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A Diegesis of Alternative Dispute Resolution in Contemporary India

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ABSTRACT

Alternative Dispute Resolution (ADR) is a process for resolving disputes outside of the legal system. Because trade and commerce are growing at such a rapid rate at the moment, disagreements have become an unavoidable aspect of the scenario. Going with the traditional technique of dispute resolution might take a long time and be more expensive, so the ADR mechanism is used to save time and money. ADR is required at all levels in India since Indian courts are overcrowded with cases, leading in long delays in resolving conflicts and proving to be a more expensive option. Many statutes and legislations are made in this subject from time to time, but there is still a need to raise knowledge about this mechanism among people from all walks of life. Also, following COVID, there has been a noticeable shift in every field, including ADR, with a shift toward Online Dispute Resolution. This paper begins by introducing the notion of alternative dispute resolution (ADR) and then goes on to analyse its origins in the Indian legal system. Following that, the various methods of ADR (Arbitration, Mediation, Negotiation, Conciliation, and Lok Adalats) used in India are discussed. The paper also includes information on the ADR legislation in India. In addition, the paper discusses the advantages of ADR. The report also looks at the future of ADR in India's legal system. Finally, the report offers some suggestions for future research and ways to make the ADR mechanism more participatory, as well as a conclusion.

I. INTRODUCTION

Conflict is sometimes used as a blanket term for all types of conflicts between two or more individuals, but it is necessary to distinguish between conflict and dispute in order to better comprehend it. A dispute, according to John W Burton, is a short-term disagreement between two or more parties that can result in the parties reaching an agreement; it involves negotiable topics. Conflict, on the other hand, lasts a long time and involves deeply ingrained concerns between two or more people that are considered "non-negotiable." Disagreements are natural and sometimes healthy because everyone has the right to voice their thoughts, opinions, and

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beliefs. Disagreements are an unavoidable aspect of our lives. After all, no two people, organisations, or nations can be expected to share the same tastes, dislikes, or agreements and disagreements. When healthy and beneficial, dissent really enhances the relationship between two people or organisations. The trick is in the reaction! It's fine to have arguments, but what's more important is what happens afterward. Every civilization, institution, and nation is made up of individuals. Furthermore, an examination of people's behavioural elements is essential in order to address the dispute settlement system.

II. HOW DO PEOPLE REACT TO DISPUTES, CONFLICTS, AND DISAGREEMENTS?

Unhealthy ways: Anger, disdain, and harsh reactions to a problem are examples of unhealthy responses. Consider two countries at odds over a territorial dispute. It causes trauma to people and has a lasting impact on people's lives and society as a whole. After all, we are a social animal, and we cannot live a calm life if we continue to respond in ways that are influenced by emotions or hormones.

Healthy ways: Calm and courteous reactions are examples of healthy responses. For example, when a disagreement arises, experts can be consulted. There are numerous ways to resolve a conflict without endangering people's lives or establishing a pleasant and healthy atmosphere for society as a whole.

There is a way where there is a will. The civil law and justice system is one such example. A civil law and justice system exists to ensure that disputes are addressed and that no one is left unheard or unhappy. Dispute resolution refers to a variety of techniques for resolving disagreements between two or more people, organisations, or governments, among other things (hereinafter referred to as Parties). Law and authorities are in charge of resolving disputes (if approached). Let's take a closer look at this.

III. PLEA BARGAINING AS AN ADR MECHANISM

Plea bargaining is an alternative dispute resolution strategy that involves a series of conversations and bargaining. Alternative dispute resolution (ADR) is a method of resolving disagreements without resorting to litigation.[3] This method provides more flexibility, allows for faster case disposal, and is less expensive and time consuming. The benefits have resulted in a noticeable increase in the use of ADR methods in Indian courts. Pre-trial mediation is a process that takes place before a trial begins with the goal of resolving some of the legal

[3] Jade Hunt Miller, ' What is Alternative Dispute Resolution' (jhmbusinesslaw, 11 February 2014) < http://jhmbusinesslaw.blogspot.com/> accessed 15th January 2022

difficulties before the trial begins. Mediation is another form of alternative dispute resolution in which a third party, known as the mediator, attempts to resolve the disagreement with the parties' mutual consent. And negotiation is a way through which the parties reach an agreement without the assistance of a third party by talking and negotiating a settlement for the disagreement. Black Law's Dictionary states negotiation as "a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter".[4]

