Q-1- The purpose of establishment of family courts 18 to promote conciliation in dispute relating to marriage and family affairs comment.

Globally, alternative dispute resolution is slowly, but steadily becoming the preferred mode for settling disputes. Many corporates including large business conglomerates are seriously evaluating the merits of mediation and conciliatory procedures to avoid lengthy, and expensive litigation given the state of courts in India and the multiple levels of appeal that tend to exhaust both parties. The Indian legislature, promoting the mediation route, has also been attempting to link the bridges so as to fall in line with the evolving global jurisprudence.

In India, the family unit continues to play a dominant role in the social structure. It has been often seen that law and religion merges and the Courts have to decide on questions which are rooted more on values and equity than the strict interpretation of law itself.

This article examines the scope of alternative dispute resolution mechanism in resolving family disputes in India and the viability of expanding the scope and functions of the family courts in India.

- The Preamble to the Family Courts Act, 1984 enacted by the Indian Parliament laws down as follows:
- "*An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.*"
- Section 9 of the said Act makes it a duty of the Court to make efforts for a settlement. It shall be worthwhile to note that the legislative intent and thought behind enactment of the said Act was to provide not only legal remedy for settlement of family disputes but ensure that estranged families avail of the services of professional and trained mediators who may provide counselling and easier settlement of disputes. Thus, this enactment can be termed as a wholesome legislation on reconciliatory modes in family law disputes in Indian matrimonial disputes.

"An **Act** to provide for the establishment of **Family Courts** with a view to promote **conciliation** in, and secure speedy settlement of disputes relating to marriage and **family** affairs and for matters connected therewith."

Q-2- Discuss the constitution and powers of Lok Adalat.

LOK-ADALATS

The establishment of Lok Adalats under the Legal Services Authority Act, 1987 is one of the alternative means of dispute resolution or redressal The preamble of the said Act shows that the Lok Adalats are constituted to provide expeditious, economical and competent legal services to the weaker Hections of the society to perform the constitutional obligations on behalf of the State. Even the commercial disputes may be adjudicated by the Lok Adalats.

What is Lok Adalat?

"The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and it's validity has not been taken away even in the modern days too. The word 'Lok Adalat' means 'People Court'. This system is based on Gandhian Principles. It is one of the components of A.D.R. system. As the Indian Courts are over-burdened with the backlog of cases and the regular Courts are to decide the cases involve a lengthy, expensive and tedious procedure. The Court takes years together to settle even petty cases. Lok Adalat, therefore, provides alternative resolution or devise for expeditious and inexpensive justice,

In Lok Adalat-proceedings, there are no victors and vanquished and, thus, no rancour.

Experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.

Lok Adalat is another alternative to Judicial Justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced Members of a Team of Conciliators."

Benefits Under Lok Adalat

(1) There is no Court fee and if Court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.

(2) The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while assessing the claim by Lok Adalat.

(3) The parties to the dispute can directly interact with the Judge through their Counsel which is not possible in regular Courts of law. (4) The award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non-appealable which does

not cause the delay in the settlement of disputes finally. In view of above facilities provided by the 'Act' Lok Adalat are boon to the litigating public they can get their disputes settled fast and free of cost amicably.

1. Establishment of Lok Adalats

Section 19 of the Legal Services Authority Act, 1987 provides that every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee, or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

Every Lok Adalat organised for an area shall consist of such number of :-

(a) serving or retired Judicial Officer, and

(b) other persons,

of the area as may be specified by the State Authority or the District authority or the Supreme Court Legal Services Committee, or the High Art Legal Services Committee or, as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

The experience and qualifications of other persons as mentioned above for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as

may be prescribed by the Central Government in consultation with the Chief Justice of India.

