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The Feasibility of Alternative Dispute Resolution within Administrative Law Process

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Abstract

The increased usage of Alternative Dispute Resolution Mechanisms in private and commercial law settings has been a welcome practice. ADR Mechanisms have allowed for speedier, cost efficient, private and more equitable means of resolution of commercial disputes. In recent times, the discussion of introducing ADR Mechanisms in India's administrative process has grown louder owing to the increasing backlog of pending cases and inefficiency in appointing qualified individuals to fill vacancies.

This paper shall study the feasibility of employing ADR Mechanisms within the Administrative Law Process in India. It shall study the Administrative Law Process from the time of its introduction post Independence and tracing its evolution till the year 2020. It shall conduct a descriptive and analytical study to understand the Administrative Law Process in India as well as its limitations. Study shall further be conducted to understand obstacles hindering the process.

The paper shall then conduct a comparative study with Australia and the United States of America where Administrative Law Processes have incorporated ADR Mechanisms. It shall study the processes in detail, the challenges, the benefits and limitations.

The paper shall then attempt to provide an insight as to the feasibility of ADR Mechanisms in the Administrative Law Process by determining whether the introduction of the ADR Mechanisms would resolve the problems that currently persist in the existing system. The paper shall further determine whether ADR Mechanisms can be employed in India, and if so, to what extent and in what form.

1. Introduction

Administrative law is a public law which serves to regulate the interaction between the state and its citizens. It exists to curb the arbitrariness and misuse of power by the state against its citizens and resolve disputes that may arise between the state and the citizens.

In a welfare state like India, Administrative law is particularly important due to the fact that in a welfare state, the state is required to take upon a large number of administrative actions. With the increase in administrative actions of the state, there is an increase in interaction between administrative authorities and citizens, and therein lies the reason to regulate the same.

The need to regulate these interactions is due to the past history where authorities have been found to be arbitrary, abusing power or causing grievances to the citizens. Therefore in order to safeguard the interests of the citizens, administrative law was developed.[1]

To enforce administrative law, we enter into the topic of Administrative Law and Dispute Resolution. Redressal of grievances and enforcement of the law fall under the ambit of Dispute Resolution. For if there is a right, there must be a remedy. The method of grievance redressal and enforcement of Administrative Law has traditionally been left to Courts of Law and specialised tribunals when appropriate. However there have been problems with respect to the same.

In the 2016-17 period, the number of pending cases available in some tribunals is as follows[2],

1. Income Tax Appellate Tribunal – 91,538
2. Customs, Excise and Service Tax Appeal Tribunal – 90,592
3. Debt Recovery Tribunal – 78,118
4. Railway Claims Tribunal – 45,604
5. Central Administrative Tribunal – 44,333

These numbers are in addition to the fact that out of 43 Lakh cases pending in High Courts, over 8 Lakh of these cases are a decade old.[3]

[1] IP. Massey, Administrative law, 5-7,Eastern Book Company,(9th ed. 2017).
[2] Law Commission of India, *Assessment of Statutory Frameworks of Tribunals in India,* Report No.272, (2017).

These numbers are alarming and state that there is a need to study and improve the efficiency of resolving disputes. In a welfare state, the trust and faith of the people in the capabilities of the state are paramount. The people should be able to believe that the state seeks to safeguard their interests and not take advantage of them. However in order for this faith and trust to be built, the people must understand that administrative officials are accountable to them and that they have rights which can and will be enforced. For the same to occur, there must be an efficient manner of resolving the disputes between the administrative authorities and the people, illustrating speedy justice, existence and enforcement of statutory rights.