Plea bargaining was introduced into India's Criminal Justice System to relieve the pressure on courts by allowing cases to be resolved more quickly. Plea bargaining is a pre-trial agreement between the defendant and the prosecution in which the defendant agrees to plead guilty to the accusations against him/her in exchange for a reduced sentence or the charges being dismissed. Explicit plea bargains are negotiations that result in legal agreements. Plea bargaining, like any other ADR method, is a private process, meaning that no one other than the defendant and his or her lawyers, the prosecution, and, in some situations, the judge will be present. The public will not have access to information about the plea bargain until it has been fully agreed upon by all parties involved. In cases where the evidence of guilt is overwhelming, the prosecution will save money and time by making a little concession to the litigants. On the other hand, if the proof or evidence is incorrect, the court will consent to a plea to a lesser charge to avoid the possibility of the accused being acquitted.[5] Because the substantive criminal code authorises a wide range of charges and sentences for common criminal behaviour, and because the procedural law gives prosecutors broad leeway in selecting charges, the prosecution will almost always offer the defence a substantial incentive to plead guilty. Negotiating guilty pleas to determine the offences that the respondent will be charged with or the length of sentence that the respondent will receive is a constant component of the legal system.

Nonetheless, the prosecutor has the option of accepting a plea deal. Despite some constitutional restrictions, prosecutors have the ability to decide which plea negotiating cases can be brought to court. Accepting or rejecting the negotiated offer is also up to the defendant's choice.[6] Judges, public prosecutors, accused, and victims must all unite and work together to achieve the individual and joint goal of plea bargaining in order to eliminate the backlog of cases. One of the many advantages of plea bargaining is that it is a reform that focuses on the victim. It demonstrates a higher level of empathy and respect for the victims and their fundamental rights. There is a formal pay-out scheme in place, as well as a fair settlement. The victims must also

[4] Black's Law Dictionary 1059, (7th ed.1999)
[5] Rahul Deo, 'Criminal Cases and ADR' (Lawctopus, 19 December 2014) accessed 15th January 2022
[6] Renada Williams-Fisher, 'Plea Bargaining Negotiations' (2005) 33 SU L Rev 237

be compensated through plea bargaining. In the area of criminal justice, guilty pleas account for about 95% of prosecutions in Western countries, with many of them decided by agreement upon charges and pleas rather than a judgement reached after the judge or jury has heard all of the necessary evidence in the courtroom.[7] Since decisions are taken and people as a result of negotiations are imprisoned, it is important that these negotiations are equitable and just.

IV. TYPES OF ADR

i) Arbitration: Arbitration is a method of resolving a disagreement between two parties who, by mutual agreement, choose an arbitrator (a third party) to settle the issue and provide a binding solution to the parties. It is a method of resolving a disagreement outside of the courtroom, which saves both money and time.[8] The Arbitrator's answer is referred to as "Award." In the age of globalisation, where parties or entities require a favourable, reasonable, and less time-consuming way of dispute settlement, arbitration is one of the most essential processes. In the case of *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd*, the Hon'ble Supreme Court defined conflicts that do not fall under the ambit of arbitration as non-arbitral disputes.[9] Those matters are:

- Disputes relating to Criminal Offences
- Family Law matters
- Matters related to Bribery/ Corruption Laws
- Matters related to Fraud
- Matters related to guardianship,
- Matters related to Anti-trust/ Competition Laws
- Matters related to insolvency and winding up
- Matters related to Eviction proceedings
- Matters related to Patents, Trademarks, and copyrights[10]

ii) Mediation: Mediation is a sort of ADR in which the parties discuss their disagreements in front of a neutral third party who assists them in achieving a resolution. It might be a formal or informal gathering for the purpose of resolving a disagreement. Mediation is particularly

[7] Geraldine Mackenzie, Andrew Vincent, John Zeleznikow, ' Negotiation about charges and pleas: balancing interests and justice' (2008) < https://research.bond.edu.au/en/publications/negotiati ng-about-charges-and-pleas-balancing-interests-andjusti-2> accessed 15th January 2022

