CHAPTER-1

1.1 INTRODUCTION

Fair, economic, reasoned and quick deliverance of justice is the aim of every legal system. Disputes are inevitable part of every society. It blocks development and disturbs peaceful conduct of human life; hence, it becomes necessary to find a quick and easy method of resolution of the disputes. Finding the fault of the disputed party and proving the guilt and further complicating the issues may not be necessary in every dispute resolution process. When a person is confronted with a dispute, either his right is in jeopardy or duty is unnecessarily cast upon him, which is harmful to his interests. The question of right or the duties are decided by the nature of the laws. Laws are the rules prescribed by the society for the government of human conduct. A law is also described as a body of principles recognised and applied by the State in the administration of justice\(^1\). Thus, it is an instrument, which helps the people living in a society to co-exist peacefully with one another in an orderly manner.

The Substantive laws such as, the Transfer of Property Act, The Indian Contract Act, Specific Relief Act, Indian Succession Act, Indian Penal Code, Industrial Disputes Act and the Personal laws of Hindus and Muslims define the rights, duties and liabilities of the people. All the rights, duties and liabilities defined by the Substantive laws can be ascertained and realised by the use and application of Procedural Laws, which are also called as Adjective laws. The Procedural Laws or the Adjective laws, defines the pleadings, procedure and proof of which the substantive law is applied in practice. Some of the examples of adjective laws or the procedural laws are The Indian evidence Act, Limitation Act

\(^1\) Salmond, Jurisprudence, p.39.
and the Code of Civil Procedure. Dispute resolution through judicial enquiry before the Court of law ascertains the rights, duties and liabilities of the respective disputed parties. In this process, the procedural law puts the substantive law in motion and facilitates justice and further its end.

On the bases of the nature and the basic characteristics of any dispute resolution system, they can be broadly classified into Adversarial, Inquisitorial and Participative System. Adversarial style is also called as accusatorial system. In this system, the disputants necessarily deny the claim or allegation of each other, irrespective of it being indisputable truth. The procedural formalities force them to rebut each other. In such a system, where a civil case is field, the pleadings of the opposite parties differ in a diametrically opposite direction making it very complicated to identify the real issues to be adjudicated. In criminal cases, the charges are framed on the one hand and on the other hand, the accused provides arguments or explanation to dispute each and every contention, or piece of evidence. The role of the presiding officer in the Court is to consider all the oral and documentary evidence placed before him on the bases of the framed issues and see whether the contentions are proved or not by the respective disputed parties. In this process, he also does the work of allotting time and supervising the conduct of the persons appearing before him and thus maintaining the Court’s decorum. This system is rigid and formal as law prescribes the rules even before the dispute arises and the Court has to meticulously follow every such procedural rule. The trial needs the disputed parties to come up to the Court with their own lists of witness and documents to prove their contentions. The examination and cross-examination of the witness are done in the presence of the opposite party to the dispute. The trial involves the process of adjudication, where charges are tried for proving the guilt. A trial ends with a formal legally
binding judgments or decree, which is binding and enforceable. Execution of the final judgments or decree is yet another legal process where, the authority decides the process of enforcement like that of trial. In this system, the Court of law functions as an independent dispute redressal institution of the State.

In the Inquisitorial system, the role of the presiding officer is much wider. The presiding officer has an active role of finding out the facts about the terms referred before him. Filing of charges is the starting point of trial in the adversarial system. The reference of terms sets the process in motion in the inquisitorial system. The Chairperson or the Presiding officer has the power to relax the rules of procedure and evidence. The Judges in the inquisitorial commission can go beyond the list of the parties and call for any information or witness and if need be, go to any place to ascertain the facts. In this system of traditional trials, Examination in Chief and Cross-Examination of the witnesses depends upon the discretion of the commission Chairman who examines the witness on its own. The commission of inquiry is a fact-finding process, where the issues are inquired into rather than tried to prove or disprove. Individual guilt or innocence is not important for fact-finding missions. In this process, the commission has a major role in the fact-finding process and the parties do not have any significant say. The process of enquiry ends with a report or an observation, which has just recommendatory value. In this process, the Commission’s Chairperson is not an independent authority.

In the participative system of dispute redressal method, the negotiator and the parties themselves take part in the process of arriving at the decision. The parties themselves script the rules and regulations and in some cases decide the process as well. Thus, the legal formalities are
reduced to a larger extent and free and innovative ideas are ever increasing with time and necessities in this field of participative dispute resolution method. In this system of resolution of disputes, there is no need of witness or evidence to establish the issues. The issues between the parties are discussed and narrowed down by the parties themselves. The fixed rules or the procedural law does not bind this system as the disputed parties, mediators and facilitators develop their own rules depending upon the need and the demand of the context. In this system, it is not mandatory to have either Examination in Chief and Cross-Examination of the witnesses, the discretion to have it or not rests with the parties to the dispute. The participative system of dispute redressal method is a problem-solving process. In this process by all means, it is the parties who decide the whole process guided by the principles of natural justice including walking out of the process or successfully reaching a settlement. In this process, there is no formal resolution or award or report but ends with a settlement to be performed or completed settlement like the signed agreement or payment of money or tender of apology. The authority of the Facilitator or Mediator or Negotiator flows from agreement of the parties and consent of the parties decide the enforcement of the settlement.

