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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL CASES**

AUTHORED BY - KAWALJEET KAUR & DR. HARSHITA THALWAL

## **Abstract**

The lengthy, complex, time-consuming and expensive court processes made judges look for a different place to settle disputes that was simpler, more efficient, and faster, which is how they came to adopt the Arbitration Act of 1940. The traditional criminal justice system focuses more on punishment than rehabilitation. This results in crowded courts, delayed hearings, and fewer victims participating. As a result, methods of alternative dispute resolution (ADR) like mediation, negotiation, and restorative justice have developed as complementary ways to get better results in criminal cases. In civil disputes, alternative dispute resolution (ADR) is widely accepted, but its use in criminal cases is still problematic and limited to certain situations, such as juvenile offenders, children involved in wrongdoing, or community-focused justice programs.

This article examines the theoretical foundations, legal structures, practical implementations, and challenges associated with the utilization of Alternative Dispute Resolution (ADR) in criminal cases. This involves the development of how ADR can improve victim satisfaction, encourage offender accountability, and aid in community healing, while also rigorously analyzing issues related to coercion, due process, and the appropriateness of ADR in serious crimes, as well as models that incorporate ADR into the traditional criminal justice system.

Delays in trials constitute a widespread denial of justice. The most important thing for the criminal justice system is a speedy trial, which is a fundamental right guaranteed by the Constitution of India. Because of the need for a quick trial, the lack of courts, the long process, and the high cost of litigation, ADR, or Alternate Dispute Resolution, has grown. The main goal of the Alternate Dispute Resolution system in criminal matters is to give criminals who have only committed minor offenses an easy and cheap way to get justice and to protect the accused from the unnecessary delays that long court cases can cause.

**Key Words:** Alternative dispute resolution, Speedy Court Proceedings, Criminal Cases, Plea Bargaining, the Constitution

## INTRODUCTION

Alternative conflict resolution is a way to settle problems that doesn't involve going to court. Arbitration, mediation, conciliation, and negotiation are some of these strategies. They help people settle their differences more quickly and peacefully than going through the courts. The historical context of ADR shows how it has changed from informal ways for communities to settle disputes to its current institutionalized forms. This change was necessary to fix problems with delays and inefficiency in formal court systems. ADR is most often used in civil cases, like business disputes or family law issues, and less often in criminal cases. Criminal cases often involve actions that harm society, and the system for criminal justice is usually the way these cases are settled.

## THE IDEA OF ADR

The ADR, or "alternative dispute resolution," is an effort to create a way to settle conflicts that is different from the usual ones. An alternative means that you can choose between two things or paths that are available to you. It doesn't mean that there is another court option; it means that there is something that can work as an alternative to court procedure or as court-annexed procedures<sup>1</sup>. There have been a lot of people in court. An official report from the year 2000 says that there are more than two crore cases pending in district courts. It is only natural that plaintiffs lose so much money and time that when they finally get a break, it might not be worth it. So, the search for other ways to run the courts began. A large number of non-judicial and administrative bodies have been set up to speed up the process of getting help. In a way, all of these courts and forums are another way to settle disputes. But even these kinds of courts and forums have become too busy to give people help in a timely manner. Many service problem tribunals have only been able to help when the employee who was hurt has left their job. In a vast majority of circumstances a delayed victim dispute resolution provides almost no impact. Thus, conventional consumer services have additionally lost their urgency. All that can be said is that "now the ADR is swiftly developing its own national institutions, knowledge, and theoretical and practical advancement and at the same time offering a more straightforward cross-border

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<sup>1</sup> Report in HT, Monday, 11-12-2000.

dispute resolution approach.<sup>2</sup>”

## **ORIGIN OF ADR**

The ADR is currently being progressively accepted in the sphere of law. The main causes for the genesis of the ADR are the arduous procedures of litigation, fees, and insufficiency of the court system. It broke past the objections of the vested interests because of its potential to deliver inexpensive and immediate relief. The ADR evolved as a formidable instrument for the resolution of conflicts at local as well as international levels. It is evolving as a separate and autonomous field of legal discipline. The important characteristic of ADR includes the participation of a third person who works without following the pattern of the adversarial system and whose final solution is not legally obligatory on the parties. The ADR has started gaining ground against litigation and arbitration. There are numerous issues that are just beyond the grasp of litigation.

