CHAPTER - 5
CONCLUSION AND SUGGESTIONS

5.1 INTRODUCTION

The implementation of alternative dispute resolution mechanism has been studied by the researcher in India and state of Maharashtra generally and in Kolhapur, Sangli and Ratnagiri districts thoroughly. The researcher observed that most of the litigations are between parties near and dear to each other, so, in the initial stage of dispute the efforts must be made by family, friends, relatives etc. to settle the issue as ours is the culture of love and sacrifice for each other attached to us by blood relations or out of affection for each other. When all the efforts made by these persons fail then only the issue becomes a legal issue. So, our legal system must provide a platform to the litigants to keep their ego, anxiety far off and come together for a mutual settlement which will shun their anger towards each other and will live happily and satisfactorily life henceforth. The training programs must be conducted for judges, lawyers, mediators, for successful resolution of the dispute.

While studying this topic initially certain questions and issues were posed on awareness, knowledge, adequacy and implementation of alternative dispute resolution mechanism. The present study was undertaken to meticulously search for answers to these questions. After a comprehensive research, analytical research and study of implementation of the alternative dispute resolution mechanism in Kolhapur, Sangli and Ratnagiri districts, certain conclusions are drawn. Most of them had already been stated in earlier chapter no. 4 which deals with the empirical study of alternative dispute resolution system Kolhapur, Sangli and Ratnagiri districts. A brief conclusion of the study on hypothesis is stated as below:
5.2 CONCLUSIONS

1) The researcher answers the first hypothesis in affirmative, and concludes that alternative dispute resolution mechanism is more advantageous than the court redressal mechanism if implemented with strong administrative set up, skilled mediators and trained judges, with effective case management; this is said on the basis of the analysis of data collected and examined by the researcher. The sample group of judges (81.2%), lawyers (66.6%) [Please see table no. 4.3] and Litigants (73.17 %) [Please see table no.4.10] had positive attitude towards the preference of the ADR mechanism over the court redressal mechanism. The level of acceptance and such attitude shows the level of success of ADR mechanism in districts of Kolhapur, Sangli and Ratnagiri, in some degree. According to knowledge, understanding and experience in ADR mechanism the sample groups (87.5% judges, 75.4% lawyers and 80.48% litigants) believed that reference to ADR mechanism would cut the cost for litigants and courts. Most of the sample groups (87.5% judges, 75% lawyers and 78.4% litigants) had shown positive attitude about the reference to ADR mechanism would reduce the pendency of cases in various courts. Majority respondents (93.7% judges, 74.2% lawyers and 80.48% litigants) has shown positive response towards ADR mechanism’s capacity to resolve matter in less time than court process. Majority of samplers (81.2% judges, 62.5% lawyers and 60.97% litigants) has shown positive response towards the capability of ADR mechanism to give more acceptable and satisfying solution to the dispute between the parties. [Please see table no. 4.3, 4.10]

When we consider the expenditure of the district and other courts in Kolhapur (see Table no. 4.45), Sangli (see Table no. 4.75), and Ratnagiri (see Table no.4.97) it is seen to be in crores of rupees.
On the other hand, if we see the expenditure of Lok Adalat conducted in district and other courts in Kolhapur (see Table no 4.46), Sangli (see Table no. 4.76), and Ratnagiri (see Table no. 98) it is seen to be in thousands only. Hence, the ADR process is seen to be less expensive to the courts than regular court system.

When we consider the time period required for solving one case through district and other courts in Kolhapur (see Table no. 4.47), Sangli (see Table no. 4.77), and Ratnagiri (see Table no. 4.99) it is seen to be in years. On the other hand, if we see the time period required for solving one case through Lok Adalat conducted in district and other courts in Kolhapur (see Table no. 4.47), Sangli (see Table no. 4.77), and Ratnagiri (see Table no. 4.99) it is seen to be in days only. Hence, the ADR process is seen to be less time consuming as compared to regular court system.

Hence, it could be concluded that according to research analysis the alternative dispute resolution mechanism is seen to be more advantageous than court redressal mechanism since, it is less expensive and less time consuming which in consequence will reduce the pendency of cases in the courts and gives more satisfying and acceptable solutions to the parties in disputes as it is settled with active participation and convenience of the parties.

