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WHY ADR BEING PREFERRED OVER CONVENTIONAL DISPUTE RESOLUTION BODY

ABSTRACT

The increase in the disputes has increased the burden of the judiciary and resulted in a huge backlog of cases in the courts. Denial of justice through delay has been the biggest mockery of law and in fact has killed the entire justice system. In order to provide a fair and reasonable justice forum for the people to access to settle their conflict the 'alternative' of judiciary body i.e. the Alternative Dispute Resolution is formulated. It has become more crucial for the business entities who are dealing overseas. There are various reasons because of which it is preferred over the conventional judicial system and the paper here highlights those preferential frameworks. The paper here is divided into five parts in which the Part I discuss about the origin and objectives of the ADR; the Part II discuss about the ADR structure in India and how it works; Part III discuss about the technological advances which has brought in the field of ADR and shaping the future from ADR to ODR; Part IV discuss the controversies faced in use of ADR in lieu of judicial system; Part V discuss about the suggestion which can improvise the ADR.

INTRODUCTION

From ages, there has been dispute in between parties and "Disputes" are basically termed as 'lis inter partes'[1] clashes of interest which is covered up within the legal rights and duties. People while only focusing on enforcement of their legal rights tends to preclude the protection of their

[1]Legal suits between parties.

interest. With the passage of time, people increased the awareness for the protection of their interest rather than focusing on their rights and duties. With the growth in the sector of business trade, there was an increase in the dispute between the traders which resulted in hindrance in the smooth flow of trade in between them. Even, in the courts the matters were delayed and created a disordered heap in the business. So as we know that it is the spirit and not the form of law that keeps the justice alive, keeping that into consideration the concept of Alternative Dispute Resolution was formed wherein 'alternative' refers to resolving the disputes outside the courtroom setting. The approach was made by the legal professionals and the court to provide a platform to the parties involved in the civil disputes to get out of these court proceedings and resolve their case through an agreement, whether directly or by taking the help of a third party who is known as a mediator or conciliator. Rather than getting involved in the court proceedings and waiting for a 'winner v. loser' formal decision of the court, there are strong reasons to motivate and inspire people to opt for Alternative Dispute Resolution to reach a solution through agreement, especially in the matters where emotional issues combined with legal issues. In the case of **Charlton v Kenny**[2] where the dispute had arose regarding the ownership of a portion of land that was close to both the plaintiff and defendant's house was resolved through mediation.

- **Shifting of the cases to the ADR platform due to delay in courts**

In addition, unlike the delays in the court process, the undoubted advantage of this ADR process is that it provides speedy access to the parties and helps them get satisfactory outcomes in a short space of time. As we are aware of the statement 'justice delayed, is justice denied' the court proceedings works at a very slow pace and eventually involve barriers to justice but the ADR processes have emerged to irradiate such delays in the court process and provide proper justice to the people in a reasonable time period. Even in India there has been an interesting feature of the legal system to avail speedy justice and that is the existence of voluntary agencies called the Lok Adalats which is a part of the ADR mechanism in India.

- **The Court Functioning and ADR Process.**

The commercial courts in High Court established in 2004 in Ireland has been encouraged to uptake the ADR process and are made to deal with high commercial disputes. They are made to

[2][2007] IEHC 308.

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use the active judicial case management to increase the use of mediation and conciliation and to improve the efficiency of the litigation process. In India, there is a demand for the same and to which recently the government has promulgated two ordinances. In Ireland similarly the small clause Courts in the District Courts is a mediation process for certain consumer disputes where the disputes are been resolved through document- only approach. In India **Aftab singh v emaar mgf land limited & anr**[3]the National consumer disputes redressal commission, discussed the issue of "whether the Arbitration Act mandates the consumer forum under the consumer protection Act, 1986, to refer parties to arbitration in terms of an arbitration agreement, notwithstanding any other provision of the aforesaid Acts?", to which it was held that arbitration cannot settle the consumer disputes. In the case of **Booz Allen and Hamilton Inc. v SBI Home Finance Limited**[4]the Court provided the framework of what kind of disputes are arbitrable and non-arbitrable in nature. And further stated that the cases which are inarbitrable in nature, the Court under section- 8 of the Act, refused the parties to refer arbitration even if the parties would have decided upon to make arbitration as there forum for negotiation and resolution. The paper here talks about these issues.

