

Chapter 6

Conclusion and Recommendations

1. Introduction

THIS STUDY reveals that, among the ADR mechanisms *ad hoc* arbitration has not been a success. At the same time, other methods such as mediation and *Lok Adalats* are developing on the right track and are achieving their objectives to a great extent, after they were institutionalized.²⁹³ It is also seen that various statutory interventions made with the objective of laying down legal framework for ADR in India, have had no impact in resolving disputes amicably. It is also found that alternative dispute resolution mechanisms, if properly manned could become very effective in resolving disputes of any kind, ranging from commercial to family disputes or from traffic offences to intellectual property disputes.

Towards the end making ADR more effective in India, it is proposed that a national policy of ADR may be formulated giving a broad framework of modes of dispute resolution through alternative means with the objective of effective settlement of disputes of both domestic as well as international character. This would also help us to develop a dispute resolution culture conducive to the acceptance and development of the philosophy underlying ADR.

2. Recommendations

The success of mediation centres and *Lok Adalats* signals that there is need for setting up institutional ADR mechanism in India. Establishment of institution/s with sufficient statutory backup, supplemented by the generation of a dispute resolution culture among the masses, India could be made the hub of institutional dispute resolution in the world. To achieve the same concrete and active steps may be taken at the following levels.

²⁹³ Disposal of a few hundred cases through these institutions will not solve the problem of huge backlog of cases in India.

Recommendation 1: Policy making and legislative intervention

1. **Legislative/policy initiative by the Government** in the form of amendments/new legislation *etc.*²⁹⁴
2. **Judicial consensus:** In the light of the aim and objectives of ADR, the judiciary should arrive at a consensus on the circumstances under which a judicial intervention is required.

Recommendation 2: More empirical, doctrinal and comparative research

- 1 **Research on ADR:** More empirical and comparative doctrinal research²⁹⁵ may be taken up by various stakeholders. This would help formulation of strategies and policies at national as well as at regional levels.²⁹⁶

²⁹⁴ Amendments shall be made in the Arbitration and Conciliation Act, 1996 and Section 89, CPC. Another specific statute with the objective of developing mediation as a successful dispute resolution technique may also be enacted. The Arbitration and Conciliation Act, 1996, may be amended to include the following provisions:

1. Time limit for conducting an arbitration matter.
2. The power may also be delegated to District Judges in the appointment of arbitrators under section 11 of the Act.
3. Separate Bar of full time arbitrators/mediators.
4. Compulsory registration of such arbitrators/mediators with the Government.
5. An internationally accepted *code of conduct* for arbitrators to ensure their accountability.
6. Arbitrator's fee shall be fixed.
7. Grounds for setting aside of arbitral awards under section 34 shall be further limited by pecuniary limits.
8. Cost to the affected party in case the opposite party the enforcement of an arbitral award.
9. Provision shall be made to regulate *ad hoc* arbitrations in India.
10. Provisions for a strong enforcement mechanism that may be self-regulatory.

The Code of Civil Procedure may be amended to include the following provisions in section 89:

1. Limited time frame shall be fixed for settlement of disputes outside the court.
2. *Suitable institution or person* mentioned in section 89(2)(c) to effect a *judicial settlement* may include Government accredited ADR institutions including mediation centres in each state.
3. The phrase in section 89 (2) (d) *court shall effect a compromise* shall be amended to include suitable mediation institutions to take a leading role in the settlement of disputes under section 89 CPC.
4. The stage at which a case may be referred to ADR shall be specifically mentioned under the section.
5. There shall be an amendment by stating, *wherever it may be acceptable to the parties or can be explored by the parties* instead of stating *where it appears to the court*.

²⁹⁵ Some of these areas are pointed in this study in a separate table under the heading "scope for further study" in chapter 1 to 5.

²⁹⁶ Sometimes the national strategy may not suit in a particular region. For example the general nature of cases that comes from urban and rural areas may not be the same, which might require separate strategies.

