



SOCIAL CHANGE VIA ADR

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Alternate Dispute Resolution (ADR) is a mechanism to solve a dispute externally without involving litigation. It is a method by which collective parties can come to a conclusion without participation of any third party. Alternate dispute resolution also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose. Alternate dispute resolution can be classified into: mediation, arbitration, negotiation, conciliation and collaborative law. The procedures of Alternate dispute resolution are collaborative and allow the parties to understand the position and state of each other. The method has its advantages and disadvantages as well. Where in one hand it is much more cost effective and flexible but it may not be effective in place where one requires direct court orders or if there is Varsity in the power of the parties involved in the dispute. The method of ADR is no new to our country and has been prevalent from decades in villages and since long disputes have been resolved through mediation of elders of village or sarpanch. Alternate dispute resolution provides with confidentiality as well as speedy settlements which when compared to the process of litigation gets or become extinct, the parties have great control over the person who decides to settle their dispute which makes the method really flexible. The mechanism of Alternative Dispute Resolution varies from country to country but in context to India, it is becoming really popular due to increase in caseloads on courts and the scope of ADR with time is expanding in India.

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser- in fees and in expenses, and a waste of time.”

– Abraham Lincoln

Alternate Dispute Resolution(hereinafter referred as ADR) has its origin and can find its roots from the constitution of India in the goal of achieving justice for the people and the citizens. It was based on Articles 14 and 21 which are the equality before law, right to life and personal liberty respectively and also takes into consideration the concept of equal justice and free Legal aid from Directive Principle of State under Article 39-A. An Alternate Dispute Resolution is a faster way of justice compared to the traditional style of courts. The mind set

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of people is also changing with time, although there were courts to look after the justice system in the country earlier and today but the same takes a huge amount of time due to pending cases before the courts since decades and the resultant being delayed decisions by the court. The other factor being that with the coming up of ADR the expensive litigation costs cannot be bearded by common public as such and tools such as mediation and arbitration would help cut down such cost and deliver effective decisions. There are several tools of ADR amongst which Arbitration, Mediation and Reconciliation are popular and deliver faster decisions. In fact even the judges and other ministers readily agreed that the burden on courts was too much and for them to deliver justice to each and every case in small amount of time was a big difficulty, with the pendency of cases in lakhs in the high court and thousands in the supreme court the mechanism of ADR became popular day by day.

“The Chief Ministers and Chief Justices were of the opinion that Courts were not in a position to bear the entire burden of justice system and that the number of disputes lent themselves to the resolution by alternative modes such as arbitration, mediation and negotiation. They emphasized the desirability of the disputants taking advantage of alternative dispute resolution which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial.”²

Tools of ADR i.e. mediation, arbitration and reconciliation went on to become more useful and contributed to less burden on the courts.

The process of **Mediation** generally involves a third party negotiating on behalf of the other two parties involved. The process comes in the picture when the parties are unwilling to settle the dispute and a mediator is hired for to resolve them. The mediator helps both the parties to conflict to find a common ground and give creative settlements and solutions for resolving the dispute. When and if the dispute is resolved the mediation agreement can be made which can be oral or written stating the settlements and will be enforceable contract.

Arbitration comes in the picture when, due to a dispute between two parties they appoint a arbitrator in order to avoid the public litigation and courts. The arbitrator would help them come to a settlement and the decision pronounced or declared by the arbitrator will be binding on the parties of the dispute. There is a vast difference between the process of Arbitration and Mediation , arbitration even though less formal is much like a court

² A gist from a conference held in New Delhi in 1993 presided by the then CJI



proceeding wherein the parties give their testimony and evidence similar to the trial and the decision hereby is taken by the arbitrator. Whereas in the process of mediation the tool of dispute resolution involves negotiation with the third party being a part in dispute between the two and help them come to a concrete settlement with communication. Mediators do not issue orders, or make determinations.

