CHAPTER-8

8.1: CONCLUSION AND SUGGESTIONS

The disputants approach the Courts of Law to seek justice. They face all the legal, physical as well as psychological snags with a strong hope that they can seek justice from the Courts. The Judiciary owes a parallel obligation to them to deliver just, quick, reasoned and inexpensive justice shorn of complexities of procedures. This belief prevents the disputed parties from taking law into their hands and thus helps in maintaining law and order of the society. Judiciary, as a means of dispute resolution is recognised as a noble service, with the aim of providing the litigant public quick and effective resolution of their disputes. It is a mechanism of enforcement of rights and obligations of the individuals in a society. Thus, the Courts perform the function that is essential for the functioning of Polity or Country. Therefore, an effective and efficient judiciary is an essential foundation of good governance. However, at present, there is a growing crisis of judicial delay and arrears before the Courts.

While finding solution to the problem of Court conjunction, backlog and judicial delay, it was kept in mind by the researcher that, the element of judicious, fairness, equity and compassion cannot be allowed to be sacrificed at the altar of expeditious disposal. Sheer quantum of justice without quality would be disastrous. Thus, the saying that, justice delayed is justice denied is taken into consideration with the fact that justice is to be imparted. Justice cannot be hurried to be buried. Thus, the case before a Court of law is to be decided and not just disposed off. While to some extent a judge could be flexible with technicalities coming in the way of providing substantial justice, but the entire procedure
governing a civil or criminal proceeding cannot be considered to be a mere formality or technicality. The due process of law cannot be compromised in an attempt of providing speedy justice.

In the face of such critical nature of the problem, the requirement of, awareness of the problem and its consequences is getting the wider consensus along with some judicial opinions that, the judicial crises due to backlog and delay are undermining the fundamental goals of the adversarial litigation process. The litigations filed before the Courts is increasing day-by-day because of various contributing factors. Simultaneously, the Courts of law are facing the challenges of judicial arrears and delays by the increased rate of filing and decreased rate of disposals. Because of which, there is the problem of judicial crises along with the discontent and unrest among the disputant public. It is an undeniable fact that not every dispute needs to be heard by a judge or in a Court. As a result, the different ADR methods can be given importance so that smaller number of cases actually comes before the Court for trial. The researcher conducted the study to value the role of different alternative dispute redressal methods in reducing the increasing burden on Courts, which was due to the increased filings and slower rate of disposals, resulting in backlogs, delays and judicial crises. The research was consequently designed towards the study of different dispute redressal methods, which can appropriately facilitate as alternative to the Court in enabling the access to speedy justice and there by reducing the judicial crises arising out of Judicial delays and arrears.

From the research on the various aspects of the research problem as reported under the previous chapters of this thesis it is thus concluded that, the alternative dispute redressal methods when compared to Court has a simple procedure of redressing the grievances of the disputed
parties. The procedural delay in the Courts of law has turned out to be one of the major contributing factors to the problem of backlogs before the judiciary. Procedural delay is seen to occur mainly in these four stages, Firstly, before the trial begins with the delays in the service of summons, delays due to the filing of written statements and documents, delay in framing of the issues. Secondly, delays occur during the trial stage, due to the non-attendance of witnesses, non-appearance of lawyers, lengthy oral arguments, arbitrary adjournments, and finally the delayed judgments. Thirdly, at the appellate stage by the extensive use of appeals the Courts face the problem of judicial delay and arrears. Litigants has the right of a first appeal on the matters of facts or matters of law to lower Courts, and the second appeal to High Courts on the matters of law only. If a single judge hears the appeal to the High Courts, the party can file a further appeal known as letters patent appeal to a division bench of the respective High Court. Subject to caveats, appeals can be made directly to the Supreme Court. Delays also occur in execution proceedings. The Courts tend not to pay attention to the execution of decrees, because the execution does not count towards the standard case disposal. Court decisions that are not backed up with a threat of being enforced by the State in a timely manner do not give any incentive for compliance, which ultimately undermines the Court system. All these factors if continued as such, will lead to frustration and dissatisfaction among the litigant public and they would gradually tend towards loosing their faith in the present judicial setup. These issues if left unchecked can also lead to the emergence of unethical and unsocial practice, eventually destroying the peace, harmony and the social setup of the Nation. Hence, it was the high time to conduct the study in order to find a solution to the problem of judicial crises arising out of judicial delays and arrears with the help of different alternative dispute redressal methods.
Form the said research it is found that, to deal with and for finding some appropriate solution to the problem of judicial crises arising out of delays and arrears, new ways are being introduced in the Courts of law. For example, firstly, there is the introduction of systematic Court management techniques in the Courts of law for removing inactive cases from the files. Secondly, there is the introduction of amendments in the Code of Civil Procedure (Amendment) Act 1999 that streamlined the procedure law followed by the Courts. Introduction of changes in the procedural laws and giving finality to the decisions of the Courts at lower level was done, in order to enable the targeting of institutional improvements on the cases that render higher social benefits. The enlisted steps are not exhaustive; there are also other steps that are being taken to find a solution to the problem of judicial arrears and delays. Steps are also taken for improving the available infrastructure for the dispute resolution process, so as to increase the rate of case disposal. These steps include the increase in the judicial capacity by filling up of the already existing vacancies and along with it increasing the number of judges through the establishment of new permanent and temporary Courts. The Indian Supreme Court has also named vacancies as the “root of the problem” of backlog and delay. The 120th Law Commission Report recommended a five-fold increase in judicial strength at all levels of the Indian judiciary which means a needed transformation from 10.5 to 50 judges per million of population. In such a situation, retired judges might be brought in for the temporary Courts, which can catch up with backlogs, without requiring a fixed continued future cost. Fast track Courts can be instituted as an immediate, cheaper and faster alternative to fixing the vacancy problem. For example, the Tamil Nadu government set up 49 Fast-track Courts to clear backlog of civil and criminal cases in its High Court and the Subordinate Courts. In the High Court alone nearly 1.5 lakh cases
were disposed of in the year 2002. In the same year, about 10,255 Lok Adalats were held in which over 1.25 lakh cases including 1.06 lakh accident claims were settled- thus this created a new trend in the expedient disposal.

