

Evaluating ADR in Practice: Empirical Evidence from the State of West Bengal

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Abstract

The Alternative Dispute Resolution (ADR) mechanisms are the best illustrations of the proverb, “Necessity is the mother of invention”. As the litigations started to increase and the court-based settlement system started to crumble, different ADR mechanisms mushroomed across the globe. Since the understanding and development of ADR in different parts of the world are at different levels, practical implementation of ADR differs from country to country. No system of dispute settlement can be effective unless people repose faith in it. Hence, creating awareness by understanding and addressing impediments in the administration of ADR mechanisms attains great significance. The success of ADR in different parts of India is not at the expected level, which is evident in the increasing pendency of cases before the judiciary at all levels. In light of this, an attempt is made here to evaluate the practical scenario of ADR in the State of West Bengal by looking into judicial trends, government efforts, responses of the legal fraternity, and public perception.

Keywords: Code of Civil Procedure – Conciliation Board – Lok Adalat – Non-litigating lawyer – Salishi Bill

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I. Introduction

Delay, unpredictability and cost are considered the three main enemies of the efficient administration of justice.¹⁴⁷ Unfortunately, they are deeply rooted in the Indian judicial system. The delay in justice delivery not only dilutes the very essence of justice but also impacts adversely the emotional, economic and societal behavior of seekers of justice. Delay defeats the hopes of parties, and consequently, they feel unsecured in the process of seeking justice. The litigants are always interested in getting their disputes resolved as early as possible through a process that is cheap, flexible and not based on a rigid formula of legal principles or technicalities. Hence, they are in search of substantive justice and not procedural adherence. This has led to the development of an alternative to the court system popularly known as the Alternative Dispute Resolution (ADR) mechanism.¹⁴⁸ With its litigant-friendly nature and suitability for any kind of society or economic setup, ADR has gained significance across the globe.¹⁴⁹

In the last four decades, ADR has become popular in practice way beyond what was anticipated. The courts and government agencies across the world have supported the use of ADR through the establishment of various dispute resolution bodies. Recent decades have been clouded with litigation explosion, and India's litigation map shows a tremendous increase in the number of cases, especially after the 1990s.¹⁵⁰ The most common trend in the settlement of disputes being approaching the courts; our society is becoming less cooperative and more combative in nature. With just 12 judges per million population, India stands at the bottom of the list in terms of speedy and quality administration of justice.¹⁵¹ Thus, ADR, as a mechanism to supplement the efforts of the courts, needs special

¹⁴⁷ ARUN MOHAN, JUSTICE, COURTS AND DELAYS 19 (vol. 1, 2009).

¹⁴⁸ JOHN W. BAGBY, E-COMMERCE LAW: ISSUES FOR BUSINESS 38 (1st ed. 2003).

¹⁴⁹ Georgios Zekos, *The Role of Courts and ADR in the Rule of Law*, VII ICFAI U. J. ALT. DISP. RESOL. 11 (2008).

¹⁵⁰ Press Trust of India, *Pendency of Cases Due to Increased Litigation, Says Chief Justice of India*, WWW.NEWS18.COM (Nov. 13, 2016, 11:16 PM), <https://www.news18.com/news/india/pendency-of-cases-due-to-increased-litigation-says-chief-justice-of-india-1302015.html>.

¹⁵¹ Maneesh Chhibber, *Do we need more judges? CJI Thakur's plea to the govt raises key questions*, HTTP://INDIANEXPRESS.COM (May 1, 2016, 8:49 AM) <http://indianexpress.com/article/india/india-news-india/india-judiciary-cji-t-s-thakur-supreme-court-judges-pending-cases-2778419/>.

focus and attention. Though the ADR mechanisms are trying to penetrate the so-called exclusive domain of the judiciary, of course, to assist and prevent its scrambling, they are yet to make a significant impact in practical terms in India. Hence, evaluating the ADR in practice attains significance in addressing the impediments to the success of ADR. This research paper attempts to gauge the practical scenario in the State of West Bengal with the help of empirical evidence.

II. Methodology Used

This research paper is based on a combination of both doctrinal and empirical methods of research. The doctrinal method involved visits to law libraries, and record rooms of different bodies involved in the administration of justice in the State of West Bengal. The empirical part of the research involved interactions with judges, lawyers, office bearers of the West Bengal Legal Services Authority, others involved in legal aid and the general public, especially the present and past disputants. A substantial portion of primary data was collected through interviews and questionnaires. Since the State of West Bengal consists of 23 districts with a huge population, sample survey method was adopted for the research. There are two criteria used for the selection of sample research areas: (a) Urban, Semi-urban and Rural areas of West Bengal, and (b) Sample areas in the northern, central and southern parts of West Bengal. The subjects of the sample were selected by considering the stakeholder's principle. This involves the administrators of ADR and judges, lawyers, and disputants, both resorting to ADR and court-based resolution.

