

Alternative Dispute Resolution in India

A study on concepts, techniques, provisions, problems in
implementation and solutions

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Introduction:

Gandhiji said: "I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realized that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul." ¹

Conflict is a fact of life. It is not good or bad. However, what is important is how we manage or handle it. Negotiation techniques are often central to resolving conflict and as a basic technique these have been around for many thousands of years. Alternative Dispute Resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails. Alternative Dispute Resolution (ADR) is an alternative to the Formal Legal System. It is an alternative to litigation. It was being thought of in view of the fact that the Courts are over burdened with cases. The said system emanates from dissatisfaction of many people with the way in which disputes are traditionally resolved resulting in criticism of the Courts, the legal profession and sometimes lead to a sense of alienation from the whole legal system- thus, the need for Alternative Dispute Resolution.

With the spread of ADR programs in the developed and developing world, creative uses for and designs for ADR systems are proliferating. Successful programs are improving the lives of individuals and meeting broad societal goals. There is a critical mass of ADR experience, revealing important lessons as to whether, when and how to implement ADR projects.

It is against this backdrop, that this research paper intends to discuss the various ADR mechanisms, the provisions present in India and the World over, and its peculiarity, implementation and problems in the Indian context. The various remedies to the situation have also been discussed.

¹ <http://www.ebc-india.com/lawyer/articles/2002v1a3.htm>

Research methodology:

The research methodology adopted for the purpose of this project is the doctrinal method of research. The various library and Internet facilities available at Lok Satta and NALSAR University of Law have been utilized for this purpose. Most of the information is, however, from the Internet.

Brief History of ADR

ADR originated in the USA in a drive to find alternatives to the traditional legal system, felt to be adversarial, costly, unpredictable, rigid, over-professionalised, damaging to relationships, and limited to narrow rights-based remedies as opposed to creative problem solving. The American origins of the concept are not surprising, given certain features of litigation in that system, such as: trials of civil actions by a jury, lawyers' contingency fees, lack of application in full of the rule "*the loser pays the costs*".

Beginning in the late nineteenth century, creative efforts to develop the use of arbitration and mediation emerged in response to the disruptive conflicts between labor and management. In 1898, Congress followed initiatives that began a few years earlier in Massachusetts and New York and authorized mediation for collective bargaining disputes. In the ensuing years, special mediation agencies, such as the Board of Mediation and Conciliation for railway labor, (1913) (renamed the National Mediation Board in 1943), and the Federal Mediation and Conciliation Service (1947) were formed and funded to carry out the mediation of collective bargaining disputes. Additional state labor mediation services followed. The 1913 New lands Act and later legislation reflected the belief that stable industrial peace could be achieved through the settlement of collective bargaining disputes; settlement in turn could be advanced through conciliation, mediation, and voluntary arbitration.²

At about the same time, and for different reasons, varied forms of mediation for non-labor matters were introduced in the courts. When a group of lawyers and jurists spoke on the topic to an American Bar Association meeting in 1923, they were able to assess court-related conciliation programs in Cleveland, Minneapolis, North Dakota, New York City, and Milwaukee.

Conciliation in a different form also appeared in domestic relations courts. An outgrowth of concern about rising divorce rates in the postwar 1940's and the 1950's, the primary goal of these programs was to reduce the number of divorces by requiring efforts at reconciliation rather than

² http://courts.state.de.us/Courts/Superior%20Court/ADR/ADR/adr_history.htm

to facilitate the achievement of divorces through less adversarial proceedings. Following privately funded mediation efforts by the American Arbitration Association and others in the late 1960s, the Community Relations Service (CRS) of the United States Department of Justice initiated in 1972 a mediation program for civil rights disputes.

Although a small number of individual lawyers had been interested in and were practicing mediation ADR in Britain for some years, it was only in 1989 when the first British based ADR company - IDR Europe Ltd. - bought the idea across the Atlantic and opened its doors for business. This was the start of ADR Group. Since then many other ADR organizations, including CEDR (Centre for Dispute Resolution), followed suite and assisted in the development and promotion of ADR in the UK.³

ADR, or mediation (as it is now synonymously known as), is used world-wide by Governments, corporations and individuals to resolve disputes big or small, of virtually any nature and in most countries of the world.

In developing countries where most people opt for litigation to resolve disputes, there is excessive over-burdening of courts and a large number of pending cases, which has ultimately lead to dissatisfaction among people regarding the judicial system and its ability to dispense justice. This opinion is generated largely on the basis of the popular belief, "Justice delayed is justice denied". However, the blame for the large number of pending cases in these developing countries or docket explosion, as it is called, cannot be attributed to the Courts alone. The reason for it being the non-implementation of negotiation processes before litigation. It is against this backdrop that the mechanisms of Alternative Dispute Resolution are being introduced in these countries. These mechanisms, which have been working effectively in providing an amicable and speedy solution for conflicts in developed economies, are being suitably amended and incorporated in the developing countries in order to strengthen the judicial system. Many countries such as India, Bangladesh and Sri Lanka have adopted the Alternative Dispute Resolution Mechanism. However, it is for time to see how effective the implementation of these mechanisms would be in these countries.

³ <http://www.adrgroup.co.uk/history.html>

Overview of ADR:

Alternative dispute resolution encompasses a range of means to resolve conflicts short of formal litigation. The modern ADR movement originated in the United States in the 1970s, spurred by a desire to avoid the cost, delay, and adversarial nature of litigation. For these and other reasons, court reformers are seeking to foster its use in developing nations. The interest in ADR in some countries also stems from a desire to revive and reform traditional mediation mechanisms.

ADR today falls into two broad categories: court-annexed options and community-based dispute resolution mechanisms. Court-annexed ADR includes mediation/conciliation—the classic method where a neutral third party assists disputants in reaching a mutually acceptable solution—as well as variations of early neutral evaluation, a summary jury trial, a mini-trial, and other techniques. Supporters argue that such methods decrease the cost and time of litigation, improving access to justice and reducing court backlog, while at the same time preserving important social relationships for disputants.⁴

Community-based ADR is often designed to be independent of a formal court system that may be biased, expensive, distant, or otherwise inaccessible to a population. New initiatives sometimes build on traditional models of popular justice that relied on elders, religious leaders, or other community figures to help resolve conflict. India embraced lok adalat village-level people's courts in the 1980s, where trained mediators sought to resolve common problems that in an earlier period may have gone to the panchayat, a council of village or caste elders. Elsewhere in the region, bilateral donors have recently supported village-based shalish mediation in Bangladesh and nationally established mediation boards in Sri Lanka. In Latin America, there has been a revival of interest in the juece de paz, a legal officer with the power to conciliate or mediate small claims.

Some definitions of ADR also include commercial arbitration: private adversarial proceedings in which a neutral third party issues a binding decision. Private arbitration services and centers have an established role in the United States for commercial dispute resolution, and are spreading internationally as business, and the demand for harmonization, expands. In the last decade, more

⁴ <http://www1.worldbank.org/publicsector/legal/ADR%20Workshop.pdf>

countries have passed legislation based on the 1985 UNCITRAL Model Law on International Commercial Arbitration, which makes an arbitral award legally binding and grants broad rights to commercial parties choosing arbitration.

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation and conciliation are non-binding forms, and depend on the willingness of parties to reach a voluntary agreement. Arbitration programs may be binding or non-binding. Binding Arbitration produces a third party decision that the disputants must follow even if they disagree with the result much like a judicial decision. Non-binding Arbitration produces a third party decision that the parties may reject.

It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require the parties to negotiate, conciliate, mediate or arbitrate, prior to court action. ADR processes may also be required as part of prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

These forms of ADR along with a lot of other hybrid processes are discussed in the next chapter of the paper. Therefore, it can be observed that the term “Alternative dispute resolution” can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other, prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included into the rubric of ADR.

Elaborate explanation of the various kinds of ADR mechanisms:

a) **Arbitration:** Arbitration, in the law, is a form of alternative dispute resolution — specifically, a legal alternative to litigation whereby the parties to a dispute agree to submit their respective positions (through agreement or hearing) to a neutral third party (the arbitrator(s) or arbiter(s)) for resolution.⁵

Species of arbitration

i) **Commercial arbitration:** Agreements to arbitrate were not enforceable at common law, though an arbitrator's judgment was usually enforceable (once the parties had already submitted the case to him or her). During the Industrial Revolution, this situation became intolerable for large corporations. They argued that too many valuable business relationships were being destroyed through years of expensive adversarial litigation, in courts whose strange rules differed significantly from the informal norms and conventions of business people (the private law of commerce, or *jus merchant*). Arbitration appeared to be faster, less adversarial, and cheaper. Since commercial arbitration is based upon either contract law or the law of treaties, the agreement between the parties to submit their dispute to arbitration is a legally binding contract. All arbitral decisions are considered to be "final and binding." This does not, however, void the requirements of law. Any dispute not excluded from arbitration by virtue of law (e.g. criminal proceedings) may be submitted to arbitration.⁶

ii) **Other forms of Contract Arbitration:** Arbitration can be carried out between private individuals, between states, or between states and private individuals. In the case of arbitration between states, or between states and individuals, the Permanent Court of Arbitration and the International Center for the Settlement of Investment

⁵ <http://en.wikipedia.org/wiki/Arbitration>

⁶ Ibid

Disputes (ICSID) are the predominant organizations. Arbitration is also used as part of the dispute settlement process under the WTO Dispute Settlement Understanding. International arbitral bodies for cases between private persons also exist, the International Chamber of Commerce Court of Arbitration being the most important. The American Arbitration Association is a popular arbitral body in the United States. Arbitration also exists in international sport through the Court of Arbitration for Sport.

