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CRITICAL ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION AND ADMINISTRATION

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ABSTRACT:

Peace is a prerequisite for progress. Disputes and disagreements undermine society's valuable money, effort, and time. There must be no conflicts in Society. However, this isn't achievable. As a result, the next ideal solution is to extinguish any dispute. Since most countries' court systems are overburdened, every new case requires a long time to be adjudicated. And, until the ultimate decision is made, there is a state of ambiguity that makes any activity nearly tricky. Commerce, business, development work, administration, and other fields suffer because of the lengthy process of settling conflicts through litigation.

Most countries support alternative dispute resolution procedures to escape the maze of litigation, courts, and lawyers' chambers. India has a long heritage and history of such practices being implemented at the grassroots level of society. These are known as panchayats, and in legal terms, they are known as arbitration. These are commonly utilized in India to settle commercial and non-commercial issues. However, instead of going to court, parties are now opting for alternative dispute resolution procedures such as discussion, mediation, and conciliation. Recent revisions to India's procedural law have been made to incorporate these procedures so that individuals can seek justice quickly and there is less dispute in society.

KEYWORDS: *Alternative Dispute Resolution; Procedure; Settlement; Judgment; Society.*

INTRODUCTION:

Administrative agencies have traditionally resolved cases brought before them in an adjudicative manner, like how litigation initiated in the court system is settled. [2] However, this method of settling disputes focuses on the parties' existing rights rather than the interests of the parties in the dispute. [3] Thus, "administrative litigation" before administrative agencies or tribunals (as opposed to litigation between an individual and the government) might have the

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[2] Judith McCormack, "Nimble Justice: Revitalizing Administrative Tribunals in a Climate of Rapid Change" (1995), 59 Sask. L. Rev. 385 at p. 391.
[3] Robert W. Macaulay and James L.H. Sprague, Practice and Procedure before Administrative Tribunals (Toronto: Thomson Canada Ltd., 2004), vol. 4 at p. 30-1.

same resolution limits as "conventional litigation" in the traditional court system.

As the expenses of traditional litigation remain increasing and there is still a preponderance of uncertainty (most of which can and often is beyond the parties' control), parties involved in the litigation have increasingly sought other ways and techniques to resolve their disputes outside of the judicial process. This, in turn, has increased the popularity of alternative dispute resolution (ADR), which gives parties the tools and methodology to attempt the resolution of their conflicts outside of the traditional court process.

While ADR is regarded as providing various benefits to litigants (including time and money savings, flexibility, improved control over the conflict resolution process, and secrecy), it does not appear that ADR is often used in "administrative litigation." Considering that the pattern of resolving conflicts in administrative court action moderately resembles traditional litigation (recognizing, nevertheless, that administrative agencies had also evolved their style of proceedings and the procedure is still mainly adjudicative), the thesis of this article is that instituting, or at least promoting, a mandatory mediation program in India would facilitate the parties concerned under certain types of administrative litigation with simplification.

Administrative procedure review may be especially pertinent to a comprehensive discussion of dispute resolution since it emerged to address a requirement in dispute resolution. Furthermore, as its procedures developed and evolved, it battled - and still does - to articulate its relationship with the court system. Consequently, the administrative procedure may benefit from the "institutionalization" of conflict resolution and the observations we are gaining on various types of dispute settlement. In the following chapters, the researcher examines the history, alternative mechanisms in administrative litigation, and future of the complicated interaction between conflict resolution and the administrative process.

