A Study on Conceptual Framework of Alternate Dispute Resolution and its Growth in India

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Abstract

This paper attempts to study how **Growth in Alternative Dispute Resolution** mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courths. Alternative Dispute Resolution (ADR) methods have been recognized and adopted by various countries and they co-exist with litigation harmoniously. Some of the main reasons for the development of ADR include the backlog of cases in courts and the lengthy time taken to resolve disputes. Many legal battles go on for years and require enormous amounts of time, patience and money as well. ADR methods such as mediation, arbitration, and conciliation prove to be a boon as they are expeditious and cost effective.

ADR can be dated back in history to 1800 BC when the Mari Kingdom (now modern Syria) used Mediation and Arbitration to settle disputes with other kingdoms. The Panchayat system in India and the Madhyasta helped in resolving disputes as early as 500 BC. Around the same time, in the ancient city states in Greece, decisions from arbitration as a result of disputes between two city-states were recorded on temple columns. Though arbitration prevailed in India, in the form of panchayats (which have been now given recognition in the Constitution of India) before the Britishers came in and established their authority. In 1923, the League of Nations gathered and agreed to the Geneva Convention. The Geneva Convention also contained clauses for arbitration. The first arbitration dedicated provision in the Civil Procedure Code, 1908 which had Section 89 providing for arbitration but the same was repealed by Section 49 and Schedule III to the Arbitration Act, 1940. In 2002, Indian Parliament brought an amendment to Section 89 of the Civil Procedure Code, 1908. The amendment brought in a different alternative dispute resolution mechanism in Section 89. The Bar at Salem was not satisfied by this and other amendments. In *Salem Advocate Bar Assn.(I)* v. *Union of India*, the constitutionality of Section 89 was challenged. The Court upheld the constitutionality of Section 89. The Court also observed that the availability of such provisions in foreign countries have been very successful. The Court constituted a committee under the chairmanship of Justice M. Jagannadha Rao (Retired) to review the difficulty in workings of the amendments. The Court also ordered for the formulation of rules with regards to meditation and ADR. As per the Committee's recommendation, the Supreme Court ordered all the High Courts to formulate their own rules for ADR and mediation. The recommendations of the Committee were accepted by the Court in another judgment.

Key words: ADR, Society, Disputes, Cases, Resolution, Settlement

Introduction

ADR is an abbreviation that stands for 'Alternative Dispute Resolution'. ADR refers to all those methods of solving disputes which are alternatives for litigation in the courts. ADR processes are decision making process through which litigants or potential litigants may resolve their disputes. These procedures are usually less costly and more expeditious. This method can be used in commercial and labour disputes, divorce actions, in resolving tax-claims and in other disputes that would likely otherwise involve court litigation.

ADR (alternative dispute resolution) usually describes dispute resolution where an independent person (an ADR practitioner, such as a mediator) helps people in dispute to try to sort out the issues between them. ADR can help people to resolve a dispute before it becomes so big that a court or tribunal becomes involved. ADR can be very flexible and can be used for almost any kind of dispute.

Using ADR can:

- Help you to resolve all or some of the issues in your dispute
- Provide a fair process
- Help you to achieve outcomes that work for everyone involved in the dispute.

Resolving your dispute through ADR is different from asking a court or tribunal to resolve your dispute. Using ADR to resolve your dispute can benefit everyone. It means that courts and tribunals can spend their time considering disputes that need a court or tribunal decision.

ADR processes can be less expensive than other ways of resolving your dispute. Going to a court can be very expensive. Tribunals can be less expensive but can still involve hearings and legal costs if you are represented.

ADR processes and outcomes focus on what is important to you and the other people involved. Courts and tribunals focus on legal rights. ADR processes may help you and other people to maintain relationship. Alternate Dispute Resolution system is not a new experience for the people of this country also. It has been prevalent in India since time immemorial. Legal history indicates that down the ages man has been experimenting with procedure for making it easy, cheap, unfailing and convenient to obtain justice.

It is generally presumed that the commonly prevalent system of Government in Ancient India was monarchy and instances of republic were either exceptions or aberrations. The view is based on the apparent perception that since there were kings in ancient India, the system was that of monarchy.

In earlier times, disputes were peacefully decided by intervention of kulas (family or clan assemblies), srenis (guilds of men following the same occupation), parishads (assemblies of learned men who knew law) before the king came to adjudicate on disputes. The political system of the Aryans in their initial days here was amazingly complex, though quite ingenious. They hung around together in small village settlements (which later grew to

kingdoms) and the basis of their political and social organization was, not surprisingly, the clan or kula. Being of somewhat militant nature, this was very much a patriarchal society, with the man in the house expected to keep his flock in control. Groups of kulas together formed a Grama or village, which was headed by a Gramina. Many villages formed another political unit called a Visya, headed by a Visyapati. The Visyas in turn collected under a Jana, which was ruled by a Rajana or king. However, the precise relationship between the grama, the visya and the Jana has not been clearly defined anywhere.

