

**Use of Alternative Dispute Resolution methods for effective consumer protection- A
Critical Analysis**

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Introduction:

Dispute resolution has two prominent categories, namely Adversarial and Non-Adversarial i.e. Adjudicatory and Non-Adjudicatory. One of the most formal methods is Adversarial which includes trial and arbitration. This method, by virtue of being the most formalized methods, is also the most widely used methods of dispute resolution.² The Non-Adjudicatory methods of dispute resolution include Negotiation, Mediation, Conciliation, and *Lok Adalat*.

The differences between Adversarial and Non- Adversarial process

One of the most important differences between the two methods is that while the first method involves a legally set up, due procedure and procedural laws, the latter does not involve any due process.³ The Non-Adversarial system is not coercive and the parties can withdraw whenever they want.

The parties involved in a dispute have full control over the non-Adversarial system of dispute resolution. In the Adversarial system, the focus is on facts and goes strictly by the facts available on the table, whereas the non-Adversarial system considers relationships between the disputing parties.

The Adversarial system looks at past and is regressive in nature. It goes by set precedents and then arrives at a conclusion The Non-Adversarial system seeks to resolve issues in a manner that maintains the goodwill relationship of the parties involved and keeps their future in mind.⁴ The Adversarial system establishes liability, whereas the non-Adversarial system focuses primarily on maintaining or in fact utilizing the relationship between the two parties.

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² Rick Sarre, Alternative dispute resolution and non-adversarial regulation: why are they still not mainstream and can they ever become mainstream? Asia-Pacific Mediation Forum Conference, Adelaide, 29 November – 1 December 2001.

³ Australian Law Reform Commission, Discussion Paper 62: Review of the Federal Civil Justice System. Sidney (1999).

⁴ Judy Gutman, “The Reality of Non-Adversarial Justice: Principles and Practice”, 14 Deakin Law Review 29-51 (2009).

The first method is thus a rather divisive method, whereas the latter is a more constructive method aiming at arriving at rather amicable solutions for a given dispute.⁵

As is visible with the judicial system, the Adversarial system establishes a clear-cut winner and loser. The Adversarial system decides a winner and a loser involving lawyers and legal-experts whereas the non-Adversarial system looks for a solution that is acceptable for all the parties involved and the parties themselves play a crucial part in reaching a settlement.

Alternative Dispute Resolution solves issues in a cost-effective manner while preserving a healthy relationship between the parties involved in the dispute.⁶ ADR tends to find different ways (beyond regular litigation) which can act as a suitable substitute for litigation and can resolve grievances and disputes, ADR is a procedure that is widely recommended in order to reduce the number of cases by providing a cheaper, less adverse and economical type of justice that is quite semi-formal and less complicated in nature. Even Judges recommend ADR to reduce the number of court cases. The development of the information and the communication technologies which are especially based on internet communications has permitted the ADR services for moving into a whole new online virtual mechanism called online dispute resolution.

Problems in Indian Judiciary

Before understanding the problems of the judiciary, it is necessary to know some key concepts which define some problems in the judiciary. Report No. 245 of the Law Commission of India titled “Arrears and Backlog: Creating Additional Judicial (wo)manpower” gives the key concepts as under:

Pendency: Case filed but have not been disposed of irrespective of when it was filed

Delay: When the adjudication takes more time than normal time for a similar case.

