



Mediation in the Rural and Urban Society- Reaching Sustainable Horizons

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ABSTRACT

Dissonance is an essential prerequisite towards a better consonance, disagreement leads to consensus and dispute ultimately resolves into a better and peaceful solution. This shows how inevitable are disputes and that it needs to be resolved, hence there has been a quest for determining numerous ways in this direction. In the present era, the means of litigation as solving disputes has attained a point of saturation, and the need is to find alternatives that would not only suffice the growing need and demand but also aim at a better and more efficient dispute resolution. The diverging lines of conflict often become too complicated and the ever blooming population growth further complicates the situation. In this scenario, a better way has evolved in using mediation as the mechanism- not simply as a substantive means itself but as a complimentary tool that would help the present system of litigation to survive as well. The study aims at not simply exploring mediation and its avenues but also provides solutions for integrating it into the prevailing system. Both doctrinal and empirical research has been conducted for the purpose. The paper encapsulates a survey especially carried out in the rural area in the state of West Bengal to help assess the rural attitude towards mediation especially.

KEY WORDS

DISSONANCE
DISPUTE
RESOLUTION
CONFLICT
MEDIATION
RURAL
SUSTAINABLE

HYPOTHESIS;

MEDIATION AS A MEANS OF ALTERNATIVE DISPUTE RESOLUTION CAN PROVIDE FOR A BETTER SUSTAINABILITY OF THE JUDICIAL SYSTEM.

RESEARCH QUESTION;

HOW FAR CAN MEDIATION HELP IN INCREASING THE EFFICIENCY OF THE JUDICIAL SYSTEM?

METHODOLOGY;

Both doctrinal and empirical research has been used for the purpose of collecting data – both primary and secondary. Doctrinal research has been conducted by means of analysing journals, articles and research papers by various scholars, as well as by scrutinising accounts on mediation, together with mediation training manuals specially designed for the purpose.

Empirical research has been conducted by two ways-survey method in which a comparative analysis of rural and urban society has been conducted by administering questionnaires and probing the respondents of the sample population. The responses from sample population have been classified and then analysed both quantitatively and qualitatively. Case study method has also been used in which a particular area was chosen, and survey of the area in particular was conducted.

In particular, empirical research was emphasised upon as the nature of the topic being so intimately associated with the practical reality, and that it helped to test the hypothesis accurately.

BACKGROUND –**INTRODUCING THE CONCEPT**

Society is based on the principle of coexistence- whereby people forming a group live in close association with each other. Such a set up implies coordination of individualistic tendencies into harmonising a group manifestation. Quite obvious to such coexistence is the occurrence of disputes with a near regular frequency as well, and it is in the resolution of disputes, together with identification and curing its cause often in punitive ways, that a system of justice and its implementation develops in society. Beyond all the institutional intricacies and the established legal procedure determining the judicial system of a country lays the inherent need for justice- by whichever means possible. Justice is the foundation of a moral society- the society which has evolved itself from animalistic barbarity towards a strive for peaceful prosperity. In this sense it is noteworthy that in case of a dispute resolution, it is not the means but the ends that matter. In this present case, mediation is being discussed as one of the most viably emerging way in Alternate Dispute Resolution (ADR).

Although in the contemporary legal universe, mediation has been termed as a means of ADR, but in reality, history bears testimony to mediation being in practice, just a bit different in form and structure. Villages had always been the grassroot centres of administrative division and were complacent in their own ways. There had been councils for administration and a head under whose supervision disputing issues and parties aimed at figuring out solutions. Mediation in its crudest and most basic sense had been realised in such villages and actively practised as well- driven by the need to find a solution. It is interesting to note how the judicial system that was once based on communicative mediation changed into the litigation system and how in the present day mediation as ADR traces its ancestry to those roots. Till colonial times, village administration and king's courts were the centres for administration of justice – the places had the head or the king presiding as the supervising head or the judge often, and working towards a solution, at times reconciliatory and other times punitive as well. With the arrival of British, the system witnessed a complete metamorphosis as they eventually integrated the British court system into the Indian society- establishing a hierarchy of courts that has changed its structure over the centuries but retained the essence to this day. Local levels of complacent autonomy were stripped of their existence, king's and zamindar's courts were deprived of their right to decide on cases and disputes. It can be worthwhile analysing how the institutionalisation of judicial system modelled on western standards sort of removed the indigenous essence to it. With establishment of courts and the profession of legal practice, seeking of justice came with technical knowhow and complications, notwithstanding which people conformed to the system. The next significant development came with the diversification of courts and the expansion of population which affected the efficiency of functioning of the courts. People adhered to the hierarchy and went on trying till the last chance to get justice and in the

process there was a overburdening of cases at each level of courts, coupled with an increasing delay in deciding and resolving the disputes which seriously affected the functioning of the entire system as a whole.

