USING ALTERNATIVE DISPUTE RESOLUTION WISELY

Manika Baliyan, Mewar University

INTRODUCTION

Human conflicts are inexorable because society is a multifarious web of social relations.[1] Therefore, one can never escape disputes, they are bound to arise. The only thing that is we are capable of resolving the disputes in a manner that are speedy, fair and inexpensive so that interests of the people are not affected.

Alternative Dispute Resolution is not just a dispute resolution mechanism outside court rather it is an active dispute resolution technique as it is he mechanism which needs least assets to resolve any dispute. The mechanism helps parties not to resort to any detailed formal court procedures rather it is only an agreement that the parties to any dispute have to arrive at amicably. In recent time the mechanism has gained widespread popularity both amongst the general public and the legal professionals. This is so because of the obvious observation relating to the pendency of the cases and the workload on the judicial officers.

This method of dispute resolution offers the parties numerous options to choose how they wish to resolve their disputes as Alternative Dispute Resolution can be exercised in the form of Mediation, Negotiation, Arbitration and Conciliation. Therefore the parties have a greater hold over the outcome and the interference of the third party is the least.

If we can observe that the mechanism is too efficient then why do not we use wisely and curb any dispute in its home itself i.e. why not each and every government and private institution have its own ALTERNATIVE DISPUTE RESOLUTION (ADR) cell whereby all basic issues between the employees or the entity could be resolved. Even if such a cell resolves few of the disputes the burden on the customary court may be reduced.

BENEFITS OVER CUSTOMARY COURTS

[1] Dr. Anupam Kurlwal, An Introduction to ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR) (2nd ed. 2014)

What is now essential is to explain those who are unaware of this mechanism the benefits that are attached to it. The chief object of ADR movement is dodging of displeasure, expenditure and delay and back up of the ideal of "access to Justice" for all.[2] The benefits that ADR carries over customary courts are:

1. Speedy relief – Looking at the pendency of the cases nationally and the impact of boom of corona virus due to which there is hardly any progress in litigation, ADR could prove as a candy to the weeping child because as rightly said "DELAY DEFEATS JUSTICE". Therefore, if there could be a mechanism which can give relief to the aggrieved in a comparatively quicker manner, such should be adopted with open hands.
2. Economical – In normal conditions as well as in prevailing conditions a cheaper mode of dispute resolution could be a great relief. Its known to all that apart from stringency in court procedures they prove to be costly. ADR is not at all an expensive mechanism for resolution of any dispute.
3. Best Approach – The parties are involved physically and are able to understand what is the progress in there matter unlike the court proceedings where common man has hardly any knowledge of the existing laws, they rely on their counsel for every decision he takes on their own dispute. In ADR the parties are masters of their own disputes and it is absolutely dependent upon them to what they decide for themselves.
4. Simple Modus Operandi – Court proceedings are formal, stringent and sometimes way too technical for any person who is unaware of the existing laws. Whereas, on the other hand ADR mechanism and procedure is dependent upon the parties, they decides the rules for dispute resolution as per their own sweet will.
5. Co-operative – What is better than a resolution of the dispute where no third party has any interference? In customary court practice the outcome is in the hands of the lawyer and finally on the judges. The parties have almost no say in what they desire. In ADR with the help of co-operation of parties desired outcome can be achieved by simple and amicable communication.
6. Reduces overburden – The most incredible associated with ADR mechanism is that it reduces the burden that is already on the courts and which have been worsened due to the existing Covid-19 situations. This is the prime reasons why also judiciary has started encouraging dispute resolution more via this mechanism.

[2] Dr. Anupam Kurlwal, An Introduction to ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR) (2nd ed. 2014)

MEDIATION IN EMPLOYMENT SECTOR

The literature on growth of mediation has expanded in recent years. The unexplored field of mediation in terms of employment dispute has a wide potential for future research. Much of the literatures addressing mediation are found in debates thereby highlighting the pros and cons of the mechanism. However, the aim behind all debates pertaining to mediation are to evolve a golden principle upon which all disputes of like nature in various fields be categorised that would have mediation as mechanism.

It is highly improbable that such principle would be found as all disputes irrespective of them being alike have different requirements for their resolution but that does not leads to a conclusion that further research is not of any use. Research can be done in specific fields with respect to mediation rather than on mediation on a whole. This area is still in need of more research and will therefore provide basis for more future research.

Mediation is not a new concept but with development of mankind it is now being recognised under various fields. In some fields mediation is made a mandatory mechanism so with respect to nature of dispute the mechanism can be incorporated in various other laws where relationship between the parties is more towards socio-economic. It is very essential that conceptual clarity is maintained in order to implement such mechanism in everyday disputes.

