In Lok Adalats mostly issues are resolved in the process of common understanding and concurrence. If compromise is not reached amicably, the matter goes back to the regular court. However, once a compromise is reached, an award is made; it is final and binding on the parties. This Award is enforced as a decree of a civil court and no appeal is allowed under writ jurisdiction, unless it vitiates natural justice.

Conclusion-

ADR is more user-friendly method to resolve disputes than regular courts. It gives people an involvement in the process of resolving their disputes. It offers wide choice for dispensation of justice. It is cheaper; it can help to curb the upward spiral of legal costs. It creates awareness and provides justice in various ways. This is considerably reduces tension and provides instant justice at the door-step. This also avoids procedural technicalities and delays. In the litigation ridden society ADR mechanism creates hope. There is high need to develop infrastructure and create awareness for ADR system. The institution of legal learning can create better atmosphere in this end.

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