
GANDHIAN PRINCIPLES AND THE ADR MECHANISM

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ABSTRACT

Alternative Dispute Resolution or ADR as it is also called has been a real buzzword in correcting the drawbacks that arise in our traditional court procedures or rather where justice has gotten stuck in the traffic or is expensive or just too rigid. The whole atmosphere of the ADR in India is almost in conformity with the Gandhian thinking- think non-violence, truth, moral pull, and preservation of the vein of the community. In this paper, we are going to dive into the discussion of how the philosophy of Gandhi still impacts on the modern ADR tools illustrated further in the analysis of how the ethics as promoted by Gandhi are shaping the way disputes are settled nowadays¹.

The paper divides some of the significant concepts of Gandhian like Ahimsa (no harm), Satya (truth), Sarvodaya (welfare of all) and self-control before examining how the concepts may be matched with ADR practices like mediation, conciliation, negotiation, arbitration and Lok Adalats. After the development of the local and traditional dispute resolving methods over the years under the influences of Gandhi to advance decentralized justice, I would argue that ADR in India is not a direct replica of a western practice. It is a continuation of the antique, ethical justice methodologies of operation that keep the communal-spirit in existence. The discussion also shows that ADR is Gandhian as far as it appreciates compromise through reaching an agreement as a common ground, the decision to participate and not to destroy relationships but solving them in a courtroom².

Traditionally, I believe that the assessment of ADR against the Directive Principles of State Policy in India and, especially, Article 39A in which the degree of equity in obtaining justice is accentuated is to be made. I also unwind the development of how Indian courts have started leaning towards ADR, and this has depicted the heightened approval of consensual justice as constituent of delivering justice to the multitude. However, the article also tears the veil of hiccups attached to the ADR based on Gandhi inspiration including existence of power asymmetry among parties, worry over

¹ M.K. Gandhi, *An Autobiography: The Story of My Experiments with Truth* (Mahadev Desai trans., Navajivan Publishing House 1927).

² M.A. Salam, *Gandhian Philosophy and Alternative Dispute Resolution in India*, 59 *J. Indian L. Inst.* 245 (2017).

enforceability of settlements and inefficacy of ADR in tangling commercial disputes of intricate nature.³

Overall, the paper finishes by arguing that the principles used by Gandhi give us a good moral framework through which to reinforce ADR in India. Even though legal machinery is critical to certain squabble, putting Gandhi sentiments into ADR makes it to appear more acceptable, less difficult to achieve and effective. ADR can be considered as the way to the non-efficiency-only justice which is also human-friendly by matching the law to the moral wisdom, and it happens to demonstrate that the concepts of Gandhi are still held in the grip of the contemporary legal sphere.

CHAPTER I: INTRODUCTION

1.1 The background of Conflict Resolution in the Society has been discussed below.

Conflicts always ensue whenever people are related to one another- because of the conflicting interests, beliefs, rights and responsibilities. Since the dawn of civilization, people have devised the ways of making the ground flat and keeping the peace. Up to a great extent these primitive solutions were not written and were founded on the village custom, the ethical requirements and common sense and not on the formal laws. The elders, village elders and religious leaders were more likely to be involved in a reconciliation manner rather than punishments as the elders were more concerned about them as mediators.

The modern nation-states emerged and the preferred place of adjudicate disputes was to be in formal courts. Courts were put in place to bring in uniformity, lawfulness and also assurance of the implementation of rights. The combative and litigious nature of the courts, mazy route of the procedure, excessive bills, and sluggish justice slowly exposed the fissures of the court-based justice system. The litigation was associated with the tendency to encourage vitrification of the parties instead of solving problems.

The answer to these snags has been in the increased forms of societies returning to non-adversarial ways of establishing order. Such new concern with the consensual justice proves that people do not feel headaches only when they are involved in legal disputes but social and even moral mess-ups. This thought is highly compatible with the Gandhian philosophy which dictates that winning court battles is not the purpose of conflict resolution but spiritual growth.

