

CHAPTER- I

INTRODUCTION

The thing which may be identified as a point of difference between the mankind and animals is the accessibility to justice. A society can never sustain in the absence of justice or reach to justice by the dwellers living within it. In any democratic set up there has always been a challenge for the State to secure and preserve the basic rights of the citizen as an obligation under the well-recognized principle of ‘social contract’. History has witnessed severe consequences in the cases of failure of the States in securing justice. From the Mahabharata and Attic tragedies to the works of Kafka and his successors, literary texts have repeatedly shown how human subjects are treated in relation to justice— assuming the roles of decision-makers, interlocutors, dispensers or victims.\(^1\) Since keeping a person away from justice always has been the root cause of revolt in the history of mankind, the importance of justice administration system cannot be underestimated. India has adopted an Anglo-Saxon jurisprudence, which provides for adversarial system as a basic constituent of the administration of justice. So in case of any dispute, the only panacea is the courts following the adversarial system. In the present time, it cannot be denied that there has been growing contraction in the credibility of justice administration system in India. The adversarial nature of the system clubbed with expensive nature of legal services; slow functioning of justice administration with piling

backlog and indescribable delay in settling the disputes are among the major causes responsible for the loss of judicial credibility to some extent as these factors generate a great sense of disappointment and helplessness to a common citizen in his thirst for securing justice. This poses a real question i.e. whether we should have a multiple doors courts or any other forms of mechanism which can assist the adversarial court system? This question takes us to the root of the problem as to how strong the foundation of the justice delivery system is. Indian adjudication system has been facing a problem of not imparting justice in proportion to the cases being filed. The pendency of the cases keeps on mounting day by day in Courts in India. Law Commission of India\textsuperscript{2} was of the view that on the advent of the Constitution of India, ever proliferating activities of the State, a rapid process of urbanisation, a large scale migration of population coupled with awareness of rights, all have contributed to the tremendous increase in the workload of the judicial system. However, the system functions without much of a change, completely devoid of modern management techniques and technological advances, neither of which has kept pace with the increase in the workload.

3.2 crore cases were pending in high courts and subordinate courts across the country while 56,383 cases were pending in the Supreme Court. It is also said that 74\% of the total 3.2 crore cases were less than five years old. Similarly, 20,334 out of the 56,383 pending cases in the Supreme Court were less than one year old.\textsuperscript{3} On an average, every year approximately 18 million cases are being filed


\textsuperscript{3} “3.2 crore cases pending in High Courts, Lower Courts” \textit{Times of India,} 20-12-2011.
and the average disposal is somehow more or less equivalent to the filing and does not contribute in decreasing the arrear.\(^4\) Number of cases has increased so fast that the entire adjudicative system is overburdened. For example in India, a vehicular crash takes place every three minutes and a death every six minutes.\(^5\) This kind of figure can be taken for knowing the true picture of the pressure on the Courts in India which keeps on alarming. A society that fails to provide justice and ignores imperative of ensuring equal access to justice to all is sooner or later but sure to invite frustration amongst its citizenry leading to loss of its credibility and ultimately running the risk of losing its legitimacy to some extent. In India, except litigants who move to Court just to delay the access to justice, others always give preference in making distance from the adversarial Court system that takes innumerable number of years and skyrocketed amount of expenses in most of the cases. According to an estimate, all pending cases in India would take a minimum of 324 years for final disposal provided no new suit or proceedings is filed.\(^6\) The road to justice in India is not just full of turns and twist, but also long and seemingly unending. Eminent jurist, Nani Palkhivala once said: “If longevity of litigation is made an item in Olympics, no doubt the Gold will come to India.” This state of affairs makes people cynical about the justice delivery process. Mark Twain once said: “If your only tool is a hammer, then every problem needs a nail.” It is now widely acknowledged that our litigation system requires drastic spring cleaning. This is not to minimize the role our Courts, specially the

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\(^4\) As per the of table given in Court News, Vol VI, Issue 1, Jan- March, 2011 evaluation.


