PREFACE

"All progress is born of inquiry. Doubt is often better than over-confidence, for it leads to inquiry, and inquiry leads to invention" is a famous Hudson maxim in the context of which the importance of research can well be understood. The significance of legal research in the process of law reform is, by now, well known to all those who have something to do with law. Alternative Dispute Resolution (ADR) is the hot new socio-legal concept of the 1990s. However, ADR is a topic that received little systematic study in our country. Most thesis and books are concentrated on Arbitration, Arbitration and Conciliation Act 1996 and Lok Adalats etc. There is no single text available which can provide a coherent and concise exposition of the subject of ADR. This study is a sincere attempt in this direction. Quite often well all hear that "A problem clearly stated is a problem half solved." This statement signifies the need of defining the objectives of research. The objectives of this research work are: to gain familiarity with the phenomenon of ADR and to achieve new insights in to it, to make an exploration in depth of the position of Alternative Dispute Resolution systems in India, to find out the course of ADR evolution, to find out the existing statutory law and case law on ADR, to find out what the law is in other countries and considering whether it can be drawn upon, with or without modification, to collect the primary and secondary data to show the working of ADR, to find out the defects in the existing law and suggesting reforms, to study how much relief is available to the litigants under those avenues, to study role of ADR in India in resolving disputes, to study and evaluate ADR as an efficient, cheap speedy and effective conflict resolving system, to study the factors responsible for growth of ADR in India, to study the image of ADR in the minds of common people.

Regarding the organisation, the present treatise has been divided in to 8 Chapters. Chapter 1 at the outset introduces the concept of ADR. At the beginning basic features of a legal system are stated and then the need of Adequate Justice Dispensing System is described. The meaning and definition of the term ADR is elaborately discussed. The term ADR is also controversial. Nomenclature in the dispute resolution world has gone through many transitions. Different versions of ADR have been explained to show that ADR is not just Alternative Dispute Resolution. ADR system seeks to provide cheap, simple, quick and accessible justice. In India ADR Movement has taken birth, the main objectives of this alternative movement have been given. Necessity of ADR is illustrated in detail. An attempt is made to compile a list of all the forms of ADR. The present researcher has divided the various forms of ADR in to three categories for convenience namely; Indigenous
Techniques, Modern Techniques and Hybrid Techniques. Lastly a review of Chapter 1 has been given.

The present researcher has attempted to trace the historical evolution of ADR in Chapter 2. The Law Commission in its Fourteenth Report has stated that there was a hierarchy of courts in ancient India. Different kinds of Courts like Kula (Gatherings or Family Council), Shreni (Corporation), Gana (Area Assembly) etc. which existed in ancient India are outlined. ADR during Mughal period is also analyzed. The position of Nyaya Panchayats in ancient India, British period and in Independent India has been examined. An attempt has been made to view ADR in British Regime and different regulations, Civil Procedure Codes, Law Relating to Contracts, Specific Relief Act 1877, Arbitration Act 1899, and Arbitration Act 1940 have been analyzed.

Position before 1996 and the factors leading to Arbitration and Conciliation Act 1996 like Criticism by Courts, Recommendations of PAC, Recommendations of Law Commission and Malimath Committee, Meeting of the Chief Ministers and Chief Justices, Representations from Various Bodies, Calcutta Resolution 1994, UNCITRAL Model Law have been elaborated in detail. The Bill on Law of Arbitration and Conciliation has also been analyzed along with its introduction to Rajya Sabha and Lok Sabha. The Arbitration and Conciliation Act 1996 being based on the Model Law which is also broadly compatible with the Rules of Arbitration of the International Chamber of Commerce puts India on the International map of arbitration. The salient features of Arbitration and Conciliation Act 1996 have been studied and this Act has also been compared with Model Law. Further historical background of ADR at International Level has been traced. Lastly, as a summary of whole chapter a review has been attached.

Chapter-3 entitled “Need of Alternatives-A Conspectus of Indian Judicial System” explores the various reasons which paved the way for ADR in India. At the outset the importance of justice and its administration is stated. A bird’s eye view of Indian judiciary is taken with respect to dispensation of justice. The judicial panorama has been given a close look and various pitfalls of present Indian judicial system like Problem of Arrears, Ratio of Judges to Population, Adversary System – Need of Inquisitorial System, Delay in Disposal of Cases, Outdated Methodology & Need of Judicial Training, Litigation- A Costly Affair, Ordinary Litigant-The Neglected Segment in Judicial Anatomy, Procedural Clap-Traps: Complex Formalities, Quest for Justice-Decision Not Always Just and Outdated Laws have been examined in full detail. An attempt has been made to critically analyze the concept of Negotiated Justice i.e. ADR through its advantages and disadvantages. At last, as a reminder a
review has been given.

