Alternative Dispute Resolution in India and the United States: A Comparative Analysis and Recommendations to Improve Efficiency and Effectiveness in Indian ADR

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Introduction

Access to the courts is an indispensable right given to citizens in democratic countries as courts are important granters of justices in most cases. However, litigation is not always necessary or efficient in many areas of the law, including civil and labor and employment law. Many times, parties have the opportunity to settle their disputes on their own or by using other simpler, less expensive, faster, and more efficient methods. In fact, in the United States, the above stated reasons have led to the use of non-formal justice for legal dispute resolution, or otherwise known as alternative dispute resolution (ADR). ADR is the use of various methods to resolve a dispute as an alternative to litigation. This ultimately reduces the burden on the courts, and allows for easier, more cost effective, and more efficient way to resolute disputes. ADR can be very useful for all parties involved and it is therefore not surprising that ADR is very prevalent as opposed to litigation in the U.S. Unlike the U.S. with its substantial experience in ADR, the system is not very prevalent nor effective in India largely due to the intervention of employer and employees' unions and people representatives. The purpose of this paper is to compare ADR in the United States and in India, and to consider some methods for increased effectiveness in India.

ADR in the U.S.

Development of ADR in the U.S.

ADR in the United States originated from English common law is speculated to have first existed in New York City during the Dutch and British colonial periods whereupon pilgrim colonists preferred to use their own mediation process to deal with community conflicts instead of the courts.[1] ADR was used sporadically hence forth and it was not until the late 19th century did ADR receive formal institution in the U.S. In 1898, Congress authorized mediation for collective bargaining disputes such as the Board of Mediation and Conciliation for railway labor and the Federal Mediation and Conciliation Services (FMCS). Still, ADR was not seen as an adequate alternative to litigation but rather a tool to avoid unrest.

In the 1920s, as states began taking more interest in systematic ADR as an alternative to litigation, modern arbitration laws were passed, and Congress enacted the Federal Arbitration

[1]Michael McManus & Brianna Silverstein, "Brief History of Alternative Dispute Resolution in the United States," Cadmus Journals (2011).

Act, all of which strengthened the ADR movement in the U.S. The largest improvement to the nature of ADR was that it allowed authorization for courts to enforce ADR remedies.[2] Further, in 1926, the American Arbitration Association (AAA) was formed provide guidance to ADR methods.

The ADR movement became especially prominent in the 1970s in the need to address increased delay and expense in litigation.[3]The system continued to grow in popularity including at the governmental level as state and federal governments began using ADR to facilitate speedy resolutions. In 1998, Congress adopted the Alternative Dispute Resolution Act which requires federal district courts to establish at least one ADR program and to develop procedural rules for its use.[4]Perhaps most notable for its success was when ADR was introduced at the academic level as universities and law schools provided ADR training and relevant courses and degrees, all of which seek to introduce students away from traditional litigation and towards ADR. Today, ADR has become institutionalized in the legal field as law firms, businesses, and individuals have commonly turned to the mediation, negotiation, or arbitration to settle disputes in a faster and more cost effect manner compared to traditional litigation. ADR has thus become institutionalized in the U.S.

ADR Methods

Currently, there are over twenty different alternative proceedings for settling legal disputes.[5] The types of ADR can be divided into three categories: adjudicative, evaluative, and facilitative.[6] The most common forms of ADR are described below.

- *Adjudicative ADR*: A neutral, impartial facilitator serves as the adjudicator or decision maker. This system is preferable to parties unwilling to negotiate yet still prefers to avoid litigation.

[2]Michael McManus & Brianna Silverstein, "Brief History of Alternative Dispute Resolution in the United States," Cadmus Journals (2011).
[3]Scott Brown, Christine Cervenak& David Fairman, "Alternative Dispute Resolution Practitioners Guide," USAID, n.d. Web.
[4]Elena Nosyreva, "Alternative Dispute Resolution in the United States and Russia: A Comparative Evaluation," Annual Survey of International and Comparative Law (2001): Vol. &L Iss: 1, Article 3.
[5]"Dispute Resolution Processes." American Bar Association. ABA, 2017. Web.
[6]Michael McManus & Brianna Silverstein, "Brief History of Alternative Dispute Resolution in the United States," Cadmus Journals (2011).

