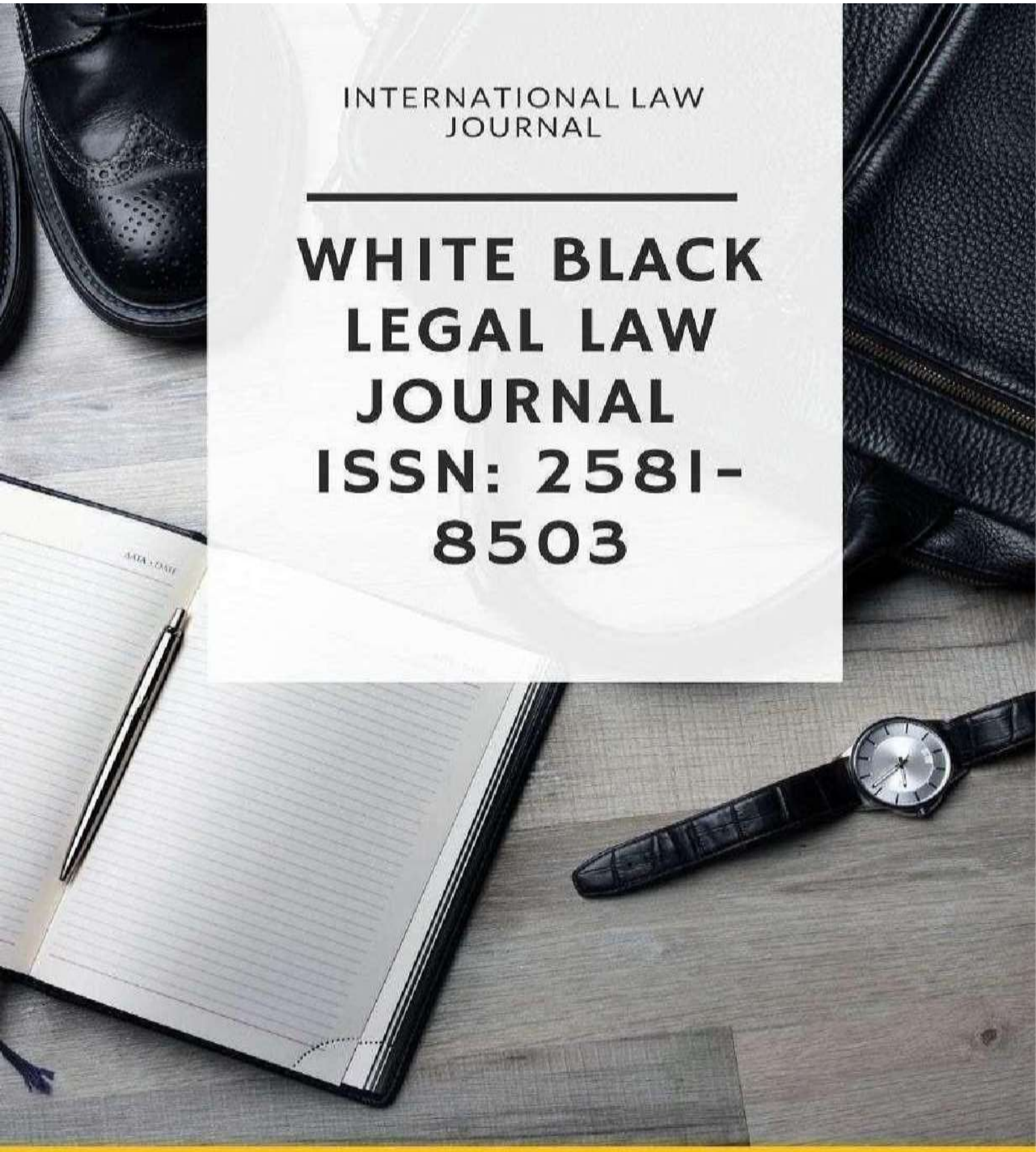

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INTRODUCTION TO ARBITRATION & EXPLORING THE CLASSICAL APPROACHES TO ARBITRATION

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"Arbitration empowers individuals and entities to take control of their destinies, resolving conflicts on their own terms while upholding the principles of fairness and justice."

