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ALTERNATIVE DISPUTE RESOLUTION SYSTEM: A BREIF ANALYSIS.

INTRODUCTION:

Alternative dispute resolution system (ADR) typically denotes a wide range of dispute resolution procedures and technicalities which act as a means of disagreeing parties to come to an agreement. It is procedure which helps to describe a settlement of dispute by the way of Arbitration, Mediation, Conciliation, and Negotiation. Which are known as mechanisms of ADR. Alternative dispute resolution system is like an Umbrella which has various roots of mechanisms controlled under one roof. This concept of alternative dispute resolution can be traced back from earlier days, which specifies this system in the form of Panchayat system. Where 5 elder members will elected as ‘panchas’ who will be deciding the disputes.

The modernisation of Panchayat system is Alternative Dispute Resolution System. In order to practice this concept the Arbitration and Conciliation Act was been enacted in the year 1996. However, while the virtues of ADR are widely acknowledged, it is not without its challenges and controversies. Critics have raised concerns about the enforceability of decisions, lack of transparency, and potential for power imbalances within ADR processes. Moreover, the effectiveness of ADR hinges on factors such as party autonomy, mediator or arbitrator neutrality, and the availability of adequate resources and infrastructure, all of which may vary significantly across jurisdictions and contexts.

In light of these considerations, this research paper aims to provide a comprehensive analysis of alternative dispute resolution systems, examining their various forms, benefits, challenges, and implications for legal practice, business operations, and social cohesion. By critically evaluating the strengths and limitations of ADR, as well as exploring emerging trends and innovations in the field, this paper seeks to shed light on the evolving landscape of dispute resolution and inform future policy initiatives and research agendas in this vital area of legal and socio-economic inquiry.

MEANING:

Alternative Dispute Resolution (ADR) refers to a diverse set of techniques and processes used to resolve conflicts and disputes outside of traditional courtroom litigation. Unlike litigation, which involves formal legal proceedings before a judge or jury, ADR methods are typically informal, collaborative, and focused on reaching mutually acceptable solutions through dialogue and negotiation. ADR encompasses a range of approaches, including mediation, arbitration, negotiation, conciliation, and collaborative law, each offering distinct mechanisms for resolving disputes efficiently and effectively.

In simple terminology, Alternative Dispute Resolution System means settling a dispute between the parties outside the court room.

DEFINITION:

According to Hurlesbury law of England “Alternative Dispute Resolution is a term of describing the process of resolving disputes in place of litigation and includes mediation, conciliation, negotiation and arbitration.”

ESSENTIALS IN ALTERNATIVE DISPUTE RESOLUTION:

- Neutral third person
- Nature of the proceedings

- Formality level
- Confidence

CHARACTERISTICS OF ALTERNATIVE DISPUTE RESOLUTION:

(1) Access is limited to the persons who has some claim.
(2) There is choice for mutual third party
(3) To start and end up the proceedings, where the consent of court is immaterial.
(4) The disputing parties may directly participate in the proceedings.
(5) The disputing parties bear the cost of the proceedings.
(6) Alternative dispute resolution are in extra judicial in nature.
(7) It is basically a problem centred system.
(8) It act as a controller for disputing proceedings.
(9) This system maintains confidentiality.

KINDS OF MECHANISMS IN ALTERNATIVE DISPUTE RESOLUTION:

There are different kinds of mechanisms in alternative dispute resolution system, which are as follows,

- Arbitration
- Mediation
- Negotiation
- Conciliation

1) **ARBITRATION:**

Arbitration is a method of resolving dispute by making an award through third neutral party known as Arbitrator. Basically, arbitration is a procedure in which a dispute is submitted by agreement of parties to one or more arbitrators who make a binding decision on dispute. The process of arbitration can only start when there is valid arbitration agreement between parties.

As per section.7 of Arbitration and conciliation Act,1996 such an agreement should be in a written form and signed by parties.

Any party to the dispute can start process by appointing an arbitrator who will be the neutral third party. The panel of Arbitrators is said to be Arbitration Tribunal.

