A CRITICAL STUDY ON ROLE OF ADR IN CONSUMER PROTECTION INDIA

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ARTICLE INFO

ABSTRACT

It has been nearly 30 years since the Consumer Protection Act was framed and passed in the Parliament. But the question is: are the objectives of the Act are realised at least to a certain extent? Or has it added to existing complex system of judiciary which has been failing in providing speedy justice through non-disposal of cases. Several reports suggest that Consumer Fora have become like civil courts which is in contrast to their aim. The ADR have chipped in to solve this crisis. But the Consumer Fora were created for ensuring justice to consumers which ADR modes cannot be fully trusted with. This paper tries to examine these aspects and bring out the role of ADR in the consumer dispute resolution.

INTRODUCTION

Equity in every one of its features – social, financial and political – is required to be rendered to the masses of this nation with no further loss of time – the need of great importance. The new strategy consists in dispute-resolution by conciliation, mediation and negotiation. The established guarantee of securing to all residents equity, social, monetary and political, as guaranteed in the Preamble of the Constitution, can't be acknowledged unless the three organs of the State, i.e., the law making body, the administration and the courts join together to discover ways and implies for giving to the Indian poor equivalent access to the State's equity framework.

The Consumer Protection Act, 1986 was sanctioned with a goal of giving better assurance of the interests of consumers and for the snappy and simple settlement of customers' question. The Act gives compelling, economical, straightforward and rapid redressal of customers' grievances, which the common courts are not ready to give. This Act is another case of ADR for the compelling mediation of consumers' debate. The Act accommodates three-level fora, that is, District Forum, State Commission and the
National Commission for redressal of grievances of consumers. Extensive quantities of consumers are drawing nearer these fora to look for speedy redressal of their grievances. There has additionally been a spurt in social activity case for the benefit of consumers by Consumer Activists, Voluntary Consumer Organizations and other Social Action Groups. India has attempted real changes in its discretion law in the late years as a feature of monetary changes at first in 1991. The Arbitration and Conciliation Act of 1996 was subsequently authorized by the Parliament getting generous changes in mediation, with respect to local and global question.

ROLE OF ADR IN CONSUMER DISPUTE RESOLUTION

The principal strides towards taking resort to alternative dispute resolution mechanism in India can be followed back as early as to the Bengal Regulation Act, 1772 which gave that in all instances of questioned records, parties are to present the same to mediators whose choice are regarded a final decision and should be last and left unquestioned. The Regulation Act, 1781 further conceived that judges ought to prescribe the parties to submit question to commonly concurred individual and no recompense of mediator could be put aside unless there were two witnesses that authority had submitted gross blunder or was inclined toward a party. A suggestion surprisingly was made to the Second Law Commission by Sir Charleswood to accommodate a uniform law with respect to arbitration. The Code of Civil Procedure was then established as needs be in 1859. Indian Contract Act, 1872 additionally perceives discretion understanding as a special case to Section 28, which imagines that any agreement in restriction of remedy through lawful procedures is void. Later, the Arbitration Act, 1899 was likewise sanctioned to apply to the Presidency towns to encourage settlement of questions out of court. The Arbitration Act, 1940 repealed and supplanted the previous Act of 1899. At the point when India turned into a state signatory to the protocol on arbitration under the Geneva Convention and keeping in mind the end goal to offer impact to the same, the Arbitration (Protocol and Convention) Act was passed. Later, India likewise turned into a signatory to the New York Convention and to give effect Foreign Awards (Recognition and Enforcement) Act, 1961 was passed. After liberalization of Indian economy in the 1990’s Arbitration and Conciliation Act, 1996 was ordered which superseded the previous Act of 1940 and achieved radical changes in the law of arbitration and acquainted ideas like Conciliation with guarantee of expedient settlement of issues/problems/disputes of mainly business.

A portion of the significant points of interest of ADR are: 1) It is less costly; 2) It is less tedious; 3) It is free from details as on account of directing cases in law Courts; 4) Parties are allowed to talk about their disparities of sentiment with no apprehension of exposure of this in the witness of any law courts; 5) Parties have the inclination that there is no losing or winning side between them yet in the meantime their grievance is reviewed and their relationship is restored.

