

## Exploring the Emerging Dimensions of Alternative Dispute Resolution System in India

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### Abstract

**Alternative dispute resolution** systems currently have worldwide relevance. Conflict of interest is natural in society. This conflict increases even more among humans from a sense of entitlement. Due to worldwide awareness and commitment towards rights, conflicts are increasing everywhere. There is a state-provided system for the settlement of such disputes through which a permanent solution is found and an effort is made to ensure justice, although in many cases justice is not decided. The first *Chief Justice* of the *Supreme Court* of independent India, *Mr. Hiralal J. Kania*, when he was a judge in the *Patna High Court*, had interrupted *Dr. Rajendra Prasad* who was practicing there, and said, that "there is no justice in the court but there are decisions. Because the courts depend on evidence". Many times, due to a lack of relevant evidence, the nature of the decision changes, resulting in a decision but not justice. Fueled by state power, the mainstream judicial system is extremely slow-moving and often delays and defeats justice. Due to the above reasons, it is natural to feel deviation or disillusionment with the mainstream judicial system. Therefore, in this sequence, a need was felt to consider alternative means. *Necessity is the mother of invention*. Thus, the need for alternative means played an unforgettable and admirable role in giving birth and nurturing the alternative dispute resolution system and it was discussed all over the world and a mechanism was developed by which people could be provided reasonable remedies.

In the presented research paper, *the emergence, development, and global utility* of alternative dispute settlement systems have been analyzed. It may be possible that the parallel system is more painful for the aggrieved party because the parallel system also makes the multiplicity of legal proceedings visible.

Key Points: Dispute Resolution System, Decision, Justice, Time Consuming Process.

### Introduction

**Alternative dispute resolution (ADR)** is a process by which any dispute or conflict is resolved without courtroom proceedings. It is an apparatus which is used by the parties to resolve their conflicts. Alternative dispute resolution has come by inclusive acceptance in the public and the

legal profession. Anyone who doesn't wish to go to court over a civil matter is free to choose ADR. When a lawsuit is undecided, in some cases it is suggested by the courts to the parties to use ADR to assist in resolving the disputes more friendly and cordially and lessen the court's heavy caseload. The Indian judicial system is categorized as one of the pristine judicial systems. In India, courts are teemed with long unresolved cases. More than a thousand fast-track courts have been established and are already functioning to hear and adjudicate the cases. Despite these, the issues remained unresolved and the pendency of the cases is increasing. Alternative Dispute Resolution is a very useful tool in dealing with such a situation. It deals with the dispute peacefully where both parties accept the outcome.

The conceptualization of the **Alternative Dispute Resolution (ADR)** mechanism is proficient in providing an alternative to the conventional procedure of settling the altercation. Where the people cannot resolve the matter by any kind of negotiation or alternative dispute resolution solves all such cases which incorporate civil, family, industrial, commercial, etc. Typically, Alternative Dispute Resolution uses a nondiscriminatory third person who finds a solution by helping the parties to communicate, discuss the differences, and resolve the dispute with each other peacefully. It is a procedure that allows the individual or group of individuals to maintain cooperation and social order and provides a favorable time to reduce animosity.

### **Origin of Alternative Dispute Resolution in India**

When we look back in time, we realize that Alternative Dispute Resolution (ADR) has never been a foreign notion in India. This has been done since immemorial. Indian people believe that whatever dispute arises should be resolved behind closed doors as this is seen as a way to safeguard one's reputation in society. Hence, since the past, the alternative dispute resolution system has had an ancient connection in India. In early times in India, where there were Kulas . People generally used to be domiciled in joint households. The headman of the family settled the dispute among the kulas. Accordingly, when people had common commerce, trade, or shrenis , they must appoint a neutral person who would help them to find the solutions for the conflicts.

