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Title- Evolution of Alternative Dispute Resolution Method

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Abstract

It is relevant to note the despite the legal acknowledgement of mediation, there is still a large interim in the law as there is no separate and staunch law for mediation yet. The amendment is key as it attempts to make ADR methods more conformist. We have done this research to lighten the alternatives of dispute resolution and future outcomes. We have done this research through the online sources and some amendments and articles. In conclusion section we have mentioned that how it will help to avoid the pendency of cases in courts.

Scope of Future Research

The future scope of this research is to analyse the loopholes in this particular field of research so that we can come through it and can promote the mediation culture. It can help in policy making and special law provisons for the mediation culture.

Research Outcomes for Industry/Community/ Government/ Policy Making

A number of companies will learn to use ADR productively, and those companies/ industries will be in fact reaping ADR'S predicted gains: lower costs, quicker dispute resolutions, and outcomes that preserves and can may be save or can improve the relationships. The community will also be in

benefit that it will cost lesser and time saving for the resolution of disputes outside the courts. For the government it will be more easier to focus on the essential and important issues and can save a lot of time of them and it will be more fruitful. By introducing amendments and dedicated laws by policy making then gradually it will decrease the pendency rate of the cases in courts.

Introduction

It is in opposition of the backdrop, that this research paper mean to discuss the various ADR mechanisms. The provisions present in India and the world over and its anomaly, implementation and problems in the Indian context. The various remedies to the situation have also been discussed.Alternative dispute resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails.Alternative dispute resolution (ADR) is an alternative to a formal legal system. It is an alternative to litigation .He said system emanates from dissatisfaction of many people with the way in which disputes are traditionally resolved resulting in criticism of the courts, the legal professions and sometimes lead to a sense of alienation from the whole legal system thus-the need for alternative dispute resolution.

The purpose of study and doing the research on this topic to acknowledge the importance of mediation and the future holdings of this culture. The benefits and alternative ways to resolve the disputes between the parties and the need to form a dedicated laws and amendments regarding this. The list of cases which we have gone through has been mentioned below:-

- Kamal Mehta v General Manager, Rajasthan Roadways Transport Corporation & Another, FAO No. 798 of 1999 Venkatesh v Oriental Insurance Co. Ltd., ILR2002KAR3666
- Smt. SoniKumari v Sri AkhandPratap Singh, Allahabad HC, 2018
- K.N. GovindanKuttyMenon v C.D. Shaji, SC, 2012
- ParmodvsJagbir Singh And Ors, 60 Punjab and Haryana High court

Review of Literature

It is noticeable that arbitration has yield over the years as the ideal tool for resolution of disputes that saves the court's time and mainly contributory in assisting the parties to make use of quick remedial measures. Every arbitration is based on perceptive application of law and its advancement is proof of its significance in the actual affairs. Thus, arbitration has come out as the most preferred platform for quick resolution of disputes especially in the industrial and the corporate realm. The report which had been submitted by the Justice Malimath Committee, In that it was recommended by the committee that after the formulation of the issue it should be made mandatory for the court to mention the dispute for resolution either by way of arbitration, conciliation, mediation, or through lokadalat44.

Method and materials

The method of writing which has been adopted is primarily logical and investigative throughout this research paper.

The materials which has been used in writing and has done the research based upon the online sources and with references of some legal books and online websites and editorials, they have been mentioned below:-

- https://www.mondaq.com/india/arbitration-dispute-resolution/537190/evolution-of-arbitration-in-india
- https://www.lexology.com/library/detail.aspx?g=18bee885-018c-49bb-abee-b949c77ae85c
- https://www.linkedin.com/pulse/evolution-alternative-dispute-resolution-indian-perspective-b-t #:~:text=ADR%20can%20be%20dated%20back,as%20early%20as%20500%20BC.

BOOKS:-

- Code of Civil Procedure by C.K Thakker
- Civil Procedure (CPC) with Limitation Act 1963
- Alternative Dispute Resolution: The Indian Perspective Hardcover – 9 January 2018 by OUP India (Author), ShashankGarg (Editor)

EDITORIALS:-

- https://www.thehindu.com/opinion/op-ed/settling-disputes-out-of-court/article24049676.ece/amp/
- https://www.thehindu.com/news/cities/Coimbatore/focus-on-alternative-dispute-resolution/article5328906.ece

Results and Discussion

With the arrival of the alternate dispute resolution, there is new approach for the people to resolve their disputes. The resolution of disputes in LokAdalat quickly has acquired good acceptance among the public and this has really given upswing to a new force to ADR and this will no doubt decrease the pendency in law Courts. There is a critical need for justice exemption through ADR mechanisms.

The ADR movement needs to be carried forward with substantial speed. This will considerably decrease the load on the courts apart from providing quick justice at the door-step, without extra cost being involved. If they are successfully given result then it will really achieve the goal of serving social justice to the parties to the dispute acquired.

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Defining the terms:

Arbitration:-Arbitration is a process in which a dispute is acknowledge, by reconciliation of the parties, to one or more arbitrators who make aconclusive decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution process instead of going to court.

As arbitration is a contract-based dispute resolution method, there may be steps place out in the contract which have to be keep before you can start arbitration. These can involve assemble meetings between senior people in the two organisations to aim to resolve the dispute or mediation.

