An Abstract of the Thesis titled

ALTERNATIVE DISPUTE RESOLUTION MECHANISM: A CASE STUDY OF DELHI

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INTRODUCTION

Alternative Dispute Resolution or ADR refers to an assortment of dispute resolution procedures that primarily serve as alternatives to litigation and are generally conducted with the assistance of a neutral and independent third party.\(^1\) Mediation, Conciliation, Arbitration, Lok Adalats, Med-Arb, Early Neutral Evaluation and Mini Trial are some of the examples of ADR procedures. ADR is essentially based on the philosophy that a dispute is a problem to be solved together rather that a combat to be won and it visualizes a participative and collaborative effort of the disputant parties, facilitated by the ADR neutral, to arrive at an acceptable resolution of the dispute outside the litigative process.

The primary objective of every legal system is to render justice\(^2\) and access to justice is one of the cherished goals, which is the *sine qua non* for the existence of a democratic and civilized state. It is, therefore, one of the prime functions of a welfare state to provide adequate dispute-resolution mechanisms and indeed in a democratic society people must have effective access to such dispute resolution mechanisms as the maxim ‘ubi jus ibi remedium’ cannot be permitted to be reduced to an empty promise.

Characterized by a huge and continuously increasing population and limited resources, ‘access to justice for all’ in India is still a distant dream even after six decades of independence. The judicial system in India, laden with insurmountable arrears, marred by a poor judge to population ratio and

\(^1\) This is also the accepted connotation in which Alternative Dispute Resolution is understood the world over. See Alternative Dispute Resolution Act, 1998 (USA), Alternative Dispute Resolution Act, 2004 (Republic Of Philippines), website of National Alternative Dispute Resolution Advisory Council, Australia: http://www.nadrac.gov.au (last visited on 12.05.2011), etc.

\(^2\) Justice is a guarantee which, even the Preamble to the Constitution of India seeks to secure to all the citizens of India.
attended with procedural complexities, inherent delays and soaring expenses, in the recent past, had entered into a phase where its credibility and efficacy was getting eroded to a considerable extent. This propelled the search for new alternatives and the result was the advent of the ADR in its contemporary modern incarnation and undoubtedly over these years ADR has proved to be one of the most promising remedies which have been advocated to counter the problems faced by the justice delivery system.

The enactment of the Legal Services Authorities Act, 1987\textsuperscript{3} and the Arbitration and Conciliation Act, 1996 unequivocally demonstrates the legislative consciousness and concern towards the necessity and importance of ADR in India. However, the turning point in the ADR movement was the legislative mandate articulated in the enactment of section 89 CPC\textsuperscript{4} followed by an extraordinary, committed and concerted judicial endeavour, which triggered an ADR revolution in India of a stature which was unprecedented and preeminently unmatchable.

In the recent past the ADR revolution has gained tremendous momentum in India, not only on account of ADR being an effective instrument for clearing the judicial dockets, but also because it steers clear of rigidity and complexity and offers an additional economical and expeditious remedy for resolution of disputes, a remedy which is fairly appropriate in the given state of affairs. The Supreme Court and the High Courts have also vociferously advocated the pervasive use of ADR and have themselves taken myriad initiatives for popularizing and promoting ADR in India.

Delhi is a legally advanced city and the variety, complexity and enormity of litigation in Delhi has no parallels as far as India is concerned. Burdened with colossal spurt in litigation on the one hand and adorned with superior infrastructure, flourishing trade and commerce, vibrant corporate sector and educated and aware masses on the other hand, Delhi has tremendous potential for development of ADR and indeed Delhi has been one

\textsuperscript{3} The Legal Services Authorities Act, 1987, \textit{inter alia}, deals with Lok Adalats and Permanent Lok Adalats which are quite popular ADR fora.

\textsuperscript{4} Section 89 was introduced into the Code of Civil Procedure, 1908 by the Code of Civil Procedure (Amendment) Act, 2002 with effect from 01.07.2002.
of the pioneers in the adoption and implementation of ADR. Albeit, a whole gamut of procedures are available under the umbrella of ADR, primarily four ADR processes namely Mediation, Lok Adalats, Arbitration and Conciliation have attained noteworthy recognition in Delhi. \(^5\) ADR has been extremely effective in Delhi in the recent past and although it is a developing subject, it has tremendous potential in times to come. What is however required is a comprehensive legislative framework, effective and proper implementation and institutionalization, constant evaluation and monitoring, a concerted endeavour to rectify the flaws and correct the aberrations, proper education, training and publicity and most importantly revolutionizing the mindset of the masses.

