

Justice is divine
obligation theology
religion essay



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CHAPTER 1

INTRODUCTION

Justice is divine obligation and a central theme which everyone has the right to be enjoyed. Dispensation of Justice always remained hot pursuit for all civilized states on equal basis, without discrimination. Such legislation has been made in this regards by the states individually and collectively under national and international laws respectively. Even bilateral, multilateral treaties and charters press hard for the proper implementation of laws to ensure Justice among citizens and alien citizens. We all equally know that judicial system remained finest way for settling the disputes arising across the way of any country. (Europe, 2005) The Judicial system is usually established with highest ideals to provide justice whoever finds its door. The courts of law enjoys exhaustive jurisdiction to resolve the dispute arising in a society, inter-state disputes. The judicial system involves with prescribed legal procedure and strict in its nature. Due process of law became obligatory under the constitution although it encapsulates with the provisions of fair trial but either of the party has to face bites of law as the decisions are not mutually agreed by the parties. Despite playing the vital role for dispensation of Justice, experience shows the harsh facts that litigation sometimes become self-torturing practice for the litigants in order to seek justice. Courts operates burden of work which caused the destruction of important maxim " Justice late justice denied". Intimidating court room atmosphere, delayed procedures, cost and fee had become serious concerns for the litigants. Eminent jurist, NaniPalkhivala has reflected on the irony of the judicial system, in this fashion: " If longevity of litigation is made an item

in Olympics, no doubt the Gold will come to see" This also became threat for social and business relationship being its rigid characteristics. The harshness and rude behaviour of court room compelled the litigants to search for other means for settling disputes in flexible means. Increasing globalization of the modern business world has also been a factor in the development of more flexible means of resolving disputes that provides alternatives to court based litigation governed by the law and procedure of a particular state or country (Mitchard, 1997) Beside Judicial System, the parallel/side by side procedure did not lost its worth to settle the dispute since the human walked to earth under the directions given by divine authority, known as Alternative Dispute Resolution. (Pluta, 2011) It works in a community according to its culture and special norms and traditions. ADR has many shapes and modes to spread resolution of disputes for anyone who wished its spirit. Black's Law Dictionary defined ADR as a procedure for settling a dispute by means other than litigation; it can also be defined as encompassing all legally permitted processes of dispute resolution other than litigation. (Harper, 1997) ADR is an amorphous term in respect of being rich mechanism and umbrella term as even the matter which does not land in the ambit of Judicial system are easily falls in ADR. It is also pregnant with processes other than judicial intervention and without formal process followed by the Courts of Law (Otto, 2010) ; despite referring the matter in court's room others means come in action for settling of disputes. The researcher focused its main point to search and squeeze out all the forums for providing justice and to solve dispute arising among society through the methods and institutions of ADR which practically found in Pakistan. All types of solution as a result of disputes revolve around the ideology of Justice. (Dr Gregg Barak, 2010) ADR <https://assignbuster.com/justice-is-divine-obligation-theology-religion-essay/>

in Pakistan has never been a new subject for study and to implement because remarkable history lead its emergence in new era, the complete history shall be discussed ahead also. (Shahrukh Rafi Khan, 2007)ADR in Pakistan has its history since foundation, however it developed gradually and now certain provisions of ADR have been inserted in legislation to strengthen the system of Pakistan. The methods/provisions and its systematic procedure is adopted by competent courts of law as mentioned in Code of Civil procedure. The same shall be discussed in Chapter No. 3 in detail. The importance of Quasi-Judicial forums never lost its importance beside the full fledge Judicial system. (Ramesh, 2011) It is working concurrently and providing relief keeping in view the tradition and culture of the society. These forums has now been reshaped as per modern standards however the wisdom remained same . The modern forums are Parliamentary Commissions, Office of the Ombudsman. These forums of ADR under Quasi-Judicial system shall be discussed in Chapter No. 4 with exhaustive detail. The researcher tried its best to awaken litigants about the importance of ADR for the provision of speedy remedy against the dispute arising among society without time consuming and cost free. In order to penetrate into the topic comparative study was referred so the reader may be able to understand.

