ALTERNATIVE DISPUTE RESOLUTION & ITS COMPARATIVE STUDY WITH INDIA AND USA

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ABSTRACT

It would be worthwhile to quote the observation has made by the noted jurist **H.L.A** ***who said, 'useful function of a lawyer is not only to conduct litigation but to avoid it wherever possible by the achieving settlement or withholding suit'.***[1] Alternative dispute resolution mechanism gives an option to all citizens so that they can resolve their dispute outside from the court. Potential benefits are said to include the reduction of the transaction costs of dispute resolution because ADR processes are cheaper and faster than ordinary judicial proceedings. They can resolve their dispute by the tools of alternative dispute resolution like mediation, negotiation, conciliation. As we know that alternative dispute resolution mostly by natural justice (1) Nemo iudex in causa sua (2) Audi alteram partem. In India status quo of the alternative dispute resolution and why the **USA** and **British** occupied a prominent place in the succession of the ADR. But in India, we can see that our government and legislation have emphasized the mechanism and they also amend this act many times (For instance, Dispute Resolution amendment bill 2021) and exclude all the impurities. As far as I understand this mechanism has played a very important role in our society and as we know this mechanism is not too old. We can see it in the period of mughal time (in devane aam, devane khas) and in Ramayana, Mahabharata as well. This tool would also prevalent in very ancient times and modern times as well. Rather many wars after the **first** and **second world war** many disputes have been resolved by the help of negotiation, meditation, arbitration, and by very ordinary language through "**table talk"**. So that we can so far & eventually say that this mechanism needs to be more effective and more developed. Further, we discuss the advantages of ADR. Why we need to emphasize ADR rather than lengthy adjudication proceedings. ADR can help a variety of people doesn't matter they are poor or either rich. The most omnipotent notion **"Justice hurried is justice buried,"** said Nirbhaya convicts'

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[1] Dr. N.V. Paranjape, Studies in Jurisprudence & Legal Theory, Ethics of legal professional, p.125.

lawyer AP Singh & also we often hear **"Justice delayed is justice denied"**. Alternative Dispute Resolution strictly follows aforesaid maxim and their notion.

Keywords: Alternative Dispute Resolution, Mechanism, Negotiation, Arbitration, Conciliation.

INTRODUCTION

Alternative Dispute Resolution in India prevalent before the independence of India (The Arbitration Act 1940) and of course after the independence of India (The Arbitration & Conciliation Act 1996). This is very true that numerous amendments have been taken to the arbitration act and gradually make it a more comprehensive and strong tool. In the latest amendment, we've seen that the new word Conciliation has been added. Its preamble also talks about the convenience of the international commercial relation. To make it easier for international traders to invest their capital into India, therefore, this act, of course, make sure that international companies may not face those litigation process. There are numerous other arbitration court has been prevalent in our society but we cannot forget that the gargantuan contribution has been made by *The Permanent Court of Arbitration*. There numerous other courts located in the universe like United States Court, United Kingdom, The Netherlands, Canada, and Singapore Court. The Permanent Court of Arbitration has resolved many taxation-related disputes and also given numerous opinions to the respective party who is interested to resolve their dispute. The permanent court has played an illustrious role in resolving the dispute. Here are some of the glaring examples have been taken place: Vodafone Case[2], Carian Energy Case[3], The Kutch Arbitration Award, Honduras v Nicaragua[4], etc. It is one of the recognized notion principles of international law that the award given by Arbitration is very binding upon the respective parties. Furthermore panacea for the parties because they avoiding long litigation proceedings. However, numerous countries file an appeal against the arbitral award but eventually, the arbitrator gives a true award to the respective parties. In India, the ADR status quo is growing very fast because usually, every person tries to resolve their dispute by the mechanism of mediation and negotiation. In the US the system of ADR is more prevalent and more effective in

[2] *Vodafone International Holdings BV v. Union of India* (2012) 6 SCC 613
[3] *Cairn U.K. Holdings v. DCIT, (International Tax)* Delhi ITA no. 1669/Del/2016
[4] *Nicaragua v Honduras, Judgment, ICJ GL No 120, ICGJ 23 (ICJ 2007)*

comparison with India. Mostly all general company alongside foreign investor also get fast relief through the ADR system and the ADR system help in many situations likewise it to reduce the gargantuan burden of civil court. So that we have to use this mechanism in our all small dispute to court gets more time to solve other affairs. In the period of Mahabharata, Ramayana, ADR also played a very significant role too.

HISTORICAL SIGNIFICANCE OF ALTERNATIVE RESOLUTION IN INDIA

Alternate dispute resolution could be traced back from the MARI KINGDOM, in 1800 BC. This is the first country that accelerates and signifies mediation and arbitration. It was used in resolving the dispute among neighbours Kingdom. Present time this country/ kingdom "MARI" popularly known as SYRIA. Thereafter, in 1400 B.C ancient Egyptian Amran system of international relations has also used the ADR system in the form of envoy. This Nation also used the dispute resolution method. Although, by the way of diplomats. In 1200 B.C - 1900 B.C, 960 B.C Israeli King and so numerous other countries were also adopted this mechanism even 500 B.C. in India in the form of the Panchayat.