In this backdrop the topic of this research - Alternative Dispute Resolution Mechanism: A Case Study of Delhi was found appropriate and approved by the Board.

**OBJECTIVES OF THE STUDY**

The concise objectives of this research are to ascertain, examine and analyze the concept and law relating to ADR, to further ascertain, examine and analyze the framework, avenues, practices and procedures relating to ADR and more specifically relating to four individual ADR processes namely Mediation, Conciliation, Lok Adalats & Permanent Lok Adalats and Arbitration with reference to Delhi and to further ascertain and analyze their necessity, advantages and shortcomings and further to evaluate their efficacy and accomplishments again with reference to Delhi and to further formulate plausible remedial measures for overcoming the shortcomings and propose suggestions for their better and more effective implementation and progress in Delhi.

**RESEARCH METHODOLOGY**

This study has been a combination of doctrinal as well as empirical research. Extensive doctrinal research has been done on the subject and both primary and secondary sources, from India as well as from foreign

\(^5\) The other ADR procedures such as early neutral evaluation, mini trial, dispute review boards, med-arb, expert determination etc. have not been able to attain widespread recognition as yet in Delhi.
jurisdictions have been analyzed. The empirical research was conducted through observation as well through interviews (both structured and unstructured) \textit{inter alia} using the questionnaire method. Individual cases were also examined and analyzed so as to further understand the practical aspects in a better manner. This research work is also based on my personal observations and the experiences and opinions of the other members of the legal fraternity. I also attended various conferences, refresher courses and trainings on ADR which enabled me to ascertain the viewpoints of other members of the legal fraternity and understand the nuances and practicalities concerning the subject in a broader perspective.

OVERVIEW OF THE CHAPTERS

CHAPTER I - INTRODUCTION

Chapter I, in the beginning, gives a concise yet fairly comprehensive exposition of the concept of ADR in general and then proceeds to explain the reasons for the advent of ADR in India and traces the growth of ADR in India. This chapter further highlights the requirement, relevance, utility and advantages of ADR and gives an insight into the customary ADR processes such as mediation, conciliation, lok adalats, arbitration, mini trial, early neutral evaluation, med-arb, etc. It then proceeds to give a brief overview of the state of affairs with respect to development of ADR in Delhi.

In the end this chapter also outlines the reasons behind this research, the objectives of the study, the research methodology and the sources of study and further gives a brief overview of all the chapters.

CHAPTER II – MEDIATION

Chapter II elaborately deals with mediation as an ADR mechanism with special reference to Delhi. This chapter first of all explains the concept and process of mediation, the role of the mediator and the advantages of mediation.

This chapter then proceeds to discuss the pre litigation and post litigation mediation framework and avenues available in Delhi giving specific details about the mediation centres at Delhi district courts, the Delhi High
Court Mediation and Conciliation Centre (Samadhan), the mediation centres established under the aegis of the Delhi Dispute Resolution Society mooted by the Government of NCT of Delhi and other private avenues of mediation such as LCIA India, etc. It simultaneously expounds the concept, practices and procedure of court annexed mediation at the mediation centres at Delhi, inter alia referring to various judicial pronouncements on the subject including Salem Advocate Bar Association v. Union of India, AIR 2003 SC 189, Salem Advocate Bar Association v. Union of India (II), AIR 2005 SC 3353 and Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., JT 2010 (7) SC 616. This chapter further specifically highlights the achievements of mediation in Delhi after succinctly referring to the statistical data resultanty establishing and analyzing the efficacy of mediation as an ADR mechanism in Delhi.

It the end this chapter proceeds to examine and analyze the issues and concerns pertaining to mediation in light of the doctrinal research and empirical study conducted in Delhi. It distinctively highlights the absence of a statutory framework with respect to mediation and underscores the need of a comprehensive legislation on mediation.