Under section.34 of Arbitration and conciliation Act,1986, the parties can appeal to principal of civil court of original jurisdiction for set aside award.

Under the mechanism of Arbitration there are again 4 types, which are as follows-

1) Ad hoc Arbitration
2) Voluntary Arbitration
3) Institutional Arbitration
4) Court Annexed Arbitration

According to section.7(1) of Arbitration and Conciliation Act,1996 'Arbitration Agreement' means an agreement by parties to submit to arbitration to all or certain disputes which have arise or arisen between them in respect of defined legal relationship, whether contractual or not.

There are some essential elements in Arbitrational Agreement which are as follows-

- Soundness of mind
- Majority of age
- Consensus ad idem
- No fraud or undue influence

Arbitration award is a final decision given by the arbitrator.[1]. There are different kinds in arbitration award which are namely,

- Domestic award
- Foreign award
- Settling award
- Final award
- Additional award

This mechanism of arbitration has a procedure to follow in order to sort out the dispute between the parties.

PROCEDURE OF ARBITRATION:

STEP-1: ***Arbitration Agreement***

STEP-2 : ***Adjudication***

STEP-3 : ***Appointment of Arbitrators***

STEP-4 : ***Preliminary meetings***

STEP-5 : ***Amendment of Claim***

STEP-6 : ***Amendment of defence***

STEP-7 : ***Addition of Statement***

2) MEDIATION:

A structured process where a neutral person uses specialised communication and negotiation techniques. Where both disputing parties mutually accept agreement.

Mediation aims to assist two or more parties in reaching an agreement. They settle by themself on conditions.

There is no binding force in this mechanism.

The facilitator is neutral third party who is responsible for settlement of dispute between parties by making an conversation between them.

STAGES OF MEDIATION:

It is a five-step mechanism, it is as follows:

1) ***Appointment of Mediator:*** Both the parties consensually appoint neutral mediator who is usually not essentially a lawyer but of course an expert and experienced person of this field.
2) ***Opening statement:*** Primarily the process starts with opening statement given by mediator. In his or her opening statements, mediator first briefs parties about purpose, benefits and rules of mediation. Also his or her role and other details in the process. It is to make parties comfortable.
3) ***Joint Session:*** Just after opening statements, joint session commences. It is continuance stage after opening statement. In this stage parties in presence of mediator keep their issues one by one. There is no time limit. Mediator makes ensure that both parties given sufficient time to express their issues.

4) ***Caucus (Individual Session):*** In this stage, in order to better understanding for each party is given more space. That is the reason why the parties are called separately for meeting which takes place on separate dates. This stage purpose is to encourage parties to share all other information that normally have not shared with other party.
5) ***Agreement and settlement:*** it is a last stage, where both the parties mutually agree to the agreement which successfully completes mediation. Settlement agreement involves effective solution with respective terms and condition. It will be valid only when the both parties sign over it.

3) NEGOTIATION:

According to the Oxford Advanced learner Dictionary, Negotiation is a formal discussion between disputing parties who are trying to reach an agreement.

According to the Black's law Dictionary, Negotiation is a bargaining process in which parties attempt to reach an agreement on a disputed matter.

In this mechanism there is no place for neutral third party. Under section 89 of code of civil procedure,[2] it is considered as valid. There is no binding force in this mechanism. The outcome of this mechanism will be compromise.

Negotiation is a process where two parties in a conflict reach a settlement between themselves by mutual understanding. It is a kind of bargain mode between disputing parties.

STAGES OF NEGOTIATION:

It is a five steps process, as follows;

STEP-1 : Preparing and Planning-

This step calls for the understanding for the nature of the dispute matters which causes for negotiation to take place. Which also includes parties, opinions of parties, objectives of negotiation.

STEP-2 : Definition of Ground Rules-

After the step of planning and preparation, there should be followed the rules and process which are made to aware the parties. At this stage there will be a mutual exchange between the disputing parties, which helps the parties to negotiate in getting acquainted with each other.

