



ISSN: 0976-3376

Available Online at <http://www.journalajst.com>

ASIAN JOURNAL OF
SCIENCE AND TECHNOLOGY

Asian Journal of Science and Technology
Vol. 11, Issue, 09, pp.11202-11208, September, 2020

RESEARCH ARTICLE

CONTEMPORARY DEVELOPMENT IN THE FIELD OF ADR (NATIONAL AND INTERNATIONAL PERSPECTIVE)

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ARTICLE INFO

Article History:

Received 07th June, 2020
Received in revised form
19th July, 2020
Accepted 24th August, 2020
Published online 30th September, 2020

Key words:

Arbitration, Conciliation, Mediation, Lok Adalat, Legal Aid, Asian International Arbitration Centre (AIAC) and Negotiation

ABSTRACT

Alternative dispute in India is not new, but existed from immemorial time. In very early time, it was in the form of Nyaya Panchayats, where five people (panchas) heard the case at a choppal of the village and gave the best judgments. During the period of British rule this institution lost its importance and developed a regular system of the Courts. But, there are several hurdles and barriers in the way of getting justice by common man in the Courts due to cost factor. The time consumed in litigation is yet another factor since there is no speedy amelioration of grievances. The above mentioned factors are not only wrecking the judicial system but also swiftly shaking the confidence of the people and the image of Courts as dispensers of justice. The need for ADR to the formal legal system has engaged the attention of the legal fraternity, comprising judges, lawyers and law researchers for several decades now. This has for long been seen as integral to the process of judicial reform and as signifying the 'access to justice' approach. Right of 'access to justice' is the most basic human right. Law relating to arbitration in India was governed by the Arbitration Act, 1889, which was substituted by the by the Arbitration Act, 1940. In 1996, once again it was substituted by the Arbitration and Conciliation Act, 1996, to include provisions relating to conciliation and international commercial arbitration. Lok Adalat as an ADR has got legal recognition under the Legal Aid Services Authorities Act, 1987. At present the countries like China, America, England, Canada and many of the Asian-African countries have shifted their judicial delivery system to the fabric of ADR. Now, emphasis is laid down on resolving the international disputes pertaining to trade and commerce through the system of ADR. To encourage the device of arbitration in settling disputes related to trade, commerce and investment, Asian-African Legal Consultative Organization have signed agreements with a number of Afro-Asian countries for adopting ADR mechanics. In this Article I have analyzed the development and scope of the ADR in India and Asian-African Legal Consultative Organization. I have also given some important suggestions for improvement of the ADR system in India.

Citation: Prof. (Dr) Patel, C.L. 2020. "Contemporary development in the field of adr (national and international perspective)", *Asian Journal of Science and Technology*, 11, (09), 11202-11208.

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INTRODUCTION

Alternative Dispute Resolution is a paradigm of the recent adjudication as viable alternative in litigation as an effective measure to relieve the courts of the burden of pendency of cases to save time of the litigants as well as the courts and as a catalyst of speedy dispensation of justice. ADR is a global phenomenon in the administration of justice. ADR is represented into five pillars, namely, negotiation, mediation, conciliation, arbitration and Lok Adalat. In India the system of ADR to settle the disputes have a hoary chequered history. The procedure to solve the disputes was speedy and in summary form. For solving the disputes negotiation, mutual interaction, conciliation, mediation and arbitration systems were in vogues which have been adopted recently not only in India but on global levels.

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With the intruding of British in India, the system of adjudication through ADR was abolished and from 1600 to 1947 the legal system was patterned on the British model. Still in villages, the justice delivery system through Panchayats remained alive. At present the countries like China, America, England, Canada and many of the Asian-African countries have shifted their judicial delivery system to the fabric of ADR. Now, emphasis is laid down on resolving the international disputes pertaining to trade and commerce through the system of ADR. The Supreme Court of India emerged as a harbinger for adoption of ADR system in the judicial delivery system. The Court had critically remarked "Interminable time consuming, complex and expensive court procedure impelled jurists to search for an alternative forum less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act, 1940."¹ The scope of Indian Arbitration Act, 1940 has been extended with the passing of Amendment Act, 1996. The 1996 Act is based on the UN Model Law as adopted

by the United Nations Commission on International Trade Law or International Commercial Arbitration 1985. It has also included in its gamut the UNCITRAL Conciliation Rules, 1980. International community has accepted the 'conciliation' as a recognized instrument for settlement of disputes. Thus, the 1996 Act of Indian Arbitration includes domestic arbitration, international commercial arbitration, enforcement of foreign awards and conciliation proceedings assimilating of the UNCITRAL Model Law and Rules. One of the aims of Arbitration and Conciliation Act, 1996 is "to settle all the disputes between the parties and avoid further litigation"² Supreme Court termed the Act as a beneficial legislation which contains fair resolution of disputes by an impartial tribunal without any unnecessary delay or expense, party autonomy being paramount subject to safeguard public interest and the arbitral tribunal is enjoined with a duty to act fairly and impartially³