\(^6\) Madabhushi Sridhar, Alternative Dispute Resolution Negotiation and Mediation, (2011).
superior courts, play in the promotion of the rule of law. Further, the adversarial system aims at upholding the one and rejecting the other, leaving the conflict between the parties unremedied. Disputes are inevitable, but litigations are not. Some believers of ADR have given ‘broken-telephone’ theory of dispute resolution that suggests that disputes are simply "failures to communicate" and will therefore yield to "repair service by the expert facilitator." The resolution of dispute can be done in diverse ways. Lawyers, as trustees of justice, can suggest simplified option to their clients, so that justice is neither denied nor delayed. There has been a consistent demand of Alternative Dispute Resolution system on the part of nations afflicted with this malady that as backlog of cases increases dissatisfaction escalates affecting the peace of society and also the smooth functioning of every agency and instrumentalities of the Government. Since disputes are unavoidable in any society, there is a pressing need to find swift and easy method of resolution. Disputes block development, disturb the peaceful conduct of human life and hence dispute sustained without resolution develops into a conflict beyond control under normal circumstances. Mr. Justice R.C. Lahoti (retd.) once said:

Now it is clear that the inlet (of water store) cannot be totally stopped. Can we at least increase either speed of

\[9\] Broken-telephone theory was implicitly illustrated in a speech by Rosalynn Carter describing the admittedly important work of the Carter Center at Emory University in Atlanta.
\[10\] Speech by her Excellency the then President of India, Shrimati Pratibha Devisingh Patil at the 19th Annual Convocation of the National Law School of India, Bangalore, 7-08- 2011.
\[11\] Hereinafter used as ADR.
the outlet or increase the number of outlets? Yes, we can increase the outlet. One such new outlet is ADR, which includes arbitration, mediation and conciliation.\(^{13}\)

All Government, indeed every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter.\(^{14}\) So there is a greater propensity for providing a stimulus to the existing adversarial court system by the ADR, if it is accepted with a pragmatic approach by all the stakeholders of the justice delivery system in India. ADR has an enormous potential for reducing caseloads by enhancing the effectiveness of settlement.\(^{15}\)

### 1.1 Meaning

According to Black’s Law Dictionary the word ‘Alternative’ means ‘giving an option’. It also refers to looking outside the adversarial courtroom setting to resolve some disputes. Similarly the word ‘Dispute’ means a ‘conflict’ or ‘controversy’. In the same manner the word ‘resolution’ means ‘a formal expression of an opinion’. In totality an inference may be drawn that ADR is an option other than the conventional adversarial method or mechanism for resolving a justifiable controversy.

ADR is a term, which refers to various procedures developed in US. Inspired by it, several countries including Australia, Canada, Germany, Holland, Hong Kong, New Zealand, South Africa, Switzerland and the United Kingdom have been using the said system

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13 Ibid.
14 Edmond Burke, in a speech in House of Commons on Conciliation with American Colonies as far back as 1775.
which encourages the disputants to arrive at a negotiated understanding with a minimum of outside help; its primary object being avoidance of vexation, expenses and delay and promotion of the idea of ‘access to justice’. In the words of Sir Laurence Street:16

ADR is not in truth alternative. It is not in competition with the established judicial system. It is an additional rage of mechanism within the overall aggregated mechanisms for the resolution of disputes. Nothing can be alternative to the sovereign authority of court system. We can, however, accommodate mechanisms which operate as additional or subsidiary processes in the discharge of the sovereign’s responsibility. These enable the court system to devote its precious time and resources to the more solemn task of administrating justice in the name of sovereign.

The research work presented herein under the title: “ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN INDIA: PROBLEMS AND PROSPECTS” is a study of justice administration in India pointing out the requirement and position of ADR (Alternative Dispute Resolution) in India as a strengthening mechanism and suggests the necessary recommendations. This study is based on the precept of the Constitution of India, United Nation Commission for International Trade Law (UNCITRAL), the statutes enacted by the legislature and procedure and practice developed by judicial wing of the Government of India which has the responsibility

of administering justice.

Research on this topic has been carried out with an inter-disciplinary approach covering all the relevant provisions related to the ADR which has become the need of the hour in India. With a view to explain the area of study lucidly, the researcher considers it necessary to offer at this stage a brief comment on the segments of the law involved in this study, and the domain of the research with which they are related.