JUSTICE AS DEVINE OBLIGATION IN RELEGIONS

Justice is a sense of fairness, peace and security in order to prevent wrong doer (Call, 2007) and protect its abider on the basis of non-discrimination. There are no two opinion about Justice and peace in any religion, all of them press hard for its maintenance by the individual and state. Prophets were

sent for the guidance of the people with clear signs only a reason for establish Justice in the world and to end injustice. To guide the people, Religion through its Holy books revealed from time to time and according to the necessity taught of observe peace and security and all the Holy books ended on Holy Quran , the last book revealed from God consisting of all previous revelation time to time, however difference of opinion exists.

(Dixon, 2010)

JUSTICE AND PEACE IN THE EYE OF HOLY BOOK " BIBLE"

Judaism and Christianity's Holy book of Bible stated about the disputes, anger, jealousy, anger its resolution and divine instructions to making peace at all . It emphasize on the concept of Justice. Bible in perspective of Justice quoted as:-" Pursue a godly life, along with faith, love, perseverance, and gentleness" (Bible, 1 TIMOTHY)" For you have been called to live in freedom - not freedom to satisfy your sinful nature, but freedom to serve one another in love. For the whole law can be summed up in this one command: " Love your neighbor as yourself." But if instead of showing love among yourselves you are always biting and devouring one another, watch out! Beware of destroying one another. So I advise you to live according to your new life in the Holy Spirit. Then you won't be doing what your sinful nature craves. The old sinful nature loves to do evil, which is just opposite from what the Holy Spirit wants. And the Spirit gives us desires that are opposite from what the sinful nature desires. These two forces are constantly fighting each other, and your choices are never free from this conflict". (bible, 5: 13-25)" When you follow the desires of your sinful nature, your lives will produce these evil

results: sexual immorality, impure thoughts, eagerness for lustful pleasure, idolatry, participation in demonic activities, hostility, quarreling, jealousy, outbursts of anger, selfish ambition, divisions, the feeling that everyone is wrong except those in your own little group, envy, drunkenness, wild parties, and other kinds of sin. Let me tell you again, as I have before, that anyone living that sort of life will not inherit the Kingdom of God". (Bible, 5: 19— 21)"

Since God chose you to be the holy people whom he loves, you must clothe yourselves with tenderhearted mercy, kindness, humility, gentleness, and patience. You must make allowance for each other's faults and forgive the person who offends you. Remember, the Lord forgave you, so you must forgive others. And the most important piece of clothing you must wear is love. Love is what binds us all together in perfect harmony. And let the peace that comes from Christ rule in your hearts. For as members of one body you are all called to live in peace. And always be thankful". (Bible, 3: 12-14)"

Don't argue with others for no reason when they have never done you any harm". (Bible, 3: 30)"

Violent people deceive their friends and lead them to disaster". (Bible, 16: 29)"

Be humble and gentle. Be patient with each other, making allowance for each other's faults because of your love. Always keep yourselves united in the Holy Spirit, and bind yourselves together with peace. We are all one body, we have the same Spirit, and we have all been called to the same glorious future". (Bible, 4: 2-3)"

Get rid of all bitterness, passion, and anger. No more shouting or insults, no more hateful feelings of any sort. Instead, be kind and tender-hearted to one another, and forgive one another, as God has forgiven you through Christ". (Bible, 4: 31&32)"

Remind your people to submit to the government and its officers. They should be obedient, always ready to do what is good. They must not

