AUTHOR: AMJAD, M.

TITLE: The use of ADR methods in the context of the barriers obstructing access to non ADR justice in Indian sub-continent.

YEAR: 2016

The Use of ADR Methods in the Context of the Barriers Obstructing Access to Non ADR Justice in Indian sub-continent

Muhammad Amjad

A Thesis submitted in partial fulfilment of the Robert Gordon University for the Degree of Master of Research

June 2016

ABSTRACT

This research considers the related questions on access to justice in India sub-continent: what exactly is wrong with the judiciary, what is Alternative Dispute Resolution (ADR), and why do people prefer it to the judiciary in settling their disputes? What advantages does it have over the judicial system of justice? What are the types of ADR and what can be done to improve on it so as to ensure good performance? Is there any way or indicator to measure the barriers in the access to Justice and how it can be implemented?

In the Indian sub-continent are allegations of corruption, abuse of office and ineptitude of government officers have also affected to the judiciary. Supposedly, Justice Users are faced with a lot of barriers in their path to access justice and, because of this, they are discontented, isolated and willing to shift away from the Judiciary. The reasons for this discontent are not far-fetched. One, the judiciary seems to be too corrupt, slow, too expensive and inefficient. From the high court judge to the court Clerks are issues bothering corruption, making it difficult for the less privileged to seek or get redress.

The politicians are also implicated as contributing to the systemic in-efficiency. At the time of recruitment and promotions for example, politicians

could influence procedures of selection and promotions and hoping that such favoured Judges return favour when their political gladiators have issues to settle in the courts. Such practice affects cost, quality of the procedures and the quality of outcomes. Faced with this dilemma, the people are demonstrably turning to the age-long alternative dispute resolution system ADR, and this paradigm shift is generating curiosity among the people, especially among researchers.

Keywords: Alternate Dispute resolution, Use of ADR in developing countries, access to justice, barriers in access to justice, traditional dispute resolution systems, mediation, arbitration, negotiation, adjudication, obstructions in non-ADR justice.

ACKNOWLEDGEMENTS

I wish to express my deepest gratitude to my supervisors Dr Femi Ilesanmi and Dr. Sarah Christie for their guidance, advice, criticism and encouragement throughout the research and academic years.

Thanks to Mr. Derek P. Auchie, my ex-supervisor who helped me a lot in searching the books and journals at the start of my thesis, who has now left the University for his better carrier. Thanks are also due to staff of Oldham Library who helped me a lot over five years in collection of books from other libraries.

Many special thanks go to my wife Nighat Amjad, children, family members and friends for their continuous support and encouragement, this study could not have been completed without them.

DECLARATION

Sources on traditional and informal justice, review of literature on barriers in access to justice and assessment of barriers on a standard scale in the Indian Subcontinent and trends of justice seekers towards traditional dispute resolution systems, obtained from different print or electronic sources has been presented in this thesis in accordance with academic rules and ethical conduct while un-intentional missing is apologized.

I declare that, as required by the rules and conduct, I have fully cited and referenced all materials and results that are not original to this work.

Muhammad Amjad

Signature:……

Acronyms

Acronyms and Abbreviations

ACC	Anti-Corruption Commission
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
CBO	Community Based Organization
CJC	Community Justice Centre
CLC	Community legal centre
CLS	Community Legal Service
CRC	Community Relations Commission
DRC	Dispute Resolution Centre
DOCS	Department of Community Services
IBA	International Bar Association
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
LAC	Legal Aid Commission
LIAC	Legal Information Access Centre
NADRAC	National Alternative Dispute Resolution Advisory Council
NGO's	Non-Governmental Organisations

TOR	Terms of Reference
UNDP	United Nations Development Programme
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development

CASE LAWS

Graphs

TABLES

FIGURES

CONTENTS

CHAPTER ONE

Research Overview

1.1 Introduction

To have a dispute or disagreement over some issues is common and natural to humans. Such disputes which are an expression of differences varies in nature and types, arising in families, neighborhood, tribes or countries. Commonly, it is between relations, about finance, land and business.

A layman can consider conflict and dispute, as one and the same thing in nature but there is a conceptual difference between these two terms.

It has been observed that when a dispute arises, the disputants uses an accessible and enforceable way to get justice in cost effective and less time consuming way. The mostly used method of resolving disputes is called the state controlled justice system, i.e. *formal justice* system that involves state-based justice institutions and procedures for handling civil and criminal cases. Such as the police, courts and enforcement measures implemented by the state.

The state's non-controlled justice system i.e. *informal justice systems* or ADR (alternative dispute resolution) systems employs traditional, religious and cultural ways of dispute resolution, which is managed by the heads of families or tribes and supported by the governments. NGOs, cultural and religious

organizations also resolve issues of disputants where the matters are minor in nature and the law of country allows them. These dispute resolution systems includes mediation, arbitration, negotiation, conciliation, expert determination, and early neutral evaluations where the parties may or may not agree at the outset to be bound by the decision.

1.2 Access to Justice

What is 'access to justice', and what is the meaning of 'access' and does these terms meet the expectations of a person who ask for justice but is denied or delayed?

'Access' according to UNDP, may be defined in simple terms as the right or privilege of a person to approach, reach, travel, enter or make use of something, by a way or means of approach or entry to gain it. UNDP defined access to justice as:

"the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards."[1]

In our view, 'accessibility' is a path to justice when travelled on by a person with the intention to resolve his/her issue by any intervention until he finds an outcome. These paths to justice may be search for information, how to

1. UNDP, "Programming for Justice: Access for All" (2005) published on website <www.unicef.org/ceecis/Programming_for_Justice.pdf > accessed on May 30, 2015

resolve the issue, contact the reliable person or refer the issue to public authority. There may be other paths to 'access' but what is adopted by the respondent or relied upon depends on the personal feelings and observations that are clear to him and he feels self-satisfaction about.

1.3 Research Background

The researcher's Post Graduation dissertation, "ADR Systems in Asian Countries" is an attempt to understand the ADR systems. The growing demands for ADR systems in developing countries encouraged the researcher to explore and identify the barriers in access to justice and to reveal the alternatives in response to the failures of non-ADR systems.

The justice users and providers understands the barriers and obstacles in the 'access to justice' in non-ADR systems but to understand their 'realism' and 'truth' that forces the 'user of justice' to search for an 'alternative' are the issues the researcher intends to identify and evaluate for justice providers, state controlled departments and public policy makers.

Here, the researcher would like to mention that English is not his first language and there may be grammatical mistakes in the sentences and phrases. Similarly, the references quoted from the Indian sub-continent literature and their author's first language is also not English. So, there may

be grammatical mistakes in their sentences and paragraphing. Please accept apologies for this.

1.4 Research Aims and Hypotheses

The research aims to explore and identify the use of ADR methods in the context of the barriers obstructing access to Non-ADR Justice in the Indian sub-continent. The research focus on the following questions:

- What is meant by barriers in access to justice?
- Is there any criteria to conduct the identification of barriers and assessment on any scale in non-ADR systems?
- Can we set the same criteria and scale for ADR Systems for the identification and assessment of barriers?

The hypotheses relates to different types of barriers and modes of operations existing in the sub-continent courts. For example:

- The reason governments do not improve the justice system is that, there are hidden costs, such as training of staff, lack of resources and legal aid that governments cannot afford.

1.5 Need for Research of barriers

It is natural and human that when someone faces an issue or obstacle that shakes his determination or he is deprived of what is his human right, he searches the alternatives to find the right path. A person who walk over the paths to justice, observes the experience better than a theoretical person who only observes others' experiences and makes comments. In that sense, the theoretical person can be likened to living in a glass house.

No doubt, each coin has two sides. On one side, if an observer finds barriers in the access to justice, the people on other side will say, no, these are no barriers but common and routine matters. That is, when you are going through a procedure you will have to face all these issues. For example if you are spending money and time to get justice, it is part of life. To get something, you will have to spend something. So differences of opinion will remain, until you justify, in terms of assessment or evaluation, who is right and who is wrong. This creates a need and drives the thinkers to research on who is right or wrong?

1.6 Research Focus on Indian sub-continent

The New Oxford Dictionary of English shed some light on what the term Indian sub-continent is*:*

"The Indian sub-continent generally comprises of the countries of India, Pakistan, and Bangladesh." [2]

A booklet published by the United States Department of State in 1959 listed Afghanistan, Ceylon (since 1972 Sri Lanka), India, Nepal, and Pakistan (including East Pakistan, since 1971 Bangladesh) as part of the: "*Subcontinent of South Asia".*[3]

John McLoed writing on history of India maintains that:

"It almost always also includes Nepal, Bhutan, and the island country of Sri Lanka and may also include Afghanistan and the island country of Maldives." [4]

Researcher's view is that the reader should be aware of the similarities and differences in cultures, traditions and legal systems before it, in order to understand the barriers and their evaluation in the Indian sub-continent.

The similarities among the three countries are:

- Religion is a way of life, which influences the social structure, history, economic activity, and political organizations in the Indian sub-

---

2. Indian subcontinent, *New Oxford Dictionary of English,* ISBN 0-19-860441-6) New York: Oxford University Press, 2001; p. 929: "the part of Asia south of the Himalayas which forms a peninsula extending into the Indian Ocean, between the Arabian Sea and the Bay of Bengal. Historically forming the whole territory of Greater India, the region is now divided between India, Pakistan and Bangladesh."

3. (Modern South Asia, Page 3, Routledge, 2004 by Sugata Bose and Ayesha) Jalal.

4. John McLeod, *The history of India*, Greenwood Publishing Group, (2002), ISBN 0-313-31459-4

continent. Among the major religions in India, Hinduism is the largest, followed by Islam, Christianity, Sikhism, Buddhism, Jainism, Zoroastrianism and Judaism. The Level of involvement of people in religious activities is very high. People perform the rituals with such devotion to the extent that they are ready to die in the name of religion all the time**.** That is why the rate of success of ADR systems within the religions is higher than the traditional and cultural environments. (Although India, being a secular country does not recognize any religion as State religion yet people have great concerns with religions);

- There exist tribes and caste system which is respected, honored and preferred in matrimonial cases and living styles, which is helpful in resolving disputes at local level.
- Honouring the elders and following their advice are among the religious teachings of Hinduism, Islam and Christianity (the dominant religions of the sub-continent). Children and young people are reminded, taught and forced to respect their elders. That is why traditional dispute resolution systems are successful in the sub-continent.
- According to an estimate, over 80% of people live in villages.

- Increment in population level is making it difficult for people to survive due to poverty and shortage of resources. The income per capita (Appendix 2) is low, as well as living index is below the poverty line. (Appendix 3)

If similarities do exist among these countries, differences should be there also as it is a natural phenomenon that where there is light, there is darkness too. The conflicts among the societies and tribes are due to the differences in religious and cultural activities. For example:

- Religious differences between the Hindus, Muslims and Christians have historic roots and have greatly influenced the development of the sub-continent. In Pakistan and Bangladesh where Muslims are in majority, they do not respect the Hindu rituals. It is the same in India where Muslims suffer due to the noise that accompanies their call to prayers and slaughtering of animals issues;

Sreenivasarao Subbanna, writing on the cultural diversity of the Indian Sub-Continent maintained that diversity is in every aspects of the peoples' lives and wondered what glued India together. He expressed it in the following line*s:*

- *"The diversity in the Indian culture is not merely in its ethnic or racial composition. It is in every walks of life. Starting with the geographical features, climatic conditions, and the vast regional and intra-regional differences, one can go on to religion, customs,*

attitudes, practices, language, food habits, dress, art, music, theatre and notice that no two regions are the same in these matters. Each group and each sub-group has its own set of identities. Then, what holds India together?" [5]

- Differences in language and ethnic background create political unrest within the borders of these three nations;
- There are differences between cultural qualities and 'values' among the three nations.
- Due to low level of poverty corruption index in the Indian Sub-Continent is very high. (Appendix 1) People do not shy away from taking bribes. It has now become fashionable to take bribe.
- A difference in the legal systems of the Indian Sub-Continent countries also exist. Bangladesh legal system is based on English common law. Nandini Chavan and Qutub Jenhan Kidwai wrote that India's legal system is based on:
- *"English common law, except in Goa, Daman and Diu and Dadra and Nagar Haveli which follow a Civil law system based on the Portuguese Civil Law."* [6]

---

5. Sreenivasarao Subbanna, The Cultural Diversity of the Indian Subcontinent , 2007, published on website http://allempires.com/article/index.php?q=The_Cultural_Diversity_of_the_Indian_Subconti and accessed on April 25, 2016

6. Nandini Chavan, Qutub Jehan Kidwai, *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code*, Page 245, Hope India Publications, 2006

Pakistan legal system is based on English Common Law with some Islamic law applications in inheritance, Tribal Law in FATA.

It is to be noted that when analyzing the barriers, the researcher have considered all of the above similarities and differences in this study.

1.7 Research Methodology

The methodology of a study, whether it is quantitative or qualitative, is linked with the nature of the research question. The qualitative strategy adopted during this study was determined by the researcher in considering the nature of the research questions and objectives of study because according to Denzin. N. K and Lincoln. Y. S. qualitative approach helps in studying things in their original state in a clearer way:

"*qualitative research builds a complex and holistic picture of studying the things in their natural settings*." [7]

The qualitative empirical approach adopted to answer the research questions follows the *Lofland concept* where he argued that the qualitative researcher must eschew personal sentiments and describe as accurately as possible what the research participants in the research believes in. This is expressed the following lines:

7. Denzin, N. K., and Lincoln, Y. S. "*Handbook of qualitative research*" Sage Publications Ltd. (1994) P-223

"the role of a qualitative researcher is not to interject one's own view but instead to describe accurately another's experience so as to elicit what the research participant believes or understands." [8]

The literature review (consolidating available knowledge) in the view of Livari. J. Hirscheim. R and Klein. H.K, is considered a sequential step to study in order to provide the foundation on which to reveal and identify what has been explored and targeted to achieve. They presented it in these lines thus: *"to collect, know, comprehend, apply, analyze, synthesize, and evaluate quality literature in order to provide a firm foundation to a topic and research method."*[9]

The researcher focused on the following procedural specifics while reviewing the literature to get the answers to his research questions to:

- search for existing literature in the area of study which were published within a certain period i.e. twenty years;
- review the literature selected from print and online resources;
- develop a theoretical and conceptual framework to resolve the issues and make the research successful.

This helped the researcher to find:

- *What is needed* for review outputs?

---

8. Lofland, J. "Analyzing Social Settings" Belmont, CA: Wadsworth (1971)

9. Iivari J. Hirschheim, R. & Klein, H. K. "*Towards a distinctive body of knowledge for information systems experts: Coding ISD process knowledge in two IS journals*" *Information Systems Journal, 14*(4), (2004) 313-342.

- *What is meaningful when* reviewing?
- *What is practical* within the timescale of the research?

Looking in-depth into the nature of the questions of research, timescale and budget of research, the writer adopted the qualitative, empirical and literature base review approach, which is based on data and information gathered from relevant literature, scholarly books, legal journals and indexes, research documents, reports and case studies. Searches were made using the Internet search engines: (a) Google.com; (b) Google Scholar; (c) Yahoo.com; (d) Questia; (d) slide share and online libraries produced a vast data collection to analyze and examine the literature, by measuring reliability and validity.

The sources referenced in the next chapters, mostly focus on the Indian sub-continent literature but some do not. They have been referenced to support the arguments and evidences. Some references are based on the experiences of the justice user when he follows the paths to justice, a need for MA2J scale, which require justice user's satisfaction.

The research contains primary and secondary sources. The arguments and evidences have been collected from both sources and cited.

For the knowledge of the readers, the difference between primary and secondary sources has been explained as follows and why the researcher has relied on secondary sources.

In brief, primary sources means a document, physical object or record which contains first-hand information or original data on a topic created by an individual or a group of people e.g. personal documents, reports, data or findings, paintings, journals, newspapers and magazines, poems, songs, government documents, etc. Surveys and Interviews are great primary sources because the individual expresses their views about the topic.

Secondary sources are sources that analyses, interprets, evaluates, cites, comments on or discusses the original / primary sources. These secondary sources include journal articles, books, reviews, newspaper articles, essays, etc.

The literature review is based on studies and research papers which are mostly based on secondary sources as they are built on the research or studies others have done. The secondary sources help readers to understand the topic more clearly as it explains and describes the primary research in an easy way.

The research was conducted in two stages:

- At the first stage, data related to barriers faced by a justice user in formal justice system was collected and analyzed.
- A scale to assess the barriers was selected and used to examine their validity and reliability and to get the results.

Analysis was not easy when there were different scales and measures to identify the barriers and to prove it, a barrier in access to justice. The literature review provided a foundation on which to conclude on the barriers, select the scale to measure it and provide the evidence in support of the claim.

1.8 Scope and Limitation of the Research

The researcher explored a number of excellent reviews and summaries which provided information about different barriers in non ADR systems (formal justice system) but there was not any comprehensive study that have the integration of both, the barriers and measures, with practice evidences.

The scope of research is unlimited as the information related to research objectives directs towards different styles and discussion topics. For example, economic justice, social justice, relationship with peace, cultures, traditions and religions. The writer has referred and quoted the maximum available legal references from study material and sources related to the research subject in order to answer the research questions but the limitation of words has set the boundaries not to include all the references but have examine them in depth.

The research has been completed by a student of RGU, Aberdeen, using its own resources. It cannot be claimed that this study is an absolute or

exhaustive analysis of the research aims, i.e. identification of barriers, their evaluation and demand for alternatives in the Indian sub-continent but it can be said that this is an initial step to further explore the aims.

1.9 Significance and Outcome of the Research

Formal justice systems are losing the confidence of the public due to different operational and structural barriers in the access to justice. The disclosure of identity and realism of these barriers made the participants and researchers to focus on the common barriers in non-ADR systems:

- What specific barriers in the access to justice works, when, with whom, and at what point in the procedures?
- What are the best strategies for dealing with these barriers and imbalances?
- What are the best means to determine the need for a different ADR forms for dispute resolution between different disputes and parties?

From the practitioner's point of view, the research includes:

- What specific techniques can a practitioner use to handle the barriers in the access to justice?
- What and how can the scale of measurement of a barrier in access to justice be set?

- Any desirable personal qualities for a dispute resolver required in overcoming the barriers?

The above questions reveals the importance of research, if answered to the satisfaction of readers, it will help the practitioners and justice providers to remove the barriers and reform the justice systems. Here, the theoretical researchers may criticise the lack of rigorous methodology associated with routine data collection and evaluation but from the researcher's point of view, the topic of research with narrow questions have significant value.

It is expected that this research will encourage the readers and practitioners to further explore and identify the barriers within or across the disciplines in non-ADR justice systems and find the alternatives.

The expected outcomes of the research will be:

- Knowledge of access to justice in terms of barriers;
- Provide a base for further discussion and research, how professionals can be involved in improving the ways to access justice.
- A solution to a practical problem for practitioners, what to do if no solution is found in non-ADR systems to resolve a dispute;
- Help for the researchers to develop a '*World Peace Model'*, an instrument to avoid the breaking out of a third world war, integrating ADR systems into non-ADR systems while delivering justice across the board.

1.10 Structure of Dissertation

The study has seven chapters and each chapter is further divided into sections to highlight the contents mentioned in the chapter. A brief introduction of each chapter is as follows:

- Chapter 1 Outlines the Aims and Objects of the study and Research Methodology adopted in this research with Background and Significance;
- Chapter 2 Review the Literature Published and Printed so far by famous authors in Print or on Internet;
- Chapter 3 Explains the Operational and Structural / Institutional Barriers in non-ADR systems.
- Chapter 4 Analyses the Barriers in the Context with 'access to justice' using M2AJ scale.
- Chapter 5 Describes the Use of ADR Systems, their Evaluation on M2AJ Scale and Justification in Context with Barriers.

  Chapter 6 Summarises the Research and Outlines the Recommendations.
- Chapter 7 Bibliography

This study also consists of a number of appendices such as:

Appendix 1: Corruption Index

Appendix 2: Income per capita

Appendix 3: Cost of Living Index

CHAPTER TWO

Literature Review

2.1 Introduction

The literature review followed a sequential steps of study which is in line with Ivari. J, Hirschheim. R and Klein. H. K's recommendation that literature review should be a thorough study in order to give credence to the topic and the research method:

"*to collect, know, comprehend, apply, analyse, synthesize, and evaluate quality literature in order to provide a firm foundation to a topic and research method.*" [10]

Hart defined literature review as the use of the ideas found in the literature to give meaning to the topic:

"the use of ideas in the literature to justify the particular approach to the topic, the selection of methods, and demonstration that this research contributes something new." [11]

Knowledge of Dispute Resolution processes, formal or informal, is getting recognition within the communities. With the increase in literacy rate in the Indian sub-continent and many books, research articles, reports,

---

10. Iivari. J, Hirschheim, R., & Klein, H. K. "*Towards a distinctive body of knowledge for information systems experts: Coding ISD process knowledge in two IS journals*". *Information Systems Journal, 14*(4), (2004) 313-342.

11. Hart, C. "*Doing a literature review: Releasing the social science research imagination*" London, UK: Sage Publications. (1998) p-1

conferences and seminar papers in print form and online resources are now available for readers.

The literature review relates with the research topic, searches and phrases i.e. access to justice, barriers in access to justice, barriers in ADR systems, operational barriers, non-operational barriers, assessment of the barriers and the need for the alternatives. The writer has identified a number of authors, books, journals, reports, research papers, articles, current researches and publications but has selected and quoted the famous ones whose references are accepted by the researcher's community and their validity is recognized.

Two online libraries, 'Questia' and 'Highbeam' were accessed after subscribing to their services (to read books, articles and reports online). The literature review reflects the main objectives of the research and covers the following three approaches:

- What are the known barriers obstructing the access to justice in the Indian sub-continent?
- What evaluation methodology has been adopted to identify their realism?
- What substitutes to non-ADR systems exist in the Indian sub-continent and their evaluation and uses?

To justify the particular approach to the research questions, authors, books, articles, reports and research papers, some reviews in the context of the research objectives have been discussed in the next pages. In brief, the writer has found different empirical researches in litigation in the Indian sub-continent that is close to his research objectives but this study illustrates the issues of access, barriers and their assessment on a standard scale. The reviewed study vary in terms of approach, definition and measuring of the costs, quality and outcome of justice vis-a-vis public costs and ADR vis-a-vis non-ADR, etc.

2.2 Barriers in Access to Justice

The writer reviewed the Lord Wolf's, 'access to justice' interim report. What he has come to understand is stated in these lines of that report:

"*key problems facing civil justice today are cost, delay and complexity, these three are inter-related and stem from the uncontrolled nature of the litigation process. In particular, there is no judicial responsibility for managing individual cases or for the overall assessment of the civil courts.*"[12] Anderson described in his published article on the barriers in access to justice, what the main issue is:

12. Lord Woolf, "Access to Justice" Interim report published on website <http://www.dca.gov.uk/civil/interim/chap1.htm> (1995) accessed on January 20, 2013

"*a lack of judicial independence is an obstacle to justice.*" [13]

In the view of Michael. R. Anderson, the:

"*other problems of justice institutions are their slowness" [14],*

For Houtzager, it is:

"the costs of legal process" [15],

Martin Abregu and Shahdeen Malik sees these barriers as:

---

13. Anderson, "Access to justice and legal process: making legal institutions responsive to poor people in LDCs" (1999) P-10, Paper for Discussion at WDR published on website <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf> accessed on December 20, 2012

14. Michael R. Anderson, "*Access to justice and legal process: making legal institutions responsive to poor people in LDCs*". March 25, 2009 published on website <http//oemmndcbldboiebfnladdacbdfmadadm/https://www.ids.ac.uk/files/dmfile/Wp178.pdf >accessed on May 25, 2014

15. Houtzager, "*We Make the Law and the Law Makes Us*: Some Ideas on a Law and Development Research Agenda." P-15, Anderson, "Access to justice and legal process: making legal institutions responsive to poor people in LDCs ". UNDP, "Access to Justice, Practice Note." De Soto, *The Mystery of Capital, Why Capitalism Triumphs in the West and Fails Everywhere else*. Here, some refers to the work by Galanter. See M. Galanter, "*Why the "Haves" come out ahead: Speculations on the limits of Legal Change*" *Law and Society* 9, no. 1 (1974).

"lack of adequate information provision of legal norms and legal practice, and the geographical distance from the poor to the courts." [16,17]

Robyn Sheen and Dr Penny Gregory added to the perspective in identifying what the barriers are:

"*the actual costs of engaging a lawyer, the opportunity cost of time spent in court, and the general level of skill and education required to litigate effectively, all serve as deterrents."* [18]

Anderson further argued that legal systems in poor countries are not effective due to political leaders' behaviour and people who are holding authoritative positions, such as bureaucrats.

Language is another issue in some countries where the language spoken is not the same as that of the court proceedings. Here, David Satterthwaite's view is relayed in these lines:

---

16. Martín Abregú, "*Barricades or Obstacles, The Challenges of Access to Justice"* Documentary libraries (2001) published on <http://www.gsdrc.org/go/display&type=Document&id=195>

17. Shahdeen Malik, "*Access to Justice, A Truncated View from Bangladesh*" published in "*Comprehensive Legal and Judicial Development"* ed. R. V. Van Puymbroeck (Washington: World Bank. (2001)

18. Robyn Sheen and Dr Penny Gregory, "*Civil justice system framework and literature review Report*", Australian Government's Attorney-General's Department by Shina Consulting. 2012

"*formality of language and precision of ritual are two of the devices by which legal systems are cloaked in legitimacy.*" [19]

Inadequate legal representation in the courts is another obstruction in Webb Douglas's view. He writes, that in:

"*most legal systems, private citizens are not even allowed to appear in court to present their own case – a monopoly of competence is bestowed on the legal profession.*"[20]

About the delay in courts, Anderson writes that justice delayed is justice denied. He gave these examples:

"*Unfortunately, most court systems in developing countries are very slow. A 1986 study of tort litigation in the state of Maharashtra, a province of India) for example, showed that the time between the filing of a suit and receiving final judgement was 17.4 years on average.*" [21]

Michael Zander citing Genn, H. in a report, 'Survey of litigation costs: In Access to Justice' wrote that:

---

19. David Satterthwaite "The Ten and a half myths that may distort the urban policies of governments and international agencies" (1989) published on < http://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_infrastructure/pdf_city_planning/IIED_Satterthwaite_Myths_complete.pdf> accessed on May 15, 2014

20. Webb, Douglas 'Legal System Reform and Private Development in Developing Countries' in Robert Pritchard, ed., *Economic Development, Foreign Investment and the Law* (London: Kluwer), (1996), p-50

21. Michael .R. Anderson "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs" Institute of Development Studies at the University of Sussex, (2003)

"*three perennial problems of cost, delay and complexity have been inflicting the civil justice system for ages, and it was these ills that Woolf's reforms, along with the previous attempts at reform of civil justice wanted to redress."* [22]

Comments by the Researcher

This study aims to identify the barriers in access to justice. The writer has focused on printed books, current research reports published by different authors and organizations. The researcher agrees with Lord Woolf's views in one of his reports, that the current judicial system was plagued with problems. He wrote:

"*present system of civil justice was too slow, too expensive, too complex and too inaccessible.*" [23]

The researcher also agree with Anderson's views that there is 'a lack of judicial independence' to justice. In his view, the:

22. Michael Zander, "*Cases and material on the English Legal System*" 10th edition, Cambridge University Press,(2007) Chapter 2 Pre-trial proceedings, p-47

23. The Article "*The Impact of the Woolf Reforms in the U.K.*" published on website http://www.allenovery.com/publications/en-gb/Pages/The-Impact-of-the-Woolf-Reforms-in-the-U-K-.aspx, visited on August 23, 2015

"*problems of justice institutions are their slowness, the costs of legal process, and a lack of adequate information provision of legal norms and legal practice, and the geographical distance from the poor to the courts.*" [24]

The researcher has compiled all these barriers in a single chapter in support of his study with evidence from different printed and published resources for the understanding of the readers.

2.3 Evaluation of Barriers

The next step of this study is to evaluate the barriers on a standard scale. What has been reviewed is that, each author has framed his own logic and the measuring approach to evaluate them. For example:

Barendrecht, Mulder & Giesen discussed the need for a framework for measuring cost and quality of access to justice:

"*the possibilities of a framework in which the costs and quality of access to justice can be determined and where costs are not merely measured in terms of money, but also in terms of time and emotional costs, for example, stress.*" [25]

---

24. Anderson, "Access to justice and legal process: making legal institutions responsive to poor people in LDCs" (1999) P-10, Paper for Discussion at WDR published on website <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf> accessed on December 20, 2012

25. Barendrecht, M., Mulder, J. and Giesen, I., "*How to Measure the Price and Quality of Access to Justice?* " (2006), published on website http://www.measuringaccesstojustice.com accessed on December 12, 2014

Taylor & Svechnikova also acknowledged the need for a measurement criteria as presented in Gramatikov's work:

"*work on measuring the cost and quality of access to justice which involved building a measurement framework that includes approaches to the study of litigation, the choice of units of analysis and measurement, the choice of data and collection methods.*" [26]

Conley and Moot considers the evaluation criteria used for needs evaluation to be very close and similar to the evaluation goals. His view is that a third category should be added, specific to the needs of outcomes of the projects for:

- *"Broadly shared vision;*
- *Clear, feasible goals;*
- *Diverse, inclusive participation;*
- *Participation by local government;*
- *Linkages to individuals and groups beyond primary participants;*
- *Open, accessible, and transparent process;*
- *Clear, written plan;*
- *Consensus-based decision making;*
- *Decisions regarded as just;*

---

26. Gramitikov, M, "*Methodological challenges in measuring cost and quality of access to justice*" TISCO Working paper Series on Civil Law and Conflict Resolution Systems No. 002/2008, Social Science Research Network, (2007) published on website <http:/papers.ssm.com/sol3/papers.cfm?abstract id=1099392> accessed on February 02, 2015.

- *Consistent with existing laws and policies.*" [27]

Martin Gramatikov and others [28] in answering the question 'what are the Benefits of Measuring Paths to Justice?' Maintains that it is an attempt to know the measurement needs. As in:

- "*Expose insufficient access to justice;*
- *Evaluate performance of procedures;*
- *Evaluate performance of legal systems;*
- *Improve decisions of users;*
- *Monitor effects of reforms;*
- *Valid benchmark for paths to justices;*
- *Improve transparency and accountabilit*y" [29]

The MA2J methodology is a type of scale which is an attempt to provide a standard measurement which:

27. The William D. Ruckelshaus, "*Literature Review*" published on website <http://oemmndcbldboiebfnladdacbdfmadadm/http://ruckelshauscenter.wsu.edu/wp-content/uploads/2013/06/RuckelshausProjectEvaluationFoster2011-LiteratureReview.pdf > accessed on February 02, 2015.

28. Martin Gramatikov, Maurits Barendrecht, Malini Laxminarayan, Jin Ho Verdonschot, Laura Klaming Corry van Zeeland, "*A Handbook for Measuring the Costs and Quality of Access to Justice*", published by Tilburg Institute for Interdisciplinary Studies of access on April 15, 2015.