1.2 Locating ‘Justice’ in the Constitution of India

The Constitutional law is the very fundamental law of land. It establishes the various branches of Government conferring powers on them for various purposes at the same time it imposes limitation on the authority of the State. As far as the Constitution of India is concerned, starting with the Preamble, which is considered to be a key to the mind of the makers of the Constitution, justice has been given a topmost priority in the list of subjects of security. Justice is the cornerstone of any society. Under Preamble of the Constitution of India, justice has been coupled with words— social, economic and political, which highlighted its paramount importance.

Part III of the Constitution of India deals with the Fundamental Rights including the principle of equality, according to which the State shall not deny to any person equality before law or equal protection of the law. Further the Article 21 of the Constitution of India is also inclusive of the concept of right of speedy trial, inexpensive trial, fair trial or reach to justice as interpreted by the judiciary in India.
Likewise Part IV of the Constitution of India, which pertains to the Directive Principles of the State Policy, gives due importance to the social order in which social justice may flourish. Under Article 38 of the Constitution of India there is an obligation on the State to secure a social order for the promotion of welfare of the people by imparting social, economic and political justice which shall inform all the institution of national life. Further, Article 39A provides that State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 40 of the Constitution provides for the organization of village panchayats, which is based upon the long rooted Indian tradition of having Pach Parmeshwar for settlement of disputes. Likewise Article 51 manifestly provides for the encouragement of settlement of international disputes by arbitration (a mode of settlement of ADR).

1.3 United Nations Commission on International Trade Law (UNCITRAL)

The General Assembly of the United Nation recommended that:

All states give due consideration to the model law on international arbitrating in view of the desirability of the uniformity of the law of arbitral procedure and the specific needs of international commercial practice.\(^\text{17}\)

A number of countries enacted law to give legal force to the UNCITRAL Model Law within their jurisdiction. In pursuance of the

\(^{17}\) Vide Resolution 40/72, dated December 11, 1985.
constitutional mandate and the abovementioned UN resolution, India passed its Arbitration and Conciliation Act, 1996.\(^{18}\) The preamble of the ordinance expressly manifested that: “It is expedient to make law respecting Arbitration and Conciliation, taking into account of aforesaid Model Law and Rules.”

Furthermore, the European Commission suggests that:

ADRs offer a solution to the problem of access to justice faced by citizens in many countries due to three factors: the volume of disputes brought before courts is increasing, the proceedings are becoming more lengthy and the costs incurred by such proceedings are increasing.\(^{19}\)

### 1.4 Historic Milestones at National Level

In order to let the concept of ADR in India flourish, at national level policymakers have taken some major strides through enacting some statutes in this field. Consequent upon the mandate of UNCITRAL, India has substituted Arbitration Act, 1940 with Arbitration and Conciliation Act, 1996. There have been some amendments in the Civil Procedure Code of India towards meeting the goal of flourishing of ADR. The Legal Services Authorities Act, 1987 was also a significant paradigm towards the promotion of *Lok Adalats*.

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\(^{18}\) The president of India promulgated ordinance on March 26, 1996. The Ordinance was replaced by *Arbitration and Conciliation Act, 1996*.

1.4.1 The Code of Civil Procedure, 1908

The Code of Civil Procedure as amended in 1999 inserted section 89,\textsuperscript{20} which deals with the provisions for the settlement of the disputes outside the Court. Section 89(1) empowers the courts that when it appears that there exist elements of a settlement between the parties, to formulate the terms of settlement and give them to parties for their observations and after receiving such observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for arbitration, conciliation, judicial settlement through \textit{Lok Adalat} and mediation. Likewise Order X\textsuperscript{21} of the Code of Civil Procedure, 1908 also provides for the procedure to be adopted for settlement of disputes outside courts.

1.4.2 Legal Services Authorities Act, 1987

The enactment of the Legal Services Authorities Act, 1987 gives special status to the functioning of the \textit{Lok Adalat} and also provides for the provision of legal aid in order to realize the goal of access to justice for all. The Act also provides for the pre-litigation settlement whereby the disputants are not required to go to the Courts first rather without moving to the Courts the disputes may be resolved by taking the recourse of the legal services institutions.