Alternative dispute resolution is not so alien to the great nation of Bharat. In India every person usually wants to short their affair into the four walls of the home to their dignity and harmony not goes out in the public so that they used to adopt negotiation, mediation method.

ANCIENT TIME: - In ancient India when there was a Kabila. All the members of Kabila usually live in a single joint family; in their clan, there was a Swami of a clan who is the leader of Kabila as well. Suppose that if any kind of dispute had been occurred thereafter their head of clan (Swami) convert into the arbitrator and through the negotiation and mediation mechanism Resolve their one and only family dispute and confer them an award and their member ought to be or has to be followed otherwise they had been punished by rigorous punishment. Likewise in the age of Mughal, there was a deewan-e-aam and diwan-e-khaas. In this facility, every dispute had been resolved by an expert and experienced person like Mantri's, Qazi (Judge), King, Juri, etc. and they're being impartial make the proceeding fairer and just so that people get trust upon the aforesaid facility.

For instance here is "A and B" both have a conflict on a land acquisition issue so both mutually have decided that they would approach a third person who is "C" (A neutral person, No connection with any of them personally, being impartial in eyes of A & B) so he first determines the issue to consider their affair and confer them Appropriate award. Thus,

consequently confers Award to the parties that "B" has to give some reasonable amount to "A" For their "Right In Rem" and "A" also gives some reasonable piece of land to "B".

ADR SYSTEM IN RAMAYANA & MAHABHARATA

The Age of Srimad Ramayana, to approximately the 5th to 4th century BC. Another significant great story or we can say (mahaan *veer Gatha)* Ramayan, we might also find Dispute Resolution Mechanism in Ramayana. Initially, we have to understand the brief story of Main Ramayan. "Mother Sita who is the wife of Lord Shree Ram, Ram prince of the great land of Ayodhya, won the hand of adorable princess Sita but was exiled with her wife (*ardhangini)* Sita and his brother (*Bharat)* Lakshman for 14 years through the plotting of his stepmother (*upmaa)*. Here the story begins, the evil Ravana, King of the all universe "Demons", who had 10 head (*seer)* and 20 arms (*bhuja)*, Ravan Spied Lord Shree Ram's adorable wife in the forest, he fell soft on together with her (sita) instantly. Ravan (king of demon) organized for his servant Maricha to disguise himself as a golden deer and tricked Lord Ram and Lord Lakshman and they both went far away from her (which is Sita). Thereafter, in the forest, Sita was abducted by Ravan. Later, "Lord Ram sent Angad to the court of Ravan as an envoy, messenger to Lanka King Ravan to set her free (wife of Rama) Sita and Avoid catastrophic, destructive war". So here we can also see that the negotiation, mediation method had also used.

In the Mahabharata, Lord Krishna goes to the Hastinapura court where Dhrutharashtra is the king. His court members include Bheeshma, Drona, Krupa, Vidura, Prince Duryodhana, Dushyasana, Shakuni, Karna, Ashwathama, and many others. Krishna salutes all the respected dignitaries in the Palace court and then starts mentioning to Dhritarashtra that he doesn't come to his court as the ambassador or Pandavas but has been present there as the ambassador of dharma. He doesn't start with giving away the whole Indraprastha or anything initially. Krishna advises the blind king (what a coincidence?) to look at this as an angle that would bring the clan together and if both Pandavas and Kauravas are one in this court, then there will be no other kingdom (with the great warriors and kinsmen that Hastinapura has) which can win over them. That is a positive note. He then proceeds further to say that it is not about who needs to win or who needs to lose in a battle, he suggests that there are "Athirathis and Maharathis" on both the sides, who want to fight in this battle, and questions whether the battle is a solution for all the problems with both the teams that wage the war. He also says to give a thought on what the future would think and talk about the king who was always misled

by his thinking that he couldn't think anything beyond accomplishing his Son's desires, rather than protecting the interests of his subjects. He asks specifically to the king that if there is a dead body that comes to King Drutarashtra from the Pandavas, would he feel happy about it because it is his enemy's side? He advises that both Kauravas and Pandavas are his children and they both should be looked at the same way as the king looks neutrally while deciding good for his subjects and that will be the best interest of the kingdom. So if we connect the aforesaid story to the Alternative Dispute Resolution Mechanism thereafter we might also see that there had also used Dispute Resolution by negotiation, mediation.

So here we also find that how Lord Shree Krishna tried to resolve a civil war between two groups of the brother.