Based on the above-mentioned criteria for the selection of sample areas, the field research was conducted in: (i) Jalpaiguri and Darjeeling (Part of North Bengal with Semi-urban and Rural areas); (ii) Burdwan (Part of Central Bengal covering Semi-urban and Rural areas); and (iii) Kolkata and North 24 Parganas (Part of Southern Bengal and Capital city of West Bengal consisting of majorly Urban population). Approximately twenty-five lawyers, twenty-five litigants resorting to ADR and twenty-five litigants resorting to court-based litigation (not resorting to ADR) were consulted in each of the above areas for getting their feedback. Since we found that the ADR administrators in West Bengal are very limited in number and judges are very busy with their schedules, data was collected from around ten ADR administrators and judges from each of the above areas.

In terms of the limitation of this research, the authors are aware of the fact that the situation prevailing in West Bengal is not the perfect indicator of the situation in the entire India. Hence, our work in this research paper shall not be misconstrued as an effort to reflect the Indian position with a study conducted in the State of West Bengal.

III. ADR and Developments in India

Just like the diversity in causes of disputes, the settlement models are also varied. ADR encompasses a wide array of practices, which are directed towards cost effective and quick resolution of disputes. ADR, as the name suggests, is an alternative to the traditional process of dispute resolution through courts.¹⁵² It consists of a set of practices and techniques to resolve disputes outside the courts. Since it actively involves parties themselves to settle their disputes, it results in the amicable settlement of disputes, which is not possible generally through courts. Hence, these practices are escape routes from the tiresome adjudication process. Many such practices have evolved to settle disputes with minimum adverse impact on the relationship between the parties. Mahatma Gandhi has said, "I realized that the true function of a lawyer was to unite parties..."¹⁵³ Hence, the role of lawyers in promoting non-adversarial dispute settlement mechanisms is undoubtedly very significant. The ADR techniques mainly include arbitration, conciliation, mediation and negotiation.

The utility of ADR in the resolution of a wide variety of disputes is unquestionable. While arbitration may resemble court-like litigation, it still has the advantage of saving time and money- if administered properly.¹⁵⁴ The conciliation, mediation and negotiation involve a high level of voluntariness among the parties, though a neutral third party usually assists them in the process of settlement.¹⁵⁵ They carry the advantage of amicable settlement of disputes between the parties, which helps them in maintaining good relations. Hence, they

¹⁵² D. P. MITTAL, LAW OF ARBITRATION ADR AND CONTRACT 8 (2nd ed. 2001).

¹⁵³ Mahatma Gandhi, *Appendix II*, WWW.MKGANDHI.ORG, https://www.mkgandhi.org/law_lawyers/appendix2.php (last visited Mar. 4, 2024).

¹⁵⁴ PHILLIP CAPPER, INTERNATIONAL ARBITRATION: A HANDBOOK 2 (3rd ed. 2004).

¹⁵⁵ ABRAHAM P. ORDOVER, ET AL. ALTERNATIVES TO LITIGATION: MEDIATION, ARBITRATION AND THE ART OF DISPUTE RESOLUTION 6 (1993).

are best suited for disputes relating to property, corporate disputes, labour disputes, family disputes, matrimonial disputes, accident claims, and so on.

While most of the above types of ADR are borrowed from other jurisdictions, Lok Adalat was invented in India. It has its roots in the ancient Panchayat system. The combination of different non-adversarial dispute settlement mechanisms in Lok Adalats is praiseworthy, since it may help in resolving the disputes by one or the other method. Various authorities established under the Legal Services Authorities Act 1987 have huge potential to make Lok Adalats a grand success at the grassroots level. The national Lok Adalats, held monthly on different issues, are capable of providing speedy and satisfactory justice to people due to their concentration on disputes in focused areas.¹⁵⁶

The development and codification of ADR during the British regime started in the province of Bengal. However, the codification was confined to arbitration, and in practical terms, the arbitration was primarily operating through the court intervention.¹⁵⁷ Hence, it was almost considered as a part of the judicial system rather than as an alternative mechanism. With the passing of the Legal Services Authorities Act 1987, Lok Adalat became the second ADR mechanism to receive independent statutory recognition. It was only in 1996 that conciliation also got statutory recognition in Arbitration and Conciliation Act 1996. Meanwhile, Section 89 was introduced to the Code of Civil Procedure 1908, which provided an enabling legal framework for arbitration, conciliation, mediation, and Lok Adalat. The most recent in the list of independent statutory recognition of ADR in India has been mediation, which attained the limelight with the Mediation Act 2023.

IV. Efforts to Promote ADR in West Bengal

1. Judicial Approach

The West Bengal judiciary has a long tradition of upholding the significance of ADR in the settlement of disputes. Before independence, Justice Rankin and Justice Trevor Harris of Calcutta High Court have contributed extensively in this

¹⁵⁶ National Legal Services Authority, *Lok Adalat*, [HTTPS://NALSA.GOV.IN](https://nalsa.gov.in), <https://nalsa.gov.in/lok-adalat> (last visited Mar. 4, 2024).

