

ACCESSING JUDICIAL SYSTEM VIA ALTERNATE DISPUTE RESOLUTION

By Radhika Belapurkar

Assistant Professor, School of Legal Studies, Reva University

ABSTRACT

An individual typically goes to the authorities who can fix his problem during times of crisis. It can be to make his complaint known or to stand up for himself. When this happens, drawn-out and difficult processes tend to make the issue the person is having worse. Access to justice becomes difficult when the same event is taken into account in adjudication or alternative dispute resolution. The rising costs and delay in finding a solution make it much more challenging. The entire goal of access to justice is defeated since the individual is burdened with additional burdens of procedural complexity, time commitment, and financial investment in order to get a resolution.

The purpose of the essay is to examine what access to justice means and how it is viewed in relation to its legal system for resolving disputes. This is accomplished by taking into account the person's socioeconomic status, financial resources, and time commitment to presenting the case in court. Access to justice would depend on the person's willingness and ability to engage in any type of dispute settlement. This essay examines the effectiveness of ADR methods by concentrating on three factors: the procedure involved, the cost, and the amount of time.

INTRODUCTION

If a person is harmed or needs to defend a claim or even himself, they should have access to legal protection. Both established legal institutions and clearly specified laws are made available to the populace. In order for people to have access to justice, these institutions must be used by them to resolve conflicts, support their claims, and exercise their legal rights. Access to justice is made possible by the crucial roles played in these institutions by the judges and attorneys.

Accessing the institutions or anyone associated with them is insufficient. The right to obtain justice is impacted by a number of additional variables. These elements are crucial in evaluating whether or not a person can access the courts or use the legal system in any way. These considerations include the person's financial ability to invest in the legal action. A time-consuming method of resolving disputes is litigation. The litigant invests a significant sum of money in this procedure. The expenses cover the advocate's fees as well as other court-related charges. The situation may last for an average of 3 to 8 years, or even longer. Until the matter is resolved, the litigant must invest. Anyone who lacks the resources to cover the cost of a lawsuit might not be able to obtain justice.

Time is the second element. As was previously mentioned, it takes a significant amount of time to reach a conclusion in these circumstances. It requires going to court on the designated hearing dates, going through difficult court procedures, dealing with the advocates' stalling strategies, and other such things. For the family member who is employed, attending court on a workday is challenging. It can cause a loss of income for that specific day.

The expense of resolving the disagreement may be more than the value of the claim, which is another consideration. On the part of the litigant, the economy's balance is impacted. In this situation, the litigant would choose an expedient course of action, such as an out-of-court settlement, which would somehow compromise the person's rights.

The aforementioned elements significantly affect a person's ability to attain justice. In light of this, I will examine several ADR procedures used in India as well as the flaws in them that impede us from achieving the goal of universal access to justice.

SHORTCOMINGS TO ACHIEVE ACCESS TO JUSTICE IN ALTERNATIVE DISPUTE RESOLUTION

The preservation of a tranquil and harmonious community depends on dispute resolution. Alternative Dispute Resolution (ADR) has been suggested as a successful method of administering justice because the justice system in our country already faces a lot of strain, backlog, and flaws that make dispensing justice to everyone through the court of law impractical. It was created as a logical solution to the issue of justice being delivered slowly. ADR is less formal, less time-consuming, and less expensive than a traditional trial, which may require the expenditure of time and money. It is also more flexible because it gives the disputants the option of choosing the resolution method.

ADR methods are being employed more and more in the business world, as well as in civil, industrial, and familial disputes, etc. The other areas where ADR has been proven effective,

particularly through conciliation, are real estate, insolvency, insurance, service, partnerships, and disputes involving intellectual property. ADR is also seen to be effective in resolving issues involving labour, consumer protection, and taxation.

According to the Supreme Court, the Indian Constitution's Articles 14 and 21 guarantee everyone the right to receive justice. Even though Part III of the Constitution was added by the Supreme Court to provide access to justice, many Indians still lack this right. The current system is ineffective since it does not reach the people.

People run into a number of issues when trying to enter the legal system. Court cases that are still pending, costly legal fees, delays, inefficiency, and other similar difficulties are significant systemic challenges.