Judicial reforms are being introduced with the introduction of information technology and training the Court staffs and judges with new case processing designs with the introduction of computerised registry for the purpose of listing all pending cases in chronological order. The listed matters being taken up sequentially, leaving no room for any arbitrary decision. In case of the absence of a judge, the cases can be immediately transferred to other judges, making sure that similar cases are assigned to the same judges. Thus, allowing for the development of greater judicial expertise and the faster disposal of cases.

Another significant step that is being taken in the Courts is towards increasing the working hours of the Courts, which could consequently improve the rate of disposals. On July 25, 2006, the Chief Justice of India proposed that Courts work in two shifts. The Law commission in its 125th report (1988) recommended introducing the shift system in Supreme Court. The Justice Sir V.S Malimath Committee on Reforms of Criminal Justice System (2003) has recommended introduction of shifts. There are proposals at the Madras High Court to introduce Evening Court sittings along with the normal working hours of the Courts in order to increase the productivity of the Judicial system. If every Court and every tribunal work in two shifts, the rate of disposal of cases will go up. While doing so, pending cases need to be classified and priority fixed for disposal. Criminal cases that involve the life and liberty of person deserves to be decided first. Quick disposal of criminal cases will have deterrent effect

on the potential criminals. Violation of Human rights and old cases need early decision and thus have to be given priority. Although, inordinate delay is a consistent complaint with the Courts of law, it is considered a preferable route because there is a possibility of obtaining an urgent ex-parte interim order from a Court, compelling the opposite party to do or desist from doing some kind of act, which will be binding on the other party, which perhaps gives the concerned party scope for strengthening their interest. If the judicial crisis is of “over litigation” only then the enlisted reforms of increasing the number of judges, their productivity, or their working hours will be helpful. Thus, solutions to the problem of judicial delay and arrears are sought after with structural reforms as enlisted above. These steps have provided traces for change in combating the judicial crises occurring due to delays and arrears. However, true reform is multifaceted. The enumerated steps must be coupled with deep reforms that realign incentive structures and address critical shortcomings.

The researcher undertook the study and concentrated only on the aspect of the role of the different alternative dispute redressal methods in reducing the problem of judicial crises arising out of judicial delays and arrears, with special reference to the different dispute redressal institutions of Pondicherry.

From the study of different alternative dispute redressal methods it is found that these mechanism of resolution of dispute are non-adversarial in nature. As alternatives to the adversarial litigation, the alternative dispute redressal mechanisms can facilitate the parties to deal with the underlying issues in dispute in a more cost-effective manner and with increased efficacy. In addition to it, the characteristic features of these methods shows that, these techniques can have the advantage of
providing parties with the opportunity to reduce hostility, regaining a sense of control, gaining acceptance of the outcome, resolving conflict in a peaceful manner, and for achieving a greater sense of justice in each individual case. The resolution of disputes through alternative dispute redressal methods can comfortably take place in private and in more viable, economic, quick and efficient way than the Courts of laws. Thus, the research study was aimed at giving the right to speedy trial its due respect with the use of different methods of resolution of disputes working as a supplement and not supplant to the conventional method of resolution of disputes through Courts of law. As a step to nip the problem in the bud, by controlling the inputs that is to say the number of cases being field before the Courts of law, there is an urgent need of introduction of alternative dispute redressal methods among the disputants, as primary consensual dispute resolution methods.

In the process of the study, the researcher dealt with, The Legal Services Authority Act, 1989 as amended by the Legal Services Authority (Amendment) Act, 2002, and The Arbitration and Conciliation Act, 1996. These legislations and their amendments have tried to introduce different alternate forms of dispute redressal methods such as arbitration, conciliation, and mediation in India with legislative basis.

If these legislative enactments are properly implemented with some necessary amendments that are enlisted as suggestion hereunder, could definitely contribute affirmatively in meeting the needs of the people for an effective justice delivery system with the introduction of different alternative dispute redressal methods. The methods that could in due course of time function along with the Court and provide for economical and expeditious justice in the course of amicable settlement of disputes and there by help in maintaining the law and order, peace and
harmony in the society. With the study of variety of alternative dispute resolution techniques that have diverse rules and dynamics, which can accomplish a range of goals, it is found that, there is lack of required knowledge about the ADR methods and insufficient knowledge has led to a lot of confusion among the people about the utility of these alternative dispute redressal methods. It is therefore important to understand and recognize that arbitration, mediation, conciliation and their hybrids are different from each other. Understanding the key concepts and distinction between them are important in using alternative dispute redressal methods effectively.

