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THE IMPACT OF ALTERNATIVE DISPUTE RESOLUTION ON ACCESS TO JUSTICE IN INDIA.

AUTHORED BY - ANUPRIYA YADAV¹

Abstract

This article examines the impact of Alternative Dispute Resolution (ADR) on access to justice in India. Access to justice is a fundamental aspect of a fair society, ensuring that individuals receive their due and resolving disputes fairly. ADR methods, such as arbitration, mediation, negotiation, conciliation, and Lok Adalats, have emerged as effective alternatives to traditional litigation. These processes offer cost-effectiveness, efficiency, informality, and the preservation of relationships, making justice more accessible to a wider range of people. However, challenges such as lack of awareness, unequal power dynamics, enforceability issues, and limited applicability exist. This article highlights the benefits and challenges of ADR in promoting access to justice and emphasizes the need for a balanced approach that combines traditional litigation with ADR methods to create a more equitable justice system in India.

Keywords:

Access to justice, Alternative Dispute Resolution (ADR), Cost-effectiveness, legal awareness, Justice delivery, Legal infrastructure.

Introduction

Justice can be defined as the moral principle of ensuring that each person receives what is rightfully theirs and preventing harm or injustice. It can be categorized into two main forms: distributive justice, which pertains to the role of authorities in allocating resources and benefits, and commutative justice, which deals with fairness in everyday interactions between individuals. However, it is noteworthy that justice lacks a universally agreed-upon, precise definition.

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

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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.

Significance of Access to Justice

Academics and policymakers articulate the concept of the rule of law in the following manner. Firstly, it entails the separation of powers, serving as a system to oversee and harmonize political authority through established regulations. Secondly, the rule of law signifies the presence and practical enforcement of a set of regulations and rights that govern interactions between the government and individuals within a society, as well as among individuals themselves. Lastly, the rule of law ensures the robust safeguarding and promotion of constitutional rights and privileges. Consequently, the rule of law stands as an essential necessity for the effective operation of any well-functioning government. The safeguarding and progress of civil rights and freedoms hinge on citizens' access to and trust in the legal system. To establish a secure societal, political, and economic atmosphere, a government must be capable of furnishing and safeguarding judicial services. When citizens lack faith in the state's justice services, they may resort to self-help measures. Consequently, a government loses its credibility when it cannot maintain a monopoly on the use of force and ensure the safety of its citizens from private acts of violence.

According to Krishna Iyer J., "… the jurisprudence of Access to justice as an integral part of social justice and examine the constitutionalism as a facet of human rights highlighted our nation's constitution.... If the state itself should travesty this principle in the teeth of Articles 14 and article 39-A, where an indigent widow is involved a second look at its policy is overdue."²

The credibility and importance of the rule of law diminish when citizens cannot avail themselves of legal services. Law Commission in its 222nd Report has defined the expression "access to justice" focuses on the following two basic purposes of the legal system:³

1. The system must be equally accessible to all.
2. It must lead to results that are individually and socially just.

² State of Haryana v. Darshana Devi, AIR 1979 SC 855

³ <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081082-2.pdf>

Alternative Dispute Resolution.

In a world where conflicts and disputes are an inevitable part of human interaction, finding efficient and equitable means of resolution becomes paramount. Traditional litigation, with its lengthy court battles, high costs, and adversarial nature, often falls short in meeting the needs of individuals and organizations seeking to resolve disputes swiftly and fairly. It is in this context that Alternative Dispute Resolution (ADR) emerges as a compelling and transformative approach. ADR encompasses a range of methods and techniques designed to facilitate the resolution of disputes outside the conventional courtroom setting. This dynamic and flexible approach not only saves time and resources but also promotes constructive communication and collaboration among disputing parties. As ADR gains prominence across legal, commercial, and societal landscapes, it offers a promising pathway to resolving conflicts in a manner that is efficient, cost-effective, and, most importantly, conducive to maintaining relationships.

ADR techniques are extrajudicial; they can be used to resolve any matter, under law, by the agreement between the parties. They have been employed to settle abundant subject categories of disputes, commercial, civil, industrial, and family disputes.⁴ The main objective of ADR is to provide quick and cost-effective relief to clients. The present system fails to deliver quick and inexpensive relief to the party in a dispute. The procedure is also overly complicated, and this leads to a search for an alternative mechanism that should be a cost-effective, quick, confidential procedure and be an accessory to the process of the traditional court system.⁵

ADR processes and outcomes prioritize the concerns of both parties involved, while courts and tribunals primarily focus on legal rights. ADR mechanisms have the potential to help maintain relationships between disputing parties. The use of Alternate Dispute Resolution is not a novel concept in this country, as it has been in practice in India since time immemorial. Historical records in the legal domain suggest that throughout history, individuals have been experimenting with procedures aimed at making the process of obtaining justice easier, more cost-effective, reliable, and convenient.