[8] Jagdeep Singh Bakshi, Arbitration law in India: Everything you want to know, The Statesman (May 21, 2019 8:04 pm) Available at: https://www.thestatesman.com/india/arbitration-lawin-india-everything-you-want-to-know1502757528.html

[9] Booz Allen and Hamilton Inc V. SBI Home Finance Ltd (2011) 5 SCC 532

[10] Pratyush Jha, ANALYZING THE CONCEPT OF ALTERNATIVE DISPUTE RESOLUTION AND IT'S FUTURE IN THE INDIAN CONTEXT, Supremo Amicus, Volume 22

effective in reducing the time it takes to resolve any issue, as well as the costs associated with litigation.[11] In the case of mediation, both parties benefit from a win-win situation because a solution is reached with both parties' cooperation. The Industrial Dispute Act of 1947 gave legal sanction to the mediation method in India. In the year 1999, the Code of Civil Procedure Act was amended by Parliament. The courts could refer a case to Lok Adalats for Arbitration, Mediation, Conciliation, or Judicial Settlements under Section 89 of the CPC. The parties' agreement was required in it. Even if the parties did not agree, courts were entitled to refer a case to mediation under Rule 5 (f) (iii).[12]

iii) Negotiation: Negotiation is derived from two Latin expressions: "negotiates" (the past participle of the term "negotiare" i.e. to conduct business) and "Negotium" (which means not leisure). Negotiation is a method of resolving a disagreement between two or more parties or their lawyers without the involvement of a third party. The bargaining technique is the most common kind of ADR. Its goal is to settle a disagreement through the exchange of ideas and viewpoints. Negotiation is widely regarded as the most cost-effective method of resolving disputes.

iv) Conciliation: Conciliation is a type of alternative conflict resolution in which a third party or parties is selected with both parties' consent and the disagreement is settled by that third party by bringing the parties to an agreement. Confidence, trust, and faith are vital factors in conciliation. The nature of this type of ADR is less formal. The basic difference between Conciliation and Arbitration is that "Conciliation" is a procedure in which parties or entities examine issues with the assistance of a dispute resolution professional (the conciliator), whereas "Arbitration" is a procedure in which the parties or entities to a dispute present arguments, points, and evidences to a dispute resolution professional known as the arbitrator (a neutral third person appointed by mutual consent of both the parties to the dispute).

v) Lok Adalat: Lok Adalat is a sort of ADR that acts as a forum for the resolution of pending cases or disputes in the courts of law, as well as the pre-litigation settlement of conflicts through conciliation and negotiating procedures. Lok Adalats have legislative status under the Legal Service Act of 1987. The Lok Adalat's decision or award is treated as if it were a civil court decree, and it is final and binding on all parties, with no right of appeal to any court of law. Furthermore, in Lok Adalats, the parties engage directly with the judge, which is not feasible in traditional legal proceedings. There is no opportunity for appeal if the parties are dissatisfied with the Lok Adalat's grant, but the parties might choose to litigate by filing a

[11] Mediation in India, Available at: https://www.mediate.com/articles/mediation-in-indiaarticile.cfm
[12] Akanksha Mathur December 28, 2017, How Does The Mediation Process Work – Steps and Procedure, Ipleaders Intelligent Legal Solutions Available at: https://blog.ipleaders.in/mediation-in-india-process/

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complaint in a competent court of law as part of their right to litigate. There is no court fee when a matter is filed in Lok Adalat.[13]

V. THE APPROACH OF THE INDIAN JUDICIARY TO PLEA BARGAINING AND ITS IMPLEMENTATION

For a long time, the Indian judiciary and judges were opposed to the concept of plea bargaining and its credibility. Plea bargaining was never thought to be a persuasive answer, but rather a vehicle for weak case investigation and procedures. This was one of the main reasons why Plea Bargaining was established considerably later than in Western countries like the United States and other European countries. The Indian Criminal Justice System recognised the need for plea bargaining as crime and the backlog of cases grew. As a result, it was included into the criminal justice system in 2006.[14] The Code of Criminal Procedure has always compelled an accused to enter a guilty plea rather than demand a full trial, but this is not the same as plea bargaining. Following a 2005 revision, it was incorporated into the Code of Criminal Procedure. Plea bargaining is discussed in Sections 265A to 265L of Chapter 12 of the CrPC.[15] Not all instances could be resolved through plea negotiation. The following were the categories of offences that were not eligible for plea bargaining:

- Crimes not perpetrated against minors, children 14 years or younger, or women,
- Disrupting India's socioeconomic condition or national policy
- When the sentence was not more than seven years.