“Justice delayed is justice denied” is indeed a much quoted adage, which resonates with the inherent need for people to have a just and fair life, much like the foundation on which the entire social system rests. If this fails, as it is already, it will not only create a chaotic situation in the society but also make the system non sustainable-implying its rejection by the society as a whole.

MEDIATION

Mediation is a means of ADR or simply stating a way of resolution of any conflict or a clash of opinions or a dispute between two or more parties, which is simply facilitated, aided, supervised in the presence of a third party whose role in the regulation of the procedure is restricted, allowing the disputing parties to take maximum responsibility for the resolution of the dispute.

In 1999, the Indian Parliament passed the CPC Amendment Act of 1999 inserting Sec.89 in the Code of Civil Procedure 1908, providing for reference of cases pending in the Courts to ADR which included mediation. The Amendment was brought into force with effect from 1st July, 2002.¹

Post legislative enactment of mediation, it has began to get a wider acceptance among people , chiefly because of the following reasons –

1. The tedious monotony in the conventional court system that runs on a pre established hierarchy, at one hand enabling complete scope of proper administration of justice, on the other hand makes the process slow and delays justice.
2. The increasing population led to rise in the number of disputes and ultimately the pressure or the burden on the courts expressed itself in the form of a huge backlog that has become difficult to be cleared with expeditious efficiency.

With the time being ripe for finding alternatives to the conventional systems, mediation comes with many promises of its own –

The procedure is SPEEDY, EFFICIENT and ECONOMICAL.

- 1.1. The procedure is SIMPLE and FLEXIBLE. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day-to-day activities.
- 1.2. The process is conducted in an INFORMAL, CORDIAL and CONDUCIVE environment.
- 1.3. Mediation is a FAIR PROCESS. The mediator is impartial, neutral and independent. The mediator ensures that pre-existing unequal relationships, if any, between the parties, do not affect the negotiation.
- 1.4. The process is CONFIDENTIAL.²

Dr M. Ismail Frauqui and Ors. vs. Union Of India (UoI) And Ors, the famous Babri Masjid case, had the Justice mention about mediation, a reference made to the parties to mediate on the case, wherein a court based solution was found to be too complicated.³

SUSTAINABILITY OF JUDICIAL SYSTEM BY MEDIATION

Ever since Mediation has gained a legal and wider mainstream acceptance in the country, there has been a significant increase in people's intentions of trying to resolve their disputes through mediation. People who have suffered long delayed justice or the ones who could not reasonably afford taking a case up the hierarchy to

¹ Mediation Training Manual of India , <https://sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>

² *Id*

³ AIR 1995 SC 605

the apex court have either accepted defeat often at the cost of grave miscarriage of justice, or in other cases have tried to come into a settlement with the disputed party. What is most important in this sense is the tendency of people to stick to the litigation system, out of their faith in the conventional institutional establishment and distrust in rising ADR mechanisms. The seat of judge in a court is largely valued and obeyed, so people feel that their problems can be redressed in the mechanism of the courts. Further, the profession of legal practice stands intricately associated with the court system, to which not only do people willingly comply, but are also persuaded as the most effective means of dispute resolution. Then the Question arises as to – “ Why mediation ?”, and the answer lies in the fact that no matter how much the system of litigation be ancient and tested and conventional, its viability is doubted by the increasing inefficiency in it, the delay that gets into finding a solution, hefty expenditure and the loss of time involved. Justice at an expeditious rate is craved by the people, a resolution of conflict and a settlement of conflicting claims need to be ascertained for preserving peace but sadly enough for the country with proportionate increase of population and disputes, the courts have failed miserably in this. The situation gets even more complicated when people of simple means fail to put up fights against bureaucratic oppression, political conspiracies and exploitative caste, class, religion or even sex based discrimination. Surprisingly the faith in the judicial system crumbles down at the cost of personal incapacity and institutional disabilities which keep lagging the system behind. These are the instances which flagrantly question the sustainability of the prevailing system, and it is in response to this failing mechanism that Mediation has had its growth and acceptance as an alternative. Being an ADR mechanism, Mediation as a dispute resolving technique holds the potential to replace the prevailing system with the provision of an alternative that is definitely more sustainable, but it is interesting how this same mediation can be used as a complimenting mechanism to preserve the viability of the present system.