- Sonia Sotomayor

1. Introduction to ADR:

In India there are over 35 lakh cases unresolved across various courts in India. "As of 31st December, 2018, there are over 60,000 cases pending before the apex court of India, over 4.5 million cases pending in High Courts across the country and over 30 million cases pending before the lower judiciary. The accumulation of cases has increased by each day passing affecting the outcome of numerous cases. This calls for an emergent need of judicial and legal reforms in a populous country like India, which will not only enable the smooth functioning of the courts in India but also at the same time can meet the expectations of the 21st Century which would preserve the courts sanctity and supports the courts imperative role in maintaining trust with the outside world & to retain their confidence in the protection bestowed to them by the law. The best alternate to the traditional litigation is Alternative Dispute Resolution (ADR) methods which provides a cost effective and expeditious dispute resolution. The main objective of using ADR methods was its procedural neutrality which enables the Arbitration Centers to take decisions on the organization of proceedings that take into account the circumstances of the case, the expectations of the parties and of the members of the arbitral tribunal, and the need for a just and cost-efficient resolution of the dispute. Alternative dispute Resolution is a very efficient method to resolve any kind of dispute" and has proven to be more effective than the traditional litigation in India. When we look at the industrial development in the country which led to escalation in growth of trade and commerce the parties also resorted to the

methods of ADR and this method is accepted not only at Indian but at an international level and these methods are really feasible in Cross-border transactions and bilateral trade relations.

Development of Alternative Dispute Resolution in India dates back to the "colonial period in the province of Bengal. The main turning point came after the Arbitration and Conciliation Act, 1996." The means of ADR were developed way before in the form of Arbitration but the act in 1996 provided it with an independent status and it was recognized officially as a means of tool to resolve disputes.

1.1.How ADR is different from traditional litigation?

Litigation incorporates a case, contention, or claim being gotten to the court. The party filling the case is named as plaintiff while being sued in a civil case, or who is being indicted in a criminal case, is known as the respondent. The preliminary is an ill-disposed procedure in which each gathering generally spoke to by its lawyer, present all fundamental proof and call observers so as to speak to its case and persuade the appointed authority and additionally jury for themselves."

"The losing party is normally qualified for bid to the relevant appellate court for looking for revocation of the decision "gave by the applicable court of first occasion. Both preliminary/first case courts and redrafting courts are constrained by the law as far as the sort of cases they can hear and the cures that can be granted.""

"Notwithstanding that the whole case process is exposed to the severe procedural standards of which the gatherings of the question in question ought to withstand. Case viably assigns force and control of the question to an outsider and the gatherings included don't hold full power over the debate. Some disputing parties become generally latent, undermined and frequently frustrated by the whole procedure.

Emergence of ADR in India: "Alternate Dispute Resolution (ADR) has certainly brought up a new system of dispute resolution in the system which is much simpler and more effective for both the parties and the judicial system in the path of justice. ADR has emerged as one of the most powerful tools in the 21st Century to end the legal battle between parties."

"New strategies for contest goals, for example, ADR encourage gatherings to manage the basic issues in question in a more financially savvy way and with expanded viability. Furthermore, these procedures host the upside of giving gatherings the chance to decrease threatening vibe, recover a feeling of control, gain acknowledgment of the result, resolve strife in a quiet way, and accomplish a more noteworthy feeling of equity in every individual case." The goals of debates generally occour

in private and is progressively feasible as well as financial, and proficient. ADR is commonly characterized into at any rate four sorts: exchange, intervention, communitarian law, and mediation. (At times a fifth sort, appeasement, is incorporated also, yet for present purposes it very well may be viewed as a type of intervention. “The arrangement of apportioning equity in India has gone under incredible worry for some reasons and most part on account of the colossal pendency of cases in courts. “It is in this setting a Resolution was embraced by the Chief Ministers and the Chief Justices of States in a meeting held at New Delhi on 4th December, 1993 under the chairmanship of the then Prime Minister, presided by the Chief Justice of India to adopt different methods and techniques to the traditional litigation.

It said: "The Chief Ministers and Chief Justices were of the opinion that Courts were not in a position to bear the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration, mediation and negotiation. They emphasized the desirability of disputants taking advantage of alternative dispute resolution which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial".

In a country where development is still continuing like India with major financial changes under route inside the system of the standard of law, procedures for swifter goals of questions for diminishing the weight on the courts and to give intends to quick goals of debates, there is no better choice yet to endeavor to create elective methods of contest goals (ADR) by setting up different center for giving settlement of debates through discretion, assuagement, intervention and negotiations between the parties.

