CHAPTER I
INTRODUCTION

The Alternative Dispute Resolution (ADR) mechanism works as part of the judicial system of the state and has been constituted as a supplementary organ of the judicial system. ADR has been promoted and given prominence in India for the last few years. The reasons for introducing the system are the existence of problems like hindrance for access to courts to many people, overburdening of dockets, inadequate number of courts, long delay in resolution of disputes, heavy expenses, etc. At present there are court-annexed ADR as Lok Adalat, mediation and conciliation etc. Arbitration under the Arbitration and Conciliation Act, 1996, systems like Ombudsman etc. are also there for the settlement of disputes. Apart from all the above there appears to be various out of court settlements including untrained mediation, informal settlement etc. prevailing in the society. At the same time there are some criticism like the phenomenon known as, the downward trend in the number of filing of cases before civil courts coupled with the erosion of jurisdiction of civil courts due to ouster of jurisdiction and conferring it on tribunals.

Equal justice for all is the goal aimed by the Constitution, on which the entire system of administration of justice is based. For the administration of justice courts are prime functionaries. Apart from courts there are several tribunals and quasi-judicial forums throughout the country. In spite of all these, for various reasons delay occurs in the dispensation of justice. At present more than thirty million cases are pending before various courts. A study made in 2012 by the National Court Management System of Supreme Court predicts even by a conservative estimation that the number of pending cases will rise by five-folds touching 15 crore in the next three decades.¹

¹ Policy and Action Plan, National Court Management Systems Supreme Court of India, (2012) p.4
While thirty million cases are pending before various courts, millions of disputes not even reach the courts owing to the difficulties created by poverty, illiteracy, lack of awareness coupled with many other reasons. Thus access to justice appears to be a problem. In order to measure the countries’ adherence to the rule of law, a new tool was designed known as World Justice Project’s Rule of Law Index.\(^2\) The study has ranked India 78\(^{th}\) among 97 countries in providing access to civil justice. Irrespective of all attempts for equal protection of the laws justice is at times seems denied to the poor. Even though both Central and State governments spent huge amount of money for various social welfare schemes as well as for other development needs of the people,\(^3\) the fruits of development in its due share have not reached the majority of the population.\(^4\) The gap between the rich and poor\(^5\) is widening and it has its impact upon justice delivery system also.\(^6\) Lack of awareness of justiciable problems and lack of sources and availability of advice, may well be the two major barriers to access to justice. However, in countries like India, it is alleged that the financial burden of litigation is also a major factor. The United Nations Development Programme in its Note on Access to Justice, published in the year 2004,\(^7\) added two other factors namely, long delays in adjudications and excessive number of laws, as additional barriers to access to justice.

\(^2\) worldjusticeproject.org/rule-of-law-index
\(^3\) World Bank news published in January 2012 says:”While India’s government has a number of programs to improve the lives of the poor, most marginalized people don’t know what they are entitled to, nor do they have the power and access to ensure that they get it”.web.worldbank.org › News, dated 18.02.2013, 12.37 P.M
\(^4\) According to Prof. Suresh Tendulkar Committee report 33.8 per cent people in rural area and 20.9 per cent people in India are below the poverty line with Rs 29 per day per person in urban areas and Rs 22 per day per person in rural areas. Press Note on Poverty Estimates, 2009-10(Government of India, Planning Commission, March 2012) Read more: http://forbesindia.com/blog/economy-policy/indias-poverty-estimates-dont-just-get-outraged-understand-them/#ixzz2LE3VFFiU
\(^6\) See the speech made by Justice Y. K. Sabharwal, Chief Justice of India, Supreme Court of India, Supreme court of india.nic.in/speeches/speeches_2006/cuttack.pdf
\(^7\) www.undp.org/.../publication/.../publications/.../access-to-justice/.../U...
It is essential that justice is brought even to those for whom it is inaccessible for various financial or social reasons. Backwardness and illiteracy multiply the problems, not to speak of legal illiteracy. Most of the poor and marginalized are not aware of their constitutional and legal rights. Even if they are aware, they are in many ways prevented from approaching courts. Exploitation, money and muscle power etc. seem to pose a challenge to rule of law in the society. In spite of the provision for free legal aid, many poor are not able to approach the legal forums.

