CHAPTER IX
SUGGESTIONS AND CONCLUSION

9.1 Suggestions

India is a nation which epitomises a subtle mix of the modern and the ancient. The preservation of the best of both is what Indians are best at.

Keeping in mind the same spirit of India, the common Indian of today should get the best of all the dispute resolution mechanisms in India. The motive behind any legislation, amendment or new introduction has and always been the welfare of the ordinary citizen of the country.

Alternate Dispute Resolution mechanisms are not an exception to this rule. The suggestions imparted in the instant thesis endorse and admire the same spirit. The researcher firmly feel that the time for the formulation of a solid ADR mechanism base in India has come and the same shall help in preservation of justice in the nation.

9.1.1 Establishing a state-run parallel authority for ADR: A nationwide network needs to be envisaged for providing solutions through ADR. An apex body viz. National Commission for Alternate Dispute Resolution needs to be constituted to lay down policies and principles for making ADR available to the common man to frame most effective and economical schemes for ADR. It should also disburse funds and grants to State ADR Authorities and NGOs for implementing ADR schemes and programmes for the common man.

In every state a State ADR Authority should be constituted to give effect to the policies and directions of the Central Authority. State ADR Authority should be headed by the Chief Justice of the State High Court or
the Advocate-General of the state or any such eminent person in the field of law.

District ADR Authority then needs to be constituted in every district to implement ADR programmes and schemes in the district. The District Judge of the district or a similar person of repute in the legal field be its ex-officio Chairman.

9.1.2. ADR to be made mandatory in certain cases: To successfully bring ADR to the common man while still reducing the backlog of cases piled up in files in the back offices of courts, radical steps need to be taken. It is important that the legislature introduce certain provisions which discourage initiation of litigation in cases where out of court settlements can easily be worked out. Cases under the Motor Vehicles Act (1988), The Consumer Protection Act (1986), and The Contract Act (1872) etc. are cases where the major cause for initiation of litigation is conflict of interests of the parties involved. These are precisely the type of cases where ADR mechanisms can be pressed into action without any second thoughts. Similarly cases involving certain civil matters, certain matters under family law, insurance etc. can be brought under the aegis of obligatory ADR.

9.1.3 De-criminalization of certain offences covered under the IPC: The word “crime” in legal terms comes to mean any act or omission defined as an offence under the Indian Penal Code (1860). Various types of crimes have been defined under the Indian Penal Code. While some are regarded as more “serious” crimes by the society, some crimes may be classified as lighter in nature, viz. Offences Relating to Weights and Measures (Chapter XII); misappropriation of property, criminal breach of trust etc. as defined under Chapter XIX and defamation as defined under Chapter XXI. Acts or omissions resulting in such crimes attract lesser attention from the society and such matters can easily be settled outside the
court if carried out in a proper manner. A very important part of criminal litigation is establishing guilt, which prima facie makes solutions offered by ADR less effective, useful and applicable in cases where criminality is sought to be established. What we would like to suggest in this case is that ADR by way of mini-trials, supplemented neutral fact-finding and case evaluation will result in prompt disposal of such cases. The primary reason for development of ADR is to provide a speedy, cheap and efficacious remedy to a problem faced by the common man. By resorting to such measures, not only is the common man being able to jump the long queue that litigation entails, he also saves a lot of money by avoiding court fees, fees paid to lawyers etc. Such a step will not only be beneficial to the common man, it will also go a long way in reducing the burden on the judiciary and make way for the more seriously viewed crimes to come to the fore-front and be tried and disposed off quickly, keeping in tune with the saying, “Justice delayed is justice denied.”

In fact, the Supreme Court started issuing various directions so as to see that the public sector undertakings of the Central Government and the Union of India and their counterparts in the State should not fight their litigations in court by spending money on fees of counsels, court fees, procedural expenses and wasting public time. (See Oil and Natural Gas Commission Vs. Collector of Central Excise, 1992 Supp (2) SSC 432, Oil and Natural Gas Commission Vs. Collector of Central Excise, 1995 Supp (4) SSC A 541 and Chief Conservator of Forests Vs. Collector, (2003) 3 SCC 472).

9.1.4. Comprehensive Plan for successful implementation of the ADR is required to be formulated which would include the expenses which are required to be incurred both for the purpose of raising the requisite
infrastructure as well as the expenditure to be incurred for its smooth function.

