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NEED OF ALTERNATIVE DISPUTE RESOLUTION (ADR): KEEPING DISPUTES OUT OF COURT ROOM

AUTHORS - JAHANVI BHARDWAJ* & PROF. (DR.) RAJESH BAHUGUNA**

*STUDENT, LAW COLLEGE DEHRADUN, FACULTY OF UTTARANCHAL UNIVERSITY, DEHRADUN, UTTARAKHAND

** PRO VICE-CHANCELLOR, UTTARANCHAL UNIVERSITY, DEHRADUN, UTTARAKHAND

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INTRODUCTION

It is the spirit and not the form of law that keeps justice alive."LJ Earl Warren .

Life is full of arguments, but survival is key. Neutral conflicts do have beauty. Resolving them amicably is what we call dispute resolution. Traditional negotiation uses ADR to resolve disputes. The Indian legal system uses ADR to resolve interparty conflicts more efficiently and cheaply. The name implies that ADR is an alternative to the legal system. Traditional aggressive litigation that causes stress is replaced by this. ADR strives to resolve disputes promptly and effectively in overburdened courts[390].

ADR programmes increase globally, enabling new system uses and designs. Effective modules improve lives and achieve societal goals. This study will examine ADR processes, their provisions in India and abroad, and their distinctiveness, execution, and problems that prevails in India along with suitable solutions [391].

[390] 1P.C.RAO &WILLIAM SHEFFIELD, ALTERNATIVE DISPUTE RESOLUTION, 1997 EDITION , PG NO.45
[391] 222nd Law Commission Report

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PROPOSITIONS OF ADR[392]

The 18th Law Commission of India wanted to eliminate delays, clear arrears, and cut expenses in the judicial administration system. The need to dispose of cases quickly and cheaply without compromising justice was much important. Reducing complications and delays aimed to attain speedy justice. The Indian Constitution guarantees fairness for all, including improving justice administration standards. All citizens of India have equal life, liberty, and other fundamental rights. Social welfare laws like the Contract Labour (Regulation and Abolition) Act 1970, Equal Remuneration Act 1976, and Minimum Wages Act 1948 offer other rights. Without enforcement means, these rights are pointless. Rule of law implies equal rights but not equal enjoyment for all individuals[393]. The poor suffer because courts enforce rights in a convoluted, expensive, and time-consuming manner.

The Indian Constitution guarantees equal protection and legal equality under Article 14. The State shall ensure that the legal system promotes fairness and equal opportunity for all citizens, regardless of economic or other limitations, under Article 39A of the Constitution. All must have equal access to justice. Equal treatment by the law is not enough. The law should guarantee justice for all, regardless of income. Two legal principles define "access to justice":

1. System access must be equitable.

2. Individual and social justice are needed.

People typically describe "access to justice" as legal courts. For most people, a court administers justice. Poverty, social and political backwardness, illiteracy, ignorance, and procedural formality make courts inaccessible. One must undergo costly and complicated litigation to get justice through courts. Court and legal fees must be paid. Financial hardship prevents poor plaintiffs from seeking justice in court. India has a large illiterate and impoverished population. They are unfamiliar of court procedures and feel scared and confused while dealing with the courts. Most Indians cannot assert their constitutional or legal rights, causing inequality[394]. ADR, or mediation, is used by governments, companies, and individuals worldwide to resolve disputes of all kinds in most nations. Overburdened courts in developing countries have many ongoing cases, causing frustration with the judicial system and its ability to dispense justice. Based on the common belief that "Justice delayed is justice denied". The courts are not completely responsible for this docket explosion or high number of ongoing cases in emerging countries. Negotiation strategies were not used before suing. ADR processes, which have solved conflicts quickly and peacefully in developed economies, are being used in underdeveloped countries to strengthen the justice system. India, Bangladesh, and Sri Lanka use ADR.

