fraud, and to share information with suppliers and business partners.

Legislation e-business with respect to in India:

e-commerce: There is no law specifically governing e-commerce except Foreign Investment Regulations which permit foreign investments in the B2B e-commerce sector. However, the traditional law is applied for most e-commerce transactions including for those relating to jurisdiction, governing law, conclusion of contracts and tax matters. Digital signatures: Digital Signature has been defined in the "Information Technology Act" and is given recognition. Certifying Authorities have been created for granting of Digital Signatures.

Data protection/privacy: No specific law in India except for Information Technology Act which is limited in scope in that it provides for data protection obligations on authorities under the Act to retain information received by them confidential. However general law does provide some protection for release of confidential information only if they are received in trust. It should be noted that transfer of data outside Europe to a country without data protection laws is generally forbidden (for details, see legal Wiki, "data protection").

Spam: No specific regulation.

Consumer protection: There is a Consumer Protection Act which apart from creating certain substantive rights to consumers also created the Fast Track Consumer Courts. Court fee in these consumer Courts also is an extremely nominal amount unlike other Courts where it is a percentage of damages claimed.

IPR and in particular, copyright: In India there exists the "Copyright Act, 1957". This Act was amended to include computer programs as 'literary work' and hence software now enjoys copyright protection. India is not a party to the WIPO copyright treaty.

Legal issues in e-business with India

Case Studies in India

The Indian company cases showed that there are a number of companies who are unaware of the complexities/legal issues that emerge in e-business transactions, this needs to be made aware of and sensitised. The LEKTOR platform can be used as an apt tool in order to discuss and disseminate information on the e-business formalities/ legalities of various countries. Most companies have been doing business with firms/ organizations in the US. The business opportunities with firms in EU has a vast potential which needs to be tapped for fruitful partnerships in that direction

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INCREASED AWARENESS OF ADR IS THE NEED OF THE HOUR

By

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Alternative dispute resolution (ADR): an overview

As anybody who has been involved in litigation will tell you, litigation usually involves huge expense, delay and stress for the parties concerned and can often be commercially counter productive. For business people, such litigation usually consumes considerable amounts management time which could more

profitably spent attending to the core business and can often end commercial relationships. That being so is there not a justifiable reason for exploring the alternatives?

Alternative Dispute Resolution (ADR) has evolved over many years, particularly in the last ten years, mainly due to the perceived and actual defects in the litigation process and as an alternative to the more adversarial Court process. ADR is designed to provide potential litigants with a speedy and responsive mechanism that allows the dispute to be dealt to the satisfaction of both parties.

ADR comes in many forms and is constantly developing. It includes methods such as arbitration, conciliation, mediation and ombudsmen.

Essentially with ADR the parties to the dispute embark on an agreed procedure in order to have the matters between them resolved amicably with the aid of an expert third party rather than having a decision imposed upon them by the Courts. Below is a brief summary of the main forms of ADR and of some of the subtle differences between each of them

The two most common forms of ADR are arbitration and mediation. Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence. Either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third to comprise a panel. Arbitration hearings usually last only a few hours and the opinions are not public record. Arbitration has long been used in labour, construction, and securities regulation, but is now gaining popularity in other business disputes.

Basic ADR Processes

Today, ADR is used to settle a variety of disputes in institutions, including the family, churches, schools, the workplace, Government agencies, and the Court.

ARBITRATION

Arbitration, as a form of dispute resolution is often an agreed term in commercial contracts. Usually it is provided that the nomination of the arbitrator will either be agreed between the parties or in default by and agreed third party, typically the President of a particular professional body if one exists in the particular area in question.

When a matter is referred to binding arbitration, there is normally no means of appeal to the Courts if one of the parties feels that the arbitrator failed to decide correctly on questions of fact. Such appeals can only be taken on a question of law. The principal advantage of arbitration is that the arbitrator is normally a person who has relevant professional qualifications and will be knowledgeable in the acceptable standards of the industry or sector in question.

In Ireland, one such method, arbitration, was established on a statutory level by the Arbitration Act, 1954 which was amended by the Arbitration Act, 1980. The Arbitration (International Commercial) Act, 1998 (which adopted the model law of the United Nations Commission on International Trade Law) further reinforced and consolidated arbitration as an alternative form of dispute than the Courts.

