

ADR and Access to Justice: Issues and Perspectives

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Introduction

Justice is the foundation and object of any civilized society. The quest for justice has been an ideal which mankind has been aspiring for generations down the line. Preamble to our Constitution reflects such aspiration as “justice-social, economic and political”. Article 39-A of the Constitution provides for ensuring equal access to justice. Administration of Justice involves protection of the innocent, punishment of the guilty and the satisfactory resolution of disputes.

The world has experienced that adversarial litigation is not the only means of resolving disputes. Congestion in court rooms, lack of manpower and resources in addition with delay, cost, procedure speak out the need of better options, approaches and avenues. Alternative Dispute Resolution mechanism is a click to that option.

Mahatma Gandhi had put in correct words as : “I had learnt the true picture of law. I had learnt to find out the better side of human nature and to enter men's heart. I realised that the true function of a lawyer was to unite partie riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromised of hundred of cases. I lost nothing thereby-not even money-certainly not my soul.”

Can't we strive for better 'Access to Justice'?

This has been rightly said that: 'An effective judicial system requires not only that just results be reached but that they be reached swiftly.' But the currently available infrastructure of courts in India is not adequate to settle the growing litigation within reasonable time. Despite the continual efforts, a common man may sometimes find himself entrapped in litigation for as long as a life time, and some times litigation carries on even on to the next generation. In the process, he may dry up his resources, apart from suffering harassment. Thus, there is a chain reaction of litigation process and civil cases may even give rise to criminal cases. ***Speedy disposal of cases and delivery***

of quality justice is an enduring agenda for all who are concerned with administration of justice.

In this context, there is an imminent need to supplement the current infrastructure of courts by means of Alternative Dispute Resolution (ADR) mechanisms. Apart from bringing efficiency in working of the judiciary, measures are being taken all over the world for availing ADR systems for resolving pending disputes as well as at pre-litigation stage. Efforts towards ADR have met with considerable success and good results elsewhere in the world, especially in the litigation-heavy United States, where professional teams of mediators and conciliators have productively supplemented the dispute resolution and adjudication process.

In 1995 the International Center for Alternative Dispute Resolution (ICADR) was inaugurated by Shri P.V.Narasimha Rao, the Prime Minister of India had observed:

While reforms in the judicial sector should be undertaken with necessary speed, it does not appear that courts and tribunals will be in a position to hear the entire burden of the justice system. It is incumbent on government to provide a reasonable cost as many modes of settlements of disputes as are necessary to cover the variety of disputes that arise. Litigants should be encouraged to resort to alternative dispute resolution so that the court system proper would be left with a smaller number of important disputes that demand judicial attention.

Problems of Formal Legal system:

Awareness: The lack of awareness of legal rights and remedies among common people acts as a formidable barrier to accessing the formal legal system.

Mystification: The language of the law, invariably in very difficult and complicated English, makes it unintelligible even to the literate or educated person. Only few

attempts have been made at vernacularising the language of the law and making it simpler and easily comprehensible to the person.

Delays: The greatest challenge that the justice delivery system faces today is the delay in the disposal of case and prohibitive cost of litigation. Alternative dispute resolution was thought of as a weapon to meet this challenge. The average waiting time, both in the civil and criminal subordinate courts, can extend to several years. This negates fair justice. To this end, there are several barricades. The judiciary in India is already suffering from a docket explosion. In fact, as on 31st October 2005, the number of cases pending before the Supreme Court was 253587003. The huge backlog of cases only makes justice less accessible. The delay in the judicial system results in loss of public confidence on the confidence on the concept of justice.

Expenses and Costs: We are all aware of the ineffectiveness of our cost regime-even the successful litigant is unable to recover the actual cost of the litigation. The considerable delay in reaching the conclusion in any litigation adds to the costs and makes the absence of an effective mechanism for their recovery even more problematic.

What is Alternative Dispute Resolution system?

