

UNPOPULAR OR UNFAMILIAR DISPUTE RESOLUTION?

– HOW JAPANESE PEOPLE VIEW ADR –

*Kyoko Ishida**

This paper discusses how Japanese people view alternative dispute resolution (ADR) in Japan, based on a recent empirical survey. Although the Japanese government enacted the so-called ADR Act of 2004 in order to promote use of ADR, Japanese people do not actively use ADR. The survey result shows that inactive use of ADR does not mean that there is no need for ADR, or that people dislike ADR. Simply, not many people know about ADR even though many people have experienced problems for which they have considered consulting with an attorney. We need education and advertisement efforts, for ordinary people as well as legal professionals, so that the existing ADR services can provide effective solutions to citizens and contribute to the promotion of a fair and just society as it is designed by the ADR Act.

Key words: ADR, ADR service providers, Japan, Attorney, Access to justice

I. INTRODUCTION

This paper discusses how Japanese people view alternative dispute resolution (ADR) in Japan, based on a recent empirical survey. Although the Japanese government enacted the so-called ADR Act of 2004 in order to promote use of ADR, it seems that Japanese people do not actively use ADR to date. Compared to the number of civil disputes brought in the district courts, the number of cases brought to private ADR institutions is very small. Why do Japanese people rarely use ADR?

In order to explore the reasons for this and to develop a proposal to increase use of ADR in Japan, the ADR Study Group,

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composed of nine scholars,¹ conducted two surveys: (1) a questionnaire survey for those people who actually used ADR provided by bar associations from October, 2014 to January, 2016; and (2) Internet surveys for ordinary people and those who used any dispute resolution system in February, 2016. This is the first survey on this scale focusing on ADR in Japan. Through these surveys, we aimed to understand both how users find ADR and how ordinary people view ADR.² This article mainly provides an overview of the major findings from the Internet survey of ordinary people. First, I briefly discuss an overview of the ADR Act and recent statistics about ADR and the court in Japan. Then I explain major findings of the Internet survey. Finally, I discuss what causes low use of the ADR system in Japan. In summary, my paper shows that although the ADR system is well designed through legislation in 2004, it is an unfamiliar dispute resolution system for Japanese people even today. More active use of ADR could be promoted through advertisement efforts for both citizens and legal professionals, with the latter group acting as the hub to connect citizens to ADR.

II. BRIEF OVERVIEW OF THE ADR SYSTEM IN JAPAN

The Justice System Reform Council published a report in 2001, which proposed overall reform of the judicial system, including the reform of civil procedure and the system of the legal profession as well as an introduction of the lay judge system in criminal courts. It also proposed a reform of the dispute resolution system outside the court, namely, alternative dispute resolution (ADR):³

¹ The members are: OTA Shozo (University of Tokyo), HISHIDA Yukyo (University of Tokyo), ISHIDA Kyoko (Waseda University), KAKIUCHI Shusuke (University of Tokyo), KAWAKAMI Shoji (University of Tokyo), FOOTE H. Daniel (University of Tokyo), IMAZAI Keiichiro (Hokkaido University of Education), IRIE Hideaki (Kyusyu University), and MAEDA Tomohiko (Meijo University).

² The whole report is scheduled to be published in 2018 from Japan Bar Foundation in Japanese.

³ As to the overview of the justice system reform, *see*, Setsuo Miyazawa, *The Politics of the Judicial Reform in Japan: The Rule of Law At Last?*, 2 Asian-Pac. L. & Pol'y J.19 (2001)

*In addition to making special efforts to improve the function of adjudication, which constitutes the core of the justice system, efforts to reinforce and vitalize ADR should be made so that it will become an equally attractive option to adjudication for the people. ... In order to promote and improve various types of ADR by making use of their characteristics, cooperation among organizations concerned should be strengthened and a common institutional base should be established.*⁴

