

ADR MECHANISM AND THE REDRESSAL OF CONSUMER GRIEVANCES WITHIN THE THREE-TIER CONSUMER ADJUDICATORY SYSTEM IN INDIA: AN ANALYSIS

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ABSTRACT

In order to handle the mounting pressure of litigation and to clear the backlog, the Government through an amendment to the Constitution, in 1976, set-up numerous tribunals, commissions, boards and special courts. Simultaneously, the system of Alternative Dispute Resolutions took shape. The ADR involving negotiation, mediation and arbitrations, is one of methods of informal grievance redress mechanism for protection of consumer rights. One important welfare legislation in India that provides direct relief and gives protection to the consumers is “The Consumer Protection Act, 1986”. It confers six rights on consumers: right to safety, right to information, right to choice, right to be heard, right to redressal and right to consumer education. This act also provided for establishment of three-tier hierarchy redressal agencies. Now the total number of consumer complaints filed before the three tier consumer agencies are 5141696, disposed : 4679910, pending: 461786 and the percentage of disposal is 91.02% as on 13.06.2019. The consumer law was amended several times and finally resulted in, “The Consumer Protection Act, 2019”. The new law aims to establish authorities, for timely and effective administration and settlement of consumer disputes. The present paper analyses how far the ADR mechanisms of negotiation, mediation, arbitration and Lok-Adalat can provide effective settlement of consumer grievances.

Keywords: Alternative Disputes Resolutions, Disputes Redressal, Consumer, Consumer Protections, Negotiation, Mediation.

INTRODUCTION

“Discourage litigation. Persuade your neighbours to compromise wherever you can. Point out to them how the nominal winner is often a loser – in fee, expenses and waste of time.”

-----Abraham Lincoln.

The Alternative Dispute Resolution mechanisms are complementary to court proceeding and are gradually gaining recognition. The main advantage of ADR techniques is that the litigants are not bound by the technicalities of ordinary court procedure. The society, state and the parties to the dispute are equally under an obligation to resolve the dispute before it disturbs the peace in the family, business community, society or ultimately humanity as a whole, because in a civilized society the rule of law should prevail and principles of natural justice should apply and it provide the complete justice.ⁱ

With rapid industrialization since independence, India has joined the race in manufacturing consumer goods and providing essential services on a large scale, mainly by the Government. The public sector has monopolized many public utility services and production of consumer goods of various types. Be that as it may the well organized sectors of manufacturers, traders and service providers with the knowledge of market and manipulative skills exploit the consumers, despite the existence of various laws protecting their interests. The traders or manufacturers make false representations about the quality, quantity, grade, composition style or model of the goods offered for sale. They even make false promises to the effect that they (traders/suppliers) have a sponsorship or approval or affiliation, which they do not have. Further they make false or misleading representation concerning the need for, or the usefulness of any goods or services and in giving to the public any warranty or guarantee for the performance, efficacy or the length of life of a product or of any good which is not based on any adequate or proper test thereof and thereby making the consumer buy, sell, hire or avail of any goods or services as a condition-precedent for buying, hiring or availing of any goods or services. By all these unfair or restrictive trade practices, the trader/manufacturer stands to gain at the expense of the consumer.ⁱⁱ

The Consumer Protection Act, 1986 was adopted with a goal of giving better assurance of the interests of consumers and for the snappy and simple settlement of customer's question. The Act gives compelling, economical, straight forward 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 meditation of consumers' debate. The Act accommodates three-levels; , that is' District Forum (new act-District Commission), State Commission and the National Commission for redressal of grievances of consumers. Extensive quantities of consumers are

drawing nearer to these fora to look for speedy redressal of their grievances. There has additionally been a spurt in social activity cases for the benefit of consumers by Consumer Activists, Voluntary Consumer Organizations and other Social Action Groups. India has attempted 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 the local and global question.ⁱⁱⁱ

ADR has been on boom between the large corporations as well as private individual parties. The reason for such a change in trend has been its fast mechanism of redressal of the disputes, which has been major concern for the judiciary as long pending cases in court has been of concern for the disputing the parties. According to section- 7 of the arbitration and conciliation act,1996, arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.^{iv} In the judgment of *M/S Emaar Mgf Land Limited v. Aftab Singh & Anr*,^v discussed in length issue “Whether the Arbitration Act mandates Consumer Forums, constituted under the Consumer Protection Act, 1986, to refer parties to arbitration in terms of a valid arbitration agreement, notwithstanding other provisions of the Arbitration Act and the Consumer Act?”

