CHAPTER -2
CONCEPTUAL ANALYSIS

INTRODUCTION

Man is a social being and the society is both natural and necessary for him. It is difficult for the human beings to live in isolation. They always live in various groups and associations. As a member of these groups, people act and behave in a certain manner and this behavior of each individual affect the behavior of the other individual in the group, which is the essence of social life and the society. Green defines social interaction as “the mutual influences that individuals and groups have on one another in their attempts to solve problems and in their striving towards goals”. Prior to proceeding towards the research problem, it is necessary to understand the meaning and the concept of the terms used to define the topic of the research. All the possible concepts, that would help in understanding the research problem and proceeding with the research in a right track are analyzed in this chapter.

2.1 CHARACTERSTICS OF DISPUTES

To appreciate the need of an array of dispute redressal mechanism for the social order, it is necessary to understand the meaning, the characteristics, and the positive and negative effects of dispute in the society. The term dispute in its wider sense may mean the wrangling or quarrels between the parties, one party asserting and the other denying the liability. Conflict between two parties arises when one asserts a particular proposition and the other denies the same. This may cover the entire range of differences of opinion to fierce controversy. Conflict between

21 ‘Man’ is used as a Generic term and is not gender specific.
22 Green, A.W. Sociology, (5th Ed), P.60
23 P.Neelakante W. Swararaju Vs. J. Mangamma, AIR 1970 AP. 1
the parties though not arising out of any transaction entered between them is also covered by the term “Dispute”24. Dispute is an argument or a disagreement between the two people, groups or countries and discussion about a subject where there is disagreement25. Almost any human action is likely to thwart the hopes or interfere with the plans of someone else. Such action becomes conflict, however, only if the deliberate attempt is to oppose26. However, what is important in understanding the concept is that how can the dispute be managed or handled.

2.2 DISPUTES

The term dispute can be defined by referring to specific issues or a disagreement regarding specific facts. Supreme Court of India in the case of Major Inder Singh Rekhi Vs Delhi Development Authority27 has held that there cannot be a dispute for the parties to invoke arbitration until “a claim is asserted by one party and denied by the other on whatever grounds”. The Court of Appeal in England in Ellerine Brother (pty.) Ltd. Vs Klinger28 held that “silence does not mean consent” that “there is a dispute until the defendant admits that a sum is due and payable”. The term dispute is interpreted in the direction of identifying the issues to be resolved between the opposite parties.

The terms Conflict and Dispute are used interchangeably by the theorists. Dispute can be defined more specifically by reference to specific issues or disagreement regarding specific facts. The Conflict can be defined as a general state of negative feeling such as contempt, anger, fear and distrust.

27 AIR 1988 SC 1007.
2.3 CAUSES OF DISPUTES

In the study of dispute resolution processes it is necessary to understand that dispute is present as part and parcel of human relations in the society. Dispute between the parties arise because of the perceived differences between them in thinking or in their interest. In a society where there is interaction between two or more people and if, their interest and thoughts do not match it is obvious that it would result in a conflict. There would be disputes so long as claims are asserted by one party and is denied by the other, be it the claim a false one or a true one, or whether it ultimately turns out to be false or true\textsuperscript{29}.

According to Darwin, the principles of struggle for existence and survival of the fittest are the main causes of the conflict. It arises primarily from a clash of interest, within the groups and the society as a whole. In short, Darwin’s ideas of the causes of the dispute\textsuperscript{30} are individual differences, cultural differences, clash of interests and social change. It is a known fact that no two persons are alike in their nature, attitudes, ideals and interests called the individual differences and because of these differences, people fail to accommodate themselves, which may lead to dispute among the individuals. Culture is the way of life of a group. The culture of one group differs from that of the culture of the other group. This cultural difference among the Groups sometimes causes tension and lead to dispute. Religion and the cast differences are the two-foremost reasons that have occasionally led to the wars and persecution in the history. The Interest of different people or groups occasionally results in clash. Prominent example for such dispute is the interest of the workers to that of his employer. The interest of workers

\textsuperscript{29} 42 CWN 391, Forward Vs. Watney, 49 LJQB 447
\textsuperscript{30} Vidya Bushan and Cachdeva.,An introduction to Sociology., Pg 144,145
clashes with that of the employers, which leads to the dispute among them. Social change becomes a dispute when a part of society does not change along with changes in the other parts. Social change causes cultural log, which leads to dispute. It is an expression of social disequilibrium.