HISTORY OF ADMINISTRATIVE LAW & ADR

ESTABLISHMENT OF PROGRAMS

Dissatisfaction with the current processes for resolving rights or interest conflicts may be used to at least partially explain why several administrative institutions, the programs they oversee, and the specific rules they circulate. In response, organizations have been formed to change the substantive interests of the parties concerned and replace the judicial system with an administrative one that, it is intended, will better fulfill the program's objectives. Four examples have been used to explain the idea in depth

- "**NATIONAL LABOR RELATIONS ACT (ACT)."**[4] Traditional legal concepts and conceptions adopted by courts to labor issues, including criminal charges for conspiracy or the use of antitrust provisions to union organizations, led to widespread dissatisfaction with the resulting antiunion or antiself-help outcomes. As a result, the National Labor Relations Act was introduced, which is overseen by the National Labor Relations Board (Board). The Legislation introduced significant hitherto excluded organizational rights, and the Board intended to function as an expert institution supportive of employees' rights to engage in collective bargaining[5]. In addition, a clause in the pro-labor legislation barred authorities from intervening with the program by issuing injunctions depending upon recognized theories.[6] It was amended because of substantial dissatisfaction with the prevailing law in question as enforced by the justice system. Additionally, there was dissatisfaction with the justices' prejudice; therefore, a new, extra-empathetic court was set up that adjudicated the ensuing conflicts.

- **ENVIRONMENTAL PROTECTION AGENCY (EPA).** On the surface, the inadequacy of dispute settlement has hardly anything to do with the "Clean Air Act[7], the Federal Water Pollution Control Act," or any other legislation that the EPA[8] regulates. If citizens who reside near a contaminating facility could enforce a "right" to clean water or recoup compensation from the offender industry, the expenses of pollutants would be internalized, and the corporation would be compelled to make an economical decision among overpaying and emitting or cleaning up. However, such a framework doesn't continuously operate; there isn't any straightforward, affordable, and precise method for internalizing those expenses. Perhaps it's because the beneficiaries—in this case, the neighbors—couldn't afford to impose one's additional powers; in other cases, they might have been able to do so if the regulated company had advocated the restrictions to make it more difficult to resolve disputes and prevent payments (whether factually correct or not).

- **FEDERAL TRADE COMMISSION (FTC)**: Numerous Federal trade commission guidelines seemed to be founded, at least partly, on the Commission's opinion because current dispute resolution methods are insufficient to address what it regarded as an issue.

[4] National Labor Relations Act, 29 U.S.C. § 151-168 (1982).
[5] National Labor Relations Act, 29 U.S.C. § 151(1982).
[6] Gorman, basic text on labor law 4 (1976); see 29 U.S.C. § 101-110, 113-115 (1982).
[7] The Clean Air Act, 42 U.S.C. § 7401-7642 (1982)
[8] BREYER, REGULATION, AND ITS REFORM 23-26 (1982); I. MILLSTEIN & S. KATSH, THE LIMITS OF CORPORATE POWER 138-42 (1981).

For instance, if prosecuting common law or fraudulent statutory prosecutions weren't so complicated and expensive, the Commission's control of two vocational schools would have a specific value. The Commission imposed requirements on the schools to combat this fraud practice more efficiently[9]. The infringement of these laws was therefore considered a breach of duty due to the FTC, and the rule would be enforced against the errant school. Surprisingly, the student was discovered to be in the same predicament as before, only reporting to the Commission as a possible course of action, which may or may not undertake measures. The Federal trade commission franchise rules[10] are comparable.

- **WORKERS COMPENSATION**. Due to dissatisfaction with the tort system for paying impacted workers, worker compensation programs have been established. The programs established special rights superseding previous substantive law and were managed by a government department. Disagreements are addressed well before authorities rather than in courts, at least in the first instance. The method was probably conceived as a hybrid of administrative jurisprudence, with experienced desk officials making preliminary rulings while a more judicial-like but empathetic forum is resolving outstanding issues. Only afterward were the judiciary called upon. Furthermore, the absence of a compassionate, responsive forum prompted the establishment of an administrative program.

It can be elucidated that several regulatory reforms have been introduced to amend the society's irregularities which might contemplate the inability to settle the disputes conveniently. Certain individuals would be termed as 'victims' since they lack the monetary value to align their rights and duties with others' rights and duties. Subsequently, an administrative program would create a built-in conflict resolution system beneath a more sympathetic process.