Alternative Dispute Resolution mechanisms have been employed with respect to private and commercial law matters in order to reduce the burden and pendency of cases that lie before the Courts. The popularity of Alternative Dispute Mechanisms such as Arbitration, Mediation and Conciliation has grown at a large rate with more and more institutes and development of the law for the same occurring over the past two decades.[4]

Alternative Dispute Resolution Mechanisms present in themselves an opportunity for parties to resolve disputes in a more informal setting in comparison to the traditional court rooms, facilitating privacy, ease of communication and better understanding of the interests and positions of the parties. Unlike Courts which emphasise on procedure and legal points, Alternative Dispute Resolution Mechanisms focus on positions and interests of the parties. These mechanisms bring with them a rather large number of benefits, such as, flexibility and control over the process, speed in disposal of disputes, lower costs, simplified rules of evidence and discovery, privacy and confidentiality, ability to select the arbitrator or mediator thereby ensuring technical expertise over the subject matter and neutrality, and finality to the proceedings. [5]

Given the benefits offered by Alternative Dispute Resolution Mechanisms in addition to its popularity and usage in private law disputes, this study is being conducted to understand whether these mechanisms can be implemented with respect to a public law, i.e. Administrative Law.

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[3] Press Trust of India, *Out of 43 lakh cases pending in High Courts, over 8 lakh a decade old*, Economic Times, (11th October 2:30 PM).https://economictimes.indiatimes.com/news/politics-and-nation/out-of-43-lakh-cases-pending-in-high-courts-over 8-lakh-a-decade-old/articleshow/69974916.cms

[4] Balazs Hohmann, The Role Of Alternative Dispute Resolution in the Administrative Procedure, DAKAM'S International Social Sciences Meeting Conference Proceedings, 54 (2017).

[5] *Id.*

To understand the ability of utilising the same shall be done by looking into the development and current point of dispute resolution of administrative law disputes, thereby studying the limitations and drawbacks of the current model. From that point on it shall be studied as to how alternative dispute resolution mechanisms have been employed in Administrative Law abroad and in India. A discussion shall then take place, going into the feasibility and benefits of employing Alternative Dispute Resolution Mechanisms in the Administrative Law Process. This discussion shall look into what benefits it brings to the table, whether it provides solutions to the problems that plague the current model, where it can be implemented, and whether the implementation of the same is practical or cumbersome. The paper shall then go on to conclude and provide the findings of the study.

It is important to note that when the paper refers to Alternative Dispute Resolution Mechanisms, it strictly refers to the processes of Arbitration and Mediation only.

2. Analysis of the Current Administrative Law Process in India

In India, as of 2020, there are 3 ways to administer administrative justice. These three ways are, 1. Traditional Courts 2. Specialised Tribunals 3. Ombudsman.

For the majority, administrative law is dealt with by specialised tribunals. The term tribunals can be defined as held in Durga Shankar Mehta v. Raghuraj Singh[6], where the Supreme Court stated that the term tribunal according to Article 136 does not mean something as "Court" but includes within it all adjudicating bodies, provided they are constituted by State to exercise judicial powers as distinguished from discharging of administrative or legislative functions.

Administrative tribunals might well be referred to as 'administrative courts' since usually their task is to adjudicate disputes which arise from the statutory regulation of a wide variety of situations, some of which will involve decisions or other action by administrative agencies, or relationship between private individuals.[7]

It is important to note that when dealing with administrative tribunals in India, there are two types, [8]

[6] Durga Shankar Mehta v. Raghuraj Singh, 1954 AIR 520.
[7] Law Commission of India, *Supra* Note 2.
[8] *Id.*

1. Those tribunals which deal with service matters and are constituted under the Administrative Tribunals Act, such as Central Administrative Tribunal, State Administrative Tribunal and Joint Administrative Tribunal;

2. Those tribunals which deal with a specialised field and are generally instituted by separate statutes; these tribunals generally deal with disputes that arise between the state, administrative authorities and citizens. Examples of such tribunals would be Income Tax Appellate Tribunal, National Green Tribunal and until recently the Competitional Appellate Tribunal which now falls under the National Company Law Appellate Tribunal.