CONCEPT OF ALTERNATE DISPUTE RESOLUTION IN OLDEN DAYS IN INDIA

Mediation settled problems in India before courts. A Panchayat, a respected local, led mediation. The local community views Panchas as honest, trustworthy, and impartial. Like-minded people from different castes help them. Disputants accepted the Panchayat's conclusion after hearing individual and family arguments. Panchayats prioritised dispute resolution and peace. A mediator acceptable to both villages and their residents mediated a problem. Both communities accepted the mediation conclusion. Old disputes rarely went to court. Panchayats resolved complex civil,

[392] Lakshmanan, A. & Law Commission of India. (2009). Need for Justice-dispensation through ADR. In Report No. 222 [Report]. Law Commission of India. https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081082-2.pdf

[393] 4P.M. BAKSHI, ARBITRATION LAW, PUBLISHED BY N.M. TRIPATHI 1996, PG NO. 13

[394] Lakshmanan, A. & Law Commission of India. (2009). Need for Justice-dispensation through ADR. In Report No. 222 [Report]. Law Commission of India. https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081082-2.pdf

criminal, and family disputes. Disputants remained friends after this conflict resolution process. ADR also utilises existential justice. Traditional African and Asian civilizations have valued conciliatory methods for survival and benefiting all. Discussing typical ADR origins and development. Alternative Dispute Resolution (ADR) involves non-confrontational dispute resolution. External arbitration, adjudication, and direct negotiations are dispute resolution procedures. Mediators help disputants establish a compromise between ADR extremes. Dispute resolution procedures other than judicial proceedings are called "alternative dispute resolution" (ADR). It includes assisted settlement negotiations, arbitration, and courtroom-like mini-trials. ADR may involve community tension management or expansion. ADR usually involves negotiation, conciliation, mediation, or arbitration.

ADR IN NUTSHELL

ADR, or "Alternative Dispute Resolution," provides an alternative to traditional dispute settlement methods. ADR resolves disagreements between uncompromising parties. Against litigation and arbitration, it gains ground. ADR resolves issues outside of courts and judicial institutions. The need to relieve court pressure prompted ADR. Judges and legislators sought absolute justice, the "Constitutional Goal". Articles 14 and 21 of the Indian Constitution guarantee equality before the law and life and personal liberty, which led to ADR. Article-39-A of the Constitution's Directive Principle of State Policy for equal justice and free legal aid is followed by ADR. ADR is governed by the 1996 Arbitration and Conciliation Act and 1987 Legal Services Authorities Act[395]. Various alternative conflict resolution strategies handle difficulties without litigation. The US ADR movement originated in the 1970s to avoid litigation's cost, time, and conflict. Court reformers want rising nations to use it for various reasons. Some nations want to modernise mediation, which spurs ADR interest. Current ADR methods include court-annexed and community-based. Court-annexed ADR helps disputants reach a settlement through mediation/conciliation, early neutral evaluation, summary jury trial, mini-trial, and other methods. These tactics save litigation costs and time, improve access to justice, and minimise court backlog while retaining disputants' social relationships, according to supporters.[396]

Community-based ADR seeks independence from biassed, expensive, distant, or inaccessible official courts. New projects build on popular justice models that use elders, religious leaders, or community figures to resolve problems. India established Lok Adalat village-level people's tribunals in the 1980s, where trained mediators mediated common matters traditionally handled by panchayats, a council of village or caste elders. Recently, bilateral funders financed village-based mediation in Bangladesh and national mediation boards in Sri Lanka. In Latin America, jueces de paz, legal officers who handle small disputes, are popular[397].

Commercial arbitration, where a neutral third party makes a binding ruling in private adversarial proceedings, is also ADR. Private arbitration services and centres, founded in the US for commercial conflict resolution, are increasing globally as business and demand for uniformity rise. It has the potential to alleviate disagreements between the parties involved. - Any of the disputing parties can choose to end it at any point. - The parties have the flexibility to determine how they want to resolve their dispute. Parties can come to an agreement regarding the law that will govern the contract. This includes determining how conflicts of law will be resolved. Additionally, it is possible for a party to be sued within its own jurisdiction, among other possibilities.