It can be interpreted that regulation and alternative dispute resolution are interconnected. Hence it should be taken into consideration that improving both the regulatory program and dispute resolution is the need of the hour to cure some social difficulties. A lack of compassion towards that interconnection would lead to dysfunctional overload, which will be detrimental in the long term. Furthermore, when considering the institutionalization of fresh dispute resolution methods, one must be wise to the history of administrative programs: maybe the acceptable answer isn't the latest method for resolving disputes but the incorporation of an institution; or,

[9] 16 C.F.R. § 438 (1984).
[10] 16 C.F.R. § 436 (1984).

conversely, possibly in some situations the expertise would then demonstrate the nature of subsequent difficulties that are plausible to emerge.

ALTERNATIVE DISPUTE RESOLUTION IN ADMINISTRATION LITIGATION

Administrative agencies had resolved matters coming before them in an adjudicative manner, much like how litigation commenced in the court system is resolved. However, this manner of resolving disputes focuses on the parties' existing rights rather than the interests of the parties in the dispute. Thus, "administrative litigation" before administrative agencies or tribunals (as opposed to litigation between an individual and the government) can have the same limitations for resolving disputes as "traditional litigation" in the traditional court system.

The Alternative Dispute Resolution mechanism usage has observed a potential growth in recent decades since this method enables the parties to resolve the dispute amicably outside the formal court process. In addition, one of the advantages of this dispute resolution is that the parties have the option to nominate a meditator and that individual would conduct the entire proceedings as a neutral third party and just in the capacity to act as a facilitator and assist the parties to reach a middle ground.

It can be asserted that a mandated mediation initiative in India will enable more parties to engage in specific forms of administrative litigation with incentives equivalent to those enjoyed by litigants who engaged in a similar process in other nations. While ADR is regarded for giving numerous benefits to litigants (including money and time savings, adaptability, improved authority over conflict resolution, and confidentiality), it doesn't often seem to be extensively used in "administrative litigation."

MANDATORY MEDIATION IN ADMINISTRATIVE LITIGATION-

According to researchers in this chapter, choosing obligatory mediation in an administrative lawsuit is valuable and advantageous to the concerned parties. The following sub-sections go through the subject:

3.1.1 *The Pace of Mediated Administrative Litigation-*

A plethora of disputes are presented before numerous administrative institutions. Consequently, if the Indian legislation introduces 'mandatory mediation' before filing a case in a court of law, it would assist the parties in various aspects ranging from time efficiency to involving the parties in an active role in the mechanism. On the other hand, considering the

surplus number of cases filed in the court daily, this programme would reduce the amount of time required to address a problem in a similar method to traditional litigation. Furthermore, the implementation of mandatory mediation was observed to be successful in other nations and met the goal in a concise period.

For example- The new applications filed in the Ontario Municipal Board exceeded 3000 cases in the 2004-05 fiscal year. When such a situation occurs, the administrative institutions must follow an identical proceeding to traditional litigation. Subsequently, a mandatory mediation program was instituted to reduce litigation cases in administrative organizations and encourage the parties to prefer alternate dispute resolution.

According to the Ontario Human Rights Commission statistics, around one-third of complaints have been resolved during early mediation without requiring an inquiry. This indicates the potential influence of a mediation program on minimizing administrative litigation delays. It is observed that the mediation program was mandatory, and the number of cases settled at an early point in the litigation would increase, resulting in less delay. It was observed that when the mediation program was mandatory with the Ontario Human Rights Commission, the matters were resolved early in the litigation, resulting in less delay. The findings mandate that administrative litigation be subject to an early mandatory mediation program.