ADR is not a recent phenomenon as the concept of parties settling their disputes themselves or with the help of third party, is very well-known to ancient India. Disputes were peacefully decided by the intervention of Kulas (family assemblies), Srenis (guilds of men of similar occupation), Parishad, etc.,

The primary object of ADR movement is avoidance of vexation, expense and delay and promotion of the ideal of "access of justice" for all. ADR system seeks to provide cheap, simple, quick and accessible justice. ADR is a process distinct from normal judicial process. Under this, disputes are settled with the assistance of third party, where proceedings are simple and are conducted, by and large, in the manner agreed to by the parties. ADR stimulates to resolve the disputes expeditiously with less expenditure of time, talent money with the decision making process towards substantial justice, maintaining confidentiality of subject matter. **So, precisely saying, ADR aims at**

provide justice that not only resolves dispute but also harmonizes the relation of the parties.

What are the mechanisms of ADR?

- Arbitration
- Mediation
- Conciliation/Reconciliation
- Negotiation
- Lok Adalat

ADR can be broadly classified into two categories; court-annexed options (it includes mediation, conciliation) and community based dispute resolution mechanism (Lok-Adalat).

What are the functions of ADR?

1. ADR is not to supplant altogether the traditional legal system, but it offers an alternative form to the litigating parties.
2. ADR tends to settle the disputes in a neutral and amicable fashion
3. ADR can be seen as integral to the process of judicial reform signifying the “access to justice approach”.
4. The very raison d’etre of the ADR is an effort towards the etiology of malise and its elimination rather than treatment of its symptoms. That means, this approach seeks for a better and longer lasting solution.
5. ADR can be viewed as a compromise where non loses or wins, but everyone walks out a winner.

Advantage of ADR

Justice Warren Burger, the former CJI of American Supreme Court had observed:

“the harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and bridges of Judges in numbers never before contemplated. The notion-that ordinary people want black robed judges well-dressed lawyers, fine paneled court rooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible”. The benefits or advantages that can be accomplished by the ADR system are summed up here briefly:

1. Reliable information is an indispensable tool for adjudicator. Judicial proceedings make halting progress because of reluctance of parties to part with inconvenient information. ADR moves this drawback in the judicial system. The truth could be difficult found out by making a person stand in the witness-box and he pilloried in the public gaze. Information can be gathered more efficiently by an informal exchange across the table. Therefore, ADR is a step towards success where judicial system has failed in eliciting facts efficiently.
2. In Mediation or Conciliation, parties are themselves prodded to take a decision, since they are themselves decision-makers and they are aware of the truth of their position, the obstacle does not exist.
3. The formality involved in the ADR is lesser than traditional judicial process and costs incurred is very low in ADR
4. While the cost procedure results in win-lose situation for the disputants
5. Finality of the result, cost involved is less, the time required to be spent is less, efficiency of the mechanism, possibility of avoiding disruption.

An analysis on Evolution of ADR mechanisms in Indian Judiciary

ADR was at one point of time considered to be a voluntary act on the part of the parties which has obtained statutory recognition in terms of CPC Amendment Act, 1999, Arbitration and Conciliation Act, 1996, Legal Services Authorities Act, 1997 and Legal Services Authorities (Amendment) Act, 2002. The Parliament apart from litigants and the general public as also the statutory authorities like Legal Services Authority have now thrown the ball into the court of the judiciary. What therefore, now is required would be implementation of the Parliamentary object. The access to justice is a human right and fair trial is also a human right. In some countries trial within a reasonable time is a part of the human right legislation. But, in our country, it is a Constitutional obligation in terms of Art.14 and 21. Recourse to ADR as a means to have access to justice may, therefore, have to be considered as a human right problem. Considered in that context the judiciary will have an important role to play.

Even before the existence of Section 89 of the Civil Procedure Code (CPC), there were various provisions that gave the power to the courts to refer disputes to mediation, which sadly have not really been utilized. Such provisions, inter alia, are in the Industrial Disputes Act, the Hindu Marriage Act and the Family Courts Act and also present in a very nascent form via Section 80, Order 32 A and Rule 5 B of Order 27 of the CPC. A trend of this line of thought can also be seen in *ONGC Vs. Western Co. of Northern America* and *ONGC Vs. Saw Pipes Ltd.*

Industrial Disputes Act, 1947 provides the provision both for conciliation and arbitration for the purpose of settlement of disputes.