The system of participative alternative dispute redressal method can be further classified into three types namely, the voluntary or independent method, the Court annexed methods and the Court referred methods. In the voluntary method when the dispute arises, the parties themselves initiate and take part in the process of mediation and negotiate among themselves for resolving their disputes. In a Court-annexed system, a department under it undertakes to do the activity of initiating the appropriate form of alternative dispute redressal methods among the
disputed party before the Court of law. In this process, one of the trained persons from its panel may be the presiding officer, who may be a Facilitator or Mediator or Negotiator or Conciliator or Arbitrator as the case may be. In case of the Court referred methods, the parties before the Court of law wish for a Facilitator or Mediator or Negotiator or Conciliator or Arbitrator as the case may be to be appointed of their own choice. The case will then be referred to such other person for the purpose of the resolution of dispute between the parties by that Court before which the dispute is pending. In the resolution of dispute by consensual processes, the consent of the parties to the dispute has a significant role to play. These different dispute redressal methods are to be effectively encouraged and put to use, with a drive to evolve a positive approach and attitude of the disputed parties towards the availability of different techniques of resolving their dispute. This can help in the process of finding a solution to the problem of judicial delays and arrears before the Court of law with the effective knowledge, adoption and use of alternative dispute redressal methods.

1.2 REVIEW OF LITERATURE

Selective review of the literatures that the researcher came across in the process of the research is presented here under. It is arranged according to the year of its publication. The detailed list of the same is enlisted in the Bibliography.

Mahatma Gandhi, in his book, *The story of my experiments with truth* (1962) while observing the role of the lawyers in the society, observed that, after losing in arbitration, Mahatma Gandhi’s client secured an agreement to pay the award in installments over a long period of time. Mahatma Gandhi became disgusted with the profession…But
both the parties to the disputes were happy over the result, and both rose in the public estimation. Mahatma Gandhi’s joy became boundless. He said that, “I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realized that the true function of a lawyer was to unite parties asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money; certainly not my soul.”

**Robert A. Baruch Bush and Joseph P. Folger**, “The promise of Mediation” (1994): the author has narrated that, in a conflict, the principal objective should be to find a way of being neither victims nor victimizers, but partners in an ongoing human interaction, which is always going to involve instability and conflict.

**Deshta Sunil**, Lok Adalats in India (1995): the author deals with a very important and stimulating theme of contemporary relevance. The experiment of Lok Adalat as an alternative mode of dispute settlement has come to be accepted as a viable, economic, effective and informal one. The Anglo-Saxon system of administration of justice inherited from the Britishers has the inability to dispense informal, cheap and expeditious justice to the common man. It is admittedly under such strain that some jurists have already predicted its imminent collapse if appropriate corrective measures are not initiated. The system has been very rigid, expensive and time consuming. The author has narrated that people are badly fed-up with obsolete, irritating and isolationist ways of administration of justice. Though legislations may not have an ability to improve the Anglo-Saxon legal system, yet there still lies the hope that the institution of “Lok Adalat” will root out the triple vices of delays, cost
and complexities from the existing Courts. The scheme is held to be judge-inspired, judge-induced and judge-aided, invented because of social philosophy expounded in the light of social justice in crises. Lok Adalat is needed to hammer out and reduce the backlog of arrears of cases and provided justice without delay to the poor litigants at their doorsteps.

**Stephen B. Goldberg, Frank E.A. Sand and Nancy H. Rogers** in ‘Dispute Resolution Negotiation, Mediation and Other processes’ (1999) stated that, “Mediation is negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties. Despite the lack of ‘teeth’ in the mediation process, the involvement of a mediator alters the dynamics of negotiations…. assess alternatives to settlement, learn (often in separate sessions with each party) about those interest the parties are reluctant to disclose to each other and invent solutions that meet the fundamental interests of all parties.

**Brown and Marriott**, in the “Alternative Dispute Redressal methods Principles and Practice”, (1999): defined the process of “conciliation” as, the practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their difference and to arrive at an amicable settlement or agreed solution. It is a process of orderly or rational discussion under the guidance of the conciliator. The process of “Mediation” as an informal, voluntary process in which an impartial person, trained in facilitation and negotiation techniques, helps the parties to reach at a mutually acceptable resolution. The process of “Negotiation” as by itself, is not an alternative dispute resolution procedure because it is
a bipartite process and does not require a third party to facilitate and promote the settlement.

**Sourdin Tania, Alternative Dispute Resolution, (2002):** The author states that, each year in Australia an estimated 250,000 disputes are resolved outside the Court and Tribunal system using alternative dispute redressal methods. ADR processes have been widely implemented within business and communities and as specific programs in areas such as family disputes. Most Australian Courts and Tribunals now provide some references to ADR. Alternative dispute resolution provides a comprehensive examination of the theory and application of ADR in Australia.