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speaking evil of anyone, and they must avoid quarreling. (Bible, 3: 1) Instead, they should be gentle and show true humility to everyone. Once we, too, were foolish and disobedient. We were misled by others and became slaves to many wicked desires and evil pleasures. Our lives were full of evil and envy. We hated others, and they hated us. But then God our Savior showed us his kindness and love. He saved us, not because of the good things we did, but because of his mercy. He washed away our sins and gave us a new life through the Holy Spirit. He generously poured out the Spirit upon us because of what Jesus Christ our Savior did. He declared us not guilty because of his great kindness. And now we know that we will inherit eternal life. 8 These things I have told you are all true. I want you to insist on them so that everyone who trusts in God will be careful to do good deeds all the time. These things are good and beneficial for everyone". (Bible, 3: 1-8)" Try to live in peace with everyone, and seek to live a clean and holy life, for those who are not holy will not see the Lord". (Bible, 12: 14)" Avoiding a fight is a mark of honor; only fools insist on quarreling". (Bible, 20: 3)" If you are sensible, you will control your temper. When someone wrongs you, it is a great virtue to ignore it". (Bible, 19: 11)Don't take revenge, dear friends. Instead, let God's anger take care of it. After all, Scripture says, " I alone have the right to take revenge. I will pay back, says the Lord". (Bible, 12: 19)There are seven things that the Lord hates and cannot tolerate: (MR Nicholas C Charles, 2012)A proud look, a lying tongue, hands that kill innocent people, a mind that thinks up wicked plans, feet that hurry off to do evil, a witness who tells one lie after another, and someone who stirs up trouble among friends". `

JUSTICE AND PEACE IN THE EYE OF HOLY BOOK " QURAN"

Holy Quran is a book which was revealed by God Almighty (divine) on Holy Prophet Muhammad (PBUH) and delivered ahead without any shadow of doubt. It consists of 114 chapters (Surah) and 6500 verses (Ayats). Holy Quran contains the provision of disputes, welfare state, peace and security, rights and liabilities and also about judiciary. The entire teaching of the sort of topic revolves around the ideology of Justice. The same are quoted with reference ahead. You who believe! be upholders of justice, bearing witness for Allah alone, (Quran, 5: 8) even against yourselves or your parents and relatives. Whether they are rich or poor, Allah is well able to look after them. Do not follow your own desires and deviate from the truth. (Quran, 4: 135) If you twist or turn away, Allah is aware of what you do. (Surat an-Nisa', 135) Among those we have created there is a community who guides by the Truth and act justly according to it. (Quran, 7: 29) (Surat al-A' raf, 181) If you do judge, judge between them justly. Allah loves the just. (Surat al-Maida, 42) (Quran, 3: 110-111) " You who believe! Show integrity for the sake of Allah, bearing witness with justice. Do not let hatred for a people incite you into not being just. Be just. That is closer to taqwa. Fear [and respect] Allah. Allah is aware of what you do. (Surat al-Maida, 8)" (Quran, 9: 8) " Every nation has a Messenger and when their Messenger comes everything is decided between them justly. (Quran, 10-47) They are not wronged. (Surah Yunus, 47)"" We sent Our Messengers with the Clear Signs and sent down the Book and the Balance with them so that mankind might establish justice." (al-Hadid, 25)" Say: " My Lord has commanded justice..." (Surat al-A' raf, 29)" So call and go straight as you have been ordered to. Do not follow their

whims and desires but say, ' I have iman in a Book sent down by Allah and I am ordered to be just between you. Allah is our Lord and your Lord. We have our actions and you have your actions. There is no debate between us and you. Allah will gather us all together. He is our final destination.' (Surat ash-Shura, 15)"" Among those we have created there is a community who guides by the Truth and act justly according to it. (Surat_al-A' raf, 181)" Those with faith, those who are Jews, and the Christians and Sabaeans, all who believe in Allah and the Last Day and act rightly, will have their reward with their Lord. They will feel no fear and will know no sorrow. (Surat_al-Baqara, 62)" Call to the way of your Lord with wisdom and fair admonition, and argue with them in the kindest way. (Surat_an-Nahl, 125)" Is it not likely that, if you did turn away, you would cause corruption in the earth and sever your ties of kinship? Such are the people Allah has cursed, making them deaf and blinding their eyes. (Surah_Muhammad, 22-23)" Allah does not forbid you from being good to those who have not fought you in the deen or driven you from your homes, or from being just towards them. Allah loves those who are just. Allah merely forbids you from taking as friends those who have fought you in the religion and driven you from your homes and who supported your expulsion. Any who take them as friends are wrongdoers. (Surat_al-Mumtahana, 8-9)" As for those who reject Allah's Signs, and kill the Prophets without any right to do so, and kill those who command justice, give them news of a painful punishment. (Surah_Allmran, 21)Pakistan being a Muslim state observed the Justice as a divine obligation under the direction and teachings of Islam; it is worth mentioning that the foundation of Pakistan was sought in the name of religion Islam. Islamic religion through its Holy books