STEP-3 : Classification and Justification-

In this stage, the parties to negotiation have an opportunity to support their demands to their counter parts by justifying and emphasizing them in the most convincing manner. The situation should not be used as an opportunity for enlightening and informing each other about genuineness and need of their demands.

STEP-4 : Bargaining and Problem Solving-

This particular step comes only into play when the parties to negotiation have become fully familiar with each other's requirements and constraints. Negotiation are mainly characterised by granting and receiving concessions during finalising the agreements. This particular step involves the actual bargaining process for solving disputed issues.

STEP-5 : Closure and Implementation-

The final step, where the final outcome of Negotiation which has to be put in a formal way. This step encompasses development for executing and controlling agreement few examples of negotiation should need to be necessarily formalised.

Like Employer-Employee Contract, Lease term Negotiation, Purchase of Property,etc.

There are certain Strategies for the mechanism of Negotiation-

- Aggressive Negotiation Strategy- Dominance, injured or hurt, extreme demands and which creates false issue. Its very dangerous or distinct.
- Co-operation Negotiation Strategy- it is a form of win-win Negotiation
- Problem Solving Strategy- both the parties reach to solve the problem but will fail to reach in settlement.

4) CONCILIATION:

It is less formal form of Arbitration. It does not require existence of agreement. Any party can ask for appointment of conciliator. Two or three conciliator are allowed, but it is preferred to be one. It maintains confidentiality. It is completely based on industrial disputing matters. If it is voluntary conciliation it is said to be informal. Whereas, Autonomous is said to be a formal.

STAGES OF CONCILIATION:

It is a five steps mechanism, which is as follows-

STEP-1 : Commencement of Conciliation Proceedings-

It is a initiation process, where a party should send a written invitation to the other party. Conciliation proceeding can only proceed if other party accepts invitation. If no response is received within 30 days it will be considered as non-acceptance.

STEP-2 : Appointment of Conciliator-

Once the parties are agreed for conciliation proceedings, they must appoint conciliator. They can appoint one conciliator by mutual decision or can appoint separately.

STEP-3 : Submission of written statements to Conciliator-

The Conciliator may request both the parties t provide the written statement detailing the relevant facts of case. Both the parties must submit their written statements to conciliator. Additionally, the parties should exchange their written statements with each other.

STEP-4 : Conduct of Conciliation Proceedings-

The Conciliator has a discretion power to communicate with the parties either through oral or written statement. They can choose to meet with the parties collectively or separately. Conduct of proceedings will be tailored to suit the case specific circumstances.

STEP-5 : Administrative Assistance-

The parties or Conciliator may seek assistance from an institution or individual if necessary. Consent of parties is required to engage such assistance.

BENEFITS AND DISADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM:

BENEFITS:

(i) It is more flexible in nature
(ii) It is a speedy trial in nature
(iii) It is less expensive
(iv) It has a choice to select their own arbitrator or conciliator
(v) It maintains Confidentiality
(vi) It finals the awards
(vii) It preserves the relationship between the parties

DISADVANTAGES:

i) There is no guarantee in resolution
ii) There is chance of biased decisions
iii) It discovers limits
iv) There is no appeal for the decisions
v) There is a more opportunity of abuse of power
vi) There is lack of power to establish legal precedents.

COMPARATIVE STUDY WITH TRADITIONAL LITIGATION:

Alternative Dispute Resolution (ADR) and traditional litigation represent two distinct approaches to resolving conflicts within the legal system. In this section, we will conduct a comparative analysis of these two methods, examining their processes, advantages, limitations, and overall effectiveness.

Process Comparison

ADR:

- **Voluntary Participation:** A key characteristic of ADR is its voluntary nature, wherein parties willingly engage in the resolution process.
- **Informal Proceedings:** ADR methods, such as mediation and negotiation, often involve informal discussions facilitated by a neutral third party.
- **Flexible Timelines:** ADR proceedings can be scheduled at the convenience of the parties involved, allowing for more flexible timelines compared to litigation.
- **Focus on Collaboration:** ADR emphasizes collaborative problem-solving, aiming to achieve mutually beneficial solutions.