Section 23(2) of the **Hindu Marriage Act, 1955** mandates the duty on the court that before granting relief under this Act, the Court shall in the first instance, make an endeavor to bring about a reconciliation between the parties, where it is possible according to nature and circumstances of the case.

For the purpose of reconciliation the Court may adjourn the proceeding for a reasonable period and refer the matter to person nominated by court or parties with the direction to report to the court as to the result of the reconciliation. [section 23(3) of the Act].

The **Family Court Act, 1984** was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matter connected therewith by adopting an approach radically different from that ordinary civil proceedings. [*K.A.Abdul Jalees v. T.A.Sahida (2003) 4 SCC 166*]. Section 9 of the Family Courts Act, 1984 lays down the duty of the family Court to assist and persuade the parties, at first instance, in arriving at a settlement in respect of subject matter.

The Family Court has also been conferred with the power to adjourn the proceedings for any reasonable period to enable attempts to be made to effect settlement if there is a reasonable possibility.

Section 80(1) of Code of Civil Procedure lays down that no suit shall be instituted against government or public officer unless a notice has been delivered at the government office stating the cause of action, name, etc. The object of Section 80 of CPC – the whole object of serving notice u/s 80 is to give the government sufficient warning of the case which is of going to be instituted against it and that the government, if it so wished can settle the claim without litigation or afford restitution without recourse to a court of laws. [*Ghanshyam Dass v. Domination of India, (1984) 3 SCC 46*]. The object of s.80 is to give the government the opportunity to consider its or his legal position and if that course is justified to make amends or settle the claim out of court. - [*Raghunath Das v. UOI AIR 1969 SC 674*]

Order 23 Rule 3 of CPC is a provision for making an decree on any lawful agreement or compromise between the parties during the pendency of the suit by which claim is satisfied or adjusted. The scheme of Rule 3 of Order 23 proves that if the court is satisfied that a suit has been adjusted wholly or partly by and lawful agreement or

compromise, the court shall pass a decree in accordance to that. Order 23, Rule 3 gives mandate to the Court to record a lawful adjustment or compromise and pass a decree in term of such compromise or adjustment.

Order 27 Rule 5B confers a duty on court in suit against the government or a public officer to assist in arriving at a settlement. In a suit where Government or public officer is a party it shall be the duty of the Court to make an endeavor at first instance, where it is possible according to the nature of the case, to assist the parties in arriving at a settlement.

If it appears to the court in any stage of the proceedings that there is a reasonable possibility of a settlement, the court may adjourn the proceeding to enable attempts to be made to effect settlement.

Order 32A of CPC lays down the provision relating to “suits relating to matter concerning the family”. It was felt that ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Litigations involving affairs of the family seem to require special approach in view of the serious emotional aspects involved. In this circumstances, the objective of family counseling as a method of achieving the object of preservation of family should be kept in forefront. Therefore, Order 32A seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for effort to bring about amicable settlement.

The provisions of this Order applies to all proceedings relating to family, like guardianship, custody of minor, maintenance, wills, succession, etc.,

Rule 3 imposes a duty on the Court to make an effort of settlement by way of providing assistance where it is possible to do so. The Court may also adjourns the proceeding if it thinks fir to enable attempt to be made to effect a settlement where there is a reasonable possibility of settlement. In discharge of this duty Court may take assistance of **welfare expert** who is engaged in promoting the welfare of the family.
[Rule 4]

The concept of employing ADR has undergone a sea change with the insertion of S.89 of CPC by amendment in 2002. As regards the actual content, s.89 of CPC lays

down that where it appears to the court that there exists element of settlement, which may be acceptable to the parties, the Court shall formulate the terms of the settlement and give them to the parties for their comments. On receiving the response from the parties, the Court may formulate the possible settlement and refer it to either:- Arbitration, Conciliation; Judicial Settlement including settlement through Lok Adalats; or Mediation. As per sub-section (2) of Section 89, when a dispute is referred to arbitration and conciliation, the provisions of Arbitration and Conciliation Act will apply. When the Court refers the dispute of Lok Adalats for settlement by an institution or person, the Legal Services Authorities, Act, 1987 alone shall apply.