MATTER RESOLVED THROUGH NYAYA PANCHAYAT

In the earlier day, before the proper establishment of the court throughout the nation so in the village, there was a mediator headed by a superior person of the village who contains higher qualifications, experience in such field, and take effective status in the village. So that whenever any kind of dispute had arisen among with villager thereafter they call "Panchayat". The composition of panchayat is that there are a "Sarpanch", a member of every cast, and ladies also a member of panchayat. Cast panchayat also exists in old times in rural areas. The panchayat could be village panchayat either "Cast panchayat". Through the panchayat, there was a mediator who is being hired by the "Sarpanch" the mediator usually collect the disputant parties under the tree (according to the old tradition) and start hearing particularly both parties argument with their proper evidence as much as possible and such mediator is very impartial in the eye of parties. This is one of the informal dispute resolution mechanisms which are prevalent in the village and it also prevailing/practising so far in the village. After the proper hearing of the disputant parties and their arguments, evidence & witnesses being heard by the panchayat thereafter, panchayat would come to conclusion and confer them award So that peace and harmony have to be maintained among with villager. And villager ought to respect the panchayat award. Panchayat Nyaya system is one of the effective and fair and just systems. It maintains peace and harmony among villagers and reduces the burden of civil court. Here we can say that PANCHAYAT is a glaring example of a Dispute Resolution Mechanism.

BRIEF HISTORY ABOUT PANCHAYATI RAJ

Soon after, when the launch of the first 5-year plan was consolidated in a single piece of legislation but some of the weaknesses were in the aim of the plan. Meanwhile, the number of Nyaya panchayat increase from 14.8 thousand to 164.3 thousand. Meanwhile the first era of independence there was a 3rd, 5th years plan was preparing for state to the rulers' area development by District and block plan. And this was based on **Balwant Rai Mehata Committee (1957).** Its report stated that, to examine and suggest measures for better working of community development program (1952) and the national excision service (1953). It also stated that decentralization democratic local government body that must come into existence and thus which came to be as Panchayati Raj. This committee recommended, submitted their report on 24 November 1967. Its scheme for democratic decentralization Juris corpus. This also suggests to state that the real meaning of justice that how rural people access justice through either by their men. The committee confers the three-tier Panchayati Raj system (1) Gram Panchayat (2) Panchayat Samiti and Zila Panchayat. This hilarious report also stated that not merely establish the body but would have to make plan and development of the Panchayati Raj system. It covers many vital factors of the democratic decentralization body. Thereafter, **Ashok Mehta** Committee, the community was consolidated in 1977 to suggest measures to word reviving and strengthen the gradually declining Panchayati Raj system in India. Its report stated that the three-tier system should be replaced with the two-tier system (1) Zila Parishad (at district level) and Mandal Panchayat (a group of a gram) as per the report and as per the source. It also stated, strengthening it by financial services, mobilize so on so forth. Thereafter, the **G.V.K Rao committee and P.R,** this committee had been established by the planning commission in 1985 and it is objective as same as previous committees. **L.M Singhvi Committee,** in 1986 Congress party leader late. Mr. Rajiv Gandhi government had established a committee to prepare a concept paper on the revitalization of Panchayati raj organization for democracy and evolution under the chairmanship of Mr. L.M Singhvi. This report made some recommendation that Panchayati Raj should incorporate in the Indian constitution and confers it separate power, incorporate it in the special chapter so that every state should follow it as constitutional mandate made and encumbrance towards their citizens, give this system some power, function, etc. This report gives numerous look-after methodology towards Panchayati raj. Another significant committee, the **Thugon Committee,** in 1988, a sub-committee of the Consultative Committee of parliament was had been incorporated under the P.K Thungon chairmanship to scrutinize the political and

administrative format in Zila for Zila Yojana (district planning). And suggest how to strengthening the Panchayati Raj institution in India.

- He also seeks to that state should incorporate the Panchayat Raj system in the constitution.
- The three-tier system of Panchayati raj
- Fixed tenure of 5 years for P.R.

Thereafter, the **Gadgil Committee,** Gadgil committee was constituted/ consolidated in 1988, by the UPA government under the chairmanship of Mr. V.N Gadgil. This committee was asked a question to consider the "How best PANCHAYAT RAJ organization could be made Effective".

- Reservation for SC ST women in the panchayat.
- State election commission held panchayat election.

So eventually "The ideas so evolved, culminated in the passing of Constitution 73rd and 74th Amendment Act, 1992 which inserted Part IX and IX-A in the Constitution of India. While part IX relates to Panchayat, containing Article 243 to 243 O, part IXA relates" to different aspects[5].

PRE – INDEPENDENCE BRITISH RULE

During the British colonial rule in India there are numerous rules, regulations, legislation had been incorporated so therefore gargantuan changes took place in the Indian administrative system. Since 1772, the court got the power that it is possible that refers affair, dispute to arbitration cell whether by parties keen or by the court discretion. Then after a long decade since 1859, the code of civil procedure (CPC) was incorporated, under this act section 312 to 327 of the aforesaid act regarding arbitration regulation. However, the aforesaid code did not apply to the Supreme Court in the presidency town and presidency small causes court. These aforesaid contemplated two kinds of arbitration 1st one is (arbitration by the intervention of the judicial code to resolve pendency case.) 2nd one is (arbitration with an interest of parties or without the intervention of the court.) But the 1882 act section related to arbitration was being repealed for the sake of the purification of the statute.

