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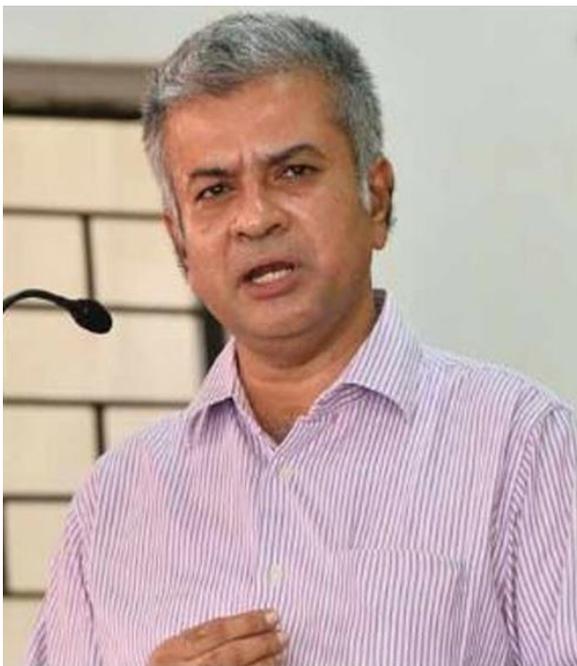
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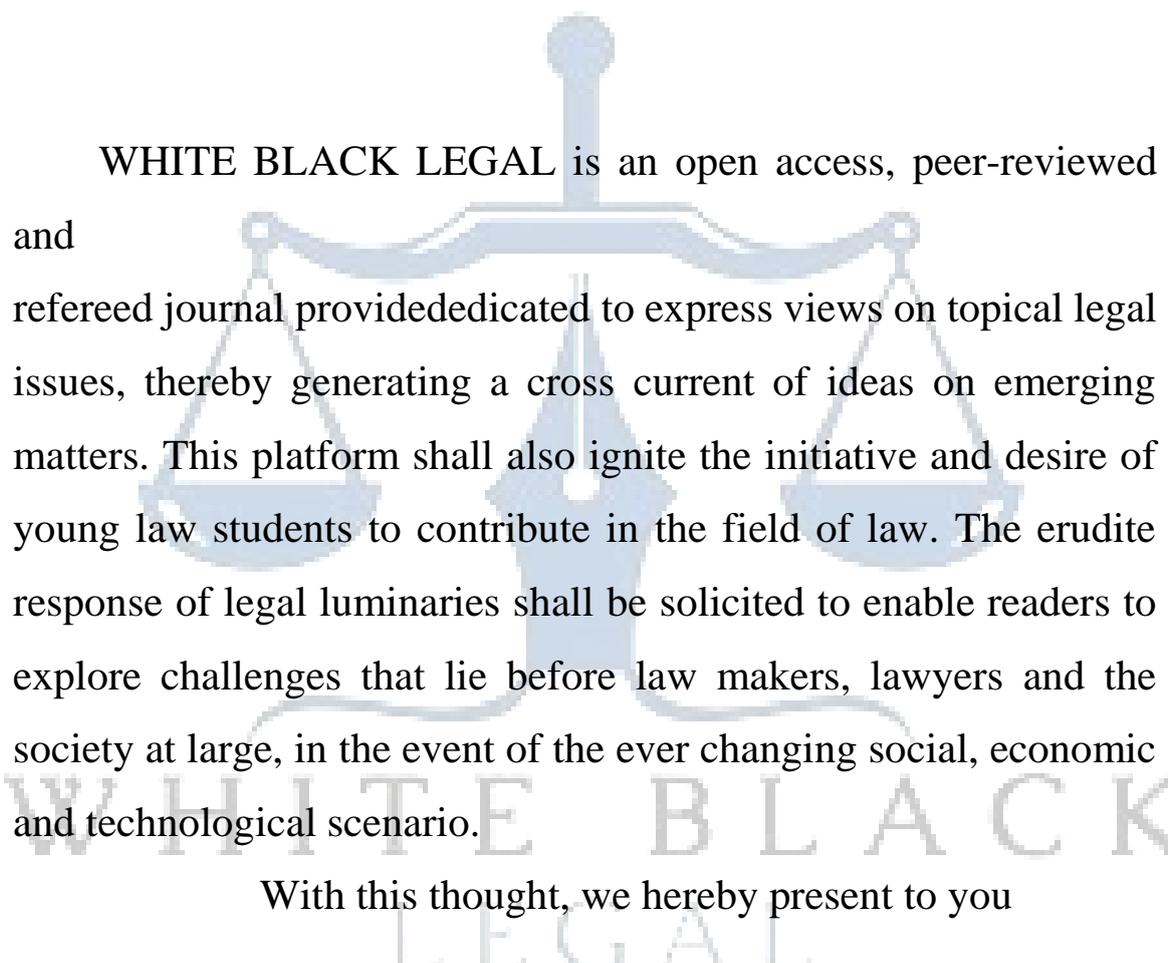