Fundamentally, the social set up and the laws governing society operate as a basis for understanding the rights and duties of the parties in a given situation, which helps in determining the nature and strength of dispute. Thus, for developing an effective and acceptable solution for any dispute it is necessary to have the knowledge of it.

2.4 TYPES OF DISPUTE

There are different categories of disputes and it is essential to understand them in order to apply the apt methodology for resolving it. The differences, which are inherent in a dispute, can usually be examined objectively and a third party can take a view on the issue to assess the correctness of one side or the other. Each area of activity has its own traditions, culture and ways of dealing with conflicts and disputes. Different rules and cultures generally apply to different fields within which disputes occur.

Prof. Simmel distinguished dispute in to four major types namely the war, the feud or factional strife, the litigation and the conflict of impersonal ideas. War is a kind of group conflict inter-territorial in nature between alien groups. Feud or Factional strife is an intra-group form of war, which may arise because of injustice done by one group on the other group. Litigation is a judicial form of conflict when some

32 Green ,A.W Sociology., Pg 64.
individual or group asserts its claim before the Judiciary to certain right based on objective factors and not on the subjective factors. The Dispute of impersonal ideas is a conflict carried on by the individuals not for themselves but for principles. Each party attempts to justify truthfulness of its own principles. A dispute can also be viewed as a class or a kind of conflict that manifests itself in distinct, justifiable issues.

The disputes can also be classified as Industrial disputes involving matters of public law. The Commercial disputes both at national and international levels with a spectrum including contractual disputes which may relate to commercial relationships such as partnerships, sale of goods, engineering contracts, banking, shipping, intellectual property, building and construction work etc. The Consumer disputes which arise out of sale of goods between the supplier and consumer. The Corporate disputes between shareholders or between company and the shareholder, arising on liquidation or winding up and receivership. The Employment and Labour disputes relating to employment or non-employment, terms of employment and conditions of labour, job security, wages, unlawful termination, retrenchment etc. The Family disputes arising out of family relationships such as separation, divorce, dispute relating to children, property, inheritance of family business, dispute relating maintenance of parents, children and wife, and the personal disputes between the family members also come under this category. Trust disputes between the trustees and beneficiaries. Tortious disputes which arise in torts, including negligence and failure of duties and including insurance claims relating to these. These are some of the major areas, where the disputes occur quite often. Globalization has been a great stimulation in the process of integration of economies and societies of different countries across the globe. It has been a great tool for breaking economic barrier
and envisioning world as a market for trade. When economies and societies integrate, it undoubtedly leads to the rise in various types of disputes such as Industrial disputes, Commercial disputes, disputes between the States and Nation. The remedy is not in the avoidance of these disputes but rather in building mechanisms to resolve these disputes amicably. Resolution of disputes is a sine qua non for growth and for maintaining peace and harmony in every society.

2.5 EFFECTS OF THE DISPUTE

There is Positive as well as negative effect of every conflict or the dispute. In order to understand the need of any kind of dispute resolving mechanism both positive as well as the negative effect of the Dispute must taken into consideration.

H.T. Majumdar has mentioned the Positive function of any form of Dispute\(^33\) such as, the dispute tends to stiffen the morale and promote the solidarity of the Group. It concludes with victory; leads to enlargement of victory. It leads to redefinition of value systems. It may also lead to working out of non-violent techniques for resolving the crises arising out of any dispute. It may also lead to change in the relative status of the disputed parties and the dispute can perhaps lead to new consensus among the disputing parties. Horton and Hunt\(^34\) have also classified the effects of Dispute as the Integrative effects and the Disintegrative Effects. Integrative effects are that where any form of dispute tends to define issues. Dispute ultimately leads to a resolution of issue among the party to the dispute. Dispute increases group cohesion. Dispute leads to alliance with other groups with similar interest. Dispute keeps groups alert to member’s interest. The disintegrative effect of any form of dispute is that,

\(^{33}\) Green ,A.W Sociology., Pg 65  
\(^{34}\) Horton and Hunt, Sociology.,Pg 310
at the foremost dispute increases bitterness among the parties to the dispute. Dispute leads to destruction and blood sheds. Dispute leads to inter group tension. Dispute disturbs the normal channels of co-operation between the groups or the party to the dispute. Dispute ultimately diverts the attention of the members from their group objectives.

