

## ADR developments in China



**Zafar Iqbal Kalanauri<sup>1</sup>**

It is a principal social phenomenon that, dispute lies in every aspect of the social life. These disputes are traditionally resolved through dispute resolution mechanism which include litigation and non-litigation(ADR). ADR is an acronym for the phrase “Alternative Dispute Resolution”. It can simply be defined as a catch-all term used to describe a wide variety of methods in resolving legal disputes often out-of-court. Some of the more popular forms of ADR are Arbitration, Mediation, Negotiation and Conciliation amongst others.

Litigation and ADR, both have their advantages and defaults, and they are mutually complementary at the same time. So, the article holds that establishing and perfecting a set of diversified resolution mechanism, which unifies litigation and ADR effectively, is of great significance to stabilizing economic development and building a harmonious society. The article introduces and compares the dispute resolution mechanism including litigation, arbitration and mediation, and concludes with the view that the mechanism of linking litigation and non-litigation to solve social disputes will become a new developmental trend in China.

Mediation has been part of China’s cultural fabric for thousands of years. The process of a respected neutral assisting parties in the resolution of a dispute has existed since ancient times. As China evolved from its ancient past into a feudal society, to imperial, to the present day, expectations of mediation have changed.

### **1. Introduction**

“Dispute is a status of social parties with their benefits in conflict.”<sup>1</sup>It is impossible for any society to eliminate the contradiction, and the human society always develops in contradictions.<sup>2</sup> Conflicts are inevitable. The occurrence and solution of disputes constitute a permanent pair of contradiction in the development of human society which gradually develops and grows in the process of settling the said pair of contradiction.<sup>3</sup>

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<sup>1</sup> He Bing, “Dispute Resolution in the Modern Society”, Beijing Legal Publishing House (January 2003).

<sup>2</sup> Speech by Zhou Yongkang at the National Political Work Conference, December 18, 2009.

<sup>3</sup> Charles Horton Cooley, “Social Process” (Hong Xiaoliang et al. trans.), 28. Beijing Huaxia Publishing House (2000)

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Generally speaking, the mechanism of dispute resolution includes two parts: litigation and non-litigation (ADR). As the organic composition part of the mechanism of dispute resolution, both have their own advantages, and always play an active role in dispute resolution. Nevertheless, litigation, as the final way to dispute resolution, is characterized by its unique state compulsion and strict standardization. It is always favored and advocated by the parties and countries in dispute. It used to be the goal of modern legal system to fully substitute other dispute resolution mechanism with judicature. However, since the 1960s, for instance, with the large increase in popular lawsuit demands, a series of problems began to emerge, such as the “litigation explosion” and unsecured benefits of the disadvantaged. The litigation systems of various countries in the world were generally beset with an unprecedented crisis. Non-litigation began to attract more and more people’s attention, and the dispute resolution mechanism of non-litigation was widely applied. Even in the U.S., a country advocating “judicial supremacy”, the rapid development of non-litigation has become an irresistible trend. In our contemporary society where the constitutional system is being growingly mature, the resolution of dispute and the choice of resolution methods are related to public resource distribution as well as citizens’ judicial right. In order to alleviate the judicial crisis and ensure people’s access to justice, all countries are attempting to seek for a non-litigation method to solve the disputes, and it is an unavoidable trend to establish a kind of diversified dispute resolution system. Modern China understands mediation as an effective dispute resolution mechanism, and it is adapting the tradition of mediation to the necessities of modern day commerce, social norms and political systems. Today, China recognizes the importance of mediation, and mediators are more than wise village elders roaming the countryside. Mediators need professional training, institutional and legal support, and access to technology. Professional mediation training programs, court annexed systems, legislative reform, and online dispute resolution are all hot topics in modern Chinese Alternative Dispute Resolution. China is currently undergoing a push toward the Rule of Law. This is a positive development, but it has resulted in a surge in litigation. People increasingly want their day in court, and the courts are backlogged. Drawing upon China’s cultural history, the ancient Chinese tradition of mediation will have an even larger role to play in the development of China’s future