According to section 80 (2)- The Consumer Protection Act’ 2019,^{vi} Where a consumer disputes is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles on natural justice while carrying out mediation. This paper focuses the legal process and technological requirements for necessary to establish an effectiveness of ADR mechanism in consumer grievances of quick settlement of consumer disputes.

RELEVANCE OF ADR MECHANISM IN INDIA

The object of Legal Services Authority Act, 1987 was to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society;

to organize Lok Adalats to ensure that the operations of the legal system promote justice on a basis of equal opportunity. The concept of Lok Adalat is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable, economic, efficient, informal, and expeditious form of resolution of disputes. It is hybrid or admixture of mediation, negotiation, arbitration and participation. The true basis of settlement of disputes by the Lok Adalat is the principle of mutual consent, voluntary acceptance of conciliation with the help of counselors and conciliation. It is a participative, promising and potential ADR mechanism out of the methods of ADR, mediation is the most method for a country like India, because by and large people in India at least in the rural areas would like to settle their disputes amicably.^{vii}

The judicial interference under the Arbitration Act defeated the purpose of speedy justice, although it was a move in the right direction. Arbitration had some ailments such as (i) traditional adversarial system is run in a arbitration proceeding; (ii) proceedings are delayed as both parties take lot of time presenting their submission; (iii) the cost of arbitration is much more than the ordinary ADR process, thereby, it does not attract the poor litigants; (iv) participatory role of the parties are neglected as the submissions are made by the counsels.

Mediation to succeed creation of awareness and popularizing the methods is to be done. Department of Consumer Affairs has initiated the process under some of its projects. Training programmes on the ADR mechanism are of vital importance. Indian Institute of Public Administration (IIPA) or State level judicial academies can assume the role of facilitator or active doer for that purpose. The idea of running Mobile ADR Mediator system under the legal jurisdiction of consumer courts to help the exploited consumers in the market places and deliver instant justice just like Traffic Mobile Magistrate can be pilot tested. It is equally important to raise the consumer's awareness and their opponents of the values of ADR. This should be done on as much levels as possible in National, State and District commissions as well as government. Lectures in consumer clubs handing out leaflets, doing public relation will help. Pilot project should be started in at least 10 different for about one year as urban and rural areas. The pilot projects should be accompanied by close evaluation. During 12th Plan mediation Centers should be started in all Districts and State Capitals in a phased manner and infrastructure support may be provided to State/UTs for enabling this process. Mediation

centers should be annexed to the District for a/ State Commission or on its premises and adequate publicity need to be provided so that consumers are aware of such facility.^{viii}

SUPPLEMENT THE EXISTING REDRESSAL SYSTEM WITH ALTERNATIVE DISPUTES RESOLUTION MECHANISM

It has been rightly said that justice delayed is justice denied. An effective judicial system requires not only that just results be reached but that they are reached swiftly. But the currently available infrastructure of courts in India is not adequate to settle the growing litigation with reasonable time. This situation is gradually becoming equally relevant in the case of consumer forums also, albeit to a lesser degree as of now. In this context, there is an imminent need to supplement the current infrastructure of forums by means of Alternative Dispute Resolution mechanisms. Efforts towards ADR have met with considerable success and good results elsewhere in the world, especially in the litigation-heavy United States, where professional teams of mediators and conciliators have productively supplemented the dispute resolution and adjudication process.^{ix}

In 1995 the International Center for Alternative Disputes Resolution (ICADR) was inaugurated by Shri P. V. NarasimhaRao, the former Prime Minister of India, who had observed:

“While reforms in the judicial sector should be undertaken with necessary speed, it does not appear that courts and tribunals will be in a position to hear the entire burden of the justice. It is incumbent on government to provide at a reasonable cost as many modes of settlements of disputes as are necessary to cover the variety of disputes that arise. Litigants should be encouraged to resort to alternative dispute resolution so that the court system proper would be left with a smaller number of important disputes that demand judicial attention.”