Literature survey can be introduced in number of ways: Chronological (in like manner to when the literature was distributed), by pattern (by taking note of the fundamental patterns), methodological (contingent on the strategy utilized by the scientist), and topical. The literature survey for this situation is introduced according to
the convenience. A particular review of literature has been done to comprehend and grasp the different parts of the research problem is as under:

But the question is: how much of a role does the ADR plays in amicable settlement of consumer disputes? And also, how far has the ADR been effective till date in regard to the consumer dispute resolution in India? The study aims to find answers to these questions.

Law Commission (2009) has emphasised that speedy justice is the privilege of every contesting individual. There is no denying the statement delay frustrates justice. In the present set-up it regularly takes 10 – 20 – 30 or significantly more years before a matter is at last decided. In the recent past, litigation has expanded tremendously. The population growth, improved financial conditions, lack of tolerance and materialistic way of life may be some of the causes. Be that as it may, the postponement in agreement of equity must be disposed of by making compelling strides generally the day is not far when the entire framework will crumple. As of late, one Hon’ble Judge of Delhi High Court ascertained that 464 years will be required to clear the overdue cases with the present quality of the judges in that High Court. The position may not be that desolate but rather is as yet disturbing.

It was additionally said by the Law Commission that legal change is the worry of the Judiciary, as well as it is the obligation of the Executive, of the Legislature, of the Bar and of the general population moreover. It is not an one-time cure, but rather an ongoing procedure. They should quit pointing the finger at one another, for the perniciousness. They should unite, to forestall and control the suit plague. With the approach of the ADR, there is another road for the general population to settle their disputes. ADR centres must be made for settling questions out-of-court which is being done in numerous different nations. ADR methods will truly accomplish the objective of rendering social equity to the general population, which truly is the objective of the effective legal framework.

It is important to comprehend the advantages of ADR to know how it helps and supplements the Courts. The essential aim, as indicated by the Working Group on Consumer Protection, of ADR development is evasion of vexation, cost and defer and advancement of the perfect of “access of equity” for all. ADR can be extensively ordered into two classes; court-added alternatives (it incorporates mediation, conciliation) and community based dispute resolution instrument (Lok-Adalat).

Meenu Agrawal (2006) has brought out the fact that the process of development coupled with increasing liberalisation and globalisation across the country has enabled consumers to realise their increasingly important role in society and governance. The consumer movement in India is as old as trade and commerce. The book provides a detailed and comprehensive study of the recent developments in the Indian consumer protection law, besides examining the provisions of various other statutes dealing with consumer protection. It also provides further insight into consumer behaviour to help marketers develop an appropriate marketing strategy.

There are many difficulties arising out of laws itself. One would be the inclusion of compulsory arbitration in the contract which can be termed as unfair term. The Law
Commission to spread both "procedural" and "substantive" viewpoints in a solitary definition, have proposed to characterize 'contract', as covering both 'contracts', (i.e. agreements which are enforceable) and agreements simpliciter which are void. Whenever "procedural" perspectives is managed, the word will signify "contract" and "substantive" viewpoints is managed, the word will signify 'agreement'. So far as the different consumer fora under the Consumer Protection Act, 1986 are concerned, they are of the perspective that the said fora must have the advantage of the provisions identifying with 'general procedural unfairness' in sec. 5 of the Indian Contract Act, 1872. It is to be noticed that however the 103th Report of the Law Commission (1984) managed the idea of 'unfair terms', did not allude to the dichotomy of "procedural" and "substantive" unfairness. Sometimes compulsory arbitration can be termed as both kind of unfairness.

A substantive revival of the Section 89 of the Code of Civil Procedure, 1908, was carried out by the Law Commission. The section was proposed to be amended as under: “89: Settlement of disputes outside the court –

(1) Where it appears to the court, having regard to the nature of the dispute involved in the suit or other proceeding that the dispute is fit to be settled by one of the nonadjudicatory alternative dispute resolution processes, namely, conciliation, judicialsettlement, settlement through Lok Adalat or mediation the court shall, preferably before framing the issues, record its opinion and direct the parties to attempt the resolution of dispute through one of the said processes which the parties prefer or the court determines.