1.2.Arbitration And Other ADR Methods:

It is a proven fact that court proceedings are a very complex and costly and time taking process and litigation in a general procedural way is not the best way to resolve cases which include accidental claims or contracts, etc. Also, a key point needs to be understood that litigation doesn’t always ends in a satisfactory manner and it always comes up across as win or lose situation and thus it leads to situations of appeals and increasing the litigation procedures.

There has come a recent survey which shows that more than 70% of the people who win the cases in courts were unhappy in the end and it is a no brainer that 100% of the parties on the losing side were happy. Thus, since in modern times we believe in the principle of talking things out it is understandable that we have to explore alternate methods to resolve the disputes in order to reduce the burden on courts and also reducing the shortcomings of litigation which comes up.

It is quiet understood that whatever alternate technique we use in order to resolve disputes can be termed as "Alternative Dispute Resolution technique". As per Sir Laurence Street, "ADR is not truly an *alternative* means of dispute resolution, in that it is not incompatible, or in competition with, the established judicial system. Rather, ADR, according to him, provides an additional range of dispute resolution mechanisms." Rather, ADR, in his understanding "provides an additional range of dispute resolution mechanisms. In fact, Sir Laurence Street has described ADR as a holistic concept of a consensus-oriented approach to deal with potential and actual disputes or conflict which encompasses conflict avoidance, conflict management and conflict resolution."

"As per the research of Professor Chris Field, the common ingredients of Alternate Dispute Resolution (ADR) are as under:

- ADR includes a range of dispute resolution processes;
- ADR does not include litigation;
- ADR is a structured informal procedure;
- ADR normally involves the intervention of a neutral third party; and
- ADR processes can be non-adjudicatory."

There are several advantages of using Alternate Dispute Resolution (ADR) methods over the traditional litigation methods. The ADR methods are time effective, cost effective, a win-win situation for both the parties'', parties have freedom to choose arbitrators/mediators/conciliators/mediators, etc.

The methods of Alternate Dispute Resolution (ADR) are very progressive in nature since they allow every party a free hand since there are no complex procedures parties act freely and thus the negotiation is done in a much better way which gives parties an option to opt for an option which is a much better way of resolving a dispute wherein they can decide the arbitrator mutually, process is not complex and thus resolving the disputes mutually and in a way where everyone is a winner.

1.3.Effect of ADR:

The method of ADR different mode of approach to a serviceable as well as reasonable option in contrast to our conventional legal framework. There are different methods of ADR strategies viz. discretion or intercession or pacification or intervention mediation, smaller than normal preliminary or private judging or last offer assertion or court-added ADR and rundown jury preliminary.

These methods have been created on logical lines in different nations like USA, UK, France, Canada,

China, Japan, South Africa, Australia and Singapore. ADR has risen as a huge development in these nations and has not just decreased expense and time taken for goals of questions, yet additionally in giving a friendly climate, a less formal and less convoluted discussion for different sorts of debates.

The Arbitration Act, 1940 was not meeting the necessities of either the global or local measures of settling questions. Colossal postponements and Court mediation disappointed the very motivation behind assertion as a method for quick goals of debates. The Supreme Court in a few cases over and again brought up the need to change the existing law. The Public Accounts Committee also expostulated the Arbitration Act of 1940. In the meetings of Chief Justices, Chief Ministers and Law Ministers of the considerable number of States, it was concluded that since the whole weight of equity framework can't be borne by the courts alone, an Alternative Dispute Resolution framework ought to be embraced. Exchange and industry likewise requested extraordinary changes in the 1940 Act. The Government of India figured it important to give another gathering and strategy for settling global and residential debates rapidly.

1.4.Concept of Arbitration:

Bernstein (1998) defines arbitration as a "mechanism for the resolution of disputes which take place usually pursuant to an agreement between two or more parties, under which parties agree to be bound by the decision to be given by the Arbitrator according to law or, if so agreed, other considerations, after a fair hearing such decision being enforceable by law." Thus, arbitration is a procedure of resolving disputes between the parties through designated Arbitral Tribunals which are either appointed by the courts or by the parties themselves. Russel (2001) in his works, describes arbitrator as a "private judge of a private court (called an arbitral tribunal) who gives a private judgment (called an award)."

Arbitration has gained recognized through arbitration clause incorporated in contracts. Christopher and Naimark (2005) say that 90% of international contracts include an arbitration clause. Arbitration and Conciliation Act, 1996 provides that the arbitration clause can be specifically enforced by the machinery of the Act. Saville (1993) state that arbitration clause is different from other clauses of the contract and an arbitration remedy clause in a commercial contract is an agreement binding upon both the parties. The parties make their commercial bargain but in addition thereto agreed on private tribunal to resolve any issue that may arise between the parties to the Contract.""

