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ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN INDIA FOR CODE OF CIVIL PROCEDURE

Siddhiben Girishbhai Bhatt

Student, Anand Law College, Anand.

Corresponding Author: Siddhiben Girishbhai Bhatt

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Abstract:

Alternative Dispute Resolution (ADR) is becoming an important part of the legal systems of every country in the world. It will help the legal actors to find out their role of mediation development and strengthening the alternative dispute resolution system. Alternative dispute resolution (ADR) refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts. It is normally thought to encompass mediation, arbitration, and a variety of "hybrid" processes by which a neutral facilitates the resolution of legal disputes without formal adjudication. These alternatives to adjudication are advocated on a variety of grounds. Potential benefits are said to include the reduction of the transaction costs of dispute resolution because ADR processes may be cheaper and faster than ordinary judicial proceedings; the creation of resolutions that are better suited to the parties' underlying interests and needs; and improved ex post compliance with the terms of the resolution.

We have seen besides than court system, there are other ways for people to solve the dispute. There have been extraordinary efforts to develop strategies aimed at more effective, less costly, and more satisfying resolution of conflict, including more wide and proper use of mediation and other "alternative dispute resolution" (ADR)methods. The research paper studies the relationship between ADR and court trial but also emphasizes the wider uses of mediation and other procedure choices. It shows the positive sign of cost and time savings and plentiful other benefits of some court-annexed ADR programs, it is evident that much depends on the shape and structure of such procedures. ADR in commercial sectors suggests that the practice of mediation has grown in recent years, reflecting in sights that it offers significant potential benefits to the business. In this research paper, the effort has been done to analyze the research questions, hypothesis, research methods, meaning of ADR, methods of ADR in India, provisions relating to ADR, the role of legal practitioners during ADR procedure in India.

Keywords: Negotiation; Arbitration; Mediation; Conciliation; Facilitation.

Introduction:

In India, the truth is that a current judicial system requires not only that just results are reached but they be reached speedily. Everyone knows court procedure is very lengthy

and it takes a very long time to get justice. Due to the burden of cases on the court, it feels like the litigation continues for the generation of the parties/litigant, and from time to time it brings on even to the next generation. In this long process of litigation, the party/litigant may suffer a lot and finish his resources in addition to physical and mental tortures. Sometimes, civil cases may even give rise to criminal cases because of lengthy litigation and parties did not handle the pain to get justice on time. In India, the justice delivery system through courts has given rise to severe problems like undue delays, enormous pendency of cases, and expensive litigation. It is very difficult for the poor and marginalized people to have contact with fairness. In these conditions, all the system of law courts must find out some mechanism where such grey areas can be effectively and adequately taken care of. Alternative Dispute Resolution (ADR) contains the effective procedure to help in quick and cost-Effective justice; it also has the possibility to lessen the burden in the ambiguity of the legal matters in India.

Brief History of Alternative Dispute Resolution:

The chronicle of ADR can be traced to our historical path. The idea of Lok Adalats (People's Court) is an advanced contribution of India to the World's Jurisprudence. In India, it was a long practice and past of ADR process like Mediation and Lok Adalat being practiced in the Indian society at the grass-root level, these are called Panchayats. The ancient concept of solving an issue or dispute through Arbitration, Conciliation, Mediation, or Negotiation known as the decision of "Nyaya Panchayat" is abstracted and exists in the process of Lok Adalat. The concept of mediation has been practiced with great

Later in the 21st Century, this ADR process has been developed with more frequency in the Western countries. Its background can be drawn in the USA, notably at the Pound Conference in 1976 and followed by two legislations i.e. The Civil Justice Reforms Act, 1990, and The Administrative Dispute Resolution Act, 1996. Many Statutes in America make mediation mandatory for dispute resolution. The State Bar Association shave set up mediation centers and the American Bar Association has its intensive section for dispute resolution. Other countries like the United Kingdom have also

introduced a mediation system as an alternate dispute resolution mechanism. It was followed by the United Kingdom, besides, Civil Procedures Reforms of 1999, Lord Chancellor's Department announced in 2001 that all government disputes should be resolved through settlement procedures. Similarly, the ADR mechanism was encouraged and applied in Australia, South Africa, and Sri Lanka.

