CHAPTER – II

CONCEPT, NATURE AND MEANING OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM

I INTRODUCTION:

India is one of the largest democratic countries in the world having its own Constitution. The rights and interest of the people have been protected in the forms of fundamental rights under Part III and Directive Principle of State Policy under Part IV of Constitution of India. The utmost efforts of our Parliamentarians and Legislators taking aid of these provisions are to look upon the interest of economically poor and downtrodden. Dr. B.R. Ambedkar, Chairman, Constitution Drafting Committee while explaining the two fold object in framing the Constitution has said

"It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. I have said that our object in framing this Constitution is really two fold : (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every government whoever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear"¹.

The advancement and efforts towards achieving the political and economic democracy are the means to the ends of social justice. The variation and amendments in the rules and regulations from time to time is an inevitable requirement to achieve the social development and ends of the justice to the people. But in the quest of Welfare State our

Parliament and State Legislature have produced the plethora of rules and regulations to regulate the code of conduct of the people. But the things have become more complicated and complexed\(^2\).

The gradual swelling of urban population is causing factor for developing materialism in our country, which has created the endless evils generating civil and criminal disputes. The competing interest and lack of means to fulfill the needs of inhabitants giving rise to clash and conflict in the society and that is to be addressed through legal action. Sometimes the dispute falls under both the categories of offences and the proceedings have to be initiated under both civil and criminal law. The ever increasing unemployment problem in our country is another factor leading to conflicts and criminality. The pollution of politics, white-collar crimes by the politicians, businessmen and other high profiles are also contributing factors in generation of crisis in the country, which ultimately has resulted in creation of plethora of cases to the Courts. Indian Judiciary [both Civil and Criminal Courts] have been overcrowded with the litigation in which hundred of cases are undesirable and relates to trifling issues. The recent origin and expansion of information technology in India has made addition of cyber crimes and other related offences, which has further increased the burden and work load on Indian Judiciary. In this way situation is aggravating day by day\(^3\). In the pursuit of the social, economic and political development and flourishing of trade and merchandised activities all over the country, there has been endless clash of interest between the persons inter se and the State on the other side. The increase of litigation and pendency of cases has also been continuously pilling up before the alternative Forums, Courts and Tribunals. The staggering pendency of the cases without effective remedy for their speedy disposal has brought the administration of justice to halt. There has been public out cry and criticism that access to justice is only

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\(^3\) *Ibid*
confined to rich, affluent and elitist class. The poor, needy and down trodden in the social strata are very often priced out of justice⁴.

The mounting pressure of cases pending before the Indian Courts has compelled the Chief Ministers of various States to consult the Chief Justices of the High Courts and conduct a conference with a view to devise appropriate strategies for dealing with exploding docket problem. In this context, a conference has been held on 4ᵗʰ December, 1993 at New Delhi to devise the appropriate strategy and gear up the pendency of cases in different Courts all over the country. It was unanimously resolved in the conference to set forth ways and means to deal with the problem of arrears of cases and pendency in both the Civil and Criminal Courts as expeditiously as possible. The delegates participated in the meeting recommended that the disputes should be resolved through the Mechanism of Alternative Dispute Resolution [ADR] System through Arbitration, Conciliation, Mediation and Negotiations. Because the Mechanism of ADR System would be an effective device for amicable settlement of the transactional disputes between the parties⁵.

The backlog of the cases pending in different Courts all over the country has compelled the Central and State Governments to think over the issue sincerely. The Chief Justice of India and other legal luminaries apart from the Government functionaries have formed serious opinion about the increasing burden of litigation in the Courts across the country⁶. The conference of Law Ministers and Law Secretaries has been held at Shimla on 10ᵗʰ and 11ᵗʰ June, 2005 to review the working of Legal Aid Services and Mechanism of ADR System all over the country in order to strengthen and improve the provisions of Legal Services Authorities Act, 1987. The Law Ministers and Law Secretaries in the conference reviewed the working of Lok Adalats all over the country. The delegates have mainly focussed on the mechanism of ADR System in the country and

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⁵ Ibid.
⁶ See, *The Minutes of the Meetings and Agenda Papers of Conference of the Chief Minister's and Chief Justice's held at New Delhi, dated 4ᵗʰ December, 1993.*
reviewed the provisions inserted under Section 89 by way of amendments made to the Code of Civil Procedure, 1908. The Parliament has made ample provisions enabling the Courts to refer cases for arbitration, conciliation, mediation and judicial settlement including the settlement of the disputes through Lok Adalats. It has been observed in the conference that the West Bengal Government has recognized and upgraded the standard of village level conciliation, which need to be followed by all the State Governments all over the country. The Law Ministers expressed satisfaction over the recommendations made by the Chief Ministers and Chief Justices during the historic meeting held at New Delhi on 4th December, 1993 and implementation thereof by the respective Governments in the States.

The Law Ministers further considered the necessity to set up Regional Centres of the International Centre for Alternative Dispute Resolution in order to propagate the ADR movement in all parts of the Country. It has been resolved in the conference that the State Government should refer all commercial disputes relating to various Government departments and Public Sector Undertakings for settlement through arbitration, conciliation, mediation or fast track arbitration. Mr. H.R. Bhardwaj, the Union Minister of Law and Justice, who presided over the conference on 11th June, 2005 have expressed that all the State Governments to make effective use of the excellent facilities being provided by the ICADR, New Delhi for implementation and propagation of mechanism of ADR.

The delegates who attended the conference have emphasized the need for upgrading of Judicial infrastructure, which may help decrease in the pendency of cases before the Courts. The delegates expressed satisfaction over the excellent results achieved through extensive computerization in the Supreme Court of India. The Hon'ble Union Law


Minster observed that the installation of Computer device in the Apex Court has resulted in a record decrease in the pendency of cases and that is required to be extended to the subordinate Courts all over the country. It may lead to remarkable expediency in the disposal of cases, which may help litigants get justice within reasonable time and that is the imminent necessity of the present and future.\(^\text{10}\)

Hon’ble Mr. Justice V.N.Khare, Chief Justice of India [as he was then] after great introspection has expressed that the working of the Indian Courts need lot of improvements to overcome the inordinate delay in the dispensation of justice in order to provide speedy and inexpensive justice to the people of our country. His Lordship has admitted the pitiable condition of the Indian Judiciary and stressed for appointment of more judges in different Courts all over the country.\(^\text{11}\) The procedure for appointment of Judges is very lengthy in India and the Government alone is responsible for the delay. The Judges in higher Courts do work a lot may be around 10 hours a day but they cannot cope with the ever increasing cases effectively due to shortage of the Judicial Officer as compared to the number of cases coming up for decisions.\(^\text{12}\)

The Researcher is of the firm opinion that existing justice delivery system may not be able to cope with the problem unless assisted by the Mechanism of ADR System. The Mechanism of ADR System consists of various alternative techniques. The alternative forums is an inevitable necessity to relive our judiciary and litigants from efflux of cases and ever increasing disputes, which are growing fast owing to changing modalities. The ADR possesses all those ingredients, which public justice demands. The ADR shall reduce the arrears of cases pending at initial or appellate stage in various Courts all over the country. The application of ADR techniques shall remove the possibility of bias. It shall relieve litigants from continuous harassment and mental agony being faced during trial for years.

\(^{10}\) *Ibid*, p-6.


together. The compromise settlement of disputes through conciliation, negotiations or mediations removes bitterness and creates enthusiasm and congenial relationship among the parties\(^{13}\).