Traditionally, the legal departments at big business houses handles disputes compared to smaller

firms, where the matters are dealt in a proprietary manner. The manner in which the disputes are handled have undergone a substantial paradigm shift from the prestige type to the strategic type. The current dispute handling from a strategic perspective requires and reflects a tactical move to derive benefits or generate opportunities in a complex business environment. The burgeoning cost of litigation in terms of time, money and efforts has resulted into massive recognition of arbitration as an alternative mechanism and top management of companies have now started paying attention to this managerial activity, instead of getting into the traditional form of litigation. Companies have started practising arbitration as a tool and have now started reaping its benefits in dispute resolution which is cost and time effective. The emergence of number of institutions both national and international, in field of arbitration has resulted into various structural measures to align dispute management, strategic planning and development of appropriate teams to handle arbitrational issues" "in different business environments and industries. In India, Arbitration and Conciliation Act, 1996 (hereinafter referred as "Act") vest powers to the judicial authority to refer parties to arbitration where there is an arbitration agreement. Section 8 (1) of the Act provides that a judicial authority before which an action is brought in a matter, which is subject of an arbitration agreement, shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration."

Conciliation is a private, informal process in which a neutral third person helps disputing parties to reach an agreement. It is a process whereby the parties, together with the assistance of the neutral third person or persons, systematically isolate the issues involved in the dispute, develop options, consider alternatives and reach a consensual settlement that will accommodate their needs. Usually, the conciliator in this process would independently investigate into the dispute and draft his report indicating the method of settlement of disputes. Then it is left open to the parties themselves to come to a final settlement in line with the report of the conciliator, with or without any changes to be agreed by the parties. Hence, unlike arbitration, the conciliator's report would not be binding on the parties.
"Lok Adalat is a unique system developed in India. It means people's court. It is a forum where voluntary effort at bringing about settlement of disputes between the parties is made through conciliatory and persuasive means. It encompasses negotiation, mediation and conciliation as tools to settle disputes between the parties. Lok Adalats have been given the powers of civil court under the Code Civil Procedure. The summary procedure employed in Lok Adalats help in the seedy disposal of cases by the team of experts involved in Lok Adalats. One of the advantages of Lok Adalat is that

a number of disputes between different parties can be settled at one go without wasting much time. Revolutionary changes are also happening in the administration of Lok Adalats with the introduction of mobile Lok Adalat systems to bring justice to the doorsteps of needy and poor.

Lok Adalats have got statutory recognition under the Legal Services Authorities Act 1987 and the award made by the Lok Adalat is deemed to be a decree of civil court. The award is final and binding on the parties. Parties may refer any dispute during pre-litigation stage or during the pendency before the court of law to Lok Adalats for amicable settlement. The reference to Lok Adalats may be made by State Legal Services Authority or District Legal Services Authority upon the receipt of any application. There are also permanent Lok Adalats operating for the settlement of cases relating to Public Utility Services like transport services, postal services, telegraph services etc. Added to this, national level Lok Adalats are held on every month on a fixed day relating to different subject matters. A huge number of cases are disposed of during national Lok Adalats."

India has a longing tradition of solving disputes through ways of consensus and unity, which was known to be *Panchayats.* The panchayats were established to decentralise power and empower local communities to make decisions regarding the villages. Such disputes were resolved generally under the supervision of elderly people.

However, colonialisation in India uprooted the many traditions from India, one of them being that of Panchayats. Such establishments of Panchayats was then replaced with courts of law, which was a much more formalised approach of resolving disputes.

Not long after it was realised that such courts cannot be the sole approach towards resolving disputes. Court proceedings posed to be a complex, costly and time consuming method of resolving disputes where the parties had limited control.

There was widespread delay in the delivery of justice, and inefficiency was clearly apparent. This led to a significant backlog of cases that persists to this day, causing ongoing challenges in our legal system.

It is evident that misunderstandings are usually caused when two people are involved in a transaction or business endeavours. Some of such misunderstandings need to be resolved through a quick and

effective method. Litigation is an extensive procedure, complying to various legislations and protocols. It involves complex court processes, including pleadings, discovery, motions, hearings, and potentially a trial. Additionally, adherence to procedural rules adds layers of complexity to the litigation process, often leading to prolonged legal battles and significant expenses for the parties involved.

To address such issue, alternative dispute resolution procedures were added. Arbitration being one of them.