The study of the Central Administrative Tribunal, State Administrative Tribunal and Joint Administrative Tribunal is beyond the scope of this paper, as those tribunals are solely dedicated towards service related matters of administrative authorities. As this paper deals with the general definition of Administrative law which states that it is the public law that regulates the interaction between administrative authorities and citizens, therefore we shall focus more on tribunals such as the Income Tax Appellate Tribunal in this chapter.

2.1.Evolution of Administrative Justice System

The administrative justice system in India was always in favour of specialised tribunals from the very onset. It was possibly due to the factor that India was then under the British Raj and hence the developments in Britain often reflected back in India, even if it was after a very long period of time.

The first Administrative tribunal in India was established in 1942, where the Income Tax Appellate Tribunal was set up with the purpose of reducing workload on courts, provide a forum manned by experts and expedite decisions.[9]

The must substantial and notable development with respect to Administrative Tribunals was the 42nd Constitutional Amendment in 1976. Through this Amendment, Articles 323-A and 323-B were inserted in the Constitution, paving the way for the establishment of tribunals for Administrative Tribunals for Service matters and Tribunals for other matters respectively.

Post the insertion of Articles 323-A and 323-B, a series of legal developments occurred with respect to finality of decision and jurisdiction of courts, as witnessed in the cases of Sampath Kumar and Chandra Kumar, which shall be dealt with later. However, tribunalisation

[9] *Id.*

continued to grow and expand with specialised tribunals being instituted under numerous statutes, notable the National Green Tribunal and the Competitional Appellate Tribunal.

Since the 42nd Amendment the most notable change to occur in the Administrative Law Process has been the enactment of the Finance Act, 2017 which merged 8 tribunals and gave the power to the government to appoint and remove members of the tribunals and the Lokpal Act, 2013 with the first Lokpal of India being appointed in March 2019.

2.2.Prevalent Forms of Administrative Justice in India

India has favoured two forms of Administrative Justice, namely,

1. Tribunalisation
2. Ombudsman

With tribunalisation, as stated earlier, the roots go back to when India was under the British Raj, and hence the continued similarities.

The calls for tribunalisation have occurred on numerous occasions, the most notable being[10],

1. The 14th Law Commission Report, "Reform of Judicial Administration" in 1958; this report recommended the establishment of an appellate tribunal or tribunals at the centre and in states.
2. The 58th Law Commission Report, "Structure and Jurisdiction of the Higher Judiciary" in 1974; this report urged for separate tribunals to deal with service matters;
3. The report by the Swaran Singh Committee as a result of which Part XIV-A was added to the Constitution by way of the 42nd Amendment, which allowed for Administrative tribunals;
4. The report by the Justice J.C.Shah Committee, i.e. the High Courts' Arrears Committee which gave a recommendation similar to that of the Swaran Singh Committee.
5. The Supreme Court itself called for the establishment of separate tribunals for Environmental issues on two occasions, one being M.C.Mehta v. Union of India and the other being, Indian Council for Environmental Legal Action v. Union of India, owing to the fact that the cases required assessment of scientific data which would require the aid

[10] *Id.*

of experts. The court stated that it would be desirable to set up courts dedicated to the environment at a regional level, consisting of a Judge and two experts. [11]

The Ombudsman in India, similarly has been called for numerous times. In India it is called Lokpal at the Central level and Lokayukta at the State level. In India it was proposed by the then Law Minister, Ashok Sen in the early 1960s, and later the first Lokpal Bill was proposed in 1968 by Shanti Bhushan. Since then numerous other Lokpal bills had been introduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001, 2005 and 2008. However despite the numerous calls for the same, it did not come into effect until 2013.[12]

Also despite passing the bill in 2013, there were numerous issues and it was amended once again. The first Lokpal of India was appointed in March 2019[13], therefore there is very little data regarding the performance of the Lokpal to evaluate the same.

However it continued to be popular throughout India with numerous states providing for Lokayuktas at the State level and the existence of banking ombudsmen and insurance ombudsmen in India.

