

EVOLUTION OF ADR IN INDIA AND A COMPARATIVE STUDY OF THE ARBITRATION ACT OF 1996 AND 1940

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ABSTRACT

*"Peace cannot be kept by force it can only be achieved by understanding."*¹

Albert Einstein

The Above mentioned quote by Sir Albert Einstein focuses on the concept of ADR is alternative dispute resolution he want to say that through this quote any issue cannot be solved by force but by arbitration and meditation. The process of arbitration always had been practiced since time immemorial in our country the people be of opinion that the dispute must be resolved with four walls otherwise it will affect their dignity and responsibility in the society consequently the ADR mechanism in prevalent in India since ancient period village level institution are the good example of arbitration where the disputes are resolved since long period of time which is properly known as Panchayat and headed by "Sarpanch".

During the period of Empire the king came to decide the matter Les and dispute where resolved by the intervention of trainees and such other self governing bodies. At the time of Mughals the disputes between parties were resolved by village court itself and its some cases where appointed as arbitrator during the era of British the arbitration clause was passed Bengal regulation law as Bengal regulation of 1772, 1780 and 1781 where framed to strength the arbitration system and discuss the unnecessary litigation. The arbitration act of 1996 the act passed after the act of 1940 modernized the same law and for the development it of informal way to said the dispute between the parties.

INTRODUCTION

The alternative dispute resolution is the process which exit in India since ages the panchayat system village level institution play a very crucial role where the matter where settle by elders contain the Council of members popularly known as **Panch** or **Sarpanch**. In ancient

¹ <http://Philosiblog.com>.

time the dispute between parties peacefully adjudicated by the meditation of kulas Parishad before the rule came to decide.² The head of the villages had the power to resolve the dispute of their villages if the matter where not settled despite the intervention of the village head then there are those matters where is resolve in the court of the king the panchayat of the respective villages where subordinate to the court of law either Court of king.

In Mauryans empire the ruler was had the court of laws as well as all the laws were made by the order of him there were many special courts in the boundaries of state. In the criminal matters where adjudicated by kantakasodhna and civil matters where decided as per the Hindu code of law which is engaged in the shastras .the decision was taken by Council of arbitrators with an option of an appeal before the court of king. During the Mughals the matters where decoded by the village quotes itself and appeal to the Impartial umpire (salis) some disputes where adjudicated by the king in diwan-es-aam if any dispute was related to the main member of the royal family were decided by the king in the Diwan-a-khass.³

During the time of Colonial rule the modern arbitration law in our country was created by the Bengal regulation of 1772, 1780 and 1781 and encourages informal justice delivery system. India has a long remarkable history of settlement of matter by the informal justice system in the modern era the process of arbitration conciliation and mediation very efficient alternative which are inexpensive as well as less time-consuming and the disputes can be resolved without the litigation in the courts. In the past two or three decades it has been observed that settlement outside the courts by the alternative means like arbitration conciliation and mediation and its scope have been broadly increased in the commercial field. Development and developing countries like USA, UK, France, Canada, China, Japan, South Africa, Australia, Singapore, etc. have adopted and acknowledgement. The Alternative Dispute Resolution for sitting the international disputes regarding trade and Commerce and other important matter.

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NEED OF ALTERNATIVE DISPUTE RESOLUTION

Surely, alternative dispute resolution ADR is prevalent in India since ages but scope of the same concept have been expanded and development to settle the dispute friendly and rapidly

² www.adr.gov.in.

³ www.lawtimesjournal.in.

the will of the related parties. Establishment of alternative dispute resolution is in the modern society is in the most recent necessity where the litigation process is very complicated.

1. **Peaceful settlement of disputes-** It is indeed that alternative dispute resolution provides amicable settlement of disputes between the parties in the commercial field it can be sensible approach to have that competitor is not the foe undoubtedly we can say the healthy competition improve and effect the shark half services product. In present time even the criminal disputes are settled friendly it would be applicable to bring up the concept of bargaining mentioned under Criminal Procedure Code 1973.

2. **Expeditious settlement of matter-** The alternative dispute resolution is very efficient and effective process that provide speedy in the settlement of dispute between the parties under the same process there is no scope of at adjournment as for like as the courts length and time taking litigation.

3. **Inexpensive settlement of disputes-** The alternative dispute resolution is the process that delivers cheap or inexpensive solution settlement of the matter in other words the litigation expenses and standing counsel for could be avoided by settlement by the major by way conciliation and mediation.

4. **Time saving process-** Time is very precious at important thing in our life the alternative dispute resolution is that time saving process where the matters can be settled without the following lengthy and procedure of normal litigation.

5. **Reduce the burden of the courts of law-** It is very recent need of alternative dispute resolution number country the same concept reduce the workload of the regular Court of laws India now has almost 4 crore spending case in Supreme Court various High Court and in also many subordinate courts according to data collected for Ministry of law and Justice.

In the apex court of the country they are 3.65 crore pending cases as the 1st February 2.20 if we talk about the high court of a state the Allahabad High Court has the highest number of

pending cases.⁴ At subordinate level the state of Uttar Pradesh top the list with the 1.80 lakh pending cases the union territory of Ladakh has the least number of cases.