## **2. The Path of Social Dispute Resolution**

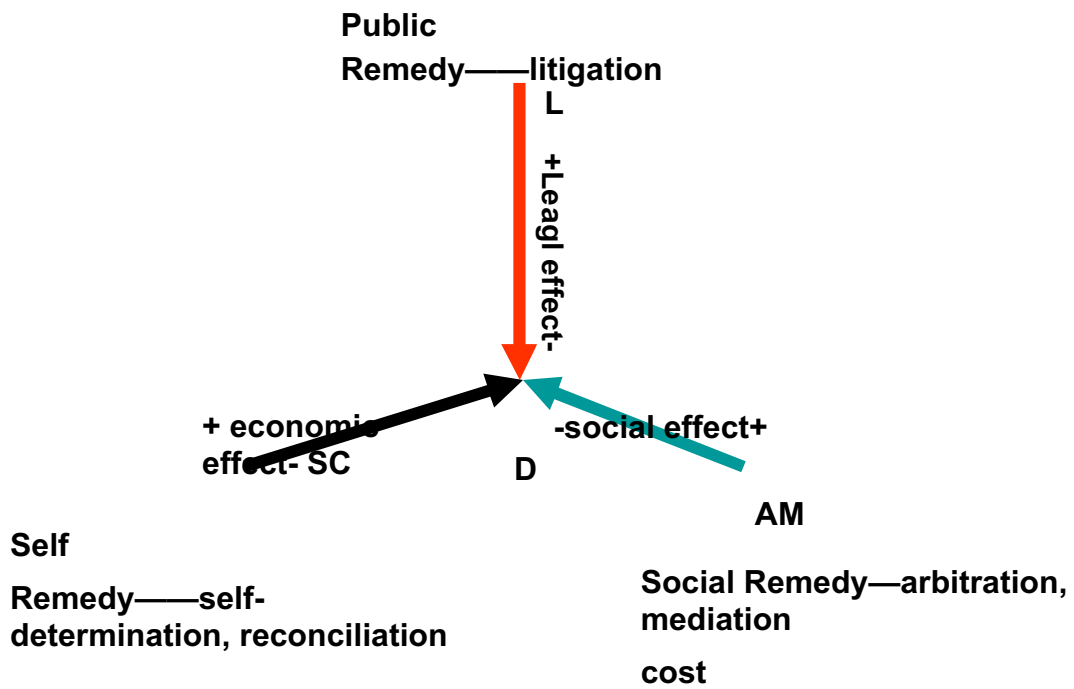
### ***2.1 Categorization of social dispute resolution mechanism***

There are three ways of remedy to solve social disputes: first, self-remedy. It is also called “private relief”, or popularly known as “solving a matter privately”. It refers to the situation that people solve the dispute by themselves, with no third party assisting with or presiding over the dispute resolution process; second, social remedy. It is a dispute resolution mechanism relying on the social power and based on both parties’ agreement; third, public remedy. It means to solve the dispute through the national power, i.e. national interference into the dispute resolution.

### [The path of social dispute resolution

We find three paths to solve social disputes from different perspectives according to different methods of dispute resolution. As shown by Chart 1 as followed:

Chart 1 : The path of dispute resolution



**Remedy—self-determination, reconciliation**

**2.3 The definition of ADR in China**

In China, the ADR theory is quite different from that under the Western legal system. Although a similarly independent ADR institution now exists in China, the general idea of ADR under the PRC legal system is actually amalgamated into the judicial or arbitration process in hearing. The People’s Mediation System is the ADR formality for Chinese parties and its ‘oriental experience’ has won high praise in international judicial circles. Unlike Western-style ADR, ADR in China is more often conducted by the same court or tribunal during or after the hearing rather than by an independent organ before the hearing. The less confrontational nature of such mediation methods can also help preserve the commercial relationship between the dispute parties. Therefore, it is obvious that the principal difference between China ADR and Western ADR lies in the broad application of mediation principles in the whole process of dispute resolution, and in all kinds of ways, which embodies the idea of “harmony is highly precious” advocated by the Confucian culture

**3. Litigation, Arbitration and Mediation:**

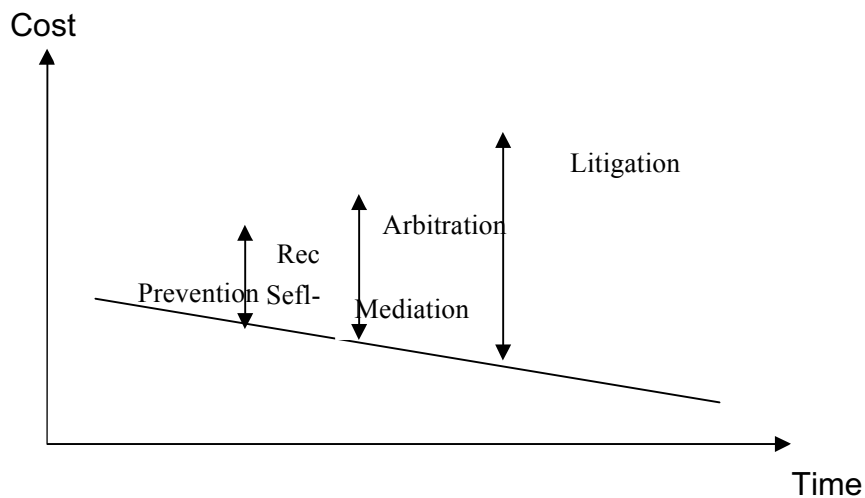
**Comparison of dispute resolution mechanism in China**

China’s economy and society have developed rapidly, benefiting from three decades of reform and opening up. At the same time, the number of civil and business disputes in China has also increased apace. Three alternative methods are available for domestic and foreign investors to resolve their disputes in China: mediation, arbitration and litigation. Mediation is conducted between the concerning parties on a voluntary basis and has no legal binding effect. Compared with arbitration, in China, court litigation remains the most traditional way of resolving disputes and litigation is much stronger to protect investor’s interests though it is more complex, unpredictable and time-consuming. But arbitration has been widely used in commercial disputes, particularly those involving foreign elements.