## **NEED FOR ADR IN CRIMINAL CASES**

In order for the rule of law and justice to be administered correctly, some essential actions have to be taken by the state. As far as the picture of pendency is concerned in the civil proceedings, it may be dealt with by the alternatives available, such as the ADR methods. But there is considerable dispute concerning the applicability of ADR in criminal justice. In reference to criminal justice, the term ADR encompasses a number of practices that are not considered part of traditional criminal justice, such as victim/offender mediation; family group conferencing; victim-offender panels; victim assistance programs; community crime prevention programs; sentencing circles; ex-offender assistance; community service; plea bargaining; and school programs. It may also caution specialty courts (such as Indigenous Courts and Drug Courts).

## **DEFINITION AND SCOPE OF ADR**

“Alternative Dispute Resolution” (ADR) is encouraged to give an alternative not only to civil litigation by adjudicatory processes but also to arbitration itself. The institution of arbitration came into being as a very beneficial alternative to litigation. But it is increasingly being considered as closer to litigation since it has to be in compliance with legislative regulations and becomes effectively an adjudicatory procedure with all the formalities of the operation of a court. A technique of conflict settlement would be viewed as a true alternative only if it can

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<sup>2</sup> Mackie, Miles and Marsh, Commercial/ Dispute Resolution (1995)3.

dispense with the adjudicatory procedure. It may be worked by a neutral third person who may bridge the distance between the parties, bringing them together via a process of conciliation, mediation, or discussions.

Nevertheless, arbitration has also been considered as an alternative to litigation and is often included in the examination of all other alternatives. This is true because arbitration has been the mother source of other alternatives, not only in substance but also in the procedural working of the other ways. The theory and practice of arbitration have impacted the establishment of many of the supplementary and hybrid procedures employed in the alternative ways of conflict settlement.

The ADR may be described as a strategy of dispute settlement through the involvement of a third party whose conclusion is not legally binding on the parties. It may be regarded as a mediation, though mediation is simply one of the ways of ADR. The procedure is neither that of litigation nor that of arbitration. The ADR flourishes because it eliminates rigidity and inflexibility, which is unavoidable in the litigation process, apart from expensive lawyer and court costs and significant delays. The ADR strives to give the parties affordable, fast, and less formalistic remedies to the aggrieved party. It aims at offering a remedy that is most suited to the circumstances of the case. This makes ADR a feasible replacement for litigation.

In certain countries, various kinds of ADR can be applied in criminal trials under specified circumstances. These strategies are aimed at giving alternate routes for settlement, often including a negotiation or agreement between the people concerned. Here are a few examples<sup>3</sup>:

**1. Plea Bargaining:** Plea bargaining is a kind of ADR utilized in criminal proceedings. It comprises conversations between the prosecution and the defendant, with the defendant agreeing to plead guilty to one or more crimes in return for specific concessions, such as a lower sentence or lesser charges. Plea bargaining tries to accelerate the conclusion of cases and lessen the strain on the judicial system. The Bharatiya Nagarik Suraksha Sanhita (BNSS) in India allows for the notion of plea bargaining under Section 289 to Section 300.

Chapter XXIII of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), on plea bargaining, of criminal trials. Plea bargaining refers to pre-trial conversations between the defendant,

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<sup>3</sup> Retrieved from [www.lawyered.in/legal-disrupt/articles/adr-criminal-cases/visted26-09-2025](http://www.lawyered.in/legal-disrupt/articles/adr-criminal-cases/visted26-09-2025)

generally performed by the lawyer, and the prosecution, during which the accused offers to plead guilty in exchange for specific concessions by prosecutors. An accused in a criminal matter might seek to negotiate a plea by making an application to the court. The application should consist of a concise summary of the matter, permission of the accused, and an unambiguous statement that he understands the nature and degree of punishment. A person who has been previously convicted in a case in which he has been charged with the same offense is disqualified under the plea-bargaining provision under BNSS from submitting an application. Also, the application must be supported by the affidavit of the accused. It is the role of the court to satisfy itself that the plea bargaining application has been made willingly by the accused. Upon doing so, the court will provide the accused and the prosecution/complainant the chance to come to a mutually agreeable disposition, which will then be recorded by the presiding officer of the court. Once the court renders a decision following the plea bargaining procedure, no challenges are permissible from the same.