To reduce the time it takes to resolve cases, the Law Commission's 154th Report proposed the use of 'plea bargaining' as an alternate approach of dealing with large backlogs of criminal cases.[16] The Malimath Committee proposed that a plea bargaining structure be introduced into India's criminal justice system to help speed up the resolution of criminal cases and reduce the strain on the courts. The Malimath Committee used the success of the plea-bargaining system in the United States to bolster its case. Appropriately, the draught Criminal Legislation (Amendment) Bill, 2003 was introduced in parliament, and it became a legally binding Indian law on July 5, 2006.[17] It attempted to amend the Code of Criminal Procedure, 1973 (CrPC),

[13] http://www.legalserviceindia.com/legal/article1823-lok-adalat-alternative-dispute-resolutionmechanism-in-india.html

[14] K. Venkataramanan, ' Plea Bargaining and how it works' The Hindu (Chennai, 19 July 2020) < https://www.thehindu.com/news/national/the-hinduexplains-what-is-plea-bargaining-and-how-does-itwork/article32126364.ece> accessed 15th January 2022

[15] Code of Criminal Procedure 1973

[16] Soura Subha Ghosh, – Advocate, 'Plea Bargainingan analysis on the concept' (legalserviceindia) <http://www.legalserviceindia.com/articles/plea_bar.htm> accessed 15th January 2022

[17] Lokesh Vyas, 'Concept of plea bargaining under the Indian Law' (ipleaders, 31 May 2018) <

the Indian Evidence Act 1872, and the Indian Penal Code 1860 (IPC) in order to improve the country's current Criminal Justice System, which is plagued by a large number of criminal cases and excessive deferral in their resolution on the one hand, and an extremely low rate of conviction in cases involving serious offences on the other. The bill sparked a massive public debate. Critics claim that it isn't viewed as such and that it violates Indian criminal justice policy. The Supreme Court has also regularly slammed the idea of plea bargaining, claiming that it is unreasonable to negotiate in criminal cases. The Criminal Law (Amendment) Bill, 2005 focused on the following key concerns in Indian criminal justice:

(i) Witnesses turning hostile

(ii) Plea-bargaining

(iii) Compounding the offense under Section 498A, IPC

In the case of *State of Uttar Pradesh vs. Chandrika*, the Supreme Court condemned the practise of plea bargaining and declared it illegal.[18] The Court was of the opinion that the concept of plea bargaining could not be used to construct the foundation for the dismissal of criminal charges. Such matters should be decided only on the merits. It was also of the opinion that the penalty granted to the accused should be in accordance with the applicable statute or law. Nonetheless, there have been examples where the benefits of plea bargaining have been recognised and praised by the courts. In the case of *Babu Singh v. State of Uttar Pradesh*, Justice V.R. Krishna Iyer stated that speedy justice is a component of social justice because the community as a whole care about the criminal being treated with dignity and finally punished within a reasonable time frame, and the innocent being spared from the traumatic experience of a criminal proceeding. On the more serious side, plea bargaining with the help of multiple jurists is a technique in which the accused understands that it is not too late to confess to his wrongdoings, which also saves time by avoiding a pointless and long trial. Negotiation, out of all the alternative dispute remedies, is a better option than the others since it is more informal and allows the accused to emphasise issues from his perspective. Negotiations are an important part of plea bargaining in the context of dispute resolution because it leads to a procedure in which the victim's losses are potentially reduced and an agreeable conclusion (i.e., justice for the victim and a reduced sentence for the guilty person).

https://blog.ipleaders.in/plea-bargaining-practiceindia/> accessed 15th January 2022

[18] Mehak Goel, 'Concept of Plea Bargaining in India' (latestlaws, 02 September 2018) < https://www.latestlaws.com/articles/concept-of-pleabargaining-in-india-by-mehak-goel/> accessed 15th January 2022

VI. DIFFERENT TYPES OF DISPUTE RESOLUTION PROCESS

There are two major types of dispute resolution process:

(A) Litigation

In Latin, the word "litigation" implies "conflict" (originating from litigation). It is a method of resolving a problem by approaching the courts. It is a procedure in which two parties take legal action and present their arguments to a judge or jury. After hearing both sides, the judge or jury renders a decision or order within the four corners of the law that is final and legally binding on both parties. The court's order or judgement must be followed by both parties involved in the dispute.

