

ACCESS TO ADR JUSTICE AND ITS VARIOUS MODES OF JUSTICE DELIVERY SYSTEM

By

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Justice is often identified as an attitude of the human mind, willingness to be fair and a readiness to accept and give recognition to the claims and concerns of others, which of course, can be attained only by practical measures and institutional means. ADR as a tool for dispute resolution is not a new concept, knowingly or unknowingly we might have had occasions to resolve several disputes involving human relationships through the process of various methods of ADR may in the capacity as a Child, Youth, Friend, Parent, Brother or Sister and in various capacities. Urge to mediate is a natural human instinct and to fight is beyond human dignity.

Legal system which cannot meet the demands of justice will not be able to provide peace and stability in society. Real justice cannot be achieved in the absence of an orderly system of judicial administration. Civilised society like ours can ill-afford to perpetrate a dispute which will disturb human relationships and create unrest in the society and be a bottle-neck for progress. Of late, Judges, lawyers, jurists and litigants and society in general have expressed concern about the adversarial system which rendered inaccessible to many, due to prohibitive costs and consumption of much time. An adversarial system place emphasizes on the substantive and procedural laws and aggravates strained relationships between the parties creating social unrest. Hence, the necessity of a more adaptable, party friendly, dispute resolution system, by way of mediation. Human being tend to react unfavourably, if their activities are controlled by strict rules and regulations rather than by a reasonably stable determination of their rights, through a friend process.

Justice is the foundation and object of any civilized society. The quest for justice has been an ideal which mankind has been aspiring for generations down the line. Preamble to our Constitution reflects such aspiration as "Justice-social, economic and Political". Article 39-A of the Indian Constitution provides for ensuring equal access to justice. Administration of Justice involves protection of the innocent, punishment of the guilty and the satisfactory resolution disputes. The world has experienced that adversarial litigation is not the only means of resolving disputes. Congestion in court rooms, lack of manpower and resources in addition with delay, cost, procedure speak out the need of better options, approaches and avenues. ADR mechanism is a click to that option.

Mahatma Gandhi had put in correct words as: *"I had learnt the true picture of law. I had learnt to find out the better side of human nature and to enter men's heart. I realised that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromised of hundreds of cases. I lost nothing thereby-not even money certainly not my soul."*

Shri P.V. Narasimha Rao, the then Prime Minister of India had observed *"while reforms in the judicial sector should be undertaken with necessary speed, it does not appear that courts and tribunals will be in a position to bear the entire burden of the justice system. It is incumbent on Government to provide a reasonable cost as many modes of settlements of disputes as are necessary to cover the variety of disputes that arise. Litigants should be encouraged to*

resort to ADR so that the court system proper would be left with a smaller number of important disputes that demand judicial attention."

Problems of Judicial Dispute System :

- **Awareness:** The lack of awareness of legal rights and remedies among common people acts as a formidable barrier to accessing the formal legal system.
- **Mystification :** The language of the law, invariably in very difficult and complicated English, makes it unintelligible even to the literate or educated person. Only few attempts have been made at vernacularising the language of the law and making it simpler and easily comprehensible to the person.
- **Delays :** The greatest challenge that the justice delivery system faces today is the delay in the disposal of case and prohibitive cost of litigation. ADR was thought of as a weapon to meet this challenge. The average waiting time, both in the civil and criminal subordinate courts, can extend to several years. This negates fair justice. To this end, there are several barricades. The Judiciary in India is already suffering from a docket explosion. The huge backlog of cases only makes justice less accessible. The delay in the judicial system results in loss of public confidence on the confidence on the concept of justice.
- **Expenses and Costs :** we are all aware of the ineffectiveness of our cost regime-even the successful litigant is unable to recover the actual cost of the litigation. The considerable delay in reaching the conclusion in any litigation adds to the costs and makes the absence of an effective mechanism for their recovery even more problematic.

MECHANISMS OF ADR :

Arbitration, Mediation, Conciliation/Reconciliation, Negotiation, Lok Adalat, etc.

- ✧ ADR can be broadly classified into two categories: Court Annexed Options (It includes Mediation, Conciliation) and community based on Dispute Resolution Mechanism (Lok-Adalat).

FUNCTIONS OF ADR :

- ✧ ADR is not to supplant altogether the traditional legal system but it offers an alternative form to the litigating parties.
- ✧ ADR tends to settle the disputes in a neutral and amicable fashion.
- ✧ ADR can be seen as integral to the process of judicial reform signifying the "access to justice approach"
- ✧ The ADR is an effort towards the etiology of malice and its elimination rather than treatment of its symptoms. This approach seeks for a better and longer lasting solution.
- ✧ ADR can be viewed as a compromise where no one loses or wins, but every walks out as a winner.

ADVANTAGES OF ADR : The ordinary people want black robed judges, well-dressed lawyers, fine panelled court rooms as a setting to resolve their disputes, is not correct. People with legal problems like people who pay, want, relief and they want it as quickly and as inexpensive as far as possible.