- Arbitration: Arbitration is a binding adjudicative process headed either by one or several individuals to make a decision about the dispute after receiving evidence and hearing arguments from both sides. Arbitration is regularly used in cases requiring expert decision. Parties must agree on the rules of procedure and amount of discovery allowed and the determination of the arbitration is binding.
- Neutral Fact Finding: Neutral fact-finding is an adjudicative procedure used in situations where parties cannot agree on the facts or expertise is necessary.

- *Evaluative ADR:* Evaluative ADR is a process where lawyers present their case and receive feedback on their arguments.
  - Peer Evaluation: In peer evaluation, attorney appear before a neutral attorney of panel of attorneys and present the case. The panel may offer insights, recommendations for argument development, and recommendations for settlement.
  - Lay Evaluation or Summary Jury Trial: In lay evaluation or summary jury trial, attorneys make an abbreviated case presentation to a mock jury, party representatives, and a presiding judge. The mock jury renders an advisory verdict that can be helpful in getting a settlement. This proceeding gives the party a sense of how an actual jury may decide.
  - Judicial Evaluation: A retired judge provides feedback to the parties of the merits of the dispute.
- *Facilitative ADR*: In facilitative ADR, the neutral's decision is not binding and the neutral does not reach the merits of the dispute but instead serves more as an advisor to the parties to encourage discussion and settlement.
  - Mediation: Mediation is the least adversarial form of ADR as the mediator helps the parties identify the issues, frames the discussion, and generate options for settlement. The goal is to bring opposing parties together to find a resolution that is mutually acceptable.
  - Conciliation: Conciliation is a more informal process to mediation whereupon the conciliator may hold conversations over telephones as opposed to regular in-person meetings in mediation.

Benefits

Efficient

Many times, courts can be employ complex, lengthy procedures that can cause significant case backlog, whereas ADR can streamline the procedures to resolve disputes quicker and accelerate case disposition. A dispute can be settled much sooner with ADR compared to litigation by weeks and even months. In a study conducted by the State Justice Institute at the University of North Carolina, a comparison of cases assigned to mediated settlement conference (MSC) and cases directed to the superior court show that the MSC program reduced the median filing-to-deposition time by about seven weeks (USAID article, 19, find citation).

Less Costly

Parties save money they would have spent on attorney fees, court costs, experts' fees, discovery, and other litigation expenses. Especially with how long litigation tends to be, the expense incurs quickly and vastly, making ADR a better alternative. One study done by the World Bank measuring the effectiveness of ADR found that ADR in general saved about $500 per party than had they gone to litigation.[7] It is important to note that cost within ADR varies as well; however, in general, most of the types of ADR have the potential to be more effective and less costly than litigation.

Personal

As a more informal process, ADR provides a greater platform for parties to share their stories and explain exactly what they want, which is really important for integrative bargaining. Ultimately, ADR afford parties with a greater role in shaping the process and the outcome through more direct participation in the process and in designing settlements. According to a USAID article written by…., many users of ADR services in the United States cite the flexibility and creativity of the process and settlements as better for the parties than the decisions produced through litigation.[8]Additionally, ADR programs may take into local conditions as opposed to courts which tend to be more centralized. Lastly, ADR can deal with specialized cases that courts are not as well-equipped to handle such as some labour-management disputes. Specialized ADR programs focus on specific types of technical or complex disputes which can be more effective and produce better results than courts.

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[7]Inessa Love, "Settling out of Court: How Effective is Alternative Dispute Resolution," The World Bank (2011).

[8]Scott Brown, Christine Cervenak & David Fairman, "Alternative Dispute Resolution Practitioners Guide," USAID, n.d. Web.

Confidential

Public records are not kept which makes ADR attractive for disputants who would prefer to keep facts of the case private. This may be beneficial for many businesses, sexual assault victims, or anyone else who would otherwise prefer the public not to know.

Increased Access

ADR programs can increase access to justice for social groups that are not adequately served by the judicial system. Litigation requires resources that are generally not available to some low-income communities, such as attorney costs. Additionally, distance from courts impairs effective use for rural populations and ADR programs can be adapted to set up in virtually any community.

Increase Satisfaction

With greater control over the process and outcome and a result of the other aforementioned benefits, satisfaction among the parties tend to be higher in ADR systems. Additionally, in litigation, there is usually a winner and loser. The winner may not be completely satisfied, and the loser is definitely not happy. ADR can help parties achieve mutual agreement, which can increase satisfaction for both parties.