DEFINING SUSTAINABILITY OF THE SYSTEM

By the word sustainable, we mean something that would last, continue and would persist, and would not lose its viability. In the sense of the court system, it implies that people and the society they comprise of will sustain their faith and belief in using litigation to resolve their disputes. Sustainability in this sense implies that the prevailing colonial set up would go on as it has been, notwithstanding the challenges that it is faced with. The litigation system has its own drawbacks, which are increasing day by day, coupled with a growing tendency to shift to ADR techniques, a recognition of mediation as the most promising alternative among the others, and the decreasing viability of prevailing litigation system. In such a scenario, one outcome is probable, given the situation continues likewise- the seekers of justice and dispute resolution will turn away from litigation system and will acknowledge mediation in largely increasing numbers. This will result in a slow but a drastic change given that the nation has been accustomed to this system for over two centuries, and the change will substantiate slowly wiping out the institutional litigation as a whole, giving way to mediation, which shall there by evolve with the changing needs and demands of people. It is crucial at this juncture that a reasonable thought be given on how to sustain the system by rectification of the drawbacks, using mediation not as an alternative but integrating it as a whole with the system for a better good. Accepting of a change is the only way to integrate it and the prevailing litigation set up cannot be an exception to this. It is by this way only that the system can sustain. Change is the trend of any institution, and when that change gets coupled with the failing drawbacks, it is realised even faster and materialised sooner.

INTEGRATING MEDIATION- THE BEST SOLUTION

There are different viewpoints on integrating mediation into the prevailing system –

1. *“It now seems that we need new ways of looking at conflict resolution and the legal profession and hope that we discover a new way that will help in bridging bonds between the ethics of practice, the values of the law and the demands of public policy. The process has started, but slowly. Creating awareness in the society of the mediation process and its benefits, and developing capacities for the same will help expedite the shift from adversarial litigation to methods of alternate dispute resolution in a big way. This will also help in reducing the backlog of long pending cases in Indian courts and usher in a new era.”*⁴

The viewpoint of creating awareness is indeed most essential in the present case. This is due to the misgivings that people have about this process, and the inertia to resist the change, rather stick to the conventional litigation as the method even though that fails to provide a resolution of disputes. People are

⁴ The Impact of Mediation in India, Arjun Pal, <https://www.mediate.com/articles/impact-of-mediation-in-india.cfm> (last seen on 10/10/19)

largely under the misconception that mediation being outside the court is not legal, or maybe a fraud that is being manoeuvred, even the mediator is not rusted with the facts of the case, nor is his involvement allowed. These are the hindrances which resist mediation in percolating down to the much needed pockets of the society. Hence, generating awareness becomes the primary task in order to generate the change.

2. The Supreme Court of India has, in the case of -

Moti Ram (D) Tr. LRs and Anr. Vs. Ashok Kumar and Anr held that mediation proceedings are confidential in nature. The said judgment takes a forward step in relation to court-directed mediation and asserts that such mediation proceedings are confidential in nature write *Vyapak Desai* and *Sahil Kanuga*,

The Court held that:

- a. In the event mediation is successful, the mediator should simply send the executed agreement between the parties to the court.
- b. In the event mediation is successful, the mediator should simply send the executed agreement between the parties to the court.⁵

Hence, the role of the courts is significant in not simply promoting the process but also integrating it within the structure of the prevailing system –

This is however a two way process and it has to be initiated by the existing system of litigation to make the entire integrative effort successful. Integration does not necessarily mean a complete change, it has to be rather realised as a continuous process, with the effect being complimentary to the litigation system.