⁴ <https://www.alliance.edu.in/committees/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf>

⁵ *ibid*

It is commonly assumed that the prevailing system of government in ancient India was predominantly monarchy, and instances of republics were rare or considered deviations from the norm. This perspective is grounded in the apparent observation that kings ruled in ancient India, suggesting a monarchical system. ADR methods are not new to India and have been in existence in some form or the other in the days before the modern justice delivery system was introduced by the colonial British rulers⁶

The Supreme Court in *Salem advocate Bar Association Tamil Nadu v Union of India*⁷ observed: 'In certain countries of the world where ADR has been successful to the extent that over 90% of cases are settled out of court there is a requirement that particular suit must indicate the form of ADR which they would like to resort to during the pendency of the trial of the suit.'

Justice Malimath Committee Report:

If a law is enacted giving legal sanction to such machinery for resolution of disputes and resort there to is made compulsory the inflow of commercial litigation in regular civil courts gradually moving up hierarchically would be controlled and reduced.

Constitutional Background of the ADR.

The constitutional requirement for rescue operations commenced with the report by Justice V.R. Krishna Iyer and Justice P.N. Bhagwati's committee. As a result, marginalized segments of society gained the ability to seek justice through legal channels, ranging from local Munsif Courts to the highest authority, the Supreme Court. The introduction of CILAS (Committee for the Implementation of Legal Aid Services) also played a role in facilitating the resolution of civil disputes through both formal legal forums and informal means.

It is settled law that free legal aid to the indigent persons who cannot defend themselves in a court of law is a constitutional mandate under Articles 39 -A and 21 of the Indian constitution. The right to life is guaranteed by Article 21.⁸ This law has to help the poor who do not have means that is economic means to fight their causes.

⁶ Supra N 1

⁷ AIR 2003 SC 189

⁸ Avtar Singh, Law of Arbitration & Conciliation and Alternative Dispute Resolutions Systems, 564(11th 2019)

Alternative Dispute Resolution Mechanism consists of various modes for delivering justice. It consists of following methods;

Arbitration:

In India, the regulation of arbitration falls under The Arbitration and Conciliation Act of 1996. Arbitration is a method of resolving disputes wherein one or more individuals are designated to act as impartial third parties to adjudicate the matter. These impartial third parties are commonly referred to as 'arbitrators,' and the outcome of their deliberation, which essentially determines the merits of the case, is known as an 'arbitration award.'

The arbitration procedure is characterized by its informality, allowing for the amicable and efficient resolution of disputes. It is known for its expeditiousness and cost-effectiveness, making it a preferred choice for parties seeking dispute resolution. This preference is particularly evident in the business world, where significant corporations often opt for arbitration to swiftly settle disputes rather than engaging in protracted court battles.

The Scheme of the arbitration law is such that arbitration process which is a quasi-judicial proceeding has become more or less a miniature form of litigation.⁹ Arbitration is an alternate means for dispute resolution. It is a more modern method and perhaps more, an efficient means for resolving disputes than adjudication. N. A. Palkhivala observed that there are incalculable advantages to such proceedings. He said.

'if the law is not to be a system of tyrannical rigidity, but instead to be the efficient and useful servant of a changing society it must from time to time be adapted and parts of it replaced. A court of law is like an ancient castle constantly under repair there comes a time when it is no longer pays to patch it up and it is better to resolve to a new compact house built on modern lines'.¹⁰

In *Guru Nanak foundations v. Ratan Singh*¹¹ the Supreme Court of India while referring to the 1940 act observe that the way in which the proceedings under the act are conducted and without an exception challenge in court has made lawyers laugh and legal philosophers weep in view of

⁹ Shashank Garg, *Alternative Dispute Resolution: The Indian Perspective* 177(1st 2018)

¹⁰ Mallika Tally, *Introduction to Arbitration* 2(1st, 2015)

¹¹ AIR 1981 SC 2075

unending prolixity, at every stage providing a legal trap to the unwary.