- **Role of ODR Mechanism**

With the development in the area of technology and e- commerce, evolved the online platform for the Alternative Dispute Resolution i.e. the Online Dispute Resolution which is way more flexible and cost friendly than the ADR process. The system of justice has come under great stress due to the huge pendency of the Court cases and the ADR and ODR mechanism would help to resolve the dispute and at the same time reduce the stress of the Court.

I. ADR: ORIGIN AND OBJECTIVE

- **ORIGIN OF ADR.**

Firstly, understanding the origin of disputes- 'Disputes are inevitable part of everyone life and majority of people are likely to get involved in a civil dispute once in their lifetime'[5]. As stated by Miller and Sarat "Disputes are not discrete events like birth and death but are the construct events like as of illness and friendships, which are partly composed of perceptions and partly of

[3]III(2017)CPJ270(NC).
[4] (2011) 5 SCC 532.
[5]Law reform commission – consultation paper Alternative Dispute Resolution (LRC CP 50 – 2008).

understandings of those who participate in and observe them. Disputes are drawn from vast course of sea of collisions, rivalry, discomforts; encounters etc…… the disputes that reach the court can be seen as the survivor of a long process."[6]

Disputes arise from grievances, "grievances talk over with as an individual's belief that he or she is entitled to a product or resource which some other person may grant or deny." We need to look at the incidence of grievance to establish the baseline potential for disputes. However, grievances are concrete circumstances which are relatively objective, but it is also composed of subjective perceptions and belief that the grievance caused can be inappropriate…. Thereby it is up to the individual how he or she reacts to that event.[7]Dispute is compared to that of a iceberg in which the submerged part are the personal interest of the party, the fundamental underlying factor contributing to any given conflict, which are not always surfaced during formal right-based processes like the arbitration or litigation.[8]

In order to resolve these disputes the society needs to develop efficient and innovative methods which can deal with the issues certain. The concept of ADR was brought in here as that innovative method or process to deal with such disputes outside the courtroom and helps to provide a speedy remedy. From the post war era, as the world political and economic barrier fell down drastically, the intellect minds of the global villages ought to direct civilization clashes towards reconciliation, preserving the cultural diversity. In addition to create framework for cooperation and interstate relations the ADR process was made to use.[9]

The concept of ADR is not a new phenomenon and the modern form of ADR is a mirage of the methods which were followed back in the ancient times. Many archeologists have discovered evidence regarding the use of ADR in the ancient civilization of Egypt, Mesopotamia.[10]Then in between 1980- 90's in US there was growing concern regarding the litigation system being expensive, too slow. This opened the way to use creative ways other than litigation to resolve the

[6]Richard Miller, Austin Sarat , Grievances Claims and Disputes: Assessing the Adversary Culture‖ (1980-1981) 15 Law & Society Review, (Vol XV, issue 3-4), 525- 527.
[7]Richard Miller, Austin Sarat , Grievances Claims and Disputes: Assessing the Adversary Culture‖ (1980-1981) 15 Law & Society Review, (Vol XV, issue 3-4), 525- 527.
[8]Alternative Dispute Resolution: Mediation And Conciliation, Law Reform Commission, (LRC 98- 2010), ISSN 1393- 3132, 13-15.
[9]William Mitchell, Law Review- cross- cultural negotiation, with special focus on ADR with Chinese (Vol XXVI, issue 4).
[10]Nelson, "Adapting ADR to Different Culture"(Dec 15, 2001).