In ancient India there were several grades of arbitration, for example the Puga or a board of persons who belonged to different sects and tribes but lived in the same locality; the Sreni or assemblies of tradesmen and artisans belonging to different tribes but connected in some way with each other, the Kula or groups of persons bound by family ties. From early times, the decisions of Panchayats were accepted as binding. According to Colebrooke (an English scholar and commentator on ancient Hindu law), Panchayats were different systems of arbitration subordinate to the regular courts of law. The decision of a Kula or kin group was subject to revision by the Sreni which, in turn, could be revised by the Puga. From the decision of the Puga, appeal was maintainable to Pradvivaca and finally to the sovereign and the prince.

It is important to note that in ancient India joint families were the order of the day and they were usually very large. When therefore, a disagreement or dispute used to take place between two members of a family, it was usually settled by its elders. If they failed to bring about any compromise, the sreni or the guild courts used to intervene. Srenis or guilds became a prominent feature of commercial life in ancient India from 500 B.C. They were well organized and had their own executive committees of four or five members. Judicial administration was changed during British period. The current judicial system of India is very close to the judicial administration as prevailed during British period. The traditional institutions worked as recognised system of administration of justice and not merely alternatives to the formal justice system established by the British. The two systems continued to operate parallel to each other.

The system of alternate dispute redressal was found not only as a convenient procedure but was also seen as a politically safe and significant in the days of British Raj. However, with the advent of the British Raj these traditional institutions of dispute resolution somehow started withering and the formal legal system introduced by the British began to rule.

Alternate Dispute Resolution in the present form picked up pace in the country, with the coming of the East India Company. Modern arbitration law in India was created by the Bengal Regulations. The Bengal Regulations of 1772, 1780 and 1781 were designed to encourage arbitration. Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit the dispute to the arbitrator, appointed after mutual agreement and whose verdict shall be binding on both the parties. Hence, there were several Regulations and legislation that were brought in resulting considerable changes from 1772. After several Regulations containing provisions relating to arbitration Act VIII of 1857 codified the procedure of Civil Courts except those established by the

Royal Charter, which contained Sections 312 to 325 dealing with arbitration in suits. Sections 326 and 327 provided for arbitration without the intervention of the court.

After some other provisions from time to time Indian Arbitration Act,1899 was passed, based on the English Arbitration Act of 1889. It was the first substantive law on the subject of arbitration but its application was limited to the Presidency – towns of Calcutta, Bombay and Madras. Act, however suffered from many defects and was subjected to severe judicial criticisms.

The Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899 and section 89 and clauses (a) to (f) of section 104(1) and the Second Schedule of the Code of Civil procedure 1908. It amended and consolidated the law relating to arbitration in British India and remained a comprehensive law on Arbitration even in the Republican India until 1996.

Objective:

This paper intends to explore and analyze the growth of ADR methods are that more flexible and party-centric and include hybrid-methods and cross-over strategies for dispute resolution.

Growth and Codification of ADR in India

The process of arbitration is not alien to India. It always had been practiced since time immemorial. In India, people believed in resolving disputes within the four walls because this was somewhere considered as an element to protect their dignity and personality in the society. Hence, the mechanism gained significance in India since Ancient times

Ancient India

In ancient India when there was *Kulas*, people used to live in joint families with their clans and when there was caste system prevalent in the society. The disputes among the kulas were resolved by the head of the of the family, clan or Kula. Likewise, when there was common trade, corporations or *Shrenis* among the people, they used to appoint person to resolve the disputes within the Shrenis.

Pre- Independence: British rule

During the British rule in India, many legislations were introduced and a drastic change came in the administration of India. In 1772, the courts were empowered to refer disputes to arbitration either at the request of the parties or by its own discretion. Then after a decade, in 1859 *The Code of Civil Procedure* was enacted, sections 312 to 327 of the act mentioned arbitration but in 1882 the sections relating to arbitration was repealed.

In 1899 *The Indian Arbitration Act, 1899* was enacted to give effect to alternate dispute mechanism in India. The act was based on the English legislation.

Then in 1908, CPC was again amended and section 89 with second schedule gave wide powers to the courts to refer the disputes to ADR mechanism. Then, *The Indian Arbitration Act, 1899* and section 89 read with second schedule of *Code of Civil Procedure, 1908* were two effective legislation to deal with arbitration.