2) Number of cases resolved through ADR process are directly proportionate to the number of cases referred to it in Kolhapur, Sangli and Ratnagiri districts. More the cases referred more will be the percentage of cases resolved. This is the second hypothesis which is answered after the research study as negative. Yearwise information of implementation of the ADR process shows that sometimes more number of cases are referred to ADR process but the percentage of disposal is very less and sometimes less number
of cases are referred to ADR but percentage of disposal is higher. In Courts at Kolhapur (see tables nos. 4.19 to 4.43), Sangli see tables nos. 4.49 to 4.73) and Ratnagiri (see Table No.s 4.79 to 4.95), therefore there is no co-relation between cases referred and resolved through ADR process in Kolhapur, Sangli and Ratnagiri districts. This may be the result of poor implementation of ADR mechanism. Majority of sample groups (68.7% judges, 63.3% lawyers and 78.04% litigants) are of the opinion that there is no proper infrastructure and manpower for the implementation of ADR mechanism. Sample group of judges are of the opinion that there is lack of sufficient infrastructure and trained personnel as a result no proper execution of ADR mechanism is possible. Lawyer group is of the same opinion and further suggest that huge funds should be made available by government. Most of the sample group of judges (87.5%) and lawyers (83.3%) has shown that no incentive is provided to personnel involved in ADR process viz. lawyers, mediators, judges for promotion of ADR mechanism. Also, majority of sample group of lawyers (56.3%) and litigants (62.60%) opined that there is no rise in awareness and use of ADR mechanism which resulted in poor implementation of ADR mechanism and affected the percentage of cases resolved through ADR mechanism negatively in Kolhapur, Sangli and Ratnagiri districts.

3) Number of cases resolved through ADR mechanism are rising due to the legislative recognition given to ADR in section 89 of the code of civil procedure, is the last hypothesis for the research study which is answered after the research study positively in Kolhapur, Sangli Ratnagiri districts as in various courts at Kolhapur (see tables nos. 4.19 to 4.43), Sangli (see tables nos. 4.49 to 4.73) and Ratnagiri (see
Table No.s 4.79 to 4.95), the number of cases resolved through ADR process are seen to be increasing

Hence, it is concluded that in Kolhapur, Sangli and Ratnagiri districts the ADR mechanism is conducted seriously and cautiously. Since, there is rise in resolution of cases through ADR process; it is welcomed by majority of judges, lawyers and litigants. But it will take a reasonable time to be rooted in the existing adversarial system as the people are more prone to old system. Although, with proper co-operation and co-ordination between of stakeholders of legal profession a day will come when there will be a well settled system for implementation of alternative dispute resolution mechanism.

In nutshell for proper implementation of ADR mechanism Central and State government, legislators as well as judiciary has to take concrete steps which will widen the scope for access to justice to all.

5.3 SUGGESTIONS

India has been experimenting with and discussing non-judicial routes like mediation, conciliation, arbitration and negotiation as well as simpler judicial alternatives to make justice a poor man's pragmatic hope. The rising pendency of cases in the courts may cause injustice to the common man. The poor are the worst victims because the rich can afford forensic mountaineering while the needy freeze to death midway. It is therefore sine qua non to discover imaginatively and innovatively all methodologies of getting inexpensive, early and easy justice. To achieve the goal of justice to all through ADR process, the researcher would like to suggest/recommend as follows:

A) AWARENESS ABOUT ADR MECHANISM

1) First and foremost important step required to be taken by government is to spread awareness about the process of ADR mechanism
amongst the lawyers, judges, litigants, law students and people at large by creation of website, publication through media, local cable television, radio, pamphlets, brochures’ and newspapers etc. about the concept and benefits of ADR mechanism.

2) As 70% of our Indian population lives in villages having low literacy ratio it is necessary to organize legal aid clinics, legal aid camps and awareness programmes to increase the awareness of people at large.

3) To bring awareness, it will be imperative to hold seminars, workshops, symposiums etc. Also a detailed ADR literacy programme has to be chalked out. The awareness campaign must take in its stride a change in the attitude or mindset of all concerned including the disputants, lawyers and judges.

4) ADR informative pamphlets are displayed at conspicuous places in police station, court premises, tahsil offices, village grampanchayat, etc.

5) ADR Informative pamphlets should be circulated with court summons or notices to the litigants.

B) JUDGES

1) The credit must be given to judges for disposal of the dispute through ADR process due to their reference as well as efforts made in referring the matter to ADR process, for this the judges must prepare record of sittings, parties negotiations, holding out of parties to settle the dispute etc.