Alternative dispute redressal methods should get a steadily increasing acceptance and utilisation because of a perception of greater flexibility, costs below those of traditional litigation, and speedy resolution of disputes, among other perceived advantages. Hence, there is immense need to create awareness about time efficiency, cost efficiency of different alternative dispute redressal methods over normal litigation process, and encourage settlement of disputes by the litigant public. These steps will eventually contributed in the process of reducing the litigation rates, before the Courts of law with the increased emphasis on quick resolution of disputes between the disputants. In some cases, the Courts can refer the cases pending before it to appropriate alternative dispute redressal methods. Reducing the caseload and subsequently increasing the efficiency and productivity of judiciary signifies the need of different alternative dispute redressal methods as necessary part of the Indian justice delivery system.

The study also reveals that some institutions are making significant contribution in promoting different forms of alternative dispute redressal services. Nevertheless, still there is a need for more organizations such as
the ICA, ICC and FICCI for rendering specialized services and promoting alternative dispute redressal methods.

The unfamiliarity of the alternative dispute redressal process among the disputed parties is a hampering factor. In alternative dispute redressal methods, the consent of the other party is required and the settlement might not always result in a binding solution. In some cases, there are chances that the contesting parties and the claimant would use the Court litigation as a strategy to know the strength or the weakness of the other party through the pleadings, and then decide to go for alternative dispute redressal methods. It is the case where the opposite party is found to be the strong one and a settlement would be beneficial in such circumstances. The alternative dispute redressal methods cannot serve any purpose where the parties are required to establish a particular right, or a precedent required from an authority by way of determining the case in the desired manner. The alternative dispute redressal methods cannot be said to be a quick and cheap method, unless the parties are equally interested in settlement. If not, alternative dispute redressal methods may be used as a strategy to delay the resolution, and further prolong the possibility of litigation of the dispute without a sincerity of settling the issues for their own reasons. Thus, with the introduction of legislations providing different alternative dispute redressal methods and by not developing a performance-based method of credentialing arbitrators, conciliators and mediators could in turn lead to an arbitrary system of qualification, one imposed by the Courts or other central authority.

The study also reveals that fact that, the outcome or the final result of different alternative dispute redressal process is largely context bound. That is, the same process may be 'successful' in one environment but
'unsuccessful' in another. The study shows that different types of factors, such as the appropriateness and timing of referral, the skills of the practitioner and the parties' commitment to settle can influence the effectiveness of an alternative dispute redressal process. Thus, there is a need for instituting mandatory training programs, focusing on concise, clear opinions and docket management in these methods.

It is also found that India currently has no major Institution providing for special training and know-how programs on the alternative forms of dispute resolution, particularly processes that seek to facilitate settlement between the parties rather than merely evaluate the legal positions. However, there are few international training institutes and academic programs, which offer some courses in mediation and arbitration almost every year.

Many international parties are willing to choose Asian countries like India to invest in and setting up of Special Economic Zones. However, they are dissuaded from doing so because of the current crisis in the Courts of law due to delays and arrears. Therefore, they are opting for countries where there are prescribed rules and adequate infrastructure for institutionalised different alternative dispute redressal methods. At the international scenario, the recourse to alternative dispute redressal methods helps to improve international economic relations by providing a mechanism that reduces the risk of transnational commerce. While entering into business relations, the business houses do hope that there would no failure disagreement but nevertheless there is always a fear of disputes. This fear gets compounded further when the business is not sure of the availability of the reliable procedures for resolution of such disputes not only promptly but also fairly. When the risk factor is high because of non-availability of effective dispute resolution procedure, the
business would normally refuse to enter into the transactions, or raise the price to compensate for the additional hazard. Needless to say that in either case, the free flow of trade will be greatly hampered. On the other hand, if the businesspersons know that effective dispute resolution mechanisms are easily available in the country, the conduct of the trade and investment will be duly facilitated. Thus, it is the needed that such a conducive atmosphere is created in India, so that the international parties shall opt for India as the venue for arbitration and other alternative dispute redressal methods and India can become a major player in the field of international arbitration and other alternative dispute redressal methods.

The complete success and the usefulness of different forms of alternative dispute redressal methods as a solution to the problem of judicial crises arising out of judicial delays and arrears before the Courts of law would be feasible only by educating the public at large about the availability and use of such alternate forms of dispute redressal methods to them. Thus, the need of the day is bringing about awareness among the people, about the utility of alternative dispute redressal methods and simultaneous developing personal who will be able to use alternative dispute redressal methods effectively with integrity. It can effectively reduce the cases coming before the judiciary and thereby paying way for a qualitative judicial system for the benefit of one and all. Thus, creating of sufficient awareness about the various legally and socially acclaimed alternative disputes redressal methods is essential, as these methods are not isolated from the rules, regulations, and justice they are just another means to achieve them.