The tenets of Articles 14 and 21, which are based on the rights to equality and to life and liberty, are the foundation of alternative dispute resolution. The fundamental goals of ADR are to protect the ideals and objectives outlined in the preamble and to build a socioeconomic and political justice system. In 2002, the Code of Civil Procedure, 1908, was changed to include pre-trial settlement, conciliation, and mediation as methods of conflict resolution. The 1940 introduction of the Arbitration Act established rules for domestic arbitration. The Arbitration and Conciliation Act, 1996, which addresses local arbitration, foreign arbitration, as well as conciliation, later repealed and replaced this Act. The UNCITRAL model is the foundation of the 1996 Act. The Legal Services Authority Act of 1987 gave Lok Adalats legal legitimacy after they were initially introduced in the year 1982. These statutes regulate and support

alternative dispute resolution (ADR) processes in India. Although ADR has grown in popularity around the nation, it still has several drawbacks.

This system uses a number of methods, including Lok Adalat, Arbitration, Mediation, Conciliation, and Negotiation. This system was put in place due to the overwhelming number of cases in the courts, the length of the litigation process, and the high cost of litigation.

In Lok Adalat, problems or disagreements that are currently in court or in the preliminary stages of litigation can be amicably resolved or mitigated.

The Legal Services Authorities Act of 1987 has granted them statutory standing. Legal service authorities from numerous governmental levels, including Taluk, District, State, and National, conduct these Lok Adalats. It is a way to settle conflicts more quickly. These courts do so while reaching a very meagre settlement. Lok Adalat is a process for settling the conflict and reaching a solution. However, not all disputes can be resolved by this particular technique. Even though it is a last choice for low-cost justice, a lot of inappropriate cases are remanded to court for further proceedings, which delays the process. This deal was laboriously negotiated in vain.

Arbitration is neither an easy nor a quick process. The costs associated with this method, which should be shared equally by the parties, include attorney fees, arbitrator fees, and other administrative costs. The costs are comparable to or perhaps even exceed the costs of litigation. To have the matter resolved by arbitration, the arbitration clause must be included in the standard form contract. Most of the issues that are settled through arbitration are related to commerce and business. Due of this, businesses lawyers and firms have emerged. Many large

and powerful businesses use arbitration as a method of conflict resolution. These organisations invest a lot of money in this dispute settlement procedure. A consumer, a small business or commercial enterprise, a private individual, or another entity engaged with these entities could be the other party. Such parties might not be able to afford the arbitration's fees.

Both parties must abide by the arbitral award's terms. They are not permitted to reopen the arbitration tribunal's case. The Arbitration and Conciliation Act of 1996's Section 34 lists a number of reasons for contesting a judgement, though. These grounds include that the parties lacked the legal capacity to enter into the agreement, that the agreement is void, that the award goes beyond what was covered by the agreement, that the arbitration agreement's terms were not followed, that the subject matter could not be resolved through arbitration under Indian law, and that upholding the award would be against Indian public policy. Within three months of receiving the award, it must be contested. The case is brought back before the courts despite the fact that there is a clause in the ruling that allows for a challenge. The challenged award will once more experience the same outcome as other outstanding matters in a regular court. The ordinary litigation process requires the plaintiff to spend time and money once more.

A neutral third party mediates a dialogue between the parties in order to resolve a disagreement. There are no explicit legal theories or applications made during the conversation. If one of the parties is hiding any information, there may be an issue during the mediation. If mediation fails, it will be viewed as a waste of time, resources, and effort. The matter will once more be litigated. The fact that any party can leave the proceedings at any time is another drawback of this dispute resolution procedure. This adaptability may be problematic as the case develops.

Conciliation is a procedure where conflicts between the parties are settled by an impartial, impartial third party known as a "Conciliator." The procedure tries to arrive at the end result through mutual consent between the two parties. If both parties are unable to come to an agreement, the process may fall apart. The conciliator lacks the power to make any decision binding on both parties. During the course of this dispute settlement process, the parties can become more familiar with one another's shortcomings. This may prompt either side to take advantage of the other's vulnerability. It might spark more contention. Because the mediator is not an expert, there are situations when she or he may relay to the other side information that is incorrect or out of context. There is a chance that the opposite side will interpret things erroneously. This can cause a discrepancy throughout the entire procedure. The parties are forced to use alternative dispute settlement procedures as a result. If this procedure is unsuccessful and the situation worsens, the courts will be involved, which will result in a decision.