2) Existing strength of judicial officers is not able to handle their own work so; they will hardly get time for effective implementation of ADR mechanism. So, new judges should be appointed to lessen the burden of litigations on the judiciary, and then among all the judicial officers who has interest or skill of mediation may bedevolve with
the responsibility of effective implementation of ADR mechanism with the assistance of full time coordinator, sufficient staff and adequate infrastructure like Court Annexed ADR in USA.

3) For successful implementation of ADR mechanism, mandatory reference should be made by judges to ADR process, for the purpose strong administrative set up, skilled mediators and trained judges must be made available.

4) The Principal District Judge should keep a constant eye on implementation of A.D.R.in their respective jurisdiction and provide regular information about reference and disposal of cases by ADR process in the courts to the Ministry of Law and check the progress of A.D.R. diligently and constantly.

C) LAWYERS

1) A section of legal practitioners should become ADR practitioners. For the purpose, it is necessary for lawyers to impart appropriate training and participate in role-plays or mock practices. Different categories of mediators and conciliators should be produced so as to enable them to work in their respective fields of specialization such as family, corporate etc.

2) Lawyers felt that they will loose cases and fees with the popularity of ADR mechanism. Lawyers must consider the changing scenario of globalization and attitude and demands of litigants. To keep an eye on the future legal practice coming years will demand compulsory adoption of ADR process. So, the lawyers must take the new process of ADR an opportunity in their practice rather challenges. For instance, In a dispute between two companies about the recovery claims, the District court, Kolhapur, has passed an order for appointment of Adv. J P Cama, a senior counsel, from Bombay high
court as mediator and for the work of mediation a fee of Rs.35000/- per sitting is fixed.

3) The experience in foreign countries about the implementation ADR mechanism realizes that most of the civil as well as compoundable criminal cases are being solved through ADR process by Lawyers acting as mediator and they are sufficiently charged for that work as they are of that capability expertise and well trained for mediating the matter. Some of the lawyers in foreign countries prefer to be named as Mediator rather Lawyer or Advocate. In coming years there will be rise of private mediation centres in our country. At present there are recognized and reputed Lawyers, Senior counsels in litigation. Time will come when there will also have a group of well recognized and reputed mediators who can then specialize in one or more areas of dispute resolution. Different skills and expertise would be required for different types of disputes for examples, different skills and expertise is required in matrimonial dispute would be different from commercial matters, so on and so forth.

4) Lawyers can make a simple beginning, for effective implementation of ADR by including in their notices or replies a clause as under “without prejudice to the contentions raised and claims made in this notice, my client is willing to resort to any of the modes of arbitration, mediation, conciliation and pre-litigation cells\(^1\) in court to

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\(^1\) The Legal Services Authorities Act, 1987 S. 20(2) is provides for pre –litigation as under :-

S. 20(2) Notwithstanding anything contained in any other law for the time being in force, the District Authority may, on receipt of an application from any person that any dispute or matter pending for a compromise or settlement needs to be determined by a Lok Adalat, refer such dispute or matter to the Lok Adalat for determination.

The National Legal Services Authority (Lok Adalat) Regulations, 2009, Rule 12 is as under :-

[12] Pre-litigation matters – (1) In a pre-litigation matter it may be ensured that the court for which a Lok Adalat is organized has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a pre- litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned:

(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in section 20 of the Act filing a petition under articles 226 and 227 of the Constitution of India.
avoid actual litigation”. (Article by Adv. (Dr.) Santosh A. Shah in Daily Sakal Newspaper, Kolhapur edition, dated 05/11/11)

5) In United States of America, a separate mediation bar is developed and auto mediation activities and training is encouraged. There are two systems namely court annexed mediation and court referred mediation. In court annexed mediation a department undertakes to do the activity of ADR and one of the trained persons may be appointed as mediator in the matter. However, if the parties want a mediator of their own choice, the case will be referred to mediation of their choice. Such system can be applied in India with proper care and management.

D) GOVERNMENT

1) Government should take effective measures to allocate sufficient funds to fulfill the essential requirements for the proper implementation of ADR mechanism, such as proper infrastructure, supervisory authority, manpower, panel of trained mediators, conciliators, arbitrators etc.

2) As maximum cases pending in the courts are the litigations by or against the government, a special law officer or mediator must be appointed to solve the cases by or against the government matters.