However, over time following the enactment of this legislation and the body of case law which has developed since its introduction, arbitration has lost much of its appeal because it is often as time consuming and costly as Court proceedings.

MEDIATION

Mediation has developed as another means of resolving disputes where the agreed third party mediator works to help both sides to narrow the issues between them and to come to an agreement which each considers acceptable. Usually mediation will take place

in a location where the mediator can meet both sides separately and then together. When agreement is reached, the terms of the agreement will normally be written down and both parties will sign the document as evidence of their acceptance of the outcome.

CONCILIATION

Conciliation is very similar to mediation but the conciliator will normally take a more proactive role than a mediator. Although he will point out the various strengths and weaknesses of each parties case, he will also suggest possible solutions in order to reach a compromise. Conciliation aims to find a particular solution to the dispute which allows both parties to achieve a workable solution to their difficulties and as with mediation it also has the added benefit of perhaps saving a commercial relationship which might otherwise be lost.

With both mediation and conciliation it is normally upto the parties to decide between themselves as to whether or not the finding of the mediator/conciliator will be binding on them. Usually the parties do not agree that such findings are binding.

The terms of reference of the mediator/ conciliator will be agreed by the parties prior to submitting the dispute to him and he will normally write to both parties detailing how he intends to proceed.

Each side will prepare a written statement on the issues in dispute as they see it and will be asked to provide copies of any supporting documentation to assist the mediator/ conciliator form a clear view of the issues in the dispute.

The mediation/conciliation takes place in a location where each side are provided with their own space. The mediator/conciliator will meet each party in private and in absolute confidence. Usually a room will be provided were both parties can meet with the mediator/conciliator who will synopsise the various issues.

For mediation/conciliation to work the parties must fully engage in the process. The primary disadvantages are that the parties may not reach an agreement or they may feel that they have not been given a sufficient opportunity to establish legal rights within the scope of the process.

New frontiers in alternative dispute resolution

The practice of alternative dispute resolution (ADR) has a long history in the area of collective bargaining and labour-management relations. Specifically, in the U.S. mediation became part of the institutional framework of labour relations when national unions came to the forefront in the late nineteenth century. The federal Government first recognized mediation as method of handling labour disputes with the passage of the Erdman Act of 1898. [1] Moreover, as articles by Meyer and Rudin in this issue demonstrate, the practice of ADR (or original dispute resolution (ODR) as Meyer terms it) by Native Americans and Aboriginal peoples of Canada predate the use of such dispute resolution techniques in labour-management relations.

In recent years the practice of ADR has spread to a variety of contexts. For example, in the labour-management relations context ADR has spread beyond contract negotiations to non-contractual disputes. [2] In the employment context in general, ADR has expanded to non-union settings [3] and to public sector employment (both union and nonunion). [4] In the public policy context ADR is being used in environmental disputes and regulatory negotiations

General Advantages and Disadvantages of ADR

For many reasons, advocates of ADR believe that it is superior to lawsuits and

litigation. First, ADR is generally faster and less expensive. It is based on more direct participation by the disputants, rather than being run by lawyers, Judges, and the State. In most ADR processes, the disputants outline the process they will use and define the substance of the agreements. This type of involvement is believed to increase people's satisfaction with the outcomes, as well as their compliance with the agreements reached.

Most ADR processes are based on an integrative approach. They are more cooperative and less competitive than adversarial Court-based methods like litigation. For this reason, ADR tends to generate less escalation and ill will between parties. In fact, participating in an ADR process will often ultimately improve, rather than worsen, the relationship between the disputing parties. This is a key advantage in situations where the parties must continue to interact after settlement is reached, such as in child custody or labour management cases.

ADR does have many potential advantages, but there are also some possible drawbacks and criticisms of pursuing alternatives to Court-based adjudication. Some critics have concerns about the legitimacy of ADR outcomes, charging that ADR provides "second-class justice." It is argued that people who cannot afford to go to Court are those most likely to use ADR procedures. As a result, these people are less likely to truly "win" a case because of the cooperative nature of ADR.