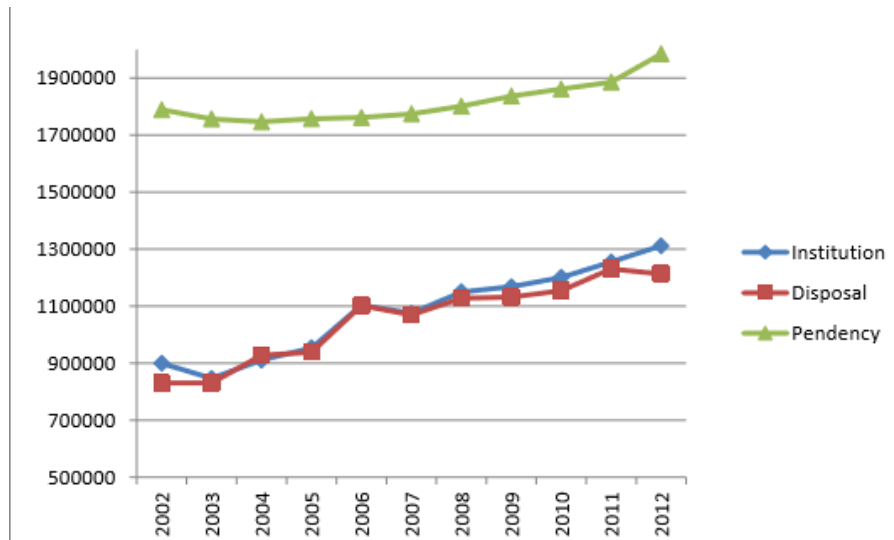
Arrears: Cases which are delayed more than the normal time but for valid reasons.

Backlog: If in a given time frame, the number of new cases filed is higher than the number of cases disposed of, then the difference between the two is called backlog.

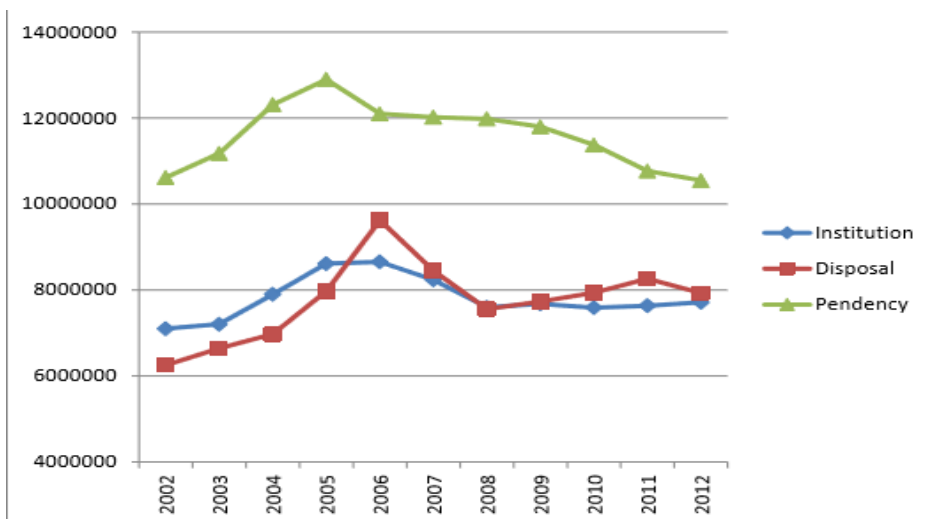
⁵ Harry N. Mazadoorian, “Putting together an ADR plan: The building blocks of a corporate program”, 3(1) Business Law Today 40-44 (1993).

⁶ Steven Shavell, “Alternative Dispute Resolution: An Economic Analysis”, 24(1) The Journal of Legal Studies 1-28 (1995).

The Report also gives the increasing pendency of cases in the judiciary. It is to be noted that the pendency of cases is on a rise in the higher judiciary while the disposal rate is constant in the lower judiciary.



Graph 1: Cases filed, Disposed, Pendent in the “Higher Judicial Service” during 2002-2012.