2.3.Limitations and Drawbacks of the Current Model

The limitations and drawbacks of the current model will be analysed with respect to the tribunals and courts only, as the lack of data on the functioning of the ombudsman in India makes it difficult to evaluate or analyse the efficiency or use of the ombudsman in addressing administrative grievances in an Indian context.

With respect to limitations and drawbacks with the current model however, the following has been found,

1. Independence – the Finance Act of 2017 has brought about the biggest problem the current administrative law process in India. Through the Finance Act, the power to appoint and remove members of tribunals has been vested in the executive/government. This compromises the integrity and independence of the tribunals, and possibly violates

[11] Anamika Kundu & Vasavi Khatri, *1976 to 2017: The Transformation of the Tribunal System in India*, 8 Indian J. Const. L. 43 (2019).
[12] Law Commission of India, *Supra* Note 2.
[13] Press Trust of India, *India's First Lokpal Appointed: Justice Pinaki Chandra Ghose as Chief,* The Wire, (11th October 1:00 P.M).

natural law for the government is often a party involved in the disputes that are put forth before the very tribunals whose members they appoint.[14]

2. Finality of decisions – this has been a contentious issue, beginning from the 42nd Amendment of the Constitution. It is widely believed that the role of tribunals in adjudicating administrative disputes is negated by the fact that appeals on orders from the tribunal can lie before the division bench of the concerned High Court. The supervisory jurisdiction of the High Court as well as its appellate jurisdiction has been a cause of concern from the very onset. Prior to the Sampath Kumar case, it was believed that the tribunals would possess equal jurisdiction to the High Courts with respect to these matters and the only appeal that would lie was before the Supreme Court through Special Leave Petition. However the Supreme Court in the case of Chandra Kumar made it clear that the jurisdiction of the High Court was granted through the Constitution, that it was a basic feature and could not be curbed by statute. The role of the tribunals is to supplement the jurisdiction of the High Courts and not usurp it in its entirety. Therefore, appeals can lie before the High Courts, thereby undermining the finality of the decisions of the tribunals.[15]

3. Pendency – As stated earlier, in the year 2016, the ITAT alone had a pendency of over 90,000 cases. This is a clear illustration that the existing system is not enough to keep up with the administrative issues prevalent.[16]

4. Uniformity – Under the current model, there is no uniformity in service conditions with respect to the members of the respective tribunals. These service conditions relate to the appointment of the members, qualifications and particularly the retirement age of members which differs from the retirement age of the chairpersons.

5. Vacancies – As a result of the lack of uniformity in service conditions, it is becoming increasingly difficult to appoint members to replace the members who have retired on time, efficiently. This leads to tribunals being understaffed and lacking trained, specialised persons. [17]

[14] Kundu, Khatri,*Supra* Note 11.
[15] Lae Commission of India,*Supra* Note 2.
[16]*Id.*
[17] Kundu, Khatri, *Supra* Note 11.

3. Alternative Dispute Resolution Mechanisms in Administrative Justice Process – Globally.

Alternative Dispute Resolution Mechanisms gathered a lot popularity across the globe owing to the advantages it offers over conventional litigation. Some of those advantages are: decrease in delay, greater party satisfaction, enforcement reliability, greater party participation, flexibility, cheaper etc. [18]

As a result of this, an ADR phenomenon gripped the globe, in response to the shortcomings they felt existed in litigation. One of the most popular mechanisms was mediation.

It more popular as many believed it to be a mechanism that facilitates a win-win situation as it stresses more upon meeting the interests and positions of the parties. In a mediation the parties are capable of disregarding the legal obstacles that are present in conventional litigation and would prevent them from focusing on their interests. Furthermore it is highly advocated for the reason that mediation offers an opportunity for the parties to provide an explanation of their position, thereby offering their interpretation of the law and understanding of the facts.[19]

3.1. Case Study: Australia

In Australia, mediation was introduced to the administrative law process in the early 1990s. The mechanism was not purely mediation, but rather a "mediation before merits review" process. It was not made to replace but rather aid the existing Administrative Law Process i.e. the Administrative Appeals Tribunal (AAT).