- Reliable information is an indispensable tool for adjudicator. Judicial proceedings make halting progress because of reluctance of parties to part with inconvenient information. ADR moves these drawbacks. In the judicial system the truth could be elevated with much difficulty found by making person stand

in the witness-box and he pilloried in the public gaze. Information can be gathered more efficiently by an informal exchange across the table. Therefore, ADR is a good step towards success where judicial system has failed in eliciting facts efficiently.

- In mediation or Conciliation, parties are themselves provided to take a decision, since they are themselves decision-makers and they are aware of the truth of their position, and the obstacle does not exist.
- The formality involved in the ADR is lesser than traditional judicial process and costs incurred are very low in ADR. The cost procedure results in win-lose situation for the disputants.
- Finally, the result is that the cost involved is less, and the time required to be spent is very less besides efficiency of the mechanism, and also the possibility of avoiding the disruption.

Criminal cases, Cases involving Public Interest, Cases affecting a large number of persons, matters relating to taxation (direct and indirect) and administrative law have to be decided by courts by adjudicatory process. Even among civil litigations, Cases involving fraud, forgery, coercion, undue influence, cases where a judicial declaration is necessary, for example, grant of probate or letters of administration, representative suits which require declarations against the world at large and election disputes have to be necessarily decided through adjudicatory process by courts and not by negotiations. On the other hand, settlement by negotiations would be the appropriate method of dispute resolution in the following types of civil cases:

- (i) All cases arising from strained or soured personal relationships, including:
 - Disputes relating to matrimonial causes, maintenance, custody of children;

- Disputes relating to partition/division among family members/coparceners/co-owners;
- Disputes relating to partnership among partners
- (ii) All Cases relating to commerce and contracts, which include and cash :
 - Disputes arising out of contracts (including money claims);
 - Disputes relating to specific performance;
 - Disputes between suppliers and customers;
 - Disputes between bankers and customers;
 - Disputes between developers/builders and customers;
 - Disputes between landlords and Tenants;
 - Disputes between licensors and licensees;
 - Disputes between Insurer and Insured;
- (iii) Cases where there is a need to maintain the pre-existing relationship in spite of the disputes which include and cash;
 - Disputes between neighbours (relating to easementary rights, encroachment, nuisance);
 - Disputes between employers and employees;
 - Disputes among members of Societies/Associations/Apartments Owners;
- (iv) Cases arising out of tortuous liability, which include claims for compensation in motor accidents/other accidents;
- (v) Consumer Disputes where a trader or service provider is keen to maintain his business/professional reputation and credibility;

Of course, if the parties are willing, other categories of civil disputes may also be referred to ADR methods. The

relevance of the same vis-a-vis the courts can be effectively brought out by comparing a litigant approaching a court to a patient approaching a hospital for treatment.

VARIOUS MODES OF JUSTICE DELIVERY MECHANISM OF ADR :

The object of the Legal Services Authority Act, 1987 was to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society; to organise Lok Adalats to ensure that the operations of the legal system promoted justice on the concept of equal opportunity as enshrined in the Constitution. The Constitution of India calls upon the State to provide for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic inability. India's socio-economic conditions warrant highly motivated and sensitized 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. ADR is appreciably 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 proved to be a successful and viable national imperative and incumbency, guest suited for the larger and higher section so the present society of Indian. The Lok Adalat is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable economic, efficient, informal, expeditious form of resolution of disputes. It is hybrid or admixture or mediation, negotiation, arbitration and participation. The true basis of settlement of disputes by the Lok Adalath is the principle of mutual consent,

voluntary acceptance of conciliation with the help of counsellors and conciliation. It is a participative, promising and potential ADRM. It resolves round the principle of creating awareness amongst the disputant to the effect that their welfare and interest, really like in arriving at amicable, immediate, consensual and peaceful settlement of the disputes.

The Arbitration and Conciliation Act, 1996 came into effect to remove few of its hurdles and judicial intervention was to some extent. But Arbitration had some ailments: (1) Traditional adversarial system is run in Arbitration Proceedings (2) Proceedings are delayed as both parties take lot of time presenting their submissions (3) The cost of arbitration is much more than the order ADR Process, thereby, it does not attract the poor litigants (4) Participatory role of the parties are neglected as the submissions are made by the party counsels.

Mediation can be defined as a process to resolve a dispute between two or more parties in the presence of a mutually accepted third party who through confidential discussion attempts to help the parties in reaching commonly agreed solution to their problems. The biggest advantage of mediation is that the entire process is strictly confidential. Mediation saves time and financial and emotional cost of resolving a dispute, thereby, leads to re-establishment of trust and respect among the parties.

OTHER ADVANTAGES ARE :

- ✓ An interest- based procedure is followed as distinct from a right-based procedure adopted by a Court.
- ✓ Emotions and feelings between parties can be preserved causing minimum stress and heartache.
- ✓ There is possibility of resolving multiple disputes.