Similarly, critics believe that ADR encourages compromise. Compromise can be a good way to settle some disputes, but it is not appropriate for others. In serious justice conflicts and cases of intolerable moral difference, compromise is simply not an option because the issues mean too much to the disputants. Another concern is that ADR settlements are private and are not in the public record or exposed to public scrutiny. This could be cause for concern in some cases. For example, using ADR to settle out of Court could allow a company to resolve many instances of a defective product harming consumers, without the issue getting any public exposure. On the other hand, a Court ruling could force the company to fix all problems associated with the bad product or even to remove it from the market.

The Advantages of ADR

One of the great advantages of ADR is that the parties have control over the process, - no more Court waiting lists, no more long drawn out formal processes; instead, an informal, quicker and cheaper process designed to get to a solution so that the parties can get on with business.

Another great advantage of ADR is that, unlike the Court system where everything is on the public record, ADR can remain confidential. This is particularly useful for disputes in, for example, the IT industry where disputes over intellectual property are in great need of confidentiality.

The Disadvantages of ADR

Although many procedures are indeed quicker and easier, arbitrations, for example, can often be as long and arduous as the most difficult litigation. What is more, the parties must pay for the arbitrator, the arbitration rooms, the transcript if necessary and all similar matters rather than being able to rely upon the Court system funded by the taxpayer.

ADR processes can also be used as a delaying tactic or as an attempt by a disputing party to gain useful intelligence on its opponent before going down the litigation route in any event. This problem is largely resolved if the ADR process is binding, thus preventing a second bite of the cherry in Court.

ADR is also limited in the way it cannot, without consensus, involve multiple parties.

The Court system enables disputing parties to bring in third and fourth parties involved in the same dispute, to apportion the ultimate responsibility all on one occasion. This can often save much time and delay.

This is a very brief introduction to ADR and is not intended to be legal advice. This publication cannot be relied on as a substitute for appropriate legal advice suited to your circumstances. Given that this is the case, you should seek and retain the advice of a solicitor if you require a comprehensive and up to date analysis of the law pertaining to your circumstances

International Scenario

A brief look at the international scenario of ADR Mechanism reveals the popularity of its usage in various countries. The seeds of ADR in the UK can be traced to the work of the advisory, conciliation and arbitration service which was formed in 1974. In China and Japan mediation was used as primary means of conflict resolution. The Chinese principle was the influence of Confucian view of harmony and dispute resolution by morals rather than coercion. Informal dispute resolution was used in many cultures of the world including India, Africa and Israel.

In Japan, Judges intervene extensively during the in-Court settlement; every Japanese Judge is expected, both by law and by litigants, to move a case towards settlement. This has the force of statutory law. At least 40% of the cases are settled. The Judge, who decides to switch the litigation to a settlement mode, takes off his robe and acts as mediator.

In 1976, Rosco Pound Conference was held to commemorate the anniversary of his dissertation on "Public dissatisfaction with the American Legal system". It was this conference that the current ADR movement actually started in America and now these methods are so successful that nearly 93% of the civil disputes are settled outside the Courts.

Even in Europe, mediation is seen as a potentially promising mechanism for the resolution of both simple and complex disputes. In 1995, France expanded the legislative basis for judicial conciliation and mediation.

The Hong Kong International Arbitration Centre, most probably the largest arbitration service centre in Asia, has held the view "arbitration as compared to litigation has become very popular for resolving the disputes. Similarly, conciliation and mediation find an increasing measure of support in future."

Philosophy and Implementation in India

ADR is by no means a recent phenomenon in India, though it has been organized and systematized, expressed in clearer terms, employed more widely in dispute resolution in recent years than before. In earlier times, disputes were peacefully decided by intervention of kulas (family or clan assemblies), srenis (guilds of men following the same occupation), parishads (assemblies of learned men who knew law) before the king came to adjudicate on disputes. There were Nyaya panchayats at grass root level before the advent of the British system of justice. Later on, Lok Adalats (people's Court) have provided speedy and inexpensive justice in both rural and urban areas in India.