Chapter 4 intends to evaluate the National Statutory Framework. The provisions for promotion of ADR, given in Constitution of India, Code of Civil Procedure 1908, Family Courts Act 1984, Hindu Marriage Act 1955, and Industrial Dispute Act 1947 have been examined at length. The legislative sensitivity towards providing a speedy and efficacious justice in India is mainly reflected in two enactments. The first one is the Arbitration and Conciliation Act, 1996 and the second one is enactment of Legal Services Authorities Act; 1987. These two Acts have been discussed with their salient features. At the end, as usual a review has been given.

An attempt has been made in chapter 5 to trace the implementation of Alternative Dispute Resolution at international level. The current position of ADR along with historical backdrop in United States of America, United Kingdom, Australia, Sri Lanka, Hong Kong and New Zealand has been examined. It is also considered whether it can be drawn upon, with or without modification. The various institutions have come up at global levels which are promoting ADR. The necessary information about these international organizations has been supplied. The functioning of the Online ADR System has also been taken up along with an assessment of famous online institutions. At the end of this chapter, a review containing the important points in the chapter has been attached.

In India, the quest for justice has been an ideal, which the citizens have been aspiring for generations down the line. Chapter 6 throws light on the various steps taken at national level for implementation of ADR. The development of tribunals as an alternative has been discussed. Why quest for ADR is quest for justice? This question is answered w.r.t. India. In India Legal Services Authorities have been created at National, District, Taluka levels to organize Lok Adalats, Legal Aid Clinics and Legal Awareness Camps. They are doing commendable job. Implementation of ADR in 25 different Indian States has been analyzed. Various Conferences, Symposia and Workshops held in India for the promotion and development of ADR have been evaluated along with their contribution.

The position of Nyaya Panchayats as existed in India has been elucidated. The reasons for their failure along with an analysis of various committees’ reports have been stated. The concept of Gram Nyayalayas and the various steps taken by state governments for their implementation have been noted. An elaborate discussion about Lok Adalats containing its history, methodology, types of cases taken, resources and achievements of Lok Adalats has been made. An attempt is made to analyze Mobile Courts along with their impact on people and administrative departments. The Conciliation Courts in Himachal Pradesh have been a
success. These Conciliation Courts have been discussed with their suitability to other states as well. The contribution of various national organisations like International Centre for Alternative Dispute Resolution, Indian Council of Arbitration, Malaviya Centre for Peace Research and International Chamber of Commerce, INDIA etc. have been examined. The future of Online ADR in India has also been analyzed. Lastly, a review has been given to sum up the whole chapter.

The formal courts dispensing justice have not lost ground in the settlement of disputes and still play a major role in interpretation and laying down rules of law and justice. Judicial Approach towards ADR has been undertaken in chapter 7. The various judgments of the Hon'ble Supreme Court of India and various other High Courts of different states in India given in this chapter will help jurists, lawyers and students in understanding the concept and law relating to arbitration and conciliation in India.

Chapter 8 addresses the conclusions and suggestions arrived at as a result of discussions in the previous chapters. In conclusions, an appraisal of whole study is given. Infact, it is the final summing up. It is earnestly hoped that the conclusions drawn and the suggestions presented on the basis of the critical study in this discourse will be a real contribution to the field.

The methodology of research differs according to the subject. “If we dig a garden, we use a spade, if we search for oil, we employ a rock drill. In other words, the choice of tools depends on depth to which we intend to probe.” The study is doctrinal in nature but wherever feasible data is supplied to make the study real and effective. This is the only approach to study the functioning and effectiveness of ADR as a dispute resolving system in India. Therefore, this monograph is an attempt to draw a complete picture of ADR as a justice giving mechanism in India. The authorities, both Indian and foreign, that have been relied upon and used as a source material have been referred to and acknowledged in foot-notes. The sources of information are duly recorded in Select Bibliography which may be useful for the more inquisitive readers.

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