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"SCOPE AND FUTURE OF ALTERNATE DISPUTE RESOLUTION"

A PAPER BY –

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I am highly grateful to Dr. Panckaj Garg, Founder and Advisor of Jayoti Vidyapeeth Women's University for giving this opportunity to write research paper on ADR. DR Panckaj Garg helped me in enriching my knowledge base and given me all the necessary support and encouragement to do this project.

ABSTRACT

Alternative dispute resolution (ADR) means any method of resolving disputes without litigation. It refers to any means of settling disputes outside of the courtroom. It typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continues to plague litigants, more states have begun experimenting with ADR programs. Some of these programs are voluntary, others are mandatory.

While the two most common forms of ADR are Arbitration and Mediation, Negotiation is almost always attempted first to resolve a dispute. It is the preeminent mode of dispute resolution.

ADR procedures are usually less costly and more expeditious. They are increasingly being utilized in disputes that would otherwise result in litigation, including high-profile labor disputes, divorce actions, and personal injury claims. One of the primary reasons parties may prefer ADR proceedings is that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions. It also allows parties to come up with more creative solutions that a court may not be legally allowed to impose.

Alternatively dispute resolution (ADR), typically denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties to come out to an agreement short of litigation: a collective term for the ways that parties can settle disputes, with the help of third party. However, ADR is also increasingly being adopted as a tool to help settle disputes alongside the court system itself.

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ADR includes informal tribunals, informal meditative processes, formal tribunals and formal meditative processes. The classic formal tribunal forms of ADR are arbitration and private judges. The classic formal meditative process is referral for mediation before a court-appointed mediator or mediation before a court-appointed mediator or mediation panel.

The Indian judicial system is under a lot of stress now because of several reasons but the most persistence one is the huge stack of pending cases. The number of cases being filed has shown tremendous increase in past years and the resultant is the delay of justice. Therefore, ADR has become the call of the hour to help the Indian judiciary in sustenance.

KEYWORDS- Negotiation, Mediation, Collaborative law, Arbitration dispute, litigation, court, law tribunal, mediator.

The scope and future of ADR are as follows-

- The field will become widely recognized as a true, independent profession.
- Family, community, business and other users will recognize and respect the profession for its quality and value and its capacity to address their needs.
- This will cause parties to spontaneously use neutrals to help resolve conflicts and negotiate contracts. There will be less reliance on a top-down approach.
- There will be an even greater use of 'other ADR' by arbitration institutions, driven by better-informed and more demanding clients.
- Users will choose to use ADR techniques, including mediators, to make deals.
- Greater respect for mediators and other problem-solving professionals will result in the visibly increased use of mediation by governments, on the political level, in State-Investor issues, in the UN and the World Trade Organization and in other highly public disputes that involve human rights and corporate responsibility and governments will see little or no reason to regulate mediation standards.
- Hybrids and collaborative negotiation will flourish, with more negotiations being based on collaborative problem-solving using advanced techniques and processes.
- There will be more work for dispute resolvers as users aim to reduce risk and cost.
- Litigation will be the new meaning of Alternative Dispute Resolution

RESEARCH OUTCOME

Alternative dispute resolution (ADR) provides parties in dispute the opportunity to work through disputed issues with the help of a neutral third party. It is generally faster and less expensive as compared to going to court.

There are a number of ways in which ADR proves advantageous. When used appropriately, ADR can:

(a). save a lot of time by allowing resolution in weeks or months, compared to court, which can take years.

(b). save a lot of money, including fees for lawyers and experts, and work time lost.

(c). put the parties in control (instead of their lawyers or the court) by giving them an opportunity to tell their side of the story and have a say in the final decision.

(d). focus on the issues that are important to the people in dispute instead of just their legal rights and obligations

(e). help the people involved come up with flexible and creative options by exploring what each of them wants to achieve and why.

(f). preserve relationships by helping people co-operate instead of creating one winner and one loser.

(g). produce good results, for example settlement rates of up to 85 per cent.

(h). reduce stress from court appearances, time and cost.

(i). keep private disputes private - only people who are invited can attend an ADR session, unlike court, where the proceedings are usually on the public record and others, including the media, can attend.

(j). lead to more flexible remedies than court, for example by making agreements that a court could not enforce or order (for example a change in the policy or practice of a business).

(k). be satisfying to the participants, who often report a high degree of satisfaction with ADR processes.

(l). give more people access to justice, because people who cannot afford court or legal fees can still access a dispute resolution mechanism.