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

"JUSTICE REDEFINED: THE IMPLICATION OF ALTERNATIVE DISPUTE RESOLUTION IN CONTEMPORARY FRAMEWORK"

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ABSTRACT

Due to the heavy caseloads burdening their legal systems, developing countries often struggle to deliver timely justice. For individuals relying on litigation to resolve their disputes, the saying "justice delayed is justice denied" resonates deeply. However, tribunals cannot be solely blamed for the rise in litigation; a significant factor is the lack of negotiation avenues before resorting to the legal system. Alternative dispute resolution (ADR) is emerging as a promising solution to this issue, inspired by its successful use in developed nations. ADR includes various methods for resolving conflicts that do not involve traditional court proceedings. It arose in the United States during the 1970s as a way to circumvent the costs, delays, and adversarial nature of litigation. On a global scale, alternative dispute resolution (ADR) serves as an effective tool for enhancing conflict settlement processes. It addresses the limitations of traditional litigation by focusing on efficiency, accessibility, and fairness, whether through community-based initiatives or court-affiliated methods.

INTRODUCTION

Alternative dispute resolution includes various methods for resolving conflicts outside of the courtroom. Driven by the need to sidestep the costs, delays, and adversarial nature of litigation, the modern ADR movement took root in the United States during the 1970s. Advocates for court reform are pushing for its use in developing countries for these reasons and more. With the introduction of Section 89 of the CPC and the amendments to the Arbitration and Conciliation Act 1996 in 2015, alternative dispute resolution methods have taken on a key role in alleviating backlog and encouraging quick and cost-effective resolution of disputes. Additionally, some nations are exploring alternative dispute resolution as a way to revitalize and reform traditional mediation systems. Many people in developing nations, where a large

number rely on litigation to settle disputes, feel frustrated with the judicial system and its ability to deliver justice due to overcrowded courts and the significant number of ongoing cases. The saying "justice delayed is justice denied" is a key reason for this sentiment. However, the courts cannot be solely blamed for the surge in cases, as it is widely recognized that the lack of negotiation methods before resorting to litigation contributes to the problem. In response to this situation, alternative dispute resolution methods are being introduced in these countries. These approaches, which have proven effective in providing quick and amicable resolutions in developed nations, are being adapted and implemented in developing countries to enhance their judicial systems. ADR today can be divided into two primary categories: community-based dispute resolution methods and court-annexed options. Court-annexed ADR includes early neutral evaluations, summary jury trials, mini-trials, and other approaches alongside mediation and conciliation, which is the traditional process where an impartial third party assists the disputing parties in reaching a mutually acceptable solution. Supporters argue that these methods not only help maintain important social connections among disputants but also enhance access to justice and alleviate the backlog of cases by reducing the costs and time associated with litigation. Community-based alternative dispute resolution (ADR) often operates outside the formal court system, which can be perceived as unfair, expensive, remote, or otherwise inaccessible to local communities. Many innovative initiatives build on earlier models of popular justice that relied on community leaders, religious figures, or elders to help mediate conflicts. Some definitions of ADR also include business arbitration, a commercial adversarial process where a neutral third party provides a legally binding decision. Private arbitration centers play a significant role in resolving business disputes in the US and are becoming increasingly common in other regions as businesses seek consistency and efficiency.¹