We can also see that Alternate Dispute Resolution is mentioned in the Bhagwat Puran *Samundra Manthhan*<sup>1</sup> is a great example of resolving the disputed conflict between the *Devas and Danavs* Samundra Manthhan was performed in the *Ksheer Sagar* with the help of *Mandar Giri* and the **serpent king Vasuki** was used as the rope to churn the ocean. During the churning process, several divine objects were produced, including **Kamadhenu**, the wish-granting cow, *Uchhaisravas*, the divine horse, and many others. *Dhanvantri* emerged with a pot containing **Amrit (immortal nectar)** on which the conflict arose. The devas managed to secure it and prevent the asuras from getting it. The story of Ksheera Sagara symbolizes the triumph of good over evil and the power of the divine to overcome obstacles. It is also a reminder of the importance of perseverance and hard work in achieving one's goals thus to resolve the conflict without the war

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<sup>1</sup> Samundra Manthhan- ShriMadbhagwat Puran: Skandha VIII Chapter, 5-12

between the *Devas and Danavas*, *Lord Vishnu* took the *Mohini Avatar*<sup>2</sup> Although the demons did not get the nectar as per the karma, they presented the form of an alternative dispute resolution system in front of everyone.

Similarly, *Ramayana*<sup>3</sup> depicts that before the war between *Ram and Ravana*, *Lord Ram* had sent *Angad* to convince *Ravana* and inspire him to avoid the war as a form of *conciliation*. Even in *Mahabharata*<sup>4</sup>, before the war between *Kauravas and Pandavas*, *Lord Shri Krishna* tried to convince the *Kauravas* and suggested giving them only *five villages*, although the *Kauravas* did not accept this and a terrible massacre took place and the *Kauravas* were defeated. Thus, in a religious nation like India, whenever power was used by pious people efforts were always made to convince the opposition. This shows that alternative dispute resolution is used for resolving conflicts. We can see how alternative dispute resolution has evolved and changed over time.

*Stories of Munshi Premchand* is strongly rooted in the land and ethos of Indian culture. In his story '*Panch Parmeshwar*'<sup>5</sup> *Jumman and Khala* agreed to settle their property matter on such a forum. The impartial nature of the Panch and the institution of the Panchayat, which has yet to be formalized, are worthy of emulation today given the abundance of institutions like *Lok Adalat* mired in inter-institutional sluggishness and inertia. These stories are always forbear to many legal ideas and their acceptance and necessity at the rural level. *ADR was introduced through the panchayat before India became sovereign*, as one of the many ideas replicated in law after independence.

### Origin of Alternative Dispute Resolution throughout the World

To find the roots of *Alternative Dispute Resolution*, we should study our anthropological and sociological aspects to understand how ancient humans may have resolved disputes without using weapons.

These are some of the ADR techniques that originated and were used in various places in the world to resolve the dispute without the use of weapons, but peacefully.

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<sup>2</sup> <https://svastika.in/blogs/blog/story-of-mohini-avatar-of-vishnu>

<sup>3</sup> Valmiki Ramayan: Yuddha kand; Sarga 41

<sup>4</sup> Mahabharat - Udyoga Parv {Part 6 ( Bhagwat-yana Parv )}

<sup>5</sup> Panch Parmeshwar ,<https://hindikahani.hindi-kavita.com/PanchParmeshwarMunshiPremchand.php>

## **Ancient Greek Origins of the Arbitration**

The ADR can be traced back to the ancient *Greeks*. The procedure was amazingly formal of arbitration which the Greeks placed. The *Arbitrator* was chosen through a lottery system for a given case. His predominant duty was to attempt a peaceful and friendly settlement between the parties. The witnesses would be called and evidence was submitted in writing by the parties only if this didn't work.

## **Hawaiian Highlanders**

*Conventional systems* were used by *Hawaiian Highlanders of Polynesian descent* for the peaceful resolution of disputes. Under the guidance of a leader, a family coming together to discuss interpersonal problems was involved. The session leader is a person whom both the parties respect and hence, the session was led by him and the mediator has an important role. The leaders could find a solution only after listening to both sides and trying to reach a decisive point.

## **Mediation in China**

*China* always had a *conservative view* on resolving disputes, and because of that, China adopted Mediation very early, which originates in *Confucian* ethics. According to *King Confucius*, harmony should not be obstructed and adversarial proceedings contradict harmony. Chinese mediators have played quite an influential role by giving peace and friendliness. The Chinese mediators not only solved and settled the disputes but also guided the parties to have a more peaceful and friendly relationship in the future.

## **Development Of Alternative Dispute Resolution**

Resolution of conflicts through a third party is not a new fact. It has been prevailing since the primeval. It is believed that it is better to resolve a conflict inside a room with four persons rather than to take it to court because it is a matter of shame for the reputation of the family if the court has to be involved in resolving the dispute. So the Alternative Dispute Resolution system is flourishing in society as it provides the solution to the conflicts without going to the court.