To bring these people to the forefront irrespective of their financial status is essential to meet the ends of justice. Legal measures for ‘actionable entitlements’ of the poor and marginalized are an emerging area for resolution of disputes.\(^8\) Justice must be done alike to the rich and poor. According to Amartya Sen, one has to address questions of enhancing justice and removing injustice, rather than to offer resolution of questions about the nature of perfect justice.\(^9\) But Justice S.B Sinha is of the view that in the area of disputes and cases, resorting to Alternative Dispute Resolution mechanism may provide perfect justice to parties to a dispute to a great extent.\(^10\) Therefore, the effective implementation of cheaper, simpler, and quicker ways and means for settlement of disputes is highly relevant and important in the present scenario for the attainment of maximum justice to all.

In an era of increasing number of human rights violations, widespread corruption, socio-economic injustices, environmental hazards, arbitrariness and undue delay in administrative actions, crimes - both conventional and new generation such as cyber-crimes; economic offences and road traffic accidents etc., people look to the judiciary as a saviour for their many problems. Exceptions apart, judiciary seems to be a hope to the democratic polity. But there is still a question that how long the judiciary can maintain its reputation

\(^8\) See the Report of the Secretary General United Nations General Assembly 64th session
\(^10\) S.B.Sinha, “Mediation; Constituents, Process And Merit” (Souvenir) National Conference on Mediation (2012), p.3
owe to the overburdening of dockets. Such situations may ultimately lead to failure of the system.

Finding a solution for all these problems is the need for a just society. It is with all these in mind that the ADR system was introduced with the hope that it will remedy the situation to some extent at least. The ADR system which consists of Negotiation, Conciliation, Arbitration, Mediation, Judicial settlement, *Lok Adalat* etc. often of wide verities. Even after the introduction of the ADR system in the country, formally and informally for the past more than three decades, the situation seems still the same. In the above background it was felt that it will be useful and better to investigate into the position of ADR in the context of the State of Kerala, hence this study.

**1.1. Contention of the thesis**

This thesis contends that

1) The existing system of *Lok adalat* and mediation is an effective alternative for formal system of settlement of disputes.

2) In order to achieve the constitutional mandate of equal justice for all, certain changes to the existing system including amendments in laws and rules relating to mediation and other ADR systems are essential.

3) The even resort of ADR system will not adversely affect the qualitative strength of the adjudication system.

4) There is scope for the development of arbitration and mediation as an independent profession in Kerala.

5) Expansion of smooth, speedy and cost effective settlement culture will contribute much to the peaceful development of the state.

The objectives of the study are:

I. To understand the philosophical, legal and practical aspects of litigation, and the reasons that lead to the evolution and development of alternative dispute resolution system in the country.

II. To understand the legal and practical aspects of the important alternative dispute resolution mechanisms practiced in the state of Kerala.
III. To assess the effectiveness or success of ADR mechanism with special emphasis to *Lok adalat* and mediation in the State of Kerala.

By way of examining:

a) Its success in settlement of cases;

b) Satisfaction of parties;

c) Attitude, role, satisfaction and concern of legal professionals;

d) Easing work of regular courts;

e) Participation and role of different institutions and agencies in promoting ADR & Mediation and the problems & prospects, if any;

IV. To find out the scope of ADR processes and mediation, in particular, in achieving the constitutional mandate of equal justice for all and to ensure tranquility, harmony and development in society.

V. To explore the possibilities if any whether the even resort of ADR system will adversely affect the qualitative strength of the adjudication system or will it strengthen the overall administration of justice.

**1.2. Tasks performed in this research**

As part of this research, the following tasks were involved

1. Explaining the various concepts relating to the dispute resolution system by way of reviewing the existing literature on this aspect.

2. Explaining the various alternatives to litigation on further investigating in to the theories and development of some major alternatives to court litigation practised in the country.

3. Identifying the problems involved in the implementation of the different forms of alternatives to litigation in the state of Kerala.

4. Observing the practise, procedure and the conduct of different ADR mechanisms in Kerala.

5. Conducting survey among various stakeholders of the ADR mechanisms to gather information by collection of data from them, holding structured interviews with experts on the theory and practise of the ADR processes with the objective of seeking feedback from these stakeholders on the
effectiveness of the existing ADR mechanism in the state and also of seeking the scope and extend of modifications required in the existing system.

6. Collecting secondary data from various authorities including courts and ADR institutions connected with the court

7. Statistically analysing the data using SPSS to find the results of the survey conducted.

8. Interpreting and further discussing these results of the analysis and formulating inferences from them in order to reach conclusions and make suggestions for improvement with the additional support of the expert opinion, secondary data and information gathered through direct observance.

