THE NARROW REACH OF ADR: A BRIEF DISCUSSION

ABSTRACT

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Today proper disposal of justice is the need of the hour. The famous saying justice *delayed is justice denied* necessitates speedy delivery of justice but the overburdened courts and expensive cost of litigation makes this very picture of justice fade away. ADR came as a light of hope as it bridges the gap of traditional dispute resolution system through its various merits which are time friendly processes, cost effective, and convenient to the parties through these advance techniques of resolving disputes. ADR refers to a culminate combination of various techniques namely arbitration, mediation, conciliation, lok adalat and negotiation for settling disputes outside the court.

But despite of such wonderful advantages, ADR is still away from the reach of common man. With all the virtues of this mechanism (ADR), it falls out reaching effectively in all the sections of the society making it inaccessible to the marginalized section of the society. Proponents of ADR lack out on the fact that this particular conflict resolution has often left out poor without equal access to justice. This research paper aims at explaining the narrow reach of Alternative Dispute Resolution (ADR). Furthermore, the paper will contain the methods which tries to give various suggestions for inclusion of marginalized section in accessing ADR, the grounds of suggestions include various programs for raising awareness among the disadvantaged section, publicly funded mediation and arbitration centers, the urge for the need of trained mediators and arbitrators for rendering their voluntary services for the poor. Thereby, making this mechanism effective, efficient and widening its scope to all the members in the society erasing the invisible gap of its accessibility between rich and poor. The researchers have adopted doctrinal and analytical method in their research.

Keywords: Justice, ADR, dispute resolution,

INTRODUCTION

"Conflict is inevitable, but combat is optional" [1]rightly quoted by Max Lucade reflects the need for Alternative Dispute Resolution across the globe for resolving disputes. ADR refers to a mechanism involving various techniques for resolving the disputes outside the court with an objective of mutual resolution of the parties. Techniques namely include Arbitration, Mediation, Conciliation, Negotiation, Lok Adalats. The rationale behind the mechanism of ADR is due exhaustiveness of traditional resolution system in solving disputes, huge burden of backlogs of numerous cases, high costs and lengthy settlement. ADR came as a boon with its virtue of cost effectiveness, speedy disposal of disputes and with its ground objective of redressing the conflict, to create a situation where no party loses coming to a mutually consented conclusion reviving the relationship of parties.

But despite of such wonderful advantages, ADR is still away from the reach of common man. With all the virtues of this mechanism (ADR), it falls out reaching effectively in all the sections of the society making it inaccessible to the marginalized section of the society. Proponents of ADR lack out on the fact that this particular conflict resolution has often left out poor without equal access to justice.ADR widens the resources for resolving conflicts, they serve to be as additional forums with the adversarial system of solving disputes which are feasible and worthy for taking into account for rendering justice to the poor.

Various concerns relating to the narrow reach of ADR to poor are as follows

Financial Concerns

ADR is not affordable to poor with hefty fees of trained mediators, arbitrators which is the core reason for fall out of this mechanism among section of society having limited resources. ADR is often remarked as 'cost effective' yet a large proportion of the society cannot have accessibility due to its cost and lack of assistance from governments for accessing the ADR.

Lack of Awareness

Lack of Bargaining power and lack of understanding of their rights comes as a huge constraint in widening the scope of ADR to poor. The main object of ADR is independence of parties to resolve their disputes with the need of relying upon lawyer to which poor

[1]Max Lucade available at http://www.adrtoolbox.com/library/adr-quotes/ , Last visited on 16-01-2019 at 16:45.

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remains unaware about their power and rights thereby narrowing their access to ADR. Although ADR being a forum for solving disputes which is flexible and less formal and which doesn't require the services of attorneys, has an board potential to be proven as effective for the poor by increasing their judicial literacy for making informed decisions.

Lack of Governmental Support

One of the hindrances for lack of accessibility of ADR to the poor is lack of allocation of sufficient funds for carrying out its mechanisms publicly and also requires more systematic drafting of the concern on the policy level.