Traditional Litigation:

- **Involuntary Proceedings:** Litigation typically involves compulsory participation, as parties are compelled to adhere to court procedures and judgments.
- **Formal Courtroom Setting:** Litigation proceedings take place in formal courtroom settings, following strict legal rules and procedures.
- **Fixed Timelines:** Litigation processes are often subject to fixed timelines dictated by court schedules and procedural rules.
- **Adversarial Nature:** Litigation fosters an adversarial environment where parties present opposing arguments, and a judge or jury decides the outcome.

Advantages of Traditional Litigation:

- **Legal Enforcement:** Court judgments and orders in litigation are legally binding and enforceable, providing a strong mechanism for compliance.
- **Comprehensive Remedies:** Litigation offers a wide range of legal remedies, including monetary damages, injunctions, and declaratory relief.
- **Formal Legal Protections:** Litigation proceedings are governed by established legal procedures and rules, ensuring due process and protection of legal rights.

Disadvantages of Traditional Litigation:

- **High Costs:** Litigation expenses can be prohibitive, particularly for lengthy or complex cases, involving attorney fees, court costs, and expert witness fees.
- **Lengthy Process:** Litigation processes are often time-consuming, with cases potentially dragging on for months or even years before reaching resolution.
- **Publicity:** Litigation proceedings are typically public, leading to potential reputational damage for the parties involved and loss of privacy.

4.3 Effectiveness in Different Contexts

Business Disputes:

- ADR methods such as mediation and arbitration are frequently used to resolve business disputes due to their efficiency, confidentiality, and focus on preserving ongoing business relationships.
- Traditional litigation may still be necessary in cases where legal precedents need to be established or where one party refuses to participate in ADR.

Family Disputes:

- ADR methods like mediation and collaborative law are often preferred for resolving family disputes, as they offer a less adversarial and more emotionally supportive environment compared to litigation.
- However, litigation may be necessary in cases involving issues of child custody, where legal precedent and enforcement mechanisms are essential.

Community Disputes:

- ADR processes, particularly community mediation programs, play a crucial role in resolving conflicts within neighbourhoods and communities, as they empower stakeholders to find mutually acceptable solutions.

- Traditional litigation may be less effective in community disputes due to its adversarial nature and the potential strain it places on relationships within the community.

CASE STUDIES:

Union of India v. Tata Iron and Steel Co. (2000) 7 SCC 357 - Supreme Court of India:
In this case, the Supreme Court of India highlighted the significance of arbitration in resolving disputes arising from complex commercial contracts. The court affirmed the principle of minimal judicial intervention in arbitration proceedings and emphasized the finality and enforceability of arbitral awards. This judgment contributed to the promotion of arbitration as a preferred method of dispute resolution in commercial transactions.

Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc. (2012) 9 SCC 552:

Commonly known as the BALCO case, this landmark judgment clarified the scope of judicial intervention in arbitration proceedings. The Supreme Court held that the Indian courts' jurisdiction to set aside arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996 is limited, and courts should exercise restraint in interfering with arbitral awards. This decision strengthened the finality and enforceability of arbitral awards in India.

S. Singh v. V.K. Ranga Rao & Ors. (2002) 4 SCC 760:

In this case, the Supreme Court emphasized the need for expeditious resolution of disputes through arbitration. The court held that delays in arbitration proceedings undermine the very purpose of arbitration and defeat the parties' intention to resolve disputes efficiently. This judgment highlighted the importance of timely conduct of arbitration proceedings in promoting the effectiveness of ADR.

Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd. (2009) 2 SCC 337:

This case is significant for its interpretation of the scope of "public policy" under Section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court clarified that the term "public policy" should be narrowly construed and should not be invoked to review the merits of arbitral awards. The judgment reinforced the principle of minimal judicial intervention in arbitration proceedings.

