

HEARING THE ‘LITTLE GUY’ – LITIGANT INVOLVEMENT TO PROMOTE ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN INDIA

—Ameen Jauhar*

To tackle the crippling judicial backlog of the Indian justice system, alternative dispute resolution mechanisms have been formalised and introduced in various formats. Despite their obvious benefits of purported lower costs, and timeliness, these mechanisms have not really found their envisioned success and high utility in reducing mainstream litigation. This paper explores how the absence of proper stakeholder engagement, especially with the service users (namely existing and potential litigants) has been an impediment to improving the popularity of ADR mechanisms in India. It studies a similar project conducted in Alberta, Canada, focusing on how litigants provided valuable insights into improving access to justice through free legal aid and services. It proposes a similar community-based model to re-envision and redeploy ADR frameworks within the country, making them appropriate dispute resolution mechanisms, instead of alternatives. While the notion of litigant awareness and involvement have been part of Indian legal scholarship for some time now, this paper attempts to broach these subjects from a sociological empirical researcher’s perspective to better inform judicial reforms in India.

* Senior Resident Fellow at the Vidhi Centre for Legal Policy, an independent think tank at its New Delhi office. This paper was originally written by the author for his master’s programme in Systematic Reviews for Social Policy and Practice, at the University College London (2017-2018). The author is a lawyer and policy advocate working on judicial reforms and access to justice issues in India, with a focus on the use of evidence-based policy.

Introduction	31	Community-Based Mapping to promote ADR mechanisms in India – an overview	38
A primer to the evolving notion of litigant engagement	32	Piloting CBM to improve the use of ADR in Delhi	39
Structure of this paper	33	Potential challenges to the CBM project and stakeholder involvement .	40
The notion of “Stakeholder Involvement” in Judicial Reforms: An International and Indian Perspective	34	Evaluation of the CBM project and concluding remarks	41
International ideas on stakeholder involvement in judicial reforms: The case of Canadian legal services	34	Continuous Evaluation and the use of feedback loops	42
The flawed dissemination of ADR mechanisms in India	36	Ex-post Evaluation	42
Community based litigant involvement to strengthen ADR frameworks in India	37	Concluding remarks	43

I. INTRODUCTION

In India, the Judiciary faces its greatest logistical challenge since independence. There is a docket explosion, resulting in an ever-increasing backlog of pending cases. As of March 2017, there are more than 32 million pending cases in India across the higher and subordinate tiers of its judiciary.¹ To tackle this burgeoning backlog, several judicial reforms have been introduced institutionally, and through legislation.² Judicial reforms are the collective legislative and institutional reforms and policies, introduced within the judiciary, to improve efficiency in justice dispensation, and increase access to justice.³ One key policy has been the promotion of *alternative dispute resolution* mechanisms (‘ADR’).⁴ These include non-adversarial, out-of-court dispute resolution techniques like arbitration, mediation, conciliation, and negotiation.⁵

¹ Supreme Court of India (2017), “Court News: January to March 2017”, Supreme Court of India, vol. 12:1.

² Amendments to both civil and criminal procedural laws, the creation of fast track courts, alternative dispute resolution, and setting up specialized tribunals for expedient litigation have been introduced in the Indian Judiciary, over the last seven decades. See Law Commission of India, 245th Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower (2014), http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf (accessed April 20, 2018).

³ Jodi Finkel, University of Notre Dame Press, *Judicial Reform as Political Insurance: Argentina, Peru and Mexico in the 1990s* (2008), <https://www3.nd.edu/~undpress/excerpts/P01233-ex.pdf> (accessed April 20, 2018).

⁴ Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014), <http://lawcommissionofindia.nic.in/reports/report246.pdf> (accessed May 10, 2018). See also Vidhi Centre for Legal Policy (VCLP), *Department of Justice, Strengthening Mediation in India: A Report on Court-Connected Mediations* (2016), <https://vidhilegalpolicy.in/reports/2017/7/17/strengthening-mediation-in-india-a-report-on-court-connected-mediations> (accessed April 20, 2018).

⁵ Frank E.A. Sander and Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10(1) NEGOT. J., 51-52 (1994).

Over the last two decades, ADR has been emphatically promoted as a cost-efficient and expedient alternative to litigation. Yet, despite these advantages, recent research shows an underwhelming use of these mechanisms.⁶ A key challenge to a stronger acceptance of ADR frameworks in India is the inadequate engagement of users of such mechanisms (i.e. the litigants), in the processes of developing interventions to promote the same.⁷ This exclusion impairs the ability of policymakers to effectively tackle challenges that such litigants and parties face in accessing and using these mechanisms.

