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# THE OUTGROWTH AND PROSPERITY OF THE ALTERNATIVE DISPUTE RESOLUTION MANNER IN INDIA

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## I. ABSTRACT

The conception of Alternative Dispute Resolution is known to be another process, when it comes to concluding the conflicts among the parties. The strait of ADR has turned out to be quite exoteric nowadays owing to the deceleration of the traditional judicial system. As we all are aware of the sedate functioning of the traditional courts, due to the pendency of cases before it. Apart from this, the costly litigation procedure is one of the predominant reasons behind the evocation of the ADR system, especially by the indigent people out there, who cannot really afford the expensive litigation system. On account of these predominant reasons, the assertion of the ADR system is noteworthy in modern times.

This research paper strives to read up on the outgrowth of the Alternative Dispute Resolution system in India as well as determine the efficacy and potency of this ADR method, in the form of a substitute to the traditional judicial system, available in India.

## II. KEYWORDS:

*Alternative Dispute Resolution (ADR), Conception, Conflict Resolution, Traditional Judicial System, Exoteric, Deceleration.*

## III. INTRODUCTION

The Alternative Dispute Resolution is an alternative way, for the purpose of the accomplishment of the disputations, among the parties - in - dispute. This strait has achieved this popularity due to the sluggish litigation system in this country, which might take years to get disposed of. On account of this slow litigation system, innumerable cases are in pendency in the traditional courts and a burden is always

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there in existence, on the judiciary, owing to this. Other than that, the costly litigation procedure matters too, especially when it comes to the impoverished people seeking for justice. The lower middle class families also cannot afford the highly expensive litigation system all the time. The litigation process, if in continuation for years, might cost a person around lakhs, which is doleful indeed.

ADR system is less formal and methodical, as compared to the traditional court procedure, which permits the parties to square the consequence of the dispute. Besides that, the ADR strait also endeavours sustaining the relationship among the parties, appearing before it.

#### **IV. RESEARCH OBJECTIVES**

1. One of the research objectives revolves around reading up on the prosperity of the ADR system in India, i.e. the process of Arbitration, Mediation, Conciliation, Lok-Adalats.
2. Another objective is scrutinising the cost - effectiveness of this Alternative Dispute Resolution system. In simple words, to examine, whether the ADR system could be benevolent, to the impoverished people, in terms of the expenditure towards the litigation system.
3. Last but not least, this research paper aims to look into the level of satisfaction and the acquaintance, people are having, with respect to the functionaries ADR system and the consequence of it.

#### **V. RESEARCH QUESTIONS**

Whether the arrival of the Alternative Dispute Resolution manner has resulted any outgrowth and prosperity in Indian Legal System?

#### **VI. RESEARCH HYPOTHESES**

The arrival of Alternative Dispute Resolution emphasized the flexibility, cost - effectiveness as well as the confidentiality, towards the parties, invoking the Alternative Dispute Resolution system. This strait is way more gratifying, especially when it comes to arbitrating the conflicts pertaining to multinational companies and

certain private disputes, which are preferred to be arbitrated in the shells of confidentiality and secrecy.

Moreover, this process is frequently prioritised, since it helps out parties resolving out their disputes, within an appropriate time period, as compared to the customary and shipshape litigation system, which is expensive too, then the conception of Alternative Dispute Resolution.

## VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

## VIII. LITERATURE REVIEW

This research paper centralises on the key provisions of the **Arbitration and Conciliation Act of 1996**, along with the **Legal Service Authorities Act, 1987**.

The literature reviewed in the research paper renders a patulous analysis upon the outgrowth of the Alternative Dispute Resolution system in India and its effectiveness as well. This research paper scrutinizes regarding the excrescence of the ADR method in India, along with certain recommendations upon this theme.

## IX. MEANING OF ALTERNATIVE DISPUTE RESOLUTION<sup>2</sup>

As the name suggests, Alternative Dispute Resolution implies the method of resolving out disputes in an alternative way, by not invoking or inviting the strait of consecutive court system in the country, which generally people do follow, whenever any disputation or tiff comes forward. This consecutive court procedure appears to be quite prolonged and sluggish in nature, that is why this alternative way is approached nowadays by the parties, which assists to settle down the altercation amicably. ADR method nowadays is pivotal in nature, due to its effectiveness, dexterity, flexibility and confidentiality, towards the parties, approaching it, which also reduces the burden of traditional judicial system.

