

WHAT IS ADR ?

ADR in simple terms is Alternate Dispute Resolution and the conventional Courts use formal system of redressal applying various rules of law. A dispute is basically 'lis inter parties' in which two parties contest their case and one party wins and the other party loses. The justice dispensation system has found an alternative to Adversarial litigation in the form of ADR Mechanism where no party loses in case of alternate dispute resolution which can be categorized in four broad heads which are 1. Arbitration 2. Mediation 3. conciliation 4. Judicial settlement: Includes settlement through Lok Adalat, as such "The Legal Services Authorities Act, 1987" has also been amended from time to time to endorse use of ADR methods. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes. Mediation, Conciliation, Negotiation, Mini-Trial, Consumer Forums, Lok Adalats and Banking Ombudsman have already been accepted and recognized as effective Alternative dispute resolution methodologies. Alternative dispute resolution has greatly expanded over the last several years to include many areas in addition to the traditional commercial dispute in the form of arbitration, mediation and conciliation which has become an important first step in the dispute resolution process. Arbitrators and mediators have an important role in resolving disputes. Mediators/Conciliators act as neutrals to reconcile the parties differences before proceeding to arbitration or litigation. Arbitrators act as neutral third parties to hear the evidence and decide the case. Arbitration can be binding or non-binding as the Arbitration Act of 1940 proved ineffective for early settlement of disputes by arbitration, the first major step taken in this direction was the introduction in Parliament of the Arbitration and Conciliation Bill, 1995. The provisions of the Bill were promulgated as Ordinances on 16th January 1996 and again on 26th March 1996. The Bill was finally enacted as the Arbitration and Conciliation Act, 1996 and was brought into force with effect from August 22, 1996. This Act is based on the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules, which provides the basis for the growth of the ALTERNATE DISPUTE RESOLUTION (ADR) movement in India on scientific lines. Being based on the UNCITRAL model, this legislation is hoped that it will help to build the confidence among foreign parties intending to enter into long-term commercial relations with their Indian counterparts.

ADR mechanism is a win – win process where no party wins or no party loses. The system of village panchayats is a ADR process of redressing the disputes where both the parties come face to face and they work out the moralities and reach to an amicable solution. The Law Commission of India in its 129th Report recommended for the Alternate modes of Dispute Redressal and the CPC envisages the mechanism of ADR in section 89 as amended section which is mandatory for court to refer the dispute after the

issues are framed for settlement of disputes outside the Court (under Clause 7 of the CPC Amendment (Bill), 1999). The ADR mechanism reduces the burden of appellate courts as well and also it saves the valuable time and energy of the courts which can be utilized erstwhile in other matters pending before court and it renders justice on time (Justice delayed is justice denied, but ADR saves time and timely judgment is possible). The ADR practitioner therefore acts like a healer of conflicts rather than a combatant. The resolution of disputes is so effective and widely accepted that Courts (*Insitanna v. Viranna*; AIR 1934 SC 105, the Privy Council affirmed the decision of the Panchayati and Sir John Wallis observed that the reference to a village panchayat is the time-honored method of deciding disputes) have more often recognized them. ADR features include severability, flexibility, party-participation, consensus, self-reflection, preservation of ongoing relationships or peaceful termination of relationships involving the principles of natural justice. ADR fosters peaceable and healthier inter-personal interactions in the long term, thereby pre-empting the causes of conflict in the society. ADR avoids protracted litigation and is based on the grounds of realities verified in person by the adjudicators and the award is fair and honest for the settlement of doubtful claims based on legal and moral grounds. The benefits of such processes in ADR are further fortified from the fact that eminent legal personalities, such as Mahatma Gandhi, Abraham Lincoln and Nani Palkhiwala have taken pleasure and pride in continually settling cases out of court, in uniting the parties driven as under by conflict and discouraging litigation. In the words of Guatam Budhha, "Better than a thousand hollow words is one word that gives peace", which even is reflected in the famous Sanskrit quote "santosham paramam sukham". Mediation is one of the modes for attainment of 'Peace'. An evaluation of the usefulness of anything presupposes an awareness of what it is and the particular value that it has to offer and the Speedy Redressal of disputes in an amicable way is the hall-mark of civilization in the Modern world.