3) To combat long standing grievances of general laymen with respect to access to justice there is need to revitalize ‘panchayats’ in the villages of every state of India to solve the disputes at the village level.

4) Programmes such as Mahatma Gandhi Tanta Mukti Goan Samiti should be organized and properly implemented with serious attention of the government to encourage implementation of ADR mechanism.
5) Presently, the fee of mediator is borne by the litigants if the matter is referred to mediation, after paying the court fees for filing the suit it makes or feels monetary burden upon litigants about the fee of the mediator which divert the litigants from referring their dispute to ADR process. The fee of mediator must be borne by government.

6) Effective organization and case management of government litigations must be done with the help of committed teams of judges and lawyers to solve the dispute through ADR in a fixed period.

E) LEGISLATION

1) ADR programmes can provide a reasonable degree of justice if a tradition of informal dispute resolution system already exists. India has ancient base of ADR. So, some efforts are required to be taken to convince and mould the people into the ADR system. Legislature must enact exhaustive Alternative Dispute Resolution Act with rules of ADR process as it existed in United States of America.

2) Labor Courts, Industrial Court, Consumer forum and Co-operative court, Trust office, Tribunals etc. are the areas where mediation should be introduced immediately on a priority basis by amending legislations relating to respective subject matter of the cases in above courts.

3) The case management may be conducted with the help of following module of mandatory ADR; Summary suits (Order XXXVII of the code of civil procedure)

   i. At the time of filing of suit the plaintiff shall be supplied brochures and forms for indicating choice of ADR

   ii. Writ of summons shall be accompanied by similar brochures and forms. After the defendant filing the appearance (within 10 days as prescribed) suit will be posted.
iii. Matter will be then referred to ADR coordinator for deciding name of mediator.

iv. Simultaneously, procedure for taking out summons for judgment, reply, rejoinder and inspection will be completed within 180 days.

v. Interlocutory motions, if any, will also be heard.

vi. After expiry of 180 days if mediation fails summons for judgment will be heard forthwith.

By and large similar procedure would be apply to other matters subject to appropriate modifications. [An article “Assessment and evaluation of ADR” by Justice A.P. Shah, judge, High Court at Bombay.]

4) There is requirement for legislative amendment to remove the anomaly which enables a defeated party to avoid execution of arbitral award by merely filing an application for setting aside under section 34 of the Arbitration and conciliation Act 1996, without being required to deposit a part of the award amount ordinarily. These awarded amount would be deposited as a matter of course in case of a judgment debtor challenging a money decree before a civil court in NALCO Ltd. V. Presteel Fabrications (P) Ltd.[(2004) 1 SCC 540] , the Supreme court of India has recently expressed a hope that suitable legislative action would undo this situation the court refused to impose any condition on that applicant pending disposal of its application for setting aside the award under section 34, reasoning being that any such order would run counter to the letter and spirit of the Act. Nevertheless, the courts take judicial notice of the injustice that could be caused to the beneficiary of an arbitral award due to the automatic stay by mere challenging of awards. The arbitration and
conciliation (Amendment) Bill, 2003, appears to have partially remedied this flaw, but the bill has not yet been taken up for consideration and passed by the parliament. It must be passed as early as possible.

5) Power vested in the Chief Justice of a High Court (Or any person or institution designed by him) for appointment of arbitrator under section 11 of the Act of 1996, undergone serious criticism as there is practice of appointing retired judges as an arbitrator. Instead of this, the list of panel members of arbitrator should be widened by inclusion of the dominant lawyers in the commercial fields, Law College Professors, expert in the field etc.

6) Although the 1996 Act confers powers on arbitral tribunal to issue interim relief there is variance in the degree and efficacy of these interim measures as arbitral tribunal is possessed of limited power to direct interim measures pertaining to protection of subject matter in dispute and providing appropriate security in connection thereof. Thus, arbitral tribunal does not have any coercive authority to secure implementation of its interim measures which will weaken the entire arbitration mechanism. More powers should be conferred on the arbitral tribunal for granting interim relief.