**Forrest S. Mosten, Institutionalization of Mediation, (2004):** held that, the Uniform Laws marks a watershed in the national institutionalization of mediation. Law deals with issues such as the definition of mediation, the affirmation that a mediator need not be a lawyer, and extensive confidentiality provisions. Such national standards and laws will lead to more uniformity within the field. Currently, the policy maker has failed to provide a statutory framework, which administers and regulates the growth of mediation in India. The existence of such legislation would codify the goals, approaches, skills, and ethical standards that are required for smooth institutionalization. It is crucial that the legislators in India congregate the necessary will to effectuate such legislation or else the momentum gathered towards institutionalization would be lost. Eradicating ambiguities within the practice of mediation in India is crucial to its growth and acceptance as a feasible alternative to litigation processes.
Dr. N.M. Ghatate "Reinventing Indian Legal System for Achieving Double Digit Economic Growth" (2004): that, the Supreme Court has declared Speedy justice as a fundamental right over 25 years back. However, it still remains a far cry. Direct consequence of which is loss in the confidence in legal system, which in turn has resulted in increase in crime rate because criminals know they can get away, and even honest men are compelled to resort to extra-legal way to redress their grievance.

Justice R.C. Lahoti, Speech of Law Day, (2005): held that, ‘Justice’ in the Indian legal system, due to delay in the dispensation has become a concealed threat to the social order. The trust and confidence of the people in the responsiveness and ability of every organ of the State to deliver true, fearless and impartial justice, which is the foundation of democracy and the bedrock of every civilized society. The Indian Legal system though fair and powerful but is awfully overcrowded and therefore slow. The backlog and delay of cases have resulted in disputes lingering on for decades. Specifically, inefficient Court administration systems, excessive judicial passivity in an adversarial legal process, and severely limited alternatives to a protracted and discontinuous full trial frustrate several goals of the adversarial process itself.

The Hon'ble Ex. President of India Dr. APJ Abdul Kalam has also been supportive of amicable settlement of disputes and has advocated the need to encourage mediation as an alternative dispute resolution (ADR) mechanism in the following words in The 12th Justice Sunanda Bhandare Memorial Lecture – Judiciary and its multi-dimensions (2006). “Mediation and conciliation is definitely a faster method of dispute resolution compared to the conventional Court processes. Only thing is that we have to have trained mediators and conciliators, who can see the problem objectively without bias and
facilitate affected parties to come to an agreed solution. In my opinion, this system of dispute resolution is definitely a cost effective system for the needy... Mediators must possess the qualities of being a role model in the society, impeccable integrity and ability to persuade and create conviction among the parties.”

The Hon’ble Shri **Y.K. Sabharwal**, (2006), in “*Justice Sobhag Mal Jain Memorial Lecture on Delayed Justice*” has narrated that; Constitution of India reflects the quest and aspiration of the mankind for justice when its preamble speaks of justice in all its forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, they would get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality. He further held that, the judiciary has to ensure that the fundamental right to a speedy trial does not remain merely a pipedream to millions of people. The very existence of an orderly society depends upon a sound and efficient functioning of its Justice Delivery System. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the vary capability of the system to impart justice in an efficient and effective manner. Code of Civil Procedure under Section 89 brings alternative systems into the
mainstream. However, India is yet to develop a cadre of persons who will be able to use these ADR methods in dispensing justice. Lawyers by and large still believe that litigation is the way of resolving disputes. Litigants are also advised accordingly. The challenges that dispute redressal methods in Indian are facing is to bringing about awareness among the people about the utility of ADR and simultaneously developing personnel who will be able to use ADR methods.

The review of different literatures shows that, there exists the problem of judicial crises due to judicial arrears and delays before the Indian Courts. ADR is a convenient, generic term encompassing a number of process commonly understood to include alternatives to the formal adversary method of trial by litigations. ADR includes arbitration, conciliation, mediation, negotiation and their variations. In finding, a solution to the problem of judicial delays and arrears before the Courts of law with the use of ADR mainly focuses on its use with integrity in the process of elimination of delays, speedy clearance of arrears. Reduction of costs to secure quick and economic disposal of cases is not to affect the cardinal principle that decisions should be just and fair.

1.3 GENESIS OF THE RESEARCH

The practice of settling the disputes through community elders existed in India even before the advent of British. For all these years in India, the settlement of dispute between its subjects has been the State monopoly and it had virtually elbowed out the pre-existing unofficial and

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2 Section-89(1) of CPC(Amendment )Act,1999(wef-2002): Settlement of dispute out side Court: Section-89(1) reads- where it appears to the Court that there exist elements of settlement which may be acceptable to the parties, it shall formulate the terms of such settlement, give them to the parties for their observation and after receiving the observations of parties, the Court may reformulate the terms of such settlement and refer the same for(a)Arbitration,(b)Conciliation, (c) Judicial settlement including settlement through Lok Adalats; or (d)Mediation.

3 The history of dispute redressal mechanism in India is discussed in Chapter III of this research paper.
non-formal settlement procedures. It was only after the introduction and predominant adoption of settlements of disputes through adversarial system of litigations\(^4\) where Courts are the custodian of the rights of the citizen, the dispute redressal methods such as ‘Arbitration’, ‘Conciliation’ and ‘Mediation’ came to be treated as alternative means of resolving the disputes.

