

PERSONAL INFORMATION

NAME OF THE AUTHOR: Abhishek Kumar

ADDRESS FOR COMMUNICATION: E-1/280, Vinay Khand-I, Gomti Nagar,
Lucknow, Uttar Pradesh.

NAME AND ADDRESS OF THE COLLEGE: Hidayatullah National Law
University, Hnlu Bhavan, Civil Lines, Raipur, Chhattisgarh, India-492001.

DEGREE PURSUING: B.A.LLB (HONS.)

EMAIL ID: abhishekhnl@gmail.com

CELL NO. +919752984467

ALTERNATIVE DISPUTE RESOLUTION AND COMMON MAN *'Need for an improved structure'*

AN INTRODUCTION

Alternative Dispute Resolution (ADR) is the way to resolve the dispute outside the court in an amicable and peaceful manner with the mutual assent of both the parties. Dispute presages to a difference of view ensuing in differences concerning the interests, rights and liabilities of the concerned parties. It is different from conflict in respect of magnitude and occasion.

The ADR process provides inclusive justice to the persons affianced or involved in conflicts and legal disputes. It is a chosen practice, which has acquired legal recognition over a period of time. It is being increasingly more accepted as an alternative to the prolonged litigation, a universal phenomenon.

It is mainly are of three forms viz. Conciliation, Mediation and Negotiation. Conciliation is a method, attempts to resolve disputes, e.g., labor disputes by compromise or voluntary agreement.

Mediation is really a search, for a way out, by the parties to the dispute, themselves, under the supervision of a third party. It is a method, facilitation, an empowerment. The fundamental reason behind it is to afford the parties with an opportunity to negotiate, discuss and search options assisted by a neutral third party, the mediator, to profoundly determine if a settlement is possible.

Negotiation is principally a common means of securing one's hopes from others. It is a sort of communication intended to reach an agreement when two or more parties have certain interests that are shared and few more that are opposed.

ADR: HISTORY AND EVOLUTION

The history and Evolution of ADR is visible from the 12th Century in China, England and America. Currently, the business group of people has recongised it in one variety or other, is the adequate means of dispute resolution.¹ It is felt that ADR is less costly, less adversarial, thus, more beneficial to the perpetuation of business dealings, which is of crucial importance in the business community.

INDIAN PERSPECTIVE

The practice of amicable resolution of disputes can be caught from historic times, when in the villages disputes were resolved between members of a particular relations or occupations or between members of a particular locality, by *kulas* (assembly of the members of a clan), *srenis* (guilds of a particular occupation), and *pugas* (neighborhood assemblies), was in practice in ancient days.² In rural India, panchayats (assembly of elders and respected inhabitants of the village) decided approximately all the disputes between the residents of the village, while disputes between the members of a clan continued to be decided by the elders of the clan.³

These were recognised methods of administration of justice and not simply 'alternatives' to the formal justice system made by the sovereign, feudal lords, *kazis*, adalats system initiated by the British, and the maintained court system. The two systems continued to function analogous to each other. The process followed by the traditional institutions was that of arbitration and conciliation, depending on the character of dispute, but that decision makers were not selected by the parties, which is in practice in this new modern era in the arbitration.

The disputes between members of a clan or *biradari* are still decided by the *biradari*, traders and other commercial associations give for settlement of the disputes of their members, interse,

¹ See, Sridhar, Madabhushi, Alternative Dispute Resolution (Negotiation and Mediation), (Lexis Nexis, Butterworths), 2006, para1, page 82.

² See, Sen, Dr. Priyanath, "The General Principles of Hindu Jurisprudence".

³ See, Supra note 1.

which is alike to srenis, and panchayats resolve disputes between those residing within its territorial limits.

LAW IS RELEVANT IN ADR:

The law functions as a foundation for understanding the rights and duties of the parties in any given circumstances, and decides the nature and vigor of the dispute. Without knowing the legality and rights, it is intricate to develop an acceptable solution. Nevertheless, it is not required that the solution could always be within the outline of the law. Thus, negotiator must have knowledge of the legal foundation of his dispute and legality of his claim, and the level of the dispensations he could legally offer to the opposite party. Legality is an indispensable precondition, while the plentiful sorts of solutions could be invented afar the law and reach of enforcement regulators. For instance, a party may concur to pay a time-barred debt as a matter of compromise to continue long standing business relations as a stair in negotiation.