Rule 13 of National Legal Services Authority Rules holds that a person shall not be qualified to be included in the Lok Adalat unless he is

(a) a member of Legal profession;
(b) a person of repute who is especially interested in the implementation of the Legal Services Schemes and Programmes,

or

(c) an eminent social worker who is engaged in the upliftment of the weaker section of the people, including the Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

Section 19 of the Legal Services Authority Act, 1987 further provides the experience and qualifications of other persons as mentioned earlier for Lok Adalats other than those who are to be prescribed by the Central Government in consultation with the Chief Justice of the Supreme Court, shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

2. Jurisdiction of Lok Adalat

In accordance with Section 19 of the Legal Services Authority Act, 1987 Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of

(i) any case pending before, or

(ii) any matter which is falling within the jurisdiction of, and is not brought before,

any court for which the Lok Adalat is organised :

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law

3. Congnizance of cases by Lok Adalats

Sub-section (1) of Section 20 holds that where in any case pending before any court for which Lok Adalat is organised :

(i)(a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement, or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of the Lok Adalat,

the Court shall refer the case to the Lok Adalat :

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of Clause (i) or Clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

Sub-section (2) of Section 20 provides that notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under Section 19 may, on receipt of an application from any one of the parties to any matter which is falling within the jurisdiction of, and is not brought before any court for which the Lok Adalat is organised that such matter need to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination. However no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

Where any case is referred to a Lok Adalat under sub-section (1) or

sub-section (2) of the Act the Lok Adalat shall proceed to dispose of the case

or matter and arrive at a compromise or settlement between the parties.

Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of natural justice, equity, fair play and other legal principles.

Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record

of the case shall be returned by it to the court, from which the reference has

been received under sub-section (1) for disposal in accordance with law.

Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2) that Lok Adalat shall advise the parties to seek remedy in a court.

Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which

was reached before such reference under sub-section (1).)

4. Award of the Lok Adalat

Section 21 of the Legal Services Authorities Act provides that every

award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following the legal principles, equity and natural justice. Ultimately, the Lok Adalat passes an award, and every such award shall be deemed to be a decree of Civil Court or, as the case may be, which is final.

5. Award of Lok Adalat shall be final

The Lok Adalat pass the award with the consent of the parties, therefore, there is no need either to reconsider or review the matter again and again, as the award

passed by the Lok Adalat shall be final. Even as under Section 96(3) of C.P.C. that "no appeal shall lie from a decree passed by the Court with the consent of the parties". The award of the Lok Adalat is an order by the Lok Adalat under the consent of the parties, and it shall be deemed to be a decree of the Civil Court, therefore, an appeal shall not lie from the award of the Lok Adalat as under Section 96(3), C.P.C.

In Punjab National Bank v. Lakshmichand Rah, the High Court held that "The provisions of the Act shall prevail in the matter of filing an appeal and an appeal would not lie under the provisions of Section 96, C.P.C. Lok Adalat is conducted under an independent enactment and once the award is made by Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act when it has been specifically barred under provisions of Section 21(2), no appeal can be filed against the award under Section 96, C.P.C." The Court further stated that "It may incidentally be further seen that even the Code of Civil Procedure does not provide for an appeal under Section 96(3) against a consent decree. The Code of Civil Procedure also intends that once a consent decree is passed by Civil Court finality is attached to it. Such finality cannot be permitted to be destroyed, particularly under the Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted, hence, we hold that the appeal filed is not maintainable.

The High Court of Andhra Pradesh held that, in Board of Trustees of the Port of Visakhapatnam v. Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another, "The award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will

have the same binding effect and conclusive just as the decree passed c compromise cannot be challenged in a regular appeal, the award of the Lok on the Adalat being akin to the same, cannot be challenged by any regular remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness

of the award on any ground. Judicial review cannot be invoked in such award especially grounds as raised in this writ petition. on the

The award of Lok Adalat is final and permanent which is equivalent to a decree executable, and the same is an end In Shalendra Narayan Bhanja Deo v. State of Orissa, Constitution Bench held as follows: the litigation among parties,

A judgment by consent or default is an effective an estoppel Between the parties as a judgment whereby the Court exercises its mind on a contested case. (1895) 1 Ch. 37 and 1929 AC 482 relied on:

In In re South American and Mexican Co., Ex parte Bank of England, it has been held that a judgment by consent or default is an effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J., Lord Herschell said :

"The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end.

And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in subsequent action."

It is submitted that award passed by the Lok-Adalat in terms of compromise between the parties, is not subjected to further judicial scrutiny.