Supreme Court started issuing various directions as so as to see that the public sector undertakings of the Central Govt. and their counterparts in the States should not fight their litigation in court by spending money on fees on counsel, court fees, procedural expenses and waiting public time. (see *Oil and Natural Gas Commission v. Collector of Central Excise*, 1992 Supp2 SCC 432, *Oil and Natural Gas Commission v. Collector of Central Excise*, 1995 Supp4 SCC 541 and *Chief Conservator of Forests v. Collector*, (2003) 3 SCC 472).

In *ONGC v. Collector of Central Excise*, [1992 Supp2 SCC 432],[*ONGC I*] there was a disputes between the public sector undertaking and GOI involving principles to be examined at the highest governmental level. Court held it should not be brought before the Court wasting public money any time. In *ONGC v. Collector of Central Excise*, [1995 Supp4 SCC 541] (*ONGC II*) dispute was between govt. dept and PSU. Report was submitted by cabinet secretary pursuant to SC order indicating that instructions has been issued to all depts. It was held that public undertaking to resolve the disputes amicably by mutal consultation in or through or good offices empowered agencies of govt. or arbitration avoiding litigation. GOI directed to constitute a committee consisting of representatives of different depts. To monitor such disputes and to ensure that no litigation comes to court or tribunal without the Committee's prior examination and clearance. The order was directed to communicate to every HC for information to all subordinate courts. In ***Chief Conservator of Forests v. Collector (2003) 3 SCC 472*** ***ONGC I AND II*** were relied on and it was said that state/union govt. must evolve a

mechanism for resolving interdepartmental controversies- disputes between dept. of Govt cannot be contested in court.

In ***Punjab & Sind Bank v. Allahabad Bank, 2006(3) SCALE 557*** it was held that the direction of the Supreme Court in ***ONGC III [(2004) 6 SCC 437]***, to the govt. to set up committee to monitor disputes between government departments and public sector undertakings make it clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee.

In the judgment of the Supreme Court of India in ***Salem Bar Association vs. Union of India (2005) 6 SCC 344***, the Supreme Court has requested prepare model rules for ADR and also draft rules of mediation under section 89(2)(d) of Code of Civil Procedure, 1908. The rule is framed as “Alternative Dispute Resolution and Mediation Rules, 2003”.

Rule 4 of the Alternative Dispute Resolution and Mediation Rules, 2003”, lays down that the Court has to give guidance to parties (when parties are opting for any mode of ADR) by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their opinion as to the particular mode of settlement, namely;

- (i) it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one of these modes of settlement rather than seek a trial on the disputes arising in the suit;
- (ii) where there is **no relation between the parties** which requires to be presented it will be in the interests of the parties to seek reference of the matter to arbitration as envisaged in clause (1) of sub-section (1) of sec.89.
- (iii) where there is a **relationships between the parties which requires to be preserved**, it will be in the interests of the parties to seek reference of the matter to **conciliation or mediation**, as envisaged in clauses (b) or (d) of sub-section (1) of sec.89.

The Rule also says that Disputes arising in **matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.**

(iv) where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to judicial settlement including Lok Adalat as envisaged in clause (c) of sub-section(1) of section 89.

According to **Rule 8**, the provisions of these Rules may be applied to proceedings before the Courts, including Family courts constituted under the Family Courts (66 of 1984), while dealing with matrimonial, and child custody disputes.

Different modes of justice delivery mechanism of ADR:

The Constitution of India calls upon the state to provide for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic inability. India socio-economic conditions warrant highly motivated and sensitized legal service programs as large population of consumers of justice (heart of the judicial anatomy) are either poor or ignorant or illiterate or backward, and as such, at a disadvantageous position. The State, therefore, has a duty of secure that the operation of legal system promotes justice on the basis of equal opportunity. Alternative dispute resolution is, neatly, worked out in the concept of Lok Adalat. It has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has gain proved to be a successful and viable national imperative and incumbency, guest suited for the larger and higher section so the present society of Indian system. The concept of legal services which includes Lok Adalat is a **“revolutionary evolution of resolution of disputes”**. Lok Adalats provide speedy and inexpensive justice in both rural and urban areas. They cater the need of weaker sections of society.

The object of the Legal Services Authority Act, 1987 was to constitute legal services authorise is for providing free and competent legal services to the weaker sections of the society; to organise Lok Adalats to ensure that the operations of the legal system promoted justice on a basis of equal opportunity.