disputes. These other creative methods collectively where named as Alternative Dispute Resolution (ADR). The ADR process started with mediation as a medium for resolving disputes and slowly in 1980's the demand of the ADR was made in the commercial sector to resolve the disputes in a creative way and more effectively other than litigation. Then the UNCITRAL (United Nation Commission on International Trade Law) model was introduced which was a big step in the field of international ADR. This harmonized the concept of arbitration and conciliation in order to delegate it for universal application. The UN thereby, recommended other member nations to adopt the model for a uniform law for ADR mechanism and other important conventions related to it such as The Geneva Convention, 1927(Execution of foreign arbitral awards), The New York Convention of 1958(Enforcement of foreign arbitral awards). These interest- based dispute resolution process takes the discussion beyond the legal rights of the individual to look at the underlying interest of that person disputes iceberg; address the party's emotion and provide creative solution for the resolution of the dispute. Therefore, the main motive of forming this body was to provide justice to the people by addressing their issues properly and providing solution for the same. ADR has provided fruitful results not just in international political arena but also in the international business world in settling commercial disputes among the corporate houses.

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TYPES OF ADR PROCESS

- **Negotiation**, unlike other ADR processes doesn't involve any third party. It is simply an exchange of proposal between the parties who wish to settle the dispute outside the court. The parties mutually discuss over the matter and come up with a solution to it and it is completely under the discretion of the parties. The matters discussed over here are kept confidential and the parties can withdraw at any point of time. In the case of **Coal Cliff Collieries Pty Ltd v Sijehama Pty Ltd**[11], it was held that the promise to negotiate is delusory hence cannot be made binding in nature. However, it can only be binding if the court is able to attribute meaning to the agreement.
- **Mediation** is a negotiated agreement between the parties done by a neutral third party called the mediator for the resolution of the conflict. Unlike, the arbitrator the mediator's decisions are not binding in nature.

[11](1991) 24 NSWLR 1.

- **Arbitration** is that body in the ADR process which is quite analogous to that of litigation as it is also an adjudicatory in nature but it is more flexible and less formal as compared to that of the court of justice. The arbitrator who is the impartial third party adjudicates the matter and the decision made by the arbitrator is binding in nature.

OBJECTIVE OF THE ADR

- **Voluntary Nature.**

  The principle of voluntariness has always been fundamental to ADR process. The party here gets to approach on a voluntary basis. The party here chooses to remain at the table, may withdraw from the process at any time the part wish to. The parties are made free to voluntarily choose their mode of dispute resolution process they wish to pursue. They must not be forced into a particular form of ADR just because they can't afford another option.[12] As it is a private forum, there is autonomy of the parties. The forum provides the party a greater control of how their dispute is resolved as compared to that of what happens in litigation.

- **Confidentiality.**

  Confidentiality is the key to the success of ADR as it provide guarantee to the party and there is a sincerity of communication exchanged within the course of the procedure. This helps to build a trust in the impartial third party and the ADR process. This even allows them to focus on the merits of the disputes.

- **Efficiency.**

  Themost common problem about the justice system is that it is expensive and the justice over a matter is delayed. This prevents the people to access the courts and those with access suffer loss of time in their work. Delay of work leads to increase in their expenses and this for many lead to justice delayed is justice denied. This has put justice beyond the reach of common man.[13] Mediation and conciliation provides an alternative way in matter of cost and time efficiency as compared to litigation. In the case of **Egan v Motor Services (Bath) Ltd**[14] , the English court appealed to give preference to the use of

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[12]Response to Policy Consultation Paper on Alternative Dispute Resolution by Advice Services Alliance (Scottish Consumer Council, August 2003).

[13]South African Law Commission on Alternative Dispute Resolution (Issues Paper No. 8, Project 94, 1997).

[14][2007] EWCA Civ 1002.

mediation at the initial stage in the case, particularly where the litigation cost is disproportionate to the amount in dispute.

- **Flexibility.**

  This is a unique part in the ADR process, i.e. it helps the parties in achieving consensual and mutually satisfactory resolution which are not available in the forum of litigation.

- **Impartiality.**

  Neutrality or impartiality is another most important key feature of ADR process. Impartiality in: lack of prior knowledge of the dispute and the parties, absence of mediator at the time of judgment and the clarity of idea about the mediator being fair and even- handed.[15] It doesn't provide the parties the enjoyment of home court advantage like in the forum of litigation and provide quality and transparency in the whole proceeding.

