

Advantages of Alternative Dispute Resolution in India

Shahruf

LLM Final Year Student of Bits Law College Affiliated MDU VPO Rojka Teh Nuh Dist Mewat Haryana, India

Abstract: *It is a fact that the Indian judiciary is one of the oldest judicial systems, but it is also a fact that in recent times it is becoming ineffective to deal with the cases as our courts are completely clogged with long unsettled cases. Law is the command of the sovereign. The work of public policies is controlled by the law, each and every organization's work is regulated by the law. Law provides statutes for the lubricated and frictionless working of the state departments. Law codifies the correct path to the resolution of personal matters as well.*

Keywords: Resolution, Judiciary, Mechanism, Frequency, De - escalation, Autonomy, Neutrality, Participation

1. Introduction

The alternative dispute resolution is a method which enables individuals and groups to maintain cooperation, social order and provides opportunity to reduce hostility. Usually alternative dispute resolution is used to resolve disputes among employer's employees, businesses and consumers, the alternative dispute resolution methods are generally used outside the courtroom but that does not mean that they are outside of the interest of our legal system. The alternative dispute resolution should not be seen as a separate entity from the court - based arrangements for civil justice but rather should be seen as an integral part of the entire system. The constitution of India mandates the state to ensure that the citizens shall not be denied justice because of economic or other disability. [1]

The Supreme Court of India in the case of Salem Advocate Bar Association versus Union of India has ruled that where it appears to the court that there exists an element of a settlement which may be acceptable to the parties. the court may refer the matter to the alternative dispute resolution for the settlement.

1.1 IN the case of Salim advocate Bar Association versus Union of India the supreme court urges the High courts to frame mediation rules for the administration of Mediation based on the model rules submitted by the expert panel [2] The alternative dispute resolution is not just significant for commercial disputes but also disputes which take 10 to 20 years to reach the destiny. the alternative dispute resolution can be one solution for many economic problems for India and at the same time is necessary to curb the menace of the backlog of cases which the most concern and worrying for Indian judiciary today.

1.2 "I realized that the true fiction of a lawyer was to unite parties. A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing out private compromise of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul" Mahatma Gandhi. [3]

1.3 The Indian legal system is being criticized quite frequently because there is delay in delivering justice, and

the need for developing alternative dispute resolution mechanisms to cope with this delay and arrears in court. [4]

The alternative dispute resolution had been seen in India as a traditional practice. The practice of dispute settlements was conducted by the five members of the panchayat in rural areas of India; in ancient India the rural Panchayat consisted of 5 elders who used to resolve Criminal, Civil and also family matters.

1.4 Several Indian High courts including the High court of Judicature of Bombay, Delhi High Court, Kerala High Court, have already formulated mediation rules, these rules can be adopted by the parties to deal with the procedural aspects of mediation. [5]

the alternative dispute resolution deals with all cases relating to the trade, commerce and contracts, maintenance, matrimonial cases, custody of children, petition among family members, disputes between neighbours, all cases related to tortious liability, all consumer dispute, or case where there is a need for continuation of the pre existing relationship in spite of the disputes, all cases arising from strained or soured relationship. Alternative dispute resolution can be a helpful. Mechanism, because it helps to resolve conflicts in a peaceful manner where the outcome is accepted by both the parties of the dispute.

1.5 The alternative dispute resolution aims to maintain peace and cooperation between the transacting parties and prevents hostility among the parties of the dispute. The alternative dispute resolution purpose is to lower the burden upon the courts and provide early access and speedy trial to those cases which are more serious. The alternative dispute resolution is established based on Article 14 and article 21 of the Constitution of India.

1.6 The Niti Aayog, in the 2018 strategy paper (new India [at] 75), had noted that at the current rate of disposal of cases in our courts it will take more than 324 years to clear the backlog. There are 2.9 crore pending cases in District and Subordinate Courts as on 15 April, 2021. The High courts have 57 lakh pending cases as on 15 April, 2021. An all time record, the backlog of cases across the Supreme Court, High Courts and about 19000 District and Subordinate Courts have gone up by at least 19% since March last year. [6]

Volume 11 Issue 8, August 2022

www.ijsr.net

Licensed Under Creative Commons Attribution CC BY

2. Advantages of alternative dispute resolution

There are the following advantages of alternative dispute Resolution:

- 1) Confidential: Court cases are public but the alternative dispute resolution can remain confidential because the alternative dispute resolution is private. The parties can also agree to keep the proceeding and any results confidential. This also allows them to focus on the merits of the dispute without concern about its public impact and a maybe of special importance where commercial reputations and trade secrets are involved.
- 2) Provides finality: In court, during the proceeding the parties usually have a chance to appeal the decision of the judge, or the verdict of the jury, but in the alternative dispute resolution is a lesser chance for the award of arbitration to be challenged. It is final and binding on the parties thereof.
- 3) Flexibility: The alternative dispute resolution can be more easily scheduled for all parties involved. It leads to more flexible remedies than in court. The people make agreements that the court cannot order or enforce upon.
- 4) Save a lot of money: It saves money, that is disbursed on lawyers and other miscellaneous expenses that one has to undergo in the process of litigation. the alternative dispute resolution is more cost effective than litigation because it allows parties to resolve their dispute in a short period of time.
- 5) Easy access to justice: Access in justice is much easier in case of alternative dispute resolution. It allows people who cannot afford fees to acquire remedy without getting into the sweat breaking system of the Court.
- 6) Freedom of choice: The parties have the freedom to choose their own arbitrator, mediator, or conciliator that means they have a right to select an expert who keeps experience in the field of the dispute. [9]
- 7) De - escalate the conflict: It does not escalate the conflict between the parties of the dispute, which is especially important in situations where there is a continuing relationship.
- 8) Save time: It is also an advantage of alternative dispute resolution that is saves lot of time of the parties because it disposes the matter within a short period of time as compared to the regular Court.
- 9) Single procedure: In alternative dispute resolution the parties can agree to resolve their matter in a single procedure involving intellectual property that is protected in several countries.
- 10) Improve relationships: Alternative dispute resolution tends to be more cooperative and less intense than litigation. In Alternative dispute resolution the both parties of the dispute have a better chance of maintaining their relationship.
- 11) Focus on issues: It is another advantage of alternative dispute resolution that it focuses on the issues of the matter that are important for the settlement of the issue and also important to the people instead of just stressing upon the legal rights and obligations.
- 12) Preserve interest: The alternative dispute resolution preserves the best interest of the parties to the suit.
- 13) Mutually satisfactory results: The parties are usually more satisfied with solutions that they have had a hand in creating, as opposed to solutions that are imposed by third party decision makers.
- 14) Foundation for future problems: If any subsequent dispute occurs parties are more likely to criticize a cooperative form of problem solving to resolve their conflicts than to pursue an adversarial approach.
- 15) Enforceability of awards: New York convention generally provides for the recognition of arbitral awards on par with domestic Court judgements without view on merits. This facilitates enforcement of awards across borders.
- 16) Limited opportunity for judicial review: There is very limited opportunity for judicial review of a decision, which is called in ADR an award, the award is usually final.
- 17) Comprehensive and customised agreements: The ADR agreements often help resolve procedural and interpersonal issues that are not necessarily susceptible to legal determination.
- 18) Reduce stress: it is also an advantage of alternative dispute resources that it produces good results by reducing stress upon the people and satisfying them by giving them the desired results and by preserving good relationships between the parties of the dispute to the dispute.
- 19) Autonomy and creative solutions: In ADR autonomy can be maintained as mediation involves more engagement from both parties of the case and creative solutions can also be reached.
- 20) Putting parties in control: The ADR ADR puts the parties in control by giving them opportunity to discuss their case by giving them a form to put forth their own views and thereby giving them a chance to put themselves on a clean slate.
- 21) Neutrality: The ADR can be neutral to the law language and institutional culture of the parties thereby avoiding any home court advantage that one of the parties may enjoy in court based litigation, where familiarity with the application law and local processes can after significant strategic advantages.
- 22) Finality of award: The ADR decision shall be final and no appeal shall be filed in that case which was decided by the ADR like Court decision that can usually be contested through one or more rounds of litigation. arbitrary awards are generally not subject to appeal.
- 23) Informal: The ADR is more informal than the regular trial of courts.
- 24) Party participation: It allows more participation by the litigants than regular trial of the court.

References

- [1] Article 39A of the constitution.
- [2] AIR 2005 SC 3353.
- [3] Gandhi and Mahadev H Desai, An Autobiography or the Story of My Experiment with Truth (Prakash books 2009).
- [4] 77th report of the law Commission on delays and arrears in trial courts 1978.
- [5] The future of dispute resolution by Devika Sharma.
- [6] The Times of India pending cases in India cross 4.4 crore, up 19% since last year by Pradeep thakur on April 15, 2021.