
EVOLUTION OF ADR IN INDIA

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ABSTRACT

The concept of **Alternative Dispute Resolution (ADR)** has evolved as a vital mechanism for ensuring timely, cost-effective, and amicable settlement of disputes outside the traditional court system. In India, the evolution of ADR reflects the nation's continuous efforts to enhance access to justice and reduce the burden on the judiciary. Rooted in ancient traditions such as **panchayats** and **village councils**, India has long practiced informal dispute resolution. The modern legal framework for ADR began to take shape with the enactment of the **Arbitration Act, 1940**, which was later replaced by the **Arbitration and Conciliation Act, 1996**, aligning domestic law with the **UNCITRAL Model Law**. Over time, mechanisms such as **mediation, conciliation, negotiation, arbitration, and lok adalats** have gained prominence in both civil and commercial disputes. Judicial pronouncements and legislative reforms—like the **Arbitration and Conciliation (Amendment) Acts** and the establishment of **Commercial Courts**—have further strengthened the institutional framework of ADR in India. Despite its growth, challenges remain in terms of awareness, uniform implementation, and quality of arbitral institutions. This paper traces the historical development, statutory evolution, and judicial approach toward ADR in India while highlighting its role in promoting speedy and participatory justice. The study concludes that a strengthened and accessible ADR system is indispensable for achieving the goals of justice, efficiency, and harmony in India's legal landscape.

KEYWORDS: Alternative Dispute Resolution, Arbitration, Mediation, Conciliation, Legal Reforms, India, etc.

INTRODUCTION

Some people considered law as a „measuring unit“ to assess the progress. This does not mean, that there cannot be the progress in absence of written law. Law is nothing but the man-made bundle of codes to govern their own conduct. In primitive era, what the head of family or community lays down, considered as binding law for that family or the community.

Alternate Dispute Resolution system has a long history. Legal history shows that throughout history, man has experimented with procedures with a view to obtain justice simple, inexpensive, reliable, and convenient. Non-judicial, local dispute resolution is not new; communities all over the world have been using from long back the various local techniques to resolve disagreements. They were in addition (ADR) to judicial modes. Now ADR tools have become more dynamic with the widespread endorsement and multiplication of methods, as well as the increased use of court-connected ADR as a tool to achieve purposes which is more than the simple resolution of specific nature of disputes.

During ancient period, there were town level establishments to inquire and settle the disputes relating to family matters, trade, property, conveyance, exchange of goods, transportation etc. Seniors, including the Council of Villages, often known as Panchayats, were in charge of resolving issues in these establishments. Such establishments or persons were following a informal pattern of intervention, intercession, negotiation, and mediation. These methods were so popular and effective that cases were used to come for trial very rarely. The solution suggested by the village council and Panchayats were obeyed and respected by all. However, after the imposition of rules and law by the Britishers, the very framework lost its impression in India.

ADR Mechanism during ancient period

The practice of ADR was prevalent during Vedic era. As per the epics Ramayana and Mahabharata, the Hanumana had tried to settle the matter of abduction by offering a proposal of Ram to Ravana, and that Krishna had tried to settle the dispute of partition in between Kaurava and Pandava. It establishes that even prior to the regime of kingship in ancient India, there was powerful additional dispute resolution system. During ancient India, there were immensely powerful, mediation and Arbitration system. In pre-kingship period, the disputes were solved by the Kulas, Puga, Srenis, Parishads and Panchayats. Here, Kulas refers to family or community meetings. It was the body of persons from the same family. Puga was consisting of the group of persons from different cast, communities, and tribes of the

concerning locality. The Srenis refers to the men's guilds involved in similar business. It had tradesmen and craftsman from different race, clan or the tribes but they used to have some relationship or connection in between them. The parishads means the group, team, or the assemblies of learned men having the knowledge of law.²² As regard panchayats, they were the team of persons which included senior member and having their setup in each or group of villages. "The decision rendered by Panchayats were considered as binding".

Aaryan political system was little bit complex. As per an article, they earlier used to live in small village which later became kingdom. The clan or Kula was the basis of their organization. It was the bend of little bit social, political and militant in nature. Family set up was based on patriarchal where the affairs of house was in control of men. The groups of kulas called a Grama or village. The head of such Gama of village was known as Gramina. Some villages constituted Visya. It was another political group. The head of such political group was known as Visyapati. The Visyas were under the Jana, and the Jana were ruled by the Rajana or king.