29. Extracts taken from the book, note 25

"*aims to build a measurement framework which is valid, reliable and efficient enough to allow implementation at a global scale."* [30]

Gramatikov have further emphasized the need for an encompassing definition of what constitutes the path to justice:

"*importance of defining the beginning and end of 'path to justice', when the legal need emerges, when the person decides to take action, when information to resolve the problem is sought, and when the professional is contacted for or when action to resolve the advice problem is taken*". [31]

Karl J. Mackie[32] in his research paper 'Methodological Challenges in Measuring Cost and Quality of Access to Justice', attempted to formulate a model for measuring cost and quality of access to justice. He noted:

"*propose a model in which paths to justice are the principal units of analysis and individuals are units of measurement. Paths to justice are conceptualized and operationalized in slightly narrower terms than the approach, used by the research on legal needs. Specific strategies for sampling and collecting*

---

30. Civil Law and Conflict Resolution Systems / TISCO, 2009, published on https://www.measuringaccesstojustice.com/wp-content/uploads/2011/03/Handbook_v1.pdf Gramatikov, M. "Methodological challenges in measuring cost and quality of access to justice." 2007, p-3. *TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 002/2008*, Published by Social Science Research Network. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1099392, p-3

31. Id

32. Karl J. Mackie, "*A Handbook of Dispute Resolution, ADR in Action*", published by Routledge, London, UK, (1991) p 3-11

data from end users of justice are reviewed and assessed for validity and reliability." [33]

A report on 'How to Measure the Price and Quality of Access to Justice' written by famous researchers Maurits Barendrecht (Tilburg Law School; Tilburg Law and Economics Centre (TILEC), José Mulder (University of Amsterdam - SEO Economic Research) and Ivo Giesen (University of Utrecht) in November 2006 and published by Barendrecht, M. Mulder, J. and Giesen, I [34] have explored how the price and quality of access to justice can be determined. M. Carfield described it this way:

"*What is lacking, until now, is an all-embracing systematic way to assess (all) the barriers that people experience when they seek access to justice.*" [35]

What are these barriers exactly? How powerful are they (in costs)? The goal is to explore how access to justice can be measured. The report by Mattei. U

---

33. GRAMATIKOV, Martin, eoutro , "Analítico de Monografia" http://www.dgsi.pt/bpgr/bpgr.nsf/305fde3cddf188ab802569660044179b/d7d2b4ebc6ab42de8025785a003c1ea8?OpenDocument website visited on June 30, 2015

34. Barendrecht, M. Mulder, J. and Giesen, I. "*How to measure the price and quality of access to justice?"* Posted to the Social Science Research Network (SSRN). (2006) published on <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=949209> accessed on march 17, 2015

35. Carfield, M. "*Enhancing poor people's capabilities through the rule of law: creating an access to justice index*" Washington University Law Quarterly. (2005) p. 339-360.

states that there is no any established theory on the barriers in access to justice:

"*legal scholars have revealed procedural hurdles that hamper access to justice, but have not yet developed a broader encompassing theory regarding access to justice.*" [36]

American Bar Association maintains, however, that surveys have been conducted on the hypothesis that users behave in a rational way concerning cost and benefits:

"*Surveys have tested the hypothesis that users of mechanisms weigh the costs and benefits of the different interventions they have access to (Genn et al. 1999, ABA 1994).*"[37]' [38]

In the paper, the authors have discussed 'how access to justice can be measured in a more systematic manner' and have explained that costs and quality of justice can be determined not only in terms of costs but it should also be determined in terms of time, emotional costs and personal stress, a person feels or is involved.

---

36. Mattei, U., "*Access to Justice, Costs and Legal Aid, General Report for the XVIIth Congress Of The International Academy Of Comparative Law*", Utrecht, The Netherlands. (2006)

37. Genn, H. & Beinart, S. (et al.), "*Paths to Justice: what people do and think about going to law*", Oxford: Hart. (1999)

38. ABA, American bar Association, "*Legal needs and civil justice. Survey of Americans major findings from the comprehensive legal needs study*". Chicago, USA, American Bar Association. (1994)

Gurthrie and Levin's view is that the evaluation of mediated outcomes is difficult and have been based on the parties' satisfaction only:

"*due to the difficulties associated with evaluating mediated outcomes, mediation is often assessed simply in terms of the parties' satisfaction with the mediation process. Current available research is very heavily oriented towards assessing the parties' satisfaction with the process*".[39]

Comments by the Researcher

The researcher's view is that, research made in the evaluation of non-ADR and ADR processes is still limited in its scope because the nature and sustainability of outcomes is facing barriers. The writer agree with Karl J. Mackie's discussion that to measure the experiences of the end user, in terms of cost and quality of justice, is a must. The model in his proposal e, 'paths to justice are the principal units of analysis and that individuals are units of measurement' seems to be workable. His claims that MA2J model investigate the costs, perceptions on procedural quality and satisfaction with the outcome, based on the experience of justice users in resolving their disputes, is workable and satisfactory.

---

39. Chris Guthrie and James Levin. "A Party Satisfaction, Perspective on a Comprehensive Mediation" *(1998) Ohio State Journal on Dispute Resolution*

Ohio State Journal on Dispute Resolution, p-886

2.4 Alternatives of Dispute Resolution

The third objective set for this research is to explore the alternatives when a justice user fails in obtaining justice while using non-ADR process. The literature review revealed that most authors explained the procedures, advantages, disadvantages and philosophical approach to how to resolve the disputes, but a few propose changes and adoptions within the current systems. For example:

Nancy .F. Atlas's views are expressed here :([40])*

"*ADR refers to those processes, outside of a court hearing, where an impartial person helps the parties to resolve their dispute."* [41]

ADR systems or mechanisms includes mediation, arbitration, negotiation, conciliation, conferencing, court connected mediation and neutral evaluation.

In her view, the potential benefits of ADR Systems are:

- "*Early resolution of disputes and identification of the real issues in dispute;*
- *Less adversarial processes for matters that involve relationships;*
- *Ownership of outcomes by parties who have participated in ADR;*

---

40. Nancy .F. Atlas, "*Alternative Dispute Resolution: The Litigators Handbook*" edited by Nancy F Atlas, Stephen Huber, E Wendy Trachte Huber, published by ABA Publishing USA (2003) p-2

41. National Alternative Dispute Resolution Advisory Council, "*Legislating for Alternative Dispute Resolution"* (2006), p 24.

- *Proportionate cost in cases of early resolution*". [42]

Concerning the details of the nature of ADR processes and techniques underlying 'successful' negotiation and mediation, **Nancy .F. Atlas** [43] explains the hybrid processes in which neutrals first attempt to facilitate a settlement but, failing that, will give a binding or non-binding decision.

Karl .J. Mackie[44] clarifies that ADR has turned out to be complimentary rather than supplanting the non ADR system. She wrote:

"*over the last two decades ADR has become a cornucopia of processes, procedures and resources for responding to disputes, all of which supplement rather than supplant traditional approaches to conflict.*" [45]

Welsh, in his explanation, states that there are essential characteristics to ADR:

"*the post-mediation interview research, reported that regardless of whether the ADR intervention is facilitative, evaluative, or transformative, the following process characteristics are essential: dignity, thoroughness,*

---

42. Id

43. Nancy .F. Atlas, Stephen Huber, E Wendy Trachte Huber, "*Alternative Dispute Resolution: The Litigators Handbook*" edited by, published by ABA Publishing USA (2000)

44. Karl .J. Mackie, "*A Handbook of Dispute Resolution, ADR in Action*", published by Routledge, London, UK (1991) p-11

45. Karl J. Mackie "*Dispute Resolution, First Aid Kit for Attorneys*", ABA General Practice Section, Introduction cited in "*A handbook of dispute resolution, ADR in Action*" published by Routeledge London (2000) available on website <http://samples.sainsburysebooks.co.uk/9781134952816_sample_526284.pdf> accessed on May 17, 2015.

fairness, progress toward resolution, and adherence to procedural justice." [46]

Dukes offered an in depth description of the ADR processes as:

"*a process that reaches very solid and long lasting agreements, including monitoring and party accountability, may fail, on the grounds that participants end the ADR process more hostile toward each other than when they began, while being bound by ADR process outcomes."* [47]

Nancy .A. Welsh says that the court must ensure that ADR is 'supervised' to ensure it is in the spirit of fairness in justice:

"Court-sanctioned mediation is part of a system that delivers justice, not just settlement, and therefore there is an obligation on the courts to promote fairness within their mediation processes".[48]

Hilary Astor put it this way:

---

46. John Reiman, Laura Beck, Marshall Peter, Dick Zeller, Philip Moses, and Anita Engiles, "*Initial Review of Research Literature on Appropriate Dispute Resolution (ADR) in Special Education*" Consortium for Appropriate Dispute Resolution in Special Education (CADRE) Eugene, Oregon (April 2007) published on website <http://www.directionservice.org/cadre/pdf/Initial Review of Research Literature.pdf> accessed on May 15, 2015.

47. The William D. Ruckelshaus, "*Literature Review*" published on website <http://oemmndcbldboiebfnladdacbdfmadadm/http://ruckelshauscenter.wsu.edu/wp-content/uploads/2013/06/RuckelshausProjectEvaluationFoster2011-LiteratureReview.pdf > accessed on February 02, 2015.

48. Nancy A Welsh, "*Making Deals in Court-connected Mediation: What's Justice Got to Do With It?*" Washington University Law Quarterly 837 (2001) 79

"This requires more involvement than simply referring matters to mediation in the absence of quality control measures."[49]

Tony Marshall provides a summary of the key motivations behind ADR and made a distinction between two types of mediations:

"*provides a useful summary of the key motivations behind the ADR and outlines the development of mediation approaches and draws a distinction between two types of mediation used, principally deriving from the extent to which mediation processes are an outcome of justice systems referrals or centred in voluntary community disputes."*[50]

Comments by the Researcher

It is a natural phenomenon that a solution exists where there is any issue. The same is in the path to access to justice. If we find barriers in non-ADR systems, then alternatives are there to overcome the difficulties.

A summary by W. Dukes Ruckelshaus states that ADR processes are reliable but can also lead to delicate outcomes:

"*a process that reaches very solid and long lasting agreements, including monitoring and party accountability, may fail on the grounds that participants*

---

49. Hilary Astor, "*Quality in Court Connected Mediation Programs: An Issues Paper*" (2001), Bobbi McAdoo and Nancy Welsh, "*Look before You Leap and Keep on Looking: Lessons from the Institutionalization of Court-connected Mediation*" Nevada Law Journal 399, 427. (2004-2005)

50. Karl J. Mackie, "*A Handbook of Dispute Resolution, ADR in Action*", published by Routledge, London, UK. (1991) P-18

end the ADR process more hostile toward each other than when they began, while being bound by ADR process outcomes" [51]

Failure to resolve the disputes in ADR process may exist and needs careful behaviour towards both parties.

The following comments by Welsh are notable as they support ADR indirectly:

"*following process characteristics are essential: dignity, thoroughness, fairness, progress toward resolution, and adherence to procedural justice*" [52]

Hedeen comments that in dispute resolution processes the interest of the party is paramount and as well as the government:

"party satisfaction with the mediation process is undoubtedly important, but also important, are the time and cost efficiencies and savings for parties and also for government" [53]

This reflects the researchers' views that ADR processes are on demand by the public when they fail to access justice in non-ADR systems.

---

51 The William D. Ruckelshaus, "*Literature Review*" published on website <http://oemmndcbldboiebfnladdacbdfmadadm/http://ruckelshauscenter.wsu.edu/wp-content/uploads/2013/06/RuckelshausProjectEvaluationFoster2011-LiteratureReview.pdf > accessed on February 02, 2015

52. Welsh, N. A. Stepping back through the looking glass: Real conversations with real disputants about institutionalized mediation and its value. *Ohio State Journal on Dispute Resolution, 19*(2), (2004). 574–678.

53. Hedeen, Timothy, PH.D. "*Using Participant Feedback to Evaluate and Improve Quality in Mediation*" (September 2002) CADRE. Available at http://www.directionservice.org/cadre accessed on April 10, 2014

2.5 Conclusion

The research is a desk base study to understand the significance of research, what has been defined and explored earlier and what the writer is going to discuss and measure. The picture before now is that there was no proper guideline on the barriers to the access to justice: Maurits Barendrecht, Jos'e Mulder and Ivo Giesen puts it this way:

"*What lacks, until now, is an all-embracing systematic way to assess (all) the barriers that people experience when they seek access to justice (Carfield 2005). What are these barriers exactly? How big are they (in costs)?* " [54]

The literature review concludes that cost and time are the main factors responsible for why the poor cannot access justice. In addition to these fundamental barriers, quality of procedures and outcome of the procedures, have great impact on the paths to justice.

How the identified barriers can be evaluated and on what scale, and what alternatives can be adopted have been discussed in the next chapter.

---

54. Maurits Barendrecht, José Mulder, Ivo Giesen, "How to Measure the Price and Quality of Access to Justice?" research paper published by Tilburg University; International Victimology Institute Tilburg (Intervict); Tilburg Law and Economics Centre (Tilec); Hague Institute for the Internationalisation of Law (HIIL), November, 2006

CHAPTER THREE

Barriers in Access to Non-ADR Justice

3.1 Introduction

S. B. Sinha, a Supreme Court judge in India wrote that justice is quintessential for mankind and it has been their aspiration through history. It is expressed in the next three lines:

"*Justice* is the *foundation* and object of *any civilized society. The quest for justice has been an ideal which mankind has been aspiring to generations down the line."* [55]

The problems of injustice becomes acute when examined in the context of the needs of those who are deprived socially and economically in the name of justice. This study explored the obstructions and barriers in the access to justice in the context of non-ADR systems in the Indian Sub-Continent, which contributes to judicial delays, including: lacunae in civil and criminal procedure codes, methods of police investigation, general administration and lack of the use of technology.

What is meant by barriers in the access to justice and can we set any criteria

---

55. S. B. Sinha, (Judge Supreme Court of India) "*ADR and Access to Justice: Issues and Perspectives*", published on website <http://www.hcmadras.tn.nic.in/jacademy/articles/ADR-Justice SB Sinha.pdf> visited on February 21, 2015

to acknowledge it? What is an obstacle or barrier on the way to access justice?

Barriers means obstacles developed by legal, religious, social, administrative, and cultural actors for their own benefits. Barriers can be divided into two types:

- Legal barriers that is set by the state through legislation to bar the acts of its citizens in order to maintain law and order;
- Operational barriers developed by the citizens themselves to start, slow or stop the state run activities.

The history of 'barrier' tells us that God made a barrier for Adam and Eve. The first barrier in the world was not to eat of the fruit of an assigned tree. They were misguided by Satan and made a mistake by eating the fruit of the assigned tree.

When is there a barrier? Anyone can claim any obstacle or mistake to be a barrier.

Bret Crow then ask question:

'are there any criteria to conduct the identification of a barrier in an appropriate manner?'

The literature review does not set any criteria or test, to conduct the identification of the barriers in access to justice in formal judicial systems. But the background of the following explored barriers revealed by the researcher, will help us to set indicators and sub-indicators for assessment

on a standard scale in the next chapter. It is to be kept in mind that the focus of this study is from a user's perspective (with the overall aim of identifying the barriers to access to justice).

The researcher's view is that, for a barrier, the following test should be applied to assess the identity of any act or obstacle as a barrier:

- There must have been an obstacle to an existing act with an evidence on a particular matter;
- The fact or evidence must have been established and objectively verifiable;
- The claimant must not have been responsible for that obstacle;
- The obstacle must have played a material part in the procedure of that matter and outcome.

The barriers in the access to justice can be due to legal, political, economic, institutional and structural issues in formal justice systems (non-ADR systems) stated by an Ohio Supreme Court Chief Justice Maureen O'Connor. This is reflected in these lines:

"*barriers to access to justice can mean many things. It can be barriers for litigants for whom English isn't their primary language, or the hearing impaired, or juveniles who need legal representation to ensure that their voice is heard, or poor civil litigants who cannot access legal representation*

through Legal Aid because of a lack of resources to meet their needs." [56]

For the application of the test set out above, understanding the difference between qualitative and quantitative approach will help to understand how quantitative data can be used to get the results.

Qualitative Research is used to gather information and understanding of reasons, opinions, and motivations in depth, to develop ideas or hypotheses. The data is collected using unstructured or semi-structured techniques. The findings obtained cannot be generalized to the whole population but to a focus group.

Quantitative Research is also used to measure and quantify the numerical data to find and formulate facts in a structured form. It involves different forms of survey, interviews, studies and polls gathering of information from a relatively large number of participants and generalizing to a broader population. In quantitative research, the data is structured in statistical format and stored in the form of tabulations. The findings are conclusive in numerical format and descriptive in nature.

Researchers have discussed the differences between qualitative and quantitative research. For example Alatsi described it this way*:*

---

56. Bret Crow, **"***Barriers to Access to Justice will be Focus of Supreme Court Task Force"* (2014) published on website <http://www.courtnewsohio.gov/happening/2014/accessJusticeTF_062714.asp#.VPs9x_khhKU> visited on June 12, 2014

"The main differences between quantitative and qualitative research consist in respect to data sample, data collection, data analysis, and last but not least, in regards to outcomes." [57]

In qualitative research, data are based on unstructured or semi-structured mechanism, whereas in quantitative research, data uses highly structured and rigid techniques. Atlasti went further to reveal the nature in which qualitative and quantitative research are done. These lines shows that:

"*Qualitative research is typically exploratory and/or investigative in nature. Its findings are often not conclusive and cannot automatically be used to make generalizations. However, it is indispensable in developing a deep understanding of a given thematic complex and sound rationale for further decision making. Quantitative research is essential for providing a broad base of insight on which typically, a final course of action is recommended."* [58]

To validate and verify the test objectives in the context of quantitative research, statistical data can be collected, using survey and face to face interview techniques. For example, the first objective is:

- There must have been an obstacle to an existing act coupled with an evidence on a particular matter*;*

  The working variables are, cost, legal aid, time (in terms of delay) and

---

57. Article published on website http://atlasti.com/quantitative-vs-qualitative-research/ under the title "Qualitative and Quantitative Research Comparison of Qualitative and Quantitative Research". Website visited on April 25, 2016.

58. Ibid.

procedures. All variables are quantifiable and measureable and outcome is conclusive.

- The fact or evidence must have been established and objectively verifiable*;*

  The working variables are delays, disclosures, facts and evidences. All variables are quantifiable and measureable and outcome is conclusive. For example how many times the user went to court but the case was adjourned and the parties could not produce the evidence or disclosures were incomplete.

- The claimant must not have been responsible for that obstacle*;*

  The variables are time and money.

  The justice user spent money and time, went to the court but the case was adjourned. The outcome is conclusive because user has lost the money and wasted his time.

- The obstacle must have played a material part in the procedure of that matter and its outcome.

  The working variables are delay and wastage of time of the justice user.

The test objectives qualify the quantitative research and are conclusive. So it can be applied to assess the identity of any act or obstacle as a barrier. Concepts of access to justice in the context of barriers in non-ADR systems

may have different directions and approaches in the perspective of the 'justice user', but the main barriers that the researcher has identified from literature review are:

- Cost and time, spent to get the justice;
- Case management, long delays occurred due to judges, police, lawyers and parties behaviors;
- Legal aid, lack of affordable legal representation;
- Corruption in the judiciary;
- Political interference;
- Literacy, lack of knowledge and awareness;
- Failure to discharge the prescribed duties;
- Language problems;
- Policing system of the state;
- Lack of enforcement of judgments;
- Distrust of people of the judiciary;
- Remoteness;
- Independence of judiciary;
- Lack of accountability of judiciary.

Additional minor barriers were also explored but their details is not possible to mention here due to words limitation.

3.2 Cost and Time

The literature review reveals that lack of resources, namely, *cost and time* are the basic factors incurred by the users. A user cannot get justice if he has no sufficient resources to handle the cost of lawyers, filling fees etc. This is expressed as the costs of justice. Beside the legal fees, justice processes require many other out-of-pocket expenses. This thought is evidenced in James. P. George's work as in the next lines:

"*Some of the possible monetary costs of the paths to justice are court, arbitration and mediation fees, jury fees, services of summons, exhibit fees, an appeal bond, court reporter fees for the trial transcript, fees for abstracting the judgment and discovery related costs."* [59]

When we focus on time, be it the time of the justice user or the time of court proceedings, this may be from a week to a year or more depending on the court system and behavior.

Cost of legal procedures is of great concern and this is due to the income and level of poverty in the Indian sub-continent and this can be judged from the "*Cost of Living Index for these Countries 2015 Mid-Year published by NUMBEO, a website used as a source by many international newspapers and magazines including BBC, Time, The Week, and Forbes for resource of data. Brief data is as following:*" [60]

---

59. JAMES P. GEORGE, *Access to justice, costs and legal aid*, 54 American Journal of Comparative Law 293, (2006).

60. Source: http://www.numbeo.com/cost-of-living/rankings_by_country.jsp visited on Nov. 15, 2015

Rank	Country	Consumer Price Index	Rent Index	Consumer Price Plus Rent Index	Groceries Index	Restaurant Price Index	Local Purchasing Power Index
105	Bangladesh	36.76	4.45	20.29	35.63	25.49	46.72
122	Pakistan	27.77	4.22	15.76	26.21	23.87	46.39
125	India	24.85	5.27	14.87	26.36	16.43	99.29

In the ranking, India is at 125th level, Pakistan at 122th and Bangladesh at 105th position. Can we expect that people will spend on justice instead of food and other life essential? What we see is that their spending is limited to food, clothing and other daily needs. To afford the cost of justice with limited resources is crucial to them. The per capita income, a useful economic indicator which enables them to compare with different countries or areas, demonstrates the incapacity of people to seek for justice. The table of income per capita (as given in appendix 2) helps us to determine a poverty line in terms of minimum level of income and consumption that is necessary for continued survival.

The table show that in poverty level Pakistan is at 155 rank, India is 151 and Bangladesh at 163.

The analysis is used to determine poverty level based on purchasing power, corresponding to other estimates where 'cost' is considered a basic element of living in each country of the sub-continent. When such is the situation, that people are living under poverty line, how can it then be expected that

they can pay for Lawyers and afford the costs of court procedures. Honourable Shri. Y. K. Sabharwal wrote that delay in litigation leads to increase in cost for the justice user. Relayed in these lines:

"*Delay, in the context of justice, denotes the time consumed in the disposal of a case in excess of the time within which a case can be reasonably expected to be decided by the Court."* [61]

The delay in justice, which is directly linked with time, significantly impacts the actual cost of litigation and constitutes one of the main reasons that it is said that justice delayed means justice denied. Delays in dispute resolution processes is one of the most touted problems of contemporary justice systems in Indian sub-continent. Martin Gramatikov acknowledged the cost of delay on jurisprudence in these next lines:

"*A prolonged path to justice will require more out-of-pocket expenses for legal fees, travel, etc. Also, a delayed procedure will likely increase the amount of time spent and will cause additional opportunity costs such as foregone earnings and opportunities."* [62]

---

61. Honorable Shri Y.K. Sabharwal, Chief Justice of India "*Delayed Justice*" (2006) speech published on website http://supremecourtofindia.nic.in/speeches/speeches_2006/delayed%20justice.pdf website visited on 12 November 2014.

62. Martin Gramatikov, A framework for measuring the costs of paths to justice. Journal of Jurisprudence, 2, 111–147. (2009) <http://arno.uvt.nl/show.cgi?fid=94183> website visited on November 10, 2014, p-125

If we calculate the negative value of the delay, in terms of time, the difference between the timely outcome and the delayed outcome will reflect the quality of the outcome. Maurits Barendrecht, et al believes that timely judgement equals justice than delayed judgement. He wrote:

"*A timely outcome will better address the need for justice compared to a delayed outcome.*" [63]

T*he* New Zealand's bill of Rights Act of 1990 also commented on the effects of delay as a cause of barriers on the judicial process in these lines:

"*delay threatens the effective operation of the judicial system and can impose additional stress for litigants, victims and witnesses and, in the criminal context, may interfere with the rights of the accused to have the charges against them speedily determined."* [64] This is also a cause of a barrier.

The study reveals and identify the following reasons for delay in the litigation process (non-ADR systems):

- reluctance of the judges to restrict the adjournments;
- lack of strict adherence to time-frames or time-limits;
- frequent resort to interim injunctive reliefs;
- frequent amendments by the parties during the trial;

And according to Dr Shah Alam is the:

- "*Absence of sufficient legal provisions for victims and witnesses'*

63. MAURITS BARENDRECHT, et al., How to Measure the Price and Quality of Access to Justice? Available at http://ssrn.com/paper=949209.

64. New Zealand Bill of Rights Act 1990 No 109, s 23(3).

protection, which seriously impede smooth process of litigation." [65]

3.3 Case Management

The case management relates with the time factor and almost in each case, it is recorded by the court registrar. On 26 July 1996, Lord Woolf published his *Access to Justice Report* [66] *(1996)* in which he listed two of the requirements of a case management as:

"*fixing timetables for the parties to take particular steps in the case; and limiting disclosure and expert evidence.*" [67]

A general term 'backlog' is used when we talk about 'case management' i.e. increasing the volume of un-heard cases. The court-based delays include the judges' behaviour in dealing with the case or bias towards one party. The court staff's behaviour and management of filing and record also causes delay. The backlog of cases may be of two types. One is party base and the other, court based. In party base backlog, sometimes one party uses different tactics to delay the case e.g. not producing the witness in time or

---

65. **Dr. M. Shah Alam, "***Problems of delay and backlog cases*" (2010) article published on http://archive.thedailystar.net/suppliments/2010/02/ds19/segment3/delay.html> website accessed on December 12, 2014

66. Lord Woolf, "*Access to Justice Final Report*", (1996) by A. A. S. Zuckerman published in Modern Law Review. 59 (773) accessed on July 12, *2012.*

67. IbId Section II: Case Management, Ch. 1, Par. 4

absence of the representative in the court.

Why are there backlogs of cases? The study reveals that, this is due to the delay and complexity of the cases. In case management mechanism, a 'Procedural Judge' is appointed to receive the suit at the first instance. The judge differentiates the suits on the basis of legal complexity, urgency and monetary value. Parties are made aware of the progress. The implementation of case management system is, to encourage the settlement of cases speedily. If backlog is developed, it means case management needs reforms and the staff needs training to clear the backlog.

3.4 Legal Aid

Legal aid is fundamental to social and legal justice in any society or community. The lack of provision of assistance in terms of finance or legal representation to those people who are unable to afford the court or solicitor's fees to access justice, is another barrier in Indian sub-continent. The delivery models for legal aid includes: law centers, payment of solicitor's fees or volunteer representation by the lawyers to deal with the cases for individuals who are entitled to help to get justice from the courts. Legal aid is the only tool available for the poor to successfully take their disputes to the court. Legal aid is provided mostly by the state to cover legal costs for the poor. UNDP recognized the existence of the legal aid barrier in developing

countries in these lines:

"*Availability, affordability and adequacy of legal aid and counseling are the three major challenges which poor people face in developing countries."* [68]

It has been observed that, without legal aid, the poor suffer and justice is denied to them. The unavailability of legal aid by the state is itself a barrier in access to justice resulting in people been deprived of justice.

3.5 Corruption in Judiciary

Corruption may be defined by the justice users in many forms and ways but the most popular and authenticated definition is of the World Bank. BorisBegovic and Dragor Hiber described corruption as an:

"abuse of the public office for private gains." [69]

Makanaka who wrote on corruption in in the judiciary also described it as:

"Corruption involves a whole range of activities from bribery, influence peddling, patronage or favour, nepotism, cronyism, electoral fraud, embezzlement, kickbacks to officials and involvement in organized crime." [70]

---

68. UNDP, *"Access to Justice"*, practice notes published by UNDP (2004) <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ACCESSTOJUSTICEUNDPPRACTICENOTE.pdf> p-15 site accessed on August 12, 2014

69. Borris Begovic, Dragor Hiber, "*Corruption in Judiciary*", published by Center for Liberal Democratic Studies, Belgrade Serboa (ISBN 86-83557-30-8) (2004) p-12

70. Makanaka, "*Why corruption in India has grown, what must now be done*" blog published on internet, (2011) <*http://makanaka.wordpress.com/2011/08/24/why-corruption-in-india-has-grown-what-must-now-be-done/> website assessed on August 10, 2014.*

Neil. H. Jacoby et al, also shed some light on the endemic nature of corruption in many parts of the world particularly in the Indian sub-continent. As cited below:

Corruption is a serious problem in Indian sub-continent like in many countries where it is common in each office and sector of life where there is public dealing. *"Indeed, in many parts of the world, corruption has become a way of life with its own local version of the term and manifestations of various forms of corrupt practices."* [71]

This corruption, Theobald. R. said is growing in many ways in these communities and cultures and threatens government and democracy. For example, bribery, political interference, electoral fraud, influence peddling, patronage, embezzlement, kickbacks, nepotism and cronyism and involvement in organized crime is common. He wrote:

"More generally, corruption erodes the institutional capacity of government as procedures are disregarded, resources are siphoned off, and public offices are bought and sold. At the same time, corruption undermines the legitimacy of government and such democratic values as trust and tolerance." [72]

Corruption affects the cost and quality of the procedure indirectly in judicial

---

71. Neil H. Jacoby e t al., "*Bribery and Extortion in World Business*" New York: Macmillan, (1977) p. 6-7

72. Theobald R. "*Corruption, Development and under development*" published by Macmillan: Basingstoke, (1990), p. 130.

systems whether it is among the lower staff or among the judges. Payments made in the shape of corruption, when they are added to the out-of-pocket expenses of the path to justice, it puts a burden on the justice user and it increases the uncertainty of the procedure and outcomes. Justice will remain behind the bars where justice providers are not fair in their duty by taking bribe.

3.6 Political Interference

Misuse of powers by the politicians is a major tool used in the sub-continent to influence the judiciary, mediators or arbitrators. Though traditional systems are free from this cultural tact (as they are held on to at the very preliminary stage), in villages or towns but political interference exist there also.

Political interference in judiciary starts from the appointments of magistrates and senior courts judges mostly on the recommendations of politicians and this elicits favourable judgments from then onwards. Even judges of higher courts are selected from those already serving in lower courts on the recommendations of politicians. If this is the framework of selection, then, surely judges have to pay the price for their selection to the higher powers. Political interference in the activities of the judicial systems in the Indian sub-continent is usually negative. The relationship between politicians and

judiciary provides a show to the public:

- use of the courts as a tool for democratic recognition;
- propaganda for the poor to access justice;
- publicity in the name of justice;
- donations to bar councils, a tool for gaining favour in the future;

If judges do not favour this practice, then, the politicians exploits the judges to gain:

- lack of public faith in the judicial system;
- Insecurity of the jobs of lower court judges;

'Does this intrusion of politicians compromise the functioning of the courts and the quality in judgments?' The answer is more complex than a simple yes or no because in the words of Albert Chin:

"sometimes, policies are implemented without any legal basis, and sometimes existing laws are put aside, ignored or bent when new policies supersedes old ones upon which the laws were based." [73]

3.7 Judicial Knowledge and Bias

The quality of outcome of judgments is related to judicial knowledge. Judges

---

73. Albert Chen, "*Legal Thought and Legal Development in the People's Republic of China 1949-2008*", SSRN Working Paper, p.38, published on <http://ssrn.com/abstract=1369782> accessed 20 November 2009

are required to have an understanding of multiple issues and areas. The literature review explores the position that judges are biased in favor of rich clients. As Albert Chen maintained in his work on the legal situation in China. As contained in these lines:

"*judges' bias in favor of debtor parties is alleged by a large proportion of those interviewed. This bias appears particularly prominent when the plaintiffs are banks or other financial concerns. They noted that, there appears to be a tendency of courts to prolong proceedings in order to afford a debtor more time to improve his/her financial situation and thereby honor the debt.*" [74]

The assessment of judges and court staff, is referring to the identification of their knowledge, skill, performance levels and the desired levels, is another obstacle in access to justice where the governments do not provide proper funding in the sub-continent.

