ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE ADMINISTRATION

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INTRODUCTION

Gandhiji in his autobiography has illustrated the importance of ADR saying that, in his twenty years of law practice he found, primary function of a Lawyer is not to put the case and parties for trial before the Courts, but to make efforts to unite them. Gandhiji believes cases can be solved if lawyer learns to enter human (Parties) hearts and trace better side of their nature. As per Gandhiji, he practiced this method and succeeded in settling more than 100 cases and lost nothing including the fee (money) and soul.[1] Legal disputes disrupt peace and leads to litigation. Dispute not only hinders the progress of parties to the dispute, but also of all those who are directly or indirectly connected with them such as their kids, parents, relatives, common friends, neighbours, those in business or occupational or fiduciary relationship with the parties, etc. As such dispute eclipses the progress and causes disturbance to the big chunk of the society. Factually, no one want disputes to exist. Everyone desires that dispute should be resolved by any means; may it be either through the court of law or outside tools.

Disputes, which I am attempting to cover under the present research, are that class of disputes, which emanates from party‟s legal rights and obligations. They arise mostly due to breach of legal and moral duties. It is that branch of disputes, which are generally placed before the Courts for adjudication or verdicts.

They may be broadly called as “legal disputes". As such we are dealing only with that category of disputes which are legal ***per se,*** or in other words, these are the disputes which arose out of violation of legal rights of a party or failure of a party to perform obligations casted by law and for which the law has provided some specified remedies. It encompasses, all compoundable and some peculiar not compoundable criminal matters (e.g., 498A IPC) as well, which by virtue of their nature and governing law (including precedents) may be settled amicably.

AIMS AND OBJECTIVE OF THE STUDY

Following are the aims and objectives of this research –

1. To study the historical background of ADR.
2. To compile and consolidate various Alternative Dispute Resolution tools, governing rules, and laws.
3. To examine and critically analyse the various Alternative Dispute Resolution tools.
4. To assess and evaluate the utility of ADR tools.
5. To understand whether ADR is a special advantageous tool.
6. To understand the Alternative Dispute Resolution modes & their position.
7. To verify and identify, the gap and inconsistencies, if any, in the prevailing rules and practice.
8. To know various precautions required to be taken by the court resorting to ADR tools.
9. To know, is there any need to drop the ADR and go back to traditional mode of settlement like Panchayat and Gram-Nyayalaya, or whether both the patterns may run together.

REVIEW OF LITERATURE

1. Reginald Heber Smith, Justice and the Poor, 1919 :-

Reginald Heber Smith, happened to be the director of the Boston Legal Aid Society. His article was basically on law and ethics, which was published in 1919. He has described the then condition of the United States where poor were denied access to courts. He tried to show that U.S. had failed to provide equal justice to the poor. He has emphasised on preserving the social fabrics by taking various measures including access to poor, simplification of court procedure provision of free legal services for the poor. Reginald Heber Smith maintained that it is sorry situation that one has to fight to get the justice. As per him poor can not go the court unless he appoints the counsel and deposits the cost to file money suit, and in that manner the justice is bought and not available to the poor.

2. R.S. Sharma, India"s Ancient Past, Oxford University Press, 2005: - In this book, the author has discussed origin and growth of civilizations, empires and administration. It has a comprehensive account of the History of early India. The author has discussed about the administrative system during the period of Mauryas, Central Asian Countries, Guptas etc. He has also highlighted about the commerce, trade and developments, which was connected with the present research.

3. V.D. Mahajan, Ancient India 557, S. Chand & Company Pvt. LTD New Delhi, Reprint Edition, 2015:-

The author has written in detailed about the vedic literature, later vedic civilization, age of sutras and dharam Sastras, the epic age, Kautalyas Arthasastra, Asoka‟s kingship,

Mauryan Administration, Mauryan Judicial Administration / Jails / welfare state, Sakas, Kushan Empire, Gupta Empire, Joint Family System during Gupta period, Cholas etc.

