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## CONTEMPORARY ISSUES IN ALTERNATIVE DISPUTE RESOLUTION LAW

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### Abstract

The Alternative Dispute Resolution systems are multifaceted. Alternative dispute resolution (ADR) refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts. It gives quick and cheap justice to the needy and aggrieved people. It is also the object of the alternative dispute resolution system to free and chains of the procedural laws. In most of the alternative dispute resolution systems, there is no court fee. Even if court fee is prescribed, it is very less and negligible. It helps the poor people. Minimizing the court's interference is also one of the significant features of the alternative dispute resolution systems. Equal value and recognition are accorded to the decision or award given by the most of alternative dispute resolution systems to that of civil court's judgement/decreed/order. The ADRs have multi-door opportunities. The aggrieved party can approach any one of the suitable. After completing the inquiry and completion of the proceedings. It is dissolved.

Primary the objects of alternative dispute resolution systems is based on the legal maxim "**Interest republicae ut sit finis litium**" (in the interest of the State, there should be an end to a litigation). Adoption of the alternative dispute resolution systems saves the time and expenses of the regular Courts. The intervention of the courts in arbitration proceedings shall be kept to a minimum. This is why those who opt for arbitration rather than pleat a court people will tend to develop a sense of favoritism towards the proceedings as well. People often find it better to approach the court at first.

There should be a limit on court intervention not only the intervention during the judicial process but also the intervention during the arbitral proceedings. This means there must be a limited scope to challenge the arbitral award under Section 14 of Arbitration Act 1996. And, so it was well debated and agreed that the involvement of the judiciary should be minimized to an extent.

**KEY WORDS:** Alternative Dispute Resolutions, Lack of awareness, Judicial Dispute Resolution, compromise, illiteracy.

### I. INTRODUCTION:

The present day new and modern judicial system was introduced by the Bruisers in India. Before the arrival, the village panchayats played an important role in the administration of justice. Every village was a republic. It was

self-sufficient and self-reliant in all respects. The village head or the gram panchayat conducts all civil and minor criminal proceedings. The law, which is now seen, was not found in the Indian villages before British reign. The administration of justice was



conducted basing upon the Dharmasashtras and customs. Gram Panchayat and caste system were very strong. Many of the problems were solved in the caste panchayats and gram panchayats.

Several models of ADRs are established in all the countries. However they may differ from each other. The constitution of each of the models of ADRS differs from others and particularly they cannot be compared with the models of other countries. The important reason for the evolution of the different models is the social economic, political and historical grounds and backgrounds prevailed in that country. For example "Ombudsman" of Sweden differs "Lokpal and "Lokayukta" of India in the constitution powers and function. There was no much difference in between civil and criminal justice. For evading the loan, capital punishment was common. The people feared to tell the false. Most of the matters concerning the transfer of property were carried only on oral agreements. The people feared to break their promised and oral agreements. In those days, morality in a high degree prevailed in the propel. After the Britishers conquered entire Indian and brought it under their control, they introduced all common laws in India. They introduced all the British statutes modifying them into India. The majority of the statues, which are in force now in India, were enacted by the Britishers for India during their reign.

Since the independence, the population has been growing tremendously and it has exceeded one hundred crore. The number of the villages has been decreased and has become the parts of cities. Urbanization and metropolitan cities. Literacy has been increased considerably; the values of the properties have been increased to several folds. Due to the urbanization, the morals of the people have been decreased. All this resulted into a huge litigation.

The object of justice is to give relief to the aggrieved and helpless persons. If the courts delay the proceedings and give the justice after

the petitioner's death or the subject matter exhausts, it cannot be called as justice. **Delayed justice is not justice.** The following legal maxims express the importance of the quick justice.

**Dilations in lege sunt odiosae (Delays in laws are hateful)**

**Dilato quae pro justitiafaciat acceptissima: quaecontra justitiam maxime invisa,** (Delay or suspension for justice sake is very acceptable, but delay contrary in justice is very hateful).

**Nulli differemus justitiam,** (Justice should not be delayed to any person).

Salus poluli est suprema lex: This legal maxim gives the meaning that 'the welfare of the people is the supreme for law". The law must provide individual freedoms. But at the same time it is its paramount consideration to look into the welfare of the people. The welfare is the supreme aim for law. For obtaining this end, there must be a check to increase of the litigations.

The ordinary civil and criminal courts proved that the delay is an essential and inherent ingredient of this system. There are not other ways to speed up the proceedings in the civil and criminal Courts: because these are confirmed and bound by procedural laws. i.e. the Indian Evidence Act 1872, the Criminal Procedure Code 1973, the /civil Procedure Code 1908 etc.

## II. Alternative /dispute Resolution Systems:

Since the beginning of 20<sup>th</sup> century, the Jurisprudents searched the other ways and means of alternative dispute resolution systems. They tried the ways to build alternative dispute resolution systems, in addition to the present day civil and criminal administrative system. The term "alternative" which is an adjective and also a noun, gives the meaning 'a choice between one and another'.

The Alternative Dispute Resolutions have become necessary to reconcile the competing interests. The parties having disputes arising



out of legal relationship, whether contractual or not, and desirous of setting them with the help of one or more persons called arbitrator, conciliator negotiator or mediator.

Majority of these systems doesn't follow the procedural laws. The Civil Procedure Code 1908, the Criminal Procedure Code 1973, the Limitation Act 1963, the Indian Evidence Act 1872, the Criminal Rules of Practice, the Civil Rules of Proactive etc. are not followed in the ADRs.

