

ALTERNATIVE DISPUTE RESOLUTION - AN ANCIENT INDIAN PRACTICE AS AN ALTERNATE TO REALIZE SUSTAINABLE DEVELOPMENT GOAL- 16



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Abstract

The objective of this study is to examine dispute settlement procedures from both a socio-historical perspective and in the light of United Nations Agenda 2030 especially Sustainable Goal 16. Alternative Dispute Resolution is widely assumed to have arisen and originated in the west over the last few decades. However, this method of dispute resolution is centuries old and was widely used in ancient Indian society. In this paper, we examine ancient socio-historic practices such as ADR which were later on refined, and became a popular legal practice. In this paper we discuss how old customs and practices became the base of the modern legal system and widely accepted as a legal practice. The primary focus of this paper is to analyze the viability of dispute resolution mechanisms in ancient Indian society and to present a layout of its utility and significance in the present era and also to show how much it is more helpful in achieving Sustainable Development Goal then the conventional judicial system.

Keywords:

Alternative Dispute Resolution, Sustainable Development Goal, legal practice, socio-political aspect, Conventional Judicial System

1. Introduction

If we talk about evolution of law then we can simply say that it is a regulation



of human conduct imposed and enforced by the state¹. It is concerned with norms governing subject's external behavior. Law is a tool that allows people to coexist peacefully and in a predictable manner. Other than legislation and judicial precedents, customs of society are a source of law. In the ancient society social control is maintained by social norms and practices. The prime goal of society was to maintain the integrity and harmony among members. For that purpose society invented methods for amicably solve the issues of its members² (2). These methods after long usage became custom of society. Contemporary Alternate Dispute Resolution is nothing but a continuation of social practice of ancient society.

2. Conceptual and Functional dimensions of ADR in Ancient Society

Sociologically speaking every society wants minimum friction and disputes among its members. This can be considered as foremost important target of any society. For this purpose society uses various methods and mediation is one of them.

2.1. Conceptual aspects of ADR in Ancient Indian Scriptures

Another mechanism of dispute resolution was mentioned in the *Yajnavalkya Samriti* which was written somewhere around 4th to 5th-century AD³. The *Yajnavalkya Smriti* presents legal doctrines in three books: *achara-kanda* (customs), *vyavahara-kanda* (judicial process), and *prayascitta-kanda* (crime and punishment, penance). He talked about three types of courts: *Puga*, *Sreni*, and *Kula*, which were non-official adjudication agencies. The *Puga* courts were made up of people who lived in the same area, regardless of caste or occupation, and they had jurisdiction over disputes involving the general population. The *Srenis* (guilds) were groups of people who shared pursuits, the most significant of which were the commercial guilds. They had the authority to make decisions concerning their specific calling as traders. At the *Kulas* level, social issues affecting residents of a local community might be explored and decided. Normally, an appeal was made to *Sreni* Court from a *Kula* court ruling, and the same might be made to *Puga* Court from a *Sreni* court decision. *Kulas*, or joint families, were common in ancient India, and if there was a

¹Dr. Madabhushi Sridhar, *Alternative Dispute Resolution Negotiation and Mediation* 09 (Lexisnexis, Gurgaon, 1st edn., 2015).

²Vijay Srivastva, "Legal Issues in International Commercial Arbitration: A Comparative Study" Ph.D. thesis, Uttaranchal University, 2017.

³S.C. Raychoudhary, *Social, Cultural and Economic History of India* 20 (Surjeet Publication, Delhi, 10th edn., 2011).



dispute between two members, the elders would try to mediate it. This informal body of family elders was known as the Kula court. When family arbitration failed, the case was brought before the *Sreni* court. The term *Sreni* was used to refer to guild courts, which were an important component of ancient community life⁴.

Thus, ancient Hindu jurisprudence acknowledged two means for resolving civilian disputes: one was through a judicial process created by the king, and the other was through various types of arbitration institutions.