- iii) **Labor Arbitration:** A growing trend among employers whose employees are not represented by a labor union is to establish an organizational problem-solving process, the final step of which consists of arbitration of the issue at point by an independent arbitrator, to resolve employee complaints concerning application of employer policies or claims of employee misconduct. Employers in the United States have also embraced arbitration as an alternative to litigation of employees' statutory claims, e.g., claims of discrimination, and common law claims, e.g., claims of defamation. Arbitration has also been used as a means of resolving labor disputes for more than a century. Labor organizations in the United States, such as the National Labor Union, called for arbitration as early as 1866 as an alternative to strikes to resolve disputes over the wages, benefits and other rights that workers would enjoy. Governments have also relied on arbitration to resolve particularly large labor disputes, such as the Coal Strike of 1902. This type of arbitration is commonly known as interest arbitration, since it involves the mediation of the disputing parties' demands, rather than the disposition of a claim in the manner a court would act. Interest arbitration is still frequently used in the construction industry to resolve collective bargaining disputes. Unions and employers have also employed arbitration to resolve employee grievances arising under a collective bargaining agreement.⁷

⁷ Supra n. 5

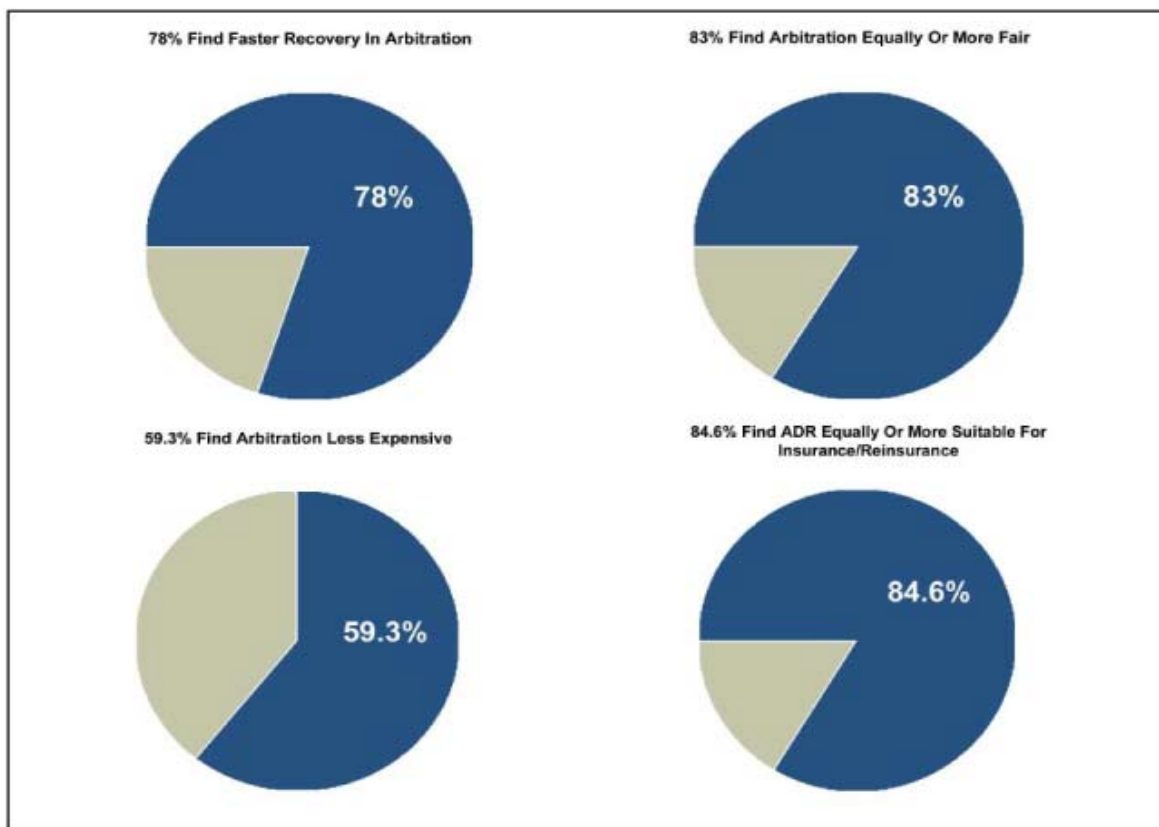
- iv) **Judicial Arbitration:** Some state court systems have promulgated court-ordered arbitration; family law (particularly child custody) is the most prominent example. Judicial arbitration is often merely advisory, serving as the first step toward resolution, but not binding either side and allowing for trial de novo.

- v) **Proceedings:** Various bodies of rules have been developed that can be used for arbitration proceedings. The two of the most important are the UNCITRAL rules and the ICSID rules. The general rules to be followed by the arbitrator are specified by the agreement establishing the arbitration. Some jurisdictions have instituted a limited grace period during which an arbitral decision may be appealed against, but after which there can be no appeal. In the case of arbitration under international law, a right of appeal does not in general exist, although one may be provided for by the arbitration agreement, provided a court exists capable of hearing the appeal.

- vi) **Arbitrators:** Arbitrators are not bound by precedent and have great leeway in such matters as active participation in the proceedings, accepting evidence, questioning witnesses, and deciding appropriate remedies. Arbitrators may visit sites outside the hearing room, call expert witnesses, seek out additional evidence, decide whether or not the parties may be represented by legal counsel, and perform many other actions not normally within the purview of a court. It is this great flexibility of action, combined with costs usually far below those of traditional litigation, which makes arbitration so attractive. Arbitrators have wide latitude in crafting remedies in the arbitral decision, with the only real limitation being that they may not exceed the limits of their authority in their award. An example of exceeding arbitral authority might be awarding one party to a dispute the personal automobile of the other party when the dispute concerns the specific performance of a business-related contract. It is open to the parties to restrict the possible awards that the arbitrator can make. If this restriction requires a straight choice between the position of one party or the position

of the other, then it is known as *pendulum arbitration* or *final offer arbitration*. It is designed to encourage the parties to moderate their initial positions so as to make it more likely they receive a favourable decision. To ensure effective arbitration and to increase the general credibility of the arbitral process, arbitrators will sometimes sit as a panel, usually consisting of three arbitrators. Often the three consist of an expert in the legal area within which the dispute falls (such as contract law in the case of a dispute over the terms and conditions of a contract), an expert in the industry within which the dispute falls (such as the construction industry, in the case of a dispute between a homeowner and his general contractor), and an experienced arbitrator.

- vii) Some important statistics : Use and effectiveness of Arbitration as a mechanism of ADR: American case study (source: National Arbitration Forum, Washington)



Key Findings in the above survey:

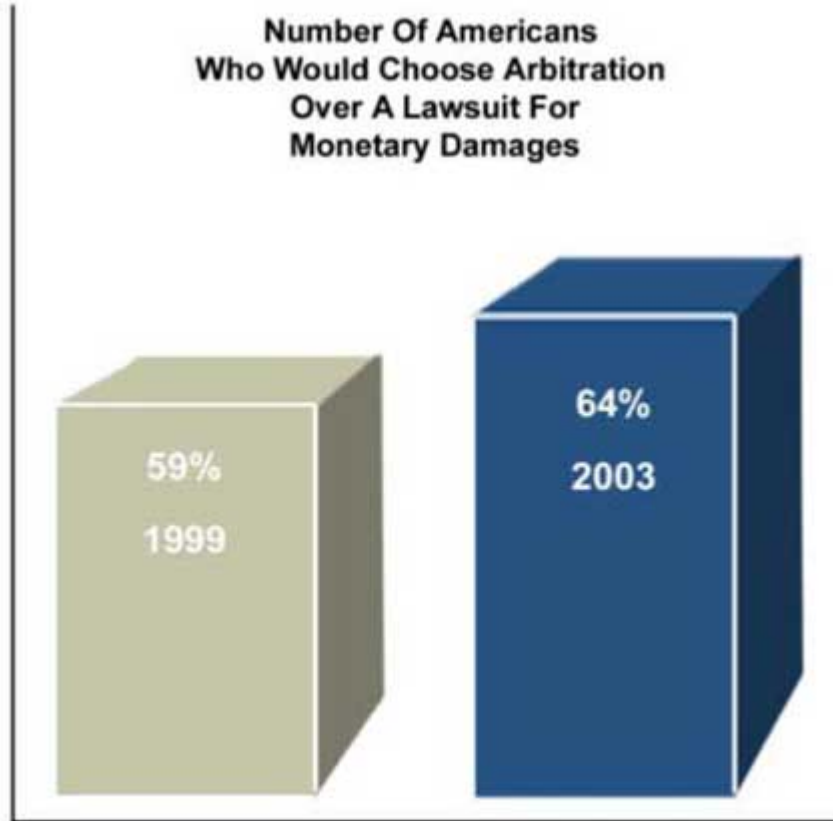
78% of people find faster recovery in Arbitration

83% of people find Arbitration equally or more fair

59.3% of people find Arbitration less expensive

84.6% of people find ADR equally or more suitable for insurance/reinsurance sector⁸

Another survey:



This survey clearly shows the increase in the number of people over the years who would opt for Arbitration over a lawsuit for the recovery of monetary damages.