**3.1 Litigation**

Courts, as national organ, exercise trial power to solve disputes, and litigation is the concrete content.

**3.1 Comparison between efficiency and cost among the three methods**



As chart 2 shows, comparing to mediation, arbitration and litigation during the process

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of disputes resolution, the cost is increase more and more and time is longer step by step. Mediation has three characteristics: convenient, time saving and low cost, but law effect is not enough and least hurt to all parties; litigation is complex, time wasting and high cost, but with strong law effect, easily to hurt the parties; arbitration is in the middle. Obviously, the three methods have their advantages and disadvantages, how to apply systematically is the new trend of China ADR.

### **3.1.1 The organization system of Chinese courts**

China practices a system of courts characterized by 'four-level and two-instance of trials'. The judicial authority of the PRC is exercised by the following people's courts: local courts at three levels; military courts, maritime courts, railway transport people's courts and other special courts; as well as the Supreme Court, which is the highest authority. Local courts are divided into fundamental courts, intermediate courts and higher courts. The courts adopt a system whereby a case should be finally decided after two instances. Basic people's courts shall include county people's courts, municipal people's courts, courts of autonomous counties, and courts of municipal districts. A basic people's court shall adjudicate criminal and civil cases of first instance, settle civil disputes, handle minor criminal cases not requiring trial, and direct the work of people's mediation committees. The intermediate people's courts shall be set up in prefectures of a province, autonomous region or municipalities directly under the central government. It shall handle the following cases: those of first instance assigned by laws and decrees to their jurisdiction; those of first instance transferred from the basic people's courts; those of appeals, and of protests lodged against judgments and orders of the basic people's courts. It also supervises the trial work of local people's courts in its jurisdiction.

The higher people's courts shall be set up in provinces, autonomous regions or municipalities directly under the central government. A higher people's courts shall handle the following cases: those of first instance transferred from people's courts at lower levels; those of appeals and of protests lodged against judgments and orders of people's courts at lower levels, and those of protests lodged by people's procuratorates in accordance with the procedures of judicial supervision. The Supreme People's Court, the highest judicial organ of China, shall supervise the administration of justice by the local people's courts at various levels and by the special people's courts. The Supreme People's Court shall handle following cases: cases of first instance which are assigned by laws and decrees to its jurisdiction or which it deems it should try; cases of appeals and of protests lodged against judgment and orders of higher people's courts and special people's courts; cases of protests lodged by the Supreme People's Procuratorate in accordance with the procedures of judicial supervision of questions concerning specific applications of laws and decrees in judicial proceedings.

### **3.1.2 The trial organization of Chinese courts**

The trial organization of Chinese courts can be divided into single judge court, collegial panel, and judicial committees. A single judge court is the organization in which the simple cases are tried by a single judge. Cases that are applicable for single judge courts are: criminal cases apply to summary procedure; the simple civil disputes tried by basic people's courts and their tribunals, qualification or other big and difficult cases shall be tried by collegial panels, the single judge shall adjudicate other cases of this type independently. A collegial panel is composed of more than three judges or of judges and people's assessors. Except for a part of simple cases, most cases are tried by collegial panels. Administrative cases of first instance, cases of second instances, retrial cases and cases concerning judicial review of death sentence are all tried by

collegial panes. A collegial panel is a basic trial organization. Judicial committee is in charge of the whole judicial work in a people's court. The main duty of a judicial committee is to sum up the judicial experience, discuss difficult, complex or major cases and other judicial issues. The principle of democratic centralism is practiced in its work.

### **3.1.3 Trial Systems in Chinese trying practice**

The two-instance system means that the judgments and orders of second instance shall become legally effective. The collegial system is a system in which a collegial panel which consists of judges and people's assessors shall adjudicate cases. Under the withdrawal system, when a member of the judicial personnel has a personal relationship with one party, if he or she may administer the case justice impartially. When a member of judicial personnel is under the legal circumstance in which he shall withdraw, he shall withdraw automatically. The death sentence review system refers to the proceeding to review and approve the judgment of the death penalty. The trial supervision system, also called retrial system, is a system through which the people's courts retry the judgments and adjudications that have taken legal effects. The international judicial aid system means the judicial department of a nation, in accordance with the bilateral or multilateral treaties or in accordance with no international treaties, in the request of judicial department or the party concerned of another nation, to act as the procurator. The judicial aids include: serving of civil documents and obtaining civil evidence; mutually admit and execute the adjudications of courts and the awards of arbitration organizations; serving of criminal documents and obtaining criminal evidence.