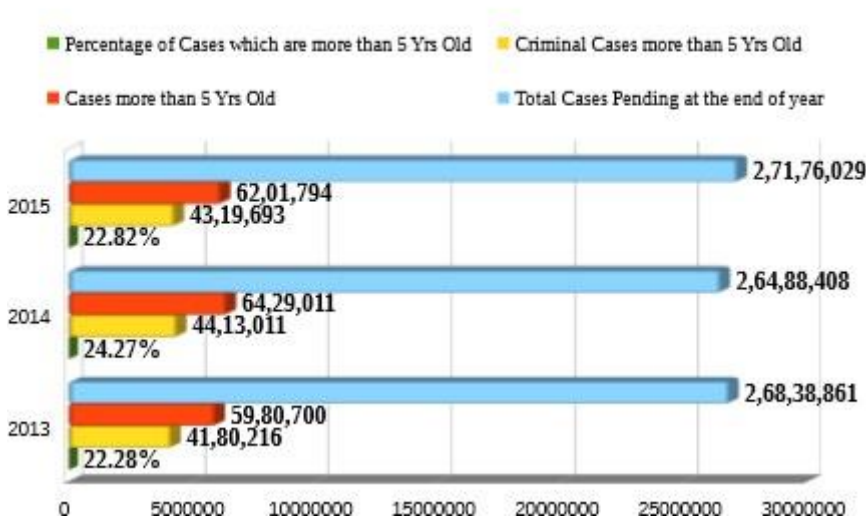
Graph 2: Cases filed, Disposed, Pendent in the “Subordinate Judicial Service” during 2002-2012.

A report by Centre for Research & Planning, Supreme Court of India, New Delhi titled “Subordinate Courts of India: A Report on Access to Justice 2016” highlights the problems of judiciary with respect to pendency and vacancies as under:

Year	Opening Balance	Institution	Disposal	Pendency	Cases more than 5 Yrs Old	Criminal Cases more than 5 Yrs Old	Sanctioned Strength	Working Strength	Vacancy
2015	2,65,09,688	1,90,44,877	1,83,78,256	2,71,76,029	62,01,794	43,19,693	20,558	16,176	4,382
2014	2,68,39,293	1,92,81,971	1,93,28,283	2,64,88,408	64,29,011	44,13,011	20,174	15,585	4,589
2013	2,69,07,252	1,86,70,907	1,87,37,745	2,68,38,861	59,80,700	41,80,216	19,526	15,128	4,398

Table 1: Cases filed, Disposed, Pendent in the subordinate courts during 2013 to 2015

Pendency of Cases in Subordinate Courts in States/UTs*: National Picture



Graph 3: Cases' pendency in the "Subordinate Courts in States/UTs" during 2013 to 2015

The Supreme Court and High Courts have realized that the task of clearing all the pending cases by the judiciary is next to impossible. They also suggest the use of ADR methods for clearing of the pendency of cases. The Legal Services Authority was set up with the purpose "to organize *Lok Adalats* to secure that the operation of the legal system promotes justice on a basis of equal opportunity."⁷ Supreme Court has released mediation training manual⁸ and various High Courts have framed the Rules for court-annexed mediations. ADR is now being considered as an essential element of the justice system by both the legislature and the judiciary in the country. The National Consumer Dispute Redressal Commission also has permitted the use of ADR for dispute resolution at consumer fora level.⁹

⁷ Preamble to the Legal Services Authority, 1987.

⁸ The same is available at:

<http://supremecourtindia.nic.in/sites/default/files/Mediation%20Training%20Manual%20of%20India.pdf>