The greatest challenge that the justice delivery system faces today is the delay in the disposal of case. Alternative dispute resolution was thought of as a quick fix to meet this challenge. The considerable delay in reaching the conclusion in any litigation adds to the cost and makes the absence of an effective mechanism for their recovery even more problematic. Although the consumer fora encourage the aggrieved parties to contest the cases personally, instead of engaging the services of advocates, the opposite is often the case. Also, the presence of judicial persons in the bench has inevitably and regrettably, led to all the trappings of civil

courts seeping in. The dire need of the hour is to lessen the burden of consumer fora and to adopt alternative dispute resolution mechanism.^x

The Alternative Disputes Resolution can be done by mediation. Though mediation, the consumer and the opposite party try to resolve the dispute with the help of a neutral third party called a mediator. In the course of informal meetings, the mediator resolves the differences between two parties. The primary object of ADR movement is avoidance of vexation, expense, delay and promotion of the idel of ‘access of justice’ for all. ADR can be broadly classified into two categories; court-annexed options (it includes mediation and conciliation) and community based dispute resolution mechanism (Lok Adalat).

The former Chief Justice of American Supreme Court while discussing the importance of ADR had observed:

“The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black robed judges, well dressed lawyers, and fine paneled court rooms as the setting to resolve their disputes is not correct. People with legal problems are like people with pain, who want relief and they want it as quickly and inexpensively as possible”.

The advantages of ADR system are briefly as follow:

- Reliable information is an indispensable tool for adjudication. Judicial proceedings make halting progress because of reluctance of parties to part with inconvenient information. ADR removes this drawback in the judicial system. Information can be gathered more efficiently by an informal exchange across the table. Therefore, ADR is a step towards success where judicial system has failed in eliciting facts efficiently.
- In mediation or conciliation parties are themselves prodded to take a decision. Since they are themselves decision-makers and they are aware of the truth of their position, the obstacles not exist.
- The formality involved in the ADR is lesser than traditional judicial process and costs incurred are very low in ADR.
- Finality of the result, cost involved is less, the time required to be spent is less, possibility of avoiding disruption is more.

The above reports of Working Group of Consumer Protection are suitability of alternative dispute resolution system in India.

ADR MECHANISM 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 a question to commonly concurred individual and no recompense of a 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. India Contract Act, 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 sanction 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 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 a guarantee of the expedient settlement of issues, problems and disputes of mainly business.^{xi}

A portion of the significant points of interest of alternative disputes resolution are:

- (a) It is less costly;
- (b) It is less tedious;
- (c) It is free from details as on account of directing cases in law courts;
- (d) Parties are allowed to talk about their disparities of sentiment with no apprehension of exposure of this in the witness of any law courts and
- (e) 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.