International Scenario: The importance of arbitration as a potential weapon for speedily resolving the disputes has been realized on the international arena. Asian-African Legal Consultative Organization during its 13th Session held at Lagos in 1973 endorsed the work of UNCITRAL in the field of International Commercial Arbitration, at its 14th Session held in 1974 at Tokyo and in 16th Session in 1976 at Kuala Lumpur. Asian-African Legal Consultative Organization endorsed the recommendations of its Trade Law Committee that efforts should be made by member States to develop institutional arbitration on the Asian and African regions. At the Doha Session in 1978, the organization in order to promote the development of the Asian-Africa regions decided to establish Regional Centers for International Commercial Arbitration as a viable alternative to the traditional institutions in the West. In 2001 a mediation and ADR Centre to promote commercial arbitration and other peaceful non-binding means of avoiding and settling trade and investment disputes had been created.

To encourage the device of arbitration in settling disputes related to trade, commerce and investment, Asian-African Legal Consultative Organization have signed agreements with a number of Afro-Asian countries for adopting ADR mechanics. Asian International Arbitration Centre of Kuala Lumpur, Malaysia is busy in providing services and innovation solutions for the world to expand and become a global hub for dispute resolution and dispute- standing out to be a catalyst of innovation, capacity building and holistic alternative dispute management for the industry. It is worth mentioning that the text of the Statutes of the Asian-African Legal Consultative Organization were drawn up at the intercessional meetings held in New Delhi in September 1985, although the original Statutes were drawn up in 1956. Off late, the Asian-African Legal Consultative Organization's effort to promote the ethos of ADR in trade and investment disputes culminated in its Annual Arbitration Forum on July 21 and 22, 2018 a global meet on connecting Asia and Africa, connecting investment and ADR--opportunities and challenges. "Whilst in developing jurisdictions, arbitration has grown from a dispute resolution procedure treated with suspicion to a trusted adjudication process supported by national Courts. The practice in interim measures has advanced by loops and bounds. The 2006 Amendments to the UNCITRAL Model Law has contributed significantly to this, as have concomitant changes among the Rules of arbitral institutions. Equally, the establishment of

'emergency arbitration' has been rapid uptake globally.⁴ Asian International Arbitration Centre (AIAC) was the first regional centre established by Asian-African Legal Consultative Organization (AALCO) in Asia in 1978 to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings in Asia. Asian International Arbitration Centre (AIAC) has developed new rules to cater to the growing demands of the global community, such as, the Arbitration Rules, Fast Track Rules, and Mediation and Conciliation Rules. Indian Arbitration and Conciliation Act, 1996 is a culmination of the amended rules globally and as such is a progressive document from 1940 Act. It is rightly said that arbitration is not a process frozen in time, it is a living, continually evolving and developing process which has to keep pace with commercial and other things.

Dr. Sundra Rajoo's celebrated view is acceptable that "the ADR practitioner of today needs to know various laws and developments in international commercial arbitration. It is that corpus of law and practice that grows out of international conventions and other instruments of harmonization and from conscious and unconscious parallelism in judicial thinking in different jurisdictions".⁵ According to Robert, dispute resolution methods have existed since people first established cohesive communities, however a systematic process with distinct features to resolve disputes out of court is a relatively recent manifestation.⁶ Plato, Aristotle were the exponents of the adjudication through arbitration. Plato said, "If a man fails to fulfill an agreed contract, an action should be brought in the tribal courts if the parties have not previously been able to reconcile their differences before arbitrators. Neighbors were treated as arbitrators at that period."⁷ According to Aristotle the disputes were to be settled by negotiation and not by force, to prefer arbitration to litigation - for an arbitrator goes by equity of a case, a judge by the law and arbitration was invented with the express purpose of securing full power for equity.⁸