The independent judicial branch of the Government exercising the authoritative settlement of disputes between individuals, between the State and its instrumentalities and individual is regarded as a sovereign function of the State. However, the Courts of law are facing the crises like situation, as they are not able to keep the pace of disposal of cases with the new and increased filings. The procedural laws that the Courts are required to follow in order to maintain the principles of natural justice and give equal opportunity of presenting their case before it are time consuming. Arrears are mounting up at an alarming phase. It might take decades to clear the backlog if the judiciary gives exclusive attention to the pending cases. However, by the time it is cleared, arrears will pile up with the new filings during that period. Perhaps the solution can be by doubling the size of the judiciary, but it is not simple and an immediate solution to the problem of judicial delays and arrears. The doubling the size of the judiciary involves the procedure to find new buildings, judicial officers and their supporting staffs, which is highly expensive, and time consuming work.

The legal maxim “ubi jus ibi remedium” means, where there is a right there is a remedy, lays down the foundation of legal system in every

\(^4\) In the process of “litigation” the Court of law is approached for resolution of dispute by the parties to the dispute; P.Ramanatha Aiyer’s The Law Lexicon,p1135 defines “litigation” as A judicial controversy, a contest in a Court of law; a judicial proceeding for the purpose of enforcing a right. The action of carrying on a suit in a law, Legal proceedings [O24, R4 (2), CPC].
human society. With the spread of literacy and growing importance of education in India, the people are becoming more sensitive, literate and are having a better understanding and awareness of their rights and duties. So, whenever there is an infringement of any right or any breach of duty, and a dispute arises, the disputants immediately tend to approach the Courts of law for seeking justice. This has led to the substantial increase in the numbers of new cases coming before the Courts, which is adding to the already existing list of pending cases before the Courts. Populace chose to approach the Courts to restrain the injustice done to them, in one way this highlights their reliance to the method of justice delivery system through the Court of Law. In other ways, this attitude of the litigant public also apparently shows their ignorance about the availability of different methods of resolution of disputes, like Arbitration, Conciliation, Mediation and such other methods that are much cheaper, quick and less complicated than the Litigations before the Courts of law. This pattern of preference in resolving dispute through the Courts has thus resulted in abundance of new cases coming before it and there by the statistics show that there is increase in the numerical data of the pending cases in Courts of law at every stage.

The practical experience of the researcher as lawyer and the reports of various committees and commissions illustrate that, the Courts of law in India are facing the problem of judicial arrears and delays due to various contributory factors. The other contributing factors to the problem of judicial arrears and delays includes the complicated long procedural laws, the unending appeals, revisions and reviews, the adjournment of the cases at the instant of the clients and the lawyers, frequent boycott and strikes in the Courts of law, decreasing number of working days and such other factors.
On the part of the judiciary, too many cases are being placed before the Judge’s and Magistrate’s of different Courts at every hierarchy. There is also the problem unfilled long judicial vacancies before the Courts, which adds to the problem of judicial delays and arrears. As per the daily case lists, it becomes practically impossible for the Judges to take-up each and every case in the list, hear each and every individual case as per the lists, conduct the proceedings in it and decide it accordingly. Thereby, at least two third of the cases are being adjourned to some other date on daily bases. Although the number of Fast Track Courts, the judicial officers and the Court staffs have been increased it is far below the requirements. All the factors working together add to the inability of the judiciary to deliver Justice within a reasonable time. This has brought about a sense of frustration amongst the Litigant public. These delays deny litigants of their right to speedy justice. This rightly shows the effect of the cliché “justice delayed is justice denied”. The impact of these delays and the denial of justice can eventually lead to the cumulative loss of public confidence in the judiciary, and the people can tend to resort to lawlessness, force and violent crime as a method of seeking remedy.

The problem of judicial delay and arrears in the Courts has resulted in the crises like situation and are posing as a challenge to the very survival of the Courts in future. As per the Department Related to Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice 20th Report, the Indian judiciary comprises of nearly 15,000 Courts situated in approximately 2,500 Court Complexes throughout the country. The total pendency of cases in these Courts at the end of 2008

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5 Problem of under staffing of the judiciary was examined in 20th law commission report, in July 1987 under the chairmanship of Justice D.A. Desai, India has 10.5 judges per million population, the corresponding figures in England was 50.9, Australia 57.7 and in Canada 75.2. Suggestion of the commission was that India requires 50 judges per million of population is five fold increase in the number of the judges in five to ten years.
the arrears of civil and criminal cases pending disposal in the High Courts was 38,74,090 of which 31,03,352 are civil and 7,70,738 are criminal cases. In Subordinate Courts the total pendency at the end of year 2008 was 2,64,09011 of which 1,88,69,163 are criminal and 75,39,848 civil cases. The total Pendency as on 30/11/2006, were 39,508 cases pending before Supreme Court, a total of 42,42,450 in different High Courts and 2,54, and 92,578 cases pending in the Subordinate Judiciary7 It is thus clearly evident that, the backlog of cases is still increasing to a considerable extent.