[395] 12P.M. BAKSHI , ARBITRATION LAW, PUBLISHED BY N.M. TRIPATHI 1996, PG NO. 25

[396] Gramckow, H., omniah ebeid, erica Bosio, & Jorge Luis silva Mendez. (2016). Good Practices for courts. International Bank for Reconstruction and Development / The World Bank. https://documents1.worldbank.org/curated/en/465991473859097902/pdf/108234-WP-GoodPracticesforCourtsReport-PUBLIC-ABSTRACT-EMAILED.pdf

[397] Dr. N.V.PARANJAI, LAW REALTING TO ARBITRATION & ADR IN INDIA, 3RD EDITION, 2006, PG NO. 150

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NEED OF ADR

ADR has grown in recent decades due to dissatisfaction with the slow court system and a desire for less formal dispute resolution. No legal philosophy influenced these modifications. The desire for speedy business lawsuit resolution, greater court activity, larger dockets, and an unbalanced judge/case ratio due to resource constraints drove this. Developing alternative modes of dispute resolution (ADR) by establishing facilities for arbitration, conciliation, mediation, and negotiation is the best way to reduce the burden on the courts and speed up dispute resolution in a developing country like India with major economic reforms under way within the rule of law. Professional legends from economic, administrative, and legal fields created the International Centre for Alternative Dispute Resolution. Established on 31 May 1995 in Delhi, this institution is established under the Societies Registration Act, 1960. Unbeneficial, independent institution. This organisation promotes culture. ADR prioritises mediation over winner-take-all, access to justice, and efficiency and reduced court delays[398].

The Indian Constitution guarantees equal protection and legal equality under Article 14. Article-39A compels the state to maintain judicial equality and avoid economic discrimination. Access to justice must be equal. The law should be fair and provide justice regardless of income. The concept of "access to justice" highlights two essential legal system goals: equal access and just outcomes for individuals and society. Citizens must have equal access to judicial and nonjudicial conflict resolution processes to settle legal concerns and enforce their rights in a welfare state. Ignorance, poverty, and inequality shouldn't hamper it. Indian judges' workload has skyrocketed, creating an untenable backlog. Thus, the fact can be established that ADR is vital to Indian judiciary[399].

WHY DID INDIA ADOPT ADR?

ADR helps Indian lawmakers and judges accomplish ultimate justice, the "Constitutional goal". ADR was designed to deal with court workload growth. Docket explosion was the primary focus, but non-legal conflict resolution has since expanded. To sustain peace in the family, business community, society, and mankind, ADR requires society, the state, and the disputing party to resolve disputes quickly.

Civilised communities should ensure dispute fairness through natural justice and the "Rule of Law." Rule of Law means orderly events that follow the law. Legal concept, principle, or precept applied to case facts. They say the Rule of Law is authoritative and may generate a win-lose disagreement. ADR fosters win-win outcomes through natural justice and law. India's long-running litigation produces enmity and unhappiness, making this crucial. ADR grows in India today[400]. Alternative Dispute Resolution occurred because Articles 14 and 21 of the Indian Constitution protect legal equality and life and personal liberty. The Indian Constitution's Part III on Fundamental Rights includes these Articles. ADR must meet the Directive Principle of State Policy for Equal Justice and Free Legal Aid under Article 39-A. The 1996 Arbitration and Conciliation Act and 1987 Legal Services Authorities Act handle ADR. Acts arbitration is allowed by Civil Procedure Code, 1908 Section 89.