A. A primer to the evolving notion of litigant engagement

As evidence-based policy ('EBP') has gained traction across disciplines,⁸ the emphasis has also increased on improving the quality and extent of the involvement of stakeholders (both service producers and service users), in research and policy processes.⁹ There is a growing recognition of the need to include non-experts in stakeholder engagements, who have traditionally been deemed as outsiders and eschewed out of these processes.¹⁰ The involvement of such area-specific experts aims at counteracting excessive reliance on experience, authority, and eminence.¹¹ It also promotes the 'conscientious, explicit, and judicious' use of the current best available evidence to guide policy decisions.¹²

Sherry Arnstein equated *citizen participation* to *citizen empowerment* – a notion that is theoretically accepted as the cornerstone of democratic governance and administration.¹³ Yet, given the inherent resistance of the expert stakeholders towards any external scrutiny and accountability, this notion of citizen participation becomes a highly challenging and contentious issue.¹⁴ In fact, while enunciating on the nature of this conflict regarding citizen participation, Arnstein conceived of a participation ladder to demonstrate the difference between actual and tokenistic stakeholder engagement. It manifests the degree of influence common citizens may wield (on the policy process) through their engagement. The 'Arnstein ladder of participation' comprises three main

⁶ Law Commission, 246th Report..

⁷ Lord Woolf, UK Parliamentary Archives, *Access to Justice: Final Report on the Civil Justice System in England and Wales* (1996). See also M.H. Crespo, *A Systemic Perspective of ADR in Latin America: Enhancing the Shadow of the Law Through Citizen Participation*, 10 CJCR, 91-129 (2008).

⁸ D. GOUGH ET AL., *LEARNING FROM RESEARCH: SYSTEMATIC REVIEWS FOR INFORMING POLICY DECISIONS*, ALLIANCE FOR USEFUL EVIDENCE 4-28 (2013).

⁹ Lou Townson et al., *We are All in the Same Boat: Doing 'People-Led Research'*, 31 BR. J. LEARN. DISABIL., 72-76 (2004).

¹⁰ Robert K. Merton, *Insiders and Outsiders: A Chapter in the Sociology of Knowledge*, 78(1) AM. J. SOCIOL., 9-47 (1972).

¹¹ Marissa Carter, *Evidence-Based Medicine: An Overview of Key Concepts*, 56(4) OSTOMY/WOUND MANAGEMENT, 68-85 (2010).

¹² David Sackett et al., *Evidence Based Medicine: What It is and What It isn't*, 312 BMJ, 71 (1996).

¹³ Sherry Arnstein, *A Ladder of Citizen Participation*, 35(4) JAPA, 216-224 (1969).

¹⁴ *Id.*

tiers – at the bottom is non-participation wherein citizens are manipulated or merely informed of change in policy; in the middle is tokenism where citizens are engaged superficially to demonstrate legitimacy and participation; and finally, at the top is actual, meaningful engagement with citizens either in partnerships or through delegations. The table below demonstrates the different rungs of the participation ladder.

Citizen control Delegated Power Partnership	Degrees of citizen power
Placation Consultation Informing	Degrees of tokenism
Therapy Manipulation	Nonparticipation

Table 1: Arnstein's ladder of citizen participation¹⁵

In Indian and international literature, while there is a discussion on involving litigants and understanding their needs, it exposes an unequal disposition between the service producers (who are the policymakers) and service users. Furthermore, such litigant engagement has predominantly hinged on validating and legitimizing predetermined policy interventions, in lieu of seeking inputs to influence the design and implementation of such interventions. This argument stems from the idea of policy-based use of evidence rather than evidence-informed policy. In the context of judicial reforms, any institutional reforms that had been initiated, right from amending procedure, to the more contemporaneous e-courts mission mode project,¹⁶ the reforms operate in a top-down format. There is a complete detachment of the “litigant(s)” in either designing or the implementation of these reforms and as such, the stakeholder engagement is devoid of a key resource – the needs and understanding of the end user of the justice system.