The Supreme Court made further observation in *Food corporation of India v. Joginder pal*¹² that the law of arbitration must be simple, less technical and more responsive to the actual reality of the situations responsive to the canons of justice and fairplay. The Supreme Court in its decision in *Konkan Railway v. Mehul Constructions*¹³ discussed about the objective of the new Arbitration Act as

‘The increasing growth of global trade and the delay in disposal of cases in courts under the normal system in several countries made it imperative to have the perception of an alternative dispute resolution system more particularly, in the matter of commercial disputes when the entire world was moving in favour of a speedy resolution of commercial disputes, the United nations Commission on international trade law way back in 1985 adopted the UNCITRAL Model Law of international commercial arbitration and since then number of countries have given recognition to that model in their respective legislative system full with the said UNCITRAL Model Law in view the present arbitration conciliation act of 1996 has been enacted in India replacing the Indian Arbitration Act 1940 which was the principal legislation on arbitration in the country that had been enacted during the British. The Arbitration Act of 1996 provides not only for domestic arbitration but spreads its sweep to international commercial arbitration. The Indian law relating to the enforcement of foreign arbitration awards provided for greater autonomy in the arbitrary process and limits judicial intervention to a narrower circumference than under the previous law.’¹⁴

Mediation:

Mediation is a process which is both new in terms of its emergency in the legal arena and old in terms of its timeless universality there is a need at the very outset distinguished model mediation from traditional form of dispute resolution other settlement forms mediation is now recognised not only a distinct system of dispute resolution but also as a system that interacts interdependently with the justice system it is an integral part of many court programs in developed countries around the world. As defined in a commentary ‘mediation is a fresh facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to

¹² AIR 1989 SC 1263

¹³ (2000) 7SCC 2011

¹⁴ Anirban Chakraborty, Law & Practice of Alternative Dispute Resolution in India : A Detailed analysis 20 (1st, 2016)

arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them but uses certain procedures, techniques and skills to help them to negotiate and agreed resolution for their dispute without adjudication'.¹⁵

Conciliation:

Conciliation emerges as a preferable alternative to the formal justice system. Choosing the mode of conciliation doesn't necessitate a formal agreement. When an arbitration clause is present in an agreement, it implies that the matter should initially undergo a conciliation process, and only if an amicable settlement proves elusive, it proceeds to arbitration. Another advantage of opting for conciliation is that even if an amicable resolution isn't achieved, the evidence presented and proposals made during conciliation proceedings cannot be disclosed in any other proceedings, including arbitration. This safeguard is inherent in the Arbitration & Conciliation Act itself, providing parties with the opportunity to engage in conciliation without incurring any risks.

Conciliation is a non-binding process where an impartial third party aids disputing parties in reaching a mutually acceptable resolution. Effective conciliation necessitates bringing the disputing parties together, face to face, in a common location where they can engage with one another and the conciliator to arrive at a resolution. The significance of conciliation lies in the fact that in other proceedings, decisions are rendered by the presiding authority and carry binding consequences."

The importance of conciliation in the present Indian court system is increased as courts are facing with the problem of mounting arrears of pending cases & there is a serious need of disposing of them & for that amicable settlement, conciliation is the best alternative. The Himachal Pradesh High court under took the project of disposing of the pending cases by conciliation & insisting on pretrial conciliation in fresh cases. This idea was based upon the mediation in Canada & Michigan. The said project had great success in Himachal Pradesh. The Law commission of India in its various reports (77th & 13th) has appreciated the project in Himachal Pradesh and recommended the other States to follow same path.¹⁶

¹⁵ Supra n 11 at 218

¹⁶ Dr. Ujwala Shinde, Conciliation as an Effective Mode of Alternative Dispute Resolving System
<https://ghconline.gov.in/library/document/conference2728072018/II2Conciliation%20as%20an%20Effective%20Mode%20of%20Alternative%20Dispute.PDF>

Negotiation

Concilia omnia verbis prius experiri, quam armis sapientem decet, a well-known legal maxim, which literally translates as "An sensible man would prefer discussion before deploying arms," justifies the goal of using negotiation. This technique aids the disputing parties in reaching a mutual understanding and settlement by recommending better outcomes to them. Negotiation can be defined as any communication, whether direct or indirect, wherein conflicting parties discuss how they might collectively address and ultimately resolve their dispute. These discussions can pertain to resolving an existing issue or establishing a foundation for a future relationship involving two or more parties. Importantly, participation in the negotiation process is entirely voluntary, with each party having the autonomy to accept or reject the outcomes that emerge. There are no restrictions on the number of parties involved; it can involve just two individuals or extend to numerous participants. Unlike arbitration and mediation, negotiations culminate in an agreement reached by the parties themselves, without the involvement of a neutral third party. This process is marked by flexibility and informality, allowing for confidentiality as desired by the parties involved.