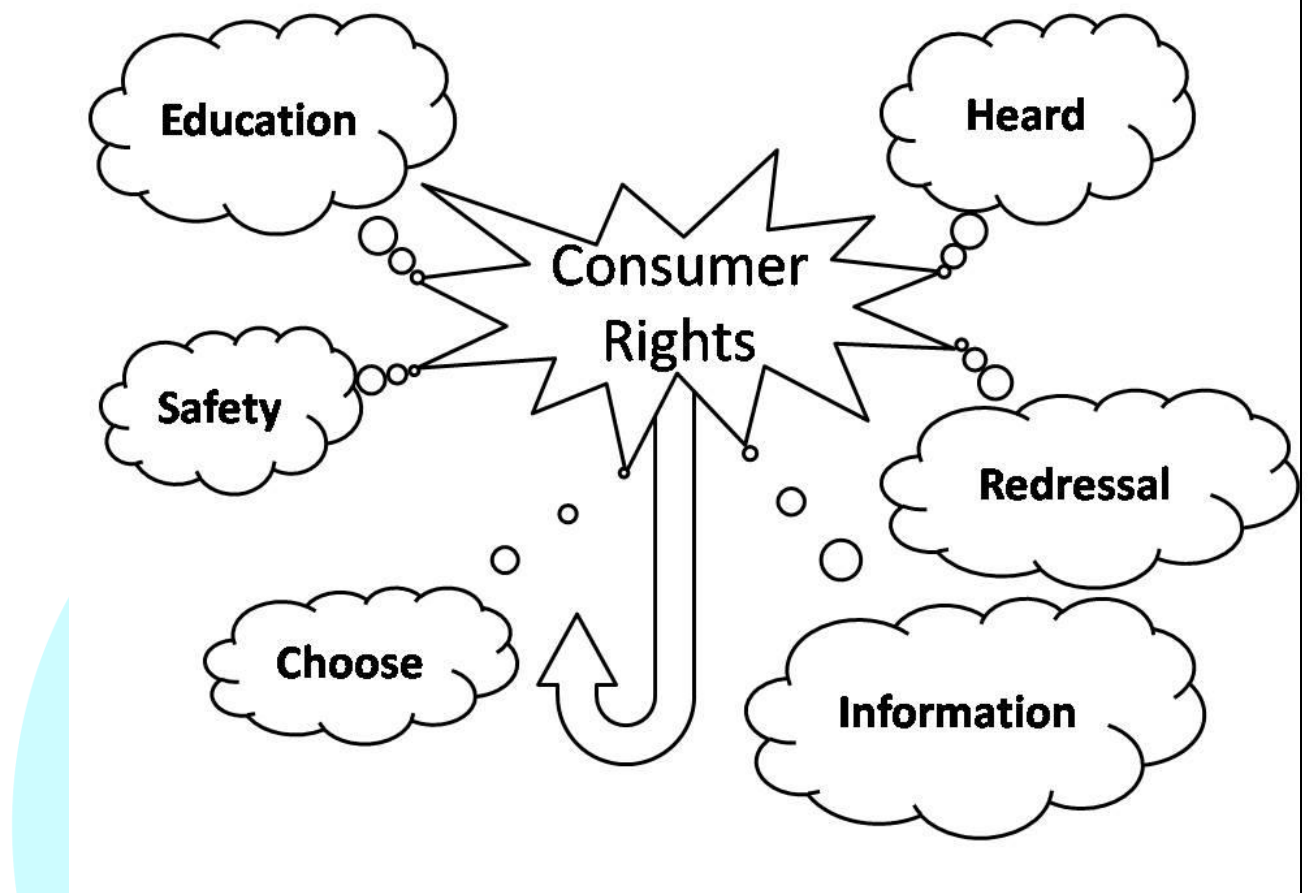
The above significant norms and standards are extend to ADR mechanism which is play in the amicable settlement of consumer disputes in out of courts.

CONSUMER AWARENESS AND ADR MECHANISM “JAGO GRAHAK JAGO”

India being a large country with 1.25 Billion populations, of which a majority live in rural area, Government has been conducting a countrywide multimedia awareness on various issues related to consumer rights and responsibilities across diverse subjects. “Jago Grahak Jago’ has today become a household maxim.^{xii}

The importance of consumer rights lies in their enforceability, which in turn depends largely on level of consumer education and awareness. In other words, it is not enough to have dynamic consumer laws in the country. There must be an equal thrust on education of all citizens on the consumer rights available to them and the mechanisms through which these rights, if violated can be redressed. History of rights, jurisprudentially speaking, is largely the history of fights about rights. To have rights is one thing and to be conscious of one’s rights is another.

The rights of consumer which are being sought to be promoted and protected through the legislative mandate available under the Consumer Protection Act, 1986 inter-alia include:



- (a) The right to be protected against marketing of goods and services which are hazardous to life and property;
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be to protect the consumer against unfair trade practices;
- (c) The right to be assured, wherever possible to access to variety of goods and services at competitive prices;
- (d) The right to be heard and to be assured that consumer interests will receive due consideration at appropriate fora;
- (e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumer; and
- (f) The right to consumer education.