The practice of arbitration was found amongst Phoenician traders at Roman Laws. "Arbitration processes are usually subject to greater statutory regimes than other methods (of ADR) such as mediation or negotiation."⁹ In a 2013 PWC survey of 600 international respondents it was found that 57% of international disputes were settled amicably through negotiation or mediation.¹⁰ There is no single method or 'magic wand' for resolving disputes. The dispute Resolution mechanisms are in general--:(i) litigation in courts (ii) arbitration (iii) other ADR mechanisms, such as adjudication, conciliation, expert determination, mediation, med-arb mini-trials, rent-a judge, dispute resolution boards and other perspective ways to engage the intervention of a third party to achieve a settlement.¹¹ "Arbitration is distinguishable from other non-binding ADR techniques. The function of an arbitral tribunal is not to decide how the dispute can most readily be resolved, but rather to apportion responsibility for that dispute based on the evidence and cases put before it."¹²

National scenario: The General Assembly of UN in its resolution, dated 17th December, 1985 recommended that all States should adopt UNCITRAL Model Law on International Commercial Arbitration. India as being a member country has adopted the Model Law which has been culminated into the Act of Arbitration and Conciliation, 1996. The Preamble of the Act runs as below:

'An Act to consolidate and amend the law relating to domestic arbitration, international arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith are incidental thereto' ADR means providing an alternative to the conventional methods of resolving disputes----"How ADR is rapidly developing its own national institutions, experience and theoretical and practical development and at the same time offering a simpler cross-border dispute resolution approach."¹³ The legal luminaries agree on the point that ADR is supposed to provide an alternative not only to civil litigation by adjudicatory procedure, but includes also arbitration itself. Arbitration is considered to be the matter of all other alternative methods for resolving disputes. Despite active role, the third party's decision is not binding on the litigants.

The pendency of cases and delays in outcomes of the cases through verdicts become a concern for search of an alternative method of adjudicatory process not only in India but on global level. Hon'ble Mr. Justice Bhagwati had critically remarked that the causes of our judicial system creaking under the weight of arrears may be manifold. The limitation of space does not permit their mention at this place. But the hard truth remains that the people are disgusted with the existing justice delivery system and are at times compelled to resort to extra judicial remedies which lead to erosion of legal values and weakens the foundation of democracy.¹⁴ The Parliament of India after visualizing the state of affairs of pendency of cases enacted the Legal Services Authorities Act 1987 for settlement of disputes cheaply and expeditiously amongst the litigants. Other enactments providing alternative settlements processes of disputes are—(i) Section 30 of the Arbitration and Conciliation Act, 1996, which inter alia states;

"It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement." The Preamble of the Constitution of India promises to secure socio-economic and political justice and equality of status and opportunity to all the citizens. Likewise Article 21 and Article 39-A inserted by 42nd Amendment in 1971 mandated that the State will ensure that the legal system operates in a manner so as to promote justice to all and to ensure that no citizen is denied the opportunities of securing justice by reason of economic and any other disability. Malimath Committee set up for looking into the problems of arrears in courts known as 'Arrears Committee. It underlined the need for alternative disputes resolution mechanism, e.g., mediation, conciliation, arbitration and Lok-Adalat as a viable alternative to the conventional court litigation. The committee was headed by Justice V.S. Malimath with two members namely Justice P.D. Desai and Justice A.S. Anand. Its report was submitted on 1989-90. On the recommendation of the report of Malimath Committee and 129th Report of Law Commission of India, Civil Procedure Code was amended in 1999. Under Section 89 and Order 10 have been inserted for settlement of disputes outside the courts. The whole text of Section 89 of Civil Procedure Code is as follows: "The soul of good government is justice to people. Our Constitution, therefore, highlights triple aspects of Economic Justice, Political Justice and Social Justice.