Indians value justice for decades. We seek social, economic, and political fairness in our Constitution's Preamble. Constitution demands fairness. Since 1950, court delays have been Constitutional problems. The system is near collapse due to legal trial delays and rising

[398] Dr. N.V.PARANJAI, LAW REALTING TO ARBITRATION & ADR IN INDIA, 3RD EDITION, 2006, PG NO. 156

[399] P.M. BAKSHI , ARBITRATION LAW, PUBLISHED BY N.M. TRIPATHI 1996, PG NO. 152

[400] ICADR. (n.d.). THE INTERNATIONAL CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION (ICADR) BROCHURE. https://icadr.telangana.gov.in/PdfFiles/BrochurePages.pdf

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costs. Unpredictable laws prohibit equal, predictable, and affordable justice, say critics. This nation has billions. How do you build a billion-person court system? Discussion of an Indian justice-delivery system's potential and restrictions is crucial. Justice administration delays are a severe operational challenge. In unprecedented numbers, lawyers and judges would rule society, predicted former US Supreme Court Chief Justice Warren Burger. It's a myth that people prefer formal courtrooms with black-robed judges and well-dressed lawyers to settle conflicts. Like pain sufferers, lawyers want rapid, cheap solutions. Stronger in India. ADR is vital in India. To protect residents' socio-economic and cultural rights, Indian courts must decide cases rapidly due to the large backlog.

RECOGNITION OF ALTERNATE DISPUTE RESOLUTION

Nationally, Panchayats have been widely accepted in India for generations. A neutral third party, usually a high-ranking unbiased adjudicator, makes a legally binding decision. Because litigation takes time and money, Indian legislators and judges have promoted ADR. Legislation and courts in India acknowledge ADR[401]. India's East India Company invented ADR. It accepted the forum under the Bengal Regulation Acts of 1772 and 1781, which permitted parties to submit disputes to a mutually agreed-upon arbitrator whose ruling was binding. The Civil Procedure Code, 1859, legitimised ADR in India by allowing reference to arbitration in pending suits u/s-312, arbitration procedure u/s-312-325, and arbitration without court participation u/s-326-327. As the first exemption to section 28 of the Indian Contract Act, 1872, arbitration nullifies agreements preventing legal action. The 1987 Legal Services Authorities Act created Lok Adalat as another ADR mechanism. The 1947 Industrial Disputes Act identified conciliation as an effective dispute resolution method. Other examples include the 1910 Indian Electricity Act and 1964 A.P.Co-operative Societies Act. Section 89 of the Code of Civil Procedure 1908 empowers it to arbitrate disputes that can be handled outside court. Parties can negotiate settlement terms under 89(2). Arbitration, conciliation, Lok Adalat, and mediation are Section 89 non-court dispute settlement processes. The first exclusive arbitration law was the 1899 Arbitration Act. Arbitration Act 1940 replaced it. 1940 Act goals were likewise unmet. The Arbitration and Conciliation Act, 1996, replaced the 1940 Act after India liberalised its economy to welcome foreign investment. Section 30 of the Arbitration and Conciliation Act, 1996 authorises arbitrators to use mediation, conciliation, or other methods to settle disputes with parties' approval.

The Legal Services Authorities Act, 1987 created LokAdalat, a cost-effective, give-and-take dispute settlement process. The Justice Malimath Committee Report (1989-90) examined the court system, arrears, and law delays and offered low-cost ways to reduce litigation and increase access to justice. It emphasised mediation, conciliation, arbitration, LokAdalat, and other ADR processes over court litigation.

JUDICIAL EFFORTS TOWARDS ADR IN INDIA

The ADR system of arbitration, mediation, and conciliation has transformed justice, the Supreme Court stated in **Food Corporation of India v. Joginder Pal**[402]. It solves problems faster and cheaper than litigation. Supreme Court accepted ADRM's procedural and family law scope. Matrimonial courts are more constructive, affirmative, and creative than abstract, theoretical, or doctrinaire, according to **Jagraj Singh v. Bripal Kaur**[403]. The court also ordered human sympathy and reconciliation in marital disputes.