Out of all the above rights, it is the right to consumer education that can be said to be of paramount importance; since this is the gateway through which all other rights can be

secured. In other words, right to consumer education forms the bedrock on which the edifice of other consumer rights stand. Therefore, the durability of super structure depends on the strength of the foundation. If the foundation is weak then the super structure is bound to collapse. An aware consumer not only protects his own rights but also induces efficiency in the economy which enables a country to become globally competitive. Hence, enforcement of consumer rights and emergence of empowered class of consumers lays the foundation of a strong and vibrant economy which is globally competitive.^{xiii}

Consumer Advice Centers (CAC) – building for a strong consumer information and advisory system. These centers at district level should offer:

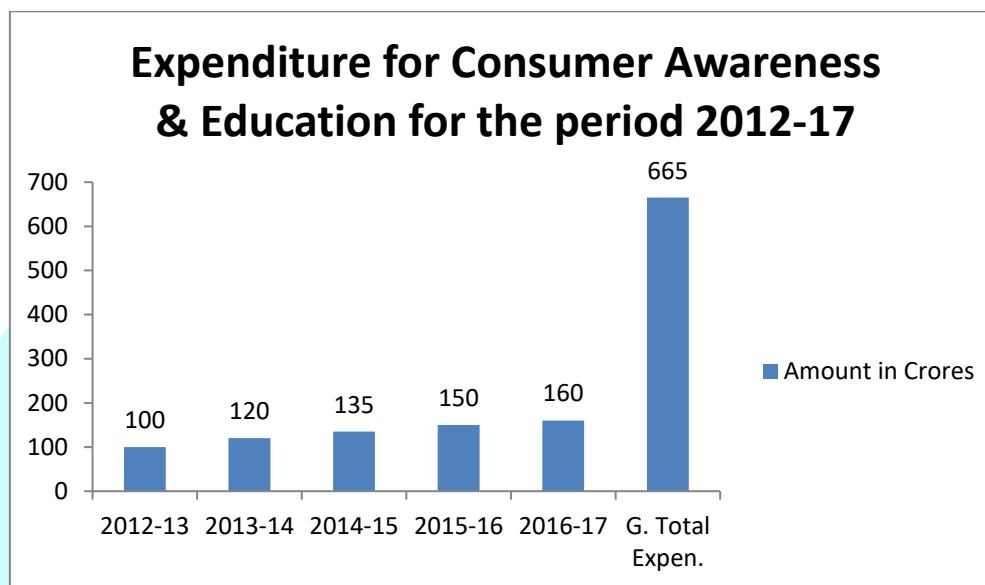
- Advice on whether court procedure is adequate for the complainant;
- Opportunity for referring the case to ADR techniques;
- Advice on adequately written complaints & completion of necessary papers; and
- The staff of the consumer centers could be recruited from consumer organizations.

The main aim of Consumer advisory Centers is to provide correct information on all aspects of consumer protection including guidance to take mediation to settle disputes. The Consumer Advisory Centre may be established at District level with linkage to State Helpline and Mediation Centre.

The 12th plan should provide a scheme to fund CACs each district and SCH in each state. These CACs can be run by NGOs, Voluntary Consumer Organization known as VCOs, co-operative institutes, citizen service centers or other public spirited who are already doing the work in the field of public welfare and charity after evolving guidelines for benchmarking such organizations. CAC may be located preferably in a market place where consumer will feel comfortable to approach it. There will be mediation Centers at the district and state level, which will arrange for settlement of disputes through mediation arising from Distt. Fora, State Commission and CACs. They may also take up some important cases directly for mediation and settlement. The mediation Centers need to be founded by the State Government and in turn by the Supervisor and three Consumer Advisors. It is proposed that in the 12th Plain the State Helpline, CACs and Mediation Centers may be integrated into composite structure providing for a permanent efficient and speedy mechanism that will cater to consumers with information, counseling and mediation, thus paving way for a structured and enduring ADR system.

Appropriate training modules may be added to this using the capacity already created in Indian Institute of Public Administration (IIPA).^{xiv}

The following Table reveals the expenditure for consumer awareness and education is as under: It shows increasing of expenditure from 2012-13 to 2016-17.



