

DZUMSA SYSTEM IN SIKKIM AS AN ALTERNATIVE MODE TOWARDS DISPUTE RESOLUTION

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Abstract: Alternate Dispute Resolution is the need of the hour in order to deal with the challenge of backlog and delay in disposal of cases that the Indian Legal System is facing since many decades. The backlog of cases is alarmingly increasing and disposal of disputes expeditiously are a must for the maintenance of rule of law in the largest democracy in the world. Thus traditional method of dispute resolution can be an answer to deal with the huge pendency of cases that have crippled the Indian Legal system. The traditional institution called the 'Dzumsa System' that have been prevalent in the two villages of Lachen and Lachung in Sikkim's North District since many centuries can be adopted as an alternate model towards resolving the disputes between the disputants. The paper discusses the alternative method of dispute resolution with special focus on the mode of dispute resolution that is being practised under the Dzumsa System.

Keywords: Dzumsa, ADRs, Dispute, Alternative

Introduction

Indian Judiciary is time and again criticized for huge accumulation of cases year after year and the poor management of the proceedings showing very little concern for the consequences to the litigant public and to the society at large.

Huge pendency of cases has been a major concern faced by the judiciary since many decades. The Indian Legal System that we have today was introduced by the British after the colonization of India. After the withdrawal of British from India there was a demand to provide speedy and inexpensive justice to the people of India. The resolve of the people of India is enshrined in the Preamble read with Art. 39-A of the Constitution of India to secure that the operation of the legal system promotes justice on the basis of equal opportunity and that no citizen is denied access to justice on account of financial or other disability.

In order to deal with the backlog of cases in 1989, the Government of India constituted Malimath Committee. The committee was headed by Hon'ble Mr. Justice V.S. Malimath, the two other members being Hon'ble Mr. Justice P.D. Desai and Hon'ble Dr. Justice A.S. Anand. The Malimath Committee which is also known as the 'arrears committee,' undertook a comprehensive review of the working of the court system and made various useful recommendations for reducing litigation and making justice readily accessible to the people at the minimum cost of time and money. The Committee identified many causes for pendency of cases and recommended the requirement for Alternative Dispute Resolution (hereinafter referred to as "ADR") mechanism such as mediation, conciliation, arbitration, etc. as a viable alternative to the conventional court litigation.

Irrespective of the Malimath Committee's Recommendation and also having different forms of ADRs the pendency of cases and the delay in getting justice continued to remain a crisis.

The Supreme Court in *Surjeet Singh & other v. Harbans Singh & others*, expressed its anguish for long delay as the case was lying pending in civil court at Patiala since 1948 with no sight of its finalization. In yet

another case of *Dr. Buddhikota Subbarao v. K.Parasharan*, the apex court observed “no litigation has a right to unlimited drought on the time and public money in order to get his matter settled in the manner as he wishes.”

In this backdrop the Dzumsa System prevailing in the villages of Lachen and Lachung in Sikkim's North District provides an interesting example for an Alternative Dispute Resolution mechanism for resolving conflict and settling of disputes between the disputants residing in the valley of these two villages.

The study is important for reason that despite Sikkim's integration with the Indian Union in 1975, centuries old Dzumsa System has managed to survive and adapt itself to the changing circumstances. Also the Dzumsa System can be adopted as a model of Alternative Dispute Resolution towards resolving the disputes between the parties amicably rather than getting entangled in the complicated court procedure which may or may not lead to a satisfactory result.

Alternative Dispute Resolution System

As the name itself indicates, ‘alternative’ means the choice of electing another. It is the regular process in the legal system that the people approach civil and criminal courts to get legal remedies. In practise, the process in obtaining legal remedies involves huge expenditure, consumes too much of time and complicated procedures which becomes very difficult for a lay man to understand.

The duty of the court is to resolve the disputes and to render legal remedies to the aggrieved persons. But the courts in India are overburdened therefore leading to unwarranted and unwanted delay, resulting in huge pendency of cases.

Amid such dismal state of affairs adoption of Alternative Dispute Resolution is the answer to the problems that the Indian Legal System is facing since many decades.

The ADR systems also work with the same objectives like the regular courts. The burden of the courts is shared by these systems and it resolves disputes without adhering to the legal formalities and the aggrieved person/s are provided justice with less expenditure and within a very less time.