Mediation:- Mediation is a process in which the parties discuss their disputes with the guidance of a trained impartial third person(s) who guide them in resolving the settlement. It may be a casual meeting among the parties or an arranged settlement meeting. The dispute may either be unsettled in a court or probably a dispute which may be filed in court. Cases suitable for mediation are conflicts in commercial dealings, personal injury, construction, workersredressal, labor or community relations, divorce, domestic relations, employment or any other issues which do not involve convoluted procedural or evidentiary issues. Presence at the mediation meeting is elective by the parties, except where controlled by statute or contract clause.

ADR is not exempt from criticism. Some have seen in it a waste of time; others aknowledge the risk that it be only initiated to check what is the minimum offer that the other party would agree. he delay in resolution of cases in Law Courts, for whatever reason it may be, has really conquered the purpose for which the people approach the Courts for their compensate. In many parts of India, fast development has mean to increased case burdens for already overburdened courts, further leading to notoriously slow adjudication.

As a result, alternative conflict resolution mechanisms have become more critical for businesses hadlings in India as well as those doing businesses with Indian firms. So Alternate Dispute Resolution (i.e;- after ADR) is necessary as a alternative to existing methods of conflict resolution such as litigation, conflict, violence and physical fights or rough handling of situations. It is a movement with a drive from evolving positive attitude towards resolving a dispute between the parties

In the subsequent parts of the paper we will discuss the evolution of ADR and its present scenario in the Indian context.

HISTORY

In India, the law and practice of private and transactional commercial disputes without court interference can be dated back to ancient time period. Arbitration or mediation as an alternative to conflict resolution by municipal courts has been widespread in India from Vedic time period.

The earliest known treatise is the Bhradarnayaka Upanishad, in which different types of mediation bodies viz (i) the Puga (ii) the Sreni (iii) the Kula are referred to. These mediation bodies, known as

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Panchayats, deal with varieties of disputes, such as conflicts of contractual, matrimonial and even of a criminal nature..The parties would ordinarily accept the decision of the panchayat and hence a resolution arrived consequennce to conciliation by the panchayat would be as keeping as the decision that was on clear legal obligations.

The Muslim rule in India faced the incorporation of the principles of Muslim law in the Indian culture. Those laws were systematically compile in the form of a explication and came to be known as Hedaya. During Muslim rule, all Muslims in India were controlled or ruled by Islamic laws- the Shari'ah as contains in the Hedaya. The Hedaya contains provisions for arbitration as well.

The Arabic word for arbitration is Tahkeem, while the arbitrator is termed as Hakam. An arbitrator was required to perform the qualities essential for a Kazee– an official Judge conducting over a court of law, whose decision was concillation on the parties subject to legality and validity of the judgement. The court has the jurisdiction to enforce such awards given under Shari'ah though it is not authorise to review the advantages of the dispute or the analysing of the arbitrator.

ADR plucked up pace in the country, with the coming imminent of the East India Company. The British government gave legislative form to the law of arbitration by formulating regulations in the three presidency towns: Calcutta, Bombay and Madras. Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit the conflict to the arbitrator, assigned after mutual agreement and whose decision shall be binding conclusive on both the parties. These remained in force till the Civil Procedure Code 1859, and were hold out in 1862 to the Presidency towns.

LEGISLATIONS OF ADR IN INDIA

Code of Civil Procedure

The Code of Civil Procedure, 1859 in its sections 312 to 325 dealt with arbitration in suits while sections 326 and 327 provided for arbitration without court intervention. The Code of Civil Procedure (Act 5 of 1908) repealed the Act of 1882. The Code of Civil Procedure, 1908 has laid down that cases must be encouraged to go in for ADR under section 89(1). Under the First Schedule, Order XXXII A, Rule 3 a duty is cast upon the courts that it shall make an endeavor to assist the parties in the first instance, in arriving at a settlement in respect of the subject matter of the suit.

The second schedule related to arbitration in suits while briefly providing arbitration without intervention of a court. Order I, Rule 1 of the schedule says that where in any suit, all the parties agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced; apply to the court for an order of reference. This schedule, in a way supplemented the provisions of the Arbitration Act of 1899.

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Indian Arbitration Act, 1899

This Act was substantially based on the British Arbitration Act of 1889. It expanded the area of arbitration by defining the expression 'submission' to mean "a written agreement to submit present and future differences to arbitration whether an arbitrator is named therein or not".

Arbitration (Protocol and Convention) Act 1937

The Geneva Protocol on Arbitration Clauses 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 were implemented in India by the Arbitration (Protocol and Convention) Act, 1937. This Act was enacted with the object of giving effect to the Protocol and enabling the Convention to become operative in India.

The Arbitration Act of 1940

The Arbitration Act, 1940, dealt with only domestic arbitration. Under the 1940 Act, intervention of the court was required in all the three stages of arbitration in the tribunal, i.e. prior to the reference of the dispute, in the duration of the proceedings, and after the award was passed.

This Act made provision for- a) arbitration without court intervention; b) arbitration in suits i.e. arbitration with court intervention in pending suits and c) arbitration with court intervention, in cases where no suit was pending before the court.

Before an arbitral tribunal took cognizance of a dispute, court intervention was required to set the arbitration proceedings in motion. The existence of an agreement and of a dispute was required to be proved. During the course of the proceedings, the intervention of the court was necessary for the extension of time for making an award.

Finally, before the award could be enforced, it was required to be made the rule of the court.[10] This Act did not fulfill the essential functions of ADR. The extent of Judicial Interference under the Act defeated its very purpose. It did not provide a speedy, effective and transparent mechanism to address disputes arising out of foreign trade and investment transactions.