AN OVERVIEW OF VARIOUS FORMS OF ADR

Ancient practices of mediation, conciliation, and arbitration existed long before the current Anglo-Saxon adversarial justice system. In India, prior to British rule, businesspeople often relied on different forms of mediation and arbitration. The Mahajans, who were respected, fair, and shrewd entrepreneurs, used mediation to resolve disputes among merchants. They were easily accessible at business hubs to help arbitrate conflicts among members of business

¹ KEYWORDS; Alternative Dispute Resolution(ADR), Community Based Dispute Resolution, Court Annexed ADR,

associations. In 1996, the Indian parliament enacted the Act on Arbitration and Conciliation, which set forth detailed guidelines for resolving disputes arising from legal relationships, regardless of whether they are contractual, along with all related actions. The Act allows for the initiation of conciliation procedures, the appointment of experienced conciliators, and the recommendation or nomination of conciliators by appropriate institutions. Additionally, parties can present their assertions to the conciliator, whose role is to assist them in negotiating a resolution to their disputes. ADR also includes business arbitration, where an impartial third party makes a legally binding decision in disputes between companies. Private arbitration centers are increasingly being established around the world, providing businesses with reliable and effective options for resolving disputes, particularly in developed countries like the US. In contrast, community-based alternative dispute resolution (ADR) occurs outside formal legal systems and is especially relevant in areas where people find courts to be costly, distant, or inaccessible. In developing countries, many contemporary ADR programs draw from traditional dispute resolution methods, often facilitated by elders, religious figures, or community leaders. These community-based approaches help alleviate the burden on those involved in disputes while offering solutions that are culturally appropriate and acceptable to the local context.

ARBITRATION

The Arbitration Act of 1940 marked the introduction of arbitration law in India. This was followed by the Foreign Awards Act of 1961 and the Arbitration (Protocol and Convention) Act of 1937, which established additional supportive regulations. However, due to the common challenges faced regarding awards, arbitration under these laws often fell short and typically led to more litigation. To improve the efficiency of both domestic and international arbitration in India, the legislature enacted the Arbitration & Conciliation Act in 1996.

COMMERCIAL ARBITRATION: The agreement between the parties to submit their dispute to arbitration constitutes a legally binding contract, as commercial arbitration is based on either contract law or treaty law. All arbitral rulings are considered "final and binding." However, this does not eliminate the need to meet legal requirements. Arbitration can be used to resolve any issue that is not legally prohibited from being arbitrated (such as criminal proceedings).

LABOUR ARBITRATION: To address employee complaints regarding the enforcement of employer policies or allegations of employee misconduct, employers with non-unionized workers are increasingly turning to organizational problem-solving methods, one of which involves arbitration by an impartial arbiter. In the construction industry, interest arbitration remains a common approach to resolve disputes that arise during wage negotiations. Additionally, arbitration has been employed by both employers and unions to resolve employee grievances stemming from collective bargaining agreements.

JUDICIAL ARBITRATION: Family law, especially in the realm of child custody, is a significant area where judicial-ordered arbitration has been adopted across various state court systems. A trial de novo is permitted, and judicial arbitration often serves as a consultative process, functioning as an initial step toward reconciliation without placing any legal obligations on either party.