## **3.2 Arbitration**

With the development of reform and opening-up and market economy, arbitration is become increasingly vibrant in China and has become one of the important methods to resolve disputes. In allusion to the division of objects for the dispute resolution, arbitration can be divided into domestic economic contract arbitration, foreign trade and maritime arbitration as well as labor arbitration.

### **3.2.1 The CAA 1994**

China's unique cultural tradition formed the fine tradition for resolving disputes through arbitration. The Chinese law regards arbitration as an effective method of resolving the international trade and investment disputes, and practice has proved that the commercial transaction is also prone to resolve disputes through arbitration. The Arbitration Law of the People's Republic of China was issued by the National People's Congress on 31 August 1994, and came into force on September 1, 1995. The CAA 1994 applies to both domestic and international arbitration and embodies numerous modern arbitration principles and China's basic arbitration principles. Under the CAA 1994, arbitration agreement is the basis for arbitration. A valid arbitration agreement is the prerequisite for arbitration bodies to accept the cases. Arbitration agreement between the parties excludes the jurisdiction of courts unless it is void. Arbitration shall be conducted independently and not be subject to any interference from administrative authorities, social organizations or individuals. An arbitral award shall be final and binding on both parties once it comes into force. Such awards can be enforced by courts. During arbitral proceedings, the arbitral tribunal may carry out conciliation in accordance with the parties' free will. Arbitration is combined with conciliation. In case a valid arbitration agreement exists, the court shall refer the parties to arbitration and thus ensure the enforceability of arbitration agreement. Upon the request of the parties,

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the court shall rule on the effect of the arbitration agreement and offer property preservative measures or measures of protection of evidence. Courts may, as the case may be, grant or reject the application for setting aside or, stay the setting aside procedure and remit the award to the arbitral tribunal for re-arbitration in order to eliminate the grounds for setting aside.

### **3.2.2 Domestic Arbitration**

The CAA 1994 has brought fundamental changes to China's domestic arbitration. The former domestic arbitration bodies subordinate to administrative organs ceased to exist on 1 September 1996. They must be reorganized in accordance with the Act. All reorganized arbitration bodies shall be independent from administrative authorities and there shall be no subordinate relationship between arbitration bodies and administrative authorities as well as between arbitration bodies themselves. Up to now, more than 160 arbitration institutions have been set up pursuant to the CAA 1994.

### **3.2.3 International Arbitration**

As far as the international commercial arbitration is concerned, since the 1950s, China has, by international practice, adopted arbitration as the final award mechanism. As early as 1956 and 1959, the first two international arbitration institutions, China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC) were founded under the auspices of the China Council for the Promotion of International Trade (CCPIT) /China Chamber of International Commerce (CCOIC). All the international arbitration cases were submitted to CIETAC and CMAC for arbitration. After the CAA 1994, although other arbitration institutions may also accept international cases, almost all the international arbitration cases are still filed to CIETAC for arbitration by the parties. CIETAC, pursuant to the autonomy of the parties and the practical need of the business, extended its jurisdiction further to all domestic cases the parties submit by agreement in its Arbitration Rules 2000 (effective as from 1 October 2000). Both CIETAC and CMAC are always the leading arbitration institutions in China.

### **3.2.4 China International Economic and Trade Arbitration Commission(CIETAC)**

China International Economic and Trade Arbitration Commission (CIETAC), was established in 1956 with its original name of Foreign Trade Arbitration Commission. In 1980 the Arbitration Commission was renamed as the Foreign Economic and Trade Arbitration Commission, later in 1988 changed to the name, CIETAC. CIETAC established its Shenzhen Sub-Commission and Shanghai Sub-Commission respectively in 1989 and 1990, and five offices in Chongqing, Chengdu, Changsha, Fuzhou and Dalian in 1999. The Beijing Headquarters of the Arbitration Commission, its Shenzhen Sub-Commission and its Shanghai Sub-Commission are one institution. They use the same Arbitration Rules and Panel of Arbitrators. CIETAC has formulated its own rules of arbitration procedure. The Provisional Rules of Arbitration Procedure were formulated when the Arbitration Commission was established. To meet the demands of its development, the Arbitration Commission amended its arbitration rules respectively in 1988, 1994, 1995, 1998 and 2000. According to the current Arbitration Rules, CIETAC takes cognizance of cases over international, foreign-related and domestic disputes of a contractual or non-contractual nature in accordance with an arbitration agreement between the parties to submit their dispute to CIETAC for arbitration.