The Supreme Court of India has repeatedly held that, "Justice delayed is justice denied"); but still exotic delays are being cause at different stages starting from the trial stage, till the stage of arriving at the final decision and also at the stage of execution of those judgments and orders. These inabilities and defects in the working of the Courts to the satisfaction of the litigant public continues at every level resulting in huge `backlogs' and repeated violation of fundamental rights of citizens of India. The Supreme Court made it clear in the year 1979 in Hussainara Khatoon Vs. State of Bihar8 case that, "speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice". It added to it in Maneka Gandhi Vs. UOI9 case that, "There can be no doubt that speedy trial -- and by speedy trial we mean a reasonably expeditious trial -- is an integral and essential part of fundamental right to life and liberty enshrined in Art 21". In Kartar Singh Vs State of Punjab10 case, Supreme Court of India has further observed that, the concept of speedy trial is read in to Article-21 as an

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7 Registry of Supreme Court of India, 31st November 2006.
8 AIR 1979 SC 1364
9 AIR 1978 SC 597
10 (1994) 3 SCC 569, 638
essential part of fundamental right to life and liberty preserved under the
Constitution. Even apart from Art. 21, the Constitutional mandate for
speedy justice is inescapable. The preamble of the Constitution of India
enjoins the State to secure social, economic and political justice to all its
citizens. Art 51 (d) promotes the international peace and security and
affirms that the State shall endeavor to encourage settlement of
international disputes by arbitration\textsuperscript{11}. The Directive Principles of State
Policy declares under Art 38 (1) that, the State should strive for a social
order in which such justice shall inform all the institutions of national
life\textsuperscript{12} . This is elaborated under Art 39A of the Constitution of India by
specifically adding that "The State shall secure that the operation of the
legal system promotes justice.; to ensure that opportunities for securing
justice are not denied to any citizen by reason of economic or other
disabilities" . While interpreting these provisions Supreme Court of India
in Babu Vs. Raghunathji\textsuperscript{13} case has held that, "social justice would include
'legal justice' which means that the system of administration of justice
must provide a cheap, expeditious and effective instrument for realisation
of justice by all section of the people irrespective of their social or
economic position or their financial resources".

A system or an organization is mostly judged on it working.
Problems arising in the system is either inherent in it that is to say which
is born with the system or the problems that arises due to the changes in
circumstances with time. Identification of the problem is primarily
important for finding a solution or a substitute of such a system in order
to make it or its alternative function as effectively as it should be and
fulfill the desired objectives. Researcher has made a humble attempt to

\textsuperscript{11} V.N Shukla, Constitution of India,p313, 10\textsuperscript{th} edn, Eastern Book House.
\textsuperscript{12} Art 38 (1), The Constitution Indian
\textsuperscript{13} AIR 1976 SC 1734
understand the problem of judicial crises arising out of judicial arrears and delays in Indian Courts with special reference to Pondicherry. To study, the role of different alternative dispute redressal methods in reducing the problem of judicial arrears and delays. The different types of alternative dispute redressal mechanisms that can be introduced as a primary grievances redressal method, supplement along with the method of adjudication of dispute through Courts for providing a less adversarial, swift and economic mean of justice to the disputant.

The disputants do get agitated because of the unending pendency, ever increasing litigation costs, possibility of destruction of business, employment and personal relationships. Disputed parties want their conflicts to be resolved quickly and fairly, instead of getting them protracted, intrusive and expensive which they neither understand, nor can control. In such a situation the researcher has designed the study to find that, if the disputed parties resort to different alternative dispute redressal methods, it can not only reduce the burden of the Courts to a considerable extent but can also secure for the disputed parties speedy decision of cases with less complicated procedure and expenses. As a consequence of heavy traffic in the main thoroughfare, a bye pass is to be opened to ease the pressure in the main thoroughfare, in the same way the mechanism of alternative dispute resolution systems\(^\text{14}\) like arbitration, conciliation and mediation, their hybrids are to be carved out and

\(^{14}\) Article 33 of the UN Charter lists six methods of peaceful settlement of disputes: Negotiation, Enquiry, Mediation, Conciliation, Arbitration, and Judicial Settlement. Negotiation is essentially a process of bargaining between the two parties in search of a solution of disputes. What the enquiry does is to elucidate the points of difference and agreement to both sides. This method may facilitate the understanding of the issues of disputes. Mediation is adopted by parties because in some disputes the degree of bilateral relationship reaches a point that direct negotiation is unlikely to resolve disputes. Conciliation is a method that combines the characteristics of both enquiry and mediation. Arbitration is a quasi-judicial method of settlement of disputes. Parties agree to select arbitrators to resolve the dispute. Judicial settlement is a decision by a Court
effectively implemented. They can considerably reduce the number of cases coming before the Courts and can control the problem of docket explosion before it. If the flow of inputs before the Courts of law is controlled with, the use of these participative alternative dispute redressal methods, the Courts can work on those cases, which are not compoundable and cannot be resolved by the parties themselves. The Courts will be able to improve its judicial productivity both qualitatively and quantitatively and will be able to eliminate the judicial arrears effectively. The effective amalgamation of the different dispute redressal methods and using it appropriately as per the nature of the individual dispute can make the whole justice delivery system affordable, accessible, cost effective, transparent and accountable to the satisfaction of all, hence the study.

1.4 OBJECTIVES OF THE STUDY

The main objectives of the study are:

1. To understand the different concepts related to the research problem.

2. To trace out the history of dispute redressal mechanisms in India.

3. To study, the major legislations that provides for different types of alternative dispute redressal methods in India.

4. To study, the different alternative dispute redressal methods and their hybrids in resolution of the disputes.

5. To explore the, uniqueness of the alternative dispute redressal methods that are successfully functioning in other Countries and the major Institutions providing for them in India and abroad.
6. To comprehend the problem of judicial crises arising out of judicial arrears and delays in the Courts of law, with special reference to Pondicherry.