CHAPTER III – LOK ADALATS AND PERMANENT LOK ADALATS

Chapter III elaborately deals with Lok Adalats and Permanent Lok Adalats as ADR mechanisms with special reference to Delhi. This chapter, in the beginning explains the concept, evolution, law, practices and procedures of Lok Adalats and the advantages offered by them as ADR fora. Lok Adalats possess statutory recognition under the Legal Services Authorities Act, 1987 and regular references have also been made to the relevant statutory provisions and the significant judicial pronouncements.

This chapter further proceeds to discuss the framework of Lok Adalats as ADR fora in Delhi giving an overview of various Lok Adalats viz. continuous Lok Adalats, special Lok Adalats, mega Lok Adalats, etc. organized by Delhi Legal Services Authority at the district courts level and the Delhi High Court Legal Services Committee at the Delhi High Court level.
This chapter thereafter specifically highlights the achievements of Lok Adalats in Delhi after succinctly referring to the statistical data, examines and analyzes the issues pertaining to Lok Adalats with reference to the doctrinal research as well as the empirical research conducted in Delhi and discusses the efficacy of Lok Adalats as an ADR mechanism in Delhi.

The last part of this chapter deals with the concept of Permanent Lok Adalats and their status as an ADR mechanism and goes on to expound the framework of Permanent Lok Adalats in Delhi succinctly referring to the statistical data and concluding with an analysis of achievements and success of Permanent Lok Adalats in Delhi.

CHAPTER IV – ARBITRATION

Chapter IV elaborately deals with the adjudicatory ADR mechanism – Arbitration. This chapter first of all gives an insight of the concept of arbitration, types of arbitration and the historical background of arbitration in India. It then expounds the process of arbitration, which is governed by the Arbitration and Conciliation Act, 1996, referring to the relevant statutory provisions and the significant judicial pronouncements. It further explains the advantages of arbitration as a dispute resolution mechanism.

This chapter thereafter proceeds to elaborately discuss analyze the continuum of arbitration avenues available in Delhi specifically referring to various permanent arbitral institutions flourishing in Delhi, such as the Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR), LCIA (London Court of International Arbitration) India, Delhi High Court Arbitration Centre (DAC), FICCI Arbitration and Conciliation Tribunal (FACT), Construction Industry Arbitration Council (CIAC) etc.

This chapter further gives an outline of the arbitration cases before the Delhi High Court and the district courts in Delhi referring to the statistical data. The chapter then proceeds to examine and analyze the issues and concerns pertaining to arbitration with reference to the doctrinal research as well as the empirical research conducted in Delhi and ends by highlighting the pervasive presence of arbitration in Delhi despite the individual and procedure generated aberrations which have come to be associated with arbitration and
endorsing its potential as an excellent ADR mechanism for resolution of commercial disputes.

CHAPTER V – CONCILIATION

Chapter V elaborately deals with conciliation as an ADR mechanism with special reference to Delhi. It first of all explains the concept and process of conciliation and the role of the conciliator and highlights the advantages of conciliation referring to the relevant provisions of the Arbitration and Conciliation Act, 1996 and the applicable case law.

This chapter further elaborately discusses the distinction between mediation and conciliation, which are fundamentally similar processes being species of the generic process of plain facilitated negotiation.

This chapter thereafter expounds a range of conciliation options available in Delhi, specifically referring to institutional conciliation under the auspices of Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR) and FICCI Arbitration and Conciliation Tribunal (FACT) and also gives an overview of conciliation under specific legislations in Delhi.

The last part of the chapter examines and analyzes the issues pertaining to conciliation with reference to the doctrinal research as well as the empirical research conducted in Delhi and highlights the inadequate use of conciliation at the post litigation stage on account of the preferential treatment given to mediation and ends by asserting the immense potential of conciliation as an ADR mechanism and the requirement of giving adequate publicity to conciliation.

CHAPTER VI – ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION 89 CPC

Chapter VI elaborately expounds the contribution of section 89 CPC to ADR jurisprudence with special reference to Delhi. In the beginning it explains the nature and ambit of section 89 CPC and highlights the reasons for incorporating section 89 CPC in the statute book. This chapter then proceeds to outline the procedure enshrined under section 89 CPC and also gives an
insight into the role of referral judges in ensuring that the salutary objective behind the incorporation of section 89 CPC is accomplished.