revealed from time to time and according to the necessity taught of observe peace and security

ADMINISTRATION OF JUSTICE AND ITS ORIGIN

The administration of Justice is the civilized substitute for private vengeance and retribution. It means the maintenance of rights in political community by the physical force of the state. It involves (Raymond, 1992) Physical force of the state Politically organized society Maintenance of rights as the object Salmond concludes that " the administration of Justice must be regarded as a permanent and essential element of civilization and as a device that admits of no substitutes". (Mahajan, 1962) Administration of Justice passed through three stages Primary stage which was the period of self help Transitional stage which was the period of social force Final stage which was the period of state control

CONCEPTUAL FRAMEWORK OF ADR

Before penetrating into the topic it needs to understand the segments of ADR which revolves around the ideology of Justice and peace among state. These are as follows:- Alternative Dispute Resolution and As quoted, these segments are inter-related to the concept of Justice and peace among state. Pakistan is country which sought its independence on the name of religion Islam so the framework of ADR in Pakistan is based on the teachings of religion conveyed by divine authority to maintain Justice, peace and security. The concept of Justice and dispute contributed in shaping ADR, the same cannot be overlooked.

WHAT STANDS FOR ALTERNATIVE

Dictionary of Mariam Webster defined the alternative with examples being adjectivedifferent from the usual or conventional asof, relating to, or being rock music that is regarded as an alternative to conventional rock and is typically influenced by punk rock, hard rock, hip-hop, or folk musicDictionary of Mariam Webster defined the alternative with examples being Nouna: a proposition or situation offering a choice between two or more things only one of which may be chosenb: an opportunity for deciding between two or more courses or propositionsa : one of two or more things, courses, or propositions to be chosenSome traditionalists hold that alternative should be used only in situations where the number of choices involved is exactly two, because of the word's historical relation to Latin alter, " the other of two." Despite the word's longstanding use to mean " one of a number of things from which only one can be chosen" and the acceptance of this usage by many language critics, a substantial portion of the Usage Panel adheres to the traditional view, with only 49 percent accepting the sentence Of the three alternatives, the first is the least distasteful. Alternative is also sometimes used to refer to a variant or substitute in cases where there is no element of choice involved, as in We will do our best to secure alternative employment for employees displaced by the closing of the factory. (Dictionaries, 1996) This sentence is unacceptable to 60 percent of the Usage Panel. • Alternative should not be confused with alternate. Correct usage requires The class will meet on alternate (not alternative) Tuesdays

WHAT IS DISPUTE

Merriam Webster defined the word dispute "-Intransitive verb: To engage in argument: debate; especially: to argue irritably or with irritating persistence (Inc, 2004) Transitive verb 1a: to make the subject of disputation 2 Synonyms: contest, challenge, impeach, oppugn, query, question Human society is endemic with disputes since the arrival of human on earth. Disputes have existed in all cultures, religions, and societies since time even they also exist in the animal kingdom. Dispute arises where the people interact, a situation where two or more persons, or groups, identify that their interests are at stake, and that these interests cannot satisfy to all the parties intricate. History of dispute is as old as human arrive. It can be found in Holy Books of Bible, Quran and in historic books of different religions and cultures. The holy book of Bible contains the dispute of Cain and Abel wherein the Cain stuck Abel in ground and killed him. The first dispute has been found in Holy Quran on the creation of Human when Iblis rebelled against his Lord's command which is: -And surely, we created you (your father Adam) and then gave you shape (the noble shape of a human being), then we told the angels, "Prostrate to Adam", and they prostrated, except Iblis (Satan), he refused to be of those who prostrate. (Allah) said: "What prevented you (O Iblis) that you did not prostrate, when I commanded you?" Iblis said: "I am better than him (Adam), You created me from fire, and him You created from clay." S. 7: 11-12 (IslamKotob, 2000)