In India, laws relating to resolution of disputes have been amended from time to time to facilitate speedy dispute resolution. The Judiciary has also encouraged out of Court settlements to alleviate the increasing backlog of cases pending in the Courts. To effectively implement the ADR mechanism, organizations like ICA, ICADR were established, Consumer redressal forums and Lok Adalats revived. The Arbitration Act,

1940 was repealed and a new and effective arbitration system was introduced by the enactment of the Arbitration and Conciliation Act, 1996.This law is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration.

The Legal Services Authorities Act, 1987 has also been amended from time to time to endorse use of ADR methods. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes. Mediation, Conciliation, Negotiation, Mini Trial, Consumer Forums, Lok Adalats and Banking Ombudsman have already been accepted and recognised as effective Alternative Dispute Resolution methodologies.

Abraham Lincoln puts the philosophy of Alternate Dispute Resolution systems by declaring "discourage litigation; persuade your neighbours to compromise whenever you can. Point-out to them how the normal winner is often a loser in fees, expenses, cost and time." Further, the Constitution of India has defined and declared the common goal for all of us as — "to secure to all the citizens of India Justice social, economic and political; Liberty; Equality and Fraternity". ADR is a vehicle to achieve these principles and objectives.

Increased awareness of ADR is the need of the hour

As per data provided by the Registry of Supreme Court of India, as on 31.10.2006, more than 2,53,80,757 cases were pending in our subordinate Courts. The figure of pending adjudication is indeed staggering. To deal with these cases, we have less than 15,000 Judges and judicial officers in the country. The ratio of Judge per million population in India is the lowest in the world. The Law Commission of India in its 20th Report examined the problem of under-staffing of the Judiciary. The Commission found that India has 10.5 Judges per million population; the corresponding figure in England was 50.9, Australia 57.7, Canada 75.2 and the U.S.A. 107. The main reason of delay in disposal of cases is inadequate Judge-population ratio.

Despite many advantages of using Alternative Dispute Resolution mechanisms, our society has been reluctant to give it its due recognition .The predominant reason being that a litigation ridden society is generally unable to explore consensual dialogue or arrive at an amicable solution. The ADR practitioner therefore acts like a healer of conflicts rather than a combatant. It is similar to the Panchayat system we have in our villages. The resolution of disputes is so effective and widely accepted that Courts have more often recognised them. In *Sitanna v. Viranna*, AIR 1934 SC 105, the Privy Council affirmed the decision of the Panchayat and Sir *John Wallis* observed that the reference to a village panchayat is the time-honoured method of deciding disputes. It avoids protracted litigation and is based on the ground realities verified in person by the adjudicators and the award is fair and honest settlement of doubtful claims based on legal and moral grounds.

Awareness of ADR through seminars, workshops and other means and its supervised and systematic implementation should be encouraged so that its effectiveness is proved and the message reaches a large section of populi. Also, apart from a good law that provides for resolution of disputes, it is rudimentary to extend or create facilities, services, and infrastructure that shall enable the implementation of such rules and lead to effective ADR practice. Effective coordination both at operational and structural level is a prerequisite of any successful ADR mechanism. Pre-trial conciliation and fixing the targets for dispensation of justice are imperative for successful implementation of any ADR mechanism. Proper training of the Mediators, Negotiators, and Conciliators

should be a mandatory requirement for the understanding of the disputes/cases and its efficient handling. The specialized firms or organizations are certainly more promising and reliable in this sphere and people choose to consult them and engage their services for dispute resolution. There are some important organizations making significant contribution in promoting ADR services in India which need a special mention herein namely ICA and ICADR, the Federation of Indian Chambers of Commerce and Industry, Indian Chamber of Commerce, the Bengal Chambers of Commerce and Industry. The Indian Council for Arbitration (ICA) established on April 15, 1965 provides arbitration facilities for all types of domestic and international commercial disputes and conciliation of international trade complaints received from Indian and foreign parties, for non-performance of contracts or non-compliance with arbitration awards. It maintains comprehensive international panel of arbitrators with eminent and experienced persons from different lines of trade and professions for facilitating choice of arbitrators. The council has launched on internet a special website called COMLAWNET to provide information on arbitration and commercial laws. We need more organizations such as the ICA, ICC and FICCI that render specialized services and promote ADR. One would agree that these organizations have a vital role to play in resolving disputes, in particular, commercial disputes across the globe!