FUTURE TRENDS AND DEVELOPMENTS:

Technology Integration:

The future of ADR will likely see increased integration of technology to streamline processes and enhance efficiency. This includes the use of online dispute resolution (ODR) platforms,

virtual mediation and arbitration hearings, and the development of artificial intelligence (AI) tools for case management and decision support.

Online Dispute Resolution (ODR):

ODR platforms will continue to gain prominence, offering convenient and accessible means of resolving disputes online. These platforms facilitate the entire dispute resolution process, from negotiation and mediation to arbitration and adjudication, through digital channels, thereby reducing costs, enhancing accessibility, and expediting resolution.

Specialized ADR Mechanisms:

There will likely be a growing demand for specialized ADR mechanisms tailored to specific industries or types of disputes. For example, sectors such as technology, healthcare, and intellectual property may require specialized mediators or arbitrators with domain expertise to effectively resolve complex disputes arising within these sectors.

Cultural Adaptation:

As ADR becomes increasingly globalized, there will be a greater emphasis on cultural adaptation and sensitivity in dispute resolution processes. This includes training ADR practitioners to navigate cultural differences and preferences, as well as incorporating culturally sensitive approaches into ADR methodologies to ensure inclusivity and effectiveness.

Environmental and Climate Change Disputes:

With growing concerns about environmental degradation and climate change, there will likely be an increase in the number of disputes related to environmental issues, natural resource management, and climate change mitigation and adaptation. ADR mechanisms, such as environmental mediation and climate change arbitration, may play a vital role in resolving these complex and multifaceted disputes.

Regulatory Frameworks:

Governments and international organizations may continue to develop and refine regulatory frameworks governing ADR processes to ensure transparency, fairness, and accountability. This includes updating arbitration laws, establishing accreditation standards for ADR practitioners, and promoting best practices in ADR administration and governance.

Hybrid Dispute Resolution Models:

Future trends may witness the emergence of hybrid dispute resolution models that combine elements of traditional litigation with ADR processes. These models may integrate pre-trial

mediation or arbitration into court proceedings, offering parties greater flexibility, efficiency, and control over the resolution process while still providing access to judicial oversight and enforcement mechanisms.

Focus on Diversity, Equity, and Inclusion:

There will likely be a heightened focus on promoting diversity, equity, and inclusion within the ADR field, with efforts to increase representation of marginalized groups among ADR practitioners, promote equitable access to ADR services, and address systemic biases within ADR processes to ensure fair and inclusive dispute resolution outcomes.

CONCLUSION:

The evolution of Alternative Dispute Resolution (ADR) has transformed the landscape of conflict resolution, offering parties efficient, cost-effective, and collaborative alternatives to traditional litigation. Through methods such as mediation, arbitration, negotiation, and conciliation, ADR has empowered individuals, businesses, and communities to resolve disputes amicably, while alleviating the burden on overburdened court systems.

As evidenced by landmark judgments, both domestically and internationally, ADR has gained recognition as a legitimate and effective means of dispute resolution, with courts and legislatures increasingly embracing its principles of party autonomy, minimal judicial intervention, and finality of outcomes.

Looking to the future, ADR is poised to further innovate and adapt to emerging trends and challenges. The integration of technology, the proliferation of online dispute resolution platforms, and the development of specialized ADR mechanisms are poised to enhance accessibility, efficiency, and inclusivity in dispute resolution processes. Moreover, as global issues such as environmental degradation and climate change continue to escalate, ADR will play an increasingly vital role in facilitating consensus-building and collaboration in addressing complex, cross-border disputes.

However, as ADR continues to evolve, it is essential to remain vigilant in addressing potential challenges, such as ensuring regulatory oversight, safeguarding procedural fairness, and promoting diversity, equity, and inclusion within the ADR field. By embracing these challenges and opportunities, ADR can continue to serve as a cornerstone of a fair, accessible, and efficient justice system, fostering peace, stability, and social cohesion in an increasingly interconnected world.

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[1] ‘Arbitration award’ defined under sec.2(1)(c) of Arbitration and Conciliation Act, 1996
[2] sec.89 of CPC proclaims that the settlement of dispute outside of court.