

DELAYED JUSTICE & THE ROLE OF A.D.R

By

Mr. Justice Tassaduq Hussain Jillani

The growth of A.D.R in the last few decades on the one hand reflects disenchantment with the formal justice system characterized by delays and on the other an effort to promote a less formal dispute resolution mechanism. This development is not the outcome of any juristic philosophy. Rather it was necessitated by the growth of commercial litigation needing speedy resolution, by the ever increasing volume of court work, by court dockets becoming heavier and by the judge/case ratio becoming imbalanced on account of limited resources.

In this paper, I have attempted to respond to some of the commonly asked questions about the A.D.R. These are as under:-

- (i) Why A.D.R?
- (ii) What are its various techniques and how have other jurisdictions put them to use?
- (iii) What measures should be taken to promote these techniques in Pakistan?

In any system of administration of justice, procedural law plays a pivotal role. Speaking broadly, a fair procedural law has three main objectives: (i) finding out the truth (ii) resolving the issue/dispute without unnecessary delay (iii) making the process cost effective. The attainment of these objectives has of late become difficult because of the phenomenal rise in the number of court cases on account of population explosion, greater public awareness of rights and the dynamics of a new market economy. Since judiciaries all over the world have a common set of roles and responsibilities, their issues of concern in this context are also similar. Not surprisingly there has been a global effort to face the challenge of delayed justice and to ensure speedy relief. However, these attempts have faced tough resistance in common law countries such as those in the sub-continent. In these countries, the most prevalent mode of resolving dispute continues to be adversarial: a judge is an impartial arbiter between two rival claimants and they are allowed a free hand to file their written statements, to adduce evidence, to file miscellaneous applications without effective control from the judge. This has led to an adversarial culture which affects the behavioural patterns of the parties to such an extent that, they, at times, become

combatants in social and criminal domains. It has also eroded people's confidence in the system itself. Even in the U.K which laid the foundations of the common law jurisdiction, there has been widespread dismay over court delays. Lord Woolf, the Chief Justice of England and Wales, in his report on "Judicial Reforms in U.K." voiced his concern in this regard and said:

"2. Without effective judicial control, however, the adversarial process is likely to encourage an adversarial culture and to generate an environment in which the litigation process is too often seen as a battlefield where no rules apply. In this environment, questions of expense, delay, compromise and fairness may have only low priority. The consequence is that expense is often excessive, disproportionate and unpredictable; and delay is frequently unreasonable.

3. This situation arises precisely because the conduct, pace and extent of litigation are left almost completely to the parties. There is no effective control of their worst excesses. Indeed, the complexity of the present rules facilitates the use of adversarial tactics and is considered by many to require it. As Lord Williams, a former Chairman of the Bar Council, said in responding to the announcement of this inquiry, the process of law has moved from being 'servant to master' due to cost, length and uncertainty"

He made valuable suggestions which, inter alia, included reference to alternative dispute resolution (A.D.R). The relevant paragraph, in Chapter 4, is as under:-

"The parties should:-

- (i) Whenever it is reasonable for them to do so settle their disputes (either the whole dispute or individual issues comprised in dispute) before resorting to the courts
- (ii) Where it is not possible to resolve a dispute or an issue prior to proceedings, then they should do so as early a stage in the proceedings as is possible."

Where there exists an appropriate alternative dispute resolution mechanism which is capable of resolving a dispute more economically and efficiently than court proceedings, then the parties should be encouraged not to commence or pursue proceeding in court until after they have made use of that mechanism." (F.N.1)

The Woolf report proved to be a catalyst in the U.K and led to drastic amendments in the civil procedure rules to make room for A.D.R.. Now the courts not only encourage but exhort the parties to adopt A.D.R. In Dunnett's case, the Court did not grant costs to the party, which won in appeal merely because it had refused mediation at the trial stage. The Court observed:

“It is hoped that publicity will draw the attention of lawyers to their duties to further the overriding objective....and to the possibility that, if they turn down out of hand the chance of alternative dispute resolution when suggested by the court, as happened on this occasion, they may have to face uncomfortable costs consequences.”(F.N.2)

However, subsequently in three cases, the Court of Appeal has held that refusal to mediate will not automatically lead to cost penalties. These cases are:

- (i) **Co-renso (U.K) Ltd. V the Brunden Group (plc LTL 21 August 2003):-** (A dispute between a seller of goods filing a claim and buyer of goods filing a counter claim. The seller refused the offer of mediation and won the case. The Court held that mediation was a form of A.D.R and so was negotiation. Since the seller was prepared for the latter, he need not be penalized).
- (ii) **Hurst v. Leeming (2002) EWHC 1051:** (This was a case in which a barrister was defending an action for professional negligence. The court held that he was justified in refusing to agree to mediation as the attitude and character of the claimant made it unlikely that mediation would succeed.)
- (iii) **Halsey v. Milton Keynes General NHS Trust (2004 EWCA (Civil) 576:** In this case, it was observed that a party could not be compelled to go for mediation as it might be violative of Article 6 of the European Convention on Human Rights.

An analysis of the above-referred cases indicates that the refusal to mediate will not automatically be a ground for cost sanctions but that it will instead depend on the nature of the each case. However, if a party unreasonably refuses mediation, it may incur the risk of sanctions.

The above-noted precedents are illustrative of the judiciary’s endorsement of A.D.R. The response of the litigant public, the industry and the Bar has not been negative either. In U.K this has led to the establishment of the Civil Mediation Council (CMC) under Sir Brian Neill’s Chair. This body comprises of elected representatives of providers and independent mediators together with professionals and academics. It works actively to promote, foster and focus interest in civil litigation and commercial mediation. In 2001, the Government and the former Lord Chancellor played a leading role in promotion of ADR in the U.K. In commercial cases, the U.K. Government agreed to provide appropriate clauses in their standard procurement contracts for the use of ADR techniques to settle disputes up to March 2002. Government departments had

previously attempted or used ADR in just 49 cases. This number rose to 617 in the year 2002/2003. Thus there was an increase of 1200% from the previous year. According to an estimate the U.K. Government saved a sum of over six million Pounds on account of the use of ADR.(FN.3)

In Australia, mediation has recently been introduced to resolve commercial disputes. Until then, it was used chiefly to resolve family matters or minor disputes between neighbours. The courts have been given powers to order that disputes before them be resolved through mediation. Recently at an International Conference in U.S.A, I met an eminent corporate lawyer from Australia, Mr. Neville Rochow, who has been associated with more than 1000 mediations. I asked him about the working of A.D.R in Australia and he informed me that the vast majority of cases get settled through mediation and that mediation and negotiation are the most successful forms of A.D.R. He said that “arbitration has fallen out of fashion except in building and engineering cases because the expense is unwarranted, given that there is another layer of appeal. There can be no appeal from mediation because no decision is imposed. . . . Mediation is usually by agreement. However, the Court will in some cases impose an order. There is power to do so both in our State Supreme Court and in the Federal Court. Most Federal Court Judges will not force parties to mediation because a forced mediation seldom produces a result.” To my query as to whether any special training is imparted to judges on ADR, his reply is as under:

“Training for Supreme Court judges is voluntary. Some have undertaken training and do an excellent job. Other mediators have done specialist courses (such as that which I did many years ago to become a graded arbitrator) run by the Australian institute of Arbitrators and Mediators.”

In China, mediation is rooted in history and culture:

“The Confucian view was that optimum resolution of a disagreement would be achieved by persuasion and compromise rather than by coercion so that it was the duty of every citizen to avoid court proceedings, which are seen as harmful to the natural social order. For this reason the Chinese, and indeed other Asian cultures, have considered litigation as the last resort, which involves a loss of face. Discussion and compromise are preferred as part of a philosophy which emphasis harmony, peace and compromise.”(F.N.4)

In China today:

“Disputes are resolved almost exclusively through negotiation... ..[C]onciliation is the preferred way and as a matter of fact, is almost compulsory as a first step. It even happens that judges will direct the parties to negotiate and try to arrive at a settlement at such an advanced stage as one the evidence has been fully presented.”(F.N.5)

Conciliation and concord through mediation is the preferred mode of resolution of disputes in Islam as well. In the Holy Quran, in *Sura “Hujrat”*, *Sura “Nisa”* and *Sura*

“*Namal*”, there are many injunctions indicating such a preference. Stephen York makes a special mention of this in his book on ADR and says that “Mediation and Conciliation are the methods preferred by the Prophet (Peace Be upon Him) and thus are favoured in the Arab world.”(F.N.6).