Despite all such, positive and negative effects of dispute it is necessary that the Society, State and Parties to the dispute be equally under the obligation to resolve the dispute, as in any civilised society, for the rule of law to prevail, complete justice should be meted out. The above study of the environment factors contributing for dispute, leads to the truth that there are elements of conflict in every situations and that dispute is part of every human society and the society, from the time immemorial has pioneered different methods to smoothen the causes of dispute with the use of different dispute resolution mechanism.

2.6 FUNDAMENTALS OF DISPUTE RESOLUTION PROCESS

Disputes resolution is an indispensable process for making social life peaceful. Dispute disturbs the integration of the group and since social stability is required for the social order, in every society efforts have been made to bring about resolution of conflict between antagonistic groups. Disputes resolution process tries to resolve and checks conflicts, which enables persons and group to maintain co-operation. It can thus be alleged that it is the sin qua non of social life and security of the social order, without which it may be difficult for the individuals to carry on the life together\(^{35}\).

In India, adversary method of resolving a dispute is predominantly followed. The Britishers primarily introduced this method of resolving

\(^{35}\) Park and Burgess, Introduction to the science of Sociology.p 735
the disputes for the first time in India. In this method, the parties to the
dispute compete with each other to get a favorable decision. This leads to
win or lose situation between the litigants ensuing animosity between
them. Hence, the shortcoming of such a system is that the congenial
atmosphere of the society is said to be affected. The Society makes
efforts to control the dispute and the conflict, but irony is that the society,
itself has created situation that leads to the dispute and perhaps cannot
avoid doing so. By assigning different status to different occupations,
society has laid the basis for jealousy, greed and resentments. By giving
authority to one person over the other, society opens the doors for abuse
of authority and consequently relation. By creating ends that are
competitive, society makes it possible for competition to take the form of
dispute. Despite some of its negative effects of litigations it cannot be
denied that it is one of the most reliable sources of resolution of dispute
among the public and has proved to be an outstanding method to the
satisfaction of everyone. It is a unifying factor, which handles the
disputes in accordance with uniform national standard. This is the reason
why it is still functioning as a primary source of resolution of the dispute
among the people.

The litigation process in India is largely influenced by the English
Common Law because of the long period of British Colonial influence
during the British Raj in India. After the independence of India, though
there was some criticism that the system was unsuited to Indian
conditions and that it has to be radically altered, there was no major
movement to replace the method that was introduced by the Britishers
with that of the traditional dispute resolution methods, which were better
suited for the masses of the Country. At present, there is a single
hierarchy of Courts in India. India's judicial system is made up of the
Supreme Court of India at the apex of the hierarchy for the entire country and twenty-one High Courts at the top of the hierarchy in each State. These Courts have jurisdiction over a State, a Union Territory or a group of States and Union Territories. Below the High Courts are a hierarchy of Subordinate Courts such as the Civil Courts, Family Courts, Criminal Courts and various other District Courts. The High Courts are the principal Civil Courts of original jurisdiction in the State, and can try all offences including those punishable with death. However, the bulk of the work of most High Courts consists of Appeals from lowers Courts and writ petitions in terms of Article 226 of the Constitution of India. The precise jurisdiction of each High Court varies. Each State is divided into judicial districts presided over by a 'District and Sessions Judge'. He is known as a District Judge when he presides over a civil case and a Sessions Judge when he presides over a criminal case. He is the highest judicial authority below a High Court judge. Below him, there are Courts of civil jurisdiction, known by different names in different states. The interminable and complex Court procedures and the problem of judicial delays and arrears have propelled jurists and legal personalities to search for an alternate to conventional Court system. The search was a great success with the discovery of alternate forum known as Alternate Dispute Resolution machineries, which is commonly called by its generic acronym “ADR”. Alternative to litigation as dispute resolution do not deviate completely from law and legal process.

Methods of dispute resolution include the method of adjudication by Court of law (litigation), arbitration, mediation, conciliation, negotiation, Panchayat, Lok Adalat. Dispute resolution processes can be broadly categorized into two major types namely; Firstly, Adjudicative processes, such as litigation or arbitration, in which a judge, jury or
arbitrator determines the outcome and Secondly, the Consensual processes, such as collaborative law, mediation, conciliation, or negotiation, in which the parties attempt to reach agreement.

