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ALTERNATIVE DISPUTE RESOLUTION-A SOLUTION TO THE DELAYED JUSTICE.

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ABSTRACT

Amicable resolution of disputes is a *sine qua non* for the **social peace** and **harmony**. India is the place for one of the largest population in the world. India is home to one of the world's most populous countries. Disputes and disagreements waste society's valuable time, effort, and money. It becomes vital for a country like India to provide people with justice without further delay, and the judiciary has devised measures for Alternative Dispute Resolution to carry out this duty. This paper discusses the numerous variables that contribute to the necessity to create rules governing arbitration procedures. In India, the judiciary is the physical manifestation of justice. Due to the overcrowding in court proceedings, it demonstrates the participation or role of the judiciary in maintaining the provisions ahead. This article discusses the Arbitral Tribunal's proceedings and the applicability of the Tribunal's ruling to the parties who approach it. In the following sections of the paper, we will analyse the evolution of ADR and the current situation in India.

KEYWORDS: Judicial Activism, Positive Approach, Legislations of Alternative Dispute Resolution, Lok Adalat, Drawbacks of Judiciary.

INTRODUCTION

"*The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.* "

-Sandra Day O'Connor

Every individual's fundamental right is to have disputes resolved in a fair, equitable, and moral manner. The preceding quotation correctly states that courts in any country should not be the places where dispute resolution begins, but rather the places where disagreements conclude after considering and trying many alternative dispute resolution techniques. In today's world, arbitration is the only means to settle conflicts. It is the method that arises from or is carried out as a result of Roman primary law. It has been one of the most important techniques of conflict resolution since ancient times. The effectiveness of shifting times has not waned over time. Where traditional venues for delivering justice are already overburdened with countless case files on the table, adopting arbitration as an alternative for conflict resolution is a must. It is one of the most popular strategies for resolving a conflict in a calm and transitory manner.

Alternative dispute resolution (ADR; sometimes known as external dispute resolution in some countries, such as India) refers to dispute settlement processes and techniques that allow disputing parties to reach an agreement without resorting to litigation. It's a catch-all word for the various methods through which parties might resolve disagreements with the assistance of a third party. The current legal system in India is evolved or inherited from the British rule. But now is the time to update or adapt the current system to administer justice in a more frequent and acceptable manner by making it less expensive, faster, and equitable.

Arbitration is a well-known mechanism used in the Indian legal system to resolve commercial disputes. It has been in use for many years in the form of village Panchayats, where disputes about business affairs such as agricultural farm property disputes and so on are settled. The primary goal of establishing this Arbitration method is to offer the aggrieved party with quick, cost-effective, and equitable justice. Due to the intense yearning of humanity, this search for justice has been seen in every civilisation.

The Alternative Dispute Resolution (ADR) is not immune from criticism. Some have dismissed it as a waste of time, while others realise the danger of it being used solely to determine the minimal offer that the other party will take. The delay in resolving matters in the courts, for whatever reason, has effectively destroyed the objective for which individuals seek remedy from the courts. The majority of the courts are overwhelmed with cases. The overcrowding of court proceedings necessitated the adoption of the Arbitration system in a country like India.

As a result, alternative dispute resolution mechanisms have become more crucial for businesses operating in India as well as those doing businesses with Indian firms.[1] So Alternate Dispute Resolution is necessary as a substitute to existing methods of dispute resolution such as litigation, conflict, violence and physical fights or rough handling of situations. It is a movement with a drive from evolving positive approach and attitude towards resolving a dispute.[2]

Access to inexpensive and expeditious justice is a basic human right.[3] As it is rightly held by Hon'ble Apex Court in its landmark judgment[4] that any procedure which do not provide for speedy disposal of the matter in controversy abridges the fundamental right of personal liberty and therefore, it is held by the Hon'ble Apex Court that the speedy trials is the fundamental right of every person. It is pertinent to note here that as ***"Justice delayed is justice denied".***

1. EVOLUTION OF ARBITRATION

Arbitration is a method of resolving disputes that does not involve the use of traditional legal systems. Dispute settlement outside of the courtroom is not a new concept; in the past, people utilised their own indigenous and non-judicial techniques to resolve their conflicts.

