

# B.COM LL.B VI SEMESTER CPC

## Unit-1 jurisdiction

### TOPIC:- ALTERNATIVE DISPUTES RESOLUTION(ADR)

DR. TRIPTI SHARMA  
INSTITUTE OF LAW  
98272-26254  
DATE:04-04-2020

## Introduction:-

- In this respect Page 8 206 section 89 **CPC** has introduced the concept of mandatory **ADR**. the parties are supposed to appear before such forum or authority for settlement of the case. again referred back to the court. If the matter is settled the settlement is recorded by the court and the matter is disposed of.

# Alternative dispute resolution (ADR):-

- **Alternative dispute resolution (ADR)**, or **external dispute resolution (EDR)**, typically denotes a wide range of [dispute resolution](#) processes and techniques that act as a means for disagreeing parties to come to an agreement short of [litigation](#): a collective term for the ways that parties can settle disputes, with the help of a third party. However, ADR is also increasingly being adopted as a tool to help settle disputes alongside the court system itself.

Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the [legal profession](#) in recent years. In fact, some courts now require some parties to resort to ADR of some type, usually [mediation](#), before permitting the parties' cases to be tried (indeed the European Mediation Directive (2008) expressly contemplates so-called "compulsory" mediation; this means that attendance is compulsory, not that settlement must be reached through mediation). Additionally, parties to [merger and acquisition](#) transactions are increasingly turning to ADR to resolve post-acquisition disputes.

The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. Some of the senior judiciary in certain jurisdictions (of which England and Wales is one) are strongly in favour of this (ADR) use of mediation to settle disputes. Since the 1990s many American courts have also increasingly advocated for the use of ADR to settle disputes. However, it is not clear as to whether litigants can properly identify and then use the ADR programmes available to them, thereby potentially limiting their effectiveness.

# Advantage and disadvantages of ADR:-

## Advantage:

- Suitable for multi-party disputes
- Lower costs, in many cases it's free when involving consumers
- Likelihood and speed of settlements
- Flexibility of process
- Parties' control of process
- Parties' choice of forum
- Practical solutions
- Wider range of issues can be considered
- Shared future interests may be protected
- Confidentiality
- Risk management
- Generally no need for lawyers
- Can be a less confrontational alternative to the court system

## Disadvantages:

- A need for precedent
- A need for court orders
- A need for interim orders
- A need for evidential rules
- A need for enforcement
- Power imbalance between parties
- Quasi-criminal allegations
- Complexity in the case
- The need for live evidence or analysis of complex evidence
- The need for expert evidence

# Example of ADR in india:-

- Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, [mediation](#) or judicial settlement.

Due to the extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under the National Legal Services Authority Act, 1987 is a uniquely Indian approach.

A study on [commercial dispute resolution in south India](#) has been done by a think tank organization based in Kochi, [Centre for Public Policy Research](#). The study reveals that the Court-annexed Mediation Centre in Bangalore has a success rate of 64%, and its counterpart in Kerala has an average success rate of 27.7%. Further, amongst the three southern states (Karnataka, Tamil Nadu, and Kerala), Tamil Nadu is said to have the highest adoption of dispute resolution, Kerala the least.