## X. HISTORICAL BACKGROUND / EVOLUTION OF ALTERNATIVE DISPUTE IN INDIA<sup>3</sup>

The altercation among the people out there had always been prevalent, even during the ancient times. There were abundant topics for the purpose of instituting disputes. However, the conception of litigation came into existence later on.

By dint of the invocation of alternative dispute resolution, the parties - in - disputes settle down their conflicts. An impartial third party(s) shall be appointed by the parties and the final award shall be pronounced by means of that neutral third party, which is supposed to be clear - eyed in nature.

Coming to the point of panchayats, by virtue of which system, number of disputes had been resolved out earlier. The predominant Legislations emphasizing the Panchayat systems were **The Bengal Regulations Act 1781** and **The Bengal Resolutions Act of 1771** respectively<sup>4</sup>. However, these two pieces of legislation were banned by the **Civil Procedure Code, 1908**<sup>5</sup>.

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<sup>2</sup> LawBhoomi, Scope of Alternative Dispute Resolution (ADR), [Scope of Alternative Dispute Resolution \(ADR\) \(lawbhoomi.com\)](#), (last visited on March 14, 2024).

<sup>3</sup> Lalit Sharma, Evolution of ADR Mechanisms in India, [Evolution of ADR Mechanisms in India | SCC Times \(sconline.com\)](#), (last visited on March 14, 2024)

<sup>4</sup> S.Chaitanya Shashank, ADR in India: Legislations and Practices, [ADR in India: Legislations and Practices - Academike \(lawctopus.com\)](#) (last visited on March 14, 2024)

<sup>5</sup> [https://indiacode.nic.in/handle/123456789/2191?sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2191?sam_handle=123456789/1362)

## XI. AREAS, WHERE THE LEGITIMATE INVOCATION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS IS SPOTTED<sup>6</sup>:

1. This procedure is employed oftentimes, for the purpose of solving out the dispute related to breach of contract, partnership disagreements etc.
2. It is invoked to fix up issues, pertaining to divorce, family disputes, property disputes, child custody, etc.
3. Mediation is one of the methods, which is exercised time and again, to resolve the above mentioned disputes.
4. The conflicts among employers and employees are too disentangled, by virtue of Alternative Dispute Resolution method.
5. Apart from this, property boundary disputes, the altercation among the landlords tenants are also fixed by means of alternative dispute resolution, every now and then.
6. On top of that, the imbroglios, arising out of environment ( i.e. due to water pollution, soil and air pollution) can be adjudged by this glamorous method.
7. Last but not least, disputations, in relation with the intellectual property rights ( i.e. **patent, trademark and copyrights**) are too arbitrated repeatedly, by dint of Alternative Dispute Resolution method.

## XII. THE INDIAN LEGISLATIONS, DEALING WITH THE ALTERNATIVE DISPUTE RESOLUTION METHOD<sup>7</sup>

1. Section 89 of the Civil Procedure Code, 1908<sup>8</sup>

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<sup>6</sup> Aarifa Nadeem, Forms and Significance of Alternative Dispute Resolution (ADR), [Drishti Judiciary : Blog Detail](#), ( last visited on March 14, 2024)

<sup>7</sup> Pranjl, Exploring Alternative Dispute Resolution (ADR): A Guide to Efficient and Effective Conflict Resolution, [Exploring Alternative Dispute Resolution \(ADR\): A Guide to Efficient and Effective Conflict Resolution \(legalserviceindia.com\)](#) ( Last visited on March 14,2024)

<sup>8</sup> Sec 89 of The Civil Procedure Code,1908, [India Code: Section Details](#) ( Last visited on March 14,2024)

2. Article 39-A of the Indian Constitution<sup>9</sup>
3. Order 32-A of the Civil Procedure Code, 1908<sup>10</sup>
4. Arbitration and Conciliation Act, 1996<sup>11</sup>
5. Legal Service Authorities Act, 1987<sup>12</sup>
6. Order 23, Rule 3, Civil Procedure Code, 1908<sup>13</sup>

### XIII. THE FORMS OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA:

The diverse forms or types of Alternative Dispute Resolution have been enumerated down below -

#### A. Arbitration<sup>14</sup>

Arbitration is one of the well - known and prominent dispute resolution processes. It is governed by the **Arbitration and Conciliation Act of 1996**<sup>15</sup>. What exactly happens in Arbitration, that the parties - in - dispute, proceed to appoint an arbitrator (of any nationality) or arbitrators, who is/are neutral or impartial individual(s) , for the settlement of their disputation, by not dragging the traditional court procedure.<sup>16</sup> The parties are required to constitute an agreement beforehand, regarding the invocation