7. To evaluate and find out to what extent the different types of alternative dispute redressal methods can be effectively adopted as an applicable remedy in managing the crisis of judicial delays and arrears in India.

1.5 NEED FOR THE STUDY

In any democratic setup, the people want the right to seek justice to be one of their basic rights, thus it can neither be provided by the State nor be received by the people as an exception. A Democratic Country is bound to provide its populace, safety, security and protection safety from any coercion, infringement of rights and injustice. The question that is to be answered affirmatively is, whether our judicial system delivers what the preamble of the Constitution ensures for. The disputants want the judgments and orders in their disputes placed before the Courts as quickly as possible and without any undue delay. However, the fact is that even after the formation of different tribunals, increase in the number of judges, introduction of computers and such other methods, the administration of justice has not become speedy enough to eradicate the problem of judicial delays and arrears.

Disputes and conflicts dissipate valuable time, effort and money of the society. It is of utmost importance that there should not be any conflict in the society. However, in a realistic sense, this is not possible. Accordingly, the next best solution is that any conflict which raises its head is pinched out before it flourishes. The overflows of the cases in the Courts are not the sign of failure of the system but a sign of increased
faith in the administration of justice through the Courts of Law, and the ignorance of the people about the other reliable, efficient, quick and cheap alternative methods of resolution of dispute available to them15.

The recommended period for the disposal of the criminal matters is about 6 months, for civil matters about 1 year and for appeals in different categories, 6 months to 2 years, as per the recommendations of the 77th and 79th Law Commission Reports made in year 1978 and 1979, respectively. However, the fact is, when the final decision comes, there is a state of uncertainty, which makes any activity almost impossible. Commerce, business, development work, administration, etc., all suffer because of long time taken in resolving disputes through litigation. The Supreme Court of India has made it clear that this state of affairs must be immediately addressed: “An independent and efficient judicial system is one of the basic structures of our constitution…It is our constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.’’16

To get out of this maze of litigation, docket explosion, backlogs and judicial delays of the Courts there is a need to encourage the use of different alternative methods of dispute resolution. Hence, the need of the time is to target the area of research in evaluating the efficiency of different types of alternative dispute redressal methods in resolution of the disputes. To find out, how far they can be effectively adopted as an applicable remedy in reducing the crisis of judicial delays and arrears. The necessity is to aim at the development of alternative dispute redressal methods, with the ultimate aim of preserving peace and harmony in the

15 Chapter III of the research paper on ‘Historically Analyses’, analyses the evolutionary history of dispute redressal methods in India.
16 Brij Mohan Lal Vs. Union of India & Others (2002-4-Scale-433), May 6, 2002.
society and protecting the right to speedy justice of the populace with the combined use of both the Courts of law and ADR\textsuperscript{17}.

1.6 SIGNIFICANCE OF THE STUDY

The search for justice has been aspiring need of the people whenever there arises some dispute between them. The commonly preferred forums for resolution of dispute are the Courts of law at different levels working within its jurisdictions, The Fast track Courts and Special Tribunals like the tribunals formed to resolve the Industrial dispute constituted under The Industrial Dispute Act, 1947 with exclusive jurisdictions over the disputes earmarked for them\textsuperscript{18}. The Indian Constitution also reflects this aspiration in the preamble, which speaks about justice in all its forms, like socio, economic and political. Justice is a Constitutional mandate. However, the biggest hurdles in the administration of justice is that the Courts are facing are delays and arrears. Delay and arrears being the biggest operational obstacles, has to be tackled on a war footing.

Various proposals have been suggested and implemented upon as the possible remedy for the problem of judicial delays and arrears. The remedies such as, the simplification of the procedural laws, cutting down the cases for appeals with necessary amendments, increasing the number of Courts, increasing the number of Judges, establishment of specialized tribunals to take over the workload of the Courts, and introduction of computers and such other changes, but the problem remains as such. The question of judicial arrears has also engaged the attention of successive

\textsuperscript{17} Alternative Dispute Resolution (ADR)

\textsuperscript{18} The Industrial Dispute Act, 1947 in Section 7A (1) provides for Tribunals constituted for adjudication of Industrial disputes relating to the matters, whether specified in the Second schedule or third schedule and for performing such other functions as may be assigned to them under this act by the appropriate government.
Government and Law Commissions. This is not to say that the measures have not succeeded, because if these initiatives had not been taken, the situation would have been much worse. In view of the sizeable increase in annual institutions, and the need to keep the pendency under control, if not to reduce it, it is necessary to look at supplementing the existing justice delivery system with the encouragement of out of Court settlement methods of dispute resolution.

These factors have propelled jurists and legal personalities to search for an alternative to conventional Court system. The device of alternative dispute resolution system like arbitration, conciliation and mediation, the constitution and functioning Lok Adalats at various levels are now needed as means of resolving the dispute in the field individual disputes, trades and business sectors at domestic as well as international levels.