II. ADR IN INDIA

- **ESTABLISHMENT OF ADR MECHANISM IN INDIA.**

Desire of affordable justice and right of speedy trails is a part of right of life and personal liberty of every individual in the society guaranteed under the Section- 21 of the Constitution of India. Disposal of cases in time is necessary in order to maintain the rule of law and provide access to justice which is a fundamental right incurred to every individual in the society.[16] But due to the increasing number of cases in the court, there had been a pendency and delay in the justice. The judiciary body came under great stress due to this sole reason underlying for the need of the Alternative Dispute Resolution method in India. So, in order to resolve this a resolution was adopted by the all the chief ministers and chief justice of the states with the then Prime Minister and Chief justice of India with the opinion that the court were not in an position to bear the entire burden and there are major economic reform under way within the framework of the rule of law in India, in that case there is no better option than to strive for the Alternative Dispute Resolution in India which is a great strategy for swifter resolution of dispute in a expeditious way and could lessen the burden of the judicial system.

- **The Arbitration Act, 1940.**

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[15]New South Wales Law Reform Commission Report on Community Justice Centers (Report 106 - 2005).

[16]Dr. Anil Kumar Singh, ADR Mechanism in India: Achievements and Challenges- Indian Journal of Research, paripex, ISSN: 2250- 1991, (Vol V, issue 8).

The Indian Arbitration Act, 1940 came into force which dealt with the domestic arbitrations. There was an intervention of the court in all the three stages of the arbitration. There was a negative competence- competence principle which was been followed by the judiciary where in the course of the proceedings, there was a invention of the court for the extension of time for making an award and finally before the award could be enforced it was required to be made the rule of court.

While the Act, 1940 recognized to be a good legislation in its actual operation but it proved to be ineffective and outdated.[17]

- **The Arbitration and Conciliation Act, 1996.**

Thus, 1940 Act was repealed and the legislature enacted the arbitration and conciliation Act, 1996 in a view to provide quick and speedy justice to commercial disputes by private arbitration. In the case of **Purushottam S/o Tulsiram Badwaik v. Anil & Ors**.[18], the SC held that even if an arbitration agreement entered into after the 1996 Act had inherit force were to create a relevance the applicable provisions of these under Indian Arbitration Act or 1940 Act, such stipulation would be of no consequence and therefore the matter must be governed under the provisions of 1996 Act. Further, the Court held that an incorrect reference or recital regarding the applicability of the 1940 Act wouldn't render the whole arbitration agreement invalid.

The arbitration agreement as per the 1996 Act should be in writing. Since the arbitration clause which is a part of the contract is in writing the same could not have been superseded by any oral agreement.[19]

It has significant two parts- Part I deals with any arbitration conducted in India and enforcement of awards and Part II deals with enforcement of foreign awards and the New York and Geneva Conventions are applied here.

In the case, **Bhatia International v. Bulk Trading S.A. and Anr**.[20], the SC stated that the provision of Part I of this Act including the (Section 9)[21] were made applicable to the

[17]Arbitration and Conciliation Act, 1996, Statement of Objects and Reasons.
[18]Civil Appeal No.4664 of 2018.
[19]Mother Boon Foods Pvt Ltd v. Mindscape One Marketing Pvt Ltd O.M.P. (COMM) 136/2017.
[20]AIR (2002) SC1432.

international commercial arbitration irrespective of the number of seats of the arbitration unless and until impliedly or expressly mentioned in the aforesaid contract. This judgment broadened the applicability of this Act beyond what was observed by the makers while enacting it.

In the case of **TDM Infrastructure (P) Ltd. v. UE Development India (P) Ltd**[22], it was held that the dispute resolution proceedings incorporated in India can only choose the Indian laws as their governing law in arbitration irrespective where the company's management is exercised from.