- 2 **Collection and tabulation of statistical data regarding ADR and courts:** Various stakeholders shall also be taken for properly recording and tabulating data regarding various modes of dispute resolution in India.²⁹⁷

Recommendation 3: Building infrastructure/ creation of a pool of professionals etc.

1. **Establishment of a separate Bar/Registry for mediators/arbitrators:** A separate Bar/Registry may be formed for mediators and arbitrators in the model of the Bar Council of India and Bar Associations for lawyers.

2. **Standards of conduct and rules of professional ethics:** The most important challenge pointed out by the sample groups during the empirical study is the lack of accountability of the arbitrators and transparency in the arbitration process.²⁹⁸ Framing of an internationally accepted code of conduct for arbitrators and others would be really of great help in ensuring quality.²⁹⁹ In India so far we have not been able to set up a separate panel of trained arbitrators or mediators. A separate panel of experts so constituted may be helpful in cultivating a good ADR culture in India.

3. **Decentralized body of practitioners:** Instead of building ADR infrastructure and pool of trained professionals with expertise in the major cities, efforts may be made to develop them throughout India.

4. **Establishment of Institutional ADRs in India:** It is seen that in India institutional mechanisms of ADR, work more effectively than ADR on *ad hoc* basis. So institutions may be developed with supervisory roles that could also coordinate the efforts of streamlining ADRs in India.

²⁹⁷ One of the greatest challenges for the completion of this study was non-availability of data since they were either not properly recorded or monitored. The benefit of such a data bank is that the trends could be easily studied, so that streamlining could also be done in a comparatively easier manner.

²⁹⁸ For details, refer to chapter 4.

²⁹⁹ *Supra* chapter 2. This would definitely encourage more and more parties coming for settling their trade disputes and it can act as the venue for even foreign arbitrations that may be encouraged to take place in India.

5. **Publication of information in various languages:** It is also important that all documents and information are published in all the major Indian and foreign languages by the various stakeholders and take a proactive step in reaching different parts of the globe through print media as well as through its web site.
6. **Working arrangements with international organizations:** The aforesaid institution and other stakeholders could have working arrangement with similar organizations in other countries/international agencies dealing with ADR so that in future ADR may develop as an effective method of dispute resolution.
7. **Use of Information Technology:** The modern avenues of information technology shall be made use of in the following manner:
 - **Developing a separate digital network:** Dispute resolution need not be done always in a face-to-face interaction across the table. A dispute could be resolved if there is an effective communication between the parties as well as between the parties and the arbitrators or mediators. It is also necessary that the authenticity of the communication is legally verifiable. In fact the judiciary in India³⁰⁰ has recognized taking evidence through videoconferencing. A strong and confidential web based network may be developed, secured by cryptographic algorithms.³⁰¹
 - **Official website:** Nowadays an official website is not a window to the organization to which it belongs but it is the main door. The important factor is that this door could be opened from any where in the world by

³⁰⁰ See the judgements of the Supreme Court of India in *State of Maharashtra v. Dr. Praful B. Desai* (AIR 2003 SC 2053) and the High Court of Andhra Pradesh in *Bodala Murali Krishana v. Smt. Bodala Prathima* (AIR 2007 A.P)

³⁰¹ Once such a network is developed, the distance and place becomes absolutely irrelevant for the purpose of dispute resolution. The parties and the arbitrator need to have a system with a strong audio and video recording devices connected to the Internet. A separate online account can be created with separate username and password for parties and arbitrators. Once they access the online content of their dispute it could be downloaded, or printed in the normal way. Parties and arbitrators could also transmit documents that are electronically signed. The benefit of such a network is that the cost of dispute resolution could be reduced to a great extent. It may also help speedy disposal.

any one. The various stakeholders shall design their websites, with all the details and information in various Indian and foreign languages.