Under the Act permanent Lok Adalat is to set up for providing compulsory pre-litigation mechanism for conciliations and settlement of cases relating too public utility services.

The concept of Lok Adalat is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable economic, efficient, informal, expeditious form of resolution of disputes. It is hybrid or admixture of mediation, negotiation, arbitration and participation. The true basis of settlement of disputes by the Lok Adalat is the principle of mutual consent, voluntary acceptance of conciliation with the help of counselors and conciliation. It is a participative, promising and potential ADRM. It revolves round the principle of creating awareness amongst the disputants to the effect that their welfare and interest, really, lies in arriving, at amicable, immediate, consensual and peaceful settlement of the disputes.

Shri M.C.Setalvad, former Attorney General of India has observed: "...equality is the basis of all modern systems of jurisprudence and administration of justice... in so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal ...Unless some provision is made for assisting the poor men for the payment of Court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice."

The great advantage of arbitration is that it combines strength with flexibility. Strength because, it yields enforceable decisions and is backed by judicial framework which , in the last resort, can call upon the coercive powers of the state. Flexible because it allows the contestants to choose the procedure which fit nature of the dispute and the business context in which it occurs. Arbitration Act, 1940. Arbitration acknowledged the pivotal role of the partie sin resolving their disputes. But this Act did not fulfill the essential functions of ADR The extent of Judicial Interference under the Act defeated the very purpose of speedy justice. The Act 1996 came into effect to remove few of its difficulties and judicial intervention was limited to some extent. But Arbitration had some ailments: (I) traditional adversarial system is run in a arbitration proceedings; (II)

proceedings are delayed as both parties take lot o time presenting their submissions; (III) the cost of arbitration is much more than the order ADR process, thereby, it does not attract the poor litigants; (IV) participatory role of the parties are neglected as the submissions are made by the party counsels.

Mediation can be defined as a process to resolve a dispute between two or more parties in the presence of a mutually accepted third party who through confidential discussion attempts to help the parties in reaching a commonly agreed solution to their problems. The biggest advantage of mediation is that the entire process is strictly confidential. Mediation saves time and financial and emotional cost of resolving a dispute, thereby, leads to reestablishment of trust and respect among the parties.

Other advantages are:

An interest-based procedure is followed as distinct from a right-based procedure adopted by a court

Emotions and feelings between parties can be preserved causing minimum stress and heartache.

There is possibility of resolving multiple disputes.

A properly conceived mediation as method of alternative dispute resolution will ensure wide access to justice for all sections of the people. This system has assumed a great importance as Lok Adalats are regular features in various parts of the country. Except litigants who stand to gain by delaying the process of justice, others do not perhaps enjoy taking recourse of litigation that consumes innumerable number of years and considerable amounts by way of expenses. *Martin Luther King* had said "The bank of Justice shall not be bankrupt". This is only possible if we develop effective and efficient mechanism of alternate dispute resolution by setting up of extra mediation centers at all level in the country.

There is a subtle difference between mediation and conciliation. While in meditation, the third party, neutral intermediary, termed as mediator plays more active role by giving independent compromise formulas after hearing both the parties; in conciliation, the third neutral intermediary's role, mainly is to bring the parties together in a frame of mind

to forget their animosities and be prepared for an acceptable compromise on terms midway between the stands taken before the commencement of conciliation proceedings.

Three reasons why mediation or conciliation is not gaining momentum:

Lack of institutionalization

Lack of case management

Excessive interlocutory appeals

Out of the methods of ADR, mediation and conciliation are the most suited methods for a country like India because by and large people in India at least in the rural areas would like to settle their disputes amicably. But in urban areas case is different where in commercial disputes, litigants want quick disposal of cases, would like the same to be done under a legal framework and with the intervention of professionals and so, these litigants prefer arbitration.

Not many Indians can afford litigation. This kind of state of affairs makes common people, especially rural people, cynical about judicial process.

We must take the ADR mechanism beyond the cities. Gram Nayalas should process 60 to 70 percent of rural litigation leaving the regular courts to devote their time to complex civil and criminal matters. With a participatory, flexible machinery available at the village level where non-adversarial, settlement-oriented procedures are employed, the rural people will have fair, quick and inexpensive system of dispute settlement.