This chapter then proceeds to discuss and analyze the available ADR mechanisms under section 89 CPC with special reference to Judicial Settlement as an ADR mechanism specifically referring to the judgment of the Supreme Court in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., JT 2010 (7) SC 616. It further analyses certain legislative drafting errors in section 89 CPC and the need for amending section 89 CPC to iron out the creases and overcome the shortcomings.

The last part of this chapter illustrates the efficacy and use of section 89 CPC and the individual ADR mechanisms available under section 89 CPC with reference to Delhi and impresses that section 89 CPC has resulted in a paradigm shift by the introduction of ADR in to the mainstream litigative process and has thereby helped in giving a massive boost to the ADR revolution.

Chapter VII Summary of Conclusions and Suggestions

In the first part of this chapter an earnest attempt has been made to assimilate the broad and generalized propositions and conclusions embodied in all the preceding chapters with brevity and precision. The second part of the chapter comprehensively expounds some of the plausible legislative, administrative and other allied remedial measures for rectifying the flaws observed during the research and also contains an exposition of a whole gamut of other suggestions for the better and effective implementation and systematic growth of ADR in Delhi from a pragmatic point of view.

A summary of conclusions and suggestions is being provided hereunder for an overview; however the detailed exposition of the same would form part of the thesis.

SUMMARY OF CONCLUSIONS

1. ALTERNATIVE DISPUTE RESOLUTION

1.1 ADR has proved to be one of the most significant instruments for contemporary dispute resolution and judicial reform and it has become an
absolute necessity in Delhi. The enormous spurt in litigation and the insurmountable arrears of cases piling up in the courts in Delhi coupled with escalating costs and inherent delays of the litigative process make ADR a \textit{sine qua non} for preventing the judicial system from collapsing. Initially advocated as a safety valve and a via media to divert the burden on the clogging judicial system, ADR, in the contemporary period, has not only accomplished the goal of clearing the judicial dockets, but has also become an inalienable part of the justice delivery system providing an additional and appropriate mode of resolution of disputes in an economical, expeditious and acceptable manner.

1.2 ADR, however, is not intended to supplant altogether the judicial system and it only offers an additional mode of dispute resolution and is therefore sometimes referred to as Additional Dispute Resolution. In fact the judicial system and ADR need to operate collaboratively so that the ultimate goal of justice for all is achieved. Further ADR aims at providing a remedy to disputant parties which is most appropriate in the circumstances of the case and is therefore also referred to as Appropriate Dispute Resolution.\footnote{See also Law Reform Commission, Ireland, Report on Alternative Dispute Resolution: Mediation and Conciliation, LRC 98-2010, November 2010, available at: http://www.lawreform.ie (last visited on 10.04.2010). See also http://www.nadrac.gov.au (last visited on 12.05.2011).}

1.3 A continuum of individual ADR mechanisms are available in Delhi but arbitration, mediation, conciliation and dispute resolution through Lok Adalats and Permanent Lok Adalats are the primary ones which flourish in Delhi. These ADR mechanisms have been quite successful and effective in Delhi and the statistical and empirical data reflects their success in relieving docket congestion and as instruments of effective dispute resolution.

1.4 ADR has been extremely effective in Delhi in the recent past and it has tremendous potential in times to come and time is not far when ADR would be the preferred and inevitable option as a mode of dispute resolution at the pre-litigation stage itself.
2. MEDIATION

2.1 Mediation in its contemporary incarnation is an ADR process where a specially trained mediator facilitates the parties in arriving at an amicable settlement through a structured process involving different stages viz. introduction, joint session, caucus and agreement.

2.2 Mediation has distinct advantages - it is cost effective and expeditious, it enables the parties to devise creative tailor-made solutions, results in a win-win situation thereby preserving relationships and is confidential.

2.3 Delhi is fortunate to have four court annexed mediation centres at the district courts and the Delhi High Court Mediation and Conciliation Centre possessing state of the art infrastructure, manned by professional and trained mediators and functioning under the aegis of the Delhi High Court. Mediation at these centres is a full time professional affair and the Mediation and Conciliation Rules, 2004 have also been framed by the Delhi High Court for facilitating mediation at these centres.