In Japan, the homogeneity of society results in an innate aversion to litigation. People generally prefer conciliation and compromise rather than bringing their causes to the court.

The Indian experience should be of special interest to all of us because of the similarities between our systems. In October 1994, the former Chief Justice of India, Judge Ahmadi, initiated dramatic reforms in the handling of all matters pending before the Supreme Court of India. A comprehensive computerization programme was instituted; a uniform classification system, according to subject matter of cases field, was created; and filing, listing, classification and allocation tasks in the Indian Supreme Court Registry were computerized. These initiatives dramatically reduced the Supreme Court caseload from approximately 1,20,000 cases in October 1994 to 28,000 cases in September 1996. Encouraged by the success, he duplicated these efforts in the High Court and subordinate courts.(F.N.7)

At the trial court level, India also introduced ADR mechanisms through the promulgation of the Legal services Authorities Act 1987, which came into effect in 1995. Through this enactment, “Lok Adalats” (Courts) have been set up which operate mostly on a consensual basis the awards passed by these courts are executable like the decree of civil courts. According to Dr. Adarsh Sein Anand, former Chief Justice of India, “Lok Adalats have so far settled over 97 lakh legal matters throughout the country. In 1999, along 9,67,990 cases were settled by Lok Adalats through the country”. (F.N.8).

India, like Pakistan and Bangladesh has amended its Civil Procedure Code by introducing the concept of ADR (Section 89). An informal mediation centre has been established in the Judicial Academy at New Delhi and Judicial Officers are being exposed to seminars on mediation.

Singapore is the classic example amongst the smaller countries where ADR has been introduced along with other judicial reforms with tremendous success. Commenting on this development in their judicial system, the Chief of Singapore said:-

“We introduced mediation primarily because of the understanding that adjudication is not always the most appropriate, as disputes differ widely in nature. The courts must be able to offer the most effective, responsive and appropriate methods for resolving disputes. They must be able to offer alternatives to the traditional resolution path. With a variety of dispute resolution mechanisms available, disputants can then match the forum to their particular dispute rather than being required to fit their dispute to the adversarial forum. The subordinate courts have taken the lead and set the pace for the use of mediation as a dispute resolution process. Unlike some other court jurisdictions where it had its genesis as a diversionary measure to deal with backlogs and delays, our motivation was different as the problem was absent. Rather we saw an opportunity to reintroduce into our culture a process to which it was not a stranger. In fact, our own mediation roots can be traced back to the early 19th century.”(F.N.9)

Egypt and Jordan, among the Muslim countries' have introduced ADR and are experimenting with these new modes of dispensation of justice. In Sri Lanka, also, a person cannot file a suit unless he has obtained a certificate from the Mediation Board to the effect that mediation has failed.

In Bangladesh, the experiment with A.D.R has been a great success. Under the energetic leadership of Mr. Justice Kamal Mustafa former Chief Justice of Bangladesh, ADR has been introduced in all Family and Commercial Courts of the country.

The most progress in the promotion of ADR was made in U.S.A. This country also inherited an adversarial system. It had acute problems of backlog and court delays. This led to the promulgation of the Justice Reforms Act, 1990 through which amendments were made in the procedural law to introduce ADR techniques and case management. The ADR Act 1998 was also promulgated to further promote these techniques. According to an estimate, 90% of the cases filed in the U.S.A are decided without regular trial and through ADR.

VARIOUS MODES OF ADR.

- (i) Case Management;
- (ii) Judicial Settlement;
- (iii) Early Neutral Evaluation;
- (iv) Mediation;
- (v) Arbitration; and
- (vi) Summary Judgment.

Case Management

Case Management is primarily the supervision of management of the time and events involved in the life of a case. In this mechanism, a court's role has the following dimensions:-

- (i) Acting as a manager, i.e to supervise the case from filing till disposition and it has to monitor progress in each case.
- (ii) Identifying issues over which the parties are in disagreement.
- (iii) Exploring the possibility of resorting to ADR.