In India since time immemorial all forms of Lok Adalat, Conciliation, Mediation and Arbitration were prevalent being part of the legal system. However, the colonization of India by the British made our own system as alternative and it was brought back in more perverted form as ADRs after Independence.

Historical Background of the ADR System and the Dzumsa System

Alternate Dispute Resolution system is not a new experience for the people of this country. It has been prevalent in India since time immemorial. In the time of the Rig-Veda (1700 BC), evidences suggest that self-governing village bodies called 'sabhas' existed. With the passage of time, these bodies became Panchayat (council of five persons). Panchayat were functional institutions of grassroots governance in almost every village.

The Panchayat at the time of deciding the dispute kept into consideration the welfare of the parties involved and to retain amicable relation between the parties. The disputes in olden days seldom reached courts. The Panchayat's even settled complicated civil disputes, criminal matters, family disputes etc. Such type of

dispute resolution maintained friendly relationship between the disputants even after resolution of their disputes. The present day judicial system was introduced by the British in India. The law which is now seen was not found in the Indian villages before British reign. The administration of justice was conducted basing upon the dharmasastras and customs.

After the colonization of India by the British, common laws were introduced by the British. Gradually the British legal system spread throughout the country and some where this traditional system of resolving disputes lost its essence amid the new system introduced by the British.

Similar to the Panchayat Institutions as discussed above the Dzumsa System is the customary or informal panchayat system that has been in existence since many centuries in Sikkim. The Dzumsa System is in existence for more than three fifty years in the villages of Lachen and Lachung (According to the Census of India 2001, Handbook: Sikkim). Dzumsa is a traditional village panchayat which is still in operation as an institution in the villages of Lachen and Lachung in the North District of Sikkim

The Dzumsa has been resolving the disputes between the disputants residing in these two villages to the satisfaction of the people.

Existing Alternative Dispute Resolution Mechanism and the Dzumsa

Litigation in India is generally longitudinal and expensive and it does not always lead to a satisfactory result. Time and again Indian judiciary has been criticised for huge delay in disposal of cases. Thus, alternative dispute resolution methods can be used as an alternative in order to deal with the problem of backlog of cases. The primary object of ADRs is promotion of the ideal of 'access of justice' for all. ADR system seeks to provide cheap, simple and accessible justice.

ADR System is an integral part of our legal system and it has been categorized into two broad categories: court-annexed options and community-based dispute resolution mechanisms. Court-annexed ADR includes arbitration, mediation and conciliation. These methods helps in reducing backlog of cases, provides speedy and inexpensive justice and amicably resolves the disputes between the parties. Community-based ADR is devised to resolve the conflict between the disputants without getting entangled in the complicated court procedure. The formal court procedure is expensive, tedious and may not lead to a satisfactory decision between the disputants. Thus, new initiatives sometimes build on traditional models of popular justice that relied on elders, religious leaders, or other community figures may be more helpful to resolve conflict. In the year 1980, Lok Adalat i.e., village level people's court was embraced, where the trained mediators worked towards resolving and settling the common problems which otherwise were being resolved by the Panchayat (a council of village or caste elders).

Dzumsa System on the other hand which has much similarity to the Lok Adalats is responsible for maintaining law and order and dispensation of justice in the villages of Lachen and Lachung in North District Sikkim. The Dzumsa arbitrates disputes and conflicts within its own community without having to resort to the courts.

The dispute is resolved amicably between the parties by the Dzumsa. The conflict is resolved between the disputants without much cost and within less time and the decision is arrived at by keeping into

consideration the welfare of the disputants. The decision rendered by the Dzumsa with very few exceptions is accepted by the parties to the dispute and the parties do not stretch the matter further to the courts.

Status of Dzumsa under the Panchayati Raj Institutions

There is no denying the fact that democratization of the justice system should start at the grass root level i.e. through the Panchayati Raj Institutions. The importance of re-orientating the traditional justice system, lies not just as a mechanism for dispute resolution but because social change around these informal institutions can pave the way to social justice and democratization. A functioning justice system is not only a mark of development but also a factor of development. Thus, access to justice is not only central to the realization of constitutionally guaranteed rights, but also to broader goals of development and poverty.

The Constitution provides that the operation of legal system shall be such as to promote justice. In order to achieve the goals envisaged under Art 39A the government enacted the Gram Nyayalayas Act, 2008 at the grass root level for the purpose of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. It is also argued that Gram Nyayalayas guided by local traditions, culture and behavioural pattern of the village community instil confidence in the people towards the administration of justice. However, the Act has not been enforced properly through out the country.