3.1.2 ***The Cost of Mediated Administrative Litigation:***

The researchers regarding the mediated traditional litigation found inadequate data to address this concept since the costs between the client and counsel are private. Even though the report doesn't show that all cases settled at the mediation resulted in cost savings. Still, it can be drawn through the general principle that when a matter is resolved soon after mandatory mediation, litigants will have a substantial amount of money.

As was mentioned while analyzing the costs of mediated traditional litigation, evaluating the costs of administrative litigation is equally problematic. Nevertheless, as mentioned above, rational thinking could help to convince that the longer one is committed to litigation, the more significant the expenditure accumulated. As a result, despite the minimal data accessible, the excellent outcomes obtained through the Ontario Mandatory Mediation Program will indicate that litigants that engage in mediation for administrative litigation matters will similarly save money.

3.1.3 ***The Outcomes, Process, and Procedures of Mediated Administrative Litigation:***

While courts adjudicate between the conflicting rights of the parties to the case, administrative agencies adjudicate and make decisions driven by the public interest[11]. To ensure that the public interest is served, specific agencies, for example, must approve any settlement made by the parties[12]. Such a requirement indicates that when administrative authorities hold hearings, their decisions must be influenced by the same factors - the public interest weighed against the parties' rights. This is not to imply that the outcome of an administrative litigation case cannot be a winner/loser scenario but that such an outcome may only be coincidental to the public's consideration.

Furthermore, the authority of administrative agencies differs from that of courts. The types of results that courts can award are limited and are sometimes limited to monetary awards, whereas the outcomes available from administrative authorities are generally vast and more flexible. As a result, the outcomes obtained through mandated mediation are less likely to have the same influence on the parties participating in administrative litigation as they would on those involved in regular litigation.

It can be emphasized that while advocating a mandatory mediation program for administrative litigation, it is acknowledged that institutional resource constraints may make implementation difficult. However, suppose such a program has the effect of reducing delay. In that case, the number of cases that go to an adjudicative hearing will eventually be reduced, delivering benefits to the administrative agency (along with the litigants) by reducing its caseload and freeing up resources.

THE FUTURE OF ADMINISTRATIVE PROCEDURE

The government looks to be optimistic regarding the future of alternative dispute resolution mechanisms, or when the terms "dispute" or "conflict" are inadequate in alternative dispute resolution methods that are difficult, intricate, and affect multiple parties. However, it is unlikely to eventuate immediately, and various difficulties must be addressed.

A. FAMILIARITY

The most pressing necessity is to familiarise the parties involved in a dispute with the characteristics of the various alternative methods. Like many individuals, institutions set up by the government are inclined to be wary of unknown procedures. As a result, they wouldn't be

[11] Attorney general's committee on administrative procedure, final report, 105-08 (1941)
[12] Walter-Logan Bill, H.R. 6324, 76th Cong., 3d Sess. (1940)

able to evaluate if it would be in their best interests as it's necessary to employ an alternative mechanism in the parties' best interests. Furthermore, administrations are constantly subject to congressional and judicial supervision. Consequently, they should be convinced that the new procedures satisfy all the obligations put upon them by the law.

B. **PARTICULAR NEEDS-**

In addition, the government has regulations that must be met in a particular manner.

Médiation: When the government concludes mediation/negotiation with the parties involved in the dispute, or, worse, merely certain of them, a discrete situation occurs. In India, mediation is controlled principally by two statutes, the Code of Civil Procedure, 1908, and the Arbitration and Conciliation Act, 1996, which authorize the courts to refer disputes to various ADR mechanisms, including mediation, for resolution. However, the courts are hesitant to allude to the case in mediation, and the litigants do not appear to be confident in the mediation approach. This can be attributed to a lack of awareness about mediation in India.