Arbitration is a method of dispute resolution, where the parties present their submissions to a neutral third party, known as the *Arbitrator*. Arbitration is an alternative to normal litigation procedures, by comparison, it is a flexible, cost-effective and quick method of resolving disputes.

Arbitration turns out to be a viable alternative to traditional litigation as it offers parties a less formal method of resolving disputes while having the enforceability of an order passed by the court.

In India, arbitration had taken time to be accepted as an alternative, this was because the people of India usually only trusted courts in the matter of resolving disputes. They were hesitant to the basic procedures of arbitration, that is, disclosing of matters in front of a neutral third party. many showed their intention to go through the hustle of going through years of court proceedings to resolve the dispute in hand.

2. **Problems Faced In India Before Arbitration:**
   - Earlier, in India, the disputes related to the village or other issues were resolved through Panchayats, whereas, the family issues were usually resolved in the supervision of the elderly members of the family. It was said by the elderly that a dispute should be resolved in a manner that it does not affect the relationship with others.

     However, in recent times, it is seen that people are not willing to resolve disputes amicably, they are more in the favour of resolving disputes through courts, where one person loses, and their reputation might be tarnished.

   - Another problem other than that mentioned is that, for court proceedings, advocates are required, where they charge a substantial amount of money. This can result to greed of the advocates and further promoting litigation procedures.

- The paper also addresses the problem of lack of awareness in the people of India, This lack of awareness to utilize arbitration results in prolonged legal battles, and significant financial burdens for the general people. Thus, there is a pressing need to examine the advantages of arbitration over traditional litigation, raise awareness of its effectiveness, and explore strategies for promoting its wider adoption in resolving disputes.

3. Objectives Of Awareness About Arbitration:

- To analyse the legal framework of arbitration in India, including the Arbitration and Conciliation Act, 1996, along with its amendments and other recent developments.
- To assess the awareness in the people of India, the reasoning behind it & to propose strategies for enhancing such alternative dispute resolution methods, as compared to the traditional litigation methods.
- To examine the role of the Indian courts in identifying arbitration as an alternative to it, analysing the delays and complexities faced by the courts. Along with this, we shall look into the take of judiciary on the same.
- To identify the challenges faced by arbitration in India, such as, limited remedies or non-compliance. The requirement of judicial intervention on the same.
- To explore the idea of emerging trends in the world including the rise of arbitration or the advancement of technological advances In the courtroom.

4. Traditional Methods Of ADR Before The Act Of 1996

Before the Arbitration and Conciliation Act, 1996, the way of resolving disputes was not through any formal procedures. As mentioned earlier, it was usually resolved by Panchayats, which was essentially a gathering of all the learned people of the village, to come together for a solution. Let's take a deep dive in at some other traditional methods of Arbitration before 1996.

Firstly, *Panchayats,* could be referred as a village council where all the respected elders or other leaders would form an association to gather and resolve disputes arisen in the village.

Panchayats have been a long tradition of rural India, which played a significant role in resolving various types of disputes, including property disputes or disputes between neighbours. This was done through informal ways of resolution.

The respected members and elders acted as arbitrators or mediators between the two parties, to

facilitate dialogue between them and finally reach a common consensus.
This was done through negotiations, compromise or pulling up of local traditions.
These were a few informal ways of resolving disputes.

Out of this *Gram Panchayat*, was the lowest tier of the Panchayati Raj System in India. Gram Panchayat comprised of the elected members, who were knows as the Panchayat members. Such members were then entrusted with the responsibility of resolving disputes, among other responsibilities.
Gram Panchayat was also recognised as a traditional method and added to the constitution under the 73rd amendment under Part IX of the Indian Constitution.

Another traditional method of ADR was *Nyaya Panchayat,* also known as Gram Nyayalya. These were the local courts established under the Gram Nyayalaya Act, 2008, to resolve disputes of civil as well as criminal nature, within their territorial jurisdiction. The aim of establishment of such courts was to provide quick, effective and affordable resolution of dispute to the general public at a grassroot level.

Such Nyaya Panchayats was composed of a Nyayadhikari, who was the judge. Such person was usually a qualified person, a judicial officer or someone with legal experience. The Nayayadikari was then assisted by Nyaya Mitras, who were the people with legal knowledge & Nyaya Sewaks, who were the court staff.
Nyaya Mitras helped the Nyayadhikari in case of any challenge legally & the Nyaya Sewaks assisted them in management and administration.