II  THE NATURE AND CONCEPT OF ALTERNATIVE DISPUTE RESOLUTION:

[i] The Alternative Dispute Resolution System is simple and free from procedural technicalities:

The methodology applied and techniques used in mechanism of ADR to settle the disputes between the parties do not follow the ticklish procedure adopted by the Judicial Courts. The mechanism of ADR system does not partake the course of judicial process. It is completely different and divorced from judicial technicalities. The ADR process is very simple, cheap, easy, speedy and result oriented in disposal of the cases. The ADR techniques are extra judicial in character. These are the main reasons for recognition of ADR techniques\(^{14}\).

[ii] The Mechanism of Alternative Dispute Resolution System consists of various simple methods:

The Mechanism of Alternative Dispute Resolution System does not have single form or rigid application in one particular way. There is an array of hybrid procedure for settlement of disputes out side the Court. The ADR consists of various alternative techniques and forms. For example Arbitration, Conciliation, Negotiations, Mediation, Judicial Settlement, Mini Trial, Med-Arbitration and Settlement Conferences and Neutral Evaluation are the forms of ADR techniques. These techniques are much acceptable both to the judiciary and common man. The ADR techniques may be used in contentious matters, which are capable of being

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resolved under the law, by agreement or mutual settlement between the parties.*

[iii] The Alternative Disputes Resolution System covers civil and commercial nature of Disputes:

The Mechanism of ADR System through various alternative techniques have been employed with very encouraging results in several categories of disputes. The disputes may be civil in nature, commercial, and industrial or may relate to family or matrimonial causes. The application of the ADR methodology has also shown favourable results in the disputes relating to the business activities and commercial ventures. The mechanism of ADR System may be able to yield expected results in the bank cases, contractual performance, contracts in constructions, the cases of intellectual property rights, the insurance coverage, business activities in joint venture, the cases of partnership arising out of personal differences, personal injury, product liability, professional liability, real estate and securities. The mechanism of ADR System is not intended to supplant altogether the traditional or existing means of dispute resolution. It offers only alternative options to litigation. The application of ADR techniques in dispute resolution aims at rendering justice expeditiously. The proceedings adopted through these alternative techniques are informal devoid of procedural technicalities and less expensive. The dispute resolution through ADR aims at substantial justice and the procedural technicalities are always managed in the manner acceptable to the parties. It is contrite proposition that when there is dispute between the parties, they lose their mutual confidence. The dispute resolution through ADR enables the litigants to regain the mutual confidence among them lost during conflict.

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15 *Ibid*
16 *Id.*
17 *Supra Note 14*, at p-83.
[iv] The role of third person is basic concept in Alternative Dispute Resolution:

The ADR process in philosophical perceptions is considered to be the mode in which dispute resolution process is qualitatively distinct from a judicial process. The disputes are settled with the assistance of a neutral third person. The third neutral person is selected or appointed by the parties of their own choice and without fear or favour in order to avoid any sort of bias. He is generally familiar with the nature of disputes and bone of contention between the parties. The neutral person is also well conversant about the relationships of the parties with each other^{18}. The involvement of third neutral person is inevitable requirement in the entire process. He is known as Conciliator, Mediator or Negotiator. He assists the parties in an independent and impartial manner and bring both the parties close for negotiations and settlement. He endeavours them to reach an amicable settlement in peaceful manner. The settlement through conciliation or mediation is guided by the principles of objectivity, fairness and justice. The ADR process during settlement always gives consideration to the rights and objections of the parties and heard on common platform in the presence of adversaries^{19}.

[v] The basic concept of Alternative Dispute Resolution System is to resolve dispute:

The ADR is a generic term and refer to a wide array of practices in different forms. The settlement with judicial help and min-trials are also the forms of ADR system apart from conciliation, negotiation, and mediations. The judicial settlement and min-trial are important to settle the disputes in business venture^{20}. What so ever may be the techniques used, the basic concept in ADR is to manage and resolve disagreements between the parties at lowest cost and with little adverse

^{18} Ibid.
^{19} Id, at p-89.
impact on business activities. The dispute resolution in ADR system does not mean temporary settlement but to end the controversy in perpetuity. It maintains cordiality and harmonious relationships between the parties\textsuperscript{21}. The alternative methods of dispute resolution are non-adversarial and reach speedier results because the neutral person, whether Arbitrator, Conciliator or Mediator, as the case may be, always help to formulate the result oriented discussions during the process settlement\textsuperscript{22}.

[vi] The Mechanism of Alternative Dispute Resolution System is economical:

The nature of ADR system is common and a voluntary process. The process of settlement is initiated for the welfare of the litigant parties without any pressure or duress. The litigant parties, because of its greater efficacy and economy choose this formulae and prefer the settlement as early as possible. The mechanism of ADR is most acceptable in nature because entire process is non-judicial. Neither the judicial nor procedural technicalities are applicable in dispute resolution through alternative methodology\textsuperscript{23}. The arguments in favour of ADR system are advanced from different corners for its greater use keeping in view the huge backlog of cases pending in various Courts and causing delay in dispensation of justice. Thousands rounds in the vicinity of Courts causes economic hardship to the litigants. But Mechanism of ADR System always results in huge savings to the litigant parities. The adoption and wider use of ADR system could save the time and exchequer of the Government and Public Sector Undertakings including other corporate clients whereas they are doing lot of spending in litigation through judicial process\textsuperscript{24}. Its most advantage is in the sense that on failure of settlement through conciliation, negotiations or mediations the money spent by the parties is meager rather negligible and the issues are bound to be narrowed down if task has not been ended completely. Hence, the system is viewed as any attractive

\textsuperscript{21} See, 4 Am Jur 2\textsuperscript{nd} Ed., (1995), p-64.
\textsuperscript{22} Ibid, at p-66.
\textsuperscript{23} Ibid, at p-67.
\textsuperscript{24} Id at p-66.
alternative to litigation avoiding long delays, which are associated with the trials in regular Courts. The parties have to wait for the decisions for years together apart from continuous harassment and mental agony.

[vii] The Alternative Dispute Resolution System is to avoid scope of future litigation:

The litigation in the Court is always governed by the set of rules and regulations under the substantive or procedural laws. For example, criminal trials are governed by Criminal Procedure Code and cases of civil nature are governed by Civil Procedure Code or other subsidiary laws like Revenue or Land Laws, House Rents Acts etc. But there is always scope of further litigation by way of appeals, reviews or revisions. But the scope of further litigation in any form is not available in the concept of ADR techniques. These techniques are applied and used keeping in view business environment and other allied activities, issues involved and likelihood of settlement apart from the nature of relationship between the parties. These are the main considerations in compromise settlement in order to end the litigation on permanent basis. The ADR techniques terminate the litigation on permanent basis and prevent future scope of litigation, which is an unending process in the judicial trials. Moreover, the Mechanism of ADR System works in dispute resolution in accordance with compromise agreement. Because the compromise agreements between the parties are pre-requisites of their claims with reference to the performance of promises and these are contained in that document, which is an effective instrument in ending the controversy permanently.