³ India Const. art. 39A.

It is against this backdrop that we are able to understand why other forms of dispute settlement, more particularly those that were inspired by Gandhi are so relevant in the present day world.

1.1.1 Background Conflict Resolution in the Society.

War is normal in any case where individuals are brought in contact with one another - it is made out of the clashing interests, beliefs, rights, obligations. People have devised ways of flattening it and maintaining peace in the world since the beginning of times. These early remedies were very loose, grounded on village customs, moral expectations and positive sense and not very strict written laws. The elder, village councils and religious leaders involved frequently used the mediators who usually worked on the reconciliation rather than punish anyone.

With the emergence of the modern nation states, courts came up as the dominant dispute resolution place. Courts were instituted to create certain semblance, justice and guarantee of enforcement of rights. But the litigious, often hostile disposition of the courts, combined with the labyrinthine complexities, the expense and time wasting nature of cases, was slowly showing the fault-lines of a court based system of justice. Litigations would serve to escalate the tension between the parties rather water down issues.

These snags have been met with by the societies being more of the societies returning to non adversarial ways of sorting things out. The recent attention paid to consensual justice reveals that people do not only view conflicts as an origin of a legal problem but a social and moral failure, too. This school of thought is much complementary to the Gandhian philosophy where conflict resolution does not consist in winning lawsuits but rather in the development of morality. It is in this context that we get to comprehend why alternative methods of resolving conflicts particularly those that are inspired by Gandhi are so relevant in the current era.

1.2 Alternative dispute resolution (ADR) History.

Alternative Dispute Resolution or ADR is simply the armory that we have but does not want to go through the courtroom aggravation of olden days. It is part of an old idea - different cultures can tinned with additions of ADR, chew over divided decisions with the elders or society. Since time immemorial, panchayats or some local elders and informal mediation of a dispute have been the order of the day in India. It was, however, during the Nineties when a

real jump was undertaken into a formal, legalized ADR as the world became tired of court systems.

Contemporary ADR trend started during the 1960s and 1970s in the US and Europe where efficiency was primary, and parties were able to succeed, justice started being readily available. It resulted in arbitration, mediation and conciliation as painless processes that minimized the congestion in the courts and at the same time pursued equitable solutions. The international business also strained the necessity to retrieve fast and confidential alternatives in resolving conflicts elevating the pace and the secretiveness level of the ADR.⁴⁵

In India, legislation like the Arbitration and Conciliation Act of 1996 and the Legal Services Authorities Act of 1987 was developed in order to establish the statutory ADR buzz. Even the highest courts start supporting it, which further reinforced it. Most importantly, the ADR philosophy is similar to non violence, cooperation and ensuring everyone agrees with the views of Gandhi. ADR is, then, not merely a by-pass procedure, but a change of philosophical perspective toward a more participatory, and more consensually inclined justice.⁶⁷

1.3 Importance of Gandhian philosophy in the modern law.

The ethical beliefs of Gandhi introduce a brand new sense of morality that interferes with the traditional understanding on justice. Justice to him was not the right of law by the sword; but by morality, respect to each other and to conciliate aroused social passions. In his opinion, there was a possibility to solve any disagreements through speaking, personal character improvement and plead instead of attracting the gavel or holding power.

In the contemporary jurisprudence, which is cluttered with cases and which dawdles on the endless course of litigation, a second opportunity of justice, as conceived of by the Gandhian thinking, offers a fresh start. Neo-classicism principles such as Ahimsa (non-violence), Satya (truth), and Sarvodaya (the welfare of all people) clash head to head with the contents of ADR values. Mediation and conciliation are seriously reflected by these concepts because both of them are concentrated on the willingness of people to participate in the process and common

⁴ Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (4th ed., Jossey-Bass 2014).