Arbitration and Conciliation Act, 1996

The government enacted the Arbitration and Conciliation Act, 1996 in an effort to modernize the 1940 Act. In 1978, the UNCITRAL Secretariat, the Asian African Legal Consultative Committee (AALCC), the International Council for Commercial Arbitration (ICCA) and the International Chamber of Commerce (ICC) met for a consultative meeting, where the participants were of the unanimous view that it would be in the interest of International Commercial Arbitration if UNCITRAL would initiate steps leading to the establishment of uniform standards of arbitral procedure.

The preparation of a Model Law on arbitration was considered the most appropriate way to achieve the desired uniformity. The full text of this Model Law was adopted on 21st June 1985 by UNCITRAL.

This is a remarkable legacy given by the United Nations to International Commercial Arbitration, which has influenced Indian Law. In India, the Model Law has been adopted almost in its entirety in the 1996 Act.

This Act repealed all the three previous statutes. Its primary purpose was to encourage arbitration as a cost-effective and quick mechanism for the settlement of commercial disputes. It covers both domestic arbitration and international commercial arbitration. It marked an epoch in the struggle to find an alternative to the traditional adversarial system of litigation in India.

The changes brought about by the 1996 Act were so drastic that the entire case law built up over the previous fifty-six years on arbitration was rendered superfluous. Unfortunately, there was no widespread debate and understanding of the changes before such an important legislative change was enacted. The Government of India enacted the 1996 Act by an ordinance, and then extended its life by another ordinance, before Parliament eventually passed it without reference to Parliamentary Committee.

Arbitration, as practiced in India, instead of shortening the lifespan of the dispute resolution, became one more "inning" in the game. Not only that, the arbitrator and the parties' lawyers treated arbitration as "extra time" or overtime work to be done after attending to court matters. The result was that the normal session of an arbitration.hearing was always for a short duration. Absence of a full-fledged Arbitration Bar effectively prevented arbitrations being heard continuously on day-to-day basis over the normal working hours, viz. 4-5 hours every day. This resulted in elongation of the period for disposal.

VeerappaMoily also said in the ADR congress held in the year 2010 that the 1996 Act, although modeled along international standards, has so far proved to be insufficient it in meeting the needs of the business community, for the speedy and impartial resolution of disputes in India.

The Law Commission of India prepared a report on the experience of the 1996 Act and suggested a number of amendments. Based on the recommendations of the Commission, the Government of India introduced the Arbitration and Conciliation(Amendment) Bill, 2003, in the Parliament. The standing committee of law ministry felt that provisions of the Bill gave room for excessive intervention by the courts in arbitration proceedings.

PENDENCY OF CASES IN THE INDIAN COURT:-

Delay in justice not only affects the interest of the litigants but also undermines the capability of the judicial system in imparting justice in efficient and effective manner.

In Babu Singh v. State of Uttar Pradesh 12, Krishna Iyer J. while dealing with the bail petition remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to „fair trial whatever the ultimate decision. Speedy justice is a component of social justice since the

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Reasons Why You Need Arbitration:-

Arbitration may be a better alternative to some construction disputes, assuming that you use a qualified and skilled arbitrator or arbitration panel. Here are five benefits for using arbitration over litigation:

- Arbitration means that the decision maker is an experienced industry professional instead of a lay jury.
- Arbitration can provide better protection for your assets by minimizing your risk of large losses sometimes seen with jury verdicts.
- Arbitration can provide flexibility in scheduling, versus court where you are told when and where to show up without much room to negotiate.
- Arbitration can put an end to your case faster. The time taken by an arbitrator is usually less than that to get a case to court to resolve a construction dispute.
- Arbitration costs can be much less when compared to the one charged during any other legal process like litigation.

New Delhi: The Supreme Court has, through a unique step, set up a panel to firm up a draft legislation to give legal sanctity to disputes settled through mediation, which would then be sent to the government as a suggestion from the apex court.

"It is essential to have diploma and degree courses in mediation in national law universities. I have already had a talk with the Bar Council of India and the chairman thought it could be included in the syllabus for LLB for mediation. When we have this, we could have lawyers qualified as mediators through a degree. They could form a mediation bar," he had earlier told ET.

MODES AND PRACTICES OF ADR IN INDIA

ADR can be broadly classified into two categories: court-annexed options (Mediation, Conciliation) and community based dispute resolution mechanism (Lok-Adalat).

The following are the modes of ADR practiced in India:

1. Arbitration
2. Mediation
3. Conciliation
4. Negotiation
5. LokAdalat

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community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings." Similarly, In SheelaBarse v. UOI13 the Honourable Court reaffirmed that speedy trial to be fundamental right. Thus Right to speedy trial is well recognized fundamental right at present.

There are many forum of appeals provided in the existing legal system. For eg :- Appeal from small causes court lies to the District Court on both facts and law and again right of second appeal lies in the High Court which is known as Letters of Patent Appeal. This various Forums of appeal results cater delay in the justice delivery system.

Till July 2009, there were 53,000 cases pending in the Supreme Court, 40 lakhs in the different High Courts of India and 2.7 Crore in the different lower Court. Even if we assume that no fresh cases would be filed and there will be no increase in the strength of the judge then it would take 9 months to the Supreme Court to clear the backlog. Similarly, it would take 2 years and 7 months for the High Courts and 1 year and 9 months for the Lower Court to clear the pending cases. However, the figure would vary if we look the individual High Courts and Lower Courts. For eg. Allahabad High Court needs nearly 6 years to clear the backlog16. ADR has emerged as a new trend preventing court litigation and resolving disputes quickly and amicably.