[viii] The Alternative Disputes Resolution System is an ‘art’ of settlement:

The Mechanism of ADR system and reconciliation between the parties is judicious application of techniques. All these techniques are employed amicably in dispute resolution. Because

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25 Id.
26 Id. at p-68.
27 Id. at p-72.
application of these techniques is an art instead of science. These
techniques can not be employed precisely in mathematical terms. It always
requires human touch and expression of profound love towards both the
parties. The good behaviourship, attitudes and benevolence of various
participants in reconciliation between the litigants becomes relevant and
important in order to make the ADR techniques effective. The reasoning
needs to be advanced with equity, justice and good conscience, which are so
precious and rare in judicial decisions. In the absence these ingredients none
of the techniques could be effective or best employed. The mechanism of
ADR system and its various forms offers flexible options to the parties in
reaching reasonable compromise and solution to their conflict. It obviates
the parties from litigation and contesting their claims through regular Courts.
The utmost benefit of the mechanism of ADR is that it maintains
confidentiality through out the proceedings and maintains continuity of good
relationships between the parties. The process and proceedings eliminates
the scope of bias.

The Hulsbury's laws recognized the mechanism
of ADR system in the form of conciliation, mediation or negotiations a
suitable methodology and convenient device to reduce the inflow of cases in
the Courts. The settlement requires third independent and neutral persons
who makes neutral evaluations and brings the parties close as early as
possible. Third party eliminate the scope of litigation and prevent the piling of
undesirable cases in the Courts. The mechanism of ADR system is a
process of reconciliation outside the Courts towards 'right settlement'. The
'right settlement' means settlement that is 'right' from the point of view of both
the parties, who are ensured harmonious relationships among them in future.
The ADR system demonstrates 'give and take' policy. The parties during the
process of settlement voluntarily endeavours to reconcile their differences.
They enjoy excellent opportunities to narrow down their differences. The trial

28 See, Raman Rao, Conciliation and Arbitration, U.S.A and India - A Comparative
29 Ibid.
30 Supra Note 2, at p – 255.
by the judicial courts or quasi-judicial authority rarely employ these techniques during adjudication of the disputes. The formulae of Alternative Dispute Resolution System is good mechanism, concept and device to end the litigation.

**III SCOPE OF ALTERNATIVE DISPUTE RESOLUTION:**

The mechanism of ADR System and its techniques are extra-judicial remedy to resolve disputes outside the legal fora. These techniques can be used in all those cases, which are capable of being resolved, under law, by mutual agreement between the parties. The scope of ADR is wider and can cover the cases of civil nature, commercial, industrial and family disputes or any other cases of urgent nature. The ADR works across the full range of business disputes: banking; contract performance and interpretations, construction contracts, intellectual property rights, insurance coverage, conflicts in joint ventures, partnership differences, personal injury; product liability; professional liability, real estate and securities. The mechanism of ADR system may offers best solution in commercial disputes of an international character. The scope of an ADR System is not intended to supplant existing means of dispute resolution. It offers only alternative options to litigation. There are large number of important areas where there is no substitute for Court decision. For example the matter pertaining to the Constitutional law and Criminal laws are beyond the purview of amicable settlement. But the ADR system through conciliation or negotiations offers viable substitute to resolve the dispute, if the matters are of such a nature which are compoundable in the eyes of law. The demand for introduction of ADR system has been persistently gathering momentum from every walk of life. The jurists, legal luminaries including judicial officer presiding over the Courts and administrative heads considers that application of ADR shall reduce the mounting pressure of cases in the higher and subordinate judiciary. The conferences and meetings on judicial reforms always start with preliminary speeches and addressed for search of

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32 Supra Note 13, at p-237.
33 Supra Note 19, at p-25.
34 Ibid at, p-26.
viable substitute to existing legal system. Every delegate stresses for promotion of Mechanism of ADR system using its various forms conciliation, negotiations, mediation instead of initiating trials in the Court. The fast emerging importance of ADR, its wider scope and commendable objectives emphasized for creation of more Lok Adalats including establishment of Fast Track Courts.

The fantastic growth of commerce and business activities in the field of information technology has created an entirely new forum for business and conduct of global operations. It has created necessity of new chapter with adequate definitions because business transactions at international level has completely extinguished the geographical borders. The laws neither have been enacted in a single day nor it could be so. The speed of justice delivery system is not so fast what the commerce of today expects. The rapidity and the advancement of technologies will remain far away of the updating and administering the relevant enactment. The contracts and dispute in growing information technology, new business transactions, environmental laws etc can not be underrated. The dispute resolution in the absence of appropriate laws shall have to take place on the basis of outdated laws in order to address the consumers. In such a situation, the scope mechanism of ADR System extends its hands to cover the new fields especially through arbitration whose award is non-appealable and can not be easily set aside.

The ADR offers the best solution and attempts to cover every field. The ADR system works to compromise the suit where disputants are genuinely interested in a settlement. The ADR system may operate successfully in dispute resolution of both domestic and international character. It may be commercial in nature or civil. The ADR system is expanding its horizon continuously keeping in view the modalities of time and delay in dispensation of justice. The scope and application of ADR system

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37 Supra note 20.
is not only beneficial from litigation or commercial point of view at international level but also assuage the sentiments of Constitution makers while help promoting international peace and security among the nations. The Constitution of India under Article 51 provides that the State shall endeavour to promote international peace and security and maintain just and honourable relations between the nations. The Constitution of India under Article 51(c) and (d) specifically emphasized that the State shall foster respect for international law and treaty obligations in the dealings of organized people with one another and would encourage settlement of international disputes by arbitration.

The ADR system is also known as 'participatory justice'. The mechanism provides full opportunity of hearing and active participation of parties during the settlement proceedings. The ADR system is result oriented in the cases filed under Consumer Protection Act, Industrial Dispute Act, Workmen's Compensation Act, Family Law Courts. The mechanism can work well in petty or coumpoundable criminal offences of theft and like nature. The scope of dispute resolution in MACT cases and the cases of tortuous liability exists in ADR System. The disputes of minor character or of no injury are resolved summarily in the presence of disputants in order to promote rehabilitation and therapeutic approach. The mechanism of ADR system offers a spirit of compromise amongst the litigants across the table, which explains the important concept of ‘distributive justice’ and that is the main purpose and object behind the justice delivery system. The scope of these alternative techniques and formulae exists within ADR policy.

Despite its importance and emerging demand, the ADR system in India is still at rudimentary and infancy stage. There are few numbers of research programs on ADR system. The very less number of ADR centres have been established in India and these are unable to faster its movement. The line, length and knowledge of ADR movement among

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39 Supra Note 4, at p-219.
professionals, Industrial groups and commercial counterparts are yet to be harnessed to make its wider publicity and know-how amongst the common men. But keeping in view the workload on regular Courts and the demand from every corner, it is hoped that the coming years would be characterized by a search for alternative means of resolving disputes. The Indian experience in the forthcoming years may prove to be of greater relevance as compared to the other developing nations\(^{40}\). I hope its scope in near future would be automatically widened for practical application.

**IV THE OBJECTIVES OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM:**

The main object of Mechanism of ADR system is not to replace the judicial process or procedural laws. The mechanism of alternative techniques does not denigrate the existing system adopted by the regular Courts under procedural codes. Its few main objectives are enumerated below.

1. The ADR System provides cheap and speedy justice to the disputant.
2. It aims at to settle the dispute on less lawyering.
3. Its main object is to settle the issue amicably by way of compromise settlement, conciliation, mediations and negotiations.
4. The parties may resort to settlement under Arbitration and Conciliation Act 1996.
5. The utmost objective behind the policy is to avoid the trial and decision in the Courts through unscrupulous evidences\(^{41}\).

The Supreme Court of India in *M/s Guru Nanak Foundation Vs M/s Rattan Singh & Sons*\(^{42}\) has emphasized the need of ADR system and observed that

\(^{40}\) *Supra Note 33*, at p-32.