⁹ *Bijoy Sinha Roy vs Lr. vs Biswanath Das*, 2017 (11) SCALE 391

Effectiveness of CPA, 1986

Evaluation Report on Impact and Effectiveness of Consumer Protection Act, 1986¹⁰

The impact of the Consumer Protection Act can be found with some statistical data retrieved from the research. The data says that, about 43.7 percent of the consumers who have gone through exploitation have stayed idle without filing complaint or any necessary action. This might be due to various reasons like financial inability of the exploited consumer, fear of the opponent, time issues and other unidentifiable reasons. In the end, all of them have just set the problem aside with no concern. The next case is quite similar to the first one but has got a difference in approach. About 41.7 percent of consumers have not taken the matter legally or just left it unnoticed. Instead, they have made a try to get the price of the defective product refunded. This category not only denotes price return, but also the replacement of the whole product. And 17.3 percent have tried to mobilise the issue. Out of 100, only four percent of the consumers have made complaints to the manufacturers and the producers of goods. Rest ninety-four percent were left ignored or did not complain even in the district forum. All these problems have a central reason, which is nothing but poor awareness about the act and the process. On seeing the knowledge or awareness level that has reached the public, 67.2 percent of the exploited consumers are unaware of the fact that there is something called Consumer Protection Act. Some know about the Act in depth and their percent is 10.2. The rest comprising of 22.6 percent have minimal knowledge about the Act and the redressal techniques available for affected consumers. The data retrieved has clear information with regards to even gender and age. In gender perspective, unawareness is seen in about 63.5 percent in male category, and 71 percent in female category. And with the view of age, 70.2 percent of people below the age of thirty are unaware of the Act and the 61 percent of people who fall above the age of fifty are with no knowledge about the Consumer Protection Act. These percent values are to make clear views on the present condition of the Act and to notify that more awareness is needed.

The first reason was that there were adjournments made without actual necessity at that place. As already mentioned, the cases and complaints made cannot be adjourned as and when required without any reason under the grounds of a “sufficient cause”. Also, the reason for these adjournments should be made as written record for later evidences. It accounts for twenty-

¹⁰ Indian Institute of Public Administration (IIPA), Evaluation Report on Impact and Effectiveness of Consumer Protection Act, 1986, (2013), *available at*: http://www.consumereducation.in/ResearchStudyReports/cpa_exec_sum.pdf (visited on: January 21, 2016).

seven percent of the whole reasons for the delay. The next reason would be poor administration. Poor administration here means the less skilled staff or inadequate number of workers in the commission for carrying out the whole process. Also, there should be an efficient administrative control within the commission to follow up the case and to make sure that all the cases admitted are brought for proceeding. Cases can at times be recorded as a disposed case even before the proceeding. Such errors occurred are purely due to improper administration. Support staffs are an integral part of any working body and when it comes to commissions handling consumer disputes, it is mandatory to have a very decent strength of support staff. There should not be work stoppage due to less support staff since it might interrupt a very expensive process. Apart from this proper administration is very necessary to maintain the infrastructure of the office as they may reveal the very first impression of the performance of the office. This reason amounts to about nineteen percent of the total reasons causing late disposal of cases. The last reason is bound to the consumer's nature or is a consumer's inherent disadvantage. Exploitation happens if the person harmed is uneducated. Not that educated people do not fall under the umbrella of exploitation, but the chances are high when it is about illiterates. It gives the confidence to the sellers or providers of a defective product or deficient service that the victim will not take further steps to file a case on him. There arise the problems for the uneducated victims. Now, this illiteracy or poor education stands as a reason for the delay in disposal of cases too. The victims who file case on the seller or provider basically suffers from the inability to survive the whole process without proper knowledge.

Legal documentation or any work requiring education will be a barrier to these victims and it finally prolongs the case. Hence, poor education will also be taken as a reason if there is a delay in the case disposal and this reason takes eleven percent share of the total reasons. Vacant positions of the President and Members of the commission takes a huge part in interrupting the services of the commissions. It is a known fact that if there are no appointed people in the respective posts, their responsibility will be left unnoticed or undone. The fact has proven in this case, and there has been a tremendous delay in disposal of cases due to vacancy of positions. The next reason is the limited or very less number of benches of the commissions. Restricted infrastructure and very less space may also be an issue for operation of any organisation. Similarly, poor infrastructure has created an impact on the cases involved and has created a situation of late disposal of cases. Insufficiency in the required tools to execute an operation is also a drawback of the infrastructure which leads to uncleared cases. Some cases