Preserve Relationships

ADR is usually a less adversarial and hostile way to resolve disputes. For example, a mediator can help parties communicate their needs and understand the other parties point of view which can be advantageous for parties that have a relationship to preserve.[9] Additionally, in the absence of an adversarial system where usually one party is dictated the winner and the other a loser, the parties are free to come to a mutual agreement where both sides leave happy and the relationship undamaged.

ADR Success in the United States

According to the statistics provided by the Department of Justice, in 2017, over $15 million was saved from litigation or discovery expenses, 14,000 days of attorney and staff time

[9]"ADR Types & Benefits." Judicial Council of California, n.d. Web. 10 July 2018.

saved, and almost 2,000 months of litigation avoided.[10] Clearly, ADR is a more efficient and cost-effective means to resolving disputes, thereby highlighting its significance.

In terms of employment relations in America, there has been an observed rise of employment arbitration.[11] This is can be attributed to the relatively large punitive damage awards of litigation that many employers do not want to risk and also as a result of many courts choosing to defer cases to ADR to prevent case backlog. This can be beneficial to both parties as employees tend to win larger settlement rates than through litigation. Many consumer and employment contracts now contain mandatory arbitration clauses as a result.[12] The success of mandatory arbitration procedures in terms of length of procedure and settlement rates remains highly contested but the fact remains, the benefits of ADR stem larger than just length and cost which can even larger implications.

Perhaps the most notable success of ADR in the U.S. can be attributed to the Federal Aviation Administration (FAA).[13] Through an analysis of the 2013 case management statistics provided by Office of Dispute Resolution for Acquisition, it is observed that there were 893 cases filed and of those, 124 were considered pre-dispute and of those, 97% was resolved through ADR and only 2 cases resulted in litigation. Out of the 893, 20 were contract disputes and of which, 182 (90%) was resolved via ADR and the remaining 20 went through adjudication. This scenario can observed in many industries in the United States including businesses, construction, private matters, and many more. The success of the programs can perhaps be attributed to increased awareness of ADR because of the cost and time savings, among the other aforementioned benefits.

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[10]"Alternative Dispute Resolution at the Department of Justice: Statistical Summary," The United States Department of Justice, n.d. Web. 10 July 2018.

[11]Alexander Colvin & Kelly Pike, "The Impact of Case and Arbitrator Characteristics on Employment Arbitration Outcomes," *Cornell University ILR School*, 2012.

[12]Carrie Menkel-Meadow, " Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the 'Semi-formal'," Georgetown University Law Center, 2013.

[13]"Office of Dispute Resolution for Acquisition: Case Management Statistics," Federal Aviation Administration, 2013.

India ADR

Dispute Resolution Process in India

Section 10 of the Industrial Disputes Act provides that when an industrial dispute occurs, the appropriate government may refer the industrial dispute to:

1. to a works committee, or
2. to conciliation officer, or
3. to a board of conciliation officers, or
4. to an arbitrator, or
5. to a court of inquiry, or
6. to a labour court of adjudication, or
7. to an industrial tribunal or national tribunal to promote settlement. [14]

Any employer or workman must notify the appropriate government that an industrial dispute exists who then refers the dispute. The procedures are more closely outlined below:

Works Committee

According to Section (3) of the ID Act, the appropriate government may require the employer to constitute a 'Work Committee' to resolve an industrial dispute. The commute shall consist of equal number of representatives of employers and workmen engaged in the establishment. The representatives of the workmen shall be chosen from the establishment. Works committee deals with the workers problem arising day to day in the industrial establishment

Conciliation Officer

According to Section (4), the appropriate government may appoint a conciliation offer to mediate a dispute where bilateral discussions will be held. The government maintains a system of conciliation officers at the district, regional, and state level to serve as conciliation officers.[15] The officer is empowered to inquire into the dispute and suggest solutions to bring the parties to an agreement. It closely resembles the mediation process and in the case of the private sector, the solutions need not be accepted by the disputants. If the conciliation officer fails to resolve the dispute, he may submit a failure report of the meeting with his recommendations to the appropriate government. The government may then decide to refer the dispute to the board,

[14] S. K. Malik, *Commentary on the Industrial Disputes Act*, 1947 (Jodhpur: Rajasthan Law Hose, 1998), 384.
[15] Ibid.

labour court, or the tribunal for adjudication. Workers are prohibited from going on strike during the pendency of conciliation proceedings, similarly the employers are prohibited from declaring lockouts.