6. Powers of the Lok Adalat

Section 22 makes provisions in relation to the powers of the Lok Adalat and it provides that the Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely :

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

Without prejudice to the generality of the powers mentioned above every Lok Adalat shall have the requisite powers to specify its own

procedure for the determination of any dispute coming before it.

All proceedings before the Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Notably, Different States have made different provisions in relation to the organisation, functioning and various other aspects of the Lok Adalat.

7. Lok Adalat Award as good as Court Decision

According to the Supreme Court the award of Lok Adalat stood on

same footing as a decision of the Court. The Court further held that award passed by the Lok Adalat is the decision of the Court itself though arrived at by simpler method of conciliation instead of the process of arguments in Court. The effect is same. In the opinion of the Supreme Court the award of Lok Adalat is fictionally deemed to be decree of Courts and therefore the Courts have all the powers in relation thereto as it has in relation to a decree passed by itself. The Supreme Court disagreed with the view that the award of the Lok-Adalat could not be equated with a decree and it only incorporates an agreement between the parties and that in case of violation of the agreement or the terms of the compromise recorded in the award, the parties lose their right to get the same executed and compromise stands withdrawn while setting aside the view accepted by Kerala High Court while allowing a revision petition on a property dispute between brothers which was earlier settled by Lok Adalat, the Court said that "the view taken by the High Court, will totally defeat the object and purpose

of the Legal Services Authority Act and render the decision of the Lok Adalat meaningless.

8- Lok Adalat can pass order-only when there is compromise between the parties

The Supreme Court in Union of India v. Ananto (dead) & another, while explaining powers of Lok Adalat has held that the Lok Adalat can pass orders only when there is compromise between the parties. In the instant case direction for appointment of arbitrator was passed by the Lok Adalat when there was no compromise between the parties. It is without jurisdiction.

9. Lok Adalat can make an award touching rights of minor

The Kerala High Court in Merlin alias Sherly Augustin & others v.

Yesudas & others, held that in a matter where a minor is involved a compromise or settlement between the parties could well be accepted and acted upon by the Lok Adalat, if it is satisfied on such materials as may be produced or called for by it, that the settlement is in the interest of the minor also and that such settlement does not, in any manner impair the interest of the minor and has not been made to defeat any interest of the minor. It can also be ensured that the person acting on behalf of the minor to arrive at the settlement, does not have any interest contrary to that of

the minor in the case in question. The Court was of the view that if such yardsticks are applied and a settlement or a compromise involving a minor is recorded and let to fruitify into an award in terms of the Act, such deemed decree is sufficient enough to take care of the interest of the minor and also abound the minor in which event, recourse to provisions and procedures before the Court of wards would be unnecessary. In the present case the Court further held that the rigour of Order 32,

Rule 7 need not, by itself deter a Lok Adalat from arriving at a compromise in a matter in which the interest of minor is involved. In the circumstances of the situation in which minor is placed, it will be appropriate for the Adalat to ensure that a compromise is entered and recorded on behalf of a minor with the leave of the Adalat which could be granted on a proper application in that regard. Again having in mind the duty of the Lok Adalat to be guided by principles of justice, equity, fair play and other legal principles. So much so, if the next friend or guardian of a minor applies to

the Lok Adalat for leave to enter into any agreement or compromise on behalf of a minor with reference to the subject matter of the reference before the Lok- Adalat, it would be well within the jurisdiction and authority of the Lok-Adalat to grant such leave on being satisfied that the agreement or compromise is for the benefit of the minor. In granting such leave, it would be open to the Adalat to take stock of the entire fact situation and also insist on an affidavit being filed by guardian to the effect that the agreement or compromise proposed, is for the benefit of the minor.