This requires the creation of ultra-modern disseminating infrastructure and manpower, sympathetic and planned, need for new judicious technology and models and remedy oriented jurisprudence."¹⁵ Lawyers are the major contributors of delaying the disposal of applications, suits and appeals. "The fault is mainly of legal professionals. We ask for adjournments on the most flimsy grounds. If the judge does not readily grant adjournment, he is deemed highly unpopular. I think it is duty of legal profession to make sure that it cooperates with the judiciary in ensuring that justice is administered speedily and expeditiously, it is the duty of which we are totally oblivious."¹⁶ Supreme Court expressed its anguish on the delayed cases pending at Civil Court at Patiala since 1948 with no sight of its finalization.¹⁷ "It is settled law that free legal aid to the indigent persons who cannot defend themselves in a Court of Law is a Constitutional mandate under Article 39-A and 21 of the Indian Constitution. The right to life is guaranteed by Article 21."¹⁸ The concept of Legal Aid was brought on focus by Justice V.R. Krishna Iyer and Justice P.N. Bhagwati. Commenting on the point of settlement of disputes, the former CJI Justice A.M. Ahmadi observed "while we encourage ADR Mechanisms, we create a culture for settlement of disputes through these (arbitration, conciliation and mediation) mechanisms. Unless the Members of the Bar encourage their clients to settle their disputes through negotiations, such mechanisms cannot succeed."¹⁹

India is a member of WIPO (The World Intellectual Property Organization (WIPO) renders specialized Services by way of arbitration and mediation in intellectual property matters to the member States. One of the significant feature of WIPO which carries on ADR activities through its centre for Arbitration and Mediation is that it has developed a system for on-line resolution of internet 'domain name' which is used in relation to a business or a commercial enterprise for maintaining its identity and provides domain exclusively to the enterprise.²⁰ The term 'domain name has been interpreted by the Apex Court as follows:--

"As more and more commercial enterprises trade or advertise their presence on the web site, domain names have become more and more valuable and the potential for dispute is high. Whereas a large number of trademarks containing the same name can co-exist because they are associated with different products, belong to business in different jurisdictions etc. the distinctive nature of the domain name providing global exclusively is much sought after."²¹

In Kochi Navigation case, the Supreme Court decided that a dispute between two parties, one of whom is not an Indian or an Indian company in relation to an intellectual property right is considered as falling within the meaning of the term 'commercial' in India and hence can be resolved through arbitration/conciliation.²²

ADR system has been globalized and became institutional also. The parties stipulate in their contract/ agreements an ADR clause with the warding that in case of any dispute arising between them, the same will be referred to a particular institution or arbitrator for redressal. In India as well as foreign nations, many sectors have been converted as ADR institutions. For example, in India, Indian Council of Arbitration has co-operation agreements with 40 arbitrations institutions of different countries. International Centre for

Alternative Dispute Resolution, Delhi is a reputed institution for providing and suggesting justice delivery system to ADR.²³

The other recent developed ADR forms are discussed as follow:

Conciliation

Almost all the authorities and Lexicon have come to the conclusion that conciliation is a method of ADR for settling of the disputes without litigation. The law relating to conciliation has been codified in India on the pattern of UNCITRAL Conciliation Rules. In 1996 the old Law of Arbitration of 1940 has been amended and entitled as Arbitration and Conciliation Act, 1996. Section 61 of the Act provides that the process of conciliation extends to –(a) disputes arising out of legal relationship whether contractual or not, (b) to all proceedings relating to it. Section 62 of the Act provides for the commencement of conciliation proceedings, when the invitation to settle the disputes by conciliation by one party is accepted by the other party in writing, when the subject matter in submitted to the conciliators as per section 65. Section 69(1) specifies that the conciliator may invite the parties to meet him. He may communicate with the parties orally or in writing separately or together. The role of the conciliator is to assist the parties to reach an amicable settlement. Section 72 specifies that each party may on his own initiative or at the invitation of the conciliator, submit to him the suggestions for the settlement of the disputes. According to section 73(3) when the party has signed the settlement agreement, it becomes final and binding on them. Conciliator is required to authenticate the settlement agreement and furnish the copy of the same to each of the parties as is provided under section 73(4) of the Act. Section 74 provides that the settlement is accepted as arbitral award and treated as a decree of the Court and “and shall be enforceable”²⁴

At present, Courts are emphasizing the system of conciliation before the litigation is finalized. In the matters of Family's Courts disputes, the parties are asked to face the court appointed conciliator and if the parties desires to settle their disputes without further wasting time in court proceedings, they are required to accord their consent which is submitted by the conciliator to the concerned Court and the further proceeding in the dispute are closed. On the basis of the opinion of the conciliator, the court pronounces the judgment which is decreed accordingly. Section 75 of the Arbitration and Conciliation Act 1996 provides confidentiality in respect of all matters in the conciliation proceedings. The same norm is adhered by the Family Court also. The only similarity between arbitration and conciliation is that third person is chosen or nominated by the parties to resolve their disputes. In the matter of family court disputes more than one conciliators are chosen or nominated by the concerned Family Court. Section 81 of the Arbitration and conciliation Act, 1996 provides that the arbitration proceedings or awards may be used as evidence in any judicial proceedings. In case of conciliation proceedings, the provisions of making their use as evidence are not permitted. The same principle is ipso facto applied in the conciliation proceedings of the Family Court.