\(^{41}\) *Ibid*, at p-80
"Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940 (Act for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceeding under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Courts been clothed with 'legalese' of unforeseeable complexity.43

V MEANING OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM:

The Alternative Dispute Resolution is not a particular word or used to denote the specific word. The ADR is a general term, which has been used to describe the processes of dispute resolution amicably through various alternative techniques. The ADR describes its various forms of dispute resolution viz. arbitration, conciliation, negotiation mediation, compromise settlement, mini trials, expert determination and early neutral evaluation etc. The ADR is a common term used to define and express various alternative techniques and forums of dispute resolution44. The ADR can not be specifically used for arbitration and its elaborated procedure. The arbitration process is different and easy from the Court

44 Supra Note 31.
viewpoint of litigation. The arbitration in many important aspects is more common with Court based litigation than various other forms of ADR System. The arbitration may be a class and form of ADR system but can't substitute this mechanism in its entirety. The mechanism of ADR system and arbitration can not exchange each other. It would be potentially misleading the mechanism of ADR System, If both the terms are allowed to spell out interchangeably. It will be of worth in supporting this version that different kinds and various forums of ADR system have not a statutory recognition as arbitration under the Arbitration and Conciliation Act, 199645.

The Mechanism of Alternative Dispute Resolution System is consisting of three important words 'ADR'. A = 'Alternative'. The word 'Alternative' according to Legal Glossary means one or the other of two things, of two things such that one or the other may be chosen or offering a choice of two or more things. The 'Alternative' in Hindi means 'AANUKALPIK' [अनुकल्प] or 'VYAELPIK' [वैकल्पिक]46. The word 'Alternative' according to oxford dictionary means available in place of same thing or choice of two or more possibilities47. According to new edition of oxford dictionary the 'Alternative' means thing that you can choose to do or have out of two or more possibilities. The 'Alternative' means method that can be used instead of something else or different from the usual or traditional way in which something is done48. Thus, 'Alternative' here means substitution in addition to existing one or an 'Alternate options' to one that takes the place of another, which is unable to perform its duty49.

The word 'Dispute' in ordinary parlance means conflict or quarrel. The word dispute according to Legal Glossary means an argument, an argumentative contention, a controversy or contest, which in

45 Ibid.
46 See, Legal Glossary, Govt. of India, M/o Law, Justice and Company Affair, (1992), p-19.
49 Supra Note 46, at p-19.
Hindi means 'VIVAD' [विवाद] \(^{50}\). The 'Dispute' may be between two or more Countries, States or persons. The dispute may be in individual capacity or collectively but two parties are necessary. There can not be a dispute or conflict without opposite side. The word ‘Dispute’ always refers to the 'controversy or conflict' between two parties\(^{51}\).

The word ‘Resolution’ means something that is resolved or to be resolved between the contesting parties\(^{52}\). The 'Resolution' according to oxford dictionary means formal statement of opinion agreed on by a Committee or a Council. The act of resolving or settling disagreement between the parties is called 'Resolution'. The 'Resolution' may mean to 'Resolve' and the 'Resolve' means an acceptable solution to a problem or difficulty in question\(^{53}\). However, in Hindi it means Samjhauta [समझौता].

The ‘System’ means methods, procedure, which in Hindi means ‘PADHATI’ [पढ़ति] and ‘PRANALI’ [प्रणाली] \(^{54}\). The ‘System’ according to oxford dictionary means an organized set of idea. The System means particular procedure or way of doing something in particular way and that in Hindi spells out Vavastha [व्यवस्था] or Yukti [युक्ति] \(^{55}\).

However, we can safely conclude that the ADR means a method used for amicable settlement of the conflict between the two different persons. The ADR means a system adopted for peaceful settlement of controversy in question between the Nations, State and individuals. The ADR System means introduction of alternative methodology with various alternative techniques for dispute resolution between the two litigants and contesting parties in addition to existing one. The ADR does not mean to substitute or replace the existing procedure prescribed in judicial


\(^{51}\) Supra note 48, at p-441.

\(^{52}\) Supra note 49, at p- 293.

\(^{53}\) Supra note 51, at p-1292.

\(^{54}\) Supra note 52, at p-335.

\(^{55}\) Supra note 53, at p-1557.
system but introduction of an approach in addition to the existing one with a view to make the system easy and more simple.

The ADR is a generic term and that refers to a wide array of practices and the purpose of which is to manage and resolve disagreements at possible lowest cost, quickly and with little adverse impact on business and other relationships. The ADR is a relatively new term for dealing with an age-old problem. The wide array of practices as has been referred means mediation, arbitration and conciliation to ensure conformity which suits to the community mores and resorting to legal system only as a last resort. There have been many segments of society that have preferred to settle dispute without litigation and decision of the Court.

The ADR may mean 'Compromise' or 'Mutual Settlement' in dispute resolution. The system accelerates the resolution of controversies, uncertainties or any sort of conflict. A 'Compromise' is a term designed to prevent or terminate litigation. Whereas the 'Settlement' refers to the fulfillment of any conditions that, in accordance, with the compromise agreement are prerequisite to the discharge of claim. It may refer to the performance of promises, which are expressed in the compromise agreements. The ADR system also means 'participatory justice' because it provides for parties the opportunity of active participation in the process of justice. The mechanism of ADR system offers a spirit of compromise amongst the litigants across the table, which explains the meaning of ADR as 'distributive justice'.

VI KINDS OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM:

[i] The Arbitration:

The globalization of economy is taking place at a rapid pace. The business transactions and disputes are also increasing. The

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56 Supra note 27 at p. 64-65.
57 Ibid, at p. 72.
58 Supra Note 39.
commercial establishments and businessmen cannot afford to lose time in avoidable litigation and they are increasingly moving towards ADR System. The arbitration among all the methods of ADR is the most popular. The construction contracts usually have an arbitration clause. After the enactment of the Arbitration and Conciliation Act, 1996 the arbitration proceedings have taken a new dynamic shape. There is no need to get the award of the arbitral tribunal to be made the rule of the Court. This is going to save a lot the precious time. The arbitration has four commendable factors to it. The speed, finality, cheapness and fair justice. When the International Chamber of Commerce at Paris started offering the services of its Court of Arbitration, businessmen in different countries immediately moved to avail these facilities under arbitration law. The provisions of Arbitration and Conciliation Act, 1996 has been discussed in detail in the following chapters relating to the legislative provisions.

The arbitration is a process and recognized mode of dispute resolution. The dispute may be existing one or shall arise in future. The method applied in arbitration is both fair and equitable. The dispute is resolved between the disputing parties through a person or persons or an institutional body without recourse to litigation who are known as Arbitrator. The Arbitrator pursuant to an agreement between the parties initiates the process of arbitration. The arbitration law has got statutory recognition and the proceedings under the Act except few stages, is equally good as under judicial proceedings. There is equality of opportunities during the proceedings to both the parties.

[a] Nature of Arbitration:

The settlement of disputes by an elderman at village level in India was a common feature. The people before the advent of the independence always resorted to amicable settlement instead of going to Courts of laws. The usefulness and effectiveness of amicable settlement of

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disputes was based upon high level of objectivity, impartiality and integrity of that elderman who is famous and renowned as 'Headman' of the village as contrasted with the present day situation. It would be pertinent to refer an episode of Sattiganahalli village in C. R.Patna taluk, where a father acted as 'Arbitrator or Judge' gave a decision against his own son on a complaint of having brought coconut from the garden belonging to another person. The father while acting as decision-maker fined his own son though it might have exchequer his own pocket. The village had earned a name and fame for avoiding any dispute in the Courts of law. The spelled amount as fine was considered to be a fair adjudication with supporting reasons, which was also reduced in writing that was beyond the expectation of the society.