⁵ Jacqueline M. Nolan-Haley, *Alternative Dispute Resolution in a Nutshell* (4th ed., West Academic Publishing 2012).

⁶ Arbitration and Conciliation Act, No. 26 of 1996 (India).

⁷ Legal Services Authorities Act, No. 39 of 1987 (India).

ground, non-destruction of relations.

Additionally, his philosophy is of great significance in a nation like India, in which the social, economic and cultural inequality dictate the recipient of justice. ADR is more inclusive and democratic as it promotes equality, empathy and decentralised decision making which is the Gandhian thinking. Diluting case load, besides, a long-run, creating peace and quality legal play.

1.4 Research Problem and Objectives.

The main question that is discussed in this paper is whether the current ADR tools are founded on the Gandhian principles or it is merely the tip of the iceberg to reduce the load at the courtroom. Although ADR is being propagated as a faster mechanism when compared with litigation, the ethics of the same are not yet well evaluated at a larger scale.

There are four objectives of the research. First have a glimpse of the very essence of the Gandhian concepts that are significant in the dispute resolution. Second, discover the extent to which these ideas are instilled in the contemporary ADR practices. Third, determine how far as ADR can produce social peace and fair outcomes. Fourth, determine whether the ADR can be strengthened with the help of Gandhian thought in the changing Indian legal environment.

In the quest to achieve these two ends, the study seeks to provide the gap between the normal functioning and the ethical aspect of law. It spreads the awareness that ADR is not a cost-saving or time-saving device but the values-based system, which is founded on the philosophy of Gandhi. Anyone interested in justice reform, particularly, policy makers and lawyers, will be interested in this.

The research will be based on the methodology and scope of study.

The article is a teaching and critical paper. The Constitution, the laws of ADR, and the adjudications of the Indians are the primary documents. The secondary sources will include books, journals, and writings of Gandhi that shall be employed in order to find out philosophical foundations and theories.

It is still focused on the ADR instruments in India, specifically, mediation, conciliation, negotiation as well as the Lok Adalats. Though the mention of the Western models is employed,

the Indian socio-legal field of focus is the main one. No empirical result data has been assessed and the paper discusses the legal systems, and how they relate to philosophy.

This method makes the examination clear and scholarly sparse so that the study may integrate law examination and moral philosophy to have a full grasp of the social aspect of the Gandhian principles in ADR.

Chapter II: Gandhian Philosopher and Dispute settlement.

2.1 Mahatma Gandhi: life, thought and legal vision.

The idea of law that Gandhi has formed allows him to be a lawyer who is a reformer at the same time. He discovered that the judicial struggle to succeed is not always as fair as win-win. To him, law was not a channel of imposing rights but it was the channel of altering the society and the moral compass of individuals.

In his case, he assumed that such courts were driving people away and pushing them to dump their problems to strangers instead of letting the folks resolving their own responsibility and conscience. Gandhi espoused self-control, compromise and dialogue and favoured reconciliation over retribution and duty in lieu of entitlement. To him, it is best to rescue mended relationships and knowing others.⁸

One can observe this vision in the fact that Gandhi was a supporter of village councils and informal mechanisms of disputes. His approach disputes the statecentric paradigm of justice and, to a large extent, is entirely in line with the tenets of ADR, which allows discussing whether modern ADR actually promotes justice or easy administrative convenience.⁹

2.2 Non violence (Ahimsa) Principle.

The main concept applied by Gandhi is Ahimsa non-violence. It is not even touching, but it is blocking psychological, emotional and social harm, in the case of dispute resolution. The adversarial cases still serve to maintain the hostility even when things turn out in court.

Ahimsa is manifested with the help of mediation and conciliation that provide the possibility

⁸ M.K. Gandhi, *Constructive Programme: Its Meaning and Place* (Navajivan Publishing House 1942).