will demand for a clear investigation or analysis to arrive at a decision. In such a situation, there exists excess time duration of the investigation process resulting in the breakdown of the whole system even if one of the processes stop working or is held for any valid reason. Test reports are very important to provide a fair judgement or to make further move in a case. If there is a considerable delay in receiving the reports, there will definitely be delay in the process of clearing the case. The case might be held uncleared if the test reports completely don't reach the commission even after providing excess time. Starting from a basic business firm to the court/forum, training for every individual working is mandatory. Training and learning together is a process which should be indulged in all the organisations to preserve the rules and regulations set in it. If there is a member or a president in a commission without proper training, the duties allotted for them will not be efficient in the output. They will lag more in terms of quality and time while performing an operation of the commission. This condition also takes the case handled to a state of uncleared case or delayed disposal. Redressal may be slow even due to insufficient funds from the consumer's side. The complainant who has filed a case should be ready with the necessary finance to travel through the whole process without any interruption. The cases taken might not be redressed at its earliest if the complainant fails to make any required payment during the process. Thus, the financial status of the complainant is also an important factor to be taken into consideration to make sure that there is no delay in redressal. All these reasons are provided in values of percentage to show each reason's share in the total percent. They are as follows,

- Vacancy of positions – nine percent
- Limited number of benches – eight percent
- Poor infrastructure- seven percent
- Delay in lab testing- five percent
- Insufficient training- four percent
- Complainant's ability to pay – three percent

Minor reasons which amount to delay in redressal

- The summons and notices sent by the commissions may not reach the consumer or the complainant on time and here starts the issue of delay. The person receives it late, then responds late and finally the whole process becomes more time consuming making the redressal lingering. This delay in the receiving of the summons and notices is due to the channel by which they are sent. Postal couriers are the only means by which these notices are sent and fault from courier's side cannot be accounted for the delay in redressal or late delivery of the notices.
- Accumulation of uncleared or undisposed cases makes the commission unable to handle the newly admitted cases. A number of the case pending in the commission demands for redressal making the new cases delayed. And it goes as a cycle where the court or commission finally makes an increase in the pendency of cases.
- Funds for operation and carrying out the necessary processes in the commissions and forums are not available always. This poor financial status holds the process as and when there is a necessity. Thus, the source of money is a problem which makes the commissions unable to work.
- While appointing a judicial member, the qualifications needed are checked for but the training aspect is missed out. The member appointed in the commission holds only the qualification for the position and is unaware of the practices and customs of the commission. Training is thus a very important factor which decides the functioning of the commission and if it is a drawback, then the cases handled will be delayed in redressal.
- Another rare reason for the delay in redressal would be the illegal strikes happening around the state. Due to these unavoidable or undesirable happenings, the commission has to stop function for two or three days till the strike is closed. Meanwhile, the cases stay pending or will be redressed with the delay in future.
- Employee satisfaction is a catalyst for better output by an organization. The members of the commission should be given appropriate amounts of salary and incentives as and when there is a need. This is the only motivation which will lead to increased level of performance. But, unfortunately, the commissions have lost in this aspect by giving less salary to the members. Also, the transport facilities demanded by the members were not

made by the commission. All these issues have led to delay in redressal making it clear that poor compensation will end up in poor performance.

- There is one more situation where the case after passing the order, will stay uncleared. This is because the judgment made needs the approval of the district collector or the police department of the respective location. Hence, the implementation of the orders is becoming complex due to approval by various office bearers. If there is implementation of the commission, the number of cases pending will reduce to a great extent.