The explanations for the layman, "going to law" and "taking him to Court" are every day expressions and general phenomenon. These wordings in ordinary parlance mean asking for legal enforcement of one's right through legal platform. But there is lot of difference between these two expressions. Taking some one to Court for enforcement of a legal claim against someone in individual capacity, against some company, public body or against the State is different thing in legal pursuits. But it is another thing or way of going to law to enforce a claim by way of Arbitration instead of instituting a case for decision through regular Court under the statutory provisions.

The essence of arbitration is that the parties for 'right settlement' refer some disputes to Arbitral Tribunal of their own choosing, instead of opting to a Court. It is necessary that some assistance should be lent by the ordinary machinery of law to make such methods of settling disputes effective. The recourse to legal machinery may be necessary for enforcing the arbitrator's decision. Some degree of control by the Court inevitably accompanies the official status thus lent to duly

62 Ibid.
63 Supra Note 36.
constituted arbitration. The nature of the arbitration and its procedure is flexible. The parties to an arbitration may in large degree themselves determine the procedure to followed and the powers the arbitrator is to have, as well as the constitution of the Arbitral Tribunal. The Act lays down a code governing these matters even though its provisions may be excluded by an agreement between the parties. The parties may withdraw from arbitration at any time but once the arbitration is carried through to a final decision by the arbitrator, his award will be enforceable by action.

[b] Meaning of Arbitration:

The word arbitration has not been defined in the Indian Statutes relating to Arbitration to the complete satisfaction, which may expose its real meaning and senses. The definition provided under the Arbitration and Conciliation Act, 1996 seems to be very narrow and pedantic. The Act defines that arbitration "means any arbitration whether or not administered by permanent arbitral institution." The arbitration is well known subject and its procedure is prescribed in the statute book. Mr Ronald Barnstein in his publication 'Handbook of Arbitration Practice' has defined arbitration as under:

"Where two or more persons agree that a dispute or a potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is upon evidence put up before him or them, the agreement is called an arbitration agreement or a submission to an arbitration. When, after a dispute has arisen it is put before such person or persons for decision, the

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65 Ibid, at p-2.
66 See, The Arbitration and Conciliation Act [No. 26 of 1996], 1996. S. 2(1 ), Sub Clause(a) which runs:
   In this part, unless the context otherwise requires;
   "Arbitration" means any arbitration whether or not administered by permanent Arbitral Institution;
procedure is called arbitration and a decision when made is called an award\textsuperscript{67}.

The Arbitration is being used as good substitute for litigation at international level. The definition of Arbitration is provided by the Ghana Arbitration Act seems to be correct and well understood in the Indian Context.

"Arbitration is the reference by the mutual consent of a difference between two or more parties to a person other than a Court for determination after hearing the parties in a judicial manner. The person; to whom a reference to Arbitration is made is called a Arbitrator. An arbitration agreement is a contract in writing to refer present or future differences to arbitration, whether an Arbitrator is named in the contract or not\textsuperscript{68}.

The word arbitration according to oxford dictionary means the official process of settling an argument or disagreement by some body who is called an ‘Arbitrator’ and not involved in the dispute in question\textsuperscript{69}. The arbitrator means and is a person who is chosen to settle disagreement\textsuperscript{70}. The word arbitration as has been defined in the Arbitration and Conciliation Act, 1996, as ‘any arbitration whether or not administered by permanent arbitral institution\textsuperscript{71}, which from definition point of view does not serve the literary or academic purpose. Where as the word “Arbitral Tribunal” means a sole Arbitrator or a panel of Arbitrators\textsuperscript{72}.

The Halsbury’s Laws of England while explaining the arbitration envisages that the word arbitration is nothing but a process used by the mutual agreement of the parties to resolve disputes through an

\textsuperscript{67} Supra Note 60, pp-3 – 4.
\textsuperscript{68} Supra Note 63.
\textsuperscript{69} Supra Note 51, at p-65.
\textsuperscript{70} Ibid.
\textsuperscript{71} Supra Note 66.
\textsuperscript{72} Ibid. S. 2(1 ) Sub-Clause (d) which runs as “Arbitral Tribunal” means a sole Arbitrator or a panel of Arbitrators.
appointed Arbitrator. The disputes in arbitration are resolved with binding effect by an Arbitrator or person appointed and acting for the purpose. He acts in a judicial manner and would have jurisdiction but for the agreement of the parties to exclude it. The parties in arbitration mutually agree to have their disputes decided with the intervention of a third person working as 'Mediator', and he is appointed as Arbitrator but with all the formalities of a judicial adjudication. The Arbitrator during arbitration proceedings acts in judicial manner and the entire process of dispute resolution may be called arbitration. The compact definition provided in 4th edition of Halsbury's Laws of England is as under:

"An arbitration is the reference of dispute or difference between not less than two parties, for determination, after hearing both sides in a judicial manner by a person or persons other than a Court of competent jurisdiction"

The word Arbitration has been defined by his lordship Mr Justice Romilly M.R. in Collins V Collins as under:

"An Arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties"

However, the arbitration means the submission of dispute by two or more parties to the judgement of third person called the Arbitrator who is to act and decide the controversy before him in a judicial manner. An arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a Court of competent jurisdiction.

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73 Supra Note 45, at P-2.
74 Ibid.
75 (1858) 26 Beav. P-306.
76 See, Collins Vs Collins, (1858) 26 Beav, p- 306 at 312-313.
[c] Essentials of Arbitration:

There are four important ingredients in the arbitration, which are essential for arbitration award.

i. There must be 'dispute' between the parties.

ii. The dispute must either 'exist or may arise in future'.

iii. There must be two or more parties to conflict or dispute in question.

iv. There must be an 'agreement' between the parties to refer the dispute for arbitration.

v. There must be 'Arbitrator or Arbitrators or umpire'.

The Arbitrator always acts like a Judge. He discharges quasi-judicial functions. He must act honestly and impartially. He is bound to proceed fairly and honestly and to conduct himself without bias or partiality towards either side. He should be above suspicion, which is the basic ingredient to be possessed by decision making authority. The Arbitrator can not be a party to the contract. He should not be a person making reference for arbitration or any kind of decision. The Supreme Court in the State of Karnataka Vs Shree Rameshwara Rice Mills has observed that

"Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions, the adjudication should be by an independent person or body and not by the other party to the contract."

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79 Supra note 67, at p-3.
81 A.I.R. 1987 SC, p-1359
The role of Arbitrator is vital in arbitration proceedings. He should not be biased. It is axiomatic that the power predicates accountability. An arbitrator is substitute for a civil judge to determine civil disputes inter se between the parties. The Arbitrator is required to be an independent and impartial judge during determination of the disputes referred to him. If he fails or neglects to act as expected of him, the award may be set aside. He is public servant as postulated by Indian Penal Code and is personally accountable for damages consequent on his conduct amounting to breach of conduct or in tort.  