ADR is now a growing and accepted tool of reform in dispute management in American and European commercial communities. ADR can be considered as a cooperative problem-solving system. It is important to note that in the field of international ADR is the adoption of the UNCITRAL (United Nations Commission on International Trade Law) model on international commercial arbitration. Thereafter, it is pertinent to mention here that the said model is that it has adopted the concept of arbitration and conciliation to designate it for universal application. The model was adopted by the member countries on the recommendation of the General Assembly of the UN in view to having uniform laws for the ADR mechanism. During that time, many international treaties and conventions have been enacted for establishing ADR globally. Some of the important international conventions on arbitration are mentioned as under:

- The Geneva Convention on the execution of the foreign award, 1927.
- The New York Convention of 1958 on the recognition and enforcement of a foreign arbitral award.

In India, Part III of Arbitration and Conciliation Act, 1996 provides for International Commercial Arbitration.

Moreover, a few steps to give strength to the international commercial arbitration is the formation of several institution sand organizations such as:

- International Court of Arbitration of the International Chamber of Commerce (ICC).
- Arbitration and Mediation Centre of World Intellectual Property Organization.
- American Arbitration Association (AAA).
- International Centre for Dispute Resolution (ICDR).
- Organization of American States (OAS), etc.

During discussing the importance of ADR, Former Chief Justice

of the American Supreme Court, Justice Warren Burger, had observed:

"The harsh truth is that we may be on our way to a society over run by hordes of lawyers, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain want relief and they want it as quickly and inexpensively as possible."

"The obligation of the legal profession is to serve as healers of human conflict and we should provide a mechanism that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about."

Research Questions:

- What is the role of Legal Practitioners before, during, and after ADR?
- What is the Legislative Approach in ADR?
- Whether the reference to ADR Process is Mandatory?
- What are the advantages of ADR?
- Can ADR help to ease the pendency of cases?

Hypothesis:

- ADR helps to save the time of litigants, advocates, and judges/arbitrators.
- The ADR u/s 89 of the Code of Civil Procedure 1908 leads to a lot of problems in the application of the ADR.
- People are unaware of the process of ADR in India?
- Not using the Arbitration clause in the Arbitration agreement suffers a lot in Litigation?

Methodology:

- Fundamental Research
- Descriptive Research
- Doctrinal Research
- Qualitative Research
- Case Laws

Meaning of Alternative Dispute Resolution:

Alternative Dispute Resolution ("ADR") is a term that includes a broad variety of methods for managing or resolving disputes that differ in kind and scope from judicial adjudication. But ADR is more than simply an

alternative or corrective to the existing court structures. Many times ADR recommends lawyers a better way to practice law, presenting opportunities for problem-solving, reconciliation, and openness to clients' needs and interests that do not exist in traditional legal practice.

Methods of ADR

There are five methods in Alternative Dispute Resolution ("ADR")

- Mediation
- Arbitration
- Conciliation
- Negotiation
- Lok Adalat

These alternatives to adjudication are advocated on a variety of grounds. ADR processes may be low-cost and quicker than ordinary judicial proceedings; the creation of resolutions that are better suited to the parties' underlying interests and needs; and amended ex-post compliance with the terms of the resolution as shown as under the following:-

Alternative Dispute Resolution (ADR) Methods:

Mediation: Mediation is the facilitation of a negotiated agreement by a neutral third party who has no decision-making power.

Arbitration: Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

Conciliation: Conciliation is an alternative out-of-court dispute resolution instrument. Like mediation, conciliation is a voluntary, flexible, confidential, and interest based process.

Negotiation: Negotiation is the preeminent mode of dispute resolution. Negotiation is almost always attempted first to resolve a dispute. Negotiation allows the parties to meet in order to settle a dispute.

Lok adalat: Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably.

Facilitation: Facilitation as an ADR tool refers to an outside person staying neutral, leading the process, and creating participation in a group.