Members who feel that there is an efficient operation in the commission fall were 24 percent and the rest still have not realised or felt the empowerment in the functioning of the commission. They found few reasons for such a situation with close supervision and efficient analysis. The first reason was a very common one which pointed the delay in redressal. No matter how efficient a system is, if the factor called timeliness is lost the whole system stands unfit or non-productive. Having said this, the commissions should take measures in order to reduce the time taken for each case. The orders passed should be implemented/executed within the commission and its absence makes the members feel that the commission holds less power. The authority to pass orders after every case should be given to the commission which will indirectly create a positive impact on the time taken for the redressal of cases. Strict rules should be made regarding adjournments where the case cannot be adjourned according to the party's wish. No case can be adjourned without stating explicit and valid reason in writing. The members feel that the commission suffers from this control of adjournments and have stated that this is also a reason for inefficiency of the commission. The members have pointed the reason for the low efficiency of the commission as poor empowerment status of the commission when compared to the empowerment status of the civil courts. They feel that the rights and powers of the civil court is far more than the commission because of which the commission is quite not chosen as the best option to deal with cases. Also, on the part of compensation provided to the consumers or the plaintiff, the commission orders only a very less amount. Recovery and refund do not completely compensate the loss faced by the complainant. This reason completely eliminates the commission from being called as an empowered one.

State of the Indian Consumer 2012¹¹

Though the exploited consumers or the complainants can represent themselves in the commissions, only a few consumers do so and the rest finds a substitute for it. The consumers are mostly represented by the advocates in the State Consumer Dispute Redressal Commission and the District Consumer Dispute Forum. Other few will represent themselves by non-Governmental organizations or by the government. They are as follows,

- Self - representation -nine percent
- Representation by commissions and forums – eighty-nine percent
- Representation by government bodies and non-governmental organizations – one percent each

The summary of the survey

- The summary has come up with few findings relating to the commission and the behavior of the consumers.
- About three-fifths of the exploited consumers do not take the issue to the commission or civil court, instead, they deal it directly with the sellers or the last person of the supply chain from whom the product was purchased. Complaints are made directly to the seller without involving any legal body to address the issue.
- There is another group of consumers who have not taken any action for the loss they have faced. They have neither complained to the seller nor made the case to be addressed by the commission. This group accounts for about ninety-three percent of the whole exploited consumers. Another group of consumers accounts for three percent who have registered the complaint with the product's company. In the end, the survey reveals that only 0.3 percent of the affected consumers have really approached the consumer for a seeking redressal. This means that the efficiency and the existence of the consumer for a should be well communicated. More awareness programmes should

¹¹ Consumer Unity & Trust Society (CUTS International), State of The Indian Consumer Analyses of the Implementation of the United Nations Guidelines for Consumer Protection, 1985 in India (2012), available at: http://www.cuts-international.org/Cart/pdf/State_of_the_Indian_-Consumer.pdf (visited on: January 12, 2016).

be created in all possible areas for creating knowledge about these commissions in the minds of people. Also, the techniques of redressal should be informed so that a sense of trust arises and with that, they approach the commission for redressal.

- In the survey, about four-fifths of the respondents have marked that the process of redressal through these commissions as tedious. On seeing the reasons for such an answer, it is seen that the commissions have failed to make the process clear and simpler. The complexity of it has stopped many of the consumers from approaching the commissions for redressal. Also, three-fourths of the admitted cases were not resolved as desired. There were confusions and commotions with the case disposal. And among this, eighteen percent of the undisposed cases were handled by the higher authorities for redressal as an appeal. This change means that the lower authorities are quite inefficient in handling the case.
- Poor timing maintained for case disposal was also a finding of the survey. About two-thirds of the cases were not solved or provided with a judgment in a given time frame. Most of the cases were pending and it took a very long time to even initiate the case again. The survey says that the cases take more than the fixed time of 100 or 150 days to get solved. There are situations where few cases are left pending even for more than ten years. Adjournment, poor number of support staff and the illiteracy condition of the complainants may be the three reasons contributing for the delay in disposal of cases.
- On the fifth of the respondents marked a mistake in terms of money. They have felt that the method of redressal demand for more money. This expensive process thus stays inefficient due to direct costs that have to be paid by the consumes or the complainants.
- Also, there is unawareness about the inherent redressal mechanism provided by the company. This unawareness is seen in about fifty-five percent of the consumers.
- Seven percent of the consumers have a strong belief that the inherent redressal mechanism in the companies does not facilitate transparency in handling the issues. There is suspicion about the reliability of the company too.