Various types of Courts in Ancient India



2.2. Functional aspects of ADR:

i. In Ancient Indian Society:

The *Sabha* most likely served as a popular court throughout the Vedic period. When it was feasible, the *Sabha*, or common village assembly, rather than the king, attempted to resolve disputes⁵. The words '*Prasnin*' and '*Abhiprasnin*' referred to the plaintiff and defendant who brought their problems to the village *sabha* for resolution. '*Madhamasi*' was more of an arbitrator than a judge, attempting to resolve conflicts rather than imposing punishments. Because their verdicts were frequently maintained by the kings, these popular tribunals flourished until the commencement of British authority. It should be remembered that these popular courts only tried civil cases and had no jurisdiction over criminal cases.

ii. In Ancient Villages:

Prior to the arrival of the British, an indigenous form of dispute settlement known as *Panchayats* existed in India's villages. *Panchayats*, or local self-

⁴Patrick Olivelle, *Between the Empires: Society in India 300 BCE to 400 CE* 188 (Oxford University Press, U.S.A., 1st edn., 2006).

⁵Shriram Yerankar, "Village Administration In Ancient India" 65 *The Indian Journal of Political Science*, 87-100 (Jan.-March, 2004).



government, were common in ancient societies. This institution was created to peacefully address issues at the village level. The village headman (*Gram*) and a council of village elders (*Ghosh*) are mentioned, and the leader (*Gramini*) was in charge of collecting state dues, keeping village records, and mediating conflicts⁶. Disputes were referred to the *Panchayats*, a body made up of five village elders whose verdict was respected by the parties for fear of excommunication, ostracism, or exclusion from religious and social functions.

S. No. Ancient Period	Name of Village Council
1. Ramayana	<i>Gram Vridhas</i>
2. Mauryan Period	<i>Sabha</i>
3. Chola Period	<i>Ur/ Mahasabha</i>
4. Gupta Period	<i>Janapadas</i>

iii. In Ancient Family Systems:

Family, which was considered as basic unit of society uses mediation to resolve disputes among its members. The joint family was the most common arrangement in ancient times, and the concept of Gerontocracy was widely accepted. Gerontocracy simply means that the family's eldest member is the family's head and has complete authority over all the family operations⁷. When there is a disagreement among family members, the leader of the joint family works as a mediator to reach an amicable solution. but what would happen if a dispute arises among different families. The same can be resolved by another available mechanism called *Sabha* in early Vedic period.

3. Modern Mechanism of Alternative Dispute Resolution

Because of the friendly and fruitful process involved, mediation is becoming the most favored technique of dispute resolution in comparison to other approaches⁸. United Nations adopted New York Convention also known as the Convention on the Recognition and enforcement of Foreign Arbitral Awards on 10th June 1958. It was the most important international treaty and described as a foundation stone in the field of international arbitration. At present 156 state

⁶Dr. Pandurung Vaman Kane, "History of Dharmashastra", 3 *Bhandarkar Oriental Research Institute*, 230 (1946).

⁷Vidyabhusan Sachdeva & D.R. Sachdeva, *An Introduction To sociology* 178-198 (Kitab Mahal, Delhi, 48th edn., 2017).

⁸Madhusudan Saharay, *Textbook on Arbitration & Conciliation with Alternative dispute resolution* 6-7 (Universal Law publishing, Delhi, 4th edn., 2017).



parties are signatories of this convention. The number of instances that choose mediation to resolve their conflict has steadily increased in recent years. However, claiming that this process is the brainchild of the current population may be incorrect. This method of problem solving, in which a neutral third party is present to help find an amicable solution, can be found as social practice and historical writings all throughout the world. Alternative Dispute Resolution hereon will be called as ADR has many wings in contemporary world. ADR processes can be divided into two types: adjudicatory and non-adjudicatory. Arbitration and binding expert determination are adjudicatory procedures that result in a binding ruling that resolves the dispute. Mediation and negotiation are non- adjudicatory techniques that help parties resolve problems by agreement rather than adjudication.

1. Arbitration: According to the Arbitration and Conciliation Act it is settled by a legally appointed authority. By its very nature, the decision is final.

2. Mediation: A third party facilitates the process based on an informal agreement. By its very nature, the ruling is non-binding.