¹⁵⁷ MITTAL, *supra* note 6.

regard. As the initial development of ADR happened only in terms of arbitration, we see many decisions of the Calcutta High Court clarifying the norms of arbitration and strengthening it to be acceptable by the people for settling their disputes. Thus, in *Hari Sing Nehal Chand v. Kankinarah Co. Ltd.*,¹⁵⁸ the High Court held that the principles of natural justice have to be followed in arbitration proceedings. However, the Court preferred to remit the arbitral award to the arbitrator instead of setting aside the order with a view that since the arbitrator is already acquainted with the details of the dispute, this would help in the speedy disposal of the case.

Since the arbitration is based on the consent of parties to the dispute, the Calcutta High Court has highlighted its significance in the better resolution of disputes. However, it has also observed in many cases that in the absence of consent of one of the parties, the other cannot impose the arbitration on the former. Since consent is so significant in arbitration, the arbitrators are also prohibited from going beyond the terms of the arbitration clause.¹⁵⁹ Moreover, an arbitration clause between the parties in one agreement would not be applicable to any other agreement between the same parties.

With an intention to protect the sanctity of arbitration for infusing confidence in the minds of litigants, the Calcutta High Court has taken a cautious approach in intervening with the arbitral awards. It has often observed that whether or not an arbitral award has been passed after a correct appraisal of the evidence is not for the court to decide. For example, in *Eastern and North East Frontier Railway Corporation v. B. Guha and Co.*,¹⁶⁰ the Court held that the courts have no jurisdiction to investigate the merits of the case and to examine the documentary and oral evidence on record to find out whether or not the arbitrator had committed any error of law.

In order to further strengthen arbitration as a dispute settlement mechanism, the Calcutta High Court has observed that any plea of absence of jurisdiction of the

¹⁵⁸ Appeal from Original Order NO.62 of 1920, against the order of Mr. Justice Rankin, dated the 12 April 1920.

¹⁵⁹ *Hurmukhroy Ram Chunder v. The Japan Cotton Trading Co. Ltd.*, 66 Ind. Cas. 342. Appeal from Original Order No. 47 of 1920, against an order of Mr. Justice Greaves, dated 8 March 1920.

¹⁶⁰ AIR 1986 Cal. 146.

arbitrator has to be taken before submission of a statement of defence.¹⁶¹ It cannot be a *post facto* argument to defeat the whole process of arbitration to make it redundant. The Court has also held in *Great Eastern Energy Corporation Ltd. v. Jain Irrigation System Ltd.*¹⁶² that the arbitration clause in an agreement stands independent of the substance of the agreement, and therefore, it may still hold good even in case other provisions of a contract are not valid.

In *P. C. Roy and Company India Private Limited v. Union of India*¹⁶³, the Court, while carrying forward the legacy of upholding the sanctity of arbitration, held that if more than one view is possible in case of any legal or factual issue, the arbitrator's view must be upheld; otherwise the entire process would be nugatory. Since the parties to the dispute in their wisdom have decided to resolve controversy before a forum outside the court, the verdict of that forum must be preserved unless it would offend the basic concept of the law of the land or is so perverse or *dehors* the scope of reference. Hence, the court viewed that it cannot sit in appeal over the conclusion of the arbitrator by re-examining and re-appraising evidence considered by the arbitrator, and hold that the conclusion reached by the arbitrator is wrong. There are also cases in which the Calcutta High Court has condemned the attitude of parties to move to the writ courts in the presence of an arbitration clause. It has also restricted the resort to other alternative fora like lower courts and consumer fora when the parties had an arbitration agreement.¹⁶⁴

Despite the fact that the West Bengal judiciary has been reluctant to interfere with arbitration to protect its sanctity, it is not to be construed that it remained a silent spectator in case of miscarriage of justice. Any arbitrariness in the arbitration proceedings is seriously considered by the judiciary and it has interfered to set right the wrong. Failure of the arbitrators to comply with the principles of natural justice has often resulted in court interventions. Though the Evidence Act is not applicable to arbitration, the requirement of hearing of both parties is held mandatory. In many cases, the Calcutta High Court has intervened

¹⁶¹ Union of India v. Pam Development Pvt. Limited, 2004 (2) ARBLR 480.

¹⁶² A.P. No. 265 of 2011.

¹⁶³ 2014 IndLaw Cal. 502.