This limited notion of *stakeholder engagement* is the underlying challenge that this paper aims to address. For this, the author will be advocating redefining who are deemed *valuable and relevant stakeholders*, effective ways to include such stakeholders in engagement exercises, and gain insightful perspectives on what lapses exist in a system and need to be remedied. Their engagement should not summarily include surveying them once research is underway, or policy decisions have been agreed upon. Instead, as Arnstein argues, real stakeholder engagement requires engagement with preparation, implementation, and evaluation of policy intervention.¹⁷ This paper will focus on proposing the broad contours of such envisioned effective litigant engagement for judicial reforms generally, and more specifically those pertaining to the ADR system in India.

¹⁵ Arnstein, *supra* note 13.

¹⁶ Department of Justice, *Brief on the e-courts project (Phase I & Phase II)*, Ministry of Law and Justice, available online at <https://doj.gov.in/sites/default/files/Brief%20on%20eCourts%20Project%20%28Phase-I%20%26amp%3B%20Phase-II%29%20Dec%202016.pdf>, last accessed on August 20, 2019.

¹⁷ Arnstein, *supra* note 13, at 221-22

B. Structure of this paper

This paper seeks to explore the idea of better and more inclusive stakeholder involvement to improve the popularity of ADR, using *community-based mapping* ('CBM') and better incentivizing litigants to use it.¹⁸ It is divided into three parts: the first part will discuss the growing recognition of the utility of stakeholder involvement in judicial reforms internationally and its comparison with the Indian context; the second part will discuss the benefits of, and challenges to increasing litigant involvement to promote ADR mechanisms in India, using CBM,¹⁹ and the third part will conclude the paper, suggesting a potential evaluation framework to gauge the impact of litigant involvement in promoting the use of ADR in India.

II. THE NOTION OF “STAKEHOLDER INVOLVEMENT” IN JUDICIAL REFORMS: AN INTERNATIONAL AND INDIAN PERSPECTIVE

Internationally, there is some research exploring the facilitators and barriers to stakeholder involvement in the judicial reforms' process.²⁰ This literature favours such collaboration and shows its impact in improving the access to justice for people.²¹ One such study was undertaken by the Canadian Forum for Civil Justice between 2005 and 2006. Having reviewed the same, there are some thought-provoking ideas of how similar methods can be piloted even within India. Before delving further into how the Canadian study can influence reforms in India, it is necessary to review some key facets of this study.

A. International ideas on stakeholder involvement in judicial reforms: The case of Canadian legal services

The Canadian legal fraternity conducted a *community mapping* exercise, involving litigants and legal services users in Alberta.²² This was due to significant international research and legal literature demonstrating how the denial of easy access to justice can make litigation, and the overall justice delivery

¹⁸ Mary Stratton, *Reaching Out with Research: Engaging Community in Mapping Legal Service Accessibility, Effectiveness and Unmet Needs*, in REACHING FURTHER: INNOVATION, ACCESS AND QUALITY IN LEGAL SERVICES (Alexy Buck et al. eds., 2008); Crespo, *supra* note 7.

¹⁹ *Ibid.*

²⁰ Canadian Forum for Civil Justice (“CFCJ”), *Alberta SRL Mapping Project: Final Report* (2007), <http://cfcj-fcjc.org/sites/default/files/docs/2007/mapping-en.pdf> (accessed May 10, 2018); Stratton, *supra* note 18.

²¹ Maria Bakolias, *Legal and Judicial Development: The Role of Civil Society in the Reform Process*, 24(6) FORDHAM INT'L L. J., S26 – S55 (2000); Hiram Chodosh, *Emergence from the Dilemmas of Justice Reform*, 38 TEX. INT'L L. J., 589 (2003); Woolf, *supra* note 7.

²² CFCJ, *supra* note 20.

process, tedious and costly.²³ Furthermore, concurrent research was also supporting of the idea that relevant stakeholders (like litigants as service users) can be involved to make the process of judicial reforms better informed through quality experiential evidence.²⁴ Such collaboration can yield cost-effective market research, valuable insights and ideas, and trust enhancement between stakeholders.²⁵ These factors were key motivators for undertaking this exercise in Alberta.²⁶

To gather its information, researchers undertook qualitative methods of research (mostly individual interviews).²⁷ Additionally, there were also group discussions held involving community members to gain insights on barriers to accessing accurate information about legal services, and knowledge on service providers (both governmental and private), to gain a nuanced understanding of the needs of litigants, as well as how accessible legal services were.²⁸