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<sup>9</sup> Article 39A 42nd Amendment (Free Legal Aid), [Article 39A 42nd Amendment \(Free Legal Aid\) \(unacademy.com\)](#) ( Last visited on March 14,2024)

<sup>10</sup> Order 32A CPC - Code of Civil Procedure, [Order 32A of CPC - SUITS RELATING TO MATTERS CONCERNING THE FAMILY of Order 32A \(lawrato.com\)](#), ( Last visited on March 14,2024)

<sup>11</sup> The Arbitration and Conciliation Act, 1996, [India Code: Arbitration and Conciliation Act, 1996](#) ( Last visited on March 14,2024)

<sup>12</sup> The Legal Services Authorities Act, 1987, [The Legal Services Authorities Act, 1987 - National Legal Services Authority! \(nalsa.gov.in\)](#) ( Last visited on March 14,2024)

<sup>13</sup> Order 23, Rule 3, [Order 23, rule 3-the words | The Code of Civil Procedure, 1908 | Law Commission of India Reports | Law Library | AdvocateKhoj](#) ( Last visited on March 14,2024)

<sup>14</sup> Shreya Pandey, Rise in Alternative Dispute Resolution, [Rise in Alternative Dispute Resolution - iPleaders](#), ( last visited on March 14,2024)

<sup>15</sup> Arbitration and Conciliation Act of 1996, [India Code: Arbitration and Conciliation Act, 1996](#), ( last visited on March 14, 2024)

<sup>16</sup> Sec 11 of the Arbitration and Conciliation Act,1996, [Section 11 in The Arbitration And Conciliation Act, 1996 \(indiankanon.org\)](#) (last visited on March 14,2024)

of the arbitral clause on the arrival of any altercation.<sup>17</sup> The consensus - ad - idem<sup>18</sup> is inevitable, between the parties, while appointing arbitrator(s).

Appointment of a third arbitrator is imperative actually. That is why, if the parties in dispute fail to appoint a third arbitrator, then the two appointed arbitrators are required to designate and appoint the third arbitrator.<sup>19</sup> The arbitrators are required to listen to both the parties and deliver the final award to the parties, that are binding and conclusive in nature.<sup>20</sup> The parties are not permitted to modify the award, passed by the arbitrator(s).<sup>21</sup>

## **B. Mediation<sup>22</sup>**

Mediation is another popular method<sup>23</sup>, pertaining to the Alternative Dispute Resolution, where a mediator is appointed by the parties - in - dispute<sup>24</sup>. It is the most invited method of ADR<sup>25</sup>, especially utilised by the businessmen<sup>26</sup>, as well as the agencies out there.

The mediator helps the parties to reach at the conclusion, straight after resolving the disputation. The mediator is required to be impartial and neutral<sup>27</sup>. The mediator doesn't impose the determination on the parties, rather he finds out the way, towards

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<sup>17</sup> Sec 7 of the Arbitration and Conciliation Act,1996, [India Code: Section Details](#) (last visited on March 14,2024)

<sup>18</sup> Consensus ad idem, [CONSENSUS AD IDEM | English meaning - Cambridge Dictionary](#), ( last visited on March 14,2024)

<sup>19</sup> Ramendra pratap singh, [Appointment Of Arbitrator \(legalserviceindia.com\)](#), (last visited on March 14,2024)

<sup>20</sup> Sec 35 of the Arbitration and Conciliation Act,1996, [India Code: Section Details](#) (last visited on March 14, 2024)

<sup>21</sup> Yash Mittal, Arbitral Awards Cannot Be Modified Under Sections 34 & 37 Of Arbitration & Conciliation Act : Supreme Court, [Arbitral Awards Cannot Be Modified Under Sections 34 & 37 Of Arbitration & Conciliation Act : Supreme Court \(livelaw.in\)](#) (last visited on March 14,2024)

<sup>22</sup> Alternative Dispute Resolution, [Alternative Dispute Resolution, Arbitration, Conciliation and Lok Adalats \(byjus.com\)](#), ( last visited on March 14,2024)

<sup>23</sup> Types of ADR Techniques, [Types of ADR Techniques | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#) ( last visited on March 14,2024)

<sup>24</sup> Mediation in India, [Mediation in India | IDRC \(theidrc.com\)](#) ( last visited on March 14,2024)

<sup>25</sup> Types of ADR Techniques, [Types of ADR Techniques | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

<sup>26</sup> Petar Petric, WHY BUSINESS NEED MEDIATION - Resolving Disputes among Business Partners, [WHY BUSINESSES NEED MEDIATION - Resolving Disputes among Business Partners \(linkedin.com\)](#) ( last visited on March 14, 2024)

<sup>27</sup> Mediation, [Rajasthan State Legal Services Authority \(rlsa.gov.in\)](#) ( last visited on March 14, 2024)



resolving the conflict. The parties therefore ascertain whether to accept his recommendation or not<sup>28</sup>.