"Arbitration" is one of the methods available for resolving disputes. According to Section 89(2), the provisions of the 1996 Arbitration and Conciliation Act apply when a disagreement is referred for arbitration or conciliation, just as if the proceedings were initiated under the 1996 Act. When there is an arbitration agreement in place, Section 8 of the 1996 Act outlines the authority to direct parties to arbitration. The judgment in *P. Anand Gajapathi Raju v. P.V.G. Raju* [2000 (4) SCC 539] confirms that the 1996 Act is relevant when both parties consent to arbitrate a dispute, whether before or during the ongoing proceedings. However, the 1996 Act does not specifically address situations like those in Section 89 of the code, where the court encourages the parties to select from various alternative dispute resolution methods, including arbitration, and the parties opt for arbitration. Naturally, the parties must agree to proceed with arbitration.

MEDIATION

While Section 30 of the Act originally set up mediation as an alternative method for resolving conflicts, it lacks the detailed guidelines for mediation that it provides for conciliation. However, in 1999, an additional Section 89 was incorporated into the CPC when the legislature enacted the Code of Civil Procedure (Amendment) Act, 1999 (the "CPC Amendment Act"). This new section introduces the concept of "judicial mediation," distinguishing it from "voluntary mediation." As it stands now, a court has the authority to identify which cases can

be settled, outline the terms of that settlement, and seek input from the parties involved.

In general, mediation includes several key elements or phases:

- A disagreement, conflict, or need for decision-making or problem-solving between parties;
- The decision-making authority stays with the parties involved rather than a neutral third party;
- The parties must be willing to express their interests and goals and work towards a constructive solution;
- The aim is to reach a favorable outcome with the help of an impartial, independent third party.

As mediation becomes more widely accepted, it may replace traditional legal and judicial processes sanctioned by nation-states. Critics, including those from the anti-globalization movement, argue that these formal procedures have failed to provide the real safety and closure needed to uphold a consistent rule of law. Recently, mediation has been increasingly recommended for resolving international disputes, particularly in high-stakes situations, due to its rising popularity and a greater understanding of its key elements and potential outcomes. Mediators have started to explore different practice areas and promote various philosophies and methods of dispute resolution, driven by the growing acceptance of mediation and the fierce competition in the field. Additionally, those pursuing mediation training come from a wide range of professional backgrounds and possess diverse specialties. In 2000, American trainers from the Institute for the Study and Development of Legal Systems (ISDLS) carried out the first extensive mediation training in Ahmedabad. Following this, two prominent lawyers from Ahmedabad decided to establish the Institute for Arbitration Mediation Legal Education and Development (AMLEAD), a Public Charitable Trust, to host a series of advanced training workshops. The official inauguration of the Ahmedabad Mediation Centre, which appears to be India's first mediation center managed by lawyers, took place on July 27, 2002, officiated by the Chief Justice of India.

CONCILIATION

Part III of the Act has now included conciliation, which is seen as one of the most effective methods for resolving disputes. For the first time, the conciliation process has received statutory recognition through a set of detailed engagement norms. Conciliation is a non-adjudicatory alternative dispute resolution (ADR) procedure that follows the rules set out in the AC Act. A valid suggestion for conciliation can only be made if both parties agree to engage in negotiations with a third party, either through a mutual agreement or by accepting the process described in section 62 of the AC Act. This is followed by the appointment of a conciliator or conciliators as outlined in section 64 of the AC Act. If neither party is willing to participate, conciliation will not occur. Therefore, the court cannot mandate the parties to enter conciliation under section 89 without the consent of all involved, similar to the situation with arbitration. The Act is based on the UNCITRAL Model Arbitration Law and the UNCITRAL Conciliation norms. It is a non-binding process where an impartial mediator assists the parties in reaching a mutually agreeable solution. According to Section 61 of the Act, conciliation will be applied in all matters related to a legal relationship, whether contractual or not, as well as in disputes that arise from it. The conciliation mechanism does not hold any legal status, and the conciliator typically lacks the authority to call witnesses, collect evidence, draft a decision, or issue an award. This sets conciliation apart from arbitration. Unlike mediation, the primary aim of conciliation is to achieve a compromise, often through concessions. In most cases, the parties do not sit face-to-face at the table with the conciliator. The differences that arise can be viewed as distinctions from a broader category. The time it takes to resolve a disagreement through alternative dispute resolution (ADR) methods, compared to traditional litigation, is another aspect of efficiency that these procedures provide, alongside the potential cost savings of mediation and conciliation. It's no surprise that many jurisdictions worldwide are integrating conciliation into the civil justice systems to expedite the resolution process for litigants and, consequently, alleviate the backlog of cases in the courts. Additionally, Burger CJ, the Chief Justice of the US Supreme Court at the time, suggested that individuals facing issues, such as those in distress, should seek help as early as possible and at the lowest cost.