⁹ M.K. Gandhi, *Village Swaraj* (Navajivan Publishing House 1962).

to discuss and resolve issues together. Parties are recommended to be polite in speech, listen and not fight in one way or another. This is a calm method that does away with stress, preserves dignity and avoids argumentation to go blown out of proportion.

Voluntary attendance, no coercion is also required by Ahimsa. A negotiated agreement is a real expression of non-violence, which does not interfere with the freedom of every member. Ahimsa, thus, gives the moral justification of non-adversarial justice systems and adds significant ethical calls to the ADR.

2.3 Principle of Satya (Truth)

It is the truth, or satya, which is the main pillar of the whole ethos of Gandhi. In my opinion, he perceived truth as a moral compass and the means of squashing the differences practically. For him, real justice? It only comes out when all people tell themselves and tell their misgivings the truth.

The truth is revealed in ADR of frankness and fair bargaining, straightforward speech. ADR makes all parties spend their real concerns out in a manner that is unattainable in court where the individuals hide their things and sink into the pool of legal technology. It implies that, attention to truth implies that solutions go to the root causes of the problems and not just cover the wounds.

Another condition that Satya gives is that, the mediators and conciliators must be just and honest. They have no agenda of pronouncing a sentence but of making parties actual as they engage in a conversation. ADR is also identical to the truth first principle, which makes the ethics of Gandhi very similar and increases the credibility and sustainability of the deals.

2.4 The idea of Sarvodaya (Welfare of All) is a Buddhist theory.

Sarvodaya implies raising of everybody, and more so those that have been marginalized. Gandhi felt that justice should not just be to advantage only of the elites.

ADR, especially Lok Adalats and community mediation have played a role in ensuring that this does not go dead since it has offered the underprivileged folks easy access to justice. They are informal and nonchalant and more individuals can actually stroll in since they are lower priced.

Also, Sarvodaya affects the way of solving disputes. ADR is not interested in rough-no win-take-all-and-have-it finish. A common push at the same direction creates peace in the society and gets the dispute resolving on par with the larger picture. Therefore, Sarvodaya validates social validity of ADR.

2.5 The fourth principle is related to self control and moral persuasion.

Gandhi had stressed a lot on self-restraint as the moral obligation towards agreeable vibrations. He believed that people should control ego, anger and greed in order to solve disagreements in amicable manner. His mode of choice in compelling compliance was moral persuasion other than use of legal force.¹⁰

ADR lives big on these ideas. The parties are advised to be patient, sympathetic and sane. Mediators talk persuasively and not I-am-the-law. Settlement are also welcome on a voluntary basis and it reflects internal willingness rather than a forced demand.

Such an ethical persuasion actually justifies ADR in a contrast to judgment of the state which is founded on the state power. Although one can argue about the enforceability of it, it gives wind to the moral responsibility and long term follow through. Persuasion and moderation are also rather more specific to the Gandhi ADR philosophy ethics.

CHAPTER III: Indian Traditional Indian system and the Gandhi influence of Indian Dispute resolution system.

3.1 In the section, the village panchayats and community justice will be discussed.

Village Panchayats has always been the grassroot component of the dispute resolving in India. The courts were formalized when the Panchayats took control of land, family, trade and social affairs. They were informal, participatory and communal and they were based on general wisdom and not rigid rules of law. Decisions were made based on the moral values, local customs and stimulation to preserve social peace.¹¹

Panchayat was the system of peace and not war. The goal? This was not to win but to make the

¹⁰ M.K. Gandhi, *An Autobiography: The Story of My Experiments with Truth* (M. Desai trans., Navajivan Publ'g House 1927).

¹¹ B.R. Sharma, *Panchayati Raj Institutions and Dispute Resolution in India* (Deep & Deep Publications 2010).

society peaceful by improving the relationship. The involvement, when it was given was voluntary, the procedures were not complicated and the outcomes were tolerated because of the social legitimacy and not through coercion. This is the reason why Panchayats were so accessible, quick and cheap.

