

TRACKING DOWN THE DEVELOPMENT OF ADR AND ITS VARIOUS ASPECTS

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ABSTRACT

In India there is a mechanism known as alternative dispute resolution. whether it is civil matter or criminal matter we all know about procedure established by law. Law can be of two main type one is called as substantive and other as procedural law .substantive law determines about our rights and liabilities and how we will achieve or ensure our substantive law it is through the procedural law. "Procedural laws are very good servants but procedural laws are very bad masters". We have CR.PC, CPC or I.E.A which is thorough but slow. In justice delivery system we want thoroughness but nobody want slowness, but since it can't happen because if we go thoroughly the process will automatically be slow and if you want to go fast then we can't go with thoroughness. Our choice is that the process should be thorough but there shouldn't be any injustice .but our inner desire is that my justice should be thorough but it should be fast as well, because if it won't happen like this then there would be chances of tragedy and one of such tragedy can be well explained by the maxim called "justice delayed is justice denied", but if justice delayed is justice denied then "justice hurried is justice buried". There is huge delay of justice and in India there is about four CR pending cases as we always followed the procedures established by law and the legal maxim. One of the reason of huge delay was that there was lesser number of judicial officer, the other reason is that we are very thorough with our judicial system. India is a very litigation rich country. When there is huge number of Pendency and workload it will affect the wheels of justice. So, this wheels of justice has to be more otherwise people will not believe in rule of law, to deal with the inefficiency of judicial system since even after so many fast track courts our judicial system is not able to pile up the pending cases and it is far from being solved. Combination of being thorough and fast was not possible so during this hardship there was a need of an alternative which further came to be known as alternative dispute resolution. ADR was not informal although it was formal in nature and it is ARBITRATION AND CONCILIATION ACT, 1996. A legal revolution has started with ADR, now days ADR is the flavor of season .ADR is conventional method of dispute resolution and a very friendly mechanism.

The aim of this article is to highlight the concept, development, genesis and history of ADR and to analyze its various concept and the emerging ODR, online dispute resolution.

ADR to ODR and its effectiveness

Introduction

Indian legal executive is one of the oldest forms of legal system and the widely acclaimed reality is however these days it is likewise verifiable truth that Indian legal system is getting wasteful to manage forthcoming cases, Indian courts are locked up with huge number of pending cases in courts since long time. The situation is that even subsequent to setting up in excess of 1,000 quick track Courts that generally settled large number of cases the issue is a long way from being addressed as forthcoming cases are as yet accumulating and it getting piled day by day and even if the cases are being solves it is not lessening the burden of courts in any manner.

ADR is additionally established on such fundamental rights which are Article 14 and 21 which maintains the balance between the Right to life and personal liberty individually, separately and with different perspectives. The thought process of ADR is to give social-monetary and political equity and keep up respectability in the general public revered in the introduction. ADR likewise endeavour to accomplish equivalent equity and free lawful guide gave under article 39-A identifying with Directive Principle of State Policy (DPSP).

Concept of ADR

ADR stands for Alternate Dispute Resolution. ADR is one of the ways of settling the dispute in amicable manner. The main and sole objective of establishing the ADR for settling disputes is deciding the matter in peaceful way and without any court's interreference. Courts are already overburdened with the cases so the matters which could be solved among the parties themselves without involvement of any third party then that would be the best thing for both the parties. The main thing over here is that, these parties can decide the matter according to their needs and wishes and here the rules of CPC are not strictly applicable and that benefits both the parties. Main thing about ADR is that, it denotes the concept of setting the matter outside the court or in other way if it would be defined then that means settling the case without entering into litigation and the ways for settling the matter other than litigation are: negotiation, conciliation, arbitration and mediation.

This concept of ADR had recently taken a form of ODR, and now in this pandemic period this process has become very popular. With the expansion of technology and e-commerce, new aspects of disputes with diverse nature, have surfaced the virtual world. Disputes in relation to cultural, political, social and commercial matters may, often involve parties or individuals that belong to different jurisdictions or territories. The disputes could arise between individuals of various State moreover, in such a scenario, the courts of another jurisdiction are way off the reach, for the individual of another territory. The Online Dispute Resolution (ODR) neutralises matters for both the parties, by making a software or

applying for it, because the third component and to conduct this online, seems to be a practical and viable solution in such a case. It is the substitute for the standard method of face-to-face dispute resolution, like processes like arbitration, negotiation or mediation.