ADR - A WAY FORWARD

ADR as a real alternative to litigation is constantly evolving. In April 2002 the EU Commission published a Green Paper on Alternative Dispute Resolutions in Civil and Commercial Law. It deals with the promotion on an EU wide basis of ADR as an alternative to litigation primarily due to the every increasing number of international disputes but also with the aim of promoting a framework to ensure that disputes can be dealt with in an efficient and cost effective manner. The Green Paper addresses issues such as wider access to justice, consumer protection law, family law and labour relations among other issues. It is envisaged that the various forms of ADR which are currently being used and developed within the various member States and internationally will have a more formal and acceptable basis.

In the UK, the new Civil Procedure Rules introduced by Lord Wolfe have provided a mechanism for the UK Courts to either encourage or order litigants and lawyers to use ADR as a means of resolving their dispute. These Rules at the moment have protocols which only deal with claims in relation to personal injury or clinical negligence but other protocols for other areas of litigation are under review at present.

As an indication of the potential success of the use ADR, statistics in the UK show that in the commercial Court were ADR was recommended by the Judge, 88% of the cases were concluded in one day while the remainder took upto 6 days. Of the total number of referrals, 77% were settled on the day or shortly thereafter. The average value of each case referred to ARD was £150,000.00. This gives a clear indication that parties are prepared to submit to ADR even where there is a high value at stake. ADR is most popular in construction, employment, professional negligence and sale and supply of goods but it is also used in the financial, high-tech and property areas to name but a few.

CONCLUSION

As is said in the practical philosophy of law that lawyers are what their cases have made them, so goes the addendum that a legal system is venerated as it has been handled and managed in course of time. Then only a legacy is left for the future to find it sufficiently germane to be accepted as a proposition of inheritance. The law and legal system should appeal the reasons of people, is not a legal

principle but a common sense observation of fact. It is this spirit that has led to the evolution of ADR Mechanisms for the dispensation of justice with efficacy and steadfastness!

ADR has applicability and benefits in areas varying from commercial to family law and in every area of industry where disputes may arise. The EU's Green Paper discusses various methods of on-line dispute resolution which has the advantage of being able to use innovative technology and communications between the parties can and should be rapid.

Ireland is an attractive location for international arbitration. Ireland has ratified the New York Convention on the Recognition and Enforcement of Arbitral Agreements and as an English speaking Common Law jurisdiction offers an effective cost efficient location for such arbitrations.

ADR is rapidly becoming developing as an alternative to litigation but has yet to receive the open acceptance of the legal and business communities. ADR is being introduced coyly but it is only a matter of time before ADR will find many suitors.

RIGHTS OF ARRESTED PERSON UNDER THE INDIAN CONSTITUTION

By

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Introduction :

Generally a police officer cannot arrest a person without any warrant, but in some cases the police can arrest any person without obtaining the warrant of arrest from the competent authority.

As a general rule every arrested person has certain rights, but those rights are not known to many persons. Like it may be said that every police officer has certain rights in arresting a person without a warrant. If an accused person arrested by a honest police officer, he will not be suffered but he arrested by a dishonest police officer definitely the accused will be suffer irreparable loss and cannot retain their life.

The Object of this Article is to analyze the rights of arrested person and the safeguards given to the accused/prisoners by the Constitution from the hands of the police.

Before discussing the rights of arrested person we should have to know what is the meaning of arrest.

Meaning of Arrest :

Arrest means to deprive the liberty of a person by some lawful authority for the purpose of compelling his apprehension. But every compulsion or physical restraint of a person is not arrest but when the restraint is total and deprivation of liberty is complete, it would amount to arrest. That the arrested person shall not be subjected to more restraint than is necessary to prevent his escape.

The Criminal Procedure Code reveals about the arrest and how to stop the misuse of powers of the police officer. The Courts also made several suggestions and guidelines with regard to the rights of arrested persons. But some police officers creating custodial violence by misusing their power and authority