

WISDOM CRUX

[ISSN: 2456-6233]

www.wisdomcrux.lawtimesjournal.in

The solution to long pendency of cases: Alternative Dispute Resolution (ADR)

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Abstract:

This paper gives a brief description of the ADR mechanism. ADR being the newly emerging mechanism in the Indian Judiciary helps in disposing of the case at faster rates. This concept is the newly emerging concept as it is helpful in filling the gaps or the lacuna present in the judicial system. This has been considered as one of the emerging concepts which are in recent years touching its height due to the development in business, families, and society. This research paper gives a brief about ADR and its history, proceeding with the second sub-heading that describes various types of methods that a person can approach for getting redressal. Next sub-heading describes Mediation where the introductory part describes its meaning whereas the next paragraph describes its principles and Modus Operandi, and the last but not the least judiciary supporting role in ADR is being explained.

Introduction:

“Justice Delayed is Justice Denied”¹, an old saying and a legal maxim, which refers to if the justice so required by the party are not given within a certain time limit, then it is equivalent to justice denied. That is if a party approaches the authorities who are responsible for the delivery of justice, can't provide it in with the time limit i.e. providing it after 10 or 12 years then under such circumstances it won't be wrong to say that the justice is denied to the party seeking justice.

¹ By William Ewart Gladstone

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Today with the development in the society, there are increasing instances of clashes between humans and their needs, also added to this the lack of discipline in litigation results in increasing number of cases, which judicial mechanism finds it extremely difficult or nearly fails to deal with this type of flood of cases within stipulated time frame. There are approx 3.3 crore cases pending before courts till 2018² and as per 2019 stats. Approx 57,346 cases are pending before Supreme Court³.

Our India Constitution also provides the provisions for fast disposal of cases. As in the Preamble itself and also the Directive Principles enumerates the provisions, that is, under article 39(A) of Indian Constitution promises to secure socio, economic, political justice and equality of status and opportunity to all citizens. But the traces and observation show us that there is an increase in filing up cases and their disposal process is so slow that it is equal to delay in getting justice.

The mounting pressure of cases pending before the Indian Courts have compelled the Chief Ministers of various States to consult the Chief Justices of the High Courts and conduct a conference with a view to devising appropriate strategies for dealing with exploding docket problem. In this context, a conference has been held on 4 December 1993 at New Delhi to devise the appropriate strategy and gear up the pendency of cases in different Courts all over the country. It was unanimously resolved in the conference to set forth ways and means to deal with

² <https://www.prsindia.org/policy/vital-stats/pendency-cases-judiciary>

³ <https://www.sci.gov.in/statistics>

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the problem of arrears of cases and pendency in both the Civil and Criminal Courts as expeditiously as possible⁴.

The delegate to the conference, recommend and consented to now prefer to opt. for alternate options. And therefore, according to the Malimath Committee also known by the name as the 'arrears committee', undertook a comprehensive view of the working of courts, pacifically different aspects and delay in law processing. It also suggested various suggestions for reducing litigation and making justice to all people at minimum possible cost.⁵

And henceforth, in order to reduce the burden of increasing files and delayed the disposal of justice, the committee suggested the need for adopting an alternative dispute resolution mechanism, like arbitration, mediation, conciliation and Lok adalats as conventional court litigation. And therefore through this view, it was hoped that this mechanism has the capacity of going a long way in restoring the confidence of people and establishing rule of law.

Meaning of Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is the process of solving the disputes and grievances of the people outside the courts. It helps in speedy and cheap disposal of justice.

⁴ Hrudaya Ballav Dass, Alternative Dispute Resolution - Its social-Legal Dimension, A.I.R. 2004, Journal, p-218

⁵ Malimath committee (1989-1990) was headed by Hon'ble justice PD Desai and Hon'ble Justice A.S. Anand

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It is a term for describing the process of resolving civil disputes in place of litigation and includes arbitration, mediation, conciliation, expert determination and early neutral evaluation by a third person. As the name suggests, it simply refers to an alternate way to settle conflicts which a person or corporate entity might encounter⁶.