[1] Krishna Sarma, Momota Oinam & Angshuman Kaushik, "*Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution***",**
[2] Madhubhushi Sridhar, LexisNexis Butterworths, Alternative Dispute Resolution: Negotiation and Mediation, at 1, (1st Ed. 2006).
[3] Lawyers as Professionals – By Soli J. Sorabjee, Attorney General of India, AIR 2002.
[4] HussainaraKhatoon –V/s.- State of Bihar (1980) 1 SCC 98;

The use of an Alternative Dispute Resolution method is not new to the people of this country. It has existed in India from the dawn of time. Throughout history, man has experimented with procedure in order to make obtaining justice simple, inexpensive, reliable, and convenient.[5]

In ancient India, there were various levels of arbitration, such as the Puga, which was a board of people from various sects and tribes who lived in the same area; the Sreni, which were assemblies of tradesmen and artisans from various tribes who were connected in some way; and the Kula, which were groups of people bound by family ties. Panchayat rulings have been regarded as legally binding from ancient times. Panchayats were separate systems of arbitration subordinate to normal courts of law, according to Colebrooke (an English scholar and commentator on ancient Hindu law). A Kula's or kin group's choice was subject to modification by the Sreni, who might then be revised by the Puga. An appeal from the Puga's verdict might be made to Pradvivaca, and then to the king and prince. The Kula, Sreni, and Gana were the three sorts of popular courts in ancient times, with each succeeding one being more important than the one before it. The king or his officers were to intervene if and when these three failed to administer right justice. Unfortunately, Sukra does not clarify the differences between the three sorts of courts mentioned above. However, based on the Mitakshara, it is possible to conclude that the Kula court was made up of a group of close or distant relatives. It's worth noting that in ancient India, joint families were the norm, and they were typically quite large. When a dispute or conflict arose between two family members, it was normally resolved by the elders of the family. If they were unable to reach an agreement, the sreni or guild courts would step in. From 500 B.C., srenis, or guilds, formed an important component of ancient India's commercial life. They were well-organized, with four or five members on their executive committees. It's tough to tell what the Gana Court is like. It was most likely the same as Yajnavalkya's Puga Court, which was made up of people from all classes and occupations who all lived in the same spot. Obviously, it was the well-known panchayat courts.[6]

In the era of British Rule in India:

During the British time, the judicial system was altered. India's current judicial system is substantially similar to the judicial administration that existed during the British period.

[5] Dr. Shraddhakara Supakar, Law of Procedure and Justice in Ancient India, Deep & Deep Publication, New Delhi, 1986.
[6] P.B. Udgaonkar, Political Institutions and Administration, Motilal Banarsidass Publishers Pvt. Ltd., New Delhi, 1986, p. 209

Traditional institutions functioned as recognised systems of justice administration, not just as alternatives to the British-established formal court system. Both systems continued to run in parallel with one another.[7] The system of alternate dispute redressal was found not only as a convenient procedure but was also seen as a politically safe and significant in the days of British Raj.

However, with the advent of the British Raj these traditional institutions of dispute resolution somehow started withering and the formal legal system introduced by the British began to rule.[8]Alternate Dispute Resolution in the present form picked up pace in the country, with the coming of the East India Company. Modern arbitration law in India was created by the Bengal Regulations. The Bengal Regulations of 1772, 1780 and 1781 were designed to encourage arbitration.[9] The Bengal Regulation Act and other Acts were enacted, directing the parties to a dispute to seek settlement through arbitration, with the parties agreeing on their arbitrators.

Post-Independence Arbitration;

Bodies such as the panchayat, a group of elders and influential persons in a village deciding the dispute between villagers are not uncommon even today. The panchayat has, in the recent past, also been involved in caste disputes.[10] Lok Adalats were established in 1982 to settle disputes outside of the courts. The first Lok Adalat was held at Junagarh, Gujarat, on March 14, 1982, and it has since been expanded across the country. Initially, Lok Adalats operated as a voluntary and conciliatory body with no legal authority to make decisions. The institution of Lok Adalats got statutory status with the passing of the Legal Services Authorities Act, 1987, which took effect on November 9, 1995. The previous Arbitration Act of 1940 has been superseded by the new Arbitration and Conciliation Act of 1996 to keep up with the globalisation of commerce. Order XXXIIA of the Code of Civil Procedure, 1908, was amended in 1976 to provide for the settlement of family disputes. Under Sections 23 (2) and 23 (3) of the Hindu Marriage Act, 1955, as well as Section 34 (3) of the Special Marriage Act, 1954, provisions are made for reconciliation attempts. In 1984, the Family Courts Act

