Chapter-I

Introduction
"It is the spirit and not the form of law that keeps the justice alive."

*Earl Warren*

The above adage by the famous jurist sums up the usefulness of the instrumentality called Alternative Dispute Resolution in general and Lok Adalats as a particular dimension of the same.

(1) Conflict- *inevitable* and Peace- *fundamental*

Conflict is a recognised fact of life. It may be argued as good or bad. But all conflict must come to an end for preserving peace and harmony in society. Resolving disputes is fundamental to the very existence of a society. It is thus necessary to see as to how it may be resolved. There is the extra legal means that is undoubtedly risky and condemnable. Within the civilised parameters, the formal legal system provides an important background. Another potent and recently prominent means to have emerged is the informal ADR measures that seek to resolve the conflict in an ingenious manner and in an indigenous setting.

(2) ADR- *an interest based approach*

There are usually three approaches towards resolving a dispute\(^2\) - (a) Power based approach- wherein disputing parties attempt to determine who is more powerful through a power contest (e.g. war). It is the power structure that may be social, political or economic which determine a dispute. When one party is domineeringly placed with respect to the other, the relative positions determine the outcome of the

---

1 Chief Justice of the Supreme Court of America, 1954

dispute. This model creates a win-lose situation.\(^3\) (b) Rights based approach- wherein disputing parties attempt to determine who is right according to some standard (e.g. an enactment) Parties to the dispute contest on claims of ‘rights’ and the final decision is considered to be a vindication of the right agitated. This approach is used in litigation or adjudication. This model creates winners and losers. (c) Interest based approach- wherein disputing parties attempt to reconcile their underlying interest by discovering solutions which will bridge their different needs, aspirations, fears, or concerns in a manner that is satisfactory to both. It is thus accommodative of the interests of the parties to a dispute. This method is based on a consensual scheme interspersed with a neutral where disputants themselves are responsible for the result. This model leads to a win-win situation.

ADR is a subset of the interest based approach. It is an ‘alternative’ to litigation, the formal legal system prevalent across the spectrum of nations, which is adversarial, costly, dilatory, rigid, over professionalised, damaging to relationships, and limited to the narrow rights based remedies as opposed to creative problem solving – the essence of ADR. The justification for searching an ‘alternative’ lies therein.

\(\text{(a) Need for ADR}\)

The search for an ‘alternative’ emerged as a result of- the indeterminacy in result, lack of finality due to the appellate process, delay, expenses, vexatious character, and stress involved in litigation, loss of social harmony, backlog of cases, success of ADR globally, and finally augmented by, cultural and access arguments.

ADR represents basically a change in forum and/or method, not in the substantive rights of the parties. It is based on more direct participation by disputants themselves rather than being run by lawyers and judges. It is imbued with the spirit of cooperation rather than competition.\(^4\)

---

\(^3\) For example, in a claim for compensation in a motor car accident it may be easy for the defendant to pay a lesser amount in a settlement due to the weaker financial position of the claimant.

(b) Types of ADR

ADR or Alternative Dispute Resolution is of two historic types. Firstly, it consists of methods for resolving disputes outside of the official judicial mechanisms. Secondly, informal methods attached to official judicial mechanisms. Lok Adalats fall in the second category to begin with.

There are in addition free-standing and/or independent methods, such as mediation programmes and ombudsman offices within organizations. The methods are similar, that generally use similar tools or skill sets, which are basically sub-sets of the skills of negotiation.

As is well known, ADR is generally classified into at least four types\(^5\): negotiation, mediation, collaborative law and arbitration. Sometimes a fifth type, conciliation, is included as well. ADR is so called because it can be used alongside existing legal systems. ADR traditions vary somewhat by country and culture.

