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INDIAN JUDICIARY AND NEED TO ALTERNATIVE METHODS OF JUSTICE

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ABSTRACT: The judiciary is expected to be the guardian of the Constitution and is supposed to protect the fundamental rights of the people and implement the rule of law. In our country, the judiciary have set very high standards in protecting the citizen's rights.. People look to the judiciary no less than God. But now a days, what is wrong with our courts that they have lost their credibility and prestige. The problem of delay and the accumulation of huge arrears of cases both in the lower-courts, the High Courts, and the Supreme Court have assumed serious dimensions and invited a lot of criticism of the entire legal system. It is big challenge for the common man to approach the Court for justice because they lacked the awareness, assertiveness, non-regulated high fee of lawyers and access to the machinery required to enforce their constitutional and legal rights. It is a danger signal for Indian judiciary. Once an impression prevails that justice is a purchasable commodity and those who administer it can be tempted, the common man would be left with no forum to look for redress of the grievances. There is nothing which rankles in the human so such as a brooding sense of injustice. for the fair and speedy justice system should adopt some alternative, which doesn't mean alternative to the court but to the court procedure. Alternative Disputes Resolution is a mode of resolution of disputes through arbitration, conciliation or mediation which provides an alternative route for resolution of disputes instead of resolution of such disputes through courts. The principle of ADR are successfully adopted in the Indian Legal System as an alternative to the justice delivery system.
Key words: judiciary, delayed, challenge, alternative method, ADR

INTRODUCTION

The Indian Constitution is a "Comprehensive Code of Justice". The judiciary of India has played a historic role in helping to realize the vision of justice set out in the Constitution. The people of India have developed deep and abiding faith in the judiciary.

The judiciary is expected to be the guardian of the Constitution and is supposed to protect the fundamental rights of the people and implement the rule of law the Judiciary is expected to protect the rights of the common people of the country to a free and dignified life where every citizen is guaranteed the means of securing the basic necessities of leading a dignified life, such as food, clothing, housing, healthcare and education etc. The judiciary is also expected to ensure that the executive and the legislature function within their powers and do not encroach on the fundamental rights of the people. When one examines the performance of the judiciary on the above parameters[1], one would be sorely disappointed. The problem of delay and the accumulation of huge arrears of cases both in the lower-courts, the High Courts, and the

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[1] Prashant bhushan, *'The judiciary -hopes and fear'* Compaign for judicial reform, New Delhi, cjar publication, 2007

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Supreme Court have assumed serious dimensions and invited a lot of criticism of the entire legal system. corruption is another challenge that we face both in the government and the judiciary. Problem of appointment and transfer of judges, accountability and transparency is a critical issue before Indian judiciary and some other ethical and technical problems are facing by judiciary on which the discussion made on in this paper.

HISTORICAL BACKGROUND

Before the arrival of the British in India, India was governed by laws based on The Arthashastra, dating from the 400 BC, and the Manusmriti from 100 AD. In fact there existed two codes of laws one the Hindu code of laws and the other Muslim code of laws. They were influential treatises in India, texts that were considered authoritative legal guidance. Manusmriti's central philosophy was tolerance and pluralism[2]. The Judiciary, the Executive, and the Legislature were the same person the King or the Ruler of the Land. But the villages had considerable independence, and had their own panchayth system to resolve disputes among its members. Only a bigger feud merited a trans village council. This tradition in India continued beyond the Islamic conquest of India, and through to the Middle Ages. Islamic law "The Sharia" was applied only to the Muslims of the country. But this tradition, along with Islamic law, was supplanted by the common law when India became part of the British Empire. The history of Modern Judicial System in India starts from there.