Based on this recommendation, the Act on Promotion of Use of Alternative Dispute Resolution (*saibangai funsōkaiketsu tetsuzuki no riyō no sokushin ni kansuru hōritsu*) (Act No.151 of 2004) (hereinafter ADR Act) was enacted in 2004.⁵ The basic scheme adopted by this Act was as follows: (1) the Minister of Justice certifies service providers that provide ADR services such as mediations if the applicant satisfies the certification standards and has the “necessary knowledge and skills as well as a financial base for carrying out the services” (Art.6); without such certificates, service providers may be penalized under the Attorney Act for the “unauthorized practice of law” (Art.5-13) if the provider is not an attorney (*bengoshi*) or an attorney corporation (*bengoshi hōjin*); (2) the Act also allows the person who uses an authorized ADR to invoke suspension of prescription under the statute of limitations (Art.25) so that the user may first try a certified ADR and then file a lawsuit if he or she finds the ADR proceedings were not successful. The court can also suspend the civil proceedings upon a request of both parties when the parties agree to try a certified ADR for the case for up to 4 months (Art.26). Through these treatments, the Act aims to maintain the quality of ADR services and to facilitate collaboration of the court and certified ADR service providers so that people can trust ADR and have easy access to it.

As of August 2018, there are 156 institutions that have obtained

⁴ Justice System Reform Council, Recommendation of the Justice System Reform Council, Chap.II (8)(2001), English translation is available at <https://japan.kantei.go.jp/judiciary/2001/0612report.html> (last accessed 2018/8/1).

⁵ As to an outline of the ADR, see, Yamada, ADR in Japan: Does The New Law Liberalize ADR From Historical Shackles or Legalize It?, 2 Contemp. Asia Arb. J. 13 (2009).

certification by the Minister of Justice under this scheme.⁶ However, the number of cases they have handled is very small. Many providers reported accepting less than 10 cases annually.⁷ While ADR services provided by local bar associations are relatively successful, the number of cases they receive annually in total is only about 1,000.⁸ According to Judicial Statistics published by the Supreme Court, the number of disputes (*sosho jiken*) that the district courts received in 2015 was 167,287 in total, and the number of disputes that the summary courts, (the court handling disputes involving less than 1,400,000 yen), received in the same year was 339,064. Compared to these numbers in the judicial branch, it is clear that the cases brought to private ADR service providers are significantly smaller. Why do so few people access ADR in Japan?

III. OVERVIEW AND MAJOR FINDINGS OF THE INTERNET SURVEY

A. Overview of the Questionnaire

The purpose of the Internet survey by the ADR Study Group was to know how ordinary people see ADR. While user surveys could provide important information about how those people who actually used ADR find the system, we wanted to reach ordinary people in order to explore the major reasons why only a small number of citizens use ADR. The survey was conducted in February of 2016 and the total number of surveys was 2,000, assigned with a ratio of gender and generations representative of

⁶ However, five institutions terminated its services. The list of certified ADR service providers is available at the website managed by the Ministry of Justice, <http://www.moj.go.jp/KANBOU/ADR/jigyousya/ninsyou-index.html> (Japanese only) (last accessed 2018/8/1).

⁷ Certified service providers are required to publish their activity report on the website mentioned note 6.

⁸ White Papers published by Japan Federation of Bar Association report total number of cases that ADR services of local bar associations received in total. According to this report, they received 1012 cases in 2013, 990 cases in 2014, and 950 cases in 2015. The report is available online: https://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2016/6-9-1_tokei_2016.pdf (Japanese only) (last accessed 2018/8/1).

the Japanese population.⁹ The organization of the questionnaire is as follows:

- (1) Q1. Questions regarding the respondent's own experience with issues for which he or she considers consulting with legal professionals.
- (2) Q2. Questions regarding the respondent's knowledge of ADR
- (3) Q3. Questions regarding how the respondent prefers to resolve a legal issue if he or she happens to face it.
- (4) Q4. Questions regarding the respondent's expectations about a dispute resolution system
- (5) Q5-Q10. Questions regarding the respondent himself or herself (age, gender, experience studying law, education, family income, etc.)