3. Negotiation: It is initiated by the parties themselves and is non-binding.



4. Advantages of ADR over Conventional Judicial System: Gone are the days when people wait for the justice for decades. In the contemporary world instant resolution of the grievance is most important aspect of governance. The biggest challenge that nations are facing today is faster and cheaper delivery of justice to their citizens. So it becomes very important for the state to find and incorporate new mechanisms of justice⁹. This problem can

⁹Thomas E. Carbonneau & William W. Park, *Arbitration: Law, Policy, and Practice*, 20-50 (West Academic Publishing, 5th edn., 2014).



be resolved through Alternative dispute resolution. However ADR is not a panacea for all the issues related to the delayed justice but there are many benefits that make it viable option over the conventional judicial system.

- 1. Access to Justice:** It increases the opportunities of justice for people as it offer various methods to resolve their disputes. It is beneficial for those who cannot afford formalities and the cost associated with formal litigation system.
- 2. Cost -effective system:** In comparison with the conventional system ADR is much cheaper because procedure and documentation is much less. Expenses of both the parties reduced if they opt for ADR mechanism
- 3. Speedy resolution of disputes:** As this system is out of the preview of court procedures and scheduling due to that decision is much faster than conventional courts.
- 4. Flexible and Informal:** ADR methods are less rigid and formal when compared to the courtroom procedures. So representation of the case and other functionalities of the trail are simple and user friendly.
- 5. Preservation of Relationship:** The focus of conflict resolution in ADR is based on compromise between parties which creates a win-win situation for both parties. These methods try to maintain brotherhood and interpersonal relations.
- 6. Confidential system:** ADR process is much more confidential when compared with courtroom proceedings. This favors the parties as it spare them from public gaze and deterioration of their image. Because such kind of news can negatively affects their business or personal brand.
- 7. Expert Decision Makers:** As it allows parties to choose their arbitrators for dispute resolution. This lets decision makers have some related technical or industry specific expertise to understand the consequences they are about to face.
- 8. High Compliance Rate:** ADR outcomes are voluntary rather than imposed so willingness to compliance to such decisions is very high when compared with conventional judicial system. This may make the implementation of resolutions faster and decrease the occurrences of enforcement actions.



So we can say, ADR systems present numerous advantages that have made them popular as an option for speedy, efficient and more satisfactory solutions to the conventional judicial system.

5. SDG – 16 realization and the function of ADR

ADR mechanisms have been found to be very useful in the implementation of the objectives of SDG 16 by enhancing access to justice, reducing on conflicts, improving the capacity of institutions, the promotion of the rule of law, and empowering communities¹⁰. They are viable and efficient substitutes to the conventional legal proceedings and therefore assist in the advancement of the general goal of realizing the is conducive, fair and sustainable

5.1. SDG-16, Peace Justice and Strong Institutions

There are the 17 goals adopted by the United Nations in 2015 in the framework of the 2030 Agenda for Sustainable Development. They are cascade nutrition and health of the world's poor, end poverty in all its forms, reduce inequality, prevent climate change and protect the planet, promote peace and justice, strengthen partnerships at global, regional and national levels. They all have defined objectives that need to be attained in this year, 2030.

SDG 16 addresses Peace Justice and Strong Institutions In this SDG it is postulated that there is need for maintaining the international peace and justice for sustainable development as well as advocating for inclusive societies that support delivery of justice to everyone and attaining proper governance for enhanced performance and accountability of all institutions–national, regional and international ones. The key components of SDG 16:

- 1. Promotion of Peaceful and Inclusive Societies:** The major focus of SDG 16 is reduction in all forms of violence like child abuse, human trafficking, torture, cruelty etc. It advocates a creation of more inclusive society by creating absolute equity among justice delivery system.
- 2. Effective and Accessible justice for all:** Today effective governance system not only demands speedy justice delivery but justice delivery system should also be more effective and is in the reach of grass root population. Justice should be free, fast and unrestricted to ensure fundamental freedom.

¹⁰Report on Transforming Our World: The 2030 Agenda for Sustainable Development, 28 submitted by United Nations in 2015, available at: www.unfpa.org/resources/transforming-our-world-2030-agenda-sustainable-development#:~:text=%22We%20resolve%2C%20between%20now%20and,protection%20of%20the%20planet%20and, visited on September 10, 2023.