If I include the mediation procedure, that is invoked by the parties, then i must reveal, that right after the submission of the written statement, the parties are required to confront with the mediator, on the date of hearing. Thereupon, the mediator listens to both the parties. Straight after the completion of the hearing, the mediator conducts a discussion with each of the parties, individually, where he recapitulates the matter-in- dispute and delivers his recommendations eventually. However, the recommendations are not at all conclusive and imperative on the parties.<sup>29</sup>

The procedure of Mediation had already been embraced by the Civil Procedure Code, 1908<sup>30</sup>, along with Commercial Courts Act. Apart from this, the Mediation Bill, 2023<sup>31</sup> had been released by the Lok Sabha and Rajya Sabha, forthwith. Mediation method has been substantiated to have been dealt excellently, for the purpose of resolving family disputes ( both civil & commercial), including family disputes and community disputes as well<sup>32</sup>.

### C. Conciliation<sup>33</sup>

This is known to be another form of alternative dispute resolution, which is quite prioritised by the laymen. This procedure is pretty informal in nature, as compared to the Arbitration process<sup>34</sup>. This process is entirely governed under the Arbitration and Conciliation Act of 1996.<sup>35</sup> In this process, a conciliator is designated<sup>36</sup>, who

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<sup>28</sup> Risabh Saxena, All you need to know about Alternative Dispute Resolution (ADR), All you need to know about Alternative Dispute Resolution (ADR) - iPleaders ( last visited on March 14, 2024)

<sup>29</sup> Ibid

<sup>30</sup> Settlement of disputes outside the court, India Code: Section Details ( last visited on March 14, 2024)

<sup>31</sup> Apoorva Misra, Nishant Rewalia, Mediation Act 2023 latest amendments: A complete guide, Mediation Act 2023 latest amendments: A complete guide (barandbench.com), ( last visited on March 14,2024)

<sup>32</sup> Shreya Pandey, Rise in Alternative Dispute Resolution, Rise in Alternative Dispute Resolution - iPleaders, ( last visited on March 14,2024)

<sup>33</sup> Anubhav Jindal, Alternative Dispute Resolution: Its need and Importance, Alternative Dispute Resolution: Its need and Importance - Lexlife India, ( last visited on March 14,2024)

<sup>34</sup> Conciliation, Conciliation - Workplace Relations Commission ( last visited on March 14, 2024)

<sup>35</sup> Arbitration and Conciliation Act, India Code: Arbitration and Conciliation Act, 1996 ( last visited on March 14, 2024)

<sup>36</sup> Appointment of conciliators, India Code: Section Details, ( last visited on March 14, 2024)

confidentially communicates with both the parties, for the purpose of concluding the dispute.<sup>37</sup> However, no party is supposed to be coerced to appoint a conciliator, nor a prior agreement is inevitable for the invocation of this procedure<sup>38</sup>.

Moreover, in accordance with sec **62** of the **Arbitrator and Conciliation Act, 1996**<sup>39</sup>, The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute. If the other party enclaps the invocation of the conciliation process, that when the procedure shall get commenced, otherwise it won't. Needless to say, that, on the acknowledgment of the settlement document, as drawn up by the conciliator, by both the parties, the parties shall be bounden to abide by the settlement document, as released by the conciliator. On the disapproval of the conciliation process, by the other party, no conciliation process shall take place consequently.<sup>40</sup>

#### **D. Negotiation**<sup>41</sup>

This procedure is non - binding in nature<sup>42</sup>, where the intercession of a neutral third party is not required<sup>43</sup>. This procedure is one of the common and flexible procedures of ADR<sup>44</sup>. With the help of the Negotiation Procedure, the parties try to arrive at the conclusion of the dispute, with a view to settling down the hassle, between them<sup>45</sup>.

