

ADR SYSTEM- ITS ROLE IN PROMOTING JUSTICE

B. K. TIWARI

Research Scholar, Advocate, Cyber Law Expert
District Court, Bhopal

Abstract:

ADR system is not a new issue for the people of this country; it has been prevalent in India since Ancient period. Ancient system of dispute resolution made a significant role, in solving resolution of disputes like, family disputes, social groups and also minor disputes relating to trade and property. Village level Panchayats played the important role, where the dispute were resolved by senior citizens, comprising council of village (popularly called Gram Panchayat or Gram Sabha), which was informal way of mediation.

KEYWORDS:

Negotiation, Mediation, Arbitration, Conciliation, Mini trial, resolution amicably.

INTRODUCTION:

The Alternative Dispute Resolution mechanism has proven to be one of the most efficacious systems to resolve commercial dispute on international scenario. The ADR systems have the advantage to providing parties with the opportunity to minimized hostility, regular a friendship, go acceptance of the outcome, resolve conflict in a peaceful method, and achieve a greater sense of justice in each individual issue. Thus the ADR is a less adversarial alternative to traditional litigation system. The ADR system append in all those cases that can be litigated, such as disputes relating to insurance, trade technology, divorce and other family matters else.

Arbitration: in case of arbitration the third party (arbitrator) adjudge and bring about peaceful settlement can very well impose the resolution on the parties. In arbitration when the parties through the contract agrees to resort to arbitration process, in case of disputes that may arise in future regarding the terms and condition of contracts.

Under arbitration a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (by settlement of dispute known as award) on the dispute that is binding on the parties.

The ADR procedure contributes to resolution of disputes by agreement of concerning parties without adjudication such as negotiation, mediation and conciliation. The mediation is different from conciliation only in that the former. The natural third parties a more active role in putting forward his own suggestions for the settlement of the dispute.

GENERAL PROCEDURE OF ADR:

1.Negotiation: - In this process the intervention from the third party takes place, to bring about peaceful settlement whereas advice of a skilled person or a social worker as a third party may be respected on certain issues. The ADR system is a non binding procedure. The discussions between parties are initiated without intervention of third party with the aim of arriving at a negotiated settlement of the dispute.

2.Mediation: - In this process a third party, known as a mediator tries to facilitate the resolution process, but he cannot impose the resolution, parties are to decide according to their conditions and terms.

ADR SYSTEM- ITS ROLE IN PROMOTING JUSTICE

3. Conciliation Mediation:- In this procedure, in which an impartial a non-binding procedure of third party, the conciliator/mediator, assists the parties to a dispute in peaceful manner, a mutually satisfactory and agreed settlement of the out coming dispute.

(A) Med- Arbitration:- In this process which combine subsequently conciliation/ mediation and where the dispute or issue is not settled through mediation/ conciliation mediation within a period of time agreed at the time of agreement of parties arbitration..

(B) Medola:- In this case where the parties fail to reach an agreement through mediation, a neutral person, who may be the original mediator or an arbitrator, will selected between the final negotiated offer of parties such selection being binding on the parties.

(C) Mini trial: - This is also a non binding procedure in which the disputing parties are presented with abstracts of their issues to enable them to assess the strengths, weakness, and prospects of their disputed issue and then an opportunity to negotiate a settlement with the assistance of neutral advisor.

Collaborative Law: - in other country the attorneys try to facilitate process of resolution in accordance with the terms of contract mentioned under agreements. The agreements are prepared with the help attorneys. The resolution reached cannot be imposed on the parties by the attorneys.

Fast track arbitration:- A form of arbitration in which the arbitration procedure is rendered in a particularly short time at reduced cost. In this process further parties to a dispute discuss their respective best settlement of issues in confidence with a neutral third party who after his own evaluation suggests settlements to assist the parties to attempt negotiated settlements.

A disputing party mutually approaches a referee or arbitrator, usually a retired judge or senior advocate; before whom they present their case in informal proceedings. The arbitrator gives his award (decision) which is enforceable in court of law. The remuneration of the arbitrator is paid by the parties.