There were different types of Panchayats in India. They followed the practice of arbitration. These Panchayats were different from Courts. In fact, they were subordinate to traditional courts. The revision against the decision of Kula was lying before the Sreni and that against the decision Sreni before the Puga. An appeal against the decision of Puga was lying before the Pradvivaca and that final appeal used to go before the Prince and the King. All these courts were very popular because of their practice and the pattern of hierarchy. In case of failure to administer the justice by the Kula, Sreni and Gana, the king or his courts man used to take the cognizance. The Mitakshara says that Kula court was having a team of relatives. There used to have joint families and in case of dispute, it was being resolved by the senior members of family. Only when this settlement has failed, the matter used to go before the courts. Since 500 B.C, the Sreni or Guilds were considered as much powerful and useful for deciding the commercial matters. Sreni court had a bench of four to five members. The Gana Court was somehow like the Puga Court. The Puga Court had a team of profession. It had members of different casts but from the same locality.

ADR during the system of Trade-Guilds

The ancient Indian Trade-Guilds were extraordinary and multi-faceted body. They had to perform different roles. Sometimes, they acted like commercial entity, trading company or merchants, trade-union, Public body, bankers, welfare government, Judicial wing, Courts and

the technological wing of the country or State. The Sanskrit writers used to call such guilds as the „Srenya“. This term,„Srenya“ implies an association or gathering of workers or craftsman. Srenya is a blend of manual laborers for some purposes. Dr.Bloch says guilds were “something like a modern chamber of commerce”.

The manual workers formed groups. Men of a similar business, service, caste and of a similar rank used to unite and form organisation.

It led to a spirit for association and consequently for the development. Due to coercive action by sovereign or his men, they further united and became strong. They gradually became different corporate bodies with a unique feature of their own. These bodies were backed by religion. They had influence over social and economic structure of ancient India. Therefore, they occupied enormous place in the Hindu States. These bodies progressively procured some impact in the political affairs of the clans.

With expansion of kingship and their dynasty, the nature of politics also underwent change. King became supreme with the merging of other empires and accumulation of power. The Royal Council also became a powerful body. Due to the large size (topography) and increase in the functions of empire, decentralization felt must. Administration duties were divided and decentralised. In this process of decentralisation, the guilds may also have acquired something. Since, Guild were experienced corporate bodies, they must have been entrusted with the corporate related administrative functions. And in case of corporate judicial matters the guilds must have been getting the judicial powers at the hands of King, in the 4th and 3rd centuries B.C. An appeal used to lie to the Royal Court against the decision of the guild. The dispute between the guilds or within themselves used to settle by the Arbitration. There is history of settlement of commercial disputes by arbitration. The Royal Court was the appellate court and that villagers could approach it, only after the adjudication of their cases by the Village Court.

Soon, guild acquired a good position and started performing the duties of subordinate court system. The Royal authority used to supervise. The several village panchayats formed as per the requirements within the Province and State. Village panchayat held an important position. They flourished even during the coercive action by the sovereign. The central government used to refer all the matters to the village panchayat. So, the Panchayats had become the trial Courts. It reduced the workloads of other courts and government. It helped in administering

the justice. Thus, the principle of self-government evolved.

ADR during Mauryan Dynasty

The King was the powerful, but the final authority was his council, in the Mauryan Dynasty. King was head of the executive, legislative and Judicial wing as well. All important matters were adjudicated by him. There were local courts, courts of trade guilds, village assemblies and the special courts. The pradesika, mahamatras and rajukas were the Judges of such special courts. The trifle issues were decided by the Mukhiya or senior-most or head of the Panchayats in the village block itself. There existed two more important branches of courts viz. (1) Dharmasthiya and (2) Kantakasodhan. The judges of these two branches of courts were the amatyas, dharmasthas, and pradestris. The Dharmasthiya was given the duty to decide the Civil cases. The Hindu epics and Shastra were the primary materials on the basis of which the disputes in civil cases were adjudicated.

The Kantakasodhan had to solve Crime mystery (theft, Murder, Robbery) and sex offences. The Criminal Courts can be said to be the tribunals, and they had secret agents and informers (guptachar) to collect necessary evidence. In addition to such courts, there were police establishment like modern day police stations, in all the major business and administration centres. The Mauryan penal Code provided for severe punishments which includes the provision of torture, mutilation of limbs, trial by ordeal etc. There were Jails. Provision of parole/ furlough was also there. As per Author/researcher V.D. Mahajan, there are instances that “condemned criminals (e.g. convicts) were given respite of 3 days to perform religious ceremonies and give money in charity to secure welfare in the ne

As per Kautilya, dharma, Vyavahara, Charitra and Rajasasaru were the sources of Law. Here Dharma means the commonly accepted principles. The vyavahara consisted of the behavioral legal codes prevalent at that point of time.