Compliance of the Constitution of any nation always remains the \textit{sine qua non} for the smooth working of the democratic institutions. Present study reflects upon the precept of the Constitution dealing with the security of the justice or access to justice. Society has a tendency of change from static to progressive

\textsuperscript{20} As amended by Act 46 of 1999, with effect from July 01, 2002.

\textsuperscript{21} Inserted, \textit{ibid}. 
and this causes a need for law to be changed accordingly for meeting the daunting challenges of contemporary world. Since the Constitution of India provides for a unique scheme for the security of justice to the citizen, it is of utmost importance to study the relevant provisions of it and further to analyze them. Likewise the initiatives taken in the form of enactment of various statutes, to meet the constitutional mandate, require a bird’s eye view for the present study. To meet this requirement, the statutes like: Arbitration and Conciliation Act, 1996, Legal Services Authorities Act, 1987, the Code of Civil Procedure, 1908 etc. have been taken to develop the base of the present study. Since the above mentioned statutes need an analytical approach for reaching towards the research-based conclusion, the present study reflects a healthy correlation between the existing laws and topic of the research. The present topic has been designed in order to meet out the existing problems faced by present judicial administration. The present study also focuses on the recent development in the realm of justice delivery system. The targets of this work being the study of justice adjudication system with the emergence of the ADR in the tune of present demand of curbing the existing lacunae in getting justice.

1.5 Access to Justice: A Significant Tool to ‘Welfare State’

The Latin maxim ‘salus populi suprema lex’, which means ‘welfare of the people’, is the supreme law and being supreme it cannot be ignored by any wings of the Government. Democracy
survives where Rule of Law\textsuperscript{22} prevails. Judiciary being the protector and guarantor of the Constitution is also accountable to the people at large through Constitution. The first and foremost duty of the judiciary is realizing the goal of access to justice. Access to justice as a basic human right emerges with the rise of ‘welfare state’ where it is held that right can not be actualized without equal and just access to legal system. The whole concept of ‘welfare state’ is bound to remain on paper where access to justice is denied. Law and justice, which seem to be synonymous to each other, though not, are the sine-qua-non for a democratic society. Law is the tool for securing justice, which later on promotes fraternity. The harmonious relationship between law and justice is the cornerstone of a society. In India, though paramount importance has been given to the administration of justice by providing equal access to justice in black and white, right from the Preamble of the Constitution of India which enshrines justice—social, economic and political as an objective to be achieved. A number of statutes have been incorporated for providing justice. Contrary to the same, a large number of people from different segments of the society are far away from plucking the golden fruit of justice because of their not having the ladder or access to justice. In the contemporary society, the existing gap, towards realizing the goal of social, economic and political justice, because of the problems suffered by disadvantaged, call for a mechanism in the form of ADR. ‘Justice delayed is justice denied’ perhaps pertinently describes the

\textsuperscript{22} The ‘Rule of Law’ is recognized as one of the very important characteristics of the British Constitution. It means that in Britain the ordinary law should be everywhere supreme and every person is subject to the ordinary law courts.
Indian judicial system. Indian judiciary has been facing problems like delay in disposal; expensive in nature; complex in procedure etc. which pose a challenge to access to justice and need a respite in the form of ADR. Pt. JawaharLal Nehru once said, “the defect really lies with the judicial structure that we have inherited from the British which entails inordinate delay and expense…”23 Pt. Nehru reiterated his views on tardy judicial process in India by saying:

   I remember reading once a famous British author. He said “If I am stopped by a stranger on the road who demands my gold watch and chain I will refuse to part with it… But if he had said: ‘I will take you to the court. I will hand over my watch and chain and go away...” it would thus appear that to an average citizen the idea of going to a court to fight a long suit is distasteful. If that distrust of the law courts is removed, they can function much more effectively. (1964)