Final proposal of Arbitration: each disputed party submits its monetary claim before a panel that render's it settlement by awarding one and rejecting the other claim.

DUTIES OF AN ARBITRATOR:

According to the Arbitration and Conciliation Act 1986, following are the main duties of an Arbitrator expressed by the act.

1. Equal treatment of the parties: The parties shall be treated with equality and each party shall be given full opportunities to present his case. The section provides that arbitrators are supposed to perform their functions honestly and impartially. It means while conducting arbitrator preceding the principle of Natural Justice must be followed.

The Supreme Court in International Airport Authority of India v/s K.D Bali 2. Court observed that "once the arbitrator enters in arbitration, he must not be guilty of any Act, which can be construed as indicative of partiality or unfairness.

2. Determinations of Rules of Procedure: The Arbitrators has to follow the ordinary rules of Evidence. Parties to proceeding are free to agree on the procedure to be followed. Where no procedure has been prescribed by the agreement, the arbitrator may conduct the proceedings in a manner he thinks appropriate.

3. Fix the place of Arbitration: The Parties are free to agree on the place of arbitrator as the venue of arbitrator is to be fixed by the mutual consent of parties. If there is no agreement regarding place of the Arbitration, it is for the arbitration keeping in view the convince of the parties and the circumstance of the case.

4. In the case of Sulaikha clay mines v/s Alpha clay and others 5. The Arbitral Tribunal granted oral hearings of the parties at the premises of parties without notice to the other parties and inspections were conducted by it without notice to both the parties. In these circumstances enters arbitral proceedings suffered from gross procedural irregularities violating the processions of section 18,19,20 and 24 of the arbitration and cancellation Act 1996. The Kerala High Court, there for set aside the award because of the procedural violation and directed the appellants to approach the civil court for redressed of its grievances.

4. Determine the language of Proceedings: Under section 22 gives the parties freedom to agree upon the

ADR SYSTEM- ITS ROLE IN PROMOTING JUSTICE

language or languages to be used in Arbitral Proceedings. In the case the parties fail to agree the arbitral tribunal shall determine the language to be used in the arbitral proceedings and such language shall be used for any written statement by a party, on hearing the arbitral award, decision or other communication by arbitral tribunal.

5. Notice to the Parties: Section 24 empowers arbitral tribunal to decide. Whether to hold oral hearing for the presentation of the evidence or oral argument or whether the proceeding shall be conducted on the basis of documents and other materials submitted by the parties before tribunal. It means the parties shall be given sufficient advance notice to any hearing and of any meeting of the arbitral for the purposes of inspection of documents, or other properly.

All the statements documents or other information supplied to or applications made to arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may making its decision shall be communicated to the parties.

6. Continue the Proceeding in default of party :Section 25 Empowers the arbitral tribunal to dismiss for default of the claimant on his failure to submit the statement of claim within the time as prescribed in section 23(1), the arbitrator may continue the proceeding and make the arbitral award on the evidence before it, under section 25 such defaults are as:

- (a) Failure of claim to defaults to communicate his statement of claim, or
- (b) Failure of respondent to communicate his statement of defense or
- (c) Failure of party to appear at on oral hearing or to procedure documentary evidence 9

7. Duty to arbitrate according to agreement: If the arbitral Tribunal takes up the matter which is clearly beyond the scope of its authority and out side its jurisdiction, it would tantamount to misconduct of arbitrator. In associated Engineering Co. v/s State of Andhra Pradesh. The SC held that an arbitrator cannot act arbitrarily, irrationally. His sole function as to arbitrate in the term of conduct but when he has remained inside the parameters of the contract, has award cannot be interfered with unless he has given reason for the award disclosing an error apart on the face oral.