The critical analysis of the alternative dispute redressal methods shows that these methods of dispute resolution can be duly synchronized
to reach the goal and needed to be adopted, depending upon the context and requirement. The alternative methods are a kind of self-controlled process where the parties have a decisive role in initiating, continuing, concluding and enforcing settlement. Thus, these strategic dispute resolutions can resolve conflicts creatively and effectively, using processes selected specifically to resolve a particular dispute. Alternative dispute redressal methods are not only an answer for the international disputes arising out of commercial transactions or inter state disputes of business firms, but it can also be effectively used for solving any conflicts that can be resolved by agreement among the disputed parties and are compoundable in nature, for social peace. The conclusion that is arrived at from the research is that, the emphasis on the need of different alternative dispute redressal methods is not to replace the judicial system with that of alternative dispute redressal methods, but on a unified system in which, the different methods of resolving the disputes could win equal standing and be applied wherever appropriate. It can be thus be concluded from the above study that, the recognition and adoption of different dispute redressal method primarily can save cost for parties and Courts, can provide for the early resolution of disputes with more satisfying procedure for disputes resolutions in each system. The outcome will reflect the parties’ interests and values, the litigant's satisfaction and willful compliance with the result. The finality, of resolution of disputes will be with the win-win situation and preservation of relationship.

In any given alternative dispute redressal program if the participant’s interests are duly satisfied, they are more likely to act productively. The active participation of the stakeholders, in the dispute redressal programs promotes good faith and behaviors. Thereby, using alternative dispute redressal methods along with concept of promotion of
good faith among the participants and the stakeholders can play an essential role in chiseling the hidden nuances and in making the final link between the designing process and a successful outcome. With the study undertaken for the research problem, the drawbacks found with respect to the different dispute redressal mechanisms and the above concepts in mind, the researcher has given the following suggestions.

To start with the suggestions, primarily there is immediate need of bifurcation of the disputes into different categories, namely the petty cases or the small claims, the cases that can be quickly resolved by specialist as fast track claims, and the third category as the those involving complicated question of law or those that cannot be settled by some agreement between the disputed parties. It will be helpful to the disputed party in choosing the apt dispute redressal method according to the nature and characteristic of the disputes.

High settlement rate of the disputes can only be achieved if cases having an ‘element of settlement’ as postulated by Section 89 of the CPC, are identified and taken out of the formal litigation system and sent to trained arbitrators, conciliators, mediators or negotiators as the case may be for settlement. The judges in the Court’s referring to the suitable alternative dispute redressal method should follow appropriate case referral and case management technique. This will eliminate unnecessary delays and ensure that only appropriate cases are sent for arbitration, conciliation, or mediation or any of the appropriate methods depending upon the facts and circumstances of each case. This will maintains strict quality control standards over the alternative dispute redressal process.

To prevent the filing of frivolous arbitration proceedings, the arbitral tribunal formed under the Arbitration and Conciliation Act 1996
should be empowered to direct a party to furnish security for the costs of arbitration. The arbitral tribunal should analyse the circumstances warranting such a step, before providing any interim measures, at the preliminary stage itself. Thus, the wide discretion of Arbitral Tribunal has to be exercised in judicious and not arbitrary or whimsical manner.

Major issues in the arena of arbitration in India are the absence of accountability of the arbitrators, there are no rules as to who can be appointed as arbitrators or conciliator under the Act, the fees to be paid to them, the action to be taken in case of their resorting to unethical practices, time limit for the making of an award, consequences of not making the award within the stipulated time limit etc. This has resulted in chaos in the field of arbitration in India. Selection processes for ADR practitioners are based on the needs of the service, but a problem is there are inconsistent standards. A national accreditation system could very well enhance the quality and ethics of ADR and lead the arbitrator, mediator or conciliators as the case may be to become more accountable. Thus, there is a need for a unified accreditation system for ADR across India to establish clarity and consistency.

Where a party makes an application under section 9(1) for the grant of interim measures before the commencement of arbitration, the Court should direct the party in whose favour the interim measure is granted, to take effective steps for the appointment of the arbitral tribunal in accordance with the procedure specified in Section 11. The time limit given for that should be restricted as not exceeding more that thirty days from the date of such direction. In addition to that, if effective steps for the appointment of the arbitral tribunal are not taken within the specified period, the Court may direct that the interim measure granted under sub-section shall stand vacated on the expiry of the said period.
However, the Court may, on sufficient cause being shown for the delay in taking such steps, shall extend the said period. In the cases where an interim measure granted stands vacated under the sub-section, the Court may pass such further direction as to restitution as it may deem fit against the party in whose favour the interim measure was granted under this sub-section.

The Arbitration and Conciliation Act, 1996 has conferred the power on the High Court for appointment of the arbitrator when the parties to the arbitration agreement do not succeeded in appointing the arbitrator within the stipulated time according to the provisions of the 1996 Act. However, it is a fact that the poor and illiterate party to the dispute finds the process of approaching a High Court to be a highly complicated, expensive and exhaustive procedure. In the Arbitration and Conciliation Act, 1940 the power vested with the power on the District Court and the Sub- Courts, which was a convenient procedure when compared to the provisions of the Arbitration and Conciliation Act, 1996. Thus, the need of the time is to re-confer the power of appointment of the arbitrator under the Act on the District Courts with a summary trial procedure and specified time limit for enforcing a quick, easy and less expensive way of appointing the Arbitrator.