⁸ <http://www.icadr.org/news-speechcjh.html>

Therefore, it is obvious that Arbitration is a growing field with a lot of potential in solving disputes in a speedy manner.

b) **Mediation:** Mediation is a process of alternative dispute resolution in which a neutral third party, the mediator, assists two or more parties in order to help them negotiate an agreement, with concrete effects, on a matter of common interest; *lato sensu* is any activity in which an agreement on whatever matter is researched by an impartial third party, usually a professional, in the common interest of the parties. i) Types of Disputes resolved by mediation:⁹

Aviation	Banking and finance
Boundary Disputes	Broker Liability
Business Disputes	Charities
Clinical & Medical Negligence	Competition
Commercial agencies	Commercial contracts
Construction & Development	Corporate finance
Distribution agreements	Employment
Energy	Engineering & Manufacturing Disputes
Environmental issues	Financial Services
Franchises	Group/Class actions
Information Technology	Insolvency and Bankruptcy
Insurance & Reinsurance	Intellectual Property, Trade Mark and Copyright
Landlord & Tenant	Leasing & Supply Contracts
Lender Liability	Libel & Defamation
Maritime & Shipping	Multiparty actions
Neighbour Disputes	Nuisance
Oil & Gas Contracts	Partnership Disputes
Passing-off Actions	Pensions
Personal Injury	Pollution Claims
Product Liability	Personal Indemnity

⁹ <http://www.adrgroup.co.uk/types.html>

Property & Real Estate	Publishing, Television & Broadcasting Rights
Railway Industry, Transport	Regulatory Disputes
Securities & Shares	Shareholder's Disputes

ii) Stages of Mediation¹⁰: Mediation commonly includes the following aspects or stages:

- a controversy, dispute or difference of positions between people, or a need for decision-making or problem-solving;
- decision-making remaining in the parties rather than being made by the neutral;
- the willingness of the parties to negotiate a positive solution to their problem and to accept a discussion about respective interests and objectives;
- the intent to achieve a positive result through the facilitative help of an independent and neutral third person.

The typical mediation has no formal compulsory elements, although some common elements are usually found:

- Each party having a chance to tell his or her story;
- Identification of issues, usually by the mediator;
- The clarification and detailed specification of the respective interests and objectives,
- the conversion of respective subjective evaluations into more objective values,
- Identification of options;
- Discussion and analysis of the possible effects of various solutions;
- the adjustment and the refining of the accessory aspects,
- memorializing the agreements into a written draft

Due to the particular character of this activity, each mediator uses a method of his or her own (a mediator's methods are not ordinarily governed by law), that might eventually be

¹⁰ <http://www1.worldbank.org/publicsector/legal/adr.htm>

very different from the above scheme. Also, many matters do not legally require a particular form for the final agreement, while others expressly require a precisely determined form. Most countries respect a Mediator's confidentiality. Mediation differs the most from other adversarial resolution processes by virtue of its simplicity, informality, flexibility and economy.

iii) **Mediation in Business and Commerce:** The eldest branch of mediation applies to business and commerce, and still this one is the widest field of application, with reference to the number of mediators in these activities and to the economical range of total exchanged values. The mediator in business or in commerce helps the parties to achieve the final goal of respectively buying/selling (a generical contreposition that includes all the possible varieties of the exchange of goods or rights) something at satisfactory conditions (typically in the aim of producing a synallagmatic contract), harmonically bringing the separate elements of the treaty to a respectively balanced equilibrium. The mediator, in the ordinary practice, usually cares of finding a positive agreement between (or among) the parties looking at the main pact as well as at the accessory pacts too, thus finding a composition of all the related aspects that might combine in the best possible way all the *desiderata* of his clients. The subfields include specialised branches that are very well commonly known: in finance, in insurances, in ship-brokering, in real estate and in some other particular markets, mediators have an own name and usually obey to special laws. Generally the mediator cannot practice commerce in the genre of goods in which he is a specialised mediator.

iv) **Global Relevance:** The rise of international trade law, continental trading blocs, the World Trade Organization and its opposing anti-globalization movement, use of the internet, among other factors, seem to suggest that legal complexity is rising to an intolerable and undesirable point. There may be no obvious way to determine which jurisdiction has precedence over which other, and there may be substantial resistance to settling a matter in any one place. Accordingly, mediation may come into more widespread use, replacing formal legal and judicial processes sanctified by nation-states. Some, like the anti-globalization movement, believe that such formal processes have

quite thoroughly failed to provide real safety and closure guarantees that are pre-requisite to uniform rule of law. Following an increasing notoriety of the process, and a wider notion of its main aspects and eventual effects, mediation is in recent times frequently proposed as a form of resolution of international disputes, with attention to belligerent situations too.

c) **Conciliation:** Conciliation is an alternative dispute resolution process whereby the parties to a dispute (including future interest disputes) agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes parties needs, takes feelings into account and reframes representations. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator. (This latter difference *can* be regarded as one of species to genus. Most practicing mediators refer to the practice of meeting with the parties separately as "caucusing" and would regard conciliation as a specific type or form of mediation practice -- "shuttle diplomacy" -- that relies on exclusively on caucusing. All the other features of conciliation are found in mediation as well.) If the conciliator is successful in negotiating an understanding between the parties, said understanding is almost always committed to writing (usually with the assistance of legal counsel) and signed by the parties, at which time it becomes a legally binding contract and falls under contract law.¹¹

A conciliator assists each of the parties to independently develop a list of all of their objectives (the outcomes which they desire to obtain from the conciliation). The conciliator then has each of the parties separately prioritize their own list from most to least important. She then goes back and forth between the parties and encourages them to "give" on the objectives one at a time, starting with the least important and working toward the most important for each party in turn. The parties rarely place the same priorities on all objectives, and usually have some objectives

¹¹ <http://en.wikipedia.org/wiki/Conciliation>

which are not on the list compiled by parties on the other side. Thus the conciliator can quickly build a string of successes and help the parties create an atmosphere of trust which the conciliator can continue to develop.

d) **Expert Determination:** Expert determination is a historically accepted form of dispute resolution invoked when there isn't a *formulated dispute* in which the parties have defined positions that need to be subjected to arbitration, but rather both parties are in agreement that there is a need for an evaluation, e.g. in a preceding contract. The practise itself is millennia old and well established where complex legal institutions either have not developed, or are unavailable, such as tribal societies and criminal organisations. The first mention that distinguishes specifically against the practise of arbitration, and introduces the formula "*as an expert and not as an arbitrator*" was in *Dean v. Prince* 1953 Ch. 590 at 591 (misquoted) and subsequently on appeal in the year 1954 1 Ch. 409 at 415.¹²

e) **Negotiation:** Negotiation is the process whereby interested parties resolve disputes, agree upon courses of action, bargain for individual or collective advantage, and/or attempt to craft outcomes which serve their mutual interests. It is usually regarded as a form of alternative dispute resolution. Given this definition, one can see negotiation occurring in almost all walks of life, from parenting to the courtroom.¹³

In the advocacy approach, a skilled negotiator usually serves as advocate for one party to the negotiation and attempts to obtain the most favorable outcomes possible for that party. In this process the negotiator attempts to determine the minimum outcome(s) the other party is (or parties are) willing to accept, then adjusts her demands accordingly. A "successful" negotiation in the advocacy approach is when the negotiator is able to obtain all or most of the outcomes his party desires, but without driving the other party to permanently break off negotiations. Traditional negotiating is sometimes called *win-lose* because of the hard-ball style of the negotiators whose motive is to get as much as they can for their side. In the Seventies, practitioners and researchers began to develop *win-win* approaches to negotiation. This approach,

¹² http://en.wikipedia.org/wiki/Expert_determination

¹³ <http://en.wikipedia.org/wiki/negotiation>

referred to as Principled Negotiation, is also sometimes called mutual gains bargaining. The mutual gains approach has been effectively applied in environmental situations as well as labor relations where the parties (e.g. management and a labor union) frame the negotiation as *problem solving*.

f) Early Neutral Evaluation (ENE): A court-based ADR process applied to civil cases, ENE brings parties and their lawyers together early in the pre-trial phase to present summaries of their cases and receive a non-binding assessment by an experienced, neutral attorney with expertise in the substance of the dispute, or by a magistrate judge. The evaluator may also provide case planning guidance and settlement assistance in some courts. It is purely used as a settlement device and resembles evaluative mediation.¹⁴

g) Fact-finding: A process by which a third party renders binding or advisory opinions regarding facts relevant to a dispute. The third party neutral may be an expert on technical or legal questions, may be representatives designated by the parties to work together, or may be appointed by the court.¹⁵

h) Med-Arb, or Mediation-Arbitration: An example of multi-step ADR, parties agree to mediate their dispute with the understanding that any issues not settled by mediation will be resolved, will be resolved by arbitration, using the same individual to act as both mediator and arbitrator. Having the same individual acting in both roles, however may have a chilling effect on the parties participating fully in mediation. In Co-Med-Arb, different individuals serve as neutrals in the arbitration and mediation sessions, although they may both participate in the parties' initial exchange of information. In Arb-Med, the neutral first acts as arbitrator, writing up an award and placing it in a sealed envelope. The neutral then proceeds to the mediation stage, and if the case is settled in mediation, the envelope is never opened.