The altercations, pertaining to business, marriage, divorce, non - profit organisations, government sectors, are lately resolved out by the Negotiation Procedure . Along with that, negotiation may also help out settling down any current legal crux.<sup>46</sup> Negotiation

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<sup>37</sup> Confidentiality, Section 75 in The Arbitration And Conciliation Act, 1996 (indiankanoon.org) ( last visited on March 14, 2024)

<sup>38</sup> APPOINTMENT OF CONCILIATOR, Appointment | IDRC (theidrc.com) ( last visited on March 14, 2024)

<sup>39</sup> Section 62 in The Arbitration And Conciliation Act, 1996, Section 62 in The Arbitration And Conciliation Act, 1996 (indiankanoon.org), ( last visited on March 14,2024)

<sup>40</sup> Ibid

<sup>41</sup> Alternative dispute resolution, Alternative Dispute Resolution | Porter Dodson, ( last visited on March 14,2024)

<sup>42</sup> Negotiation: A Mode of ADR, Negotiation: A Mode of ADR (lawbhoomi.com) ( last visited on March 14, 2024)

<sup>43</sup> Scope of Alternative Dispute Resolution (ADR), Scope of Alternative Dispute Resolution (ADR) (lawbhoomi.com) ( last visited on March 14,2024)

<sup>44</sup> NEGOTIATION AS A FORM OF ALTERNATIVE DISPUTE RESOLUTION, Negotiation as a form of Alternative Dispute Resolution | VIA Mediation Centre ( last visited on March 14, 2024)

<sup>45</sup> Ibid

<sup>46</sup> Negotiation, Negotiation - LAW Notes, SCLSC (last visited on March 14, 2024)

doesn't possess a specific legal column of troops, still it is invoked and treated as one of the methods, related to dispute redressal.

### E. Lok Adalat<sup>47</sup>

Lok Adalat, also known as **People's Court**<sup>48</sup>, is another pivotal alternative dispute redressal mechanism. Disputations related to finance, property, are straightforwardly dealt by the Lok Adalats.<sup>49</sup> In lok adalat, the cases, that are in pendency, in the traditional courts of law, are arbitrated duly. Lok Adalat is presided over either by a sitting or retired judicial officer, social activists are required too, for the purpose of settling down the disputes.<sup>50</sup> The concept of lok adalat, falls within the ambit of the **Legal Service Authorities Act, 1987**.<sup>51</sup>

The awards, passed by the lok adalats, are regarded to be conclusive and binding at the same time. It must be included, that no appeal shall lie, against the final award, made by the Lok Adalats, before any court of law<sup>52</sup>. However, this finality can be challenged in some circumstances that transparently emphasize that the awards have been adopted fraudulently.<sup>53</sup>

Justice **P.N. Bhagwati** is held to be the **Father of Lok Adalat's concept**, on account of his outstanding notion, behind forming the lok adalats.<sup>54</sup>

There are six types of Lok Adalats, i.e. **Permanent Lok Adalat, Continuous Lok Adalat, Mega Lok Adalat, Mobile Lok Adalat, Daily Lok Adalat, and National Level**

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<sup>47</sup> Lok Adalat, [Lok Adalat - National Legal Services Authority! \(nalsa.gov.in\)](https://nalsa.gov.in) (last visited on March 14, 2024)

<sup>48</sup> Lok Adalat, [SCLSC](https://sclsc.org/) (last visited on March 14, 2024)

<sup>49</sup> Ibid

<sup>50</sup> Sec 19 of the Legal Services Authorities Act, 1987, [India Code: Legal Services Authorities Act, 1987](https://www.indiacode.nic.in) (last visited on March 14, 2024)

<sup>51</sup> Legal Service Authorities Act,1987, [India Code: Legal Services Authorities Act, 1987](https://www.indiacode.nic.in) (last visited on March 14, 2024)

<sup>52</sup> Sec 21 of the Legal Services Authorities Act, 1987, [India Code: Legal Services Authorities Act, 1987](https://www.indiacode.nic.in) (last visited on March 14, 2024)

<sup>53</sup> [Bashir Ahmad Malik VS Chief Judicial Magistrate - Supreme Today AI](#) (last visited on March 14, 2024)

<sup>54</sup> Sweta, Lok Adalat, History, Composition, Types, Benefits & Concerns, [Lok Adalat, History, Composition, Types, Benefits & Concerns \(studyiq.com\)](#) (last visited on March 14, 2024)

**Lok Adalat.**<sup>55</sup>The permanent lok adalats are conducted on a daily basis and 344 permanent lok adalats ( as of 2022) are noteworthy in India at the present time.<sup>56</sup>

The context, pertaining to **E-Lok Adalat**, has also come into existence with a view to fix up abundant pending cases.<sup>57</sup>

#### **F. Online Dispute Resolution (ODR)**<sup>58</sup>

It emphasizes the online platforms of dispute resolution i.e. **video conferencing, online mediation**, etc, to resolve out the disputes among the parties. This manner is invoked, especially when the parties have been dwelling far away from each other and there is no such opportunity to conduct this procedure offline or physically<sup>59</sup>.