[7] 4 Sarvesh Chandra, ADR: Is Conciliation the Best Choice, in P.C. Rao and William Sheffield (eds.), Alternative Dispute Resolution: What it is and How it Works, Universal Law Publishing Co., New Delhi, (1997) p. 85.
[8] 5 K. Jayachandra Reddy, Alternate Dispute Resolution, in P.C. Rao and William Sheffield (eds.), Alternative Dispute Resolution: What it is and How it Works, Universal Law Publishing Co., New Delhi, (1997) p. 79.
[9] Nripendra Nath Sircar, Law of Arbitration in British India (1942), p. 6 cited in 76'th Report of Law Commission of India, 1978, p. 6, para 1.14
[10] http://www.nishithdesai.com/Research-Papers/adr.pdf

was passed. The Family Courts Act of 1984 mandates that the family court make reasonable attempts to reach an agreement between the parties.

The addition of section 89 and Order X Rule 1A, 1B, and 1C to the Code of Civil Procedure, 1908 by virtue of the 1999 Amendment represents a significant step forward in the Indian Legislature's embrace of the *"Court Referred Alternative Dispute Resolution*" system.[11]

1.1 Commercial Arbitration:

The concept has existed since the time of the ancient Egyptians, Greeks, and Romans, whose records have been utilised by historians to back up their claims. These documents show that, contrary to modern practise, the arbitrator in ancient times was generally a person who could be recognised and trusted by both parties; the better known the arbitrator, the more faith the parties had in his or her judgement.

Philip of Macedon, father of Alexander the Great, is recorded to have used arbitration to settle territorial disputes arising from a peace treaty with some of the Greek states in 337 BC.[12]

Today, the most common use of international arbitration is the resolution of commercial disputes, which is referred to as commercial arbitration. It is a method of resolving business issues in which the companies involved have stated in their manifestos that if a dispute arises, they will first seek arbitration. Each firm has the ability to appoint its own arbitrators, who will act in an informal capacity but with the authority of a judge and jury. If it was already stated in their contract, their decision will be binding on both parties.

Powers and Role of Indian Judiciary in uplifting the ADR:

Because India's judicial system is the primary best way of obtaining justice for aggrieved parties, the judiciary plays a critical role in advancing Alternative Dispute Resolution techniques. However, many people blame the formality, intricacy, and confrontational nature of courtroom proceedings for delivering unsatisfying outcomes for many parties. The courts was the most essential factor in persuading the parties to the dispute that arbitration was the best option. Due to the overburdening of the courts, the judiciary must consider other options

[11] 08_chapter 2pdf, p. 62, para 2.10 at https://shodhganga.inflibnet.ac.in/bitstream/10603/10373/8/08_chapter%202.pdf

[12] Bales, Richard C "Compulsory Arbitration : The grand Experiment in Employment"

to relieve the burden. The cases that could be resolved outside of court were sent to the Arbitration. Under section 89 of the Code of Civil Procedure, the judge of the court has the authority to send cases for conflict resolution through various kinds of ADR such as arbitration, conciliation, mediation, judicial settlement, or lok adalats.

When a dispute is resolved through conciliation, the settlement agreement has the same character and effect as an arbitral award under Section 74 of the Arbitration and Conciliation Act, and it is consequently enforceable as a court decree under Section 36 of the Act. When a settlement is reached before the Lok Adalat, the Lok Adalat's award is deemed to be a civil court decision under Section 21 of the Legal Services Authorities Act, 1987, and is therefore executable.

Except as stipulated in Part -1 of the aforementioned Act, the court shall not intervene in any subject relating to the arbitration: 1. The authority to refer parties to arbitration where an arbitration agreement exists (section 8). 2. The ability to issue an interim order in the case of a dispute (Section 9). 3. The authority to appoint arbitrators if the parties to an arbitration agreement cannot agree (section 11). 4. Authority to decide on the termination of the arbitration mandate [Sec 14(2)]. 5. The ability to assist in the gathering of evidence (section 27). 6. The ability to set aside an award (section 34). 7. Power to give arbitral tribunals a second chance to resume arbitral proceedings for the purpose of removing grounds for setting aside [sec34] (4). 8. The ability to enforce an arbitral award (section 36). 9. The authority to hear appeals (section 37). 10. The power to order the delivery of an award in exchange for payment of the court's costs [section 38(2)]. 11. In the absence of sufficient provisions in the award, the power to make an order for arbitration costs [section 39(4)]. Section 41(2) gives the court the authority to decide on questions connected to insolvency proceedings. 13. Power to extend the time limit for referring time-barred future disputes to arbitration [section 43(3)]. As a result, the function of the judiciary should encourage parties to resolve conflicts using ADR processes.