IMPLEMENTATION OF ADR IN INDIA

It is not easy to switch from the UK (English/European) litigating system to the age old and forgotten tools of dispute resolution. The ADR is like a master key to open the lock of the minds of litigants and dispose the "stale stock of cases" from the court rooms. It may provide speedy remedy if the barriers in the way of its enforcement are removed. Arbitration in the form of legislation thought first brought in 1940, however could not perform much batter as was expected. The defects were removed, and loopholes were filled, and the new law came in 1996. It was drafted on the basis of proposal of the United Nations.

Afterwards, law was again criticized, and some changes were suggested by the commercial and corporate personalities, entities, and bodies. The law was then again amended. The law now seems to be sufficient strong to ease the disposal and reduce the pendency by way of speedy trial and settlement. Forums like Lok-Adalat and Mediation are working with full swing and now it has been adopted by almost all sectors. Still there are some issues which the ADR facing. These problems can be conveniently divided in to (i) Inherent Limitation, e.g. subjects of inherent defects, lacunae in law etc, and (2) Human Based, e.g human attitude and behavioral aspects.

The human no doubts, are contributing factors of first category also, but the real difference lies in the objective use of the law. We may either try to follow and to apply the law for the settlement of matter or instead doing so may act like fault finding machines or the profit making machines or the tool to delay the fruit an harass the opposite side. These two categories are elaborated and also given suggestion to try to overcome the barriers in the following subpoint.

BARRIERS IN ENFORCEMENT AND THE SUGGESTIONS TO OVERCOME

There are several barriers in the way of enforcement of ADR. There are solutions to almost all problems. Some such problems and suggestions to overcome them, are as under:

ADR Implementation and Problem in India

Inherent limitations	**Human based**
1. Legal Education:	1. Attitude of the Parties :
2. No prescribed procedure	2. Interests of Lawyer and Client:
3. Non-Compoundable matters	3. Unethical Consideration:
4. Multiple Proceedings or the Problem: linkage to other disputes:	4. Communication
5. Multiple Parties:	5. Elimination of Apathy:
	6. Different viewpoint and legal understanding:
	7. Misinformation about the ADR:
	8. Pressures of Society, Institution, association, Group etc.

9. The jackpot syndrome

10. Ignorance

11. Corruption.

RATIONALE FOR ADAPTATION OF ADR

ADR is an endeavour of the law framers and the courts to accomplish the Constitutional vision of complete justice, in India. A thought process that began as a way to address docket explosion has since evolved into a new field dedicated to various types of processes for resolving disputes outside of the formal legal system (FLS).

The logic behind mechanism of ADR is that, the society, the State, and the disputant all should accept their equal responsibility for speedy resolving the conflict, and that they should try to eradicate the same quickly, before it could disrupts the peaceful atmosphere of the house, family, society, community, business, and eventually mankind.

Some academics that are opposed to ADR tools believes that with the decrease in number of cases in courts, need for an ADR procedure, will also decrease. They also claim that if litigation costs are decreased, the need for "alternative conflict resolution mechanisms" will decrease.

MERITS AND DEMERITS OF ADR

The merit of the ADR includes –

(1) There are some matters which cannot be decided by the court and that such matters can be very well decided with the agreement of the parties through the different modes of the ADR.

(2) The ADR prescribes certain time limit for the settlement attempts by the Arbitrator, Conciliator, Lok-Adalat and Mediation as such it has the inbuilt quality to render speedy justice.

(3) Parties feel happy with ADR as they can the opportunity to write their own judgment with the help of an expert in law (who are technically named as Arbitrator, Conciliator, Lok-Adalat and Mediation).

(4) It has not procedural obstacles, and the expert (Arbitrator, Conciliator, Lok- Adalat and Mediation) is free to select the procedure which is best suited to the situation of particular matters before him.

(5) ADR saves the money, time and energy of the parties which are generally waisted and spoiled in the court litigation trial system. And because of this ADR indirectly helps to preserve the health and to lead stress free life to the litigants.

