CHAPTER VII
OTHER MODES OF ADR

These are some of the modes of ADR which have not shown their existence in our country but are more prevalent in US, UK, Canada, Australia and other countries. Their practical utility establish that these modes shall be in practice in our country in the time to come. So elementary knowledge about working of these modes is required for the purposes of present study.

7.1 ADJUDICATION

This terminology is used in ADR literature as one of the primary dispute resolution in contrast to arbitration, negotiation and mediation. The idea is to bring about a quick end to the dispute so that when the parties to an agreement have disputes during the currency thereof may settle their disputes so as to enable them to complete the contract. Such adjudicator may not be an expert or may be an expert. In some agreements, before the disputes are referred to arbitration, the same is considered by a nominated officer. In a building contract or similar other contract who is normally an Engineer, reference can be made to arbitration only when he grants a certificate or refuses to grant the same within a reasonable time. In the process, the dispute may be adjudicated upon.

7.2 RENT A JUDGE/ PRIVATE JUDGING

The parties may often select a retired Judge to decide the case privately. He is paid by the parties and once his decision has been passed it is enforceable as if it had been given by Court. One of the disadvantages as has been experienced in some countries is to select the right person to judge the case or when the parties are not keen to appeal. However, advantages of
this system are speed, convenience, flexibility and confidentiality, although the secrecy of the process is also a source of criticism. It however, may not be appropriate for a poor litigant and it is sometimes called a rich man's justice. It is in a sense more adversarial than arbitration.

7.3 MEDOLA

It is a procedure wherein if the parties fail to reach an agreement through mediation, a neutral person who may be the original mediator or an arbitrator will select between the final offer of parties, such selection being binding on all the parties.

The concept has been described by the American Bar Association as "an exciting and innovative idea". It is expected to stimulate Judges and other attendees to explore new concepts for their court systems and provide better service to the citizens of their countries.

7.4 OMBUDSMAN (OMBUDSPERSON)

Ombudsman (ombudsperson) is an organizationally designated person who confidentially receives, investigates, and facilitates resolution of complaints. The ombudsman may interview parties, review files, and make recommendations to the disputants, but normally is not empowered to impose solutions. Ombudsmen often work as management advisors to identify and recommend solutions for systemic problems in addition to their focus on disputes from individual complainants.

7.5 PARTNERING

Partnering is a preemptive technique to avoid disputes before they arise by building a strong relationship between parties. The goal is for the parties to avoid a major dispute, or alternatively, minimize disruptive impact, by focusing on the development of a cooperative working relationship rather
than an adversarial one. Partnering is a relatively new hybrid form of
dispute resolution.

7.6 PEER REVIEW PANELS OR DISPUTE RESOLUTION PANELS

Peer Review Panels or Dispute Resolution Panels use groups or
panels to conduct fact-finding inquiries, assess issues, and present a
workable resolution to resolve disputes. In workplace personnel disputes the
panel is generally composed of knowledgeable employees and supervisors.
Panels may be standing groups or formed ad hoc from a pool of qualified
employees and supervisors. In contract disputes, the panel is often
composed of two or more neutral subject matter experts selected by the
disputing parties. Decisions of the panel may or may not be binding,
depending on the advance agreement of the parties. This method attempts to
resolve disputes at their inception to avoid traditional litigation.

7.7 SETTLEMENT CONFERENCE

Settlement Conference is an ADR technique either permitted or
required by statute in many jurisdictions as a procedural step before trial. An
assigned or jointly selected ‘settlement judge’ typically applies mediation
techniques to strongly suggest a specific settlement range based on his or her
assessment of the case. However, these judges play a much stronger
authoritative role than mediators since they also provide the parties with
specific substantive and legal information.

7.8 SUMMARY JURY TRIAL

Summary Jury Trial is a formal but abbreviated trial involving a
presentation by the disputing parties to a panel of jurors. This process
‘reality tests’ the case with a non-binding jury verdict to encourage the
parties to negotiate for a settlement based upon their new assessment of
litigation risk.
7.9 HYBRID ADR

Hybrid ADR is any creative adaptation of ADR techniques for dispute resolution. ADR has found its niche as an adjunct to traditional litigation because of the financial and emotional cost as well as the other aggravations of formal litigation. Processes leading to less litigation cost or risk may be considered ADR, regardless of the labels used to identify them. The distinguishing characteristic is that the techniques enable parties to acquire sufficient information to evaluate litigation risk and voluntarily negotiate resolution directly with each other. The techniques can be applied in any sequence as long as the parties are moving in good faith toward resolution of all or part of a dispute. Identical fact patterns with different parties may be resolved through different techniques and, conversely, identical parties with different fact patterns may successfully apply the same ADR techniques.