Through this project, the Canadian legal fraternity was able to identify the following key benefits by involving stakeholders, and systematically compiling their inputs on legal services and the justice delivery system:²⁹

One, knowledge sharing between all stakeholders can truly deliver meaningful change by bringing a holistic understanding of challenges and developing innovative, comprehensive, and effective solutions. For instance, through a pilot study in the province of Alberta (Canada), different organisations established a unique national-level partnership. This allowed them to *one*, create a large pool of dataset on the legal services and the justice system in the province, and *two*, allow effective networking amongst the formal partners of these collaborative efforts, as well as other stakeholders of the justice system to coordinate advocacy efforts in effectuating changes to the civil justice system.³⁰

Two, involving service users (like litigants) can prove insightful in enhancing existing services, and introducing new ones to address the unmet needs of these stakeholders. For instance, the Canadian initiative was adapted from

²³ Shruti Vidyasagar et al., *Approaches to Justice in India* (2017), DAKSH, http://dakshindia.org/Daksh_Justice_in_India/00_cover.xhtml (accessed April 28, 2018); Stratton, *supra* note 18; Woolf, *supra* note 7.

²⁴ Crespo, *supra* note 7; Chodosh, *supra* note 21.

²⁵ Jacques Bughin, *Three Ways Companies Can Make Co-Creation Pay Off* (2014), MCKINSEY, <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/three-ways-companies-can-make-co-creation-pay-off> (accessed April 20, 2018).

²⁶ Stratton, *supra* note 18.

²⁷ Stratton, *supra* note 18 at 63.

²⁸ Stratton, *supra* note 18.

²⁹ Stratton, *supra* note 18.

³⁰ Barbara Billingsley et al., CFCJ, *Civil Justice System and the Public Learning from Experiences to Find Practices That Work* (2006), <http://www.cfcj-fcjc.org/sites/default/files/docs/2006/cjsp-learning-en.pdf> (accessed May 10, 2018).

a previous Australian initiative to enhance communication between the justice system and civil society, to seek direct inputs on reforms for the civil justice system.³¹ Issue of ease of access to courts due to a fragmented nature of the civil processes was one key issue that was identified through the project of open communication with the public.³²

Three, inputs from litigants can prove useful in utilizing financial resources optimally, in preventing redundancy, and ensuring the development of an efficient and expedient justice delivery system. Cost can also be better managed in developing and implementing more targeted interventions, after gaining inputs from litigant participation on the same, rather than ineffective, omnibus interventions. An example of the latter could be advertisements disseminated through mass and print media (for instance, ministry advertisements discussing the role of ADR). The problem is not the objective which is seemingly to spread information – it's the manner in which it is believed that information is the equivalent of willingness to try ADR mechanisms. More importantly, such advertisements seem more prone to serving propaganda value, rather than actually tackling potential questions or enquiries in the minds of the potential user of ADR.

While these benefits became evident, the study found that more scenarios of stakeholder collaboration will need a significant paradigm shift within the legal fraternity. Such initiatives need a bottom-up approach in every sense, starting from access to research, to actually gathering of opinions in a manner that is not patronizing or tokenistic.³³ Simply put, litigants should not merely be informed about steps or prospective reforms but should have real and meaningful engagement as stakeholders empowered to negotiate and influence such reforms.³⁴

B. The flawed dissemination of ADR mechanisms in India

From my work experience as a former litigator, and a research fellow focusing on judicial reforms in India, I can say that Indian policymakers working in this field are quite exclusionary in this process.³⁵ In the process of determining challenges and formulating solutions for the Indian judiciary, the litigant is often eschewed out of it.³⁶ The debate is typically limited to lawyers, judges, and legal academics and researchers. In fact, the absence of any major

³¹ Prof. Stephen Parker, *The Australasian Institute of Judicial Administration, Courts and the Public* (1998), <https://aija.org.au/publications/courts-and-the-public/> (accessed October 8, 2018).

³² Billingsley, *supra* note 30.

³³ Arnstein, *supra* note 13.

³⁴ Bakolias, *supra* note 21; Chodosh, *supra* note 21.

³⁵ Justice (Retd.) K.G. Balakrishnan, Keynote Address, Indo-EU Business Forum (London), *Judicial Reforms in India* (2008) <<http://www.delhihighcourt.nic.in/library/articles/Judicial%20Reforms%20in%20India.pdf> (accessed May 8, 2018).