In the contemporary world, amongst the various alternatives to litigation, the better known ones are\(^6\):

- Negotiation
- Mediation/Conciliation
- Mediation Arbitration (Med-Arb)
- Mini Trial
- Arbitration
- Fast track arbitration

(c) Indian scenario

India, the most populous and diverse democracy in the world has a legal system that has been under immense strain, stifling the pursuit of justice. As Lord Delvin said “if our business methods were as antiquated as our legal methods we should be a

---

\(^5\) Courts retain their importance in cases where complex, intricate issues or constitutional issues are involved or where the litigants seek a precedent or where there is diversion of views qua legal interpretations.

bankrupt country." India spends only 0.2% of its GNP on the Judiciary. It is not that India alone has to deal with the hugely overburdened and cumbersome legal system but undoubtedly it has become more accentuated in modern day India. The need for fast and equitable dispute resolution has led to the emergence of various manifestations of ADR that has become as much an Indian necessity as a global clarion call, as judicial backlog proliferates. ADR is no longer an ‘alternative’ but a necessary part of the Indian justice system because of the huge pendency of the cases in courts and consequent denial of access to justice.

The ADR techniques that India has been conversant with over centuries of practise, though recognised by the west only recently, are Arbitration & Conciliation. It is considered akin to the Indian contribution (in mathematics) of zero to the world, wherein world legal jurisprudence has benefited of a traditional non-adversarial ‘alternative’ to the court system viz. the Panchayats, a system of dispute resolution, indigenous & particular to India. We are aware how India in ancient and medieval times evolved an informal system of binding resolution of disputes and how the vestiges of the system survived through the tumultuous upheavals of foreign invaders & foreign rule. However, the court system introduced in India with the advent of the British colonial ambitions provided almost a fatal death knell to the Panchayat system of dispute resolution. The hierarchical order of courts, the introduction of statutory substantive & procedural laws, pre-eminence to statutory law vis-a-vis customary law, emergence of the professional lawyer & doctrine of precedents all contributed to the gradual decline of the system of arbitration & conciliation, which had prevailed in India till then.

After independence, the drawbacks of the formal legal system was displayed in a pronounced manner through a severe clogging of cases in the hierarchy of courts of law with resultant exacting expenses and prolonged delivery of justice, undermining people’s faith in the justice dispensing system.

---

7 The number of pending cases is indeed alarming. 57,179 cases in Supreme Court as on 30.06.2011 and 42,17,903 in the High Courts as on 30.09.2010 are pending as informed by Minister of Law and Justice in the Rajya Sabha on 3.08.2011.

8 Jitendra N Bhatt, “Round Table Justice through Lok Adalat”, 1 SCC (Jour) 11 (2002).
(d) Access to Justice

‘Access to Justice’ is a laudable mandate spelled out expressly in Article 39A of the constitution and derived implicitly from the Preamble and the Fundamental Right to Life. Endemic delay has been deemed unconstitutional by the Supreme Court of India- a speedy trial is considered to be of essence to criminal justice and there can be no doubt that the delay in trial itself constitutes denial of justice.9 The concept of justice includes both economic and social components. ‘Access’ and ‘Justice’ as dispensed by the formal court structure is both elusive and formal. It is so because real ‘access’ and real ‘justice’ are either unavailable or denied to the vast masses of people. There may be several impediments as ignorance, illiteracy, indigent condition or even social or geographical barriers and these may have to be overcome by legislative pronouncement (as LSAA, 1987) in order to realize the mandate effectively. Courts are supposed to offer a forum where the poor, powerless and marginalized can stand with all others as equal before law. Ideally speaking, judicial system is blind to power, wealth, social status etc. However, in view of the intimidating litigational miseries, the search for an Indian ‘alternative’ to the Anglo Saxon system of justice began in right earnest to relieve the court congestion, to prevent undue delay and vast expense, to encourage community involvement in dispute resolution process, to facilitate ‘real’ access to justice and ultimately to provide an efficacious dispute resolution mechanism.