¹⁴ <http://www.spea.indiana.edu/icri/terms.htm#ENE>

¹⁵ Ibid.

i) **Judge hosted settlement conference:** In this court-based ADR process, the settlement judge (or magistrate) presides over a meeting of the parties in an effort to help them reach a settlement. Judges have played a variety of roles in these conferences, articulating opinions about the merits of the case, facilitating the trading of settlement offers, and sometimes acting as the mediator.

j) **Minitrial:** A voluntary process in which cases are heard by a panel of high level principals from the disputing sides with full settlement authority; a neutral may or may not oversee this stage. First, parties have a summary hearing, each side presenting the essence of their case. Each party can thereby learn the strengths and weaknesses of their own case, as well as that of other parties. Secondly, the panel of party representatives attempts to resolve the dispute by negotiation. The neutral presider may offer her opinion about the likely outcome in court.

k) **Court based minitrial:** A similar procedure as that of the above, generally reserved for large disputes, in which a judge, a magistrate and a non-judicial neutral presides over one or two-day hearing. If negotiations fail, the parties proceed to trial.

l) **Regulatory Negotiation or Reg-Neg:** Used by governmental agencies as an alternative to the more traditional approach of issuing regulations after a lengthy notice and comment period. Instead, “agency officials and affected private parties meet under the guidance of a neutral facilitator to engage in joint negotiation and the drafting of the rule. The public is then asked to comment on the resulting, proposed rule. By encouraging participation of interested stakeholders, the process makes use of private parties’ perspectives and expertise, and can help avoid subsequent litigation over the resulting rule.”

m) **Ombudsperson:** An informal dispute resolution tool used by organizations. A third party ombudsperson is appointed by the organisation to investigate complaints within the institution and prevent disputes or facilitate their resolution. The Ombudsperson may use various ADR mechanisms in the process of resolving disputes.

n) **Private Judging:** A private or court-connected process in which the parties empower a private individual to hear and issue a binding, principled decision in their case. The process may be agreed upon by a contract between the parties, or authorized by statute.

o) **Two-track approach:** Used in conjunction with litigation, representatives of disputing parties who are not involved in the litigation conduct settlement negotiations or engage in other ADR processes. The ADR track may proceed concurrently with litigation or an agreed upon hiatus in litigation.

Enumerated above are most of the ADR mechanisms that are practised in countries all over the world against the backdrop of their different socio-economic-politico-cultural scenarios.

Study of ADR Institutions across the World

The various institutions and provisions governing the ADR mechanisms all over the world are listed below:

INTERNATIONAL ORGANISATIONS:¹⁶

- a) **Permanent Court of Arbitration (PCA):** The Permanent Court of Arbitration (PCA), also known as the Hague Tribunal is an international organization based in The Hague in the Netherlands. It was established in 1899 as one of the acts of the first Hague Peace Conference, which makes it the oldest institution for international dispute resolution. In 2002, 96 countries were party to the treaty. The court deals in cases submitted to it by the consent of the parties involved and handles cases between countries and between countries and private parties. The PCA is housed in the Peace Palace in The Hague, which was built specially for the Court in 1913 with an endowment from the Carnegie Foundation. The same building also houses the International Court of Justice, though the two institutions operate separately.

¹⁶ <http://www.spea.indiana.edu/icri/terms.htm#ENE>

- b) **World Trade Organisation (WTO):** The World Trade Organisation is an international organisation which oversees a large number of agreements defining the “rules of trade” between its member states. The WTO is the successor to the General Agreement on Tariffs and Trade, and operates with the broad goal of reducing or abolishing international trade barriers. The WTO has two basic functions: as a negotiating forum for discussions of new and existing trade rules, and as a trade dispute settlement body. The function of WTO as a trade dispute settlement body is important in this context. The WTO has significant power to enforce its decisions, through the Dispute Settlement Body, an international trade court with the power to authorize sanctions against states which do not comply with its rulings. The WTO mainly resolves disputes through the process of “consensus” and “arbitration” which are essentially mechanisms of ADR.
- c) **International Chamber of Commerce (ICC) :** The International Chamber of Commerce is an international organization that works to promote and support global trade and globalisation. It serves as an advocate of world business in the global economy, in the interests of economic growth, job creation, and prosperity. As a global business organization, made up of member states, it helps the development of global outlooks on business matters. ICC has direct access to national governments worldwide through its national committees. ICC activities include Arbitration and Dispute resolution which are the most prominent activities that it performs.
- d) **Court of Arbitration for Sport (CAS):** The Court of Arbitration for Sport (CAS; Tribunal Arbitral du Sport or TAS in French) is an arbitration body set up to settle disputes related to sports. Its headquarters are in Lausanne; there are additional courts located in New York City and Sydney, with ad-hoc courts created in Olympics host cities as required. the CAS underwent reforms to make itself more independent of the International Olympic Committee (IOC), organizationally and financially. The biggest

change resulting from this reform was the creation of an "International Council of Arbitration for Sport" (ICAS) to look after the running and financing of the CAS, thereby taking the place of the IOC. Generally speaking, a dispute may be submitted to the CAS only if there is an arbitration agreement between the parties which specifies recourse to the CAS. Currently, all Olympic International Federations but one, and many National Olympic Committees have recognised the jurisdiction of the CAS and included in their statutes an arbitration clause referring disputes to it. Its arbitrators are all high level jurists and it is generally held in high regard in the international sports community.

- e) **United Nations Commission on International Trade Law (UNCITRAL):** The United Nations Commission on International Trade Law (UNCITRAL) is the core legal body within the United Nations system in the field of international trade law. UNCITRAL was tasked by the General Assembly to further the progressive harmonization and unification of the law of international trade. The UNCITRAL is a body of member and observer states under the auspices of the United Nations. It drafted the UNCITRAL Model law on International Commercial Arbitration in 1985. Agreements, which cite the UNCITRAL Arbitration Rules, may be bound to this form of dispute resolution. Legislation based on the *UNCITRAL Model Law on International Commercial Arbitration* has been enacted in Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bermuda, Bulgaria, Canada, Chile, in China: Hong Kong Special Administrative Region, Macau Special Administrative Region; Croatia, Cyprus, Egypt, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Ireland, Japan, Jordan, Kenya, Lithuania, Madagascar, Malta, Mexico, New Zealand, Nigeria, Oman, Paraguay, Peru, Philippines, Republic of Korea, Russian Federation, Singapore, Spain, Sri Lanka, Thailand, Tunisia, Ukraine, within the United Kingdom of Great Britain and Northern Ireland: Scotland; in Bermuda, overseas territory of the United Kingdom of Great Britain and Northern Ireland; within the United States of America: California, Connecticut, Illinois, Oregon and Texas; Zambia, and Zimbabwe.

- f) Other treaties: The other treaties governing ADR in various states would include the United States Code Title 9, The Agreement relating to the Application of the European Convention on International Arbitration (Paris, 1962), The European Convention providing a Uniform Law on Arbitration (Council of Europe, 1964). The various other treaties enacted by the rest of the countries in the world are not included in this list.

Reasons behind introduction of ADR in India:

Alternative Dispute Resolution in India is an attempt made by the legislators and judiciary alike to achieve the “Constitutional goal” of achieving Complete Justice in India. ADR first started as a quest to find solutions to the perplexing problem of the ever increasing burden on the courts. A thought-process that started off to rectify docket explosion, later developed into a separate field solely catering to various kinds of mechanisms which would resolve disputes without approaching the Formal Legal System (FLS). The reasoning given to these ADR mechanisms is that the society, state and the party to the dispute are equally under an obligation to resolve the dispute as soon as possible before it disturbs the peace in the family, business community, society or ultimately humanity as a whole.

In a civilised society, principles of natural justice along with the “Rule of Law” should result in complete justice in case of a dispute. Rule of Law is defined as the state of order in which events conform to the law. It is an authoritative, legal doctrine, principle, or precept applied to the facts of an appropriate case. These definitions give us the indication that the Rule of Law is a authoritative concept which might lead to a win-lose situation in cases of dispute. Therefore, ADR uses the principles of natural justice in consonance with the Rule of Law, in order to create a favourable atmosphere of a win-win situation. This is much needed in countries like India where litigation causes a great deal of animosity between the parties due to the agony caused by the long-standing litigation. ADR, thus, gains its momentum in India today.¹⁷

Alternative Dispute Resolution in India was founded on the Constitutional basis of Articles 14 and 21 which deal with Equality before Law and Right to life and personal liberty respectively. These Articles are enshrined under Part III of the Constitution of India which lists the Fundamental Rights of the citizens of India. ADR also tries to achieve the Directive Principle of State Policy relating to Equal justice and Free Legal Aid as laid down under Article 39-A of the Constitution. The Acts which deal with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 (discussed in detail later) and the Legal Services Authorities Act, 1987. Section 89 of the Civil Procedure Code, 1908 makes it possible for Arbitration proceedings to take place in accordance with the Acts stated above.

¹⁷ <http://www.icadr.org/news-speechcjh.html>

In India, the quest for justice has been an ideal, which the citizens have been aspiring for generations down the line. Our Constitution reflects this aspiration in the Preamble itself, which speaks about justice in all its forms: social, economic and political. Justice is a constitutional mandate. About half a century of the Constitution at work has tossed up many issues relating to the working of the judiciary; the most important being court clogging and judicial delays. Particularly disturbing has been the chronic and recurrent theme of a near collapse of the judicial trial system, its delays and mounting costs. Here, the glorious uncertainties of the law frustrated the aspirations for an equal, predictable and affordable justice is also a question, which crops up often in the minds of the people.

We are a country of a billion people. The fundamental question is: *How do we design and structure a legal system, which can render justice to a billion people?* The possibility of a justice-delivery mechanism in the Indian context and the impediments for dispensing justice in India is an important discussion. Delay in justice administration is the biggest operational obstacle, which has to be tackled on a war footing. As Justice Warren Burger, the former Chief Justice of the American Supreme Court observed in the American context:

“The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion — that ordinary people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their disputes, is not correct. *People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible.*”

This observation with greater force applies in the Indian context.

Therefore, this explains the need for Alternative Dispute Resolution in India. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution. These are the reasons behind the introduction of ADR in India.

The Arbitration and Conciliation Act, 1996¹⁸

The Arbitration and Conciliation Act, 1996 was passed on the basis of the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. Its had been recommended by General Assembly of the United Nations that all countries should give due consideration to the said Model Law in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of the international commercial arbitration practices. It has also recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek on amicable settlement of that dispute by recourse to conciliation. These rules are believed to make a significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations. These objectives have been laid down in the Preamble to the Arbitration and Conciliation Act, 1996.