The AAT was a tribunal established in Australia to arbitrate conclusively on merits, including policy determinations, of the relevant public authorities. The decisions of this tribunal could be reviewed by the Federal Court but these reviews were limited to questions of law. A notable feature of the AAT was its power to review exercise of administrative discretions and power on merit. [20]

[18] Bengt Lindell, *Alternative Dispute Resolution and the Administration of Justice – Basic Principles,* Scandinavian Studies in Law (2012).
[19] Laurence Boulle, *ADR Applications in Administrative Law*, 1993 Acta Juridica 138 (1993).
[20] *Id.*

The AAT was introduced with the idea of providing an informal and non-adversarial forum to resolve administrative disputes but over time and through the course of reforms, the AAT was soon being criticised for having become legalistic, adversarial and judicialized.[21]

To counter this problem, a new system of "mediation before merits review" system was introduced. As per the provisions envisioned by this new system, the parties who sought a remedy from the AAT were offered a voluntary mediation before a trained neutral. This system was applicable for disputes related to the fields of social security, customs jurisdictions and taxation.[22]

Under this system a direction was issued. As per this direction the AAT members participating in the mediation conference were encouraged to discuss the merits of the case with the parties and attempt to mediate a settlement or encourage the continuation of negotiation after the conference.[23]

The AAT undertook several steps to ensure that the integrity to the process of mediation were preserved. Some of these steps are as follows[24]:

1. Attendance of parties to the mediation conference must be voluntary. Refusal to mediate would not affect their rights in any manner.
2. Parties must find their own solution.
3. The mediation process would not affect the normal time procedures for the hearing before the tribunal.
4. Efforts are to be undertaken to ensure that confidentiality and control of the parties over the process are maintained.
5. Mediation would only be conducted by staff and members of AAT who have been accredited as mediators by an appropriate authority.
6. All pilot mediations are to be followed by a debriefing in which the mediator relates to another mediator the developments of the conference with a view of identifying possible improvements.

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] D.F.O'Connor, *Mediation in the Administrative Appeals Tribunal,* First International Conference in Australia on ADR, LEADR, Sydney (1992).

7. Additional feedback is to be provided by the parties through the form of questionnaire.

In the event the mediation results in a settlement, the AAT is empowered to make a consent decision which is the equivalent to an order and/or decision of the tribunal which has the effecting of substituting the original decision. However if a mediation settlement has been reached where the application is dismissed by consent, the original decision shall continue to stand.[25]

As per a study conducted by D.F.O'Connor in 1992, taking in a sample of 80 mediations conducted in Victoria and Queensland, the mediation sessions provided a success rate of 78.5%. It was also noted that mediations served as a useful tool of clarification when there was confusion on the part of the applicant with respect to matters regarding the powers of the authorities, comprehension of the procedures and requirements of the legislation. As a result of this, even in event where mediation sessions were not successful, the dispute proceeded to being heard upon agreed facts, enabling the proceedings to be conducted in a quicker and more efficient manner. [26]

However the AAT has issued a list of instances where mediation sessions cannot be conducted in a successful manner or cannot be mediated upon. These are as follows[27],

1. When the legislation is viewed as harsh, rigid or unfair by the parties;
2. There is no scope for negotiation on the part of the authorities;
3. The parties are not subject to external factors such as financial risk, therefore are not compelled to seek settlement;
4. There exists an ambiguity between the legislation and departmental policy which the tribunal must adjudicate;
5. Administrative authorities feel constrained by policy;
6. Parties seek a precedent or ruling on a point of law;
7. Where maladministration has occurred;
8. The decision is of great social significance and would affect non-parties.

