



## BOOK REVIEWS

ALTERNATIVE DISPUTE RESOLUTION—WHAT IT IS AND HOW IT WORKS (1997). Edited by P.C. Rao and William Sheffield. Universal Law Publishing Co. Ltd., Delhi. Pp. xvi + 448. Price Rs. 350.

THE PROBLEM of arrears in courts has assumed serious proportions in almost all countries including India. In fact, the key factor, among others, that has led to the crisis of the Indian legal system<sup>1</sup> is the problem of docket explosion.<sup>2</sup> Realising the limitations of the court system to deliver justice in a big way, alternative dispute resolution (ADR) mechanisms are being discovered or shaped in most countries so as to become the dominant dispute resolution paradigm. In some countries like USA, Switzerland, UK and Newzealand ADR is popular for more than two decades. ADR envisages minimal intervention of court-like forums in dispute resolution and encouragement to disputants to arrive at a negotiated settlement. Apart from negotiation, several other procedures come within the ambit of ADR, e.g. conciliation mediation, final offer (also pendulum) arbitration, ministerial, and neutral evaluation.

Traditionally, ADR mechanisms are known to be occupying a very important place in labour-management disputes. But lately, ADR has become popular in several other categories of disputes like civil, commercial and family disputes. ADR is not intended to supplant litigation as a method of dispute resolution, but presents only an alternative option to it. It has several merits as compared to litigation. It is a more expeditious and less expensive method. By promoting involvement of parties themselves in dispute resolution it encourages creative and realistic business solutions. Most importantly, ADR helps in reducing the load of courts.

In the Indian context *lok adalat* (people's court) is intended to be one of the principal ADR mechanisms. A good number of disputes have been settled by them, mostly related to motor accidents, land acquisition, family disputes, bank loans, workman compensation and compoundable criminal offences. Despite this, however, *lok adalats* have not been admired in a big way, especially in case involving heavy financial stakes or important civil cases. Globalisation of the economy

- 
1. Upendra Baxi, *The Crisis of the Indian Legal System* (1982).
  2. Rajeev Dhavan, *The Supreme Court Under Strain: The challenge of Arrears* (1978).



has led to the need for expeditious disposal of commercial disputes. Consequently, the Arbitration and Conciliation Act 1996 has been enacted. It consolidates the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, apart from defining the law relating to conciliation. However, barring arbitration and conciliation we in India have not resorted to other forms of ADR.

The book under review<sup>3</sup> is the first and a very timely arrival on the important subject of ADR. It contains 26 articles by some very distinguished persons in the area including justices, jurists, lawyers, academics and bureaucrats from India and abroad. principally, the book aims to “present an outline of ADR developments, processes and resources in India and other selected jurisdictions” so as to promote a more articulate understanding of what ADR is and how it works. The range of topics include, among others (i) alternative dispute resolution; (ii) the new law of arbitration and conciliations in India; (iii) settlement of disputes through lok adalats; (iv) the American experience in the field of ADR; (v) international mediation — the U.K. experience; (vi) ADR in Australia, Srilanka, Hongkong and New Zealand; (vii) Mini-trial, fast-track arbitration; and (viii) ADR in the construction industry. In the appendices are contained the recently-enacted Arbitration and Conciliation Act 1996 and rules made under this Act.

While it is not possible in a review of this type to comment on every paper, some of the important articles of direct relevance to those interested in the subject may be focused upon. A good number of papers by Indian as well as foreign authors have eulogised the ADR as a philosophy envisaging superior values than litigation. These papers have discussed the merits and demerits of ADR, problems in implementing ADR, and the role of lawyers. Since several papers have focused on these sub-topics, several perspectives are available to the reader. But at the same time substantial repetition of perspectives is also noticeable. A more patient and careful editing would have helped in eliminating such portions, reducing the size of the book and also increasing its readability.

Most papers are of fairly good quality. P.C. Rao's paper on alternative to litigation is highly informative and entirely readable. It contains a precise overview of ADR including types and advantages along with an interesting short history of ADR in India. Another paper by him titled, “The Arbitration and Conciliation Act, 1996: The Context” helps a

---

3. P.C. Rao and William Sheffield (ed), *Alternative Dispute Resolution — What it is and how it works* (1997).



great deal in knowing the broad scheme and salient features of this new law. Probably the most interesting paper in the book on issues related to ADR in India is by F.S. Nariman. He has convincingly analysed the working of the arbitration system in the ambience of lawyers. He makes a strong case for “less-lawyering” if we want movements like ADR or arbitration to survive effectively. His line of argument is also compatible with the broad philosophy of globalisation, which does not encourage pluralism. More emphasis is placed on cooperation and collaboration rather than interest group assertion and conflict generation. The state in its new, market-friendly role too is orienting itself to encourage the internalisation of these values (also known as unitarism or neo-unitarism). Nariman laments that commercial arbitration in India is “filled with lawyers” in the Mexican sense.<sup>4</sup> While he rejoices at the funeral oration of the 1940 Arbitration Act and its replacement by the new Arbitration and Conciliation Act 1996, he appropriately emphasises “the will to work in the right spirit and with good faith” if ADR has to function as intended.

Another very interesting paper is by Tania Sourdin which is titled, “Matching Disputes to Dispute Resolution Processes— The Australian Context.” She cautions that while ADR is important, mediation could be wasteful if applied to all disputes. She also presents a very interesting checklist for diagnosing the appropriateness of mediation in a dispute. Tom Arnolds paper, “Twenty Common Errors in Mediation Advocacy— In No Particular Order” is yet another interesting reading, which is highly readable and gives extremely useful tips to mediators for effective performance of their job.

While most issues have been covered in the book fairly extensively the reviewer tends to feel that a comprehensive paper on negotiation should have been included. As we know, negotiation is increasingly becoming a subject study. The Harvard project on negotiation undertaken at the management and law schools of Harvard University has helped a great deal in popularising the subject of negotiation amongst the academia all over the world. Even in India several leading management schools offer a full course on negotiation to their students. Consequently, the full science of negotiation seems to be crystalising to encourage the disputants and mediators learn the dynamics and skills of negotiation. A large number of management consultants offer training packages related to various aspects of negotiation for business executives. If a

---

4. F.S. Nariman in his paper narrates the curse of a businessman from Mexico. When a commercial magnate in that country indulged in sharp practice with a colleague, the latter ended the acrimonious conversation with an invocation: “May your life be filled with lawyers”. (*Id.* at 55)



paper mapping the basic tenets of negotiation had been included in this book it would have justified the theme more fully.

All in all, however, the International Centre for Alternative Dispute Resolution under whose aegis this project was undertaken needs to be complemented for the timely production of this book. The reviewer is only like that the book is distributed effectively so that it helps in sensitising academics, lawyers, professionals, litigants and all concerned about the utility of ADR as also about knowing its philosophy so that the process of justice dispensation become more effective.

*Debi S. Saini\**

---

\* Professor, Institute for Integrated Learning in Management, M.Com., LL.M. Ph.D. (Delhi).