

LIMITATIONS OF JUDICIAL PROCESS IN INDIA AND EFFICACY OF ADR

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ABSTRACT

Present judicial system is encircled with its inherent problems and limitations of judicial process. Severity of the problem increases when common man is also not feeling friendly and protected in the present judicial system. Despite many advantages of using Alternative dispute resolution mechanisms, our society has been reluctant to give it its due recognition. The predominant reason being that a litigation ridden society is generally unable to explore consensual dialogue or arrive at an amicable solution. Taking into consideration the inherent problems and limitations in judicial process, the desperate need of ADR becomes more prominent to overcome the same and to reach the ultimate aim and destination that is justice.

Keywords: *Judicial process, judicial system, Alternative dispute resolution mechanisms, amicable solution, Limitation.*

I. INTRODUCTION

Present judicial system is surrounded by its limitations of judicial process. The main reasons, which can be mentioned for this particular situation, are procedures in Indian courts have not changed much during the post-independence period. The pre-independence practice of humiliation of the natives at the courts continues till today.

The effect is that the common man is away from the system. The alienation of the common man in India with the judicial system leads to his feeling that the court-room is an alien-land almost like a war field where the common notions of morality and ethics have no place. It is often said that 'All is fair in love and war.' **In India this gets extended to the courtroom where technicalities rather than truth and morality rule.** This has led to the Indian courts becoming battlefield of justice instead of being temples of justice.

From the point of view of a person of civilized society justice can only be the result of proper procedure followed though it would take some time but it would be the surprising thing for a person coming from the tribal areas or rural areas, because justice for them is not the thing for which one should wait for some days. But it would be a procedure where problem is heard & decided at once, not spending time. Therefore limitations in every society are different. Taking into consideration Indian society in general, and not any other society as a specific, following are the limitations that our judicial process faces.

II. LIMITATION

1. Basic Set up Problem

There is a problem in basic set up of justice delivery system by the justice delivering institution. For e. g. if appeal is to be preferred in the High Court or Supreme Court, in that situation the future of the case will depend upon whether the case is admitted or not, in spite of the grievances and hardships faced by the victim or parties. If the case is admitted on law points i.e. on merits then only there are some chances of justice, otherwise access to the way of justice is totally denied to the judicial process. The main features of Indian judicial system are independent judiciary, sufficient legal talent, civil service of court administrators, and a modern procedural code. However, the system also exhibits a general failure to manage effectively the dispute resolution processes of a democratic, socially diverse, and newly market oriented society.¹ Specifically, inefficient court administration systems, excessive judicial passivity in an adversarial legal process, and severely limited alternatives to a protracted and discontinuous full trial frustrate several goals of the adversarial process itself. Inefficiency in court administration denies timely access to legal dispositions. Excessive party control places those seeking legal redress in an unequal position because respondents can abuse and delay the resolution procedures with impunity. Finally, the unavailability of alternatives to litigation clogs the system. Many cases awaiting judgment are no longer contentious, and long awaited judgments are often difficult to enforce. Some of the causes thus identified are either beyond the control of the judiciary (such as the growth of the Indian population, poor communication systems between the court and the litigants, the expansion of legislation and regulation, and the resulting explosion of litigation),² beyond the scope of procedural reform (such as implementation of privatization policies or improvements in legal education), or beyond judicial authority. For interrelated political and economic reasons, other causes, such as the low judge to case ratio and the need for more judges, are not likely to be addressed. Furthermore, not all causes require change; some such as the principle of access³ reflect positive, central tenets of the Indian concept of civil justice. But many other causes are within reach of new measures, and the study focuses its primary attention on those features. Accordingly, concentration can be given on those problems that can be effectively addressed by the reforms, such as the critical functions of the civil justice process and the systemic allocations of responsibility to different institutional and non-institutional actors to perform such functions over time.⁴

¹Carrie Menkel Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 *Wm. & Mary L. Rev.* 5 (1996), 1 *J. Inst. Study Legal Ethics* 49 (1996), *passim*. ISDLS

² Dr. Dhananjaya Y. Chandrachud, *Note on Dimensions & Causes of Delay in the Courts in the City of Bombay and in the State of Maharashtra*, Sept. 27, 1992.