1. Process of Civil Litigation

The following is a quick rundown of the litigation process:

a) The first step in the lawsuit procedure is to determine which legal rights have been violated by the other party. Tort claims, contract claims, land claims, and other types of legal disputes exist. The first step is to determine whose right has been infringed and what remedies are available.
b) Once the kind has been determined, a complaint or plea is drafted and filed in court as a lawsuit.
c) A lawsuit contains the names, ages, and occupations of the parties, as well as the parties' claims and requests. A lawsuit can only be brought with the help of a lawyer. An advocate is a person who is competent and eligible to represent a party in a court of law.
d) Following the filing of a lawsuit, the judge or jury takes all required steps to conduct the trial.
e) Depending on the type of the complaint filed, the judge or jury issues an order, a decree, a decision, or a judgement after hearing both parties and competing trial processes.
f) The court's judgement or order becomes legally enforceable, and both parties are compelled to obey, respect, and behave in accordance with the court's decision.

The decision concludes the civil litigation process, and it is now the parties' responsibility to obey the court's directions in the form of a judgement. If you do not obey the orders, you will be in contempt of court, which is a crime for which you might be prosecuted.

2. What if a party is not satisfied with the judgement?

The legal process begins in the lower courts of the hierarchy. If a party is dissatisfied with a

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lower court's decision, that party can appeal to higher courts in the hierarchy. The lawsuit has now evolved into an appeal, a request to the higher court to reconsider the lower court's decision.

Higher courts have the jurisdiction and power to examine, repeal, or cancel a judgement rendered by a lower court. The Supreme Court of India is the country's highest court, followed by the High Court, and then district and sessions courts and tribunals. The Supreme Court's decision is final, binding, and unappealable.

3. Merits of Litigation:

i) Consistency in Obtaining a Result: The nature of the litigation mechanism ensures that a final result is obtained. No one is left without a choice or a result.

ii) There Are No Grey Areas: When two parties are involved in a legal dispute, it is evident that one of them will win. There are no such things as both winning and losing teams.

iii) Setting Precedents: When litigation proceeds through the courts, it establishes precedents that can be used in the future. This means that if a court notices a set of comparable events that have occurred before and have been resolved upon, the court can rely on the conclusion reached in earlier instances with similar facts. This reduces the amount of time spent in court.

iv) Importance of Evidences: Without evidences, no legal process can be completed. The gathering of evidence is a crucial aspect of the legal process. Every allegation must be supported by evidence before the court. To support their claims, courts always rely on the evidence presented by the parties. As a result, it is the most reliable method of resolving disputes.

4. Demerits of Litigation:

i) Expensive: Litigation cannot be conducted without the assistance of a legal counsel, and hence can be costly due to legal fees and other expenditures related with the trial process.

ii) Time Consuming: From the filing of the case to the passing of the judgement, there are various procedures involved in litigation. Depending on the complexity of the case, it can take several years for the courts to reach a decision. Both parties must wait and may or may not take certain steps in connection with the ongoing trial.

iii) Public Forum: Most court records are also available to the general public for information or reference. This means that the parties' names, ages, and occupations, as

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well as the facts of the case, ongoing issues, and so on, will not be kept private. Parties are often concerned about their public image and so uneasy about it.

Some of the benefits and drawbacks of litigation were discussed previously. However, when it comes to dispute settlement methods, people's personal preferences play a role.