Salient Features of ADR

ADR mechanism encompasses various aspects of solving disputes. The dispute resolution process in this mechanism is very simple and free from technicalities and therefore easy to be followed and adopted. The following are some of the basic features of ADR mechanism:-

1. Simple and free from procedural technicalities:

The ADR mechanism is very simple and has less formal techniques as compared to judicial proceedings. Filing of matters in judicial courts is a lengthy and expensive procedure in the opposite of ADR mechanism which cheap and speedy. ADR system is working totally different from the judicial mechanism. This mechanism is cheap, simple, speedy disposal, free from technical complications and result oriented in the disposal of the cases. The ADR techniques are extrajudicial in character. These are the main reasons for the recognition of ADR techniques⁷.

⁶ <https://lawtimesjournal.in/alternative-dispute-resolution-india/>

⁷ See, P.C.Rao & William Sheffield, Alternative Dispute Resolution: What it is and How it Works, Reprint, 2002, p-2

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2. **Simplicity in methods to be adopted:**

The ADR mechanism is of dynamic in nature, that is there is no such fix procedure or any single or rigid application in such resolution mechanism. The ADR consists of various different techniques and forms like arbitration, mediation, judicial settlement and many more. These techniques are widely accepted even judiciary recommends it, as here the process is simple and easy to adopt. The ADR techniques may be used in contentious matters, which are capable of being resolved under the law, by agreement or mutual settlement between the parties⁸.

3. **Matters dealt:**

The ADR mechanism being alternative to judicial procedure tries to solve the dispute by mutual consent or through any of alternative options. It does not always aim to prove the other party guilty or punish them as in the case of criminal offenses, where it is necessary to punish the guilty one. Therefore the matters that may be of civil or commercial or industrial or family disputes are dealt with in such type of mechanism. Mostly this mechanism is used to solve the commercial matters and business matters. The mechanism of ADR System is not intended to supplant altogether the traditional or existing means of dispute resolution. It offers only alternative options to litigation. The application of ADR techniques in dispute resolution aims at rendering justice expeditiously. The dispute

⁸ Ibid.

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resolution through ADR enables the litigants to regain the mutual confidence among them lost during conflict⁹.

4. The third person plays a vital role in this Mechanism:

ADR process, being an alternative to the judicial procedure and so its judgments giving mechanism also works differently. In such a mechanism the decisions are given by the third neutral person who is known as mediator, negotiator, and conciliator. This third neutral person is appointed or selected by the consent of both parties. Such a person is believed to be neutral in the matter on which he is to decide and is having knowledge about the matter and also has knowledge about the relation between both the parties. However, here the term neutral refers that the person so appointed as being neutral should have any personal interest in the matter which results in favoring one and curtailing the rights of the other party of the right to fair justice. The third person tries to endeavors the parties to reach an amicable settlement in a peaceful manner. The settlement through conciliation or mediation is guided by the principles of objectivity, fairness, and justice. The ADR process during settlement always gives consideration to the rights and objections of the parties and heard on a common platform in the presence of adversaries¹⁰.

5. Aims to resolve the dispute:

ADR procedure is an alternative to judicial procedure, tries to secure the same aim i.e. to resolve the dispute in a peaceful and satisfactorily manner. This mechanism is

⁹Supra Note 6, at p-83.

¹⁰ https://shodhganga.inflibnet.ac.in/bitstream/10603/127847/12/07_chapter%202.pdf

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responsible for giving satisfactory decisions not of a temporary nature but of a permanent one, this mechanism was evolved for speedy disposal of cases and therefore within a very short span of time it had gained a lot of trust of the general public, and therefore to maintain this trust it is its primary duty and also aim to resolve the dispute, which is acceptable and satisfactory to both the parties, without having much loss.

6. Cheap, economical and always try to avoid future litigation:

ADR is totally economical and cheap. As it is a non-judicial process it avoids various processes involved in judicial proceedings which requires a huge amount of money and also it causes trouble to parties by having various rounds of courts, therefore as the ADR process overcome this lacuna of judicial proceedings it is mostly preferred and it being cheap process of getting justice public are more attracted and have trust built in such proceedings. Moreover, if at all in any circumstances it is unable to settle the issue through mediation, negotiation as a whole issue, it would try to narrow the issue and also the cost so incurred is meager rather than negligible.