The study of alternative dispute redressal methods is preferred by the researcher for reducing with the problem of judicial delays and arrears due to the unique characteristics of these methods. When compared with the Courts, alternative dispute redressal methods are cost savings for parties and Courts. They give early resolution of disputes. They are more satisfying procedure for disputes resolutions. The outcome reflects the party’s interests and values. The litigant’s get more amount of satisfaction and compliance with result. The disputed parties get finality of resolution.

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19 Arrears Committee Report (Malimath Committee Report) dt 7 August 1990 is the one that has been repeatedly referred in the study of the problem of Judicial delay by various committees and Commission. The Law Commission of India has submitted some 12 reports covering various aspects of the problem judicial delay. The researcher in Chapter III of the research paper has studied the reports of committees and commissions and analyzed its effect in the development of dispute redressal mechanisms.

20 Article 33 of the UN Charter lists six methods of peaceful settlement of disputes: Negotiation, Enquiry, Mediation, Conciliation, Arbitration, and Judicial Settlement.
of disputes. It provides for win-win situation and preservation of relationship. Thus, reducing backlog and freeing judicial resources.

1.7 HYPOTHESIS

Dispute resolution process in each and every case cannot be confined to the Courts of Law. Due to the increased burden, procedural complications and inadequate knowledge about alternative dispute redressal methods among the public the Courts of Laws are facing the problem of judicial crises. The study is based on the assumption that, when the rate of filing of the cases before the Courts is decreased the judicial delays and arrears before the Courts can be properly managed. Different forms of alternative dispute redressal methods either socially or legally can effectively be used as a mechanism in reducing the problem of judicial delays and arrears. The lack of knowledge on the part of the disputed party has also made the existing system not to function in an effective manner.

Based on the data collected and the study made by several scholars, the researcher makes a humble attempt to study the research problem ,“A Study On The Role Of Alternative Dispute Resolution Methods In Reducing The Crisis Of Judicial Delays And Arrears With Special Reference To Pondicherry”. With a view to analyze the topic, the researcher has framed the main hypothesis that the Problem of Judicial crises arising out of judicial delays and arrears must necessarily be reduced, if it is not possible to be eradicated with the use of alternative dispute redressal methods. To study whether the use of alternative dispute resolution mechanisms can play a constructive role in reducing the crisis of judicial delays and arrears existing before the Courts of law in India.

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As stated in the objectives of the research, efforts are made with the necessary sub hypotheses to study the research problem and to find out procedural lacunas in the existing legislations providing for ADR and in its implementation in India.

The sub hypotheses are framed wherever necessary to study various causes for the judicial crises, the various kinds of alternative dispute redressal methods, its institutionalization, the needed attitudinal changes and social changes for its effective implementation and use.

Pondicherry is a small Union Territory where study can be made at the Courts of Law and at the grass root level. A sub hypothesis has been framed, to study the nexus between the increased filings before the Courts, the non-utilisation of different alternative dispute redressal methods and the problem of judicial arrears and delays.

Having the impact of the different system of jurisprudence a sub hypothesis has been formulated to show that the finer aspects of the system of other countries where alternative dispute redressal methods are successfully functioning can be incorporated in the Indian dispute redressal system.

The alternative dispute redressal methods cannot be said to be a replacement of the adversarial system of Courts of law. Alternative dispute redressal methods can be quick and economical methods, unless the parties are equally interested in settlement. If these methods are not put to proper use, they can be very well 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. Consequently, the right to speedy trial can successfully be given its due respect only with the appropriate use of different alternative dispute
redressal methods as a supplement and not as supplant to the conventional method of resolution of disputes through Courts of law.

1.8 METHODOLOGY OF THE STUDY

To fulfill the objective of the study the researcher has adopted both the “Doctrinal research” and the “Empirical research” methodology. The researcher used the doctrinal research method for gathering the opinions of the textbook writers, the Law Commission reports on the structural and operational part of the legislative machinery. The methodology helped in systematizing legal propositions and judicial interpretations for a theoretical assessment of the research problem with the help of the various law journals, and books of the eminent jurists forming the secondary sources of the research. The researcher has tried to scrutinize and identify the institutional deficiency present in the Indian legal system, which has resulted in the crises like situation. The doctrinal research method was further used to study the different alternative dispute redressal methods, the major institutions providing for the same at national and international levels and a comparative study of the different dispute redressal methods functioning in different Countries.

An Empirical field study was undertaken by the researcher in the different dispute redressing institutions functioning in the Union Territory of Pondicherry, for identifying the functional deficiency and the facts and circumstances contributing to the problem of judicial arrears and judicial delay before the Courts. The statistical interpretation of data collected during the field studies was undertaken by the researcher for the analyzing the problem of case congestion, judicial arrears and judicial delay as performance indicators of the different dispute redressal methods with special reference to Union Territory of
Pondicherry. This assured the study of common institutional framework in which the judicial quality can be properly measured in the study of research problem.

The associated facts, the primary and secondary data relating to the research problem were collected with the help of, the interview method, random sample survey method and observation methods, which were primarily based on the tool of questionnaire, that focused on the study of research problem and its objectives. Thus, the methodology used in the study includes both the evaluation of the theoretical framework and the limited empirical analysis based on actual field studies of the various dispute redressal mechanisms and institutions of Pondicherry. The chosen methodology of the research aimed at identifying the functional bottlenecks that are widening the gap between the filings and disposal of cases before the Courts of law and finding the solution to the problem with the help of different alternative dispute redressal methods.