3. *The mediator will spend as much time as necessary with the participants (jointly and privately) to explore all options of settlement. If the parties do reach a settlement, the terms will be written, signed and submitted to the court for approval and passing a decree. If not, the case will be returned to the court for adjudication.*⁶

One of the most important aspects of mediation is to realise that how an unsolved matter, unsatisfied party to a mediation proceeding is not stopped, rather at full liberty to approach the Courts for a trial by litigation. Choosing mediation does not restrict the option of litigation, neither is mediation absolute in itself. It remains as an alternative, an additional scope and a chance to consider settling of disputes by a cooperative dialogue.

Hence, the issue of integrating mediation with litigation has found an expression in two ways namely –

Court Directed Mediation; where the court directs the parties to refer their dispute to mediation and try to reach a compromise,

Private Mediation – in which the disputed parties decide that they will not approach the court for mediation and rather try to figure out a settlement by themselves.

It is therefore implied that in order for the litigation system to survive, it needs to fill its loopholes, cater to its drawbacks and in doing it, and eventually assimilate mediation into litigation. Primarily it needs to be realised that the mean of resolution of disputes vary, but the essence remains the same, which is to obtain justice, preserve fairness and conduct people on good conscience. Litigation is highly effective, conventionally established system with a defined hierarchy, but that does not cover for the dissatisfaction people have with this system now. The principle means of sustenance involves adapting – to accept changes and get reformed, or else perish with the force of time. In this case, the system of litigation has to adapt, with changing attitudes of people and has to accept mediation into its structural fold.

One way that it can be established, is by setting up mediation centres as a requisite for filing a case- this will make mediation the first basic step towards litigation. The benefit will be, trivial matters will get solved before entering the complication of trials, weaker parties can extract better settlements than live with the fear of losing completely. Secondly there can be a stage during the proceeding of the case, after a certain span of time when the parties will be given a chance to mediate, and thirdly the provision of resorting to mediation will be kept open even after trying the case in mediation.

This would make a perfect integration of mediation into litigation, a blend of two techniques to improve the sustainability and viability of the judicial system as a whole. Mediation as an ADR was introduced,

⁵ India Law Journal, https://www.indialawjournal.org/archives/volume4/issue_1/article_by_desia_kanuga.html

⁶ <http://keralamediation.gov.in/Mediation%20Proceedings>

but it is indeed high time that it gets channelized into mainstream judicial system, catering to the needs of the people in the society who want it as an alternative, the concerns of those who are sceptical about it and specially designing the system which would strive for the welfare of the society, in arranging for both quality as well as expeditious delivery of justice. The question of sustainability of justice and judicial system is significant as it is the sole pillar of society on which peaceful coexistence rests. Be it Dharma or a law, the essence is universal and it is modelling human society on morally upright grounds. The present concern is not simply about the means of delivering justice but also the fact that the ends of justice needs to be met. Hence the structural change in litigation has to be accomplished for a better functional efficiency.

COMPARATIVE SURVEY; RURAL AND URBAN

DATA 1 ; RURAL

DETAILS:

10 respondents were chosen who were administered with questionnaires and asked to respond, supported by a personal interview session.

AGE; 25 TO 45 YEARS

OCCUPATION; WORKERS, HOUSEHOLDERS, FARMERS

SEX; BOTH MALE AND FEMALE.

1. Do you know what is meant by mediation? How do you know about it?

YES – 9 (90%)

NO – 1 (10%)

Almost the entire sample population are aware of mediation. Everyone identified the Sarpanch, head of the Gram Sabha or Panchayat to be the mediator and have also identified instances where disputing parties have sorted out conflicting claims or reasons. They have also stated instances when a third party acting neutrally has mediated towards resolution of conflict.

2. Are you satisfied with the system of litigation? Justify your response.

YES – 4 (40%)

NO – 6 (60%)

The affirmative respondents have expressed satisfaction with litigation, primarily as it is the conventional way of demanding justice and they want to stick to the established procedure even at the cost of getting a very expensive and delayed justice. The negative response stems from the fact that people have often failed to get a proper solution in time from the courts, they could not appeal up to the High Court, could not fight cases in certain situations which they refused to specify, and lastly expressed their disgust with the existing system.

3. Would you take any dispute to Courts or solve it by mediation?

COURTS – 4(40%)

MEDIATION – 6 (60%)

The third question has showed a perfect response in which there is a tilting majority towards using mediation rather than using the litigation system. The rural people although resistant wholly to shift from the conventional system, have largely acknowledged the viability of the alternative provided in mediation to them.