**2. Restorative Justice**—This idea is about fixing the harm the offense causes by bringing together victims, the criminal in question, and society at large in the manner of negotiating the matter in question. In certain circumstances, restorative justice methods can be used rather than regular criminal proceedings. Lets the people involved deal with the effects of the crime and work toward a settlement that promotes rehabilitation and accountability.

**3. Diversion Programs:** These kinds of initiatives have the goal of keeping people who were wrongfully convicted of crimes that are not violent out of the criminal justice system and instead point them toward other options. Counseling, rehabilitation, and volunteering are prevalent parts of these schemes. The organization may assist with problems like drug abuse or mental health issues. If you successfully complete a diversion program, costs may be dropped or lowered.

**4. Compounding of Offenses:** The Bharatiya Nyaya Sanhita (BNS) permits the compounding of certain offenses, which implies that the victim and the offender might agree to settle the case outside of court. However, compounding is confined to particular offenses that are defined as compoundable by the law. Section 359 of Bharatiya Nagrik Suraksha Sanhita (BNSS) lays forth the transgressions under Bharatiya Nyaya Sanhita (BNS) that are compoundable. There are some offenses that can be negotiated between the victim and the perpetrator. This procedure of striking a solution without wasting the court's time is termed

"compounding." Section 359 outlines two categories of compoundable crimes. One where approval of the court is not necessary and another where the permission of the court is required before compounding can be done. This provision has been changed time and again to add new offenses to the list of compoundable offenses. Offenses that were previously compoundable with the approval of the court are now compoundable without the court's permission. At present there are 56 compoundable offenses: 43 without the consent of the court and 13 with the approval of the court. Under this clause, only the victim has the right to compound the offense, and an offender cannot claim compounding as a matter of right.

**5. Mediation and Conciliation:** Although not frequently employed in criminal trials, mediation and conciliation processes are often advocated in particular instances. For example, in circumstances of non-serious violations when the parties concerned are agreeable, the court may submit the matter to mediation for peaceful settlement.

#### **An examination on Evolution of ADR procedures in Indian Judiciary**

ADR was at one point in time thought to be a voluntary conduct on the part of the parties, which has acquired formal status in terms of CPC Amendment conduct, 1999; the Arbitration and Conciliation Act, 1996; the Legal Services Authorities Act, 1997; and the Legal Services Authorities (Amendment) Act, 2002. The Parliament, apart from litigants and the general public, as well as the statutory agencies like the Legal Services Authority, has now pitched the ball into the court of the judiciary. What is consequently necessary now would be implementation of the parliamentary object. Access to justice is a human right, and a fair trial is also a human right. In certain nations, trial within a reasonable period is an element of human rights law. But, in our nation, it is a constitutional requirement in terms of Art. 14 and 21.

#### **Different kinds of justice delivery mechanism of ADR:**

The Constitution of India calls upon the state to provide free legal assistance to guarantee that possibilities for attaining justice are not denied to any person by reason of economic incapacity. India's socio-economic realities require highly motivated and sensitized legal service programs since a big population of consumers of justice (the heart of the judicial anatomy) are either poor or uninformed or illiterate or backward, and as such, at a disadvantaged position. The State, therefore, has a duty of ensuring that the operation of the legal system promotes justice on the basis of equal opportunity. Alternative conflict settlement is, nicely, dealt out in the notion of Lok Adalat. It has supplied a significant juristic technology and critical instrument for easy and

early settlement of disputes. It has again demonstrated to be a successful and viable national imperative and incumbency, well-suited for the bigger and higher segment of the contemporary society of the Indian system. The notion of legal services, which includes Lok Adalat, is a “revolutionary evolution of resolution of disputes.” Lok Adalats provide rapid and affordable justice in both rural and urban communities. They cater to the needs of poorer parts of society. The object of the Legal Services Authority Act, 1987, was to constitute legal services authorized for providing free and competent legal services to the weaker sections of the society and to organize Lok Adalats to ensure that the operations of the legal system promoted justice on a basis of equal opportunity.