1.9 SCHEME OF THE STUDY

This work consists of nine chapters. The First chapter is the *introductory* chapter which gives the introduction as to why was the particular research topic chosen by the researcher for the study, the objective of the study, the need for the study, the significance of the study, the hypothesis of the study, the methodology applied for the study and the scheme of the study.

The Second chapter deals with the *conceptual analysis* with respect to the research problem, like the characteristics of disputes, the causes of disputes, types of dispute, effects of the dispute, fundamentals of dispute resolution process, the concept of adjudication through Court of law (litigation). It includes the study of causes of judicial arrears and backlog.
of cases, the conceptual analysis of alternative dispute resolution mechanisms, the advantages and disadvantages of alternative dispute redressal mechanism and the scope of alternative dispute redressal methods.

The Third chapter deals with the study of different stages in the evolutionary history of dispute redressal process in India, starting with the Vedic or Pre–Sutra period (Aryan Civilizations), Dharma sutra period, Post Smriti Period, Muslim Period, and British Period. It includes the dispute redressal methods that existed after Independence of India, the reports of Committees and Commissions including the Legislations that are presently adopting the different alternative dispute redressal methods in India.

The Fourth chapter deals with the major forms of alternative dispute redressal methods. Starting with The Arbitration and Conciliation Act, 1996 the characteristic features of the arbitration and conciliation processes, arbitration, kinds of arbitration, the enforcement of certain foreign award, differences between the alternative dispute redressal methods and conciliation under the Arbitration and Conciliation Act, 1996. It includes a brief study on the Arbitration and Conciliation (Amendment) Bill, 2003, its criticisms and the case study of Salem Bar Association Case with the draft Alternative dispute resolution and Mediation Rules, 2003. The process of Mediation, its definition and scope, the difference between the Mediation and other dispute redressal process, Mediator, the tasks of a Mediator, Mediation process , the types of Disputes not suitable and not suitable for Mediation, Mediation in Other Countries, Concept of Court annexed Mediation and Institutionalisation of Mediation. The chapter also includes a brief study into the concept of Negotiation, its meaning, procedure, its advantages
and disadvantages. The future of alternative dispute redressal methods and its hybrids is dealt with the study of Online Dispute Resolution in India and its need, Judicial Response with reference to Information and Communication Technology, Ad Hoc Arbitration, Institutional Arbitration, Mediation-Arbitration (Mediation Followed by Arbitration) and the concept of Arbitration-Mediation.

The fifth chapter deals with the institutions promoting alternate dispute redressal methods, starting with those functioning at the grassroots level in India namely the panchayat system and principles of decentralization, Gram panchayat, Gram Sabha, Panchayat Samiti, Zilla Parishad. It includes a study on the Nyaya Panchayats, Panchayat system in Pondicherry, Gram Nyayalaya and Lok adalats. The advent of Permanent Lok Adalat system, the Criticism on the system of Permanent Lok Adalats and the present needs of such alternative dispute redressal mechanisms at the grassroots levels. This chapter further includes the alternative dispute redressal services institutions established in India at national level starting with The Tamil Nadu Mediation & Conciliation Centre, Indian Institute of Arbitration and Mediation (IIAM), International Centre for Alternative Dispute Resolution (ICADR), Indian Council of Arbitration (ICA). The study includes the International Institutions promoting alternative dispute redressal methods like the International Chamber Of Commerce (ICC), The Permanent Court of Arbitration (PCA), World Intellectual Property Organisation (WIPO) Arbitration and Mediation Center, The London Court of International Arbitration, and The World Trade Organization.

The Sixth chapter deals with the Comparative Study of the different alternative dispute redressal institutions functioning in other countries. The countries that are studied with respect to the research problem are
China, Japan, United States Of America(USA), United Kingdom(UK), and Australia.

The Seventh chapter is the Field study report, with respect to the study of different dispute redressal institutions of Pondicherry. The Report starts with the brief with the history of Pondicherry, liberation of Karaikal, Mahe and Yanam, the merger and its impact, the judiciary after 1816, the judiciary under the French India, the extension of central enactments, reorganisation of the judiciary, the present structure, functions and powers of judiciary in Pondicherry, Karaikal, Mahe and Yanam. The report includes the constitution of Labour Court, Pondicherry, Industrial Tribunal and Special Court under different Statutes. The report includes the gist of the responses to the questionnaire and observation of the research with reference to the research problem. The report on the Labour Office Conciliation its functions, powers and working, the Union Territory Of Pondicherry Legal Services Authority, Lok Adalat and the relevant provisions of The Legal Services Authorities Act, 1987 and Union Territory Of Pondicherry Lok Adalat Scheme, 1999 and the statistical research report also form an important part of the said report.

The Eighth chapter is the concluding chapter of the research work. It is with respect to the Conclusion and the Suggestions that the researcher has arrived at out of the research study. The suggestions are based on the study and are mainly focusing on the answers to the questions that arose during the study in the form of suitable recommendations. The changes that can play a constructive role in redressing the problem of the judicial crisis due to the judicial delay and arrears in the Court of laws in the long run.