ARBITRATION PROVISIONS:

Under the Arbitration and Conciliation Act, 1996; “arbitration” means any arbitration whether or not administered by a permanent arbitral institution. This has been discussed in S.2 of the Act, along with other definitions, which are peculiar to the Act. Under the Act, written communication is delivered when it reaches the other party’s place of business, habitual residence or mailing address. If such an address cannot be traced recorded attempt to find out and mail to the old address is sufficient (S.3). In the event that either of the parties know of a provision from which either parties derogate, or any part of the agreement has not been complied with, if no obligation is raised to such non-compliance, it is taken that the party has given up his right to object and that right will be waived. (S.4) The extent of Judicial Intervention and Administrative assistance are discussed in Ss. 5 & 6 of the Act.

Part II of the Act deals with Arbitration Agreements. Section 7 defines an arbitration agreement as “an agreement by the parties to submit to arbitration all or certain disputes which have arisen

¹⁸ www.indialawinfo.com/bareacts/arbc.html

or which may arise between them in respect of a defined legal relationship, whether contractual or not.” An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and it shall be in writing.

In case of a judicial application being filed for a dispute between parties who have agreed to arbitrate, the judicial authority may refer the case to arbitration if he feels and arbitration can take place even if the issue is pending before the judicial authority (S.8) The provisions regarding interim measures are made under S.9 of the Act.

Part III of the Arbitration and Conciliation Act, 1996 contains provisions regarding the composition of an Arbitral Tribunal. The parties to an arbitration agreement are free to determine the number of arbitrators they want and any person, of any nationality may be appointed as the arbitrator. The parties are also free to decide on the procedure of arbitration. In case of a “three arbitrator approach” each party nominates an arbitrator and the two said nominees should nominate a third arbitrator. In case either of the parties fails to nominate an arbitrator or the two nominees do not appoint a third arbitrator in 30 days the Chief Justice or any other institution may on a request by either party appoint the arbitrator. Other provisions regarding the appointment of arbitrators have been discussed at length under S.11 of the Act.

Under this Act, an arbitrator may be challenged in case there are circumstances, which give rise to justifiable doubts regarding his independence or impartiality, or if he does not possess the qualifications agreed to by the parties (S.12). A party who has appointed the arbitrator may also challenge him. The parties may freely determine the procedure for arbitration, and in the event that they do not decide such procedure, the arbitral tribunal relating to the agreement will look into the challenge and pass an arbitral award. In case this award is also challenged, then the court will pass a decree (S.13). Sections 14 and 15 lay down provisions relating to failure or impossibility to act by the arbitrator and the termination of mandate and substitution of arbitrator respectively.

Chapter IV of the Arbitration and Conciliation Act, 1996 deals with the jurisdiction of arbitral tribunals. Section 16 clearly emphasizes that the arbitral tribunal may rule on its own jurisdiction

even with regards to any objection raised on the validity of the arbitration agreement itself – the reason being that the arbitration clause, a part of the agreement is treated as an independent contract of its own. A decision by the arbitral tribunal that the contract itself is null and void does not render the arbitration clause as invalid. A plea that the arbitral tribunal does not have jurisdiction cannot be raised later than after submitting the statement of defence and this plea should be submitted as soon as the matter alleged to be beyond the scope of its authority is raised in the arbitral proceedings. Interim measures regarding the dispute may be taken at the request of a party unless otherwise agreed by the parties.

Chapter V deals with the basic conduct of an arbitral proceeding. Section 18 states that there should be equal treatment of parties and both parties must be given equal opportunity to present the case. Section 19 lays down that the arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The parties are free to determine the procedure to be followed by the arbitral tribunal in the course of proceedings. In the event that no such procedure is established by the parties, the tribunal may follow any procedure it deems fit. The power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence (S.19). The parties are free to agree upon the place of arbitration or, if not determined, the power lies with the tribunal. (S.20) Arbitration proceedings commence immediately after a dispute is submitted for arbitration, unless agreed upon otherwise. (S.21) The language preference also lies with the parties, or the tribunal, which may use a language it thinks fit. All documents submitted and received should be in the language adopted in the proceedings or must be translated into it. (S.22)

Statements of claim and defence are dealt with under Section 23:

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statement all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Section 24 deals with hearing and written proceedings. It states that in the absence of a particular clause, the arbitral tribunal shall decide whether to carry on the proceedings orally or on the basis of documents and evidence. It also says that the parties should be given sufficient notice of any meeting and all documents submitted must be shown to the other party.

Section 25 deals with the default of the party to claim or to respond or to appear for the oral hearings. In the case of the former, the proceedings are terminated by the arbitral tribunal whereas in the case of the latter two instances, the proceedings would continue with the document evidence on hand.

The arbitral tribunal may appoint an expert to seek opinion, to collect information, and to produce a report backed up by relevant documents unless otherwise agreed by the parties. The parties may also examine the report, documents with the expert, again unless otherwise agreed to by the parties. This is dealt in Section 26.

The arbitral tribunal or the party with the approval of the arbitral tribunal may apply to the court for evidence. The court may order the evidences to be given directly to the arbitral tribunal or it may furnish details about processes in earlier cases of similar nature. Disregard to this order by personnel in absenting themselves to attend to the arbitral tribunal or for any other default in producing the relevant evidence, invites punishment and penalties. Section 27 elaborates on the summonses and commissions for the submission of witnesses and summonses for submission of documents.

Making of arbitral award and termination of proceedings are written in the chapter VI.

In this Section 28 speaks on the rules applicable to the substance of dispute. In other than the international commercial arbitration, the existing rules of arbitration prevalent at that time are taken into account. In international commercial arbitrations, the rules designated by the parties as applicable to the substance of dispute, the substantive law of the countries and not their conflicts;

In the absence of any such specifications, the rules as circumstantially viable and if the parties so agree, decide *ex aequo et bono* or as *amiable compositeur*. In all cases, the terms of the contract and the trade usages form a ground for decision making by the arbitral tribunal. Emphasizing on the majority decision of the arbitral tribunal in case there are more than one in the tribunal, Section 29 spells that the presiding arbitrator would decide on the questions of procedure.

Section 30 elaborates on the settlement, the conciliatory proceedings, the terms agreed on, and if requested by the party and if there is no objection by the arbitral tribunal, to record and issue an award on the terms agreed as per Section 31. Section 31 lists the various aspects of, and the requirements for, the laying down of the terms of the award of settlement, the date and place specifications, the monetary details, the costs and expenses – everything pertaining to the arbitration award.

Under Section 32 and 33, termination of proceedings and the corrections to the award (made within 30 days) respectively. The various instances under which the termination of proceedings occurs be it for having reached a consensus or withdrawal by either party or if the arbitral tribunal finds it unnecessary to proceed further for reasons substantiated by the tribunal. Once the award is issued and if there need be any corrections or amendment, and if within 30 days, it has been put forth to the arbitral tribunal, an amendment to the award could be given as stated in Section 33.

Chapter VII encompasses Section 34, which covers Recourse against Arbitral Award. Recourse to the court for setting aside the Arbitral award by an application can be made only if the party to the application furnishes proof of incapacity, lack of proper notice, not being present for the arbitral proceedings for valid reasons, and if the decisions made are beyond the scope of the submission to arbitration. Alternatively, if the court finds the subject-matter of the dispute is not capable of settlement by arbitration under the law, for the time being in force, or if the arbitral award is in conflict with the public policy of India.

Section 35 and 36 under Chapter VIII deal with Finality and Enforcement of arbitral awards. Section 35 makes it final and binding on the parties to adhere to the arbitral award and Section

36 gives the arbitral award the power under the code of Civil Procedure, 1908 and in the same manner as if it were a decree of court.

Chapter XI covers Section 37 on Appeals, the instances when appeals are allowed and it also states that if a noting under this section shall take away any right to appeal to the Supreme Court. Also, there is no second appeal provision.

CONCILIATION PROVISIONS:

The proceedings relating to CONCILIATION are dealt under sections 61 to 81 of Arbitration and Conciliation Act, 1996. This Act is aimed at permitting Mediation conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes. This Act also provides that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.

Section 61 says that conciliation shall apply to disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. Unless any law excludes, these proceedings will apply to every such dispute while being conciliated. The parties may agree to follow any procedure for conciliation other than what is prescribed under the 1996 Act. If any law certain disputes are excluded from submission to conciliation, the third part will not apply. According to Section 62, a party can take initiative and send invitation to conciliate under this part after identifying the dispute. Proceedings shall commence when the other party accepts the invitation. If the other party rejects, it stops there itself. If other party does not reply within 30 days it can be treated as rejection.

Conciliators

- a. There will be only one conciliator, unless the parties agree to two or three.
- b. Where there are two or three conciliators, then as a rule, they ought to act jointly.
- c. Where there is only one conciliator, the parties may agree on his name
- d. Where there are two conciliators, each party may appoint one conciliator.

e. Where there are three conciliators, each party may appoint one, and the parties may agree on the name of the third conciliator, who shall act as presiding conciliator.

f. But in each of the above cases, the parties may enlist the assistance of a suitable institution or person.

The above provisions are contained in section 63 and 64(1)

Section 64(2) and proviso of the new law lay down as under:

a. Parties may enlist the assistance of a suitable institution or person regarding appointment of conciliator. The institution may be requested to recommend or to directly appoint the conciliator or conciliators.

b. In recommending such appointment, the institutions etc. shall have regard to the considerations likely to secure an "independent and impartial conciliator".

c. In the case of a sole conciliator, the institution shall take into account the advisability of appointing a conciliator other than the one having the nationality of the parties.