- And there is one more crowd which does not even know that there is redressal mechanism outside the company. These people amount to about fifty-three percent and are more towards the redressal mechanism provided internally.
- Regarding the accessibility, the respondents have made points stating that the redressal mechanism cannot be accessed by a common man since those mechanisms are highly independent. Also, few others have stated that it is possible to access it easily. They are separated as thirty-eight percent in the first category and twenty-seven percent in the next category.
- A sense of trust is created only in twelve percent of consumers. This group strongly believes that the functioning of these redressal mechanisms is very positive and will be a one favoring the consumers. They also believe that the capability of redressing the issues and the level of security here in these redressal systems is high.
- From the consumer forum about thirty-four percent of people believe that consumer education will be helpful in making the redressal process a very smooth one. Also, the rights that can be availed by the consumers should be informed to them so that they know how to handle various issues. Another group of members holding twenty-four percent, opine that the consumers can be provided with legal and technical assistance to make the process more convenient.
- Finally, only twenty-four percent of the State Consumer Dispute Redressal Commission has accepted that they are sufficiently powered to try all cases. Rest of them are still in the status of a dilemma to decide on the efficiency of the commission.

Thus, it is clear from the above that neither the mainstream judiciary nor the quasi judicial structure under the Consumer Protection Act, 1986 are good for the consumers who want swift justice which is inexpensive as well.

Importance of Alternative Dispute Resolution

Alternative Dispute Resolution is regarded as a grievance solving system outside the doors of the court of the country. Alternative Dispute Resolution mechanisms give the parties the freedom and flexibility to solve disputes with harmony and with ease instead of taking it to the

court for claim via the formal procedure of the court.¹² Alternative Dispute Resolution is now an important part of the civil judicial system of the country and has developed on its own way.¹³ ADR is the result when the search is of a simple, fast and flexible dispute solving system. The main objective of ADR is to avoid vexation, high expenses and time consumption in decision making which has made it the ideal form of seeking Justice, the Alternative Dispute Resolution techniques are conciliation, arbitration, mediation, hybrid procedures, and negotiations. Parties can exit the ADR methods when they wish and all methods in the ADR methods are voluntarily reached.¹⁴

ADR in other laws

ADR methods have been extensively used in laws. Some of these are mentioned below:

1. Industrial Disputes Act, 1947: Section 2(p) of the Act defines Settlement as – “(p) "settlement" means “a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer;”

The Conciliation officers are given the duty of mediating and resolving the disputes amicably as given under Section 4(1).

“(1) The appropriate government may, by notification in the Official Gazette, appoint such number of persons, as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.”

2. The Hindu Marriage Act, 1955: The provision provides that the court shall give due consideration towards the counseling and reconciliation of the parties.

“Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and

¹² Faye A. Silas, “Settling disputes: Law firms get into ADR act”, 72(4) ABA Journal 37 (1986).

¹³ Anurag K. Agarwal, “Resolving Business Disputes Speedily”, 41 (21) Economic and Political Weekly 2417-2418 (2006).

¹⁴ Robert D. Raven, “ADR: New Options for Clients” 75(6) ABA Journal 8 (1989).

circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.”¹⁵

3. The Family Courts Act, 1984: Section 9 of the Family Courts Act says that wherever possible the Family Court shall try to settle the matter.¹⁶

“In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

If in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.”

It may also be noted that while Section 89, CPC confers the jurisdiction on the court to refer a particular dispute under its consideration to an ADR mechanism, it is Rules 1A, 1C of Order X that lay down the manner in which the court is supposed to exercise its jurisdiction. It may be noted that the number of options available for availing ADR path, permit the parties to choose the process by consensus. If the consensus is not reached, the mechanism allows resuming of the legal process.