NATURE OF DISPUTE

The dispute continued to be occur in every religion, culture, society, state and also internationally. There is a clear cut variation in disputes regarding

nature and range. Even in same category, huge difference involves due to otherwise issues and factors by which the opposite party gets influenced. On this ground it is readily apparent that only one type of dispute resolution cannot apply in all types of disputes. Some disputes require intervention of third party, some required negotiation. The understanding of dispute completely strengthen the confidence of third party and also the parties having dispute.

SUBJECT MATTER OF DISPUTES

According to Brown and Marriot " Disputes are not readily capable of neat categorization". Subject matter of disputes has variety according to its nature and range. Possible subject matters are as follows"-Constitutional Issues - includes issues relation to interpretation and solution in case of disputes between governments and also observe fundamental rights. Labour Issues - includes pay, promotion and transfer matters. Organizational Issues - includes issue relating to management and structure. International Issues - includes matters of public lawCorporate Issues - includes issues of shares and liquidation. Divorce Issues - includes issue on separation, children and maintenance. Family Issues - includes issue of inheritance, family businesses etc. Trust Issues- includes issues of beneficiaries and trustees. Criminal issues - includes issues which are cognizable. Tort issues - includes issues of insurance, negligence and failure of duties. Property issues - includes issues between tenant and landlord , boundary disputes and rent services. Consumer issues - includes issues between consumer and seller/service provider. Commercial issues - includes issues of partnership, contracts, joint ventures, banking and shipping. Ethnic issuesInter-personal disputes

WHAT IS RESOLUTION

Merriam Webster defined the word Resolution:- (Merriam-Webster, Merriam-Webster's French-English Dictionary, 2000)1: the act or process of resolving: asa: the act of analyzing a complex notion into simpler onesb: the act of answering : solvingc: the act of determiningb: firmness of resolveThe concept of resolution revolves around the ideology of Justice and settlement of dispute in this way or the other. Settling of dispute and provision of Justice is divine obligation upon the human since its arrival as per all religions and cultures. The revelations by divine in shape of Holy Book Quran not only emphasize upon Justice, settlements of dispute but also press hard upon the conduct and welfare among society. It has been narrated in 49; 13 that the noblest among you, in the sight of Lord, is the one who is best in conduct. For the sake of resolution, inter dispute made forbidden with one another so the strength may not depart and it has been made clear that Lord stand beside who avoids from this all.

SYSTEMS FOR RESOLUTION OF DISPUTE

Resolution/Remedy of disputes can be acquired through formal or informal justice systems, also raised to in particular cases as ' state' and ' non-state' systems (some countries recognize these system through constitution or other enacted laws). Formal system includes judicial system which has following hierarchy in Pakistan and also in other developed countriesSupreme CourtFederal Shariat CourtHigh courtSession CourtsCivil CourtsThe Judicial system is assisted by Law Officers of Federation and Provinces which includes:-Attorney GeneralDeputy Attorney GeneralProsecutor General AccountabilityDeputy Prosecutor General

Accountability
Additional Prosecutor General
Accountability Advocate
General
Additional Advocate General
Deputy Advocate General
Assistant Advocate General
Prosecutor General
Additional Prosecutor General
Deputy Prosecutor General
Assistant Prosecutor General
District Public Prosecutor
Deputy District Public Prosecutor
Divisional Prosecutor General
Assistant District Public Prosecutor
Informal systems include a choice of traditional, customary, religious and informal normative frameworks and mechanisms that grip over disputes for settlement. Informal system for settlement of dispute which is practiced in Pakistan is as follows (Deneulin, 2012)
Traditional which includes Jirga/Panchayat
Public bodies includes Committee or Small Claims and Minor Offences Courts Ordinance, 2002, Institute of Ombudsman