3.8 Failure to Discharge Prescribed Duties

This factor is about the quality of outcome of the judgments. The examples of failure from prescribed duties by the judiciary in the Indian Sub-Continent are common. This is manifested in the form of orchestrated delays. Sandra Eelena, Alvaro Herrero and Keith Henderson talks about it this way:

"*majority of judges clings to the bygone concept of disposition Albert Chin and exercise a minimal role in moving the process along. Many will not move*

74. Id

a case forward without the impetus from the parties. Even when a case is active, judges do not appear to exercise their power to keep it running smoothly or to prevent unnecessary delays or obstacles to completion." [75]

Another factor which affects the judge's progress and work is their transfer from one court to another court or from one city to another city. A judge who hears the testimony may not decide on the dispute due to his transfer. The new judge may have to repeat some of the procedural requirements already fulfilled in order to understand the nature of the case. This affects their duties and this element of delay causes a delay in justice.

The role of paralegal staff (known as court clerks) cannot be ignored as they are responsible for court procedures, pleadings and court orders. The above mentioned writers also described the duties of the court administrative staff as:

"Their role is to assist with the work of the judges, providing them the documents and decisions included in filings and formulating drafts of orders that judges will issue." [76]

If the staff is cooperative with the judge, then, his work is easy. Otherwise, the judge will fail in discharging his duties as the paralegal staff is always the

---

75. Sandra Eelena, Alvaro Herrero, Keith Henderson, April 2004 "*Barriers to the Enforcement of Court Judgments in Peru*", winning in Cour t only Half the Battle: Perspectives from SMEs and Other Users, p- 2l, published by IFES and produced with generous support from USAID. (April 2004)

76. IbId

right hand man of the judge who performs the various duties ranging from giving hearing dates to writing the judgements. He also do every other related jobs under the powers of judge in the court. Sandra Eelena and her colleagues also described how negligent the support staff in the court are. As in:

*"According to the judges, the attitude of their staff was to perform the minimum amount of work possible, thus delaying proceedings and increasing the cas*eload, *further bolstering the general perception that the justice system is corrupt*." [77]

3.9 Language Barriers

This factor is concerned with the quality of the procedures of the courts where the language of the court can be a disadvantage. Nicholas. P. Tsuamaki confirms this in these lines:

"language of the procedure could be a barrier to justice if a particular person is not fluent in this language"[78]

If there is a person who is in need of justice but does not understand the language of the system or procedure in which the court is conducted, additional interpretation expenses or translation of documents from court

---

77. Id as above

78. Nicholas P. Tsukamaki, "*Legislative Inconsistency: California's Good Cause Statutory Exceptions As a Step Back in the Effort to Improve Court Access for Non-English Speaking Civil Litigants"* 41 University of San Francisco Law Review 69, (2006).

language to user's language will be incurred. This may result in hiring a translator. Therefore, the language barrier in courts is an additional expenses that the users of justice have to pay in order to overcome his problem and to get justice in non-ADR systems.

3.10 Policing System

Access to Justice is a recognized human and fundamental rights which is under criticism in the Indian sub-continent. From a layman to a professional, each one finds serious lacunas in the functioning of the judicial system. People have the understanding that police department has an easy way to change the witness by way of bribery to achieve their desired outcome in court. Political influence and corruption can change the investigation reports too. This barrier is a major obstruction in the access to justice for the poor who are unable to bribe the police in time.

The literature further reveals that criminal justice system in Indian sub-continent is tilting in favor of the police due to terrorism and extremism. The prosecutors listen to the higher authorities or politicians to make a change in the reports where required. Their acts at the initial stage affects the case and deprives the justice user from justice.

3.11 Lack of Enforcement

The study reveals that there is a lack of mechanisms in the enforcement of court judgments in the judicial system of Indian sub-continent. The following barriers affects the procedures of enforcement of judgments:

- Corruption and injunctions;
- procedural delays;
- a lack of accountability.

The enforcement of civil and commercial judgments are affected due to these barriers that are working against a person or against the state.

3.12 Lack of knowledge and Awareness

Literacy and education are the two factors which empowers the individuals and increases their capacity to understand their rights. If the level of literacy and education is poor, this will be a negative effect on the economic resources. This study reveals that these negative effects will in turn affects his capability to access justice. U. Sarathchandran described it in these lines: "*Illiteracy, lack of financial resources, and social backwardness are major factors that hinders the common person from accessing justice. There are other invisible barriers: lack of courage to exercise legal rights, the proclivity to suffer silently, the denial of rights and geographical and spatial barriers*

are examples." [79]

In the Indian sub-continent, a lack of knowledge and awareness of systems, influences the daily life of the poor man. Legal awareness is considered a foundation in the access to justice. The more people are aware, the more they will have the knowledge to pursue their rights. It is a fact that the poor cannot seek remedies for injustice when they do not know what their rights are under the law and how they can avail themselves of it. UNDP described it in this way:

"*A related obstacle is the poor's limited legal awareness and knowledge of the law and their rights."* [80]

In addition, S. F. Moore maintained that such ignorance can lead to distrust of the legal institutions. He wrote that:

"poor people tend to distrust formal institutions and the law, often such distrust coincides with the perceptions that getting justice in the legal system

---

79. U. Sarathchandran, "*Bringing legal aid a step closer home*" published in HINDU newspaper (2011) <http://www.thehindu.com/opinion/lead/article2609718.ece> website accessed on August 10, 2012.

80. UNDP, "*Access to Justice, Practice Note*", Barendrecht and Van Nispen to Sevenaer, and "Microjustice." 6, Abregii, "*Barricades or Obstacles, the Challenges of Access to Justice*" Published on website <http://www.gsdrc.org/go/display&type=Document&id=195> accessed on December 12, 2014

is difficult or impossible." [81]

Anderson further presented other reasons that discourage the poor from seeking justice. Relayed in these lines:

"*The poor are further inhibited in seeking justice in formal institutions due to the fact that many live a life of illegality in terms of housing, tax payment or registration and fear of going to a formal court, or are barred to go there in the first place."* [82]

Educating the public creates awareness of rights and obligations. It also develops the knowledge to know the solutions to their problems. The people with poor literacy level are deprived of their rights by the politicians whose true identity is wrapped in false promises.

Access to justice may also be denied when the people that need remedies do not have the capacity to demand them. This lack of capacity can stem from many factors like lack of legal awareness and lack of legal aid and paralegal services.

---

81. S.F. Moore, "*Law and Social Change: the semi-autonomous social field as an appropriate subject of study*" *Law and Society Review* 7 (1973). Also cited in S. Macaulay, "Non-contractual Relations in Business: A Preliminary Study," *American Sociological Review* 28 (1963).

82. Anderson, "*Access to justice and legal process: making legal institutions responsive to poor people in LDCs* ". CLEP, "Agreed Principles and Conceptual Framework."

3.13 Distrust of Justice Systems

In the Indian-sub-continent, individuals and the poor are abused and discriminated against by the police force and other state authorities, on the basis of religion, casts and tribes. Influence of high ranking officials directly affects the outcomes of the justice system. This negative effect is creating an impression on the poor and disadvantage people causing them not to rely on formal legal procedures for the solution of their justice problems. This is acknowledged by Galanter and Krishnan as:

"distrust in or lack of credibility of the justice system" [83] Which is a challenging obstacle, because it is damaging to the reputation of the courts. When people have distrust, they will pretend to attend the courts, ultimately making delays in judgments.

3.14 Remoteness

The study reveals that there are barriers in rural and remote areas of Pakistan and India, especially, where people live in remote and isolated villages or among the valleys that limits the effectiveness of using their

83. MARC GALANTER & JAYANTH K. KRISHNAN, *"Bread for the Poor": Access to Justice and the Rights of the Needy in India*, 55 Hastings Law Journal 789, (2004).

rights. Those people are unable to contact the judicial system of the country when in need, due to travelling cost and time to reach the city.

Maria Karras, et al also revealed that the disabled and people with mental illnesses also face barriers in the access to justice. This is conveyed here:

"*Disabled people or people with mental illnesses often find it difficult to reach courtrooms or offices of the public authorities.*" [84]

The only source available to them to access justice is to avail themselves of ADR systems at the local level.

3.15 Independence of Judiciary

The literature review explains that the courts in the Indian sub-continent are not independent. When judges are carrying out their duties, they are not free and independent. The judges in lower courts mostly face pressure from political persons, media, and religious leaders or from their seniors. Lack of independence affects appointments, promotions, service tenure, judicial training and continuing legal education. No doubt when judges feel secured and independent, the outcome of justice will be affected.

---

84. MARIA KARRAS, et al., On the edge of justice: the legal needs of people with a mental illness in NSW available at http://www.lawfoundation.net.au/report/mental.

3.16 Lack of accountability

The study observed that although legal institutions have an important role in holding government agencies in the Indian sub-continent to account, in the institutions, there is still a vacuum and that accountability is not effective. Judges and magistrates are not held accountable for their performance by their senior members of the judiciary or by an Independent Judicial Service Commission. When judges have no accountability, there will certainly be delays in hearing the cases which becomes a barrier in the access to justice.

3.17 Conclusion

The study found that a number of operational and institutional barriers in the access to justice in the Indian sub-continent are not faced by the poor only but rich people too. The rich ones bribes the judiciary in different forms. The ones that suffers are the poor who cannot afford the cost of justice and as a result, have a distrust of the quality of procedures and outcome of the procedures of the courts. This research consists of a number of case studies but limitation of words does not live room to discuss it further.

CHAPTER FOUR

Analysis

4.1 Introduction

In a fast developing and growing age, the approaches and instruments to define, measure and analyze barriers cannot remain valid for a long time. Progressive thinking and variable environments, reformed laws and legislations, helped the researchers to explore and reveal how they can be re-evaluated in order to form a significant impact on justice, dispute resolution processes and political infrastructure.

In previous chapters we explored the following barriers, which in our view, fully passed the test for a barrier that was set for their identification and they have common variables in their existence. Such as:

- Operational Barriers
    - Cost & Time (money, time)
    - Case Management (money, time, procedures, outcome)
    - Legal Aid (money, procedures, outcome)
- Structural Barriers
    - Corruption in Judiciary (money, procedures, outcome)
    - Political Interference (procedures, outcome)
    - Judicial knowledge and bias (money, procedures, outcome)
    - Failure to discharge prescribed duties (procedures, outcome)

- Language barriers (fees, procedures, outcome)
- Policing System (money, procedures, outcome)
- Enforcement of Judgments (fees, procedures, outcome)
- Lack of Knowledge and awareness (money, procedures, outcome)

From the analysis of these barriers, we find that the cost of justice, quality of procedures and quality of the outcomes are the main variables, (measurable, comparable and scalable) that hinders the justice users from getting access to justice. Here, we defined the user, as a person who actively initiate and maintain the dispute resolution process.

The literature review explored some authors and researchers who have developed theories to assess and measure these variables but none of them is universally accepted, although they include some common elements.

Barendrecht, Mulder et al, in their milestone paper "*How to Measure the Price and Quality of Access to Justice"* [85] have proposed an outline of a methodology for measuring the costs and quality of access to justice.

The barriers in access to justice that we are willing to evaluate, match close to the MA2J scale (measuring access to justice in the context of barriers)

85. Maurits Barendrecht et al., José Mulder, Ivo Giesen; 'How to Measure the Price and Quality of Access to JusticeD', 2006, on Zhttp://ssrn.com/abstract\949209[(accessed 10 September 2015).

which satisfies the assessment criteria of the paths to justice, that is, the Cost of Justice (cost & time), quality of procedures and quality of outcome, will be discussed in our analysis.

4.2 Setting Variables and Indicators

For the analysis of data collected through desk study, first of all, we had to set the variables and paths to justice. Maurits Barendrecht et al, Jose Mulder and Ivo Giesen explained in the next citation, what is paramount in choosing the variables of the part to justice:

"An important point when choosing variables is their level of generality. The paths to justice can range from formal to informal; from between party's paths to paths with a neutral decision-maker; from local to international; from one level to multiple layers. Ideally, the variables should be the same for every path to justice and for any kind of claimant."[86]

They clarified these requirements further in the next citation:

"For each of the variables, reliable and valid indicators have to be chosen, which are also practical and which can be established in a rather straightforward way." [87]

---

86. Maurits Barendrecht, José Mulder, Ivo Giesen 'How to Measure the Price and Quality of Access to Justice?' November, 2006 published on website http://www.ivogiesen.com/uploads/media/Access_to_Justice_2006_SSRN.pdf accessed on July 15, 2015

87 . see note 1

The selected variables for this study are, the cost of justice, quality of procedures and quality of outcome. It is believed that cost and time are not constant. They vary from procedures to the type of dispute, user and the jurisdiction.

4.3 Paths to Justice

Martin. G. Gramatikov et al in their work defined path to justice as in this citation:

"A 'Path to Justice' is defined as 'commonly applied process that people address in order to cope with their Legal Problems'. A court procedure is an obvious example of a path to justice. However, the definition includes both formal and informal procedures." [88]

They further defined paths to justice in simple words as a:

"commonly applied process which users address in order to cope with their legal problem." [89]

The definition of the path to justice may differ from users' point of view or the nature of the dispute, but the outcome will remain the same in all cases, that is, judgement or award. The path to justice *is from the* beginning of a

---

88 . Access to Justice, "*measuring cost and quality of justice*" https://www.measuringaccesstojustice.com/index.php/main-parent-page/measurement-in-7-steps/ website accessed on April 20, 2015

89 Martin Gramatikov et al., *A Handbook for Measuring the Costs and Quality of Access to Justice* 2010.

litigation process till it's resolution. This is the position of martin Gramatikov et al:

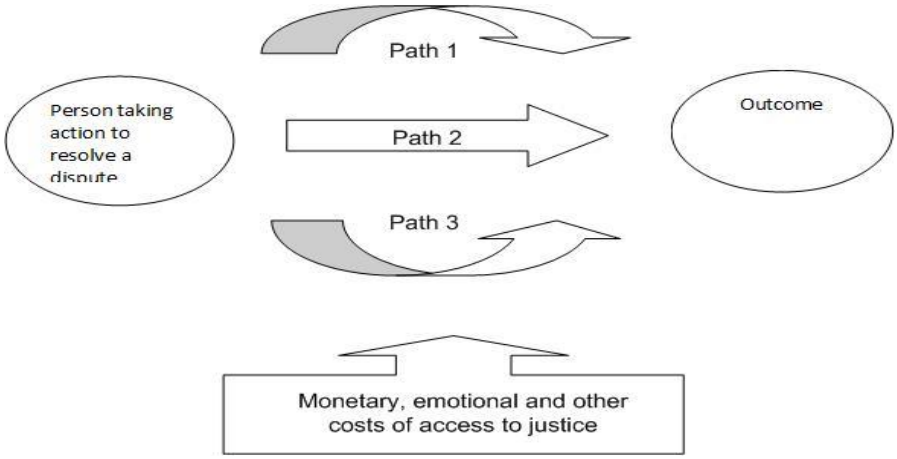
"searching for information, seeking advice from lawyer, filling in forms are examples for actions intended to solve the problem. The 'end of a path to justice' is the moment when the user receives an outcome regardless of the content or favorability of the outcome." [90]

This path can be a non-ADR process (litigation) or ADR process (mediation, adjudication or arbitration), whatever the parties select to settle the dispute. Figure 4.1 shows the concept of the paths to justice: a client (user), who enter into the system (starting point) to access justice and follow a procedure in order to get the outcome of his struggle (end point).

---

90. Martin Gramatikov, Maurits Barendrecht, Malini Laxminarayan, Jin Ho Verdonschot Laura Klaming / Corry van Zeeland "*A Handbook for Measuring the Costs and Quality of Access to Justice*", published by Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems / TISCO, Maklu Apeldoorn, Antwerpen, Portland (2009), published on website <https://www.measuringaccesstojustice.com/index.php/main-parent-page/qa/> website accessed on May 12, 2015

Figure 4.1: Paths to Justice [91]



There is no criterion to measure the attitude, perceptions and emotions of a justice user when he travels on the paths to justice, who faces different barriers in access to justice. This analysis is based on the understanding that the user's perspective is a valid ground for measuring the indicators (barriers) because in the view of Martin Grammatikov et al:

"*only the users of justice could express their perceptions on the costs and qualities of the particular path to justice."* [92]

---

91. Maurits Barendrecht, José Mulder and Ivo Giesen "How to Measure the Price and Quality of Access to Justice?" November, 2006 published on website http://www.ivogiesen.com/uploads/media/Access_to_Justice_2006_SSRN.pdf accessed on July 15, 2015

92. Martin Gramatikov, Maurits Barendrecht, Malini Laxminarayan, Jin Ho Verdonschot Laura Klaming / Corry van Zeeland "A Handbook for Measuring the Costs and Quality of Access to Justice", 2009, published by Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems / TISCO, Maklu Apeldoorn, Antwerpen, Portland, (2009)

In this study, the access to justice will be measured through the experiences of a user on his path to justice. Figure 4.2, is accurately described by American Bar Association in these lines, that it:

"*visualizes the proposed model for measuring the costs and quality of access to justice. At the beginning, is the pyramid of legal problems and needs for justice in the everyday life.*" [93]

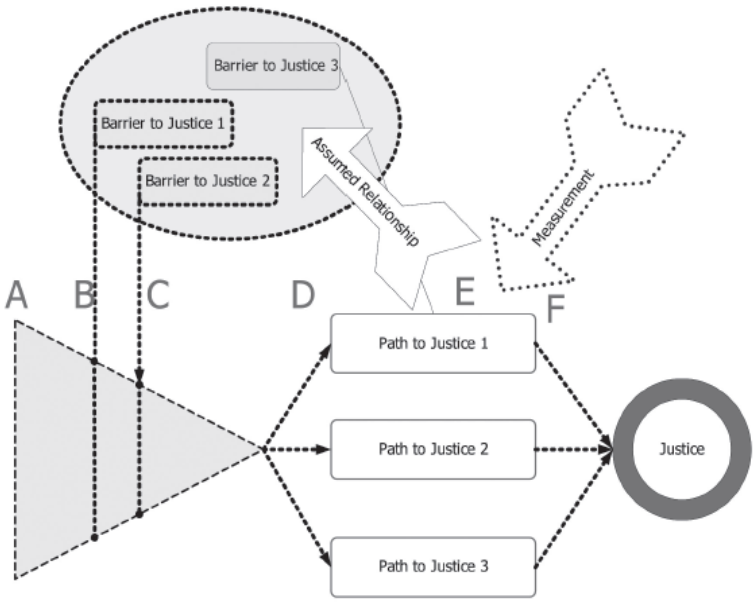


Figure 4.2: Model of access to justice (source: *Martin Gramatikov et al. HJRL 3 (2011) http://arno.uvt.nl/show.cgi?fid=122117 page 354*

The researcher's assumption is that, paths to justice are the primary units of analysis whereas the user has the right to select a different strategy to measure the possibilities than that defined by us.

93. American Bar Association, Comprehensive Legal Needs St (1994). Also cited by Hazel Genn and Sarah Beinart, "*Paths to Justice: What People Do and" ink about Going to Law*"

Before we start measuring the paths of access to justice in terms of cost, of justice, procedures and outcome, to select an appropriate scale is required otherwise it will be difficult to compare the different paths and get the conclusion.

4.4 MA2J Model to Measure the Paths to Justice

Martin Gramatikov, a part of the Netherlands access to justice research group, has focused on the challenges of measuring the cost, time, quality of procedures and outcome, in access to justice. It explores the possibilities within a framework in which the costs and quality of access to justice can be determined making it a valid, reliable and efficient model to be considered as a global standard scale.

The main variables, we suppose, are, cost of justice, quality of procedures and quality of outcome whereas barriers in access to justice described in Chapter 3, are set as indicators. To evaluate these barriers and assessment of quantitative data collected from different sources, different approach levels can be implemented. The writer is using the MA2J model because in the views of Martin Gramatikov et al:

"research methodology aims at measuring access to justice through the perceptions and attitudes of people who have travelled on a "path to justice" [94],

This view they maintained is based on the measuring need of justice. Which is:

"from the moment when a person first takes a step toward resolving the problem." [95]

MA2J scale focus on three paths of justice which evaluate the main indicators to get results:

- Cost and time spent;
- Quality of the procedure; and
- Quality of the outcome or judgment.

The measurement tool used to assess how different people perceive the same path to justice depends on the justice user itself, his thoughts in approaching and assessing capability. They believe that the MA2J can be further applied in other areas of assessing the impact of justice on the user:

"*The impact of justice innovations on users' perceptions can be easily visualized applying the MA2J before and after the innovation… You can compare your process with the process of another organization or institution. Last but not the least, MA2J clearly shows the value of your efforts as a*

---

94. See note 7

95. Martin Gramatikov, Maurits Barendrecht, and Jin Ho Verdonscho "*Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology*" Hague Journal on the Rule of Law at 355. (2011)

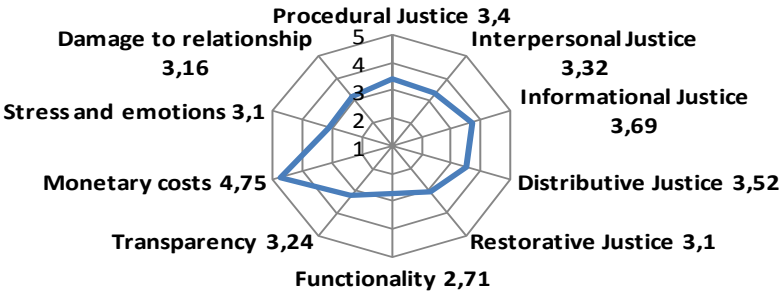
provider of paths to justice." [96]

Here a spider web is used to assess the path of the justice user. The reason for this is captured in the work of American Bar Association:

"*spider web suggests that the users of the two processes assess them in similar terms. The quality of the process and the quality of the outcome is experienced in strikingly similar terms. There is a slight difference in time and out-of-pocket categories.*"[97]

The spider directs the way to judge, what to provide and what they should expect from the procedures.

Fig. 4.3 Spider web of Justice [98]



96. Access to Justice, "*measuring cost and quality of justice*" https://www.measuringaccesstojustice.com/index.php/category/general/, website visited on June 10, 2012.website accessed on June 10, 2013.

97. Same as note 9

98. Access to Justice, "*measuring cost and quality of justice*" https://www.measuringaccesstojustice.com/index.php/category/general/, website visited on June 10, 2012.website accessed on June 10, 2014.

The procedure to measure the processes is simple and easy to apply:

1. Define the path to justice which you want to measure;
2. Identify when the users receive the final outcome;
3. Ask the justice users about their experience.

A summary of dimensions of sub-indicators of cost, quality and outcome of procedures, measureable on the same scale have been described in the following table:

Table 4.1: Summary of the indicators/principles, their dimensions, and the criteria that may become part of the measuring instrument [99]

Path of justice	Measurable Indicators	Where Discussed in Ch. 3
Cost & Time	• Direct cost – court fees, lawyer's fees, Expert witness, translation, bailiff, travelling (Justice User can record all expanses in a register) • Indirect Cost: devaluation of assets, loss of opportunities, stress, emotions, and change of relationships (assets devaluation can be calculated in terms of currency. The cost of other factors cannot be	• Operational Barriers – Cost and Time, language barriers • Institutional barriers – relationships, emotions

99. Martin Gramatikov, Weighting Justice: Constructing an Index of Access to Justice, Tilburg University Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO, Hague Institute for the Internationalisation of Law (HIIL) <http://www.lawforlife.org.uk/data/files/measuring-the-costs-and-quality-of-paths-to-justice-275.pdf> site visited on August 06, 2012

	measured. Only the judge can compensate in terms of money. For example, in divorce case, compensation can be given.	
Quality of Procedures	• Court Procedures • Judge behaviour, politeness, bias, supress, listening to another party • Decisions, Consistency • Honesty, equal respect • Explanations	• Operational Barriers – Legal Aid, Corruption, interference • Institutional barriers – Case Management, judicial knowledge and bias, language barriers, court staff and legal specialists, policing, lack of knowledge, judicial knowledge and bias.
Quality of Outcome	• Distributive justice, (proportionality to need, contribution, effort, equality, efficiency) • Restorative justice (acknowledgement of harm done, acceptance of responsibility) • Corrective justice (reparation of harm) • Retributive justice (proportionality to harm inflicted) • Transformative justice (fitting interests, Strengthening relationships) • Formal justice (equal treatment to others, transparency of criteria, comparability)	• Operational Barriers – cost and time • Institutional Barrier – enforcement of judgements,

We find from the above table that some variables are measureable in terms of money (i.e. cost), and some can be measured on a scale in terms of points. The measurement of these variables may be different in each country of the

sub-continent because each country have its own traditions and cultural values which is a dominant factor on personalities and systems of resolution of disputes. The measurable indicators and sub-indicators have different standards of measurement. For example:

- The cost can be measured in terms of records of expenditures. The cost factor is related to the income per capita (Appendix 2); discussed in Operational barriers; how people living under the poverty line cannot afford court and lawyers' fees, since they can only attend the courts with the help of legal aid providers. This fact is aptly capture by these lines by Sandra Elena, Alvaro Herrero and Keith Henderson:

"*The time and cost of proceedings are the major disincentives for turning to the courts to enforce judgments or business obligations (small debts)*." [100] The time spent on each hearing by the user can be recorded and translated into expenditures.

- The quality of procedures depends on a number of factors. The user himself can visit the court to see the procedures of the court, its staff and management and presentation of his case by his solicitor. Awareness of the systems also plays an important role in quality of the procedures, where the user of the system understands the issues.

---

100. Sandra Elena, Alvaro Herrero Keith Henderson, "Barriers to the enforcement of court judgments and the rule of law" published by IFES, (2004)

- The outcomes of the courts can be measured from the court record (how many judgments are made in a month). The records of case files and hearing may help to understand the progress and working of the courts; an indirect way to measure the cost and time spent by the court staff. Another factor of outcome of procedures is related to awareness. This is explained by Ewa Wojkowska as:

"*Poor and disadvantaged groups often fail to make use of the laws and rights, precisely, because they are not aware of them and need to be aware of the law, rights and available remedies.*"[101]

- Enforcement of judgments are inter linked with other components of the rule of law and is a measurable sub-indicator in terms of time and money. The procedural delays in enforcing a judgment can be translated into cost, i.e. a barrier to the access to justice.

4.5 Evaluation of Barriers using MA2J Methodology

The evaluation and measurement of the explored barriers will help us to understand and analyze barriers and their existence on the paths to justice. The scale used is MA2J, which will measure the barriers in the context of the cost of justice, quality of procedures and quality of outcome. The evidence

101. Ewa Wojkowska "*Doing Justice: How informal Justice System can contribute*" (2006) <http://www.scribd.com/doc/30433456/Doing-Justice-How-informal-justice-systems-can-contribute> website visited on May 15, 2012

of their existence, validity and reliability will be the references and reports published in print and net media by authentic researchers, authors and writers.

4.5.1 Cost of Justice

The major barrier identified from literature reviews and published reports from the Indian sub-continent, is that the 'cost of procedures' that a 'justice user' face before obtaining an outcome, filing a case in the court and paying legal fees to solicitors are the first obstruction a 'justice user' face. When we talk about cost in legal language, mostly, it is considered as the cost of the procedure the user pays to get justice and is a measurable variable.

Time consumed in the access to justice is another measureable variable and affects the other two paths of justice, namely, the quality of procedures and quality of outcome. The measurement of cost and time may be different the on scales but readers should be satisfied from the results. The following table explains the indicators of cost and quality of the paths to justice and procedures that are measurable in practice. Felicity Steadmaan described what the cost in the path to justice is for the user:

"*Costs are not only measured in terms of the price paid for dispute resolution services but also the time to deal with conflict and disputes, the impact of conflict and disputes on, amongst other things, production, quality and*

customer relations. The longer it takes to resolve a dispute generally, the more it costs the parties and the economy." [102]

In the writer's opinion, other out-of-pocket expenses, such as, search and collection of information, money spent for travel, expert witnesses, translation and communication etcetera should be considered while analysing the data.

Table 4.2, describes the categorisation of costs borne by the 'justice user', which distinguishes the out-of-pocket expenses, the costs of time spent, costs of delay and emotional costs analysis in detail.

Table 4.2: The Types of Costs of a Path to Justice for the Claimant. [103]

Type of costs	**Most important Categories**	**Remarks about factors determining costs and measurement**
Out-of-pocket expenses	Fees for authorities (filing fees, document fees)	Depend on: • the (range of) issue(s) involved • the value in dispute • the amount of information needed for a decision on each issue
	Fees for legal assistance, lawyers' fees	
	Court fees	
	Fees for experts, witnesses, translation, bailiffs, court reporters, etc.	

102. Felicity Steadman, Handbook on Alternative Labour Dispute Resolution, p-11 published by International Training Centre, available on website<http://actrav.itcilo.org> visited on May 23, 2013

103. Maurits Barendrecht et al., José Mulder, Ivo Giesen `How to Measure the Price and Quality of Access to Justice', 2006, on Zhttp://ssrn.com/abstract\949209[(accessed 10 September 2015).

	Travelling expenses	• the difficulty of reproducing this information • the structure of the proceedings. Relatively easy to calculate from official sources, bills, etc.
Time spent by the claimant and other persons addressed by him	Costs of searching for an (legal) adviser	Depend on: Estimates on the amount of time spent can be obtained through survey research and then be valued at opportunity costs: • labor costs • Value of leisure time for non-professionals.
	Interaction with the other party	
	Consultation (family, friends, etc.), seeking legal advice, deciding on strategy	
	Interaction with authorities	
	Instructing lawyers	
	Collecting evidence	
	Attending hearings	
	Amount of time spent travelling	
Costs of delay	Devaluation of assets in dispute	Depend on: - the issue involved - the value in dispute - the duration of the dispute and its proceedings.
	Loss of opportunities because of uncertainty regarding future of relationships	
Emotional costs	Stress, fear, sadness, loss/ change of relations etc.	Depend on: - the issue involved - the value in dispute - the duration of the dispute and its proceedings.

The research is literature based, so, calculating and finding the exact cost of any legal case by the 'justice user' is difficult until we maintain a record of all costs as mentioned in the above table. The support of different case studies may produce evidence, of how cost affects the justice.