We had 990 male respondents and 1,010 female respondents. The respondents' ages ranged from 21 to 75. The samples were successfully collected all over Japan.

B. Major Findings

There are several important findings from this survey. First, we asked if the respondent had any experience of facing "trouble (*momegoto*)" for which he or she had considered consulting with a legal professional within past five years (Q1-1). Specifically, 18.6% responded "Yes," 77.8% responded "No," and 3.7% responded "Don't know." This means that about one fifth of the Japanese adult people will face a legal issue in five years. This result seems to be similar to another online survey conducted by the Cabinet Secretariat in 2014. That survey also asked a similar question regarding the respondents' experience of facing legal issues for which the respondent had considered consulting with an attorney. As to this question, 20.6% of the respondents answered "Yes."¹⁰

⁹ The survey itself was conducted by a research corporation called Survey Research Center (SRC). The SRC has an alliance with the Rakuten Research Corporation which has about 2.27 million individual participants who can volunteer for an Internet survey.

¹⁰ The report of this survey is available online: http://www.cas.go.jp/jp/seisaku/hoso_kaikaku/ (Japanese only) (last accessed 2017/12/10). As to the

Figure 1 shows the types of legal issues the respondents faced. Spousal, neighbor, money, and workplace problems are the major issues.

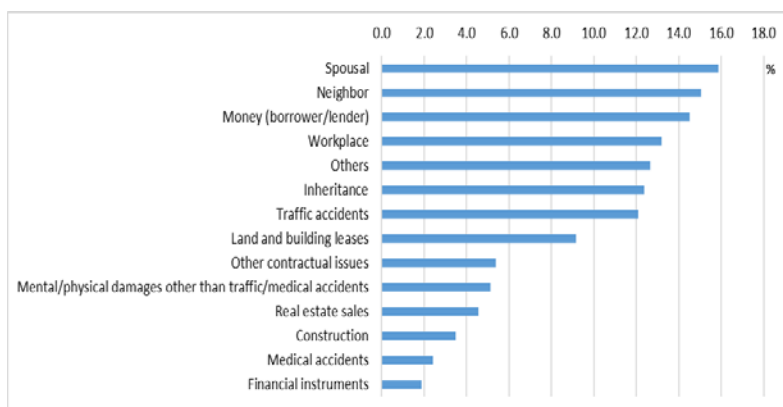


Figure 1 Types of legal issues (Q1-1) (n=372)

Figure 2 shows persons/institutions that those respondents who had legal issues consulted with. Among those who have had legal issues, 38.2 % consulted with an attorney (*bengoshi*), and 21.2% consulted with legal counseling services provided by a local government, in which generally attorneys or quasi-lawyers (such as judicial scriveners (*shiho shoshi*)) provide consultation.¹¹ The most notable finding is the third ranked answer - 14.8% of the respondents answered that they did not consult with anyone even though they acknowledged that they had a legal issue. Since the Justice System Reform started, the number of attorneys has doubled and some claim that the legal services market is “too crowded.” However, we can see that there is still a substantial portion of people who do not, *or* cannot, access legal counseling

summary of this survey, *see*, Kyoko Ishida and Masahiko Saeki, “*Hōsō jinkō chōsa ni miru bengoshi no juyō to riyōsha no irai iyoku* (Needs for Attorneys and User’s Motivation to Ask Attorneys from ‘The Survey of Legal Profession Population’)” 2 Hō to Shakai 85 (2016) (in Japanese).