Access to justice means an ability to participate in the judicial process.10 In their monumental comparative work on civil justice systems Mario Cappelletti and Bryant Garth point out that the emergence of the right of access to justice as “the most basic human right” was in recognition of the fact that possession of right without effective mechanisms for their vindication would be meaningless.11

---

9 The Right to speedy trial is a significant component of Right to life & must be given its due as emphasized in Hussainara Khatoon v. Home Secy., State of Bihar, (AIR 1979 SC 1364). In yet another case the court affirmed that principle by adding that “there can be no doubt that speedy trial - and by speedy trial we mean a reasonably expeditious trial - is an integral and essential part of fundamental right to life and liberty enshrined in Article 21.


(e) Evolution of ADR

An overview of the sequence of the landmark episodes leading to the emergence of a viable ADR system in contemporary India reveals the underpinning spirit of the traditional, informal dispute resolution mechanisms resonating the entire heartland of India and having their echo in modern India through the development of modern ADR techniques.

Historically speaking, India is considered to have a rich legacy in informal methods of dispute resolution. The early experimentation in alternative fora was through establishment of special courts and tribunals (to deal with specific issues as an alternative to adjudication in a regular court) followed by establishment of specialized forum (to deal with cases of the same genre) as Labour Courts, Industrial Tribunals, and Consumer Forums etc. The establishment of fast-track courts, the post of ombudsman for sectors like insurance, banking, and lokayukt have also been conceived to deal with particular issues efficiently and expeditiously detouring the regular courts. The logic of establishment of the various bodies endorses the very same causes that called for an ‘alternative’. Even the procedural component is tried to be simplified in most of these fora. It may be then considered that active attempts have been made to diffuse the problem of delay and accelerate access in the Indian justice dispensation system.


It is clear that apart from the well-recognised ADR techniques (negotiation, mediation, conciliation, arbitration etc.) that have had tremendous impact on dispute

---

13 Special Court provided the Immoral Traffic (Prevention) Act, 1956. See Sathe S. P., p.2-5, *The Tribunal System in India* (Buttersworth, New Delhi, 1996)
14 Lokayukt is appointed under the Lokayukt Act of 1973 with a mandate to curb corruption.
resolution systems in the west, the traditional ADR technique typical to the Indian situation that has evolved is the Lok-Adalat system. The ADR techniques, including that of Lok Adalat that have evolved in India, are much varied in application and result, subject to the nature of cases and circumstances. They have in fact proved to be extremely effective in handling a wide range of disputes.

(f) Lok Adalat

Critically, the Lok Adalat system gave the Indian people for the first time in centuries a choice of forum for the resolution of their dispute so that they may make well informed, rational decisions.15 Lok Adalats were to take the place of Panchayats, which had operated for a long time within the rigid caste system. They were meant to right the imbalances of the British imposed judicial system which had introduced the concept of equality before law but had never implemented it. The benefits of Lok Adalats include: no court fee, direct consultation with a judge without procedural hurdles; an extremely abbreviated hearing schedule; and the final decision that is binding. Perhaps most importantly, disputants prefer Lok Adalats as they know that, unlike in conventional judicial proceedings where they may lose everything, in ADR a compromise position is often reached. The costs in sacrificing procedural protections, at first at least, seemed minor in comparison. After all, chronic judicial stagnation calls for simplifying procedures and increasing their flexibility.16

Lok Adalats have been more successful in settlement of partition suits, motor accident claims, matrimonial and family disputes, labour disputes, dispute relating to public services, bank recovery cases etc. Newspapers and Journals have widely applauded the resounding success of LAs in settling hundreds or thousands of cases in a single stroke. This underscores the public need and pride in resolving the greatest number of disputes as quickly as possible. Efficiency is now commonly seen as the goal, rather than as a means to greater justice.

The Legal Services Authorities Act, 1987 is the result of the cumulative efforts of various Committees set up in the 1970s to probe into alternative strategies to provide

16 Ibid
doorstep justice through legal aid and other institutionalized forums. Apart from provisions on legal aid, the Act confers statutory recognition to the Lok Adalats. The amendment effected in LSAA, 1987 in 2002 provides for establishment of Permanent Lok Adalat for settlement of disputes relating to public utility services by applying ADR techniques initially and deciding the case otherwise on merits in order to alleviate litigational problems of the public.