The present study explores the avenues in the form of ADR system for playing a supplementary role with the present adversarial court system for realizing the concept of access to justice for all. The ADR system works on the mutual consonance of the disputing parties and it helps the parties in reaching towards the ‘win-win situation’ by amicable settlement of disputes. The words of John F. Kennedy also need to be understood for using the ADR in right direction. He said: “Let us never negotiate out of fear but let us never fear to

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23 Nehru’s speech in Parliament on the Prevention Detention Bill on August 2, 1952. See also Alice Jacob, “Nehru and Judiciary” JILI, 1969.
The present world of globalization has enlarged the need of the business houses for an alternative to court-based litigations governed by the law and procedure. Further lawyer being an officer of the court owes an obligation towards public at large in contributing towards realizing access to justice. Lawyers are known as mouthpiece of the society; therefore, they reflect the whole society and its judicial process. Society has witnessed a sea change in the nobility of this profession. Earlier, role of an advocate was more to act for the social cause and for social welfare rather than for the fee-oriented services which are in practice nowadays. Lawyers charge a sky-rocketed fee, which is not in the reach of the disadvantaged. Lord Denning while quoting Chaucer said: “ever since lawyers have been going, the layman has complained of their delays: and for just so long, the lawyers have been making excuses.

The most common excuse is their busyness.” Quoting Geoffrey Chaucer, Denning said:

No-ther so busy a man as he thernas,
And yet he semedbisier than he was.²⁵

If you are busy, you are successful: if you are not busy, you are a failure. So it is important to ‘some bisy’.²⁶ This practice may be highlighted in today’s context also. In a study it was found that a number of advocates used the services of touts in order to increase their clientage. In that study, a young advocate in Delhi said that

²⁴ Quoted by John F. Kennedy in an inaugural address, Jan 20, 1961.
²⁶ Ibid.
competition between lawyers was such that they generally engaged a ‘gentleman’ to go in search of clients and that he got a kick-back of as much as half of the fee.²⁷ Some believe that lawyers take advantage of the legal illiteracy of the poor peasants, disadvantaged, subalterns and marginalized people. A Socialist Party advocate in Puri said if "you don't have ten touts you have no practice."²⁸ Lawyers are the backbone of the judicial system and are responsive towards people. Not insignificant among, is the growing interest among advocates in the use of alternatives to traditional Court litigation to resolve their clients’ disputes more efficiently and economically, with less risks and better results.²⁹ Only a litigation lawyer knows too well the frustration brought about by frequent and long adjournment of cases in Courts. Frequent adjournments lead to lengthy delays in disposing of cases, while long adjournments occasioned by judges’ busy schedules or counsel’s unnecessary applications intending to delay the proceedings or to buy some time for their clients, do not help matter. The result has been a huge backlog of cases dating back to years.³⁰ Many advocates said that they often recommended and tried to achieve settlement out of court.³¹ Advocates appeared to have a clear understanding of their position as mediators...,³² which if utilized, could be of great worth for breaking the long rooted backlog of cases. This led George Bernard Shaw to quip that, all professions

²⁸ Ibid.
³¹ Supra note 27.
³² Ibid.
are conspiracies against the laity.... In a society where justice, in theory at least, is held up as the highest ideal, lawyers", it is said, "are always looking for technical and sometimes dubious means of bending the law to their advantage." The criticism against the profession is as old as the profession itself. William Shakespeare said that "the first thing to do, let us kill all the lawyers." ADR is premised upon the win-win situation which is the outcome of mutual consensus. Western countries have devised a roadmap in the form of ADR in last two decades for curbing the problem of denial of access to justice.

The situation in India is more deteriorated as compared to the rest of the world as far as the satisfaction of public at large is concerned regarding the justice delivery system. Though the ADR system is not new to India, but the statutory prevalence of the adversarial system once again gave birth to the need of adoption of ADR system. ADR, an old wine in a new bottle, is the need of present time in order to crack bottleneck in the justice delivery system.