BRIEF HISTORY OF ADR (ALTERNATE DISPUTE RESOLUTION)

Looking for alternatives to the traditional legal system, which many viewed as confrontational, costly, unpredictable, inflexible, overly formal, damaging to relationships, and limited to rights-based solutions instead of creative problem-solving, led to the rise of alternative dispute

resolution (ADR) in the United States. Given aspects of the American legal system, such as jury trials for civil cases, contingency fee arrangements for lawyers, and the partial application of the "loser pays" rule, it's not surprising that this concept took root there. The use of mediation and arbitration as a way to resolve conflicts began to gain traction in the late nineteenth century, particularly as a response to the contentious disputes between management and labor. In 1898, Congress recognized the importance of mediation for collective bargaining issues, following similar initiatives that had emerged in Massachusetts and New York a few years earlier. This led to the creation of specialized mediation organizations, such as the Federal Mediation and Conciliation Service in 1947 and the Board of Mediation and Conciliation for Railway Labor, which was renamed the National Mediation Board in 1943. These organizations were funded to help mediate disputes that arose from collective bargaining. Over time, states also began to offer more labor mediation services. The New Lands Act of 1913 and other subsequent legislation illustrated that maintaining industrial peace could be achieved through the resolution of collective bargaining disputes, with conciliation, mediation, and voluntary arbitration playing key roles in facilitating settlements.

MEDIATION, THE ABROGATION OF LEGAL ENTITLEMENT AND 'JUSTICE'

Mediation raises important issues about the possible removal of legal rights and how justice is perceived. Mediation can sometimes lead to an avoidance of justice, which is a point of criticism. Unlike adjudication, where an impartial judge makes decisions based on established legal standards, mediation reframes disputes through a "harmony" perspective, turning them into extralegal issues that require dialogue and compromise. This viewpoint ties justice closely to the law, disregarding other factors and standards that could also signify justice, and overlooks the complexities involved in interpreting the law imperfectly. However, it's important to recognize that the law isn't the only source of justice; in fact, parties may not always agree with legal terms. Recent studies indicate that respondents believed attorneys' focus on legal strategies diminished the importance of issues that mattered to them. Individuals may seek something entirely different from mediation, such as clarification or an expression of remorse. When stronger parties exploit the mediation concept of voluntariness to unfairly sway weaker parties, it can create imbalances in bargaining power. This discrepancy raises an ethical question about whether mediated agreements truly reflect free and informed consent. Critics argue that, instead of achieving fair and just outcomes, mediation in these cases may perpetuate

existing structural injustices. Mediation is a valuable tool in the judicial system despite these concerns. Unlike confrontational litigation, it emphasizes cooperation and tailored solutions, often leading to more satisfactory results for those involved in disputes. Furthermore, by preserving relationships and encouraging a collaborative approach to resolving conflicts, mediation can foster social harmony. In many cases, it provides an attractive and culturally relevant method for resolving disagreements, particularly in communities where traditional legal processes may feel intimidating or out of reach. While mediation offers numerous benefits, it is crucial to recognize its potential to overlook legal rights and undermine the concept of justice. Ensuring fairness in mediation involves implementing strong procedural safeguards, raising awareness of legal rights, and establishing mechanisms to protect vulnerable parties. By tackling these issues, mediation can effectively complement traditional legal systems while maintaining the principles of justice and equity.