Role of Legal Practitioner:

Legal Practitioners have multiple roles in ADR legal practice. First, the legal practitioner engages with clients,

courts, and judges, as well as with each other. The counsel helps the clients to understand the merits of ADR processes and review and help implement the agreements that clients make in ADR. In some cases, legal practitioners later may argue in court against the enforceability of agreements created in ADR. In court-connected ADR programs, lawyers may act as either third-party neutrals or as one- sided advocates for clients. Finally, lawyers are often in a professional relationship with each other when participating in ADR processes.

Provisions Relating To ADR

Before the existence of Section 89, CPC various provisions gave the power to the Courts to refer disputes to mediation. There are provisions are in the Industrial Disputes Act, 1947, Section 23(2) of the Hindu Marriage Act, 1955, Section 9 of the Family Courts Act, 1984. Likewise, such provisions in Section 80, Order XXIII, Rule 3, Order XXVII, Rule 5-B,Order XXXII- A and Order XXXVI of the Code of Civil Procedure, 1908.

The Supreme Court noticed in the Industrial Disputes Act that, "the policy of law emerging from Industrial Disputes Act, 1947 and its enactments is to provide an Alternative Dispute Resolution mechanisms to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil court.

SECTION 9 Of The FAMILY COURTS ACT, 1984, mandates the family court to assist and persuade the parties at the first instance, to arrive at a settlement.

SECTION 107(2) Of The CODE Of CIVIL PROCEDURE provides that subject to such conditions and limitations as may be prescribed, "The appellate court shall have the same power sand shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein." Hence, it is contingent that the provisions regarding Alternative Disputes Resolutions apply to appellate courts also. Order 23, Rule 3,Code of Civil Procedure mandates the courts to record a full settlement or compromise and pass a decree in terms of such settlement or compromise. But the compromise decree has to be recorded as a whole togather the intention of the parties.The court duty applies Its judicial mind while inspecting the terms

of the settlement. The compromise shall not be recorded casually. The court has its duty to satisfy itself about the legality and authenticity of the compromise.

The government or statutory authorities are defendants in a large number of suits pending in various courts in the country. Section 80 of CPC, and some other statutes require service of notice as a condition precedent for filing of a suit or other proceedings against the government or authority. It is observed that in a large number of cases where the government is a defendant either the required notice is not replied to or in a few cases where a reply is sent; it is generally vague and evasive. Thus, the object of S. 80 of CPC, and similar provisions get defeated. It not only gives growth to unnecessary litigation but also consequences in expenses and costs to the government state treasury.

The entity of notice under section 80 of CPC is to give the government enough warning of the case which is going to be filed against it and an opportunity to it to settle the claim without litigation. It allows the government to consider its legal position and accordingly settle the claim out of court. The notice under section 80 of CPC intends to alert the state to negotiate a just settlement or at least have the courteousness to tell the potential outsiders why the claim is being resisted. The primary object of section 80 of CPC, and further similar provisions is to curtail litigation and area of dispute.

The Apex Court has directed that all governments, central or state or other concerned authorities nominate within three months, an officer who shall be made to ensure that replies to notice under section 80 of CPC, or similar provisions are sent within the specified period and the replies shall be sent after due application of mind. This direction of the Supreme Court shall put the government authorities in a conciliation mode and promote early settlement of disputes.

Section 89 has been inserted in the Code of Civil Procedure by the CPC (Amendment) Act, 1999. It became effective from 01.07.2002. Section 89 CPC reads as follows:

Section 89: Settlement of disputes outside the court: Where it appears to the court that there exist elements of a settlement which maybe acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the

parties, the court may reformulate the terms of a possible settlement and refer the same for:

- Arbitration.
- Conciliation.
- Judicial settlement including settlement through Lok Adalat.
- Mediation.

Where A Dispute Has Been Referred For Arbitration Or Conciliation:

The provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

Lok Adalat: The court shall refer the same to the Lok Adalat by the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987), and all other provisions of that Act shall apply in respect of the dispute so-referred to the Lok Adalat.

