ALTERNATIVE DISPUTE RESOLUTIONS

The poor cannot reach the court because of heavy court fee and other expenditure, the mystique of legal procedure. The hierarchy of courts, with appeals, puts legal justice, beyond the reach of the poor. "If people lose faith in the Bench and the Bar, they will easily take to

remedies in the streets. This will inevitably leads to downfall of democracy and the im.poter.cy of the Court."

- Justice VR Krishna Iyer

Alternative Dispute Resolution in India is not new. But existed from immemorable time. In very early time it was in the form of Nyaya Panchayats. where five people (Panchas) heard the case, at the chopped of village and gave the best judgment. During the period of British rule this institution lost its importance, court, and developed a regular system of the courts. Gandhiji realized the importance of reviving these panchayats, but could not succeed. The instrument was

enacted in the form of Arbitration Act, 1940 and some statutory tribunals also constituted to solve the problems. Industrial Dispute Act 1947 also recognized the conciliation proceedings and reference to arbitration. Except labour laws, the office of conciliation was created by the

Arbitration and Conciliation Act, 1996. Presently, Local Court Bill. 2006, is pending before Parliament. Its object is to provide speedy and inexpensive justice to the innocent persons within time.

1. Meaning of Alternative Dispute Resolution System:

ADRS serve as an alternative to settling disputes through the alternative judicial system, other than the regular system of court. Typically, in ADR, disputes are settled in a quick and cost-effective manner as the procedure followed is non-formal without strict

adherence to procedural aspects. The Government has also given a tremendous boost to the ADR system by establishing special tribunals and dispute settlement bodies by means of various Acts.

Justice Krishna Iyer has observed that our judicial system is terribly cumbersome expensively dilator,' and cumulatively disastrous.

The poor cannot reach the court because of heavy court fee and other expenditure, the mystique of legal procedure. The hierarchy of courts, with appeals, puts legal justice beyond the reach of the poor.

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. Coupled with delay in disposal of cases, mounting arrears at all levels in judicial courts has virtually reached a

point that the ordinary citizen starts feeling that justice is a 'myth' or a 'fiction'. Today we have reached to a stage where, for courts of law, it is said that criminals are rewarded and honest are punished. Truth has becomes the biggest casualty. The above-mentioned factors are not only wreaking the judicial system but also swiftly shaking the confidence of the people and the image of courts as dispensers of justice. The figures of pendency have reached to a monstrous number and this has resulted in frustration and expiration tendencies again to vitiate course of justice.

1. Needs for alternatives to the formal legal system:

The need for alternatives 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.

In India too, the need to evolve alternative mechanisms simultaneously with the revival and strengthening of traditional systems of dispute resolution has been reiterated in reports of expert bodies.Reference in this context may be made to the Report of the Committee on Legal Aid constituted by the State of Gujarat in 1971 and chaired by

Justice P.N. Bhagwati, which inter alia recommended adaptation of the 'neighbourhood law network' then in vogue in the U.S.A: the Report of the Expert.Committee on Legal Aid, which was authored primarily by its Chairman Justice V.R. Krishna Iyer, which while urging ADR (LokNyayalayas) in identifying groups of cases exhorted the

preservation and strengthening of Gram Nyayalayas: and the Report of two-members committee of justices Bhagwati and Krishna lyer appointed to examine the existing legal aid schemes and suggest a framework of a legal services programme that would help achieve social objectives. This report formulated a draft legislation institutionalising the

delivery of legal services and identifying ADR, conciliation and mediation as a key activity of the legal services committees. Each of these reports saw the process of improving access to justice through legal aid mechanisms and ADR as a part of the systemic reform of the institution of the judiciary coupled with substantive reforms in laws and processes- The present law of legal reforms have only partly acknowledged and internalised the recommendations in these reports.Still, the implementations of the reforms pose other kinds of challenges.The attempt through the introduction of Section 89 of the C.P.C. 1908,is perhaps a major step in meeting this challenge.

1. Reasons for arrears in court:

I

There are many factors for delaying the disputes of the cases in our existing judicial system. Due to being very expensive it is out of the reach of poor persons in the country, many are not going to the court, think if all disputes go to the court, than what will be the areas in courts. So.it is necessary to look into the alternate resolution system, which will be less expensive and speedy.