Moreover, unlike in the judicial proceedings where there is a long process of solving the dispute and also the provisions for appeals, reviews or revision, in ADR mechanism there is no availability of any such provision. It tries to settle the dispute without having any further scope of litigation in the future. This mechanism was designed specifically for the business environment where the disputes are solved by compromise, and hence there is very less scope of further future litigation. Because the compromise agreements between the parties are pre-requisites of their claims with reference to the performance of

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promises and these are contained in that document, which is an effective instrument in ending the controversy permanently¹¹.

Types:

1. Arbitration

Arbitration is one of the methods of ADR and is most common as compared to others. The construction contracts usually have an arbitration clause, and even with the development and formation of Arbitration & conciliation act, 1996 this method has even got more popularity. Businessman usually prefers this method to solve the dispute as it is trustworthy, fast, and cheap. In this, there should be the availability of two parties and one arbitrator. The arbitrator is the one who acts as a substitute to Civil Judge to determine the civil disputes between the parties. Here it is very much required that the judge should be independent and impartial to give proper justice to the parties. An arbitrator is considered as a public servant as postulated by Indian Penal Code and is personally accountable for damages consequent on his conduct amounting to a breach of conduct in tort¹².

2. Conciliation:

The term basically refers to the process of conciliating between the parties, i.e. by raising some new point or some new angle or view to the case because of which the parties agree to settle or compromise between them. It is the nonbinding procedure on parties, but the

¹¹ Ibid.

¹² See, M.A.Sujan, Accountability of an Arbitrator, A.I.R, 2002, Journal, p-66

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conciliator so appointed has to be free and independent and impartial. The conciliator does not have the power to deliver the decision. It is processed establish by law, which the party has to go through and then the court and the conciliator observes the contribution so contributed by the one party in the form of compromise.

3. Mediation:

Mediation usually refers to the solving of disputes with the help of the third neutral person who is impartial and frees from all biases, however, as in conciliation process here also the procedure here is nonbinding and non-adjudicatory.

4. Negotiation:

This is also one of the kinds of method of ADR, like in the case of mediation and conciliation. It is also non-binding and non-adjudicatory. It is different from the other two methods of conciliation and mediation in the sense that unlike in other two there is the intervention of the third party but in negotiation third person may or may not be appointed. The purpose of negotiation is to arrive at the negotiated settlement of the dispute by having conferencing between the parties so as to reach the solution to the subject matter of the problem. Here also the negotiator so appointed is trained and educated one in the matter so given to him for giving a decision. For solving such disputes it is always required that the third person so appointed should be free from all biases, should be of broad mentality and should be neutral.

5. Mini-trial

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This is basically a new concept recently developed in a recent tie, due to the pending of cases. In this type of method of ADR the lawyers, law professors or formal judges are usually given the responsibility of deciding the issues. These are usually small trails which are resolved within a single day. In such processes, the attorneys representing both the parties and try to prove in front of the judge so appointed why they should win the case. However, if they fail to negotiate then the process turns into mediation, with neutral advisors helping them.

6. Ombudsperson:

This is also one of the methods of ADR which is not so popular, but was developed to solve the disputes between the government and general public; therefore, in the simpler word, it can be said that it serves as an alternative for solving adversary issues. It doesn't have the power to reverse or have an adverse effect on the decisions of the policy being made by administrative authorities. It can ask from the government authorities for certain information or even it can give suggestions. In the case where the authorities fail to comply with the general solution by ombudsperson or provide the information, it can report its finding either directly or publicly to the legislature¹³. The funds for the office of the institution come from the legislative body. It is totally independent of judiciary and executive body.

7. The Lok Adalats:

This is system is newly developed to support the judiciary. The long-pending of cases has to lead to the emergence of cases. The basic purpose of setting up such a system was to solve

¹³ Ibid.