In **Government of Kerala vs. Luiz Paul**[404], the court found that PWD requirements cannot be

[401] P.M. BAKSHI , ARBITRATION LAW, PUBLISHED BY N.M. TRIPATHI 1996, PG NO. 120

[402] AIR 1989 SC 1263
[403] (2007) 2 SCC 564
[404] (1998) 28 CLA 4

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utilised for arbitration if the tender terms clearly restrict them, even if they apply to the contract. Attorneys laughed and legal philosophers cried when the Supreme Court declared the Act ineffective in **M/S Guru Nanak Foundation v/s M/S Rattan Singh and Sons**[405]. Experience and law reports imply Act processes have become complicated and prolix, trapping the unwary. The courts have complicated a party-selected informal forum for speedy dispute resolution. In **Sitanna v/s Viranna**[406], the Privy Council affirmed the Panchayat's decision, and Sir John Wallis emphasised that local panchayats traditionally resolve conflicts. It avoids protracted litigation, depends on adjudicators' in-person verification, and settles doubtful claims on legal and moral grounds fairly and honestly. The Apex Court stated in **Brij Mohan v/s UOI** that "fast track courts" are crucial to strengthen ADR systems. International alternative dispute resolution forums originated in the Renaissance with Catholic Popes resolving European issues. Many firms have used ADR to resolve political and economic difficulties abroad.

The adoption of UNCITRAL's Model on International Commercial Arbitration advanced international ADR. The paradigm harmonises arbitration and conciliation for universality. UN General Assembly members were recommended to standardise ADR laws using this methodology. Key international arbitration agreements include the Geneva Protocol (1923), Geneva Convention (1927), and New York Convention (1958). Recognition and execution of foreign arbitral awards.

A BIRD'S EYE-VIEW OF ADR INSTITUIONS ACROSS THE WORLD[407]

a) The Hague Tribunal, often known as the Permanent Court of Arbitration (PCA), is an international body. The earliest international dispute settlement institution was created in 1899 at the first Hague Peace Conference. The treaty was signed by 96 nations in 2002. When parties agree, the court hears lawsuits between countries and private parties. The Peace Palace in The Hague, built for the Court in 1913 using Carnegie Foundation financing, houses the PCA. The International Court of Justice operates separately yet shares a building.

b) WTO: This international organisation maintains member-state trade protocols. The WTO, which replaced the GATT, seeks to abolish trade barriers. WTO negotiates existing and new trade rules and resolves disputes. In this context, WTO dispute resolution is essential. The WTO's Dispute Settlement Body can sanction non-compliant states to enforce its rulings. The WTO resolves disputes by "consensus" and "arbitration."

c) ICC: International Chamber of Commerce Supports globalisation and trade. Global business is promoted for economic growth, job creation, and prosperity. Global business organisation with member states promotes global business perspectives. National committees give ICC direct access to national governments worldwide. Arbitration and dispute settlement are ICC's core activities.

d) Court of Arbitration for Sport (CAS) arbitrates sports disputes. Lausanne is its headquarters, with courts in New York City, Sydney, and Olympics host towns. The CAS restructured to become financially and organizationally independent of the IOC. This reform's biggest alteration was the creation of the "International Council of Arbitration for Sport" (ICAS) to run and fund the CAS. An arbitration agreement must mention the CAS to submit a dispute. Most National Olympic Committees and all Olympic International Federations save one acknowledge the CAS and incorporate an arbitration clause in their statutes. The global sports community respects its arbitrators, elite lawyers.

[405] (1981) 4 SCC 634
[406] AIR 1934 SC 105
[407] Medha, N. (2021). Alternative dispute resolution in India. In Lok Satta & NALSAR University of Law, NALSAR University of Law (p. 1) [Thesis]. https://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf

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e) UNCITRAL: UNCITRAL is the UN system's main international trade law organisation. UNCITRAL was tasked by the General Assembly to harmonise international trade law. Under UN supervision, UNCITRAL has member and observer states. It drafted the 1985 UNCITRAL Model Law on International Commercial Arbitration. Conflict resolution may be required by UNCITRAL Arbitration Rules agreements. Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bermuda, Bulgaria, Canada, Chile, Hong Kong and Macau Special Administrative Regions of China; 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, Russia etc.

f) Other agreements Various states have ADR treaties including United States Code Title 9, Agreement related to the Application of the European Convention on International Arbitration (Paris, 1962), and European Convention establishing a Uniform Law on Arbitration (Council of Europe, 1964). Other international agreements are not included.