The literature review reveals that cost is borne both by the claimant and defendant when they start the litigation process. This cost cover the fees of Lawyers/paralegals staff; Filing and translation fees; Bailiffs' fees; travel expenses; witnesses' compensation; Bribes and other unofficial or official payments.

Time factor can be estimated into cost in two ways. The first is to calculate the total amount of time spent on the procedure and the second is to quantify the time spent into hours, days, months or years, in money terms. *"Mulder et al. suggest examples of possible sources of time spending on a path to justice:*

- *Searching for an (legal) adviser;*
- *Interaction with the other party;*
- *Consultation (family, friends, etc.), seeking legal advice, deciding on Strategy;*
- *Interaction with authorities;*
- *Instructing lawyers;*
- *Collecting evidence;*
- *Attending hearings;*
- *Amount of time spent travelling."* [104]

104. Barenderecht, et al., How to Measure the Price and Quality of Access to Justice? P-14.

After estimation of the time spent on the path to justice, its cost in terms of money, is calculated in order to calculate the total cost of the procedure.

The other measurement method is to ask the user, 'how much did he spend because of the pending procedure and dates of hearing?' A description of the following sub-indicators of 'Cost and Time' will help us to evaluate what a user's perceived view is when dealing with any non-ADR case. A basic estimate of measurable expenditures has been shown, in the following table, showing how it affects the user directly.

Table 4.3: Analysis of cost and time in non-ADR systems

Indicator	Description	Non-ADR systems
Cost	As it relates to cost of the procedures and overheads	• Costs[105] are higher • Case filing fees req. • Lawyers' fees, a must • Enforcement agency fees required. • Personal expenditure, additional
Time [106]	Relative to the time and speed[107] of the process	• Lengthy Procedures -Court trials takes a lot of time, even years • Procedures need to be followed

105**.** The money expended on litigation is always determined by the duration of time in which such suit was pending. Ref. <http://tribune.com.ng/index.php/tribune-law/2575--alternative-dispute-resolution-cost-and-time-saving-option-to-litigation>

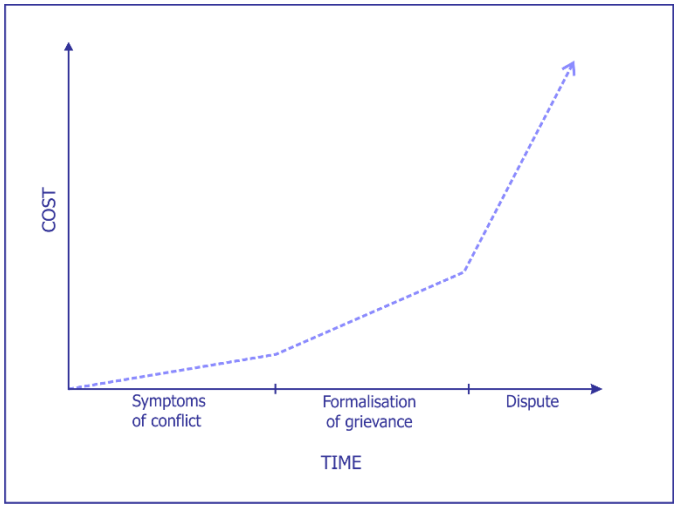
106. Parties fix time most convenient for them and the arbitrator and such conflict is resolved on time. Ref. Inessa Love, Settling Out of Court: How Effective Is Alternative Dispute Resolution? Study report by World bank and IFC Number 329

107. The research carried out by Professor Dame Hazel Genn in 1998 showed that mediation was able to promote and speed up settlement. In the number of cases that appeared before

A relationship between cost and time has been observed where a common indicator is 'procedures'. On this cost and time relationship, we considered an example of a divorce case's expenses, to supports the logic of how cost increases with the passage of time.

If we draw this relationship in graphical format, as we see it on the next page, i.e. cost is directly proportional with time. If the time of procedures increases, the cost of procedures also increases.

Figure 4.4: Cost and Time Relationship



Source: Felicity Steadman, Handbook on Alternative Labour Dispute Resolution published by ITC (International Training Centre)

This cost and time relationship can be measured only when the total cost of the non ADR process is taken into account. This is explained in this citation:

---

the mediation council 62% percent of them were mediated and settled at the pre-trial ADR stage.

"*petitioner and the respondent have to consider costs such as legal fees, court fees, travel costs, personal time, missed opportunities because of the pending trial and so forth. However, the resolution of the case normally has more costs – the judge and the court secretary receive a salary, the court building has acquisition and maintenance price, a system of appeal courts safeguards the right to seek review etc. These are all examples of public costs of justice. The difference is, who pays the costs, the private costs are borne by a particular user of justice and the public costs covered by the tax payer.*"[108]

One World Bank study estimated that:

"*the average length of civil suits in which judgments were reached was 572 days.*" [109]

For example the study by Sandra Elena, Alvaro Herrero and Keith Henderson found that:

"*proceedings handled by Justices of the Peace in which monetary awards are sought typically take from anywhere, from between three months (50.74%) to six months (34.02%), while those exceeding one year are much fewer*

---

108. Antonia Evans of CEDR, discussion ref. Felicity Steadman , Handbook on Alternative Labour Dispute Resolution Published by International training centre, Bangkok (October 2007)

109. This average does not take account of those cases in which no judgment had been issued at the time the survey was taken (i.e., three years after they had been filed). Accordingly, the average should presumably be a higher number.

(0.29%). However, these time-spans do not take into account cases that have been appealed, nor the time required for enforcing judgments".[110]

The majority of the studies suggest that perhaps people care more deeply about the procedure used in the courts to obtain an outcome, than the outcome itself. They observe the procedures deeply and assess the court staff's behaviour in formation of outcome.

CASE STUDIES

To support the argument that Cost of Justice (cost and time) is the major barriers in access to justice in the Indian sub-continent, cases reported in print media, research reports and publications are referenced in brief. For example, the Law Commission in India confirms it in these references. In

India:

"*to get justice through courts, one has to go through the complex and costly procedures involved in litigation. One has to bear the costs of litigation, including court fee and, of course, the lawyer's fee. A poor litigant who is barely able to feed himself will not be able to afford justice or obtain legal redress for a wrong done to him, through the courts."* [111]

---

110. Sandra Eelena, Alvaro Herrero, Keith Henderson, "Barriers to the Enforcement of Court Judgments in Peru", winning Courts only Half the Battle: Perspectives from SMEs and Other Users, April 2004, published by IFES and produced with generous support from USAID. P-34

111. "Need for Justice-dispensation through ADR" published by Law commission of India (2009) published on website http://lawcommissionofindia.nic.in/reports/report222.pdf p-11 website visited on November 12, 2013

It also confirms the cost in terms of time and suggests that reforms are necessary:

"*A number of people who are aggrieved are not able to seek justice because of the prohibitive costs of litigation and the delays that come along with them."* [112] *"The crisis of delays that has engulfed the Indian judicial process calls for responses at multiple levels of decision-making. A range of reforms — legal, judicial and institutional — needs to be initiated for dealing with delays and ensuring access to justice."* [113]

Another literature relayed the magnitude of pending cases:

"*Currently as per the available information, there are more than 3 crore (30 million) cases pending in various court in the country. There are 2.75 crore (27.5 million) cases in lower courts, more than 50 lakhs (5 million) cases in high court and more than 20,000 cases in the Supreme Court.*" [114]

Delay is another factor, which is concerned with time. As the cases are delayed, cost factor does increases:

"*Four years ago India's Prime Minister, Manmohan Singh, informed the Lok Sabha (the lower house) that India had the largest backlog of cases in the world, and figures from this year estimate that as many as 30 million cases are pending. The Hindustan Times reported last week that over four million*

---

112 Id

113. Id

114. aniket "Justice delayed is justice denied 2010 (2010)

<http://www.legalservicesindia.com/article/article/justice-delayed-is-justice-denied-393-1.html> blog published on 23-10- 2010

of these are High Court cases, with a further 65,000 cases pending in India's Supreme Court." [115]

Sagnik Dutta confirms the enormity of the backlogs in the India justice system which attests to the argument that delay cost enormously and amounts to denial of justice:

"According to information available with the Supreme Court, as on July 31, 2014, there were 35,244 matters pending at the stage of admission and 30,518 matters pending at the stage of hearing. Of these, more than 46,000 matters had been pending for a period exceeding a year. Ten criminal appeals filed between 1991 and 1999 and 10 criminal writ petitions filed between 2002 and 2006 were still pending."[116]

This research identifies numerous problems that justice user's face in the access to justice in **Bangladesh**. A vast literature was found during the study about this particular dimension in Bangladesh. Delay in access to justice is considered as the number one issue that hinders the access to justice. Normally, Mizanur and Chowdhury maintained that a case usually takes about ten to twenty years to dispose of:

"*The volume of backlog of cases, the loopholes and complexity in the procedural law and case management system and widespread corruption and malpractices are among a number of factors which delay and deny access to*

---

115. Justice Delayed is Justice Denied: India 30 million Case by Ram Mashru. December 2013. http://thediplomat.com/2013/12/justice-delayed-is-justice-denied-indias-30-million-case-judicial-backlog/ website accessed on September 24, 2015

116. SAGNIK DUTTA, System Fa**i**lure, http://www.frontline.in/the-nation/system-failure/article6464657.ece Print edition : October 17, 2014

justice for many. The court machinery is overloaded, slow and not readily accessible to all." [117]

The occurrence of delay in the disposal of cases in the courts happen because the provisions of the Code of Civil Procedure are not properly followed Mizanur and Chowdhury added:

"*After the defendant's appearance in the court, his advocate often seeks long adjournments to file written statement. After the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled but nobody bothers to produce documentary evidence at this stage.*"[118]

Begiraj and McNamara supported this delay discourse with statistical information to establish backlogs in Bangladesh:

"*According to latest annual report on the judiciary, the Appellate Division of the Supreme Court has 8,997 cases pending, the High Court 2,62,349 cases and the judicial magistracy 6,02,173 cases as of December 31, 2007*

117. Mohammad Mizanur Rahman Chowdhury, A STUDY ON DELAY IN THE DISPOSAL OF CIVIL LITIGATION: BANGLADESH PERSPECTIVE, article published in "The International Journal of Social Sciences, 30th August 2013 Vol. 14 No. 1 published on website www.tijoss.com accessed on 25 November 2015. P-28

118. Mohammad Mizanur Rahman Chowdhury, A STUDY ON DELAY IN THE DISPOSAL OF CIVIL LITIGATION: BANGLADESH PERSPECTIVE, article published in "The International Journal of Social Sciences, 30th August 2013 Vol. 14 No. 1 published on website www.tijoss.com accessed on 25 November 2015. P-28

although the disposal rate of cases has increased."[119]
The reasons behind this delay are:

- civil and criminal procedure codes are not followed;
- lawyers play a foul play in delays because the more delays, the more it is to their earning;
- lack of a sufficient number of judges and courts;
- Criminal cases are delayed by the police, by taking a long time in submitting the challan due to excessive workload and corruption.

Mizanur and Chowdhury gave a perspective into the nonchalant attitudes of the judges which contributes to the delays:

- "*One of the reasons for delay in disposal of suits, is readiness to grant adjournment either for Court's own advantage or for the convenience of the parties. The liberal attitude of the Court in respect of adjournment is one of the main causes for the inordinate delay as every such adjournment takes months altogether."*[120]

---

119. J Beqiraj and L McNamara, *International Access to Justice: Barriers and Solutions (Bingham Centre for the Rule of Law Report 02/2014),* International Bar Association, 2014. IBA Access to Justice and Legal Aid Committee available on www.ibanet.org/PPID/Constituent/AccesstoJustice_LegalAid/Default.aspx accessed November 13, 2015

120. Mohammad Mizanur Rahman Chowdhury, A STUDY ON DELAY IN THE DISPOSAL OF CIVIL LITIGATION: BANGLADESH PERSPECTIVE, article published in "The International Journal of Social Sciences, 30th August 2013 Vol. 14 No. 1 published on website www.tijoss.com accessed on 25 November 2015. P-30

- The judicial system of Bangladesh is jammed with a huge backlog of suits or cases. The backlog of cases wears down the adjudicating process which has been described by professor M. Shah Alam[23] and by Mahbub S. K. Golam as:
- *"eating Bangladesh judiciary" while delay in the judicial process causes backlog, mounting backlog puts a tremendous load on the present cases."*[121]

If we observe the situation in **Pakistan**, the judicial system has serious operational problems. There is a backlog of cases that dates back to its independence (1947):

"*According to a footnote, that backlog is estimated to be some 1.5 million cases."* [122]

The Judiciary has no time to handle the old cases. Think of a petition that was filed in 1998 by Asghar Khan in the Supreme Court of Pakistan has been heard in 2012. The respondents insist that the judiciary is 'corrupt to the core' and therefore, 'there is no such things as justice' in Pakistan. As for the cost factor, the poor have to spend money from their pockets until there is

121 Mahbub, SK. Golam,(2005) *Alternative Dispute Resolution in Commercial Dispute*, 1st edition, Kathal bagan, Dhaka, P-13

122. (2012)UKUT 389- Tribunal Decisions http://www.bailii.org/uk/cases/UKUT/IAC/2012/00389_ukut_iac_2012_mn_ors_pakistan_cg.html website visited on November 16, 2012, ref. MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC) cfm website visited on April 10, 2012

an outcome. That is, if anyone has to get the justice at all, otherwise, forget it. There is no data available in any format on how much a user has to spend to get justice in Pakistan but the 'delay' example reveals the level of obstruction to the access to justice.

4.5.2 Quality of Procedures

The second path of the access to justice is the 'quality of procedures' (referred to as procedural justice). Disputants' personal satisfaction with procedures is measured along various indicators and dimensions including fairness, opportunity to be heard and formality of the procedures. These procedural paths to justice can be measured easily. The courts can arrange a client surveys to know their performance. This information can be treated as the user of the path to justice, in particular, if he has the realistic choices between different paths.

MacCoun noted that user equally care passionately about the judicial process:

"*Three decades of socio-legal research have demonstrated that citizens also care deeply about the process by which conflicts are resolved and decisions are made, even when outcomes are unfavourable or the process they desire is slow or costly. So, not only time and money are important, things like lack*

of bias, thoroughness, clarity, voice (the ability to tell one's story) and a dignified, respectful treatment are at least as important" [123]

"*Delay" is commonly seen as a problem for both parties but it is not. "Delay threatens the effective operation of the judicial system and can impose additional stress for litigants, victims and witnesses and, in the criminal context, may interfere with the rights of the accused to have the charges against them speedily determined."* [124]

From the above citation New Zealand Bill of Rights says that increase in delay means increase in court costs, making litigation more expensive.

These costs are borne not only by individuals but taxpayers too.

This delay which is related to time and cost has been identified as the major cause of the backlog of cases and this is an obstruction in non-ADR systems.

The delay indicator can be analysed using 'regression' approach to:

"*establish causation for Civil Case Dispositions, estimating the relationships between variables by providing a method to model observed data in order to understand those relationships.*" [125]

---

123. MacCoun, R.J., Voice, Control, and Belonging: The Double-Edged • Sword of Procedural Fairness, Annual Review of Law and Social Science, (2005) p. 171-201. Also refered to by Maurits Barendrecht, José Misulder , Ivo Giesen, How to Measure the Price and Quality of Access to Justice?, November, 2006 published on website p- 16 http://www.ivogiesen.com/uploads/media/Access_to_Justice_2006_SSRN.pdf accessed on July 15, 2015

124. New Zealand Bill of Rights Act 1990 No 109, s 23(3).

125. Basic regression analysis is explained in econometrics textbooks, e.g. Stewart (2005), Stock and Watson (2007) and Wooldridge (2009) referenced in Kim Economides, Alfred A.

The delivery procedures make a significant role in reducing the delays and it relates with the following sub-indicators.

Table 4.4: Quality of the Procedures in context of delivery

Indicator	Description	Sub-indicators
Procedural Justice	Fairness perceptions of users regarding the processes that are utilized to resolve disputes and allocate resources	Process control, decision control, consistency, bias suppression, accuracy, ability to correct, ethicality
Restorative Justice	Concerned with the harm that has been caused by the legal problem and attempts to offer reparation to the user of justice	Opportunity to ask the other party for an explanation and recognition
Interpersonal Justice	The extent to which people are treated with politeness, respect, and propriety	Politeness, respect, propriety, respect for rights
Informational Justice	The validity of information provided by decision makers as the foundation of the decision making process	Honesty, explanation of rights and options, as well as whether the explanation was timely, understandable, and in need of clarification

In non-ADR systems, 'quality of procedures' incorporates a number of activities and steps of the court. The user's experiences and observations about the procedures adopted by the court helps to understand and evaluate the procedures. An important aspect of dispute resolution by a judgment of

Haug, Joe McIntyre, "Are Courts Slow? Exposing and Measuring the Invisible Determinants of Case Disposition Time" published by University of Otago Economics Discussion Papers No. 1317, November 2013.

a third-party is the extent to which participants and observers are satisfied that both the procedure and the outcome are fair and impartial. Following sub-indicators helps the 'justice user' to understand the quality of procedures in non-ADR systems setting the dimensions to find out the causes of procedures and management failure.

Table 4.5: Quality of Procedures in non-ADR systems [126]

Indicators	Description	Non-ADR Systems
Flexibility	• Parties are free to choose the method of dispute resolution system	• Court processes are generally less flexible
Accessibility	• Assessment and approach to system	• No easy assessment • complicated rules of evidence • adversarial process • more intimidating • more stressful
Management	• Case Managements and ICT	• back log of cases • Only rule has to follow • Win-to-win case, 50 % • Parties presence / absence make no effect
Privacy and confidentiality	• Resolution of disputes in confidentiality	• Hearings and decisions of courts and tribunals (including the reasons for the decision) are usually public. • Trials are open and do not offer privacy
Self-directed	• How people follow the procedure	• Judge appointment by court • Court judge / tribunal outcome is honored

126. "*Quality of procedures*" published on website

<http://arno.uvt.nl/show.cgi?fid=93621> website visited on Feb. 12, 2014

		• Court process, you can only raise issues that are connected with your legal rights. • Court process difficult without a lawyer
Focus	• What is focused while resolving disputes	• Courts and tribunals focus on legal rights • Courts prefer the laws and rulings
Expertise	• Expertise of dispute resolvers	• Skill shortage prolong the case • calling of expert evidence can cost a lot of money • Juries are unpredictable and often damage awards
Customer Satisfaction	• Public level of satisfaction in using the system	• Discussed in detail in previous chapters
Political Interference	• Any interference by the politicians	• Discussed in detail in previous chapters
Corruption	• Affects and bribery in the system	• Discussed in detail in previous chapters
Awareness about the system in public	• Awareness about the system in public	• People know about litigation but not in detail how the system works

Making the discussion in brief, the discussion about following indicators will help us to measure the procedural and outcome activities which affect justice as barriers.

4.5.2.1 Legal Aid

Legal aid is fundamental to social and legal justice and core factor of the quality of procedures. India, Pakistan and Bangladesh are developing democratic countries in south Asia. The democratic societies provide to their

citizens, a right of access to justice and to get fair trial. For a fair trial, if they need legal aid, then, to provide it. Some definitions are provided below;

"*Legal aid is the provision of assistance to people who are unable to afford legal representation and access to the court system. Legal aid is regarded as a central indicator in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. A number of delivery models for legal aid have emerged. This includes duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid.*" [127]*

It can be considered a sub-indicator of cost and time where it helps the justice user to overcome his expenditures in getting justice. World Bank maintains that legal aid is essential for the poor as revealed in this citation:

"*Availability, affordability and adequacy of legal aid and counseling are the three major challenges which the poor people face in developing countries. Legal aid, like legal awareness, is another operational factor in access to justice where intervention of both government and non-government actors can provide good results.*" [128]

The courts admit that without legal aid or support from the communities, the poor cannot get justice and this is evident from the Supreme Court in *Sheela Barse v. State of Maharashtra* (AIR 1983 SC 378), where it was stressed of the importance and relevance of legal aid:

---

127. Regan Francis 1999. The Transformation of Legal Aid: Comparative and Historical Studies. Oxford University Press PP 89-90 visited on December 15, 2014

128. Access to justice, practice note (2004) published on net <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/accsstojusticeunderundppracticenote.pdf>p-15 site accessed on August 12, 2012

"*emphasized that the provision of legal assistance for a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty was a constitutional imperative mandated not only by Art. 39A but also by Arts. 14 and 21 of the Constitution. In the absence of legal assistance, injustice may result. Every act of injustice corrodes the foundation of Democracy and the rule of law."*[129]

The level of the delivery of legal aid services is related to cost and time which is measurable as discussed earlier and can be indexed knowing the users satisfaction from the service providers. No doubt access to justice is prevented from the poor by high legal costs, here costs includes, court fee, process fee, advocate fee, and other incidental costs.

CASE STUDIES

How are people deprived of legal aid in the Indian sub-continent? The following cases are presented as evidence in support of our findings:

In **India**, Article 39A of the constitution, provides equal justice and free legal aid. The said article obligates the State to provide free legal aid, by suitable legislation or schemes or in any other way, to promote justice on the basis of equal opportunity. The directive requires the State to provide free legal

129 Krishna Agrawal , Justice Dispensation through the Alternative Dispute Resolution System in India, Indian Institute of Comparative Law (Jaipur, India)

aid to deserving people so that justice is not denied to anyone merely because of economic disability. Article 39A makes it clear that;

"*the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating schemes for free legal aid"* [130]

It continued, but the fact is:

"most citizens do not know that under its provisions, free legal services are available to all members of a scheduled caste or scheduled tribe, all women and children, victims of trafficking in human beings, persons with disabilities, persons under any circumstances, of undeserved want such, as being a victim of man-made disaster, ethnic violence, caste atrocity, flood, drought, etc., an industrial workman, and persons in custody, and persons in receipt of annual income as may be prescribed by the state government." [131]

Its survey showed that most people in India are not even aware that legal aid is freely provided by the state:

"Based on its survey, the study says, out of 85 respondent groups from scheduled caste (SC) community, only 5.89 per cent SCs were aware about availability of free legal aid. Further, out of 47 respondent groups of scheduled caste (ST) community, only 17.02 per cent STs were aware of the

---

130. Law Commission of India, "Need for Justice-dispensation through ADR etc.(2009) <http://lawcommissionofindia.nic.in/reports/report222.pdf> website visited on November 12, 2013

131. Counterview desk "*Deprived sections of India community, including details, tribal and women, are not aware that they can avail free legal aid*" (2013) <http://counterview.org/2013/10/08/deprived-sections-of-india-community-including-dalits-tribals-and-women-are-not-aware-that-they-can-avail-free-legal-aid-study/> website accessed on October 12, 2013

availability of free legal aid. As for the other backward classes (OBCs), out of six respondent groups of the community, none of them were aware of this facility." [132]

In 1986, in *Sukhdas v. Union Territory of Arunachal Pradesh AIR 1986 S.C. 991* case, Justice P.N. Bhagwati, while referring to the decision of Hossainara Khatun's case made the following observations in paragraph 6 of the said judgment that many people especially the poor are not knowledgeable about their rights and this why they are exploited:

"*Now it is common knowledge that about 70% of the people living in rural areas are illiterates and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what their rights are and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land.*" [133]

It will be true if we say that cases in India are mainly criminal ones:

---

132. Counterview desk "*Deprived sections of India community, including details, tribal and women, are not aware that they can avail free legal aid*" (2013) http://counterview.org/2013/10/08/deprived-sections-of-india-community-including-dalits-tribals-and-women-are-not-aware-that-they-can-avail-free-legal-aid-study/ website accessed on July 12, 2014

133. Raman Mittal and K. V. Sreemithun, Legal Aid, Catalyst for Social Change, published by Legal Aid Society, Campus Law Centre, University of Delhi (Sataym Law International)

"*In India, legal aid is used mainly in criminal cases, however, it may be possible to use it in public interest cases.*" [134]

In **Bangladesh**, the Legal Assistance Act 2000, dealing with legal aid contains nothing on the protection of environment, human rights or even on public interest litigation. However, it mentioned that:

"*legal assistance would be offered to those having socio-economic problems.*" [135]

The current version of the Act was enacted in 2001 as the *Legal Aid Services Act 2000 (LASA).* Under the central authority of a semi-autonomous corporate body, the National Legal Aid Organization (NLASO) has been set up to provide legal aid to deserved persons:

"*Legal aid is theoretically available for all sorts of criminal, family and civil matters and is defined to include legal advice, legal representation and (since 2006 amendments) limited ADR services in civil matters.*" [136]

The Role of MLLA, ASK and BLAST, which are NGOs providing legal aid to poor people in Bangladesh is appreciable, especially for women.

---

134. Lalit Kumar Arora, Human Right Information and Documentation, published by Isha Book, D 43 Pritviraj Road, Adarsh Nagar Delhi 110033, (2006) p-244

135. See note 35 as above

136. "Legal aid in Bangladesh" (2012) <http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/papers/Legal_Aid_in_Bangladesh_-_Ian_Morrison.pdf> website accessed on August 12, 2012.

Pakistan, a highly litigious society, where most of the litigations is dealt with by the determination of legal and constitutional rights, and where the constitution says:

"*The State shall ensure inexpensive and expeditious Justice*" [137]

However, what is practiced shows a different picture. Regarding what is actually happening in the courts, an observer's view is that, the reality is quite the opposite of the constitutional spirit of fair and timely justice:

"*Much of the criminal litigation in Pakistan is a series of retributive legal actions and as such, the courts are left with the onerous and uninspiring task of sifting through the cases to determine which ones are genuine and which are not.*" [138]

As a result, civil litigation has become a practice that is widely used by disputing parties as another means of "bargaining", that is:

"*the process usually entails favourable status quo orders."*[139],

This is followed by a deliberate delay. The free legal aid committee was established by the government in 1999 but it is not properly guided by law

---

137. Constitution of Pakistan 1973, Article 37 (d)

138. Yasser Latif Hamdani "*The Crisis of Legal Aid in Pakistan* " (2014) http://inp.org.pk/sites/default/files/job%20description/%20Executive%20/The%20Crisis%20of%20Legal%20Aid%20in%20Pakistan.pdf website accessed on November 14, 2014

139. Temporary injunctions under Order XXXIX are the legal device of choice in these matters. The culture of misuse of these orders is passed on from one generation of lawyers to another. Getting a stay order is usually considered a win; what follows is dalliance between the bar and the bench and delaying tactics of the worst kind.

as result, it has not been very successful. Low awareness of the people about its existence accounts for the low success rate of the legal aid. Some researchers have offered some views on this. Begiraj and MacNamara observed stated:

"*The Government has established the free legal aid committee in 1999. However no legislation is there to guide such legal aid.*" [140]

According to Yasser L. Hamdani's research:

"*the percentage that had received free legal aid in each area was: 3% in Punjab, 25% in Sindh, 16% in Balochistan, 5% in Khyber-Pakhtunkhwa and 4% in Gilgit-Baltistan. This situation is further compounded by low awareness of legal rights and procedures, thus the poor and vulnerable find themselves disconnected from the formal justice system resulting in a glaring trust deficit.*" [141]

In 1999, the Pakistan Bar Council amended its Free Legal Aid Scheme of 1988 to include a newly devised set of rules, namely, the Pakistan Bar Council Free Legal Aid Rules of 1999 (the "Rules")[142]. It states:

"*The Rules envisage the existence of system multi-tiered legal aid committees, on a central, provincial and district level, which can call upon*

---

140. See note 35 p-244

141. Yasser Latif Hamdani "*The Crisis of Legal Aid in Pakistan*" (2014) <http://inp.org.pk/sites/default/files/job%20description/%20Executive%20/The%20Crisis%20of%20Legal%20Aid%20in%20Pakistan.pdf> website accessed on November 14, 2014

142. In the creation of these Rules, The Pakistan Bar Council was acting in accordance with the powers granted to it, for the purposes of rule-making under Section 13 of the Legal Practitioners and Bar Councils Act of 1973.

members of the bar to take on one case per year free of cost. Under the Rules, to avail yourself of free legal aid, a litigant is required to make an application to the district committee and illustrate the need for free legal aid. The schedule to the Rules provides the requisite application form required to be filled out." [143]

The various issues that may be pointed out concerning the quality of legal help, both free and otherwise are as follows:

- "*Capacity constraints of lawyers and judges (to take up cases)*
- *Corruption of lawyers and judges*
- *Unprofessional conduct of lawyers and judges*
- *Lack of security and protection for lawyers and judges in controversial or religiously or*
- *politically sensitive matters*" [144]
- *Frequent adjournments and continuances without rhyme or reason."* [145]

---

143 See note 44

144. In 1998, a High Court Judge was gunned down after he acquitted a blasphemy accused defendant. See <http://www.newsweekpakistan.com/scope/265>

145. These are sought under Order XVII Rule 1 of the Civil Procedure Code 1908- a much abused provision of law. Order XVII Rule 3 provides for closing of evidence in the event of inordinate delay but is rarely used. At times the situation becomes hilarious in a court. Adjournments are sought for reasons as simple as "I had a headache last night" or "I didn't have time to prepare". This culture of dallying and delaying is all pervasive and many lawyers are known and marketed for their skill in delaying matters.

The current situation regarding legal aid in Pakistan is that lawyers are reluctant to offer legal aid and when they do they do so half-heartedly and this further discourages the users, noted the World Bank report:

"*no advocate is likely to represent a free legal aid client with full diligence and commitment, beyond a hearing or two, on the pittance that is paid under the Rules aforementioned. Accordingly, it is reported that only about two to three percent of poor litigants have received legal aid, and that too of a highly ineffective quality. As it is, a very significant number of litigants are wary of the legal aid they get even when they have paid for it.*" [146]

It is important to highlight these issues because in a report it is alleged that:

"*the entire nature of the legal system as it exists now is attuned towards delaying justice at all costs.*" [147]

The news appeared in an English Newspaper 'DAWN' Pakistan that:

"*NGO office giving free legal aid ransacked at city courts.*" [148]

Which is an example of the barriers in access to justice where NGOs are forced not to deliver the legal aid to poor because lawyers fear that they will have financial loses if their clients are provided with free of cost legal aid.

---

146. See note 44

147. Many lawyers report that they have seen either the initiation of a proceeding or the middle and very rarely the end; cases continue notoriously for decades.

148. DAWN, "*NGO office giving free legal aid ransacked at city courts*" (2011) http://dawn.com/2011/07/13/ngo-office-giving-free-legal-aid-ransacked-at-city-courts-2/ site visited on August 12, 2012

4.5.2.2 Lack of Knowledge and Education

This sub-indicator can be measured using an index scale by surveying level of education in people and how many know their rights. The data collected by international agencies will help us to know the index in each country.

