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Reducing the Burden on Indian Judiciary: Turning to Alternative Dispute Resolution

Law

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ABSTRACT

The conventional system of justice delivery is deeply flawed; as a result of which there is a backlog of pending cases in the Indian Courts. The judicial infrastructure is inadequate and is on the verge of a collapse. It was imperative that an alternate innovative mechanism be provided to cater to the needs of the society. A unique system of Alternative Dispute Resolution (hereafter referred to as ADR) has been introduced. But how will the various forms of ADR help in reducing the burden of the judiciary? Should we resort to ADR? Has this mechanism proved to be effective and has the Legislature made any reforms in this aspect? These are some of the key issues discussed in this paper. The authors have derived certain conclusions and made some suggestions which might help in making ADR 'the preferable choice' of dispute resolution in the long run.

Introduction

The Constitution of India in its preamble replicates the desire of achieving 'economic, social and political justice'.[1] Any civilized nation aims and strives to provide its citizens with an effective mechanism to resolve legal disputes. At the time Constitution was enacted and formally adopted in 1950, mode of accessing justice was limited to litigation in the courts and there existed a unified structure of courts and laws. Uniformity and unity of the judicial structure was preserved in such areas of law as criminal laws and procedures, civil procedures, wills, succession, contracts, etc.

The hierarchy of the judicial system is eminent. At the apex of the entire judiciary is the Supreme Court of India with a High Court for each State or a group of States. Under the High Court there is a hierarchy of Subordinate Courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, below him there are courts of civil jurisdiction, known in different States as Munsif, Sub-Judge, Civil Judge. The criminal judiciary consists of the Chief Judicial Magistrate and Judicial Magistrates of First and Second Class.[2]

Weighed down by the mass of litigation

In India over 30 million cases are pending at various levels of judiciary across the country as of June 2012. Lower levels of judiciary have around 27 million pending cases; over 4 million are pending in 21 High Courts. Uttar Pradesh has the maximum number of pending cases: 1 million in Allahabad High Court and nearly 6 million in lower courts.[3] It is contemplated that it may take over 30 years for disposal of the pending cases.[4]

Table 1
Number of cases pending in the Supreme Court of India since 2006 to June 2012

Year	Regular	Admission	Total
2006	22,361	17,419	39,780
2007	27,960	18,966	46,926
2008	30,087	19,732	48,819
2009	34,976	20,815	55,791
2010	32,565	21,997	54,562
2011	33,454	25,065	58,519
2012	36,833	27,018	63,851

Table 2
Number of cases pending in the High Court's since 2006 to June 2012

Year	Bombay	Madras	Calcutta	All India
2006	362,950	406,950	268,358	3,654,843
2007	369,997	428,832	283,237	3,743,060
2008	336,080	451,496	300,473	3,874,090
2009	338,138	431,390	319,846	4,060,709
2010	351,297	448,168	334,901	4,249,344
2011	362,885	473,736	347,154	4,327,746
2012	362,948	483,848	350,260	4,340,867

Table 3
Number of cases pending in the Subordinate Courts since 2006 to June 2012

Year	Uttar Pradesh	Maha-rashtra	West Bengal	All India
2006	4,704,300	4,148,019	2,067,311	25,079,618
2007	4,874,615	4,045,782	2,194,631	25,418,165
2008	5,160,174	4,138,766	2,411,334	26,409,011
2009	5,404,633	4,158,458	2,597,655	27,275,953
2010	5,653,441	3,904,605	2,786,044	27,775,181
2011	5,798,048	3,275,954	2,629,655	26,986,207
2012	5,798,272	3,144,426	2,638,937	26,851,766

Source for the above tables: Supreme Court Annual Report and Supreme Court News

Our justice delivery system in its hierarchical structure suffers from the following ailments:

1) Procedural delay of disposal of cases;
2) Complicated procedure;
3) High cost of litigation;
4) Limited number of Judges

The legal principle of *'Justice Delayed is Justice Denied'* as quoted by William Gladstone clearly signifies the importance of timely fashion of redressal for a legal dispute. The principle forms the foundation for right to a speedy trial and articulates that if the existing system is unable to deliver first hand justice at a faster pace, then it is equivalent to having no remedy at all.

Therefore the object of justice is twofold: firstly to provide for

a remedy and secondly to provide it at faster pace. The modern slogan is Justice must be speedy, less costly and non-cumbersome. In our society it has become a menace on the part of unscrupulous persons to rope in innocent citizens by using the weapon of litigation by falsely making frivolous complaints by misusing the provisions of law to foster a new legal terrorism with personal vendetta, the oblique object being to unleash harassment and to soil the unsoiled image and integrity of the innocuous human being in the eye of the people of the society.[5]

Therefore the hierarchical embedded judicial structure has to be broken down and an alternate mechanism to access procedural justice needs to be made available.