## **3.3 Mediation**

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**Types of Mediation in China:** Today, China uses five broad types of mediation. The most regularly used types are “People’s Mediation,” also known as “Civil Mediation” and “Judicial Mediation.” People’s Mediation is conducted by grassroots community mediators. Judicial Mediation is conducted by judges. Other forms of mediation are “Administrative Mediation,” conducted by government officials, “Arbitral Mediation,” conducted by arbitral administrative bodies, and “Industry Mediation,” conducted by respected associations within a particular industry. People’s Mediation is organized by “People’s Mediation Committees” (PMCs). PMCs are established under the Chinese Constitution as autonomous organizations, whose mission is to mediate civil disputes. PMCs and their mediators might exist in a village, a residential block, or a factory work unit. Today, there are about 4 million people’s mediators in China, far more than the number of judges or lawyers. Judicial Mediation is performed by judges, usually prior to a trial. In many cases, a judge is required to first try to mediate a case. If the parties reject the mediation, or if no settlement results, the case proceeds to trial with the same judge adjudicating the case. About 30% – 40% of court cases are settled by mediation. Mediation is to achieve self-reconciled process through communication and coordination between the mediators and parties concerned. China mediation system and ADR has century’s history so far.<sup>4</sup> Nowadays, there are five types of mediation.

### **3.3.1 Civil Mediation**

Mediation is conducted by People's Mediation Committees outside the court. This system originated in ancient China and took shape in the 1930s when China was locked in a war against Japanese invasion. It was formalized in the early 1950s shortly after the founding of New China. Disputes involving neighbours often have no formal dispute-resolution mechanism. People's Mediation Committees generally focus on this type of neighbourhood conflict, with trained volunteers from the local community usually serving as mediators. Mediation helps the parties repair relationships, in addition to addressing a particular substantive dispute. Agreements reached in civil mediation are generally private, but now, the parties have the option of making their agreement enforceable in court. People's Mediation Committees will offer their services for free. The roots of civil mediation can be found in community concerns to find better ways to resolve conflicts, and efforts to improve and complement the judicial system. Citizens, neighbours, religious leaders and communities became empowered, realizing that they could resolve many complaints and disputes on their own in their own community through mediation. US Supreme Court Chief Justice Warren Burger made a visit to the People’s Republic of China in 1981-a visit which included an opportunity to see at first hand the work of people’s mediation committees in Shanghai. After this visit, he called on those involved in civil litigation in the United States to search for a “better way”. Civil mediation now flourishes throughout China.

### **3.3.2 Judicial Mediation**

Mediation is conducted by a court of law in civil and economic disputes and minor criminal cases inside the court. For marital cases, inside-court mediation is a necessary procedure. Whether or not to seek judicial mediation is for litigants to decide. Mediation is not a necessary procedure. A court's mediation document is as

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<sup>4</sup> Phillip C Huang ‘Commercial Mediation in China, Past and Present’ (2006) 32 (3) *Modern China* 1; Xiaobing Xu ‘Different Mediation Traditions: A Comparison between China and the US’ (2005) 16 *American Review of International Arbitration* 515; Bobette Wolski ‘Culture, society and mediation in China and the West’ (1997) 3 *Commercial Dispute Resolution Journal* 97.



valid as its verdict.

### **3.3.3 Administrative Mediation**

This can be outside-the-court mediation by grassroots governments such as a township government in ordinary civil disputes, or outside-the-court mediation by government departments in compliance with legal provisions in specific civil disputes, economic disputes and labor disputes.

### **3.3.4 Arbitration Mediation**

Arbitration mediation: Mediation by arbitration bodies in arbitration cases. Arbitration is called upon only if mediation fails to resolve the differences. This is also an outside-the-court mediation. In major commercial centres such as Beijing and Shanghai, the mediation and arbitration system has proved to be very successful in addressing disputes relating to commercial and economic cases, particularly cases relating to foreign trade and investment. Such system enjoys a good reputation among domestic and international business circles.

### **3.3.5 Litigation-connected Mediation**

Litigation-connected mediation: Mediation involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. In domestic relations matters, the agreement shall then be filed with the court. Upon motion and after hearing a mediated agreement may be registered with the court to make it legally binding.