(g) Court annexed ADR

According to the age old and popular conception, courts were recognized only as placed where disputes are adjudicated but today the courts are also a place which encourages settlement. "The court is not simply a court house but a dispute resolution centre where a grievant, with the aid of the screening Clark, would be directed to the process (or sequence of process) most appropriate to a particular type of case."\(^{17}\)

The amendment made to Civil Procedure Code 1908 by Amendment Act 46 of 1999 and Amendment Act 22 of 2002 seeks to institutionalize ADR techniques in the Indian Judicial System. By the said amendments, a new Section 89 has been introduced in the Act that streamlines a system of court monitored ADR. It virtually makes it obligatory for the court to explore the possibility of reduction of disputes by making reference to one of the several ADR mechanisms provided therein.

(h) Working of ADR mechanisms

A relative analysis of the working of different forums of ADR in Delhi, a microcosm of India, is as revealing as is interesting.

Arbitration is primarily an adhoc measure with a very small percentage of disputes being submitted to institutional arbitration. It is adjudicatory in nature and the result is binding. It is regulated by the Arbitration and Conciliation Act, 1996. The Delhi Arbitration Centre attached to the High Court has emerged as an important institutional forum for arbitration. Cases may be directed by the courts for resolution

under the regulatory framework of DAC. Conciliation/Mediation are increasingly acceptable modes of ADR which have made inroads in the court system as Mediation Centres have been opened in District Courts as well as Delhi Mediation and Conciliation Centre in the High Court. Conciliation is governed by the Arbitration and Conciliation Act, 1996 and mediation being recognized u/s 89 CPC 1908 becomes binding upon a decree of court.

Mediation, a visible ADR measure has made an indelible impact in the looming ADR landscape in India. The Delhi Mediation Centre (Tis Hazari Mediation Centre & Karkardooma Mediation Centre)- since Aug 2005- has made several advances in ‘Judicial Mediation’ in the District Courts in Delhi that is now institutionalised as a permanent unique mode of ADR as also envisaged by S.89 of the amended CPC, 1908.\footnote{Delhi Mediation Centre, Annual Report (2005-2006) Researched & Prepared by Anu Malhotra, Additional District & Sessional Judge Delhi.} One of the most significant aspects of Judicial Mediation is that the service is provided at absolutely no cost to a litigant. On the contrary, on conclusion of a successful mediation, followed by a decree, plaintiff is entitled to a refund of court fees in terms of Court Fees Act, 1870 as amended. A pilot project on Judicial Mediation (under Mediation & Conciliation Project Committee) was launched in Tis Hazari courts on 2.8.2005 with Mr. Robert W. Rack and Mr. Dave Schlacter as Program Coordinators. In the program, judicial officers were trained as mediators who would then mediate pending disputes that would be referred by other judicial officers. The training emphasised on communication skills, confidentiality through holding of caucuses and ethics, with the informality of the entire process which instilled into the trainees the cultivation of the thought process to allow the parties to be assisted through a non-binding, confidential negotiable process by especially trained neutral mediators to come forth with creative remedies which would be helpful to both parties to reach the ultimate resolved solution. The training also enabled trainees in assisting parties to understand their respective points of views, interests, priorities & assessing alternatives to effect agreements & to help parties to put aside issues in a case & work to resolve underlying cause of disputes, thereby giving both sides a sense of satisfaction.\footnote{Ibid} In the interim period, the full court of Delhi

The National Commission for Women has evolved the concept of Paribarik Mahila Lok Adalat (PMLA) wherein marital disputes and other family disputes may be settled or compromised. In the year 1995, the first PMLA was organised and till now approximately 80 PMLAs have been organised throughout the country (in association with State Women Commission and State Legal Service Authority, SLSA).\textsuperscript{21} Thus a new arena of delivering justice to vulnerable sections of society as destitute wives or other family members within a short span of time is sought to be made.