It also follows from this review that many countries offshore has incorporated the mediation mechanism in their industrial dispute resolution and it has proved to be quite effective. Some countries apart from incorporating has made practice of mediation compulsory.

Also a mediation that does not result into success should not be considered to be a failure of mediation practice. For example, employer and employee may not come to a conclusion in mediation practice but that does not result into failure of mediation as a whole, probably the margin of salary to which each party agrees is fairly low and the court may then resolve the dispute amicably.

ADR CELLS

As observed ADR brings along with numerous benefits and it would not be intelligent of us if we do not use it to the best of our abilities. Thus, for the most effective usage ADR cells must be created in every governmental and non-governmental body that would help the resolution

of any dispute that arises internally in the department. Departmental disputes most of the times are just ego clashes between the employees or the employer and employee.

The benefit of such cell would be that many a times due to petty disputes in the work space the pace of the work in the organisation is hampered thereby causing delay in public functions. Governmental organisations are concerned in carrying out majorly the tasks associated to public at large therefore, any delay in the departmental work is likely to adversely affect the interested persons physically and mentally.

Even in the non-Governmental organisations there are some disputes which are not so serious in nature and could just be resolved by mere negotiation. Due to lack of such existing mechanism a petty disputes turns into a formal suit thereby involving non interested parties in the matter which could have been easily resolved.

It is not just the delay that is to be accounted for but also what it results into indirectly. Any address to Intra-departmental issue in the court of law needs having expenditure whereas if there is a possibility of redressal in the home itself then there would be no need to incur heavy expenditures along with mental harassment.

The court is under a bounded duty to address all the matters that come before it and this is the reason why courts in India are overburdened as we do not opt for other methods of dispute resolution as effectively as they need to be. Due to lack of infrastructure such as ADR cells the aggrieved persons of whatever be the nature of dispute have no other means than to approach the court thereby over-burdening the court.

The composition of ADR cells can be such that all sections of the workers are adequately represented. One such distribution can be like-

1. Presiding Office- Chairman or the Head of the Department
2. Members: a) Person having knowledge of law.
   b) Person associated from a Non- Governmental Organisation.
   c) Social workers
   d) Female Members
   e) Departmental Members
   f) Member from Labour Organisation, etc…

The strength of the members, tenure, functions and rules can be prepared by the department upon satisfaction of all other members. The selected members in any cell should be persons of repute as it would instil the faith of people working in the department that justice would be ensured. Few members of the cell must always be present in the cell and should carry out timely inspections in order to address any grievance that is likely to arise. Such members should be welcoming towards the dispute as otherwise the motive for forming the cell would fail.

ADR IN GOVERNMENTAL AGENCIES GLOBALLY

Few countries globally have already started to look upon this aspect of mechanism in the government sector whereby ADR in some form or the other has been inculcated to resolve any dispute arising inside the department. Some of the countries are-

1. In **United States of America (USA)** governmental agencies are rapidly making ADR mechanism accessible to parties backed by the Alternative Dispute Resolution Act, 1990 and the Negotiated Rulemaking Act, 1990. The former allows the federal agency to use ADR thereby making arbitration compulsory in certain matters. This has helps USA to reduce its lawsuits to a great extent.
2. In **Hong Kong** the foundation of ADR in government related functions have been laid down. Any dispute pertaining to government contracts in the sector of new airports that are to be developed are to be resolved via ADR. A three stage program which includes mediation and arbitration has been drafted for effective adjudication.

CONCLUSION

Statistics have time and again revealed that pendency of case have burdened the courts in India. Each judge in Indian courts are over-burdened with such larger number of cases that they are working manifold of their efficiency. This not only adversely affect the delivery system of Indian judiciary but also brings fatigue and restlessness in the minds of all the persons involved in the justice delivery system. Legislators should look upon to such issues and it one of their prime concerns to reform the causes that leads to delay in departing justice. It is necessary that the pain of delay reaches the drafters of the legislations and affirmative steps are taken.

The mediation practiced at present in our nation is on a smaller scale and thus, continuous efforts have to be made to make this technique progress so as to yield a desired result. Mediation is also effective in resolution of industrial disputes as it can reduce the number of pending cases

in the court, and the closure of an industry does not only affect it but also the economy of the nation thus, for the speedy disposal of the dispute the technique can be opted. The process is also one of the most transparent dispute resolution mechanism

What has already happened cannot be undone but what can be done now to improve the condition of existing pendency is to reform ADR infrastructure in India and effectiveness of such mechanism should be such that it actually proves to worth the efforts of all involved in the establishment, working and framing of the policies. Therefore, adding of ADR cells as part of the administration in all the governmental and non-governmental organisations can up to an extent reduce the number of lawsuits likely to be instituted.