³⁶ *Id.*

non-legal experts writing or publishing scholarship on reforming the Indian judiciary is *per se* indicative of how limited the stakeholder involvement is in the space of judicial reforms. This conspicuous absence of non-legal, interdisciplinary research often stems from what Merton described as the 'insiders versus outsiders' phenomenon.³⁷ The non-legal researchers are meted a step-sibling treatment who despite their own expertise are deemed incapable of grasping the nitty-gritty of legal processes, consequently apparently disqualifying them researching and publishing on legal systems and judicial reforms.³⁸

While the courts exist to service the litigants, it feels unethical, undemocratic, and arbitrary to not listen to the litigants, the 'little guys',³⁹ who are diurnal users of the justice system.⁴⁰ As the recipients of the services of courts and lawyers, litigants are key stakeholders, and it is only fair and potentially useful to allow them to have a say in this process.⁴¹

III. COMMUNITY BASED LITIGANT INVOLVEMENT TO STRENGTHEN ADR FRAMEWORKS IN INDIA

The aforementioned Canadian project presents some useful ideas that can be adapted and piloted in India as well. The said study demonstrated the ability of CBM to delve into a qualitative appraisal of multiple perspectives (emerging from the community) on service accessibility. Before venturing further into this potential framework, it is fair to disclose the reason for looking to Canadian research on this subject. Both Canada and India are common law jurisdictions, deriving their tenets, and basic legal procedures and institutions from the English common law (as erstwhile colonies).⁴² In fact, because of this commonality in their respective legal systems, even previously, Indian policymakers and legal researchers have looked at Canadian practices to modify them and adopt the same within our own country.⁴³

³⁷ Merton, *supra* note 10.

³⁸ Ameen Jauhar, *Wait for Justice: How New CJI Ranjan Gogoi Should Tackle Judicial Backlog*, THE FINANCIAL EXPRESS (Oct. 5, 2018), <https://www.financialexpress.com/opinion/wait-for-justice-how-new-cji-ranjan-gogoi-should-tackle-judicial-backlog/1337843/> (accessed October 8, 2018).

³⁹ Little guy is a symbolic moniker quite popular in the legal fraternity. It represents the hope of justice that the weaker, or less influential litigant may have because of "due process" and "equality before law".

⁴⁰ Bakolias, *supra* note 21.

⁴¹ Bakolias, *supra* note 21.

⁴² Alok Prasanna Kumar et al., *Towards an Efficient and Effective Supreme Court: Addressing Issues of Backlog and Regional Disparities in Access* (2016), VIDHI CENTRE FOR LEGAL POLICY, <<https://vidhilegalpolicy.in/reports/2016/2/8/towards-an-efficient-and-effective-supreme-court>> (accessed April 28, 2018).

⁴³ Alok Prasanna Kumar et al., *Consultation Paper: The Supreme Court of India's Burgeoning Backlog Problem and Regional Disparities in Access to the Supreme Court* (2015), VIDHI CENTRE FOR LEGAL POLICY, <https://vidhilegalpolicy.in/reports/2015/10/1/consultation-paper-on-the-supreme-courts-burgeoning-backlog> (accessed April 28, 2018); Ameen Jauhar, *SC Backlog: The Need to Amend Article 136 & Limit Appeals*, THE QUINT (July 14, 2016), <https://>

A. Community-Based Mapping to promote ADR mechanisms in India – an overview

Despite being cost-efficient and timely expedient, ADR mechanisms are still not deemed mainstream legal frameworks for dispute resolution in India.⁴⁴ The literature on the subject has indicated that among other reasons, inadequate promotion and the failure to understand ground level needs for effectively deploying ADR frameworks in India are key challenges faced by policymakers and the Indian judiciary.⁴⁵

It is pertinent to mention here that while there has been a general acknowledgement of inadequate awareness about ADR mechanisms amongst parties and litigants, the literature discussing this deficiency has lacked an empirical nuance in determining its causality. For instance, the recent *Srikrishna Committee* report on institutional arbitration stated the lack of adequate awareness as a key impediment to the promotion and use of institutional arbitral tribunals in India.⁴⁶ Yet the same report has not actually evaluated why this lack of awareness exists, or more effective ways to combat this problem (which needs to go beyond the conventional workshop-oriented approach towards generating user awareness). Another example of this emerges from a recent white paper published by the Department of Justice (GoI), listed the lack of knowledge about mediation processes amongst litigants and potential users, as a key barrier to its growth.⁴⁷ Arguably, this lack of knowledge stems from a flawed or inadequate involvement of all stakeholders. In such instances, a more meaningful engagement with litigants and parties potentially using ADR frameworks could present qualitative contextual insights to formulate better targeting and innovative solutions for awareness campaigns.