The Charitra means the Character and the Customs. The Rajasasaru, was the decree passed by King. The system of filing of cases and the examination of witnesses to prove the case, was also existed. There used to have the panel of Arbitrators to decide the case. There was provision of appeal, which was lying before the king. As per the record of Megasthenes, barring the petty crime the major crime such as theft were rare during Mauryan era.

The Arthashastra shows that during the reign of Kautilya there were Minor and Major

Punishments. False deposition was then a serious crime punishable with mutilation. It provided the „sentence of death“ in case crime is committed against the artisans of royalty. There was provision of punishment to the members of „Protection and Enforcement Wing“ if they found violating the law.

ADR during Kushan Dynasty

Kushan Empire was spread over to Peshawar, Banaras, Jammu and Kashmir. The period of 78-123 AD considered as golden era of Kanishka's time. Kanishka was one of great rulers of ancient India. Kushan and his relatives used to call themselves as 'Devputra' which implies the children of god. During this phase, the India was known as Aryavarta. It was one of the largest empires of the World. Kushan set up a period, usually known as Shaka time or era in 78 A.D. However, as per Sir John Marshall, the Shaka period or era corresponds to 79 AD. Shaka period is still being used in India. Kushan had a unique court system. He had kept several scholars in his court which includes Parsva, Ashvaghosha, Vasumitra, Nagarjuna, Charaka, Sushruta and Mathara. However, there is not much materials available about the use of ADR.³³

ADR during Gupta Age

The era of Gupta empire was from 320 to 550 AD. They had setup a full- fledged judicial system. There was council of village or trade guild at the lowest level. They used to mediate and settle the disputes. There were various kind of special village councils also for the settlement of different category of matters. It was like modern Lok-Adalat and Arbitration system where the expert of related field deputed to decide the related matters. If the matter could not get settled, it used to go for trial or adjudication before the councils. The final appeal used to go before the King's Court. The King's Court used to have judges, experts, officers, ministers, priests, etc. "Several books were compiled and for the first time civil and Criminal laws were demarcated".

The judicial officers of Gupta era were called Mahadandanayaka, Mahakshapatalika etc. Mahadandanayaka was the Chief Justice. Probably, Mahadandanayaka had the double charge or the duties. First of a Judge and another of a General. Whereas „Mahakshapatalika happened to be head of "office records". There were several clerks, writers, draftsman, copier etc. under them. Adhikarna, an additional type of courts, used to decide the matters pertaining to land. There were Sarvadhikshas, the general superintendent, and the Kulputras to check the corruption.

ADR during Mughal Rulers

The law was not well codified during the Mughal Period. There were 12 charters (Fatawas) of Jahagir. There was digest of the Muslim Law known as Fatawa-i-A Xat. The Judges used to decide the cases on the basis of Fatawas, precedents, interpretation of Jurist and the charters or Fatawas passed by the Emperors. Sometimes, they used to follow the law and principles of custom and equity. There was no uniformity in application of law and enforcement. There were three different categories of Courts which included the courts of (1) Religious Law, (2) Secular Law and (3) Political matters. There were not coordinating with each other. Each category of Court was treated as separate and supreme. The Qazis were the judges of Religious Courts.

He used to decide the case as per Islamic law. The Qazi had to follow the principles of Quran in deciding the matters before him. He had no authority to frame or interpret the law in contradiction with or outside the scope or limitation of express provisions in Quran. The Qazis were assisted by the librarians or researchers called as Muftis. There were Miradls like present day Steno, who were given the responsibility to draft the judgment. Miradls were also performing the functions of junior judge of the present-day Courts of Division Bench, so far relates to dictating and delivering of the judgment.

During King Akbar, the cases of Hindus were given for adjudication to Brahmans. Panchayat followed same practice. The Governors of riyasat, the Faujdars and the Kotwals were appointed as the Judges of Secular law Courts. The cases of Rebellion and other major criminal matters e.g., murders were dealt and tried by the Political courts. The Subahdars, Faujdars and Kotwals used to try such matters. There used to have Chief Justice (Quazi-ul-Quazat). His duty was to monitor administration of justice in the entire empire. His used to appoint and regulate the duties of the Quazis. The villagers used to settle their dispute mostly in the Village Courts. There was provision of Appeal to the Panchayats. Panchayats in fact, was the penal of arbitrators or impartial persons. The punishment during Mughal Period was very harsh. It includes, the amputation of body parts, mutilation, public beating, beheading, and specified counts of whipping. The capital punishment was awarded with the approval of the emperor. The Emperor was supreme executive-cum-final appellate or judicial authority.³⁷

ADR during Maratha Rulers

The Shivaji Maharaj was one of the most popular and successful Maratha King. The King Shivaji Maharaj his father Shahaji Maharaj and son Rajaram made sincere efforts for the

administration of justice. Incidents of Patilki-watan, watan Right, Ramaji Krishna etc. are few illustrations of effective mediation. During 1808 and 1839, the Maratha Ruler from Satara namely, Chhatrapati Pratap Singh, had prepared the list of prevailing customs. He gave much weightage to amicable settlement and that only when settlement attempts failed, the matter used to go for trial before the Arbitrator for decision. The arbitrator used to decide the cases without bias.