With time, alternative dispute resolution has evolved. From ancient periods to the current. The development of Alternative Dispute Resolution can be discussed by categorizing it in various eras.

### **Ancient Era**

The *Samundra Manthan* was described in Shrimadbhagawat Puran where the God and demons performed the Manthan through mutual consent which was a great example of alternative dispute resolution., The *Brihadaranyaka Upanishad* <sup>6</sup> mentioned the various types of arbitral bodies

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<sup>6</sup> Brihadaranyaka Upanishad - One of the Principle Upanishads, and one of the first Upanishadic scriptures of Hinduism.

known as *Pugas, kulas shernis*,<sup>7</sup> or Panchayats which solve conflicts of various natures. The tales of *Ramayana and Mahabharat* show a strong existence of alternate dispute resolution which was accepted by the people in general.

### Pre-Independence Era

In India, alternate dispute resolution evolved with the changing eras. The **Pre-Independence era** brought provisions for arbitration through **The Bengal Resolution Act 1772 and Bengal Regulation Act 1781**<sup>8</sup>. According to this Act, both had to bring their dispute before the arbitrator with mutual consent. Until before the *Civil Procedure Code 1859* was introduced the above act was continued, and after the CPC 1859 was introduced, sections **312 to 325** dealt with the **arbitration** in the suit while **326 & 327 dealt with the arbitration without the interference of the judiciary**.

<sup>9</sup> After the **Civil Procedure Code 1908** was introduced, the disputes were referred to the Alternative Dispute Resolution Committee under section **89(1)**, and also a duty was cast on the court to help parties resolve their disputes through compromise and resolution rather than court proceedings.

India approved and adopted the *Geneva Convention in 1937*, and a corresponding statute, and thus **The Arbitration (Protocol and Convention) Act, 1937**, was enacted. At resolving problems in communities in India at the grassroots level. **Panchayats** were effective also in those days.

### After Independence

After its independence when India became an endorser of the New York Convention. *The Foreign Award (Recognition and Convention) Act, of 1961*<sup>10</sup> was embraced by India. Earlier, *The Arbitration (Protocol and Convention) Act, 1937*<sup>11</sup>, and *The Arbitration Act, 1940* were implemented. In 1985, India acknowledged and signed the **United Nations Commission on International Trade Law (UNCITRAL)**.

Ultimately, *the Arbitration and Conciliation Act, of 1996*<sup>12</sup> was introduced in 1996 which provides both, domestic and international arbitration. It followed the **UNCITRAL Model Law** and was merged into a single set of legislation revoking *The Arbitration (Protocol and Convention) Act 1937, The Arbitration Act 1940, and The Foreign Award (Recognition and Convention) Act, 1961*.

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<sup>7</sup> Pugas, kulas Shernis - Described in Brihadaranyaka Upanishad.

<sup>8</sup> The Bengal Resolution Act 1772 & 1781

<sup>9</sup> Section 326 & 327 of the Code of Civil Procedure, 1859

<sup>10</sup> The Foreign Award (Recognition and Convention) act, 1961

<sup>11</sup> The Arbitration( Protocol and Convention ) 1937

<sup>12</sup> The Arbitration and Conciliation Act, 1996

<sup>13</sup>Again in 2002, with **Order X(2) Rule 1A to 1C CPC**<sup>14</sup> reapplied with **section 89(1)**, and the Act was revisioned twice in the years 2015 and 2019 respectively.

### **Why Alternative Dispute Resolution is Necessary**

As we know India has a huge and pristine judicial system, but it is also a patent fact that it is incapacitated to treat all matters promptly and that's why there are lots of pending cases lying in the court till today. Thus, Alternative Dispute Resolution is a marvelous solution to settle disputes peacefully and without much wait. It is one of the most important duties of a welfare state to provide judicial and non-judicial dispute-resolution mechanisms to which all citizens have equal access for resolution of their legal disputes and enforcement of their fundamental and legal rights. Poverty, ignorance or social inequalities should not become barriers to it.