2.4 Mediation has emerged as the frontrunner in the ADR revolution which is gaining momentum in Delhi. At the post litigation stage mediation is perhaps the most preferred mode of dispute resolution especially for complicated, multifaceted and long standing disputes. Statistics reveal that in all the five court annexed mediation centres in Delhi till date more than 55,000 cases (including connected cases) in total have been settled through mediation.

2.5 Mediation centres at different districts have also been established by the Delhi Dispute Resolution Society, mooted by the Government of NCT Delhi. LCIA India and ICADR also provide private professional institutional mediation services on a chargeable basis in Delhi.

7 Mediation Centres are functioning at Tis Hazari, Rohini, Karkardooma and Rohini district court complexes in Delhi.

8 Delhi High Court Mediation and Conciliation Centre known as ‘Samdhan’ is housed in the Delhi High Court building.

2.6 Mediation, at the pre litigation stage, however has not made much headway on account of lack of statutory framework, albeit we have a range of institutional and ad hoc options available in Delhi for pre litigation mediation also.

3. **LOK ADALATS AND PERMANENT LOK ADALATS**

3.1 Lok Adalats meaning ‘People’s Courts’ are ADR fora where the Lok Adalat Judge steers the disputant parties towards a negotiated settlement by the use of the generic process of conciliation. Lok Adalats can dispose of the matter only on the basis of settlement and compromise and such settlement gets crystallized in the form of the award of the Lok Adalat, which is final and is executable as a decree of the court. Lok Adalats have statutory recognition under the Legal Services Authorities Act, 1987.

3.2 Lok Adalats have proved to be extremely efficacious in Delhi for disposal of simple straightforward cases such as complaints under section 138 of the Negotiable Instruments Act, bank recovery suits, electricity disputes, motor accident claim cases, traffic challans, etc., although they may not prove to be the most appropriate ADR mechanism for resolution of complex cases such as partition suits, family disputes, complex commercial cases, matrimonial disputes, etc. The prime reasons for the same are availability of limited time with the Lok Adalat judges, heavy cause lists, lack of continuous personalized attention, want of confidentiality, limited number of sittings (sometimes only one) with the same Lok Adalat Judge, etc.

3.3 However despite these limitations Lok Adalats are extremely popular ADR fora in Delhi and are regularly organized by DLSA at the district court level and by DHCLSC at the Delhi High Court level in the form of continuous Lok Adalats, special Lok Adalats, mega Lok adalats etc.

3.4 Lok Adalats in Delhi have disposed of thousands of cases and have helped a lot in clearing judicial dockets. Their efficacy can be appreciated from the example that from 01.04.2007 to 31.03.2008 the Lok Adalats in Delhi disposed of more than 1,29,000 cases at the Delhi district courts. To cite another instance, in the mega traffic Lok Adalats organized by the DLSA at all district court complexes in Delhi only in 4 days in September & December,
2007 more than 80,000 traffic challan cases were disposed of.\textsuperscript{10} The empirical data reveals that if the number of cases disposed of were the only parameter Lok Adalats would be crowned as the finest ADR mechanism.

3.5 Permanent Lok Adalats are permanent ADR fora which have been established under the Legal Service Authorities Act, 1987 for resolution of disputes pertaining to public utility services at the pre litigation stage. The Permanent Lok Adalat initially utilizes the generic process of conciliation to broker a settlement between the parties and in case the matter is not settled it proceeds to decide the case on merits, except in cases involving a criminal offence. The procedure followed by Permanent Lok Adalats is similar to the ADR hybrid procedures Med-Arb and Con-Arb.\textsuperscript{11}

3.6 In Delhi various Permanent Lok Adalats are functioning for public utility services and are disposing of numerous cases. Their efficacy can understood from the example that 3063 cases were disposed of by the Permanent Lok Adalats constituted for NDPL/ BSES cases from 01.04.2007 to 31.03.2008.\textsuperscript{12} The disposal of thousands of cases by Permanent Lok Adalats in Delhi is also a significant contribution to the justice delivery system as all these cases could have become prospective arrears for the Delhi Judiciary.

4. ARBITRATION

4.1 Arbitration is an adjudicatory ADR mechanism wherein a private judge i.e. arbitrator chosen by the parties adjudicates their disputes on merits through a simplified private process culminating into a binding arbitral award. In India arbitration is governed by the Arbitration and Conciliation Act, 1996.