Settlement of disputes through arbitration, conciliation, mediation or by an impartial third party is also a component of ADR. Today the business community prefers ADR because the time and cost implications of ADR far outweigh that of settling disputes through the traditional court based system. There exists substantial evidence to prove that the inclusion of arbitration and mediation clauses in commercial contracts help ensure disputes to be dealt with in a timely arid cost effective manner.

Not having sufficient judges: In 2001, the ratio remained at 12 or 13 judges per million population. Chief Justice of India said that "the reason why we do not have more judges across the board is because the States are simply not willing to provide the finances, that are required ...The expenditure on the judiciary in terms of the GNP is only 0.2%; and, of this, half is recovered by the States through court fees and fines Given the attitude of the States, is it any wonder that the jails of our country are filled to the brim, largely with undertrials?"

This movement will be further strengthened with more and more government litigations and disputes by and against the Government going to Lok AdalaL since the Government is the largest litigant in this country. This is older, but now, legalised proven viripotent and vital mechanism of ADR, is covered by the statutory umbrella, the Legal

Services Authorities Act, 1987. which has given it, a legal sanction and made it more effective and enforceable in different States. Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions. Through this mechanism, disputes can be settled in a simpler, quicker and cost effective way at all the three stages i.e., pre-litigation, pending-litigation and post-litigation.

There is considerable evidence that, ADR was widely used in ancient India,

Rome and Egypt for the settlement of varied disputes. ADR's growth has long been an integral part of world's landscape, reflecting a sense that system of justice based on technical rules and procedures and formal processes was inefficient, insufficient and

incomplete response to the needs and expectations of mankind. The institution of LokAdalat in India, as the very name suggests, means, People's Court. "Lok" stands for "people" and the vernacular meaning of the term "Adalat" is the court.

Mahatma Gandhi has said that "I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realized that the true function of a lawyer was to unite parties driven as under. The lesson was so indelibly burnt unto me that the large part of my time, during the 20 years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul."

CONCILIATION

Meaning:

Conciliation is a means for settlement of a dispute outside the court of Law. The old act i.e. The arbitrations Act, 1940 made no provisions for conciliation. The Arbitration and Conciliation Act, 1996, under part - III sections 61 to 81 makes express provisions for Conciliation, which was new to the Act. Before, these provisions there

were special provisions for Conciliation Office and Board of Conciliation under Industrial Dispute Act, 1947 (Labour laws). But, this Act is providing office of conciliator as statutory office for other than industrial dispute. This part applies to conciliation of disputes arising of legal relationship, whether contractual or not, and to all proceedings relating thereto. It does not apply to the disputes that may not be submitted to conciliation.

(1) Meaning of Conciliation:

According to the dictionary meaning, conciliator is one who brings opponents into harmony, or one who conciliates the parties (act of reconciling). In other words, conciliation means bringing of opposing parties or individuals into harmony Court of conciliation or conciliation board.

(2) Commencement of Conciliation proceedings :

Where a party is initiating conciliation, it shall send to the other party a written invitation to conciliate, briefly identifying the subject of the dispute. If the other party accepts in writing the invitation to conciliate, then conciliation proceedings shall commence; but, if the other party rejects the invitation, there will be no conciliation

proceedings. Where the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if so elects, he shall inform in writing to the other party accordingly.[Section 63]

Generally, the conciliation proceedings in respect of a particular dispute may commence on the date on which the respondent for that dispute is referred, and conciliation received a request. But.if there is any agreement by the parties to the proceedings regarding commencement of conciliation proceedings, it will commence on the date so agreed.

1. Appointment of Conciliators:

<,

Generally, there shall be one conciliator to conciliate the matter.But, if there is an agreement between the parties, there may be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly. [Section 63)

According to Section 64 of the Act, the parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators and in particular:

1. Party may request such an institution or person to recommend the names of

Suitable individuals to act as a conciliator.

1. The parties may agree that the appointment of one or more conciliators be made

Directly by such an institution or person;

1. Parties to the dispute are only authorized to appoint the conciliator;
2. If the conciliation proceedings are with one conciliator, the parties may agree on the

Name of sole conciliator;

1. If the conciliation proceedings are with two conciliators then each party may appoint

One conciliator;

1. If the conciliation proceedings with three conciliators, then each party may appoint one conciliator and the third conciliator will be appointed by the agreement of both the parties, who shall act as the presiding conciliator.