- (iv) Fixing dates in the case in consultation with the main actors in case, i.e. the lawyers and the parties.
- (v) Setting down a schedule for various procedural steps towards the final resolution of case.

The case management process enjoins the parties, i.e. both the plaintiff and the defendant, to file a written statement and a Case Management Statement, in which under a specific questionnaire they are obliged to point out the issues involved, the evidence proposed to be adduced, and the choice of ADR that they wish to undertake. After the submission of the respective Case Management Statements, a joint conference of the parties is held and the parties are compelled to exchange additional information of key issues as early as possible. By structuring the case in this manner, the process facilitates and promotes early resolution of disputes. In those cases where there is no settlement, the case is set down for trial with a defined trial schedule.

Judicial Settlement

One of the major objectives of ADR is to apprise the parties of the merits of their respective claims. The mode of judicial settlement is a technique which helps the parties to have their case settled by referring the same to a Judge who is not seized of the case for trial. The benefit of this mode is that the referee evaluates the case confidentially and gives his opinion. When the case is referred for judicial settlement, the Referee Judge convenes a settlement conference. The Settlement Judge while handling the case acts as a mediator and facilitates both the parties to reach a settlement. He convenes conferences jointly or separately and gives his assessment of the case objectively but the same time offers them various options. When he convenes a meeting separately with a party he is mandated to maintain complete confidentiality. If finally the case is settled, both the parties sign an agreement and the matter is settled and the trial court is informed about it. However, if the parties fail to reach a settlement the case is sent back to the trial court for a trial on merit. This technique is mostly used in commercial cases where parties value time and they want to maintain a business relationship as well.

Early Neutral Evaluation

Early Neutral Evaluation is a method whereby in commercial cases the parties solicit the help of a neutral party to have their case evaluated before going to trial. According to Robert A Goodin:

“The central goal of early neutral evaluation is to get the central participants in litigation---that is the decision-makers, on behalf of the clients and their principal trial lawyers---intensively involved in the legal and factual merits of the case in the very beginning of the litigation as opposed to the traditional American litigation pattern which has such intense involvement only after a length period of very expensive fact finding called discovery.”

In the U.S.A, this technique is mostly used in the Federal Courts in commercial cases. Normally, an experienced lawyer with expertise in the field concerned agrees to be the evaluator, to call meetings and to convene evaluation sessions where both the parties and counsel are present. The parties tender written arguments and the documents they wish to rely on for the perusal and examination of the evaluator who examines them and gives his opinion or fixes some other date for his opinion. For the evaluation and assessment, the evaluator may ask questions of the respective lawyers or the parties. The evaluator also calculates the cost of litigation. The evaluator also indulges in private caucuses which are separate sessions with each party for detailed discussion. At times the evaluator has to shuttle between caucus not only to undertake evaluation but also to explore mediation.

Like judicial settlement, the evaluator has to keep meetings of each session confidential and if the parties fail to reach a settlement, the case is sent back to trial. The advantage during this phase of pre-trial proceedings is that both the parties are in a better position to formulate their case and identify issues for an ultimate trial.

Mediation

Mediation, as the term indicates, is a procedure by which the dispute is settled by a mediator through the mutual agreement of the parties. It is different from arbitration because in arbitration the Arbitrator decides the matter in the light of the evidence adduced by the parties, whereas in mediation the Mediator promotes and encourages negotiations between the contesting parties with a view to resolve the matter. Mediation is consensual whereas arbitration is not. In mediation, parties are given more than one options. The role of the Mediator, therefore, is very creative. Mediation allows the neutral party to examine the parties with respect to aspects of a dispute that most litigation systems ignore. These include:

- (i) the relative strengths and weaknesses of each legal claim and defense;
- (ii) the impact of these issues on the present value of the claim;
- (iii) settlement proposals that more accurately reflect the probabilities of success on the merits; and
- (iv) creative solutions, including new business or contractual arrangements between the parties that maximize their ongoing interests.

Three essentials of a good mediation are as follows:

- (i) Persistence;
- (ii) Neutrality; and
- (iii) Creativity.