Evolution of Arbitration In India

The industrial revolution has led to rapid escalation in global trade and commerce. To correspond with the economic growth and avoid prolonged litigation, the parties resort to arbitration as the preferred dispute resolution mechanism. Not only in India but cohesive global growth strategies and economies have realized that arbitration happens to be a favourable way out for all. Cross border transactions and bilateral trade relations have fostered affiliations between countries thereby increasing legal intricacies. Needless to say, disputes have also become inevitable and there is a demand for methodology to expedite legal remedies.

The earliest evolution of arbitration can be traced back to the era when King Solomon during his rule followed the biblical theory when he settled the issue between two mothers where each one was claiming the right on the baby boy and the issue was who the true mother of a baby boy1 was. Thereafter, arbitration was used by the rulers to settle territorial disputes and also for commercial disputes. According to historical references, arbitration has been in place even before the times of Christ. There has been references that prove the same. For instance, the Arabic word for arbitration is Tahkeem and arbitrator is Hakam. Similarly, in case of Persian language, an arbitrator is called as Salis and the party to same is known as Salisee. Moreover, the first law for arbitration came into force in England in the year 1697.

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Statutory Arbitration

When a law specifies that if a dispute arises in a particular case it has to be referred to arbitration, the arbitration proceedings are called "statutory arbitration". Section 2(4) of the Arbitration and Conciliation Act 1996 provides, with the exception of section 40(1), section 41 and section 43, that the provisions of Part I shall apply to every arbitration under any other act for the time being in force in India.

Fast track arbitration

Fast track arbitration is a time-bound arbitration, with stricter rules of procedure, which do not allow any laxity for extensions of time, and the resultant delays, and the reduced span of time makes it more cost effective. Sections 11(2) and 13(2) of the 1996 Act provides that the parties are free to agree on a procedure for appointing an arbitrator and choose the fastest way to challenge an arbitral award respectively. The Indian Council of Arbitration (ICA) has pioneered the concept of fast track arbitration in India and under its rules, parties may request the arbitral tribunal to settle disputes within a fixed timeframe.

2. Mediation:

Mediation is a process in which the mediator, an external person, neutral to the dispute, works with the parties to find a solution which is acceptable to all of them.[26] The basic motive of mediation is to provide the parties with an opportunity to negotiate, converse and explore options aided by a neutral third party, to exhaustively determine if a settlement is possible.[27]

Mediation is negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties.

Despite the lack of 'teeth' in the mediation process, the involvement of a mediator alters the dynamics of negotiations.[28] The concept of mediation is not foreign to Indian legal system, as there existed, different aspects of mediation.

The Village Panchayats and the NyayaPanchayats are good examples for this. A brief perusal of the laws pertaining to mediation highlights that it has been largely confined to commercial transactions. The Arbitration and Conciliation Act, 1996 is framed in such a manner that it is concerned mainly with commercial transactions that involves the common man rather than the common man's interest.

In India, mediation has not yet been very popular. One of the reasons for this is that mediation is not a formal proceeding and it cannot be enforced by courts of law. There is a lack of initiative on the part of the government or any other institutions to take up the cause of encouraging and spreading awareness to the people at large.

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1. Arbitration:

The definition of 'arbitration' in section 2(1) (a) verbatim reproduces the text of article 2(a) of the Model Law-'arbitration means any arbitration whether or not administered by a permanent arbitral institution'.] It is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is binding on the parties.

It is a private, generally informal and non-judicial trial procedure for adjudicating disputes. There are four requirements 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.

The essence lies in the point that it is a 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. Hence it follows that if the forum chosen is not required to act judicially, the process it is not arbitration.

Types of arbitration are:

Ad Hoc Arbitration

An ad hoc arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, etc. Provided the parties approach the arbitration in a spirit of cooperation, ad hoc proceedings can be more flexible, cheaper and faster than an administered proceeding. The advantage is that, it is agreed to and arranged by the parties themselves. However, the ground realities show that arbitration in India, particularly ad hoc arbitration, is becoming quite expensive vis-à-vis traditional litigation.

Institutional Arbitration

An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as according to the rules of that institution. It is important to note that these institutions do not arbitrate the dispute, it is the arbitrators who arbitrate, and so the term arbitration institution is inapt and only the rules of the institution apply.

Incorporation of book of rules in the "arbitration agreement" is one of the principle advantages of institutional arbitration. Institutional Arbitration, throughout the world, is recognized as the primary mode of resolution of international commercial disputes. It is an arbitration administered by an arbitral institution.

Further, in many arbitral institutions such as the International Chamber of Commerce (ICC), before the award is finalized and given, an experienced panel scrutinizes it. As a result, the possibilities of the court setting aside the award is minimal.

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6. LokAdalats:

LokAdalat was a historic necessity in a country like India where illiteracy dominated other aspects of governance. It was introduced in 1982 and the first LokAdalat was initiated in Gujarat. The evolution of this movement was a part of the strategy to relieve heavy burden on courts with pending cases. It was the conglomeration of concepts of social justice, speedy justice, conciliated result and negotiating efforts.