Stages:

In sections 65 to 73 contains provisions spread over a number of sections as to the procedure of the conciliator. Their gist can be stated in short form.

a. The conciliator, when appointed, may request each party to submit a statement, setting out the general nature of the dispute and the points at issue. Copy is to be given to the other party. If necessary, the parties may be asked to submit further written statement and other evidence.

b. The conciliator shall assist the parties "in an independent and impartial manner", in their attempt to reach an amicable settlement. See Section 67(1) of the new law.

c. The conciliator is to be guided by the principles of "objectivity, fairness and justice". He is to give consideration to the following matters:

i) Rights and obligations of the parties;

ii) Trade usages; and

iii) Circumstances surrounding the dispute, including previous business practices between the parties. [Section 67(2)].

- d. He may, at any stage, propose a settlement, even orally, and without stating the reasons for the proposal. [Section 67(4)].
- e. He may invite the parties (for discussion) or communicate with them jointly or separately. [Section 68].
- f. Parties themselves must, in good faith, co-operate with the conciliator and supply the needed written material, provide evidence and attend meetings, [Section 71].
- g. If the conciliator finds that there exist "elements of a settlement, which may be acceptable to the parties", then he shall formulate the terms of a possible settlement and submit the same to the parties for their observation.
- h. On receipt of the observations of the parties, the conciliator may re-formulate the terms of a possible settlement in the light of such observation.
- i. If ultimately a settlement is reached, then the parties may draw and sign a written settlement agreement. At their request, the conciliator can help them in drawing up the same. [See Sections 73(1) and 73(2)].

Legal Effect:

- a. The settlement agreement signed by the parties shall be final and binding on the parties. [See Section 73(1)].
 - b. The agreement is to be authenticated by the conciliator. [See Section 73(4)].
 - c. The settlement agreement has the same status and effect as if it were an arbitral award rendered by the arbitral tribunal on agreed terms. [See section 74 read with section 30].
- The net result is that the settlement can be enforced as a decree of court by virtue of section 36.

Role of the Parties

Under section 72, a party may submit to the conciliator his own suggestions to the settlement of a dispute. He at his own initiative or on the conciliator's request may submit such suggestions.

Conciliator's Procedure

The net result of section 66, Section 67 (2) and Section 67(3) can be stated as follows:

- a. The conciliator is not bound by the Code of Civil Procedure or the Evidence Act.
- b. The conciliator is to be guided by the principles of objectivity, fairness and justice.

c. Subject to the above, he may conduct the proceedings in such manner, as he considers appropriate, taking into account.

- i. The circumstances of the case;
- ii. Wishes expressed by the parties;
- iii. Need for speedy settlement.

Disclosure and Confidentiality

a. Factual information received by the conciliator from one party should be disclosed to the other party, so that the other party can present his explanation, if he so desires. But information given on the conditions of confidentiality cannot be so disclosed.

b. Notwithstanding anything contained in any other law for the time being in force, the conciliator and a party shall keep confidential "all matters relating to the conciliation proceedings". This obligation extends also to the settlement agreement, except where disclosure is necessary for its implementation and enforcement. (Section 75).

Admissions etc.

In any arbitral or judicial proceedings (whether relating to the conciliated dispute or otherwise), the party shall not rely on, or introduce as evidence

- i. Views expressed or suggestions made by the other party for a possible settlement;
- ii. Admissions made by the other party in the course of conciliation proceedings;
- iii. Proposal made by the conciliator; and
- iv. The fact that the other party had indicated his willingness to accept a settlement proposal (Section 81).

Parallel Proceedings

During the pendency of conciliation proceedings, a party is debarred from initiating arbitral or judicial proceedings on the same dispute, except "such proceedings as are necessary for preserving his rights". (Section 77) (There is no mention of arbitral or judicial proceedings, which are already initiated).

Conciliator Not to Act as Arbitrator

Unless otherwise agreed by the parties, the conciliator cannot act as arbitrator, representative or counsel in any arbitral or judicial proceedings in respect of the conciliated dispute. Nor can he be "presented" by any party as a witness in such proceedings. (Section 80).

Costs and Deposit: The new law also contains provisions on certain other miscellaneous matters, such as costs and deposit (Section 78 and 79).

Lok adalats as a unique ADR measure in India:

The emergence of alternative dispute resolution has been one of the most significant movements as a part of conflict management and judicial reform, and it has become a global necessity. Resolution of disputes is an essential characteristic for societal peace, amity, comity and harmony and easy access to justice. It is evident from the history that the function of resolving dispute has fallen upon the shoulders of the powerful ones. With the evolution of modern States and sophisticated legal mechanisms, the courts run on very formal processes and are presided over by trained adjudicators entrusted with the responsibilities of resolution of disputes on the part of the State. The processual formalisation of justice gave tremendous rise to consumption of time and high number of cases and resultant heavy amount of expenditure. Obviously, this led to a search for an alternative complementary and supplementary mechanism to the process of the traditional civil court for inexpensive, expeditious and less cumbersome and, also, less stressful resolution of disputes.

As such, ADR has been, a vital, and vociferous, vocal and vibrant part of our historical past. Undoubtedly, Lok Adalat (Peoples' Court) concept and philosophy is an innovative Indian contribution to the world jurisprudence. It has very deep and long roots not only in the recorded history but even in prehistorical era. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fine and familiar fora which has been playing an important role in settlement of disputes. The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society.¹⁹

Lok Adalat (people's courts), established by the government settles dispute through conciliation and compromise. The First Lok Adalat was held in Gujarat in 1982.

Lok Adalat accepts the cases which could be settled by conciliation and compromise, and pending in the regular courts within their jurisdiction. The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the

¹⁹ <http://www.dca.nic.in/cir/anr2gc1099.html>

dispute is settled at the Lok Adalat. The procedural laws, and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat.

Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat. Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat, as the scope for compromise through an approach of give and take is high in these cases. Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. Parliament enacted the Legal Services Authorities Act 1987, and one of the aims for the enactment of this Act was to organize Lok Adalat to secure that the operation of legal system promotes justice on the basis of an equal opportunity. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by the Lok Adalats.

According to Legal Services Authorities (Amendment) Act 1994 effective from 09-11-1995 has since been passed, Lok Adalat settlement is no longer a voluntary concept. By this Act Lok Adalat has got statutory character and has been legally recognized. Certain salient features of the Act are enumerated below:-²⁰

Section 19

1. Central, State, District and Taluk Legal Services Authority has been created who are responsible for organizing Lok Adalats at such intervals and place.
2. Conciliators for Lok Adalat comprise the following: -
 - A. A sitting or retired judicial officer.
 - B. other persons of repute as may be prescribed by the State Government in consultation with the Chief Justice of High Court.

²⁰ <http://www.ce9.uscourts.gov/Web/OCELibra.nsf/0/9ce38a05659d753988256949006625a5?OpenDocument>

Section 20: Reference of Cases

Cases can be referred for consideration of Lok Adalat as under:-

1. By consent of both the parties to the disputes.
2. One of the parties makes an application for reference.
3. Where the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.
4. Compromise settlement shall be guided by the principles of justice, equity, fair play and other legal principles.
5. Where no compromise has been arrived at through conciliation, the matter shall be returned to the concerned court for disposal in accordance with Law.

Section 21

After the agreement is arrived by the consent of the parties, award is passed by the conciliators. The matter need not be referred to the concerned Court for consent decree.

The Act provisions envisages as under:

1. Every award of Lok Adalat shall be deemed as decree of Civil Court.
2. Every award the dispute.
3. No appeal shall made by the Lok Adalat shall be final and binding on all the parties to lie from the award of the Lok Adalat.

Section 22

Every proceedings of the Lok Adalat shall be deemed to be judicial proceedings for the purpose of :-

1. Summoning of Witnesses.
2. Discovery of documents.
3. Reception of evidences.
4. Requisitioning of Public record.

Abraham Lincoln has observed:

"Discourage litigation. Persuade your neighbours to compromise wherever 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 still be business enough." ²¹

The concept of Lok Adalat was pushed back into oblivion in last few centuries before independence and particularly during the British regime. This concept is, now, again very popular and is gaining historical momentum. Experience has shown that it is one of the very efficient and important ADRs and most suited to the Indian environment, culture and societal interests. The finest hour of justice is the hour of compromise when parties after burying their hatchet reunite by a reasonable and just compromise. This Indian-institutionalised, indigenised and now, legalized concept for settlement of dispute promotes the goals of our Constitution. Equal justice and free legal aid are hand in glove. It is, rightly said, since the second world war, the greatest revolution in the law has been the mechanism of evolution of system of legal aid which includes an ADR. The statutory mechanism of legal services includes concept of Lok Adalat in the Legal Services Authorities Act. The legal aid, in fact, is a fundamental human right.

Indian socio-economic conditions warrant highly motivated and sensitised legal service programmes as large population of consumers of justice (heart of the judicial anatomy) are either poor or ignorant or illiterate or backward, and, as such, at a disadvantageous position. The State, therefore, has a duty to secure that the operation of legal system promotes justice on the basis of equal opportunity. Alternative dispute resolution is, neatly, worked out in the concept of Lok Adalat. It has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has again been proved to be a successful and viable national imperative and incumbency, best suited for the larger and higher sections of the present society and Indian system. The concept of legal services which includes Lok Adalat is a *"revolutionary evolution of resolution of disputes"*.