All these attributes depict the ideas of Gandhi in regards to the justice system of decentralization and moral persuasion. Gandhi said that the Indian democracy and justice were the bone of village institutions. However, as well as a comparably ancient progenitor to what we now call ADR, non-adversarial dispute settling that exemplifies justice according to values cherished by the community is viable and humane.

3.2 Pre-Colonial Indian Pre-Colonial Mediation.

Community pre-colonial India informal mediation was a huge exercise between communities. The merchant guilds, the caste councils, the religious leaders, and the elders came in as mediators culminating into the beginning of a dialogue between the two parties. They lacked the formal power, but they were socially and morally respected by people.

This mediation process was flexible and interests centered. He was not acting according to any fixed and solid legal arguments, but rather, he was directed towards compromise, apology, restitution and harmony in future. The role that was played by the mediators was to increase the level of understanding and to lead the parties to the path of a solution, which they all would be comfortable with. This avoided embarrassment of society and delayed resentment that the vindictive verdicts tend to cause.

This culture also corresponds to the values of Gandhi like the truth, non-violence, and restraint. It was such local practices that motivated Gandhi and loathed the fact that it was the colonial courts that ruled. Informal mediation educates on the fact that conflicts can be solved without the heavy machinery of the law. Its most important contribution in success was the moral agreement and social responsibility that is still instrumental in the work of modern ADR models.

3.3 Gandhi as a Prophet of the Decentralised Justice.

To provide an opposition to the government run law systems, Mahatma Gandhi propagated the idea of vigorously decentralized justice. He based his argument on the fact that justice at the

community level is easier to administer, ethical and effective. In his view, courts had the propensity to alienate individuals, make them dependent on lawyers and make fights.

Gandhi had the vision of the village republics where the village disputes can be solved through mutual conversation and decision-making. He champions Panchayats since they were people judicial bodies, not law, but morality. His conception of the litigation did not consist in the rejection of law, which was adversarialism and too much formalism.

These ideas were the foundations of the philosophical approaches to ADR mechanisms. Decentralization results in participation, low costs and empowerment. Gandhi still speaks through the vision to this day dealing with the backlog, inequality, and alienation in the contemporary justice systems.

3.4 Colonial Courts and the Indigenous Mechanisms Compared

The colonial litigation presented in the courts initiated practically all fancy jurisprudence, systematized processes, codified legislation, and a significant amount of adversarial litigation in India. Yes, they made it a uniform and binding law, but they put a huge distance between justice and average people. The processes were taxing, the languages spoken at work were different, the costs were high, and the waiting times were annoying to most of the individuals since they could not even access the courts.

The native systems including the Panchayats and mediation were very simplified, interactive and more localized in comparison. They did not focus on the rights of the laws but on justice and rebuilding of connections and relationships. Justice in this regard was more situational than a body of abstract rules with the help of which to restore equilibrium within the community.

Gandhi was quite harsh in the way he dealt with the colleges of the colony that conditioned the battle and reliance as a standard. He liked Indian systems, which were consistent with the reality and morality of the nation. This sort of an analogy explains why ADR styles based on tradition are a less invasive and more humanitarian path to justice that we are literally reviving the Indian tradition of dispute-resolution by Gandhian philosophy.

3.5 The Applicability of Gram Swaraj in Dispute Resolution

Gram Swaraj or village self-government is one of the Gandhian concepts. He had a vision of

self-governing towns in which the entire government such as the resolution of conflicts is conducted on a local level through agreement and moral responsibility. The decentralisation of democracy and social responsibility was all about Gandhi.¹²

Gram swaraj of dispute resolution practice promotes dialogue, participation and accountability. The local resolution helps to avoid the feeling of foreignness among individuals and lessen their reliance on remote institutions. It also captures culture relevant outcomes and enhances a long time peace.