Where arbitral award is rendered on agreed terms of the disputed parties, it should be specifically made enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if, it were a decree of the Court. In other cases, where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award should be made enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court.
The Arbitration and Conciliation Act, 1996 has not prescribed the qualification of an arbitrator or the conciliator. It is the discretion of the parties to the arbitration agreement to decide about the qualification of the arbitrator. But, when the Act requires that, the arbitrator has to decide about the admissibility, significance and the relevance of the evidence placed before it and to proceed and decide the dispute placed before it by the application of substantive law for the time being in force shows that, there is a pertinent need for the arbitrator to have the knowledge of those relevant provisions of law. Thus, the 1996 Act should prescribe that the person having the knowledge of the laws that are to be applied during the process of arbitration is eligible to be appointed as an arbitrator under the Act.

The Courts should be empowered within its jurisdiction to allow the parties to refer the dispute to arbitration or any other alternative dispute redressal methods at any time, in the appropriate case where all the parties to a legal proceeding enter into such agreement to resolve their disputes during the pendency of such proceedings before the Courts. For the purpose of calculating the limitation period of a dispute, in the cases where, the Court passes an order under Section 89 of the Code of Civil Procedure, 1908 (V of 1908) or under any other law and thereby, refers a dispute pending before it to any of the alternative dispute redressal methods, the said proceedings shall be said to commence when the Court passes such an order.

The multiple claims brought before any type of dispute redressal authority should be consolidated wherever possible. For example, a land acquisition dispute involving 100 claimants is likely to be divided into

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681 The Arbitration and Conciliation Act, 1996. Section 19(4)
100 separate litigations, each with its own attorneys, filings, time schedules, procedural maneuverings, evidentiary preparation, appeals, and Court dispositions. This will ensure the evaluation of correct datas with respect to the problem of judicial arrears and delays. It is very necessary to avoid duplication of judicial efforts and curb the wastage of resources due to multiple claims.

The Field study undertaken by the researcher in the different Courts of Pondicherry shows that, the judges are very much interested in encouraging young advocates to argue cases on their own, hence giving them an opportunity shows the change in the attitude in the Court’s functioning. In the similar fashion, one can assume that judges are open for changes in the system design. Therefore, if judges actively participate in encouraging and involve in the process of promoting alternative dispute redressal methods it will help them personally by reducing the workloads and pressure of the backlog they face in the Courts. Thus, the common interests of speedy remedy with low cost and effective resolution of disputes will ultimately reduce the workload and paying way for dealing with current judicial crises of arrears and judicial delays. The judges should take up the initiative themselves and lead the Court, lawyers and litigant public for choosing alternative dispute redressal methods in appropriate cases for quick dispensation of justice. Thereby the judges can relieve themselves to some extent from the caseload pressures falling on them by new filings and those disputes that can be easily and quickly resolved with some appropriate alternative dispute redressal method to the satisfaction of both disputants and themselves.

The Field study undertaken by the researcher also shows that, the lawyers are generally in jeopardy and are anxious of the alternative dispute redressal system towards their position and livelihood. The
lawyers are needed to be made part of the alternative dispute redressal system designs. There is a need to have their strong sense of participation in the alternative dispute redressal process as mediators, arbitrators and negotiators. Such participation of the lawyers will reduce the litigant public time and economic expenses in the litigation and pave way for the advocates in analyzing a case in a better way with their educational background and settling the cases between the disputants with the encouragement of the good relationships in the society at large. It will also be a good source of income to the lawyers, there by the threat of loss of source of income with the introduction, use of alternative dispute redressal methods will end along with it quick dispensation of justice the problem of judicial arrears, and delays before the Courts will be solved. Thus, Lawyers must advise their clients to use alternative dispute redressal methods more often and they must educate and explain clients on the benefits of different alternative dispute redressal methods. The greater awareness of its increasingly widespread application will soften the initial tendency to dismiss alternative dispute redressal methods as anathema.

The Bar Council of India along with the State Advocates Associations should play a significant role in gratifying scope of alternative dispute redressal methods in India. The Bar Associations should have a dedicated resource to deal with the feelings of above-mentioned insecurity. It is essential to have persons within the Bar to effect change and if those persons' talents and energies are focused at the level of an official committee, the chances of success can be positively enhanced.

Counseling is an important part of alternative dispute redressal methods. Lawyers should be specifically trained as counselors due to the
nature of the job they are do. The clients are expected and so presumed to
tell the whole truth to his lawyer and the conciliation as the process
involves person to sort out issues and reach decisions affecting life. Thus,
there is a requirement of guiding hands of counsels as counselors not only
for the poor and illiterate person but also for the well-educated and
economically stable men of intelligence. The lawyer as third party is the
only person who can easily get perception of the facts as the client
provides them and subsequently in counseling he can put before the client
a broader context of the solving the problem. It will help the person to
solve a problem or help create conditions that will cause the disputed
parties to understand and improve their behavior, character, values or life
circumstances, as there is no need for every differences or disputes to be
converted into litigation. As different cases require different treatment,
proper structured and suitably designed alternative dispute redressal
methods coursed with appropriate training and support from the bar and
bench should be made available. So that it will afford the lawyers, to
enthusiastically take up the implementation of alternative dispute
redressal methods.