¹¹ In Japan, there are several kinds of legal professionals in addition to *bengoshi*. Judicial scriveners can represent clients in summary courts as well as undertake land registration, administrative scriveners can represent clients in some administrative proceedings. The number of those so-called *quasi lawyers* (*rinsetsu horitsu senmonshoku*) is never negligible. *See*, Kyoko Ishida, *Growing Influences on Lawyer Substitutes*, 27 Waseda Bulletin 15 (2009).

even when faced with a legal issue.¹²

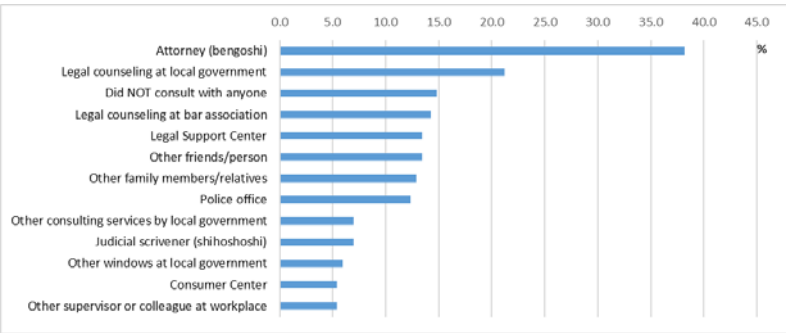


Figure 2 (Q1-2) Person/Institution consulted about legal issues (n=372, multiple answers)

Figure 3 shows actions taken for the legal issue by the respondent and/or the professional he or she retained. While 40.3% (n=150) responded that they negotiated with the other party, it is also notable that 34.7% (n=129) responded that they did nothing. Again, we can see that in Japan there are people who have an access problem and just shelve the problem. Another notable result is that 8.9% used court-annexed conciliation (*chōtei*), whereas 7.5% filed a suit in court. There were 4.8% (n=18) of respondents who used private ADR services.

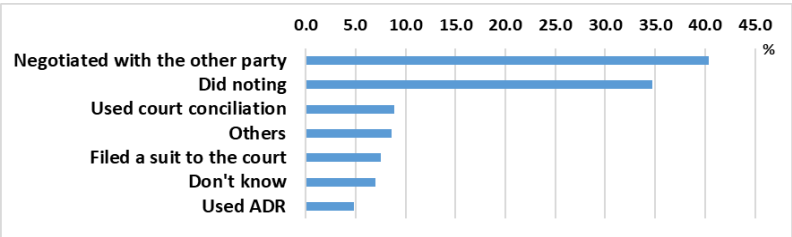


Figure 3 (Q1-4) Action taken for the legal issue

Based on these answers, we can say that, although the possibility of facing a legal issue is not so low (one fifth) in Japan, there are a substantial number of people who do not, *or* cannot,

¹² As to the claim that the market is too crowded due to the sudden increase of attorneys, *see*, The Japan News (Yomiuri Shimbun), “40% of trainee lawyers can't secure work / Crowded field leads to intense competition,” August 14, 2010.

access legal professionals even when faced with a legal issue. As to actions taken for such a legal issue, the most frequent was negotiation, but close to 10% approached the court for court-annexed conciliation or formal proceedings.

Next, we surveyed people's knowledge and views about ADR. The questionnaire simply asked, "Have you ever heard of the term 'ADR' before you participated in this survey?" Surprisingly, 80% (n=1,611) answered "No," whereas 13.4% (n=267) answered "Have heard of the term only," 4.0% (n=79) answered "Have known the content of ADR to some extent," and 2.2% (n= 43) answered "Have known the detailed content of ADR." This result shows that the overwhelming majority of Japanese people do not know about ADR in the first place. For those who responded that they knew ADR to some extent (n=389), the questionnaire asked the source of his or her knowledge (Q2-1). One third (n=128) responded that they knew of it through media (newspapers, TV commercials, magazines, etc.) and 27.9% responded that they saw it on the Internet. On the other hand, only 6.4% (n=25) answered "from an attorney or bar association." Needless to say, it is the attorney whom the persons who have a legal issue try to approach in general. This result shows that the attorneys and bar associations do not function as an effective hub to connect people to ADR service providers even today.

