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LEX BONA FIDE - LAW JOURNAL is an open access, peer- reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

The Transition from Litigation to ADR

***SHIVANI SINGH**

(3rd Year Student, School of Law, FIMT, GGSIP University)

Introduction:-

When civil litigation is agreed by the parties to be transitioned to arbitration, counsel have both an opportunity and an obligation to carefully canvass the procedural rules to be selected to regulate the arbitral proceedings. Working alongside the tribunal, the parties and their counsel are in a position to tailor the procedural rules to best achieve a good and efficient resolution of the problems. While delay often suits the needs of one of the parties, in situations where all parties desire a way quicker adjudication of their claims before the court, they comply with making arbitration the dispute resolution process. While the pros and cons of such transfer are often debated and involve many considerations, this paper focuses only on the sensible issue of what procedural rules should be embraced at the time of the adaption to arbitration.¹ One of the signs of arbitration, and for sure one of its attractions, is the adaptability it gives in the decision of procedural principles, the capacity of insight and the court to tailor rules to suit the nature and conditions of the debate. It is crucial, obviously, that every one of the gatherings must be managed reasonably and be allowed a chance to introduce and shield the cases before the court, yet the residential Acts award wide scope to design procedural principles suitable to the debate.

ADR Mechanism:-

An ADR mechanism mainly focuses on delivering justice through mutual consent of the parties within the minimum time with none delay like in litigation. An ADR mechanism recognized four methods to resolve any dispute like arbitration, conciliation, mediation and negotiation. Alternative methods are to work on the mutual consensus and check out to settle dispute with as early as practicable. ADR mechanism is a choice to the general public who don't want to travel for conventional method or want to resolve their matter without court interference.²

ADR may be a mechanism of dispute resolution that's non adversarial, i.e. working together co-operatively to succeed in the simplest resolution for everybody. ADR are often instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved. It provides the prospect to "expand the pie" through

¹By Hon. Clifton D. O'Brien, Q.C. Transitioning from Civil Litigation to Arbitration

<http://adric.ca/adr-perspectives/transitioning-from-civil-litigation-to-arbitration/>

²by Anveksha Padhye Mediation As An Effective ADR Mechanism March 2019

<https://www.mediate.com/articles/padhye-mediation>

[effective.cfm#:~:text=An%20ADR%20mechanism%20mainly%20focuses,%2C%20conciliation%2C%20mediation%20and%20negotiation.](https://www.mediate.com/articles/padhye-mediation-effective.cfm#:~:text=An%20ADR%20mechanism%20mainly%20focuses,%2C%20conciliation%2C%20mediation%20and%20negotiation.)

creative, collaborative bargaining, and fulfil the interests driving their demands.³

ADR in India-

- The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements, and therefore the new Arbitration and Conciliation Act was enacted in 1996.
- Procedure for plea-bargaining was included within the Code of Criminal Procedure in 2005. {Plea-bargaining is best described as a "pre-trial negotiation between the accused and therefore the prosecution during which the accused agrees to plead guilty in exchange surely concessions by the prosecution."}
- Lok-Adalat or "people's court" comprises an off-the-cuff setting which facilitates negotiations within the presence of a judicial officer wherein cases are dispensed without undue emphasis on legal technicalities. The order of the Lok-Adalat is final and binding on the parties, and isn't appealable during a court of law.⁴

ODR Mechanism:-

Online dispute resolution (ODR) may be a diversified part of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a mixture of all three. During this respect it's often seen as being the web equivalent of other dispute resolution (ADR).⁵The fourth party may do many things like organize information, send automatic responses, shape writing communications during a more polite and constructive manner e.g. blocking foul language. Additionally, it can monitor performance, schedule meetings, clarify interests and priorities, while consuming a lesser amount of time.⁶

The collaboration of the fourth party will expand the more technology advances, thus reducing the role of the third neutral party. It's been predicted that virtual "fourth party" avatars are going to be created to gauge disputes and will become more skilled and intelligent over time.⁷Thus, ODR forms are expanding in productivity, furnishing their disputants with more noteworthy focal points and are much efficient and budget worthy.⁸ODR shields disputes that are resolved over the web having been initiated in cyberspace but with a source outside it i.e. offline.

³ Alternative Dispute Resolution (ADR) Mechanisms, 26 Nov 2018

<https://www.drishtiiias.com/to-the-points/Paper2/alternative-dispute-resolution-adr-mechanisms-paper-2>

⁴ supra at 3

⁵ Arthur M. Monty Ahalt, [What You Should Know About Online Dispute Resolution](#)

⁶ E. Katsh, and J. Rifkin, J. Online Dispute Resolution: Resolving Conflicts in Cyberspace (San Francisco, Jossey-Bass, 2001).