³ See, e.g., *Comment of Justice M.S. Janarthanam, High Court of Madras*, Sept. 28, 1996 (saying that "no price should... be charged for delivery of justice, by any method")

⁴ Section III Hiram E. Chodosh- *Egyptian Civil Justice Process Modernization: A Functional & Systematic Approach*, 17 *Mich. J Int'l L*, 865 (1996) ISDLS

2. Background of Judges

Personalistic and Environmental Aspect i.e. background of Judges or their brought up has great impact on the judicial process or judgment. Their line of thinking depends upon the environment in which they were brought up. Judge as a person has great effect upon a judgment. If a judge is a person who has come from the very poor family or from the slum area, in that case he is well aware of the problems, which those people face. And also he would be aware of the causation of crime of these people. Therefore environmental aspect i.e. psychological aspect would definitely reflect upon the decision given by the said judge. Psychology is the science of mind and behaviour. It has a close connection with judicial process. To decide the punishment to the criminal in any particular case, psychology of the criminal is taken into consideration. It is the duty of the people in judicial process to understand the criminal and the working of a criminal mind. Therefore Personalistic and environmental aspects are important in a judicial process.

3. Social limitation

Sociological aspect also plays vital role in judicial process. Social apathy, Public attitude, streamlining procedures, which enable the judge to frame the issues, is rarely effectuated. Likewise, sanction power to impose costs for frivolous conduct is seldom exercised.⁵ Interim injunctive relief is routinely granted, but long delays in hearing the contentions of those enjoined persist. Commonly made interlocutory appeals fracture the case into many parts and effectively stay the trial. The absence of alternatives to litigation makes a full, discontinuous trial necessary, regardless of how long a full trial may take. Once a judgment is reached, the truly hard work of enforcement and execution begins. These compounding problems engender despair among pessimists and overwhelm even dedicated optimists, while public tolerance appears to be waning.

4. Political interference

The pressure by the politicians while deciding the cases is the very normal factor of Indian Judiciary. Traditionally in any democracy, it is the duty of the political class to debate and to carry out such structural reforms. It is not unusual for the politicians in India to lean on retired judges, bureaucrats and even army officers for carrying out duties that are in a democracy responsibility of the political class. The political class must realize that this sort of abrogation of duties is detrimental to the future of democracy. Notwithstanding the crisis of confidence that the political class faces, the politicians must ask the judiciary to reform their own house. It can be said that the political interference should be in the interest of the general public, but at the same time it must not tremble the roots of the democracy.

5. Financial Limitations

For applying modern techniques in judicial process and to be in pace with globalization it is necessary to have sufficient funds. Unless and until sufficient funds are available, machinery of

⁵ Consequently, many helpful provisions of the Code of Civil Procedure remain underutilized

the court system cannot be improved or replaced by the modern techniques, which are used in western or developed countries, useful for speedy delivery of justice or disposal of work. As a daunting symptom and aggravating cause of these problems, widespread and profound backlog and delay⁶ currently undermine the fundamental priorities of a law-based society. Backlog and delay in the resolution of civil disputes in India erode public trust and confidence in legal institutions, and act as significant barriers to India's chosen path to social justice and economic development. The inability to enter final legal decisions within a reasonable time renders state action functionally immune, turns obligations to perform contractual duties into effective rights to breach with impunity, and devalues remedies eventually provided. In sum, the inability to resolve disputes in a timely manner eviscerates public and private rights and obligations. The poor judicial system in India has attracted worldwide attention. International investors and corporations take this as one of the big hurdles of doing business in India. Businessmen in India resort to all means other than courts for settlement of disputes. Courts are considered only as a last resort or as an alternative to be used for harassment of the opposite party. The situation is indeed alarming and calls for immediate steps on war footing. The only institution that can stem this rot is the judiciary itself, but the judiciary does not even seem aware of the problem.