In such a background, CBM can prove to be a useful framework for engaging existing litigants and potential users of ADR. CBM is a type of community-based participatory research. It hinges on an organisational and research relationship between community members and researchers.⁴⁸ Developed as a format for assessing needs through collaborative participation of communities or individuals, CBM is increasingly being used in different policy processes involving the delivery of services and facilities.⁴⁹ Therefore, this

www.thequint.com/voices/blogs/supreme-courts-power-on-special-leave-petitions (accessed May 18, 2018).

⁴⁴ Vishnu Konoorayar, *ADR: Status/Effectiveness Study* (2014), <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-410340> (accessed May 10, 2018).

⁴⁵ Law Commission Report, 246th Report; Justice Srikrishna et al., *Report of the High Level Committee to Review the Institutionalization of Arbitration Mechanism in India* (2017), <http://legallaffairs.gov.in/sites/default/files/Report-HLC.pdf> (accessed November 20, 2018).

⁴⁶ Srikrishna, *supra* note 45.

⁴⁷ VCLP, *supra* note 4.

⁴⁸ Barbara Israel et al., *Review of the Community-Based Research: Assessing Partnership Approaches to Improve Public Health*, 19(1) ANNU. REV. PUBLIC HEALTH, 173-202 (1998).

⁴⁹ Stratton, *supra* note 18.

community-based involvement of stakeholders is a legitimate attempt to make them an integral part of the policy formulation process (including actively involving them in all research in pursuit of the policymaking process), and any recommendations devised thereunder.⁵⁰ Such engagement typically involves *one*, the participation of the community stakeholders to evolve and fine-tune the policy challenge (or research question); *two*, training the community stakeholders in research techniques to aid in the data gathering process; *three*, sharing findings emerging from data analysis which would feed into the formulation of a policy intervention; *four*, incorporating feedback on the findings and recommendations, before effectuating the intervention; and *five*, evaluating and modifying the intervention as needed.⁵¹ To reiterate Arnstein, not only does such a participatory framework empower citizenry in a democracy, but it also fosters a sense of ownership and commitment in developing and successfully implementing policy interventions.⁵²

With respect to ADR mechanisms, CBM can deliver vital and nuanced insights for two key objectives: *one*, on how to educate communities and individuals about the benefits of using ADR mechanisms and incentivising their use; and *two*, recognising local and domestic needs and ensuring that the laws which establish ADR procedures address the same, rather than blindly adopting Western or international standards.⁵³

B. Piloting CBM to improve the use of ADR in Delhi

It would be ideal to pilot the CBM exercise in one particular city, instead of simultaneously initiating such projects across India.⁵⁴ From my work experience, I believe Delhi would be a suitable city to pilot this programme. This is because the High Court of Delhi and its five District Courts have the requisite infrastructure and logistical framework in place, to facilitate this programme which (as anticipated) may result in a significant increase in the number of cases going to ADR.⁵⁵

⁵⁰ Jacques Chevalier et al., *Participatory Action Research: Theory and Methods for Engaged Inquiry*,, ROUTLEDGE (2nd edn., 2013), at pp. 1-9.

⁵¹ Israel, *supra* note 48.

⁵² CFCJ, *supra* note 20.

⁵³ Crespo, *supra* note 7.

⁵⁴ The complexity and novelty of a CBM structured stakeholder participation makes it a costly and logistically tedious exercise. The idea behind piloting this process in a single city (which has an established reputation to be relatively better in the providing access to and having a higher rate of usage of ADR mechanisms), is to evaluate the impact of this exercise. It allows an opportunity to iron out shortcomings and ensure the CBM framework to be better equipped for Indian cities. Lastly, a staggered employment of this framework would ensure that the cost (presumably borne by the exchequer) is not a logistical nightmare for State and Central Governments in India. *See* Stratton, *supra* note 18.

⁵⁵ Konoorayar, *supra* note 44.