The system must be equally accessible to all. It must lead to results that are individually and socially just. Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man a court is the place where justice is meted out to him/her. But the courts have become inaccessible due to various barriers such as political backwardness, illiteracy, ignorance, procedural formalities and the like. To get justice through courts one has to go through the complex and costly procedures involved in litigation. One has to bear the costs of litigation, including court fee and, of course, the lawyer's fee. A poor litigant who is barely able to feed himself will not be able to afford justice or obtain legal redressal for a wrong done to him, through courts. Further a large part of the population in India is illiterate and live in abject poverty. Following are several reasons why Alternative Dispute Resolution is necessary.

#### **1. Speedy disposal of litigation**

Alternative Dispute Resolution is necessary for solving the conflicts between the parties because it takes less time to resolve the dispute than compared to the Courts.

#### **2. Settlement of disputes at a reasonable cost**

The Alternative Dispute Resolution allows the parties to resolve the dispute effectively and peacefully at a reasonable cost without paying huge sums of money to the advocates. **Article 39(A)**<sup>15</sup> under the Directive Principles of State Policy of the Indian Constitution also describes free legal aid for every citizen of the nation for fair justice. Help of this provision can also be taken.

#### **3. Friendly and Peaceful ambience**

As we discussed before in India, there is a belief and trend among the people that first of all the person should settle the dispute in a closed room with four people instead of going to court because

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<sup>13</sup> The Arbitration (Protocol and Convention) Act, 1937 & Arbitration Act, 1940

<sup>14</sup> Order X(2) Rule 1(a) of The Code of Civil Procedure, 1908

<sup>15</sup> Article 39(A) of the Constitution of India, 1950



it tarnishes<sup>16</sup> the reputation in the society. Thus, the Alternative Dispute Resolution mechanism plays an important role in dealing with such a situation. It provides the parties with a friendly, peaceful, tranquil way to resolve the dispute without any damage to the reputation of the parties.

## **Types of Alternative Dispute Resolution**

India is a center of disputes, Not unaware of the alternative disposal arrangements, resolving disputes in public opinion through mutual dialogue and rational intervention of the intellectual, impartial people. This modus operandi has been widely prevalent. In sequence with these public sentiments, the legislative reaction in modern times was also reflected. These are the following types of Alternative Dispute Resolution are prevalent in India.

### **1. Arbitration**

**Arbitration** is the method of Alternative Dispute Resolution. The arbitration process always needs a *valid arbitration agreement*, which has to be made before the occurrence of the dispute. It has been defined in **Parts I and II** of the *Arbitration and Conciliation Act, of 1996*. This method is used for resolving the dispute outside the court between the parties. This is done by appointing arbitrator(s) by both parties. Any type of arbitration irrespective of its nature is statutorily acknowledged by India within the scope of the Arbitration and Conciliation Act, 1996.

Any of the parties within this contract, where the arbitration clause has been given can invoke the arbitration clause.

In the case of *State of U.P Vs Tipper Chand*<sup>17</sup>, In this case the plea found favour with the trial Court as well of the appellate Court but was rejected by the High Court in revision on the ground that it merely conferred power on the Superintending Engineer to take decisions on his own and that it did not authorise the partis-to refer any matter to his arbitration. Holding, in conformity with the judgment of the High Court, that Clause 22 above extracted does not amount to an arbitration agreement, Honorable Supreme Court said that there is no force in this appeal which is dismissed with the costs. According to the Court, this only empowers the Superintendent Engineer to preside over and exercise administrative jurisdiction over the implementation of the work

### **2. Conciliation**

**Part III** of *The Arbitration and Conciliation Act, 1996* describes the **Conciliation** method for resolving the dispute. **Section 61 to section 81**<sup>18</sup> of the *Arbitration and Conciliation Act, 1996* deals with the Conciliation. Conciliation is a pliable and casual method of Alternative Dispute Resolution where the disputing parties resolve their disputes with the support of one or more conciliators who act impartially and help the parties reach a friendly settlement. A conciliator is more helpful in convincing the parties to settle the dispute by proposing the settlement at any stage

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<sup>16</sup> Tarnish - spoil

<sup>17</sup> AIR 1980SC1522

<sup>18</sup> The Arbitration and Conciliation Act ,1996

of the conciliation proceedings. *Sections 62 to 81 of the Arbitration and Conciliation Act 1996* provide an absolute and pervasive system for Conciliation. All the steps for conciliation, From the commencement of the process of Conciliation, evidence, roles of the Conciliator, the settlement of the dispute, etc. to the settlement of the dispute are completely included in the above-mentioned sections.