Award passed by Lok Adalat-Not immune from judicial review under Article 227 of the Constitution of India, 1950

The Allahabad High Court in Dr. Smt. Shashi Prateek v. Charan Singh

Verma & another,' ruled that although the provisions of the Act are intended to make award of Lok Adalat arrived at on the basis of compromise or settlement between the parties to dispute as final and remedies of appeal, review and revision against the award of Lok-Adalats are not available under law but being a Tribunal of special nature, the remedy to recall the order/award passed by Lok Adalat on the ground of fraud or misrepresentation or mistake of fact cannot be held to be barred under law, as power to recall its order on the aforesaid grounds is inherent in every court or tribunal or statutory functionary. Similarly, awards made by the Lok Adalat organised or established under the Legal Services Authority Act, 1987 cannot be held to be immune from judicial review as High Court under Article 227 of the Constitution has ample power of superintendence over decisions of all the Courts or tribunals throughout the territories in relation to which it exercises jurisdiction, therefore, orders passed or award made by Lok Adalats organised or established under the said Act within territorial limits of High Court, are subject to judicial review on the grounds available under Articles 226/227 of the Constitution.

Lok Adalat and ADR

Merely making law is not sufficient in absence of necessary infrastructure to secure justice to poor litigants. Further, the society is to be educated and trained to avail the benefit of free legal aid.

Q-3- What is alternative dispute resolution? Explain its advantages.

During ancient time arbitration, conciliation and mediation were the dana for settlement of disputes outside the formal legal system. These alternative means were recognised not only in India but also in other parts Ava world. The, settlement of dispute outside the scope of the formal o atom may be called as an alternative means of settlement of Wanita. However, in the context of the law of arbitration the settlement of minute through a mediator is necessarily treated as an alternative means. settlement of disputes, outside the scope of the formal legal system was Availing in India before the advent of Mogul regime. India is a country of all ages and among the rural folks the settlement of disputes used to be resolved by rural intellectuals and by prominent persons of villages. On arrival of Englishmen/Britishers in India this system diminished by the inception of formal legal system.

The judicial system developed by the Britishers was very expensive and time consuming and due to these reasons the people's faith on such legal vat was being diminished. After the independence it was realised that here is noed to have such an alternative means of dispute resolving system or machinery which may be economical and less time consuming. Consequently emphasis was put on developing the alternative means for settlement of disputes which should be scientifically designed. Even, the International community paid attention towards this traditional alternative means for settlement of disputes by way of arbitration, conciliation and mediation. It is to be seen that not only in India but also in China, England and United States of America this traditional alternative means for settlement of disputes was prevailing since long. Now, the international business community is of firm opinion that alternative dispute resolution-ADR is the only means or way to get rid from the demerits of the present legal system.

It is a universally admitted fact that arbitration, conciliation and mediation are efficient alternative means for resolving disputes. Undoubtedly, these alternative means are less expensive and are not time consuming which are in fact very important factors for protection of commercial relationship.

In past years it has been witnessed that settling the disputes by the alternative means such as arbitration, conciliation and mediation and its scope have been considerably increased in the business field. Several developed and developing

countries have adopted and recognised the alternative dispute resolution for resolving the international commercial disputes. The United States of America is the first country which has no only campaigned for alternative means for settlement of international

commercial disputes but also adopted the system of alternative means of dispute settlement. It should be made clear that the alternative dispute resolution is not an alternative to the formal judicial system but only a supplement to it, its main object being to render economical and speedy disposal of disputes. Notably, negotiation, mediation, arbitration and conciliation are the system which comes within the purview of the alternative means for disputes resolution.

In view of increasing importance of alternative means for settlement of disputes, it has become necessary to train the person for this purpose and impart expertise in this field as skilled persons are required to perform under the system of alternative disposal of disputes. Thus with the object to give statutory recognition to alternative means of settlement of disputes, the necessity of an organisation was felt. On 4th December 1997 the Chief Ministers of States and the Chief Justices of the High Courts met in New Delhi to discuss at length the alternative means of dispute resolution. In the meeting it was declared that the present justice delivering system is not capable to bear the whole workload and it would be appropriate to deliver justice by the alternative means of disposal of disputes as well. Under this system there is a procedural flexibility and also it is time and money saving besides the absence of tension of regular trial.

