

The Traditional Adjudicatory System and the Alternative Dispute Resolution System

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Abstract--- The essence of the alternative dispute resolution system has existed from the ancient society. It was then regarded as an effective mode of dispute resolution because going to the courts was regarded as a very serious and offending matter. But later the judicial adjudicatory process became very popular because of its binding nature of its judgement. In spite of this fact, the judicial adjudicatory process involved time consuming and cumbersome process, due to which the alternative dispute resolution is preferred. The most significant aspect of the alternative dispute resolution is that it involves a flexible informal and simple procedure. The arbitrator or a mediator or a conciliator is chosen by both the parties to the dispute and hence the parties have faith in them, and even if the binding nature of the solution or the decision is lacking, still the parties have a feeling of acceptance of the decision. The alternative dispute resolution system is effective in speedily solving dispute and granting relief; and hence it is indeed in furtherance of achieving and securing justice.

Keywords--- Alternative dispute resolution, arbitration, mediation, conciliation, negotiation, Lok Adalat, Panchayat system, Vedic period, Hidaya law

I. INTRODUCTION

The main function of the law is to secure justice and the law has various modalities to secure justice. One of the important fundamentals to secure justice is to have separate organ which indulges into the adjudication process and dispense justice; such an organ is called as the judiciary. In pursuance to the theory of separation of powers, the judiciary is independent of the legislative and the executive organs. The main function of the judiciary is to adjudicate and the secondary function is to make the law through interpretation during the process of adjudicating. Dispute solving is one of the main fundamental issues without which life in a society would be impossible, hence it is of great significance.

- The main aspects of the judiciary are as follows

- i. It is independent from the other organs.

As the judiciary is independent, people tend to believe in it because it neither makes the law nor executes it and has hence has a neutral approach in declaring a law or an executive action as ultra vires to the law.

- ii. The judiciary is impartial and this fact helps to build confidence in the people. The people believe and know that the judiciary acts in an independent and impartial manner.

- iii. The adjudicatory process of the judiciary is considered to be the traditional method of solving the disputes and hence it is the most relied technique of dispute solving.

- iv. The decisions of the courts are legally binding upon the concerned parties to the dispute.

- v. The judicial courts are regarded as authoritative and authentic authorities to solve the disputes and give judgements.

- The times have changed and along with it the needs of it have also changed. As the number of disputes have increased the judicial courts are overflowing with the litigation matters. Due to this much time is lost by the affected parties to secure a relief and in turn the wheels of justice may be hampered. So, another technique to deal and solve the cases relating to disputes emerged and was found to be effective in solving the disputes. The alternative dispute resolution system is effective, and it is devoid of many of the negative aspects. For instance, the rigid cumbersome procedure etc.

- The aspects of the alternative dispute resolution.

The alternative dispute resolution may be a popular concept in today's times but indeed it is of ancient origin, under the Hindu legal system the alternative dispute resolution was referred even in the Vedic times. It is said that even Lord Krishna himself played the role of a mediator between the Pandavas and the Kauravas. Basically, the concept of alternative dispute resolution brings a feeling of informally settling the disputes. Many a times the people prefer an informal way to settle a dispute rather than to follow a rigid formal and a lengthy process

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of coming to a settlement. Even under the Muslim legal system the concept of arbitration prevailed in the 'Hedaya' laws. Apart from this, the alternative dispute resolution was sought in the prelegal society as well as in the modern rural society, in the form of Panchayat forum. In the villages almost all the disputes were solved by the Panchayats. The Panchayat consisted of five eminent judicious members of the village who solved the problems of the villagers by mediation or conciliation. The panchayat solved the matters related to family disputes, property disputes, or any other dispute involving a social cause. The most important part was this that, the decision of the panchayat was regarded as binding on the villagers, and the procedure which was followed was informal and before the public at large.

The point to be noted here is that, the concept of alternative dispute resolution has existed from the ancient time but today it has gained more motion and is recognized as a popular and effective method of dispute solving.

- Advantages of the alternative dispute resolution.
 - i. The concept of informal way of the solving the dispute. The process of judicial adjudication is very formal involving a stringent procedure. Whereas the alternative dispute resolution involves a comparatively informal way of solving the dispute which is considered to be more appealing.
 - ii. No rigid and lengthy process is adopted.
- The classic feature of the alternative dispute resolution is that the procedure involved is not only informal but also very simple and flexible, which gives some relaxation to the individual parties. Hence the alternative dispute resolution is devoid of rigid lengthy and cumbersome procedure.

iii. Time saving.

Another advantage of the alternative dispute resolution is that it is quicker and speedier in solving the disputes and giving the decision. Comparatively the judicial adjudication involves a lot of time and sometimes the adjudicatory process involves many years. Hence people chose the alternative dispute resolution system in order to get quick relief.

iv. Economic in nature.