Regarding its procedural aspects, negotiation stands out as an exceptionally flexible method of dispute resolution. It exclusively involves those individuals or parties with a vested interest in the matter, enabling them to shape the negotiation process according to their specific needs and schedules. The probability of arriving at a mutually agreeable resolution is notably high, as the consent of all parties is a fundamental aspect of the process. By adopting an interests-based approach rather than the more commonly used positional-based approach, negotiation enhances the likelihood of achieving a successful outcome.

Lok – Adalat:

Lok adalat is an old form of adjudicating system prevailed in ancient India and its validity has not been taken away even in the modern days too. The words lok Adalat means People's Court.¹⁷ This system is based on Gandhian principal and it is one of the very important component of alternative dispute resolution system. Since the Indian courts are overburdened with a plethora of the cases and the regular courts are not able to decide the cases and if being decided it involves a lengthy and inexpensive and tedious procedure. The courts are taking years together to settle the cases.

¹⁷ Sukumar Ray, Alternative Dispute Resolution 154(2nd, 2020)

The Lok Adalat is considered as one of the methodology of alternate dispute resolution for expeditious and inexpensive justice. In Lok Adalat proceedings there are no victors and vanquished and thus, no rancour.¹⁸ Experiment of Lok Adalat is the alternative dispute resolution has come to be accepted in India as a viable economic efficient and informal one. The legal service authorities act 1987 is the outcome and the rule about Lok adalat is included as a part of it.

Benefits of ADR on Access to Justice

1. **Cost-Effective:** ADR is generally more cost-effective than traditional litigation. Legal fees, court expenses, and lengthy proceedings can be prohibitive for many individuals and businesses. ADR provides a more affordable option, allowing a wider range of people to access justice.
2. **Time-Efficient:** Traditional lawsuits can drag on for years, causing undue stress and financial strain. ADR processes are often faster, ensuring that disputes are resolved more promptly, reducing the time and resources required to reach a resolution.
3. **Informality and Flexibility:** ADR methods are less formal than court proceedings, making them less intimidating for many individuals. Parties have greater control over the process and can tailor it to their specific needs and circumstances.
4. **Preservation of Relationships:** ADR methods, especially mediation, encourage parties to work together to find solutions. This can help preserve relationships, which is crucial in family, business, and community disputes.
5. **Reduced Caseload on Courts:** By diverting disputes away from the court system, ADR helps alleviate the burden on overloaded court dockets. This allows courts to focus on more complex cases and ensures that individuals with pressing matters receive quicker resolutions.

Challenges of ADR in Promoting Access to Justice

1. **Lack of Awareness:** Many people are unaware of ADR options and may not know how to access them. Raising awareness about ADR and its benefits is essential to ensuring its widespread use.
2. **Unequal Power Dynamics:** In some cases, there may be significant power imbalances between parties involved in a dispute. This can affect the fairness of ADR processes, as

¹⁸ Ibid

the party with more resources or influence may have an advantage.

3. **Enforceability:** Unlike court judgments, ADR outcomes are not always enforceable by law. Parties may choose to disregard agreements reached through ADR, potentially undermining the efficacy of the process.
4. **Limited Applicability:** ADR may not be suitable for all types of disputes, particularly those involving serious criminal offenses. In such cases, traditional court proceedings are necessary to ensure justice is served.

Conclusion.

Alternative Dispute Resolution has made significant strides in improving access to justice by offering a faster, more cost-effective, and flexible way to resolve disputes. Its benefits in terms of affordability, efficiency, and preservation of relationships cannot be underestimated. However, challenges related to awareness, power imbalances, enforceability, and limited applicability must be addressed to ensure that ADR fulfills its potential as a means to make justice more accessible to all. Striking a balance between traditional litigation and ADR methods is key to building a fair and equitable justice system that truly serves its constituents. Advocacy for the ADR has led to the development of various legislations in India to make alternative dispute resolution mechanisms available to the litigants. This alternative method of dispute resolution which complements the formalities of the court process has now become a part of the mainstream dispute resolution mechanism. The research is still underway to explore the further possibilities in revamping the institutions of community or family based dispute resolutions. In India, the need of the hour is for a robust infrastructure which could only be provided by a credible institutional framework which can overcome the significant challenges of the selection of the right arbitrator or mediator or the conciliator as well as time and cost of the proceedings.