[5] D.D BASU & DR. Acharya Durga, Introduction to the Constitution of India , Lexsis Nexis,23rd edition 2018

So here Bharat gets a new alternative dispute resolution mechanism being evolved by the British legislation in India which is the Indian arbitration act 1899 first time as per the source. All we have to know about this act Indian arbitration act 1889 this act however only extended to the three presidency town of Madras, Bombay, and so-called Calcutta but it is not extended throughout the territory of Bharat hence the act had to further incorporated or in legal language codified into the section 59 of the act of the code of civil procedure popular as CPC, 1908 and whereby this codification arbitration was accordant and all Bharat status in other words extended throughout the nation.

So in 1908, as we know civil procedure code popularly known as CPC was further again amended by the legislation and section 89 along with a seconds schedule confer gargantuan force to the court of India so that the court could refer the dispute to arbitration popularly known as an alternative dispute resolution mechanism.[6] After the incorporation of section 89 and the second schedule court has control over the dispute had been extended or you can say that increased. Section 89 of the Indian arbitration act 1899 and the 2nd schedule of the code of civil procedure popularly known as CPC were 2 omnipotent rules and regulations which is deal with arbitration resolution mechanisms. So thereafter since 1973, the Geneva Convention was signed and incorporated in Indian administration by the Indian legislation so consequently, a law was incorporated in the form of the Arbitration (protocol and convention) act 1937. "The arbitration (protocol and convention) act 1973 which came into force on 4th March 1937 it provided for enforcement of alien arbitral award because of as we know the Geneva Convention of 1927 has been applied." So consequently in the year 1940, therefore, the Indian Arbitration Act, 1899 popularly known as (IAA) along with Section 89 along with the 2nd schedule of the Code of civil procedure (CPC) had been Repealed and consequently Replaced by the New Act - The Arbitration Act, 1940.[7]

POST-INDEPENDENCE ERA

After the post-independence era, we have adopted so many statutes and constitutional provisions. So numerous changes also took place for the better effect of alternative dispute resolution mechanisms. We have adopted the Panchayati Raj system in our Constitution after a long political endeavour in article 243 Part IX and IX-A in the Constitution of India. And we also replaced numerous other arbitration statutes from the Present Arbitration and

[6] 238th report on Amendment of Section 89, https://indiankanoon.org/doc/174517104/
[7] Ibid.

Conciliation Act,1996[8] which is analogous to United National Commission on International Trade Law commonly known as (UNCITRAL) model and bypass The Arbitration (Protocol and Convention) Act 1937[9], the Arbitration Act 1940[10] and The Foreign Award (Recognition and Convention) Act 1961[11]. Legislature also makes it more strengthened so that by re-introducing of section (89) along with order X rule 1A to 1AC in code of civil procedure in 2002 (CPC) amendment. The Arbitration and Conciliation Act 1961 has amended numerous times so on August 9, 2019 president Ram Nath Kovind has given their assent to the amendment of The Arbitration and Conciliation Act 1961, in 2015 The Arbitration and Conciliation Act 1961 had also amended to make it more effective and more cost-less. In the amendment, the arbitration and conciliation amendment ordinance 2002 notifies on the day of 4 November 2020 the government has to eradicate either amend Section 36 of the Act in 2020. And recently Arbitration and Conciliation Act, 1996 Amendment bill 2021 was also introduced in our constitutional body (Parliament) and our Law Minister Shri Ravi Shankar Prasad introduced the 2021 Amendment proposal to exclude numerous impurities and eradicate the 8th schedule and substitute some section as well. So thus, we can see that how much the Indian council of ministers and respected parliament members emphasize the arbitration process so that by the use of Alternatives, Court burden might be reduced. A great effort was made by parliament.

NOTION AND CLASSIFICATION OF ADR

"According to National Judicial Data Grid (NJDG), 10205331 CASES are pending in Civil Case, Total of 277255247 Crime Case pending so far, Civil Case more than 1-Year-Old 8273310(81.07%) case pending so far, Criminal Case more than 1 Year Old are 22068025(79.51%) pending so far, these all number of cases are pending merely honourable High Court. Could anyone see justice? Can anyone see justice delayed justice denied doctrine! No! In India, every Litigants party has been through the very long substantive procedure so that they would suffer numerous problem because of merely litigation." Although we cannot deny that litigation is not mere waste of time, of course, it has numerous

[8] Arbitration and Conciliation Act, 1996, https://legislative.gov.in/sites/default/files/A1996-26.pdf
[9] Arbitration (Protocol and Convention) Act 1937, WIPO, https://www.wipo.int/edocs/lexdocs/laws/en/pk/pk065en.pdf
[10] The Arbitration Act 1940, https://indiankanoon.org/doc/1052228/#:~:text=An%20Act%20to%20consolidate%20and%20amend%20the%20law%20relating%20to%20Arbitration.&text=(1)%20This%20Act%20may%20be,1st%20day%20of%20July%2C%201940%20.
[11] The Foreign Award (Recognition and Convention) Act 1961, https://indiankanoon.org/doc/1695780/