(B) Alternative Dispute Resolution

Alternative Dispute Settlement, or ADR, refers to the various ways and types of dispute resolution processes that are available in lieu of litigation or going via the courts. It is a method of resolving conflicts outside of the courtroom. The strain on the shoulders of courts is increasing as the number of cases increases, and as a result, efficiency is being harmed. There are approximately 1,047,107 civil cases waiting in India's District and Taluka courts,[19] 4,170,762 civil cases pending in the country's High Courts,[20] and 69,212 cases pending in the Supreme Court.[21]

With such a large population and numerous disputes occurring on a daily basis, it is critical for the judicial system to establish a process for resolving disputes within the confines of the law. As a result, Alternative Dispute Resolution procedures were implemented. It is a step toward people receiving justice without disrupting the courts, and it is our responsibility to minimise the pressure on the courts by adopting alternative conflict resolution methods.

1. Various Kinds of Alternative Dispute Resolutions

Arbitration, Mediation, Conciliation, and Negotiation are the most prevalent types of ADR proceedings for individuals, organisations, national, and international issues.

- **Arbitration**

'Arbitration' is the process of resolving a dispute between two parties by assisting them in reaching an agreement. Arbitration is a legal procedure that encourages the mutual settlement of disputes between two or more parties through the appointment of an arbitrator.

In the arbitration procedure, an Arbitrator is a neutral and experienced third party who acts as a judge. In the presence of both parties, the arbitrator conducts the arbitration procedure, hears both sides' arguments, and renders a verdict. The arbitrator's order or decision is referred to as a 'award,' and it is legally enforceable and binding on both parties. There are no requirements for the nomination of an arbitrator, and the decision to select an arbitrator is left to the parties'

[19] 'National Judicial Data Grid' (Njdg.ecourts.gov.in, 2021) accessed 15th January 2022
[20] *Id.*
[21] 'Statistics | SUPREME COURT OF INDIA' (Main.sci.gov.in, 2021) accessed 15th January 2022

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discretion. Both parties are free to choose their own arbitrators, and the chosen arbitrator chooses a third arbitrator to serve as the chair of the arbitration. If any party wants to nominate more than one arbitrator, it must be specified in the contract.

When it comes to international commercial issues, arbitration is the most preferred form of conflict resolution. International business arbitration is governed by the UNCITRAL Model Law on International Commercial Arbitration.[22] Every Member State has approved and formulated its arbitration legislation in accordance with the UNCITRAL Model Law's rules and instructions. Arbitration in India is governed by the Arbitration and Conciliation Act of 1996.

- **Mediation and Conciliation**

Mediation is described as "a form of non-binding dispute resolution using a neutral third party who tries to help the opposing parties reach a mutually agreeable solution," according to Black Law's Dictionary. Mediation is a process in which two parties meet to try to resolve their disagreement with the help of a third party. A third person is referred to as a Mediator. The mediator is a professional, neutral third party who assists the parties in resolving their disagreement or conflict. Mediation is a completely voluntary practise with no legal ramifications.

Mediation is a non-formal method that the parties themselves schedule or agree upon. A mediator can be any professional or counsellor whose job it is to assist two parties in resolving their differences. Mediation is a non-binding, flexible, and private process.

The parties and the mediator meet for mediation conferences or meetings in a mutually suitable location. The parties are not required to have a legal representative. There are no standard rules or regulations governing the mediation process. How, when, and where the mediation meeting is held, as well as who should be the mediator, are entirely up to the parties. Mediation is a good technique of resolving disputes because it is informal and not legally binding. It acts as a talk with professional assistance. Business transaction issues, marital matters, pre-divorce counselling, private injury difficulties, and other cases that do not involve complex procedures or evidence issues are often well suited for mediation.

Conciliation, like mediation, is a voluntary and flexible process in which a third party acts as a mediator between two parties and assists them in reaching an agreement. A Conciliator is the third person involved in Conciliation. The sole difference between mediation and conciliation

[22] UNCITRAL Model Law on International Commercial Arbitration (United Nations 1994)

is that conciliation begins with a proposal to conciliate made to any of the parties. A conciliator's job is to express and communicate one party's remarks, requests, or wishes to the other. Both parties may make statements to the conciliator orally or in writing, and the exchange of statements takes place through the conciliator.

The parties choose the conciliator in the same way they choose the arbitrator or mediator in arbitration or mediation. The conciliation procedure begins with one of the parties sending the other a conciliation invitation, and it is up to the other party to accept or decline the invitation to conciliate or settle. Conciliation is codified and controlled in India under the Arbitration and Conciliation Act, 1996, despite the fact that it is totally voluntary. When the parties do not agree to voluntary conciliation and do not wish to meet to resolve their dispute, it can become a mandatory process. In circumstances involving labour conflicts or domestic concerns, mandatory conciliation is widespread.