¹⁶⁴ Jayasree Biswas v. Indian Overseas Bank and Others, 2014 Ind Law Cal. 91; Amit Kumar Choudhry v. State of West Bengal and Ors, W.P. No. 23547 (W) of 2012; Niranjana Lal Todi v. Nandlal Todi and Others, 2014 (3) Cal LT 314.

in the arbitration on the grounds of bias of arbitrator, absurdity and misconduct of arbitrators. The requirement of speaking orders has also been insisted by the High Court in many cases.¹⁶⁵

In the situations of error apparent on the face of the record, the judiciary has not hesitated to intervene. Despite its reluctance to re-appreciate the evidence considered by the arbitrators, the judiciary has intervened in case of total absence of evidence or non-consideration of material evidence in the determination of the award. Similarly, when the award is passed without jurisdiction or contrary to public policy, the judiciary has intervened to set it aside. Thus, with this limited judicial intervention, norms of arbitration are fine-tuned to prevent miscarriage of justice.

Though the other modes of ADR are recent in origin, there has been a significant number of references of cases to these modes in West Bengal. The statistics show that a few thousand cases are referred to mediation every year in West Bengal.¹⁶⁶ Though the success rate of mediation is low when compared to the huge inflow of cases, there is certainly hope for the future if effective steps for implementation are taken under the Mediation Act 2023 to improve the situation. A large number of cases also take the route of Lok Adalats, both national and special, for amicable settlement.

4.2 *Efforts by the Government of West Bengal*

Governmental efforts to promote ADR in West Bengal have not been at a satisfactory level. The only noteworthy effort by the West Bengal Government in this regard has been the drafting of the West Bengal Block Level Pre-

¹⁶⁵ See, for example, *Sachidananda Das v. State of West Bengal and Ors.*, AIR 1991 Cal. 224; *State of West Bengal v. Usha Ranjan Sarkar*, APO No. 474 of 1993; *Hooghly River Bridge Commissioners v. Bhagirathi Bridge Construction Co. Ltd.*, AIR 1995 Cal. 274; *Dhariwal Infrastructure Ltd. v. Naresh Dhanraj Jain*, 2015 Ind Law Cal. 1125; *Yash Traders v. Inspiration Cloths and Ors.*, 2015 Ind Law Cal. 1124.

¹⁶⁶ National Legal Services Authority, *Settlement through Mediation, April 2018 to March 2019*, [HTTPS://NALSA.GOV.IN](https://NALSA.GOV.IN), <https://nalsa.gov.in/statistics/settlement-through-mediation-april-2018-to-march-2019> (last visited Mar. 4, 2024). Ministry of Law and Justice, Government of India, *Lok Sabha, Unstarred Question No. 1464*, [HTTPS://LEGALAFFAIRS.GOV.IN](https://LEGALAFFAIRS.GOV.IN), <https://legalaffairs.gov.in/sites/default/files/USQ%201464%20for%2010%20feb%202021.pdf> (last visited Mar. 4, 2024).

Litigation Conciliation Board Bill (Salishi Bill)¹⁶⁷ in 2004. This attempt is said to be an effort to implement the spirit of equal justice and free legal aid as enshrined under Article 39A of the Indian Constitution at the Block level. It was observed that despite the enactment of the Legal Services Authorities Act and recognition of pre-trial conciliation, there is no permanent forum functioning beyond the sub-divisional level.¹⁶⁸ Hence, the Salishi Bill was drafted to establish a forum at the Block level to settle the disputes at the pre-litigation stage with the help of conciliation.¹⁶⁹

Clause 3 of the Bill proposed the establishment of one or more Conciliation Board/s at the Block level by the Panchayat Samiti of a Block in consultation with the State Legal Services Authority. Every Conciliation Board was planned to consist of three members: (i) Conciliator (Chairman), (ii) Legal Adviser (Member), and (iii) Counsellor (Member). A separate list of persons qualified to act as conciliators, legal advisers and counsellors was required to be prepared by the Panchayat Samiti in consultation with the Sub-divisional Officer and State Legal Services Authority.¹⁷⁰ Added to three members in the Board, the Block Development Officer of each Block or any other duly authorised officer not below the rank of an Extension Officer, Panchayat, was to act as ex officio Secretary to the Board. The Secretary is entrusted with the primary task of keeping records of the proceedings and decisions of the Board.¹⁷¹ In addition, the Secretary examines the appropriateness of a case for pre-litigation conciliation upon receipt of an application by a party to the dispute.¹⁷²

The Conciliation Board was entrusted to deal with cases at the pre-litigation stage and to promote conciliation of such cases at the Block level. In addition, the improvement of legal awareness of the people at the Block level was the task of the Board.¹⁷³ Clauses 7 and 8 of the Salishi Bill provided the procedure for carrying on pre-litigation conciliation. The Board was mandated to hold

¹⁶⁷ Bill No. 9 of 2004.

¹⁶⁸ Buddhadeb Bhattacharjee, *Discussion on the Alternative Dispute Resolution at the Grass Root Level (Inaugural address)* in PROCEEDINGS OF DAYLONG SEMINAR ON THE ALTERNATIVE DISPUTE RESOLUTION 11 (2005).