It does not depart totally from law and legal process. They achieve negotiating force from law, apart from moral strength. Thus, the need to resort to alternatives has emerged, as discussed in the beginning, from the troubles arising out of litigation, such as unwarranted delay, rising costs of litigation, mounting arrears, persistent corruption, unfairness in system, non-revival of *Nyaya panchayats* (people's courts), despite recommendation of the Desai Commission in the year, 1988.

ADR: POSITION OF COMMON MAN

In the present day, in this modern world, era of Globalisation, commercial development, consumerism and cut throat competition, the want for ADR is being felt because the disputes, to get decided in the traditional courts receives long and inordinate time due to lengthy and exhaustive procedures of law. Moreover, it is also very costly; a poor man cannot afford its expenses and disburse the court and lawyer's fees. A formal procedure is desired in order to file a case and afterwards for litigation. All these processes take too much time that it overwhelm the very objective of the filing a case and it is quite accurate to say, 'justice delayed is justice denied.'

Now a days, trade, development, commerce and business have increased to the large extent due to which it requires their prompt and immediate resolution of dispute to thwart loss in business and trade. It extensively paved the way for ADR and demand was begun to augment for it, with its prologue large business transactions dispute began to solve readily and business community of entire world obtained the apposite, stable remedy in a extremely less time and too very cheap in comparison to traditional courts. Thus, in such a way the ADR (Arbitration, Conciliation and Mediation) reached to the commercial and enormous money transactions but it remained out of the reach and purview of the common and poor men. It failed to pay heed to such persons, despite the fact in olden days we used to resolve the disputes through ADR process as has been discussed earlier. The only rationale behind it is the very intention of drafting ‘Arbitration and Conciliation, Act, 1996’ by the parliament of India was to resolve disputes of commercial nature and it has been sketched on the outlines of United Nations Commissions on International Trade Law (the UNCITRAL Model Law on International Commercial Arbitration in 1985).

Therefore, government failed to observe, recognise and appreciate its need for common and poor people also and gave primacy to the commerce and trade. It absolutely forgot the history of the very evolution and existence of ADR and made a successful attempt to keep it out of the reach of the poor, indigent and common men who are in dire and desperate need of such a method of dispute and conflict resolution.

The ADR method is needed in this era because traditional courts takes so much time in deciding a particular case or matter, and the reason behind such delay is numerous such as long formal legal procedure, increasing number of pending cases, inadequate number of judges, corrupt judiciary, etc. due to all these things matters are not decided readily, ultimately, court failed to provide justice to the poor as well as needy persons.

Now, the need of the hour is that a proper, new Alternate Dispute Resolution method should be introduced to resolve the disputes speedily for everyone and primarily for the poor and common men so that they can also get justice in such a largest democratic country of the world.

NEED OF AN IMPROVED STRUCTURE:

- A. UNIQUE INSTITUTION SHOULD BE OPENED BOTH AT VILLAGE AND CITY LEVEL TO RESOLVE THE DISPUTE:** There is a need of such an institution because today the poor do not have access to the traditional courts and justice, just because of expensive litigation costs and delay in rendering judgments. Therefore, a unique and distinct institution is needed and it should be opened in which grievances of the people can be heard and redressed. Such institution must be free from any sort of formal procedure and there should not be need of legal representative. It should not charge money for anything in whatsoever manner, in any form from the parties to the dispute. The court should try the cases that are civil in nature not of criminal. The retired good judges should be appointed as a presiding officer or judge in such disputes or conflicts. The disputes and conflicts must be disposed off within stipulated fixed time which is not longer period. The decision and judgment rendered by such court must be binding and there must be no scope of further appeal against its decision. The decision in regard to the disputes and conflicts shall be final. There should not be court intervention, before, during or after arbitration; otherwise it would become dilatory system like traditional courts. It would ensure the independence and competence of the court and at the same time it would get faith of the people that they would get justice without any sort of intervention from any body or person.
- B. FAMILY MATTERS SHOULD NOT BE LITIGATED IN ANY COURT UNLESS IT IS OF EXTRAORDINARY GRAVE NATURE. IT SHOULD BE AMICABLY RESOLVED:** Family disputes such as divorce, partition, marriage, maintenance should not come into the higher courts and it should be resolved mutually and conclusively in the family court itself, so the need is that the decision of the family court should be made binding and final. It would reduce the time of the higher judiciary where grave matters are pending to decide in comparison to family disputes. Family disputes are such disputes that can be resolved even in the home itself with a unanimous consensus. These matters in the higher judiciary just increase the number of cases and increase the burden on the court. It wastes precious time of the court with such petty matters. Thus, family courts should be of such nature that's decision is final and binding. In this way it can very well work as an alternative method for dispute resolution and significantly contribute in delivering justice to the people as well poor and common people. For those people who cannot bring family matters to the higher judiciary because of being indigent and poor.