The history of the morden judicial system in India can be traced back to the establishment of the First British Court in Bombay in 1672 by Governor Aungier then establishment of the Mayor's Courts in 1726 in Madras and Calcutta. The Mayor's Courts, established in the three presidency towns, were Crown Courts with right of appeal first to the Governor-in-Council and a right of second appeal to the Privy Council. In 1791, Judges felt the need of experience, and thus the role of an attorney to protect the rights of his client was upheld in each of the Mayor's Courts. The Supreme Court of Judicature was established by a Royal Charter in 1774. The Supreme Court was established as there was dissatisfaction with the weaknesses of the Court of the Mayor. Similar Supreme Courts were established in Madras in 1801 and Bombay in 1823. The first barristers appeared in India after the opening of the Supreme Court in Calcutta in 1774.

On 28 January 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court of India was born. The inauguration took place in the Princes Chamber in the Parliament building complex which also housed both the Rajya Sabha and the Lok Sabha, also known as the Council of States and the House of the People, respectively. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow its creation, until the Supreme Court of India acquired its own building in 1958. The Supreme Court of India is the highest court of the land as established by Part five, Chapter four of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court,

[2] Praful Bidwai. *"India: Legal System in the Dock"* shiv publication , first ed. Vol.1 New Delhi 2000

guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution. The Supreme Court of India had its inaugural sitting on 28 January 1950, and since then has delivered more than 25,000 reported judgments[3].

ROLE AND FUNCTION OF INDIAN JUDICIARY

In a democracy, the role of judiciary is crucial. Judiciary is a faithful keeper of the constitutional assurances. An independent and impartial judiciary can make the legal system vibrant. Our Indian judiciary can be regarded as a creative judiciary[4]. However, the judiciary performs Judicial Functions, Law-making Functions, act as guardianship of the Constitution, protector of the Fundamental Rights and also pays Supervisory Function.

CHALLENGES BEFORE JUDICIARY

The Indian judiciary is famous for being independent and non-partisan. Being harassed from the executive and legislature people rush to courts for quick and complete justice but now a days it appear that people are loosing faith and confidence in the judicial system due to delay in disposal of cases, corruption, time taking and uncertainty and there are so many other reasons. There are several areas which our judiciary has been struggling. On January 12, 2012, a Supreme Court bench[5] said that people's faith in judiciary was dwindling at an alarming rate, posing a grave threat to constitutional and democratic governance of the country. It sincerely acknowledged few of the serious problems such as -Large number of vacancies in trial courts, Unwillingness of lawyers to become judges, Failure of the apex judiciary in filling vacant HC judges posts, The dragging of feet by the Centre in keeping its promises.

I. Judiciary and executive conflict

The executive assault on the judiciary began in 1973 with the superseding of three judges in the appointment of the Chief Justice of India. "In appointing a person as Chief Justice, I think we have to take into consideration his basic outlook, his attitude to life, and his politics We, as a government, have a duty to take the philosophy and outlook of a judge into account in coming to the conclusion whether he should or should not lead the Supreme Court at this time. This is our own prerogative which the Constitution has entrusted to us. This was Mohan Kumara

[3] Krishna das, '*judicial reform and accountability in india'* nnlrj ,24august 2011, Available at: law resources http://indialawyers.wordpress.com/tag/list-of-high-courts-of-india/
[4] Clara Niiska" *Indian courts: a brief history* "Laura press, Bruel p.32 1981
[5] Editor's note," Supreme Court chides itself, govt for judicial backlog". Reported inTimes News Network. Jan 12, 2012, via http://timesofindia.indiatimes.com/india/Supreme-Court-chides-itself-govt-for-judicial-backlog/a rticle how/11456652.cms.

mangalam's defence of the superseding of three judges of the Supreme Court, Justice l. M. Shelet, Justice K.S. Hegde and Justice A.N. Grover by Justice A.N. Ray[6]. It was an executive assault on the independence of the judiciary. Now in current Indian politics on the matter of transfer appointment and on financial infrastructure judiciary is totally dependent upon executive and it is major challenge before Indian judiciary. Some Instances of The Conflict are- Indira Gandhi v. Raj Narain[7], Minerva Mills v. Union of India[8], SC on Reservations in Private Institutions , PIL on the Constitutional Validity of Office of Profit Bill SC on the Cash for Queries Scam IR coelho case[9]