7) As per the recommendations of Supreme Court in the Salem Bar Association Case II (2005), every High court has drafted different Alternative dispute resolution and Mediation rules for their respective High court and subordinate courts for implementation of ADR process. Alternative Dispute Resolution and Mediation Rules should be drafted to make it applicable to each and every court in India which will develop a sense of certainty in the law relating to the rules and its application which will raise the faith of people over the ADR system.
F) LAW INSTITUTIONS

1) Mentality of student as lawyer is build up in the law colleges, law schools and other law imparting institutions etc. It is the place where usually from the beginning law students were taught A vs. B in which one wins and other looses and winning as an essential part of legal profession. Hence, it is difficult to saw the seeds of ADR mechanism in an adversarial soil. The tree of ADR process will grow if the law practitioners start to mediate the cases coming before them. In nutshell it could be said that law students must be taught, learn, absorb and adopt the ADR processes from the root level of building up of their personality for legal practice. In law institutions all the students should be taught A and B have a misunderstanding or misconceptions about right, title etc. to be corrected with the help of legal profession.

2) Law institutions should add in their curriculum as well as in syllabus, ADR mechanism as a special and compulsory subject which includes theory as well as practical for each year of law course for developing the knowledge as well as clearing misconceptions relating to ADR mechanism which in result will cultivate a soil for effective adoption of ADR methods in legal profession.

3) The professors in law schools and colleges must be compulsorily trained with specific skills of mediation, conciliation and arbitration to teach the students the skills of ADR processes.

4) National Law Schools were set up in India with the objective to advance and disseminate learning and knowledge of law and legal processes and to serve society in the field of law. But statistics shows that 85% of fresh law graduates of the law schools and other reputed institutions are more fascinated towards the corporate sectors. Efforts should be made to divert the flow of law scholars towards legal
profession and development of different legal skills in field of ADR process by making availability of handsome packages to them with the help of government or its schemes.

5) Senior lawyers are less interested in adopting these new techniques as they are ridden to the old adversarial system. So, maximum efforts should be done to develop the skills of ADR processes for fresh law graduates as they are mentally prepared for adoption of new concepts in the field as all the concepts will be new for them. It should be done by conducting ADR training programme for all law students in legal knowledge imparting institutions under special supervision of members of State and District legal services authority in their respective jurisdiction.

6) Courses imparted to the neutral facilitators or ADR practitioners should be carried out by some university together with other legal knowledge imparting institutions so that on successful completion of their training they may be awarded a diploma or degree as the case may be so that the courts including family courts can appoint them as a family counselors, welfare experts or mediator or conciliators etc. on the basis thereof.

G) GENERAL

1) Multidoor court house approach which is practiced in some of the jurisdictions of United States should be adopted by Indian Legal system. Instead of just one ‘door’ leading to the courtroom, many doors through which individual might pass to get to the most appropriate process such as arbitration, such as medical malpractice screening boards or tax courts should be made available taken into consideration the factor in dispute viz. nature of case, relationship of parties, history negotiations between disputants etc,
2) Essential pre-condition for successful enforcement of ADR mechanism, intensive training of concerned judges, lawyers and the court staff is a must. The training will be on a continuous basis and should have an trainer on its pay roll to impart training on different methods of ADR to different tiers of trainee-judges, including new entrants to the judicial service. A batch of trainers should be created to take up training of judges, lawyers and court staff in all the districts.

3) For the success of ADR the attitude of both bars and bench has to be changed. The bar must encourage by passing of orders regarding the reference of disputes to settlement by ADR mechanism and convey the benefits of resolving the disputes through ADR mechanism to the litigants and loss by law delays.

4) Before introducing ADR in any field, following steps are required to be taken by judiciary: first, proper institutionalization with active participation of Bar and Bench, second, formation of Advisory committees of all lawyers, judges, law professors, social activist etc. to reach at consensus on the programme and lastly educating the litigants and people at large to opt ADR mechanism as the most beneficial and appropriate mechanism to solve the dispute.

5) Special training of human psychology must be given to the neutral facilitators such mediators, conciliators or arbitrators to use it while reconciling any dispute before them.

6) In all courts, the disputes arising from motor accident claims, matrimonial / family disputes, bank recoveries etc., could be as a matter of routine subjected to ADR process before they are in fact listed for admission.
7) Voluntary participation of parties in ADR process is the life blood of the success of the ADR process in the dispute. So, efforts should be made to make the ADR process popular amongst the litigants and general people at large.

5.4 CONCLUSION

Though ADR mechanism is preferable than court system, it cannot be a substitute for formal judicial system, so, when all the players, viz., government, judges, lawyers and litigants take a concerted action in cooperation with each other, then only there will be an effective implementation of the ADR mechanism.