In the Indian sub-continent, M. I. Malik noted that the main factors militating against the common man in the pursuit of justice are:

"*lack of education, awareness, unbearable delay and costs of lawsuits, complexity and bureaucratic nature of the system, makes it extremely difficult for the common man to seek justice.*"[149]

According to a survey, a few respondents know at least, one of their rights as a consumer but majority has no knowledge about their rights at all. Moreover, awareness of consumer redress mechanism is also alarmingly low. Only 3% of respondents know about consumer redress mechanism while others do not know where to address their complaints and do not have any knowledge on consumer redress mechanism. The Survey highlights a lack of commitment to consumer education and the low will of government to popularize the working of consumer protection." [150]*

149. Muhammad Iqbal Malik, "Institutional failure in Pakistan" (2003) available on website <http://www.letsstartthinking.org/articles/Institutional%20Failure.pdf> website accessed on July 13, 2013

150. News, "http://www.lhrtimes.com/2013/07/26/only-2-pakistanis-aware-of-national-law-survey-182962/#ixzz2nHPVskRB "published on website <http://www.lhrtimes.com/2013/07/26/only-2-pakistanis-aware-of-national-law-survey-182962/#ixzz2nHPVskRB> accessed on November 12, 2013.

Some researcher has identified the likely effects of a lack of awareness and capacity to demand justice. Harding, et al, believes that:

"The lack of knowledge and capacity to demand justice is a barrier for a number of reasons. First, this makes it difficult for citizens to regulate their own behaviour according to the law, and to know the expected judicial responses. Second, when citizens are unaware of legal procedures, they might choose inappropriate mechanism for pursuing justice." [151]

Furthermore, they maintained that:

"*lack of legal knowledge means that individuals are more vulnerable to abuse or exploitation in the judicial system, and are less likely to receive a fair trial."* [152]

This indicator is again measurable and can be evidenced by different surveys and published reports.

The measurement of awareness level is linked with education level. The more educated people are, the more of awareness there is, the more the societies and cultures will develop. Some researchers have suggested how the education index can be measured:

"*The Education Index is measured by the adult literacy rate (with two-thirds weighting) and the combined primary, secondary, and tertiary gross enrolment ratio (with one-third weighting). The adult literacy rate gives an indication of the ability to read and write, while the GER gives an indication*

---

151. Harding, Scanlon, Lees, et al. "*Access to justice and the rule of law*" Forced Migration Review (2008).

152. Id

of the level of education from nursery (UK & others)/kindergarten (USA & others) to post-graduate education."[153]

The Education Index of selected developing countries will help us to understand the results, where low awareness level has failed in giving good quality procedures. The latest Education index was released in the Human Development Report in November 2013. This statistical update covers the periods up to 2007:1 and is the highest possible theoretical score, indicating perfect education attainment:

"Education, including formal education, public awareness and training should be recognized as a process by which human beings and societies can reach their fullest potential." [154]

The measurement of awareness level with an international index proves that people are unable to benefit and avail themselves of the quality of procedures in developing countries. The highest level for Norway is 0.910. Change in value from the last one is very poor. The index report is given as follows:

Table 4.6: Education Index in Indian sub-continent[155]

153. Education Index published on hdr.undp>content>education>index. website visited on September 30, 2013

154. UNEP report "*Promoting Education, Public Awareness and Training*" United Nations Environment Program (1990) published on <http://www.unep.org/Documents.Multilingual/Default.Print.asp?DocumentID=52&ArticleID=4415&l=en> website access on April 10, 2015

155. http://hdr.undp.org/en/content/education-index

Rank	Country	2007 data	2013 data	Change
135	India	0.430	0.473	0.043
142	Bangladesh	0.395	0.447	0.052
146	Pakistan	0.338	0.372	0.034

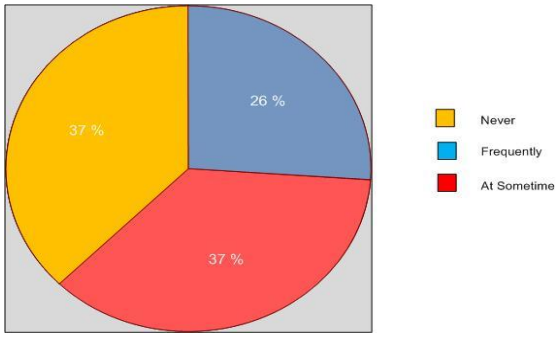
4.5.2.3 Corruption

Another indicator which is measurable is corruption. The IFES survey results show that corruption is prevalent in the judicial process:

"*in response to the question of whether corruption exists in the justice system, particularly with regard to the procedures to obtain judgment enforcement, most respondents responded without hesitation said that it was systemic. However, when asked how frequently an officer of the court solicited an illegal payment in order to expedite a case or to determine its outcome, many respondents in the survey and in the interviews were reluctant to answer and over half were silent. Of those surveyed, 26% indicated that it happened frequently, 37% indicated that they had at some time been asked to give bribes, and the remaining 37% indicated that they had never been asked."* [156]

156. Barriers to the Enforcement of Court Judgments in Peru, Winning in courts is only half the battle: Perspectives from SMEs and Other Users, Alvaro Herrero, Keith Henderson, April 2004, page 51 report available on http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EnforcementofJudgmentsinPeru.pdf site visited on June 15, 2012

Graph: **Frequency of requests for bribes**



IFES Enforcement of Judgment in Peru Survey 2004

Bribery can occur in every step during the hearing in the judicial system. The court officials can take money for work they ought to have done anyway, or lawyers can ask for additional 'fees' to expedite the procedure or delay the case. The lawyers can also ask for more money to bribe the judge for a favorable decision. In the view of the clients, that judges may accept bribes to delay or accelerate cases, accept or deny appeals, influence other judges or simply decide a case in a certain way.

The taking of bribes in the Indian sub-continent has become fashionable. In each government office for staff take bribes openly under different typical names. No one is ashamed of accepting bribes. It is considered a part of the work and nobody have any objection to it. Bribery is common in administration, Politics and judiciary. Even on the roads beggars give bribes to concerned department officers who enforces the law of ''prohibition of

begging. No proper data is available here on what percentage takes bribe. But a sample of a study from Peru on the enforcement of awards, can be judged from this table:

Table 4.7: Personnel involved in taking bribes according to survey Respondents in Peru

	Persons selected in the first place	Persons selected in second place	Persons selected in third place	Ranking[157]
Courthouse staff	27.3 %	27.3 %	6.5 %	23.14 %
Police	30.3 %	12.1 %	19.4 %	22.66 %
Attorneys	24.2 %	21.2 %	16.1 %	21.68 %
Judges	6.1 %	24.2 %	32.3 %	16.77 %
Legal Court Staff	12.1 %	12.1 %	16.1 %	12.90 %
Auctioneers	0 %	3 %	9.7 %	3.81 %

IFES Enforcement of Court Judgments in Peru Survey 2004

To measure the corruption statistically is difficult due to the nature of the issue and imprecise definitions of corruption but different 'benchmarks' can be used to know the level of the existence and development.

157. In order to rank each reason, a weighted average was assigned for the respondents, first, second and third choice, as follows: the first reason chosen was assigned a rank of 50%, the second choice 30% and the third choice 20%.

The literature review reveals the existing empirical examples, surveys, comparisons and scales. The best measuring tool considered is Transparency International, which publishes an annual report all over the world and comments on how to assess corruption:

"*Because corruption is inherently clandestine, the methodology of an assessment is likely to require reliance on interviews, surveys, and observation in addition to press reports, published indices, and official records. The analysis needs to address what corrupt acts are taking place, the reasons why corruption is occurring, and likely solutions."* [158]

Transparency International, an anti-corruption NG Global Corruption Barometer (based on a survey of general public attitudes toward and experience of corruption), working since 1995, publishes the Corruption Perceptions Index (CPI) annually, which helps to evaluate the corruption indicator in all the countries; a bench mark and index of corruption indicating the levels of corruption, a barrier in the access to justice. Further to these indices, data collected by World Bank, including survey responses from over 100,000 firms worldwide and a set of indicators of governance and institutional quality, provide tools to measure the corruption in developing,

158. Reducing Corruption in the Judiciary, June 2009, This report was produced for review by the Office of Democracy and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, United States Agency for International Development, under the terms of Task Order No. 5, Contract No. DFD-I-01-03-00141. The report was prepared by DPK Consulting, a Division of ARD, Inc. The author is James Michel, DPK Senior Counsel.

as well as, developed countries. How we can measure the corruption in the judiciary and what scale can be used? Is a question for a further research.

"*The Corruption Perceptions Index 2014 (appendix 1) serves as a reminder that the abuse of power, secret dealings and bribery continue to ravage societies around the world.*" [159]

The following is the ranking of these three countries in Corruption Perceptions Index. Further details can be seen from Appendix 1.

India 85

Pakistan 126

Bangladesh 145

The following case studies supports our revealed barriers as evidence for how corruption in judiciary does affect the access to justice:

CASE STUDIES

In **India** C. Kohli wrote:

"*corruption is the largest single element to be found. All the spheres of life, from the maternity hospital to the crematorium, smells of corruption. No individual is free from it, no area can be found where corruption is not a ritual.*" [160]

---

159. "*Corruption Perceptions Index 2013"*, Transparency International published on website http://cpi.transparency.org/cpi2013/results/ website accessed on August 14, 2012

160. Chetane Kohli, "In Cinema," in Suresh Kohli, ed., Corruption in India, New Delhi: Chetana Publications (1975) p-67

Corruption has become a major public concern in the wake of successive scams unfolding over the past few years. In India, a report noted:

"*millions of people still suffer from acute poverty, hunger and lack of socio-economic opportunities, the pillage of public resources through corruption, amounts to a crime of a very serious nature.*" [161]

Another report by Makanaka captures the situation as:

"*The judicial system is highly dilatory, expensive, and beyond the reach of the common man. Ordinary citizens find it hard to seek redress, as litigation is expensive and extra money is often required to oil the wheels of the system."* [162]

There are instances of Metropolitan Magistrates issuing billable arrest warrants against individuals of whose identities he has no idea, in return for an inducement. Some time back, a Metropolitan Magistrate in Ahmed Abad issued billable arrest warrants against the President of India in return for an inducement of Rs. 40,000." [163]

"*In some cases, judges offer a favour in exchange for personal gain or favours. In Rajasthan, some time back, there were reports of a judge who*

---

161. Report published as a blog "*Why corruption in India has grown, what must now be done*"
<http://makanaka.wordpress.com/2011/08/24/why-corruption-in-india-has-grown-what-must-now-be-done/> visited on 12-05-2012

Nagaraja.M.R *"Judgement Fixing – Satyameva?"* (2012)
<https://sites.google.com/site/sosevoiceforjustice/judgement-fixing---satyameva-jayate>website visited on July 12, 2012

163. IbId

offered judicial favour in exchange for sexual favours from a litigant. Some of these instances have been reported by the media, but no action has resulted." [164]

The former Chief Justice of (Jummu and Kashmir) J&K High Court Bashir B. A. Kirmani while addressing a two-day conference on Judicial Accountability said:

"some corruption cases have been detected in higher levels of the judiciary. Every judge is not honest. System of appointment of judges is also contaminated. The people, who select judges, are polluted and hence, the whole system becomes polluted, he alleged." [165]

B. Bergovic and D Hiber describes the ways bribes are offered in India:

"*Most frequently, bribes are conducted through attorneys, through judge's acquaintances and friends, through personal contacts and other representatives of public authorities. Contrary to this, the most rarely used channel for bribing are other judges or individuals employed in higher judicial instances."*[166]

S. H. Atlatas laments the high cost of corruption in Pakistan:

"*Corruption in **Pakistan** has now attained devastating magnitude. The misery and human suffering caused by corruption are beyond description.*

---

164. IbId

165. http://www.risingkashmir.com/news/political-interference-poses-threat-to-judiciary-kirmani-27000.aspx website visited on December 10, 2011

166. Borris Begovic, Dragor Hiber, Corruption in Judiciary, published by Center for Liberal Democratic Studies, Belgrade Serboa ISBN 86-83557-30-8, (2004), p-38,

The state which was formed at great cost of human lives and suffering, attending the partition tragedy, is now being abandoned by tens of thousands of its skilled and unskilled manpower. The brain, as well as the brawn drain from Pakistan, is truly impressive." [167]

Another report also relay the situation in Pakistan as: "*There is reference to lower courts remaining plagued by endemic corruption and to judges being said to be prone to intimidation by local officials, powerful individuals and Islamic extremists."* [168]

According to TI Pakistan's 2006 survey,

"96 percent of the people who came in contact with the judiciary encountered corruption and 44 percent of them reported having to pay a bribe to a court official. The judiciary is also viewed as lacking independence from the executive and contributing to a general culture of impunity.[169]

---

167. Syed Hussein Alatas, The Problem of Corruption (Singapore: Times Books International), (1986), p. 86

168. Report published on website http://www.bailii.org/uk/cases/UKUT/IAC/2012/00389_ukut_iac_2012_mn_ors_pakistan_cg.html website visited on November 16, 2012, ref. MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC)

169. Farah Naz, Corruption in Pakistan, (2012) <http://aikpakistan.wordpress.com/2012/11/20/corruption-in-pakistan-and-its-way-out/ website visited on October 31, 2013

In **Bangladesh**, a report noted;

"*court procedures are often cumbersome, politically influenced, and corruption-prone. This is confirmed by the US Department of State 2012."* [170]

Accordingly judicial corruption and inefficiency, lack of resources, and a large case backlog taint the judicial system. Furthermore, Freedom House 2013 noted:

"*judicial appointments are marred by political bias. The impartial appointment of judges has spurred from the Supreme Court Bar Association; nevertheless, politicization of the judiciary is still an issue in Bangladesh."* [171]

For Bangladesh, M. Ahmad gave some measurement of the rate in which bribes were offered to various government officials at different levels;

"*about 46% of businessmen make extra-legal payments to mastan, 15% to police, 11% to bank officials, 39% to political parties or their front organization, 7% to inspectors (e.g. factory, fire, sanitary etc.), 4% to municipal officials, 12% to labour unions, 15% to various organizations, 11% to taxation officials, 24% for renewal of licenses and 7% for getting government contractors for supply or constructions. The range of extra-legal payments was between 2-20% of the gross turnover."* [172]

---

170. "*Business Corruption in Bangladesh*" report published on website <http://www.business-anti-corruption.com/country-profiles/south-asia/bangladesh/show-all.aspx> website visited on October 17, 2012

171. Bangladesh Overview <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh website accessed on June 13, 2013

172. Muzaffer Ahmad, "Governance, Structural Adjustment & the State of Corruption in Bangladesh", published on website

According to the US Department of State, 2011:

"*a former chief justice and several other judges from the high court division received a payment of USD 13,127 from the prime minister's Relief and Welfare Trust. The payments were made shortly before a series of rulings that nullified several constitutional amendments, including a provision that protected the electoral system from politicisation. The Ministry of Law, Justice, and Parliamentary Affairs confirmed the amounts transferred, and the former chief justice stated that the money he received was used to provide medical treatment for his wife.*" [173]

4.5.2.4 Political Interference

This is a hidden sub-indicator too difficult to measure or scale as the interference involved is hidden. Political interference comes about by threat, intimidation and bribery of judges, manipulation of judicial appointments, transfers, salaries and conditions of service. Only the justice user can estimate what was the quality of procedures and what he was expecting became the outcome. Political influence in the judicial decision-making process in Bangladesh is common. A report maintained that the Bangladeshi

---

<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan047830.pdf>

website visited on October 15, 2013.

173. "*Corruption P it has been erceptions Index 2013*" published by Transparency International <http://cpi.transparency.org/cpi2013/results/ site accessed on August 14, 2013

government has attempted to tackle the backlogs in the judiciary but it is flawed by favoritism:

"*In 2009, the government began an initiative to investigate politically-motivated cases filed against politicians and others, under the code of criminal procedure, regular penal code, and the Anti-Corruption Commission Act. A committee was set up under the leadership of the Minister for Law, Justice, and Parliamentary Affairs to review applications for such cases. By March 2011, the committee had withdrawn 4,687 cases, most of which involved members of the ruling party. The committee also dropped twelve corruption cases against the Prime Minister as well as other cases filed against senior party leaders, known party supporters, and their relatives.*

At the same time, the committee has been reluctant to drop criminal charges filed against opposition party leaders and has refused to withdraw charges against journalists and human rights activists." [174]

In Bangladesh, it has been observed that judicial appointments process is corrupted:

"*Political clout is demonstrated in the appointment of junior judges to senior posts in defiance of a tradition of appointing judges on the basis of seniority and experience.*"[175]

---

174. "Bangladesh Overview" (2013) published on website FREEDOM HOUSE <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> website accessed on June 13, 2013

175. *New Age* (Bangladesh), 28 July 2006. http://newagebd.net/

A very little data is available in literature about the influence of politicians on the judiciary as it is hidden and where the influence has been proven, the judiciary has considered it and passed the rulings.

4.5.2.5 Policing System

This is another sub-indicator which can be measured over this scale as it affects the cost and quality of procedures. There is delay-factor in formal Justice Systems where criminal matter exists. This usually occur because of the police. Submission of paper work, filling of cases and producing evidence are the factors that cause the delay. K. R. Hope wrote that the police in India are pathetically corrupt. This also dissuades the people from pursuing justice in non ADR system:

"*The police in India is perceived to be an extremely corrupt organization (Verma 1999). Citizens are reluctant to approach the police in cases of victimization as they are apprehensive of exhortation by the officers. Bribe taking is common among the police personnel and for even routine services, they make demands for money."* [176]

The role of the police at the investigation stage in criminal cases is a big barrier in access to justice in the Indian sub-continent and cannot be ignored when we consider the barriers in the context of non-ADR systems. The

176. Kempe Ronald Hope, Sir Editor of Police Corruption and Police Reforms in Developing Societies, printed by CPC press, 2015

literature reveals that Pakistan's criminal justice system is steeply tilted in favor of the police and prosecutors. The vast majority of cases turn to confessions by suspects who have no access to defense lawyers. People find the Police department as an easy way to change the witness by offering bribes to get the desired results in court and this barrier is a major obstruction in the access to justice for the poor who are unable to bribe the police in time.

CASE STUDIES

It is established that the police are corrupt in Pakistan and it dates back to colonial periods. Y. L. Hamdani noted that:

"*The Police in **Pakistan** is notorious for bullying and are is used to oppress the people instead of protecting them. Historically, the police were used by the colonial administration as a means of implementing its own policy. Inevitably, the victims of police brutality in Pakistan are those without patronage or support of the influential and, more often than not, these are the people mostly in need of legal aid.*" [177]

The study reveals that in developing countries, courts are working to manage the cases using ICT resources but backlog is still present. For example, in

Bangladesh:

177. Yasser Latif Hamdani , "*The crisis of legal aid in Pakistan*" <http://inp.org.pk/sites/default/files/job%20description/%20Executive%20/The%20Crisis%20of%20Legal%20Aid%20in%20Pakistan.pdf>

"the case of criminal court, some of the primary legislation is almost 150 years old." [178]

British heritage still play an important role in the Indian-subcontinent's judiciary, which restricts the movement of the poor and where a judge performs administrative and judicial duty. This is because the higher authorities have inadequate resources to separate the judiciary from administration. This make the judges over-burdened in addition to their judicial activities thus, creating a backlog of cases.

In **Pakistan,** these backlogs are hopelessly many:

"backlog is estimated to be some 1.5 million cases."[179]

Livingston Armytage put it like this:

"The endemic delays of the Pakistani court system are caused in part by chronic under resourcing, but in part, by archaic and inefficient work practices." [180]

---

178. Kamal Siddiqui, *'In Quest of Justice at the Grass Roots'*, Journal of Asiatic Society of Bangladesh, Vol. 43, no.1, (1998); Fazlul Huq, Towards to a Local Justice System for the Poor, Dhaka, 1998.

179. Ahmadis – country conditions – risk, [2012] UKUT 389 (IAC), [2012] UKUT 00389 (IAC) published on website <http://www.bailii.org/uk/cases/UKUT/IAC/2012/00389_ukut_iac_2012_mn_ors_pakistan_cg.html> web site accessed on November 16, 2012

180. L**ivingston Armytage, "***Pakistan's law and justice sector reform experience: some lessons*" published on website

The police is one of the actors in the system why Pakistani courts are losing the confidence of people.

4.5.3 Quality of Outcome

The third path of access to justice is 'the outcome of the procedures' in non-ADR system. Outcome depends on user's expectations and the comparison that it receives with other resources. If the outcome falls below one's expectations, it is evaluated as unfavourable. Then the level of making judgments is based on procedural information.

In order to measure the quality of the outcome, the MA2J methodology uses four criteria:

- "*Distribution – extent to which the apportionment of the outcome is fair and just*
- *Restoration – ability of the outcome to restore the damages caused by the underlying legal problem*
- *Functionality – extent to which the outcome is useful from the perspective of the client of justice*

<http://www.educatingjudges.com/hyperlinks/pakistanadbprojectlessonslearned.pdf> accessed on November 22, 2014

- *Transparency - explanation of the reasons for the particular outcome, justification and comparability with outcomes in similar paths to justice."* [181]

The sub-indicators, we considered in quality of outcome have been shown in the form of a table below:

Table 4.8 Analysis of Outcome of Indicators [182]

Indicator	Description	Non-ADR Systems
Agreements	Agreements that outcomes is as a result of the process	• Outcome will be a judgment • Court proceedings can often end relationships with the other people involved. • Parties are bound to the law & regulating the subject of litigation
Relationships	Relationship between the disputants	• Win-win position harm the relationship
Appeal	Review on agreements	• Appeal process, encouraged
Confidence	Confidence between disputants on revival of relationship	• Outcomes imposed by the courts and tribunals are sometimes taken back to court (appealed) because people are dissatisfied.
Enforceability	Enforcement of outcomes, agreements	• Enforcement delayed due to involvement of the enforcing agency

Outcome of any dispute results are usually the agreements or court orders. If any party is dissatisfied with the outcome they have the right to go for

181. Access to Justice, "Measuring cost and quality of justice", <https://www.measuringaccesstojustice.com/index.php/main-parent-page/quality-of-the-outcome/> website accessed on August 05, 2014

182. Id note 93

appeal in the higher court. Y. L. Hamdani affirms the importance of quality of outcome in the access to justice:

"*The quality of the outcome is expected to have similar effects on accessibility of justice. If the person who needs justice knows that the, given mechanism will not fully restore or compensate the lost interest, than the probability of failure will play the role of a barrier. "The more the claimant believes that the outcome will be of `high quality`, the higher the likelihood that he enters a path to justice."* [183]

The quality of outcome in the distribution of justice is affected by some hidden elements in non-ADR justice systems, too. It has been observed that judicial systems which is expected to respect the judicial values ('independence, impartiality, integrity, accountability, and transparency and uphold the rule of law') have been involved in corruption.

Shortage of judges in courts is a serious issue in the continent. Judges are unable to produce quality of judgments due to number of factors. For example in India, the Judiciary is unable to cope with the flood of litigation. Therefore, the number of judges needs to be increased in proportion to the population.

Consider, for example, how court procedures facilitate delays in cases in which the outcome is reasonably clear-cut. Sometimes certain parties have an obvious motive to delay: activity in violation of the law, for instance, can

183. Id note 93

be continued up to the hearing, unless interlocutory relief can be obtained. Similarly, a person might be induced to abandon a claim, or a case might be weakened with time because witnesses are no longer available. In one ruling it was noted:

"*The rules of evidence also raise up the barriers to establishing a case. Statistical evidence is not admissible, to show that a surgeon has a much higher wound infection rate than average. Yet if only one case is examined, it will be much easier for the surgeon to argue chance and to have any inference of negligence rejected. "* [184]

When we consider outcomes of the courts, enforcement of judgments is another major barrier in access to justice in non-ADR systems. Some of these barriers arise from the legal framework while others are from the practice, or from both. The following reasons have been noted as a conclusion from the survey results related to the main obstacles to the enforcement system:

- *"excessive delays and judges' failure to duly enforce the law are closely related and indicate that the main problem may be the behavior of judges themselves;*
- *Excessive cost and unwillingness to pay are also important obstacles to the efficiency of the enforcement system."*[185]

According to our review, citing a Times of Indian news article:

---

184 ***Hales* v. *Kerr*** [1908] 2 K.B. 601; Phipson on Evidence (13th ed., 1982), p. 230.

185. Sandra Eelena, Alvaro Herrero, Keith Henderson, "Barriers to the Enforcement of Court Judgments in Peru", Winning Courts only Half The Battle: Perspectives from SMEs and Other Users, April 2004, published by IFES and produced with generous support from USAID.

- *"Indian judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts including High courts in the country.*
- *Every judge in the country will have an average load of about 2,147 cases.*
- *India has 14,576 judges as against the sanctioned strength of 17,641 including 630 High Court Judges. This works out to a ratio of 10.5 judges per million populations."*[186]
- *"The actual time required for an enforcement case is extremely difficult to gauge accurately."* [187]

The following IFES Enforcement of Judgment Survey 2004 results helps to understand the barriers in terms of the 'quality of outcome' of courts when there is the issue of enforcement of judgement.

Table 4.9: Reasons for not resorting to the courts for enforcement actions*

Reasons	First reason	Second reason	Third reason	Ranking reason[188]

186. News published in Times of India , March 6, 2010 http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms website accessed on January 14, 2015

187. Eyzaguirre, Hugo, et al., "La estructura de incentivos y las inefi ciencias en tres procesos civiles: Juicios por títulos ejecutivos vencidos, juicios por alimentos y ejecución forzada de bienes" [The Structure of Incentives and Ineffi ciencies in Three Civil Cases: Trials on Expired Forfeiture Papers, Trials for Alimony, and Mandatory Property Forfeiture, Instituto Apoyo, August 2000, for another estimate of the time required for trials.

188. In order to rank each reason, a weighted average was assigned for the respondents' first, second, and third choices, as follows: the first reason chosen was assigned a rank of 50%, the second choice 30%, and the third choice 20%.

Excessive time or delays	35.2 %	34.0 %	15.1 %	30.8 %
Excessive cost	29.6 %	15.1 %	7.5 %	20.83 %
Judicial inefficiency	9.3 %	18.9 %	13.2 %	12.96 %
Judicial corruption	5.6 %	9.4 %	20.8 %	9.78 %
Lack of sanctions in cases of debtor noncompliance	9.3 %	5.7 %	17.0 %	9.76 %
Low probability for judgment enforcement	3.7 %	7.5 %	11.3%	6.36 %
Unwillingness by judges to enforce judgments	5.6 %	7.5 %	1.9 %	5.43 %
Lack of information	1.9 %	1.9 %	9.4 %	3.40 %
Better alternatives to the courts	0 %	0 %	3.8 %	0.76

* IFES Enforcement of Judgment Survey 2004

"*According to the IFES SME surveys[189], 33% of the respondents believe that enforcement proceedings take between two or three years; 21.6% indicate one to two years, and 23.5% indicate from seven months to one year. Thus, 45% of respondents estimate that anywhere from one to three years is needed to enforce a judgment. This is consistent with the opinions offered by attorneys and representatives of banks, which are the source of a large number of enforcement actions."* [190]

189. Approximately 60% of the survey sample consisted of users of the courts. All those surveyed were SME representatives.

190. González Mantilla, IFES enforcement of judgments Peru interviews (2004)

4.6 Conclusion

It is easy to measure cost and time, quality of procedures and quality of outcome by a user who is willing to know to what level these factors are barriers in the access to justice. The other barriers mentioned, have been measured, indexed or scaled to a standard scale.

In concluding the study of the obstacles in enforcement of decisions of the courts, we found the following barriers in enforcement, summarised in one of the studies carried out by IFES. The scale of enforcement of the outcomes is the actual result which reveals the level of barriers.

Table 4.10: Obstacles to Executing a Court Judgment for Enforcement of Awards.

Obstruction in court judgments	First obstacle	Second Obstacle	Third Obstacle	Ranking[191]
Lack of public resources	18.9 (%)	8.9 (%)	8.9 (%)	13.9 (%)
Unwillingness of government to pay	17 (%)	22.2 (%)	17.8 (%)	18.72 (%)
Excessive delays	13.2 (%)	11.1 (%)	11.1 (%)	12.15 (%)

191. In order to rank each reason, a weighted average was assigned for the respondents first, second, and third choices, as follows: The first reason chosen was assigned a rank of 50%, the second choice 30%, and the third choice 20%.

Inadequate procedures	9.4 (%)	6.7 (%)	6.7 (%)	8.05 (%)
Immunity to enforcement proceedings	7.5 (%)	6.7 (%)	13.3 (%)	8.42 (%)
Lack of independent Judiciary	5.7 (%)	4.4 (%)	8.9 (%)	6.83 (%)
Excessive Costs	3.8 (%)	15.6 (%)	11.1 (%)	8.80 (%)
Insufficient authority to effect enforcement	3.8 (%)	2.2 (%)	4.4 (%)	3.44 (%)
Corruption in the enforcement procedure	1.9 (%)	8.9 (%)	2.2 (%)	3.11 (%)
Absence of sanctions for failure to comply with court orders	1.9 (%)	0 (%)	0 (%)	0.95 (%)
Lack of respect for the Courts	0 (%)	2.2 (%)	2.2 (%)	1.10 (%)
Inefficiency in the courts	0 (%)	2.2 (%)	2.2 (%)	1.10 (%)
Unwillingness of courts to impose sanctions	0 (%)	8.9 (%)	6.7 (%)	4.01 (%)
None	15 (%)	0 (%)	0 (%)	7.05(%)

IFES Enforcement of Court Judgments in Peru Survey 2004

The barriers in the access to justice established as a result of measurement on MA2J scale in the Indian sub-continent are detailed as follows:

Table 4.11: Existence of Barriers in non-ADR justice in Indian sub-continent

Country	Barriers in access to justice
Bangladesh	• Lack of legal identity and adequate capacity • ignorance of legal rights, outdated laws, • Lack of coordination and cooperation between justice

	• Sector agencies , • Unavailability of legal services, • Unjust and unaccountable legal institutions, • Lack of coordination between the key ministries responsible for or contributing to the delivery of justice, • Lack of trained staff and shortages of judges, • existing case backlog, • Low public and user awareness of the justice system • Need for legislative reform
India	• Corruption, an unaccounted cost generated by the current system • Legal fees, as well as the hidden cost of lost wages and other expenses of attending court. • Travel costs suffered by users or witness. • Lawyers, regrettably come to be perceived as a barrier to justice who are worried about their income. • Legal aid, • Low public and user awareness of the justice system • Need for legislative reform
Pakistan	• Corruption, • Political influence, • Cost of proceedings, • Weak judicial infrastructure, • Existing case backlog • Lawyers (hindrances in promotion of ADR systems and legal aid) • Lack of trained staff and shortages of judges • Religious extremism • Low public and user awareness of the justice system • Need for legislative reform

It is expected that the measurement of barriers using other models, will provide similar results. They may set differing paths to measure it but the indicators and sub-indicators will remain the same.

CHAPTER FIVE

Use of ADR Systems in the Context of Barriers in Justice

5.1 Introduction

It is natural for a person to search for alternatives, when he is frustrated because of some act of continuity which resulted in financial or emotional loss. The desire for 'change' or search for 'alternatives,' depends entirely on the nature of the individual or the situation in which he finds himself.

The need to explore alternatives, with respect to business objectives, makes this research goal-oriented where each alternative reflects a potential plan for satisfying the goal.