A bilateral conflict settlement method is negotiation. There is no involvement of a third party, and the parties are solely responsible for resolving any disagreements amongst themselves. The secret to success in this dispute settlement procedure is collaboration. Negotiations may not succeed if the parties are not cooperative. There are no binding legal regulations. The parties are free to choose their own negotiation guidelines. This method of dispute resolution does not appear to be successful because there is no third party. The negotiation's guidelines and conditions may be influenced by the dominating party. In the event that negotiations are unsuccessful, they either resort to lawsuit or other ADR techniques.

In contrast to litigation, where the processes take place in open court, the ADR process is private in nature. Only the parties and the judge are present in the chamber where the proceedings take place. In these systems, decisions are made informally and privately. Private decision-making can be called into question on a number of grounds, including the preservation of legal norms, potential power disparities, etc.

These flaws in the procedures show that the ADR system in the nation is underdeveloped. The ADR process should receive more attention so that the court's workload is distributed fairly. Cases that cannot be handled via one of the available processes end up in court. The fact that the parties must resort to litigation demonstrates how ineffective the ADR system is at resolving disputes. Different disputing parties are unaware of numerous alternative conflict settlement procedures. Either their attorneys or the courts failed to inform them. Once a side is aware of such a conflict resolution process, they must devote a significant amount of money, time, and effort to it. If none of these options work to resolve the dispute, it is then taken to a regular court, where the party involved must spend money, devote time, and wait for justice.

REFORMS RECOMMENDED

I'd like to offer a few adjustments to the legal system that could result in beneficial and practical modifications that would improve people's ability to access justice. These structural adjustments are necessary since India's justice delivery system is exceedingly complicated, cumbersome, and expensive. In order to bring about systemic changes that will deliver justice and make it easier for people to seek justice, the public's faith in the legal system needs to be rebuilt.

It is expensive to resolve disputes through traditional courts and ADR. Low-income individuals cannot exercise their right to justice. Equal justice and free legal assistance are the main goals of Article 39A of the Indian Constitution. The article advocates that no person should be denied access to justice, and that the free legal aid programme is a component of the principles of natural justice. Legal assistance programmes have been established at the district, state, and federal levels in support of this Article. The qualifying requirements to receive legal aid services are outlined in the Legal Services Authorities Act of 1987. This system has numerous problems and difficulties that prevent it from functioning as intended. The problems include a lack of broad public awareness of these services, a dearth of lawyers involved in these services, and insufficient compensation for lawyers provided by the state.

For legal services to be effective, reforms are necessary. First, society as a whole needs to be made aware of the issue. Running legal assistance camps in both urban and rural regions is one way to do this. The attorneys must inspire the client's faith in the legal aid system. By adding capable and seasoned attorneys to the panel, the Legal Aid Services should handle the cases with the highest dedication and effectiveness. In order to retain attorneys and motivate them to deliver high-quality services, the state's compensation for their services should be raised to a significant level.

ADR can be used to resolve disagreements, however it isn't often used because of its lack of appeal. To make ADR the most approachable and acceptable form of the dispute settlement system, reforms must be made. ADR should be used to resolve some disputes, according to the judges of the regular courts. Governmental or private ADR centres may be established to

support such activities. The procedure should be made affordable, approachable, and consistent with the fundamentals of the rule of law.

It's crucial that we consider the adjustments needed in the adjudication system while discussing the issue of access to justice. In order for the court systems to become more effective in managing cases, they must also embrace technology. using technology or outside expertise to streamline the cases for efficient case management This will facilitate the quick and effective administration of justice.

Judgment should be rendered quickly, effectively, and affordably. Filling in the court vacancies is one approach to bring about this transformation. The distribution of cases on the courts will take place. Technology in the courtrooms will improve the efficiency of the proceedings. For instance, if a witness or litigant is unavailable on the date of the hearing, they can still be present via video conference. As a result, the case won't be adjourned and will instead be heard that day.

The notion of equal access to justice is significant and beneficial. Every person has the right to make contact with organisations or use any dispute resolution procedure to support or advance their claim. In order to guarantee that everyone has access to justice, the legal system must be sufficient. While the ADR system should be improved to make it more effective and party-friendly because the normal courts are overworked. Every person should have access to justice, according to the desired outcome. Adjudication or ADR are both options. The procedures ought to be less difficult, quicker, and more cost-effective. This would facilitate both the efficient operation of India's justice system and the exercise of the people's right to obtain justice.