Juvenile Justice

Despite of rapid growth and development of ADR programs, there is a need to modify and recreate existing ones with consideration of poor. The cost for providing ADR services should not act as a hindrance for resolving the conflicts. There must be inclusion of every section of the society irrespective of their financial position for reaching out to justice through ADR. There must be effective education reach out programs for dissemination of awareness regarding ADR to the marginalised section.

Existing Laws related to ADR

Civil Procedure Code, 1908 – Section 89 of the Civil Procedure Code,1908 gives the opportunity to people who wish to settle disputes outside the court. The dispute can be settled in Arbitration, Conciliation, Mediation and Lok Adalat.

The Protocol on Arbitration Clauses, 1923 (Geneva Protocol) –

When First World War ended, there was increase in importance of international Trade and International Commercial Arbitration there was a need for providing a proper arbitral machinery for dispute resolution. That is why Protocol on Arbitration Clauses was enacted. Therefore, International chamber of commerce promoted an international convention to look after the enforceability of arbitral clauses. This protocol also comprises of arbitral procedure and execution of arbitral awards.

The Arbitration (Protocol and Convention) Act, 1937

Arbitration (Protocol and Convention) Act, 1937 was enacted for giving effect and implementing to Geneva Convention and Geneva Protocol.

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The Foreign Awards (Recognition and Enforcement) Act, 1961

For giving effect and implementation of to the New York Convention, the Foreign Award (Recognition and Enforcement) Act, 1961 was enacted. The act of 1937 stands repealed in relation to foreign awards, by virtue of the provisions in section 10 of the 1961 Act. The act of 1961 aimed at giving a mechanism for speedy settlement of disputes in terms of Arbitration between the contracting parties and for speedy enforcement of arbitral awards which are made within the territory of sate. Also, there was recognition of domestic arbitral awards which was based on arbitration agreements governed by the internal system of laws of state.

The Arbitration and Conciliation Act 1996

According to the Arbitration and Conciliation Act,1996 a judge can refer parties to a dispute can for arbitration for resolving their conflicts wherein number of arbitrator are determined by the parties in the Arbitration Tribunal. An arbitration reward is granted after the arbitral proceedings which are binding on both the parties.

Case study for ADR

A. Illinois

In 1987, the Illinois Non-for-Profit Dispute Resolution Center Act [2]was passed. The legislation funded the community dispute resolution centers throughout the state for creation of dispute resolution fund .In the present , only two mediation program being publically funded through the Illinois Non-for-Profit Dispute Resolution Center Act .According to the provisions of the act, only a successful dispute resolution center with three year track record are eligible of allocation of dispute resolution fund. Since funding is not available at the initial stage, programs will unlikely be able to survive until they quality for allocation of funds, very few centers in reality actually get funded.

B. Kankakee Centre for Conflict Resolution

[2]Illinois Non-for-Profit Dispute Resolution- http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1870

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Kankakee Centre for Conflict Resolution[3] is a publicly funded program of Victim's Assistance Centre of Kankakee Country located in northern Illinois. This program was designated by the Chief Judge of 21st Judicial Circuit as a dispute resolution centre under the aforementioned act. The centre aims at resolving disputes by providing free mediation services in the region relating to family, small claims, neighbourhood, consumer/trader, and landlord-tenant and business conflicts. In the year 1998, program's fifteen volunteer mediators mediated 87 cases, divorce custody and visitation conflicts constituted a count of 36 and nearly 70% of the cases resulted to successful mutually agreed settlements.

C. New York

New York has a systematic and coordinated network of ADR. The New York Unified Court System connects and contracts with various local not-for-profit organizations to provide various techniques of ADR namely mediation, arbitration, conciliation for resolving conflicts. The objective of the Office of Alternative Dispute Resolution is to supervise all programs in the Unified Court System and provide assistance in developing, implementing, enhancing and maintaining existing ADR programs to all district administrative judges. There is usually no charge or a nominal fee for the same. It also provides educational and training programs for its members as well as for court litigants.