Next traditional method of ADR would be the gatherings of *Community Elders.* In many communities of India, it was common practice that the community elders would gather to resolve any disputes. This would also include any family and matrimonial issues.
Such elders would act as mediators, their aim was to facilitate dialogue between the two parties and resolve the dispute without damaging the relations between the two.
The elders were known for their impartiality and wisdom and entrusted with the responsibility to reach a common consensus regarding the resolution, through negotiations.

Additionally, *Customary Practices* were also a traditional method as in it included various rituals, traditions or community gatherings. Most of the communities used customary practices to resolve disputes. Such practices varied according to the regional, cultural or religious factors.
Such practices aimed to resolve disputes between the parties and restore harmony in the community.

Religious institutions also posed to be a traditional method of resolving disputes. Religious institutions like temples, mosques or gurudwaras have historically played a common role in resolving disputes among their followers.
The role of arbitrator or mediator is played by the religious leaders or the priests, they take the responsibility to resolve disputes in accordance with the religious teachings, by applying the religious ethics or protocols.

These examples represent a few glimpses of the traditional methods of ADR. While these practices still may endure in certain pockets of India, and continue to be utilised in a few small villages of India, but these exist alongside of the Arbitration and Conciliation Act, 1996.

Despite the modernisation and codification of arbitration laws, the traditional methods of ADR, such as, Panchayats or community based arbitration continues to play a significant role in certain regions of India. Such practices are ingrained in the social culture & practices of India, drawing upon various centuries old customs. India is known for its customs and norms, such practices being a part of it.

In many rural areas of India, people still prefer such panchayats over the proper legal institutions for dispute resolution. This is due to various reasons, a few being, access to such institutions, cost-effective and familiar method.
However, it is pertinent to note that such methods are not immune to the challenges and issues. Such institutions severally lack formal legal training, equal power distribution & effective implementation of the agreed upon resolution. Co-existence of such institutions along with the can also lead to various complexities among the system.

Nonetheless, the traditional methods are an integral part of India's culture and heritage and serve as a testament to the ingenuity of the grassroot dispute resolution mechanisms. As we progress in the recent times, the accumulation and codification of such laws make the procedures of arbitration and

other dispute resolution simpler and such modernization of laws strike a balance between traditional customs and contemporary principles of law. This ensures justice for all segments of the society.

5. Conclusion

In an era characterised by rapid globalisation and intricate international transactions, dispute resolution becomes an inevitable part of the society. it is evident that, whenever a transaction occurs, regardless of its nature, disputes inevitably arise. Traditional litigation with its procedural complexities, costs, delays tends to fail to address such issues. Here, arbitration emerged as a pivotal component of modern legal system, it shaped the dispute management system in a way which was not seen before.

Its significance transcends for the fact that it is an efficient way of dispute resolution with broader themes, cost-effective, procedural fairness and access to justice. The arbitral award serves in the same manner as a court order, which secures justice for people.

At its core, arbitration had started to represent the traditional methods to resolve disputes. This offers the parties a forum and the power to resolve their disputes on their own, with a neutral party present. By empowering the parties to make their own decisions and come up with solutions, arbitration aims to promote autonomy and self-independence, this encourages them towards collaborative problem solving, instead of reaching to court with the intension of winning or tarnishing the other party's reputation.

Arbitration embodies the principles of procedural fairness and due process. This ensures that parties are not hesitant to reach towards arbitration and they freely participate in the proceedings of resolution process. It aims to reduce the rigid procedural formalities of the traditional court proceedings. Such principles of arbitration promotes procedural efficiency while ensuring that the integrity and legitimacy of the dispute resolution process.

Additionally, arbitration also plays a pivotal role in promoting cross border commerce and takes part in facilitating the international transactions. The process of arbitration along with other methods of dispute resolution have been embodied in the international conventions, for instance, New York Convention mentions arbitration. The convention enhances legal certainty and predictability, it aims

to provide confidence to the parties in respect to the enforceability of arbitral awards across borders. Arbitral awards have a global recognition and arbitration is gradually gaining the credibility as a preferred method of resolving disputes in the international arena, fostering trust and confidence in the parties who are engaged in such cross border transactions.

In conclusion, arbitration is extending far beyond its practical advantages, as regards to the efficiency and cost-effectiveness. It is now becoming a forum for self-determination, an advocate for procedural fairness, a role of a facilitator for international commerce.
It promotes easy access to justice, assisting parties towards cooperation and resolving disputes in a world today which is extremely complex and interconnected.