benefits too but in the case of High Gravity crime neither low gravity dispute. So because the Enormous burden of "low gravity" cases is popularly known as "Compoundable Offense" upon Courts judiciary got overloaded so consequently Court couldn't look over essential dispute irrespective of normal dispute which possibly can be solved by an alternative method. Alternative dispute resolution mechanism is not very alien to the great nation of Bharat, it prevails in India a very long time before, in the form of Panchayat Commonly known as Panch and another form Kula. Alternative Dispute Resolution confers the option to the disputant party that they can resolve their every dispute outside from the court with help of some quiet tool which is arbitration, negotiation, mediation, conciliation. Every person can resolve their dispute with the help of alternative dispute resolution and be saved from the adverse effect of the litigation process. Usually in India, every party wants speedy and cost-effective justice and they also keen on Supportive Procedures rather than Substantive Procedures. ADR mechanism is the only one of the stables effective systems which people can easily avail. ADR system is a very pocket-friendly settlement tool so that people easily aviles this system and settle their every dispute outside from the court and get reduce the burden of the court so that they not be affected by the delayed justice. As far as alternative dispute resolution system in India is concerned, in the present Era, the legislature of India has accelerated it through a various amendment which takes place in the Arbitration and Conciliation Act, 1996[12] so that citizens of India and either foreign commercial company get easily resolved their every commercial, taxation related dispute and citizen shall get speedy and fair justice as per the article 21 & 39 A of the Indian constitution which stipulated that "The State shall secure that the operation of the legal system, promotes justice based on an equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities". One of the worthwhile ruling of the Supreme Court of India in, [13]State of Jammu & Kashmir v. Dev Dutt Pandit[14] observed that "Arbitration has to be looked up to with all earnestness so that the litigant has faith in the speedy process of resolving their disputes." before we proceed further we have to understand some important section of the Indian contract act 1872 because alternative dispute resolution system somewhere corresponds to the Indian contract act, 1872 because these will help to understand how the component of ADR does work exactly. Section (10) of the ICA 1872

[12]Arbitration and Conciliation Act, 1996, https://legislative.gov.in/sites/default/files/A1996-26.pdf
[13] Report of the research project on ADR & Legal Aid, Ministry of Law and Justice, India
[14] State of Jammu & Kashmir v. Dev Dutt Pandit , AIR 1999 SC 3196.

whispering about "what agreement are contracts as per the section "All agreement are contracts but must be made by the free consensus of the party section (14) of the act which talks about consent. Section (17) of the act which talks about fraud like not disclosing fact with the other party or in other words, any kind of intentional fraud commence by the any of them then such contract are void. Section (16) of the Indian contract act, 1872 stated that "Undue Influence" which means in the context of alternative district resolution if any party agreed by the compulsions then such consideration would be invalid. Likewise section 18 (misrepresentation), 23 and 25 so on so forth. Whenever we choosing the ADR mechanism thereafter there is some point that we have to keep in our mind that the settlement party does not come under any influence for instance section (16). Both parties have to give their free consent to proceed with the investigation either by arbitration or mediation or conciliator for instance section (10) of ICA 1872. Consideration must be necessary by both parties for instance section 16, 24, and 25 of the Indian contract act 1872. Alternative dispute resolutions present in every sector what we have to do just looked over only the right choice. For instance, A and B both are the disputant party, they went to the court for resolving their dispute whereas there were another two parties who not chosen litigation rather they don't go out for resolution, they have chosen ADR component which is Arbitrator, so Arbitrator came to their comfortable spot, listen to both parties as per both convenience and confers them the award and dispute get resolved. How easy is this mechanism!

"Satyendra Kumar v. Hind Constructions Ltd[15]. On 14 August 1951", It was held that where the parties to a dispute referred the matter to a person and such person hold's judicial inquiry in the dispute and their award is equivalent to a judicial decision such person is called an arbitrator. Thus, while changing his quasi-judicial function the arbitrator expected to act with honesty without any bias towards any parties. Alternative Dispute Resolution Mechanism is a quasi-judicial function. An arbitration award is binding upon the parties.

So far we know the use and meaning of the ADR system, how it works, and all things. We have seen the ADR system is more pocket-friendly rather than the litigation proceedings. We have also acknowledged how the ADR mechanism reduces the burden of the Court and confer cost-effective justice to the parties as per the parties' convenience.

[15] Satyendra Kumar v. Hind Constructions Ltd , AIR 1852 Bom 227

CONCEPT OF PLEA-BARGAINING IN INDIA

The system of plea bargaining has been originated from the U.S Criminal Justice Mechanism. It has been incorporated in India by the criminal law amendment act, 2005. When the accused plea guilty of the office or for seeking a lesser offence. The plea of guilty to a lesser charge/offence consequently plea bargaining on the advice of their case attorney, either he can plea bargain to the prosecutor attorney for the lesser charge of the offence and thus by this mechanism court trial time get saved. However, plea bargaining is not possible under offence punishment is far more than 7 years. So the concept of plea bargaining is used to reducing the uncountable number of pending cases and of course their fast disposal. Validity of plea bargaining is properly incorporated under the code of criminal procedure, 1973 (section 265A to 265L) involved "part bargain" and part compoundable with the consent of the honourable court.