9.1.5. Judicial Impact Assessment is normally carried out in England and other countries by preparing a financial memorandum whenever a new bill is introduced. The financial memorandum indicates the amount of expenditure that is likely to be incurred as a result of any statute or amendment in the existing statute.

However before bringing in Section 89 of the CPC and other statutes, no assessment was carried out as regards financial implications or the infrastructural requirements to make it effective. For example, for mediation, trained mediators will be required and expenses will have to be incurred for their training. Similarly, some space may be provided to the mediators where they can sit and carry out, their job. Most of our Courts do not have adequate space even for their existing work and, thus, it may not be possible to accommodate the facilitators, mediators, or arbitrators to provide for suitable accommodation to them within the Court premises. The infrastructural requirements in terms of rooms, trained mediators, etc. thus, must be provided for effective implementation of ADR regime so long it had not been done but it is not too late to make these arrangements even now.

9.1.6 Mediation/Conciliation/reconciliation is carried out in matrimonial matters and in child custody cases. Usually in the District Courts, there is no space available for children to meet his parents. Some meetings are held in the Chambers of the Judges not only at the district level but at the High Court level. The atmosphere is not conductive to such meetings.

9.1.7 Conciliation is provided under the Industrial Disputes Act. Conciliation in such cases normally takes place in the office of the Conciliation officers or in the premise of the Management which does not
give a fair chance to the workmen to negotiate. There should be a neutral place for such kind of mediation. What is needed is providing a proper and congenial atmosphere for mediation. In a case of this nature, there should be a separate budgetary allocation at the outset. Like Fast Track Courts, the Central Government should come out with a budget taking into consideration the possible expenditures that the High Court and the District Courts are likely to incur.

INSTITUTIONAL FRAMEWORK

The institutional framework must be brought about at three stages. The first stage is to bring awareness, the second acceptance and the third implementation.

9.1.8 AWARENESS

With a view to bring awareness, holding of seminars, workshops, symposiums, etc. would be imperative. A detailed ADR literacy programme has to be chalked out.

By spreading the message of ADR, the disputants can be made aware of its benefits. The awareness campaign must take in its stride a change in the attitude or the mindset of all concerned including the disputants, the lawyers and the judges. Their active participation in the process must be ensured. The members of the legal and judicial fraternity must accept ADR mechanism as an additional forum for resolution of the disputes. It is a continuous process and proper and effective mechanisms should be adopted so that the message reaches a large section of population.

Our awareness or lack of it would be tested from the fact that how many of us are aware that in terms of Section 7(hb) of the Notaries Act, 1952 one of the functions of a notary is to act as an arbitrator, conciliator, if so
required. How many of us would even think of availing the services of notaries as mediators who are absolutely untrained.

Many institutions have been established for the purpose of Alternate Dispute Resolution implementation. Some of these institutions are IIAM, ICA and ICADR

- Various measures can be taken to make this technique more efficient and easily approachable such as, Mediation and Conciliation centers can be opened exclusively for dispute resolution purposes, as has been already implemented by many State high courts. These centers can work effectively on weekends or an hour after normal working court hours.

- To increase awareness seminars, workshops can be held and Alternate dispute Resolution can be made a compulsory subject for all law courses. Awareness camps will help to change the mindset of the people; thereby making it clear to them that litigation is a second priority for resolution purpose the very purpose can be reached.

- Arbitrators, Mediators, Conciliators and all those forming a part of this process must be provided with expert training to deal efficiently with any kind of problem.

Therefore, Alternate Dispute Resolution is a need, both at the national and international front. Quality of justice suffers when there is a disproportionate delay in deciding piles of cases. When easier way has been resorted and found, then holding on to traditional concepts is not a wiser show. This technique is useful in dispensing Justice effectively, which is the basic pillar of every judicial system. Alternate Dispute Resolution is an appreciable step if taken, with serious concern and proper management. A
common man can enjoy number of its advantages, from speedy justice, less expenses, deserved justice to secured confidentiality and final satisfaction.

**Imparting Legal Literacy:** Perhaps the biggest roadblock that faces any country is illiteracy. Our government has continuously been trying to eradicate illiteracy and now the new task has become even harder, that is, to impart legal literacy to the literates and illiterates alike. Legal literacy empowers one to be an active and alert citizen, thereby making a population more vigilant about its rights and duties. ADR is a fairly new concept and concepts like these not only take time in percolating to the grass root levels, acceptance of such a concept is also a big problem. Therefore a robust programme imparting legal literacy to the masses in India, especially in the field of ADR becomes a necessity. Not only will this allow bringing ADR to the common man, an aware citizen will contribute positively to the development of the nation too.