²¹ <http://www.dca.nic.in/cir/anr2gc1099.html>

Implementation of ADR in India:

The implementation of Alternative Dispute Resolution mechanisms as a means to achieve speedy disposal of justice is a crucial issue. The sea-change from using litigation as a tool to resolve disputes to using Alternative Dispute Resolution mechanisms such as conciliation and mediation to provide speedy justice is a change that cannot be easily achieved. The first step had been taken in India way back in 1940 when the first Arbitration Act was passed. However, due to a lot of loop-holes and problems in the legislation, the provisions could not fully implemented. However, many years later in 1996, The Arbitration and Conciliation Act was passed which was based on the UNCITRAL model, as already discussed in the previous section of the paper. The amendments to this Act were also made taking into account the various opinions of the leading corporates and businessmen who utilise this Act the most. Sufficient provisions have been created and amended in the area of Lok Adalats in order to help the rural and commoner segments to make most use of this unique Alternative Dispute Resolution mechanism in India. Therefore, today the provisions in India sufficiently provide for Alternative Dispute Resolution. However, its implementation has been restricted to just large corporates or big business firms. Lok Adalats, though a very old concept in Indian Society, has not been implemented to its utmost level. People still opt for litigation in many spheres due to a lot of drawbacks. Provisions made by the legislators need to be utilised. This utilisation can take place only when a definite procedure to increase the implementation of ADR is followed. In order to have such an implementation programme, it is necessary to analyse what the problems are and rectify them.

Problems in implementation and suggestions:

Any implementation is usually confronted with problems. ADR is no exception to this rule. Some of the problems faced during implementation are enumerated as under:

- 1) Attitudes: Although Indian law favours dispute resolution by arbitration, Indian sentiment has always abhorred the finality attaching to arbitral awards. A substantial volume of Indian case-law bears testimony to the long and arduous struggle to be freed from binding arbitral decisions. Aided and abetted by the legal fraternity, the aim of every party to an arbitration (domestic or foreign) is: "try to win if you can, if you cannot do your best to see that the other side cannot

enforce the award for as long as possible.” In that sense, arbitration as a means of settling disputes is a failure- though it is being increasingly regarded as a useful mechanism for resolving disputes. The trouble is that neither the private sector nor the public sector in India are as yet sufficiently infused with the “spirit of arbitration.” An arbitration award should only be permitted to be set aside for reasons extraneous to its contents – such as, lack of jurisdiction of the arbitrator, fraud or corruption of the arbitrator or of the other party, or a fundamental miscarriage of justice in the conduct of arbitral proceedings. Jurisdiction to correct patent legal errors on the face of the award was a peculiarly English innovation. To have imported this questionable jurisdiction into litigious India (as we did under the Arbitration Act, 1940) was a great mistake. Then, thin dividing line between the merits of an award and errors of law apparent on its face are often blurred- few questions of fact continue to remain so after being churned up in the mind of a skilled lawyer! These basic infirmities in the law of arbitration, and the approach of users, left their mark on domestic arbitration under the Arbitration Act, 1940.²²

First and foremost, there is a need to change our traditional approach to resolving disputes, even a need to change our basic attitudes. Perhaps the legendary basketball coach of Temple University, John Chaney, said it best when he said that "winning is an attitude." He might well have been speaking about dispute resolution and ADR. We need to redefine the very meaning of what it is to "win." Consistent with what our clients want and deserve, the ultimate "win" requires our understanding of the clients' interests and goals and our ability to solve their problems. The spirit of ADR mechanisms is to create a WIN-WIN situation, but the attitude to people is changing it into a WIN-LOSE situation, which is not very different from a litigation. In so many large international arbitrations the defendant will do everything to postpone the moment of the award; at and before the hearing, the parties will deploy all conceivable, and some inconceivable, procedural devices to gain an advantage; the element, of mutual respect is lacking; and the loser rather than paying up with fortitude, will try either to have the award upset, or to at least have its enforcement long postponed. It is in this background that the new Indian law (of arbitration and conciliation) was conceived and enacted. But it is not enough to have a new law- it is necessary for judges and lawyers to realise that the era of court-structured and court-controlled arbitration is effectively at an end. Our attitudes require readjustment; we need to re-

²² F.S. Nariman, “Alternative Dispute Resolution”, 1st ed. 1997, p.45

adjust to the spirit of ADR, and adhere to its underlying philosophy, which is that of utmost good faith of the parties.

2) Lawyer and Client Interests: Lawyers and clients often have divergent attitudes and interests concerning settlement. This may be a matter of personality (one may be a fighter, the other a problem solver) or of money. In some circumstances, a settlement is not in the client's interest. For example, the client may want a binding precedent or may want to impress other potential litigants with its firmness and the consequent costs of asserting claims against it. Alternatively, the client may be in a situation in which there are no relational concerns; the only issue is whether it must pay out money; there is no pre-judgement interest; and the cost of contesting the claim is less than the interest on the money. In these, and a small number of situations, settlement will not be in the client's interest.²³

Still, a satisfactory settlement typically is in the client's interest. It is the inability to obtain such a settlement, in fact, that impels the client to seek the advice of counsel in the first place. The lawyer must consider not only what the client wants but also why the parties have been unable to settle their dispute and then must find a dispute resolution procedure that is likely to overcome the impediments to settlement. Note, however, that, even though it may initially appear that the parties seek a settlement, sometimes, an examination of the impediments to settlements reveals that at least one party wants something that settlement cannot provide (eg. Public vindication or a ruling that establishes an enforceable precedent.)

An attorney who is paid on an hourly basis stands to profit handsomely from a trial, and maybe less interested in settlement than the client. On the other hand, an attorney paid on a contingent fee basis is interested in a prompt recovery without the expense of preparing for or conducting a trial, and maybe more interested in settlement than is the client. It is in part because of this potential conflict of interest that most processes that seek to promote settlement provide for the clients direct involvement.

For lawyers, this means new approaches that initially seem almost counterintuitive. For example, the recovery of large sums of money is usually regarded as the ultimate "win" for plaintiffs in

²³ Supra n.22

commercial cases. Yet, Wall Street values longterm streams of revenue even more highly than large sums of cash. Perhaps the restructuring of a long-term relationship would offer a better result.

Once in mediation, lawyers usually try to exert a high degree of control over the process, not unlike in a deposition or at trial. However, direct involvement of the client in the mediation process is often the best way to succeed. Lawyers also frequently engage in a "we-they" approach to negotiations that rarely results in a zero-sum gain. Lawyers need to have a better understanding of the importance of integrative bargaining, where lawyers can sit on the same side of the table and try to "expand the pie."

Lawyers also need to reflect upon the meaning of Ethical Consideration, which imposes a duty to represent a client zealously. Effective mediation advocates need to abandon any desire for revenge in favor of a more goal-oriented approach if they are to secure the "win" that best serves their client's interests. In many instances, it is not the lawyer but the angry client who wants revenge. For these clients, every new case becomes a matter of principle until the client receives the lawyer's third or fourth bill-then the client wants to spell the word "principle" differently. Here, even more so, the lawyer has a responsibility to make an early and realistic assessment of the dispute and to serve as an anchor for the client. These differences in interest need to be sorted out.²⁴

3) Legal Education: Law schools train their students more for conflict than for the arts of reconciliation and accomodation and therefore serve the profession poorly. Already, lawyers devote more time to negotiating conflicts than they spend in the library or courtroom and studies have shown that their efforts to negotiate were more productive for the clients. Over the next generation, society's greatest opprtunities will in tapping human inclinations towards collaboration and compromise rather than stirring our proclivities for competition and rivalry. If lawyers are not leaders in marshalling co-operation and designing mechanisms which allow it to flourish, they will not be at the centre of the most creative social experiments of our time.²⁵

²⁴ <http://www.ce9.uscourts.gov/Web/OCELibra.nsf/0/9ce38a05659d753988256949006625a5?OpenDocument>

²⁵ Supra n.22

A serious effort to provide cheaper methods of resolving disputes will require skilled mediators and judges, who are trained to play a much more active part in guiding proceedings towards a fair solution. In short, a just and effective legal system will not merely call for a revised curriculum; it will entail the education of entire new categories of people. For law schools, there is a need to recognize that the demands of the marketplace have forever changed the dynamics of dispute resolution. Obviously, an understanding of the adversarial system, *stare decisis*, and the process of litigation remain critical. At the same time, students need to enhance their skills as negotiators and to appreciate, for example, the value of listening or the advantage of making the "first credible offer." Law students also need to understand the suitability and advocacy issues in ADR at more sophisticated levels and to understand the important keys to problem solving. It is time that our law schools began to take the lead in helping to devise such training.²⁶

4) Impediments to settlement²⁷ : Just as there may be problems in the implementation techniques, there are impediments even after that stage, i.e. during the time of settlement. Some of them are:

- Poor communication: The relationship between the parties and/or their lawyers may be so poor that they cannot effectively communicate. Neither party believes the other. An inability to communicate clearly and effectively, which impedes successful negotiations, is often, but not always, the result of a poor relationship. If, for example, the parties come from different cultural backgrounds, they may have difficulty in understanding and appreciating each other's concerns. Or, if there had been a long history of antagonism between the key players, all efforts to communicate are likely to be hampered by antagonism.
- The need to express emotions: At times, no settlement can be achieved until the parties have had the opportunity to express their views to each other about the dispute and each other's conduct. Such venting, combined with the feeling that one has been heard by the other party, has long been recognized as a necessary step in resolving family and neighbourhood disputes. Business disputes are no different. After all, they do not take place between disembodied corporations but between people who manage those

²⁶ http://www.findarticles.com/p/articles/mi_qa3923/is_200102/ai_n8950563/pg_2

²⁷ Frank E.A. Sander & Stephen B. Goldberg, "Fitting the forum to the fuss", 1st ed. 1997, p.338

corporations, and who may have as much need to vent as anyone else involved in a dispute.