After the BALCO[23] judgment in 2012, the ICA in India changed. It laid down some principles such as the Indian courts do not have any authority to grant any interim relief if in case there is an ICA with a seat outside India. Secondly, only if the arbitral awards are enforced and passed in India with accordance with the Part II of the 1996 Act, then only the award granted in ICA would be subjected to the jurisdiction of Indian courts.

- **The Arbitration and conciliation (Amendment) Bill, 2015.**

The 1996 Act was passed with the main intention to provide smooth and speedy process of solving disputes in between the parties with the minimum involvement of the court. But it failed to some extent, which then forced the government to make amendment regarding it. The amendment brought various changes in the existing act. The main lacunae which caused by the BALCO judgment was cleared in which the Indian court was not allowed for granting interim relief and providing assistance in collecting evidence in the case of ICA[24]. The issue was resolved with the changes brought in the provision (Section 9 and Section 27). The definition of 'court' was changed and was referred to as high court in case of an ICA. The struggle by the government for making India a hub for ICA like Paris, New York seemed to be successful with the Arbitration and Conciliation (Amendment) Bill, 2015. The lack of confidence in the foreign investors to choose India as a seat for arbitration was set aside with the help of this amendment bill. It brought a huge difference in the ADR forum in India.

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[21] Passing interim orders.
[22] 2008 (2) Arb LR 439 (SC).
[23] Bharat Aluminium Co v. Kaiser Aluminium Technical Services Inc (2012) 9 SCC 552.
[24] Gary B. Born and Suzanne Spears, 'International Arbitration and India': "A truly Excellent Judgment!" , Indian Journal of Arbitration law (vol I Issue 1).

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- **VARIOUS FORMS OF ADR IN INDIA.**

There are various forms of ADR which exists in India and the nature of the dispute and relation of the parties decide the forum of the ADR methods.

➢ **Arbitration.**

It is mentioned in the section 2 of the Arbitration and Conciliation Act, 1996. It is a procedure in which the dispute is brought up in front of the arbitral tribunal which makes the decision or arbitral award on the dispute that is binding in nature. 'Disputes are resolved by a person or persons acting in the judicial manner in private, rather than the court which would have jurisdiction but for the agreement of the parties to exclude it.'[25]There are various kinds of arbitrations:

- **Ad hoc Arbitration** is a kind of arbitration where the parties agreed to and arrange the proceedings. It is very flexible, cheaper and faster than administered proceedings. But in reality the ad hoc arbitration is becoming expensive vis-à-vis traditional litigation.[26]
- **Institutional Arbitration** is a form of arbitration where is a permanent institution which aids and administers the arbitral process. Here the institution doesn't arbitrate the dispute; instead the arbitrator does the same only the rules of the institution are applied. In institutional arbitration, the International chamber of Commerce (ICC) has a committee to scrutinize the arbitral award. As a result of which the court cannot set aside the award as the scrutiny removes all the flaws and defects in the award.

Instead of such advantages also in India people prefer ad hoc arbitration over institutional arbitration.

- **Fast track Arbitration** is been established by the Indian Council of Arbitration (ICA). It has strict rule of procedure and is also known as time- bound arbitration.

[25] Halsbury'sLaw of England, (4th edn) (reissue) para 1, taken from,Words and Phrases Legally Defined, edited by David Hay,4th edn., Lexisnexis Butterworth, p 161.
[26]Krishna Sharma, Momota Oinam,Agshuman Kaushik, Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution- CDDRL.

The reduced span of time makes it more costly. The 1996 Act has built in provision for the fast track arbitration, under section 11(2) the parties are free to appoint their arbitrator and choose the fastest way to challenge an arbitral award.

- **Mediation**

Mediation is a process through which the parties get an opportunity to negotiate and explore options provided by the third part i.e. the mediator, to determine if a settlement is possible. Since, it is not done through formal proceeding the demand of mediation in India is not yet popular. In India, these settlements are done through Nyaya Panchayats and Village panchayats. The Supreme Court in the case of **Salem Bar Association vs. Union of India**[27] , held that there should a prepare model rules for ADR (rule framed as 'Alternative Dispute Resolution and Mediation Rules, 2003) and even requested to draft the rules of mediation in the section 89(2)(d) of the CPC, 1908.