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the dispute by discussion, counseling, persuasion, and conciliation. It provides justice at the doorsteps of the public in a very cheap, efficient and easy way. Justice disposal system here is the participatory type, where the judges and the parties solve the dispute by mutual consent and discussions, and hence fulfilling the basic requirement of ADR mechanism.

Therefore, these are some of the commonly observed types of ADR system.

Mediation:

In recent years, mediation has become the fastest growing ADR method, one that is increasingly favored to handle a range of conflicts from personal and family disputes to commercial disagreements, from complex high-value controversies to run-of-the-mill situations. It has caught the attention of judges, lawyers, policymakers, corporations, and other users, and has emerged as an attractive alternative to litigation. It is largely free of the negative characteristics of the adversarial system and demonstrates a high success rate in resolving conflicts swiftly and inexpensively.

Mediation can be defined as a mechanism in which the parties to the dispute appoint a neutral person or it can also be appointed by the court to solve the dispute¹⁴. The neutral person so appointed is known as a mediator who is impartial, independent, detached, and has the responsibility of solving the dispute. The mediator facilitates both the parties either directly or by communicating to the parties, it helps in figuring out the issue, clarifying disputes generating

¹⁴ CPC Sec 89(2)(d) rule V

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more opportunity for the parties. It also ensures that the parties are capable enough to take the responsibility allotted to them after the dispute is resolved. This mechanism is different from general judiciary system as in judiciary mechanism the disputes are resolved generally by a panel of judges and the decisions are binding on the parties whereas in mediation there is usually one mediator and also the decisions are not binding. Mediation can be applied in cases where the person exercises his/her right in Personem (Civil Proceedings). Thus, these proceedings are preferred in those cases where both the parties want to settle the dispute but couldn't do so, as the negotiation has stuck in between.¹⁵ Mediation can be traced in the society through court referred to mediation or through private mediation. Court Referred Mediation as mentioned under sec 89 of Code of Civil Procedure, 1908 according to which the pending cases can be referred to mediation if they are being referred by the court and private mediation refers to the situation where the person is the qualified mediator and charges private fees for providing private personalized service. Both of these systems are prevalent in society.

Principles of Mediation:

Every method of ADR has its own basic principle on the basis of which it works. The following principles:

a. Voluntary Participation:

¹⁵ *V Bondy & L Mulcahy with MDoyle & V Reid* (June 2009) Mediation and judicial review, Public Law Project, London

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The parties under this method are free to opt. either for ADR process or go to court. No one can compel them to go for mediation. As this is a process which is nonbinding, and the parties feel that the dispute can be resolved by discussion and there is no need for a long process they can go for the mediation process.

b. Confidentiality in the process:

The mediators under such process are not allowed to disclose the information so given to them for the solution of the dispute. Neither they have right nor can the court compel them to leak it. However, they are allowed to break their silence only in cases of sheer emergency like where the criminal intent of one of the party is involved or where there is a possibility that the party may harm himself, in such circumstances the confidentiality rule can be broken. This rule was basically set up for building up the confidence of the public over such process.

c. Mediators should be impartial

It is also necessary that the mediators so appointed by either court for court-annexed mediation or for the private resolution should be impartial, i.e. he should be neutral to both the parties, and also have the broad mind to decide the case impartially. As this method is alternative to the judiciary mechanism, therefore, it is needed that the method should also reach the standards so set by judiciary for being impartial, and also people opt for this method as they have trusted over this, therefore mediators are needed to be impartial.

d. Mediation is without prejudice to other procedures

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The method does not restrict for opting other procedure, i.e. it is non-binding and non-adjudicatory process therefore if the party is not satisfied with the solution so given they can approach courts for the dispute resolution.

e. The satisfactory factor of the parties

As all the ADR methods aims, this method also aims at attempting and giving satisfaction to the parties. As this is the method which is solved with the mutual consent and discussion between the parties, therefore satisfaction factor plays an important role for such a method.