Mediation: Like conciliation proceeding the third party's role is essential in the mediation also. In both, third party plays neutral role and choice to formulate compromising formula to

create a congenial atmosphere through interaction of the parties so that they forget their animosities. In both the proceedings, the acceptable solutions are submitted to the both the parties for their agreement and in acceptance by the parties the same becomes binding to the parties to the litigation. In case any party is hesitant to accept the formula of settlement, the conciliation and mediation proceedings are not carried out further. In arbitration as well as mediation and conciliation the same procedure is followed. In the disputes under Family Court the conciliation and mediation proceedings are submitted in the confidential cover to the concerned court and on the basis of finding the court announces the judgment. The “mediation” is the technical term in international law which signifies the interposition by a neutral and friendly state between two states at war or on the eve of war with each other, or its good offices to restore or to preserve peace. The term is sometimes as a synonym for intervention, but mediation differs from it in being purely a friendly act”²⁵. In domestic field, mediation is a technique of ADR frequently adopted by the parties on disputes and the courts as well. At present in civil litigation also the process of mediation is being experimented. As an ADR mechanism, mediation is being adopted in the disputes related commercial sector frequently at national and international level.

On December 4, 1993 in the joint meeting held in Delhi of the Chief justices and Chief Ministers of different States patronized by the Hon'ble Chief Justice of India in which the need for resorting to ADR methods were felt to encourage the litigants to adopt them because of the fact that these means of adjudication are less expensive, less consuming and less formal in procedure as compared to the traditional proceedings in a Civil Court.²⁶ It was found that at times the arbitrator, mediator and conciliator transgress the boundary of their jurisdiction; their such style of functioning has been seen in bad taste. "If the settlement made by the mediator/conciliator is beyond the scope of the subject matter of the dispute itself, the Court may refuse execution thereof although the parties have not challenged the same and are agreed for its execution."²⁷

The Apex Court in another case observed that:

"The system of dispute resolution has of late, acquired a certain degree of notoriety by the manner in which in many cases, the financial interests of Government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety."²⁸

Negotiation/Judicial Settlement: To persuade the litigants for settlement through negotiation is a form of facilitative mediation wherein the judge plays a role of a facilitator to create a conducting atmosphere for negotiations among the disputant parties. Negotiation or judicial settlement method of ADR is borrowed from USA. In India it has been inserted in Civil Procedure Code under Section 89 and Order 10. In American case Management System is also developed as an ADR means of settling disputes. In India, we have yet to develop such technique of adjudication. In the early neutral evaluation technique, the judge explores the possibility of settlement by negotiation amongst the disputants playing a role of neutral. A senior lawyer named as 'amicus curie' is involved in bringing the parties together to settle their issues of differences amicably.

Provisions under Section 89 and Rules under Order 10 of the Civil Procedure Code in this context are reproduced below:-

"Compromise is an essential feature of negotiation which has got protection by Section 123 of the Indian Evidence Act. On the basis of compromise the Court passes consent decree which gets the shape under *res judicata*.

Lok Adalat: Among of all the ADR mechanism, the Lok Adalat is the most efficacious means to settle the disputes. Lok Adalat means 'People's Court'. The accepted definition of Lok Adalat is "as a forum where voluntary effort aimed at bringing about settlement of disputes between the parties is made through conciliatory and persuasive efforts. Dr. Ambedkar, Chairman of the Drafting Committee of Indian Constitution on November, 1949 observed in the Constituent Assembly that social democracy means a way of life which recognizes liberty, equality and fraternity as the principles of life. Former Attorney General, Mr. M.C. Setalwad, the chairman of the Law Commission in the 14th Report of the Law Commission asserted that "Equality is the basis of all modern system of jurisprudence and administration of justice. Unless some provisions is made to assisting to the poor man for the payment of the court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.