- **Negotiation**

Negotiation, unlike arbitration, conciliation, and mediation, does not involve a third party in the resolution of disputes. Negotiation is a process in which two or more parties communicate directly or indirectly to make their respective arguments before reaching an agreement or closure. No party is obligated to participate in the negotiation and is free to accept or reject the other party's or parties' points. A buyer and a vendor, for example, are negotiating the price of items. Parties communicate their wishes or demands in a completely casual manner, and it is up to the other party or parties to accept or reject such wishes or demands.

2. Merits of Alternative Dispute Resolution

i) Time Saving - Unlike litigation, alternative conflict resolution takes less time because it does not require many procedural stages. It saves time for both the parties and the courts.

ii) Cost-Effective - Alternative conflict resolution is cost-effective because the parties do not need to pay a lawyer or expert witnesses, saving money. Various other procedural expenditures, like as court fees, are also saved.

iii) 'The Choice Is Yours' - Unlike litigation, where the parties cannot pick their own arbitrator, mediator, or conciliator, the parties are free to choose their own arbitrator, mediator, or conciliator. The protocol, location, and conduct of the resolution meeting are all up to the parties' discretion.

iv) Independence - Only arbitration is legally binding; other forms of alternative conflict settlement, such as mediation, conciliation, or negotiation, are not. The parties may or

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may not achieve an agreement, and the parties may or may not follow the third person's directions. The parties, in essence, have the authority to make their own judgments.

v) Confidentiality - If the parties agree, ADR processes and their outcomes or conclusions can be kept completely confidential.

3. Demerits of Alternative Dispute Resolution

i) No promise of a resolution - with the exception of arbitration, alternative conflict resolution does not guarantee a resolution. It is possible that the parties will not always be able to find a solution to their concerns.

ii) Not suitable for all types of disputes – ADR proceedings only address financial or civil problems. It does not deal with criminal or complicated legal issues.

iii) No Safeguards - Arbitrators, mediators, or conciliators, for example, cannot issue injunctions commanding a party to do or refrain from doing something. The parties are also without any legal protection or safeguards provided by the courts.

4. Legislations on ADR in India

In India, there are a variety of ADR laws. The following is a list of statutes:

- The Legal Service Act of 1987 governs Lok Adalats.
- The 1996 Arbitration and Conciliation Act (The law of arbitration in India is founded on English common law, and the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules of 1976 were used to draught this act.)[23]
- Mediation, conciliation, and pre-settlement of disputes are all covered by Section 89 of the Code of Civil Procedure, as revised in 2002.

5. Future of ADR in India

There are 33.84 million cases pending in district courts and 4.57 million cases pending in high courts.[24] Furthermore, there are 35.6 percent vacancies in high courts and 21.4 percent vacancies in the district level judiciary.[25] Courts in India are currently overcrowded, making it impossible to obtain prompt resolution of any case. Litigation is also fairly expensive at the moment. ADR is the finest approach for resolving a dispute in a timely and cost-effective

[23] Jagdeep Singh Bakshi, Arbitration law in India: Everything you want to know, The Statesman (May 21, 2019 8:04 pm) Available at: https://www.thestatesman.com/india/arbitration-lawin-india-everything-you-want-to-know1502757528.html

[24] 'E-Courts Services' https://ecourts.gov.in/ecourts_home/ accessed 15th January 2022

[25] 3 As per the statistics released by the Department of Justice on 1 May 2020, 385 out of 1079 positions were lying vacant in the High Courts. See Department of Justice, 'Statement Showing Sanctioned Strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts (as on 01.05.2020)' accessed 15th January 2022

manner. In addition, courts are pushing out-of-court settlements and supporting the ADR system. This may be seen in the Supreme Court of India's decision *in Salem Advocate Bar Association v. Union of India,*[26] when the court took a strong pro-mediation attitude. People in India are becoming more aware of the benefits of ADR as time goes on, and parties themselves are looking forward to it. In today's world, arbitration and mediation are used to resolve a variety of issues. Many international disputes are also handled using the ADR process. Many institutes have been established in India to provide training to ADR professionals, particularly Arbitrators and Mediators, so that they can obtain experience in their fields of interest. Prior to COVID, these operations were mainly carried out by physical means in India (and other nations), but this is changing now. There is a trend toward resolving conflicts online, with E-Arbitration and E-Mediation procedures becoming more common. Many E-Arbitration centres have opened and begun to operate.