Following are the advantages of mediation:-

- (i) it promotes conciliation and concord.
- (ii) It is speedy.
- (iii) It is informal and flexible.
- (iv) It is confidential.
- (v) Creative.
- (vi) The mediation could be statutory, court ordered, contractual or voluntary.

Arbitration

Arbitration is a mode of ADR which is quite well known in the Anglo-Saxon system of administration of justice. Reference to arbitration is a form of contract and is thus consensual. However, arbitration can be directed by the Court as well. The Arbitrator can be Court appointed or selected through mutual agreement. Our experience of this mode of ADR is that in most cases the Arbitration award does not end the dispute and the award is challenged on allegations of misconduct on the part of the Arbitrator.

Summary judgment.

Summary judgment is a process through which the Court on the motion of either of the parties decides the case summarily. In American terminology there is a procedure called "demurrer". It means a motion to dismiss an action for failure to state a cause of action. In appropriate cases, either a plaintiff or a defendant may obtain a final and complete resolution of a law suit without incurring the often considerable delay and expense of a full trial.

In our Civil Procedure Code, Order 7 Rule 11 is more or less a motion in the nature of "demurrer" as in the American Legal System. There are other provisions in our Civil Procedure Code through which the matter can be summarily decided. For instance, under Order 12(6) CPC, where admissions of fact have been made, the Court may pronounce judgment. Similarly, under Order XV Rule 3, the Court may proceed to decide the case where it is of the view that no further evidence or argument is called for.

Community Mediation:

The Community Mediation agencies represent a network through which there are greater chances of participation of the disadvantaged groups in the process of resolution of dispute.

“The first community mediation centers were set up in the early 1980s and there has been a significant increase in their number since then. Many of the early centers which were established were largely dependent on the vision of particular people or groups including professionals from the fields of probation work and psychology, and religious groups such as the Anglican Clergy and Quakers. In the United States of America, community mediation has become the most pervasive form of mediation and the number of centers has also grown rapidly there. In the United Kingdom the majority of schemes are concerned with neighbourhood conflict although many direct their attention to victim/offender work and to working with schools. Community mediation centers are particularly prevalent within the inner cities where rates of conflict may be higher because of the high density living and general stresses in the urban environment”.(F.N.9-A)

A.D.R. and Equity Legislation.

One of the remarkable features of A.D.R is that in parting with the conventional and formal modes of dispute resolution it offers a wide range of options wherein the only limit is human creativity. It provides relief where victims are dead, where the law of limitation blocks the way for substantive justice, where rules of evidence raise barriers, and where the “wretched of the earth” shy away in the face of prohibitive costs. Legislation is yet another avenue of public policy where A.D.R has been used with success to surmount the afore-referred impediments.

The classic example in this regard is the case of the Rosewood survivors. Rosewood was a small town in Florida, consisting of a few hundred black residents, three churches, a store and a school. In 1923, the New Year morning was marred when the white men of nearby locality, enraged by the alleged attack on one of their woman, lynched a black resident to death, burnt the houses of others and killed many in the days which followed. The story goes that the “tiny children of Rosewood were forced to escape the massacre by fleeing their homes on a cold January night and hiding for days in the Florida swamps.” They never returned and died in the wilderness. The justice system did not offer any solution. The issue of substantive justice, of compensation and of retribution got drowned in a sea of racism and for lack of someone to espouse their cause. The victims were forgotten and their claims remained unattended till 1990 when the matter was taken up by a public spirited law firm (Holland & Knight Community Service Team Florida). Their case was taken to the state legislature as a claim bill to provide justice for the survivors of Rosewood. The bill was initially debated before a special master of the state legislature who too was a lawyer. The Government was represented through the State Attorney General. Witnesses and experts appeared, the hearing continued for days and eventually the Special Master found the claims to be equitable. The Claims Bill was presented before the legislature, which passed it and eventually the Florida Government signed it. The bill “included compensation for survivors, who had actually been present at the time of massacre. It also provided for funds to be set aside to compensate the survivors or their descendants for the loss of their property. A perpetual scholarship fund was established for descendants and other minorities. This range of options would not have been possible through court litigation.” (F.N.10).