Board of Conciliation

According to Section (5), the appropriate government may constitute a Board of Conciliation to settle an industrial dispute. A board shall consist of an independent chairman and two or four other members. The chairman is independent of the parties and the other members are appointed to represent the parties to the dispute. In case of failure of settlement, the board should send the government a report of facts relating to the dispute and the board's opinion.

Arbitration

Under section 10(a) of the ID Act, parties may agree to refer the dispute to arbitration any time before it is referred to adjudication. The Act requires parties to sign an arbitration agreement specifying the terms of the reference and the names of the arbitrator(s). Once the agreement is signed, the government has the power to prohibit any strikes or lockouts during the pendency of the dispute. The arbitrator's decision is binding.

Court of Inquiry

Section (6) establishes the court of inquiry to investigate any matter in connection with a dispute. The court's only purpose is to inquire and submit its findings to the appropriate government. Like labor courts and industrial tribunals, the court has powers equivalent to a civil court. The court of inquiry has a time limit of six months from the commencement of the inquiry to submit its report to the appropriate government. The government occasionally uses the court to buy time or to cool off hot-headedness that might arise form an industrial dispute.[16]

Labour Court

Under 11 and 11(a) of the ID Act, the government may refer industrial disputes relating to any matter specified in the Second Schedule for adjudication.[17] Second Schedule includes matters connected with disciplinary action taken by the employer or his workmen, illegal lockouts and strikes, and interpretation of standing orders. Generally, a labour court consists of a single person with specified qualifications. Decisions of the labour court may be appealed by either party in the high court.

[16]Paul Lansing & Sarosh Kuruvilla, "Industrial Dispute Resolution in India in Theory and Practice," Cornell University ILR School, 1987.

[17] Industrial Disputes Act, 1947.

Second Schedule:

a. The propriety or legality of an order passed by an employer under the standing orders;
b. The application and interpretation of standing orders;
c. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
d. Withdrawal of any customary concession or privilege; and
e. Illegality or otherwise of a strike or lock-out.

Industrial Tribunal

The appropriate government may refer under Section 10(1)(d) to the industrial tribunal for adjudication for disputes relating to matters specified in the second or third schedule in the Industrial Disputes Act. The tribunal shall consist of one person of highly qualified credentials. The tribunals are set up to complement labour courts and are required to follow the general principles followed in all civil courts.

Third Schedule:

a. wages including the periods and mode of payment;
b. compensatory and other allowances;
c. hours or work and rest intervals;
d. leave with wages and holidays;
e. bonus, profit sharing, provident fund, and gratuity;
f. classification by grades;
g. rules of discipline;
h. rationalization;
i. retrenchment and closure of the establishment; and
j. any matter as may be prescribed.

National Tribunal

National tribunals are appointed by the central government to adjudicate matters of national importance or disputes that are likely to affect industrial establishments in more than one state.

Types of Industrial Disputes[18]

Interest Disputes: Arising out of deadlocks in negotiation for collective bargaining

Grievance Disputes: may pertain to discipline, wages, working time, promotion, rights of supervisors etc. also sometimes called interpretation disputes.

Unfair Labour practices: those arising out of rights to organize, acts of violence, failure to implement an award, discriminatory treatment, illegal strikes and lockouts

Recognition disputes: over the right of a trade union to represent class or category of workers.

Development of ADR in India

India has a long history of dispute resolution with the earliest recorded instances dating back to the centuries before Christ with the *panchayat* system. This system consisted of a group of elders and influential members of a village settling disputes.[19] During the Muslim rule in India, the dispute resolution system using a *Kazi* was utilized whereupon the *Kazi* decided a case by getting disputants to agree to a solution through conciliation.

Formally, India was exposed to ADR with the Trades Disputes Act of 1929. The object of the Act was to provide a conciliation process to bring settlements of industrial disputes through the creation of the Board of Conciliation and Court of Inquiry. However, this Act had its severe limitations as it prohibited strikes and lock outs and the decisions passed by the Board of Conciliation and Court of Inquiry were not binding. This was changed with Rule 81A of the Defense of India Rules which empowered the central government to refer to disputes compulsorily to adjudication or voluntarily to conciliation and enforce the awards. This rule was embodied in the Industrial Disputes (ID) Act of 1947.