At the start, the web Dispute Resolution process only aimed toward focussing towards providing us, the net dispute resolution platform but where, the particular mediators were humans that solve the disputes and conflicts. Though, the thought of ODR was a brand new one but, the concept and application of it, was very kind of like the normal approaches of dispute resolution. However, the concept of Online Dispute Resolution outgrew its initial model and was transformed to a system, which solves all types of disputes arising within the community, through the mode of technology or the net applications. The implication ODR is beneficial in such a manner that it prevents the further disputes to happen or it prevents any dispute to take place in future.. In Cyberspace world, it is well acknowledged by everyone and also the internet is that the best preferred means, for interaction globally. In such a world, contrary to the traditional methods of litigation, the ODR is that the most suitable choice that gives a practicable solution. The parties or individuals involved during this ODR process, must submit the desired or estimated amount online, which is promised to be kept confidential. The regulations and rules of the ODR service provider must be kept independent and confidential and could also be changed or applied to the request of an independent judge's panel, by the parties for settling their disputes.

Nature of ADR

The word 'Alternative Dispute Resolution' means to solve the dispute by alternative means rather than following the traditional and lengthy process of Indian legal system. As mentioned above, there are different techniques for settling disputes outside the court & without following judicial process and solve disputes by mutual understanding. ADR can be considered as extra supporting system of judicial system by easing the burden on the same. This process is less expensive and time saving. According to **Justice Mustafa Kamal**, "it is a non-formal settlement of legal and judicial dispute as a means of disposing of cases quickly and inexpensively."

Features of ADR are: -

- Settlement is done with the assistance of a third person who is neutral.
- The third person shall be well versed with the nature of the dispute.
- Proceedings are not done in formal way.
- Lesser procedural technicalities are involved in ADR than the litigation processes.
- Parties have full freedom to decide the case according to their convenience.
- This process is the most efficient and effective method because the confidentiality of the subject matter (related to the dispute) is maintained to the larger extent.

Advantages of ADR

All these are similar in nature but some of the differences are there which separates them. ADR is very effective, less costly, time saving and flexible also for solving any dispute or finding the solution in any case. The above-mentioned advantages of Alternate Dispute Resolution could be understood well by the explanation given below-

1. **Effective-** The award passed by the arbitrator, mediator, negotiator or conciliator is effective and this can be applied by the parties. As here in these cases, the parties are given freedom to choose their appropriate solution to the problem and last the authority decides its validity and amends that according to the need and laws.
2. **Time saving-** As civil litigations take much time and there is no time frame prescribed as to under what time limit the case is needed to be decided whereas in the case of Alternative Dispute Resolution there is time frame prescribed at every level and it had also been mentioned that in how much time the cases are needed to be decided.
3. **Flexible-** ADR is flexible which means that the freedom is given to the parties rather it upon the parties to decide the place of arbitration. Here, parties have one most beneficial right that they can withdraw the filed case at any time (after the initiation of the proceedings) they feel that the matter can be resolved by mutual understanding and there is no need of further proceedings.

Genesis of ADR system

Alternate Dispute Resolution System is not a new concept for the people living in India because it has been prevailing in India since very long time. This System of Dispute Resolution, have made a significant contribution in matters related to family, social groups, and trade and property or rather it could be said that matters of civil nature are dealt by the help of ADR. Earlier disputes were also resolved at village level which comprised of elders who used to form 'Panchayat' and performed the informal 'mediation'. This system was also used in villages which was known as "Panchayati Raj System" and had not been codified as such or given legal recognition. More such institutions were also there in ancient times like Kulas, Srenis and Parishads adjudicated disputes before 'kings. Later, moving further after the entry of East India Company, Modern Arbitration Law was introduced by way of Bengal Regulation of 1772, 1780 and 1781. In the common law countries, the roots of ADR can be traced from the English legal development. Charters and documents of previous times reveal that some respected male members in the community often used to resolve the disputes by extending legal authorities of kings, creating one of the first forms of arbitration.