[ii] The Conciliation:

The conciliation is a non-binding procedure in which an impartial and neutral third party assists the disputing parties to reach a mutually satisfactory and agreed settlement of the dispute. The parties competent to contract can seek conciliation and resort to an amicable settlement of their disputes. They may belong to the same or different nationalities. The dispute, which has either arisen or may arise in future between the parties can be settled. The dispute may be in respect of the defined legal relationship, whether contractual or not, can be settled by conciliation. The parties should agree to seek an amicable settlement of that dispute by conciliation. The conciliation means to console for settlement of the conflict by mutual agreements. The settlement means 'right settlement' on give and take basis. The 'right' means 'just' from both parties point of view with a view to ensure future harmonious relationship between the parties eliminating the possibility of litigation on the subject matter. According to Simkin,

"Conciliation is a mild form of intervention limited primarily to scheduling conferences, trying to keep the disputants talking, facilitating other procedural niceties, carrying messages back and forth between the parties,

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64 Supra Note 41, at p-88.  
65 Supra Note 32.
and generally being a ‘good fellow’ who tries to keep things calm and forward looking in a tense situation^86.

The conciliation means an ‘assisted bargaining process’ between the two. The conciliation involves the intervention of a third party whose fresh point of view, suggestions, proposals, broad knowledge and dignity of office are intended to facilitate agreement between the disputants. The Conciliator has no power of decision. The conciliation stresses the power of diplomacy and of mental acuteness as contrasted with the judicial process and decision making aspect of adjudication and arbitration. The conciliation process requires involvement of Conciliator who is knowledgeable and experienced person. The person to be appointed or acting as Conciliator should possess three basic qualities:

i. He must possess knowledge and experience of compromise settlements.

ii. He should have broad thinking with objectivity.

iii. He must maintain Independence and Impartiality.

iv. He should have capability to employ the conciliation techniques efficiently like persuasion, rationalization, suggestions and coercion on equal footings on both the parties^87.

The conciliation is unstructured process of facilitating communication between the parties. But it facilitates easy access of communication between the disputants during conciliation proceedings. The conciliation, in an action brought under Age Discrimination in Employment Act, has been defined as an attempt to reach a reasonable, voluntary and mutual understanding. In conciliation proceedings one party is required by law to attempt conciliation and the Court and Conciliator evaluates the party’s efforts with an eye to the conduct of the other party^88.


^88 Supra Note 57, at p-79.
[iii] The Mediation:

The procedure in Alternative Dispute Resolution System combines two or more well-established procedures. The ADR procedure is divided into two categories. Adjudicatory and non-adjudicatory. The arbitration is adjudicatory process whereas the conciliation, mediation and negotiations are non-adjudicatory processes. The mediation is also a non-adjudicatory and non-binding procedure as in conciliation proceedings. Similarly, an impartial third party is involved to act as Mediator in the mediation proceedings. The mediation and conciliation may be spelled out and are inter-changeable expressions. Because in both the procedures a successful completion of the proceedings results in a mutually agreed and acceptable settlement of dispute between the parties. The mediation, in some jurisdictions, is treated as distinct from conciliation inasmuch as in mediation the emphasis is on more positive role of the neutral third party than in conciliation. In U.S.A. the procedure of conciliation is described as mediation in which a positive role is played by the neutral in assisting the parties to arrive at an agreed settlement.

The mediation is rapidly growing ADR option. It is a form of assisted negotiations in which the parties agree to enlist the help of a neutral third party. His task shall be to assist the parties in their quest for a voluntary settlement. The mediation is a process in which a neutral person intervening has to assist negotiating parties in reaching mutually acceptable terms of settlement. The purpose of mediation is to bring the dispute to an end through mutual resolution as early as possible. The parties and Mediator remains involved in the mediation process until the proceedings are concluded to the complete satisfaction of both the parties. The mediation has an immense potential of problem solving in situations where the disputants are not able to reach an agreement on their own.

The mediation is one of the best form and means of ADR in family dispute resolution. The problem of family disorganization or

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89 Supra Note 84, p-84.
90 Ibid, at p-88.
91 Supra Note 88, pp-79-80.
maladjustment is on uprising swing, which consists of marital adjustment, judicial separation and divorce, family division between the co-shareholders, intolerable environment and unpleasant conditions at home or juvenile delinquency, which may lead to criminality at home and in the society. The mediation offers a multifaceted proactive role in understanding, focussing and finalizing issues and then giving all the help needed for finding out a negotiated settlement. Third person who is not involved in conflict is expected to play a catalytic role with his fairness, objectivity, unbiased stand, neutrality and independence. Moreover, the mediation is free from rigid rules of CPC and Evidence Act. It provides multiple options and means to achieve compromise settlements between conflicting parties. However, mediation in family disputes resolution will yield good results if applied with care and cautions.

[iv] The Negotiation:

The negotiation is another form of an Alternative Dispute Resolution System. Like conciliation and mediation, negotiation is also a non-binding procedure but a suitable formula for dispute resolution. The discussions between the parties are initiated with the object to reach an amicable settlement through amicable devices. The difference lies in the sense that the conciliation and mediation is always initiated with the intervention of third independent and impartial person. The negotiations may be initiated with or without the intervention of the third party. The main purpose and thrust of all these forms is to arriving at a negotiated settlement of the disputes. The negotiation is the process of conferencing with another so as to arrive at a amicable settlement about subject-matter of controversy. The most important factor in negotiation by the parties or with the intervention of third party facilitation is that the disputants always retain control over the process. The process of negotiation and mediation is of educational one. The parties including middleman in negotiations are qualified and enriched with academic and practical experiences. The qualification and experience may

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93 *Supra Note 90*, at p-26.
help the parties to learn how to handle controversy and to resolve future disputes more effectively by themselves. The Judges, lawyers and other voluntary associations may help negotiations between the disputant but these formulae are not used often enough or extensively to avoid litigation. The honest, free and frank mind with broad senses of approach is the essential requirement, which must possess in both the parties in order to end the task of dispute permanently.

[v] Mediation-Arbitration:

Mediation-Arbitration ['Med-arb'] is designed to bring together the benefits of both mediation and arbitration in one forum. The parties use one neutral person as both Mediator and Arbitrator. 'Med-arb' is a procedure where conciliation, mediation or arbitration alone has not been able to settle the dispute within time frame. 'Med-arb' is two step processes. First using mediation and then using formal arbitration to decide any of issues not settled at the mediation stage. The parties are encouraged to be more honest with each other during mediation. They are enriched with sense that neutral person will resolve all unsettled matters without biased. The 'Med-arb' is binding decision including agreements achieved during the mediation phase and the arbitration decision and the decision is enforceable as an ordinary arbitration award.

[vi] Mini-trial:

The mini-trial is a device introduced in recent years to avoid lengthy and expensive litigation between corporate parties. In mini-trial, the parties to the dispute choose an impartial third party who may be an eminent lawyer, law professor, or former judge of any Court. The person who is an authority in the area of dispute resolution is always preferred in mini-trial. The mini-trial takes one day or less in dispute resolution. It consists of the attorneys for the two parties making their presentation not only before the impartial adviser but also before the chief executives of the two parties or some other executive who has been given

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94 *Supra Note 91*, at p-78.
95 *Ibid*, at p-81.
the power to settle the case. The respective attorney argues the case on behalf of the litigant parties. He explains their case to the adversarial questions of the other side and expose every support that why they should win the case. The Executives on hearing always arrive at a good settlement. The min-trial is primarily a structured negotiation between business or disputing persons. If they fail to negotiate the process turns into mediation with neutral adviser helping them.