It is pertinent to reiterate the two key attributes of community-based participatory models (like CBM) – *one*, comprehensive participation of community members at all stages of the research (and policy formulation) processes, and *two*, to not include them merely for interaction, but also allow them to lead interactions, debates, and discourses addressing the issues being researched.⁵⁶ In the present case, it would first require potential community members to be identified, and approached for their engagement in this project. Ideally, these should be people who have either litigated or have had some experience with ADR frameworks. The initial set of research participants can further identify more potential participants through *snowball sampling*.⁵⁷ The objective of CBM should be to allow these community members to not only formulate the questions or key points for the group and individual interactions but also be trained by the team of policy researchers and analysts in actually leading these discussions.⁵⁸ This could, for instance, involve some basic seminars on the rudiments of qualitative research methodology, and its application in such scenarios. The degree of their involvement in these interactive processes will be the yardstick to evaluate how authentic the principles of stakeholder engagement have been adhered to or been deviated from.⁵⁹

C. Potential challenges to the CBM project and stakeholder involvement

While a CBM programme could provide some impressive results in promoting and incentivising the use of ADR frameworks, it will prove to be a challenging endeavour in the following ways:

(a) The hierarchical culture of the justice system

A key lesson that emerged from the aforementioned Canadian study is that legal structures and justice delivery systems are inherently hierarchical.⁶⁰ From the way courts operate (from trial to the appellate processes), to the more intangible manner in which reforms and policies are conceived, there is a hierarchy.⁶¹ Added to this is the conventional pattern of only listening to members of the legal fraternity when it comes to reforming the judiciary, and access to justice.⁶² While the objective of the CBM exercise is to break the ‘outsider versus insider’ demarcation and involve all variants of stakeholders, in reality,

⁵⁶ Israel, *supra* note 48.

⁵⁷ Snowball sampling refers to a process where an initial individual serves as a gatekeeper, aiding and facilitating in the recruitment of other research participants. See Mark Mason, *Sample Size and Saturation in PhD Studies Using Qualitative Interviews*, 11(3) FORUM: QUALITATIVE SOCIAL RESEARCH 2010).

⁵⁸ Crespo, *supra* note 7; Chodosh, *supra* note 21.

⁵⁹ Arnstein, *supra* note 13.

⁶⁰ Stratton, *supra* note 18.

⁶¹ Justice Balakrishnan, *supra* note 35.

⁶² CFCJ, *supra* note 20.

implementing this will be challenging due to hierarchical rigidity in the culture of the justice system.⁶³

(b) Complexity of the justice system

A challenge encountered in the Canadian CBM project was tackling the inherent complexities of the justice system. From procedures of law to interactions between litigants and the courts, the processes are layered, hierarchical (as aforementioned), and exceedingly complex. It is in this background that members of the justice fraternity have often challenged the notion that individuals not familiar with these complexities would fail to provide meaningful ideas to address problems faced by it.⁶⁴ The ADR mechanisms are one segment of the overall justice delivery system in India, which too (arguably) is a complex motley of procedures and laws.⁶⁵ Therefore, an inherent resistance could be faced by advocates of a stronger stakeholder involvement.

At this point I reiterate, despite this defensive mentality, this exercise can, and should be undertaken, as it was even in the Canadian context. The resistance to change or more collaborative engagement can only be broken if such an exercise is conducted successfully, which is another reason to pilot it in a single city, rather than a pan-Indian research exercise. The success of such a pilot programme could also demonstrate the benefits of adequate stakeholder engagement and its impact in better informing and educating non-experts on issues and nuances of legal processes and practice. It will (hopefully) dispel some of the dogma against the non-legal experts, who are vital contributors to policy discourses across disciplinary lines.

The information that emerges from this mapping exercise could prove useful in understanding barriers and facilitators to the use of ADR in local communities, the ways in which awareness programmes could be made more informative and accessible, the potential of engaging the government officials, judiciary, and civil society (community) representatives, in a collaborative exercise to identify common interests and pursue such interests for collective benefit of all concerned in these processes.⁶⁶

IV. EVALUATION OF THE CBM PROJECT AND CONCLUDING REMARKS

The evaluation framework laid out herein is suggestive for this prospective initiative to involve litigants in research and policy processes for judicial

⁶³ Stratton, *supra* note 18.

⁶⁴ Stratton, *supra* note 18.

⁶⁵ Konoorayar, *supra* note 44.

⁶⁶ Stratton, *supra* note 18; Crespo, *supra* note 7; Chodosh, *supra* note 21.

reforms. This section proposes a bifurcated evaluative process – namely, continuous evaluation during the term of the project, and an *ex-post facto* evaluation of the project, and also discusses how the same could contribute to the overall project.