There is subtle difference between mediation and conciliation. While in mediation, the third party, neutral intermediary, termed as mediator plays more active and vital role by giving independent compromise formulas after hearing both the parties; in conciliation, the third neutral intermediary's role, mainly is to bring the parties together in a frame of mind to forget their animosities and be prepared for an acceptable compromise on terms mid-way between the stands taken before the commencement of conciliation proceedings. There are three reasons why mediation and conciliation is not gaining momentum:

1. Lack of Institutionalisation.
2. Lack of case management.
3. Excessive interlocutory appeals.

Out of the methods of ADR, Mediation and Conciliation are the most suited methods for a country like India because by and large people in India at least in the rural areas would like to settle their disputes amicably. But in urban areas case is different where in commercial disputes, litigants want quick disposal of cases, would like the same to be done under a legal frame work and with the intervention of professionals and so, these litigants prefer arbitration.

Gram Nyayalayas should process 60 to 70% of rural litigation leaving the regular courts to devote their time to complex civil and criminal matters. With a participatory, flexible machinery available at the village level where non-adversarial, settlement-oriented procedures are employed, the rural people will have fair, quick and inexpensive system of dispute settlement. Rent and eviction constitute a considerable chunk of litigation in urban courts and they take on an average time period of 3 years or more than that. The Law Commission felt that an alternative method for these disputes is imperative.

Panchayati Raj or self-governance at the village level is in revolutionary process in our democratic governance. Along with powers of administration, system of self-government dispute resolution can also be delegated to these institutes. If the object of judicial reform is fair, quick and inexpensive justice to the common people, there can be no better way to pursue to objective than to invoke participatory systems at the grass root level for simpler disputes so that judicial time at higher levels is sought only for hard and complex litigation.

MALADIES AND ITS AUMENTS:

The evolution of ADR mechanism that initially the ADR mechanism were tried to be implemented with much emphasis on statutes by way of inserting the ADR clauses in those statutes. But these process and policy was not of that much success. Thereby, the trend is the imposition of responsibility and duty on Court and in this process, Courts are authorised to give directives for the adoption of ADR mechanisms by the parties and for that purpose Court has to play important role by way of giving guidance, etc. power is also conferred upon court so that it can intervene in different stages of proceedings.

ADR MECHANISM MORE VIABLE

: It is not possible to stop the inflow of cases because the doors of justice cannot be closed. But there is a dire need to increase the outflow either by strengthening (both qualitatively and quantitatively) the capacity of the existing system or by way of finding some additional outlets. In this situation ADR mechanism implementation can be such a drastic step for which three things are compulsorily required:

- (1) Mandatory reference to ADRs.
- (2) Case management by Judges
- (3) Committed teams of Judges and Lawyers.

It should aim to achieve earlier and more proportionate resolution of legal problems and disputes by:

- ✧ Increasing advice and assistance to help people resolve their disputes earlier and more effectively;
- ✧ Increasing the opportunities for people involved in court cases to settle their disputes out of court;
- ✧ Reducing delays in resolving those disputes that need to be decided by the Courts.

To implement the noble ideas and to ensure the benefits of ADR to common people the four essential players (Government, Bench, Bar, Litigants) are required to co-ordinate and work as a whole system.

GOVERNMENT : Govt. to support for new changes. If the Govt. Support and implement the changes, ADR institutes will have to be set up at every level from District to National.

BENCH : Unless there is acceptance from the Judges, there will be no motivation for the Advocates to go to go in for the ADR methods.

BAR : The view point of the members of the Bar is also to be changed accordingly, otherwise it would be difficult to implement ADR. The myth that ADR was alternative decline in Revenue or Alternative Drop in Revenue is now realising that as more and more matters get resolved their work would increase and not decrease.

LITIGANTS : Few parties are usually interested in delaying and will not hesitate in taking a stand so as to take the benefit if delayed. Parties have to realise that at

the end, litigation in court may prove very costly to them in terms of both cost and consequence.

Few things are more required to be done for furtherance of smooth continuance of ADR mechanism. Few of them are:

- ✧ Creation of awareness and popularising the methods is the first thing to be done. NGOs and media have to play prominent role this regard.
- ✧ For Court-annexed mediation and conciliation, necessary personnel and infrastructure shall be needed for which Government funding is necessary.
- ✧ Training programmes on the ADR mechanism are vital. State level judicial academies can assume the role of facilitator or academicians and legal experts for that purpose.

While the Courts have never tired of providing access to justice for the teeming millions of this country, it would not be incorrect to state that the objective would be impossible to achieve without reforms in the justice dispensation mechanism. It may require certain amendment to the Constitution itself or various statutes. On the other hand, changes at the operational level requiring one to work, within the framework of trying to identify various ways means of improving the effectiveness in the legal system. Needless to emphasize, this will considerably reduce the load on the Courts apart from providing speedy justice at the door steps, without substantial cost being involved. This is also to avoid procedural technicalities and which is causing delays in the administration of justice hopefully based on truth and morality, as per acknowledged considerations of delivering Social Justice.