Judicial Settlement: The court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act.

Mediation: The court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The Supreme Court, to correct the draftsman's error, has held that the definitions of "judicial settlement" and "mediation" in clauses (c) and (d) of Sec. 89(2) of CPC shall have to be interchanged as follows:

(c) For "mediation", the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act.

(d) For "judicial settlement", the court shall affect a compromise between the parties and shall follow such procedure as may be prescribed.

ORDER 10 RULE 1-A

"The direction of the court to option for any one mode of alternative dispute resolution: After recording the admissions and denials, the court shall direct the parties to the suit to option for either mode of the settlement outside the court as specified in sub-

section (1) of Section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be optioned by the parties."

ORDER 10 RULE 1-B

"Appearance before the conciliatory forum or authority: Where a suit is referred under Rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit."

ORDER 10 RULE 1-C

"Appearance before the court consequent to the failure of efforts of conciliation: Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it."

SECTION 89 OF CPC talks the jurisdiction on the court to refer a dispute to an ADR process whereas Rules 1-A to 1-C of Order X lays down the manner in which the jurisdiction is to be exercised by the Court. The scheme is that the court explains the choices available regarding the ADR process to the parties, permits them to choose for a process by consent, and if there is no consent, proceeds to choose the process.

Need of ADR In India:

The system of dispensing justice in India has come under great pressure for several reasons mainly because of the huge pendency of cases in courts. In India, the number of cases filed in the courts has shown a tremendous increase in recent years resulting in pendency and delays underlining the need for alternative dispute resolution methods. A Resolution was adopted by the Chief Ministers and the Chief Justices of States in a conference held in New Delhi on 04.12.1993 underneath the chairmanship of the then Prime Minister and presided over by the Chief Justice of India.

Advantages of ADR:

- Through ADR, reliable information regarding the case can be gathered and an amicable settlement of the case can be arrived at.
- In Mediation or Conciliation, disputants themselves take the decisions with the intervention of the Mediator.
- Lesser formalities in ADR than in the litigation.

- Settlement through ADR Process is cost-effective and less time-consuming
- There is a win-win situation in the ADR system for the parties whereas in the litigation procedure there is a win-lose situation.
- Through the ADR system the result is final and the award has been passed by the Sole Arbitrator or Arbitral Tribunal.

Advantages of Mediation:

- Mediation is participative and the parties directly participate in the negotiation.
- Parties have control over the mediation. They have the right to decide whether or not to settle the dispute and the terms of the settlement.
- Mediation procedure is very speedy, efficient, and cost-effective.
- Mediation is a private process.
- Communication between the parties is better and effective.
- Mediation helps to maintain, improve and restore relationships between the parties.
- Mediation process is voluntary because the parties are at liberty to option-out of it at any stage. If any party feels that the mediation process is not helping him, he can option out of it.
- Mutually beneficial settlement is reached out in mediation.
- The process of mediation always considers the long-term and underlying interests of the parties at each stage of the dispute resolution process.
- As per rules, Court fees will be refunded if the settlement was done by the court through the process of Mediation.

Advantages of Lok Adalats:

The Apex Court, emphasizing the importance of Lok Adalats has observed:

- "Lok Adalats have been created to restore access to remedies and protections to lower the burden of petty cases in the regular courts.
- Experience has shown that not only huge numbers of cases are settled through Lok Adalats, but this system also has definite advantages, some of which are listed below:

- Speedy justice and saving from the lengthy court procedures.
- Justice at no cost.
- Solving problems of back-log cases.
- Maintenance of cordial relations.