Limitation of Plea Bargaining - Plea Bargaining is not considered in the case of rape, murder, dacoity, robbery, etc. High Gravity cases are not possible to deal with rather by any of the ADR mechanisms.

In the case of **State of Haryana v. Janak Singh and others**[16] the supreme court of India clarified that the office of rape being a more serious crime against women as it dwarfs her personality ruins her confidence and erodes right to life the sentence bargaining cannot be permitted in the case of rape the court in this case held at the minimum for the office of rape is 7 years, therefore, the High Court was not justified to reduce.

LOK ADALAT

Lok Adalat is another significant institution in the history of Indian judiciary administration and the form of ADR. Lok Adalat the only justice institution which gives justice to the door-step of a common man especially those who are economically weak, those who live in the rural or remote area rather they don't have to come to the door-step of the law court. The main objective either aim of the institution of Lok Adalat is the amicable settlement between the parties and speedy disposal of the case and avoid minimum litigation formalities. Presently, Lok Adalat is properly functioning in the state of Maharashtra, Gujarat, Kerala, Andhra Pradesh, Madhya Pradesh, Delhi, etc. Lok Adalat has disposed of numerous varieties

[16] State of Haryana v. Janak Singh and others , AIR 2013 SC 3246.

of cases like matrimonial dispute, civil dispute, maintenance case, etc. The case related to the property Act as well. The disputant parties come to face to face and resolve their every affair with the support of Lok Adalat members. Once both the parties take the mutual decision and come to the conclusion thereafter they have to fulfill encumbrance. There is no question of the appeal. Its verdict is like a court decree or court order. The organization of Lok Adalat is properly elaborated or defined in section (19) of the legal services authorities act, 1987[17]. Cognizance of case Lok Adalat Defines in section (20) of the aforesaid statute. Some major effort has been made by the parliament of India in this Act related to the Lok Adalat member's qualification which is defined under Section (28) of subsection (2) clause (O).

Case Laws – In the State of Punjab and Another v. Jalour Singh and Others[18], the court validated, **"**Section 19(5) (i) of the LSA Act provides that a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending...or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement".

Another significant institution Related to the ADR, the "Fast track court" system has also incorporated in India from the 1st April 2001 for better and faster disposal of cases. So that people get as soon as possible justice.[19]

GRAM NYAYALAYAS

Another significant mechanism, The Gram Nyayalayas Act, 2008 which is enacted by the legislature of India for the establishment of Either "Gram Nyayalayas" or Gram Court. Gram Nyayalayas is another form of ADR mechanism which is faster and easy access to Rural or remote area people. Gram Nyayalayas objective to determine the grass-roots issue and resolve them with the help of an established procedure of act so that justice should be reached every needy person. In other words, Gram Nyayalayas is recognized for all grass root problem of villagers and whereby provide them justice so that everyone from the illiterate to economic weaker Gram Vasi get fair and impartial justice on time. Behind the act legislature intended that justice should be reached every doorstep of the villagers and dispose of civil cases.

[17] NALSA 1987, https://nalsa.gov.in/acts-rules/the-legal-services-authorities-act-1987
[18] State of Punjab vs. Jalour Singh and others AIR 2008 SC 1209
[19] An overview of fast track courts,https://www.prsindia.org/theprsblog/overview-fast-track-courts

Right to justice, speedy trial, legal aid, legal services, legal free consultation, etc is guaranteed right of the citizen of India as per the Magna Carta or constitution of India. One of the landmark cases of S.C of India are the following:-

In the case of Hussainara Khatoon v. the State of Bihar[20], according to this case, every under-trial prisoner has to avail speedy trial as per Article 21 and free legal attention to the needy people as per Article 39-A. The state has to avail those free legal services and free legal advice and time to time check how many prisoners exceeded their sentence in the prison. Supreme Court of India has directed the state of Bihar to release forthwith all under trial prisoners within 6 months. Supreme Court of India also interpreted that article 21, 14, 39-A, needy person of India has right to free legal services held is implicit article 21, S.C also district magistrate to must satisfy section 167(2) of CRPC, article 21 also give direction to the state speedy disposal of the case. Under-trial prisoners has also the same rights as every citizen of India so why they been deprived hence S.C has made their observation aforesaid.

Alternative Dispute Resolution Mechanism is the most popular and effective method so far I have seen this method also clearly visible in the International Laws. The mechanism of settlement of international Disputes is separated. **Pacific means of settlement of international disputes** are divided in the following manner -

- By virtue of arbitration.
- By virtue of judicial settlement.
- By virtue of negotiation.
- By virtue of good offices.
- By virtue of mediation.
- By virtue of conciliation.
- By virtue of inquiry.
- By virtue of settlement of international dispute under the auspices of united nation organization.

[20] Hussainara Khatoon v. State of Bihar ,(1979) SCR (3) 532

ARBITRATION

Arbitration in the international law, if any dispute has occurred between the states thereafter disputant party may hire some third person who might be another state or any expert individual and such person called as arbitrator.