In this context the legendaries of various fields i.e., commercial, administrative and legal unanimously constituted an institution to be called "International Centre for Alternative Dispute Resolution-ICADR. This institution was established in Delhi on 31st May, 1995 and registered under the Society Registration Act, 1960. It is an autonomous non-beneficial institution. The chief object of this institution is to inculcate and expand the culture of alternative dispute resolution. However, other objects of the International Centre for Alternative Dispute Resolution are as under :-

1. to expand, encourage and popularise the scientific means for

settlement of local, national and international commercial disputes;

2. to provide assistance and render facilities for arbitration, conciliation and mediation;

3. to develop the alternative means of dispute resolution among the communities in accordance with their social, economic and other requirements;

4. to appoint conciliator and mediator on the request made by the parties in the dispute. In accordance with the Arbitration and Conciliation Act, 1996 if the parties are unable to appoint the mediator or conciliator or arbitrator they can designate or nominate any person or institution for the appointment of the mediator. Similar power has also been conferred upon the Chief Justice;

5. to provide training and skill and also confer diploma and degrees in the field of the alternative dispute resolution;

6. to provide infrastructural facilities for education, research and training in the field of alternative means for settlement of disputes;

7. to provide scholarship, stipend and fellowship in the matter relating to alternative means of dispute resolution.

In India the system of alternative means of dispute resolution although was prevalent since ancient times but it acquired statutory recognition Ir in the 20th century. This system is mostly related to commercial disputes, thus it deserves further development.

Alternative Dispute Resolution : Why needed

Undoubtedly, Alternative Dispute Resolution (ADR) is a modern concept which has been developed to settle dispute amicably and speedily specifically relating to commercial transaction/contract.

Introduction of ADR in modern judicial system is the need of the hour

to deal efficiently, economically and to further expeditious disposal of cases. Undoubtedly, the system of adjudication needs drastic improvement and policy makers are compelled to innovate alternate mechanism. It is true that ADR helps in pre-litigation stage. While considering the legal aspect the Parliament in India

introduced the Legal Services Authorities Act, 1987 which created a legal platform for the ADR machinery for amicable settlement of disputes by setting up Lok Adalats.

The mounting arrears of pending cases in the Indian Courts involving inordinate delay in the administration of justice and the expenses of

litigation are the factors undermining the litigant's faith in the judicial system.

Now NGO's working on legal awareness campaign and legal aid are promoting the ADR mechanism.

It is submitted that ADR mechanism is proving to be an efficient

alternative for redressing grievances or answering a complaint and rendering justice which is the constitutional right of the people in a democratic governance.

Notably, due to various reasons the regular litigation has become awful on account of lethargic, inadequately equipped judicial system. However, reasons that, why Alternative Dispute Resolution is needed could be summarised as follows:

(1) Amicable settlement of disputes.

(2) Speedy disposal of dispute.

(3) Economical settlement of dispute.

(4) A time saving management.

(5) Legal recognition.

(6) Globalisation of commercial activities.

(7) Advent of multi-national corporations.

(8) Industrialisation.

1. Amicable settlement of disputes.- It has been settled now that ADR provides a friendly settlement of disputes. In business it is a prudent approach to have a competitor not a rival. In business; wisdom do not have scope for enmity. It is clear that a healthy competition brings improvement and it also effects cost of service or

commodities in every sphere. In present scenario even criminal matters are settled amicably. It would be relevant to

mention the concept of plea bargaining in the Code of Criminal Procedura, 1973 has been incorporated. Meaning thereby that in term of comprenant the compensation can be offered by accused to the complainant and the Court of Law may put its seal of approval and pass the order accordingly

(2) Speedy disposal of dispute. Alternative Dispute Resolution provides speedy disposal of dispute. Under this system there is no much scope of adjournment, stay or lengthy session of arguments ete.

(3) Economical settlement of dispute. It delivers sconomiuat solution/settlement of dispute. In other words litigation expenses and exorbitant counsel's fees could be avoided by invoking settlement of dispute by means of conciliation and mediation.

(4) A time saving management.-Alternative Dispute Resolution des also known as dispute management. This is a time saving device, wherein dispute is being settled without following the cumbersome procedure of ordinary litigation

(5) Legal recognition.-This system has been recognised in the Indian Statutes. For instance-now the Civil Procedure Code, 1908, Order XXXII-A, Rule 3 contains scope for compromise and the decree evolved from that compromise is not appealable. Notably, Section 12 of the Industrial Disputes Act, 1947 contemplated provision for conciliation as pre-requisite for any pressure tactics/collective bargaining. In the same manner Section 23 of the Hindu Marriage Act, 1955 provided the need for Alternative Dispute Resolution.