This type of dispute resolution process predominantly emerged out during the outbreak of **COVID-19** throughout the world, so that people could easily get accessed to justice, on the arrival of any disputation, even during the quarantine<sup>60</sup>.

## **XIV. THE PROS & CONS OF THE ALTERNATIVE DISPUTE RESOLUTION STRAIT**<sup>61</sup>:

**The Pros:** The predominant pros of this method have been enumerated down below:

### **A. Better than the sluggish judicial system of our country**<sup>62</sup>

It appears to be flexible and rapid as compared to the sluggish and long delayed judicial system of our country which takes years to resolve out disputes, doesn't

<sup>55</sup> How many Types of Lok Adalat are there?, [How many Types of Lok Adalat are there? - Types of Lok Adalat \(byjusexamprep.com\)](#) (last visited on March 14, 2024)

<sup>56</sup> The Lok Adalat is one of the important Alternative Disputes Resolution (ADR) Mechanism available to common people, [Press Information Bureau \(pib.gov.in\)](#) (last visited on March 14, 2024)

<sup>57</sup> Lok Adalat, [drishtiias.com/daily-updates/daily-news-analysis/lok-adalat-2/print\\_manually](#) (last visited on March 14, 2024)

<sup>58</sup> PIB Delhi, NITI Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice, [Press Information Bureau \(pib.gov.in\)](#) (last visited on March 14, 2024)

<sup>59</sup> Exploring Alternative Dispute Resolution (ADR): A Guide to Efficient and Effective Conflict Resolution, [Exploring Alternative Dispute Resolution \(ADR\): A Guide to Efficient and Effective Conflict Resolution \(legalserviceindia.com\)](#) (last visited on March 14, 2024)

<sup>60</sup> ONLINE DISPUTE RESOLUTION IN INDIA, [Online Dispute Resolution in India | VIA Mediation Centre](#) (last visited on March 14, 2024)

<sup>61</sup> Advantages and Disadvantages of ADR, [Advantages and Disadvantages of ADR - ADR Times](#) (last visited on March 14, 2024)

<sup>62</sup> Mark Fotohabadi, Advantages and Disadvantages of ADR, [Advantages and Disadvantages of ADR - ADR Times](#) (last visited on March 14, 2024)

matter what type of dispute it is. However, if the ADR system gets evoked by the parties, then it would hardly take a few months for the dispute resolution and the final verdict is released thereafter.

### **B. An inexpensive strait indeed<sup>63</sup>**

Another wonderful factor to be considered, is regarding the money. The parties are not required to spend a whole lot of money towards the ADR system to fix up their disputes as compared to the litigation. As we can observe that the litigation system consumes too much money from the parties, even if it doesn't require. What exactly happens that litigation system deliberately gets delayed and due to the elongated procedure; the legal representatives keep asking for fees every time they advise their clients. However, sometimes this method may also turn out to be expensive, still on account of time saving as compared to the traditional judicial system, the legal representatives cannot consume excessive fees from the parties day by day.

Henceforth, ADR seems to be affordable in this regard.

### **C. Too much comfortable and unmethodical in nature<sup>64</sup>**

What exactly happens, that straight after the invocation of traditional judicial system, parties are asked producing a whole lot of evidence before the judicial officers. However soon as somebody invokes ADR, they are not required to do procreate excessive evidence, it's quite commodious in this regard. However, sometimes there seems to be a requisite to produce adequate evidence, still this method is simpler than the methodical judicial practice.

### **D. The Conservation of Confidentiality<sup>65</sup>**

Another pros includes secrecy or confidentiality, which helps the parties conceal their legal disputation from the outside world. If litigation system is invoked, there is no

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<sup>63</sup> Ibid

<sup>64</sup> Lark Lewis, J.D. Arbitration Pros and Cons, [Arbitration Pros and Cons - FindLaw](#) (last visited on March 14, 2024)

<sup>65</sup> ADR- ADVANTAGES & DISADVANTAGES, [ADR - Advantages & Disadvantages | VIA Mediation Centre](#) (last visited on March 14, 2024)

chance of concealment really. The outside world can now spontaneously access to the issues and tiffs you are having.