Mediation under Consumer Protection Bill, 2015

As discussed in the previous chapter, the Consumer Protection Bill contains a separate chapter on Mediation. The process of mediation is briefly explained below.¹⁷

After the admission of a complaint in the district forum, if there is any sign present in the complaint showing the possibility of redressing it through mediation, then the commission can direct the case to the mediation process. However, this cannot be done in cases where there are loss or serious conditions of injury or death to the consumer. The cases can be directed for mediation after one hearing or at any stage during the proceeding.

¹⁵ Section 23(2)

¹⁶ Section 9

¹⁷ Chapter V of the Bill

There should be proper guidance given by the district forum regarding the processes of mediation. Also, the decision of the consumers to opt for mediation is to be considered before directing them to such a settlement.

After arriving at a decision to solve the dispute through mediation, it is mandatory for the parties to submit an application to the commission regarding the use of mediation for redressal. This application has to be made within five days of the commission's direction for redressal through mediation. After this application it is the duty of the commission to refer the matter for mediation which should possibly be done within five days after receiving the application. Further, the mediation process is carried out by the Chapter five provisions of the Act.

The state governments can establish Consumer mediation cell attached to district forum of each district and state commission of the state. In the similar way, the Central Government can have Consumer mediation cell attached to the national commission.

The other duties of the mediation cell are to maintain a regular and clear database on a daily basis which is submitted as a report every month. The mediation cell should also maintain the list of trained mediators in the centre to carry out the mediation process. The appointment of mediators by the national commission for handling or settling a case is done by choosing a panel of mediators and putting it on the notice board or the official website of the national commission.¹⁸

The national commission alone holds the power to make appointments of mediators with the assistance or recommendation of the selection committee consisting of the President and two other members of the national commission. The same procedure is applied to state commissions and district fora *mutatis mutandis*. It is necessary to get the consent from the respective mediators in handling the case. Without this, the commissions cannot put up the names of the appointed mediators in the notice board and the website.

The commissions can look for qualified mediators by checking their success history in settling disputes through mediation. The suitability of the mediators to carry out the process should also be checked for before nominating them for mediation.

Parties involved in the mediation process may offer a mutually acceptable solution at any stage of the proceeding without "prejudice". Also, offers can be made "with prejudice" at any stage

¹⁸ Rick Sarre, Alternative dispute resolution and non-adversarial regulation: why are they still not mainstream and can they ever become mainstream? Asia-Pacific Mediation Forum Conference, Adelaide, 29 November – 1 December 2001.

of the proceeding. These two incidents cannot happen without the notice to the mediator involved. After arriving at a settlement, the commissions can pass the orders with the recorded settlement. This happens seven days after the receipt of the settlement by the commission and thereby the case is disposed. If the settlement has solved only few issues of the case, then the national, state commission or the district forum can pass orders with other terms and conditions including the settlement.¹⁹

Conclusion

It is not strange in India to find a law which has been ineffective. Even Consumer Protection Act, 1986 which aimed²⁰ at providing swift justice which is cost and time effective failed the consumers of this country with many issues. Even otherwise ADR methods especially mediation and conciliation can be very effective for consumers in terms of both time and cost. The government has realized this and thus, brought forward the new Bill which envisions the rationale for having mediation as a precursor for consumer litigation in India.

¹⁹ Australian Law Reform Commission, Discussion Paper 62: Review of the Federal Civil Justice System. Sidney (1999).

²⁰ Consumer Unity & Trust Society (CUTS International), State of The Indian Consumer Analyses of the Implementation of the United Nations Guidelines for Consumer Protection, 1985 in India (2012), available at: http://www.cuts-international.org/Cart/pdf/State_of_the_Indian_-Consumer.pdf (visited on: January 12, 2016).