Importance to the study of alternative dispute redressal techniques
must be given especially while imparting the legal education to the
budding lawyers at Law colleges. Techniques of improving the skills
required in alternative dispute redressal methods must be taught along
with the Lawyering skills to the students during the study. Moreover, the
strengths of alternative dispute redressal methods cannot be negated, in
the encouragement of the good relationships, the sense of participation in
the process for parties and in the flexibility of potential outcomes.

Mediation and Conciliation Centers in association with Law
colleges, Law department, University and Bar Associations must be
started to promote free negotiation of disputes between the disputants. The final year students and the freshly enrolled lawyers should be made to participate in the process as observers to learn the skills used in alternative dispute redressal methods.

At every District Court and High Court there should be a separate accommodation for Conciliation Center to function as has already implemented by Madras High Court. The High Court of every State should initiate and provide for a panel where it can notify the names of those qualified persons who are willing to act as conciliators, mediators and arbitrators and negotiate the settlement between the disputed parties. The Court annexed alternative dispute redressal methods can assist the litigants to negotiate settlement within a lesser expense of time and money. The resolution of the civil and commercial litigations in a more quick and amicable manner with these Court annexed alternative dispute redressal methods and the participation of the disputants in these processes can positively contribute towards the economic, commercial and financial growth and development of a Country.

The Bar Council should make alternative dispute redressal methods a compulsory subject. It should grant a specific license to the qualified lawyers willing to practice as arbitrators. A well-defined program for judicial reforms must be introduced. The program must include the redefinitions and expansion of legal education programs and providing training to the students of law, the lawyers, and judges, increasing the availability and efficiency of alternative dispute redressal methods. Thus, creating awareness among all about time efficiency and cost efficiency of alternative dispute redressal methods over normal litigation process and encourage settlement of disputes by the litigant public and in turn ensuring the existence of independent judiciary with better efficiency.
The management and maintaining of a welfare state is no doubt the task of the three sovereign organs of the Constitution and speedy disposal of cases is also one of the tasks on their agenda. The same, however, cannot see the light of the day unless citizens also “participate” in that movement. The citizens can help in the achievements of these objectives by restraining themselves before invoking the jurisdiction of the “traditional Courts” in such cases where, the matter in dispute can be conveniently and economically taken care of by some appropriate alternative dispute redressal mechanisms. Hence private as well as government initiatives is needed for not only establishment of alternative dispute redressal facilities in India but also equally for the “liberal use” of the same by the people.

The characteristic features of different alternative dispute redressal methods and its advantages should be made known to all through education, camps, street plays, and advertisements by governmental and non-governmental organisations. Awareness of the alternative dispute redressal methods through seminars, workshops and other means and its supervised and systematic implementation ought to be encouraged so that, its effectiveness is proved and the message reaches a large section of population. If benefits of their participation and use of alternative dispute redressal methods in resolution of disputes are made known among the public, the litigant public will definitely have curiosity in these process. They would be interested in seeking justice, and would like to resolve their dispute and get the result with the consent of both the parties to the dispute, with minimum expenses and time. The Central Government should instigate a national campaign involving all the stakeholders, for promotion of alternative dispute redressal methods in addressing different kinds of disputes that can be resolved with such methods.
There is a need for the existence of a specific legislation that would codify the goals, approaches, skills, and ethical standards that are required for smooth alternative dispute resolution method’s functioning and its institutionalisation. It is crucial that the legislators in India congregate the necessary will to effectuate such legislation or else the momentum gathered towards alternative dispute resolution method would be lost. Eradicating ambiguities within the practise of alternative dispute resolution method in India is crucial for its growth and acceptance as a feasible alternative to litigation processes. The involvement of the Legislatures in the process of encouraging the use of alternative dispute redressal methods from the beginning will have more reasons to their giving approvals to the recommendations of committees and commission of India and in the introduction of the alternative dispute redressal methods in new and improved legislation. In general, the mindset is that the ultimate implementation of the alternative dispute redressal, process depends upon the presence of some legislative enactments.

Apart from a good law that provides for alternative dispute redressal methods for resolution of disputes, it is rudimentary to extend or create facilities, services, and infrastructure that shall enable the implementation of such rules and lead to effective alternative dispute redressal method’s practice. Effective coordination both at operational and structural level is a prerequisite of any successful alternative dispute redressal mechanism. For making the alternative dispute redressal mechanism to be more and more effective, is to be amalgamated and merged with appropriate information and communication technology. The benefits of online dispute resolution mechanism, as found in the process of the study, are far more and convincing enough to switch to that method. All that is needed is initiatives of private persons and institutions
for the facilitation of their maximum and proper use. Alternative dispute
redressal methods give a healthier platform to redress grievances of civil
nature. This is more so when online dispute redressal method is used
because it is not only instantaneous but also equally cheap and
convenient. The companies and individuals engaged in the business of e-
commerce and web dealings must avail its services. With the emergence
of information and communication technology in every field, it is a fact
that in future, every “electronic dealing” will inevitably carry an “online
dispute redressal method clause”. Thus, there is the need of a base of
qualified techno-legal experts who can make the “right to speedy trial” a
Constitutional reality is the need of the hour.

