Preface

INDIA HAS a proud tradition of dispute resolution based on consensus and conciliation. The institution of *Panchayats,* the remnants of which are still found in our social system is the symbol of indigenous administration, which covered not only dispute resolution, but also other aspects of public administration. Colonisation of India had had in its sway uprooted many indigenous institutions including *Panchayats* and the very philosophy of mediation and conciliation was replaced by adjudication necessitating the establishments of courts of law based on adversarial philosophy. The blending of administration and adjudication which had been the imprint of colonial administration was resorted to suit the requirement of efficient tax collection. This approach had had its impact on the efficacy of the system in the maintenance of law and order in the society. Delay in justice delivery was rampant. Inefficiency was abundantly evident. The result was docket–explosion that continues to haunt us even today.

India despite the need could not experiment with any alternative system while other democracies like the U.S were constrained to try several modes like plea bargaining, arbitration *etc*. The need to cope with the increased volume of litigation later made India also to experiment with ADR. The Arbitration and Conciliation Act, 1996 was enforced with all earnestness. But no study worth the name on its efficacy has so far been done. Here is an attempt to do it with the help of data collected from various institutions in three metros namely, Delhi, Mumbai and Bangalore.

Purpose and scope of this study

The study is mainly focused on the effectiveness of ADR systems in India in terms of reduction of cases in courts and also to make concrete suggestions for building a strong institutional ADR mechanism in India. As per the terms of reference, the Indian Law Institute was required to study the following: -

1. Review of existing laws and regulations that provide the legal environment for resolving commercial disputes through ADR. This will include the review of the Arbitration and Conciliation Act, 1996 with a view to recommending removal of any shortcomings and the review of the implementation of the Section 89 of the Code of Civil Procedure in order to improve its usage and ICADR's possible role in assisting in the implementation of the provision.

2. Review of enforcement mechanisms of domestic and international arbitration awards.
3. The incentive structures underlying the use of courts and ADR mechanisms to resolve certain types of disputes and the incentive structure for various stake holders to promote or to oppose certain types of ADR mechanisms for certain types of cases (stake holder analysis). It was stipulated that the study should not be data based.
4. ADR experience in three selected cities viz. Delhi, Mumbai & Bangalore and the type and number of cases currently being handled through arbitration / mediation; average period of their disposal; selection of cases for these mechanisms; existence of traditional or modern ADR methods; successful and unsuccessful attempts of introducing ADR; public awareness of ADR; formal ADR trainings and activities; pool of trained and trainable mediators/ arbitrators.
5. The nature of cases, which can be effectively, handled through arbitration/ mediation and other ADR, including their possible selection for ADR; Possibility of including Intellectual Property Rights cases under ADR mechanisms shall also be studied.
6. The impact of case disposal through arbitration/ mediation and other ADR mechanisms on the reduction of cases in courts.
7. The steps necessary to improve disposal of cases and attract more cases for dispute settlement through ADR.
8. The scope of developing institutional ADR systems in India on the lines of renowned international ADR institutions.

Methodology of the study

The study was done in a systematic manner, in three stages, *viz* data collection, data analysis and report writing. The challenging task in the beginning stage was the identification of research organizations in the three metros with a good track record of empirical research in law. This was sorted out by selecting the Post Graduate Department of Law, University Law College, Bangalore University and Post Graduate Department in Law, Law School, SNDT Women's University, Mumbai. In Delhi, the work was done under the direct supervision of the research team at the Indian Law Institute. To facilitate data collection, researchers with LL.B degree were also appointed in all the three cities. They were given details as to the purposes of the study, the nature of data collection and above all the time limit of the study.

Simultaneously detailed guidelines,[1] questionnaires and proforma[2] for the collection of data were finalized and sent to the research teams in all the three cities. There were altogether six questionnaires and one proforma for the collection of data from different sources including case records in various courts, opinions of the general public, interview with arbitrators, lawyers and other ADR practitioners, working of training and awareness institutes, views of judges and other experts. The researchers were also instructed to consult maximum number of arbitrators and gather their opinion as to the functioning of arbitration mechanism in India. Similar interviews were also conducted to find out the better choice between institutional arbitration and *ad hoc* arbitration. For conducting interviews and consultation the help of information and communication technology was also sought. Taking in to account the capacious nature of the study, data collection was limited to the high courts, district courts and subordinate courts in these cities.

Since the collection of data from the case records in the courts is not possible without permission of the high courts concerned, request letters were written to Registrar Generals of the respective High Courts through proper channel. Since there was no response even after the lapse of one month, request letters were directly sent to the Chief Justices of the High Courts. Though belatedly, permission was duly granted thereafter for accessing to court records in Delhi, Mumbai and Bangalore.[3] Inspite of these difficulties, the researchers could satisfactorily collect the data.

Simultaneously, the researchers at ILI collected articles and books, which were analyzed for the purpose of literature review to draw the basic structure of the report.. Meanwhile a National Judges Consultation was organized in Delhi from 12th April to 13th April, 2008. Fifty-one district judges from all over the country participated in the Consultation and gave inputs and made fruitful suggestions.

When collection of data was completed in each city, those data were analyzed and presented before the experts in Bangalore and Mumbai through Regional Roundtable Conferences. The consolidated data from all these cities were thereafter presented before the National Roundtable Conference held in Delhi on 13th May 2008. In the light of the views expressed in these conferences, the final report was drawn up. The report has had its

[1] See Annexure 1.
[2] Annexures 2 to 8.
[3] As reported by the researchers in Delhi and Mumbai and Bangalore, co-operation from the court staffs was not forthcoming.

limitations. For example, *ad hoc* arbitration being absolutely an unorganized sector in India, even the total numbers of arbitrators involved is difficult to be ascertained. There are no records showing the total number of arbitrations taking place in a year. Even when they are approached, these arbitrators are not ready to disclose the true facts regarding the present system of *ad hoc* arbitration in India. Due to this difficulty, the data on *ad hoc* arbitration used for making this report is largely based on the ones collected through interviews, consultations and conferences. Similarly, except for mediation, there were no separate and consolidated records of cases settled under section 89 CPC, posing great difficulty for the researchers to disaggregate the available data.

Chapterisation

The final report contains six chapters arranged in sequence. The first chapter introduces the problem of case pendency by analyzing the statistical data of cases pending in the high court and subordinate courts of these three cities. This chapter concludes that the effective functioning of the courts is seriously affected by huge backlog of cases.

The second chapter discusses the current status of ADR in India. This is a doctrinal analysis on the efficiency of the current ADR initiatives in India. This chapter among other things critically examines the provisions of Arbitration and Conciliation Act, 1996 and Section 89 of Code of Civil Procedure,1908, in detail.

The third chapter exclusively deals with the current trends in Mediation. The analysis of the effectiveness of mediation has been done with the help of empirical and statistical data collected by the researchers.

Similarly, the fourth chapter is an attempt to analyze the working of *ad hoc* arbitration in India. An endeavor is also made to compare the efficiency of *ad hoc* arbitration with that of institutional arbitration. This study is purely based on the empirical data collected.

In the fifth chapter the effectiveness of other ADR techniques is examined using empirical data. An extensive analysis of the working of *Lok Adalats* has also been made in this chapter as it has proved itself to be an institution useful to resolve disputes mostly among the general masses.

The last chapter concludes the study and gives recommendations for improving the effectiveness of ADR mechanism in India. It mainly recommends that an ideal institutional mode of ADR should be developed in India.