The Judicial Administration during Maratha regime was unique. Law of equity was followed. There existed several epics, writings or books providing code of conduct i.e. the provisions of law. The decision used to be taken on the basis of practice, epics, granthas and literatures, which includes Dhramashastra, Jati-nirnaya Vyvahaar-nirnaya, Vijnanesvara, Vyavaharamayukha, Dhanakamalakara, Manu, Hemadri, Madhava etc. The judges adopted the method of administration of oath of truthfulness to the accused and witnesses in the Temple. There decisions were not so harsh in the administration of civil Justice. They used to try for the amicable settlement of civil matters. The parties were given opportunity to prove the case. The power of pardoning was exercised to harmonise the relationships between the parties. There had been several instances of use of mediation for the settlement of disputes.

At lowest level there were Panchayats to solve the civil disputes. The Patil (for village and Shete Mahajan (for town and marketplaces) had to constitute and hold the Panchayat to adjudicate petty cases. The pattern of execution of terms of agreement was prevalent. It was like modern day execution of compromise decree. Parties had to sign and follow the agreed terms. The orders passed in civil cases were executed as per the instructions of the Panchayat. Apart from playing the role of arbitrator and mediator, the Panchayat also used to deliver the judgment. The panchayats used to be very impartial.

The next level court was the court of Mamlatdar, who used to judge validity of the judgment passed by Panchayat. At that time, the ex-parte judgment used to have no value.

There was practice of quashing such ex-parte judgments even in absence of the decree holder. The civil cases were tried by the Panchayats and that criminal matters by the Patil. There were Nyayadhish (Judges) to hear and decide the appeals against the order passed by Panchayats and Patil. There was Supreme Court (Hazir Muzlis) as well. There was prison system for sending the criminals for crimes. King used to deliver the judgments in major and important matters/cases.

ADR during British Period

Until the advent of British the cases were tried primarily by Panchayats in accordance with the practice of settlement (mediation and arbitration). Soon picture changed. The Britishers have brought civil and penal laws and much weightage was given to judge and magisterial trials. The present magisterial and civil courts are much similar to the British pattern. The panchayat system and the traditional pattern of Patil or Mukhiya etc. used to prevail even during English period. But with the passage of time it started losing its sanctity and authority. Britishers soon realized the defect in their pattern and the merits of Indian traditional legal system.

Consequently, they brought several arbitration legislations which includes, the Bengal Regulations of 1772, the Bengal Regulations of 1780, the Bengal Regulations of 1781, the Arbitration Act VIII of 1857, Indian Arbitration Act, 1899 (for the presidency towns of India), the Civil Procedure Code, 1908, The Arbitration Act of 1940 (which repealed the earlier Act of 1899) and S.89 and 104 (1) of the amended Civil Procedure Code 1908. They contained the provision for referring the matters by parties to Arbitration. After the appointment of Arbitrators, the efforts were made for mutual agreement, and that the decision of Arbitrator was considered binding.

ADR in post-independence period

Literature shows, that after the Independence, the first Lok Adalat was organized on 14.03.1982. It was conducted at Junagarh in Gujarat. Thereafter the Legal Services Authorities Act is legislated in India in 1987. But it acquired the status of law after around eight years. Its implementation started from 9.11.1995. Due to several defects, the old Arbitration Act of 1940 was repealed. Later the AC Act, 1996 has been brought. In 1976, the CPC was amended with the inclusion of family matters settlement provision under Order XXXIIA. The s.23 (2) and (3) of the HM Act, 1955 provided for reconciliation efforts. Similar provision was made in the Special Marriage Act, 1954 under s.34 (3). In 1984, the FC Act was brought which provides for the endeavour of the family courts to take all required steps for the settlement of parties. Thereafter, s.89, Order 10 Rule 1A, 1B and 1C of the CPC were modified in 1999. It brought radical changes in the Indian ADR jurisprudence.