Active advocacy of the use of Online Dispute Resolution is the
need of the hour. There is a need to tap online mediation and other
alternative dispute redressal methods in dealing with resolution of
disputes arising in cyberspace. The study shows that, India must start
immediately preparing to have a full-fledged online mediation and other
alternative dispute redressal system in place with a good insight in the
right direction. Alternative dispute redressal methods will have the
capacity to not only reunite parties, but also unify the Nation behind a
fully functional, equitable, and efficient justice system.

A hybrid on the line of online dispute redressal mechanism in the
form of E-Courts must be introduced. This technique of alternative
dispute redressal method should be a combination of online dispute
redressal mechanism and E-Courts in India. This hybrid method can bring
a “Golden Era” of Indian Judicial System that is presently passing trough
a “Dark Age” of backlog and inefficiency due to judicial crises arising
out of judicial delays and arrears resulting out of excessive litigation
before it.
The arbitrator, conciliator or the mediator in the settlement process plays the compound and unique role. It requires instilling the qualities such as neutrality, persistency, and confidentiality. An incompetent arbitrator, conciliator or the mediator will do no more than delay proceedings, leading to increased costs, and may even worsen the situation by causing the parties to harden even further in their positions. A skilled person on the contrary provides especially valuable assistance in bridging miscommunications among the parties. Thus, a uniform alternative dispute redressal methods training system is the first step towards enhancing the attractiveness and availability of mediation to the country as a whole.

The establishment, promotion and functioning of more institutions such as the ICA, ICC and FICCI at the very grass root level for rendering specialized services and promoting alternative dispute redressal methods is the need of the time. Proper training of the Arbitrators, Mediators, and Conciliators in such organisations should be made as an obligatory requirement, for it will help in their apt understanding of the disputes and there by paving way for its efficient handling by them. The specialized firms or organizations are certainly more promising and reliable in this sphere, and the study undertaken during the research makes it clear that, business people feel comfortable and choose to consult the specialized institutions and engage their services for dispute resolution. With the globalization of Indian economy and encouragement of foreign investors in India, these specialized institutions will undoubtedly have a vital role to play in resolving disputes, in particular, commercial disputes across the globe.

The Legal services Authorities (Amendment) Act 2002 provided for the establishment of Permanent Lok Adalat (PLA) for providing pre-
litigation conciliation and settlements. Under these provisions, there is a need for some amendments. In consensual dispute redressal methods followed by these permanent lok adalats, consent of both the parties to the dispute is necessary for arriving at a settlement and resolution of the dispute. Thus, there is a need for including the provision insisting for the consent on the part of both the parties to the litigation for deciding the case brought before permanent Lok Adalat. If the parties do not reach consensus, imposing of the award of PLA would be unreasonable.

The Legal services Authorities (Amendment) Act 2002 provides for a non-judicial member from a Public Utility Service under its panel meant for deciding the dispute. It has not insisted for any other qualification for such member. A provision is to be added under the Act, which should insist for such a member to have the required amount of knowledge of the basic principles of natural justice and thereby enable the Bench to properly and justifiably resolve the dispute placed before it.

The Legal services Authorities Act, provides an impetus to the right to legal aid and the alternative dispute resolution process. Legal services authorities functioning at National as well as State levels have definitely contributed a lot towards the promotion and settlement of disputes between the disputants coming before them. Thus, in order to facilitate the continuance of their services in a more productive manner a Centrally Sponsored Scheme with hundred percent central funding for implementing NALSA scheme throughout the country is to be started. State Governments should ensure that those Central grants are fully utilised for providing necessary infrastructure for free legal services to weaker sections, and thereby ensuring their meaningful and effective participation. Thereby it would ensure the continuance of the work of legal services authorities in the field of reducing the problem of judicial
crises arising out of delays and arrears before the Courts of law. Along with it, the Central Government should also constitute special Committees or Services to manage and keep a check on the effective and judicious utilization of such funds provided to various States. It must also ensure an evaluation technique and monitoring program for the utilization of such Funds. The Central Government should look into the creation of Boards especially for the management of funds in relation to legal aid. It should look into the aspect of public funding of such programs and clutch over establishment of a funding code in this regard for the efficient working of the NALSA and the programs therein.

Infrastructure to facilitate the process of the dispute resolution and data collection should be standardized across the Country for all alternative dispute redressal methods sites. Standardized data collection will allow for meaningful program evaluation, which will put in the picture the future efforts for setting up of counseling and alternative dispute redressal method’s centers throughout the Country.

There should be establishment of a National Alternative Dispute Redressal Method’s Information Network and Websites to enable service providers to share useful practical information about dispute resolution techniques having regard to the needs of particular groups of the society. The Institutions and the Individuals providing alternative dispute redressal methods services should develop an information materials about the various alternative dispute redressal methods, and the kind of services they provide. Handbook setting out the advantages and disadvantages likely to be encountered in taking particular kind of disputes to alternative dispute redressal methods should be made available to all. The development of the pamphlets, videos, or booklets setting out for the people's basic legal entitlements in relevant areas will help in the
development of effective links with advocacy and other services. Thus, in
der order to find a solution to the problem of judicial arrears and delays it is
necessary to cut down on the demand for adjudication, through arbitration
and other alternative dispute redressal methods mechanisms though the
stipulations mentioned above.