CONCLUSION

People often convince themselves that justice doesn't exist when it isn't delivered swiftly. Chief Justice Bhagwati expressed similar sentiments in his Law Day speech, saying, "I am dismayed to see that the nation's judicial system is in danger of crumbling. I use these strong words, but I say them with a heavy heart. Our justice system is falling apart due to negligence. "Delays and arrears create inefficiencies, preventing the average person from experiencing true justice. It's easy to understand how someone could feel overwhelmed after multiple trips to court and meetings with attorneys. Yet, many Indians, increasingly inclined to pursue legal action, find themselves spending hours idly waiting in court hallways. Key factors contributing to the backlog of cases include a significant surge in the number of cases reaching courts and tribunals, largely due to hastily enacted, flawed laws, unpredictable administrative decisions, and a growing awareness among litigants of their rights, fueled by numerous appealing and constitutional changes. The parties involved in the conflict are eager for a prompt decision. As the issue of overloaded courts has become a global concern, new strategies have been sought. This exploration has led to the establishment of various tribunals. In India, there are countless tribunals. However, despite the creation of these tribunals, the pace of justice has not improved. Therefore, it is reasonable to conclude that the solution lies elsewhere. Currently, there is a global trend shifting away from litigation and towards alternative dispute resolution (ADR). This approach is highly advantageous and, if implemented, could potentially reduce the workload of Civil Courts by half. Thus, it is the Bar's essential responsibility to embrace the

challenge of implementing ADR, allowing for the resolution of disputes without getting lost in the complexities of judicial procedures and technicalities.

John F. Kennedy once said, "Let us never negotiate to overcome fear but let us never fear to negotiate." This idea is especially important to consider in today's context.

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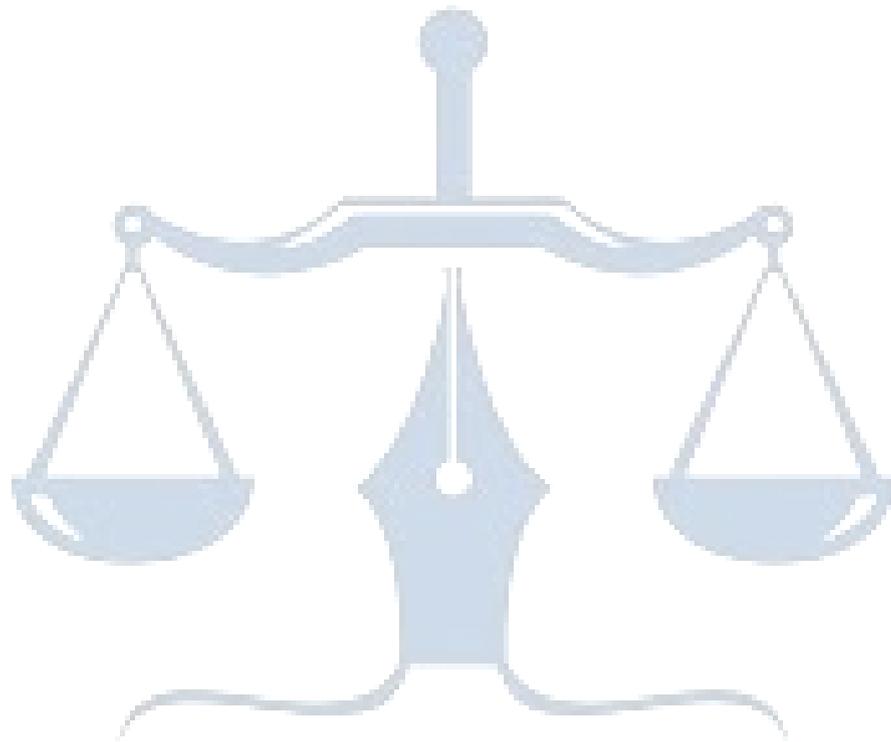
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