(i) Role of Lawyer

In the new era of rediscovered ADR framework in India the role of the lawyer has finally emerged as a more positive one in assisting the clients by helping them to propose and consider settlement options in the light of the clients’ long term interests. It is a new professional opportunity to advocates as it has opened doors to many a dispute being brought forth by litigants who were previously intimidated by the complex, formal, legal system.

It may be said that if lawyers accept ADR as a reality and integrate it into their practice it will act as an aid and certainly not a hindrance to their practice. The client upon being offered efficient services by a competent lawyer who has successfully stayed ahead of the times by including ADR in his repertoire will obviously approach him because he offers the best of both worlds.

\textsuperscript{20} SC approved draft CP ADR & Mediation Rules framed by Committee headed by Chairman of Law Commission, Justice M. Jaganadha Rao- in \textit{Salem Advocate Bar Association v. Union of India}, (2005) 6 SCC 344

(j) ADR- possibility of emergence as a ‘mainstream’ dispute resolution system in future

ADR is thus gradually emerging as a successful preventive measure and as a method for channelizing disputes outside the formal justice system.\(^{22}\) The preventive function is achieved by providing facility for pre-litigation counselling and conciliation/mediation. In order to bypass the conventional system there may be either a direct channelizing of cases\(^ {23}\) or by providing means of dispute settlement in the shadow of law.\(^ {24}\)

For the successful pursuit and progress of ADR in the country, the attitude of the Bench, the Bar and the litigant – the main participants in justice dispensation – has to change so that their co-ordinated efforts overcome the travails of cost and time excesses of the formal litigation system. The Bench by encouraging the parties to resolve their disputes through ADR mechanisms and assisting through passing of orders regarding reference of disputes for settlement through ADR, the Bar by seriously conveying the benefits of ADR to the litigants so as to persuade them to resolve cases before ADR forums and not luring them to the conundrum of case delays and finally, the litigant to become aware of ADR options and adopt them for their dispute, not succumbing to the vicissitudes of the court system.

It is only through simultaneous efforts at revamping the existing litigation system with a pronounced tilt towards ADR and revitalising and reshaping ADR measures in contemporary context that a satisfactory outcome shall emerge that shall result in resurrecting the dispute resolution system in India.

The time for ascendency of ADR has come whence it may even emerge as the ‘mainstream’ dispute resolution system regaining its ancient Indian glory after aeons although in a new format and a new milieu.


\(^{24}\) E.g. Sections 5&6 of Family Courts Act, 1984 provides for service of counselors with whose help parties try to solve their dispute. Also Order XXIII, Rule 3 of C.P.C., 1908 provides for compromise of a suit.

11
(3) Hypothesis

"Lok Adalats as an expeditious ADR forum for resolution of disputes" and "Lok Adalats as an efficient instrument in reducing arrears of cases"

(4) Scope, Purpose and Limitations of the Study

The study is mainly focussed on the effectiveness of ADR forum specially Lok Adalats in Delhi in justice dispensation and for the purpose of dealing with pendency of cases clogging the courts across the hierarchy. It is also a natural evolution to make concrete suggestions for building a strong institutional and functional Lok Adalat mechanism in India. The study will include the existing mechanisms of ADR as a dispute resolution measure including Arbitration and Conciliation. This will include the review of the statutory enactments as Legal Services Authorities Act 1987, The Arbitration and Conciliation Act 1996 and a host of other provisions enumerated in various enactments as the Civil Procedure Code 1908, Industrial Dispute Act 1947, Family Courts Act, 1984 etc.

The nature of cases that are and can be effectively handled through Lok Adalats, Arbitration and Mediation will also be studied during the research. Finally, the measures necessary to improve the quality of dispute resolution through ADR mechanisms, especially through Lok Adalats shall be an important component of the study.