Source: Working Groups/Steering committees for the XII plan for 2012-17

LAW COMMISSIONS SUGGESTED TO NEED FOR JUSTICE-DISPENSATION THROUGH ADR METHOD

Law Commission^{xv} has emphasized 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 making compelling strides generally the day is not far when the entire framework will crumble. 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 general population moreover. It is not a 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 centers 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.^{xvi}

The Law Commission^{xvii} to spread both 'procedural' and 'substantive' viewpoints in a solitary definition have proposed to characterize 'contract, as covering both contracts and agreements simpliciter which void. Whenever 'procedural' perspectives are managed, the word will signify 'contract' and 'substantive' viewpoints is managed, the word will signify 'agreement'. So far as the different consumer for a under the Consumer Protection Act, 1986 are concerned, they are of the perspective that the said for a must have the advantage of the provisions identifying with 'general' procedural unfairness' under section 5 of the Indian Contract Act, 1872. It is to be noticed that however, the 103rd Report on Law Commission^{xviii} 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 kinds of unfairness.

A substantive revival of Section 89 of the Code of Civil Procedure, 1908 was carried out the Law Commission.^{xix} The section was proposed to be amended as under section 89, that is Settlement of disputes outside the court as follow:

- (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 non adjudicatory alternative dispute resolution processes, namely conciliation, judicial settlement, 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 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 time limit for the completion of conciliation. Thereupon, the provisions of section 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 disputes 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 provision of sub-section 20, section 21 and 22 of Legal Service Authorities Act, 1987 shall apply in respect of the disputes 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 a 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 another proceeding shall be deemed to have disposed of accordingly.

Moreover, the Law Commission also emphasized the direction of the court to option 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 option 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 non-attendance without substantial cause, follow the procedure for compelling the attendance of witness. The court shall fix the date of appearance before such forum authority or persons as may be opted by the parties or chosen by court.

Appearance before the court consequent upon the failure 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 it on the date fixed and proceed with suit”.^{xx}

THE SCOPE OF ADR MECHANISM IN NEW CONSUMER ACT, 2019

The Digital Age has ushered in a new era of commerce and digital branding as well as a new set of customer expectations. Digitization has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. However, along the growth path it also brought in challenges related to consumer protection. Keeping this in mind and to address the new set of challenges faced by consumers in the digital age, the Indian Parliament, on 6th August 2019, passed the landmark Consumer Protection Bill, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes. The Consumer Protection Act, 2019 (New Act) received the assent of the President of India and published in the official gazette on 9th August 2019. The New Act will come into force on such date as the Central Government may so notify. The New Act, has to replace the more than three decades old Consumer Protection Act, 1986.^{xxi}

The New Act, 2019 provides for mediation^{xxii} as an Alternative Dispute Resolution mechanism, making the process of dispute adjudication and quicker. It will help with the speedier resolution of disputes and reduce pressure on consumer courts, which already have numerous cases pending before them. These major sections are as follows.

Establishment of consumer mediation cell:

Under Section 74. (1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commission of that State.

(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

(3) A consumer mediation cell shall consist of such persons as may be prescribed.

(4) Every consumer mediation cell maintain-(a) a list of empanelled mediators;(b) a list of cases handled by the cell;(c) record of proceeding; and(d) any other information as may be specified by regulations.

(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.^{xxiii}

Procedure for mediation:

Under Section 79. (1) The mediation shall be held in the consumer mediation cell attached to be District Commission, the State Commission or the National commission, as the case may be.

(2) Where a consumer disputes is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall guided by the principles of natural justice while carrying out mediation.

(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

Settlement through mediation:

Under Section 80. (1) Pursuant to mediation, if an agreement is reached between the parties with respect to all the issues involved in the consumer dispute or with respect to only

of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorized representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.^{xxiv}

What has changed in new Act, 2019?

Sl. No	Subjects	Consumer Protection Act, 1986	Consumer Protection Act, 2019
1.	Regular	No separate regular	Central Consumer Protection Authority (CCPA) to be formed
2.	Consumer court	Complaint could be filed in a consumer court where the seller's (defendant) office is located	Complaint can be filed in a consumer court where the complaint resides or work
3.	Product liability	No provision, consumer could approach a civil court but not consumer court	Consumer can seek compensation for harm caused by a product or service
4.	Pecuniary jurisdiction	District: up to Rs 20 lakh, State: Rs 20 to 1cr and National: above Rs 1cr	District: up to Rs 1cr, State: Rs 1cr to Rs 10cr and National : above Rs10cr
5.	E-commerce	No provision	All rules of direct selling extended to e-commerce
6.	Mediation cell	No legal provision	Court can refer settlement through mediation

Source: <https://economictimes.indiatimes.com/wealth/spend/heres-how-consumers-will-benefit-under-the-new-consumer-protection-act/articleshow/70711304.cms>

JUDICIAL TRENDS

The Supreme Court and various High Courts of India have interpreted the provision of C.P. Act, liberally in favour of consumer and made valuable contribution to the progress of consumer protection law which is dealing with matters of housing services, medical negligence and deficiencies by public utility services like insurance, railway telephones etc.