Aristotle holds the view that, it is inherent in humans to make choices because they are a reasoning being. He summed it up in these lines:

"*Human beings live their lives by making choices on the basis of reason and then acting on those choices. All reasoning about what to do proceeds from the premises that is relating to the agent's beliefs and desires.*"[192]

---

192. Aristotle, 384 BC –322 BC, was a Greek philosopher and polymath, a student of Plato and the teacher of Alexander the Great. His writings cover many subjects, including physics, metaphysics, poetry,theater, music, logic, rhetoric, linguistics, politics, government, ethics, biology, and zoology. Together with Plato and Socrates (Plato's teacher), Aristotle is one of the most important founding figures of Western philosophy.

Researchers have attempted to identify how many justice criteria are there that can be used to measure fairness in the access to justice. Notable ones among them are, Karen. S. Cook and Karen. A. Hegtvedt, who revealed that: "*Three justice criteria are used to assess the degree of fairness – needs, equity and equality*."[193]

Other researchers like, Martin Gramatikov, et al also writing about the access to justice, argued that access to justice do not only need to be fair but the outcome/judgement should be too for measurement to be meaningful. They wrote:

"*Access for the sake of access is insufficient. People need the justice processes in order to solve their legal needs in a just and fair manner. Cheap and high quality* processes which *lead to unfair outcomes, are nothing more than access to injustice. Without taking the result of the justice process into consideration, the measurement approaches could tell little about the efficacy of access to justice*."[194]

---

193. Karen .S. Cook and Karen .A. Hegtvedt, "*Distributive Justice, Equity, and Equality Annual Review of Sociology*", Department of Sociology, University of Washington, Seattle, Washington 98195, USA, (1983)

194. Martin Gramatikov, Maurits Barendrecht, Malini Laxminarayan, Jin Ho Verdonschot, Laura Klaming, Discussion paper, "*Five Methods for Measuring the Rule of Law and Access to Justice: Challenges and Lessons Learned*" (2010) published on website http://www.hiil.org/data/sitemanagement/media/Discussion_paper_Measuring_220410_FINAL(1).pdf accessed on July 17, 2014

A recent judgment of the Supreme Court of India has buttressed the necessity for alternatives to non ADR. It declared that:

"*Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy, for resolution of dispute avoiding procedural claptrap.*"[195]

5.2 What are Alternative Dispute Resolution Systems?

ADR is a process, an alternative to court action where the disputants choose an independent and neutral third-party to resolve their dispute in an agreed time. It is a process for resolving disputes in the place of litigation and it include, mediation, conciliation, expert determination, and early neutral evaluation, where the parties may or may not agree at the outset to be bound by the decision. Typically, it includes arbitration, mediation, early neutral evaluation and conciliation.

Jethro. K. Lieberman and James. F. Henry agrees with this view of what ADR is. They wrote that:

"*ADR is perceived both as a preventive measure and as a method for channelizing disputes outside the formal justice system.*"[196]

---

195. Mr. Justice Sanjay Kishan Kaul, and Mr. Justice Rajiv Shakdher, State Trading Corporation Of ... vs Indian Sugar Mills on 24 April, 2012, published on website <http://www.indiankanoon.org/doc/136662189/> accessed on February 15, 2014

196. Jethro K. Lieberman & James F. Henry, "*Lessons from the Alternative Dispute Resolution Movement"*, 53 U Chi L Rev 424, 425-426 (1986)

In ADR, the parties are at liberty to choose the what, who, where, when and how of the case resolution. Rao. P. C's work supports this line of thought. He wrote:

"*In ADR the parties select and control the process of it for smooth, correct, effective and efficacious remedy and they are under the liberty to appoint any expert in the subject matter of the dispute."*[197]

Ahmad Ishrat Azim and Karim's work also belong to this school of thought. They maintain that privacy is essential part of ADR. They wrote:

"One important positive side of ADR is absolute maintaining of privacy because privacy is a key value which underpins human dignity and it is a basic human right and the reasonable expectation of every person."[198]

ADR stems from historical ways of settling disputes. It has developed through trials and errors and it is time tested too. Nelson's writing reflects this historical element in ADR. He submits that:

"*The concept of ADR is not a new phenomenon. For centuries, societies have been developing informal and non-adversarial processes for resolving disputes. In fact, archaeologists have discovered evidence of the use of ADR processes in the ancient civilizations of Egypt, Mesopotamia, and Assyria."*[199]

---

197 RAO. P.C. *Alternative to Litigation in India*, edited P.C. RAO and WILLIAM SEFFIELD, Universal Law Publishing Co. Pvt. Ltd. New Delhi, at P-24

198. AHMAD ISHRAT AZIM and KARIM Md. ERSHADUL. (2006) *Principle of civil litigation: Bangladesh perspective*: first edition, Law Lyceum, P-222

199. Nelson, "*Adapting ADR to Different Cultures*‖" (2001) published on website <http://www.gowlings.com/resources/publications.asp?pubid=776> accessed on July 18, 2014

It has been identified that most of the ADR methods used in Indian sub-continent are developed after the shape of traditional dispute resolution methods used in the continent for centuries. The court system itself was once an alternative dispute resolution process, in the sense, that, it superseded older forms of dispute resolution, including trial by battle and trial by ordeal. Burger, writing along this line of thought maintains that if we search through history, we will find that:

"*One of the earliest recorded mediations occurred more than 4,000 years ago in the ancient society of Mesopotamia when a Sumerian ruler helped avert a war and developed an agreement in a dispute over land.*" [200]

Indian sub-continent has a long tradition of using ADR processes. The most popular method of dispute resolution, 'Panchayat', started about 2500 years ago and is still used widely in villages and tribes for the resolution of disputes where heads of the villages or families get together to find the solution to any dispute. The process is accepted as a reliable and cost effective dispute resolution method. The literature by Law Commission of India reveals that:

"*There were various types of arbitral bodies which led to the emergence of*

200. Burger, "Isn't There a Better Way", 68 American Bar Association Journal 274 - 277 at 274. (1982)

the celebrated Panchayati Raj system in India, especially in the rural locales. The decisions of the Panchayat were accepted and treated as binding."[201]

The following table helps us to identify the ways that are available and adopted by both systems (formal and Informal), in resolving disputes. The study has revealed different traditional systems working in Indian sub-continent, showing their age and support by the legal stems.

Table 5.1: Traditional Systems in Developing Countries

Country	**Traditional System**	**Age of the System**	**State supported System**	**Age of the System** (years)
Bangladesh	Shalish	92 years (1919)	*Village Courts (union parishad)*	1976
India	Punchayat[202]	1400	Punchayat	Reintroduced in 1870
Pakistan	Jirga Punchayat	3510 (1500 BC)[203]	No	1870

Nishita Medha, in her writing, made a clarification of the aspects of ADR processes that is binding. She wrote that:

201. "*Need for Justice-Dispensation through ADR*" report published by Law commission of India, published on website <http://lawcommissionofindia.nic.in/reports/report222.pdf> accessed on November 12, 2013

202. Birendra Nath, Judicial Administration in Ancient India, Janaki Prakashan , (1979), p. 2.

203. "*Loyia Jirga, introduction.* Q&A What is Loya Jirga BBC News July 1, 2002.accessed on December 10, 2013

"*It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation and conciliation are non-binding forms, and it depends on the willingness of parties to reach a voluntary agreement.*" [204]

It is to be noted that when using the term, ADR in our study, it means, mediation, arbitration, negotiation, conciliation, expert determination, and early neutral evaluation, where parties may, or may not, agree at the outset to be bound by the decision. No one is a winner and no one is a loser. These systems are successful because all parties become satisfied with the outcome of the dispute.

5.3 Why Alternative Dispute Resolution Systems?

Alternative Dispute Resolution Systems (ADRs) are generally used to refer to systems for resolving disputes between the disputants without involving the judiciary. According to the Ministry of Justice of New Zealand there are many benefits in using ADR. It stated that:

"*ADR have potentially positive benefits for court systems through:*

- *reducing filings;*
- *encouraging settlement rather than adjudication;*

---

204 Nishita Medha, Alternative Dispute Resolution in India, A study on concepts, techniques, provisions, problems in implementation and solutions, www.fdr**india**.org/old/publications/**AlternativeDisputeResolution**_PR.pdf accessed on Novemeber 12*, 2015*

- *reducing both hearing related, as well as case preparation costs, by narrowing the issues that require adjudication within the courts; and*
- *developing sustainable solutions that are less likely to be subject to repeated re-litigation.*" [205]

ADR systems are used due to their successes and availability, in terms of time and cost. In measuring the success of ADR systems, Kerbeshian, suggests, that its' successes are traceable to the goal for which it exists. He noted that:

"*The answer depends on the purpose of ADR, the definition of success or failure and attainment of the selected criteria.*"[206]

But what have researchers defined? The literature reviews shows that:

"Researchers have attempted to define success by using such criteria as, client satisfaction, settlement rate, efficiency and cost."[207]

The settlement rates of disputes are also used to evaluate the program. Typically, under the:

"*assumption that settlement is beneficial to the participants.*"[208]

The success of these dispute resolution justice systems is linked with:

- age of the traditional justice system;

---

205. Ministry of Justice New Zealand "*ADR and the Court Systems*" (2004) published on website <http://www.justice.govt.nz/publications/global-publications/a/alternative-dispute-resolution-general-civil-cases/6-adr-and-the-courts-system> accessed on April 21, 2014

206. Kerbeshian, L.A, ADR: To Be or. . .?" *North Dakota Law Review* 70, p-428, 1994

207. Note 15, p-385, 395

208. Note 15, p-400

- confidence in the systems;
- success of the system;
- knowledge of the procedure that works.

The most important factor for the success of these traditional systems, is, the *'age of the traditional justice systems,'* which hugely, pertains to the average life of a generation. If the system encompasses an era of life within the generations, it can then be argued, that, people know the system and are aware of its procedures, advantages and disadvantages. For example, if we take a dispute resolution system like 'Panchayat', that has been working in the Indian subcontinent for the last three centuries, then, in the context of age, we can argue that since it has been *working* in more than 5-6 generations (*age*) and the people *trust* its *success* because they get justice speedily, it is then a trusted system.

Similarly, 'Tahkeem', another system used to resolve disputes in Arabian countries, which is based on Islamic principles (working there since the last fourteen centuries), is well known in Arabian Countries and people living in these countries are aware of how it works. The ages of the system 'Panchayat' and 'Tahkeem' is a proof of their stability and success. The same logic can be used for other ADR systems working in other developing or developed countries for generations.

ADR has evolved in India resulting in some of them having changed names over the years. Some of the people are not conversant with these new names for the different types of ADR but are aware of their availability. The literature states:

"*When we measure the level of awareness in developing countries, like India, it is revealed that the people are aware of these systems but ignorant of their new names, such as mediation or arbitration. We find that Traditional Panchayats are now largely extinct in India.*" [209]

Hiram Chodosh reveals that the people are familiar with these systems and how they work, namely, this:

"*traditional Hindu law that came before the Muslim and English invasions.*"[210]

Robert Moog also affirms the existence and the manner in which they are practiced. He presented it this way:

---

209. Other names for panchayats include: Nyaya Panchayat, Panchayat Adalat, and Gram Kachheri.

210. Hiram Chodosh, "*Global Justice Reform: A Comparative Methodology*", NYU Press, (2005), (Arguing that the "original Indian law is much more alien to Indians today than the imported alien forms of the English common law system. It is therefore futile to go beyond the seventeenth century for any appreciation or understanding of the existing Indian legal institutions or concepts"). The British Raj is the major historical cause of limited alternatives to the formal court system.

"*Traditional disputes resolution, though, is still practiced, because it is common for parties to simply approach a respected individual and have him act as a mediator."*[211]

The success of any system is best judged if they are available to independent evaluators and studied by experts. User involvement and participation in the resolution of disputes make them more trust worthy and reliable when the:

- working of the process is transparent;
- measurement of the system give successful results;
- outcome achieves its goals

A brief history of Indian ADR systems in the context of its success, reliability and working characteristics, is displayed in the following table, which helps us to understand the systems and their modality in Indian sub-continent and the year in which they were established.

Table 5.2: Traditional ADR Systems and their life in Indian sub-continent

Indian Forms of Dispute Resolution[212]	**Traditional Panchayat**	**District Courts**	**Arbitration**	**Nyaya Panchayat**	**High Courts/Supreme Court**	**Lok Adalats**
Flourished Since	Before British	Early 20th Century	1940	1950-1975	1977	1982
Personnel	Communal notables	Bureaucratically	Selected by	Elected by local	Appointed judges	Retired judges

211. Robert Moog, "*Conflict and Compromise: The Politics of Lok Adalats in Varanasi District"*, 25(3) Law & Society Rev. 545-570, 1991.

212. Hiram Chodosh, "*Global Justice Reform: A Comparative Methodology*" NYU Press, (2005), The British Raj is the major historical cause of limited alternatives to the formal court system.

		selected career	Parties	electorate		
Norms	Custom of caste/locality	Lex loci (state law)	Reflection of law	Statute law	State law	Unknown
Sanctions	Fines, Excommunication	Money damages, injunctive relief	Money awards enforced by court	Fines	Money damages, injunctive relief	Enforced by court of law
Accountability	Politics of Reconsideration	Appeal within judicial hierarchy	Enforced by Court	Appeal to courts	No appeal	No appeal
Representation	Self	Advocate	Advocate	Self	Advocate	Self/Advocate

It is a law of nature when a person live in a society, culture or religion, from his birth till his death, he becomes aware of what constitutes his community's functions, habits, respects and traditions.

The importance of tradition in the practice of this system cannot be over-emphasized. A 'tradition', according to Thomas. A. Green, means:

"*ritual, belief or object passed down within a society, still maintained in the present, with origins in the past.*"[213]

The life-span of the 'tradition' establishes its stability and confidence of the users. Traditional dispute resolution systems stems from the roots where

213. Thomas A. Green, "*Folklore: an encyclopedia of beliefs, customs, tales, music, and art*." ABC-CLIO. pp. 800 (1997)

people gather together and the heads resolve the disputes quickly without any cost and implemented within a short time.

Another factor for the success of any system, is, the confidence that the people have in that system. Such confidence relies on the belief that any disputes will be settled quickly and fairly, either by the heads of the family/village or the court and that the treatment for both parties is as *equitable* and fair as a formal procedure or legal procedure of the country.

To measure the level of confidence, the study used multiple statistical tests. The initiation of any procedure by oral or written form in itself is confidence in that procedure. The truth of this logic appears from an example of Ghana culture.

In Ghana, the following survey results confirmed the level of trust and confidence on different members of community.

Table 5.3: **Who would you most trust to settle any dispute? "Trust a lot"** [214]

Trust in	% of Choice	Ranking
Village chief	62.1	1
Heads of families	61.4	2
Court judge	35.4	3
Unit Committee Chairman	34.2	4
Paramount Chief	32.1	5
Divisional Chief	28.8	6

214. Richard C Crook," *Alternative Dispute Resolution systems: What kind of Alternative to the Court?*" Published by "Institute of Common wealth Studies, University of London", 2007

Tendana	26.2	7
Lawyer	19.8	8
Police	14.2	9
Agriculture Dept Officer	13.8	10
District Commissioner	13.2	11
School headmaster	11.4	12
Lands Commission officer	11.1	13
Town and Country Planning Officer	10.4	14
CHRAJ	8.6	15
Church leader	3.4	16
Elders	1.6	17

If the working of the system is fair (no bias, no favoritism or discrimination due to age or gender), then, the trust of the people develops and the award issued as a result of resolution, are respected and enforced easily.

Can we develop a way to identify whether an ADR process is successful? Yes, from the literature review, we find many possible aspects or dimensions in which an ADR process could be called successful or effective. If the outcome of any dispute resolution meets its goals, it can be said that the process was effective and successful. The widely used success measures include:

- User satisfaction;
- Rates of settlement;
- Nature of agreements;
- Efficiency of the procedures; and

- Improvement in the post dispute climate.

Why are ADR the alternatives to litigation?

It cannot be claimed that ADR are the alternatives to litigation but it can be considered, to a certain limit, that, they are alternatives to litigation because ADR has advantages over court actions, where both parties are willing:

- to maintain their **relationship** after the dispute is over;
- to be reassured that **costs** and time of the trial will be minimum;
- to keep their dispute and settlement, **confidential;**
- to achieve an **outcome** that can be agreed:
- to use a system that is **voluntary,** l**ess formal** and **less stressful**.

The study, by Kelly Joan .B also revealed that mediation used in ADR, produce more success rate than the Non ADR one. She wrote:

• *"Mediation research across countries, indicates that clients reach agreement in divorce mediation, is 50 percent to 80 percent in time.*" [215]

• Kelly's study also show that satisfaction rate of mediation was higher that of ligation. She Maintained that:

"*Satisfaction with mediation was higher among those who reached agreement than among those who did not.*"[216]

Another question then arises is does ADR work better than litigation?

---

215. Kelly, Joan B 'A Decade of Divorce Mediation Research' 34(3) *Family and Conciliation Courts Review* 375, 1996

216. Id

The study has revealed that following ADR methods which are running successfully under different names and forms are in common use in the Indian sub-continent:

- Mediation
- Arbitration
- Adjudication
- Court connected mediation

From the literature review, we have come to know that ADR is cost effective and goal oriented. In the words of Bergman Edward and Bickerman John, we:

"*know that well-run ADR programs may reduce cost and time. That ADR is satisfying and fair for most participants and that good ADR can cost money."* [217]

As noted earlier that participants in family mediation achieved significantly greater satisfaction than those who used the non-ADR process for divorce or custody dispute. Pearson, Jessica. A, and Thoennes Nancy also supports the view that mediation in ADR gives higher satisfaction than in the alternative to ADR. They wrote that:

---

217. Bergman, Edward and Bickerman, John (eds) *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*, Pike & Fischer Inc, Bethesda, Maryland, 1998

"Users of mediation reported high levels of satisfaction with mediation, in contrast to the dissatisfaction reported with "the adversarial legal system." [218]

Further studies have corroborated the inexpensiveness of Mediation. Like Kelly Joan. B. Who noted:

"*mediation... was significantly less expensive" than an adversarial process"*[219],

And Pearson Jessica. A. noted that other:

"research reported significant evidence that mediation will reduce legal fees." [220]

The findings made by Keilitz Susan states that there is a common ground between litigants and attorneys on the benefits of ADR. In his writing:

"both litigants and attorneys find mediation to be fair and satisfactory"[221]

Kressels Kenneth and Pruitt Dean has observed that mediated cases can be

---

218. Pearson, Jessica A and Thoennes, Nancy (1989) 'Divorce Mediation: Reflections on a Decade of Research' in Kressel, K and Pruitt, D (eds) *Mediation Research: The Process and Effectiveness of Third Party Intervention* San Francisco: Jossey-Bass Publishers p- 27, 28

219. Kelly, Joan B 'A Decade of Divorce Mediation Research' 34(3) *Family and Conciliation Courts Review* 376 (1996)

220. Pearson, Jessica A (1994) 'Family Mediation' in Keilitz, S (ed), *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings - Implications for Courts and Future Research* State Justice Institute p-62

221. Keilitz, Susan (1993a) 'Court-Annexed Arbitration' in Keilitz, S (ed), *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings - Implications for Courts and Future Research* State Justice Institute p-7

settled faster than cases that followed traditional adversarial method. They stated that:

"*There are evidences that cases that get to mediation, reach settlement more quickly than comparable cases that follow the traditional adversarial approach*."[222]

In Kressel's view mediated agreement tends to be economical to the parties than adjudicated ones:

"*There are some evidence that mediated agreements involves more compromise and more equal sharing of resources than the adjudicate agreements; [but] this pattern is hardly uniform.*"[223]

In India, the Delhi Mediation Centre, DMC, issues newsletters and annual reports about alternative dispute resolutions. On the success of ADR in India, it maintained that as of:

"*December 2012, the DMC had settled over 70,000 cases, with an average success rate of seventy percent*." [224]

This reflects the level of trust the people have on ADR systems in India.

---

222. Kressel, Kenneth and Pruitt, Dean (eds) (1989) *Mediation Research: The Process and Effectiveness of Third Party Intervention*, San Francisco: Jossey-Bass Publishers p-398

223. Id

224. Delhi Mediation Centre: District Courts of Delhi, http://delhimediationcentre.gov.in/nl2012.htm last visited on Mar. 16, 2015.

5.4 Use of ADR Systems in the Context of Barriers

The most important question that needs to be answered, is, what are the essential criteria for an ADR system if one is to achieve sustainable success? The study reveals that ADR should satisfy: independence, expertise, fundamental rights, due process, fairness, justice, legitimacy, governance, effectiveness, efficiency, speed, cost, flexibility and access to justice.

Alternative Dispute Resolution (ADR) mechanisms are a useful means in developing countries by which the parties can preserve their contractual relationship, while resolving the disputes peacefully. If a dispute arises in the course of the performance of the contract, or between the parties to a contract, who are likely to deal with each again other in the future, arbitration or court proceedings may be disastrous.

Bell Catherine explained in her work, that, people have shifted from using the courts to resolve disputes due to dissatisfaction with the practice. Instead, they are turning to ADR. She wrote that:

"*Until recently, the courts have been used as the main forum to resolve disputes. However, public dissatisfaction with an adversarial system, government recognition of experts other than judge and an increased in awareness of the impact of discretion on the administration of justice, especially how cultural differences affect the exercise of discretion, have all*

led to increased popularity and need for alternative dispute resolution processes."[225]

If we analyse the circumstances of the users and their views as justice users, we will find that the use of alternatives is linked with the reputation of courts and the barriers that the users face in accessing justice. The reason behind this, is, the inefficiency of the courts and corruption which forces the people to find alternatives when they are in trouble.

In order to measure the need of ADR processes and outcomes, a number of indicators have been identified, where the user's perspective is a valid ground for measuring the indicators. This view is expressed in the writings of Martin Gramatikov. He wrote that:

- "*Only the users of justice could express their perceptions of the costs and qualities of the particular path to justice*
- *The perceptions and attitudes could be compared across different procedures*
- *Research show that people normally fail to correctly forecast categories, such as emotion, stress, and satisfaction, in the context of legal procedures, therefore, the actual experiences are a valuable informational asset."*[226]

---

225. Bell Catherine and Kahane David, "Intercultural Dispute Resolution in Aboriginal Contexts", p-254 Vancourer: UBC Press, 2004

226. Martin Gramatikov, "*A Handbook for Measuring the Costs and Quality of Access to Justice*", Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems Maklu Publishers (2010)

5.5 Evaluation of ADR Systems

The evaluation of ADR processes cannot be ignored when non-ADR processes are under critique. A third-party evaluation can help us in avoiding bias in the results that ADR practitioners face. For example, Alan Foster believes that evaluation is important in ADR. That, it is so important that participants are in control of the self-evaluation which in turn can add to cost and time, especially when a neutral third party is enlisted to carry out the evaluation. He wrote:

"*Yet, another form of evaluation deployment entails, participants being in charge of evaluation themselves wherein they conduct self-evaluations and focus groups as part of the ADR process itself. Yet, another, time and cost intensive method uses a neutral observer as part of the project process.*" [227]

The writer has used the MA2J and the TISCO methodology to evaluate the ADR systems, from the user's perspective, discussing the three main indicators of the paths of the access to justice. The same criteria of justice, namely, cost and time, quality of the procedures and quality of outcome are applied here to measure ADR Systems.

---

227. Alan Foster "*Evaluating Alternative Dispute Resolution Projects: Review and Recommendations*" for the William D. Ruckelshaus Centre, (June 2011) published on website http://ruckelshauscenter.wsu.edu/wp-content/uploads/2013/06/RuckelshausProjectEvaluation-FosterDegreeProjectJune2011.pdf website accessed on March 20, 2014

5.5.1 Cost of Justice

The research explored how ADR systems are effective in reducing the costs of dispute resolution relative to litigation. Cost savings may vary from case to case depending on the nature of the ADR process, the type of case, the background, cultural ethics and the local traditions.

The *time* it takes to resolve a dispute through an ADR process relative to traditional litigation, is also of interest in evaluating the effectiveness of ADR. This time, is also referred to as the time of disposition measured as the total time from filing a complaint to settling the case.

Researchers use a variety of methods to study differences in time, including surveys, archival data sources, and randomized experiments:

"*The estimates of the differences in time between ADR and traditional litigation vary widely among studies, again depending on the ADR mechanism.*" [228]

The IFC report (2006) note that ADR is fast and economical and allows the defendants to avoid disgrace if the dispute is resolved in his disfavour.

---

228. Arbitration may take longer than other types of ADR such as mediation, because arbitration is an adjudication based process and for the most part resembles a litigation process that occurs in a private venue with the third-party neutral decision maker. (PDF Settling out of Court. How effective is the alternative dispute resolution? Sitresources. Worldbank.org>Resources.

However, the measurement of the impact of the quickness of ADR is not easily measure. It is stated in the report as follows:

"*ADR resolutions are faster, they may allow plaintiffs to avoid bankruptcy thanks to receiving the payment earlier, and may allow defendants to avoid a negative public image. These direct impacts are more difficult to measure (because of the lack of counterfactuals), and no empirical evidence on these impacts has been found.*"[229]

Gropper reports that the application of ADR in tax appeals in Pakistan resulted in the fall of the pending cases. He wrote that:

"*after the introduction of an ADR process for tax appeals in Pakistan, the number of pending cases fell from 2,500 to 770.*"[230]

Descriptions of the following sub-indicators will help us to evaluate what a user's perspective view is when he deals with any ADR method.

Table 5.4: Analysis of "Cost and Time" Indicators

Indicator	Description	ADR Systems
Cost	Relate with cost of the procedures and overheads	• Costs are lower • No filing fees • No lawyers' fees • No enforcement agency fees • No personal expenditures • Mediation fee, low where req.

229. Inessa Love, "*Settling Out of Courts*" (2011), report published by World bank published on website http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/282044-1307652042357/VP329-Setting-out-of-court.pdf P-4, accessed on November 08, 2014.

230. Gropper, Akvile. "*ADR in Tax Disputes"* Research Note, World Bank, Washington, DC., 2010

		• Arbitration fee low, where req.
Time[231]	Relate with the time and speed [232] of the process	• No back log of cases • Less time[233] req., sometime a single session enough • Settlement can be speedy[234]

Cost saving in using ADR systems relative to court litigation cost- the table supports the research of 'Cost and Time' factor of the MA2J model.

5.5.2 Quality of Procedures

The quality of dispute resolution procedure is the skeleton on which ADR activities are based, incorporating a variety of procedural steps where the user also observes the procedures. The following indicators points out the

231. Parties fix time most convenient for them and the arbitrator and such conflict is resolved on time. **Ref.** Inessa Love Settling Out of Court: How Effective Is Alternative Dispute Resolution? Study report by World bank and IFC Number 329

232. The research carried out by Professor Dame Hazel Genn in 1998 showed that mediation was able to promote and speed up settlement. In the number of cases that appeared before the mediation council 62% percent of them were mediated and settled at the pre-trial ADR stage.

233. Most importantly, conflicts could be resolved in no time, if the parties are present and provides the necessary information on time.

234. Successful mediation avoids time consuming litigation and allows parties to achieve a prompt resolution.

dimensions of a justice user to get satisfaction when he selects the path to ADR justice to determine the quality of procedures.

Table 5.5 Analysis of indicators of "Quality of Procedures"

Indicator	**Description**	**ADR Systems**
Flexibility	Parties are free to choose the method of dispute resolution system	process can be made to suit the particular type of dispute where costs are lower
Accessibility	Assessment and approach to system	Easy accessible No complicated rules of evidence Non-adversarial process less intimidating less stressful
Management	Case Managements and ICT	No back log of cases No need to keep the records Traditional ADR style can be adopted Success rate 80-90 % Parties presence give quick results
Privacy and confidentiality	Resolution of disputes in confidentiality	Processes and outcomes are usually private and confidential. Notes taken during the mediation are confiscated and discarded
Self-directed	How people follow the procedure	Self-selection of mediator / arbitrator / negotiator Participation without lawyer you and the other people involved choose what issues to raise

		Self / Selected persons outcome is honored
Focus	What is focused while resolving the disputes	ADR processes and outcomes focus on what is important to you and the other people involved. Mostly maintain relationships
Expertise	Expertise of dispute resolvers	Special skills favor to resolve the disputes Jury is not involved in the ADR process No specific education or skills required in traditional systems
Customer Satisfaction	Public level of satisfaction in using the system	ADR both the parties involved leave with a high level of customer satisfaction
Political Interference	Any interference by the politicians	Very rare
Corruption	Effects and bribery in the system	Very rare traces
Awareness about the system in public	Awareness about the system in public	Well

Efforts were made to retrieve data, case studies and other resources to support the use of sub-indicators as mentioned above. However, there was no success.

5.5.3 Quality of the Outcome

The application of the MA2J model to know the 'quality of outcome.' Norwood explained is the true nature of mediated outcomes in the following lines. That:

"disputes resolution processes may result in one of three possible outcomes. The outcome might be an:

- *Agreement (as in negotiation),*
- *Compromise (as in conciliation) or*
- *Judgement (as in an arbitration or court proceedings).*

The mediation outcome is not a judgment or a compromise but an agreement in which no party has to concede to another, to giving in or to compromise his or her right in any sense." [235]

From the user's point of view, the subsequent sub-indicators of 'quality of outcome' in ADR systems are considered in order to know about the outcome in any dispute.

Table 5.6: Analysis of Indicators of "Quality of Outcome"

Indicator	Description	ADR Systems
Agreements	Agreements that outcomes as a result of process	• agreement, consent order or a consensual judgement • restore or maintain or even improve your relationships with the other people involved • agreements that fit their economic, personal or professional circumstances

235. Norwood, South Australia, establishment of the Community Mediation Services, published on website, <https://elaw.murdoch.edu.au/index.php/elawmurdoch/article/viewFile/62/33> accessed on October 03, 2014

Relationships	Relationship between the disputants	• No harm to relationships within as a result of an agreement.
Appeal	Review on agreements	• Appeal process limited, only in arbitration
Confidence	Confidence between disputants on revival of relationship	• More confidence that everyone will do what was agreed, because everyone contributes to the outcome.
Enforceability	Enforcement of outcomes, agreements	• suitable method of enforcement as agreed

The sub-indicators described above are so apparent in our daily lives that they are praised and considered the success of any issue and peace in the community. Efforts were made to retrieve the data, case studies and other resources to support the use of sub-indicators as mentioned above. Again, there was no success. There is a need to expand on these sub-indicators. The evidence in support of ADR systems outcome is based on its' successful implementation in developing countries as well as developed countries. In a court ruling on the enforceability of mediated outcomes, it maintained that the outcomes of ADR and non ADR are equally legal. This is expressed in the following lines:

"*The enforceability of outcomes, is an important feature in dispute resolution processes. A decision of a court is legally binding and is enforceable by the parties to the dispute and enables the final resolution of a dispute. It is important to note that mediation and conciliation processes are not binding in themselves, but agreements reached through those processes can be*

made binding. For example, a mediated agreement can be in a binding contract, which can then be enforced in court." [236]

It can be argued, that agreements made as a result of mediation will remain long lasting than imposed settlements or as a result of court orders because the disputants have voluntarily settled themselves in drawing up an agreement.