II. Pendency of cases in Indian courts

Our Constitution provides for an independent and efficient justice delivery system. Delay in disposal of cases, not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an efficient and effective manner. As on 30th September, 2010, a total of 2.8 Crore cases are pending in subordinate courts and 42 lakh in High Courts. Approximately 9% of these cases have been pending for over 10 years and a further 24% cases have been pending for more than 5 years[10]. With the increase in rate of pending cases and declination of pronouncement of justice, society now considers Justice delayed is Justice denied. Even the Law Commission of India in its Seventy - Seventh Report has observed: “Long delay in the disposal of cases has resulted in huge arrears and a heavy backlog of pending file in various courts in the country. A bare glance at the statements of the various types of cases pending in different courts and of the duration for which those cases have been pending is enough to show the enormity of the problem’.[11]

III. Judges-Population Ratio & Vacancies of Judges

Presently, for dealing with the pending cases there must be required number of judges present to entertain the matter laid before them. But in Indian judicial system there is number of vacancies existing which ultimately affects the efficiency of rendering justice. Supreme Court of India said[12] "The root cause for delay in dispensation of justice in our country is poor judge-population ratio." Law Commission of India on 31st July, 1987 submitted its 120th report on “Manpower Planning in Judiciary” in which it compared India’s judge-population ratio vis-à-vis developed countries and found that the ratio in India is 10.5 judges per million people (lowest in the world) as compared to 41.6 per million people in Australia, 75.2 per million people in Canada, 50.9 per million people in United Kingdom and 107 per million people in United States of America (which was three times less populated than India in 1981 had 25,037 judges as compared to India’s total judge strength of 7,675 at that time). The Central (Government) has failed in its

[6] Editorial note,*’Indian Judiciary Under Executive Assault’* pucl bulleten july PUCL publication , New Delhi 1981
[7] (1975)suppl.SCC 1
[8] (1980) 3 SCC 625
[9] (2007)2 SCC1
[10] Text of Speech V. moili, Union Law Minister on the programme to reduce pendency in courts (July 1, 2011)
[11]. Seventy Seventh Report, the Law Commission of India, 1978, v 1, New Delhi, Law Commision of India
[12] *Brij Mohan Lal vs Union Of India* (2002)5 SCC1

objective to extend the judge strength to 107 judges per million people by the year 2000 as recommended by the Law Commission of India. Even The Honorable Supreme Court of India in All India Judges Association & ors. v. Union of India & Ors[13]. observed that judge strength should be increased by 10 per million people every year for 5 years to meet at least the desired ratio of 50 to a million people.

IV. Poor budgetary system for Indian judiciary

Till 1993, no provision was made for expenditure of the Judiciary, in the Five Year Plans. The Centre's plan investment started in the Eighth Five Year plan 1992-97 in compliance with the direction of the Supreme Court of 1993, Rs.110 crores was granted for judicial infrastructure such as construction of Courts[14]. This was 0.071% of the Centre's Ninth Plan expenditure of the total expenditure of the Ninth Plan of Rs.5,41,207 crores[15]. During the Tenth Plan (2002-07), the allocation for Justice is Rs.700 crores, which is 0.078% of the total Plan outlay of Rs.8,93,183 crores. In the Eleventh Plan (2008-13) the allocation for Justice is 0.07% of the plan outlay.