IMPLEMENTATION OF ADR IN INDIA:

Using ADR to speed up justice is crucial. Conciliation and mediation are challenging alternatives to litigation to speed up justice. In 1940, India established its first Arbitration Act. Many legislative flaws prevented comprehensive enforcement. The 1996 Arbitration and Conciliation Act followed the UNCITRAL model. Top corporations and businessmen who employ this Act influenced its amendment. India has enough Lok Adalat legislation and revisions for rural and commoners to use this unique ADR method. India currently sufficiently covers ADR. Only huge corporations and businesses can apply it. LokAdalats are an old Indian concept that has yet to be fully realised. People chose litigation in numerous industries despite its drawbacks. Consider legislative measures. It can only be used with a certain ADR installation technique. An implementation programme requires problem identification and resolution.

PROBLEMS IN IMPLEMENTATION AND SUGGESTIONS

1) Attitudes: Indian law promotes arbitration for conflict resolution, although people have generally opposed its finality. A substantial collection of Indian case law records the long fight against binding arbitral rulings. Arbitration fails because every party, domestic or foreign, wants to "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." Despite its growing popularity, it fails. Unfortunately, India's private and public sectors lack "spirit of arbitration."

2) Apparent Mistakes: Arbitration verdicts can only be overturned for non-content reasons such lack of jurisdiction, fraud, corruption, or a basic miscarriage of justice. English innovation: patent award error correction jurisdiction. It was wrong to bring this questionable jurisdiction into litigious India under the Arbitration Act, 1940. The boundary between an award's merits and legal blunders is often blurred—few factual questions remain so after a competent lawyer formulates them! Domestic arbitration under the Arbitration Act, 1940 was formed by these fundamental arbitration law and user behaviour flaws [408].

This implies that we should reconsider our dispute resolution procedures and attitudes. John Chaney, Temple basketball coach, said "winning is attitude." He may have discussed ADR and dispute settlement. 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

[408] F.S. Nariman, "Alternative Dispute Resolution", 1st ed. 1997, p.45

different from 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 given a decent burial. Our attitudes require re- adjustment; we need to re-adjust to the spirit of ADR, and adhere to its underlying philosophy, which is that of utmost good faith of the parties.

3) Lawyer and Client Interests: Due to personality differences, money, or other factors, lawyers and clients may have different settlement preferences. A binding precedent or the desire to impress potential litigants with firmness and costs may prevent a settlement. Although a satisfying settlement normally benefits the client, the failure to reach one causes the client to seek legal counsel. A look at the settlement obstacles may show that at least one party wants something settlement cannot provide, such as public vindication or an enforceable claim. In these, and a small number of situations, settlement will not be in the client's interest.

A contingent fee attorney wants a quick recovery without the cost of preparing for or conducting a trial, while an hourly attorney stands to profit handsomely from a trial and may be less interested in settlement than the client. Like depositions and trials, lawyers try to control mediation, but direct client involvement is best. Lawyers also use a "we-they" approach to negotiations that rarely yields a zero-sum gain. Integrative negotiating requires lawyers to sit on the same side and "expand the pie." Ethical considerations require lawyers to represent clients zealously. Effective mediation advocates must sacrifice retribution for a goal-oriented strategy to gain the "win" that best serves their client. Irate clients consider every new case a matter of principle until the lawyer sends the third or fourth bill, at which point they wish to spell "principle" differently balance these interests.