4.2 Arbitration, albeit is an adjudicatory process, yet it finds itself seated in the galleries of ADR since it serves as an effective substitute for litigation.\textsuperscript{13}

\textsuperscript{10} Delhi Legal Services Authority, 4\textsuperscript{th} Annual Report, 2008.

\textsuperscript{11} InterGlobe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463.

\textsuperscript{12} Delhi Legal Services Authority, 4\textsuperscript{th} Annual Report, 2008.

4.3 Arbitration has distinct advantages – party autonomy, flexibility of procedure, confidentiality, potential for expeditious resolution and finality of arbitral award, etc. It is however a cause of concern that soaring expenses, unethical practices, undue delays and recurrent judicial interruptions are critically impeding the growth of arbitration as an effective ADR mechanism. Institutional arbitration is one of the plausible solutions to the problem and needs to be encouraged.

4.4 Be that as it may, despite all its individual and procedure generated aberrations arbitration continues to be widely utilized as an ADR mechanism in Delhi and especially in the commercial quarters since the atmosphere in courts is not too conducive for expeditious resolution of high stake commercial disputes and arbitration becomes the best alternative in this scenario. This is fortified by the pendency of numerous Arbitration Petitions and OMPs pertaining to arbitration matters before the Delhi High Court and the Delhi district courts.

4.5 There are various permanent arbitral institutions flourishing in Delhi, such as Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR), LCIA (London Court of International Arbitration) India, Delhi High Court Arbitration Centre (DAC), FICCI Arbitration and Conciliation Tribunal (FACT), Construction Industry Arbitration Council (CIAC) etc. which provide state of the art infrastructure for resolution of disputes through arbitration in a professional manner and point towards the prosperity of arbitration in Delhi. The establishment of the Delhi High Court Arbitration Centre (DAC) under the aegis of the Delhi High Court\(^{14}\) has marked the beginning of a new era of cost effective and expeditious institutional arbitration.

1.6 Arbitration has great potential in Delhi and time is not far when majority of the commercial disputes will be resolved through arbitration however some reforms are unquestionably desirable in this branch of ADR.

\(^{14}\) DAC was inaugurated on 25.11.2009 by Justice K.G. Balakrishnan, Chief Justice of India and is housed in the premises of the Delhi High Court, Sher Shah Road, New Delhi.
5. CONCILIATION

5.1 Conciliation is an ADR mechanism where the ADR neutral known as the conciliator steers the disputant parties towards a negotiated settlement. Conciliation is governed by the provisions of part III of the Arbitration and Conciliation Act, 1996 in India.

5.2 Conciliation is strikingly similar to mediation however, in India the introduction of the two terms separately in section 89 CPC has necessitated the development of a fine line of distinction between mediation and conciliation. The conciliator plays an evaluative and interventionist role and is statutorily authorized to make suggestions and propose plausible solutions to the parties while mediation is regarded as an ADR process which is primarily facilitative.

5.3 The principal advantage in conciliation is that a conciliation settlement agreement is treated to be an arbitral award on agreed terms and is executable as a decree of the court under the Arbitration and Conciliation Act, 1996.\(^\text{15}\)

5.4 It is primarily because of this advantage that conciliation overshadows mediation as an ADR mechanism at the pre-litigation stage in Delhi. There are various institutions in Delhi such as Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR), FICCI Arbitration and Conciliation Tribunal (FACT), etc. which provide state of the art infrastructure, professional conciliators and excellent facilities for conciliation. There are various private companies and PSUs in Delhi which incorporate conciliation clauses in their contracts and go in for conciliation at the pre litigation stage, conducted either by ad hoc conciliators appointed by the parties by mutual accord or by institutions providing conciliation services.

5.5 At the post litigation stage however, the situation is diametrically opposite. Conciliation is though utilized in Delhi by the courts themselves for resolution of matrimonial and family disputes under the Hindu Marriage Act, 1955, Family Courts Act, 1984 etc., however in general, the process of

\(^\text{15}\) Ss. 30, 36 & 74, Arbitration and Conciliation Act, 1996.
mediation overshadows conciliation as a dispute resolution process under section 89 CPC at the post litigation stage in Delhi.