- **Conciliation**

Conciliation is an unstructured method of dispute resolution where the conciliator establishes communication between the parties in order to help them settle their differences. The provision for conciliation of disputes is made under section 61 of the 1996 Act which provide this form of arbitration for disputes related to legal relationships and other related proceedings, be it be contractual or not. After the enactment, no objection can be made for not permitting the parties to end into such agreement regarding settlement of upcoming future disputes.

- **Lok Adalats**

The concept of Lok Adalat is not something new. It was established under the National Legal Services Authority Act, 1987, pursuant to the constitutional mandate of 39-A of the Constitution of India, which contains various form of resolving disputes, in which Lok Adalat is one such method. This has helped the weaker sections of the society to avail with speedy and fair justice without approaching the court. Even, the Hon'ble Delhi High Court has provided a landmark judgment giving direction for the setting up of permanent Lok

[27](2005) 6 SCC 344.

Adalats in the case of **Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board and Others[28].**

- **ADVANTAGES AND CHALLENGES OF ADR IN INDIA.**
  - **Advantages**.

Over the past few decades, there has been a increase in the international trade and commerce in India which has resulted in the increase in the commercial disputes among the business entities. The growth in judiciary dispute mechanism cannot be at the same pace as of the growth in the industrial sectors resulting in the backlogs of cases. Thus, the requirement of the Alternative Dispute Resolution in India has become very important for the businesses operating in India and also for those who are doing business with the Indian firms. The ADR mechanism has provided a more flexible, cost efficient platform to resolve the issues thus being preferred over the conventional way of dispute resolution. Unlike the court proceedings it is informal in nature and not governed by strict rules of pleading and of evidence. It helps to promote self- reliant development. It helps the parties to regain a sense of control, acceptance of the outcome, resolve their conflicts in a peaceful manner and achieve a greater sense of justice. It happens in private forum and is more economic and efficient.[29]

  - **Challenges.**

They foremost disadvantage is that many persons in the legal field are ignorant of the ADR methodology of dispensing even justice. After the enactment of the Arbitration and Conciliation Act, 1996 quite after some times the Act lost its basic structure and identity and is not the same as the parliamentarians intended it to be. Since, in ADR the precedents are not given any value therefore the outcome of the ADR vary considering the arbitrator/mediator and other subsidiary factors i.e. a poor arbitrator/ mediator can result in unsuccessful resolution and can defeat the core purpose of the ADR mechanism.

- **Conclusion**

Everything is a mixture of black andwhite and ADR in India doesn't stand in any exception to this general rule. Nothing is perfect; there are some or other demerits in every Act and

[28] AIR 1999 Del 88.
[29] SUJAY DIXIT, ADR Mechanism in India, 06/2010.

process. However, looking at the advantages over the disadvantages in ADR mechanism functioning in India, the balance lies in the favor of the advantages it carries. The mechanism is evolving and no doubt providing good results to the business entities.

III. TECHNOLOGY SHAPING THE FUTURE FROM ADR TO ODR

Imagine the e-bodies in the dispute resolution forum who can reformulate parties' overall mood based on their speech and recreate the real- life intensity of emotional and social connection through a pattern of ODR program. Imagine the same brainstorming secret meetings and resolution process be done through a web- based agent in an e- room where the agent would advise parties to trade- off or settle their issues. The way the parties one generation ago where concerned with the idea of moving 'out of the court' for resolution of their disputes similarly today the concern has shifted to the arena of cyberspace for dispute resolution.[30]This is how the technology is shaping the future providing an internet- based forum for negotiation, mediation and arbitration. This is known as the Online Dispute Resolution.