DATA 2 ; URBANDETAILS:

10 respondents were chosen who were administered with questionnaires and asked to respond, supported by a personal interview session.

AGE; 25 TO 45 YEARS

OCCUPATION; SERVICE, BUSINESS, HOMEMAKER

SEX; BOTH MALE AND FEMALE.

1. Do you know what is meant by mediation? How do you know about it?

YES – 10 (100%)

NO – 0 (00%)

Urban respondents have unanimously accepted that they have the knowledge of mediation. This shows a high level of awareness among people residing in urban society, and that they are accustomed to the growing acceptance towards mediation.

2. Are you satisfied with the system of litigation? Justify your response.

YES – 4 (40%)

NO – 6 (60%)

A similarity of responses with the rural sample population is found. Although majority is not satisfied with litigation owing to the tedious and monotonous delay involved, but there remains a considerable section of population still clinging on to the conventional establishment.

3. Would you take any dispute to Courts or solve it by mediation?

COURTS – 3(30%)

MEDIATION – 7 (70%)

An overwhelming majority of respondents have chosen mediation over litigation. This indeed reflects the changing trend and that urban society is more synchronised with the acceptance of the initiation of the upcoming change.

ANALYSIS:

The comparative analysis of the data shows that both urban and rural societies are aware of mediation, they willingly express dissatisfaction with the existing system of litigation, have faced problems with the tedious court system and express a desire to choose mediation over litigation. The pattern of responses of both the sample sets of data show an acceptance of change- if not wholly, but partly with a trend of increasing affirmative reaction towards the change. The collected data supports our hypothesis that indeed mediation needs to be introduced as complimenting the existing system, so as to make the system sustainable against its own backdrop.

CASE STUDY

PLACE; ANDAL VILLAGE

COUNTRY; INDIA

STATE; WEST BENGAL

DITRICT; PASCHIM BARDHAMAN

METHOD:

Andal village was selected for case study, as a rural centre to test awareness about mediation, the need for mediation and if it exists, and a survey of public opinion in the village towards analysing their attitude to mediate. It is significant in the sense that a case study of a particular place is an empirical means of survey and it provides primary data for the purpose of research- so as to analyse the practical aspect of the theoretical basis of the paper.

Drives were conducted in the village, short videos showed to the people and simulated mediation sessions were conducted with local participation to accustom people with the ways of mediating and familiarise the process with them. A meeting with the Gram Panchayat was held with the purpose of organising such an awareness camp that would benefit the locals in better understanding of mediation as a viable alternative to litigation.

ANALYSIS:

From our case study of the village, we have obtained some interesting analytical viewpoints, -

1. People have widely appreciated mediation not only because its new, but because they found it simple and felt that it did not involve much of a technical expertise, as involved in filing a case with the Court and carrying on with the proceedings.
2. There were instances of cases that the people stopped fighting for want of money, other socio political factors included, and cases in which people could not make proper appeals to higher courts. People also responded with incidents where the proceeding of their case and its status was not known to them, being far away from the place of the court.
3. People wanted to accept mediation when they were assured of the legality of the process and when they understood that a complete confidentiality can be maintained, along with a cooperative dialogue with the person with whom the dispute has come up. The fact that mediation encouraged and provided a chance to the respective parties to take responsibility of their own affairs and try to figure out a solution by compromise, was received with mixed reactions but largely appreciated.
4. Mock or simulated mediation sessions proved worthwhile for people's complete understanding of the prospects of mediation, the operation of the process and the utility derived from it hence. This gives a valuable insight that in order to enable people to reach out to mediation, as a new change as well as a much needed alternative, proper orientation process needs to be carried out by the local self bodies at the grassroot levels.

CONCLUSION

When it comes to justice, being the sole pillar on which the moral standard of the society and the virtue of peaceful coexistence of people living in close association in society, the means matter as much as to the extent of the ends. The structural system of justice of any country should be such that it would aid in the functional efficiency of the system, so as to keep the system viable and sustainable. In the present case, the research paper has analysed mediation as a means to increase the efficiency of judicial system.

Our hypothesis for the research has been proved as indicated by the analysis of data and the derived conclusions thereof. There exists a strong acceptance and tendency to accept mediation among people and it is established that a proper integration of mediation into the existing system of litigation would be indeed helpful in maintaining the sustainability and viability of the judicial system.