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**ENSURING JUSTICE AMIDST THE COVID-19 PANDEMIC
EXPEDITING DISPOSAL THROUGH ALTERNATE
DISPUTE RESOLUTION**

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Ensuring Justice Amidst the Covid-19 Pandemic Expediting Disposal Through Alternate Dispute Resolution

Sandra Marie Roberio

Introduction

ADR is a process for settling disputes by means other than litigation such as arbitration, mediation, conciliation etc.. and is also known as conflict resolution or rather dispute resolution. The main aim of ADR is to resolve a matter of dispute between two or more parties. Under this mechanism, the disputes are addressed and settled outside the courtroom. ADR mechanism provides this technique in the Indian judicial system reducing the burden on the courts. Indian judiciary is considered as one of the most powerful systems of justice in the world but it is weighed down with unsettled cases. Despite having thousands of fast track courts set up to deal with pendency and speeding up disposal, the sheer amount of pending cases continues to rise. In order to deal with such cases in an efficient manner, there is ADR which resolves the matter in a way where both parties are equally satisfied.

An Opportunity For ADR In The Times Of Covid-19

During this pandemic, it was seen that our courts were still burdened from cases before the pandemic. In addition, the restrictions imposed on travelling, fear of coronavirus and reduced workforce has considerably impacted the disposal rates. There are different kinds of alternative methods but the easiest and the effective method for disposal is undoubtedly through mediation. In India, mediation is a voluntary process whereby the parties find a mutual solution for their legal problem by entering into a written contract and appointing a mediator. The parties can appoint an ADR lawyer who will be able to explain the procedure in a professional manner to them.

Generally, mediation is divided into two types i.e. court-referred mediation and private mediation. Court referred mediation in India according to Section 89 of Code of Civil Procedure, 1908¹; this mediation is used for matrimonial disputes particularly divorce cases. Private mediation is meant for the government and corporate sector to resolve their dispute and is based on a fixed fees basis. Section applied for ADR i.e., Section 89 of the Civil Procedure Code of 1908² was introduced to mutually settle a dispute peacefully with the consent of the parties, the case may go for trial when there is a failure for resolution using this process. This Section states that when the disputes are before the Court and if it has an opinion that there are elements for settlement which may be acceptable to the parties, the court shall formulate the terms and settle the dispute and give parties an opportunity to observe and after the observation is done the court will reformulate the terms to settle the dispute. Otherwise, the Court can refer the same for (1) arbitration, (2) conciliation (3) judicial settlements including settlements through Lok Adalat or (4) mediation. Disputes which are referred to (1) arbitration and (2) conciliation under this provision follows the rules laid down in the Arbitration and Conciliation Act of 1996³., the proceedings for settlement are under the provision of this act. When Court refers to Lok Adalat it is the provision of subsection (1) of section 20 of the Legal Service Authorities Act of 1987⁴ and for mediation, the dispute is mutually settled.

The Purpose of ADR

In ADR as long as the communication between the parties is not broken by the parties, it becomes the most efficient way to achieve the outcome i.e. settlement. It also maintains the privacy of the parties compared to the public nature of a court proceeding. Arbitration is a popular and attractive option for

¹ The Code Of Civil Procedure, 1908 ,Act No. 5 of 1908

² Ibid

³ The Arbitration and Conciliation Act, 1996, Act No. 26 of 1996

⁴ The Legal Services Authorities Act, 1987, Act No.39 of 1987)

the Corporate sector as it provides the space to keep matters confidential and maintain the reputation of the parties and the business involved intact.

Pros of ADR

It reduces time in dispute resolution; it takes lesser time to reach a final decision in ADR, so it is time-saving. It reduces the cost of dispute resolution; cheaper method of conflict settlement. Freedom for parties in choosing rules that would be applied to the dispute. ADR produces effective results; dispute settlement rate is up to 85% in ADR. The satisfaction among the parties in resolving their dispute is more. Disputes involving intellectual property can be solved by a single procedure. Confidentiality is maintained in ADR; the parties are allowed to keep the dispute between themselves without involving the public. ADR preserves the relationship between the parties because the settlement is reached without blaming each other.

Cons of ADR

Parties are not forced to continue negotiations or mediation. They don't have any legal precedents for clarity. Sometimes the relevant parties who are so sure can weaken the final judgment. Parties cannot demand the powers as it is limited; when there is no check on the powers it creates an imbalance between the parties. In ADR the rights may not be protected legally. ADR mainly resolves issues involving money matters or civil disputes this won't result in injunctive orders. ADR does not always lead to resolution. Sometimes, a speedy ADR might end up in faulty and unjustifiable judgments.

The Task And The Results Of ADR

This technique is made to list out the alternatives and to be fair. It's a fast-tracking of providing justice. There are many techniques for ADR such as mini-trial, private judging, final offer arbitration, court-annexed ADR, summary jury

trial etc. Before the new Act the procedure of ADR did not meet the expectations of international standards of resolving disputes due to the delay in the courts which also frustrated the purpose of arbitration which is fast and speedy dispute resolution. The Supreme Court was constantly opined to have a change in the law. The Public Accounts Committee disapproved of the Arbitration Act, 1940. In a meeting of chief justices and chief ministers and law ministers of all states it was stated that the courts were burdened with cases ADR had to be adopted more.

So the government of India made new forum and procedure for resolving the dispute in domestic as well as international level to resolve quickly the problems with the old Act.

The statutory recognition of a legal aid is in article 14 of Constitution and section 22(1) of the Legal Service Authorities Act 1987⁵. These provisions ensure that it is obligatory on the state to ensure equality before the law. On the basis of equal opportunity to all, citizens have the right to a speedy trial and free legal aid. This has been recognized as being the part of the right to life and personal liberty under Article 21 of the Indian Constitution.

Provisions related to Alternate Dispute Resolution (ADR)

Lok Adalat is one of the ADR methods in India. It is a forum where pending cases in the pre-litigation stage in a court of law are settled. It has been given statutory status under the Legal Service Authorities Act 1987⁶. According to authority, its main aim is to provide free legal services to the weaker sections. Article 39A of the Constitution of India provides that the state shall secure this

⁵ Ibid

⁶ Ibid

operation. The perception of a free legal service is incomparable with the quality of services provided and there are not many lawyers under this authority who can deliver free legal aid services and they are not interested in providing legal assistance due to financial constraints.

Conclusions

In conclusion, ADR can be a way to obstruct or enhance the relationship between the parties and company culture depending on how it's handled. ADR increases the access to justice without reducing the quality of justice. The sections are in the right place to reduce the burden on courts, to resolve disputes between the parties and speedier dispute settlement with an effective method of administering justice. Although there are pros and cons for both arbitration and mediation each one serves in its area of business. ADR is not a replacement for litigation, but it is a mechanism that makes our traditional system more efficient and effective. ADR taking the scope of law out of its narrow decision making process to a wider application. It reiterates the fact that the main aim of justice is to solve the dispute and end the case rather than delaying if forever, and it is this motto that ADR follows. Hence it is the right time to utilize ADR to the maximum to reduce the burden on our courts and improve the efficiency of our system.



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