**Integrating ADR in the Indian legal education:** The legal education of today’s India needs to take the ADR mechanisms seriously. Today these mechanisms are taught only as part of speciality courses which primarily focus on the deployment of these processes pertaining to areas of corporate mergers and amalgamations. The need of the hour is different – It is time when these dispute resolution mechanisms are taught as essential courses for a new breed of lawyers who will be adept in these forms of dispute resolutions would surely help the ordinary man. US law schools have responded to rise in ADR mechanisms. Indian law schools are growing in number and are producing the finest lawyers. No time can better be suited for the implementation of this idea.

413 R. MOBERLY, ADR in the Law School Curriculum: Opportunities and Challenges At mediate.com <http://www.conflict-resolution.net/articles/moberly.cfm?plain=t> (last accessed on 1.11.2008)
9.1.9. ACCEPTANCE

The courses imparted to the facilitators a purpose, it is necessary to impart appropriate training. Extensive training would also be necessary to be imparted to those persons who intend to act as facilitators, mediators conciliators. Different categories of mediators and conciliators should be produced so as to enable them to work in their respective fields of specialization. It is also necessary to have trained welfare experts, family counselors who would not only have fair knowledge in the branches of law they are required to deal with but also with psychology, sociology, etc. as a fair knowledge of the said subjects have a direct impact on the job. Indisputably, the judges and judicial officers should also be imparted requisite training. We are ill equipped for this purpose.

At Hyderabad Centre at ICADR post graduate diplomas are awarded to the students of ADR and family counseling. In some States, some NGOs impart such training but the certificates issued by them may or may not be recognized by courts. The legislators must chalk out a comprehensive plan to establish institution so that the persons have the facilities of getting themselves trained in different fields of mediation or conciliation. To start with at least services of some experts may be requisitioned to train some trainers who in turn may impart training to those who intend to play a role of mediator or conciliator. Different experts teams, thus, should train people to have expertises in specialized fields.

Industrial Disputes Act, 1947 was enacted in the same year when we attained our Independence. The act provides for appointment of conciliator who although are 'charged with the duty of mediating in and promoting the settlement of industrial disputes' failed in performing their duties as they do not have requisite training.
Similarly, the matrimonial courts and family courts are unable to effectively settle the dispute as they do not have either the requisite training or the mind set therefore.

The taxing statutes provide for setting up of settlement commissions which are quasi judicial bodies having wider jurisdiction than ordinary tribunals but they act like adjudicators and not conciliators. We have not yet come across any case where a Court has forced the parties to take recourse to conciliation under Arbitration and Conciliation Act, 1996.

A qualified mediator must undergo 30 to 40 hours of general mediation training which would include experience in mediation either as an observer or a co-mediator or participant in role-plays or mock practices. Chief Justice Benjamin, F. Overton in an interesting Article published in Dispute Resolution Magazine, Winter 200, I feels that the judges are the most experienced neutrals in the justice system, and if properly trained in the mediation process would turn out of be excellent mediators.

In short, imparting of training should be made a part of continuing education on different facts of ADR so far as judicial officers and judges are concerned.

9.1.10 IMPLEMENTATION

The third stage of the ADR framework should be to see that, the disputes and differences between the litigants coming before the courts are actually referred to for conciliation, mediation or arbitration. The judicial officers must also be trained to identify, cases which would be suitable for taking recourse to a particular form of ADR. They must be able to identify cases which are capable to being resolved through the ADR mechanism and that too which one of them would be suitable for the said purpose having regard to the facts and circumstances obtaining therein.
The court annexed mediation conciliation or arbitration should be encouraged if not made compulsory. With a view to encourage court annexed mediation and conciliation, the court may sometimes be required to be a bit harsh on the litigant.

Skilled mediators are now able to achieve results satisfactory to both parties in many cases which are quite beyond the power of lawyers and courts to achieve. This court has knowledge of cases where intense feelings have arisen, for instances in relation to clinical negligence claims. But when the parties are brought together on neutral soil with a skilled mediator to help them resolve their differences, it may very well be that the mediator is able to achieve a result by which the parties shake hands at the end and feel that they have gone away having settled the dispute on terms with which they are happy to live. A mediator may be able to provide solutions which are beyond the powers of the court to provide. Occasions are known to the court in claims against the police, which can give rise to as much passion as a claim of this kind where a claimant's precious horses are killed on a railway line, by which an apology from a very senior police officer is all that the claimant is really seeking and the money side of the matter falls away.