[25] Boulle, *Supra* Note 19.
[26] O'Connor, *Supra* Note 24.
[27] *Id.*

3.2. Case Study: United States of America

The legal system in the United States of America is vastly different from that of India. However the United States of America, is one of the first countries to begin introducing and utilising Alternative Dispute Resolution mechanisms within the administrative process, alongside Australia. The usage of ADR mechanisms by the United States of America is also quite significant in comparison to Australia, therefore it shall be studied.

The foray of the United States of America in implementing ADR mechanism can be traced back to the Executive Order on Civil Justice Reform of 1990. As per this order, agencies were urged to consider the usage of ADR methods in administrative proceedings, for which the United States Department of Justice had delegated Authority. [28]

Echoing the sentiments of the Executive Order of 1990, the Alternative Dispute Resolution Act of 1990 authorises and encourages usage of Alternative Dispute Resolution Mechanisms by federal agencies in disputes. The nature of these disputes could be between[29]:

1. Government and individual citizens;
2. Inter-agency disputes;
3. Disputes arising between labour and management within an agency.

As per the provisions of the aforementioned statute, agencies must in consultation with the Administrative Conference of the United States and Federal Mediation and Conciliation Service, review all programs of the agencies in order to find scope to implement ADR mechanisms and adopt other policies that further the usage of ADR in disputes that may arise with regard to that agency.[30]

Furthermore, each agency must designate a senior official to act as the dispute resolution specialist for the agency. The agencies must also ensure training is provided for dispute resolution techniques and it must review grants and contracts to incorporate the usage of alternative dispute resolution practices.[31]

[28] *Administrative Law, Litigation and ADR*, 1996 A.B.A. Sec. Pub. Util. Comm. & Transp. Ann. Rep. 27 (1996).
[29] *Id.*
[30] *Administrative Law, Litigation, and ADR*, 1998 A.B.A. Sec. Pub. Util. Comm. & Transp. Ann. Rep. 15 (1998).
[31] *Id.*

The state does not mandate the usage of Alternative Dispute Resolution mechanisms but rather encourages it. It does not prescribe the situations in which it must be used but it does state the circumstances where ADR mechanisms must not be considered:[32]

1. Where it is a matter that requires authoritative resolution for precedential value;
2. Where the matter involves significant questions of government policy that require additional procedures before a final resolution is made;
3. The maintenance of established policies is important;
4. A public record of the proceeding is a must;
5. Where the must maintain continuing jurisdiction with authority to alter the disposition of the matter in the light of changed circumstances.

These circumstances, for the most part, are similar to the findings of O'Connor with respect to the AAT in Australia, thereby highlighting a limitation with the usage of Alternative Dispute Resolution mechanisms in the administrative law process.

Certain agencies that utilise ADR mechanisms to resolve disputes are[33]:

1. Department of Transportation;
2. Environmental Protection Agency;
3. Federal Communications Commission;
4. Federal Energy Regulatory Commission.

4. Discussion and Findings

To analyse the role that Alternative Dispute Resolution Mechanisms can occupy in the Administrative Law Process in India, the following questions must be answered:

1. What benefits do ADR mechanisms present in comparison to the existing system?
2. Are ADR mechanisms compatible with the Administrative Law principles currently followed in India?

[32] *Supra* Note 28.
[33] *Id.*

3. Whether ADR mechanisms meet the needs of the current model?

4.1.ADR Mechanisms and their "benefits"

To evaluate the usage of ADR mechanisms in the Administrative process in India, we must look at what they offer. In other words, what do ADR mechanisms bring to the table that is not currently offered by the system that is currently in place to resolve administrative disputes?

In general, the benefits that ADR mechanisms have offered thus far in a private law setting is that it is faster, less expensive, technical expertise, party participation, preservation of relations etc., however most of these benefits are provided by tribunals as well, and that is the very purpose under which tribunals were established. Tribunals provided a faster, less complex and less expensive alternative to courts, accompanied by an expert in the field adjudicating the matter.

