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CONTEMPORARY ISSUES IN ALTERNATIVE DISPUTE RESOLUTION

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ABSTRACT

“Justice delayed is Justice denied and Justice hurried is Justice buried” – Dr. Martin Luther King Jr. This phrase means that if justice is not carried away earlier even if it delivers later will not be the real justice because when there was a need of that justice, it was not carried away. So in order to accelerate the process of justice delivery, the concept of Alternate Dispute Resolution has emerged in the world and in India also. This article helps to get insight knowledge of the history as well as current trend going on in the field of ADR. This article also helps the reader to understand the concept of ADR and its types. The emerging issues which are degrading the value of ADR as well as suggestions are tried to bring in this article to better understand the problems and the ways to resolve these issues.

Keywords – Alternate Dispute Resolution, ADR, Mediation, Counselling, Lok Adalat

I. Introduction – The concept of ADR is not a new subject in India. It has emerged from ancient times to today itself and founded to be an effective tool to settle down the disputes and promotes harmony among the society. ADR caters various forms such as mediation, conciliation, arbitration, negotiation, etc. some of these types are existed since ages in India. Mediation is one of the forms which has proved its significant importance from past time. In ancient times, when a dispute among two business parties emerged, their disputes were referred to a mediator known as ‘Mhajans’ and in villages, they were known as ‘panchas’. These panchas were consists of five persons, collectively called as “Panch Parmeshwar” who were prominent and elder persons of the society and they resolved the disputes among parties after hearing all their concerns. This practise of Panchas is still existed today in Indian villages. In Mahabharata, Lord Krishna also played a role of a mediator and mediate the disputes among the Kaurvas and Pandyas. This concludes that ADR is not a novel mechanism in India but it had developed over a period of time. New forms of ADR got developed

and collectively enriching the dispute resolving mechanism.

Over the period of time, ADR had established itself as an efficient tool for accelerated justice delivery and ease the process of legal framework. But with the advent of ADR in India seems efficient, it also possessed several issues adjoined with itself resulting in more complexities in Indian judicial system and it’s Jurisprudence. ADR such as mediation, arbitration, conciliation, negotiation etc. had proved its effectiveness but its result founded to be insufficiently low.

II. ADR OVERVIEW :-

ADR is defined as Alternate Dispute Resolution which is a mechanism for resolving disputes among parties. It is an alternate form of method which counters dispute resolving in an accelerated manner and require less resources. One of the special feature of ADR is that it is a hassle free process in which people does not require to visit courts and found it difficult to resolve their dispute. Some of the common methods of ADR are as follows:-

A. Arbitration – Arbitration is one of the method of ADR in which the disputing parties

engages a third person known as arbitrator who hears their disputes, examines the presented evidences of both the parties and then made a decision over it. The decision made by the arbitrator bounds both the disputing parties to accept and abide by the decision of the arbitrator. In India, Arbitration is governed by Arbitration and Conciliation Act, 1996 which paved the way to speedy justice and helped out the courts to reduce the burden of pending cases of Indian Courts.

B. Mediation – Mediation is another form of method in which a third person known as mediator who is appointed by the disputing parties, agreed mutually or the court appoint a mediator if the disputing parties failed to appoint a mediator. The disputing parties then approached the mediator and disclosed all the disputed facts and then the mediator made efforts to reach on a mutual settlement agreed by the disputing parties. However, the decision made by the mediator is not binding on the disputing parties as the mediator only enunciate the negotiation which both the disputing parties could reach on the mutual agreed settlement.

C. Conciliation – Conciliation is another kind of Alternate Dispute Resolution which is also governed by the Arbitration and Conciliation Act, 1996. It is completely out of court method to resolve the disputes among parties. A conciliator is a third person who is appointed to hear the dispute and formulate a proposal to the disputing parties in order to resolve their disputes. However, the proposal made by the conciliator is voluntary in nature and does not binds the parties to accept the proposal. Either of the disputing party may refuse to accept the proposal and are free to abide or not to abide by the provisions of the proposal.

D. Lok Adalat – Lok Adalat is one of the innovative method in alternate dispute resolution which is established by the government to settle the disputes among parties through compromise and adjudication. Lok Adalat is governed by the Legal Services

Authority Act, 1987 which consists of matters which are allowed to be settled amicably by the parties such as civil cases, matrimonial cases, MACT cases and petty offence cases. Lok Adalat are organized by District Legal Service Authority in their jurisdictional courts.