This is also corroborated by Edna Sussman in the following lines:

"*For example, a structured settlement with payment terms within a party's ability to pay, is much more likely to be paid and useful to the other party, than a court money judgment which leaves the prevailing party with the unhappy task of moving forward with collection actions as the loser simply cannot make the payment*." [237]

Just like litigation, where enforcement of judgments face difficulties, ADR systems also have some obstructions in the enforcement of mediation and arbitration. Undoubtedly, mediation is a voluntary process where there it is not binding on both parties to reach an agreement, or to follow the agreement because he understands that the procedure does not necessarily mean a successful outcome.

---

236. Thakrar v Ciro Citterio Menswear plc (in administration) [2002] EWHC 1975 (Ch) the Court held that a mediated settlement was an enforceable contract. (The Primary Dispute Resolution Processes. Law Commercial Essay. www.uniassignment.com>sample esssays

237. Speech delivered by Edna Sussman entitled —*The Final Step: Issues in Enforcing Mediation Settlement Agreement*ǁ, Fordham Law School, New York, (2008)

Lord Denning. MR, stated in *Courtney and Fairburn Limited -v- Tolaini Brothers (Hotels) Limited [1975] 1 WLR 297* at pages 301-302 that such agreements were 'too uncertain to have any binding force'.

In India, the *Sitanna v. Marivada Viranna*[238] case confirms the use of alternatives, where Privy Council affirmed the decision of the Panchayat in a family dispute.

Sir John Wallis, J, commented on this recognition by the notable legal authorities of the authenticity of the use of non ADR in India in the following lines:

"*Reference to a village Panchayat is the time-honoured method of deciding disputes of this kind, and has these advantages, that it is comparatively easy for the panchayatdars to ascertain the true facts. That, as in this case, it avoids protracted litigation which, as observed by one of the witnesses, might have proved ruinous to the estate. Looking at the evidence as a whole, their Lordships see no reason for doubting that the award was a fair and honest settlement of a doubtful claim based both on legal and moral grounds, and are therefore, of the opinion that there is no grounds for interfering with it.*" [239]

238. AIR 1934 PC 105

239. "*Need for Justice-dispensation through ADR, Law commission of India"* (April 2009) article published on website <http://lawcommissionofindia.nic.in/reports/report222.pdf> p-23 website visited on November 12, 2014

It is understood that in ADR mechanisms the agreement reached are voluntary and that one of the parties may decide to discard the agreement. Such change of heart is influenced by other factors.

Edna Sussman put it this way:

"*a mediated agreement is the outcome of a voluntary agreement between the parties; there are many reasons that might cause a party to depart from an agreement reached. These reasons might include, for example: a change of heart after the mediation is over, there actually was no agreement with respect to a material term or there was a lack of agreement on the interpretation of a term; external factors intervene, such as a change in a party's economic situation; or impossibility of performance for a variety of reasons.*" [240]

The Commission noted that the absence of enforcement powers and procedures can mean a lack of finality for the parties involved in the process. In the words of Deason, the enforcement of settlement can sometimes upset the spirit of reconciliation where one of the party is not happy that he has to be the one to pay for peace to reign:

"*When enforcement action must be taken on a settlement agreement, some of the primary goals of mediation are defeated - speed, economy, and the*

240. Edna Sussman entitled —*"The Final Step: Issues in Enforcing Mediation Settlement Agreement"*, Fordham Law School, New York, (2008)

maintenance of relationships. The degree to which these goals are undermined can be impacted by the enforcement mechanisms available." [241]

What has been noted is that the parties have to agree to the terms the agreement and its enforcement. That is, according to the report by Law Commission and it states:

"*enforceability of agreements reached through mediation or conciliation is intrinsically linked to the principle of self-determination. It is for the parties to determine whether an agreement reached through mediation or conciliation is to be a legally enforceable contract or a non-binding agreement."* [242]

5.6 ADR Systems and the Access to Justice

When we talk about ADR systems, the questions that arises are, how can we identify that there this is an alternative to non-ADR system? What are the characteristics of an alternative and benefits of its use? What procedures are adopted and how do they work in an alternative system? W. Ury, J. Brett and

---

241. Deason, "*Enforcing Mediated Settlement Agreements: Contract Law Collides with Confidentiality*" 35 UC Davis Law Review 1. (2001) Ref. Report Alternative Dispute Resolution: median & Conciliation, published by Law Reform Commission 35-39 Shelbourne Road, Ballsbridge Dublin 4, P-87, published on website <http://www.lawreform.ie> accessed on July 13, 2014.

242. Report, "*Alternative Dispute Resolution: median & Conciliation*", published by Law Reform Commission 35-39 Shelbourne Road, Ballsbridge Dublin 4, on website <http://www.lawreform.ie> visited on July 12, 2014. P-87.

S. Goldberg believe that the parties in a dispute have three options on how to resolve their dispute. They wrote that:

"*Modern dispute resolution theory indicates that parties to a dispute have three broad options when considering how to resolve a dispute. These are*:

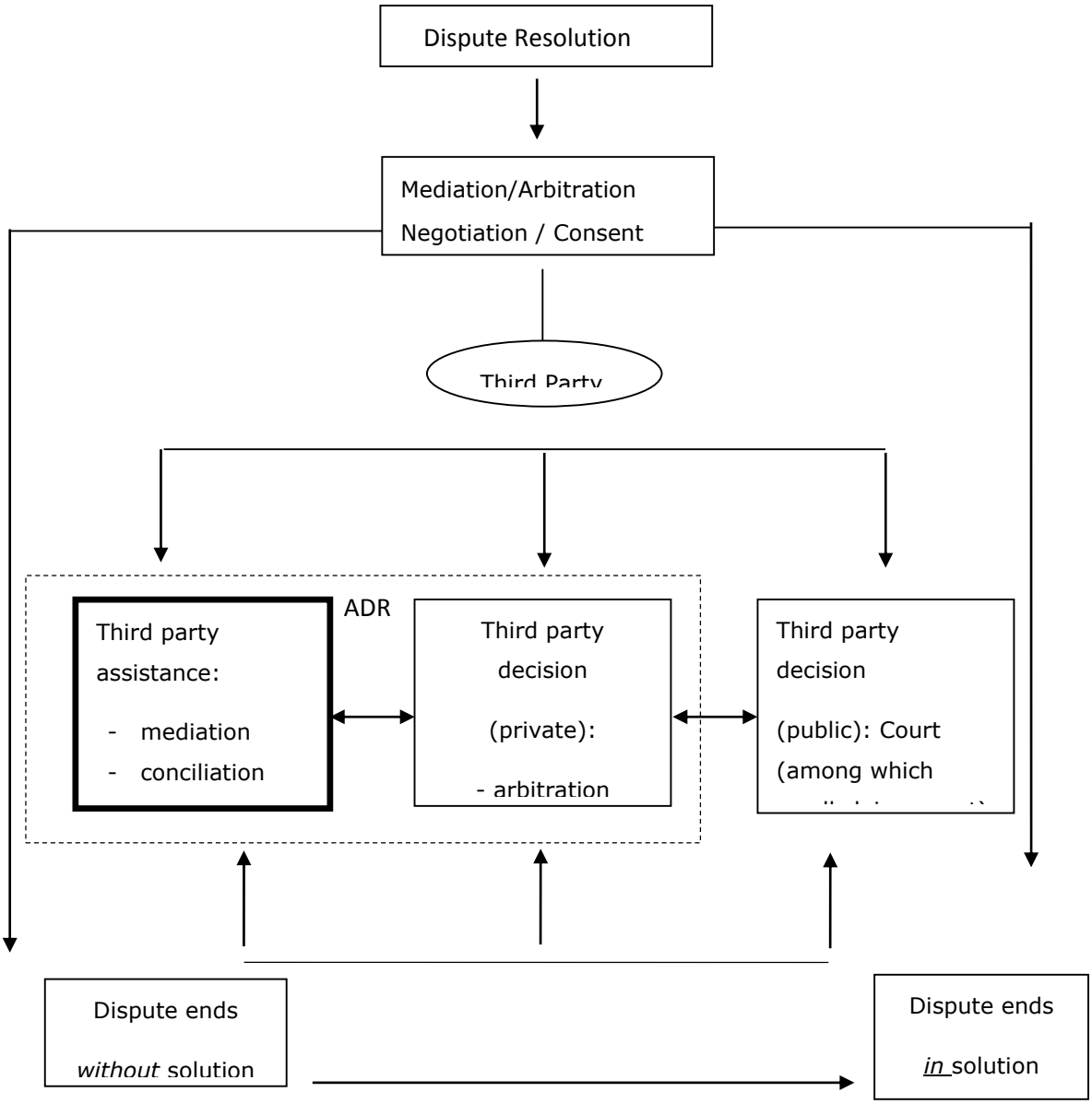
- *a party endeavours to reconcile, compromise or accommodate*
- *positions or underlying needs by negotiating interests and reaching a mutually acceptable outcome using consensus-based processes;*
- *a party uses some independent standard of right or fairness to resolve the dispute by determining their rights through adjudicative processes;"* [243]

The next diagram explains how a dispute can be resolved by mediation/arbitration/negotiation, by involving a third party and what the expected outcome is in each case.

SEE Figure on Next Page

243. W. Ury, J Brett and S. Goldberg, "*Getting Disputes Resolved*) published in San Francisco, CA. (1988) published on website http://www.actrav.itcilo.org/courses/2008/A3-01023/resources/sb_ADR_Handbook_final.doc accessed on February 20, 2014

Figure 5.1: Dispute Resolution Solving Diagram



Source: EIM, 2005

The salient features of dispute resolution systems currently in practice are described for knowledge and discussion, are:

Fig. 5.2 DISPUTE RESOLUTION PROCESSES [244]

	CONSENSUS-BASED PROCESSES	HYBRID PROCESSES	RIGHTS-BASED PROCESSES
PRIMARY PROCESSES	Negotiation Conciliation Mediation Facilitation	Med-arb / con-arb Conciliation-then-arbitration Arb-med	Arbitration Investigation Fact finding (binding or non-binding) Litigation
LESS COMMONLY USED PROCESSES	Facilitated negotiation Con-opinion		Expedited, high-low, pendulum and advisory arbitration
OTHER PROCESSES	Executive tribunal / mini-trial Project or alliance mediation Pathfinder mediation		Early neutral evaluation Judicial appraisal / 'rent a judge' Adjudication Expert determination Expert appraisal Ombudsman

The mostly adopted and used alternatives are mediation, adjudication, arbitration and court connected mediation. These primary dispute resolution processes are described in brief as follows:

244. Felicity Steadman, "*Handbook on Alternative Labour Dispute Resolution*", p-17 published by International Training Centre, available on website <http://www.apirnet.ilo.org> website accessed on November 23, 2011

Table 5.7: "Primary" Dispute Resolution Processes[245]

Characteristics	Negotiation	Mediation	Arbitration	Adjudication
Voluntary/ Involuntary	Voluntary	Voluntary, In some cases involuntary (mandated mediation)	Voluntary (when based on contract clause– mandatory)	Involuntary
Binding/ non-binding	If agreement, enforceable as contract	If agreement, enforceable as contract, sometimes agreement embodied in court decree	Binding, subject to review on very limited grounds.	Binding, subject to Appeal
Third party	No third-party facilitator	Party-selected outside facilitator	Party-selected decision maker often with specialized expertise	Imposed, third-party neutral decision maker, generally with no specialized expertise in the dispute subject
Degree of Formality	Usually informal, unstructured	Usually informal, partly structured	Procedurally less formal than litigation; procedural rules and substantive law may be set by parties	Formalized and highly structured by predetermined, rigid rules
Nature of processing	Unbounded presentation of evidence, arguments and interests	Unbounded presentation of evidence, arguments and interests	Opportunity for each party to resent proofs and arguments	Opportunity for each party to present proofs and arguments
Outcome	Mutually acceptable	Mutually acceptable	Sometimes principled decision supported by	Principled decision supported by reasoned

245. Goldberg, S. B., Frank E.A. Sander, et al. "*Dispute Resolution; Negotiation, Mediation and Other Processes"* New York, NY, Aspen Law & Business., 4th.ed. p 4-5, 2003

	agreement sought	agreement sought	reasoned opinion; sometimes compromise without opinion	opinion; rarely compromise without opinion
Orientation	Future-oriented	Future-oriented	Past-oriented	Past-oriented
Private/public	Private	Private	Private, unless judicial review sought	Public

If we compare ADR and Court procedures in achieving the disputant's goals, the following table will help us to conclude on the relative advantages of different resolution procedures under a wide range of conditions.

Table 5.8: ADR Systems in a glance

Disputant's Goals	**ADR Procedures**			**Court Procedures**
	Mediation/ Conciliation	Non-Binding Arbitration	Binding Arbitratio	Adjudication
Minimum Costs	3	2	1	0
Resolve Quickly	2	2	3	0
Maintain Privacy	2	2	2	0
Maintain Relationship	3	2	1	0
Involve Constituencies	3	1	1	0
Link Issues	3	1	1	0
Get Neutral Opinion	0	3	3	3
Set Precedent	0	0	1	3

Source: Frank Sandar and Stephen Goldberg, "Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure, "Negotiation Journal, January 1994, pp. 49-68

Key: 3 = highly likely to satisfy goal

2 = Likely to satisfy goal

1 = Unlikely to satisfy goal

0 = highly unlikely to satisfy goal

5.7 Conclusion

The use of ADR processes in the Indian sub-continent reveals that ADR is the process which settles disputes at the early stage of proceedings and prevents lingering of suits before entering into trial stage. ADR works like an anti-biotic against the long process of disposal of suits. For effective ADR mechanisms, the following suggestions are given:

The measurement of ADR systems on the MA2J scale provided some different results than non-ADR systems. The ADR systems are more flexible and cost saving than non-ADR systems. The indicators which were assessed and evidenced in chapter 4 have opposite results. These differences have compelled the justice users to think about ADR systems. What is the support that can be provided to ADR systems to make them successful in places where justice is not available, or if available in non-ADR systems? The following table may help the reader to understand this:

Table 5.9: Types of Support to Promote Access to Justice

Type	Description	Key Actors
Legal protection	Provision of legal standing in formal or traditional law — or both — involves the development of capacities to ensure that the rights of disadvantaged people are recognized within the scope of justice systems, thus giving entitlement to remedies through either formal or traditional mechanisms. Legal protection determines the legal basis for all other support areas on access to justice. Legal protection of disadvantaged groups can be enhanced through: (a) Ratification of treaties and their implementation in the domestic law; (b) implementation of constitutional law; (c) national legislation; (d) implementation of rules and regulations and administrative orders; and (e) traditional and customary law.	- Parliament - Ministries of Foreign Affairs - International/regional fora - Ministries of Law and Justice, police forces - National Human Rights Commissions - Law Reform/Legislative Commissions - Legal drafting cells of relevant ministries - Local officials involved in legal drafting - Judges, particularly of courts whose decisions are binding on lower courts or, under the law, are able to influence courts in other jurisdictions - Traditional Councils - Community leaders (chiefs, religious leaders) - CSOs, especially those involved in legal research, legal advocacy and monitoring

Legal awareness	Development of capacities and effective dissemination of information that would help disadvantaged people understand the following: (a) their right to seek redress through the justice system; (b) the various officials and institutions entrusted to protect their access to justice; and (c) the steps involved in starting legal procedures. UNDP's service line on access to information provides an opportunity to develop capacities and strategies to promote legal awareness.	- Ministry of Justice - Ministry of Education/higher education, schools and universities - NHRIs - Legal aid providers - Quasi-judicial bodies (human rights, anti-corruption, and electoral commissions). - Local government bodies - Non-governmental institutions (e.g. NGOs, Bar associations, universities, communities) - Labor unions
Legal aid and counsel	Development of the capacities (from technical expertise to representation) that people need to enable them to initiate and pursue justice procedures. Legal aid and counsel can involve professional lawyers (as in the case of public defense systems and *pro bono* representation), laypersons with legal knowledge (paralegals), or both (as in "alternative layering" and "developmental legal aid").	- Ministries of Justice and state-funded legal aid programmes - Public Attorneys - Court system (e.g. to deal with court fees) - Local governments - Police and the prison system - Non-governmental organizations (NGOs) - Bar associations - Law clinics (often linked to university faculties of law)
Adjudication	Development of capacities to determine the most adequate type of redress or compensation. Means of adjudication can be regulated by formal law, as	- Courts - National human rights institutions (Human Rights Commissions and Ombudsman Offices)

	in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems.	- Alternative dispute resolution mechanisms: these can be attached to the court system, or be administrative bodies (such as land and labour boards) - Traditional and indigenous ADR
Enforcement	Development of capacities for enforcing orders, decisions and settlements emerging from formal or traditional adjudication. It is critical to support the capacities to enforce civil court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings.	- Prosecution - Formal institutions (police and prisons) - Administrative enforcement - Traditional systems of enforcement.
Civil society and parliamentary oversight	Development of civil society's watchdog and monitoring capacities, so that it can strengthen overall accountability within the justice system.	- NGOs working on monitoring and advocacy - Media - Parliamentary select and permanent committees

Source: Access to Justice, Practice Notes published by UNDP

CHAPTER SIX

Summary of the Research and Recommendations

6.1 Introduction

The research objectives were:

- To explore and examine the barriers in access to non-ADR systems and their assessment on a standard scale, in the Indian sub-continent
- To explore the alternatives to non-ADR systems, their workings and assessment on a standard scale, in the Indian sub-continent;

The qualitative, empirical, desk/literature review approach was used to find the answers to the research question. The study was divided into three parts: access to justice, barriers in access to justice and the use of alternatives. Below are the findings of this research.

6.2 Barriers in Access to Justice in Non-ADR systems

The study identified the following barriers (operational and institutional) in non-ADR systems:

- Cost and Time in the form of fees;
- Unavailability of Legal Aid to the poor;
- Judicial corruption;

- Political influence;
- Delays and backlogs in the hearing of cases;
- Unawareness of legal knowledge and rights;
- Improper management of cases in courts;
- Failure to discharge prescribed duties by the judiciary;
- Language barriers in courts;
- Court staff and legal specialists behaviour to work;
- Behaviour of the police against the public at the investigation and enforcement levels.

The study summarised in line with Gramatikov's view that it boils down to cost in comparison with the expected returns, that act as the main stumbling block on the way of the majority of the people in the Indian sub-continent when they pursue justice. Gramatikov wrote that:

"high costs of paths to justice are a significant barrier which obstructed the equal accessibility to justice. Implicitly or explicitly, cost considerations shapes the responses to existing legal problems. People compare the expected costs with the anticipated returns and make decisions, which directly affects their access to justice. Without adequate knowledge of the structure and dynamics of the costs of justice, researchers

and policy makers are limited in their ability to contribute to the idea of equal and unobtrusive access to justice."[246]

6.3 ADR Systems and their Impacts

The study concludes that the role of the elders cannot be neglected in the resolution of disputes in the Indian sub-continent. If it is been considered to stop them from intervening in criminal cases, they should be trained and then appointed to handle such, even if it is not to a grand scale. This will also help the courts in reducing backlogs.

The role of religious laws and leaders in dispute resolution systems in some aspects is appreciable. People who are very close to religions prefer to adopt religious laws. It appears that all religious teachings guide us towards a peaceful life and community. The way of expression may be different but a common theme among the religions, is the resolution of tension between people amicably.

The philosophy of alternate dispute resolution systems is well described by Abraham Lincoln's famous words:

"*Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in*

---

246. Martin Gramatikov, "*A Framework for Measuring the Costs of Paths to Justice*" Published on website <http://www.jurisprudence.com.au/juris2/gramatikov.pdf> accessed on October 23, 2014

fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man." [247]

These words spell out grim reality and truth.

The study concludes that ADR is now popular as it is has now become a common subject matter in all the human spheres. This thought is shared by Yona Shamir as she maintained in her work as reflected in the following lines: "*the ADR movement has been gaining popularity, and a movement that started as an answer to the needs of the judicial system, has generated interest in a variety of fields (such as education, society, environment, international, and gender concerns)*" [248]

Linsky. D. B and Seeber. R. L submits that traditional mediation may have many terminologies but helps in cutting down backlogs. Other researchers believe also, that they are useful in amicable settlement and cost reduction. McEwan and Nancy .H. Roger are some of these researchers. The 'traditional systems' in the form of 'mediation', working in the Indian sub-continent

---

247 . Abraham Lincoln's Notes for a Law Lecture, published on website <http://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm> accessed on 25 April 2015. Source: *Collected Works of Abraham Lincoln*, edited by Roy P. Basler et al.

248. Yona Shamir, "*Alternative Dispute Resolution Approaches and their Application*" Israel Center for Negotiation and Mediation (ICNM), published on website <http://webworld.unesco.org/water/wwap/pccp/cd/pdf/negotiation_mediation_facilitation/alternative_dispute_resolution_approaches.pdf> visited on August 20, 2014

countries, with different terminologies, have been found to be a good tool to at least, partly achieve the following objectives:

- *"Reduce court backlogs"* [249]
- *"Reduce time necessary for contract enforcement"* [250]
- *"Reduce costs of dispute resolution (e.g. by limiting court and legal fees)*." [251]

6.4 Recommendations

This study is a step towards exploring the barriers in non-ADR systems in the Indian sub-continent and how barriers can be removed from the access to justice by:

- Centralising the court systems of appointment of judges before the

249. Lipsky, D.B. & Seeber, R.L. "In search of control: The corporate embrace of ADR". University of Pennsylvania Journal of Labor and Employment Law, 1(1), 133-57. (1998). Most data supports the claim that mediation reduces backlog in courts in various countries. Most of the parties and their counsel (65- 80%) believe that mediation and arbitration reduce the time and costs of resolving commercial disputes, as compared to litigation.

250. Although mediation itself is not an enforcement mechanism and mediators alone do not possess powers of compelling the disputants to enforce a contract, there are different ways in which mediation can shorten the time necessary to enforce a contract. Successful mediation can drastically shorten the time necessary for reaching a solution (mediation usually is resolved in one session). Mediation of out of court system can resolve the conflict at a very early stage (before the case is brought to the court).

251. McEwen & Nancy H. Rogers, *"Mediation: Law, Policy & Practice"*, 2nd ed. Ch. 9, Confidentiality.

hearing of any case. So that parties cannot influence or approach the judges;

- Awareness should be created in the public using religious and cultural platforms to talk about legal systems, legal language and procedures, so that the public can access them conveniently;
- Train the judges to improve their professional qualifications and making them accountable in favourable or influenced judgments;
- Encourage the lawyers and paralegal staff to help the needy persons to access justice by following the formal legal procedures;
- To stop corruption, political influence and delays in the access to justice. A National Commission can be formed by law to overcome the identified issues, amend the procedural rules, take the disciplinary sanctions against the accused;
- Encourage the judges and public to report all the irregularities that they encounter, to the National Commission and the media in order to improve the system.
- Encourage the use of hybrid ADR systems where the ADR systems are protected by law.

Based on this conclusion for the improvement of ADR systems and overcoming the barriers, the authorities should consider that:

- informal systems should remain entirely voluntary and their decisions

non-binding

- The use of traditional ADR systems on a voluntary basis but under formal arrangements, should be encouraged, *where mediation is the best way to resolve the disputes*. Formation of courts charged with mediation in the village level will facilitate greater access to justice and encourage the rural people to reinforce their belief in the integrity and efficiency of the judicial system
- The use of hybrid ADR systems, for example, mediation-arbitration Court annexed mediation, must be encouraged and legislation in this regard may provide good results. The view of Parnika Malhotra is that it is imperative that the control of ADR is good and it will assure the masses:

"*with the ADR model being directed under the control, supervision and guidance of the court, the effort of dispensing justice will become more coordinated and harmonized. It will induce the rural masses' to think that conciliation is complementary and not competitive to the court system"*[252]

From the Ghana practice of ADR, Perpertua Francisca Midodzil, and Imoro Razak Jaha noted that a lot needs to be done in order to improve it. They offer the following suggestions:

---

252. Parnika Malhotra, "*Alternate Dispute Resolution at the Grass root level*" (2008) published on website <http://www.adrcentre.in/images/pdfs/Alternative%20Dispute%20Resolution%20At%20The%20Grassroot%20Level.pdf. Website visited on November 12, 2014.

- "*ADR systems should be integrated into legal systems to support them and enhance the procedures of enforcement of awards.*
- *Political support, not interference, should be provided to concerned agencies for promotion of ADR systems*
- *The Government should not interfere with the "appointment" of informal arbitrators or mediators within the community*
- *Magistrates courts and the police should be made aware of existing informal justice mechanisms, how they operate, and should refer appropriate cases to them, on the agreement of both parties. Either Party should be allowed to reinstitute proceedings if the informal process fails;*
- *Alternative disputes resolution desks or units should be created at Districts levels in the country to help educate the people and also to create methods of access to people.*" [253]

6.5 The Needs for Further Research

There is a need for further research into traditional and informal mechanisms operating within each country of the Indian sub-continent, to explore the barriers and make recommendations on how to make the ADR systems more effective and respectful of its own religious and cultural values.

---

253. Perpertua Francisca Midodzi1 and Imoro, Razak Jaha, "*Assessing the effectiveness of the alternative dispute resolution mechanism in the Alavanyo-Nkonya conflict in the Volta region of Ghana" published on website*
http://www.academicjournals.org/ijpds/PDF/Pdf2011/Sept/Midodzi%20and%20Imoro.pdf accessed on 12/01/14

- Academic research currently covers only a fraction of the various traditional systems or their existence and discussion about acts and Laws. There are virtually no follow-up studies to determine how the individual and hybrid mechanisms of dispute resolution that research systems have developed, in response to external forces like, political, social and economic change over time.

- A research database should be developed, for keeping the records of values assigned to indicators and barriers discussed in research reports, for future studies and applications.

- Research on the use of hybrid ADR systems is in need of time, as the trend to use ADR systems is developing and a legal protection of these systems will enhance their usability.

- A practical question for further research is: how could the three factors - cost, quality of procedures and quality of outcome - be expressed in comparable form and on a single scale?

BIBLIOGRAPHY

Books, Journals and Internet References

Albert Chen, "Legal Thought and Legal Development in the People's Republic of China 1949-2008", SSRN Working Paper, p.38

Albers, Pim, Evaluating Judicial Systems: Balance between Variety and Generalization, European Commission for the Efficiency of Justice, Council of Europe, May 2003

Barendrecht, M, Mulder, J. and Giesen, I. (2006). How to measure the price and quality of access to justice? Posted to the Social Science Research Network (SSRN).

Barendrecht, J.M., Kamminga, Y.P., & Verdonschot, J.H. "Priorities for the justice system: Responding to the most urgent legal problems of individuals". (TILEC Discussion Paper No. 2008/011 , TISCO Working Paper No. 001/2008) (2008).

Barriers to the Enforcement of Court Judgments in Peru, Winning in courts is only half the battle: Perspectives from SMEs and Other Users, Alvaro Herrero, Keith Henderson, April 2004, page 51

Bell Catherine and Kahane david, "Intercultural Dispute Resolution in Aboriginal Contexts", p-254 Vancourer: UBC Press (2004)

Bergman, Edward and Bickerman, John (eds) (1998) *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*, Pike & Fischer Inc, Bethesda, Maryland

Cappeletti, M. & Garth, B. (eds.), (1978) *Access to justice: A world survey* (vol. 1), Alphen aan de Rijn, The Netherlands: Sijthoff.

Chetane Kohli, "In Cinema," in Suresh Kohli, ed., Corruption in India, New Delhi: Chetana Publications (1975) p-67

David Satterthwaite "The Ten and a half myths that may distort the urban policies of governments and international agencies" (1989)

Denzin, N. K., and Lincoln, Y. S. (1994). Handbook of qualitative research. Thousand Oaks, CA: Sage Publications Ltd.

Dr Robyn Sheen and Dr Penny Gregory, "*Civil justice system framework and literature review Report*" Australian Government's Attorney-General's Department by Shina Consulting. (2012)

Felicity Steadman, Handbook on Alternative Labour Dispute Resolution, p-11 published by International Training Centre

Genn, H. & Beinart, S. (et al.), "*Paths to Justice: what people do and think about going to law*", Oxford: Hart. (1999)

Gintis, Herbert. 2006. "Behavioral Ethics Meets Natural Justice." Politics, Philosophy, and Economics 5(1): 5 – 32.

Goldberg, S. B., Frank E.A. Sander, et al. "*Dispute Resolution; Negotiation, Mediation, and Other Processes"* New York, NY,Aspen Law & Business., 4th.ed. p 4-5 (2003)

Gropper, Akvile. "*ADR in Tax Disputes"* Research Note, World Bank, Washington, DC. (2010)

Hart, C. "*Doing a literature review: Releasing the social science research imagination*" London, UK: Sage Publications. (1998) p-1

Hedeen, T. "*The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress*" Conflict Resolution Quarterly, Vol. 22, 101 p-122 (2004)

Hedeen, Timothy, PH.D. "Using Participant Feedback to Evaluate and Improve Quality in Mediation" (September 2002) CADRE. Available at

Henderson, Keith et al. Barriers to the Enforcement of Court Judgments and the Rule of Law , IFES, Washington D.C., (2003)

Henry J. Brown and Arthur L. Marriot, *ADR Principles and Practice* (published by Sweet & Maxwell London, UK, OUP 1993 page 5)

Hiram Chodosh, "*Global Justice Reform: A Comparative Methodology*" NYU Press, (2005), The British Raj is the major historical cause of limited alternatives to the formal court system.

Lalit Kumar Arora, Human Right Information and Documentation, published by Isha Book, D 43 Pritviraj Road, Adarsh Nagar Delhi 110033, 2006

Iivari, J., Hirschheim, R., & Klein, H. K. "*Towards a distinctive body of knowledge for information systems experts: Coding ISD process knowledge in two IS journals*". *Information Systems Journal, 14*(4), (2004) 313-342.

Jethro K. Lieberman & James F. Henry, "*Lessons from the Alternative Dispute Resolution Movement"*, 53 U Chi L Rev 424, 425-426 (1986)

John McLeod, *The history of India*, page 1, Greenwood Publishing Group, 2002, ISBN 0-313-31459-4

Jin Ho Verdonschot et al., 'Measuring Access to Justice: The Quality of Outcomes', 2008, published on website http://ssrn.com/abstract=1298917

John Reiman, Laura Beck, Marshall Peter, Dick Zeller, Philip Moses, and Anita Engiles, "Initial Review of Research Literature on Appropriate Dispute

Resolution (ADR) in Special Education" Consortium for Appropriate Dispute Resolution in Special Education (CADRE) Eugene, Oregon (April 2007)

Kakalik, J. & Robyn, A. (1982). Costs of the civil justice system: Court expenditures for various types of civil cases, R-2985-ICJ pg iii. Santa Monica: Rand Institute for Civil Justice.

Kakalik, J. & Nicholas M. Pace, N. (1986). Costs and compensation paid in tort litigation. Santa Monica: The Rand Corporation.