Equality of opportunity has been mandated under Preamble of the Constitution of India. 42nd Constitutional Amendment, Act 1976 directed to State to ensure that the legal system promotes justice on the basis of equal opportunity, and in particular, provide free legal aid, by suitable legislation or scheme and ensure that opportunities for securing justice are not denied to any citizen by reason of his economic or other disabilities.²⁹ The rights to free legal and speedy justice are guaranteed as a part of the fundamental right to life and liberty under Article 21 of the Constitution. In order to ensure that free legal aid is available to the needy poor, the State should initiate the measures to organize Para-legal services and legal literacy programme throughout the country.³⁰ The concept of Legal Aid includes many facets of life including right to life as contained under Article 21 of the Constitution of India. Legal Aid is recognized as one of the ingredients of human rights. The concept is implied in Article 7, 8 and 10 of the Universal Declaration of Human Rights. It is also implicit in clause (3) of Article 14 of the International Covenant of the Civil and Political Rights, 1966.

Even accused are to get protection under the guise of Human Rights. The Law Commission Remarkd at least in session trial, legal aid should be made available to the indigent accused for defending himself.³¹ Legal Aid has got legislative intent and is governed by the provisions of Legal Aid Services Authorities Act, 1987. Lok Adalat as an ADR has got legal recognition under the Legal Aid Services Authorities Act, 1987.

Hussainara Khaton Vs State of Bihar,(1979) case³²: followed by Justice P.N. Bhagwati Committee's recommendation formed the core issues pertaining to Legal Aid and passing of Legal Services Authorities Act, 1987 in India. The main objects of the Act was twofold, one, to provide opportunities to the indigent persons for securing justice and two, the establishment of Lok Adalats to secure the

promotion of justice to all on the basis of the framework of the Act, specially for vulnerable section of the society, special provisions have been made under Section 12 of the Act. Under the scheme of Lok Adalats, the Act provides for set up of legal services authorities at Central, State, District and Taluka levels to organize Lok Adalats periodically as mandated under section 19 of the Act. Every Lok Adalat comprises of three members including the presiding one who shall be a sitting or retired judge and two members one person having social accolade and other an advocate. Section 19 to 22 of the Act is related to composition, jurisdiction and functions of the Lok Adalats. National Lok Adalats are constituted under the supervision of Chief Justice of India. Every Chief Justice of a State is the patron of the State Level Lok Adalat. District and Sessions Judge at District Level and in- charge senior most judge of Taluka level shall organize Lok Adalat.

About the jurisdiction the Act reads : "cognizance of cases by Lok Adalats can be taken where in any case pending before any court for which Lok Adalat is organized (1)the parties thereof agree, or (2)one of the parties makes an application to the court for referring the case to the Lok Adalat for settlement and if such court is satisfied that there are chances of such settlement; or(3) the court is satisfied that the matter is appropriate case of which the Lok Adalat can take cognizance.³³ Sub- Section (6) of Section 20 stipulates that where no settlement or compromises have arrived at through conciliatory efforts of the Lok Adalat, the matter shall be returned to the concerned Court which had referred the case to the Lok Adalat. Sub-section 7 of Section 20 specifies that on return of the case to the concerned Court, the Court will proceed to trial with such case from the stage which was reached before the reference was made.

The Amendment in the Act in 2002 provides for deciding the case back to the concerned court by Lok Adalat on merit rather than referring. The settlement in Lok Adalat, the principles of justice, equity and fair play are kept in view. On the basis of settlement, the Lok Adalat pronounces the award. "Every award of Lok Adalat shall be deemed to be a decree of a Civil Court.³⁴ Every award made by the Lok Adalat shall be final and binding on all the parties to the dispute and there shall be no appeal against such award.(Section 21(2) of the Act). The powers of the Lok Adalat have been detailed in Section 22 of the Act. Sub-section (3) of Section 22 provides that the proceeding of the Lok Adalat shall be deemed to be judicial proceedings. Lok Adalat have the same powers as are provided to a civil Court under the Civil Procedure Code in the manner of trial of a civil suit. In one case the Apex Court held that the "Phrase 'compromise' means bilateral mutual agreement and the term 'settlement' refers to termination of legal proceedings by mutual consent"³⁵

For some time, the lawyers are barred from the proceedings of Lok Adalat but at present their presence with the litigants is allowed. Conferment of deciding powers on Lok Adalats was proposed and approved in the Legal Services Authorities Act (Amendment) in 2002 against which lawyers went on strike and the Supreme Court declared the strike illegal and held that there was no constitutional infirmity in the said amendment.³⁶ There are various other kinds of Lok Adalats at work viz, Motor Accidents Claims Settlement Lok Adalat, Pension Lok Adalat, Postal Services Lok Adalat, Electricity Lok Adalat, Women's Lok Adalat, Telephone Services Lok Adalat besides