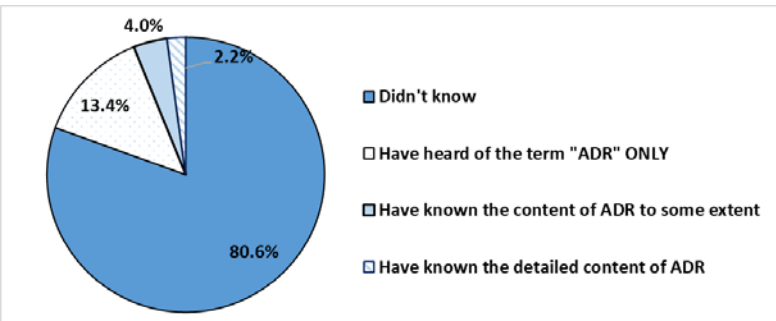


Figure 4 (Q2-2) Did you know the term “ADR”?

Regardless of the fact that four fifths of Japanese people do not even know the term “ADR,” about 20% of the respondents at least have heard of ADR. The questionnaire asked these people about their view of ADR (Q2-2). Figure 5 shows the result. Answers

were rated on a five point scale from 1 (Agree) to 5 (Disagree).¹³ Figure 5 integrates those answers into a three point scale. The longer the left bar is, the more people agreed with that phrase. The item that the most respondents agreed with was “ADR is an unfamiliar system.” Similarly, the majority agreed with “ADR is a reasonable dispute resolution system,” and “ADR is a quick dispute resolution system.” On the other hand, the item that the most respondents disagreed with was “ADR is an unnecessary system because we have the court system.” The majority also disagreed with “ADR is an unreliable system.” What does this result mean? We can see that those who have some knowledge about ADR do not view it negatively. They know the major positive characteristics of ADR, such as reasonableness, quick resolution, and specialized dispute resolution. The majority did not agree with the bad phrases that practitioners sometimes note as grounds for inactive use of ADR.

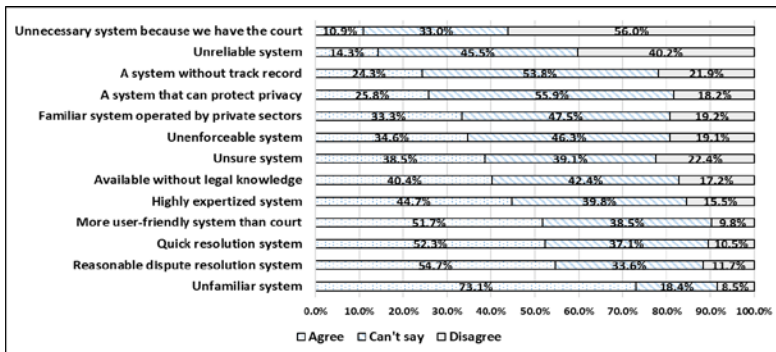


Figure 5 (Q2-2) What is your view of “ADR”?

Finally, the questionnaire asked, “How would you like to solve your dispute if you happened to face one? (Q3-1).” Again, each item was rated on a five point scale and Figure 6 shows the result on a three point scale.¹⁴ The longer the left bar is, the more people agreed with that phrase. While it turned out that many respondents agreed with all items, the item that the most respondents agreed with was “I want to resolve my dispute through negotiation with a

¹³ The respondents could choose “0” for “Don’t know.” I excluded those respondents who choose “0” from the calculation.

¹⁴ Again, the respondents could choose “0” for “Don’t know.” I excluded those respondents who choose “0” from the calculation.

specialist in the field.” Also more than 70% agreed with the statement “I want to resolve my dispute through a neutral third party.” On the other hand, the items that relatively more respondents disagreed with were “I want to claim my own opinion directly to the other party by myself” and “I want to resolve my dispute through negotiation among the parties”. This result shows that there is some need for a neutral third party, as well as legal professionals for representation.