V. Corruption in judiciary

Lord Acton, once observed that "Power tends to corrupt, and absolute power corrupts absolutely[16]."Judiciary in India is more powerful than any other organs. Corruption has rotten the whole system of governance and judiciary is no exception to it. Some of the instances which disgraced the judiciary are- K. Veeraswami case, the former judge of the Madras High Court was found guilty under the Prevention of Corruption Act, 1946, but fought his case in 1991 in the Supreme Court[17]. V. Ramaswamy**,** Son-in-law of Veeraswami, was a judge in the Supreme Court when the Speaker of the ninth Lok Sabha admitted an impeachment motion brought by 108 MPs against him for financial irregularities committed during his term as chief justice of the Punjab and Haryana High Court. The motion was, however, defeated as Congress MPs stayed away in 1993[18]. A.M. bhattacharjee, the chief justice of the Bombay High Court was forced to resign[19]. Ajitsen gupta case, A.s. anand case, Justice Soumitra Sen, Justice P. Dinakaran [20] Provident fund scam[21], Ex -cji balakrishnan case.[22]

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[13] (1992) 1 SCC 119

[14] See 12th planning commission report, government of India

[15] See ninth five year plan v. chapter allocation for judiciary, New Delhi India

[16] Lord Acton saying quoted by J. Bhagwati in *Union of India vs. sankalchand* (1978) 1SCR p.476 cited in H.M. Seerwai *constitutuion of india* ed.4th v.3 Mumbai tripathi pvt. Law publisher 1996, p.2614

[17] *K. Veeraswami vs Union Of India And Others*, 1991 SCC (3) 655

[18] Cover story 'Bench shame' *India today* issue septebmer2007 v1 Noida UP

[19] Ravichandran Iyer versus Justice A.M. Bhattacharjee and Others case (1995)

[20] Justice P.D. Dinakaran vs Hon'Ble Judges Inquiry Committee on 5 July, 2011, available at http://indiankanoon.org/doc/990570

[21] Repoter *times of india Provident fund scam accused judges* delhi retrived Available at: *http:// timesofindia . indiatime s.com /city/delhi/Provident-fund-scam-accused-judges-get-bail/articleshow/7836936.cms*

[22] News reportd The government Monday submitted to the Supreme Court the status report of the probe by the income tax department into allegations that relatives of former chief justice K.G. Balakrishnan had amassed huge wealth during his tenure published on Mon, Mar 12 2012

These are only some of the reported cases of corruption in judiciary, many of them still goes unreported. The main reason for this is the sword of contempt, through which judiciary has got unbridled authority without any accountability towards it.

VI. Transparency and accountability

Every other institution of the State is accountable to the anti-corruption agencies and to the judiciary. How ever when it comes to the judiciary, we find that it is neither democratically accountable to the people nor to any other institution. India currently faces a moral detraction. In order to preserve the independence of the judiciary, we defiantly need a much more transparent and credible system. A powerful judiciary without accountability and transparency is not only an anathema to our constitution but also a recipe for disaster for our democracy.

VII.Quality of justice

It is the competence and proficiency of the Judges that contributes to better quality of justice. Unfortunately adequate attention is not paid to look for competent persons proficient to handle criminal cases Anybody who sits and watches the proceedings in the Courts will not fail to note that the level of competence of the Judges of the Subordinate courts at different levels is not adequate possibly because the training did not give emphasis on professional skills and case/court management[23]. Recently the High Court upheld that if a person found not worthy to be a member of judicial service he could be removed from service even without holding an enquiry[24]. Above all he must be a man of character having abiding faith in the values of life. Two areas which need special attention for improving the quality of justice are prescribing required qualifications for the judges and the quality of training being imparted in the judicial academics.

VIII. Problem of access to justice

The Indian judiciary, especially at the level of the Supreme Court and the High Courts, has for long been concerned with the concept and practice of justice. What constitutes justice and for whom?[25] It is big challenge for the common man to approach the Court for justice because they lacked the awareness, assertiveness, non regulated high fee of lawyers and access to the machinery required to enforce their constitutional and legal rights.