They cater the need of weaker sections of society. It is a suitable alternative mechanism to resolve disputes in place of litigation. LokAdalats have assumed statutory recognition under the Legal Services Authorities Act, 1987. These are being regularly organized primarily by the State Legal Aid and the Advice Boards with the help of District Legal Aid and Advice Committees.[34]

Legal Services Authorities Act, 1987:

The Legal Services Authorities Act, 1987 was brought into force on 19 November 1995. 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 not denied to any citizen. The concept of legal services which includes LokAdalat is a revolutionary evolution of resolution of disputes.

Though settlements were affected by conducting LokNyayalayas prior to this Act, the same has not been given any statutory recognition. But under the new Act, a settlement arrived at in the LokAdalats 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 LokAdalat. Section 20 provides for different situations where cases can be referred for consideration of LokAdalat.

Honorable Delhi High court has given a landmark decision highlighting the significance of LokAdalat movement in the case of Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board and Others[35]. The court passed the order giving directions forsetting up of permanent LokAdalats.

SUGGESTIONS FOR IMPROVING MECHANISMS

The evolution of ADR mechanisms was not of that much success. Thereby, the trend is the imposition of responsibility and duty on Court

I) Courts are authorized to give directives for the adoption of ADR mechanisms by the parties and for that purpose Court has to play important role by way of giving guidance. Power is also conferred upon the courts so that it can intervene in different stages of proceedings. But these goals cannot be achieved unless requisite infrastructure is provided and institutional frame work is put to place.

ii) The institutional framework must be brought about at three stages, which are:

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3. Conciliation:

Conciliation is "a process in which a neutral person meets with the parties to a dispute which might be resolved; a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences".

This consists in an attempt by a third party, designated by the litigants, to reconcile them either before they resort to litigation (whether to court or arbitration), or after. The attempt to conciliate is generally based on showing each side the contrary aspects of the dispute, in order to bring each side together and to reach a solution.

Section 61 of the 1996 Act provides for conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. After its enactment, there can be no objection, for not permitting the parties to enter into a conciliation agreement regarding the settlement of even future disputes.

There is a subtle difference between mediation and conciliation. While in meditation, the third party, neutral intermediary, termed as mediator plays more active role by giving independent compromise formulas after hearing both the parties; in conciliation, the third neutral intermediary's role, is to bring the parties together in a frame of mind to forget their animosities and be prepared for an acceptable compromise on terms midway between the stands taken before the commencement of conciliation proceedings.

4. Negotiation:

Negotiation-communication for the purpose of persuasion-is the pre-eminent mode of dispute resolution. Compared to processes using mutual third parties, it has the advantage of allowing the parties themselves to control the process and the solution.

Essentials of Negotiation are:

1. It is a communication process;
2. It resolves conflicts;
3. It is a voluntary exercise;
4. It is a non-binding process;
5. Parties retain control over outcome and procedure;
6. There is a possibility of achieving wide ranging solutions, and of maximizing joint gains.

In India, Negotiation doesn't have any statutory recognition. Negotiation is self counseling between the parties to resolve their dispute. Negotiation is a process that has no fixed rules but follows a predictable pattern.

1. Awareness: It can be brought about by holding seminars, workshops, etc. ADR literacy program has to be done for mass awareness and awareness camp should be to change the mindset of all concerned disputants, the lawyers and judges.
2. Acceptance: In this regard training of the ADR practitioners should be made by some University together with other institutions. Extensive training would also be necessary to be imparted to those who intend to act as a facilitator, mediators, and conciliators. Imparting of training should be made a part of continuing education on different facets of ADR so far as judicial officers and judges are concerned.
3. Implementation: For this purpose, judicial officers must be trained to identify cases which would be suitable for taking recourse to a particular form of ADR. [36]

iii) ADR Mechanisms to be made more viable: The inflow of cases cannot be stopped because the doors of justice cannot be closed. But there is a dire need to increase the outflow either by strengthening the capacity of the existing system or by way of finding some additional outlets.

iv) Setting up of Mediation Centres in all districts of each state with a view to mediate all disputes will bring about a profound change in the Indian Legal system. These Mediation centres would function with an efficient team of mediators who are selected from the local community itself.

v) Not many Indians can afford litigation. This kind of state of affairs makes common people, especially rural people, cynical about judicial process. We must take the ADR mechanism beyond the cities. Gram Nyayalayas should process 60 to 70 percent of rural litigation leaving the regular courts to devote their time to complex civil and criminal matters.

vi) More and more ADR centres should be created for settling disputes out-of-court. ADR methods will achieve the objective of rendering social justice to the people, which is the goal of a successful judicial system.[37]

vii) The major lacuna in ADR is that it is not binding. One could still appeal against the award or delay the implementation of the award. "Justice delayed is justice denied." The very essence of ADR is lost if it is not implemented in the true spirit. The award should be made binding on the parties and no appeal to the court should be allowed unless it is arrived at fraudulently or if it against public policy.[38]

Study to ADR institutions across the world:-

The various institutions and provision Governing the ADR mechanisms all over the world are discussed below:-

Internationals organization-

a) Permanent court of arbitration (PCA)

b) World trade organization(WTO)

c) International chamber of commerce(ICC)

d) United nation commission on international trade law (UNCITRALl)

e) Other treaties

Reasons behind introduction of ADR in India :-

Alternative dispute of resolution in India was founded on the Contitutional basis of articles 14 and 21 which deal with equality before law and right to life and personal liberty respectively these articles are enshrined in the III part of the constitution of India which list the fundamental rights of the citizens of India .ADR also tries to achieve the directive principles of state policy relating to equal justice and free legal aid as laid down under article 39-A under constitution.