Rent and eviction constitute a considerable chunk of litigation in urban courts and they take on an average time period of three years or more than that. The Law Commission felt that an alternative method for these disputes is imperative.

Panchayati Raj or self-governance at the village level is in revolutionary process in our democratic governance. Along with powers of administration, system of self-government dispute resolution can also be delegated to these institutes. If the object of judicial reform is fair, quick and inexpensive justice to the common people, there can be no better way to pursue the objective than to invoke participatory systems at the grass root

level for simpler disputes so that judicial time at higher levels is sought only for hard and complex litigation.

According to Law Commission recommendation a very simple procedure envisaging quick decision, informed by justice, equity and good conscience. The CPC and Evidence Act not to be applied to proceedings before those. In respect of jurisdiction, the Commission preferred criminal jurisdiction covering boundary disputes, tenancies, irrigation disputes, minor property disputes, family disputes, wage disputes irrespective of pecuniary value of the dispute. It would be wise to avoid to confer criminal jurisdiction of Gram Nyayalayas in the initial stage. In districts, towns and other urban areas where the nature of disputes are quantitatively different from rural areas, the litigations are of money suits, suits on mortgage, succession and inheritance suits, rent and eviction suits, matrimonial disputes. The staggering number of pendency of suits seeks for an alternative.

Few maladies and its ailments:

We have already examined in the "evolution of ADR mechanisms" that initially the ADR mechanisms were tried to be implemented with much emphasis on Statutes by way of inserting the ADR clauses in those statutes. But these process and policy was not of that much success. Thereby, the trend is the imposition of responsibility and duty on Court and in this process Courts are authorised to give directives for the adoption of ADR mechanisms by the parties and for that purpose Court has to play important role by way of giving guidance, etc. Power is also conferred upon court so that it can intervene in different stages of proceedings.

But these goals cannot be achieved unless requisite infrastructure is provided and institutional frame work is put to place. A judicial impact assessment is carried out in U.K. 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.

Before bringing in S.89 of the CPC and other Statutes, no assessment was carried out as regards financial implications or the infrastructural requirements too make it effective. For example:

For mediation, trained mediator will be required and expenses will have to be incurred for their training. Most of our courts do not have adequate space even for their existing work, and thus, it may not be possible to accommodate them to provide for suitable accommodation of the ADR regime all these have to be complied with and this is not too late to make these arrangement.

Mediation/Conciliation/reconciliation is carried out in a matrimonial matter in child custody case. Usually in the Dist. 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 also at the High Court.

Conciliation is provided for under the Industrial Disputes Act and it takes place in the office of the Conciliation Officer or in the premises of the management which does not give a fair chance to the workmen to negotiate. There should be a neutral space for such mediation or negotiation.

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

Awareness: in view of this holding seminars, workshops, etc. would be imperative. A ADR literacy programme has to be done for mass awareness. Awareness camp should be to change the mindset of all concerned disputants, the lawyers and judges.

Our lack of awareness would be tested from the fact that how many of us are aware that in terms of Sec.7(hb) of the Notaries Act, 1952 one of the functions of a notary is to act as an arbitrator, conciliator, if so required.

Acceptance: In this regard training of the ADR practitioners should be made by some University together with other institution. Extensive training would also be necessary to be imparted to those who intend to act as a facilitator, mediators, conciliators.

Industrial dispute Act, 1947 provides for appointment of conciliator who although are "charged with the duty of mediating in the promoting the settlement of industrial disputes" failed in performing their duties as they do not have requisite training. Similarly matrimonial courts and family courts are unable to effectively settle the dispute as they do not have either the requisite training or the mindset there of.

Imparting of training should be made a part of continuing education on different facets of ADR so far as judicial officers and judges are concerned.

Implementation: for this purpose, judicial officers must be trained to identify cases which would be suitable for taking recourse to a particular form of ADR. In the decision of House of Lords in *Dunnett V. Railtrack* (In railway administration, [2002]2 All ER 850, the Court had noticed that: "the encouragement and facilitating of ADR by the court in an aspect of active case management which in turn is an aspect of achieving the overriding objective. The parties have a duty to help the court in furthering that objective and therefore, they have a duty to consider seriously the possibility of ADR procedures being utilized for the purpose of resolving their claim or particular issues within it when encouraged by the court to do so."