MODUS OPERANDI:

In Court-Referred Mediation the mediation services are provided by the court as a part and parcel of the same judicial system as against Court-Referred Mediation, wherein the court merely refers the matter to a mediator. The advantage of court-annexed mediation is that the judges, lawyers, and litigants become participants therein, thereby giving to them a feeling that negotiated settlement is achieved by all the three actors in the justice delivery system. When a judge refers a case to the court-annexed mediation service, keeping overall supervision on the mechanism, no one would feel that the system parts with the case. The Judge would feel that he refers the case to a mediator within the system. The same lawyers who appear in a case retain their briefs and continue to represent their clients before the mediators within the same set-up. The litigants feel that they are given an opportunity to play their own participatory role in the resolution of disputes. This will also give a larger public acceptance for the mechanism at the same time tested the court system, which has acquired public confidence because of integrity and

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impartiality, retains its control and provides additional service. The court is the parental institution for the resolution of disputes and if ADR models are directed under court's supervision, at least in those cases which are referred through courts, the effort of dispensing justice can become more coordinated. ADR services under the control, guidance, and supervision of the court would have more authenticity and smooth acceptance. It would ensure the feeling that mediation is complimentary and not competitive with the court system. The system will get positive and willing support from the judges who will accept mediators as an integral part of the system. If the reference to mediation is made by the judge to the court-annexed mediation services, the mediation mechanism will become more expeditious and harmonized. It will also facilitate the movement of the case between the court and the mediator faster and purposeful. Again, it will facilitate reference of some issues to mediation leaving others for trial in appropriate cases. Court-annexed mediation will give a feeling that the court's own interest in reducing its caseload to a manageable level is furthered by mediation and therefore reference to mediation will be a willing reference. Court-annexed mediation will thus provide an additional tool by the same system providing continuity to the mechanism, and above all, the court will remain a central institution for the system. This will also establish a public-private partnership between the court and the community. A popular feeling that court works hand-in-hand with mediation facility will produce satisfactory and faster settlements.¹⁶

¹⁶ Research paper By Niranjana J. Bhatt can also refer
http://lawcommissionofindia.nic.in/adr_conf/niranjan%20court%20annx%20med13.pdf

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Does Judiciary support ADR Mechanism?

Yes, Judiciary does support ADR mechanism, as this system, in a way can be said to be evolved because of the incapacity of the judiciary for clearing up long-pending of cases, the heavy cost so incurred and many others incapacities.

Looking back at the history of justice in India, it can clearly be seen that there is a constant increase in pending of cases, people get justice after the preferable limit of time, this has often termed as justice denied. The Law Commission has maintained that the reason for the judicial delay is not a lack of clear procedural laws, but rather the imperfect execution, or even utter non-observance, thereof¹⁷. Due to such pending, it has become extremely difficult for the governance and administrative control over the judiciary.

The Supreme Court made it clear that this state of affairs must be addressed: “An independent and efficient judicial system is one of the basic structures of our Constitution...It is our Constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases¹⁸. And this made the judiciary to support ADR mechanism, as this mechanism helps in not only providing speedy trial but also give fair justice to parties at cheaper rates with the flexible procedure and easy application procedure. It is also considered as one of the effective mechanism, as it provides justice especially to those who were earlier denied justice

¹⁷ Law Commission of India, 77th Report, pr.4.1..

¹⁸ Brij Mohan LalVs. Union of India & Others (2002-4-Scale-433), May 6, 2002

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due to economic or unawareness about the long judicial procedure. It is considered beneficial even to judiciary as maximum of the civil disputes and the cases which can be solved by conversation, but were not be able to due to the demand of adjournments by the parties or their advocates resulting in long pending of cases, but through such as disputes are easily solved in one go the satisfaction of the parties are incurred and also the delay in disposal of cases problem is solved.

Justice Bobde, while speaking at a seminar on mediation held at Judicial Academy in Ranchi; he had rarely seen such a positive response from the state government to the scheme put forward by the judiciary. "That mediation works in resolving disputes is not in dispute. Mediation not only reduces pendency of cases but also leads to peace and harmony in society," he said while listing out the advantages of this mechanism¹⁹.

Some instances where the judiciary has supported ADR mechanism:

1. Salem Advocate Bar Association Tamil Nadu vs. UOI²⁰

In this case, the Supreme Court was of the view that the delay in law procedure and the limited number of availability of judges has now become imperative ADR procedure ensured upon, so as to end the long litigation and dispose off them as early and speedily.