- Arbitrators can merely be appointed by mutual consent of the disputant party so that when they agreed then such agreement must be binding and strictly followed by both states.
- If we understand the means of arbitration method through which the disputant party refers their particular matter to another person, such person called as Arbitrator and their decision must be award. Article "15" of Hague Convention of 1899 provides, International Arbitration provides Judge to the disputant parties or parties can choose their arbitrator but by respective Law.[21]
- Some essential points must be followed, (1) consent of the parties (2) settlement must take place by Law.

To reduce the burden of I.C.J. there needs to be an informal Arbitration institution so that amicable settlement between the parties should be possible. In 1899 The Hague Convention took place, wherein International Law has decided to adopt an arbitration mechanism and consequently, it codified. Another significant event also took place whereby The Hague convention of 1899 is incorporated The "Permanent Court of Arbitration". The mega project had been done by the Hague Conference of 1907 PCA played a very tremendous role in resolving the dispute between the commercial company vs state. The significant factor is that its decision is recognized by international law as a legally BINDING upon the parties. Some of the cases, for instance, are as followed:- **The Kutch Arbitration case**: In this, there was a land dispute between Pakistan and India, so that both counties bother each other to acquire land, so eventually they mutually decided that they would approach PCA, PCA HELD that 10% of the land went to Pakistan and rest of them went in Indian part. Both states obeying the decision of the Arbitration Court.

[21] Hague Convention of 1899, loc.gov/rr/frd/Military_Law/pdf/Hague-Peace-Conference_1899.pdf

For instance, **Honduras vs Nicaragua**, The Iceland of palmas case (1920), Sarvarkar's case (1911), Russia Indemnity case (1912).[22]

In the case of **Carian Energy Plc and A Subsidiary (Carian energy case),** the Carian energy company is U.K based Oil and Gas company, three members of Tribunal at the PCA gives award against India on its long-running Tax-Dispute with U.K based company, PCA held that India has to pay $1.4 billion to the Carian Energy Company. However, India has decided to file an appeal against the PCA award but Carian energy co. has the right to cease assets of India and recover their respective amount but both parties try to resolve their affair by negotiation.[23]

METHOD OF ALTERNATIVE DISPUTE RESOLUTION

Method of Arbitration Dispute Resolution is as follows:-

- Arbitration
- Mediation
- Negotiation
- Conciliation

ARBITRATION

When the disputant parties refer their dispute to a third person, such person shall be an arbitrator. Arbitration is one of the successful mechanisms in India to resolve parties' disputes. While any matrimonial case comes to the doorstep of the court, initially court refers their case to The Arbitration Tribunal so their relationship does not get worst and they both get expert advice to mutually resolve their dispute. According to the Arbitration and Conciliation Act, 1996 section (10), the parties are completely free to select more than one arbitrator for the resolving of their dispute but such number should be in even number.

- As far as the arbitrator is concerned, the arbitrator assists the disputant parties in every possible manner so that disputant parties get resolved their every compoundable affair in the four walls of the home.

[22] Ibid.
[23] Ibid.

- As far as the appointment of arbitrator is concerned, parties are free to appoint any person as an arbitrator under section (11) of the arbitration and conciliation act 1996 so that amicable settlement must prevail.
- Arbitration is the only formal mechanism that provides cost-friendly justice to disputant parties rather through the arbitration parties can resolve any matter at any place and both parties' conversation/statement is confidential.
- As far as the arbitration agreement is concerned, section (7) of the arbitration and conciliation act, 1996 said that disputant party can form an agreement and submit it to the arbitrator such agreement or arbitral award on the agreement is binding upon the parties.
- The disputant party can dissolve their affairs with the help of an elder person of the home with the mutual consent of both parties. Although this is an informal method amicable settlement is possible.

Advantages - Lots of benefits are there but we choose significant point which is, you possibly may avoid substantive procedure, worth of money, save time, saved from the mental pain (which is 100% not possible in litigation), peace and harmony must be sustained in the arbitration proceeding.

MEDIATION

As far as mediation is concerned, mediation is another form of informal alternate dispute resolution mechanism tool in order to disputant party refer their dispute to a mediator mostly when a compoundable offence comes to the court thereafter court would refer it to the mediation cell so that the parties may get every possible assistance. Mediation can be private mediation or a respective Court refers to mediation as per Section 89 of the Code of Civil Procedure, 1908.

Advantages - Lots of benefits are there but we choose significant points, By the mediation both parties get a satisfactory result, they might save every possible loss of dignity harmony, time-saving, worthwhile, very cost-friendly as comparison with litigation.

CONCILIATION

Conciliation is another significant mode of settlement and part of alternate dispute resolution tools as well. Both the disputant party hire a conciliator to resolve their matter so that they tell

him/her every conflictive issue. Parties can appoint anyone as their conciliator and no matter how many as per section (63) of the arbitration and conciliation act, 1996, and proceeding of the conciliation shall proceed by the section (62) of the arbitration and conciliation act, 1996. Conciliator must follow the three significant manners so that any kind of arbitrariness could not arise. (1) Follow Nature Justice (2) Impartial (3) Fair and Just.