5.6 The prime reason for this is the judiciary’s choice of mediation over conciliation. The process of mediation has been given wide publicity and recognition in Delhi as a court sponsored mode of dispute resolution and since both conciliation and mediation are generically similar, the process of mediation is extensively used at the post litigation stage at the court annexed mediation centres and flourishes in Delhi whereas conciliation remains practically unexplored in this arena.\(^{16}\)

5.7 Conciliation has great potential in Delhi as an ADR mechanism; however, it is not being utilized to its full potential. Therefore there is an urgent need to appreciate the utility of this ADR process and take necessary measures for advocating, propagating, popularizing and utilizing conciliation as an ADR process in Delhi especially at the post- litigation stage.

6. **ADR UNDER SECTION 89 CPC**

6.1 Section 89 CPC embodies the legislative mandate to courts for exploring the possibility of a resolution of a dispute de hors the litigative process in matters pending for judicial determination and if found appropriate, refer the dispute to any of the ADR processes provided therein namely arbitration, conciliation, mediation, lok adalats and judicial settlement.

6.2 The initiatives taken by the Supreme Court in *Salem Advocate Bar Association v. Union of India*\(^ {17}\) and *Salem Advocate Bar Association v. Union of India (II)*\(^ {18}\) gave the initial momentum to use of ADR in courts pursuant to section 89 CPC. Thereafter in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*\(^ {19}\), which can be described as a comprehensive practical guide for effective use of section 89 CPC, the Supreme Court has

\(^{16}\) The centres at district courts in Delhi are designated as Mediation Centres only and in practice also they administer dispute resolution through the process of mediation only although the rules framed by the Delhi High Court have been classified as the Mediation and Conciliation Rules, 2004.

\(^{17}\) AIR 2003 SC 189.

\(^{18}\) AIR 2005 SC 3353.

\(^{19}\) JT 2010 (7) SC 616.
given detailed practical guidelines so that section 89 CPC can be utilized so as to achieve the best results.

6.3 In the *Afcons* case (*supra*) the Supreme Court has also directed interchange of clauses (c) and (d) of section 89 (2) CPC by interpretative process to correct the draftsman's error so as to give a purposive interpretation to mediation and judicial settlement under section 89 CPC.

6.4 Section 89 CPC is being efficiently utilized in Delhi. Mediation and Lok Adalats are the most widely employed ADR mechanisms in terms of section 89 CPC Delhi. However Arbitration and Conciliation are being rarely resorted to and judicial settlement is not being employed at all in terms of section 89 CPC in Delhi.

6.5 The mediation revolution which has stormed Delhi with the establishment of numerous mediation centres is an upshot of section 89 CPC only and the overall results peg mediation as the most efficient ADR mechanism under section 89 CPC both in terms of quality of disposal as well quantum of disposal and therefore mediation has emerged as the primary ADR process in courts in Delhi.

6.6 Be that as it may, section 89 CPC has given a massive boost to the ADR revolution in Delhi and has resulted in a paradigm shift by the introduction of ADR in the mainstream litigative process and has thereby helped in developing a settlement culture.

7. In the end I conclude that ADR has been extremely effective in Delhi in the recent past and it has great potential in times to come. The ADR movement was initially advocated as an escape route for the heavy traffic which was blocking the paths of justice in our judicial system, however with the passage of time ADR has created a niche for itself and it has in fact become an indispensable part and parcel of the contemporary justice delivery system. I further hope that in future ADR flourishes in Delhi, and it indubitably will, not on account of the inadequacies of the traditional justice delivery system but as an independent mechanism offering effective, economical and expeditious resolution of disputes outside the conventional litigative process.
so that not only access to justice for all but also de facto justice for all becomes a reality.

SUMMARY OF SUGGESTIONS

1. LEGISLATIVE MEASURES

1.1 A separate comprehensive legislation on ADR dealing with all forms of ADR in all respects is the key to further systematic and satisfactory growth and development of ADR.

1.2 In the interregnum there is an urgent need to afford statutory recognition to mediation, which has already developed as the frontrunner in the ADR revolution and therefore legislation of a Mediation Act on the lines of Part III of the Arbitration and Conciliation Act, 1996, is the need of the hour.

1.3 Arbitration Division at High Courts should be statutorily created for exclusively dealing with arbitration matters which should also monitor special courts for arbitration matters at the district court level.

