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Alternative Dispute Resolution– Considered to Offer the Best Solution

Today we have seen that everyone take way out to strikes, road blocks, and other modes of disobedience, this situation has not arisen overnight, rather it's a consistent development, people are slowly losing their faith in judicial system also, as they end up getting justice at a very later stage, which is too late, as justice delayed is justice denied. Today the public at large have lost faith in government and police department; their FIRs are not getting registered, which is a settled law, law is social engineering, and the role of judges is the important in this whole episode, and law is governed by two rules, firstly equality before law under article 14 in constitution, and no one is above law.

Judge's work is divine work and the justice is done by god and we are doing delegated work of God so, as a judge we should never forget that our judgments have direct impact on the society, and public have lots of expectations from us, and we should try to come up to their expectations.

Mahatma Gandhi : "I realized that the true function of a lawyer was to unite parties... The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul".

What is justice, in layman's term it's something which an aggrieved person deserves and it has been encroached upon by another, and now our conventional system of justice needs overhauling and need to develop a new approach, the alternative dispute resolution is a step towards that end, and in India we have yet not developed a fully fledged system, the time has come that as a judge we need to take initiative at the court of first instance, which plays the most important role in the justice delivery system, as the seed of justice is sowed over there, because the case takes off from there and we lack a strong system at that which can be easily rectified, the Shetty Commission envisages 50 judges per million we have only 10.5 judges per million, the judges really are overburdened with work, and due to this the work is hotched potched and become out of control, which can be easily managed by systematic approach

WHY WE NEED ADR TECHNIQUES :

Alternative Dispute Resolution techniques can be resorted to in almost all types of contentious matters capable of resolution by agreement between parties under the law where both parties are generally interested in a settlement. Conflict is a fact of life. It is not good or bad. However, what is important is how we manage or handle it. Negotiation techniques are often central to resolving conflict and as a basic technique these have been around for many thousands of years. Alternative Dispute Resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails. Alternative Dispute Resolution (ADR) is an alternative to the Formal Legal System. It is an alternative to litigation. It was being thought of in view of the fact that the Courts are overburdened with cases.

ADR only offers an alternative option to litigation, it is intended only to supplement and not supplant the legal system. It can be invoked in civil, commercial, industrial and family disputes. It is particularly useful in all types of business disputes and is considered to offer the best solution in respect of commercial disputes of international character. Even if the ADR proceeding fails, it is never a waste since it helps the parties to see each other's view point and understand the case better.

The Legal Services Authorities Act, 1987 has also been amended from time to time to endorse use of ADR methods. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes. Mediation, Conciliation, Negotiation, Mini-Trial, Consumer Forums, Lok Adalats and Banking

Ombudsman have already been accepted and recognized as effective Alternative dispute resolution methodologies.

Alternative dispute resolution has greatly expanded over the last several years to include many areas in addition to the traditional commercial dispute in the form of arbitration; mediation has become an important first step in the dispute resolution process. Arbitrators and mediators have an important role in resolving disputes. Mediators act as neutrals to reconcile the parties' differences before proceeding to arbitration or litigation. Arbitrators act as neutral third parties to hear the evidence and decide the case. Arbitration can be binding or non-binding.

What is ADR?

ADR means dispute resolution by alternative means or means other than by taking recourse to the established formal courts of justice. In simple terms it is Alternate Dispute Resolution the conventional Courts use formal system of redressal applying various rules of law, as we have erstwhile mentioned that our system is adversarial. The concept of Conflict Management through Alternative Dispute Resolution (ADR) has introduced a new mechanism of dispute resolution that is non adversarial. A dispute is basically 'lis inter parties' and the justice dispensation system in India has found an alternative to Adversarial litigation in the form of ADR Mechanism in which two parties contest their case and one party wins and the other party loses, but in case of alternate dispute resolution (Section 89 – Code of Civil Procedure), which can be categorized in broad heads which are-

1. Arbitration;
2. Mediation;
3. Conciliation;
4. Negotiation
5. Judicial settlement including settlement through Lok Adalat.

It is win – win situation and no party wins no party loses, today the need of time is that we resort to non conventional systems as well, we should not forget that it's not something new to us, we had for ages, like panchayats etc, it was self sufficient, every village has panchayat and it was a powerful authority for redressing the disputes. The best part of ADR is that since both parties come face to face and they work out the modalities and reach to an amicable solution, there is no likelihood of winning or losing the case, i.e. it's a win – win situation and thereafter no appeal, and thus it reduces the burden of appellate courts as well, the arbitration and conciliation Act, 1996 provides for Arbitration and the award given by the arbitrator is deemed to be a decree. It was step towards the ADR. The labor legislation has already incorporated conciliation and mediation system in their enactments, to have an amicable solution in case of tussle between the labor and the management. The conventional courts are already overburdened with loads of cases, and at least a sizable number of cases can be disposed of by way of ADR.

The purpose of this special provision seems to help the litigant to settle his dispute outside the Court instead of going through elaborate process in the court trial. This is a special procedure for settling the dispute outside the courts by a simpler and quicker method. The litigants on the institution of the suit or proceedings may request the Court to refer the disputes and if the court feels that there exist any element of settlement which may be acceptable to the parties.

Execution of ADR in India:

The execution of Alternative Dispute Resolution mechanisms as a means to achieve speedy disposal of justice is a crucial issue. The sea-change from using litigation as a tool to resolve disputes to using Alternative Dispute Resolution mechanisms such as conciliation and mediation to provide speedy justice is a change that cannot be easily achieved. The first step had been taken in India way back in 1940 when the first Arbitration Act was passed. However, due to a lot of loop-holes and problems in the legislation, the provisions could not fully implement. However, many years later in 1996, The Arbitration and Conciliation Act was passed which was based on the UNCITRAL model, as already discussed in the previous section of the paper. The amendments to this Act were also made taking into account the various opinions of the leading corporate and businessmen who utilize this Act the most. Sufficient provisions have been created and amended in the area of Lok Adalats in order to help the rural and commoner segments to make most use of this unique Alternative Dispute Resolution mechanism in India. Therefore, today the provisions in India sufficiently provide for Alternative Dispute Resolution. However, its implementation has been restricted to just large corporate or big business firms.

Lok Adalats, though a very old concept in Indian Society, has not been implemented to its utmost level. People still opt for litigation in many spheres due to a lot of drawbacks. Provisions made by the legislators need to be utilized. This utilization can take place only when a definite procedure to increase the implementation of ADR is followed. In order to have such an implementation programmed, it is necessary to analyse what the problems are and rectify them.

CONCLUSION :

The best time for initiating consensual ADR procedure is when the parties are still on pleasant and speaking terms because that is the time when a responsible solution to the dispute is more likely to be found by mutual effort. Three things are absolutely necessary for a successful detection of ADR movement in India, these are good law; infrastructural facilities for holding ADR proceedings; and professionally trained ADR practitioners. This law constitutes an important attraction in the history of legal and judicial reforms in India.

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