The passage of the Bhopal Leak Disaster (Processing of Claims) Act 1985 is yet another example of equity legislation where ADR was invoked. In 1984, Bhopal witnessed one of the worst industrial disasters in history. The escape of highly toxic gases from the facility of the iron carbide corporation in Bhopal left more than 2,000 dead in a single night and more than 300,000 persons were exposed to different degrees of injury. It would have been impossible for each victim to have filed an individual suit against the company in India or in the U.S.A. The Indian Parliament passed an Act authorizing the Government to bring an action against the company in USA and then India to recover the damages on their behalf. Finally in 1991 a sum of \$ 470 million was deposited in the fund created under the Act. The amount was subsequently disbursed to the individual claimants after verification. (F.N.11).

A.D.R. in Pakistan

Although, some laws in Pakistan do contain provisions for initiating settlement of disputes through ADR these provisions have till recently not been put to use due to our predominant adversarial culture. For instance, in family laws there is a specific provision for pre-trial and post-trial conciliation/mediation effort by the court. In 1998, the Chief Justice of Lahore High Court, on my report and suggestion, launched a pilot project on ADR comprising of two courts in Lahore and it was confined to family cases only. The nine months working of these courts indicated that 80% of the cases filed were decided within days, i.e. 30% ended in compromise and the remaining by mutual settlement. Pakistan Law College, Lahore conducted a survey to gauge public perception of ADR in the light of the pilot project. Its findings were that 70% of the lawyers, 60% of the litigants and 100% of the judges were of the view that ADR reduces litigation and that ADR should be introduced in the country. It was in July, 2002 that the Civil Procedure Code was amended and Section 89 was introduced to make room for ADR. It would be pertinent to mention that within a year of this amendment in Pakistan, India and Bangladesh also amended their C.P.C to introduce ADR. A comparative chart of the amendments made in CPC in these three countries is appended as Annex-A.

Legislative, Executive support for ADR

Legislative and executive support for introducing ADR has not been lacking. Unlike the slow response that these institutions traditionally may have to change and reform, the steps taken, the laws enacted and the decisions made reflect that both these institutions have acted with the desired interest to bring about the requisite changes. After amendments in the CPC, the following laws have been amended with the same object in view:-

(i) **Customs Act, 1969:**

Section 195-C has been added with the specific title of ADR which reads as under:-

“195-C. Alternate Dispute Resolution.----(1)

Notwithstanding any other provision of this Act, or the rules made thereunder, any aggrieved person in connection with any matter of Customs pertaining to liability of customs duty, admissibility of refund or rebate, waiver or fixation of penalty or fine, confiscation of goods, relaxation of any time period or procedural and technical condition may apply to the Central Board of Revenue for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application.

- (2) The Central Board of Revenue, after examination of the application of an aggrieved person shall appoint a committee consisting of an officer of customs and two persons from a notified panel of Chartered or Cost Accountants, Advocates or reputable taxpayers for the resolution of the hardship or dispute.
- (3) The committee constituted under sub-section (2) shall examine the issue and may, if it deems necessary, conduct inquiry, seek expert opinion, direct any officer of customs or any other person to conduct an audit and make recommendations in respect of the resolution of dispute as it may deem fit.
- (4) The Board may, on the recommendation of the committee, pass such order, as it may deem appropriate.
- (5) The aggrieved person may make the payment of customs duty and other taxes as determined by the Board in its order under sub-section (4) and all decisions, orders and judgments made or passed shall stand modified to that extent and all proceedings under this Act or the rules made thereunder by any authority shall abate:

Provided that, in case the matter is already sub-judice before any authority or tribunal or the court, an agreement made between the aggrieved person and the Board in the light of recommendations of the committee shall be submitted before that authority tribunal or the court for consideration and order as deemed appropriate.

- (6) In case the aggrieved person is not satisfied with the order of the Board, he may file an appeal with the appropriate authority, tribunal or court under the relevant provision of this Act within a period of sixty days of the orders passed by the Board under this section has been communicated to the aggrieved person.
- (7) The Board may, by notification in the official Gazette make rules for carrying out the purposes of this section.”

(ii) **Custom Rules, 2001:**

A new chapter XVII has been added on ADR laying down elaborate procedure to facilitate ADR.

(iii) **Income Tax Ordinance, 2001:**

Section 134-A has been added for ADR.