The Supreme Court of India in *Salen Advocate Bar Association Tamil Nadu V. Union Of India*,^{xxv} had requested to prepare draft model rules for Alternative Disputes Resolution and also draft rules for mediation under section 82.(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 82. (2) (d) of Civil Procedure, 1908.

There are immense contrasts in the terms mediation and conciliation. Justice M JagannadhaRao 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, 1986 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 a 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 Rao has also pointed out that, in addition, our judges and lawyers require to be trained. Workshop, seminars, conferences must, therefore, be held regularly in the Districts as well as the courts every month, for quite some time, Bar Councils should seriously think of ADR as a compulsory subject. There can likewise be a different examination on ADRs and a pass in that can be a condition for the award of a 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 the

settlement were the consequence of some impulse. Settlements must be the after effect of sensible influence.^{xxvi}

In *National Seeds Corporation Ltd. V. M. Madhusudhan Reddy & Anr.*,^{xxvii} the sight of consumer threatening to drag traders to court for the most trivial of issues is commonly observed. In the wake of such an attitude, Indian consumers live in a bubble that they have a higher bargaining power vis-av-vis the traders. However, contrary to such presumption, it is often the traders who have an upper hand in such cases. All this is made possible because of a sly trick of the hand, wherein the traders provide for a mandatory arbitration or exclusive jurisdiction clause in the standard form of contract. Since most consumer provide assent to the same without properly going through the terms, the miserable sight of consumers trying to resist the enforcement of such clauses is routinely seen.

But in *Magma Leasing & Finance V. Poluri Madhavilata* case,^{xxviii} the Supreme Court has opined that, in the presence of a valid arbitration agreement, the court is mandated to refer the matter for arbitration. In *Booz Allen and Hamilton Inc. v. SBI Finance Ltd.*,^{xxix} the binding force of the same has been diluted over the course of time. The primary cause of this is the advent of the 'arbitrability doctrine'. Consequently, disputing the arbitrability of the subject matter i.e. whether a matter is capable of settlement by arbitration has become a trend. This has been the first line of defense to resist an application filed under section-8, seeking mandatory reference to arbitration.^{xxx}

The above objections have been raised regarding the arbitrability of consumer matters in various issues.

CONCLUSION

The preamble of the consumer protection act, 2019 states that its object is to provide for protection of the interests of consumer and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and also to protect interest of the consumers from exploitation and to present the consumer complaints in appropriate consumer court or by ADR methods of negotiation, mediation and arbitration, to provide justice the consumers'. In this context, the court in *Lucknow Development Authority v. M. K. Gupta*,^{xxxi} has held that the importance of the act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to

remove the helplessness of a consumer which he faces against powerful business, described as, a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouse of inaction where paper do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked.

Now it is a great challenge for the justice delivery system in India to face the delay in the disposal of case. To meet this challenge, the statutory authority under the Legal Services Authority Act, 1987 and Parliament have come up with the idea of making ADR a routine exercise in all civil disputes by enabling judges to attempt settlement at the first hearing itself. It is being done through mediation, conciliation, arbitration or judicial settlement organized under the amended section 89 of the Civil Procedure Code. Therefore, it is need of hour to lessen the burden of consumer fora to adopt the alternative dispute resolution mechanism.

The Planning Commission (xII-2012-17) of India has selected consumer protection as one of the subject to be included as priority areas and constituted a Working Group to formulate a comprehensive strong policy paradigm for consumer protection. This has given birth to the new Consumer Act, 2019. It provides new statutory provisions for ADR mechanism to settlement three-tier consumer disputes through mediation.

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