3. **Effective governance:** The United Nations – Agenda 2030 stresses on the necessity of promoting and providing a culture of lawfulness and a corruption free public institutions. This helps government to gain confidence of their people hence develop a good relationship with them which is very vital for the development of any Nation.
4. **Corruption free governance:** Inclusive growth and peaceful environment in society is only possible when the governance system will be corruption free. This can only be possible by creating transparent, efficient, and accessible and corruption free governance system.
5. **Safeguarding Human Rights:** According to agenda 16, no one can be discriminating on the bases of race, ethnicity, religion, gender or any other disability. Nations should create equal opportunities for each and every person and should focus on equity rather than equality while protecting their human rights

5.2. Interrelation of ADR with SDG 16: ADR can therefore be associated with sustainable development goal 16 of the United Nations or UN SDG 16. SDG 16 focuses on the peace, justice, and institutional space that is required for development while offering affordable and fair justice to everyone.

1. **Access to Justice:** Among disputes, there are mechanisms like mediation or arbitration – choices that are equal to legal procedures, but do not take place in court. They can improve access to justice by providing solutions that are equally efficient, fast and affordable especially to persons and groups who may be locked out of judicial system.
2. **Reducing Violence and Conflict:** Of special interest, since ADR primarily involves settling disputes without resorting to legal battles it stands to alleviate rivalry and enmity within the community as well as human relations. This is as per the objectives of SDG 16 of ending conflict and violence for sustainability of societies.
3. **Building Effective Institutions:** ADR mechanisms assist to build up the capability of legal and judicial systems around the world since they diminish the cases pile and enhance the effectiveness of the dispute resolution systems. This is because it would help in the attainment of the institutions that are accountable as envisaged in the SDG 16.



4. **Promoting Rule of Law:** ADR is useful in upholding the principle of the rule of law as it entails practices that are organised towards the finding of solutions to disputes assured of principles of fairness, equity as well as impartiality. It assists in fostering peoples' confidence in legal systems and encourages compliance with the laws and legal frameworks.
5. **Empowering Communities:** ADR also assists people and groups using the adoption of participatory procedures whereby they determine the fates of their conflicts. Participatory states ensure that people take full responsibility when implementing the development process, hence the sustainability.
6. **Discussion:** The rate of population growth and the rate of conflict are nearly identical. In an era, where need for dispute resolution and justice delivery is very prompt. Agenda 2030 of Sustainable development goal is also demanding a just and a peaceful society and one way to realize this goal is to systematize ADR¹¹. Any civilization cannot afford to have such a high rate of conflict. Despite the fact that modern governments have a well-established judicial framework for administering justice and resolving disputes, however, by its very nature, this system is not harmonious. The majority of conflicts may be resolved without going to court. As previously stated, ancient society has a well-established method for resolving disputes. The primary motivation for developing such a process was to resolve disputes not only promptly but also amicably. This strategy was usually a win-win situation for both sides, as well as maintaining societal unity. Our discussion point is that we should learn from ancient culture and adapt this ancient approach of conflict resolution in order to build a more harmonious society.
7. **Conclusion:** In today's world, the rule of law frequently takes precedence over societal practices and norms. Law is viewed as a product of modern scientific society according to most of the people in contemporary time. In every civilization, the process of administering justice reflects the people's social understanding and consciousness. Even in the most ancient societies, concepts of equitable justice and diverse ADR approaches were always available at the parties'

¹¹Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 13-21 (Jossey Bass, 3rd edn., 2003).



discretion. The primary objective of ancient society was to maintain social harmony, tranquility, and integrity. Our predecessors were more concerned about peacefully resolution of issues in order to meet these objectives. They knew that while avoiding conflict is tough, resolving it through mediation is simple. Same ideology of peace and justice is reflected in the Agenda 2030 of the Sustainable Development Goal. ADR, undoubtedly become a game changer in realization of SDG – 16. Though, due to political and sectarian connotations, the system has lost its integrity over time. In essence, out-of-court dispute settlement is not new, and non-judicial, indigenous dispute resolution procedures have long been employed in every civilization.