Alternative Dispute Resolution (ADR) - Need of the Hour
To overcome the delay and to provide effective justice to the consumer of justice, it has become imperative to resort to ADR with a view to bringing an end to litigation between the parties at an early date.

In the words of Abraham Lincon: "Discourage litigation. Persuade your neighbors, make composition whenever you can. As a peace maker one should encourage being a good human being, to refrain from resorting to lies. There will still be business enough".

In *Salem Advocate Bar Association, Tamil Nadu v Union of India* [6]the Supreme Court held: "In certain countries of the world where ADR has been successful to the extent that over 90 percent of the cases are settled out of court, there is a requirement that the parties to the suit must indicate their intention to refer to ADR during the pendency of the trail."

Understanding ADR
According to Halsbury's Laws of England, 'Alternative Dispute Resolution is a term for describing the processes of resolving disputes in place of litigation and includes mediation, conciliation, expert determination, and early evaluation.'[7]

Main Processes of ADR
Arbitration: It is a private determination of the controversial issues by a neutral third party, who is empowered to make a binding award. It is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an 'award') on the dispute that is binding on the parties.

Mediation: It is a structured negotiation process, where the mediator, an impartial third party, assists the parties to agree on their solutions to the problem. Therefore, the mediator facilitates negotiation.

Conciliation: It is a process similar to mediation used in agencies which administer rights granted under legislation, and in tribunals or courts. It is a non-binding procedure in which an impartial third party, mediator assists the parties in reaching a satisfactory solution.

Negotiation: It is a process initiated by the parties themselves in resolving the dispute. It is to confer with another with a view to reaching an agreement. Thus, it is a non binding process.

Justification to resort to ADR
The basic justification for ADR is to get rid of the existing workload and litigation is expensive as well as does not always lead to a satisfactory result. A case won or lost does not change the attitude of the litigants who continue fighting vehemently by filing appeal after an appeal. ADR system enables this change in the approach of the parties.

There are five basic points of justification:[8]
1) Saving time and money, and possibly rescuing the judicial system from an overload;
2) Having 'better' processes- more open, flexible and responsive to the unique needs of the participants;
3) Achieving better results- outcomes that serve the real needs of the participants or society;
4) Enhancing community involvement in the dispute resolution process;
5) Broadening access to "justice".

There are various advantages in opting for ADR over being overly litigious by filing a court case and being strangled and completely consumed by it for the following years to come.[9]

- Reduces the burden on the Courts
- Presence of an advocate is unnecessary
- Parties have every existing right available to them to approach the Court if they fail to arrive at a settlement
- Technicalities of law and procedures, rules of evidence have no place in ADR mechanism
- The parties have the power to choose their own judge
- The process is confidential and takes place without prejudice basis the parties have the freedom to develop and consider innovative settlement ideas.

Efforts to Reform
The Government of India introduced an effective ADR system by enacting the Arbitration and Conciliation Act, 1996 that came into force on the 22nd August 1996. The Act covers both international and domestic arbitration. It is based on the Model Law on International Commercial Arbitration recommended by United Nations Commission on International Trade Law (UNCITRAL).

In 1999 the Parliament amended the Civil Procedure Code; new subsections have been inserted[10] according to which the court has been empowered to refer disputes for settlement to arbitration, conciliation, judicial settlement through lok adalat or mediation. The court has to check whether there is any element of settlement that exists in the case, which is acceptable to the parties. The court then has to formulate the terms of a possible settlement and refer it to one of the methods of settlement.

Conclusions and Suggestions
As the dominance of commercial elements are increasing and service character diminishing, and the hierarchical system of law cannot meet the growing demands for justice, people are opting for alternatives. It has been observed since the previous decade ADR has been catching up and is viewed as a successful instrument in diminishing the load off the judiciary.[11]

The most popular forum of ADR is arbitration which is akin to litigation; other forums of ADR should also be encouraged and given due importance which will help in timely and peaceful disposal of disputes. The Legislature should enact statues covering all aspects of ADR. The Conciliation part of the 1996 Act should be brought into effect immediately. Alternate methods such as negotiation and mediation should be cheered as they are the best, effective, informal and autonomous methods of resolution.

ADR as an instrument should not be confined only to address international commercial transactions, state, private or foreign business firms, inter- corporation conflicts or inter- country disputes but should be advanced and used as an effective tool for solving problems of the middle class society and conflicts amongst the poor.

ADR in India had embarked upon a journey with the aim of facilitating access to justice and to relieve court congestion. ADR must be adopted in order to resolve common disputes of all categories of people. The legal community and social personalities must support and develop a positive attitude to rely on ADR movement to achieve complete justice, the goal of the Constitution and rule of law, which will go a long way in reducing the load on judiciary.

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