- **Online Dispute Resolution techniques:** Efforts shall be made to develop secure online platforms for resolving disputes of all nature but commercial disputes in particular.³⁰²

Recommendation 4: Creation of dispute resolution culture in India

1. **Development of a dispute resolution culture from school level onwards:** Efforts may be made for the development of a dispute resolution culture from school level onwards. The need and methods for peaceful resolution of dispute may be made a part of the formal education curriculum.
2. **Promote public awareness with the help of voluntary organizations, educational institutions and others:** More seminars, workshops, conferences, training programmes,³⁰³ refresher programmes, publications, *etc.* may be organized so that a dispute resolution culture is generated in the country from grass root to policy making level.
3. **Community mediation:** The benefits of community mediation are that they resolve disputes in an informal and amicable way without affecting the relationship between the parties.³⁰⁴ Most of these community mediation mechanisms have very strong social sanctions against the violation of their rules.³⁰⁵ Hence, community mediation, which peacefully resolves disputes, may be encouraged.

³⁰² Online Dispute Resolution techniques can be more effectively used in resolving commercial disputes than other kinds of disputes. There are limitations in using online platforms of dispute resolution for criminal cases, disputes involving immovable property etc.

³⁰³ With strong curriculum drafted with the objectives in mind.

³⁰⁴ For example, the *Auto Rickshaw courts* prevalent at Kannur District in Kerala. Under this system the passengers can take their complaints against the auto drivers to the informal courts established by the *Auto Drivers Coordination Committee*. If complaints are found to be genuine, the court punishes the errant driver. The court is an offshoot of the set up to protect the interest of the passengers as well as the auto drivers. The committee consisting of trade unions affiliated to both the ruling and opposition parties had been engaged in settling the disputes between the drivers and passengers for the last two years. The 'Auto Court' has no judicial powers. Yet, the auto drivers as well as the passengers accept its verdicts. The result is that there is a steep fall in the number of complaints involving auto rickshaws, except those concerning accidents.

³⁰⁵ In Africa, community mediation is quite frequently resorted to by the litigants. The system of dispute resolution is not altogether a concept new to our business world. The study in Mumbai has

Recommendation 5: Addressing the root causes for court delay and case backlog

1. This study shows that ADR has great potential to reduce court delay and case backlog in India. It also indicates that ADR has certain limitations in this regard. Given the dimensions of the challenge of court delays and case backlog in India, it is therefore crucial to address their root causes, *e.g.* inefficient case management, lack of inadequate information technology systems, inadequate filters for influx of certain types of cases, inadequate enforcement capacity, inadequate human resources *etc.* These root causes will have to be identified and analyzed by continuous studies.

Recommendation 6: Keeping pace with the challenges

1. **Efforts to be continued:** Continuous efforts are to be made for further progress even after achieving results at all these levels.

The present study on the status and effectiveness of ADR in India undoubtedly signifies that the success of any ADR mechanism would indeed depend upon the strength and support of its institutional set up.³⁰⁶ The small-scale efforts to introduce institutionalized ADRs like *court-annexed mediation*, may not achieve the desired goal in the long run. Only concrete, well-planned and continuous efforts at different levels would help India in achieving its mission. Active support and encouragement of the judiciary is essential to help us develop a culture conducive to the growth of well-respected and well-recognized ADR.

found that there is a well-established system of traditional dispute resolution existing among the business community in Mumbai. For example, the powerful *Marwari* community has their own mechanism set-up to decide and resolve the dispute among its members arising out of their business transactions. Similarly, the businessmen belonging to *Sindhi* and *Parsi* communities have evolved a similar system over the years. The *Bori* community very systematically resolves their disputes through their respective *Jummat Khanna*. The decisions of such traditional neutrals have better enforceability as it is backed by social sanctions. The only difficulty with the system is that it applies only among the members of the particular community. Moreover, the decisions are often based on logic and wisdom rather than on facts or law. Similarly the study in Bangalore also found such community dispute resolution mechanisms especially among the business communities.

³⁰⁶ As has been discussed in the respective chapters on mediation, arbitration and *Lok Adalats*.