(iv) **Federal Excise Act, 2005:**

Section 38 specifically caters for ADR

(iv) **Sales Tax Act, 1990:**

Section 47-a has been inserted on ADR and Chapter X has been added laying the procedure for resorting to ADR techniques.

The above-noted amendments, though comprehensive in nature, have raised many issues of concern. For instance, if the matter is referred for A.D.R. under the Customs Act, the role of the Alternate Dispute Resolution Committee is merely recommendatory and the ultimate decision is taken by the Central Board of Revenue. Parties involved cannot mutually resolve a dispute and the Committee constituted under section 195-c of the Customs Act after interacting with the parties sends the recommendations to the C.B.R. which in any case was the administrative and adjudicating authority even prior to the introduction of A.D.R. If the matters ultimately land up in the same bureaucratic rigmarole, innovative and speedier resolution of disputes cannot be achieved. Moreover, the officials of the C.B.R being government servants are not in a position to decide confidently for fear of being accused of a collusive deal for ulterior motives. These issues have to be attended to if the newly added provisions in law are not reduced to a mere symbolic reflection of the new modes of dispute resolution, lacking in substance and effectiveness.

Courts and A.D.R

Notwithstanding the legislative and executive measures taken, the Courts have not made use of section 89 of the CPC very frequently. There is more than one reason for this. Firstly, for any new scheme to succeed, institutional support is a *sine qua non* which has been mostly lacking. Secondly, not much has been done for training and capacity building of the judges. And thirdly, the amendments in the CPC were not followed by amendments in the rules for procedural details to invoke ADR techniques. In this backdrop, however, the steps taken by the Honourable Chief Justice of Pakistan have not only been dynamic but a breath of fresh air. The National Judicial (Policy Making) Committee (of which the Honourable Chief Justice is the Chairman) in its meeting held in August, 2005 has decided that ADR should be promoted in all the four provinces and that programmes be organized for training of judicial officers on ADR techniques. To achieve this objective, the Committee decided to constitute a Sub-Committee headed by a Judge of the Supreme Court and comprising of a Judge from each High Court. I have the honour to head this Committee. Five months back, the Honourable Chief Justice presided over an international Seminar on A.D.R in Karachi and conveyed his message loud and clear. It struck a responsive chord and only last week the Sindh High Court has set up the first Mediation Centre in Pakistan with the assistance of the World Bank. The Honourable Chief Justice has also taken steps to revamp the working of the Federal Judicial Academy so that this important institution responds effectively to the changing needs of the justice system and functions to promote the professional competence of judges and thereby bring about a qualitative change in the administration of justice in the country.

The committee has submitted its report to the Honourable Chief Justice. Some of the suggestions made by the committee for promoting a culture of dispute settlement through negotiation, conciliation, mediation, arbitration or any other mode the parties may adopt, are as under:

- (i) A comprehensive instructional code be prepared for the judges at the district level as to how to make use of the amended provisions in the CPC and how to facilitate adoption of ADR techniques.
 - (ii) Each High Court be asked to amend the rules to give effect to Section 89-A of the CPC. The amendment in the Bangladesh CPC in this regard is much more comprehensive as it has laid down a procedure as to how the parties may appoint a mediator. In the event of their failure to do so the Court may appoint a mediator. The rules should also be amended to provide as to how a panel of mediators is to be maintained by the District Judge and the qualifications of a mediator in the panel. Furthermore, a time period of 10 days has been specified within which parties may decide whether they would like to settle the dispute through mediation failing which the Court may proceed with the trial. Finally, a period of 60 days is given for a mediator to decide the case entrusted to him with the provision that if mediation fails then the court seized of the matter should not try the suit.
 - (iii) ADR should be introduced as an optional or compulsory subject in the final year of the LL.B course. The London School of Economics offers an LLM course in ADR. As a judge of the High Court, I was also a member of the Syndicate of the Bahauddin Zikrya University and I got in touch with the convenor of the ADR course in London School of Economics, Mr. Simon Roberts, and discussed with him this idea. He was fully supportive of the same and his view was ADR is a most appropriate subject for an LL.B course. My own preference would be to divide the course into three sections: The ADR Movement in General; The Primary Forms of Decision-Negotiation, Mediation, Arbitration, Adjudication; the ADR Scene in your own jurisdiction (which I know to be very well developed). My strong sense is that a very substantial section on Negotiations should be included in any course of this kind.”
- It would be pertinent to mention that a private university (Lahore University of Management Sciences) has introduced A.D.R. as a subject in its L.L.B course
- (iv) Short courses on ADR for in-service members of the subordinate judiciary should be organized.
 - (v) The National Judicial (Policy Making) Committee may examine the desirability of establishing an institute of Arbitrators and Mediators in the Federal Judicial Academy, Islamabad.