It is clear from any review of the court decisions that followed Halsey that the courts encourage ADR and regularly impose sanctions. Parties who express an unwillingnessto mediate must at least provide reasons as to why at the time. A court will not look favourably on reasons raised for the first time, to justify a failure to mediate, when the question of costs comes to be considered. In SPGF II SA v OMFS Co &Anr, Mr Recorder First QC noted that:

"The court should be wary of arguments only raised in retrospect as why a party refused to mediate or as to why it cannot be demonstrated that a Mediation would have had a reasonable prospect of success. First such assertions are easy to put forward and difficult to prove or disprove but in this case unsupported by evidence. Secondly, and in any event, it is clear that the courts wish to encourage mediation and whilst there may be legitimate difficulties in mediating or successfully mediating these can only be overcome if those difficulties are addressed at the time. It would seem to me consistent with the policy which encourages mediation by depriving a successful party of its costs in appropriate circumstances that it should also deprive such a party of costs where there are real obstacles to mediation which might reasonably be overcome but are not addressed because that party does not raise them at the time. I have little doubt that that is the position here, namely that any such inhibitions to mediation could have been overcome at the time."

Silence in the face of a request to mediate will almost certainly be considered to be both a refusal and an unreasonable refusal. Briggs LJ provided fresh judicial support for the Halsey decision again in the case of PGF II SA v OMFS Co &noting that:

"In the nine and a half years which have elapsed since the decision in the Halsey case, much has occurred to underline and confirm the wisdom of that conclusion, reached at a time when mediation in particular had a track record only half as long as it has now..... this case sends out an important message to civil litigants, requiring them to engage with a serious invitation to participate in ADR, even if they have reasons which might justify a refusal, or the undertaking of some other form of ADR, or ADR at some other time in the litigation. To allow the present appeal would, as it seems to me, blunt

that message. The court's task in encouraging the more proportionate conduct of civil litigation is so important in current economic circumstances that it is appropriate to Emphasises that message by a sanction which, even if a little more vigorous than I would have preferred, nonetheless operates pour encourager les Autres."

NEED FOR ALTERNATIVE DISPUTE METHODS:-

The main reason for the origin or need of the ADR is the tiresome processes of litigation, costs and inadequacy of the court system. It has ability to provide quick and cheap relief. The present mode of adversarial system fails in providing the real justice between the parties. The party, who approaches the Court of justice with pain and anguish in their heart, faces various problems and suffers physically, economically and mentally. The present system fails to deliver quick and inexpensive relief to the party. The procedure is also very complex. This leads to a search for an alternative mechanism which should be inexpensive, quick and with supplementary to the process of the traditional civil court. However, at the same time the elements of judiciousness, fairness, equality and compassion cannot be discarded for expeditious disposal. It is well said that "justice delayed is justice denied" and at same time, it is also said that "justice hurried is justice buried". In Fuerst Day Lawson Ltd v Jindal Exports Ltd18 the Honourable Supreme Court held observed that the object of Alternative Dispute Resolution Act 1996 is to provide speedy and alternative solution to the dispute and avoid protraction of litigation. The provisions of the Act have to be interpreted accordingly.

Alternative Dispute Resolution promotes amicable settlement and help in the preservation of the relations. Since there is direct involvement of parties in the settlement process there is no need of the involvement of technical and formal procedures. However, amicable settlement does not mean compromise at any cost rather it is reasonable compromise factor.

LEGISLATIONS RELATING TO ADR IN INDIA :-

Legislators in India has incorporated various provisions in different statutes pertaining to ADR. The list of such legislations are as follows :-

- Section 89 of Civil Procedure Code.
- Order 23 Rule 3 of the Civil Procedure Code.
- Order 32-A of the Civil Procedure Code.
- Section 80 of the Civil Procedure Code.
- Arbitration and Conciliation Act – 1996.
- Legal Services Authorities Act – 1987.
- Section 320 of Criminal Procedure Code.
- Section 9 of Family Court Act .
- Inter State water Dispute Act.

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Advantages of ADR :-

I) **Privacy and Choice in the Tribunal –** One of the major significance of arbitration is privacy and confidentiality of the proceedings. Some people prefer to settle their dispute out of the public gaze. Particularly in matrimonial disputes it is very effective. Because people don t want that their private disputes to come inthe public. Arbitration also saves matrimonial home and relations because the dispute is resolved peacefully with the consensus of the parties. If matters come to the ordinary civil court in most of the cases the relation become strained and family shatters. Further, some disputes involve highly technical issues therefore it would be useful if at least one member of the tribunal is expert in that field. Since in arbitration it is the party who select the member of the tribunal, they select at least one member expertise in that field. However, in the ordinary court judge may not be expert in that field and therefore we can t expect proper justice in that case.45

ii) **Flexibility –** Arbitration is very much flexible both in time and procedure. If dispute needs urgent resolution, the parties can choose a tribunal who will act promptly rather depending on the luck of the draw from a court list. The parties are also free to choose the most suitable procedure. The parties are also free to be represented by anyone of their choice and they are not bound by rules limiting appearance to persons with particular legal qualifications.

iii) **Neutrality and Equality–** Where the parties belongs to the different countries they don t wishes to litigate in the ordinary court of law rather they prefer arbitration. Because Arbitration offers them Neutrality in the choice of law, Procedure and tribunal. They can choose the law and procedure of the third or they can appoint an Arbitrator which belong to the third country. It gives them confident of equality and there is parity of power between them.