Today with the backlog of cases in courts across the country slowly being reduced, ADR is increasingly being explored. However, ADR in India is still relatively in its infancy stage. India's first arbitration enactment was the Arbitration Act of 1940. However, arbitration under this law was never effective and it and ultimately led to litigation as a result of the challenges to the awards. In order to make arbitration more effective, the government enacted the Arbitration & Conciliation Act of 1996 which said that the award can be challenged only on limited ground and in the prescribed manner and ultimately, the Act provided a statutory framework for dispute

[18]R.K.A. Subrahmanya, "Labour Adjudication in India: Legislation and Trends," Web, n.d.

[19]Murali Neelakantan, "Conciliation and Alternative Dispute Resolution in India," Lawasia Journal (1998): 143-152

resolution. However, the act only regards civil matters and there is no specific act that pertains to the whole of ADR in India, thus representing a need to improve the current system.

Litigation in India—The Need for ADR

With over 1.3 billion people, India is the most populated democracy. Despite various autonomous arbitral bodies and provisions for arbitration and conciliation for particular categories of cases, litigation in India continues to remain popular.[20] The current situation of litigation in India is enumerated below:

Overburdened Judiciary

India's lengthy court procedures and complex systems of reviews, revisions, and appeal overburden the court system. The hierarchy of courts, with appeals after appeals adds to the magnitude of the problem. According to the Press Information Bureau of the Government of India, there are 8,234,281 number of pending civil court cases in District and Subordinate Courts as of 2014 and of those, 611,658 have been pending for more than 10 years.[21] Those are just civil cases of District and Subordinate Courts. In total, there are over 300 million cases pending in the different courts and with the present rate of disposal, it would take over 300 years to clear the entire backlog.

Inadequacy of judiciary to meet the challenges of the total population

Insufficient number of judges combined with the complex procedures by the courts exacerbates the issue as vacancies in the courts climbs to an all-time high. As of December of 2017, there were 5,984 vacant judge posts out of the 22,677 sanctioned positions existing in the subordinate courts, representing a 26% vacancy.[22] In the high courts, out of a total 1,079 sanctioned positions, 411 remain vacant (38%) as of July 1, 2018.[23] And in the Supreme Court, out of total 31 sanctioned positions, 8 are vacant (25). This in total represents a 27% vacancy in the Indian court system. With only 73% of the needed judges to hear over eight million cases, the system is largely unable to meet the challenges of the total population.

[20]Janet Martinez, Sheila Purcell, Hagit Shaked-Gvili, & Mohan Mehta, "Dispute System Design: A Comparative Study of India, Israel, and California," Cardozo J. of Conflict Resolution, 14:807.
[21]"Pending Court Cases," Press Information Bureau: Government of India: Ministry of Law & Justice 2016, Web.
[22]Pradeep Thakur, "Vacancies in Lower Courts at All-Time High," Times of India, 2018, Web.
[23]"Vacancy Positions," Department of Justice: Appointment of Judges: Vacancy Positions, 2018, Web.

State is the Largest litigator

The central and state governments are the single largest litigants, abetted by government owned corporations, semi-government bodies and other statutory organizations.

Time taken in disposal of cases

The average time taken by Indian courts in deciding cases can range between five to fifteen years.[24]

Factors Hindering ADR in India

Perhaps one of the main issues preventing ADR from becoming as effective as possible is its implementation. The success of mediation greatly depends on institutionalizing it.[25]

Lack of Efficiency

In one research survey measuring perceived delays in arbitration proceedings, it was found that from 27% of respondents indicated that 25% of their cases took more than 2 years to settle and 12% of respondents reported that 75% of their cases took more than 2 years to settle.[26] Additionally, according to another study to examine the effectiveness of arbitration, it would was discovered that on average the total time to conduct and complete an arbitration process is 83 months or close to 7 years.[27] It takes almost 10 months alone to appoint an arbitrator, 50 months to conduct the first hearing, 22 months to complete the remaining hearings (including submission of briefs, discovery, etc.), and 2.2 months to publish an award. The study suggests that there are significant delays at virtually every stage of the process.