(6) Globalisation of commercial activities. At present time the globalisation of commercial activities is being campaigned not only in India but also in other countries like U.S.A., U.K., Germany and France etc. Practically it is quiet difficult to get acquainted with the foreign law. Therefore, dispute arising out of international commercial transactions needed to be settled by negotiation, conciliation and meditation etc.

(7) Advent of multinational corporations.-A number of multinational corporations are coming to invest and establish their business and also setting up their infrastructure.

These corporations have dynamic approach toward business activities. Therefore in case of dispute arising, they should be provided with machinery which deals and resolve dispute amicably and speedily. Hence, ADR is the only tool to settle dispute in question quickly and economically.

(8) Industrialisation.- No doubt that in recent past we have

witnessed a great magnitude of industrialisation across the globe and India

is not an exception to it. Thus, the reasons for adoption of ADR cannot be

postponed indefinitely

It is submitted that on account of aforesaid reasons the need of ADR cannot be simply overlooked at threshold. Once commercial transactions carried out it is natural to develop some conflict and differences and approaching ordinary court of law will be a herculean task specifically in Indian Judicial System. Hence, ADR contains way to come out while settling dispute in a most economical and conducive manner.

However, in a broad perspective ADR is not only confined to settlement. of commercial dispute, even civil and criminal matter are settled by

instrument of Lok Adalat, Nyaya Panchayats and Panchayats in India.

Methods of ADR

It is to be noted that ADR has several methods. However, the principle of natural justice is required to be followed while adopting any method under ADR. A negotiator or mediator may follow more than one method depending upon nature of dispute and strategies. Although, the methods of ADR are as under.

(i) Arbitration

(ii) Negotiation.

(iii) Mediation

(iv) Conciliation

(v) Mini trial.

(vi) Expert appraisal.

(vii) Neutral evaluation.

(viii) Hybrid arbitration.

(i) Arbitration.-It is a determination of a dispute referred to a person called on arbitrator, but an arbitrator is appointed by a third party when dispute referred to that party/person.

(ii) Negotiation. It is a method of settlement of dispute with or without the assistance of a third person.

(iii) Mediation.-It is a method to achieve a conciliated solution of

dispute.

(iv) Conciliation.-It is a process recognised under the law which is to be achieved by a conciliator.

Merits of ADR

The ADR process has the merits as under :-

(i) ADR process can be initiated at any time, whenever disputing party takes recourse to ADR.

(ii) It can provide more expeditious and less expensive settlement of dispute.

(iii) It promotes conducive and amicable mechanism.

(iv) ADR programmes are not rigid.

(v) No lawyer's assistance is mandatory, it does not mean that role of lawyer is diminished. law.

(vi) ADR concept reduces the work load of the regular Courts of

(vii) ADR helps in confining dispute as a private matter.

(viii) ADR can be used to reduce the gravity of contentious issues between the parties. There is no method which do not have its own demerits. In other words

Demerits of ADR

There is no method which do not have its own demerits. In other words particular ADR method may not suit the requirement of the parties. In over

all ADR has the following demerits-

(i) Unfamiliarity of process is a factor causing obstruction in ADR.

(ii) In case of unequal position of the parties, the weaker party may not be willing to submit to ADR process, may prefer Court's protection.

(iii) Investment of time and energy in ADR.

(iv) Lack of binding effect of solution arrived after exercise ADR process.

(v) Disputes relating to right of parties and title could not be decided by means of ADR because in such matter the decision arrived at after ADR process lacks enforcement.

(vi) Practically ADR process is slow as before initiation of said process consent of the party concerned is to be obtained.

Indian Statutes & ADR

The ADR mechanism has been statutorily recognised in Order 32A The the Code of Civil Procedure, 1908 which contains scope of compromise and decree passed on compromise between the parties, is not appealable.