¹⁶⁹ West Bengal Block Level Pre-Litigation Conciliation Board Bill, 2004, Preamble.

¹⁷⁰ *Id.* cl. 5.

¹⁷¹ *Id.* cl. 6.

¹⁷² *Id.* cl. 7(2).

¹⁷³ *Id.* cl. 4(1).

meetings at least twice a week. Parties to the conciliation proceedings were entitled to authorise any person to represent their cases before the Board with the permission of the Board. In order to have balance, the Bill mentioned that if a party to the case gets permission for legal representation before the Board, the other party shall also be entitled to have legal representation.¹⁷⁴ The Panchayat Samiti was to supervise the working of the Board and to send quarterly reports about the functioning and performance of the Board to the State Government and the State Legal Services Authority.¹⁷⁵ A proposal was also made to create a Conciliation Board Fund to meet the expenses involved in the functioning of the Board.¹⁷⁶

Unfortunately, the Bill took a political shape and met with high opposition.¹⁷⁷ Since the Conciliation Board was to be appointed and supervised by the Panchayat Samiti, it was argued to be subject to political influence. It was also viewed that the adoption of the Bill would end-up making the village disputes more complicated with undue political influence. Due to severe opposition, the Bill was not passed in 2004. Further efforts to rejuvenate the Salishi Bill were made in 2005. In order to discuss the nuances of the Bill, the Judicial Department of the Government of West Bengal, in collaboration with the Union Ministry of Law and Justice, the International Centre for Alternative Dispute Resolution (ICADR) and the West Bengal State Legal Services Authority, had organised a high-level consultation seminar on 16 April 2005. It was attended by around 900 participants from legal fraternity in West Bengal.¹⁷⁸ However, the deliberations during the seminar reflected a clear political divide on the Salishi Bill. With the increased opposition, the Bill could not conceptualize into a law.

¹⁷⁴ *Id.* cl. 14.

¹⁷⁵ *Id.* cl. 9.

¹⁷⁶ *Id.* cl. 10.

¹⁷⁷ Subhrangshu Gupta, *Nine MLAs among over 1,200 arrested Trinamool Congress-sponsored Bangla bandh*, THE TRIBUNE (Aug. 3, 2004, 3:00 AM), <http://www.tribuneindia.com/2004/20040803/main4.htm>.

¹⁷⁸ Bhattacharjee, *supra* note 22, at vii.

V. Analysing the Field Data

The empirical research in the three sample areas has shown contrasting results on the status of ADR in West Bengal. Views expressed by the ADR administrators and the litigants were also different to a certain extent. In Kolkata and North 24 Parganas, Lok Adalat and arbitration are popular with the practitioners. The popularity of arbitration not only owes to the industrial settlement in and around the area but also the jurisdiction of the High Court as the appellate authority on the matters pertaining to Arbitration. However, in terms of reference by the courts, arbitration edges over Lok Adalat in Kolkata and North 24 Parganas. The litigants, on the other hand, have shown a good amount of awareness of mediation along with arbitration and Lok Adalat. While 42% of the litigants have practical experience of Lok Adalats, 38% and 25% have undergone arbitration and mediation respectively.

In Jalpaiguri and Darjeeling, mediation topped the list of popularity among practitioners, which was closely followed by Lok Adalats. The litigants' view on this was also that mediation and Lok Adalat are the most popular, but with the interchange of their positions in the list of popularity. Around 68% of litigants have been part of Lok Adalats and another 32% have resorted to mediation. In Burdwan, Lok Adalat topped the list of popularity by distance among practitioners and litigants. More than 80% litigants resorting to ADR have been part of Lok Adalats. The cost-effectiveness and quick disposal of cases are the key factors behind the higher number of litigants resorting to Lok Adalats.

The modes of conciliation and negotiation barely find any application across all three sample areas. According to the practitioners, people often question the legality of ADR mechanisms. While most of the cases referred to arbitration are appealed against in the High Court, conciliation and negotiation are believed to have lesser legal importance. Even when people are told about conciliation or negotiation for settlement of their disputes, they refuse to resort to them due to their preconceived notion bias. When it comes to legal matters, litigants are both inhibitive and cautious. They compare such extra-judicial methods to regular court procedures, and often find them less authoritative than a regular court proceeding.

Though a good number of cases are settled through the process of ADR in Kolkata and North 24 Parganas, it is not at the expected level. This is reflected

in the increasing number of cases before the ordinary courts. The practitioners and ADR administrators believed that this is due to the people's mindset that the court is the ultimate resort to settle their disputes. But when the litigants were asked about less popularity of ADR, they mentioned that either their lawyers did not tell them or they were abruptly told in unclear terms about alternatives to court litigations. Similar responses were found in Jalpaiguri and Darjeeling as well as Burdwan. Thus, the blame game is commonly found in all areas subject to this study.