Proposals for ADR

Alternative Dispute Resolution suffers variety of problems in terms of its accessibility to poor and middle class section of the society. Problems such as lack of awareness, involvement of numerous resources in conflict resolution, and increased cost etc. are there. The following are the proposals to cope up with these types of issues are-

- Neighborhood Justice System and small claim courts– These types of courts apply a problem solving approach to local crime and safety concerns for the poor. It is an innovative form of dispute resolution for poor. Both neighborhood justice system and small claim courts can act as a creative mechanism as it can provide an opportunity for poor to access dispute resolution. Creation of such courts can remove minor or insignificant disputes from the regular civil justice system, providing an effective technique for establishing access to courts. This type of court model has been successful in countries like United States of America, United kingdom, and Australia.

[3] Kankakee Centre for Conflict Resolution- https://www.aboutrsi.org/library/kankakee-center-for-conflict-resolution

In United states the midtown community court have specific floors which comprises of wired computer system to allow judge, social workers and attorney to keep in touch with each other. These types of courts provide inexpensive accessibility to justice.

- Providing subsidies and education- By providing subsidies and education to the middle class and poor people, the ADR mechanism can be made available to a all segments of people in the society regardless of their ability to pay. If the subsidies are not provided then ADR can have an effect of privatizing justice which can create a two-tiered system in terms of justice between the one who can afford to use ADR mechanisms and who cannot.
- Trained Volunteers- use of trained volunteers can play an important role in settling disputes among the poor and middle class section of the society. Due to voluntary services by trained mediators and arbitrators, a lot of money and resources can be saved.
    - Trained Volunteer Mediators - Use of mediators as volunteers who are trained can act as an effective mechanism for promotion of ADR. There are many centers available for training of volunteer mediators across the world. In United States there are organizations such as Dispute Resolution Center (DRC)[4], Center for Conflict research [5] (CCR), and Nashville Conflict Resolution Center (NCRC) [6]which offer volunteer opportunities in mediation.
    - Trained Volunteer Arbitrators- These volunteers can play an important role in minimizing the gap between "haves" and "haves not" in access to justice. For example Community Juvenile Arbitration Program [7]is a program under which Arbitrators volunteer for non-violent crime.

Therefore, opening of such more centres across the world can solve wide range of problems in terms of access to justice.

- Publicly funded Dispute Resolution Centers - These centers can promote and develop use of Alternative Dispute Resolution. It can be said that as courts are publically financed and ADR techniques act as a "alternatives" to courts, similarly ADR should

[4] Dispute Resolution Centre - http://disputeresolutioncenter.org/volunteer/
[5] Centre for Conflict Research- https://www.ccrchicago.org/volunteering-at-ccr.html
[6] Nashville conflict resolution Centre- https://nashvilleconflict.org/join-our-community/mediator-orientation/
[7] Community Juvenile Arbitration Program- http://www.pointsoflight.org/programs/recognition/dpol/awards/2270

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be publically funded. The government should also make funding available to profit and non-profit organ

- Legislations that can provide mediation and other forms of resolutions. The state of Nebraska enacted a Nebraska Dispute Resolution Act that aimed to fund six regional mediation centers and it proved to be an effective measure for Alternate Dispute Resolution.

Conclusion

The gap between ADR and its accessibility to poor should be bridged by following the models aforementioned models including neighbourhood justice system, Kankakee Centre for Conflict Resolution, Illinois, and New York. The most feasible technique for providing assistance to poor for accessing the ADR is training voluntary mediators, arbitrators for the legal institutions wherein in poor can afford its cost. Lack of awareness about alternative Dispute Resolution should be combated by providing judicial activism among the marginalized section making them aware of their rights, duties and the requirements and procedure of seeking justice through ADR and traditional dispute resolution system. This particular issue needs to be raised as policy making level for providing its required provisions in the legislations.

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