Under the Act, a permanent Lok Adalat is to be set up for providing obligatory pre-litigation procedure for conciliations and resolution of matters connected to public utility services. The notion of Lok Adalat is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of conflict settlement that is regarded as a viable, economic, efficient, informal, and speedy manner of resolution of disputes. It is a hybrid or admixture of mediation, negotiation, arbitration, and participation. The actual basis of settlement of conflicts by the Lok Adalat is the notion of mutual consent, voluntary acceptance of conciliation with the aid of counselors and conciliation. It is a participatory, promising, and possible ADRM. It centers round the notion of generating awareness amongst the disputants to the effect that their well-being and interest, actually, lie in arriving at an amicable, immediate, consensual, and peaceful settlement of the problems.

**Shri M.C. Setalvad, former Attorney General of India**, has observed, “Equality is the basis of all modern systems of jurisprudence and administration of justice. Insofar as a person is unable to receive access to a court of law for having his wrongs redressed or for defending himself against a criminal accusation, justice becomes uneven. Unless some provision is provided for supporting the poor man for the payment of court fees and lawyer’s fees and other incidental costs of litigation, he is denied equality in the ability to seek justice.”

The tremendous benefit of arbitration is that it blends strength with flexibility. Strength because it provides enforceable decisions and is backed by a judicial structure, which, in the ultimate resort, may draw upon the coercive forces of the state. Flexible because it allows the participants to pick the method that matches the nature of the dispute and the business setting in which it happens.

## LEGAL AND CONSTITUTIONAL PROVISIONS

The Constitution of India relies on the notion of a welfare state. It is the role of the state to ensure access to justice to its citizens by establishing judicial and non-judicial venues of conflict settlement that deliver prompt and effective justice and enforcement of their legal and basic rights. Ignorance, poverty, and other socioeconomic infirmities should not become hurdles to attaining justice. It is agreed today that free legal aid must be supplied to the destitute individual, who cannot defend himself in a court of law owing to the cause of money and others, and now it is also necessary under Article 39-A and Article 21 of the Indian Constitution<sup>4</sup>.

The law needs to support the underprivileged who do not have resources to pursue their issues. The Constitutional Mandate rescue mission began with Judge V.R. Krishna Iyer and Justice P.N. Bhagwati's Committee Report, which was a weak section, so it became enabled to approach the law courts' right from the Munsif courts to the Supreme Court. CILAS (Committee for the Implementation of Legal Aid Services) also came on the scene. Based on this, states adopted (via state legal aid and advice boards) Lok Adalat.<sup>5</sup>

## CONSTITUTIONAL PROVISION

### Article 21 of the Constitution of India

Article 21 says in a required tone that no individual shall be deprived of his life or his personal liberty except according to procedure prescribed by law. The term "life and liberty" is not to be construed narrowly; it is quite vast in its connotation. In Hussainara Khatoon vs. Home Secretary, Bihar<sup>6</sup> It has been construed that the right to a speedy trial is also a part of the right to life and personal liberty. The Supreme Court has authorized Article 21 to expand aspirations as wide as lawfully may<sup>7</sup>. The reason for this liberal interpretation was very simple: Article-21 is to redress that mental agony, expenses, and strain that a person proceeded against in litigation has to undergo and that, coupled with delay, may result in impairing the capacity or ability of the accused to defend himself. The same has gotten acknowledgment from the legislation as well in the form of the adoption of Alternative Dispute Resolution and Alternative Dispute

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<sup>4</sup> Avtar Singh- "Law of Arbitration and Conciliation" PP 397-398, 7 Edition, Eastern book Company, Lucknow

<sup>5</sup> Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution Systems.