India had started its new journey in the field of ADR by passing the statutes like Constitution (42nd Amendment) Act, 1972 which inserted Article 39A, Legal Services Authorities Act, 1987, Arbitration and Conciliation Act 1996, Amendment in the Code of Civil Procedure, 1908, Amendment in the Code of Criminal Procedure, 1973, etc. which read with the path-breaking judicial pronouncements had directed the speedy, inexpensive and consensual

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justice. However, to the contrary, The World Justice Project (WJP) Rule of law Index, 2012-2013, having surveyed 97 countries with 2500 experts and 97,000 other individuals from around the world seems to be a rear view mirror for all the countries surveyed. The WJP uses a working definition of the Rule of Law based on four universal principles. One of the principles Index has taken is:

Justice is delivered by competent, ethical and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the makeup of the communities they serve.

The World Justice Project (WJP) Rule of Law Index measures, as claimed, adherence to the Rule of Law principles through a comprehensive and multidimensional set of outcome indicators that reveal the extent to which these principles are observed in practice. Total 48 specific indicators taken into consideration consist of— civil justice is not subject to unreasonable delay, civil justice is free of discrimination, of corruption, of improper government influence, criminal adjudication system is timely and effective, ADR are accessible, impartial and effective etc.

In the findings of this Report, Indian Civil Court system ranked poorly (ranking 78th out of 97 countries), mainly because of deficiencies in the areas of court congestion, enforcement and delay in processing cases. Order and security—including crime, civil

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35 Mark David Agrast, Juan Carlos Botero, et. al., WJP Rule of Law Index (2012-13). The World Justice Project (WJP) Rule of Law Index is an assessment tool designed by the World Justice Project, an independent, Non-Profit Organization that offers a comprehensive picture of adherence to the Rule of Law. The Index and its findings have been referenced in major global media, including The Economist, The New York Times, The Washington Post and El Pais. WJP offices are located in Washington, D.C. and Seattle, WA USA.

36 Ibid.
conflict, and political violence—is also a serious concern in India as it is ranked second lowest in the World.\footnote{Ibid.}

In the background of these kinds of excruciating data, which keeps on getting alarming, the present study highlights the various contours of ADR system with the suitable suggestions.

1.6 Research Methodology: Means and Approaches to the Research

The methodology used in the present research work is basically intended to be comprehensive and doctrinal. In the context of research methodology opted for this research study, the basic object of research is to arrive at certain conclusions and to give suggestions on the basis of the study and it has been possible by getting material which is informative on the basis of proper understanding of the relevant document on the theme of administration of justice and on the ADR. Analytical method,\footnote{Analytical Research deals with about the present law.} comparative method\footnote{Examination of doctrines, rules and institutions of developed legal system.} and critical method\footnote{Study of Present Law and Needs of the society.} have also been adopted and applied to examine all the relevant aspects & related problems of adversarial court system. The research work is based on the studies of primary as well as secondary sources of information. The Primary sources are taken in the form of legislations of different countries including India. Secondary sources are available and have been utilized in the form of judgments, journals, periodicals, magazines and articles. While studying the meaning and origin of ADR, the researcher explored the provisions of different enactments, articles, journals and definitions given by
different jurists and academicians in order to project clear picture on the subject of ADR system in India.

According to the need of time interpretations of the concept given by the Supreme Court of India as well as different Courts have been elaborately discussed. While studying the concept of ADR, comparative view of developed countries like United States of America and United Kingdom have been considered, during research work. Emphasis has been given to cover all relevant areas for the study of ADR system in India which till date have not been explored to the desirable extent.

1.7 Rationale of the Study: Validity and Relevance

Since we live in a progressive society which keeps on changing day by day rapidly, the concept of justice also undergoes a change. In other words, changes in society have their impact on various matters of justice. As noted by Winkler CJ (Chief Justice of Ontario):

If litigants of modest means cannot afford to seek their remedies in the traditional court system, they will be forced to find other means to obtain relief. Some may simply give up out of frustration. Should this come to pass, the civil justice system as we know it will become irrelevant for the majority of the population. Our courts and the legal profession must adapt to the changing needs of the society that we serve.41

In situation like this the best method of understanding the

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strength or weakness of the justice delivery system is that of having a look at the justice adjudication system as a whole. Hence, the study covers not only the system already established but also the developments taking place in various matters. There are several institutions making their own efforts to improve the justice delivery system by opting or suggesting ADR system such as Indian Council of Arbitration, International Centre for Alternative Dispute Resolution, Law Commission of India, Ministry of Law and Justice etc.