The practitioners in all three sample areas have very little experience of legal aid clinics. The majority of the practitioners have either never been part of legal aid clinics or have been part of such clinics less than five times in their entire career. Due to their busy court schedule, they feel that they could not find time for it. Hence, the role of the practitioners in reaching the poor sections of society and helping them settle their disputes through ADR mechanisms has been minimal. The categories of cases referred or preferred to be referred to ADR in Kolkata and North 24 Parganas are corporate matters, matrimonial disputes and motor vehicle accident claims. In Jalpaiguri and Darjeeling, preference was given to matrimonial and other family disputes for reference to ADR. Similar observations are also found in Burdwan with the addition of motor vehicle accident disputes.

The implementation of ADR in West Bengal comes with a lot of impediments. The biggest impediment that was commonly found in all three sample areas was the element of bias. This applies more to arbitration issues in which the arbitrator has a pre-determined inclination towards one party or the other for different reasons, ranging from monetary to personal interests. This not only discourages the parties from trusting the fairness of the system but also encourages them to constantly challenge the legality of the award/outcome of ADR proceedings. In addition to the element of bias, the appointment of litigation lawyers and judges of ordinary courts of law was also pointed out as a major concern. The litigation lawyers and judges fail to appreciate the essence of doing away with the procedural complexities in the administration of ADR mechanisms, which takes away the benefit of speedy disposal of cases. The lack of enforcement and irregular appointment of ADR administrators also surfaced as other two major factors impeding the progress of ADR in West Bengal.

There are times when even well-informed parties refrain from using ADR mechanisms as their means of dispute resolution. In the field study, we found that unsuccessful precedents are the main reason for this in Kolkata and North 24 Parganas. This may be due to the frequent challenge of arbitral awards before the High Court resulting in unnecessary delay and cost in terms of enforcement. Stakeholders in this region particularly stated that often, the appointment of an arbitrator is made through a discrepant process, and it results in a dissatisfactory outcome, which forces the parties to move the court. In the other two sample areas, the most dominant factors that discourage the informed parties from resorting to ADR are the incompetence of ADR administrators and the traditional mindset of the parties.

Given all the limitations and impediments in West Bengal regarding the implementation of ADR, the success rate is also low. In Kolkata and North 24 Parganas as well as Jalpaiguri and Darjeeling, approximately 50% of the practitioners believed that the success rate of ADR is less than 25%. This belief is shared by more than 70% of practitioners in Burdwan. Even the remaining set of practitioners in all three sample districts placed the success rate of ADR only between 25% and 50%. Hence, even after the reference of cases to ADR mechanisms, they find their way back to the courts for final settlement.

Based on the above evaluation, the following inferences can be drawn on the status of ADR in the State of West Bengal:

- Though Lok Adalat is widely known in West Bengal, other ADR mechanisms are not popular to the expected level. Urban areas like Kolkata and North 24 Parganas have some exposure to arbitration and rural areas have some exposure to mediation, in addition to Lok Adalat. Conciliation and negotiation have got least significance.
- Except in Kolkata and North 24 Parganas, litigants are mostly uninformed about ADR mechanisms. The lawyers do not take active steps to explain the clients about the availability of ADR mechanisms, primarily due to financial implications. Some judges have made efforts to inform the parties about the available means of ADR, however, in a limited manner.
- The orthodox mindset of the litigants motivates them to resort to court proceedings rather than ADR mechanisms. Even though the court directs

resorting to ADR mechanisms under Section 89 of the Code of Civil Procedure, the majority of cases are not settled through ADR.

- The ignorant litigants believe that anything in nexus with their legal disputes is akin to litigation. In the absence of proper guidance, they misjudge ADR as another legal formality and run away from it in apprehension.
- Arbitral awards are often challenged before the courts of law resulting in delay and additional costs. Many times, this is due to misleading lawyers.
- Element of bias, irregular appointment of ADR administrators and problems in enforcement of outcomes of ADR proceedings are the major obstacles in popularising ADR in West Bengal.
- The litigants who are aware of ADR proceedings are also hesitating to resort to ADR proceedings due to unsuccessful precedents and incompetency of ADR administrators.
- The cumulative effect of all the above factors is to have a low success rate of ADR in West Bengal. Lawyers and incompetent ADR administrators have to take much of the blame in this regard.

VI. Conclusion and Recommendations

There is no doubt that ADR has huge potential to reduce the burden of courts and render effective justice to the people in West Bengal. While on paper all the stakeholders of this research agree with this fact, the practical scenario is found different. The judiciary has stressed the significance of ADR; however, a systematic approach to direct the cases for the suitable channels of ADR is found missing. The only major initiative of the Government of West Bengal in the form of the Salishi Bill could not conceptualise. In light of these factors, the authors make the following suggestions to improve the status of ADR in the State of West Bengal:

A. Capacity Building of ADR Administrators

One of the major findings of this research is that West Bengal has a very limited number of ADR administrators. Most of them, being retired judges, are carried away by their longstanding courtroom experiences. Some even believe that ADR has become a kind of retirement package for the judges. It would be difficult for

the judges to come out of their courtroom mindset to adapt themselves to informal or less formal methods of dispute settlement like ADRs. Moreover, they would have very little experience in mediation or negotiation, which require a special set of skills. They may be good in terms of legal interpretations, but not in understanding the needs of parties and bargaining for amicable settlement.