[vii] **Ombudsperson:**

An Ombudsman is also a viable remedy and good alternative for the dispute resolution. Ombudsperson serves as an alternative to the adversary system for resolving disputes. But the Ombudsman do not take regular cases for decisions. The forum of Ombudsman decides the cases between citizens and government agencies. A Ombudsman is generally a independent and nonpartisan officer of the legislature. He supervises the administration and deals with specific complaints from the public against administrative injustice and maladministration. He has power to investigate, criticize and publicize but not to reverse administrative action. An ombudsman proposes solutions to specific complaints against government agencies. He cannot impose a decision on the government and that is the deficiency in its working system. He is empowered under the statutory provisions to request for relevant information from government agencies. He can issue subpoenas and examine pertinent records or documents related to the subject matter. If a government agency within his jurisdiction refuses to comply with the ombudsman’s proposed solution or general recommendation concerning an agency’s policies and practices, the ombudsman may report his findings and recommendations directly and publicly to the legislature.

The Office of the Ombudsperson has recently surged in popularity. An Ombudsperson is independent from the executive

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96 *Id.*
97 *Id.*, at p-82.
98 *Id.*, at pp-87-88.
99 *Id.* at p-88.
and the judiciary. The office of the Ombudsperson is funded by the legislative body. The officer of the Ombudsperson can take various forms. It can be a general purpose of specialized agency that receives and investigates citizen's complaints against bureaucratic actions, an agency charged with protecting citizen's human right, or an agency to protect other right and interest e.g. environmental protection. The powers of the Ombudsperson also vary. Some can receive complaints and conduct some initial investigation while others can only mediate or recommend solutions. Some Ombudsperson has standing as complainants relating to judicial actions. The Ombudsperson plays an important role in legal and judicial reform.°°

[viii] The Lok Adalats :

The Lok Adalat is a new system created for dispute resolution and speedy dispensation of justice. The Lok Adalat system has not come into existence as a substitute to replace the present judicial system but a supplementary to it. The Lok Adalat system is giving a practical shape to the twin concept of Swaraj and Sarvodaya propounded by the Father of the Nation. The concept of the Swaraj implies not merely liberation from the foreign yoke but also emancipation from backwardness, poverty and illiteracy. The Sarvoday means well being of all and obliteration of the distinction between haves and have-nots. The concept of Lok Adalat implies dispute resolution by discussion, counselling, persuasion and conciliation and providing justice to the people at the door step litigants with the mutual and free consent of the parties. The justice system through Lok Adalat means participatory justice in which people and judges participate and resolve their disputes by discussion and mutual consent.°°

[a] Meaning of Lok Adalat :

The Lok Adalat in India as the very name suggests, means "People's Court".°°. The word ‘Lok’ stands for people and

the vernacular meaning of the term ‘Adalat’ suggests its meaning as the Court. The Lok Adalat traditionally may mean Panchayat, which has taken the form of arbitration. It is one of the fine and familiar forum, which has been playing an important role in settlement of disputes. The Legal Services Authority Act, 1987 defines the meaning of the word Lok Adalat as “a Lok Adalat organized under Chapter VI”, which is narrow and do not convey the meaning in its full senses. The Lok Adalat is not a Court of law in its truest connotation. Lok Adalats may be defined as a forum of ADR system where voluntary efforts aimed at bringing about settlement of disputes between the parties that are made through conciliatory and persuasive efforts by the mediators.

[b] Working modalities of Lok Adalat:

The disputes resolution through Lok Adalats is a composite endeavour of different participants in the forms of Conciliator, Negotiator or Mediator. The Lok Adalats are basically meant for dispute resolution by conciliatory techniques and voluntary action. The Lok Adalats may be organized by Central Authority, State Authorities or District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committee, including at District and Talukas levels. It helps in creating awareness among the people of their rights and obligations by providing legal literacy in the basic laws with which people come in close contact in day to day life. The Lok Adalats involve volunteers in settlement process at the grass root level and educate social workers to function as para-legal enabling them to give first aid in law to the people on the spot. The camp of Lok Adalat is a daylong exercise at a predetermined place. The teams of Lok Adalats are consisting of retired judges, advocates, law teachers, spirited public men and voluntary social organizations including

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104 See, The Legal Services Authority Act, 1987, Section 2(1) (d), which runs as : "Lok Adalat" means a Lok Adalat organized under Chapter VI".
105 Supra Note 77, at p-334.
learned elders of the locality. The case pending in Court, tribunals and before the executives are taken up by Lok Adalat. The list of cases, which are suitable for negotiated settlements are prepared on the direction of District & Sessions Judges one month advance and ordered to be transferred to the Lok Adalat. The cases relating to civil, revenue and compoundable criminal disputes, motor accidental claims including labour and industrial disputes cases are taken up by the Lok Adalats\textsuperscript{107}.

[c] **Advantages of Lok Adalat**

The Lok Adalat are guided by the principles of justice, equity, fairly and other legal principles while arriving at a compromise or settlement between the parties. The Lok Adalats are required to pass an award on the basis of compromise. The award passed by the Lok Adalats are final and binding on all the parties to the dispute and no appeal shall lie to any Court against its award. The award made by the Lok Adalat shall be deemed to be the decree of a Civil Court or any other Court. The most advantage of the Lok Adalats to the common man is that where a compromise or settlement has been arrived at in a matter referred to it by any Court, the Court fee paid in such case shall be refunded in the manner provided under the Court-Fees Act, 1870. The Lok Adalats, for the purpose of holding any determination enjoy the same powers as are vested in a Civil Court under CPC. In case the parties fail to reach an amicable settlement, the Court from whom the reference has been made shall conduct the trial. All the proceedings of Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 197, 219, 228 of the IPC and Lok Adalat shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Criminal Procedure Code\textsuperscript{108}.

But there is no strict application of the procedural laws and evidence Act while assessing the merits of claim by the Lok Adalat. The most advantage of the Lok Adalat is in the sense that although the parties to the disputes are represented by the advocate, yet they can interact

\textsuperscript{107} Supra Note 101, pp-86-87.

with the Presiding Officer of Lok Adalat and parties can directly explain their stand in the dispute including the reasons therefor. Whereas self pleadings in the presence of advocates are not possible in the Court of law. The disputes can be brought before the Lok Adalat directly instead of going to a regular Court first. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process and no appeal lies against the order of Lok Adalat. The provision of Lok Adalats and its working system has been discussed in the following chapters relating to the legislative provisions.

VII Basic Ingredients in Alternative Dispute Resolution System:

[a] Good Faith:

The various alternative techniques in the process of ADR methodology are designed to function within an adversarial context. These may be used whether parties are negotiating in a hostile adversarial mode or a co-operative problem-solving mode. The most consensual ADR processes would be enhanced by an obligation on participants to negotiate in good faith. This may not imply a duty on parties to act against their best interest. The parties are duty bound to conduct negotiations in a proper and constructive manner. If the negotiations are conducted with individual self-interest and discarding the interest of another, the parties may not be able to reach a right settlement. However, the proceedings under the Mechanism of ADR System, the technique used and methodology applied are always conducted frankly in good faith and without any prejudice to any of the party. The Mechanism of ADR System has possible ability to settle the controversy permanently.