Lack of Awareness

Perhaps one of the largest reasons for the failure in implementation of ADR in India is the lack of awareness of the system and of the existing provisions in the law. The legislation

[24]S. K. Verma, S. C. Srivastava & Geeta Obrai, "Dispute Resolution Process in India," Institute of Developing Economies, Japan, 2002.
[25]Vishnu Konoorayar, K. N. Chandrasekharan Pillai & Jaya V. S., "Alternative Dispute Resolution in India-ADR: Status/Effectiveness Study," Social Science Open Access Repository, New Delhi: 2014, 95.
[26]Amit Moza & Virendra Kumar Paul, "Review of the Effectiveness of Arbitration," American Society of Civil Engineers, 2016, 2.
[27]Ibid, 4.

exists on the constitutional level but not much effort has been made to build awareness of ADR as an alternative to litigation.

Public Perception

ADR is regularly seen by the public as less than way to settle disputes compared to litigation. This can be attributed to the public's distrust of ADR and even the legal system as a whole due to inordinate delays and costly affair of litigation. Additionally, ADR methods in India are seen by many individuals as a cheaper system than litigation and therefore view it as the system lower income communities use to resolve issues.

Legal Education

ADR methods are not as widely taught and practiced in law schools in India, in comparison to the United States. ADR clinics are few, arbitration and conciliation proceedings are not specialized, and there is no encouragement by law schools to take on professions in ADR. Additionally, as a result of no legal education and no degree allow an individual to specialize in ADR, there is no specific profession. Many conciliators and mediators are retired judges or currently practicing attorneys so there is no specialization.

Absence of Quality Training Programs

The United States Federal Mediation and Conciliation Service is a reputable organization that provides a well-trained body of mediators, with enough time to handle various disputes, thus rendering the service effective. In contrast, the Indian conciliation and arbitration officers lack sufficient quality training, infrastructural support systems such as information, legal and administrative support, and time to be effective.

Lawyer Interests

Many times, legal professionals will suggest by default litigation to solve disputes because litigants and courts have an active interest in promoting litigation to use their services. As a result, this can mean legal professionals not referring to ADR when matters would be perfectly compatible in an ADR process.

Recommendations to Improve ADR in India

One of the main pitfalls of usage of ADR programs is its lack of implementation in society. The following recommendations are steps that can be taken to institutionalize ADR in society to inform more communities, dispel negative attitudes of the methods, and ultimately, increase its usage.

Ensure Efficiency of the Processes

The dispute resolution process in India is inefficient and can thereby become ineffective. This is largely due to the timely measures of the proceedings. To ensure efficiency with the proceedings, the Arbitration and Conciliation Act, 1996 should be amended to include more subjects in addition to civil law and should include a time limit for arbitration proceedings. Additionally, a provision should be added to mandate parties to stipulate on certain facts of the case and thereby eliminating or closely limiting briefs, discover, and time-intensive reliance on expert testimony. When increased time is spent on these proceedings, the cost of ADR begins to closely resembles litigation. To improve the current ADR processes, there needs to be assurances to parties and potential parties that the ADR is a more efficient alternative to litigation.

In order to ensure efficiency of arbitration, the Act should lay down a fixed period of 30 days for the appointment of an arbitrator and set arbitration fee ceilings to ensure accessibility and remove public doubts of collusion among parties and arbitrators. Alternatively, the arbitrator appointing authority should maintain a list of arbitrators that cases can actively be referred to them, which would mean all arbitrators would have to formal register with this authority, and this would also ensure credibility.

Reduce Delays in Hearings

It can be seen from the earlier cited research that the hearings comprise a large part in the inefficiencies of ADR methods, largely from delays. In order to reduce the delays in the hearings, documents should be submitted pre-trial, briefs and discovery should be simplified, and a page limit established, and any delayed submission of documented should automatically be eliminated.

Supportive Judiciary

ADR was never meant to be a substitute for litigation but instead as a complement. The State has a duty to see that the legal system promotes justice; but how can this happen with the significant case backlog causing extreme delays and depriving individuals with the due diligence and justice they deserve. ADR is institutionalized properly as a complement to litigation can be a vital too for easy and early settlement of disputes.[28] The judiciary should also more concretely and definitively decide on the circumstances under which a judicial intervention is required to reduce the amount of cases referred to adjudication.[29] Additionally, institutional arbitration and mediation should be promoted in cases of settlement outside the court. Establishment of institution with sufficient backup supplemented by the generation of a dispute resolution culture among the public.