¹⁹ Report by Sanjay Sahay, 2017; can also refer to <http://www.livelaw.in/mediation-not-reduces-pendency-cases-also-leads-peace-harmony-society-justice-bobde/>

²⁰ AIR 2003(1) SCW 4627

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Through his case, it was enlightening that sec 85 of CPC 32 defines ADR which includes arbitration, conciliation, settlement through Lok Adalat, mediation.

2. **Deco Mica Ltd Vs UOI**²¹

In this case, the Gujarat High Court held that the ADR with the growth in the technology and society there are increased instances of filing number of cases resulting in increased pending of suits. To curb down this problem, in this case, the bench expressed their view that ADR has now become inevitable form in the world of the justice of global unquestionable phenomenon, as the judiciary in the present day has become home of long pending cases and also has become expensive and too time-consuming.

3. **Basheer vs. Kerala State Housing Board**²²

In this case, the Kerela High Court Judge gave his view that, for a country to be developed the cases are always recommended to be disposed of or resolve through ADR mechanism.

4. **Oil and Natural Gas Commission vs. CCE**²³

In this case the officers of this tribunal have given the orders that the cabinet secretary has issued instructions for all departments of Government of India as well as PSU's that max. of the disputes regardless of type, should be resolved amicably by mutual consultation or through good offices of respected agencies of the government or through arbitration and recourse to litigation should be eliminated.

5. **Ayodhya's Ram Janmabhoomi-Babri Masjid Case**

²¹ 2002(144) ELT 18 (Guj)

²² AIR 2005 Ker 64

²³ 1995 Supp(4)SCC 541

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This case might be said to be the greatest proof that the judiciary has immense trust over the ADR process. That is this case might be the longest ever case that has been pending before the Supreme Court, where Supreme Court has given his final verdict on 26 February 2019 for referring the case for mediation.

The reason for such reference can be better understood after looking at the history of the case. This case was started around 500 years back in 1528, where it was believed that Mughal Emperor Babur builds Babri Masjid by demolishing Ram Temple. This led to the fight between Muslims and Hindus resulting in this long war between both religions. This case is basically for the piece of land for which the Civil Suit was filed in the court; decision favoring any one party of the case would result in huge devastation by other in the whole country. The whole journey of this case till finally referring it to the Mediation process has faced many riots situation including 6 Dec. 1992 the demolition of the Masjid and Godhra Kand and Mumbai blast which took lot life of many innocents in the name of religion.

Therefore, after almost the 25 years of journey of this case, the Supreme Court has finally decided it refer the case to in-camera mediation proceedings, so that the parties can settle the disputes by conversation and mutual agreement so that no again such riots arrive. The bench consists of the chairman, Justice Kalifulla, who had served at the Supreme Court with distinction; Sreeram Panchu is a senior advocate who has pioneered mediation as an alternative dispute resolution mechanism in this country. Sri Sri Ravishankar has come a long way from his initial days with Mahesh Yogi. Such bench was constituted so that the

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doubt regarding the impartiality can be evaded. The panel has to hold sittings in Faizabad and submit a status report within four weeks and try to resolve the issue within eight weeks²⁴.

The following instances show the trust of Judiciary over the ADR mechanism and also its support towards it.

Conclusion

It has now been so long observed that ADR has become an indispensable part of the Judiciary system. This is now considered as one of the important mechanism supporting judiciary to fill its lacuna and to help him to dispose of cases speedily without denying the fairness at its part.

ADR process has not only been considered best in India but also in other parts of the country like in America where the American Bar Association recommends ADR as the first step before going to litigation. Likewise, there are many instances showing the success of this system.

Therefore after observing so far, it would not hence be wrong to conclude that ADR has become an emerging concept in Justice disposing system in the new era of the world, which has gained the trust of general public and judiciary with the passage of time.

²⁴ See, https://www.business-standard.com/article/current-affairs/mediation-in-ayodhya-title-dispute-taking-the-most-suitable-course-ahead-119031100281_1.html