Section 12 of the Industrial Disputes Act, 1947 dea's with conciliation as the pre-condition for collective bargaining. Similarly, Section 23 of the Hindu Marriage Act, 1955 recognised the necessity for ADR. However, the family Courts Act, 1984 shows a greater emphasis on ADR rather Paliatory approach for settlement of matrimonial dispute. The present Arbitration and Conciliation Act, 1996 makes provision for settlement of disputes/differences by means of ADR mechanism.

In 1984 the Himachal Pradesh High Court evolved the technique to dispose off the cases pending in subordinate courts by conciliation, with the view to reduce the

arrears of cases. Notably, this technique was in the nature of the Michigan Mediation method.

The Law Commission of India in its 77th and 131st reports suggested setting up of mediation centres across the country at least at the State and District levels to reduce the backlog of pending cases in High Courts and District Courts. In December, 1993 the resolution to this effect was passed in the conference of Chief Ministers and Chief Justices.

The Concept of ADR found a well structural place in the Arbitration and Conciliation Act, 1996 which is based on United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules, 1980. The said provisions have universal familiarity for settlement of domestic as well as international commercial disputes/differences.

By virtue of the CPC (Amendment) Act, 1999 a new Section 89 was incorporated in the Code of Civil Procedure. 1908. Sub-section (1) of Section 89 of the Code, 1908 states that "where it appears to the Court that there exist elements of settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may formulate the terms of a possible settlement and refer the same for :

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

Settlement upon reference.- When the parties come to a settlement upon a reference made by the Court for mediation and the parties want the same, there has to be some public record of the matter in which the suit is disposed off and, therefore, the Court must record the settlement and pass decree in terms thereof and, if necessary, proceed to execute it in accordance with law.

Now, it has been realised that formal legal system will not be capable to deal with the entire burden of pending cases, therefore, the present sysetm deserves drastic change for the sake of wodering litigants. Thus, it is high time to take recourse to ADR mechanism.

Difference between Adjudication and ADR process.-Basically, there are five differences between adjudication and ADR process. These are as below:

ADR : Knowing the problems in hand

It is most essential to know the problem in hand and for purpose of initiating ADR process, knowing the problem is a pre requisite. This fact can be achieved by holding interview of the parties. Thus, ascertainment of the problem can be done while establishing communication between the counsellor and parties.

Interpersonal "communication". The expression "communication" means exchanging views and feelings. Generally, it is witnessed that party submitting to ADR may not be skilful in communication and projecting points; therefore counselling is necessary process which commences after the client is thoroughly interviewed and counsellor is equipped with information to deal with the problem. The client cum aggrieved person needs guidance. A client's interview is more than just a commercial Herersation and social work and psychology are substantially connected to the process which has to last with counselling.

However, objectives of interpersonal communication are :-

(i) Reception;

(ii) Understanding;

(iii) Acceptance; and

(iv) Action.

Chief Processes of ADR

The chief processes of ADR are as under:

1. Arbitration.-It is a private adjudication of disputed matter by intervention of a neutral third party, who has been conferred power to make binding arbitral award. It

is a process in which the disputed matter is submitted to the arbitrator/arbitrators constituting an arbitral tribunal which passes a reasoned arbitral award binding on the parties.

2. Conciliation. It is a non-binding process in which an impartial person settles the dispute amicably and make recommendations pertaining to dispute. Such person is called 'conciliator'. The Industrial Disputes Act, 1947 and the Family Courts Act, 1984 provide settlement of disputes by conciliation

3. Mediation. In the process a third party assists the conflicting parties to find out a solution to their problem.

4. Negotiation.-In this process the intervention of a third party is not there. Whereas disputants take their own initiative across the table to settle their disputes. In other words it is a non-binding process in which discussions and deliberations take place between the parties or representatives of the parties specifically without intervention of a third party. However, such representatives are called 'negotiators'.

5. Expert's appraisal.-It is a non-binding process in which an expert makes investigation and submits his opinion to the parties.

6. Mini trial.-It is also a non-binding process in which disputants make presentation of their case in a summarised manner to evolve the opportunity to negotiate the disputed matter with the help of a neutral advisor, This process is also called "case presentation".

7. Hybrid arbitration. In this process arbitration is combined with another kind of ADR involving mediation and conciliation.

8. Fast Track Arbitration. It is a process in which time bound arbitration takes place.