- **Online Mediation**

  The online mediation is a little bit different from what we have seen in the ADR forum of mediation. Here the parties' are sent an e-mail informing them about the basic information about the online mediation conduct. The mediation basically is conducted virtually in "chat rooms" where the neutral third party who is the mediator communicates with the parties' separately or simultaneously with both of them. There are three stages in the e- mediation. First there is room meant for 'joint session', then there is breakout room for caucuses and lastly for filing and storing documents. Asynchronous mediation is the best way of mediation as it is very flexible in nature and provides faster resolution as compared to that of offline mediation.[31]

  But everything that is related to technologies comes up with some flaws in it. In case of the e- mediation is lacks some of the key features of the mediation which is human relational aspect of mediation. The e- mediation sometimes fail to address the exact

[30]Ethan Katsh and Janet Rifkin, Online Dispute Resolution: Resolving Conflicts in Cyberspace (Jossey-Bass, San Francisco, 2001) at 26.

[31]DERIC YEOH (Schellenberg Wittmer)- Is Online Dispute Resolution the future of Alternate Dispute Resolution? (March 29, 2018)- YSIAC http://arbitrationblog.kluwerarbitration.com/2018/03/29/online-dispute-resolution-future-alternative-dispute-resolution/.

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emotions which the parties' want to convey because the means of e-mail to convey something instead of face to face interaction creates a huge gap. Sometimes one wrong statement can ruin the whole process of mediation.

- **Online Arbitration**

  Asynchronous online arbitration is a kind of arbitration in which all the proceeding is conducted online. Here, the parties' send all their evidential documents to the arbitrator through mail, then the geographical location where the arbitration would take place is determined and also place of signing the award by arbitrator is determined[32], then the parties' answers all the necessary questions as by the arbitrator and at the end the arbitrator sends the final decision to the parties. The whole proceeding is done through the use of video conferencing. As it function through web- based pattern it is very flexible and budget friendly as the parties residing in two other states finds it easy to proceeding with the hearing without spending a lot. The online arbitration is used mainly for internet domain name disputes.

ODR in India

There has been a growth in the evolution of ODR in India after the enactment of the Information Technology Act, 2000. The factors creating hindrance in the growth and development of ADR would eventually be the indirect reason for the growth of ODR in India. By observing the extent of advancement in the field of technology in India and seeing the younger generation indulging completely in the arena of cyberspace the day is not too far away were the ODR would be adopted as the primary tool for the dispute resolution.

The ODR forum in India is not well established to the lack of proper legal framework to govern such body. The present ODR infrastructure in India seems very discouraging. There is not much institution to train, educate, and provide research knowledge to the people for the success of the ODR. After looking to such situations we cannot expect India to be a hub for the ODR services and thereby, needs to cover a long way before ODR can properly be used for the dispute resolution. But with some constructive changes and development both in the legal and infrastructure framework India could be the hub for ODR forum.

[32] Ms. Apoorva Dixit, Online Dispute Resolution: An Indian Perspective, ISSN-2581- 5369, 2018 IJLMH, (Vol II, issue 1), 1.

Conclusion

The complex cases are still a part of the traditional way of dispute resolution. But, with the advancement in technology the less complex cases can be resolved through the online dispute resolution. Therefore, the intermediary parties need to be aware of the latest technology to avoid from being made aside in the wake of technology's fierce march.

IV. DRAWBACKS SET IN THE ADR MECHANISM

- **CONFLICT IN LAW OF JURISPRUDENCE OF TRADITIONAL JUDICIAL SYSTEM.**

The main subject for controversy lies in whether there is more privatization or secrecy in the settlement of disputes in the ADR forum than what was happening in the times of the traditional judicial system. Due to the increase in the ADR process there has been a problem regarding the 'doctrine of precedent', since the mechanism works in a secret forum there are a fewer and fewer cases which are made available for making of precedents.[33] Even as the settlement are done in private forum with secrecy clauses the wrongs done by the defendants are not highlights in the public domain and in a result of which the others won't get to learn from the same.

- **DIFFICULT FOR A COMMON-MAN TO ACCESS THE FORUM.**

The less privileged people face the real problem in this ADR process as suggested that there is a little evidence that they proceed better in the judicial system. Due to the absence of any judge, formal rules they are felt as leftovers as they find no one who can advise them their legal entitlement.