- Different views of facts: Usually in a dispute, there are two or more parties, each believing that they are the hurt party in some way or the other. Each believes that the other is the wrong-doer. To this belief, they have their own justifications. Just as each one of them has a different perspective on what the result of the dispute should be, they also have their own view regarding the facts of the case. Both parties have their own version as to what the facts are and reconciling these different views is itself a major problem.
- Different views of legal outcome if settlement is not reached: Disputants often agree on facts but disagree on their legal implications. One party asserts that, on the basis of the agreed upon facts, he has a 90 percent likelihood of success in court; the other party, with equal fervour, asserts that she has a 90 percent chance of success. While there may be a legitimate dispute over the likely outcome, both these estimates cannot be right.
- Issues of principle: If each of the disputing parties is deeply attached to some fundamental principle that must be abandoned or compromised in order to resolve the dispute, then resolution is likely to be difficult. Two examples: a suit challenging the right of neo-Nazis to march into a town where many Holocaust survivors live; and a suit by a religious group objecting to the withdrawal of life-support systems from a comatose patient. In view of the intensity of feelings in cases such as these, it is unlikely that evaluative techniques will be helpful in reaching a settlement.
- Constituency pressures: If one or more of the negotiators represents an institution or group, constituency pressures may impede agreement in two ways: different elements within the institution or group may have different interests in the dispute, or the negotiator may have staked her political or job future on attaining a certain result.
- Linkage to other disputes: The resolution of one dispute may have an effect on other disputes involving one or both parties. If so, this linkage will enter into their calculations, and may so complicate negotiations as to lead to an impasse. For example, an automobile manufacturer in a dispute with one of its dealers concerning the dealer's right to sell autos made by the other companies may ultimately be willing – for reasons specific to that dealer – to allow it do so. But the manufacturer may so fear the effect of such an agreement on similar disputes with other dealers that the parties arrive at an impasse. It is

possible that the manufacturer did not make this concern explicit in its negotiations with the dealer because it did not want the dealer to know it was engaged in similar disputes elsewhere.

- Multiple Parties: Where there are multiple parties, with diverse interests, the problems are similar to those raised by diverse constituencies and issue linkages.
- The “Jackpot” syndrome: An enormous barrier to settlement often exists in those cases where the plaintiff is confident of obtaining in a Court a financial recovery far exceeding its damages, and the defendant thinks it is unlikely. For example, the case may be one in which the controlling statute provides for the discretionary award of punitive damages to the successful plaintiff. If the underlying damage claim is for Rs. 10 lakh, and the plaintiff thinks that Rs. 50 lakh in punitive damages is a real possibility while the defendant does not, the vast disparity in case valuation may make settlement close to impossible.

5) Ignorance: One of the major reasons for the failure in implementation is the ignorance of the existing provisions of law. Legislators have made the necessary laws, but have never thought of implementing them at the grass- root level. They do not help in building up the awareness of those laws, so that people will utilise them. ADR provisions are well known only in the big business circles. Most of the educated elite are also unaware of the availability and possibility of such mechanisms in India, let alone the rural sector. Most of the rural segment, after all these years of independence, is now understanding the formal legal system and is making use of it at a time when the country and the world at large is reverting back to the old community-based problem solving and other ADR techniques so well known in rural India. Ignorance of laws is not an excuse in our country. However, when no awareness is present, how would people know about it and utilise it?

6) Corruption: Corruption is not a new issue in our country. It has always been a parasite to the nation and is sucking out the very purpose of independence. Today, not a single work gets done without having to bribe the way through. People have stopped challenging it as without being a part of it, life becomes difficult. ADR mechanisms have a very great risk of being ridden by corruption. For instance, in cases of negotiation between a rich educated person and poor

illiterate man over a land dispute, chances of the negotiator being bribed by the rich person is very high. Thus, corruption can become a raging problem in ADR.

7) Though recourse to ADR as soon as the dispute arises may confer maximum advantages on the parties; it can be used to reduce the number of contentious issues between the parties; and it can be terminated at any stage by any one of the disputing parties. However, there is no guarantee that a final decision may be reached.²⁸

8) ADR procedures are said to be helpful in reaching a decision in an amicable manner. However, the decisions arrived at after a non-litigative procedure are not binding as they are voluntary. This makes the entire exercise futile as parties do not stick to their decision resulting in a waste of time and money.

9) ADR procedure permits parties to choose neutrals who are specialists in the subject matter of the disputes. This does not mean that there will be a diminished role for lawyers. They will continue to play a central role in ADR processes; however, they will have to adapt their role ADR requirements. Neutrals and trained ADR experts are very few to cater to the vast population.

10) Since the ADR proceedings do not require a very high degree of evidence, most of the facts regarding the dispute which would have been proved otherwise continue to be a bane in the discussion which may lead to dissatisfaction.

11) In ADR, the parties can choose their own rules or procedures for dispute settlement. Arriving at them is the major hurdle.

12) ADR programmes are flexible and not afflicted with rigorous rules of procedure. There is, therefore, a possibility of the parties going back on the agreed rules and programmes. This creates a delay and slows the process of dispute resolution.

13) Flexibility and unconfirmed procedures make it extremely difficult to quote and use precedents as directives.

²⁸ Dr. S. R. Myneni, "Arbitration, Conciliation, and Alternative Dispute Resolution Systems," 1st ed. 2004, p.18

14) ADR procedures were introduced to lessen the burden of the courts. However, since there is an option to appeal against the finality of the arbitral award to the courts, there is no difference in the burden.

15) There are also some situations under which an amicable settlement through ADR is not favoured. They are:

- One party may be owed money and simply be looking for the final and enforceable decision which can be obtained by resorting directly to litigation. Any ADR procedure only compromises his situation.
- A party may owe money and seek to use amicable settlement as a delay and discovery mechanism – the other party may, therefore, be concerned about the delay, incurring extra costs and being disadvantaged in the subsequent litigation
- Adjudicative methods may be most appropriate for resolving some situations, such as frivolous claims, claims which compromise a particular principle, cases which involve bodily injury or alleged criminality.

All these problems are not permanent in nature. They all have solutions. An attempt to make suggestions for the solutions of the above listed problems has been made below. This list of suggested solutions is merely illustrative and not exhaustive. An in-depth research for this is vital.

It is felt that an attitudinal change towards ADR would result in active implementation of ADR and the burden on the courts will reduce. Yet, whether it is in the urban segment or in the rural segment, there is still a lack of knowledge about ADR. A need for instilling awareness is imperative to bring in a change in the attitudes. The urban sector which has a higher literacy rate could be reached by inserting slides in movie theatres, having advertisements in television channels and newspapers, conducting periodical seminars and having a dedicated helpline. It is the rural segment whose attitude is difficult to change. From the initial gramasabha system, it took many years for them to adopt litigation. To revert back to the old system, which is in fact an ADR concept would require tremendous amount of communication by trained professionals bespeaking the strengths of the system. An insight into the advantages of conciliation and

negotiation would bring in the desired change – change of attitude. To keep active here is awareness, by interactive communication. A dedicated helpline would exhilarate the process of attitudinal change by giving clarity to communication.

People are generally ignorant about legal terminology and the opportunities available in dispute resolution. The other gnarling issue is corruption. To combat these two forces, imparting knowledge is a must. Driving ignorance away would infact, help in curtailing corruption too. The NGOs should put in their efforts in providing a knowledge base to the needy. A committed person in each NGO, working in rural areas, should help in reaching the goal quickly.

The major lacuna in ADR is that it is not binding. One could still appeal against the award or delay the implementation of the award. “Justice delayed is justice denied.” The very essence of ADR is lost if it is not implemented in the true spirit. The award should be made binding on the parties and no appeal to the court should be allowed unless it is arrived at fraudulently or if it against public policy.

Rules of procedure are being formulated on a case by case basis and the rules made by the parties themselves, with maybe, some intervention of legal professionals. However, a general guideline and a stipulated format would assist in bringing clarity to the formulation of an ADR award. This would also help in cutting down ignorance and assist in better negotiation.

Legal education and law schools shoul focus on the arts of conciliation and negotiation and not merely on litigation. Lawyer client interests should also be moulded towards a primary focus on ADR failing which the recourse should be towards litigation.

Conclusion

Because justice is not executed speedily men persuade themselves that there is no such thing as justice. Sharing the same sentiments, Chief Justice Bhagwati said in his speech on Law Day, “I am pained to observe that the judicial system in the country is on the verge of collapse. These are strong words I am using but it is with considerable anguish that I say so. Our judicial system is creaking under the weight of errors.”

Arrears cause delay and delay means negating the accessibility of justice in true terms to the common man. Countless rounds to the Courts and the lawyers’ chambers can turn any person insane. Even then loitering and wasting time in the corridors of Courts has become a way of life for a majority of Indians who day by day are becoming litigious. Some of the main reasons for delay in the disposal of cases are abnormal increase in the number of cases going to Courts and Tribunals, mainly due to faulty legislation enacted hurriedly, arbitrary administrative orders, increased consciousness of one’s rights and gambler’s instinct in a litigant due to multiplicity of appeals and revisions provided in law.”

The disputants want a decision, and that too as quickly as possible. As the problem of overburdened Courts has been faced all over the world, new solutions were searched. Various Tribunals were the answer to the search. In India, we have a number of Tribunals. However, the fact of the matter is that even after the formation of so many Tribunals, the administration of justice has not become speedy. Thus, it can be safely said that the solution lies somewhere else. All over the globe the recent trend is to shift from litigation towards Alternative Dispute Resolution. It is a very practical suggestion, which if implemented, can reduce the workload of Civil Courts by half. Thus, it becomes the bounden duty of the Bar to take this onerous task of implementing ADR on itself so as to get matters settled without going into the labyrinth of judicial procedures and technicalities. The Bar should be supported by the Bench in this herculean task so that no one is denied justice because of delay.

It is important here to mention the statement made by John F. Kennedy in this respect: “Let us never negotiate out of fear but let us never fear to negotiate.”

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