In the modern era, dispute resolution refers to both Alternate Dispute Resolution

subsequent to which the process of Online Dispute Resolution (ODR) has also been introduced. ADR includes the mechanism sort the cases with the help of a third party amicably. With the technology seeping into this whole world, the arena of ADR & Online Dispute Resolution (ODR) is the new face of Dispute Resolution and this process has also been welcomed by public at large with great zeal and acceptance. For the disputes to be resolved this process might be referred to Arbitration, Mediation, and Negotiation and Conciliation as here, there is no compulsion to follow strict court procedures.

1. Arbitration

The interaction of Arbitration can't exist without legitimate intervention understanding before the development of contest. In this procedure of goal parties allude their question to at least one people called judges. Choice of mediator is bound on gatherings and their choice is called 'Grant'. The object of Arbitration is to get reasonable settlement of question outside of court immediately and cost. Any gathering to an agreement where mediation provision is there, can conjure intervention proviso either himself or through their approved specialist which allude the question straightforwardly to the discretion according to the Arbitration condition. Here, assertion statement implies a proviso that notice the course of activities, language, number of authorities, seat or legitimate spot of the mediation to be occurred in case of question emerging out between the gatherings.

Procedure of arbitration when arbitration clause had been invoked against any party?

- At first, candidate starts an assertion by recording an assertion of guarantee that determines the applicable realities and cures.
- The application should incorporate the affirmed duplicate of assertion understanding. Explanation of case is a composed report documented in the court or council for legal assurance and a duplicate additionally ship off the litigant in which petitioner portrayed current realities on the side of his case and the help he looks for from the respondent.
- The respondent answer to the discretion by recording an answer against the assertion guarantee of petitioner that indicates the significant realities and accessible protections to the assertion of guarantee.
- Referees choice is the interaction where the gatherings get arrangements of expected judges and select the board to hear their case. At that point there is the trading of reports and data in anticipation of the meeting called "discovery".
- The gatherings meet in people to direct the consultation in which the gatherings present the contentions and confirmations on the side of their individual cases.
- After the observers inspected and confirms are introduced, at that point taking everything into account judge gives a "award" which is restricting on the gatherings.

- Presently the complexities of the procedures shift with the mediation arrangement.

For instance, there could be a course of events which should be followed. This course of events would be specified in the arrangement.

Section 8 of Arbitration and Conciliation Act, 1996 gives if any gathering affronts the arbitral arrangement and as opposed to moving to intervention, moves that suit to common court, other gathering can apply the court for alluding the make a difference to assertion council according to the understanding however not later the accommodation of the primary assertion. The application should incorporate an ensured duplicate of assertion understanding and if courts fulfil with it, the matter will be alluded to intervention.

1. Mediation

Mediation is an Alternative Dispute goal where a third impartial gathering intends to help at least two disputants in agreeing. It is a simple and straightforward gathering focused arrangement measure where outsider goes about as an arbiter to determine question agreeably by utilizing proper correspondence and exchange methods. This interaction is completely constrained by the gatherings. Go between work is simply to encourage the gatherings to arrive at settlement of their contest. Middle person doesn't force his perspectives and settle on no choice about what a reasonable settlement ought to be.

The process of mediation works in various stages. These are:

1. Opening proclamation
 2. Joint meeting
- Separate meeting and,

1. Shutting

At the beginning of mediation measure, the arbitrator will guarantee the gatherings and their direction ought to be available.

- At first in the initial explanation, he outfits all the data about his arrangement and proclaims he doesn't have any association with both of gatherings and has no interest in the debate.
- In the joint meeting, he assembles all the data, comprehend the reality and issues about the debate by welcoming both the gatherings to put forth their viewpoint and set forward their point of view with no interference. In this meeting, middle person attempts to support and advance correspondence and oversee interference and upheavals by the gatherings.

- Next is independent meeting, where he attempts to comprehend the contest at a more profound level, assembles explicit data by taking both the gatherings in certainty independently.
- Middle person poses continuous inquiries on realities and talks about qualities and shortcomings to the gatherings of their separate cases.
- Subsequent to hearing both the sides, go between begins defining issues for goal and making choices for settlement.
- On account of inability to agree through exchange in intervention, arbiter utilizes diverse Reality check strategy like:

Best Alternative to Negotiated Agreement (BATNA)

It is the most ideal result both the gathering think of or has as a main priority. Its appropriate circumstance as each gathering ponders their most great situation resembles.