METHODS OF ALTERNATIVE DISPUTE RESOLUTION

Undoubtedly the alternative dispute resolution has many method but the just natural is compulsory to be followed while adopting any procedure the method of alternative dispute resolution are as follows.

1. **Arbitration**- The same method is a process where parties to the dispute agree that one or more than one party can make a decision and matter can be settled outside the court in this process the whole settlement process is being governed by the arbitrator who is appointed by third party.
2. **Negotiation**- It is a process by which the parties settled their difference in other words the method of settlement of any dispute between the parties with or without the assistance of any third party.
3. **Mediation**- It is the process to attend a conciliation solution of any matters or disputes.
4. **Conciliation**- What is the method practice under law the whole process is to be activated by the person who is known as conciliator.
5. **Skilled appraisal**- It is very popular method of alternative dispute resolution under the method a person who is an expert in that field related to dispute is appointed to investigate the situation and a non-binding opinion.
6. **Neutral evaluation**- The said method a non-binding evolution in an unbiased manner.

THE ARBITRATION AND CONCILIATION ACT 1940

Arbitration and conciliation act 1940 was in enacted before independence which integrates and amended the rules and regulation retail to arbitration Centre as covered in the Indian arbitration act 1899 as well as the second schedule of Civil Procedure Code 1908 the main

⁴ www.bloomberquint.com

objective of said Act was to settle disputes through the arbitration process selected by the disputing parties. The act of 1940 e default only with domestic arbitration there was no substantive law for international arbitration. According to the act of 1940 interference of the court was compulsory in all three step of arbitration either before the reference of dispute to the arbitrator terminal time span of the proceeding before the arbitral Tribunal and after the award was passed by the arbitral Tribunal. Reference of the court was mandatory for the expansion of time for making forming and award.

Lastly prior to award can be enforced it definitely required to be made the rule of court of law. In the landmark judgement of *M/S Guru Nanak Foundation vs. M/a rattan Lal Singh and sons*⁵ The Honourable Supreme Court of India observed, “*The way in which the proceedings under the act are conducted and without any exceptions challenged in court has made lawyer laugh and legal philosophy weep experience shows the law Reports carry sample testimony that the proceedings under the act have become highly technical accomplished by unending proximity at every stage providing a legal trap to the unwary informal forum sallied by the parties for expenditures disposal of disputes has by the decision of the courts been clothed with ‘legalise’ of unforeseeable complexity*”.

THE ARBITRATION AND CONCILIATION ACT 1996

The act of 1996 which revoked the act of 1940 was passed to provide an efficient and expenditure dispute process which would stimulate confidence the dispute resolution system in India. The 1996 act carries to unusual features that vary from the UNCITRAL model law. Firstly, the time when uncritical model law was formulated to apply only to International commercial arbitration.⁶ The act of 1996 deals with both International as well as domestic arbitration.

Appointment of an Arbitrator

According to the old act of 1940, disputing parties to get an arbitrator appointed had to proceed before the jurisdiction of civil Court either under section 8 of section 20 of the arbitration and conciliation act 1940. The provisions mentioned under the above mentioned sections were time consuming that is why are unable to fulfil the conditions of time saving. But after the enactment of the new act of 1996 if the dispute in parties fail to get an

⁵ 1981 4 SCC 634.

⁶ www.lawctopus.com.

agreement as mentioned in subsequent to or within 30 days if they are the other party fail to confirm the receipt of the request by them the Honourable chief justice can proceed for the appointing an arbitrator under sub clause (5) a sub section 11 of the arbitration and conciliation act 1996 the chief justice has the power of delegation for the apartment to any authorised person or institution.

In the arbitration process the arbitrators are to be appointed by the disputing parties when they fail to settle their disputes by own. The Important features of arbitration and conciliation act 1996 that the laws mentioning to interim measures which authorise the arbitrator or arbitral tribunal to pass and orders related to the dispute on the request of either party in the arbitration and conciliation act 1940 had such rule except it could only make an entry in award but the act of 1996 provides for the enforcement of certain for an award made under New York convention.

Jurisdiction of Arbitrators

In the arbitration and conciliation act 1940 they had no provisions of arbitral tribunal was authorised to make final decision in the jurisdiction but in the latter act section 16 stated that the arbitral tribunal has been permitted the power to make a ruling on its own jurisdiction In the case The Honourable Supreme Court of India held that section 16 (1) authorise the arbitral tribunal to have power about its jurisdiction.⁷

CONCLUSION

As we all know that the old Court system is damaged with procedural and a lot of pending litigation that converts into unusable delay and it could not be affordable by middle class people because of costly charges and court fees etc. In the same process is a private Independent and friendly that are reasonable and inexpensive. The arbitration and conciliation Act of 1996 was passed by the Parliament of India to increase the quick and economical dispute resolution.

These are some suggestions which are as follows:-

- A Separate Act should be enacted for recognition and imposition of arbitral awards.
- Enough training should be provided to the judges considered to undertake the procedure.

⁷ S.B.P. & Co vs. Patel Engineering Ltd. & Anr., AIR 2006 SC 450 2005 (9), <https://main.sci.gov.in/jonew/judis/27300.pdf>.