Due to this, the first step in popularising ADR in West Bengal is to keep away the ADR from heavy judicial influences. We need more well-trained and skilled arbitrators, mediators and negotiators to make ADR successful. People's confidence in ADR mechanisms can only be gained through their success and not by mere slogans or other means. Inculcating ADR skills cannot happen by way of having few workshops or conferences; rather, it requires rigorous practical training. Most of the law clinics in Western countries have emphasised on this aspect to build the capacity of ADR administrators. It is pertinent to note here that ADR might become an unruly horse if the administrator is incompetent. Hence, capacity building of the administrators is most significant to avoid such a situation.

B. Creating Awareness among Lawyers' Community

The next step in making ADR a grand success in West Bengal should be creating awareness among the lawyers. Just like the medical profession, the legal profession is a noble profession. Unfortunately, the current state of affairs has made it a business. It is true that lawyers need to earn their livelihood, but it should not be at the cost of others. People with problems approach lawyers with the hope that they will get satisfactory relief within a reasonable period of time. Since they leave their fate to the best judgment of lawyers, they have an obligation to advise the client to the best of their ability. Hence, in this process the lawyers have a duty to make their client aware of multiple options available to settle the disputes. This has been made mandatory for lawyers in jurisdictions like Italy¹⁷⁹ and Singapore.¹⁸⁰

Apart from creating awareness about ethical aspects of the legal profession, there is also a need to create awareness among lawyers about different forms of ADRs

¹⁷⁹ See the Legislative Decree 28/2010, Art. 4(3).

¹⁸⁰ Jonathan Yuen & Ang Tze Phern, *Mediation – Singapore*, WWW.RAJAHTANNASIA.COM (July 26, 2022), https://www.rajahtannasia.com/media/pdf/2022_Mediation_Singapore.pdf.

and their utility. As evident from this research, it is wrong to assume that most of the lawyers are aware of different ADR mechanisms. Often, lawyers do not inform their clients to resort to ADR mechanisms due to their own ignorance. The current system of legal education in India is court litigation-centric. Only having one or two papers on ADR in the legal curriculum would not help in making the products of this system well-acquainted with ADR mechanisms. Therefore, awareness about ADR mechanisms needs to be inculcated at the graduation level by introducing more subjects on different types of ADR mechanisms. Reference can be made here to the enormous contribution of the law curriculum reforms in the development of a strong ADR culture in the United States of America.¹⁸¹ As the spirit of ADR should be rooted in the hearts of the legal service providers to make it a success, it can only be achieved at the level of learning. Such an endeavour at the stage of learning would entirely change the perception of ADR among the practitioners as well as ADR administrators.

C. *Creating a Separate Set of Non-Litigating Lawyers for ADR*

Carrying forward from the previous suggestion, creating a separate set of non-litigating lawyers who can both advise clients and administer ADR is another significant step to be taken for promoting ADR. One of the major problems of practitioners in West Bengal is their busy schedule. Due to this, most of the experienced lawyers have no time for ADR. Even if they advise their clients to resort to ADR for settlement of their disputes, the lawyers fail to have effective involvement in it. Methods like negotiation, mediation and conciliation require a lot of patience and quality time of lawyers. In light of this, it is advisable to have a separate set of non-litigating lawyers to help litigants reach amicable settlement of their disputes. This has already been tried in many developed countries, wherein, the non-litigating lawyers helping in ADR have even outnumbered the litigating lawyers.¹⁸²

Adequate government support in terms of finances and infrastructure for ADR administration is absolutely essential. Until the time when ADR becomes popular

¹⁸¹ By mid-1980s education in mediation was virtually in all law schools of the United States. Leonard L. Riskin, *Mediation in the Law Schools*, 34 J. LEGAL EDUC. 259-267 (1984).

¹⁸² Reference can be made to a study conducted by Justice Dilip. B. Bhosale, which is published in Nyaya Deep. Dilip. B. Bhosale, *An Assessment of A.D.R. in India*, VII NYAYA DEEP 57, 68 (2005).

and self-sustaining, the non-litigating lawyers/ADR service providers need to be remunerated adequately. Without adequate incentives, getting qualified and experienced persons to administer ADR mechanisms would be difficult. Moreover, in the absence of any remuneration, the parties resorting to ADR may be extorted by the administrators for financial gains. This would leave a dark spot on the administration of ADR.