CASE Laws:

In 1981, in GURU NANAK FOUNDATION V. RATTAN SINGH [1], Desai, J. observed with regards to the 1961 Act that the arbitration system has become ineffective. The fact was that even in cases if the arbitrator passed an arbitral award, the parties used the provisions of the Act to challenge the award. This remark presented the 1961 Act as an additional layer which party may choose or not, before the litigation process. The omissions in the provisions of the 1961 Act, made it redundant and people ended up approaching the courts for litigation. Arbitration is a procedure that was meant to be cost-effective and time-efficient, but the 1961 Act failed miserably to achieve this objective. This act would be further rescinded and replaced by the Arbitration and Conciliation Act, 1996. In 1985, United Nations Commission on International Trade Law (UNCITRAL) presented a comprehensive model for arbitration. The Arbitration and Conciliation Act, 1996 is based on the UNCITRAL model. The Arbitration and Conciliation Act,1996 has been subjected to two more amendments in 2015 and 2019.

The Apex Court held in the case titled FOOD CORPORATION OF of INDIA V. JOGINDER PAL, [2] also emphasized the ADR system of adjudication through arbitration, mediation, and conciliation as a modern revolution into the field of the legal system and it has brought ground-breaking changes in the administration of justice. It can deliver a better solution to a dispute more expeditiously and at a lesser cost than in regular litigation.

AFCONS INFRASTRUCTURE AND OTHERS VS. CHERIYAN VERKAY CONSTRUCTION COMPANY PVT. LTD. AND OTHERS, [3] the plain reading of the words in Section 89 of CPC "where it appears to the court that there exist elements of a settlement", clearly displays that the cases which are not appropriate for ADR process would not be mentioned under section 89. In Afcons's Case, the Apex Court has specified an excluded category of cases that are considered not to be suitable for ADR Processes. Consequently, having a hearing to consider remedy to ADR processes under section 89 of CPC,

is mandatory. Nevertheless, the concrete reference to an ADR Process in all cases is not compulsory. The court has to consider whether the case falls under an excluded category, if yes, then it is not to be referred to ADR Process. In such cases of excluded category, the court should record a brief order referring to the nature of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of the issue and trial. In all other cases(except excluded category), reference to ADR Procedure is a necessity.

The Supreme Court appreciated the scope of ADR Mechanisms in procedural as well in family law in JAG RAJ SINGH V. BRIPAL, [4] the Court stated and observed that the approach of a court of law in matrimonial matters is much more constructive, affirmative, and productive rather than abstract, theoretical or doctrinaire. The Court also said that matrimonial matters must be considered by the courts with human viewpoint and understanding and to make every endeavor to bring about a compromise between the parties.

Conclusion:

When parties need to resolve a legal dispute, a trial before a state-sanctioned court is only one alternative and one in frequently chosen at that. Most civil suits are resolved by negotiation not by adjudication by "bargaining in the shadow of the law". Arbitration, mediation, and a variety of hybrid methods now represent an array of other possible ways in which a third party (other than a judge) can be involved in dispute resolution. Whether and how ADR helps to overcome barriers to achieving effective outcomes, and the effects of its introduction on incentives to settle and the efficiency of the Dispute resolution system, warrant further theoretical and empirical study by law and economics scholars.

Human development has come a long way forward as far as methods for dispute resolution are worried. The growth of ADR mechanisms has been conspicuously driven by the objective of resolving the dispute in a timely and cost-effective manner. The evolution of ADR mechanisms represents a knotted situation; and, it is important to note that both legislature and judiciary have had a hard time in rearranging all the ADR mechanisms and rules regarding them. The past of ADR mechanisms started with the enactment of arbitration laws which evolved a lot over time. By the time the other ADR

mechanisms collided on the door of the Indian Parliament and Parliament was wise enough to include these new procedures to solve the dispute. The Government of India also ensured that these ADR methods are used on a specific basis in some industries, for example, the Commercial Courts Act, 2015 and the Micro, Small, and Medium Enterprises Development Act, 2006. There has been dissatisfaction within the legal fraternity with regards to amendments in Section 89 of CPC, which has been resolved based on the recommendations of Justice (Retd.) M. Jagannadha Rao Committee Report. In the current scenario, the Indian Government is taking additional steps in the evolution of ADR mechanisms wherein it desires to make India a global last stop for arbitration and other dispute resolution methods.

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4. Jag Raj Singh v. Bripal Kaur; (2007) 2 SCC 564.