6. Limitations in management

Generally in business courses it is taught how there should be efficient working in business hours but unfortunately it is no where taught that what is required for smooth running of the court system and efficient dealing of the cases by the court officials. The typical life span of a civil litigation presents a sad picture. Records of new filings are kept by hand, and documents filed in the courthouse are frequently misplaced or lost among other paper. Lawyers crowd the courtroom and wait for their cases to be called. Even when called, judicial attention is frequently deferred by innumerable adjournments: the witness is not available, the party is not present, the lawyer has not arrived, or a document is not yet available. When the case is heard, a judge orally summarizes testimony for a court reporter. There is little likelihood that this judge will be the same one to issue a decision because judges are transferred more quickly than legal dispositions are made. Judges are so under paid and over worked that they often adjourn and delay the preparation of a case, if only to put off the demands of reaching a decision.

III. National and International Scenario and Efficacy of ADR

A brief look at the international scenario of ADR Mechanism reveals the popularity of its usage in various countries. The seeds of ADR in the UK can be traced to the work of the advisory, conciliation and arbitration service which was formed in 1974. In China and Japan mediation was used as primary means of conflict resolution. The Chinese principle was the influence of Confucian view of harmony and dispute resolution by morals rather than coercion. Informal dispute resolution was used in many cultures of the world including India, Africa and Israel.

In Japan, Judges intervene extensively during the in-court settlement; every Japanese Judge is expected, both by law and by litigants, to move a case towards settlement. This has the force of

⁶ Robert Moog, Delays in the Indian Courts: Why the Judges Don't Take Control, 16 Just. Sys. J. 19, 22,30 (1992).

statutory law. At least 40% of the cases are settled. The Judge, who decides to switch the litigation to a settlement mode, takes off his robe and acts as mediator.

Even in Europe, mediation is seen as a potentially promising mechanism for the resolution of both simple and complex disputes. In 1995, France expanded the legislative basis for judicial conciliation and mediation.

The Hong Kong International Arbitration Centre, most probably the largest arbitration service centre in Asia, has held the view “arbitration as compared to litigation has become very popular for resolving the disputes. Similarly, conciliation and mediation find an increasing measure of support in future.”

However in India, laws relating to resolution of disputes have been amended from time to time to facilitate speedy dispute resolution. The Judiciary has also encouraged out of court settlements to alleviate the increasing backlog of cases pending in the courts. To effectively implement the ADR mechanism, organizations like ICA, ICADR were established, Consumer redressal forums and Lok Adalats revived. The Arbitration Act, 1940 was repealed and a new and effective arbitration system was introduced by the enactment of the Arbitration and Conciliation Act, 1996. This law is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration.

The Legal Services Authorities Act, 1987 has also been amended from time to time to endorse use of ADR methods. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes. Mediation, Conciliation, Negotiation, Mini Trial, Consumer Forums, Lok Adalats and Banking Ombudsman have already been accepted and recognised as effective Alternative dispute resolution methodologies.

IV. CONCLUSION

Indian Constitution makes Indian judiciary a self-regulatory body. The Supreme Court and High Courts exercise powers of superintendence and also lay the procedures for conduct of business in the courts. Armed with such wide powers, it would have been logical for the judiciary to develop internal decision making processes and systems for intellectual development of its Honorable members. Despite many advantages of using Alternative dispute resolution mechanisms, our society has been reluctant to give it its due recognition. The predominant reason being that a litigation ridden society is generally unable to explore consensual dialogue or arrive at an amicable solution. The ADR practitioner therefore acts like a healer of conflicts rather than a combatant.