## **4. New developments of ADR Connection Mechanisms of Litigation and Non-litigation**

Due to the fact that the approach of Alternative Dispute Resolution has no legal validity, the parties finally tend to resort to courts after spending considerable time and effort. However, the parties inevitably end up with a lose-lose result due to the complicated as well as time-consuming and energy-consuming legal proceedings. Indeed, in order to remove the disadvantage of low efficiency of civil dispute resolution mechanisms, it is far from enough to rely on various dispute resolution approaches only. During the overall design and operation of dispute resolution mechanisms, it will be difficult to straight out the approaches of dispute resolution if there is no systematic and coordinated development strategy, and mechanism connection and proceeding arrangement are not scientific and rational enough. Only by establishing a coordinated dispute settlement system<sup>5</sup> that connects litigation and non-litigation dispute resolution mechanisms, and keep an ecological social balance as well as achieve comprehensive and long-lasting relationship between disputed parties<sup>6</sup>, can the efficacy of the

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<sup>5</sup> From the sociological theory about dialogue and reflection of Habermas and Luhmann, legal system and dispute resolution ideas as well as institutional innovation and ideology wealth can be perceived from different angles, through which many scholars get a view of the possibility of connecting traditional meditation and modern legal system. Source: Ji Weidong, Law Development New Mechanism of Meditation System-from the Contradictory Situation of Chinese Legalization, recorded by Meditation, Legal System and Modernity: Chinese Meditation System Study compiled by Qiang Shigong, p1-87.

<sup>6</sup> Grant: Trial, Litigation and Related Phenomenon, See Zhu Jingwen: Modern Western Legal Sociology, p199.

mechanisms of litigation and non-litigation dispute resolution be maximized and effectiveness of allocation resources optimized.

#### **4.1 Basic connection requirements of litigation and non-litigation dispute resolution mechanisms are satisfied.**

Firstly, they are relatively independent. Litigation and non-litigation mechanisms exist independently, which play their own advantages and are irreplaceable. Relative independence also serves as a precondition for their mutual transformation. Secondly, they are alternative. All kinds of mechanisms coexist in parallel without superiority for parties to choose, which makes the separation of civil disputes feasible. Thirdly, they can be mutually transformed. There are reasons for the transformation. On the one hand, diversity of settlement mechanisms and different choices of parties are involved. On the other hand, dynamics in civil disputes also lead to transformation between settlement mechanisms.<sup>7</sup> Fourthly, they are related intrinsically. Litigation and non-litigation mechanisms constitute an organic system in civil dispute settlement. The ability of dispute settlement not only displays itself in reasonable construction and effective operation of each mechanism, but also in whether all kinds of mechanisms can form an organism with intrinsic relevance.

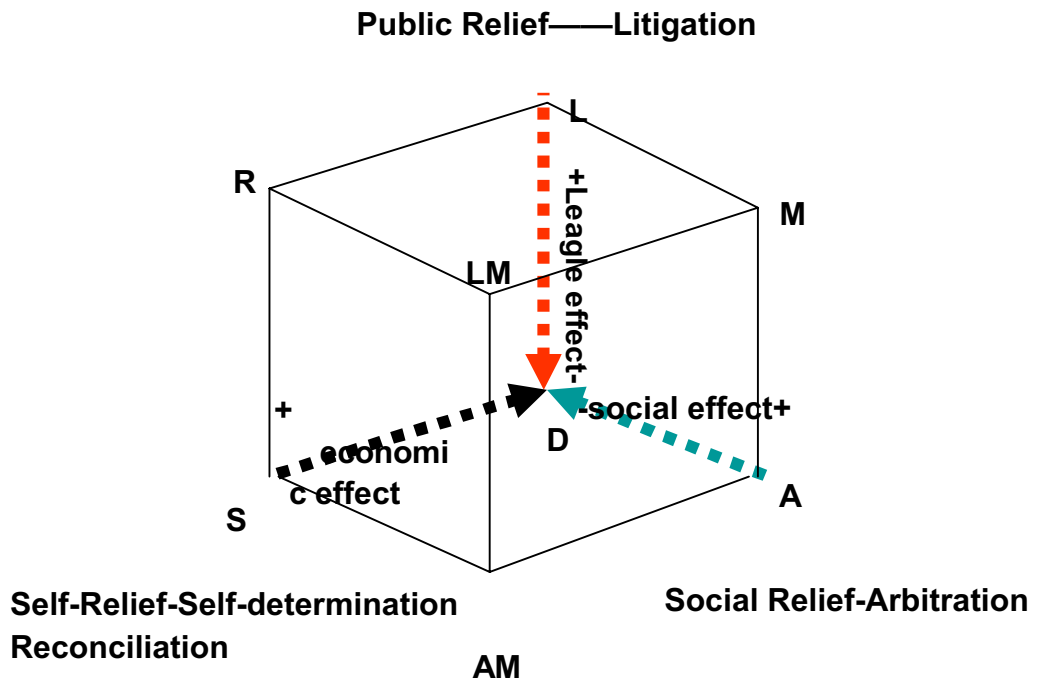
#### **4.2 Future direction of Chinese ADR mechanism**

Therefore, China is trying to systematically integrate all kinds of dispute settlement mechanisms of self-relief, social relief and public relief. Through improving and reforming judicial system and working mechanism, litigation and non-litigation mechanisms will be connected tightly and form a three-dimensional dispute settlement network. Please refer to chart 3

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<sup>7</sup> Civil dispute is a segment of social life. It will change with the development of social environment and subjective awareness, and it is dynamic and changeable. Dispute resolution mechanisms are supposed to correspond with civil disputes, and when the latter changes, the corresponding dispute resolution mechanism will naturally change correspondingly.