### 3. Mediation

**Mediation** is one of the methods of Alternative Dispute Resolution which helps the parties to resolve their conflicts with the help of a third person. *Section 89*<sup>19</sup> *read with Order X-IA, IB, and IC of the Code of Civil Procedure, 1908.* In mediation, both parties work together with the third person i.e. the Mediator in bringing a possible peaceful solution to the dispute.

It is a voluntary process where the mediator helps the parties to understand the matter, transfers the information between the parties, and defines the process in a way that allows the parties to divulge their aspects civilly.

### 4. Negotiation

**Negotiation** is an informal process that two or more parties use to end a dispute and reach a solution. This is the most common way used by the Indians.

Negotiation is a flexible process that is performed with the consent of both parties and the parties themselves are responsible for the outcome. *Negotiation is the most friendly and peaceful process of Alternative Dispute resolution* that only allows the parties to enter the negotiation rather than the interference of any third party. It is less expensive as there is no expense for the court, it is also a faster process because there is no interference from any third party.

### 5. Lok Adalat

**Lok Adalat** is a method of Alternative Dispute Resolution that is used as a tool to solve any case without the involvement of advocates or the Court. Lok Adalat, also known as **Gandhian Law**, was traditionally called Panchayat and is an Arbitration in the legal field. Lok Adalat was acknowledged by the **Legal Services Authority Act**<sup>20</sup> which established the statutory provisions for the function and constitution of the Lok Adalat. It is more *cost-effective, faster, and result-producing*.

If a case is pending within the jurisdiction of the Lok Adalat and has been brought before the Lok Adalat, the Lok Adalat has the power to decide the case, and if both parties mutually agree to decide and settle the dispute in the Lok Adalat. The decision of the Lok Adalat will be final and mandatory for both parties and will not be appealed against in any Court.

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<sup>19</sup> The code of Civil Procedure, 1908

<sup>20</sup> The Legal Services Authority Act, 1987



## 6. Med-Arbitration

*Med-arbitration* is a hybrid method of Alternative Dispute Resolution, it is made with two words: *Mediation and Arbitration* (*Mediation+Arbitration=Med-Arbitration*) in which the parties with consent allow a mediator to transform automatically into an Arbitrator who can make a legally binding decision if the mediation fails to resolve the pertinent dispute. Like the decisions that are submitted in the arbitration proceedings, similarly, the decision made by the arbitrator will be final and enforceable, and the arbitration steps will be legally binding. Med-arbitration is a two-step process that is mainly used in resolving a wide range of commercial Disputes.

## 7. Medola

*Medola* is an Alternative Resolution method that is used when the parties can not solve the conflicts by mediation. In this method, the third person trying to solve the conflict becomes the arbitrator who is an unbiased person and tries to solve the dispute by taking the points of dispute. That person keeps the agreed point aside and then works to settle the dispute by taking a middle way for the satisfaction of the parties in dispute.

## 8. Mini-Trial

*Mini-trial* is also an alternative dispute resolution method. It is used as a tool to resolve disputes informally by allowing the parties by mutual consent to choose any undisputed and impartial third person before whom they can present their case and when the third person understands the matter, then he puts forward all the positive and negative points. After that, he explains the case and also gives appropriate suggestions for the resolution of the conflict.

## Status of Alternative Dispute Resolution in India

In India, we have seen that since ancient times, alternative methods of resolving any dispute have always been given priority. Be it *Samudra Manthan*, *Ramayana*, *Mahabharata*, or popular stories like *Panch Parmeshwar*, alternative dispute resolution has always been considered and given priority. Since then, a variety of techniques have developed. Even after independence, many legal provisions have been made for alternative dispute resolution. The *Legal Services Authorities Act was passed in 1987*<sup>21</sup> to buoy extra-judicial settlements and then the *Arbitration and Conciliation Act 1996 was passed*. *Lok Adalat* was recognized by the *Legal Services Authorities Act* which enables parties to settle disputes amicably and obtain solutions. Its decision will be final and binding on all parties.

In 2021, the *Arbitration and Conciliation (Amendment) Bill, 2021* was passed in the Lok Sabha to prevent misuse by fraudsters to obtain awards in their favor.