Advantages - Numerous Benefit is there but we choose significant facts, Although mediation and conciliation are mostly same but conciliator has a wider scope as comparison mediation, parties get expert advice, conciliator assists in every situation, more cost-friendly, very speedy as compared with traditional litigation proceedings, everyone can afford, time-saving.

NEGOTIATION

One of the most common methods of alternative dispute resolution negotiation which the disputant party can resolve their affair with the help of negotiation method rather both the disputant party may resolve their dispute on a table by negotiation method. Negotiation is one of the traditional methods of resolving the dispute as we discuss it in the historical significance of alternative dispute resolution, At that time people have more belief in negotiation rather than war. The disputant party initially has to consult with their lawyer so that they get the knowledge about their rights and duties thereafter both parties quietly come to a strong conclusion. Negotiation is only a single process that parties can anywhere settle their dispute doesn't matter how big it and how small it.

Advantages - Through the negotiation party gets speedy resolution, it is very cheap as compared with the substantive procedure, Parties can resolve their Dispute anywhere but it is not possible in the judicial process, negotiation is a very informal method so that it is based on free consent & free will of parties, an amicable settlement is possible.

ALTERNATIVE DISPUTE RESOLUTION CONCEPT IN USA

Alternative dispute resolution mechanism in the great continent of the US is also not too old. The moment of more informal justice in the US has been started from the late 1970s and early 1980s. The informal justice system had started in the US, so it's most credit goes to the US justice and administrative department some of "chief justice" of United State they said that "if we want to eradicate the burden of court then we should avoid trial processor, we need to implement a law that mandatory settlement through the arbitration, more matter has

resolved outside from the judicial court. Chief Justice "Warren Burger" is one of them who emphasizes informal justice in the US by their numerous precedent. After been much non-profit organization struggle toward dispute resolution system in the US some Countries has to adopt several laws regarding arbitration, Congress of America and many other countries have passed federal legislation example civil justice reform act of 1990, administrative dispute resolution act of 1976 and of course alternative dispute resolution act of 1998 so many changes in their federal rule so consequently they add "Plea Bargaining" concept and this concept is possible in criminal procedure as well (many other countries of Asia has also adopted this concept Although not much stronger enough as the US).[24] US Supreme Court gives numerous precedent which talks about "mandatory" provision of alternative dispute resolution or informal instrument. In the Labour law of US or for instance, company law and many other form of trade law are "mandatory" to resolve their employees' affair through the alternative dispute resolution consequently making this practice stronger Congress had passed Mediation Act, Uniform Arbitration Act even the United State of America and other country resolve their every international dispute by the ADR mechanism with the help of "Permanent Court of Arbitration" which is established by 1889 treaty.[25] Also, with the "International Court of Justice" so that's why the United State alternative dispute resolution mechanism or we can call it in generally "tool" is more powerful as compared with other countries. According to the data, US 30% to 45% of matters are solved by the arbitration, mediation, and conciliator it almost around 50%. So many other informal fora for shorting affairs or dispute resolution are following:

- A private company usually uses mediation or arbitration.
- Court related to religion
- Mediation and conciliation agencies
- Denomination community and neighbourhood alternative dispute resolution process
- A non-profit or non-government agency established specially for mediation through the ADR system.

CONCLUSION

Alternative Dispute Resolution has played a very important role in resolving disputes in informal manners. Many countries have accelerated this system, India is also one of them but

[24] Key ADR Statutes, Guidance, https://www.adr.gov/adrguide/04-statutes.html
[25] Permanent Court of Arbitration treaty 1889,https://pca-cpa.org/en/home/

the status quo of the ADR mechanism in India is not more popular and not more effective because in many states, district, the village even people don't know about their fundamental rights Alternative Dispute Resolution Mechanism is very far away so how it gets more popular and more strong until unless citizen of India not getting involved into the informal justice system. In this modern time, every law student has every possible scope and opportunity in the arbitration field because our Indian judiciary system is totally under the pressure of lots of cases so that Alternative Dispute Resolution possibly can be a very cost-friendly, cheaper, and very authoritative body. Some of the factors that possibly might be a reason for ADR mechanism not becoming more popular - Firstly advocate initially not advising their client about dispute resolution tool this can be an also major factor of dispute resolution not becoming more popular as litigation proceeding. If law student, police officer start advising disputant party to resolve their affair by ADR mechanism thereafter all judiciary administration burden get reduce as fast as possible, lack of awareness is also one of the major factors that alternative dispute resolution is not becoming more popular so if law student, police officer, and other executive officers may popular it through the legal aid camp whereby they provide legal knowledge about citizen's right and also tell them about alternative dispute resolution mechanism and their binding force as well. So then people get to start using alternative methods rather than substantive procedures. Parliament of India has also passed a law regarding ADR that every person initially uses the arbitration, mediation, conciliation, negotiation method to resolve their affair and parliament of India give it "Mandatory Compliance". Parliament has to take a serious step towards more arbitration tribunal likewise in the US and many other countries have built many tribunals and imposed mandatory use of alternative dispute resolution mechanisms like in the financial sector, civil sector, company, and employees' dispute, commercial sector, taxation so on so forth.