**Chart 3 : Mechanism on ADR connection between litigation and non-litigation**



- D – Disputes;**
- S - Self-determination;**
- R - Reconciliation;**
- A - Arbitration ;**
- M - Mediation ;**
- L - Litigation;**
- AM - Arbitration &**
- Mediation; LM - Litigation**
- & Mediation**

#### **4.2.1 Prevention - dispelling disputes**

Under the mechanism of comprehensive disputes resolution, courts should solve the disputes through extensive methods such as “self-relief and reconciliation” by improving mass media, social ethnic and citizen quality, which will settle social disputes and achieve the best social effects.

#### **4.2.2 Coordination - Mediating disputes**

The courts should motivate social power to take part in the process of social disputes resolution through “arbitration and mediation”, and solve the disputes through pre-litigation mediation and arbitration mediation prior to litigation.

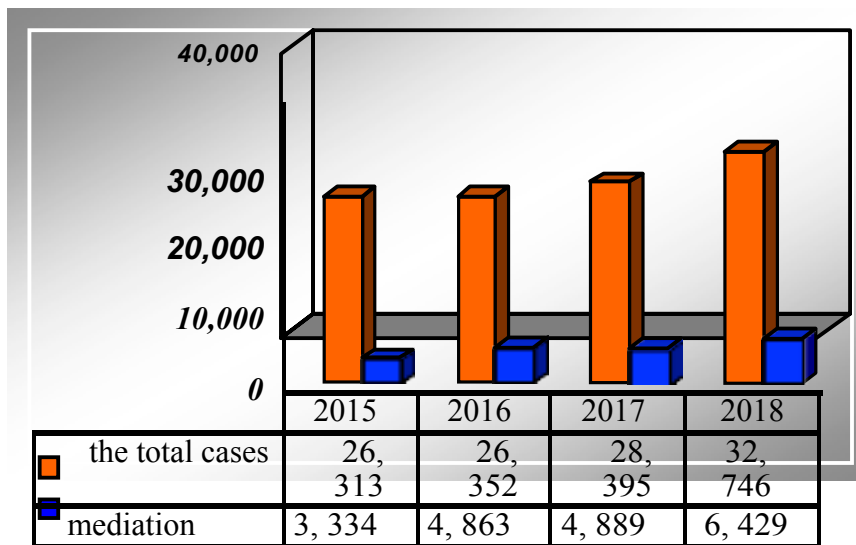
#### **4.2.3 Service - evacuating disputes**

The courts should provide lawsuit consulting, litigation mediation and explanation after trial through comprehensive judicial service, which will moderate or settle the disputes through litigation.

#### **4.3 An example: Shanghai Pudong New Development Area People’s Court**

Nowadays, China is to establish the court-leading procedure in order to connect the litigation and non-litigation. From 2006, Shanghai Pudong New Development Area People’s court established a court-connected mediation program, required that litigants in all civil and commercial cases consider the use of mediation in the pre-trial stages of a case. The number of cases settled through court-connected mediation accounts for 16.3% of the total number of cases in civil and commercial matters from 2015 to the first eight months in 2018 (not including the cases settled through judicial mediation). Chart 4 shows a comparison of percentages of cases in civil and commercial matters settled through mediation at Pudong New Area Court

**Chart 4: A comparison of percentages of cases in civil and commercial matters settled through Mediation**



Other courts also have similar situations. Percentages in some courts may be higher and that of other courts may be lower, but the average percentage can reach 18% according to recent data provided by the research division of the Supreme Court. In August, 2009, the Supreme Court of China issued the guideline for court-connected mediation and judges may carry out meditation according to the following principles:

- (1) Mediation of disputes between parties ought to be permitted by those parties;
- (2) When parties give up mediation or give up the approaches of dispute resolution, the final outcome will not be affected;
- (3) Once a judge has begun to act as a mediator in a dispute case, the judge can only bring in a verdict with the consent of the parties.

Unless with the consent of the parties, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence of information release in civil and commercial judicial proceedings or arbitration or in the process of meditation.

## 5. Conclusion

If dispute resolution mechanisms of any country emphasize one aspect at the expense

of another, the mechanisms will be unhealthy. China traditionally put particular stress on the mechanism of non-litigation, and in a certain period it emphasizes more on the construction of litigation mechanism. In fact, both of the two aspects are supposed to be connected organically. Only by doing so, can various mechanisms of civil disputes be legally built and improved and legal effects, social effects and economic effects can be organically balanced and unified in order to promote harmonious development of society.