(2) Where the parties prefer conciliation, they shall furnish to the court the name or names of the conciliators and on obtaining his or their consent, the court may specify a timelimit for the completion of conciliation. Thereupon, the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996, as far as may be, shall apply and to this effect, the court shall inform the parties. A copy of the settlement agreement reached between the parties shall be sent to the court concerned. In the absence of a settlement, the conciliator shall send a brief report on the process of conciliation and the outcome thereof.

(3) Where the dispute has been referred:- a) for judicial-settlement, the Judicial Officer shall endeavour to effect a compromise between the parties and shall follow such procedure as may be prescribed; b) to Lok Adalat, the provisions of sub-sections (3) to (7) of section 20, sections 21 and 22 of the Legal Services Authorities Act, 1987 shall apply in respect of the dispute so referred and the Lok Adalat shall send a copy of the award to the 25 court concerned and in case no award is passed, send a brief report on the proceedings held and the outcome thereof; c) for mediation, the court shall refer the same to a suitable institution or person or persons with appropriate directions such as time-limit for completion of mediation and reporting to the court.

(4) On receipt of copy of the settlement agreement or the award of Lok Adalat, the court, if it finds any inadvertent mistakes or obvious errors, it shall draw the attention of the conciliator or the Lok Adalat who shall take necessary steps to rectify the agreement or award suitably with the consent of parties.

(5) Without prejudice to section 8 and other allied provisions of the Arbitration and Conciliation Act, 1996, the court may also refer the parties to arbitration if both
parties enter into an arbitration agreement or file applications seeking reference to arbitration during the pendency of a suit or other civil proceeding and in such an event, the arbitration shall be governed, as far as may be, by the provisions of the Arbitration and Conciliation Act, 1996. The suit or other proceeding shall be deemed to have been disposed of accordingly”.

Moreover, the Law Commission also emphasized on the direction of the court to opt for any one mode of alternative dispute resolution- “At the stage of framing issues or the first hearing of the suit, the court shall direct the parties to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 and for this purpose may require the parties to be personally present and in case of nonattendance without substantial cause, follow the procedure for compelling the attendance of witness. The court shall fix the date of appearance before such forum or authority or persons as may be opted by the parties or chosen by the court.

Appearance before the court consequent upon the failure of efforts of conciliation- Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority or the person to whom the matter has been referred is satisfied that it would not be proper in the interest of justice to proceed with the matter further, in view of the stand taken by the respective parties, it shall refer the case back to the court who shall direct the parties to appear before it on the date fixed and proceed with the suit.”

In the judgment of the Supreme Court of India in Salem Bar Association vs. Union of India, the Supreme Court had requested to prepare draft model rules for Alternative Disputes Resolution (ADR) and also draft rules for mediation under section 89(2)(d) of the Code of Civil Procedure, 1908. Pursuant to the said judgment, the Law Commission prepared a set of draft rules. They are in two parts – the first part consisting of the procedure to be followed by the parties and the Court in the matter of choosing the particular method of ADR. The second part consists of draft rules of mediation under section 89(2)(d) of the Code of Civil Procedure, 1908.

There are immense contrasts in the terms mediation and conciliation. Justice M. Jagannadha Rao has perceived that under the law and the UNCITRAL model, the part of the mediator i.e. mediator is not dynamic and is to some degree not exactly the part of a 'conciliator'. Under Part III of the Arbitration and Conciliation Act, the 'Conciliator's powers are bigger than those of a "mediator" as he can recommend proposition for settlement. Thus the above importance of the part of "mediator" in India is very clear and can be acknowledged, in connection to sec. 89 of the Code of Civil Procedure moreover. The distinction lies in the way that the "conciliator" can make proposition for settlement, "formulate" or "reformulate" the terms of a conceivable settlement while a "mediator" would not do as such but rather would just encourage a settlement between the parties.

Justice M. Jagannadha Rao has pointed out that, in addition our judges and lawyers require to be trained. Workshops, seminars, conferences must therefore be held regularly in the Districts as well as in the Courts every month, for quite sometime, Bar Councils should seriously think of ADRs as a compulsory subject. There can likewise be a different examination on ADRs and a pass in that can be a condition for award of
permit to practice to highlight the significance of the ADR forms. If there are any changes to be made and realized, it is impossible by minor enactment, it must be finished by rousing one's self and in addition inspiring others. Yet, an expression of alert – all settlements at mediation and conciliation must be deliberate, the method must be reasonable and none of the parties must face with an inclination that the terms of settlement were the consequence of some impulse. Settlements must be the aftereffect of sensible influence.