⁷ Ethan Katsh, Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes Through Code, 1 N.Y.L. Sch. L. Rev. 271, 286 (2005)

⁸ E. Katsh and Wing, "Ten Years of Online Dispute Resolution (ODR): Looking at the Past and Constructing the Future" 38 (2006) U. Tol. L. Rev. p. 31

Originally, arbitration was intended as an alternate to getting to court for various sorts of disputes but with time the tactic itself has become complex and expensive. ODR offers a faster, transparent and accessible option for several companies to resolve disputes online particularly those that have high volume and low-value cases. Within the past half-decade, India has seen significant growth within the volume of online transactions, no other position would be more convenient to simply accept ODR as an efficient mechanism to settle disputes and hence execute a quick and fair dispute resolution system. Electronic Arbitration may be a less popular method of online dispute resolution but it cover-up the method up to a particular extent.⁹ Every practicable method of ODR is exclusive and efficient in itself and therefore the beauty is that it is often tailored as per the requirements of the parties.¹⁰

However online arbitration isn't found to be an appropriate option for criminal matters and matrimonial disputes. Also, the education barrier and lack of access to technology is another major drawback behind the implementation of online arbitration in India. The ODR mechanism has not been primed to instil trust and confidence amongst people for obvious constraints of technology, awareness and apprehensive, apart from the sceptical approach of individuals. The trust and confidence in such a web methodology are often developed only with time and built on experience. Limited by lack of physical existence and vis-a-vis interaction between the parties to the dispute. Also, the mechanism is additionally deemed to be limited to resolve disputes of online business and transaction. The irregular distribution of technology, internet and e-commerce opportunities within the developing countries impedes the acceptance and recognition of ODR mechanism. Lack of coaching to lawyers impedes quick and healthy acceptance of the exceptional dispute resolution mechanism and thus, there's a requirement to spread awareness through seminars, training, and campaigns to inform lawyers and other legally aware people of the possible measures of dispute resolution.¹¹

⁹ by [Karan Singh](#) India: Online Dispute Resolution (ODR): A Positive Contrivance To Justice Post Covid- 19 17 May 2020 <https://www.mondaq.com/india/arbitration-dispute-resolution/935022/online-dispute-resolution-odr-a-positive-contrivance-to-justice-post-covid-19#:~:text=Online%20Dispute%20Resolution%20or%20ODR%20is%20a%20process%20to%20settle,source%20outside%20it%20i.e.%20offline>. Arthur M. Monty Ahalt, [What You Should Know About Online Dispute Resolution](#)

⁹E. Katsh, and J. Rifkin, J. Online Dispute Resolution: Resolving Conflicts in Cyberspace (San Francisco, Jossey-Bass, 2001).

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⁹ by [Karan Singh](#) India: Online Dispute Resolution (ODR): A Positive Contrivance To Justice Post Covid- 19 17 May 2020 <https://www.mondaq.com/india/arbitration-dispute-resolution/935022/online-dispute-resolution-odr-a-positive-contrivance-to-justice-post-covid-19#:~:text=Online%20Dispute%20Resolution%20or%20ODR%20is%20a%20process%20to%20settle,source%20outside%20it%20i.e.%20offline>.

¹⁰ Supra at 9

¹¹The Need for an Online Dispute Resolution Mechanism 06 Mar 2019 <https://www.drishtias.com/daily-updates/daily-news-editorials/the-need-for-an-online-dispute-resolution-mechanism>

Issues faced by any party in adapting ADR instead of litigation:-

There are several questions in minds of individuals thanks to which they face problems in choosing ADR over litigation. the primary and foremost is that folks aren't conscious of it and the way it works, moreover when introduced with something new it's obvious that folks would be wary of its feasibility and wonder if a waste of their time and money. However, the choice systems of dispute resolution are cheaper, faster, and fewer scary than the hardware of courts. They do not include court charges, the tactic embraced in these discussions is a smaller amount specialized and proximity of legal advisors isn't required. Gatherings can go straightforwardly. Likewise, they're increasingly touchy to the concerns of the contesting parties. They supply better justice, cause less distance between the gatherings and fulfil their longing to carry a selected level of authority over the procedure of resolution.¹²

The defects of the court system influence the choice of people but there is always a doubt before pursuing ADR that whether or not it will provide desired results. The cultural and mental factors influence the choice of ADR because for a long time people have been going to courts the traditional way. Even though ADR is much easier, it takes time and result to change one's mind. The biggest issue in the minds of people are, whether the value and time are comparative advantages of ADR to litigation, whether there are any institutional constraints on the prevailing ADR or whether they should trust ADR? Albeit with the emerging globalization, more and more matters are being taken out of the traditional courts and vested in regulators. People still have faith within the higher judiciary. This is often evident from the amount of appeals that precede the high courts and therefore the Supreme Court of India from awards of arbitrator and appellate tribunal bodies.

Conclusion:-

When civil litigation is agreed by the parties to be transitioned to arbitration, counsel have both a chance and an obligation to carefully canvass the procedural rules to be selected to control the arbitral proceedings. Working alongside the tribunal, the parties and their counsel are during a position to tailor the procedural rules to best achieve a good and efficient determination of the problems.¹³ One of the signs of arbitration, and in reality one of its attractions, is the adaptability it gives in the decision of procedural standards and the capacity of insight and the tribunal to tailor rules to suit the nature and conditions of the question. It is key, obviously, that every one of the gatherings must be managed reasonably and be allowed a chance to introduce and protect the claims before the tribunal. Thus the speed with which the Alternative dispute resolution is proceeding, it will soon be one of the most adaptive solution for civil disputes

¹² Madonna Jeph -Addressing the issues pertaining to ADR, January 12, 2019

<http://lawtimesjournal.in/addressing-the-issues-pertaining-to-adr/>

¹³By Hon. Clifton D. O'Brien, Q.C. **Transitioning from Civil Litigation to Arbitration**<https://adric.ca/adr-perspectives/transitioning-from-civil-litigation-to-arbitration/>

among the public because of its easy access, quick solutions, less time consumption and inexpensive methods. Also with the new ODR techniques it will become even easier to access and resolve issues.