The biggest arguments in favour of ADR mechanisms is that they offer technical expertise and adopt a broad problem definition when assessing conflicts.[34] With respect to technical expertise, the appointments made in the tribunals are those individuals who are skilled in that particular field, both in terms of knowledge and experience. In fact with respect to technical expertise, it is highly likely that the individuals appointed to the tribunals are on par with the experts who would be appointed in an ADR process as an expert.

Coming to the part where ADR mechanisms adopt a broad problem definition, thereby allowing them to see the facts and circumstances affecting the issue. This process is adopted by ADR mechanisms as ADR prefers to focus on positions and interests. This can only be done by looking at things such as personal issues, commercial issues, community issues and social issues that affect or will be affected by the dispute.[35] It is considered an advantage over the court system, as courts are required to stick to the legal issues alone, thereby adopting a narrower problem definition and are thus restricted and hampered by obstacles presented in the form of legal technicalities.

However again the establishment of the tribunal system was done keeping in mind that tribunals would emphasise less on procedure and legalities. Tribunals are specialised to deal

[34] *Supra* Note 18.
[35] *Id.*

efficiently and effectively with that particular field. They are not impeded by legal technicalities as courts would often find themselves. Moreover, owing to the nature of the expertise of the adjudicator of the tribunal, it is implied that the required facts and circumstances affecting the case would be looked into as the person adjudicating is well aware of the relevant factors that must be considered, owing to his expertise.

The only clear advantage that ADR mechanisms offer over tribunal proceedings are the fact that ADR mechanisms tend to be final by nature. A problem that is faced by tribunals, as highlighted by the discussion relating to the case of Chandra Kumar in chapter 2, is that the decisions of the tribunals are subject to judicial review by a division bench of the concerned High Court. Many believe this to undermine the tribunals and this has failed to reduce the pendency of cases before the High Courts.

ADR proceedings, for example mediation and arbitration tend to be final by their very nature. In a mediation, both parties come to a settlement and upon that settlement, a contract is drafted and signed. In arbitration, the Arbitration and Conciliation Act has made it increasingly clear that arbitral awards can only be challenged on certain grounds, those of which relate to legality and procedure, rather than merits. Therefore the fact that these proceedings are final, appears to be a prima facie advantage over tribunals.

However it must be noted that the rights that mediation, arbitration and other popular ADR mechanisms have dealt with thus far, relate to commercial rights and those rights relating to other private laws. In administrative law, a public law, the rights being discussed are statutory rights. The nature of statutory rights must be looked into, and seen whether they can be extinguished by arbitration proceedings. Tribunals on the other hand have been exclusively set up by statutes to adjudicate upon these rights. Thus the clearest advantage possessed by ADR mechanisms appears to be ambiguous as the position of their ability to adjudicate on statutory rights with finality is unclear.

Therefore on a side by side comparison, it is abundantly clear that the ADR mechanisms do not offer any significant advantage over the current system in place with respect to public law.

4.2.ADR Mechanisms and their compatibility with Administrative Law Process

As illustrated in the case studies of USA and Australia in Chapter 3, it is clear that administrative law is not fully compatible with the administrative law process. There are

numerous instances that cannot be mediated upon, as shown in the case of Australia, and other instances where a judicial authority is required to be involved, as shown in the case of USA.

ADR is not compatible with administrative law as there exists a power inequality. In mediation, there is a certain level of equality or inequality that is assumed. This difference or similarity is measured by resources, expertise, access to information, ability to tolerate delay etc. In this case, the government has a large power advantage over the citizens, therefore mediation cannot be efficiently utilised.[36] Even if the government adopts a policy to that of USA and Australia and tries its best to sit for mediation, the power inequality from the very beginning will hamper the mediation process to a great extent for it to be fully successful.