Article 243G of the Constitution also provides the Panchayats power to further “social justice”. The Sikkim Panchayat Act enacted in the year 1965 in Sikkim by the then Chogyal (King) created formal local body i.e. block panchayat in the state. However, the customary tribal panchayat prevalent in Lachen and Lachung was retained without any changes. The Sikkim Panchayat Amendment Act, 1993 gave the status of Gram Panchayat to the Dzumsa System.

Thus, it can be said that the Dzumsa System has been working towards accomplishing the Constitutional goals.

The Dzumsa: Continuity amidst Change

In every society all over the country there existed formal local bodies (like the Gram Panchayat) and there still exist a customary or informal panchayat system and enjoy a substantial power when it comes to social and cultural issues. In some case these customary/informal panchayats enjoys more power than the formal local bodies.

Dzumsa is the existing traditional village panchayat which is still in operation as an institution in the villages of Lachen and Lachung in North District of Sikkim.

The word Dzumsa has three meanings. Literally, it refers to the 'gathering place' but also to the institution in-charge of administering and organising activities within a given territory, as well as to the general council of the villagers composed of household heads.

In the 1970s when the Indian government initiated the reorganization of Sikkim's administration and introduced the 'panchayat' system of local government the new system was not imposed in the valleys of Lachen and Lachung.

Eventually, the Dzumsa was officially recognised in 1985 and continues to function till today. The Dzumsa is an interesting example considering that few of this surviving political system throughout the Himalayas were officially recognised by the governments in place.

Even after the introduction of the Panchayat system in Sikkim it was not imposed in the villages of Lachen and Lachung. The Sikkim Panchayat Act 1965 retained the customary tribal panchayat prevalent in Lachen and Lachung without any changes. Similarly, the British ruler though brought major reforms in the administrative system of Sikkim also allowed the functioning of this system in these two villages of North Sikkim. J.C. White, the first Political officer in his visit to these villages observed: “the two villages of Lamteng in the Lachen and Lachung in the Lachung valley have an unusual and almost communistic government of their own. On every occasion the whole population meet at a “Panchayat”, or council, where they sit in a ring in consultation. As discussed above the Dzumsa was granted the status of Gram Panchayat and was provided with more powers and functions.

Composition of Members and the Functions of Dzumsa

The Dzumsa is directed by a group of people to represent them and manage the village affairs. Besides two pipons (Village Chiefs) Dzumsa is composed of six gembos (village elders), two tsipos (Accountants) and two gyapons (assistants of the Pipons). The Gembos assist the Pipons in performance of their functions. They are also elected by the public. The tsipos are responsible for calculating fines and maintaining the accounts. The Gyapons are responsible for calling members to assemble for the village meetings.

The Pipons, the Chief of the Dzumsa is elected every year by the people of Lachen and Lachung. In olden days, the office of pipon was however not elective. It was hereditary at first and then thereafter the King became the appointing authority.

This council of representatives is referred to as the Iheyana and better known as the panchayat.

The election to the Dzumsa is held every year which means the tenure of the elected members of the Dzumsa is only one year. The election is held on a non political basis. Government officials and politicians are not allowed to contest the election. Every household registered with the Dzumsa sends one representative to the Dzumsa meetings. Attendance is mandatory in the meetings of the Dzumsa those who fail to comply are punished monetarily.

Mong Khim (Mong means public and khim means house) is the epicentre for discussions on all the development plans for the villages.

Dzumsa exercises vast powers and performs numerous functions such as maintenance of local law and order, dispensation of justice, collection of taxes, organization of social functions and distribution of governmental

schemes. All the major decision like division of cultivable land, grazing facilities, harvesting, cutting of hay from community pastures, problem arising from seasonal migration etc., are taken in the Dzumsa meeting.

It acts as the custodian of all the traditional rules and norms prevalent in the regions. It debars the members of Dzumsa from going against the rules and customs of the society.

The Dzumsa have some ecclesiastical functions. It is involved in collecting the funds for religious activities including the construction of Gompas (monasteries), repairing and maintenance and organizing religious festivals like mask (Cham) dance.

Thus Dzumsa functions as an effective local self-government for all purpose in the valleys and the dispute resolution function performed by the Dzumsa sets it apart from other Gram Panchayat unit existing in the state of Sikkim.