<sup>6</sup> Hussainara Khatoon (No.) V. Home Secretary, Bihar, AIR 1979 SC 1360; Kadra Pradesh V. State of Bihar, AIR 1998 SC 1167; Raghubir Singh V. State of Bihar,(1986) 4 SCC 481: In this case it is ruled that where matters are not disposed of within a period of say 5 years for no fault of the convict, they should be released on bail.

<sup>7</sup> Article 21 is Fundamental Right that can be directly enforced in the Supreme Court under Article 32 of the constitution of India.

Resolution Mechanism through several statutes.

### **ARTICLE 39-A FREE LEGAL AID**

Article 39-A obligates the State of secure that —the operation of the legal system which promotes justice, on a basis of 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 by reason of economic or other disabilities<sup>8</sup>.” Thus, promotion of justice is the most important function of a state, and ADR mechanisms help in it. Hence various legislation like the Arbitration and Conciliation Act 1996, Section 89 of CPC, and the Legal Services Authority Act 1987 have been passed to promote justice<sup>9</sup>.

### **BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) 2023**

Traditionally the ADR mechanism was not available to cases of a criminal nature, but the Law Commission of India, in its 142nd report, stated that it is desirable to infuse life into reformatory provisions embodied in Section 401 of BNSS and the Probation of Offenders Act, which, according to the Law Commission, remained unutilized.

Today Bharatiya Nagarik Suraksha Sanhita and several other enactments allow compromise and resolution in criminal cases by means of plea bargaining, Lok Adalat, and mediation. The Justice Malimath Committee has remarked with relation to the usage of ADR in criminal justice.

—By no stretch of imagination can the taint of legalizing a crime be connected to it. It should not be forgotten that currently the Probation of Offenders Act gives the court the ability to make a probation order. Further, the authority of presidential pardon and the power of remission of sentences already have an aspect of not condoning the crime but lowering the rigor of the term of incarceration. In imposing a sentence for a lesser offense or a lesser period, the community interest is served, and it will facilitate an earlier resolution of a criminal case, thus reducing the burden of the court. Perhaps it would even reduce the number of acquittals, for after a prolonged trial, it is quite possible that the case may end in acquittal.

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<sup>8</sup> This directive principle was inserted by the Constitution 42nd Amendment Act, 1976

<sup>9</sup> Dr. Anupam Kurlwal, An introduction of Alternative Dispute Resolution System Page 114

### **Motor Vehicle Act, 1988**

The Motor Vehicles Act, 1988 (MV Act), is notorious for producing excessive litigation, adding to the enormous pendency of cases in courts. India has the biggest number of road accidents in the world, resulting in a very significant number of accident claim lawsuits being filed in courts. As per Sections 146 and 149 of the MV Act, victim compensation in motor accident claims is dependent on third-party insurance. Section 169 of the Act states that the Tribunal must pursue such summary method as it sees suitable in fixing claims compensation. But in actuality the tribunals created for this reason are conducting regular trials instead of brief inquiries, which occupy a lot of time. Insurance firms delay payout of claims. There is no adherence to the obligatory third-party insurance regulations. The insurance companies have not been settling claims on the pretext that they had no knowledge of the road accident until the receipt of the notification from the Claims Tribunals. Considering the foregoing, it is apparent that it is vital to make the procedure of accident claims simple and worry-free for the victims of road accidents. The alternate technique to conventional trials that has evolved, which is regarded to be more victim-friendly, is settling compensation claims through Lok-Adalats, where victims need not resort to litigation for realizing his/her claim. Lok Adalats are an indigenous type of alternative dispute resolution in India and have jurisdiction over both pre- and post-litigation problems. It utilizes largely a reconciliatory method and delivers settlements that are not appealable.

### **THEORETICAL FOUNDATIONS**

The primary theoretical underpinning for alternative dispute resolution (ADR) in criminal cases is restorative justice, which changes the focus from state punishment to healing harm to the victim and society. Other core notions include parties' self-interest above rights-based impositions, a belief in swift and accessible justice, the potential for direct engagement between parties, and the view of dispute as a chance for societal learning and progress.