Adjudicative or Determinative processes are not the literal dispute resolution process. Judges do not resolve disputes coming before their Courts in fact they decide disputes or adjudicate on them. Disputes are resolved through consensual interaction between the disputants. The deciding of a dispute involves a fundamentally different approach by the judge from the approach of a mediator. The Mediator’s job is promoting or facilitating resolution of the dispute by the parties themselves and not purporting to decide the issues between them\textsuperscript{36}. In India, with major economic reforms under way within the framework of rule of law, necessitates the need of strategies for swifter resolution of disputes. It is required for lessening the burden on the Courts and for providing expeditious means of resolution of disputes. At this juncture, there is no better option but to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through Arbitration, Conciliation, Mediation and their hybrid techniques.

The acceptance of process of alternative dispute redressal techniques is not intended to supplant altogether the traditional means of resolving disputes by means of litigation\textsuperscript{37}. It only offers alternatives to litigation. There are a large number of areas like Constitutional law and the Criminal law cases where alternative dispute redressal methods cannot substitute Courts. In those situations, one has to take recourse of the existing traditional modes of dispute resolution through Court of Law.

\textsuperscript{36} Tania Sourdin, Alternative Dispute Resolution, p.v.  
2.7 ADJUDICATION THROUGH COURT OF LAW (LITIGATION / LAWSUITS)

Litigation as commonly understood is a lawsuit, a judicial contest or a contest in the Court of Law. Justice P.B. Mukharji held that litigation means dispute and not actual proceedings in a Court of law. In the case of Vide Mury Exportation Vs Khaitan and Sons,\(^{38}\) it was held that Litigation and Arbitration, are both methods of resolving the Dispute, one in a Court of law while the other through a private Tribunal. There are some disputes, which can only be decided in the Courts thus, the in-arbitrability of the subject matter of the disputes makes it not capable of settlement by the alternative dispute redressal methods for the time being in force.\(^{39}\)

The expression ‘subject matter’ has neither been defined in the Arbitration and Conciliation Act, 1996 nor in Code of Civil Procedure 1908. The rights and liability arising out of certain actions falling in the area of criminal offences have to be determined by the criminal Courts because such Courts are specifically equipped with the paraphernalia to try criminal offences and inflict punishment. Thus, such disputes are not triable by the alternative dispute redressal forums as in law it cannot acquit or punish a person for a criminal offence, because it cannot assume the powers of a Magistrate. The matters covered by The Guardian and Ward Act 1989 cannot be suitable dealt under the alternative dispute redressal methods. That Guardian and Ward Act 1989, provides special machinery for dealing with various types of disputes, which are suitable dealt with only under the provisions of that Act. Likewise the question of legality and validity of will or capacity of testators etc, have to be dealt with by the law relating to wills, trust and succession statutes or the

\(^{38}\) AIR 1956 Cal 644,648.
personal laws only. The matters relating to winding up, amalgamation and takeover etc are covered under The Companies Act 1956 and such matters can only be dealt with under the machinery provided in that Act. The disputes coming under The Monopolies and Restrictive Trade Practice Act 1969, The Consumer Protection Act 1986, the intellectual property rights covered under The Trade mark Act 1999, The Patent Act 1970, The Copyright Act 1957, The Designs Act 2000, The Geographical Indication of Goods (Registration and Protection) Act 1999, The Protection of Plant Varieties and Farmers Right Act 2001, The Semiconductor Integrated Circuits Layout- Design Act 2000, The Biological Diversity Act 2002 are not arbitrable or negotiable between the disputed parties. Likewise the questions involving public policy like agreement to commit a crime or civil wrong or fraud, Contract with alien enemy, agreement for the Sale of Government offices or contract injurious to public service cannot be resolved by the use of alternative dispute redressal methods. The agreement intending to abuse the legal process, a in restrain of marriage, agreement in restrain of Trade etc, by virtue of Section 27 of the Indian Contract Act 1872 every agreement by which one is restrained from exercising a lawful profession, trade or business of any kind is to that extent Void. The administrative disputes and matters between the Individual and the government that are non-cognisable in nature in other words the disputes which cannot be resolved through the process of mutual agreement between the parties to the dispute. These issues cannot be subject matter of arbitration or any other form of alternative dispute resolution methods.