Most likely Alternative to Negotiated Agreement (MLATNA)

For a fruitful arrangement the outcome consistently lies in the center, middle person subsequent to considering both the gatherings thinks of in all likelihood result. Here outcome isn't generally in the center yet minimal left or right of the middle contingent upon exchange circumstance.

Worst Alternative to Negotiated Agreement (WATNA)

It the absolute worst result a gathering has in their psyche for what could occur during exchange. It could be useful to the gatherings and middle person to look at the option outside the mediation (specifically suit) and talks about the results of neglecting to arrive at understanding like: impact on the relationship of the gatherings or impact on the matter of the gatherings. It is consistently essential to consider and talk about the most noticeably terrible and most likely results, it's not generally individuals get the best result.

Middle person examines the viewpoint of the gatherings about the conceivable result at prosecution. It is additionally useful for the middle person to work with parties and their promoters to go to an appropriate comprehension of the best, most exceedingly awful and most likely result to the question through suit as that would assist the gatherings with recognizing the truth and get ready sensible, intelligent and serviceable recommendations.

1. Conciliation

Conciliation is similar to that of mediation yet it is less formal in nature and it is being practiced very commonly. It is the way towards encouraging an agreeable goal between the gatherings, whereby the gatherings to the debate use conciliator who meets with the gatherings independently to settle their question. Conciliator meet independently to bring

down the pressure between parties, improving correspondence, deciphering issue to achieve an arranged settlement There is no need of earlier understanding and can't be constrained on gathering who isn't planning for appeasement. It is not the same as discretion in that manner. In reality, it isn't feasible for the gatherings to go into appeasement arrangement before the debate has emerged. It is clear in Section 62 of The Arbitration and Conciliation Act, 1996 which gives, the gathering starting mollification will ship off the other party a composed greeting to mollify under this part, momentarily distinguishing the subject of the debate. Pacification procedures will start when the other party acknowledges recorded as a hard copy the encouragement to appease.

Above arrangement unmistakably states assuagement understanding ought to be an extemporaneous understanding gone into after the contest has however not previously. Gatherings are additionally allowed to participate in placation measure even while the arbitral procedures are on (section 30) of Arbitration and Conciliation Act.

Conclusion

The rise at global level could be seen in the implementation of ODR with the internet business sector, when E-bay and Paypal began settling their disputed through online medium. This mode of resolving disputesthe function of odr, have been rising in India since the times of pandemic. Nations like U.S.A, China, Brazil and some European Union countries have just received the ODR instrument by establishing their different stages to determine debates emerging out of internet business exchanges. Many such disputes have just been managed effectively without recording a solitary suit in a conventional official courtroom. Technology improves with time and innovation being the primary element of various ODR strategies, it is sure that ODR will concoct new and more alluring procedures.

In India, ODR is as yet in its outset stage however it is simply a question of time before ODR is received at a huge scope in India. The electronic type of question goal attempts to empower additional opportunities that were already inaccessible, for example, the virtual concurrent presence of the relative multitude of gatherings without requiring individual participation at a specific spot and time. With 4.5 million cases forthcoming in high courts, 31 million cases forthcoming in region courts and 350,000 overabundances in the best 5 focal councils, undoubtedly, we are in the need to solve maximum number of cases from the Online Dispute Resolution mode. ODR is a basic instrument which successfully can possibly come into standard debate goal frameworks and its acknowledgment can't be raised doubt about. Soon, ODR won't just fill in as a stage for speedy removal of cases yet in addition as a zone of work for a great many mediators or promoters. These increasing burden of cases in courts prove that the implementation of ODR must be done in India also with such effectiveness as the ancient court system works in today's era and also previously also.

References

1. <https://www.mondaq.com/india/arbitration-dispute-resolution/935022/online-dispute-resolution-odr-a-positive-contrivance-to-justice-post-covid-19>
2. <https://corporate.findlaw.com/litigation-disputes/adr.html>
3. <https://indianlegalsolution.com/the-need-of-adr-and-odr-system-in-india-with-a-comparative-analysis-with-the-united-kingdom/>