#### **Restorative Justice:**

**Focus on Harm:** instead of merely punishing the perpetrator, restorative justice stresses healing the harm caused by the crime to the victim and the community.

**Reparation and rehabilitation:** This entails activities by the offender to make apologies, such as compensation, community service, and attempts to repair deficits and build socially acceptable norms.

**Victim-offender model:** ADR in a criminal context typically utilizes models that allow discussion between the victim and offender, encouraging empathy and reconciliation.

### **Judicial Approach towards ADR**

There are limited techniques accessible for settling disagreements between two parties. The first and most popular technique is resolving conflict through courts. When a dispute happens between two individuals belonging to the same nation, their medium to settle the dispute is the same, meaning the parties resolve their issue through the courts created by the law of that country. This has been the most prevalent and vital approach used by the inhabitants of India for the resolution of their disagreement with their fellow citizens<sup>10</sup>. As the years went on, it was apparent that our traditional court system had grown outmoded, and there was a need for another mechanism that likewise supported our judicial system as a replacement or alternate in the resolution of people's problems.

There are various problems with our judicial system, like

1. Overburdened court
2. Time-consuming
3. Expensive Technical Process
4. Low Ratio of Judges to Population
5. Unfilled Vacancies
6. Long Procedural
7. Pendency of cases

About 40 years ago, the late Mr. M.C. Setalvad, the first Attorney General of India, addressed the Bar Association of India and said:

“No doubt, the British system of administration was very good and led to excellent results, but it had its defects, which have been accentuated in two ways. We are now a democracy and a tremendously populous country. These days, then, what is necessary is a major reform in the way of administration of justice. We want a court to which people may go easily and with as little cost as feasible. It is not only the rapidity of justice, but it is the simple approach and quick disposal, both of which are needed and that only can be achieved if the system is totally

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<sup>10</sup> Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution system, edition 2011 Page no. 76

overhauled<sup>11</sup>.”

**Justice R.C. Lahoti** also observed that<sup>12</sup> “Working under considerable handicaps such as inadequate funds, budgetary allocations for law and justice not being part of plan expenditure, lack of resources, shortage of staff and infrastructure, the Indian judiciary can still claim a better standing with the other wings of governance in performance.”

### **An Analysis of Evaluation of Alternative Dispute Resolution Mechanism in Indian Judiciary**

Justice is the foundation and purpose of any civilized society. The desire for justice has been an ideal that mankind has been aiming for for generations along the road. Dispute settlement is one of the primary duties of the Indian judiciary, and it is necessary for a stable society. Through the means of the State, norms and institutions are developed to maintain social order and to realize the purposes of justice, or at least to establish conflict resolution systems. The Government of India works through many institutions, and the judiciary is one that is directly accountable for the administration of justice. In India the judiciary is the practical delivery point of justice. Resolving disagreements is one of the fundamental criteria for the peaceful existence of society. Arbitration, the modality of ADR, is recognized by the Indian Judiciary as a means of resolution of disputes. The arbitration was initially controlled by the rules of the Indian Arbitration Act, 1940. The courts are principally worried about the monitoring of arbitral tribunals, and they are extremely interested to check if the arbitrator has exceeded his authority when considering the case, which has been brought to him for arbitration. It is obvious from the study of the preamble to our constitution that aspiration is also “justice—social, economic, and political.” Article 39A of the Constitution provides for ensuring equal access to justice. Administration of justice entails protection of the innocent, punishment of the criminal, and the satisfying resolution of disputes. We all know that our Indian legal system is quite broad, tired, monotonous, unexciting, and tiring. Not only is the court procedure exceedingly expensive for an ordinary individual, but it takes years and years to provide justice. In order to address the widely criticized delay in justice delivery, the introduction of Alternative Dispute Resolution (ADR) methods such as Lok Adalats, arbitration, mediation, and conciliation was thought of and subsequently adopted with noteworthy success. Although the alternative processes have brought swift justice to the people, the practice has highlighted some significant

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<sup>11</sup> Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution System, edition 2011 page no. 76

<sup>12</sup> Justice R.C. Lahoti- “ A conspectus of Indian System” NYAYA DEEP Vol. VI-Issue 1, Jan 2005 PP.8-9

issues by certain legal luminaries.