8. Duty to abide by agreement of reference: The arbitration agreement laid down particular method by which the disputes of parties are to be settled. It is significant note that sections contemplates, not only request by the party for staying the legal proceedings but also referring the parties to arbitration. 11 Thus the Arbitrator have not carried out the mandate given to them under the agreement to refer dispute between the parties to the arbitrators were held to have misconduct themselves and the award had to be set aside. 12

9. Duty of Arbitrator to hear witness: The primary duty of an arbitrator to hear to witness produced by concerning party .The award may impeached if its arbitrator makes his award without hearing all the evidence, heaving allowed the party reasonable opportunity of proving his whole dispute or issues relating case 13

10 Duty of Arbitrator to examine all accounts and papers: The duty of arbitrator to insist the parties to produce the books in regard to all matters in disputed as otherwise either party can steal an advantage by keeping back such book and account sheets as might be unfavorable to him. If the party refuses to produce the books and help in investigate of all the matters, the arbitrators. 14

11. Duties of arbitrator in minor's interest: In Laxminarayan v/s Ramchandran case the court held that it is the duty of an Arbitrator to see that the minor's property represented where the guardian revokes a represented on behalf of the minor and the arbitrator never less proceed to watch the proceedings on the minor's behalf without his being duty represented as liable to be vacated at his instance.

Where the reference to arbitrator as made on behalf of a minor but the later is not properly represented in the arbitration proceedings and his guardian fails grossly and fraudulently in his duties, to protect his interest, the award based by the arbitrator is not binding on the minor. 16

An award passed on reference of court binding a minor who was not in fact represented in proceeding before the arbitrator should be set aside under 15(1) of schedule as for arbitrator's misconduct.

In m/s Eastern Mineral and Trading Agency v/s Steel authority of India Ltd, the SC. held that inappropriate to stay the proceedings before the arbitrator and observed that the arbitrator may go ahead with the proceedings and conclude it but will not sign the award, which shall be subject to the order to be passed either on appeal which is pending.

ADR SYSTEM- ITS ROLE IN PROMOTING JUSTICE

CONCLUSION:-

In this process, the parties submit to the advice of a conciliator, who discuss to the parties separately and try resolving their disputes. These are some more terms of ADR like evaluation, early neutral evaluation, neutral fact finding, ombudsman practiced in other part of the world. ADR can be conducted online too; such process is called entire dispute resolution these services can be provided by the government, but such methods cannot assume efficiency. Section 89 was introduced to civil procedure code which formulates four methods to settle dispute outside of the court. The method in which dispute of parties settled is known as arbitration, conciliation, mediation and Lok Adalat. In case of Salim Advocate Bar Association V. Union of India Supreme Court directed the setting up committee that would look into the implementation of various provisions, including section 89 C.P.C.

It can be mentioned that various methods and process have been incorporated in Indian legal system to achieve speedily disposal of cases, the concept of ADR is a western approach where is Lok Adalat one of its species is purely a national concept.

Today it is demand of cruel society to increase awareness, seminar, workshop can be held and alternative dispute resolution can be made a compulsory subject for all law courses. How the ADR is compulsory to LL.B/ B.A.LL.B course. Awareness camps will help to change the mindset of the people, thereby making it clear to them that litigation is second priority of resolution purpose which settled the dispute as well as reach resolution amicably.

REFERENCE:

1. Section 18 of Arbitration act.
2. A.I.R. 1988 Sc 1099
3. Section 19 of Arbitration Act
4. Section 20 of Arbitration Act
5. A.I.R. 2005 Ker 3
6. Section 22 of Arbitration Act
7. Section 24 of Arbitration Act
8. Section 24(3) of Arbitration Act
9. Section 25 of Arbitration Act
10. A.I.R. 1992 SC 232
11. P.W.H. Analgen v/s Damodar Ropeways
12. Ramnath v/s Goenka and co, A.I.R 1973 Cal 253
13. Ganga Sahai v/s Lekhray Singh of All 252
14. Laxman v/s Ram Dularu A.I.R. Del 25
15. 45 Ind cas 763
16. Kanaolo Venkata v/s Kandala, 56 Ind case 893
A.I.R. 2000 SC 3579