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<sup>21</sup> The Legal Services Authority Act, 1987

In 2022, significant changes to the Arbitration Bill were recommended by the *Parliament's Standing Committee on Law and Justice*. After that the said amendment was passed by the Parliament and implemented.

**Online Dispute Resolution (ODR)** – This process of ADR uses digital technology along with mediation or negotiation to settle the dispute between the parties. The concept of online dispute resolution and its importance was discussed in the report '*The Future Dispute Resolution*'<sup>22</sup> released by *NITI Aayog*. It also enables parties to use information and communication technologies (ICT) to resolve disputes.

### **Status of Alternative Dispute Resolution at international Level**

When we talk about alternative dispute resolution systems at the international scale, it is always necessary to talk about the peace conferences held in **The Hague in 1899 and 1907** to promote peace and avoid wars.

This topic would be incomplete if we did not mention the *Covenant for the League of Nations*. It installed the permanent Court of International Justice which provides resolution of many conflicts. Post World War II, the **United Nations** was established and its charter was created. The *International Court of Justice* was founded as the *principal judicial organ*. It should adjudicate conflicts as per the regulations of the international law.

Today, the UN Charter provides a framework that helps to understand international dispute resolution better. The United Nations' main purpose is to *maintain international peace and security*.

**Article 2(3)**<sup>23</sup> of the UN Charter states that – *All Members shall settle their international disputes by peaceful means so that international peace, security and justice are not endangered*. This means that each member state must resolve its conflicts peacefully and without hindering international security.

**Article 33**<sup>24</sup> of the UN Charter states that – *Any dispute that is likely to endanger the maintenance of international peace and security must first be addressed by negotiation, mediation, or other peaceful means, and states that the Council may ask the parties to use such means to resolve their dispute*. This means that Article 33 lists various dispute resolution methods classified into diplomatic, political, and legal categories for resolution with binding or non-binding situations.

### **Conclusion**

Therefore it is clear that the concept of Alternative Dispute Resolution is not a new concept. It is the alternative way to resolve any conflict in a peaceful and friendly manner. It is a method to sort

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<sup>22</sup> The Future Dispute Resolution released by NITI AAYOG

<sup>23</sup> Article 2(3) of the UN Charter

<sup>24</sup> Article 33 of the UN Charter

out the conflict without the involvement of the Court. The origin of the Alternative Dispute Resolution explains its importance in society.

John F. Kennedy, former US President said, "Let us not negotiate with fear but let us not fear to negotiate."

None can deny that our cultural heritage is no different. Mahatma Gandhi advocated conciliation and mediation as a practicing lawyer in South Africa and said that it was the duty of lawyers to make efforts to settle disputes and that by doing so, lawyers would not be losers. He said that he, in fact, built up a reputation that he would always appear for the party whose case was invariably the just one. Therefore, the systems of conciliation and mediation are as much part of our cultural heritage as they are in any other country. Human beings, when it comes to disputes relating to money or property or status, are all the same, everywhere round the globe. Selfishness, strength of money-power for protracting litigation or ego are common features. If the conciliation/mediation solution have been successful in other countries, they must and will succeed here also. Where the problems are same, the solutions could be similar, though there may be differences in degree or the methodology adopted. The procedure for conciliation/mediation are today part of the systems of almost every judicial administration both in common law countries as well as in countries governed by civil law systems. The fact that we have woken up in 1999 and have started to enforce sec. 89 of the Code of Civil Procedure only from 1st July 2002, should not matter. Better late than never.

We have various types of Alternative Dispute Resolution systems such as *Mediation, Negotiation, Conciliation, Arbitration*, etc. which are used as a tool to resolve any conflict without any court proceedings to save time and lessen the burden of the case of the courts. It also prevents the people from losing their reputation if the court has to interfere in the matter. It provides a friendly and peaceful atmosphere to settle the case at a reasonable cost with a speedy disposal. Despite all this, the usefulness and benefits of the alternative dispute resolution system are not reaching the general public as much as they should. The reason behind it is lack of awareness. There is a need to have more and more institutions which can prove helpful in spreading awareness, can control awareness programs, can finance them, and have someone to discharge their duties. Mechanism should be created so that alternative dispute resolution system can be used more and more.

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