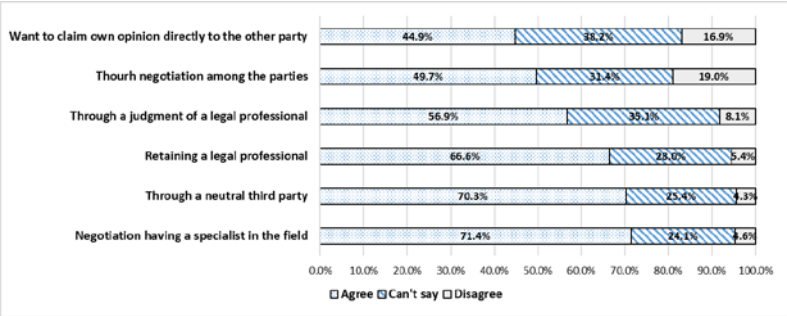


Figure 6 (Q3-1) How would you like to resolve your dispute if you happen to face one?

C. Discussion: ADR is Unfamiliar but NOT Unpopular

While the government institutionalized ADR as a system to promote a fair and just society by passing the ADR Act in 2004, the reality is that the number of cases brought to ADR is very small compared to those cases brought to the courts. Thus, ADR is not functioning as the ADR Act aimed. The Internet survey for ordinary people shows some important findings: ADR in Japan is not unpopular but it is unfamiliar. It shows that four fifths of the respondents don't even know the term ADR, whereas the majority of people who have some knowledge about ADR have a sound image of ADR. Although information about ADR is received correctly, it is received by too few Japanese citizens.

The Internet survey also shows that there are a substantial number of people who face legal issues but do not, *or* cannot, contact a legal professional and/or do nothing about that issue. According to the survey, about one fifth faced a legal issue for which he or she thought of consulting a legal professional. However, about one sixth of these people did not consult with anyone, and one third did not take any action. This indicates that

there is still an access problem in Japan even after the Justice System Reform doubled the number of attorneys and expanded the practice scopes of quasi-legal professionals. Well designed advertisement and education efforts regarding ADR and how to consult legal help could promote access to ADR service providers as well as legal professionals. The survey also shows that a substantial number of respondents prefer having a neutral third person, or retaining an attorney for representation, if they happened to face a legal issue. So, the result shows that there is some need for ADR, even though the overwhelming majority of respondents do not even know the term “ADR.”

Another important factor relates to the legal professionals. The survey shows that attorneys do not function as a hub to connect people to ADR services today. Among those people who know about ADR to some extent, only 6.4% answered that they had known of ADR through an attorney or a bar association. Actually, it turned out that among those respondents who consulted with an attorney or bar association, 64.4% (n=103) did not know about ADR and 28.1% (n=16) answered that they had known about ADR through legal counseling. While it is true that, among those who consulted with an attorney or bar association, there were more respondents who had known about ADR (35.6% among those who consulted, versus 22.6% among those who did not),¹⁵ it is fair to say that not many attorneys provide ADR information to their clients in the same manner as the court proceedings, as was expected in the ADR Act. We need to educate those legal professionals who are responsible for people’s access to justice so that they provide the necessary information regarding ADR to the people who face legal issues and connect those people to appropriate ADR service providers.

In order to make ADR more familiar to the Japanese people, the government must take concrete measures such as (1) more advertisement at city halls, courts, or any other public places that people with legal issues may access, (2) more education at the elementary school level so that every Japanese person can have an opportunity to learn about ADR as a legal dispute resolution system, and (3) mandatory education at the law school level so that all lawyers recognize ADR as an option for their clients.

¹⁵ In the end, the more people had some knowledge about ADR among those who experienced a legal issue (28.2%) than those who never had (17.0%).

Especially, education of both citizens and future legal professionals is an urgent task in order to practically implement the ADR Act.

IV. CONCLUSION

This article discussed the major findings of the Internet survey for ordinary people conducted by the ADR Study Group. The survey was the first national survey on this scale and this article showed that it presented important suggestions on how to improve the current state of ADR in Japan. While ADR is not actively used in Japan, this does not mean that there is no need for ADR, or that people dislike ADR. Simply, not many people know about ADR, despite the fact that many people experience a legal issue for which he or she thought of consulting with an attorney. We need education and advertisement efforts for ordinary people as well as legal professionals so that the existing ADR services can provide effective solutions to citizens and contribute to promotion of a fair and just society, as intended by the ADR Act.

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