INTRODUCTION

These are some things to take into account when considering whether to use ADR and which type is most appropriate for a person. ADR may not be suitable for every dispute, for example if the dispute involves a matter of public interest, it may be more appropriate to have a court judgment to set a precedent than to go for ADR.

Where a binding agreement is made (for example through negotiations or use of ADR), parties normally give up the right to go back to the court about the same matter. Similarly, an award made at arbitration is generally binding and cannot appeal except in limited circumstances.

Some agreements made at ADR may not be as easy to implement as a court or tribunal order. In some cases this can be addressed by having the terms of an agreement made into orders by consent by a court or tribunal. A person can also get legal advice or further information about other ways of

making ADR agreements and decisions binding. If ADR is not successful and one have to go to court in the end, trying ADR first might add to the legal costs. However, in general, ADR has very high rates of success.

RESULTS AND DISCUSSION :- The main motive of ADR is to create a fair and compatible alternative to our traditional judicial system. It can be seen as a fast track way of delivering justice.

An ADR mechanism has various advantages that are helping in its growth exponentially. It is affordable and easily available to people belonging to every strata of society, especially the poor people who cannot afford the litigation expenses. It is a much less time consuming process unlike the traditional system which takes years to deliver justice. It is free from all the technicalities of the normal court and doesn't require any expert knowledge. Moreover the feeling of losing is not there, hence all the parties go as winners in ADR.

Arbitration is more formal than Mediation and resembles a simplified version of a trail involving limited discovery and simplified rules of evidence. Prior to the dispute occurring, parties usually enter into a binding arbitration agreement or any other form of agreement with an arbitration clause, which allows them to lay out major terms for the arbitration process. If parties still have disputes about certain terms before entering into arbitration they can petition to a court to resolve a dispute. The arbitration is headed and decided by an arbitral panel or a single arbitrator, depending on the agreement of the parties. To comprise a panel, either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect third. Arbitration hearings usually last between a few days to a week, and the panel only meets for a few hours per day. The panel or a single arbitrator then deliberates and issues a written binding decision or arbitral award. Opinions are not public record. Arbitration has long been used in labor, construction, and securities regulation, but is now gaining popularity in other business disputes.

ADR has gained widespread acceptance among both the general public and the legal profession in recent years. Its rising popularity can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentially, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute.

Alternative dispute resolution (ADR) is generally classified into at least four types - Negotiation, Mediation, Collaborative law, and Arbitration. Sometimes, conciliation is included as a fifth category, but for simplicity may be regarded as a form of mediation.

Mediation is an informal alternative to litigation. Mediators are individuals trained in negotiations, which bring opposing parties together and attempt to work out a settlement or agreement that both parties accept or reject. It is not binding. It has also become a significant method of resolving disputes between investors and their stock brokers.

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CONCLUSION

While the report states that "the Rules and the case law have to date been too liberal to those who ignore ADR and in our undisputed view under-estimate the potential benefits of ADR", it also expressly states "we do not support the introduction of blanket compulsion in the sense of an administrative requirement that proof of ADR activity has to be provided as a prerequisite of any particular step".

As such, there is no severe change recommended to compel parties to try ADR.

That said, it is apparent that the working group is concerned about the current state of play and considers that ADR needs to be given a boost, with a harder look taken at those who ignore ADR. The move towards a "presumption" that ADR should be attempted together with the costs consequences for failure to mediate is likely to mean that we can expect more claims will be switched away from judicial determination.

Whilst it will take time for the report to be reviewed and discussed, and for resultant steps to be determined and undertaken, it is clear that ADR is in the upper hand. However, what is interesting in the report is the reminder that mediation is not the only form of ADR and it may be that we shall see more stress around these alternatives in the future such that, even if parties have good grounds to shun mediation, they may not have a good reason to turn down ADR altogether.

CO-RELATION WITH ANCIENT LAW

ADR is of two historic types. First, methods for resolving disputes outside of the official judicial mechanisms. Second, informal methods attached to or pendant to official judicial mechanisms.

Historically, the origin of ADR in India finds its root in the constitution of India. It is a quest to achieve the “constitutional goal' of achieving complete justice. It was based on Article 14 and 21 i.e. equality before law, right to life and personal liberty respectively and also takes into consideration the concept of equal justice and free legal aid from Directive Principle of state under Article 39-A of the constitution.

The main governing acts of ADR are Arbitration and conciliation Act, 1996, Legal Services Authorities Act, 1987 and Section 89 of the Civil Procedure Code.

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