**New Developments in Mediation in China:** While mediation has many benefits, there have been concerns that the standard of mediation must improve to better serve modern Chinese society. China has been looking at combining the positive concept of harmony and dispute resolution embedded within traditional Chinese mediation, with the norms and expectations of modern international ADR practices. The Central Chinese Government has been pushing five significant changes.

**The first change is a greater focus on personal rights.** Traditional mediation has its origin in Confucian ethics, where mediators persuaded parties, sometimes quite authoritatively; to reflect on their own mistakes, give up their own interests and compromise to settle disputes. Making the dispute disappear for the betterment of the group was more important than the desires and rights of the individuals involved. As China pushes toward Rule of Law and provides more rights to its citizens, however, the Chinese people have been looking to lawsuits to enforce their rights, seeing traditional mediation as unable to provide the relief they desire. In order to match the expectations of a more rights-conscious and individually focused society, modern mediation is more about the rights of the parties, than the overall harmony of the group. **The second change is the professionalization of mediation.** Although China has a vast number of mediators, almost none of them have received professional training. People's Mediation Committees are usually underfunded, most mediators are either poorly paid or entirely voluntary, and almost all mediators are part-time. Today, more resources are being used to train and educate mediators, in order to provide People's Mediation Committees with better resources. Professional mediation organizations have emerged in insurance, securities, intellectual property and other sectors, and China has begun to see the emergence of its first full-time mediators. **The third change is collaboration between mediation bodies,** in particular, between courts and professional non-judicial mediation organizations. Parties can resolve their disputes at a mediation organization and then have their settlement award confirmed by a court. Likewise, courts can refer cases to mediation organizations, or invite mediation organizations to provide advice, recommendations and assistance to the courts. **The fourth change is the institutionalization and legislation of mediation.** China has enacted a "**People's Mediation Law,**" and it has amended the "**Civil Procedure Law**" to outline forms of mediation, qualifications for mediation, selection of mediators and procedures for judicial confirmation of mediated settlements. **The fifth change is the use of modern technology and online dispute resolution.** The Supreme Court established a national online dispute resolution platform [www.fayuan.com](http://www.fayuan.com) in 2017. Within one year, over **1,000 courts** and **12,000 mediation organizations** had joined this platform. Through this online mechanism, parties can apply for mediation, select a mediator, attend via video, and sign an agreement through their cell phone, tablet or computer. In addition, the **Zhejiang province government** has set up a comprehensive dispute online resolution platform [yundr.gov.cn](http://yundr.gov.cn), which provides diversified services including: consultation, evaluation, mediation, and arbitration. In late summer 2017, the **first Internet court** was established in **Hangzhou**, specializing in handling **Internet-related cases**, to cater to the increasing number of online disputes.

## **New treaty to encourage cross-border Mediation has been signed by China.<sup>8</sup>**

The United Nations Convention on International Settlement Agreements Resulting from Mediation was signed by 46 Countries, including China and USA on 7<sup>th</sup> August, 2019 at an official signing ceremony in Singapore. To be known as the "Singapore Mediation Convention", the Convention is intended to facilitate the enforcement of settlement agreements that have been entered into with the assistance of mediation. The Convention is consistent with the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation (2018). According to UNCITRAL, the intended benefits of the Convention include that it will 'bring certainty to the international framework on mediation' and facilitate 'the promotion of mediation as an alternative and effective method of resolving trade disputes'. The Convention reflects a business need and an increasing prevalence of mediation as an international dispute resolution mechanism (whether stand-alone or in combination with other hybrid dispute resolution mechanisms, such as the practices of 'med-arb', 'arb-med', and 'arb-med-arb'). This approach is intended to provide States with the flexibility to adopt either the Convention, the Model Law as a standalone text or both the Convention and the Model Law as complementary instruments of a comprehensive legal framework on mediation. It will come into force six months after three countries have signed. The Convention will make international settlements resulting from mediation easier to enforce, in much the same way as the New York Convention has made awards from international arbitrations easier to enforce. This should promote the use of mediation as a dispute resolution mechanism for international disputes.

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<sup>i</sup> Zafar Iqbal Kalanauri, Advocate Supreme Court of Pakistan, Arbitrator, Mediator, Adjunct Faculty of Law at SAHSOL, Lahore University of Management Sciences (LUMS), SAF Center, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan. Cell: (92) 300- 4511823  
E-mail: [kalanauri@gmail.com](mailto:kalanauri@gmail.com) ; Web: <http://www.zklawassociate.com>

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<sup>8</sup> <http://www.zklawassociate.com/wp-content/uploads/2012/03/The-Singapore-Mediation-Convention.pdf>