[b] The role and essence of third party:

The ADR System is consisting of various techniques like conciliation, negotiation or mediation, which is always conducted with the help of third person who is either appointed as

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109 Supra Note 103, at pp-35-36.
Concept, Nature and Meaning of Alternative Dispute Resolution System

Conciliator, Mediator or Negotiator. The Mediator third party is committed to disputants with laudable object to end their controversy. He has an ability to understand nature of conflict and attend to the parties effectively giving equal opportunities of representing their cases. He always gives patient hear to them and is able to control emotions despite awkward situation during conciliation. He develops rapport with both the parties on an equal understandings and works unbiased, using open method with logical thinking and friendly with the parties to the mediation so as to reach a solution mutually acceptable to both. The Mediator, in case it is matrimonial dispute, must possess complete maturity and understanding about the preservation of marriage institution in disputes. It is an essential ingredient and possessed by the Conciliator, Negotiator or Mediator, that he is honest, truthful, fair and do not act to the disadvantage of other party. The role of middleman as mediator is an essential in ADR techniques and it is best performed by third party.

VIII ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM:

India has a vast rural background with its downtrodden economy of inhabitants. It is proverbial saying that 'India is rich country but inhabited by the poor people'. The introduction of ADR system in statute books would help lot at the grassroots level from several points of view. The mechanism of ADR system in one or the other form especially conciliation, mediation, negotiation may help removing rancour and malice among the litigants. The system will be able to pave the way for peaceful co­existence of different sects in the society after conciliation on the legal battle. The system would be able to create harmony among the business comity, even at international level. It will not be out of place to mention that had the elders settlement [The advice and suggestions of Bhisham Pitamaha, Daronacharya, Vidur and like other genius persons] been acceded to

111 Supra Note 92.
112 Supra Note 110, at p-287.
compromise the issue, the great and renowned Mahabharat at ‘Kurushetra Sangram’ could have been avoided\textsuperscript{113}.

On the other hand the conciliatory approach and mediation saves the parties from unnecessary harassment in the Court, which further help reducing the workload and burden of the regular Courts. The mechanism of ADR techniques is an alternative to formal judicial proceedings initiated in the Courts under the statutory provisions. These techniques are valuable ways for common man to access timely justice. These methods provide services, remedies to the complex issues and cost, which are proportionate to the issues or controversy in question rather less expensive\textsuperscript{114}. The Lord Chancellor has said that

"there are often ‘alternative ways of settling the issue at stake which are simpler, cheaper, quicker and less stressful to all concerned than an adversarial Court case. Alternative dispute resolution techniques have evolved as an attractive alternative to formal judicial proceedings. They are a valuable way to access justice ---- providing services and remedies and costs which are proportionate to the issues at state”\textsuperscript{115}.

There are various advantages of ADR system which are being enumerated below.

[i] The ADR methodology can be used at any time before or after the institution of the case. The parties may resort to ADR and settle the issue on having compromised the bone of contention even, when the case has been instituted and pending before the Court of law for trial or decision\textsuperscript{116}.

[ii] The settlement through ADR may be resorted to without the help of lawyer. The parties are given full opportunity to plead his case on negotiating table. The ADR procedure takes only a day or two to

\textsuperscript{113} Supra Note 93, at p-81.
\textsuperscript{114} Supra Note 74, at p-6.
\textsuperscript{115} Ibid.
\textsuperscript{116} Supra Note 113, p-25.
arrive at amicable settlement and that is the utmost advantage of ADR techniques\textsuperscript{117}.

[iii] The ADR techniques always provide better and expeditious solution to the controversy and consume less cost and time. These techniques are non-adversarial and reach speedier results because the neutral person, whether arbitrator, conciliator or mediator as the case may be, always help to formulate the result in shortest possible time\textsuperscript{118}.

[iv] The ADR system is always viewed an attractive alternative to litigation to avoid long delays associated with the trials. The ADR generally result in huge savings to corporate clients. In case the proceedings fail, the money spends on ADR is not lost in the course of negotiations and the issues are bound to be narrowed down\textsuperscript{119}.

[v] The role of Advocates in ADR has not been diminished or discarded in its absolute terms. The utmost advantage of ADR procedure is that the parties are also free to seek the help of lawyers, who may assist the clients in providing legal as well as factum guidance\textsuperscript{120}.

[vi] The ADR procedures permit the parties to choose neutrals, who are specialists and subject matter expertise and it is the best and important benefit of ADR to attract parties. The only condition is that all those acting or aiding in making the settlement have to adapt their role to the ADR requirements\textsuperscript{121}.

[vii] The parties contesting their claims in the trial Courts have to resort to procedural technicalities prescribed by the statutory enactment and the judicial officer in the Courts are bound to follow the statutory rules and regulations applicable in given situation. But in ADR system there is no such binding while negotiating on the issue\textsuperscript{122}.

[viii] The mechanism of ADR does not supplant, but it supplements the existing adjudicative machinery in its attempt to resolve the

\textsuperscript{117} Ibid
\textsuperscript{118} Supra Note 99, at p –66.
\textsuperscript{119} Ibid.
\textsuperscript{120} Supra note 116, at p-26.
\textsuperscript{121} Supra Note 37, 238.
\textsuperscript{122} Supra Note 119, p –67.
disputes and clear the backlog apart from establishing the congenial relationships between the parties.\textsuperscript{123}

[ix] The ADR processes are confidential, which often encourage participants to be more candid or offer more creative solutions. The Conciliators or Mediators are neutral persons. They are bound not to disclose the material facts to any other person who is neither the party to the conciliation nor involved in any way. Thus, the conciliation process maintains confidentiality throughout its proceedings.\textsuperscript{124}

[x] The parties in ADR usually create their own agreements. They are more likely to honour their commitments made during the settlement. Thus consensual ADR processes result in mutual benefits of 'win-win' solutions, rather than 'win-lose' or 'lose-lose' outcomes. In this way, the ADR techniques helps in continuing friendly terms and maintaining good and everlasting relations of parties in domestic and commercial ventures.\textsuperscript{125}

[xi] The conciliatory process is always conducted in the presence of both the parties. Both the litigants are given full liberty to spell out their grievances on the negotiating table during conciliation and before the Mediator, which removes any kind of frustration, suspicion, distrust and eliminates the scope of corruption or bias.\textsuperscript{126}

[xii] The conciliation and mediation is non-binding process and it reserves the freedom of the parties to withdraw from conciliation at any stage.

[xiii] The most advantage of ADR system through the Arbitration and Conciliation Act, 1996 would be to create congenial atmosphere for different parties from different cultures and countries with diverse interest and background. The new Legislation provides uniformity of law of arbitral procedures, to make significant contributions to the


\textsuperscript{124} Supra Note 121.

\textsuperscript{125} Ibid.

establishment of unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations\textsuperscript{127}.

\textbf{Sum Up :}

However, the Mechanism of Alternative Dispute Resolution System consists of various alternative techniques and different forums viz. arbitration, conciliation, mediation, negotiations and mini trials including Lok Adalat. India is poor country and majority of the litigants are poor and with rural backgrounds. The Mechanism of ADR System is a viable substitute and an effective instrument in providing speedy, cheap and timely justice to the litigants. It has various advantages. The litigant can opt any of the various forums. The ADR System does not mean to replace the existing judicial system. But to aid and assist the existing judicial and justice delivery system in providing timely relief. The ADR System may be able to check the docket problem in the Courts. The ADR system ends the controversy in perpetuity, which is the utmost advantage avoiding efflux of the cases by way of appeals and revisions in the higher Courts. The ADR System works on the basis of justice, equity and good conscience. The Mediator, Conciliator or Negotiator always works in good faith, unbiased and to the advantage of both the parties. The parties are free to opt the forum and mode of proceeding in any way mutually acceptable to both the parties. The ADR System and its proceedings always maintain confidentiality.

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\textsuperscript{127} Supra note 72, The Preamble,