Thereafter, in 1937 *Geneva Convention* was signed and adopted by India and a parallel legislation was introduced in the form of *The Arbitration (Protocol and Convention) Act, 1937.* In 1940, *The Indian Arbitration Act*, 1899 and section 89 with second schedule of *CPC* was repealed and replaced by *The Arbitration Act, 1940.*

In local levels *Panchayats* were very effective in resolving the disputes in villages in India

Post- Independence Era

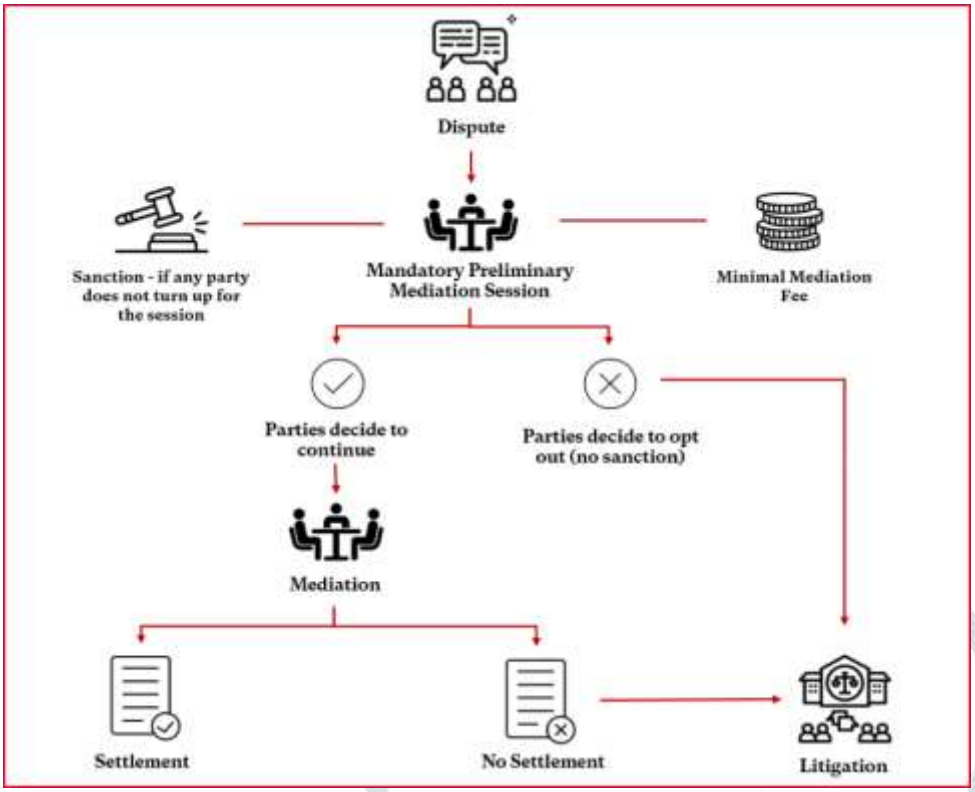
The Arbitration (Protocol and Convention) Act, 1937 for the enforcement of foreign awards and *The Arbitration Act, 1940* for referring disputes to ADR mechanism were presently in force in India. Then in 1961, India became signatory to the *New York Convention* and *The Foreign Award (Recognition and Convention) Act, 1961* was enacted.

In 1981, in *M/S Guru Nanak Foundation vs. Rattan Singh & Sons,* the Supreme Court described *the Arbitration Act, 1940* in off- quoted passage. It observed that "the way in which the proceedings under the act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the act have become highly technical and accompanied by unending prolixity, at every stage providing a legal trap to the unwary."

In 1985, the UNCITRAL model law was adopted and signed by India on International commercial arbitration.

In 1996, finally *The Arbitration (Protocol and Convention) Act, 1937*; *The Arbitration Act, 1940* and *The Foreign Award (Recognition and Convention) Act, 1961* was repealed and consolidated in a single piece of legislation following the UNCITRAL model law, the act was called the *Arbitration and Conciliation Act, 1996.* to make the act more effective and efficient Section- 89 with Order- X (Rule- 1A to 1C) was re- introduced in CPC in 2002. The act of 1966 was amended twice in 2015 and 2015. However, to deal with ADR mechanism we have a consolidated, single, effective, efficient and a good piece of legislation.