Adaptation of ADR institutions across the World

During 1960-1970 the United States started feeling the need of Alternate Dispute Resolution

System. US adopted mediation as one of the tools and soon started realizing the effects. The people started recognizing the benefits of ADR as against delay and expense in overcrowded court system. The system of ADR uplifted with the support of Academicians, U.S. Congress, Courts, Judges, American Bar Association, and all the Provincial Governments. US enacted the Civil Justice Reform Act, 1990. It provided for the development of concrete methodology to curb pendency, costs, and delay in civil matters.

The Federal and other Courts adopted the ADR. Soon, the ADR movement gained momentum in the U.S. and has become an important feature of the American Judicial System. Unlike, India, different types of mediation are practiced tackling different situations, and this is the main reason of success of mediation in family matters (Divorce, Adoption, Custody of Children etc.), construction matters and other types of cases in the America.

US though now considered as one of the fine models of administration justice, it was not so during 1970s. It was more or less similar to those countries of the world, which were struggling to come out of the menace of pendency due to adaptation of British legal system of settlement of disputes. In one literature the comments of Edward Bennet Williams have been cited, which is very relevant here. It says that legal system has become so much ineffective that there is no fear remained. He has compared the Legal system with the scarecrow and stated that the condition is like scarecrow which was installed by the farmer to create fear in the crow so that his grains can be saved, but it is so old, worn, torn and in poor condition, that it does not create any fear and the crows seat and rest on the arms and caw in contemptuous manner. The literature has further cited the words of Earn Warren which had uttered in one of his address that, our legal system's main flaw is that it does not function smoothly, and it has been jammed, and resulting in delay in determining the conviction or acquittals of persons accused of crimes. As regard, delay in delivering the justice, the Abraham Lincoln once pointed out, that encourage and persuade the neighbours to settle the matter, as even the winner in court proceedings has to lose the fees, expenses, and the valuable time. So suggest them to avoid going to the courts, as ultimately winner becomes the losers. Literature has also cited the comments of Vein Judge Learned Hand that, as a litigant, I must state that, short of sickness and death, I should fear a lawsuit more than practically anything else.⁴²

Soon the US and many other countries realised their fault and went back on adopting to ADR which were practiced and experienced already in the past. After 1970s the countries rapidly move towards industrialisation and development. They felt the need of speedy dispute

resolution system and realised the value attached to ADR and its suitability of the Domestic and International settlement of dispute. AS such ADR gain much importance due to increase in trade and commerce throughout the world. As expected, the ADR was proved timely, speedy, cheaper, and efficient mode even for corporate sector related disputes. As a result of which India and other developing countries also get attracted towards ADR.

England, Ireland, and Wales had initially adopted the mediation for the settlement of pending cases. Concept went further with making ADR as compulsory. The compulsory mediation provision is there in European Mediation Directive (2008). The High Courts, Commercial Courts, Consumer Courts, District Court, Smalls Claims Court, and Family Courts all have started following the practices of mediation and conciliation, as per the requirements of the case and the parties.

Law Reform Commission of Ireland (in Third Law Reform 2008-2014) had recommended for the legislation on Mediation and Conciliation ACT. The Commission Report suggested various important measures such as (I) making some changes in the civil laws (II) casting duties upon the parties in civil matters to conduct matters efficiently; (III) duty to inform, in suitable cases, to the parties, about the availability of efficient and suitable ADR tools (including mediation and conciliation) for the settlement of their disputes. The commission had recommended for the consolidation of over 240 Acts into the single enactment called as The Courts (Consolidation and Reform) Act and had also appended the draft Courts (Consolidation and Reform) Bill to its Report. The draft law was aimed at speedy administration of justice in the courts.

CONCLUSION

The study into status and practice of ADR during Vedic, Ancient, Medieval, and beginning of modern period shows that during Vedic, Ancient and Medieval period, the ADR tools such as Arbitration, Mediation (negotiation) and Lok-Adalat and were used as primary dispute solving methods. The matters hardly used to go for trial before the Courts. Even in Courts (including Kings Council) the emphasis was given mainly on to mediate, negotiate and settle the civil matters, like the present-day MED-ARB practices in the Arbitral Tribunals and Commercial Courts. One important lacuna found in the preset day system is that more emphasis is given on court trials and not the settlements. It is noticed that Britishers revamped the legal system of India and brought court trials as primary methods of dispute resolution ignoring the Indian tradition, culture, and practice where the ADR tools were more suitable as

compared to British Court trial pattern, which was/is based on difficult legal code, rules and regulations and suffered/s from complicated lengthy procedure, where it takes years together to get the decree and further time for its execution.