\(^{40}\) As amended by The Consumer Protection (Amendment Act)1993.
\(^{41}\) As amended by The Patent (Amendment) Ordinance 2004.
\(^{42}\) Section 24 to 30 of the Indian Contract Act 1872.
Lawsuits have their own advantages\textsuperscript{43} such as the Judicial officers will be highly qualified lawyers with high experience, expertise and objectivities. The established rules and procedures result in cases being present to the best advantage, including detailed enquiry into the facts, the principles applied by the Court are clearly discernible and reasonable. The Court have the dignity, authority and confidence in the eyes of the public, as a right legal aid is also available to the litigants, and in some cases the Court proceedings can sometimes stimulate settlement negotiations.

The parties to the Suit also experience the disadvantages in the Process of Litigations in practice. The process of litigation is open to the public viewing and public reporting it is the main disadvantage where the dispute is between the individuals regarding matters on which they do not want a bitterness before the public eye. The differences are highlighted and the parties sometimes take extreme position in the adversarial atmosphere. The process of litigation is also costly, in many cases litigation results in anxiety, apprehension and stress. Litigations ends in a winning, losing situation and compromises among the parties to the dispute is very rare, and most notable disadvantage is the backlog of cases due to the unending and unjustifiable time taken by the Courts at the trial stage or in appeals for arriving at the final judgment.

2.8 CAUSES OF JUDICIAL ARREARS AND BACKLOG OF CASES

The analysis of the Law Commission of India reports and the empirical study of the research problem done by the researcher sheds light on the factors contributing towards delays and huge backlog of cases

\textsuperscript{43}William Sheffield, P.C. Rao’s ADR, Milon K. Banerji, Arbitration Vs Litigation, p61.
before the Courts. The prominent contributory factors are the frequent adjournments at the instance of the clients and lawyers\textsuperscript{44}, the boycotts of the Courts by the lawyers, shortage of presiding officers of the Tribunals and Courts\textsuperscript{45}, lack of adherence to basic procedures and principles of case-management and disposal\textsuperscript{46}. The Government is also known to be a huge contributor to delays, in matters where it is a party at various stages from evading notices, replying to notices and replying without application of mind, unnecessarily appealing even when the laws are clearly in favour of the other side\textsuperscript{47}. The improper management of Court diary, absence of strict compliance with the provisions of CPC\textsuperscript{48} such as, provisions of the Order 10 CPC relating to examination of parties before framing issues, to ensure narrowing and focusing the area of controversy, the laxity in enforcing the provisions of Order 8, R 1, CPC by allowing repeated adjournments with Order 17, Rule 1, CPC to be read with the proviso to Order 17, Rule 2 where Clause (b) for giving adjournments also are the prominent contributors to the problem of delays and the resultant judicial arrears. The Code of Civil Procedure (Amendment Act) 2002, Act No. 22 was sought to bring a change in the procedure in suits and civil proceedings by way of reducing delays and compressing them into a year's time from institution of suit till disposal and delivery of judgment, yet the revised procedures are also not strictly adhered to. As a result, the time taken in the final disposal of the cases by the Courts still runs into years by unduly lengthy and winded examination and cross-examination of witnesses\textsuperscript{49}, protracted arguments\textsuperscript{50}, inadequate electronic connectivity

\textsuperscript{44} Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344
\textsuperscript{45} 120\textsuperscript{th} Law Commission Report (1987)
\textsuperscript{46} 77\textsuperscript{th} Law Commission Report (1978)
\textsuperscript{47} Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344, paras 38, 39
\textsuperscript{48} Code of Civil Procedure “CPC”
\textsuperscript{49} The 14\textsuperscript{th} and 77\textsuperscript{th} Law Commission Reports.
\textsuperscript{50} 79\textsuperscript{th} Law Commission Report (1979) on delays and arrears.

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and use of information technology and so forth. The problem judicial delay and judicial arrears are spreading like epidemic at every level of the judicial system and thus it is a major cause of concern for the very survival of the entire process of litigation.