- evolution of ADR in India
- codification of ADR in India
- tracing the enactment of Arbitration and Conciliation Act, 1996



Bodies such as the panchayat, a group of elders and influential persons in a village deciding the dispute between villagers are not uncommon even today. In 1982 settlement of disputes out of courts started through Lok Adalats. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat and now it has been extended through out the country. Initially, Lok Adalats functioned as a voluntary and conciliatory agency without any statutory backing for its decisions. By the enactment of the Legal Services Authorities Act, 1987, which came into force from November 9, 1995, the institution of Lok Adalats received statutory status. To keep pace with the globalization of commerce the old Arbitration Act of 1940 is replaced by the new Arbitration and Conciliation Act, 1996. Settlement of matters concerning the family has been provided under Order XXXIIA of the Code of Civil Procedure, 1908 by amendment in 1976. Provisions for making efforts for reconciliation under Sections 23 (2) and 23 (3) of the Hindu Marriage

Act, 1955 as also under Section 34 (3) of the Special Marriage Act, 1954 are made. Family Courts Act was enacted in 1984. Under Family Courts Act, 1984 it is the duty of family court to make efforts for settlement between the parties.

Introduction of section 89 and Order X Rule 1A, 1B and 1C by way of the 1999 Amendment in the Code of Civil Procedure, 1908 is a radical advancement made by the Indian Legislature in embracing the system of “Court Referred Alternative Disputes Resolution”.

- **Law Commission Report and Need for ADR**

Reasons of finding alternatives:

1. Weight of Pendency

The need for finding alternatives arises due to the working of the present system of administration of justice, which is crumbling under the weight of the pending cases.

1. State fighting the citizens

Interestingly, the government is the biggest litigant in the country. According to a rough estimate, around 70 per cent of all cases are either agitated by the State, or appealed by it. The State fight cases against the citizens at the costs of citizens. Thus, directly or indirectly the State is also responsible for increasing the weight of pending cases.

1. Other reasons

Jurists have suggested that the reduction in number of holidays of courts, and an increase in the working of days. At present the court are working for 210-230 days per year, with a fairly long summer vacation. If courts work for longer hours and days, litigation can be brought under control.

1. Adjournments

Unnecessary adjournments also extend the life of litigation. The process of adjournment, on frivolous grounds, is one of the major reasons for increase in delay. There is a need to evolve a set of guidelines for granting adjournments, and a framework for the settlement of dispute should be designed.

To overcome, such problems, the law commission of India set up to reform the 'justice delivery system in India', time in time came up with the solutions and suggestions, and these are:

The Law Commission of India, 117th Report in the year 1986, talks on the *'training of judicial officers'* so that the huge backlog of cases can be managed. The law officers should be trained as per modern methods of dispute resolution, so as to re-establish the credibility on justice delivery system in India and to restructure judiciary on all level in India.

The 221st Law Commission of India, in the year 2009 came up with their report on *'Need for Speedy Justice – Some Suggestions'* since there was Mounting of arrears of cases in courts, particularly in High Courts and District Courts, has been a cause of great concern for litigants as well as for the State. It is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration. In this Report, they have made few proposals which when given effect to, will be helpful not only in providing speedy justice but also in controlling frivolous, vexatious and luxurious litigations.

Several amendment has been suggested, In order to shorten delay in disposal of cases, it is necessary that provisions parallel to section 80 CPC be introduced for all kinds of civil suits and cases proposed to be filed by a litigant.

Conclusion

The human beings, being living together on this earth since time immemorial; have unavoidable interactions for the actualizing of their interests and, thus, face differences and conflicts in day-to-day life. Being social creatures, they have developed a variety of mechanisms for resolution of such differences and conflicts. Amongst it, the Alternative Dispute Resolution (ADR) is the most significant and effective one which is adopted by almost all nations- despite difference of beliefs, cultures and civilizations. History shows the effective use of ADR by the ancient Greece, Roman Empire, Chinese and Indian civilizations, Monotheistic (Abrahamic) Religions, the Islam and many more. However, the mechanism and structure approved by each nation, remained different from the others- to some or large extent. Human civilisation has come a long way forward as far as methods for dispute resolution is concerned. The development of ADR mechanisms has been prominently driven by the objective of resolving the issues in a timely and cost effective manner. The evolution of ADR mechanisms portrays an entangled scenario; and, one thing is sure that both legislature and judiciary has had a hard time in streamlining all the ADR mechanisms and rules regarding them. The history of ADR mechanisms started with the enactment of arbitration laws which evolved a lot over time. With time the other ADR mechanisms knocked on the door of Indian Parliament and Parliament was prudent enough to incorporate these new methods for dispute resolution. The Government also ensured that these methods are used on a specific basis in particular industries, for instance, the Commercial Courts Act, 2015 and the Micro, Small and Medium Enterprises Development Act, 2006. There has been discontent within the legal fraternity with regards to amendments in Section 89, which has been resolved based on the recommendations of Justice (Retd.) M. Jagannadha Rao Committee Report. The present day Indian Government is taking further steps in the evolution of ADR mechanisms wherein it desires to make India a global destination for arbitration and other dispute resolution methods.

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