iv) **Principal of Natural Justice–** Arbitrator is not bound by the strict procedure of the Civil Procedure Code and law of evidence. However, he has to follow the principle of natural justice. It is one of the advantage of the alternative dispute resolution that it avoids technicality and complexity of law and focus on theproblem of the disputant parties and try to resolve it with simple method or procedure.

v) **Enforceability of award –** Another advantage of the arbitration is the extensive enforceability of the award. Today, there are various conventions which Recognise arbitral awards and enforce it in many countries than English court judgment.48

vi) **Control over both the process and the outcome –** An important benefit of using ADR methods is that the disputant has control over both the process and the outcome of the resolution.

vii) **Amicable Settlement** - Alternative disputes method promote amicable settlement of dispute. It enables the parties to resolve the dispute and bury the past. Which results in the preservation of the present relation and at the same time it paves better for future.

viii) **Payment of Court fee –** In Alternative Dispute Resolution there is no need of payment of Court fees as it is paid in the ordinary court before the hearing of civil cases. If court fee is not paid, the court does not entertain the suit. Sometimes, the parties are not in a position to pay the court fee. ADR is the best resort for those kind of people.

ix) **When a disputant goes to the court-** he knows that he would win or lose all. On the Contrary, if he gives his consent for the informal settlement, he knows very well that he might not get all that he wants, but he will also not lose everything.

x) **Procedural flexibility –** ADR provides procedural flexibility which is not found in the traditional court. It may be as casual as a discussion around the conference table. The disputant has freedom to choose the procedure and applicable law.

xi) **Win- Win Situation –** The Court procedure results in win-lose situation. In other words, in the ordinary court litigation a party shall either win the case or lose hisclaim. On the contrary, in ADR a person may not get all that he wants, but he will certainly not lose everything.

xii) **The most significant feature of ADR-** is that it does not only resolve the dispute but also the pathology of the dispute. Which hit at the root of the dispute and it bring normalcy in the relationship of the disputant.

xiii) **ADR provides participatory solution-** Being participatory solution in nature its implementation becomes easier.

Cases which can be referred to ADRs:

1. All cases relating to trade, commerce, and contracts, including - disputes arising out of contracts (including all money claims); a. Disputes relating to specific performance; b. Disputes between suppliers and customers; c. Disputes between bankers and customers; d. Disputes between developers/builders and customers; - disputes between landlords and tenants/licensor and licensees; e. Disputes between the insurer and insured;

2. All cases arising from strained or soured relationships, including

   a. Disputes relating to matrimonial causes, maintenance, custody of children; b. Disputes relating to partition/division among family members/coparceners/co-owners; and c. Disputes relating to a partnership among partners.

3. All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

a. Disputes between neighbors (relating to elementary rights, encroachments, nuisance, etc.); b. disputes between employers and employees; c. disputes among members of societies / associations /Apartment owners Associations;

In Venkatesh v. Oriental Insurance Co. Ltd.,54 Karnataka High Court had given the affirmative answer to these questions in the following words,-

"a Court can suo-moto or at the request of even one of the parties, refer the case to the LokAdalat provided that it is done after giving a hearing to all parties and it is satisfied that there are chances of settlement or that the case is a fit one to be taken cognizance by the LokAdalat, and records such satisfaction. In fact, we may say that Courts owe a duty to examine all cases to find out whether they are fit cases for reference to LokAdalats. If 8 to 10 years old cases are pending in a Court and if cases which are 3 or 4 years old have no chance of being taken up for trial in the immediate near future, there is no reason why a Conciliation should not be attempted in such cases, by reference to LokAdalat. In fact, with the establishment of permanent LokAdalats, there is no reason why the Court should not, at the time of framing issues, apply its mind whether the case is a fit case for reference to LokAdalat and if found fit, after giving a hearing to the parties refer it to LokAdalat. The Bar and Bench owe a duty to identify these cases which deserve negotiated settlement and settle such cases. The LokAdalat movement under the Act will become a success only when all types of cases, and not only motor accident cases and petty cases, are settled by conciliation.

In Kamal Mehta v. General Manager,59 RajasthanRoadways Transport Corporation, Punjab and Haryana High Court observed that LokAdalat can pass an award in a dispute upon the basis of the compromise between the parties; it cannot transgression the powers of the court and pass an award on merits. As per the Legal Services Authorities Act, LokAdalat award become final and binding; however, if the award is not passed on the compromise then, it does not attain finality. The High Court further held that the Legal Services Authorities Act does not specify the remedy against the LokAdalat award especially if there is any objection against such award.

In ParmodvsJagbir Singh AndOrs, 60 Punjab and Haryana High Court held that the aggrieved person of the LokAdalat award cannot invoke section 151 of CPC for challenging the award; he can invoke supervisory powers of High Court under article 227 of Indian Constitution for challenging the LokAdalat award. In Smt. SoniKumari v Sri AkhandPratap Singh,LokAdalat passed a decree on the basis of the compromised deed of the parties on Divorce. Later, the wife filed an appeal before the High Court for challenging the LokAdalat decree. She contended that the procedure lay down in Family Courts Act and Legal Services Authorities Act were not followed and she had been coerced to give her consent for the compromise. However, the High Court dismissed the appeal and stated that LokAdalat award cannot be challenged through appeal; it can be challenged through writ under article 226/227 of Indian Constitution, that too in very limited grounds