The adjudicatory process involves not only much time but involves lot of expenditure of the individuals, such as the expenditure involving the travelling expenses to attend the court whenever required, or paying the huge amount of fees to the legal experts or lawyers.

v. Due to the over burdening of the judicial courts.

One of the reasons for the alternative dispute resolution to gain importance is the fact that the courts are over

burdened with the litigation matters and hence the case or the disputed matter does not come before the judge for the sake of hearing. This causes a feeling of insecurity and uncertainty in the minds of the people and hence they prefer the alternative dispute resolution which deals with the disputed matters in a quick and speedy manner.

- The different type of alternative dispute resolutions.

i. Arbitration.

In India as stated above, the concept of arbitration is very old, a reference is found in the Indian Arbitration Act 1899 which dealt with the arbitration for the East India Company, later on the Arbitration Act 1996 was implemented to deal exclusively with the domestic arbitration matter. The Civil Procedure Code also lays down a few provisions for arbitration.

In 1966 the Arbitration and Conciliation Act was implemented which fortified the concept of arbitration in India. The essential features of arbitration are as follows.

- a. It is an informal method of dispute resolution.
- b. It involves a simple and non-judicial technical procedure for solving disputes.
- c. The concept of arbitration necessarily involves the arbitration agreement. Both the parties should have agreed before, that if a dispute arises then the disputed matter should be decided by the arbitrator.
- d. The arbitrator is chosen by the concerned parties to the dispute. The parties should have already decided who would be the arbitrator and should be appointed in the agreement.
- e. The appointed arbitrator gives a decision, which is called as the award.

The arbitration process because of its advantages has gained a lot of importance as people are preferring arbitration as a mode of dispute solving.

ii. Mediation and conciliation.

Mediation and conciliation are the second aspect of alternative dispute resolution which is done with the help of a third neutral person. The essential features of mediation and conciliation.

- a. The concerned dispute is trying to be solved by a third neutral person who is called as the mediator or conciliator.
- b. The object of mediation is to try and negotiate a solution with the help of a third person, who is neutral that is the mediator or conciliator.
- c. Through mediation an attempt is made for both the parties to converse and negotiate with one another.
- d. The function of the mediator is to help the concerned parties to find out or explore various options as solutions for the disputed matter.
- e. The solution forwarded by the third person or the

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mediator is not binding upon the concerned parties to the dispute.

The mediation or conciliator, as an alternative dispute resolution is preferred because firstly the mediator is known by both the parties and secondly, he puts forward the various alternatives before the parties to the disputes. Hence the concerned parties welcome a particular solution which has sprung out through mediation or conciliator, because it is not imposed upon them through technical process.

The mediation and the conciliator process have the same essential features with one difference in them. In the mediation process different options of solution are analyzed by the mediator for the parties to the dispute to select the solution. In the conciliation process the conciliator's main motive is to help the parties to the dispute to converse with each other and understand each other and then come to a decision or a settlement. In conciliation, the conciliator tries to resolve the dispute by making the parties see and understand one another view point and then enter into a compromise situation.

iii. Negotiation.

The essence of negotiation is to indulge in communication with the object of pursuing the other person or party to agree with the terms. The essential aspects of negotiation are as follow.

- a. The main feature of negotiation is communication with the other party.
- b. The communication is done with the focus to put forward the points for acceptance of a particular view point.
- c. The outcome of negotiation is non-binding.
- d. Even though the outcome of negotiation are not binding never the less they are very effective and frequently followed.

iv. Lok Adalat.

As stated above the judiciary is overburden with the litigation matters and hence sometimes there is a little delay in the dispensing of justice. In order to speed up the judicial process the disputed matter in which the parties may enter into a settlement or compromise are referred to the Lok Adalat. The scheme of Lok Adalat fulfils two objects one it reduces the overflow of the litigation. Secondly it enables the concerned parties to get relief in a short time.

The alternative dispute resolution is a very effective system to solve the dispute outside the judicial framework. The technique of arbitration is sought by many as an effective method of alternative dispute resolution. Initially the common man as well as the legal fraternity was a little inhibited to invoke it as an effective dispute resolving

method. But in the recent times this attitude has changed and we find that arbitration existing in the various commercial dealings and in another field also. Mediation and conciliation are also frequently adopted. Conciliation is one of the best methods to solve the family dispute because it lacks the rigid technical process, and instead makes the people to converse understand and then come to a settlement.

II. CONCLUSION

The main content is not an issue which involves the traditional method of adjudication by the judicial courts versus the modern alternative dispute resolution system. In fact, justice will be well delivered if the judicial adjudication and the modern alternative dispute resolution system work in a collateral combination. The alternative dispute resolution system includes the technique of arbitration, mediation, and conciliation and negotiation, each having a specific characteristic to solve particular cases. The various techniques of the alternative dispute resolution should be selected according to the nature of the dispute to give maximum effectiveness. However, it is felt that more awareness should be brought about in the society and more centers of alternative dispute resolution system should be created in order to secure justice.

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