IX. Problem of enforcement of directions

The question that, how the directives and orders made by the Court specially in PIL cases can be enforced? In fact it is a challenge before Indian judiciary. The orders made by the Court are obviously not self-executing. They have to be enforced through State agencies and if the State agencies are not enthusiastic in enforcing the court orders, the object and purpose would remain largely unfulfilled. The consequence of the failure of State machinery to secure the enforcement

[23] Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs Report Vol India March 2003

[24] *Ajit kumar vs State of Jharkhand*, C.A. no. 2420 of 2011

[25] P.N. Bhagwati & C.J. Dias, *the judiciary in India: A hunger and thirst for justice* ,5 NUJS L. Rev. 171 (2012), april-june2012

ofcourt orders specially in PIL cases would not only result in the denial of effective justice to the disadvantaged groups but would also have a demoralizing effect on further attempts at litigation. It would make people lose faith in the capacity of the Court to deliver justice.

ALTERNATIVE MEASURES FOR JUDICIAL FEFORM

In the complexities of modern life-style disputants want a decision and that too as quickly as possible. As a problem of over-burdened courts, a number of tribunals were established in India. Even after formation these adjudicatory tribunals and setting up of Family courts, H.R. commissions, Women commissions for the protection of rights of men and women, the problem of delay in courts still persists unabated thereby defeating the cause of justice.

In Surjeet Singh & other v. Harbans Singh & others[26], the Supreme Court expressed its anguish for long delay as the case was lying pending in civil Court at Patiala since 1948 with no sight of its finalization. In yet another case of Dr. Buddhikota Subbarao v. K.Parasharan[27], the apex court observed " no litigation has a right to unlimited drought on the time and public money in order to get his mater settled in the manner as he wishes. "

The noted jurist Mr. N.A. Palkhivala attributing this cause to legal profession inter-alia, observed: "The fault is mainly of legal professionals. We ask for adjournments on the most flimsy grounds. If the Judge does not readily grant adjournment, he is deemed highly unpopular, I think it is the duty of the legal profession to make sure that it co-operates with the judiciary in ensuring that justice is administered speedily and expeditiously , it is a duty of which we are totally oblivious". ADR is not a recent phenomenon as the concept of parties settling their disputes themselves or with the help of third party, is very well-known to ancient India. Disputes were peacefully decided by the intervention of Kulas (family assemblies), Srenis (guilds o men of similar occupation), Parishad, etc., The primary object of ADR movement is avoidance of vexation, expense and delay and promotion of the ideal of "access of justice" for all. ADR system seeks to provide cheap, simple, quick and accessible justice. ADR is a process distinct from normal judicial process. Under this, disputes are settled with the assistance of third party, where proceedings are simple and are conducted, by and large, in the manner agreed to by the parties. ADR stimulates to resolve the disputes expeditiously with less expenditure of time, talent money with the decision making process towards substantial justice, maintaining to confidentiality of subject matter. So, precisely saying, ADR aims at provide justice that not only resolves dispute but also harmonizes the relation of the parties.

Types of ADR

- Arbitration- a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts. The parties to a dispute refer it to arbitration by one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), and agree to be bound by the

[26] AIR 1996 SC135
[27] AIR 1996 SC 2678

arbitration decision (the "award"). A third party reviews the evidence in the case and imposes a decision that is legally binding on both sides and enforceable in the courts.[28]

- Mediation- In a mediation procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute. Any settlement is recorded in an enforceable contract.[29]
- Conciliation- Conciliation is a voluntary proceeding, where the parties involved are free to agree and attempt to resolve their dispute by conciliation. The process is flexible, allowing parties to define the time, structure and content of the conciliation proceedings.[30]
- Negotiation- Negotiation is a dialogue between two or more people or parties intended to reach an understanding, resolve points of difference, to gain advantage for an individual or collective, or to craft outcomes to satisfy various interests[31]
- Lok Adalat- Lok Adalat is a system of alternative dispute resolution developed in India. It roughly means "People's court". India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is based on the principles of the Panch Parmeshwar of Gram Panchayats which were also proposed by Mahatma Gandhi[32]