Submission of statement to conciliator:

After appointment as conciliator, he may request each party to submit him a brief written statement describing the general nature of the dispute and the points at issue. Copy of the statement shall be sent to other party. The conciliator is not bound by the Civil Procedure Code, 1908 or the Indian Evidence Act. 1872.

(4) Role of Conciliator in the Conciliation proceeding:

*··,·,* I \_ ", ... \_\_ . "". .', '.

Duties and functions of Conciliation Officer are mainly described by Section 67 of the Arbitration and Conciliation Act, 1996. There is no bar on the power and duties of the conciliation Officer. According to this section the role of Conciliator is as follows:

1. The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
2. The conciliator shall be quided by the principles of objectivity,fairness and justice, giving conciliation to, among other things,the right and the obligation of the parties, the usages of the trade concerned and the circumstances surrounding the dispute Including any previous business practices between the parties.
3. The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account, the circumstance 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 related.
4. The conciliator may at any stage of the conciliation proceedings, make proposals for a statement of the dispute. such proposal need' not be in writing and need not be accompanied by a statement of the reasons therefore.

**Communication between conciliator and parties:**

It provides that 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.(section 69)

**Discloser of information:**

When the conciliator receives factual information concerning the dispute from the party, he shall disclose the substance of that information to other party in order that, the other party may have opportunity to present any explanation that he considers appropriate. But, when a party gives any information to the conciliator subject to a

specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party. There should be cooperation of the parties with conciliator. Parties to the conciliation for settlement of dispute can submit the suggestions. (Sections 70-72]

1. **Termination of conciliation proceedings:**

According to Section 76 of the Act, conciliation proceeding shall terminate in anyone of the following manner.

1. By the signing of the settlement agreement by the parties on the date of agreement.
2. By a written declaration of the conciliator, after consultation of the parties, to the effect that, further efforts at conciliation are no longer justified on the date of the declaration.
3. By written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration.
4. By written declaration of the party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

The Act debars parallel proceedings by resort to arbitral or judicial proceedings in respect of the same dispute which is under conciliation proceedings except that a party may initiate arbitral or judicial proceedings, where in his opinion, such proceedings are necessary for preserving his rights.

Costs **relating to the** proceedings:

Upon the termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The costs of conciliation shall be borne equally by the parties unless the settlement agreement provides for a different appointment. All other expenses incurred by the party shall be borne by that party.

Costs means reasonable costs relating to :

1. The fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties:
2. Any expert advice requested by the conciliator with the consent of the parties;
3. Any administrative assistance under Section 68. and appointment by

Institution under section 64; and

1. Any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

\_\_\_\_Settlement agreement:

Parties to a dispute can execute settlement agreement. Such settlement agreement becomes final and binding on the parties. Such settlement agreement should be In writing and signed by the parties.Settlement agreement under Section 73 of the Act read as follows:

When it appears to the conciliator that there exist elements of a settlement, which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the

light of such observations.

If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up the settlement agreement.

When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The settlement agreement must be authenticated by the conciliator and each of the parties should be furnished with a copy thereof.

**Status and effect of settlement agreement**:--d\_-----------

The settlement agreement shall have the same effect as if *it* is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

Settlement under Section 30:

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 tribunal proceedings to encourage settlement. If the parties settle on the dispute, the arbitral tribunal shall terminate the proceedings.

**DISTINCTION BETWEEN ARBITRATIOIN AND CONCILIATION**

Both Arbitration and Conciliation are the means of setting disputes. In the both the systems, a third person is chosen or nominated by the parties to resolve / settle their dispute. Despite certain similarities, following are the notable points of distinction between the two:

CONCILIATION ARBITRATION

1. It flows/emerges from mere agreement 1. It flows from a prior agreement in

Writing by parties to the dispute.

1. The parties agree to conciliate after 2. Arbitral Tribunal may be constituted

The dispute takes place to settle future disputes.

1. A conciliator helps the parties to reach 3. An arbitrator settles the dispute and

An amicable settlement of their dispute makes an award, which is binding on

The parties to the dispute.

1. Conciliation proceedings may be 4. Arbitral proceedings cannot be

Unilaterally terminated by a written terminated unilaterally.

Declaration by a party to the other party

1. Conciliation proceedings cannot be used 5. Arbitral proceedings may be used

As evidence in any arbitral or judicial as evidence in any judicial proceedings

proceedings