1.2 Loopholes in Indian Judicial System:

"There is no better test of the excellence of a government than the efficiency of its judicial system"

-Lord Bryce

Our Indian judicial system is well-known for being broad, tired, monotonous, uninteresting, and exhausting. The judicial process is not only prohibitively expensive for the average citizen, but it also takes years and years to complete. The use of Alternative Dispute Resolution (ADR) processes such as Lok Adalats, arbitration, mediation, and conciliation was thought of and then executed with commendable success in order to overcome the much-criticised delay in justice delivery. Despite the fact that alternative systems have provided people with prompt justice, the exercise has highlighted some important considerations among legal luminaries.

The Law Commission of Indian has maintained that, the reason for judicial delay is not a lack of clear procedural laws, but rather the imperfect execution, or even utter non-observance, hereof.[13] Given the huge number of pending cases, the governance and administrative control over judicial institutions through manual processes has become extremely difficult[14]

There are just a few options for resolving a dispute between two parties. When a dispute arises between two persons belonging to the same nation, the first and most common method is to resolve the matter through the courts created by the legislation of that country. This has been the most prevalent and important way used by Indian residents to resolve disputes with their fellow citizens.[15]

About 40 years ago, late Mr. M.C. Setalvad, the first Attorney General of India, address the bar Association of India and said:

"No doubt, the British system of administration was very good and led to excellent results, but it had its defects which have been accentuated in two ways. We are now a democratic and a very populous country. In these days, therefore, what is required is a radical change in the method of administration of justice. We want court to which people can go with ease and with as little cost as possible. It is not merely the quickness of justice but it is the easy approach

[13] Law Commission of India, 77th Report, pr.4.1..
[14] In all, 33,79,033 cases are pending before the High Courts. The total pendency thus is 2,78,22,030. This shows that out of the total national pendency at the subordinate Courts level, 70% is criminal cases and the remaining is civil cases. The total number of district and subordinate Courts are 12,401. These Courts are located in 2,066 towns
[15] Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution System, edition 2011 page no.76

and quick disposal both of which are needed and that only can be achieved if the system is completely overhauled."[16]

Justice R.C. Lahoti also observed that[17] *"Working under considerable handicaps such as inadequate funds, budgetary allocations for law and justice not being part of plan expenditure, lack of resources, shortage of staff and infrastructure, and the Indian judiciary can still claim a better standing with the other wings of governance in performance."*

1.3 Judiciary in the development and enhancement of ADR in India:

Every individual has the fundamental right to go to any dispute resolution centre and demand justice, which must be fair, quick, and inexpensive. In a country like India, where the population is already above average, adequate alternatives must be available to avoid delays in justice. Because the majority of the population lives in poverty, government and the judiciary must work together to encourage more parties to use arbitration. The judiciary had already done a lot of work in moving and pushing people to use arbitration instead of court proceedings.

The court should concurrently clarify the way for ADR to obtain legal recognition and give them the information about judicial expertise. The ADR approach is thought to satisfy both sides because the issues are resolved in a win-win situation rather than a one-sided loss. The courts also urge parties to use alternative dispute resolution (ADR) techniques to resolve their disagreements. Even government entities are encouraged to use the private management system to acquire and resolve issues. Both the ADR and judicial fields can work at the same time and figure out if their working methods intersect.

2. Contribution of Alternative Dispute Resolution in administration Justice:

The first case that has seen the Supreme Court passing an interesting and somewhat complicated judgment is the ***Yograj v. Ssang Yong Engineering***[18] case where the principal reason for dispute between the two parties was a decision by a lower court which asked Yograj to give away machineries and equipments. The Supreme Court found that, while the agreement was to be controlled by Indian laws, the presence of "curial laws" of Singapore

[16] Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution System, edition 2011 page no.76

[17] Justice R.C. Lahoti-"A Conspectus of Indian System" NYAYA DEEP Vol. VI-Issue 1, Jan 2005 pp.8-9

[18] (2012) 12 SCC

(which was also the site of arbitration) allowed the agreement to be governed by Singaporean laws. The Supreme Court's decision has been criticised, primarily because Singapore's status as the seat of arbitration appears to have influenced the outcome. Given the Supreme Court's prominence, such a decision is exceedingly incongruent.