The vastness of the subject matter has made it necessary to concentrate on major issues. This has entailed omitting of detailed discussions on evolution of Arbitration Law, Mediation and other ADR measures, a comparison of these ADR methods with other countries, the impact of international developments on the domestic ADR system etc. The empirical part of the study has also been limited to Delhi for an intensive period from 2008 onwards as the data available with various agencies (DLSA, NLSA, and HCLSC) in respect to Lok Adalats is consistently available only thereon. It is true for other ADR mechanisms (Arbitration, Conciliation, Mediation) too. It is only the trends of the earlier years that could be traced and incorporated for the purpose of the study.
(5) Methodology of the Study

The study is split into the doctrinal and the empirical content. For the purpose of the doctrinal part of study, recourse was made to library, journals, articles and websites. Also Acts, Reports, documents, judgement reports were an important source of information. As regards the empirical part of the study, data was collected in two ways.

Primary data collection was made through periodic visits to the Lok Adalats and circulating questionnaire to the Presiding Officers, Advocates and Litigants, comprising the three major participants in Lok Adalat. The feedback responses were critically analysed and interpreted, ultimately, resulting in certain conclusions and suggestions.

Secondary data collection was made by approaching NLSA & DLSA for the data and statistics pertaining to Lok Adalats held in Delhi and across various States in India. Further, data was also collected from Delhi Arbitration Centre and Delhi Mediation and Conciliation Centre for data relating to Arbitration and Mediation/ Conciliation. An immense amount of enriching data was collected that helped in the study and analysis of the subject matter of the research.

The various sources of data have been studied and examined in a holistic manner for the purpose of critical analysis and evaluation of the theme of the study. Reference to foreign law and judgements is minimal. Since the research topic is “Lok Adalats as an aspect of ADR System of India – A critical study of the State of Delhi”, no useful purpose is served by referring to ADR systems of other countries in detail since the system is unique to each country and the laws have been formulated to suit their particular situation. Thus foreign laws/judgments have only been referred when deemed necessary and not otherwise.

(6) Chapterisation

The content of the research study has been arranged across Eight Chapters.

The First Chapter is the Introduction that journeys through the basic framework of the entire research.
The Second Chapter introduces the concept of ADR in the Indian context as having prevailed across centuries and having its popular connotation in the term ‘panchayat’. The chapter traces the evolution of ADR mechanisms in ancient, medieval, British and post independent India. The emergence of Lok Adalats is a culmination of the modern efforts to resurrect the ancient tradition of dispensing justice in an adaptation of requisites of the present.

The Third Chapter focuses on the formal litigation system, the drawbacks that ail it and have emerged over a period of time, the reforms that have been suggested but not honestly implemented and finally the emergence of ADR as a ray of hope to overcome the ills of the formal litigation system.

The Fourth Chapter looks at emerging scenario of ADR mechanism generally and their application in the Indian context in particular. Apart from negotiation, mediation, arbitration, conciliation, the Lok Adalats is considered to be an innovative contribution of the Indian legal system.

The Fifth Chapter considers the Constitutional mandate for access to justice on the basis of equal opportunity that shall be provided through suitable legislation including the enactment of Legal Services Authorities Act 1987. Other constitutional provisions giving rise to the inference of ADR measures in India are Article 40, Article 51, Article 14, and Article 21.

The Sixth Chapter looks at the statutory framework of ADR in India incorporated through various provisions in different statutes and it looks particularly at the legislative framework for Lok Adalats expressed in LSAA, 1987 and Section 89 of CPC 1908.

The Seventh Chapter is the key chapter of the entire research study and is almost entirely empirical in content. It depicts data collected through primary and secondary sources in various formats, as bar diagrams and pie charts. It further provides the critical analysis of the data reflecting upon the trend in the emergence of Lok Adalats in Delhi through various indices. A comparison also has been made with other ADR forums as Arbitration and Mediation to gauge the efficacy of Lok Adalats amongst all the alternatives to litigation.
The last chapter i.e. Eighth Chapter provides criticism, conclusions and suggestions/recommendations for improving the working of ADR system particularly Lok Adalats in India. It contains concrete suggestions based on empirical research conducted as part of study as well as those pronounced by various august bodies as the Law Commission of India etc.