A study was conducted by the Indian Institute of Public Administration. The sample size consisted of 10 districts from 5 states (two from each state). From each district 200 person from different sections of the society and 25 complainants from the respective DCDRF were selected (total sample size of 2000 consumers and 175 complainants). Apart from these 10 District Forums, 5 State Commissions and National Commission have also been taken up for the study. For the purpose of study we proposed to interview 30 members from 10 District Forums, 15 members from 5 SCDRCs and 10 members of NCDRC, but to have a broader perspective, Questionnaire was administered to all the District Forums of the five selected states inviting their views and suggestions on the working of the quasi-judicial machinery. Out of total 162 District Forums in the five states we received responses from 112 Presidents and 193 Members of the District Forums, which covers 70 percent of the study area. Their opinions have been incorporated in this report. Apart from this the CCS research team also organised Search Conferences at district level. One Validation Seminar was also organised after the presentation of the report to Department to get suggestions and to validate the findings. The study was completed in six months. The study revealed that the Act although has been in operation for the last 25 years, but there are deficiencies and shortcoming in respect of its effective implementation and operation. The purpose of the three tier quasi-judicial structure was to give quick and inexpensive justice to the consumers; however, the machinery is riddled with many problems making it difficult for the complainant to get justice in the prescribed time. The problem is further aggravated by the low level of awareness among the consumers. Even after 25 years of the consumer movement, concerns are being raised regarding the level of awareness of the consumers inspite of many steps taken at the central and state government level to generate awareness among the masses.

On the topic of suitability of ADR in India, the Report of the Working Group on the Consumer Protection gives an amazing answer. Out of the methods of ADR, mediation is the most suited system for a nation such as India, on the grounds that all around individuals in India at any rate in the provincial ranges might want to settle their question agreeably. The degree of Judicial Interference under the Arbitration and Conciliation Act crushed the reason for fast equity, in spite of the fact that it was a move in the right course. Arbitration had a few diseases: (I) conventional ill-disposed framework is kept running in an arbitration procedure; (II) procedures are postponed as both sides take lot of time introducing their entries and submissions; (III) the expense of arbitration is a great deal more than the common ADR process, consequently, it doesn't draw in the poor disputants; (IV) participatory part of the parties are disregarded as the entries and submissions are made by the lawyers. Mediation to succeed making of mindfulness and advancing this technique is to be made.
If Consumer Protection Act was framed for speedy disposal of cases then why the need for focus on ADR in consumer dispute resolution? The answer lies in the report of the CUTS International. There are various issues with the consumer courts. The customer courts are getting to be similar to common courts, with presidents (legal individuals) requesting a more formal methodology. Hardware and offices are likewise an issue much of the time. Some of the time these forums have even requested that complainants connect with legal advisors, notwithstanding when it is not by any means required. There have been occurrences when the National Commission has taken over five years to choose cases. As of late, the National Commission was alluding cases for arbitration and the Supreme Court needed to mediate to control this illegitimate practice. Every one of these elements have brought about dissatisfaction among the consumers. The appointments of individuals is another issue. Previously, individuals were delegated on the premise of their associations instead of merit. Presently, the framework has improved significantly because of a change in the law requiring a selecting committee to appoint them. Commercials are additionally being discharged for better choice. In any case, because of extremely poor pay, great individuals are not pulled in to these positions. On account of resigned judges or common workers wishing to be designated, it is not such an issue in light of the fact that the remittances that they get are notwithstanding their benefits. Then again, much of the time the arrangements of the State Commission Presidents don't keep going for over two years on a normal, when they are really required to be in office for five years or up to the age of 65, whichever is prior. There is a lazy methodology in selecting such individuals.