2.9 ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

The alternative dispute resolution methods are not new to India and have been in existence in some form or the other in the olden days. It is interesting to discover that the practice of settling the dispute through community elders existed in India even before British Raj. It is only now that there is universal acceptance and statutory recognition for such procedures to facilitate early settlement of disputes on agreed terms. It was only after the Court system that was predominantly adopted for resolution of disputes, the methods such as Arbitration, Mediation, and Conciliation came to be treated as alternative means of resolving the disputes. A detailed study of evolutionary history of Indian legal system establishing the above fact is done in proceeding chapters of this study.

Alternative dispute redressal methods are being increasingly acknowledged in the field of law and commercial sectors both at National and International levels. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously. Alternative dispute redressal techniques are in addition to the Courts in character. Alternative dispute redressal techniques can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties. Alternative dispute redressal techniques can be employed in several categories of disputes, especially

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52 Alternative Dispute Resolution Mechanisms is herein after abbreviated as “ADR”
civil, commercial, industrial and family disputes. Form the study of the different alternative dispute redressal techniques in the proceeding chapters it is found that, alternative dispute redressal methods offers the best solution in respect of commercial disputes where the economic growth of the Country rests.

The goal of ADR is enshrined in the Indian Constitution’s preamble itself, which enjoins the State: “to secure to all the citizens of India, justice-social, economic, and political—liberty, equality, and fraternity.”

The Law Commission of Indian has maintained that, the reason for judicial delay is not a lack of clear procedural laws, but rather the imperfect execution, or even utter non-observance, thereof. The Law Commission of Indian in its 14th Report categorically stated that, the delay results not from the procedure laid down by the legislations but by reason of the non-observance of many of its important provisions particularly those intended to expedite the disposal of proceedings. Given the huge number of pending cases, the governance and administrative control over judicial institutions through manual processes has become extremely difficult. The Supreme Court made it clear that this state of affairs must be addressed: “An independent and efficient judicial system is one of the basic structures of our Constitution…It is our Constitutional

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54 The Preamble of Indian Constitution
55 Law Commission of India, 77th Report, pr.4.1.
56 In all, 33,79,033 cases are pending before the High Courts. As on December 31, 2004, the total number of civil cases pending before the subordinate judiciary is 82,36,254 and criminal cases pending are 1,95,85,776. The total pendency thus is 2,78,22,030. This shows that out of the total national pendency at the subordinate Courts level, 70% is criminal cases and the remaining is civil cases. The total number of district and subordinate Courts are 12,401. These Courts are located in 2,066 towns.
obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.”

2.10 THE ADVANTAGES AND DISADVANTAGES OF ADR

Wide range of process are defined as alternative dispute redressal process often, dispute resolution process that are alternative to the adjudication through Court proceedings are referred to as alternative dispute resolution methods. These methods usually involve a third party referred to as neutral, a skilled helper who either assists the parties in a dispute or conflict to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.

The alternative dispute resolution mechanisms by the very methodology used in it can preserve and enhance personal and business relationships that might otherwise be damaged by the adversarial process. The method has strength because it yields enforceable decisions, and is backed by a judicial framework, which, in the last resort, can call upon the coercive powers of the State. It is also flexible because it allows the contestants to choose procedures, which fit the nature of the dispute and the business context in which it occurs. The process of alternative dispute resolution mechanisms is facilitative, advisory and determinative in nature.

Distinct advantages of alternative dispute redressal methods over traditional Court proceedings are its procedural flexibility. It can be conducted at any time, and in any manner to which the parties agree. It may be as casual as a discussion around a conference table or as structured as a private Court trial. Also unlike the Courts, the parties have

57 Brij Mohan Lal Vs. Union of India & Others (2002-4-Scale-433), May 6, 2002.
58 Tania Sourdin, Alternative Dispute Resolution. p 4.
the freedom to choose the applicable law, a neutral party to act as Arbitrator or as the Conciliator in their dispute, on such days and places convenient to them and fix the fees payable to the neutral party. Alternative dispute redressal methods being a private process between the disputed parties and the arbitrator, mediator or the conciliator it offers confidentiality, which is generally not available in Court proceedings. While a Court procedure results in a win-lose situation for the disputants, in the alternative dispute redressal methods such as Mediation or Conciliation, it is a win-win situation for the disputants because the solution to the dispute emerges with the consent of the parties.