Process of Dispute Settlement under ADRs and the Dzumsa: A Study of Convergence and Divergence

Alternate dispute resolution is applicable to all those disputes which are civil in nature.

Arbitration works as a corollary to the judicial process. In summation, arbitration has two parties in dispute and an arbitrator decides the case based on the facts, issues and evidence presented. The decision is binding and can be placed at the same pedestal as a decree passed by any court.

On the other hand, in conciliation the disputants prepare a statement containing the issues to be addressed. The conciliator then works towards a settlement between the parties by negotiating with them. In conciliation both the parties can actively take part in settling the matter which cannot be done in arbitration. The arbitration may be cheaper when compared to litigation but in itself it is expensive. Arbitration necessitates attorneys, a tribunal, presentation of facts, appraisal of evidence and a trial but conciliation requires only a conciliator. Conciliation is being actively used in various disputes. Many marital disputes are now being resolved by conciliation.

Mediation on the other hand is a negotiation process, in which an unbiased, neutral third party assists the disputing parties, in their resort to resolve the dispute. The third party assisting in the process is called the “mediator.” Mediation can be thus better understood as “assisted negotiation.” Mediator’s role is those of a facilitator or catalyst who communicates with both parties and finds a solution.

In its judicial capacity, the Dzumsa arbitrates disputes and conflicts within its own community without having to resort to the courts. In such a case, a complaint is first registered by the Lheyne who then becomes the only referee and judge the case. Cases handled by the Dzumsa are numerous and varied: these may

concern illegal land occupation, defamation, family disputes and marital discord problems. Judgement is pronounced by calling and informing the guilty party who must then apologize to the other party. Dzumsa has also the power to punish or fine a person convicted in any offences. The nature of punishment and the fine to the convicted persons are decided by the Pipon in consultation with village elders. The punishment could range from heavy fines levied upon the guilty person along with traditional appeasement of the one wronged. Harsher crimes could invite complete banishment from the village. Thus, in an overall, the Dzumsa act as the court of the region. Its decision is considered final and binding.

The parties involved in a dispute have to bear the cost of the proceedings in Dzumsa. It is the responsibility of the Pipon to settle the case in the House. In serious cases the Pipon calls for the help of the Thimpon who forms the jury which usually comprises of the elders of the village. Unresolved cases by the Pipon and Thimpon are laid before the body called Kheysar which comprises certain number of lamas (Monks) representing the village monastery and the general public along with the Pipon and his council. Unresolved cases by the Kheysar are settled outside Dzumsa.

Out of the ADRs discussed above Mediation bears a striking resemblance, in some respect, to the Dzumsa System. In mediation the parties are encouraged to participate directly in the process. The mediator, an expert in the process of dispute resolution, controls the proceedings, much like Pিপונים under the Dzumsa.

Alternative Dispute Resolution is an alternative to the formal legal system. It is an alternative to traditional litigation process. The settlement of dispute outside the courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflicts. However the ADRs in India is either court-directed or statutorily prescribed that means the disputants somewhere has to get involved with the court. However in the case of Dzumsa the conflicts and disputes are resolved within its own community without having to resort to the court.

Thus, after going through the above discussion the author establishes that it is not arbitration, conciliation and mediation that can be an 'alternative' to the existing legal system. But our own indigenous panchayat system i.e. Dzumsa can be the best alternative mode towards dispute resolution.

Conclusion

The present system of administration of justice has failed to achieve its desired goal, and the time has come to establish a forum where the grievances of the needy and poor can be speedily redressed. A common perception amongst the rural masses is that access to justice is both complex and difficult and as a result,

they avoid seeking legal redress for their grievances through courts. Justice delayed is justice denied and at the same time justice hurried is justice buried.

Therefore there is a need to create a medium which is balanced and which secures 'justice' to the poor and the needy. In order to overcome this problem adoption of an alternative mode of dispute resolution is the need of the hour. Adopting an ADR model to deal with the issue of backlog of cases will be an alternative to the problems

posed in the administration of justice in India.

In such circumstances the Dzumsa System being practised in the valleys of Lachen and Lachung in North Sikkim is unique in a way that it works towards resolving the disputes at the grass root level itself. Under this system the dispute between the disputants is settled amicably rather than being stretched further to the courts.

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