Another reason why ADR mechanisms cannot be utilised efficiently in Administrative Law is that ADR mechanisms for the most part tend to go towards compromise settlements. However in public law, it relates to issues of basic civil liberties, which require an authoritative determination. The fundamental difference in how ADR resolves disputes and how an adjudicatory body like tribunals and court resolve disputes is highlighted here. ADR seeks to solve the fight between parties, however courts seek to validate and determine rights, which is more appropriate in a public law setting. [37]

A problem with ADR is it also requires compromise by the administrative authorities, who at most times are constrained by legislation from doing so. There are very limited instances where an administrative authority has the power to exercise discretion in a manner that would be conducive to and ADR process. When talking about the exercise of power by an Administrative authority, we need to look into whether he is exercising the power under a statutory legislation, for eg Income Tax Act, or an executive order, like the rule stating every individual must wear a mask in public during the COVID-19 pandemic. The official only truly has power to exercise his discretion in the event of the latter.

Lastly it is the confidential and private nature of ADR processes that make it incompatible with administrative law. In public law, there are interests over and above those involved in the dispute. Also these involve the exercise of administrative discretion, both of which

[36] *Supra* Note 19.
[37] *Id.*

require openness on the part of the state. Therefore adopting an ADR process here, is simply not possible as it would be antithetical to the features of the administrative system.[38]

4.3.ADR Mechanisms, the answer to the current problems of the administrative law process in India

The current model, as stated earlier, is not perfect and has certain short-comings. However it must be studied whether these short comings would be addressed by the usage of ADR mechanisms.

The problems that plague the current system have been addressed earlier. The current system struggles with 1. Independence 2. Uniformity 3. Finality and Authority 4. Pendency of cases.[39]

The usage of ADR mechanisms does not meet the needs of any of the problems besides pendency. ADR mechanisms can be used in certain instances, as seen in the case of Australia, to help relieve the burden of the case load. However even then these mechanisms would function as supplements to aid the current system in place rather than replace.

Their usage would actually cause more problems with respect to uniformity as the appointment of officials would be up to the parties and thereby unregulated, unless a process as devised in Australia is used.

With respect to independence and finality, the former cannot be dealt with by ADR and the latter has already been discussed earlier.

Therefore it can be stated that ADR mechanisms will not overcome the shortcomings of the current system in place.

5. Conclusion and Suggestions

The introduction of Alternative Dispute Resolution Mechanisms in the Administrative Law Process does not appear to be a particularly beneficial move. Owing to the nature of both the mechanisms and the administrative law process, they are not fully compatible with one another to be practically feasible.

[38] *Id.*
[39] Law Commission of India, *Supra* Note 2.

ADR mechanisms were studied in relation to Administrative law to see how they could be utilised in a practical and feasible manner. The introduction of the process could be done in one of two ways:

1. Replace the existing model.
2. Act as an aid and assist the existing model.

From the discussion held above, it is clear that ADR mechanisms alone cannot be utilised in feasible manner if it were to replace the current model in its entirety. It has far too many limitations and instances where it cannot function.

Furthermore, as seen through the case studies, ADR was only effectively used as a process in administrative law, in a supplemental capacity to facilitate and ease a much larger process.

Utilising ADR mechanisms in a supplemental capacity in India, stands to have some merit. However it would not truly alleviate the current system of the problems it faces to a great extent.

Regardless of the same, the introduction and usage of ADR mechanisms in Administrative Law has been growing slowly in India. The introduction of the Ombudsman in 2019[40] is one example. Another example would be the series of reforms being utilised by the Income Tax Department, by way of faceless assessment or E-assessment. The process seeks to utilise a series of mini-mediations without face to face interaction between officials and citizens, and is expected to make the process more efficient and friendly for the citizens. Both processes have been introduced within the last 2 years and therefore do not have data which can be relied upon or analysed.

In conclusion, it can be stated that ADR mechanisms in the administrative law process in India are feasible and can be utilised to a limited extent. They will never be able to fully replace the current system but they may be utilised to supplement and aid the system in place.

ADR continues to grow in popularity and has been used in administrative law processes across the globe earlier, and India appears to be catching on and has slowly started to do the same.

[40] PTI, *Supra* Note 13.