9. Reaching conclusions and making directions for future research in various aspects of the study.

1.3. Pragmatics of this research

Any conscientious lawyer may reasonably argue that a study in the area of ADR mechanism is one of the most fundamental requirements for the people who manage dispute resolution. The study will help to find out whether the ADR method is effective as it is expected and in what ways it may be made more effective and it will be helpful for the policymakers, implementing agencies and judiciary to reform the system in a better manner. It will also helpful to find ways to create a cultural milieu in favour of such a system. The study will help researchers for further research activities with the intention of contributing towards attainment of the goal of equal justice for all.

The study will be of very much significant as the area is of utmost important as far as the litigating people and other stakeholders are concerned. The results of this study will be useful for the legal fraternity to generate more ideas, carry forward discussions and suggest further reforms.
1.4. Chapter Formulation

For the purpose of study, this thesis has been divided into four parts.

Part one deals with Formal and Alternative Dispute Resolution System. It consists of two chapters, namely chapter 1 and chapter 2.

Chapter 1 is the introductory chapter. This chapter deals with the introduction of the subject, the reason for choosing the specific research area, the contentions and objectives of the study, the tasks performed in this study, the pragmatics of the research and chapter formulation.

Chapter 2 deals with the review of literature. This chapter reviews the various literatures dealing with the formal adjudication system and alternative dispute resolution system. This chapter elaborates the concept of disputes, reasons for emergence of disputes, explosion of litigation, the problems of access to justice, advantages and disadvantages of the formal dispute resolution system, challenges to the adjudication system, the need for alternatives to litigation, arbitration and resolution of disputes, alternatives of adjudication in the Code of Civil Procedure, 1908, Lok Adalat and Indian tradition in dispute resolution and negotiation and mediation.

Part two deals with Data and Methodology. It has only one chapter which is chapter three.

Chapter 3 discusses the methodology adopted in this study. It explains the different devises used to conduct the study, the way of collection of data and their analysis etc.

Part three deals with a new philosophical approach in ADR. It contains five chapters. They are chapter four to eight.

Chapter 4 elaborates on the Alternatives to Litigation. It discusses the origin and development of Alternative Dispute Resolution and its history in India, the reasons for introduction of alternatives to litigation, the advantages and disadvantages of ADR etc. this chapter also contains some new proposals relating to alternatives to litigation.
Chapter 5 deals with arbitration and resolution of disputes. In this chapter there is an elaboration about the history of Arbitration, a brief summary of its introduction in India, (Detailed description is given in Chapter 2) details and specialities about the Arbitration and Conciliation Act 1996, the problems of arbitration law in India etc. this chapter also contains some new proposals relating to arbitration.

Chapter 6 is concerned with alternative to adjudication in the code of civil procedure. This chapter attempts to establish that the Code of Civil Procedure contains a lot provisions that helps to settle and resolve the disputes at an early stage itself without prolonging for a long time. The chapter advocates that the Code of Civil procedure, 1908 has to be looked into as a law that helps to augment a fair justice delivery system and not as a statute that promotes inordinate delay. Finally, the chapter puts forward some new proposals. This chapter with some modifications has been send to The Academy Law Review for publication.

Chapter 7 studies the Lok Adalat and Indian tradition in dispute resolution with some proposals. This chapter discusses the objectives behind the introduction of Lok Adalats in India, the important features of the Legal services Authorities Act, 1987, and finally puts forward some new proposals relating to the functioning of Lok Adalats.

Chapter 8 deals with Mediation. It defines the consensual proceedings like negotiation and mediation. It explains the various dimensions of negotiation and mediation, the difference between mediation and conciliation, the advantages and disadvantages of mediation etc. This chapter also puts forward some proposals.

Part four deals with quantitative validation and discussion. It consists of seven chapters.

Chapter 9 to Chapter 14 is about quantitative validations of the proposals through statistical analysis of the collected data and the discussion of results is conducted. Through the discussion probable inferences are also
made. The data pertaining to the study from the various sources were examined and analyzed using the Statistical Package for the Social Science Version 20 (SPSS). The qualitative variables were described by frequency and percentages. Associations of various factors were tested by Pearson Chi square test. The relation between various dimensions was examined by Spearman Correlation coefficient (r). The significance of results was explained by P value. The value of P which was less than 0.05 considered as statistically significant.

Chapter 15 is concerned with conclusions and suggestions. This chapter concludes the work and suggests some points for future research.