How to make ADR mechanisms more viable?

We cannot stop the inflow of cases because the doors of justice cannot be closed. But there is a dire need to increase the outflow either by strengthening (both qualitatively

and quantitatively) the capacity of the existing system or by way of finding some additional outlets. In this situation ADR mechanism implementation can be such a drastic step for which three things are required most:

- Mandatory reference to ADRs
- Case management by Judges
- Committed teams of Judges and Lawyers

Equal justice for all is a cardinal principle on which entire system of administration of justice based. It is too deep rooted in the body and spirit of common law as well as civil law jurisprudence that the very meaning which we ascribe to the word “justice” embraces it. We cannot conceive justice which is not fair and equal. Effective access to justice has thus come to be recognized as the most basic requirement, the most basic human right, in modern egalitarian legal system which purports to guarantee and not merely proclaims legal rights to all.

We should aim to achieve earlier and more proportionate resolution of legal problems and disputes by:

- Increasing advice and assistance to help people resolve their disputes earlier and more effectively;
- Increasing the opportunities for people involved in court cases to settle their disputes out of court; and
- Reducing delays in resolving those disputes that need to be decided by the courts.

To implement the noble ideas and to ensure the benefits of ADR to common people, the four essential players (government, bench, bar litigants) are required to coordinate and work as a whole system.

Case management includes identifying the issues in the case; summarily disposing of some issues and deciding in which order other issues to be resolved; fixing timetables for the parties to take particular steps in the case; and limiting disclosure and expert evidence.

- **Government:** Govt has to support new changes. If the govt support and implements changes, ADR institutes will have to be set up at every level from district to national level.
- **Bench:** unless mindset of the judges are changed, there will be no motivation for the lawyers to go to any of the ADR methods.
- **Bar:** the mindset of the members of the Bar is also to be changed accordingly otherwise it would be difficult it is difficult to implement ADR. The myth that ADR was alternative decline in Revenue or Alternative Drop in Revenue is now realizing that as more and more matters get resolved their work would increase and not decrease.
- **Litigants:** few parties are usually interested in delay and not hesitate in taking a stand so as to take the benefit if delay. Parties have to realize that at the end, litigation in court may prove very costly to them in terms of both cost and consequence.

Conclusion and suggestion:

ADR is quicker, cheaper, more user-friendly than courts. It gives people an involvement in the process of resolving their disputes that is not possible in public, formal and adversarial justice system perceived to be dominated by the abstruse procedure and recondite language of law. It offers choice: choice of method, of procedure, of cost, of representation, of location. Because often it is quicker than judicial proceedings, it can

ease burdens on the Courts. Because it is cheaper, it can help to curb the upward spiral of legal costs and legal aid expenditure too, which would benefit the parties and the taxpayers.

In this juncture, few things are most required to be done for furtherance of smooth ADR mechanisms. Few of them are:

Creation of awareness and popularizing the methods is the first thing to be done. NGOs and medias have prominent role to play in this regard.

For Court- annexed mediation and conciliation, necessary personnel and infrastructure shall be needed for which government funding is necessary.

Training programmes on the ADR mechanism are of vital importance. State level judicial academies can assume the role of facilitator or active doer for that purpose.

While the Courts have never tired of providing access to justice for the teeming millions of this country, it would not be incorrect to state that the objective would be impossible to achieve without reform of the justice dispensation mechanism. There are two ways in which such reform can be achieved- through changes at the structural level, and through changes at the operational level. Changes at the structural level challenge the very framework itself and requires an examination of the viability of the alternative frameworks for dispensing justice. It might required an amendment to the Constitution itself or various statutes. On the other hand, changes at the operational level requires one to work within the framework trying to indentify various ways of improving the effectiveness of the legal system.

Needless to say, this will considerably reduce the load on the courts apart from providing instant justice at the door-step, without substantial cost being involved. This is also avoid procedural technicalities and delays and justice will hopefully be based on truth and morality, as per acknowledged considerations of delivering social justice.