4) Legal Education: Law school's place more emphasis on conflict simulation than reconciliation and accommodation, which leads to poor profession service. Lawyers spend more time mediating than in the library or courtroom, and studies show that clients benefit. Over the next generation, society will have more opportunities to leverage human tendencies towards collaboration and compromise than competition and rivalry. Thus, a realistic approach to cheaper dispute resolution requires professional mediators and judges who are trained to actively guide proceedings towards a fair solution. An equitable and functional legal system will require the education of new groups, not just a reformed curriculum. Students must understand stare decisis, the adversarial system, and litigation.

5) Settlement Impediments[409]: Settlement issues exist even with implementation options.

• Poor communication: Cultural differences or long-standing enmity between key players may inhibit party-lawyer communication. Settlements typically involve parties to communicate their feelings about the conflict and each other's actions. Being heard by the other party has long been a requirement in family and neighbourhood disagreements. Business disputes are no different because corporate managers may need to vent as much as anyone else.

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

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• Multiple parties have different justifications and viewpoints on case facts in disputes.

If settlement fails, parties may disagree on legal outcomes. One side may predict a 90% chance of court success, while the other may estimate 90%. Both estimates are inaccurate.

A suit challenging neo-Nazis' right to march into a town with many Holocaust survivors and a religious group's suit opposing the withdrawal of life-support systems from a comatose patient are examples of disputes that are hard to resolve. Conflicting interests or political or job prospects may hinder institutional or group negotiators. For example, an automaker may allow a dealer to sell automobiles from other firms for particular reasons, which may stall negotiations. When many parties have different interests, constituent issues and issue connections are similar.

• The "Jackpot" syndrome: Settlement hurdles occur when the plaintiff expects a large financial recovery more than their damages and the defendant thinks it's unlikely.

6) Ignorance: Only large business knows about ADR provisions, and educated elite are oblivious of their potential.

7) Corruption: Our country has long struggled with corruption, which undermines independence and prevents work without bribes. Without addressing it, life is difficult. ADR procedures are at risk.

8) 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[410].

9) ADR can help obtain a cooperative resolution, but the voluntary character of the decisions wastes time and money.

10) ADR allows parties to choose neutrals with dispute knowledge. Lawyers will still be important, but they must adapt to ADR requirements. However, there are few neutrals and qualified ADR experts to service the big population.

11) 11) 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.

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

13) ADR programmes are flexible and lack strict procedures, which can lead to parties breaking the rules and delaying down conflict resolution.

14) Flexibility and untested methods prevent precedent citation.

15) 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.

16. ADR may not work in certain scenarios, such as:

• Since ADR may fail, a party owing money may sue for a final and enforceable resolution.

If a party owes money and utilises amicable settlement to delay and discover, the opposing party may worry about excessive costs and litigation disadvantage.

• Adjudicative methods work for false claims, compromised principles, bodily damage, and misbehaviour.

[410] Dr. S. R. Myeneni, "Arbitration, Conciliation, and Alternative Dispute Resolution Systems," 1st ed. 2004, p.18

CONCLUSION

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 gram Sabha 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 professional's be spelling 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. ADR is flawed because it is not binding. "Justice delayed is justice denied." The award should be binding on the parties and no appeal to the court should be allowed unless it is fraudulent or against public policy. A general framework and format would clarify ADR award formation, eliminate ignorance, and promote negotiation. Law schools should emphasise on conciliation and negotiation, not only litigation. On Law Day, Chief Justice Bhagwati observed, "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 delay justice for the common man. Countless trips to the Courts and lawyers' chambers can drive anyone nuts, but most Indians, who are getting more litigious, linger and waste time in Court hallways. Overburdened courts worldwide led to the creation of several Tribunals. In India, there are many Tribunals, but justice has not grown faster. Thus, the remedy rests elsewhere. The global trend is to shift from litigation to Alternative Dispute Resolution, which can cut Civil Court workloads in half. The Bar must implement ADR to settle matters without complicated judicial procedures and technicalities. The Bench should support the Bar in this herculean task.