- **CHANGE IN THE ADR MECHANISM DUE TO THE COURT INVERVENTION.**

The forum which was made as an 'alternative' for the judiciary body is today co-opted within the judiciary body. The forum which was once flexible, creative and expeditious is now becoming rigid and judicialized as more laws are passed in legislatures about ADR. Processes of mediation and conciliation which was voluntary in nature are made compulsory by the courts. The

[33]Fiss, O. (1984). Against settlement. Yale Law Journal, 93, 1073–1090.

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acculturation into the traditional judicial system has deformed the ideologies of the ADR mechanism.

CONCLUSION

Quality of case suffers when there is a huge gap or delay in deciding piles of cases, this is because of the inadequate judge population and lack of basic infrastructure which are major responsible for the backlogging of the cases. In such a situation, to reduce the burden of the judiciary the need of the Alternative Dispute Resolution forum is necessary. This would not act as a mere replacement of litigation, rather would be used as an additional weapon to make our traditional judiciary system work more efficiently and effectively. After the formulation, this mechanism has eased the present burden of the judiciary system to some extent. Many people now prefer the to resolve their cases in the ADR forum as it provides speedy justice to people and are inexpensive as compare to the ordinary legal process.Therefore, it helps the litigant who cannot afford the expenses in the ordinary legal process and in addition, enhance the involvement of community in the dispute resolution process.

Talking about the ADR mechanism in India, as a developing country India is undermining through economic reforms within the rule of rule, for a swift and speedy resolution of disputes without adding pressure on the judiciary body the only alternative India is having is to adopt the Alternative Dispute Resolution. Even in the CPC Section- 89, the section encourages the ADR process forwarding the disputes to the lok adalat which is a part of the ADR process in India. The only problem in India regarding ADR mechanism is the lack of infrastructure and lack of understanding about the objective of this forum in the people as it is still in the formative stage and meanwhile there are lots of things to learn about this alternative forum to litigation. To conclude, it is suggested that the ADR in India should be institutionalized.

To sum up the whole paper this can been evidently said that although this mechanism has some flaws in it but is the need of both national and international front for the resolution of the disputes. Moving with the same pace as the technology is moving it has revolutionized with the passage of time and has filled the gap of reaching to the people to resolve their disputes. It has provided a forum of online dispute resolution also where the parties living overseas also can easily get a fair chance to resolve their issues through the web- based ODR mechanism. Hence, it

can be the future of the arena of dispute resolution globally. Alternative dispute resolution body is an understanding step for the common people to have access to justice without waiting for a long time for the justice but the only matter of concern is it should be governed under proper management for a long steady term.

Some suggestive measures which can be taken to promote and develop the ADR mechanism;

- More awareness should be spread through conferences, seminars and workshop to promote the ADR mechanism among the common people as well as the students of laws and the lawyers. Because in spite of being a lawyer also many of them are not aware about the structure and functioning of the ADR.
- Priority should be give to development of proper infrastructure as because without that the ADR cannot proceed too far.
- The government should actively take part as because due the inadequate functioning of their government there is a lack of adequate judges in the judicial system which has created a burden on the system.
- The ADR should be institutionalized and proper training should be provided to the mediators, arbitrators and conciliators.
- The lawyers need to be active and need to understand the basic thing behind this ADR is that the dispute is a problem that needs to be resolved and not a contest which needs to be won.
- The quality of justice should be maintained and the neutral third parties should not get biased.
- The ADR mechanism should slowly and gradually make to cover all the genres in law.
- Cases need to be kept in the public arena for making of precedents which would be required by the judges for reference.
- Proper laws and particular institutions should be made to strengthen the ODR mechanism globally.

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- The court should take a middle path i.e. to presume positive Kompetenz- kompetenz and to establish a limited form of negative kompetenz- kompetenz to promote the optimum arbitral autonomy.[34]

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[34] Ashley Cook, Kompetenz- Kompetenz: Varying Approaches and a Proposal for a Limited Form of Negative Kompetenz- Kompetenz, Pepperline law Review, 2014,(vol, issue 1), 34.