Access to justice is a human right, and a fair trial is also a human right. In certain nations, trial within a reasonable period is an element of human rights law. But, in our nation, it is a constitutional responsibility in terms of Articles 14 and 21. Recourse to alternative conflict resolution as a method to have access to justice may, therefore, have to be treated as a human right concern. Considered in that framework, the judiciary will have an essential function to play.

### **Critical Analysis of Lok Adalats**

Lok Adalat is considered to be one of the greatest Alternative Dispute Resolution Systems. Just like any other system, Lok Adalat likewise has various virtues, and it suffers from few ailments as well. As it is properly claimed that “Justice delayed is justice denied, but justice hurried is justice buried.” Keeping this reality in view, the higher judiciary in several of its rulings ruled that the rapid procedure performed by way of Lok Adalat shall not affect the right of any party. The lawyers are often reluctant to refer the subject for resolution before Lok Adalat. Sometimes parties may pressurize their counsel to stick up for the rigid process of court. The High Court<sup>13</sup> observed, “In the name of the speedy resolution of disputes, the fair interests of the parties cannot be sacrificed, more importantly when the petitioners involved are minors, insane, and disabled.” While expressing its lamented remark about the present Lok-Adalat system, the Kerala High Court pointed out the drawback as “However, the major drawback in the existing scheme of organization of the Lok Adalat under Chapter VI of the Legal Services Authorities Act is that the system of Lok Adalat is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the matter is either returned to the court of law, or the parties are directed to seek relief in a court of law. This causes undue delay in the dispensing of justice. If Lok Adalat was granted power to resolve the cases on merits in case parties fail to arrive at any compromise or settlement, this problem may be solved to a large extent.” However, this problem has been corrected in the permanent Lok Adalat. It has also been noticed that when the forum of Lok-Adalat is headed by the person from the judiciary, they adopt the function of Lok- Adalat as a judicial forum and diverge from the core aims for which it has been founded. The Supreme Court has also remarked on this subject. Alternate Dispute Resolution is quickly emerging at the national and international levels, giving easier

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<sup>13</sup> Manju Gupta v National Insurance Company, I, (1994) ACC 242, 1994 ACJ 1036

means of settling conflicts. The increasing trend of ADR services may simply be deduced from the rise of the “arbitration clause” in the majority of contracts. There has been a huge expansion in the number of law school courses, diplomas, seminars, etc. focused on alternate conflict settlement and rationalizing its effectualness in processing a wide variety of issues in society.

### **Conclusion**

Now it is shown all over the world that alternative dispute resolution is a process of resolving disagreement by consensus in an organized manner with skills and procedures that might be learned and employed. Alternative Dispute Resolution methods are in addition to courts and supplement them. Every method of alternative dispute resolution mechanism has its own logic, purpose, and reason. Arbitration is used to definitively resolve a dispute like adjudication, and that has transpired and requires fact-finding, interpretation of contractual terms, or application of legal principles on the other hand. Mediation and conciliation are often used to improve communication between parties, especially those with preexisting relationships, to reorient the parties to each other, and to develop future-oriented solutions to broadly defined conflicts.

The administration of the justice system in India has been under enormous stress for so many reasons, principally because of the huge number of pending cases in courts. The vast number of cases filed in the court every year has exhibited a dramatic shift in recent years, resulting in delay and pendency, underscoring the need for Alternative Dispute Resolution techniques. In the final analysis it may be stated that expanding the distance between the common people and the judiciary is undoubtedly a major matter of worry for all those who deal with the administration of justice. The notion of alternative settlement of dispute in alternate mode should be thoroughly instilled in the minds of litigants, attorneys, and the judges so as to guarantee that ADR procedures in quest of justice are commonly employed. The efficient application of the ADR mechanism will go a long way in filling the gap that is blocking the path of justice.