

EVOLUTION OF MUTUAL DISPUTE SETTLEMENT

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I. Abstract

In olden days also disputes and conflicts has been settled own by the interruption of the third party. If there is a conflict or any kind of dispute, that will be investigated by the authoritative person like village leader in front of the village people. They could investigate the both parties and provide solution or remedy. They will resolve the dispute. This method has been now evolved as alternative dispute resolution. This means settlement of dispute through the peaceful manner. Both parties are accepting the final decision. This method was introduced to reduce the burden of the court. Because in india, there are so many number of pending cases. This alternative dispute resolution governed by the arbitration and conciliation act, 1996. This method provides short term solution. But, most of the people not aware about this method. Parties can get their grievances redressed without the feeling of enmity in this method.

II. Key words – Arbitration, Mutual agreement, Grievances, Litigation, Alternative Dispute proceedings.

III. Introduction

There are so many numbers of pending cases are unsettled cases in india. India has a very oldest judiciary system. India's population is very high so that high numbers of litigations are filed. But India contains very few courts, it can not deal all the petitions or litigation. To deal with such a litigation or situation or petition alternative dispute resolution was introduced. It will be helpful mechanism. Settlement of dispute through the third party had been prevailed in india since time immemorial. Elder people were sit under the banyan tree and give solution to the dispute or conflicts.

IV. Alternative dispute resolution

In India, the arbitral proceedings are governed by the Arbitration and conciliation Act 1996. Alternative dispute resolution is the substitute method for resolving the dispute. It provides solution to all type of matters including civil matter, commercial matter, industrial matter and family matter etc. Alternative dispute resolution means to resolve the conflicts in a

peaceful manner where the solution is accepted by the both parties. In this method alternative dispute resolution uses the neutral third party to communicate between the parties to resolve the dispute. It includes the arbitration, conciliation, mediation, negotiation and lok adalat.

- ❖ This is a quasi-judicial proceeding.
- ❖ It refers to setting the disputes outside of the court room.
- ❖ This is more suitable for multi-party system.
- ❖ It reduces the burden of the court.
- ❖ This involves a third party, who helps them in settling the dispute.

V. Basic concept of Alternative Dispute Resolution

The constitution of India has guaranteed access to justice for all Indian citizens through article 39a.

Article 39a of the Indian Constitution, 1950

Equal justice and free legal aid

The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Access to justice means access to court of law.

Alternative dispute resolution method is to provide social and economic and political justice. This maintains the integrity in society.

VI. Related legal provisions

A. Section : 89 of civil procedure code , 1908

Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation
- (c) judicial settlement including settlement through lok adalat; or
- (d) mediation.

(2) where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the arbitration and conciliation act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that act.

(b) to lok adalat, the court shall refer the same to the lok adalat in accordance with the provisions of sub-section (1) of section 20 of the legal services authority act, 1987 and all other provisions of that act shall apply in respect of the dispute so referred to the lok adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a lok adalat and all the provisions of the legal services authority act, 1987 shall apply as if the dispute were referred to a lok adalat under the provisions of that act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Under this section the civil court have power to refer the matter to the alternative dispute resolution method.

B. Legal service authorities act, 1987

The main object of this act was to provide free legal services to ensure the opportunity for securing justice. This includes the lok adalat.

C. Arbitration and conciliation act , 1996

This act was based on the uncitral [united nations commission on international trade law] model law, international commercial arbitration 1985 and uncitral [united nations commission on international trade law] conciliation rules , 1980.

This act contains the 4 parts.

Part i – arbitration

Part ii – enforcement of certain foreign awards

Part iii – conciliation

Part iv – supplementary provisions

It contains the 13 chapters and 7 schedules.

VII. Methods of dispute settlement

A. What is mean by arbitration ?

Arbitration is a procedure where the dispute submitted by the party's agreement before one or more arbitrators. In this process arbitrator's decision have the binding authority. Arbitral award shall be final and binding on the parties and persons claiming under them respectively.

1. Arbitrator

This term implies an impartial person who have the power to resolve the dispute in a peaceful manner.

As per the Section 10 of the Arbitration and conciliation Act

1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) the arbitral tribunal shall consist of a sole arbitrator.

2. Arbitration agreement

Arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

3. Arbitration council of India

This arbitration council of India was established by the central government. Head office of this council is Delhi. This council shall consist a person, who has been, a Judge of the Supreme Court or Chief Justice of a High Court and an eminent arbitration practitioner and an eminent academician and Secretary to the Government of India and one representative of a recognised body of commerce and Chief Executive Officer-Member-Secretary, ex officio.

B. What is mean by mediation ?

Mediation is a structured process for settlement whereby disputing parties arrive at a mutually acceptable agreement. Any person who undergoes the required 40 hours training as stipulated by the Mediation and Conciliation Project Committee of the Supreme Court can be a mediator

C. What is mean by conciliation ?

Conciliation is a kind of arbitration . It is a process which aims to end an argument or disagreement The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or

communicate with the parties together or with each of them separately. Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

1. Role of conciliator

- The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of reasons.

D. What is mean by lok adalat ?

This is known as people's court . Lok adalat will be presided over by a sitting or retired judiciary officer or member of legal profession.

E. What is mean by negotiation ?

Negotiation is also a form of dispute resolution. In this method, there is no third party , parties are find a mutual solution.

This method is not statutorily recognized.

VIII. Advantages :

- ✓ This process is not expensive. It saves lot of money which has been spent in litigation process.
- ✓ It provide short term solution to the disputes. It consumes the less time.
- ✓ People can easily disclose their problems and facts.
- ✓ It prevent from conflicts.
- ✓ It maintain good relationship between the parties.
- ✓ Alternative dispute resolution method was introduced due to the inefficiency and drawbacks of litigation.
- ✓ There is no winning or losing side. Both parties get their grievances redressed without the feeling of enmity.

IX. Dis advantages:

- ✓ Courts have played a very important role in giving guidelines and instructions.
- ✓ Most of the people are not aware about alternative dispute resolution.
- ✓ Judiciary officers must be trained about the identification of cases which can be refer to the mediation.
- ✓ There is no appeal from mediation.
- ✓ Example :
- ✓ As per the section 41 of the consumer protection act, 2019 no appeal shall lie from the mediation.
- ✓ If the settlement failed in alternative dispute resolution method , there is a need of court such as interim order or enforcement .
- ✓ There is no guarante for the settlement. Party to the concerned dispute or conflict may accept the mediation result or they may reject. This is totally based upon the parties.
- ✓ Alternative dispute resolution method needs the expert advice and suggestion.
- ✓ There is no compulsion to fulfil something or do something.
- ✓ Alternative dispute resolution method is not applicable for all the type of cases.

- ✓ The final decision or settlement of alternative dispute resolution method is not equivalent to the order or judgement of the court.
- ✓ If the neutral party or person favours any of the party , the aggrieved party may not go for the appeal.

X. Problem

The issue or problem involved in this method is that there is no appeal from the mediation. Another important problem. Is that not most of the people are aware about this Alternative Dispute Resolution Method.

XI. Suggestions:

- Most of the rural people are not aware about the alternative dispute resolution method.
- Awareness must be conducted by seminars , workshops and literacy program.
- Setting up of mediation centres in all the districts of each states.

XII. Conclusion

Every indian citizens have the right to get fair justice. People who want quick and less expensive remedy or solution can go for the alternative dispute resolution method. Through the arbitration , mediation , conciliation, negotiation and lok adalat , they can get their grievances . This method is a very peaceful method and this maintain integrity between the parties.

I. References

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