A. Continuous Evaluation and the use of feedback loops

Feedback loops provide an informal framework to the community members who are engaged in the project, to present their thoughts, ideas, and inputs in an informal and inclusive format.⁶⁷ The Canadian study also used such feedbacks as an intrinsic part of their community mapping exercise.⁶⁸ For the proposed project, such feedback loops could yield important inputs to ensure two things – first, easy adaptability and timely responsiveness of the project conductors to the emerging needs of the participants; and secondly, stakeholder involvement in the continuous evolution of the programme. It is recommended that even for the proposed CBM project, feedback loops be incorporated at all stages from conception to implementation, to ensure litigant involvement in spirit.

B. Ex-post Evaluation

After the conclusion of the project, evaluation can serve as a lesson learning phase, with the following potential benefits:

(a) Impact assessment

A crucial element of the theory of change proposed in this paper is how litigant involvement could have a direct impact on improving the popularity and use of ADR mechanisms in India. To evaluate this, a quantitative *ex-post facto* impact evaluation could be undertaken. For instance, quantitative data can be gathered and analysed to determine if greater stakeholder engagement has resulted in improving the use of ADR mechanisms. Quantitative assessments are ideal, and the format of choice typically used by policymakers and policy analysts in judicial reforms.⁶⁹ This data could help assess if there has been a positive impact of litigant involvement on improving the rate of ADR frameworks, and in changing the laws governing them to accommodate domestic needs, and if yes, quantify the extent of this impact. More nuanced assessment of what factors worked, or those which need revision, can be undertaken through qualitative interviews and focus groups.

⁶⁷ Centre for the Study of Social Policy (CCSP), Western and Pacific Child Welfare Implementation Centre, *Stakeholder Engagement: Tools for Action* (2013), https://www.cssp.org/publications/general/WPIC_DCFS_Stakeholder_Engagement_Toolkit.pdf (accessed May 22, 2018).

⁶⁸ Stratton, *supra* note 18.

⁶⁹ Aparna Chandra, *The Role of Data in Judicial Reform*, INDIA TOGETHER (February 11, 2015), <http://www.indiatogether.org/quality-of-data-on-pendency-in-courts-and-effectiveness-of-judicial-reform-laws> (accessed April 28, 2018); Vidyasagar, *supra* note 22.

(b) Deepening future collaboration

Evaluation of the CBM project will help members of the legal community, and the concerned policymakers to realise if there is any real positive impact of such litigant involvement in actually augmenting the rates of ADR usage. Furthermore, through a more qualitative methodology of evaluation, like interviews and group discussions, the legal fraternity can tap into the rich experiential evidence of the community members participating in the process, to find ways to deepen such collaboration in the future projects and develop more sustainable and permanent models to facilitate the same. The members of the justice community conducting this project can also utilise basic standards and principles designed by researchers working on stakeholder involvement evaluation,⁷⁰ as well as tool kits designed by ENGAGE for policymakers and researchers on good practices for ensuring high standards in stakeholder involvement.⁷¹

Together this evaluative framework can provide useful information for improving different models of stakeholder involvement, across India, to improve the quality of and access to justice.

C. Concluding remarks

To reiterate, this paper was aimed at introducing and discussing the feasibility of litigant involvement to expand and strengthen the ADR mechanisms in India. While there has been an initial exploration of this idea herein, and some frameworks for stakeholder involvement, and evaluation thereof, have been proposed, these are only indicative (and not prescriptive) of the potential of such collaboration. It is my belief that any programme of collaborative participation must also be conceived and developed with inputs from the concerned stakeholders (in this case community litigants), and not be formulated unilaterally.

Therefore, this paper recommends ideas which hitherto were under explored in the field of judicial reforms in India, in the hope that future research and policy action can build on the same to effectuate better informed and inclusive changes within the Indian justice system.

⁷⁰ Jonathan Boote et al., *What Does It Mean to Involve Consumers Successfully in NHS Research? A Consensus Study*, 7(3) HEALTH EXPECTATIONS, 209-220 (2011).

⁷¹ The different toolkits are classified and listed for free public access online at <http://engage.hscni.net/get-involved/involving-people/methods-of-involvement/co-production-and-involvement-tools/> (accessed May 22, 2018).