(6) Generally, the cost of ADR (i.e. fee of Advocate Mediator) is borne by the State,

(7) ADR helps in restoring the relationships.

(8) ADR kills the ego, and it can be seen parties weeping together and tendering the apology.

(9) ADR helps to create new bonding and the agreement so that future dispute can be avoided.

(10) ADR also empowers the parties to dispose all the connected issues though they were not the mentioned in the pleadings filed by them before the courts.

(11) Procedure is very flexible. Switching facility is available. Parties may go back to case trial mode. They have liberty to drop the ADR at any time and join the litigation of court.

(12) The parties get the opportunity to share confidential facts and these facts never get leaked.

(13) ADR is helping in restoring the image of justice delivering system. (14) ADR is an additional tool of dispute solving mechanism and so on.

CRITICISM

1. In many cases parties are using the ADR tools to delay matter.

2. It is seen many cases have just been referred to ADR [like mediation and Lok Adalat] to complete the quota or follow the direction. Even it was seen that some criminal matters under reference were not compoundable u/s. 320 of the Cr.P.C.. They were not fit for settlement.

3. Instead filling the posts same judges have been given the work of ADR. Judges who are already overburdened with work are not able to give much time for ADR [like mediation in working days].

4. There are no sufficient infrastructures for the ADR sittings.

5. Government has looked upon the Judiciary like neglected son which is appearing from the vacancies in the courts and want of basic amenities.

6. People are not much aware of the ADR tools.

7. ADR is not successful where parties wanted a judicial determination.

8. ADR is not successful where parties lacked authority.

9. Parties untrust on mediator (e.g. doubt about his practice or power), makes mediation unsuccessful.

10. ADR is not successful where mediator, conciliator, arbitrator, or penal judge is not trained and expert in the related branch of ADR and laws.

SUGGESTIONS

(a) The panel should avoid adjudication or imposition of its decision in the

Lok Adalat. It create apathy. The Lok Adalat will lose the faith of litigants. For this purpose, presiding officers should be given proper training. The Jharkhand High Court has also held that the retired judges of the District court while acting as the members of the Permanent Lok Adalat should not behave and act like a judge of any court.[106]

(b) **Public awareness about the Lok-Adalat: -** The study shows, that Lok-

Adalat can be used as front forum of administration of justice by the People of India. There is need to create public awareness amongst people, lawyers and judges. They must be shared the merits of ADR. Still there is a section of the people who due to illiteracy, stay in remote places and other socio-eco disadvantaged position is not much aware of the utility of the Lok-Adalat. Still there are some remote places and villages which are located far away from the Taluks courts and offices/legal aid clinics of the Taluka Legal services Committees. There is need to create mass awareness, and this can be possible if the services of the Gram Panchayats, Sarpanch and other revenue department is also availed.

(c) **Definition of ADR tools**: - There is need of specific definition of

ADR Tools viz. Arbitration, Lok Adalat, Mediation and conciliation. The

existing law does not define it clearly. For example, the Definition of

„Arbitration" as provided in the AC Act, 1996 is not clear as it does not define what is the mean by arbitration.

CONCLUSION

The present study was carried out to study and analyze five prime questions viz. (1) Whether adaptation of ADR will reduce workload of courts? (2) Whether ADR is helpful in ensuring speedy justice? (3) Whether ADR tool in speeding up disposal, adversely compromising with justice delivery? (4) Whether ADR is a sound helping hand to poor, downtrodden, and socially & economically disadvantaged group? and (5) Above questions seem to have created dilemma in the mind of litigants, "whether to get matter referred to ADR or not"? The findings as recorded on the basis of study illuminates that inspite of instances of misuse at the hands of mischievous litigants, the ADR has innumerable benefits attached to it. Its unique features have the potential to become primary mode of administration of justice. It may on one hand reduce the workloads of courts and on the other hand may provide justice to every class of persons. It is extremely helpful to the marginal class and matters must be referred to it to get timely, fair and cheaper solutions to legal disputes or conflicts.

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