1.4 An Arbitral Council of India should be created as a statutory body for regulating domestic arbitration.

1.5 A Code of Conduct / Code of Ethics for arbitrators should be introduced via appropriate legislation/ delegated legislation/ amendment so as to maintain the impartiality, independence, purity and quality of arbitration.

1.6 A provision to regulate the process of appointment of arbitrator by putting a full stop on unilateral appointments in domestic ad hoc arbitrations should be incorporated in the law.

1.7 Statutory provisions prescribing a time limit for completion of arbitration proceedings and for imposition of costs for adjournments should be introduced and the provision providing for automatic suspension of arbitral award once it is assailed in the court should be repealed by legislative amendments as they would go a long way in expediting the arbitration process.

1.8 Section 89 CPC should be suitably amended and first of all the requirement of formulation and reformulation of the terms of the settlement at the pre reference stage should be done away with. Secondly the flaws in the
definitions of mediation and judicial settlement should be legislatively rectified and clarity should be introduced with respect to the enforcement and finality of a mediation settlement agreement. Thirdly the detailed procedure and rules for judicial settlement should be prescribed.

1.9 The scope of Permanent Lok Adalats can be widened by bringing more and more public utility services and also other appropriate matters involving government departments, PSUs etc. within the domain of PLAs.

1.10 The Arbitration and Conciliation Act, 1996 should be amended so as to incorporate a clause for suspension of limitation period in case of pre litigation conciliation and the issue with respect to enforcement of conciliation settlement agreement be clarified in clear terms and in fact the same should be made executable in a summary manner.

1.11 Online Dispute Resolution (ODR) which is the future of ADR in this age of internet, e-commerce and e courts should be afforded legislative recognition.

2. **ADMINISTRATIVE AND ALLIED MEASURES**

2.1 ADR should be largely institutionalized in Delhi so as to bring in more consistency and efficacy. Institutional arbitration should be promoted and should gradually replace most ad hoc arbitrations. However the government, judiciary and private players need to work collaboratively to develop such institutionalized ADR framework.

2.2 Courts should provide comprehensive multi door alternatives to disputants under a single roof ranging from litigation to arbitration to mediation and other ADR mechanisms and develop court annexed ADR centres.

2.3 In the interregnum there is an urgent need to immediately classify and designate the existing mediation centres as Mediation and Conciliation Centres expressly offering conciliation also as a state sponsored ADR mechanism.

2.4 The Mediation and Conciliation Centres should diversify and expand their role so as to provide dispute resolution services at the pre litigation stage also and primarily pre litigation conciliation.
2.5 There is a need to develop a separate cadre of full time professionals who are dedicatedly engaged in the field of ADR, including both, ADR neutrals as well as ADR practitioners/ lawyers.

2.6 There is an urgent need to provide education and specialized training in ADR to all persons connected with ADR. The law colleges/ universities should also incorporate courses on ADR in their curriculum/ offer diplomas in ADR with a provision for some form of practical exposure/ training.

2.7 The requisite training should also be imparted to the referral judges so as to enable them to identify the apposite cases and ADR mechanisms in terms of section 89 CPC and guidelines should also be issued in this respect. They should also be given the basic training in ADR.

2.8 The Lok Adalat system should be further improved and the endeavour should be to organize more and more Lok Adalats, ensure greater participation, reduce formalism, spare more time and personalized attention thereby ensuring quality justice through Lok Adalats. There is also a need to engage the services of counselors and psychologists who can assist the Lok Adalat Judges so as to persuade the parties appearing before Lok Adalats to opt for an amicable resolution of the dispute. The involvement of the law universities, law students and NGOs should also be encouraged for growth and improvement of Lok Adalats.

2.9 There is a need to establish more and more Permanent Lok Adalats in respect of all possible public utility services, give adequate publicity to them and make them more user friendly.

2.10 There is a need to develop infrastructure for establishment of a comprehensive ADR system. The government and judiciary should allocate requisite funds and manpower for the same and monitor the process. The private players also need to enter the arena to provide pervasive professional services.

2.11 But to begin with awareness of the concept, requirement, importance and benefits of ADR need to be spread amongst the masses so as to foster the development of a collaborative attitude, a problem-solving approach and
settlement culture\textsuperscript{20} amongst the masses as it is most important to revolutionize the mindset of the people.

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