E. **The Cons**<sup>66</sup>: The predominant cons of this method, have been enumerated down below:

**F. The issues pertaining to appealing before Higher Courts**<sup>67</sup>

As we all are aware of the factor, that there may not be too much of legal protections, in the ADR system like the traditional judicial system, rather the parties may not proceed for appealing before the higher courts, against the Final Award and this is one of the disadvantages in here.

**G. The bewilderment regarding the solution**<sup>68</sup>

Another disadvantage includes, the willingness of the patties. If one of the parties do oppose to the get indulged in the ADR process to ascertain their disputes then it stands implausible to invoke this procedure.

**H. The problem relating to the revelation**<sup>69</sup>

Though the matters in dispute, in ADR method, are confidential and secret in nature, so that the public do not get to know much about it. However, sometimes the concept of revelation turns out to be quite magnificent for the society, as the people dwelling in the society are sometimes required to what exactly has been happening in the society and what type of disputes have been occurring lately.

**I. Lack of experience regarding the ADR system**<sup>70</sup>

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<sup>66</sup> Rishabh Raj, Merits and Demerits of the Alternative Dispute Resolution System, [Merits and Demerits of the Alternative Dispute Resolution System \(lawyersclubindia.com\)](#) (last visited on March 14, 2024)

<sup>67</sup> Mains Marathon, [drishtias.com/mains-marathon-daily-answer-writing-practice/papers/2022/alternative-dispute-resolution-involves-settling-cases-out-courtroom-offers-resolve-all-types-disputes-including-civil-criminal-industrial-etc-context-discuss-types-adr-discuss-pros-and-cons-adr-gs2-polity-and-governance/print](#) (last visited on March 14, 2024)

<sup>68</sup> Exploring Alternative Dispute Resolution (ADR): A Guide to Efficient and Effective Conflict Resolution, [Exploring Alternative Dispute Resolution \(ADR\): A Guide to Efficient and Effective Conflict Resolution \(legalserviceindia.com\)](#) (last visited on March 14, 2024)

<sup>69</sup> Ibid

<sup>70</sup> Mains Marathon, [drishtias.com/mains-marathon-daily-answer-writing-practice/papers/2022/alternative-dispute-resolution-involves-settling-cases-out-courtroom-offers-](#)

Another perplexity arises due to not being that much experienced regarding the entire context of the Alternative Dispute Method. Simply put, not everyone is well aware of this entire process of ADR and this process is to be invoked. Therefore, people often end up getting bewildered regarding the evocation of this alternative way of dispute resolution.

## **XV. THE SUPREMACY OF ALTERNATIVE DISPUTE RESOLUTION METHOD (IN THE PRESENCE OF THE TRADITIONAL JUDICIAL SYSTEM)**

As the name suggest, the Alternative Dispute Resolution, i.e. an alternative or another approach, for the purpose of resolving the disputes, that come into existence, among the private entities. As specified beforehand, that the private entities, such as the multinational companies and other authorities, predominantly prioritise the ADR method, on account of which the altercation arising out among them remain in secrecy and get disposed of promptly. Family disputes ( divorce..) as well as the disputes regarding properties and many more are arbitrated unanimously, through alternative dispute resolution manner.

Apart from this, another principal factor pertaining to the invitation of ADR method is the encumbrance on the traditional judicial system. The traditional judicial system is inducted with unnumbered cases, in front it, due to which the it turns out to be implausible to entertain cases pertaining to every single field of law. Also, the traditional judicial system is indeed costly and exorbitant, especially in the context of the quantum of fees, an advocate charges to his/her clients.

Apart from this, the typical litigation procedures are quite time - consuming and sluggish most of time, as this method might take several years or month, for the accomplishment and disposal of the cases, owing to which, it becomes impossible to afford the cost of litigations, for the people belonging to the marginalized society, which is why, the they too invoke the Alternative Dispute Resolution system, without

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[resolve-all-types-disputes-including-civil-criminal-industrial-etc-context-discuss-types-adr-discuss-pros-and-cons-adr-gs2-polity-and-governance/print](#) (last visited on March 14, 2024)

any hesitancy. It's not only for the impoverished people, but also is utilised repeatedly by the businessmen and the companies.