C. TRADERS AND OTHER COMMERCIAL ASSOCIATION SOLVE THEIR OWN DISPUTES:

Commercial disputes should be resolved by the traders themselves by amicable means it would be save their time and money both, because their harmonious relation would continue to maintain. They should thwart in furthering the disputes to the higher courts for their own sake and others. A special mechanism needs to be developed for the commercial sectors for resolving the dispute outside the court as alternative dispute resolution.

D. LABOUR AND INDUSTRIAL DISPUTES:

The labour and disputes relating to the industries can very well be resolved between the employer and labourers with a peaceful and friendly approach. The disputes are not such of a grave nature that it requires the assistance of the court. The employer and employees both should resolve the disputes and conflicts cordially because they have to work together and for it healthy relation is needed. Often both involves themselves futile court proceedings at the end of day both suffered losses in terms of money and time, in addition do waste less exercise mentally and physically.

On the other hand labourers are poor who work in the industries very often they are unable to bear the costs of the litigation and failed to proceed, consequently lose the case and become helpless and aggrieved. Thus, in such a way both suffered loss. It would be very fine to introduce Alternative dispute resolution method to resolve their disputes and conflicts. It would be provide all the remedies that they are not getting from the traditional courts. However, the Industrial Disputes Act, 1947 provides for alternative method to resolve the disputes but such method is not binding due to which often matter comes to the court.

E. COMPENSATION MATTERS:

The disputes pertaining to compensation such as Motor accident claim matters involving permanent disability or death of persons and relating to other injuries, insurer or owners liability matters, matters relating to railway accident including other railway compensation matters, accident other than those covered by Motor Vehicle Act, and others should be resolved mutually. It would facilitate to the common men as well as other party to resolve dispute readily and within in short span of time.

CONCLUSION AND SUGGESTION:

ADR has been proved a cheapest and simple means to resolve disputes amicably. It is a unique and significant process by which very easily solution can be obtained. From the above study it is quite evident that we have ADR from the very beginning and it is not newly developed or evolved. It has ancient backing. It was prevalent in the ancient society and people used to get resolved their disputes through ADR process not by approaching courts. The result was that they used to get readily and speedily disputes resolved.

Now in this modern world, where traditional courts have dominated whole dispute and conflicts resolution system and people prefer to go to these courts, despite the fact it takes so much time and money. People forgot to adopt another alternative and for the redressal of their disputes and grievances, even for petty matters they are approaching to the courts, that resulting in collapse of traditional courts to the large extent, in the sense delay in justice dispensation and increasing costs of litigation.

To cure such a situation parliament of India enacted legislation, Arbitration and Conciliation Act, 1996 to resolve the disputes out of the traditional courts and also brought amendments in section 89 of the Civil Procedure Code, 1908 (CPC), in the year 1999. In this section specifically various modes of ADR have been adopted. It laid down resolution of disputes out of the courts by mutual consent of the parties and the circumstances when parties to the dispute may adopt it during the course of litigation in the traditional courts.

These above two efforts of parliament of India are entitled to appreciation but both proved ineffective for the poor and common men in this modern era where globalisation and consumerism are prevailing.

The government is required to bring necessary alterations and changes in the existing laws of the land and also adopts alternatives various methods for resolving disputes and conflicts of family matters, traders and commercial associations, labour and industrial disputes and compensation matters. A unique institution at village and city level should be opened, where the petty matters

can be brought & resolved, and which is free from any formal procedure. There should be no need of representation through lawyers. The decision rendered by these institutions must be binding and no scope of further appeal should be made. It should charge a very nominal or minimal fee that is must to run the institution and it should not charge even a this nominal fee from the poor who are openly incapable to give it.