Report of the Working Group of Consumer Policy (Report No. 14 of 2006) study was directed in Maharashtra to know the mindfulness among consumers with respect to Consumer Protection Act and viability of component put set up under CPA by the Central and State government to advance and secure the interests of customers. 500 respondents were incorporated into this study. Discoveries of the report were as per the following (1) 66% of the Consumers didn't know about the rights and 82% of them discovered ignorant about CPA. (2) Nearly 49% of the mindful consumers had come to think about the Act in most recent four years however the law has been in presence in for a long time. (3) Overall, just 13% of the consumers discovered mindful about Dispute Redressal Mechanism under CPA. (4) A larger part of complainants came to think about Consumer Forum through electronic and print media, NGOs were not mainstream wellspring of mindfulness as just 4.9% of the complainants credited their attention to the work of NGOs. (5) It was likewise uncovered by study that 78% of respondents were conveying a negative sentiment of the tries made by the administration or had not any thought regarding the same. Toward the end, report recommended that Ministry of Consumers Affairs ought to facilitate with the States Governments including NGOs/VCOs in advancing attention to the consumer security measures among consumers by setting up particular plans of money related and other backing.

Noting the inquiry: Should organizations be required to illuminate consumers when they are a piece of an ADR plan? Provided that this is true, what might be the most proficient ways? The International Mediation Institute (IMI) has addressed that it
is required for consumers to consent to sponsored or free mediation by means of lawful
guide plans would be important since numerous won't have encountered mediation and
might some way or another reject the thought through absence of experience or
understanding. Some type of kitemark or logo would function admirably ought to be set
to show mandatory assertion or different methods of ADR.

In any case, it is to be noticed that ADR too are not flawless and Arbitration in
India has neglected to accomplish its targets as it is spooky by the issues of problems of
conventional litigation, similar to postponement, over accentuation of procedural law
and regular suspensions. It is additionally influenced by colossal expense charged by
arbitrators, absence of their responsibility and duty, nonappearance of guidelines of
behaviour and measures of expert morals. These elements have welcomed the
consideration of partners in building up a solid institutional arbitration advancing their
interests. As has been demonstrated in the present study, without an all around sorted
out institutional set up, the act of assertion i.e. arbitration would not realize the wanted
results. As inspected in different sections, different methods of ADR viz. intervention
and Lok Adalats and so forth have been, as it were, effective in determining debate in
view of their institutional set up.

There are other emerging areas of ADR as well such as Online Dispute
Resolution (ODR). Julio César Betancourt and Elina Zlatanska has given a broad
meaning for the merging concept of Online Dispute Resolution in India. Online Dispute
Resolution (ODR) means the utilization of Alternative Dispute Resolution (ADR)
systems over the web. ODR methods can be utilized to manage both logged off and
online-related question. ODR components are normal, in addition to other things, to
"encourage access to equity", and ought to in this manner have the capacity to handle a
percentage of the issues concerning the utilization of disconnected from the net question
determination instruments. Additionally e-arbitration, e-mediation and e-negotiation
are dealt in length. Hon. Arthur M. Monty Ahalt has opined that ODR gives the
capacity to two (or more) different parties to settle their question/problems/issues
utilizing the Internet. Here and there this includes legal advisors and middle people and
some of the time it doesn't. It relies on upon the vehicle/supplier that the parites consent
to use to determine their case. But the question is feasibility of such methods in
developing country like India?

Namrata Shah and Niyati Gandhi have brought out the need to create
institutional arbitration to exist together with ad-hoc arbitration and scale it down to be
accessible for dispute resolution in developing nations utilizing India as an explanation.
Certain proposals to make institutional arbitration, which is thought to be proper for
global business dispute resolution, suitable for domestic issues in using arbitration
especially in developing nations have been highlighted.

Sugandha Kamal suggests that it is required to be perceived that obligatory
mediation provisions in consumer contracts are characteristically unjustifiable, and are
unmistakable from understandings made by parties of equivalent bartering power with
a through and through freedom to seek after substitute method of remedy. Pre-dispute
mediation provisos in consumer contracts, should be set under a different legitimate
class and ought not be given the same reverence as different understandings to parley.
The main area of the paper takes a gander at the position in United States and the grounds that exist to challenge pre-dispute provisos. The resulting segment talks about how the issue of compulsory mediation is managed in the European Union.