This mechanism got invoked a number of times, after the outbreak of the **Covid - 19** pandemic, when the entire world went into lockdown. The traditional courts were not an exception to that lockdown and that is when the ADR method emerged out potentially, for the purpose of indemnifying and safeguarding the legal system and the process of litigations. Most importantly, the ODR ( Online Dispute Resolution) system came forward, when the COVID - 19 broke out.

Besides that, the parties in dispute are not required to await too long to get the resolution and the final award from whichever mode of ADR they preferred to go ahead with. It's indeed a time saver and it let the parties get rendered with an apposite final award most of the time. After scrutinizing each of the factors mentioned beforehand, it goes without saying that the practice of Alternative Dispute Resolution demonstrates exorbitant supremacy and prosperity, in the Indian legal system, beside the traditional courts of justice.

## **XVI. CERTAIN SOLICITATIONS THAT ARE REQUIRED TO BE CONTEMPLATED ON, WITH RESPECT TO THE ADR SYSTEM**

Straight after coming across the advantages of Alternative Dispute Resolution method, it is implicit that ADR, lately, is one of the most invited systems out there. After witnessing it's blossom, I must opine that there is a requirement of establishing multifarious ADR institutions. Additionally, the evocation of this procedure should be way more frequent and rhythmic by the citizens<sup>71</sup>, especially through online modes of communication. The awareness regarding the ADR system is required to be amplified throughout the country, as people are not having apposite experience and knowledge about the same<sup>72</sup>.

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<sup>71</sup> Mains Marathon, [drishtias.com/mains-marathon-daily-answer-writing-practice/papers/2022/alternative-dispute-resolution-involves-settling-cases-out-courtroom-offers-resolve-all-types-disputes-including-civil-criminal-industrial-etc-context-discuss-types-adr-discuss-pros-and-cons-adr-gs2-polity-and-governance/print](https://drishtias.com/mains-marathon-daily-answer-writing-practice/papers/2022/alternative-dispute-resolution-involves-settling-cases-out-courtroom-offers-resolve-all-types-disputes-including-civil-criminal-industrial-etc-context-discuss-types-adr-discuss-pros-and-cons-adr-gs2-polity-and-governance/print) (last visited on March 14, 2024)

<sup>72</sup> Ibid



Coming to the part of the expenditure after invoking the ADR system. The Expenditure is quite cheaper and inexpensive, compared to litigation<sup>73</sup>, as particularized beforehand. However people belonging to the marginalized society, are required to be taken into consideration, during fixing the quantum of charges for the ADR process and on the commission of which there might be an acknowledgement on their part to the Alternative Dispute Resolution contexture.

Another emergent exhortation would be the invocation of ADR method in criminal cases, which is indeed required lately. Being a citizen of this country, we keep witnessing bountiful cases pertaining to criminal offences. People are getting accustomed committing offences every now and then, regardless of the nature of the crimes ( whether cognizable or non-cognizable). Presently, rape cases have appeared to be the mostly committed cases among all types of criminal cases, in my opinion. Henceforth, despite of the effectual evocation of ADR method in situations like **plea - bargaining, compoundable offences, restorative justice** and many more<sup>74</sup>, the evocation of ADR method in non-compoundable offences ( especially in rape cases) is severely required, with a view to serving prompt righteousness to the victims.

## XVII. CONCLUSION

The strait of the Alternative Dispute Resolution is indeed dominant in India, these days. It had been functioning in the form of an alternative way to cut down the burden of the traditional courts and also guarantees a prompt settlement of the cases produced before it. In addition to this, the lesser money factor is needed to add on along with it, which attracts the eyes of the laymen as well as the multinational companies and other authorities, contemplating on this procedure, with a view to arbitrating their disputes.

As analysed earlier, Mediation is the most invoked provisions of this system, through which, people have been settling down the issues and the profitability of Mediation is spanking lately. The Mediation process is supposed to be emphasized time and again,

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<sup>73</sup> 6 Advantages of Alternative Dispute Resolution, [6 Advantages of Alternative Dispute Resolution | BT Mediation](#) (last visited on March 14, 2024)

<sup>74</sup> Shwetabh Sinha, ADR IN CRIMINAL CASES, [Making Justice Accessible and Affordable for All \(lawyered.in\)](#) (last visited on March 14, 2024)

by the traditional courts, which shall be alleviating the encumbrance of the courts at the same time. Nevertheless, Alternative Dispute Resolution method could have been way more prosperous, if the above-mentioned solicitations would have been looked after. Consequently, we will be looking forward to witnessing a period when this alternative way shall come out to be as influential as the traditional judicial system is.