HISTORY OF ALTERNATE DISPUTE RESOLUTION

Inclusive history of the dispute resolution journey has not been written yet . The origin of modern ways of alternative dispute resolution is as old as human walked to this earth. The divine authority stressed hard upon maintenance of peace and to settle dispute if exist. Holy books of Bible and Quran stressed upon the settlement of disputes by the ways which are highly recognized in this era through modern way. Conciliation and harmony through intervention is the ideal style of resolution of disputes in Islam. In the Holy Quran, in Sura " Hujrat", Sura " Nisa" and Sura " Namal", there are loads of injunctions referring this preference as" Allah command you, to render back your trust to those to whom they are due; and when you judge between man and man, Judge with justice verily how excellent is the teachings which he gives you. For Allah hears and see all things"(IV-61)" If ye

fear a breach between them (husband and wife) twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things." (Chapter 4 Verse 35)" O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor" (Chapter 4 Verse 135) During the stay of Holy prophet at madina, it has been mentioned in constitution of Madina that if any disputes arises in society, the same shall be decided mutually or be referred to Holy Prophet (PBUH) for its peaceful settlement. Stephen York makes a special mention of this in his book on ADR and says that " Mediation and Conciliation are the methods preferred by the Prophet (Peace Be Upon Him) and thus are favoured in the Arab world." (Saleh, " The Settlement of Disputes in the Arab World: Arbitration and other Methods". 4 International Tax & Business Law 280). The words of York reflects that Muslim world was familiar with the alternative ways for settling dispute and not new in Islamic thought, however formal ways were set out afterwards but the history no doubt starts from them. There have been alternative forms of dispute resolution for thousands of years. The earliest known use is where the Greeks and the Phoenicians had agreements to use roaming arbitrators to settle civil disputes in the Sixth Century B. C. In 1850, Abraham Lincoln succinctly put it: Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will be business enough. (Basler, T., et al., The Collected Works of Abraham Lincoln.

Volume 11(1953-1955))

President Clinton's initiative to streamline Government. During his presidential campaign he stated: In my view, the best reforms are those that make it less likely for people to go to court. We should encourage greater use of alternative dispute resolution to give consumers redress without having to litigate, such as mediation, mini-trial and the multi-door courthouse. (American Bar Association, The 1992 Presidential Campaign, ABA Journal, October 1992)

NEED FOR THE ALTERNATIVES

Being divine obligation, justice and dispute resolution has always been a topic to study since the creation of Human and its Disputes. The authorities of the time stressed upon peace and security so to avoid disputes and to solve disputes if took place; in order create a sense of justice among the society. The perspective behind ADR methods is to protect the distressed person from adversity of going to court of law, involving cost effecting, very often indefinite and unjustified period and with the slightest surety that justice will be provided to distressed party, as judgments of the courts are usually based on evidence produced, and the capability of the lawyer handling the case. The expression that Law is bind, often found accurate in case of court decisions relating to the oppressed and monetarily deprived parties against their antis belonging to the prosperous class. According to Walter K. Olson: " Older law makers and judges tended to recognize litigation as a wasteful thing, in its direct expense and in the demands it placed on the time and energy of people with better things to do. It was grossly invasive of privacy and destructive of reputation. It was acrimonious, furthering

resentments between people who might otherwise find occasion to cooperate. It tended to paralyze productive enterprise and the getting on of life in general by keeping rights in a state of suspense. It corrupted its participants by tempting them to harass each other and to twist, stretch, and hide facts. It was a play ground for bullies, and an uneven battlefield where the trusting, scrupulous, and plainspoken were no match for the brassy, ruthless and glib. For all that, it was sometimes the least bad of the extremities to which someone might be reduced; but society could at a minimum discourage it where it was not absolutely necessary." (Olson, 1992)