It can be claimed to benefit everyone in some ways because it saves a lot of time and resources in every individual arbitration or mediation. Even judicial hearings are conducted by video conferencing, which has been observed to be a cost-effective and readily fixable technique of litigation. Because we have all technology resources that can be easily exploited, all of these procedures taking place can be regarded to be the future of dispute resolution. Even the court has recognised the need for Online Dispute Resolution on occasion. According to Hon'ble Mr. Justice N.V. Ramana, online dispute resolution can be utilised to successfully resolve familial, commercial, consumer, and business issues.[27] The legitimacy of online arbitration was accepted by the court in the cases *Trimex International v Vedanta Aluminium Ltd*[28] and *Shakti Bhog v Kola Shipping.*[29] On the other hand, because the system is evolving, many people have found it difficult to transition from a traditional pattern to a new pattern. There are a variety of causes for encountering such issues, including a lack of thorough knowledge of current technology, a lack of confidence in working on a new pattern, and so on. During this pandemic, however, people are doing their best to adapt to the new normal. Even during the pandemic, e-Lok Adalats were effectively organised in Chhattisgarh and Karnataka.[30] As an illustration of such evolutions, consider the following. Similarly, in the next days, numerous new strategies will be applied and adopted to meet the demands of the moment and to move forward toward

[26] Salem Advocate Bar Association v Union of India AIR 2005 (SC) 3353
[27] Justice N.V. Ramana, 'Delay reduction at different tiers of the court system, pre-trial settlement (use of conciliation procedures for dispute resolution) – The experience of the Supreme Courts of Shanghai Cooperation Organization (SCO) countries' accessed 15th January 2022, See also 'Justice Ramana Tells SCO to Harness Technology To Resolve Disputes' (India Legal, 21 June 2019) accessed 29 October 2020
[28] Trimex International v Vedanta Aluminum Ltd 2010(1) SCALE574
[29] Shakti Bhog v Kola Shipping (2009) 2 SCC 134
[30] Mustafa Plumber, 'First 'Virtual Lok Adalat' Held In Karnataka', (Live Law, 15 July 2020)

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a progressive future.

VII. Conclusion

The current increase in disputes is leading in an increase in cases in the courts of law, which further delays the delivery of justice because the courts are already overburdened with cases, as described in one of the preceding paragraphs. Furthermore, the traditional system of conflict resolution has various disadvantages (one of the most significant being a lack of effective communication between the parties), so in this circumstance, we must apply the ADR mechanism as soon as feasible. Although ADR (particularly arbitration) is used to resolve disputes in economic concerns, there is a need to expand its scope. Initiatives have been launched at many levels to make this practise more widely adopted. Courts set up mediation centres, and the court tries to settle disputes through mediation. Different committees have been formed over time, and various amendments and legislation have been introduced to broaden the scope of ADR, but these initiatives will only be successful if parties to a dispute look forward to resolving their disputes through ADR at any level, whether pre-litigation or post-litigation. This is because such initiatives are useless unless the parties make up their minds to resolve their dispute through the ADR system. Even if they are forced to do so, the outcome will be meaningless because mutual consent to a decision can never be reached in such circumstances. As a result, in such a situation, the masses will play a significant role. As many individuals in the country are unaware of this notion, it is also necessary to raise public knowledge about this mechanism and how it might benefit them. Apart from that, there is a shift in ADR medium after COVID. Things are done in virtual form, which has numerous advantages and disadvantages. In this situation, it is critical for professionals and, to a lesser extent, parties to have a thorough understanding of the current technology, as it has become the new normal in our daily lives. Though we expect things to return to normal, the current pattern will have a significant impact. Furthermore, keeping all of the points discussed in mind, we need to look forward to this mechanism on a large scale (though many of us are) and make it the future of dispute resolution in India so that we can secure justice in less time and at a lower cost, as the right to speedy justice is a fundamental right of every individual.

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