National Lok Adalat, State Lok Adalat and District and Taluka Lok Adalats. In ancient India, Nyaya Panchayats at villages were dispensing with justice as a model of ADR. From 1980, the present system of Lok Adalat, which started from State of Gujrat has got momentum throughout India with statutory recognition. The forum of Lok Adalat is known for an efficient, cost effective and accessible form of equitable justice serving the cause of speedy justice to the poor in particular and every citizen in general. Legal Services Authorities (Amendment) Act, 2002 has inserted sub-section (b) (i) in Section 22 for establishment of Permanent Lok Adalat at every Judicial District in whole day. Later, other Civil and Criminal Courts, the Permanent Lok Adalat is sitting every day and the grievances related to public utility services are ventilated within a short span of time. They dispose of the complaints summarily and have acquired all the powers vested in the Civil Court in deciding the civil suit. Some of the Benches of Permanent Lok Adalats have started giving awards on merits where the settlement between the parties is refused. Even compensation have been awarded in some cases but some High Courts have entertained the appeals enforcing the awards of compensatory nature and have ruled that such decisions/awards are beyond the jurisdiction of Lok Adalats. After amendment in 2002 in the Act the veracity of the adjudication through ADR has increased because the Adalat system tackle the “menace and monstrosity of what is known as docket explosion-an unmanageable upsurge in the number of pending cases before regular courts.”³⁷

The first National Lok Adalat was inaugurated in Delhi in 2008. Since then, the organizing of National Lok Adalat at the interval of every three months have been mandatory phenomena throughout India. The same subjects, the same dates are adhered to throughout the judicial network of the country. The latest National Lok Adalat was organized on the 14th July and 8th Sep. 2018 in which a number of cases have been settled. The numbers of cases settled through National Lok Adalat in State of Chhattisgarh are more than 8000 which include claim cases, petty criminal cases and pre-litigation cases. At present, the scope of Lok Adalats has extended to criminal cases also where petty offences are committed, and the cases of matrimonial disputes particularly of Section 125 of Criminal Procedure Code, compoundable cases under Section 320 and recently added ‘Plea Bargaining’ cases have been included under settlement schemes of ADR.

A sixth pillar added to ADR is pre-litigation. In Monetary matters, transaction, recovery of loan etc., by the Banks and Insurance Companies instead of approaching the Courts by filing suits against defaulter, they have started resorting to pre-litigation mode of settlement. An application with details of dues is submitted to the Legal Aid Agency of the concerned District requesting for settling the issue through Lok Adalat. Their application with a notice is sent to the concerned person asking them to appear before the ensuing or next hearing of Lok Adalat, if the defaulters desire to settle the accounts amicably by mutual consent. On appearing of the both the parties with consent letter to settle the issues, the Lok Adalat passes the award which becomes final, binding on the both the parties and in the form of a decree but non-appealable. In case, the defaulter or the concerned party absents in the hearing, the Lok Adalat without taking any decision returns the dossier to the Legal Aid Cell of the Court. This is an innovative and easy mechanism to settle the disputes in the financial matter.

In the proceedings of Lok Adalat one of the parties is loser or gainer. In case the matter is referred to the Lok Adalat of the case pending in a court the person who had paid Court fees gets the same returned as provided under Fees Act, 1870.

Suggestions

- Though the arbitration has been included under the ambit of ADR mechanism, yet its proceedings become highly technical and complicated like Courts. The disposal is time consuming. Therefore, it is suggested that an amendment be made dividing arbitration clauses into hardware and software for domestic as well as international commercial matters. The software technique be adopted on the lines of Lok Adalat for poor and vulnerable group of people.
- It is seen that the State is the largest single litigant in civil and criminal matters. ADR technique be applied for disposal of such a cases also and discourage the State for litigation frequently.
- The mechanism of counseling, mediation and pre-litigation also be resorted to Court litigations.
- More and more Para-legal services, especially in rural area be spread over to make the people aware of the advantages of ADR methods.
- Legal education be imparted in Schools and Colleges irrespective of disciplines.
- Mediation-cum conciliation centers be opened on District and Taluka level to settle the dispute with some incentives to lessen the litigation in the Courts.

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