The background that compelled the findings ways of Alternative Dispute Resolution is upon the landmark maxim " Justice late is Justice denied". The delayed dispensation of Justice led the emergence of alternatives as courts of law operates heavy backlog of cases. The purpose to strengthen Alternative Dispute Resolution is to avoid from lengthy, expensive and cumbersome procedure. It is just a mode of settlement of disputes other than court proceedings, diffusing over year and years. There is a massive backlog of unresolved cases in different competent courts of Pakistan. It is estimated that it would roughly take 15 years to dispose off the same even if fresh cases were not listed. According to the International Finance Corporation (IFC), World Bank organizations, publication " Doing Business Report 2009 contract enforcement in Pakistan takes estimated 957 days and involves 47 procedures". As per local press, millions of cases were pending in different competent courts of Pakistan. It is pertinent to mention that most of the minor cases have not been reported to register FIR (First Information Report). Roughly estimated that hardly 30% crimes are registered in urban areas and not even 10% in rural areas. Crimes like theft

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of sewerage manhole covers, traffic offenses, local fights, thefts of cheap articles like bicycles, mobile phones snatching on gunpoint are rarely reported or registered. If I may quote Mr. Justice Tassaduq Hussain Jilani, Judge, Supreme Court of Pakistan from his paper:" We (Pakistan) are a vibrant society in transition. There are strains of societal divide; cultural, economic, political, sectarian and ethnic. This divide feeds the downside of Adversarial Legalism. There is a need to promote consolidation, concord and search for alternatives in every arena of societal divide. This would require a mindset, a culture and institutional support. ADR is an attempt in the judicial and quasi domains to promote these values and these institutions. Not underestimating the need for more resources for the administration of justice, I am of the considered view that the problems of backlog and delayed justice cannot be tackled unless there is an attitudinal change in the main actors of the judicial process i. e. the Bench, the Bar and the litigant public. Case management and Alternative Dispute Resolution primarily aim at bringing about this attitudinal change. This process has to commence at the basic level i. e. at the subordinate judiciary level. The subordinate courts are the back-bone of the entire judicial hierarchy. It is here that the concept of rule of law confronts the first trial; it is here that more than 95 % of cases are filed and pending; it is here that the impressions and perceptions about the judiciary take shape; it is here that people in litigation suffer for months, years and decades and spend the best part of their lives waiting for that elusive Justice which at times is delayed, at times denied, and at times is bitter with expense it entails." In order to setting the dispute other than formal system, alternative means are needed to settle dispute rapidly and without cost effecting.

ADVANTAGES OF ALTERNATE DISPUTE RESOLUTION

The alternatives have been preferred in the matters which deem fit in the ambit of this system due to some advantages compare to Formal/Judicial system. The advantages are as follows:-

LESS STRESSFUL/LESS FORMAL: Court can be a scary experience. Formality can ruin relations and form an obstacle between the parties. ADR involves of a more informal and comfortable environment. This can sustain relationship and understanding between the parties without embracing them from the situation of being won or lost.

CONTROL: The ADR process usually controlled by the parties in order to select the required option for settling disputes. However, in Formal system the parties are bound to follow whatever decided by Judges.

SAVES TIME: Litigation diffuses over years and years for resolution of disputes due to lengthy procedure adopted at different dates and time. ADR solves the matter in less time even in a single sitting sometimes.

COST EFFECTIVE: Litigation which diffuses over years involves heavy cost of expert's fee and courts cost but the ADR is cheaper in cost.

CONFIDENTIALITY: The process in itself is confidential and it evades any publicity. The parties can approve that material revealed during discussions cannot be used in later proceedings. This permits them to concentrate on the merits of the dispute without fear about its public impression.

FLEXIBILITY: The process and settlement under ADR are flexible in nature. It is tailor made package in the sense that it even propose that remedies which usually not available in court as per concern of the parties.