Court annexed mediation should be enforced in:

(i) Commercial mediation;

(ii) Matrimonial matters;

(iii) Labour disputes.

9.1.11 CONCLUSION

Analysis of cases before subordinate courts in India reveals that there was total pendency of 2.8 crore cases in the year 2010. As per data available with National Legal Services Authority, Lok Adalats in various states disposed of 1,64,86,348 cases up to 31.5.2012. Disposal of pending
cases before Subordinate Courts during the year 2008, reveals that there was institution of 1,63,55,535 cases and disposal of 1,54,32,810, whereas pendency at the end of the year was 2,64,09,011. Similarly, the trend of institution and disposal during the year 2002-2007, shows that Subordinate Courts have been able to dispose of almost same number of pending cases as instituted during the year, except marginal increase. Here role of ADR systems become more relevant. If ADR systems are able to dispose of 15% to 25% of pending cases, then there would be substantial decrease in total pendency of cases.

By now Lok Adalats have been able to dispose of 1,64,86,348 cases up to 31.5.2012. If Mediation and Arbitration are also able to dispose of 5% of pending cases each, then there will be decrease in total pendency and the litigants can expect speedy disposal of pending cases.

The data available with the researcher reveals that during the period 2002-2008, pendency at the end of the year was 2,24,40,376 to 2,64,09,011. Out of the total pendency, total institution is ranging from 1,45,45,711 to 1,63,55,535 i.e. about 1.5 crore cases on average basis. Similarly, pendency at the end of the year can be taken as 2.5 crore. Meaning thereby, the backlog of pending cases before Subordinate Courts in India is about one crore cases because about 1.5 crores cases are instituted during the year and same are to remain pending at every stage. Even litigants do not expect that their cases should be decided at the time of filing itself. Average period of disposal of a case can be taken to be eighteen months before the trial court. Similarly, average disposal period before First Appellate Court can be taken to be six months. ADR systems like Lok Adalats are also contributing by way of disposing 1,64,86,348 cases up to 31.5.2012. Apart

from that Mediation Centres have also started giving results although the same have been setup recently. Process of Arbitration is giving much support to the judicial system by settling disputes of commercial transactions.

Significantly ADR systems have been able to settle the disputes to the complete satisfaction of the litigants. The decision of Lok Adalat and Mediation Centres are taken on the basis of mutual consent and that give complete satisfaction to the litigating parties. They do not prefer to go for appeal. Costs involved in settlement of cases through Lok Adalats is bare minimum. This aspect is most suitable to the Indian society because India is mainly Agro based economy with high rate of illiteracy and poverty in comparison to advanced countries. Litigant public is not aware of their legal rights and they do not have financial resources to get justice because of technicalities of law. Settlement of disputes on the basis of compromise through Lok Adalat, Mediation or Conciliation gives complete satisfaction to Indian litigating public in most of the cases.

To conclude ‘Alternative Disputes Resolution Systems’ have been able to strengthen the judicial system by way of support system. ADR systems have come in our judicial system to stay because same have relevance in our social and judicial system.

For successful implementation of the mechanism, it is imperative that we fix our target which would be two fold viz.,

(i) all the cases which are instituted in courts having original jurisdiction must be disposed of within 18 months and in a court of appellate jurisdiction within 12 months;

(ii) only 15% of the disputes should be determined by the ordinary courts. For the purpose of achieving this object, it is necessary to take recourse to judicial reform in
justice delivery system. With a view to achieve this target, it is necessary to see that:

Gram Nyayalaya or a body at the grass root level should process 60 to 70% of rural litigation having the regular courts to devote their time on complex civil and criminal matters.

(iii) Rent and eviction matters which constitute a considerable chunk of litigation in urban courts should be disposed of by taking recourse to alternative mode of resolution in terms of suggestions of the Law Commission that there should be a conciliation court alongwith a participatory model where a professional Judge interacts with lay Judges and evolves a reasonable solution. No appeal should lie their against but revision may be permissible on question of law to the district courts.

(iv) Pre-trial conciliation should account for the disposal of a considerable chunk of cases.

For the aforementioned purpose, the Government and the Judiciary have to undergo the process of judicial review seriously both on an operational and structural level. If all the players viz., the Government, the Judiciary, the Bar and the litigants take a concerted action in co-operation with each other, there is no reason as to why all stake holders, should not reach consensus on the programme.  

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