D. Establishing Multi-Door Court House System

The concept of a multi-door court house system is prevalent in Western societies as well as in Singapore.¹⁸³ In this system, every litigant approaching the court would be provided with the best among multiple options available for settling his/her dispute. It may be court proceedings or any of the alternative resolution mechanisms like arbitration, conciliation, mediation or negotiation. However, it is not to be misconstrued with reference to ADR under Section 89 of the Code of Civil Procedure. This is because the reference under Section 89 of the Code of Civil Procedure is made by the judge once the case comes before him/her. As witnessed in the findings of this research, the judge is not an expert in ADR, and s/he has very little time to explain the litigants about the ADR mechanisms. Hence, such references often fail to take parties into confidence, resulting in unsuccessful ADR proceedings.

In a true system of the multi-door court system, the channelling of the cases for different modes of settlement is done by an expert in all modes of dispute settlement. Such an expert would be an officer of the court receiving all cases of litigants and directing the parties to go for a suitable settlement mechanism on the basis of the nature of the dispute. Unlike judges, an independent expert will have sufficient time to explain to the parties the nature of suggested proceedings. This infuses confidence in minds of litigants to accept the mechanism, which goes a long way in resorting to a cooperation-based process leading to an amicable settlement of disputes.

E. Creating a Mediation-Friendly Atmosphere

¹⁸³ Larry Ray & Anne L. Clare, *The Multi-door Courthouse Idea: Building the Courthouse of the Future... Today*, 1 J. DISP. RESO. 7-54 (1985); see also Gladys Kessler & Linda J. Finkelstein, *The Evolution of a Multi-door Courthouse*, 37 CATH. U. L. REV. 577-590 (1988).

With the passing of the Mediation Act 2023, necessary legislative backup to mediation is provided in India. However, creating a mediation-friendly atmosphere at the State and local levels is key to its success. One of the classic examples of such an effort can be seen in Karnataka in the form of the Bangalore Mediation Centre. Since its establishment in 2007, the Bangalore Mediation Centre has set a new trend in mediation. The fact that between 2007 and 2020, it has got 77,839 cases referred, and out of which, more than 54,515 cases are amicably settled, with a success rate of more than 70%, speaks for its credential.¹⁸⁴ Interestingly, even the Supreme Court of India has referred cases to the Bangalore Mediation Centre.

The credit for the success of the Bangalore Mediation Centre goes to the High Court of Karnataka, which has created a mediation-friendly atmosphere in the Bangalore Mediation Centre. Notification No. LAW 291 LAC 2005 and Notification No. LAW 292 LAC 2005, passed by the Karnataka High Court have infused blood in court-annexed mediation. The former mentions that conciliation or mediation may be preferred when the relationship between the parties needs to be preserved, and the latter brings clarity with respect to the appointment of mediators, their qualifications, confidentiality, enforceability, etc. Similar efforts from the West Bengal judiciary are required to make mediation a success. Looking from the point of view of parties to disputes, incentives may be provided in terms of granting certain benefits to them for resorting to mediation. Such benefits may be in the form of waiver of fees or granting tax benefits, which help the litigants to explore mediation as a cost-effective alternative.

F. Dealing with Accessibility Problem

Several litigants face the problem of accessibility to ADR mechanisms in West Bengal since their operation is largely limited to Kolkata and surrounding areas. Most parts of West Bengal do not have well-qualified ADR administrators. Hence, efforts need to be made to take ADR to the doorsteps of common people. One of the methods to achieve this is to resort to the online dispute resolution mechanism. Understandably, it is not easy in remote places; however, it should be workable in urban and semi-urban regions of West Bengal. Governmental

¹⁸⁴ See Karnataka Mediation Centre, *Abstract Report*, [HTTPS://NYAYADEGULA.KAR.NIC.IN](https://nyayadegula.kar.nic.in), https://nyayadegula.kar.nic.in/abstract_statis.html (last visited Mar. 5, 2024).

support in building infrastructure is crucial in this regard. Added to this, creating awareness that online dispute settlement is in no way inferior to other modes of dispute settlement in the presence of parties is very significant to win the trust of parties.

Lok Adalat has been the popular mode of ADR in West Bengal. However, as evidenced in this research, many people have found it inconvenient to travel long distances to attend Lok Adalats. This may be due to their financial constraints, problems in the transportation system or time constraints. Many litigants in Darjeeling have expressed this view. The system of mobile Lok Adalat, which is run by a dedicated team of experts visiting different places in mobile legal services-cum-Lok Adalat vans or buses, helps such litigants to have access to Lok Adalat to settle their disputes. This system is already successfully implemented in Karnataka, Kerala, Andhra Pradesh, Telangana, Puducherry, Tripura, Himachal Pradesh, Meghalaya, etc. Adopting a similar system in West Bengal, especially in rural areas, would bring justice to the doorsteps of poor and marginalised sections of society.