I am of the firm belief that no effort for judicial reform can succeed without the positive cooperation of Bar. The Bar has played a crucial role in promoting ADR in many countries.

In the UK, lawyers and clients were initially suspicious. Lawyers in particular felt threatened or discomforted by a process they did not understand. Some felt they may not be able to extract due rewards---or that reasonable expectations of profit costs would be thwarted. But now this has changed. Mediation providers in Canada and the UK, notably CeDr, the ADR Group and the Academy of Experts in the 1990s, addressed the common interests of defendants and claimants and their lawyers. Parties on both sides began to welcome the opportunity to minimize risk, leakage, delay, cost and stress in a procedurally fair setting".(F.N.12) In the U.S.A lawyers have played a dynamic role in promoting ADR. In North Carolina, the members of the Bar contribute 3% of their income to promote ADR in the State. In California, the State Bar has published "A Guide to Early Dispute Resolution Making ADR Work for You" and a mini guide. The mini guide explains the concept of ADR, its rules, various facets of ADR, the kinds of disputes which are most appropriate for resolution through these techniques, their advantages and disadvantages, how to approach the client or the opposite party in this regard and what considerations should be weighed while formulating an agreement to use ADR. The American Bar Association publishes a monthly magazine containing empirical data, research work and guidelines on various aspects of the working of ADR.

As most people are now aware, negotiation, mediation or arbitration, are today the preferred modes of dispute resolution in the corporate world. Multi-national companies, in the Third World are wary of jurisdictions where ADR has not been made part of the justice system. That is why governments across the globe are making suitable amendments in the rules of the game. Lawyers too may not want to miss out on this large clientele. This explains the growing interest of the Bar in these modes of dispute resolution. All the stakeholders in the judicial process are coming on board. This will go a long way in promoting a more conciliatory culture of dispute resolution, in reducing the court work and in providing speedier justice.

BIBLIOGRAPHY

- (1) The Right Honourable the Lord Woolf, Access to Justice.
- (2) Dunnet v. Railtrack plc(in administration) [2002] EWCA Civ 303; [2002] 2 All ER 850, New Law Journal, Arbitration and ADR Supplement, September 27,2002.Page 1431.
- (3) Mediation, How to Win Clients and Influence People. New Law Journal September, 2003, Page 1419.
- (4) Stephen D York, Practical ADR, Chapter I, "The Practical Alternatives", Growth of ADR
- (5) Presentation at Lex mundi College of Mediators, <http://www.hg.org/1354.txt>.
- (6) Saleh, "The Settlement of Disputes in the Arab World: Arbitration and other Methods". 4 International Tax & Business Law280.

- (7) Hiram E. Chodos, Stephen A. Mayo, A.M Ahmadi & Abhishek M. Singhvi, " Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process", New York university Journal of International Law and Politics, Volume 30, Fall 1997-Winter 1998.
- (8) "Naya Deep" Issue No.1 January-March 2000, published by the National Legal Services Authority, 12/11, Jamnagar House, New Delhi-110011.
- (9) Singapore Subordinate Courts, Page 27 of leading justice @ subordinate courts. Annual Report 1999.
- (9-A) "The Devil and the Deep Blue Sea? A critique of the Ability of Community Mediation to Suppress and Facilitate Participation in Civil Life, Journal of Law & Society, Volume 27, Number 1, March 2000, at page 137.
- (10)"Story of Justice" by Martha Barnett "Dispute Resolution Magazine" Winter 2000 Page 17.
- (11)"Public Interest Litigation" : The Lessons from India by Indira Jaising.
- (12) "Mediation—How to Win Clients and Influence People "by Jonathan Dingle, New Law Journal Friday 26September, 2003.