Jamshed Ansari has aimed to examine critically the parties’ autonomy in Arbitration. Further, to see that whether the Arbitration law gives absolute autonomy to the parties or gives some restrictions on that. To what extent the party autonomy principle is acceptable. The party autonomy principle given in the Arbitration law is not absolute and which is controlled by the important mandatory provisions. However, the party autonomy principle is somewhere violating the principle of natural justice and public policy as well which are the fundamentals of the law of the land. The author has formulated the following questions and has tried to find out the answer- Whether the parties may agree on everything for Arbitration. What is the autonomy available to the parties during Arbitration proceedings? Whether there is any restriction on such autonomy or it is absolute. Whether principle of natural justice apply to the Arbitration proceeding. Whether giving party autonomy is against the public policy of the country.

Shivaraj S. Huchhanavar has opined that today equity administering framework in India is on contorted street at the one end disappointment of formal law Courts bringing about accumulation of cases, and on the flip side ADRs neglects to get tremendously require open backing, under this situation it is vital to reconsider on the new routes out for coming era. As needs be it is crucial in this connection to think about different types of ADRs, their advancement, and method of working of ADRs in order to survey it masters, cons and materialness to the pluralistic Society of Indian.

Aparjita Roy and Pooja Khethrapal have analyzed the part of various option question determination framework winning in India for equity. The Constitution of India insurances expedient equity and lawful guide as a central right. In spite of the fact that it is not simple for a crowded nation such as India, still it is making a decent attempt in such manner. They have additionally made a genuine endeavour to inspect the need of an option framework in India, its capacities and viability.

Akhileshwar Pathak frustrated with the new Consumer Protection Bill, 2015 has remarked that that the Bill is weak and needs many modifications and it does not fit many needs of the society such as retailing sector. The Consumer Protection Bill, 2015 is not securing the rights of the consumers not protecting the consumers from exploitation in many manner in its establishment and needs update. His paper surveys the privileges of the consumer and makes proposals for amendment in the Bill.

FINDINGS

It can be said that there doesn’t exist much information on the impact that the ADR has made in the consumer dispute resolution. ADR no doubt has made great impact on the quick disposal of the cases which the judiciary has been finding hard to do. There are no more doubts or arguments that courts are performing better than the ADR. The ADR modes have gained quite a good reputation in the present era considering the backlog of cases. Moreover, it has to be noted that consumer dispute for
a provided under the Consumer Protection Act, 1986, is also ineffective in the consumer dispute resolution. The ADR has also impeccably gained momentum even in the case of the consumer disputes although the consumer fora exists under the Consumer Protection Act, 1986. The ADR has quite successfully entered into the field of consumer dispute resolution as well. So, the real question is what is the exact role and involvement of ADR in the consumer dispute resolution. And also, whether the ADR has been effective in the resolution of consumer disputes is another question which the answer seems to be incomplete and bleak. With the evolution of Online Dispute Resolution, it is quite pertinent to take technology as advantage by both ADR modes and also traditional Courts.

CONCLUSION

Therefore, ADR, as the name itself suggests are alternative to the traditional approaches made by the courts. The courts have been accused of slow disposal of cases and has been cause of dissatisfaction among the general public. ADR has presently gained importance in the present era especially where the failure of the courts is blatantly seen. It has, of late, become a fact that ADR are more effective in definite terms of time, cost and satisfaction. Moreover, the context of the use of ADR in consumer dispute itself is limited. That is to say, all the modes of the ADR are not adequately explored and tested in the role, involvement and effectiveness in consumer dispute resolution. Much literature focuses on the consumer fora and its success itself. But how far have the consumer fora been capable of handling and disposing the cases are another matter of inquiry. Many reports as explored above suggest that the Consumer Protection Act has failed in implementation. Much more revealing is the limiting of the modes of ADR and also the impact, the modes of ADR have made on the resolution of the consumer dispute resolution. In regard to this, therefore, a study is necessary to understand and critically analyse the role and evaluate the effectiveness of Alternate Dispute Resolution mechanism including not only arbitration and conciliation but also mediation, negotiation, lok adalat, regulatory authorities, ombudsman, online dispute resolution mechanism etc. in the consumer dispute resolution.

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