III. Contemporary Issues in Alternative Dispute Resolution Law Review –

The current regime of Alternate Dispute Resolution developed over a period of time but there are several issues which acted as a barrier to growth of Alternative Dispute Resolution in India as follows:-

1. Contemporary Issues in reference to Arbitration form of Alternate Dispute Resolution –

Arbitration is one of the best method of dispute resolution among parties outside of conventional Court proceedings. While Arbitration offers several benefits, there are several contemporary issues associated with this form of ADR such as:-

- a. Lack of Dispute resolving skills in Arbitrator
- b. Lack of Proper Infrastructure
- c. Lack of Awareness
- d. Outdated existing Law

• Lack of Dispute Resolving skills in Arbitrator

Arbitration is a very professional quality of a person. Arbitrator has not only solve the problem between the parties but has to deliver the decision which satisfies the disputing parties. These skills are really important in a person i.e. arbitrator. It has seen that most of the arbitrators lacks these qualities resulted in the low scope of dispute resolution by ADR.

• Lack of Proper Infrastructure

The arbitration is a process in which it requires special attention for the settlement of dispute through an arbitrator. This requires arbitration sessions are take place in a proper arbitration centre which must be available for conduction of these sessions.

• Lack of Awareness

Despite its advantages, arbitration is not widely known or used in India as an alternative dispute

resolution method. Many people and companies are unaware of arbitration as a viable option for resolving disputes or are reluctant to participate in the procedure due to worries about its enforceability, a lack of confidence in the arbitrators, or perceived biases.

- **Outdated of existing law**

The Arbitration and Conciliation Act was enacted in India in 1996 to regulate arbitration proceedings, but it has since undergone numerous revisions. The extent of judicial review, excessive court interference, and the enforcement of arbitral awards are some of the provisions that continue to raise questions. The arbitration process is frequently hampered by these problems due to confusion and uncertainty.

2. Contemporary Issues in reference to Mediation form of Alternate Dispute Resolution – Due to its success in resolving disputes, mediation has become a popular alternative dispute resolution (ADR) technique worldwide. However, there are new concerns about mediation that must be addressed. These problems include some of the following:-

- a. Standard and Consistency of Mediators
- b. Mediated agreement enforceability
- c. Lack of Appropriate Law

- **Standard and Consistency of Mediators**

Mediators' abilities and dependability can differ greatly. To facilitate efficient and impartial mediation processes, mediators should have a high level of expertise, training, and experience. However, some jurisdictions lack standardized accreditation and regulation of mediators, which result in variations in the calibre of mediation services rendered.

- **Mediated agreement enforceability**

Agreements reached through mediation are generally enforceable and binding, but ensuring compliance can be difficult. Sometimes parties will reach an agreement during mediation, but they'll later break it or try to renegotiate the terms. Maintaining confidence in the mediation process depends on making sure that mediated agreements can be enforced.

- **Lack of Appropriate Law:**

Since there is no legal authority to bind the mediation process, it is informal relates to a lack of confidence in the mediation process. Judicial justice's lack of effectiveness is a direct result of disputes involving legal proceedings in Indian courts has shown to be a time-consuming, expensive, and difficult process. In accordance with section 89 of Code of Civil Procedure, which specifies how mediation process should be done. There is no such statutory or legal sanctity to follow the settlement, despite the mediation process, a mediator's rule applies. So, it's necessary for the appropriate implementation of the mediation -related legislation.

3. Contemporary Issues in reference to conciliation form of Alternate Dispute Resolution –

As a form of alternative dispute resolution (ADR), conciliation entails the involvement of a third party who is impartial in the process of mediating disputes. Conciliation has a number of benefits, but there are also some current problems with it. Among them are the following:

- a. Voluntary Participation
- b. Non-Binding Decision
- c. Selection of Qualified Conciliators

- **Voluntary Participation** – Participation of All Parties: Conciliation is dependent on the participation of all parties. Assuring the parties' willingness to participate in the conciliation process, though, is one of the modern issues. Some parties might be hesitant to take part because they have doubts about how effective or fair the process will be, or they might choose to use a different method of resolving their differences.

- **Non-Binding Decision** – Decisions made through conciliation are not legally binding, in contrast to arbitration. Although the conciliator assists parties in coming to a mutually acceptable resolution, the agreement is not binding unless both parties voluntarily abide by it. The absence of legally binding decisions can occasionally lead to disputes resurfacing or parties failing to adhere to the terms of the agreement.

- **Selection of Qualified Conciliators** – Conciliators should be chosen carefully because their abilities, knowledge, and objectivity are crucial to the process's outcome. However, choosing a qualified conciliator can be difficult, especially when there is a small pool of qualified and experienced individuals available. Another difficulty in ensuring the competence of conciliators is the absence of specialized conciliation training programs or standards.