Some of the disadvantages that are found on the methods of alternative methods of dispute redressal are that, the arbitrators is not subject to overturn on appeal may be more likely to rule according to their personal ideals. Large corporations may exert inappropriate influence in consumer disputes, pressuring arbitrators to decide in their favor or lose future business. The burden of paying remuneration for the arbitrators is upon the parties to the dispute, which may sometime be felt as a burden by the disputants.

The parties can cure these difficulties by prudently entering into the contract and deciding the terms of referring the dispute, before choosing the alternative dispute redressal forum. The advantages of alternative dispute redressal methods are so prominent that there is global need and trend to adopt alternative dispute redressal methods to resolve the dispute as it is quick as well as cheaper than that of adjudication through Courts of Law. The characteristic features of individual alternative dispute resolution methods are dealt in detail in the preceding chapters of this study. As argued by the father of our Nation Mahatma Gandhi, the role of
law, is to unite the parties and not to riven them. As compared to Court procedures, considerable time and money can be saved in solving the disputes through alternative dispute redressal procedures, which can help in reducing the workload of regular Courts and in long run can pave way in solving the problem of judicial arrears before the Courts of law.

2.11 THE SCOPE OF ALTERNATIVE DISPUTE REDRESSAL METHODS

Delay, in the justice delivery system with respect to both the civil or criminal justice is a disturbing feature in the Courts of law. Alternative and consensual means of dispute resolution are needed to reduce the backlog and delay in civil justice system. In the criminal justice system, the criminal offences are regarded as a breach of State’s command. The State, as a prosecuting party, cannot resort to arbitration, mediation and conciliation modes to reduce the backlog of criminal cases. Nevertheless, a device for compounding is allowed under Section320 of the Criminal Procedure Code. This section is limited with respect to the minor and domestic offences, where by fulfilling the ends of criminal justice and stabilizing orderliness in the society. For other crimes, the formal legal adjudication is the sole means and last resort. In criminal trials the Supreme Court of India has laid down that, for fairness in the criminal trial no procedure can be regarded as fair and just if it does not ensure a reasonable quick trial. Expediency and fairness of trial are held by the Supreme Court as integral part of Fundamental right to life and personal liberty enunciated in Article 21 of the constitution. The litigation in this 21st Century needs active intervention of the judges, mediators, conciliators and arbitrators to achieve speedy disposal of pending cases.

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60 Hiram Chodosh, Global Justice Reform: A Comparative Methodology (2005)
61 Hussainara Khatoon Vs State of Bihar, 1979 CrLJ 1036
and reduce expenditure. In India, The Arbitration and Conciliation Act, 1996 provides for legislative hold to the methods of Arbitration and Conciliation as, alternative forms of resolving the disputes. The Indian Supreme Court has interpreted that “social justice includes ‘legal justice,’ which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources.”

Form the proceeding chapters of the study dealing with historical evolution of the dispute resolution process it is evident that prior to the advent of the British the laws in India were not codified. An in depth study of the evolutionary history, the provisions, the study of actual functioning of the Arbitration and Conciliation Act, 1996 and the allied facts are dealt with, in succeeding chapter of this thesis.

The time has come for the public at large to understand and adopt the current fact that, there is a global trend of shifting towards alternative methods of dispute redressal mechanisms like arbitration, conciliation, negotiation and mediation from that of the predominately-adopted form of adjudication of disputes by the Courts of law. A settlement agreement arrived at among the disputants has the same status and effect as if it is an arbitral award on agreed terms and it is final and binding on them. This chapter dealt with the conceptual analysis of the terms dispute, the problem of judicial arrears and backlog of cases, different dispute resolution mechanisms and so forth. To tackle with problems of judicial delays and arrears, all the Courts and members of the Bar as well as the litigants will have to realize that, there exists a problem of judicial delays and arrears and the problem is to be dealt with efficiency and fast track manner. One of the ways of finding the solution to the problem is to

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conduct extensive research and publications in that field. The researcher has tried to study the different types of dispute redressal methods in the subsequent chapters, the unique characteristics of the different dispute redressal methods functioning in other countries in order to find a solution as to, can the adoption of different process of dispute resolution, function successfully as alternative dispute redressal methods? It the need of the time, hence the study of the ADR methods that can be introduced and adopted with necessary amendments according to the circumstances for reducing the problem of judicial arrears before the Courts.