As regards the threat of non-compliance of the settlement by any
of the parties to alternative dispute redressal methods, the arbitrator, or
the conciliator or the mediator should ensure that their settlement to be
embodied in a binding contract or settlement agreement signed by both
the parties. The alternative dispute redressal process can successfully be
catalyzed by guaranteeing the enforcement of a decree or order of an
arbitration award of Courts and Tribunal.

Institutionalised form of different alternative dispute redressal
methods should be established. The setting up of specialized institutions
would not only save foreign exchange on arbitration taking place outside
India, but also earn foreign exchange by undertaking international
arbitration on behalf of Asian and Middle Eastern countries and other
developed, underdeveloped and developing countries. It is readily
possible in our country as India has the advantage of having English as a
working language throughout country that can readily attract foreign
parties.

To ensure accountability of the Arbitrator, Mediator, Conciliator or
any other presiding authority the persons who would like to render their
services as arbitrators etc., should be made to register as members of a
professional institution or association such as the Bar Council of India,
the Institute of Chartered Accountants, and the Engineers' Association
etc. As such, the arbitrators shall be governed by the ethical rules of that institution. This will in turn ensure accountability of the arbitrators.

In order to avoid pendency of cases, before the alternative dispute redressal authority the follow-on consequences should be provided for. Accordingly, for unreasonable delays and for not disposing of the case within the stipulated time limit, the fees of the arbitrator should be withdrawn, or he should be blacklisted and no further case should be allotted to him. The respective institution under which he is registered should be given the powers to take stipulated action against a defaulting arbitrator, conciliator or any other person as the case may be. If the presiding authority is of the opinion that the delay is caused due to the fault of the parties, he should be given adequate opportunity to explain the same and inform it to the institution.

It is further suggested that, statutorily autonomous permanent institution in the name of the Indian Arbitration Commission must be constituted in India. It shall be presided over by the Chief Justice of India. Its members shall be one representative each of the Ministry of Law and the Ministry of Commerce and two representatives of recognised professional bodies such as the Bar Council of India, the Institute of Chartered Accountants, and the Engineers' Association etc. This Commission should be vested with the powers to grant accreditation to professional institutions, which come forward to render their services in the field of institutionalised arbitration. Accreditation will ensure that the institutions are equipped with proper infrastructure such as buildings, modern information technology and communication systems, library for law books and books on other professional subjects for reference by arbitrators or such other persons as the case may be. The guidelines for
granting accreditation shall be made public. This will ensure transparency of the accreditation process.

Along with it, the professional institution which is a candidate for accreditation should be made to meet the standards laid down by the Indian Arbitration Commission. Such an institution can thus be an international centre of excellence. It shall frame its own rules that will govern the appointments, preparation of panel, fixing of fees, the conduct of arbitrators as well as that of the arbitration proceedings, the penalties in case of delay in settling disputes etc. A panel consisting of appropriate persons, competent and qualified to serve as arbitrators, conciliators and mediators or persons willing to serve in any other specialist capacity such as experts, surveyors and investigators shall be maintained by these institutions. Such rules and list shall be made public. This would provide for not only familiarity to the international commercial community who have to look out for a proper arbitral venue for resolution but would also instill confidence in the minds of the public that this is a transparent and reliable institution. This will in turn ensure accountability and complete dedication on the part of arbitrators or any other presiding officer as the case may be.

The benefits of institutionalised arbitration should also be made available to Public Sector Undertakings and Government Departments. This will put an end to the alleged unethical practices followed in such institutions cases, where the departmental officers work as arbitrators. This can be ensured by incorporating necessary clauses in the contracts entered into by them with the stakeholders, which would bind them to go for institutionalised arbitration. This shall be to the advantage of the public and the public institutions in terms of cost and expertise.
At the grass root level, the steps should be taken towards employing mediators from the people among themselves to reduce or prevent violence in schools, coaching centers and specialized training centers for sports etc... For example, using peers as mediators is a process known as “peer mediation”. This process provides a popular way of handling conflicts and of preventing violence in primary schools, high schools and sporting activities. Schools adopting this process can recruit and train students interested in being peer. This will introduce the alternative dispute redressal methods not only for resolve the disputes that have arisen but also to prevent them and imparting the knowledge and awareness of such techniques at the very young age.

All the alternative dispute redressal methods require the consent of both the parties. Such consent will be given only if the parties to the dispute are provided with is proper advice and information. This will not only strengthen the available alternative dispute redressal methods framework but also effectively help the disputed parties to understand and chose the best dispute resolution method and resolve it to the betterment of one and all.

These suggestions are draw extensively upon adaptable ancient customary and contemporary India and foreign models, while attempting to establish greater accountability, discipline, and versatility in the management of dispute resolution mechanism. Finding alternatives to formal adversarial litigations will extend the variety of dispute resolution functions to more joint and conciliatory processes and diversify limited remedial possibilities to non-binding, polycentric and consensually calibrated outcomes. These measures will allow the civil justice system to operate according to its basic design and codified procedures. Judges will become less burdened, with the increase in the use of alternative dispute
redressal methods. Litigants will receive greater satisfaction of meritorious claims and defenses. Time has come to give alternative dispute redressal methods a full thrust. This will ensure the establishment of a foundation of a law based society as India moves towards globalisation of its economy with vibrant democracy.