The majority of the ADRs do not strictly follow the legal rules. However, some of the ADRs are Court annexed, namely the Administrative Tribunal, Industrial Tribunal, Sales tax Tribunal, Income tax tribunal, Family Court etc. These Court-annexed ADRS adhere to the Procedural Laws and also the Principles of Natural Justice.

The Judicial Dispute Settlement Systems follow the adversary process. Whereas the ADRs follow a different process, which cannot strictly be included in the adversary process or in the inquisitorial process. In the ADRs the symptoms of both these processes can be seen. However, the qualities of adversary process are more in the ADRs. And there can be no party control in rigid terms. The presiding Officer of an ADR acts as a friend of both the parties and acts as amiable compositor.

III. **Significance of ADRs:** ADRs are solved quickly. In this regard, the Judicial Dispute Resolutions are criticized year of time taken to solve a case in the courts. It is reported in the Press as stated by the Justices of The Supreme Court that there are more than three crore cases pending in the Sub-ordinate Court. If a new case is not undertaken from today, at least three hundred years' time would be taken to solve these pending cases. This type of delay is not cause in the Alternative Dispute Resolutions. In fact, the Alternative Dispute Resolutions are innovated due to the abnormal delay of the judicial Dispute Resolutions if the Judicial Dispute Resolutions are solved quickly then there could not any necessary of the Alternative Dispute Resolutions.

The Alternative Dispute Resolutions provide a more flexible for a wide variety of disputes small or large and also it very cheaper. The Alternative Dispute Resolutions are concerned mainly with the facts and facts only. They need not go into the depth of the legal provisions. The Judicial Dispute Resolutions are mainly concerned with the procedural and substantive laws. The officers of the Alternative Dispute Resolutions are not invested with the judicial power and duty. They are not bound to follow the strict legal rules. Hence they are liberal to a great extent and thus access with the disputants with free will and consent. It makes an Alternative Dispute Resolutions more advantageous that the Judicial Dispute Resolutions.

The legal procedures are also mostly complicated in the Courts. The litigants cannot know the legal procedures and legal language. This is not the position before the ADRs. The parties can agree the terms regarding the language and procedure which are acquainted to them.

Case Law: I Northern Health Authority Vs. Derek Crouch Ltd, (1984) 2 All ER 175 CA), the Court of appeal observed: "The court does not have the power which the arbitrator had to open up and review the exercise of the architect a discretion since the court's jurisdiction was limited to determining and enforcing the contractual rights of the parties. The arbitrator, on the other hand because the parties agreement expressly gave him such power was entitled to modify the parties contractual rights by substituting his own discretion for that of the architect if he disagreed with the architect's certificates and opinions. Accordingly, if the parties chose to litigate rather than arbitrate the court would not have the same powers".

IV. **Techniques and Process:** The Alternative Dispute Resolutions consists arbitration, conciliation negotiation, mediation and array of hybrid procedures. The Alternative Dispute Resolution echinus is extra-judicial in character.



The concept of “compromise” is seen in the Alternative dispute Resolutions **Satisfaction** to both the parties is the essential ingredient of the ADRs. It is achieved by “**compromise**” between the disputants in the amicable and friendly way. Negotiation conciliation and mediation are the ways to get the compromise. Thus achieving the compromise between the parties by using amiable, amicable, friendly techniques is the most important technical process involved in the Alternative Dispute Resolutions.

#### **V. Lack of Awareness:**

Lack of awareness is the important impediment to the growth of arbitration in India is a lack of awareness among people. As a matter of fact only some of the business people, advocates are aware of the process relating to dispute resolution and it is obvious that many small scale business people who are unaware of such remedies are unable to avoid themselves of such procedures. The award must be enforced at any cause so as to protect the parties. Lack of enforcement of arbitral award is also one of the major causes in failure of the development in India. As we know that each and every problem has a solution. As a result it is important to address the solutions. Creating awareness among each and every individual irrespective of their professions, rich and poor in order to resolve the dispute quickly. It must be made mandate in order to get recognized and resolve disputes quickly. Court should interfere to refer parties to arbitration is the best kept to a minimum and under control and should nonetheless be a limited scope to challenge an arbitral award under section 34 of the Arbitration Act 1996. The ADRs are for the public purpose. They are meant to provide cheap, quick and simple procedure for solving the disputes. It also has the purpose of minimaxing the work load and number of the case on the civil courts. It also has the purpose of minimizing interference of the civil courts in the ADRs.

However, the people are not aware of these several modes and models of the ADRs, due to the reasons of illiteracy and poorness and

particularly lack of legal knowledge in the majority of the Indian people. Due to unawareness about the emergency of the alternative dispute resolutions, the majority people could not take the recourse of them.

**Mandatory Enforcement:** Bharatia International Bulk Trading Venture Global Engineering V. Satyam Computer Ltd and Bharat Aluminum Co. V. Kaiser Aluminum Technical Services. The court in Bharat Aluminum observed that the first part of the act exclusively lays down the procedures and guidelines for domestic arbitration whereas the second part of the act in accord with the UNCITRAL Model Law, New York Convention and Geneva Convention applies it should be noted that arbitration under Part I of the Arbitration and Conciliation Act 1996 include both arbitration in India between two Indian parties and International commercial arbitration held in India.

#### **CONCLUSION:**

Alternative Dispute Resolution has been evolving in India for a long time. But majority of Indian people not aware of such effective and time saving process. It is a less painful method of delaying with conflicts that occur within small business partnerships. Conflict is inevitable when it comes to owning an establishment, especially when there is lack of communication and planning strategy. ADR can assist in keeping the business intact by being fair (neutral mediator), cost efficient and fast while generating terms that both parties compromise with.

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