Conciliation is a process wherein a conciliator is used or hired by the parties to a dispute to come to a settlement. A conciliator meets the parties alone and together to eliminate the differences to the party. A Conciliator communicates and gives desirable options to come to a settlement. The process of conciliation has no legal standing and the conciliator writes no direction or decision to the dispute neither does he have the authority to call for evidence and or witnesses.

Lok Adalat is forum where in pending cases and disputes in the court of law or cases which are in the pre-litigation stage are settled and judged. In furtherance to this when a case is filed in Lok Adalat there is no court fee payable, any cases which is pending before the court is referred to Lok Adalat.

In India the Arbitration and Reconciliation Act,1996 comes into play when the parties have made a arbitration agreement , the aforesaid act provides certain powers to the judiciary and other concerned authorities to provide settlements for civil matters in cases of dispute concerning two or more party. Section 30 of the Act deals with provisions wherein the arbitrator, with the consent of the parties, undergo mediation, conciliation or other such proceedings at any time of arbitration to encourage settlement of the dispute. Settling of disputes with the tools of alternate dispute resolution provides various advantages to the parties in itself. Confidentiality acts as important factor why one does not want to approach the courts which is kept in adherence with in case of mediation and conciliation. The process of mediation , arbitration and conciliation provides flexibility to the parties in dispute and it gives them a chance of revealing the true facts, with these factors coming in places they provide much favour for the Alternate Dispute Resolution techniques and have become quite popular with people for the mentioned factors. Certain factor in which these tools of ADR won't play a role would be when a party to a dispute wants a court order or he/she wants a interim order against the other such orders would only be given by the courts.

The concept of ADR has been deeply rooted in the constitution itself whereby the panchayats have been given powers to act as a mediator to parties in a dispute and settle disputes



regarding the same. Our country has a history of settlements of disputes outside the justice delivery system. Long before the king came to adjudicate on disputes involved between two persons such disputes were peacefully decided by the intervention of kulas, srenis, pugas and such other autonomous bodies³. Arbitration was only recognised in the british rule and relating provisions were enacted relating to the same. The traditional institutions in the ancient times worked as a dispute resolution and not a alternative. Section 89(1) of the Civil Procedure, 1908 deals with the power of the court to refer the dispute for settlement for a purpose of an amicable, peaceful and mutual settlement between the parties without the intervention of the court. Over the period of time there have been cases involving section 89(1) of the Civil Procedure Code,1908. In the case of Afcons infrastructure and Anr v. Cherian Varkey construction co⁴. , the supreme court held that ” all suits of civil nature and in particular of the following categories of cases are normally suitable for the process of Alternate Dispute Resolution process”:

- Whereby the cases are related to trade, commerce and contract
- Cases arising out of strained or sourced relationship
- Cases relating to tortious liability
- All consumer disputes
- In cases wherein there is a need for continuation of pre –existing relationship in spite of disputes

The Apex court also held that unless the parties intend or give consent a reference to arbitration under section 89 of Civil Procedure Code , there be no as such reference⁵.

The Alternate Dispute Resolution plays a vital role for settling disputes outside the normal court system and as discussed above has many important reasons from being effective, less time consuming to a cheaper alternative. The tools of ADR have emerged with time and apart from Lok Adalats which came under the Legal Services Authorities Act, 1987, other tools such as mediation, arbitration and conciliation grew to popularity later. With these effective mechanisms replacing and easing the burden of the courts they have become more prominent and have brought a social change in the society of how people used to approach disputes and judiciary.

³ P.C. Rao, Alternatives to Litigation in India, in P.C. Rao and William Sheffield (eds.), Alternative Dispute Resolution: What it is and How it Works, Universal Law Publishing Co., New Delhi, (1997) p. 27.

⁴ M/S. Afcons Infra. Ltd. & Anr vs M/S Cherian Varkey Constn ... on 26 July, 2010, CIVIL APPEAL NO.6000 OF 2010 (Arising out of SLP (C) No.760 of 2007)

⁵ Jagdish chander v. Ramesh Chander 2007 (5) SCC 719