Increase ADR Training

A national institution should be developed, similar to the American Arbitration Association or the Federal Mediation and Conciliation Service in the U.S., to promote ADR in India—this would mean imparting training to arbitrators/mediators and to provide facilities to conduct processes. Additionally, the appropriate government should also look to train its own officers on conciliation and mainly, arbitration to have a constant internal pool of arbitrators. This will reduce reliance on departmental arbitrators who are already few in numbers and thus reduce workload.

Ensure Accountability of Arbitrators.

In a case study done by the Indian Law Institute comparing the effectiveness of ADR in Delhi, Bangalore, and Mumbai, it was observed that ADR in Delhi experienced higher success rate compared to ADR in Bangalore. This was observed from the higher percentage of cases mediated and settled through mediation in Delhi.[30] From a study of two mediation centers in Delhi, it was shown that 65-79% of cases were settled through ADR in comparison to a mediation center in Bangalore showing only 55% settlement through ADR. The principle difference among these centers is that in Delhi judicial officers act as mediators whereas

[28]Vishnu Konoorayar, K. N. Chandrasekharan Pillai & Jaya V. S., "Alternative Dispute Resolution in India-ADR: Status/Effectiveness Study," Social Science Open Access Repository, New Delhi: 2014, 78.
[29]Ibid, 80.
[30]Ibid, 93.

Bangalore advocates act as mediators. This is very important in increasing the usage and effectiveness of ADR because mediation by judicial officers seems more acceptable by the public than mediation by advocates.

Additionally, in order to dispel any attitudes of corruption by the public, there needs to be a code of conduct to ensure the accountability of arbitrators. This code of conduct should regulate and maintain behavior of arbitrator both within and out of proceedings, discussion with individual parties outside proceedings, and should regulate fees asked by arbitrator.

Increase Awareness of ADR

In some situations, the judicial system or new ADR mechanisms may have changed in ways that could increase access, but the disadvantaged may be unaware of the changes because of inadequate public outreach. If one of the goals of the ADR program is to increase access to justice for a particular target population, the program design must include adequate means for reaching that population. Stating the goal is not sufficient, and in the absence of specific design focus, there is a risk that the system can be co-opted by elites. For example, one of the original goals of the Colombian Conflict Resolution Project was to provide low cost services to the disadvantaged. The client base of the Bogota Chamber of Commerce, however, through which much of the program was managed, was comprised of business elites. The program became focused more on providing low cost services to small businesses than to poor populations. The original design of the project omitted a clear definition of the target client population and failed to establish any goal for reaching the target population. This resulted in a failure to create any public outreach or publicity campaign to increase awareness and use of the services among the poor.

Changing Mindset of Stakeholders

The change in mindset is required for accepting finality with arbitration awards, similar to awards in the courts. This should be stressed to disputants pre-hearing and a contract should be signed by disputants to agree to the terms. Additionally, in combination with the previous methods, ADR needs to be adopted more commonly among all classes of people to dispel the image that ADR is less than and only for those of lower income backgrounds.

Conclusion

In its purest form, ADR seeks to get beyond the cloud of the present difficulties and resolve matters in a way that does not just stop the fighting but allows the participants to build a better relationship for the future. It is important to note that ADR would not replace the judicial system but instead make the judicial system more efficient. This report served to examine the current ADR systems in the U.S. and its successes in comparison of ADR systems in India.

It is evident that in both the United States and in India ADR methods have existed informally long before it was recognized by the government as a system to resolve disputes. However, since their respective legal recognition, ADR in the U.S. has exploded and proven to become very successful in settling disputes, reducing court case overloads, and ultimately reducing inefficiencies saved from litigation. In contrast, from delays in hearings, negative public images of ADR, lack of awareness and quality training programs, India has been slow to implement ADR methods and the current systems in place are largely inefficient in saving time, money, and promoting more peaceful ways to resolve disputes, despite the overwhelming case burden on the court system. It is because of this latter point that the necessity of ADR in India is ever more significant.

In order to improve the current processes and really ensure its growth, steps must be taken to ensure efficiency within the processes, such as reducing delays, dispel negative images by establishing a code of conduct, regulating ADR training, and increase awareness of ADR and its accessibility. By taking steps to improve its processes, ADR can truly flourish in India and can effectively serve as an alternative to litigation for dispute resolution.

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