The Supreme Court's strange judgments related to arbitration cases continued in its verdict on ***Dosco v. Doozan***[19] it excluded the first clause of the agreement which clearly stated Indian laws were supreme when it came to governing the agreement. It is unclear why India's top judicial authority appears to be so perplexed about the legal status of arbitration and whether Indian laws can or cannot govern arbitration agreements. Certain situations where the Supreme Court has ruled that Indian laws are final when it comes to managing an arbitration agreement can be identified.

An arbitral award is at par with a judgement of the court as recognized by the Supreme Court in the case of ***Ras Pal Gazi Construction Company Ltd. v. FCDA***[20] where Hon'ble Justice Katsina-Alu pronounced that "arbitration proceedings are not the same thing as negotiations for settlement out of court. An award made, pursuant to arbitration proceedings constitute the final judgement on all matters referred to the arbitrator. It has a binding effect and it shall upon application in writing to the court be enforceable by the court."

In the case of ***Olympus Superstructure Pvt. Ltd. v. Meena Vijay Khetan***[21] it was held that under sub clauses 2 (a)(iv) to Section 34 Arbitral Award may be set aside by the Court if the Award deals with the dispute.

Conclusion:

Because they are both reliant on each other, the main job for ensuring flawless justice should be for ADR and the Judiciary to operate together and concurrently. To relieve the courts of their enormous burden, the court must urge the parties to settle their issues amicably using ADR processes. Rapid resolution of business disputes will not prevent the parties from continuing their lawsuits, which will benefit the country's economy through increased trade. The most important thing for the judiciary to remember is to have the least amount of intervention in the ADR process possible, with the court only intervening if absolutely

[19] (2010) 8 SCC
[20] (2001) 10 NWLR
[21] AIR 1999 SC 2102; 1999(2) Arb. LR 695 (SC)

necessary. The ADR process should be given more leeway. If an arbitrator tries to be partial, the court should be strict with them and hold them responsible for any liability they may incur.

Until now, every other institution has played a significant part in the administration of justice. Some have done a much better job of delivering justice than others. The key issue here is their performance, which has been limited by a variety of factors such as a lack of financial, material, and human resources. The advantages of these procedures have not been fully explored as they should be. If the institutions are to perform at their best, there is still opportunity for improvement. ADR in India is still in its early stages compared to western countries. Even though ADR has been gradually introduced in India, many still prefer to go to court first. One of the reasons is a preference for right-based rather than interest-based dispute settlement. The right-based system favours litigation, whereas the interest-based approach favours alternative dispute resolution.

The study reveals that ADR has made a significant contribution to disputants' pursuit of justice in India, but it must be remembered that ADR is not intended to replace the formal adversarial method of dispute settlement. As previously said, the benefits of this can only be realised if it operates in tandem with or in addition to the formal system. The need for ADR is undeniable at this point; the question is how this system may be enhanced to make ADR a viable alternative to litigation.

Suggestions:

On the basis of my research work I furnish the following suggestions:

It is strongly recommended that the judiciary in a country like India organise training and advocacy programmes for lawyers or advocates, who are essentially arbitrators in the case of arbitration, with the right ways on how to behave themselves in the ADR process. As the use of alternative dispute resolution (ADR) grows, more cases should be filed under the Arbitration Act, allowing ADR to resolve more litigation and dispute situations in India. However, there are six measures that can be taken to improve the ADR process:

1. The first and most important step is to raise awareness of the importance of promoting Alternative Dispute Resolution Mechanisms among justice consumers.
2. Seminars and workshops can be held to raise awareness.

3. It should be made mandatory for cases to refer to ADRs.
4. The Judges should be in charge of the case.
5. The Judges and Lawyers should work together and form committed teams.
6. Courts have the authority to direct parties to use alternative dispute resolution mechanisms, and the court must play an important role in this regard. The court is also given authority to interfere at various phases of the proceedings. However, these objectives will not be met until the necessary infrastructure and institutional framework are in place. Courts should have the necessary infrastructure. Judges and the bar should be supplied with effective/modern facilities that will aid in the efficient disposition of cases.

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