Recently the government has taken concrete steps to promote mediation, but the lack of comprehensive legislation will continue to hinder the growth of mediation in India. The 129th Law Commission Report advocated 'Urban Legislation Mediation' as an alternative to adjudication in 1988, which marked the beginning of efforts to strengthen mediation. Following that, the decision in "***Salem Bar Association v. Union of India***"[13] declared that all conflicts brought to court must not be addressed by the courts and that alternative dispute resolution processes should be aggressively pursued. This necessitated a change to the CPC, and Section 89 was added. Another significant change was the addition of Section 12A to the Commercial Courts Act in 2018. This required parties to engage in mediation before filing a commercial dispute. The formation of the "The Mediation and Conciliation Project Committee," tasked with debating mediation-related policy issues, has boosted mediation in India.

Acceptance/ Lack of referrals: Some judicial officers may object to the employment of some options because they are incompatible with the institution's position as the sovereign. This is especially true in mediation and bargaining, but it would also likely apply in arbitration. The agency is likelier to have an illusion of sovereignty during negotiations or mediation than true

[13] Salem Bar Association v. Union of India, (2003) 1 SCC 49.

sovereignty. This is due to a conflation of the authorization to act with the power to act. Because of the competing strength that others have, negotiation may be an appealing alternative.

Furthermore, even though the court established in the case of Afcons that only compoundable offenses are frequently referred to as mediation, there are cases where non-compoundable felonies such as rape are sent for mediation. The court further said that public interest situations should not be referred to as mediation. The **"*Ayodhya Case*"**[14]involved the public interest of two completely different religions and was referred to as mediation. According to the researchers, considering all the circumstances that impede the execution of the Mediation process in India, there is a need for mediation law in India. Separate laws can add consistency to the mediation process and aid in creating harmony between the judiciary and mediation.

Institutionalization: Although there may be pressure to do so, premature institutionalization through codification or rigorous criteria should be avoided. We certainly need more time to experiment and become acquainted with the procedure. However, once we have a better grasp of appropriate ways, some form of institutionalization could be very beneficial in overcoming the abovementioned issues.

CONCLUSION & SUGGESTIONS

The conclusion is that it is reasonable to question whether the courts should necessarily provide the right to a trial in compoundable offenses. This matter is best settled by negotiation between the parties. Long wait times, high costs, and the inability of the judicial system to provide individuals with a speedy, legally secure, and affordable process are all significant burdens. This aid is provided to even wealthy corporations who can afford arbitration processes at the cost of more pressing disputes involving binding legal obligations. Hearings for these more urgent matters are postponed as a result. The researchers in their previous chapter also opined that the parties in the dispute should be compelled to go through serious negotiation discussions before they approach the court.

The researchers suggest that the Alternative Dispute Mechanism must be integrated into administrative litigation matters as it was observed in the earlier chapters as well that introduction of a Mandatory Programme in the Ontario administrative judicial system helped the parties involved to resolve the dispute amicably out of the court of law and subsequently within a year the case number of filing suits have dropped to one third as observed by Ontario

[14] M. Ismail Faruqui (Dr) v. Union of India, (1994) 6 SCC 360: AIR 1995 SC 605.

Human Rights Commission. Similarly, the Indian Constitution shall take adequate measures to implement ADR into the Indian Legal System by professionalizing mediation practice in India. In addition, parties' lack of awareness of the alternative mechanism such as mediation, negotiation, and arbitration prevailing in India is one of the primary reasons the parties opt for litigation proceedings; hence to overcome this issue, the legislation is required to introduce "mandatory mediation." When mandatory, mediation has a lot of promise, but it shouldn't be seen as a cure for a broken and overloaded justice system. Concurrently, it is necessary to adopt other reforms to strengthen our society's overall legal system. However, it can significantly reduce the courts' load while still offering a valuable method of settling conflicts, as observed in a few jurisdictions.

Alternative dispute resolution in the administrative procedure looks to have a bright future. The histories of the two are extensive and convoluted. The demands on the administrative process are also higher than ever: handling massive caseloads, coming up with creative alternatives to coercive regulation, and settling challenging disputes. The administrative process has a lot of room for improvement concerning the problem-solving techniques that are now under discussion.