NEUTRALITY. ADR can be unbiased to the law, commandments, linguistic and institutional culture and tradition of the parties, thereby evading any home court benefit that one of the parties may enjoy in court-

based litigation, where understanding with the appropriate law and local procedures can offer major strategic advantages. ADR IS SPEEDY. Court Trials are prolonged, without exception. In many jurisdictions it could calculate greater time even to argue case before a judge, less get outcome. ADR is speedy in nature and reaches to a conclusion rapidly. EXPENSES ARE KEPT DOWN: Law experts and pleaders are costly, meaning trial cases can definitely run up unexpected bills. Alternative dispute resolution being flexible and speedy involves less money from both sides. PRESERVE RELATIONSHIPS: ADR can be a less confrontational and aggressive way to resolve a dispute. It can help parties to communicate effectively so for the sake of relationships. ACCESS TO JUSTICE: Judicial and formal process are not affordable for the poor so the ADR provides access to justice FINALITY OF AWARDS: Unlike court verdicts, which can normally be opposed through several rounds of litigation however, awards under ADR are not typically subject to appeal and increase compliance. EXPERTISE INVOLVED: The parties of dispute can assisted by arbitrator or mediator who is skilled in the related field. In court trial difficulties concerning technical knowledge or measures that many people cannot recognize, But if the background knowledge of person resolving dispute can easily jump to settlement.

MOVING FORWARD WITH ADR

ADR can be a scheme that aids breeding better success in dispute settlement. Though, ADR as a scheme requires time to be moulded and adapted. ADR needs spell, support, mechanism and a good administrative body. ADR can be a speedy remedy regarding settlement of dispute arising among society. This however, could not be attained suddenly. I quote Justice

Mustafa Kamal, former Chief Justice of Bangladesh, when His Lordship made the following observations:" First, like innovative exercises, ADR needs a motivator or an army of motivators throughout the country. For practical reasons, it is not possible for a sitting Judge to spare the time, energy and effort to assume this role. Retired Judges who are respected by both the Bar and the Bench should come forward to give leadership. That will be paying back to the Bar and the Bench a small part of the debt they owe to the Bar and the Bench for the honour given to them during their working life. The same goes for elderly senior lawyers. Nothing can take root by sporadic effort of a few years. At least two or three generations of lawyers and Judges must give their sustained labour to make ADR an integral part of their judicial system. Secondly, a well thought-out action plan is necessary to make ADR a success. It is not desirable that an avalanche of mediation should descend upon the Courts all at a time. The Courts should refer relatively simple cases first to the mediators. A simple case is one that requires the least judicial effort to adjudicate upon facts and law. A relatively complex case is one that requires a little more judicial effort to ascertain facts and law. Following this criterion, simple cases should be referred first. With experience gained, relatively complex cases can be referred to mediation. It should not be the aim of anyone to achieve anything overnight."

WHEN TO USE ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is a superb choice when parties of dispute have the same opinion that a rapid resolution could be sought by reforming

the dispute procedure. It is also suitable when either of the party is "locked" into their positions and a third neutral party is able of bringing the both sides back to the table for bargaining. The neutral can deduce the facts and merits from both sides for resolution. If the parties of disputes agree on the legitimate right of either one, then the problem reaches to a logical conclusion of settlement. If one side of the dispute holds an unrealistic observation of the case a third party can realistically evaluate the position. The last factor that favors ADR avoids adverse order to become a precedent.

WHEN NOT TO USE ALTERNATIVE DISPUTE RESOLUTION

ADR would not be suitable in following incidents and cases1) When there is a charge of fraud2) When a classic and solid decision is needed as a pattern3) When the matter involves important issues of Government policy4) When maintaining traditional policy and avoiding variations in implementation5) When the subject notably affects non-parties6) When a full public record of the proceeding or resolution is important7) When the agency must uphold ongoing jurisdiction over the issue with the right to modify the resolution as situation stressUnited States Congress, Administrative Dispute Resolution Act, Law 104-320, 104thCongress, 2ndSess., 1996