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In K.N. GovindanKuttyMenonvs C.D. Shaji,65 Supreme Court has come across a question Whether the magistrate court's referral of a case which falls under section 138 Negotiable Instruments Act and the award passed by the LokAdalat is considered as Decree of the civil court and executable by the civil court or not. In this case, a magistrate court had referred a 138 Negotiable Instruments Act case to the LokAdalat. The LokAdalat passed the award on the basis of the agreement of the parties. Later, the award debtor had not complied with the award; hence, the award holder had filed an execution petition before the principal Munsif court. However, the Munsif court had rejected the execution petition stating that LokAdalat's award on section 138 of Negotiable Instruments Act was not a decree. High Court of Kerala had upheld the view of Munsif Court. Later, he approached the Supreme Court under a special leave petition. Supreme Court directed the Munsif Court (execution court) to execution petition and proceed further.

Conclusion

Mediation is a negotiation process. Parties who go through the mediation process participate directly and with free consent to this process. Resolving the disputes through a process which is under the supervision of a mediator is called mediation. The aim of mediation is to provide a fair, neutral, speedy decision or conclusion to the parties. Meditation can be done for any matter. But nowadays, the concerned topic is Divorce. Mediation for divorce is a must process and needs to be done before going to the court. Through mediation, the burden of the court becomes less and the parties can confidently make their point clear to each other. Mediation is a non-judicial and informal process that needs to be done by the divorcing couples. Mediation centers do not pass the judgment but give the couples solutions to smoothly repair the cracks in their marriage. After the mediation process, the divorcing couples may give another chance to their relationship or file a petition for divorce in the court. After the mediation process, the divorce becomes a mutual divorce with the consent of both the spouse. Section 9 of Family Court Act, 1984 also states that before going to the court, the partners need to go through the mediation process. Therefore, mediation is a must for all the divorcing couples to give their marriage one more chance.

Belief in alternative dispute resolution takes on the character of a moral value. For believers it represents a “best practice” not only in producing technically superior outcomes but of being “ The right thing to do”. To conclude, it is suggested that ADR system should be Institutional. But at the same time a caveat is also suggested, that one must be careful to avoid the dysfunctions that frequently accompany successful Institutional. Because the ADR movement is still in the formative stage, there is much to learn about the feasibility of alternatives to litigation. ADR is, as yet, a highly speculative endeavor. We do not know whether ADR programs can be adequately staffed and funded over the long-term; whether private litigants will use ADR in lieu of or merely in addition to litigation; what effect ADR may have on our judicial caseload; whether we can avoid problems of "second class"

justice for the poor; and whether we can avoid the improper resolution of public law questions in wholly private fora. In light of these and other uncertainties about ADR, we should continue to view alternative dispute resolution as a conditional venture, subject to further study and adjustment. Every new ADR system should include a formal program for self-appraisal and some type of "sunset" arrangement to ensure that the system is evaluated after a reasonable time before becoming permanently established.

ADR can thus play a vital role in constructing a judicial system that is both more manageable and more responsive to the needs of our citizens. It is essential, as the aforesaid discussions illustrate, that this role of ADR be enhanced in the resolution of important constitutional and public law issues by ADR Mechanisms, that are independent of our courts. Fortunately, few ADR programs have attempted to remove public law issues from the courts. Although thismay merely reflect the relative youth of the ADR movement, it may also manifest an awareness of the danger of public law resolution in non-judicial.

The main object of Alternative Dispute Resolution is to give quick, cheaper and efficient dispute resolution.

My suggestions regarding the promotionof ADR in India52 :-

There is need to spread awareness of ADR through seminars, workshops and other means to not only uneducated people but also well educated people. Because in most of the cases it has been seen that even well educated people are much aware about its structure and functioning.

At the same time, there is need to extend or create facilities, services and infrastructure for the effective implementation of ADR practice.

There is need of effective coordination both at operational and structural level for the success of ADR mechanism.

There is need of promoting pre-trial conciliation.

There is need of establishing institutions to provide proper training to mediators, negotiators, and conciliators.

There is need to establish more organizations like ICA, ICADR , Indian Chamber of Commerce to promote and strengthen the ADR mechanism.

Organise legal aid camps in rural areas: In rural areas people are not even aware about their basic fundamental rights. They must be made aware about it and also about the available forum for the Redressal of their grievances.

No compromise on Quality: Free legal aid should not mean providing poor or inferior legal services. The lawyer to provide the free legal aid service should be experienced. As Justice Blackmun has

rightly said in Jackson v. Bishop that; "The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice."

Student interest – Classroom teaching can teach the basics of law but can not imbibe among the students the sense of humanity and moral obligation to aid the poor and the destitute. In this regard I would like to appreciate the initiatives taken by the various universities for incorporating practical training of students in the course curriculum. For eg :- Bangalore university provides 200 marks for this curriculum in B. A. L.LB programe. If we give the law students exposure of lokAdalat, mediation centre, court visit, jail etc. then only they could follow it up and develop interest to choose it as a carrier option. If law students are given such exposure it has two two-fold benefit :-

a) Needy people like under trial prisoners will aware from the legal status of their case

b) Student would get practical application of law which would help them once they pass out from the college and join profession.

- There is need to encourage Gram Nayalaya, Mobile Courts etc.
- There is need to encourage networking among various law schools and colleges to organize more seminars and conference on the importance of ADR not only in Law schools and colleges but also in other corporate offices, rural areas etc.

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