4. Contemporary Issues in reference to Lok Adalat form of Alternate Dispute Resolution – In India, the Lok Adalat is a type of people's court where disputes are arbitrated or settled through settlement talks or mediation. Although Lok Adalat has been important in providing accessible and quick justice, there are some current problems with this mechanism. Several are listed below:

- a. Limited Scope
- b. Enforcement Issues
- c. Lack of Knowledge
- d. Limited Expertise

- **Limited Scope**

Lok Adalats primarily handle cases that fall into defined categories, such as ongoing legal proceedings, pre-litigation issues, and criminal offenses that can be compounded. Due to its narrow scope, Lok Adalat cannot be used to settle certain complex or uncompoundable cases of disputes.

- **Enforcement Issues**

Despite the fact that Lok Adalat judgments and awards are enforceable in court, there have been some cases where parties breach the terms of the settlements and awards. It can be difficult to implement Lok Adalat judgments, and it can occasionally take a long time and be laborious to turn a Lok Adalat settlement into a court order.

- **Lack of Knowledge**

Many people, particularly in rural areas, might not be aware of the idea and advantages of Lok Adalat. Because of this ignorance, Lok Adalat's potential as an ADR mechanism is underutilized. Public awareness campaigns are required to let

people know about the benefits of Lok Adalat, as well as how to use its services.

- **Limited Expertise**

Retired judges, attorneys, and social workers who serve as conciliators or mediators frequently make up Lok Adalats. The skill and knowledge of these conciliators can differ, especially in highly specialized fields like business disputes, intellectual property, or technical issues. The effectiveness of Lok Adalats can be increased by ensuring the availability of skilled and trained mediators in a variety of fields.

IV. SUGGESTIONS

The following recommendations can be taken into consideration in order to improve the problems with Alternative Dispute Resolution (ADR), which includes various methods like arbitration, mediation, conciliation, and Lok Adalat.:-

- To increase awareness and educate the public, businesses, and legal professionals about the advantages and accessibility of ADR techniques, advocate awareness campaigns. To spread knowledge about ADR and how effective it is at resolving disputes, hold workshops, seminars, and training sessions.
- **Strengthening the Legal Framework:** The laws governing ADR procedures should be regularly reviewed and updated. Make sure that laws include provisions for the enforceability of agreements and awards, minimal court involvement, and precise rules for confidentiality and privacy in order to create a supportive and favourable environment for ADR.
- **Create Accreditation and Training Programs:** Create accreditation and certification programs for mediators, arbitrators, and conciliators. Establish standardized training programs to advance the professionalism, expertise, and skills of ADR practitioners. To ensure the ongoing improvement of ADR services, promote ongoing professional development.
- **Enhance Quality Control and Regulation:** Implement ADR service quality control and regulation mechanisms. Establish committees

or organizations in charge of establishing guidelines, observing practitioners' conduct, and resolving grievances or disagreements involving ADR procedures. In ADR proceedings, this can support preserving the processes' professionalism, morality, and fairness.

- Enhance the fusion of alternative dispute resolution practices with the established legal framework. Establish systems for seamless coordination, such as clear guidelines for ADR referral, enforcement of ADR outcomes, and collaboration between ADR providers and courts. Encourage courts to support and actively promote the use of ADR.
- Encourage Specialization: Encourage ADR specialization by creating ADR panels or centres that concentrate on particular fields, such as business disputes, construction disputes, family law, or intellectual property. As a result, it will be possible to guarantee that ADR practitioners are well-versed in these specialized fields and skilled at handling disputes there.
- Adoption of Technology: Incorporate technology into ADR procedures to increase accessibility, effectiveness, and economy. Examine the use of secure digital platforms for document sharing and case management, video conferencing, and online dispute resolution. This can make it easier for participants to participate remotely, lower geographic barriers, and simplify administrative tasks.
- Evaluate and Monitor Performance: Continually assess the efficiency of ADR providers and processes to pinpoint areas for improvement, collect user and stakeholder feedback. Keep an eye on the effectiveness of case handling, the satisfaction of the parties involved, and the quality of ADR services.
- Collaboration and Cooperation: Promote communication, coordination, and cooperation among the various ADR participants, including the judiciary, the bar, business associations, and service providers. To discuss problems, exchange best practices, and advance ADR as the preferred dispute resolution method,

encourage communication and information sharing.

These recommendations can be put into practice to improve the overall efficacy, acceptability, and accessibility of ADR, which will result in faster dispute resolution and less stress on the traditional court system.

V. CONCLUSION

Alternative Dispute Resolution has emerged its growth through the ages. Presently, it has become a substitute over traditional litigation. People are choosing it for its various advantages such as acceleration, less formality and quick dispute resolution. It will not be wrong to say that ADR has emerged as one of the great instrument in lessen down the burden of the courts. However, there is an urgent need to bring more effective laws in the field of Alternative Dispute Resolution. The issues pertains to ADR must be tackle down as to create more effectiveness of ADR and alternatively lessen the burden of pending cases in India.

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