ROLE OF ALTERNATIVE DISPUTE RESOLUTION

"I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realized that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul." [33] Alternative Dispute Resolution is today being increasingly acknowledged in the field of law as well as in the commercial sector. The very reasons for origin of Alternative Dispute Resolution are the tiresome processes of litigation, costs and inadequacy of the court system. It broke through the resistance of the vested interests because of its ability to provide cheap and quick relief. In the last quarter of the previous century, there was the phenomenal growth in science and technology. It made a great impact on commercial life by increasing competition throughout the world. It also generated a concern for consumers for protection of their rights. The purpose of ADR is to resolve the conflict in a more cost effective and expedited manner, while fostering long term relationships. ADR is in fact a less adverse means, of settling disputes that may not involve courts. ADR involves finding other ways (apart from regular litigation) which act as a substitute for litigation and resolve civil disputes, ADR procedure are widely recommended to reduce the number of cases and provide cheaper and less adverse form of justice, which is a lesser formal

[28] Sullivan, arthur; Steven M. Sheffrin (2003). *Economics: Principles in action*. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. p. 324. ISBN 0-13-063085-3.
[29] Avatar singh, *law of arbitration and conciliation*, ed. 10th, ebc publication Lucknow, 2013
[30] M. Sridhar, *alternative dispute resolution* ed 1st 2006 reprint lexis nexix publication wadhwa Nagpur 2010
[31] Supra note 29 p. 28
[32] M P Jain *Indian constitutional law*, fifth edition VOL. 1 p 1555 Wadhwa and co. Nagpur, New Delhi 2003
[33] Jitendra n bhatt, *A round table justice through lok adalat*, (2002)1 SCC 11

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and complicated system[34]. Off late even Judges have started recommending ADR to avoid court cases.

ADVANTAG OF ADR METHOD

Justice warren Burger, the former CJI of American Supreme Court had observed[35]: "the harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and bridges of Judges in numbers never before contemplated. The notion-that ordinary people want black robed judges well-dressed lawyers, fine paneled court rooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible". The benefits or advantages that can be accomplished by the ADR system are summed up here briefly:

1. Reliable information is an indispensable tool for adjudicator. Judicial proceedings make halting progress because of reluctance of parties to part with inconvenient information. ADR moves this drawback in the judicial system. The truth could be difficulty found out by making a person stand in the witness-box and he pilloried in the public gaze. Information can be gathered more efficiently by an informal exchange across the table. Therefore, ADR is a step towards success where judicial system has failed in eliciting facts efficiently.

2. In Mediation or Conciliation, parties are themselves prodded to take a decision, since they are themselves decision-makers and they are aware of the truth of their position, the obstacle does not exist.

3. The formality involved in the ADR is lesser than traditional judicial process and costs incurred is very low in ADR

4. While the cost procedure results in win-lose situation for the disputants

5. Finality of the result, cost involved is less, the time required to be spent is less, efficiency of the mechanism, possibility of avoiding disruption.

CONCLUSION

In our country, the judiciary have set very high standards in protecting the citizen's rights. People look to the judiciary no less than God. But now a days, what is wrong with our courts that they have lost their credibility and prestige. Delay of dockets and Himalayan arrears frustrate the hope of justice. The justice dispensation system in India has come under great stress for several reasons, mainly due to huge pendency of cases in the courts. Once justice Krishna Ayyar[36] observed:"Justicing should uphold justice, social, economic and political. It is not multi-tired big business or macro-commercialism. It is a great trust of the people as their dearest right to every man."

To sum up, for the fair and speedy justice system should adopt some alternative, which doesn't mean alternative to the court but to the court procedure. Alternative Disputes Resolution is a mode of resolution of disputes through arbitration, conciliation or mediation which provides an

[34] Supra note 30

[35] Available at: *http://www.hcmadras.tn.nic.in/jacademy/article/ADR-%20SBSinha.pdf*

[36] V.R. Krishna Iyer, 'Needed, transparency and accountability' *The Hindu* Feb 19, 2009 New Delhi.

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alternative route for resolution of disputes instead of resolution of such disputes through courts. The principle of ADR are successfully adopted in the Indian Legal System as an alternative to the justice delivery system.