The reason why, in the present study, the ADR system has been linked with the adversarial court system for assisting the later one, is that the Constitution of India spells out in its Preamble the basic postulates which the State has to pursue, and embodies in it various provisions, a large number of principles and procedures with regards to the organization and the functioning of justice delivery system by using the adversarial system, which in the contemporary world seems to be on receiving end. The existing bottlenecks in the form of delay, exorbitant expenses, procedural technicalities etc. have accelerated the need of having a complimentary mechanism with adversarial court system. Though India has seen the initiation of the ADR system in the form of some statutes, still there is a need to have a strong movement for multiplying the efforts for using ADR in various walks of life of human beings. Presently the ADR system in India with the courts has been facing various problems and requires a roadmap for proper utilization. That is why, the present study has been planned with the topic: “Alternative Dispute Resolution System in India: Problems and Prospects”.
The present study is an attempt to provide concrete solution to the problems like delay in justice, expensive nature of justice and technicalities in getting justice etc. by giving a special and due importance to the Alternative Dispute Resolution system, which is the need of the present hour in order to comply with the pervasive need of securing equal access to justice for all. The present study has the aim of establishing such conditions in the society in which there is a security of law and order. The ADR system gives sustenance to the Rule of Law and meaning and significance to the idea of justice. The problems faced by the present adversarial court system and also by the ADR (to some extent) require a research based solution and the present study is an attempt in this regard.

What has influenced the researcher to select this topic is the criticism very often heard that Indian justice delivery system, which follows the adversarial approach, has failed in imparting justice within time to the citizens of India, in spite of the fact that an average judge in India is amongst the best performers in the world in adjudicating the largest number of cases annually.

The researcher is interested to know how far the failure of justice delivery system in India can be attributed to the principles embodied in the Constitution. On account of the problems faced by the adversarial court system and by the ADR (to some extent due to the lack of a perfect roadmap) arising in regard to the official managing the justice delivery system, there is justification for a thorough investigation into the organization and functioning of the system.
1.8 Framework of the Study

In order to keep the research work within feasible limit, the study has been divided into six chapters. Chapter I deals with introductory provisions which highlight the meaning, need, rationale and importance of the present study. The research methodology used in the present study has also been discussed in this chapter.

‘Justice’ is the cornerstone of every society. The security of justice alone may be the single foremost factor for declaring a state a welfare state. Justice delivery system in India with the adversarial court system has been tackled along with the concept of Justice and Alternative to Litigation in Chapter II which highlights various mechanisms of ADR. These various modes of the ADR may be fruitful to meet the standstill problems like mounting arrear of backlog.

Adversarial court system provides for the lose-win situation, wherein third person as appointed by the State for this purpose after hearing the parties to the suit adjudicate by applying his/her judicial prudence within the parameter of complicated procedures or technocratic principles of statutory law. Arbitration as a mode of ADR is also an adjudicatory mechanism but, it is quite different from the adversarial court system as the arbitrator is to be appointed by the parties to dispute and the place and manner etc. also to be decided by the parties itself. All these issues related to arbitration have been discussed in Chapter III which deals with Arbitration: An Adjudicatory form of ADR.
The non-adjudicatory modes of amicable settlement of disputes always provide for a suitable platform for the parties for outside Court settlement. Chapter IV deals with Non-Adjudicatory Modes of ADR: Conciliation, Mediation and Negotiation.

India has given to the world a home-made mechanism for resolution of disputes in the form of Lok Adalat. Though the concept of Lok Adalat is not new to India but it got a statutory recognition by passing of Legal Services Authorities Act, 1987. Society in India witnessed the prevalence of Panch Parmeshwar for settling the disputes from the time immemorial. Legal aid movement which also incorporates the emergence of Lok Adalat has been dealt with in Chapter V.

Chapter VI is devoted to conclusion and suggestions drawn from the present study. ADR being a supplementary to adversarial court system may be expedited for realizing the goal of access to justice for all.