Karen S. Cook and Karen A. Hegtvedt, "*Distributive Justice, Equity, and Equality Annual Review of Sociology*", Department of Sociology, University of Washington, Seattle, Washington 98195, USA, (1983)

Karl J. Mackie, "A Handbook of Dispute Resolution, ADR in Action", published by Routledge, London, UK, (1991) p-3 - 11,

Kelly, Joan B 'A Decade of Divorce Mediation Research' 34(3) *Family and Conciliation Courts Review* 375 (1996)

Keilitz, Susan (1993a) 'Court-Annexed Arbitration' in Keilitz, S (ed), *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings - Implications for Courts and Future Research* State Justice Institute

Kressel, Kenneth and Pruitt, Dean (eds) (1989) *Mediation Research: The Process and Effectiveness of Third Party Intervention*, San Francisco: Jossey-Bass Publishers

Langseth, Petter, "Measuring Corruption," in Sampford, Charles J. G., Arthur Shacklock, Carmel Connors, and Fredrik Galtung, Measuring Corruption, Ashgate Publishing, London, (2006)

Iivari J. Hirschheim, R. & Klein, H. K. "*Towards a distinctive body of knowledge for information systems experts: Coding ISD process knowledge in two IS journals*" *Information Systems Journal, 14*(4), (2004) 313-342.

Lofland, J. "Analyzing Social Settings" Belmont, CA: Wadsworth (1971)

Lord Woolf, Access to justice: Final report to the Lord Chancellor on the civil justice system in England and Wales. London: Her Majesty's Stationary Office (1996).

Laura Klaming/ Corry van Zeeland, 2009, "A Handbook for Measuring the Costs and Quality of Access to Justice" Maklu & Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems.

Martin Gramatikov, 'A Framework for Measuring the Costs of Access to Justice', in: 2 J. Juris. (2008).

Mattei, U., "*Access to Justice, Costs and Legal Aid, General Report for the XVIIth Congress Of The International Academy Of Comparative Law*", Utrecht, The Netherlands. (2006)

Martin Gramatikov, A Handbook for Measuring the Costs and Quality of Access to Justice, 2010, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems Maklu Publishers.

Martin Gramatikov, Maurits Barendrecht, Malini Laxminarayan, Jin Ho Verdonschot Laura Klaming / Corry van Zeeland "A Handbook for Measuring the Costs and Quality of Access to Justice", 2009 published by Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems / TISCO, Maklu Apeldoorn, Antwerpen, Portland

Mattei, U., *Access to Justice, Costs and Legal Aid*, General Report for the XVIIth Congress Of The International Academy Of Comparative Law, 16th – 22nd July 2006, Utrecht, The Netherlands.

Maurits Barendrecht, José Mulder, Ivo Giesen, November, How to Measure the Price and Quality of Access to Justice?, 2006,

Michael Zander, "Cases and material on the English Legal System", Cambridge University Press) Chapter 2 Pre-trial proceedings, 10th edition (2007) 141, 143 and 144

Nancy A Welsh, "*Making Deals in Court-connected Mediation: What's Justice Got to Do With It?*" Washington University Law Quarterly 837 (2001) 79

Nancy F Atlas, "Alternative Dispute Resolution: The Litigators Handbook" edited by Nancy F Atlas, Stephen Huber, E Wendy Trachte Huber, published by ABA Publishing USA (2003) p-2

The New Merriam-Webster Dictionary 166 (1989).Black's Law Dictionary 262 (5th ed. 1979).

Thomas A. Green, "Folklore: an encyclopedia of beliefs, customs, tales, music, and art." ABC-CLIO. pp. 800 (1997)

UNDP (2005), Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice.

USAID (1998), Alternative Dispute Resolution Practitioners' Guide.
Van Gramberg, B. 2003, "ADR and Workplace Justice: Just Settlement?", Australian Dispute Resolution Journal, Vol 14.

Walker, Samuel and Katz, Charles M. "The Police in America: An Introduction" (4th edition) Boston: McGraw Hill (2000)

Webb, Douglas 'Legal System Reform and Private Development in Developing Countries' in Robert Pritchard, ed., *Economic Development, Foreign Investment and the Law* (London: Kluwer), Webb (1996), p-50

Wissler, Roselle. "*The Effectiveness of Court-Connected Dispute Resolution in Civil Cases*." Conflict Resolution Quarterly 22: 55–88. (2004)

Worthington, D. and Baker, J. (1993). The costs of civil litigation: Current charging practices. Sydney, N.S.W.: Law Foundation of New South Wales on behalf of the Civil Justice Research Centre.

Websites Visited for general study

In addition to the quoted websites in foot notes, the following websites were visited for collection of data and review.

http://www.academicjournals.org/ijpds/PDF/Pdf2011/Sept/Midodzi%20and%20Imoro.pdf

http://arno.uvt.nl/show.cgi?fid=122117

http://arno.uvt.nl/show.cgi?fid=93621

http://cpi.transparency.org/cpi2011/results/

http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_sum_en.pdf.

http://en.wikipedia.org/wiki/Awareness

http://en.wikipedia.org/wiki/Civil_law_(legal_system)

http://en.wikipedia.org/wiki/Education_Index

http://en.wikipedia.org/wiki/Education_Index

http://en.wikipedia.org/wiki/Human_Development_Index

http://en.wikipedia.org/wiki/Israeli_Institute_of_Commercial_Arbitration

http://en.wikipedia.org/wiki/Legal_aid

http://en.wikipedia.org/wiki/Legal_system

http://en.wikipedia.org/wiki/Loya_jirga

http://en.wikipedia.org/wiki/Self-awareness

http://en.wikipedia.org/wiki/Xeer

http://ens.lycos.com/ens.march

http://epublications.bond.edu.au/adr/vol4/iss6/2

http://factsanddetails.com/china.php?itemid=299&catid=8

http://findarticles.com/p/articles/mi_qa3923/is_200502/ai_n13635378/

http://fordhamilj.org/articles/justice-for-all-improving-the-lok-adalat-system-in-india/

http://harvardhrj.com/wp-content/uploads/2009/09/71-114.pdf

http://www.lawfoundation.net.au/report/consultations

http://www.gsdrc.org/go/display&type=Document&id=195

http://library.manor.edu/tutorial/empiricalresearch.htm

http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/282044-1307652042357/VP329-Setting-out-of-court.pdf

http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf

http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EnforcementofJudgmentsinPeru.pdf

http://students.law.duke.edu/curriculum/courseHomepages/spring1999/508_01/dclarke_dispres.pdf

http://taubcenter.org.il/index.php/publications/special-issues/x/lang/en/

http://taubcenter.org.il/index.php/publications/special-issues/x/lang/en/

http://www.abanet.org/wjp/

http://www.accessjustice.ca

http://www.accesstojustice.org

http://www.acjnet.org

http://www.adb.org/Law/default.asp

http://www.arbitratioindia.org /act96.htm

http://www.arno.uvt.nl/show.cgi?fid=122117

http://www.austlii.edu.au/cgi-bin/disp.pl/au/journals/MULR/1999/22.html?query=asiancountries#fn1

http://www.baseswiki.org/en/South Africa

http://www.beyondintractability.org/essay/culture_conflict/

http://www.dawn.com/2011/07/14/attack-on-ngo-office-giving-free-legal-aid-condemned.html

http://www.dbca.org/brief/sepissue/1998/art20998.htm

http://www.dfid.gov.uk/left_bar.htm

http://www.dundee.ac.uk./journal/html

http://lawcommissionofindia.nic.in/reports/report222.pdf

http://www.ilagnet.org

http://www.newsweekpakistan.com/scope/265

http://arno.uvt.nl/show.cgi?fid=93621

<http://www.letsstartthinking.org/articles/Institutional%20Failure.pdf>

website accessed on July 13, 2011

http://www.lhrtimes.com/

http://www.fao.org/docrep/008/a0032e/a0032e05.htm

http://www.fdrindia.org/publications/AlternativeDisputeResolution_PR.pdf

http://www.geocities.com/elaw007

http://www.hg.org/articles/article_1530.html

http://www.hiil.org/data/sitemanagement/media/Discussion_paper_Measuring_220410_FINAL(1).pdf

http://www.iaml.org/cms_media/files/adr_in_indian_family_law.pdf

http://www.ids.ac.uk/ids

http://www.mbali.info/doc399.htm

http://www.measuringaccesstojustice.com

http://www.measuringaccesstojustice.com/index.php/ma2j-shows-how-people-assess-the-costs-and-quality-of-two-paths-to-justice-in-rwanda/

http://www.measuringaccesstojustice.com/index.php/main-parent-page/qa/

http://www.measuringaccesstojustice.com/index.php/main-parent-page/measurement-in-7-steps/

http://www.measuringaccesstojustice.com/index.php/main-parent-page/methodology-at-a-glance/

http://www.measuringaccesstojustice.com/index.php/main-parent-page/qa/

http://www.mediate.com/articles/adjabengS3.cfm

http://www.pakistan-karachi.info/Jirga

http://www.pbhi.or.id/profil.php

http://www.peacemakers.ca/publications/ADRdefinitions.

http://www.qlc.edu.pk/publications/pdf/1%20-%20Alternate%20Dispute%20Resolution%20&%20Scope%20in%20Pakistan.pdf

http://www.questia.com/PM.qst?a=o&d=107288588

http://www.scribd.com/doc/30433456/Doing-Justice-How-informal-justice-systems-can-contribute

http://www.studycirclebangladesh.info/admin/publication/2007041164_photo.pdf

http://www.thedailystar.net/suppliments/2010/02/ds19/segment3/delay.htm

http://ruchichowdhury.tripod.com/a_possible_way_out_of_backlog_in_our_judiciary.htm

http://www.thedailystar.net/suppliments/2010/02/ds19/segment3/delay.htm

http://www.thehindu.com/opinion/lead/article2609718.ece

http://www.thenewsmanual.net/ManualsVolume/volume3_63a.html

http://www.txiolta.org

http://www.umdnj.edu/idsweb/idst6000/research_overview.htm

http://www.usaid.gov/

http://www1.worldbank.org/publicsector/legal/access.htm

http://www.scribd.com/doc/30433456/Doing-Justice-How-informal-justice-systems-can-contribute

www.unicef.org/ceecis/Programming_for_Justice.pdf

APPENDIX 1

Corruption Index 2014

The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country's rank indicates its position relative to the other countries and territories included in the index. This year's index includes 177 countries and territories.

Country Rank	Country / Territory	CPI 2014 Score	Surveys Used	Standard Error	90% Confidence	
					Lower	Upper
1	Denmark	92	7	2.04	89	95
2	New Zealand	91	7	2.28	87	95
3	Finland	89	7	2.05	86	92
4	Sweden	87	7	3.41	81	93
5	Norway	86	7	2.38	82	90
5	Switzerland	86	6	2.61	82	90
7	Singapore	84	8	1.75	81	87
8	Netherlands	83	7	1.97	80	86
9	Luxembourg	82	6	2.78	77	87
10	Canada	81	7	2.45	77	85
11	Australia	80	8	1.31	78	82
12	Germany	79	7	2.58	75	83
12	Iceland	79	6	3.16	74	84
14	United Kingdom	78	7	2.09	75	81
15	Belgium	76	7	2.26	72	80
15	Japan	76	8	3.16	71	81
17	Barbados	74	3	8.09	61	87
17	Hong Kong	74	7	2.75	69	79
17	Ireland	74	6	4.75	66	82
17	United States	74	8	3.74	68	80
21	Chile	73	8	1.74	70	76
21	Uruguay	73	6	1.41	71	75
23	Austria	72	7	3.49	66	78
24	Bahamas	71	3	0.99	69	73
25	United Arab Emirates	70	7	5.14	62	78
26	Estonia	69	9	2.89	64	74
26	France	69	7	2.17	65	73
26	Qatar	69	6	7.21	57	81
29	Saint Vincent and the Grenadines	67	3	4.64	59	75
30	Bhutan	65	4	1.81	62	68
31	Botswana	63	6	1.93	60	66
31	Cyprus	63	5	3.92	57	69
31	Portugal	63	7	3.36	57	69
31	Puerto Rico	63	3	4.37	56	70
35	Poland	61	9	2.70	57	65
35	Taiwan	61	7	4.17	54	68
37	Israel	60	6	2.34	56	64
37	Spain	60	7	3.75	54	66
39	Dominica	58	3	2.34	54	62
39	Lithuania	58	8	3.85	52	64

39	Slovenia	58	9	3.03	53	63
42	Cape Verde	57	4	5.94	47	67
43	Korea (South)	55	9	2.64	51	59
43	Latvia	55	8	3.35	49	61
43	Malta	55	5	2.63	51	59
43	Seychelles	55	3	8.62	41	69
47	Costa Rica	54	5	4.07	47	61
47	Hungary	54	9	3.45	48	60
47	Mauritius	54	4	2.39	50	58
50	Georgia	52	6	6.47	41	63
50	Malaysia	52	8	2.88	47	57
50	Samoa	52	3	4.88	44	60
53	Czech Republic	51	9	2.94	46	56
54	Slovakia	50	8	4.07	43	57
55	Bahrain	49	5	6.11	39	59
55	Jordan	49	7	2.87	44	54
55	Lesotho	49	5	3.55	43	55
55	Namibia	49	5	4.00	42	56
55	Rwanda	49	4	3.23	44	54
55	Saudi Arabia	49	5	6.69	38	60
61	Croatia	48	9	3.25	43	53
61	Ghana	48	8	3.01	43	53
63	Cuba	46	4	4.46	39	53
64	Oman	45	5	6.55	34	56
64	The FYR of Macedonia	45	6	5.92	35	55
64	Turkey	45	8	2.69	41	49
67	Kuwait	44	5	5.24	35	53
67	South Africa	44	7	2.41	40	48
69	Brazil	43	7	4.01	36	50
69	Bulgaria	43	9	2.82	38	48
69	Greece	43	7	5.56	34	52
69	Italy	43	7	2.26	39	47
69	Romania	43	9	3.60	37	49
69	Senegal	43	8	2.28	39	47
69	Swaziland	43	3	2.98	38	48
76	Montenegro	42	4	4.25	35	49
76	Sao Tome and Principe	42	3	5.05	34	50
78	Serbia	41	7	2.92	36	46
79	Tunisia	40	6	1.72	37	43
80	Benin	39	4	4.38	32	46
80	Bosnia and Herzegovina	39	6	1.15	37	41
80	El Salvador	39	6	1.98	36	42
80	Mongolia	39	7	2.13	35	43
80	Morocco	39	6	3.57	33	45
85	Burkina Faso	38	7	2.67	34	42
85	India	38	9	2.27	34	42
85	Jamaica	38	6	1.80	35	41
85	Peru	38	7	2.63	34	42
85	Philippines	38	8	1.84	35	41
85	Sri Lanka	38	7	2.18	34	42
85	Thailand	38	8	1.60	35	41
85	Trinidad and Tobago	38	4	4.82	30	46
85	Zambia	38	8	2.27	34	42
94	Armenia	37	6	3.69	31	43
94	Colombia	37	7	1.68	34	40
94	Egypt	37	6	2.91	32	42
94	Gabon	37	4	4.19	30	44
94	Liberia	37	6	3.09	32	42
94	Panama	37	6	3.49	31	43

100	Algeria	36	5	2.06	33	39
100	China	36	8	2.17	32	40
100	Suriname	36	3	3.25	31	41
103	Bolivia	35	7	2.98	30	40
103	Mexico	35	8	1.66	32	38
103	Moldova	35	8	2.70	31	39
103	Niger	35	5	3.99	28	42
107	Argentina	34	7	2.42	30	38
107	Djibouti	34	3	9.10	19	49
107	Indonesia	34	8	3.57	28	40
110	Albania	33	7	1.51	31	35
110	Ecuador	33	5	3.56	27	39
110	Ethiopia	33	8	2.54	29	37
110	Kosovo	33	3	2.33	29	37
110	Malawi	33	8	3.03	28	38
115	Côte d´Ivoire	32	8	4.20	25	39
115	Dominican Republic	32	6	3.30	27	37
115	Guatemala	32	6	2.96	27	37
115	Mali	32	6	3.37	26	38
119	Belarus	31	5	4.04	24	38
119	Mozambique	31	7	1.89	28	34
119	Sierra Leone	31	8	2.30	27	35
119	Tanzania	31	8	3.20	26	36
119	Vietnam	31	8	2.55	27	35
124	Guyana	30	4	3.03	25	35
124	Mauritania	30	5	4.23	23	37
126	Azerbaijan	29	6	3.02	24	34
126	Gambia	29	5	7.55	17	41
126	Honduras	29	6	3.49	23	35
126	Kazakhstan	29	8	4.40	22	36
126	Nepal	29	5	2.20	25	33
126	Pakistan	29	7	3.24	24	34
126	Togo	29	5	3.69	23	35
133	Madagascar	28	8	3.38	22	34
133	Nicaragua	28	7	2.03	25	31
133	Timor-Leste	28	3	5.18	19	37
136	Cameroon	27	8	2.87	22	32
136	Iran	27	6	4.72	19	35
136	Kyrgyzstan	27	6	2.35	23	31
136	Lebanon	27	6	3.37	21	33
136	Nigeria	27	8	2.82	22	32
136	Russia	27	8	2.61	23	31
142	Comoros	26	3	8.75	12	40
142	Uganda	26	8	3.03	21	31
142	Ukraine	26	8	1.64	23	29
145	Bangladesh	25	7	4.23	18	32
145	Guinea	25	7	3.21	20	30
145	Kenya	25	8	2.98	20	30
145	Laos	25	4	3.80	19	31
145	Papua New Guinea	25	5	4.16	18	32
150	Central African Republic	24	4	1.33	22	26
150	Paraguay	24	5	2.95	19	29
152	Congo Republic	23	6	4.20	16	30
152	Tajikistan	23	5	5.32	14	32
154	Chad	22	5	2.95	17	27
154	Democratic Republic of the Congo	22	5	4.19	15	29
156	Cambodia	21	7	2.25	17	25
156	Myanmar	21	7	2.87	16	26
156	Zimbabwe	21	8	4.18	14	28

159	Burundi	20	5	3.65	14	26
159	Syria	20	4	5.31	11	29
161	Angola	19	6	1.71	16	22
161	Guinea-Bissau	19	4	2.37	15	23
161	Haiti	19	5	2.86	14	24
161	Venezuela	19	7	1.69	16	22
161	Yemen	19	6	2.37	15	23
166	Eritrea	18	4	7.91	5	31
166	Libya	18	5	2.81	13	23
166	Uzbekistan	18	6	2.54	14	22
169	Turkmenistan	17	3	2.85	12	22
170	Iraq	16	4	2.37	12	20
171	South Sudan	15	3	2.35	11	19
172	Afghanistan	12	4	1.29	10	14
173	Sudan	11	6	3.55	5	17
174	Korea (North)	8	3	3.35	2	14
174	Somalia	8	4	2.34	4	12

APPENDIX 2

Gross National Income per Capita

This is a list of countries by Gross National Income per capita in 2011 at nominal values, according to the Atlas Method, an indicator of income developed by the World Bank. The GNI per capita is the dollar value of a country's final income in a year, divided by its population. It reflects the average income of a country's citizens.

Knowing a country's GNI per capita is a good first step toward understanding the country's economic strengths and needs, as well as the general standard of living enjoyed by the average citizen. A country's GNI per capita tends to be closely linked with other indicators that measure the social, economic, and environmental well-being of the country and its people. For example, generally people living in countries with higher GNI per capita tend to have longer life expectancies, higher literacy rates, better access to safe water, and lower infant mortality rates.

All data are in United States dollars. Rankings shown are those given by the World Bank. Non-sovereign entities or other special groupings are marked in italics.

From this table we can conclude the rate of poverty, the less is the income, the more is poverty level.

Lower-middle-income group

Rank	Country	GNI per capita (US$)	Year
142	Uzbekistan	2,090	2014
143	Papua New Guinea	2,020	2013
144	Vietnam	1,890	2014
145	Syria	1,850	2007
146	Nicaragua	1,830	2014
147	Solomon Islands	1,830	2014
148	Zambia	1,760	2014
149	Sudan	1,740	2014
150	Ghana	1,620	2014
151	India	1,610	2014

152	Laos	1,600	2014
153	São Tomé and Príncipe	1,570	2013
154	Côte d'Ivoire	1,550	2014
155	Pakistan	1,410	2014
156	Yemen	1,370	2013
157	Cameroon	1,350	2014
158	Lesotho	1,350	2014
159	Kenya	1,280	2014
160	Myanmar	1,270	2014
161	Mauritania	1,260	2014
162	Kyrgyzstan	1,250	2013
163	Bangladesh	1,080	2014
164	Tajikistan	1,060	2014
165	Senegal	1,050	2014
166	Djibouti	1,030	2005

Source: Wikepedia

Appendix 3

Cost of Living Index for Country for 2015

You are looking at cost of living rankings by country for 2015. These indexes are updated yearly.

Rank	Country	Consumer Price Index	Rent Index	Consumer Price Plus Rent Index	Groceries Index	Restaurant Price Index	Local Purchasing Power Index
1	Switzerland	124.51	54.53	88.82	114.81	137.82	210.00
2	Norway	109.30	40.41	74.17	95.90	136.81	139.78
3	Iceland	95.41	29.04	61.57	88.13	113.07	111.09
4	Us Virgin Islands	93.41	29.12	60.63	88.02	89.26	129.51
5	Australia	89.50	38.66	63.58	82.00	87.00	157.97
6	Denmark	88.31	26.33	56.70	71.67	112.78	164.26
7	Singapore	88.12	71.26	79.52	74.30	59.45	117.65
8	United Kingdom	86.68	33.50	59.56	75.10	96.69	133.64
9	Papua New Guinea	86.55	77.16	81.76	86.48	56.67	9.21
10	Kuwait	85.63	36.40	60.53	105.46	51.92	125.33
11	Venezuela	82.81	24.41	53.03	106.44	66.81	21.48
12	Luxembourg	80.81	50.91	65.56	65.30	104.96	153.61
13	New Zealand	79.84	26.72	52.75	75.12	81.64	118.84
14	Ireland	79.71	32.62	55.70	69.99	86.08	137.60
15	South Korea	77.80	34.10	55.52	91.47	48.90	138.27
16	Israel	77.57	24.34	50.42	63.76	89.40	133.59
17	Finland	76.89	23.48	49.65	65.61	86.25	149.42
18	Belgium	76.71	34.06	54.96	65.43	92.35	115.19
19	France	75.85	24.11	49.47	68.55	84.76	132.55
20	Hong Kong	75.03	75.00	75.02	76.97	58.11	111.81
21	Netherlands	74.43	28.00	50.75	54.89	92.68	150.57
22	Japan	74.29	26.44	49.89	73.76	50.27	135.77
23	Sweden	73.86	22.95	47.90	65.71	81.61	156.16
24	Canada	73.53	26.96	49.78	74.08	74.13	143.94
25	United States	73.38	31.48	52.01	76.22	69.17	156.46
26	Italy	72.38	20.10	45.72	58.34	86.84	112.63
27	Qatar	71.64	75.87	73.80	61.52	73.36	136.36
28	Ghana	70.70	54.10	62.23	67.79	60.64	18.30
29	Puerto Rico	68.69	16.99	42.33	69.82	63.50	125.90

Rank	Country	Consumer Price Index	Rent Index	Consumer Price Plus Rent Index	Groceries Index	Restaurant Price Index	Local Purchasing Power Index
30	Argentina	68.17	19.07	43.13	56.67	70.50	83.59
31	Austria	68.14	25.30	46.30	62.28	67.86	135.34
32	Germany	65.96	21.20	43.14	51.08	67.54	160.12
33	United Arab Emirates	64.88	62.22	63.52	56.39	66.44	143.80
34	Lebanon	64.02	29.57	46.45	46.20	67.27	74.65
35	Cyprus	63.68	12.41	37.53	54.86	69.41	109.82
36	Belize	62.76	10.68	36.20	56.26	44.00	195.34
37	Zimbabwe	62.05	16.51	38.83	52.86	57.08	48.45
38	Malta	61.79	17.05	38.98	50.25	72.00	100.05
39	Uruguay	61.57	16.97	38.83	52.88	65.42	61.71
40	Brunei	60.40	23.67	41.67	59.86	40.78	87.07
41	Costa Rica	59.48	16.00	37.30	61.20	50.36	70.95
42	Greece	58.92	9.27	33.60	46.81	63.86	83.15
43	Maldives	58.74	26.31	42.20	56.68	42.95	42.09
44	Trinidad And Tobago	57.97	20.13	38.68	57.50	52.92	72.00
45	Jamaica	57.50	12.23	34.42	54.84	47.16	58.73
46	Spain	56.55	16.10	35.92	43.89	65.94	114.82
47	Jordan	55.73	11.96	33.41	42.08	58.71	56.34
48	Slovenia	55.60	13.70	34.24	45.01	49.18	94.62
49	Oman	54.44	22.96	38.39	46.95	47.41	173.05
50	Taiwan	54.22	13.71	33.56	60.25	28.33	104.72
51	Panama	53.81	26.94	40.11	57.85	41.87	58.34
52	Tanzania	53.58	23.99	38.49	49.13	42.94	62.38
53	Palestinian Territory	53.42	8.60	30.57	44.89	44.53	63.73
54	Dominican Republic	53.25	11.01	31.71	50.40	45.41	37.70
55	Cuba	52.69	12.63	32.27	37.74	32.68	2.36
56	Myanmar	52.50	19.81	35.83	55.56	29.57	37.18
57	Estonia	52.49	12.31	32.00	38.95	48.37	80.00
58	Namibia	52.10	18.28	34.85	41.23	50.85	58.52
59	Cambodia	51.34	11.50	31.03	59.76	26.84	19.44
60	Mozambique	50.83	27.87	39.12	43.15	56.99	57.58
61	Portugal	50.55	14.08	31.96	38.66	47.75	87.27
62	Bahrain	50.49	29.52	39.80	45.73	53.73	91.26

Rank	Country	Consumer Price Index	Rent Index	Consumer Price Plus Rent Index	Groceries Index	Restaurant Price Index	Local Purchasing Power Index
63	Honduras	50.04	9.66	29.45	44.18	37.19	78.84
64	Croatia	49.82	8.66	28.83	41.82	41.30	71.44
65	Mauritius	49.71	15.15	32.09	44.03	45.63	91.32
66	Uzbekistan	49.70	12.40	30.68	43.84	36.38	31.19
67	Chile	49.21	13.98	31.25	42.11	43.53	93.76
68	Iraq	48.84	16.57	32.38	38.29	50.38	60.71
69	Nigeria	48.79	22.42	35.34	45.80	46.50	61.73
70	Latvia	48.71	11.79	29.88	36.67	43.21	68.59
71	Saudi Arabia	48.19	12.66	30.07	40.10	34.90	187.40
72	Ethiopia	48.02	17.97	32.70	44.66	25.73	22.60
73	Guatemala	47.63	11.50	29.21	45.55	37.82	51.15
74	Nicaragua	46.90	6.96	26.54	40.16	29.77	46.74
75	China	46.83	19.64	32.96	47.95	34.48	86.93
76	Kazakhstan	46.71	14.42	30.24	36.98	50.57	69.29
77	Brazil	46.71	12.79	29.41	35.23	40.95	56.18
78	Belarus	46.26	13.07	29.34	37.28	61.95	41.64
79	Lithuania	46.09	11.45	28.42	36.08	36.97	64.38
80	El Salvador	45.82	10.00	27.56	40.21	35.34	42.60
81	Slovakia	45.13	13.27	28.88	39.36	35.71	77.09
82	Fiji	44.83	16.76	30.52	52.77	39.26	47.42
83	Turkey	44.53	9.17	26.50	35.32	36.43	77.61
84	Russia	44.27	19.59	31.69	35.09	54.17	62.05
85	Ecuador	43.53	11.50	27.19	43.27	28.50	45.85
86	South Africa	43.50	14.62	28.77	36.89	42.81	142.40
87	Kenya	43.47	11.58	27.21	43.37	33.06	35.17
88	Iran	43.06	18.73	30.66	40.69	40.67	48.78
89	Thailand	42.75	13.58	27.87	46.91	23.76	57.34
90	Czech Republic	42.69	12.64	27.37	35.85	31.43	98.81
91	Azerbaijan	42.20	19.13	30.43	33.29	43.17	44.13
92	Peru	41.88	13.49	27.40	39.53	31.31	41.30
93	Hungary	41.75	7.92	24.50	31.34	35.33	66.35
94	Malaysia	41.72	9.93	25.51	40.59	24.59	103.75
95	Montenegro	40.36	7.87	23.79	30.75	41.39	59.74
96	Poland	39.62	11.75	25.41	29.89	36.54	90.97
97	Sri Lanka	39.56	9.72	24.34	46.78	24.10	35.41
98	Vietnam	39.22	12.23	25.46	36.88	20.90	30.23

Rank	Country	Consumer Price Index	Rent Index	Consumer Price Plus Rent Index	Groceries Index	Restaurant Price Index	Local Purchasing Power Index
99	Uganda	39.02	5.41	21.88	35.05	23.50	26.33
100	Bolivia	38.51	9.19	23.56	30.84	25.56	56.83
101	Libya	38.38	13.06	25.47	37.36	38.72	71.14
102	Armenia	38.30	8.78	23.25	29.94	35.70	39.51
103	Mexico	38.07	9.31	23.40	36.62	34.23	91.36
104	Romania	36.86	7.87	22.08	30.20	33.96	61.17
105	Bangladesh	36.76	4.45	20.29	35.63	25.49	46.72
106	Bosnia And Herzegovina	36.24	5.89	20.76	30.51	26.68	64.94
107	Bulgaria	36.13	6.92	21.23	30.26	30.05	58.73
108	Philippines	36.05	5.88	20.67	36.78	21.31	50.32
109	Indonesia	35.88	10.11	22.74	38.83	20.95	37.47
110	Colombia	35.42	9.51	22.21	29.85	27.59	50.03
111	Serbia	35.42	5.93	20.38	27.17	30.18	55.93
112	Egypt	35.32	8.97	21.88	30.62	32.89	40.81
113	Morocco	34.56	8.89	21.47	28.92	27.13	55.70
114	Syria	34.44	8.44	21.18	29.90	29.06	33.02
115	Albania	33.86	6.19	19.75	26.44	28.89	46.01
116	Macedonia	31.66	5.18	18.15	26.00	24.32	50.06
117	Tunisia	31.15	6.70	18.68	27.42	22.90	54.64
118	Ukraine	30.75	8.39	19.34	23.66	27.60	32.72
119	Georgia	30.37	10.29	20.13	23.93	30.42	36.92
120	Kosovo (Disputed Territory)	30.35	8.65	19.29	25.02	24.57	64.60
121	Algeria	28.55	6.49	17.30	26.91	23.24	55.32
122	Pakistan	27.77	4.22	15.76	26.21	23.87	46.39
123	Nepal	27.53	2.75	14.90	25.86	16.74	29.86
124	Moldova	27.43	6.44	16.73	21.64	24.52	32.75
125	India	24.85	5.27	14.87	26.36	16.43	99.29

Showing 1 to 125 of 125 entries

Source: http://www.numbeo.com/cost-of-living/rankings_by_country.jsp