The spirit of Gram swaraj is present in the contemporary ADR methods i.e. Lok Adalats and community mediation. They undermine justice and put the power in people. The concept of gram swaraj is to make justice an inclusive, moral yet inexpensive process which is consistent with the Gandhian ideals of self-government and social assimilation.

CHAPTER IV: Idea and formulation of the ADR Mechanisms.

4.1 Meaning and Nature of ADR

The simplest way of dispute resolution is what is known as the Alternative Dispute Resolution the name given to the more or less certified means of resolving disputes without necessarily going through the traditional court system. ADR is used to overload processes of arbitration, mediation, conciliation and negotiating that are consent-oriented, flexible and efficient. The whole point is to give a quick, cheap and interactive justice.

ADR is non-adversarial. ADR is more focused on the interests of people and not just on their claims, quite on the contrary it necessitates cooperation and less competition and is more concerned with a resolution and not with winning as compared to courtroom fighting. The parties have a say on the turn of events and how things are going on and this enhances satisfaction and adherence.

ADR as viewed by Gandhian approach has some form of moral justice. It revels in conversation, veracity and non-violence which ought to have been a most preferable choice than judgmental hardness. So ADR is not another forum but alternative philosophy of justice.¹³

¹² B.R. Sharma, *Panchayati Raj Institutions and Dispute Resolution in India* (Deep & Deep Publ'ns 2010).

¹³ C.W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (4th ed., Jossey-Bass 2014).

4.2 Types of ADR Mechanisms

ADR has numerous mechanisms, of many purposes. Arbitration entails the use of a third party, which is a neutral third party and gives a binding decision and is applicable mainly in business disputes. Conciliation and mediation entail the aid of a mediator who helps partying to reach an agreement. In the case of negotiation, it just entails a face-to-face negotiation among parties where no third-party is present.

Lok Adalats hold a niche in India which is both a mixture of judicial power and informal practices. They want to promote social justice and harmonious solutions.

The mediation and conciliation is far more congruent to the Gandhian ideals as opposed to the routine court action of arbitration, which is more aligned with a routine court action. They are grounded on teamwork, integrity, and dignity. Such differences are worth knowing in the case you want to obtain the degree to which Gandhian philosophy is penetrating each of the ADR instruments.

4.3 India Statutory Framework of ADR.

The ADR is backed by the Indian statutory framework in the country. Arbitration and conciliation has been recognized in the settlement and awards and it has been established by the acts of 1996, Arbitration and Conciliation Act and is binding under the law. Lok Adalats have been institutionalized by the Legal Services Authorities Act of 1987 and Lok Adalats agitate greater access of the under-privileged to justice.

These are legislations that seek to minimize the court proceedings and favorable justice through consent. They echo the constitutional notions of equality and fairness and access to justice and the Gandhian notions of settlement and participation.

Such legal support increases the credibility of ADR and it is also flexible. Simply, the Indian ADR law is the manifestation of the amalgamation of formal legalism and Gandhian ethics.

4.4 ADR recognition of the judiciary on Indians.

The Indian courts have been propagating the ADR as a healthy avenue of controversy dealing mechanism. ADR has been found to be the key in eliminating backlog and improving access

to justice in the decisions of the courts. It is sent to the mediation and Lok Adalats courts where the focus is made on settlement as opposed to the needless litigation exercise.¹⁴¹⁵

This court support renders ADR as valid in court. Courts do not look at alternative dispute resolution as substitute justice but as supplement to formal adjudication. This approach is consistent with the philosophy of nonviolence against social strife that is Gandhian.

ADR has struggled its way to get out of informal activity to constitute part of the system of justice delivery thus integrating the principles of Gandhian ideology in the constitution.

CHAPTER V: GANDHIAN PRINCIPLE lodged in the ADR mechanism nowadays.

5.1 Gandhian Ethics and mediation.

The tool of ADR that correlates well with the Gandhian ethics will be the mediation. It is a non-adversarial, confident, and voluntary process whereby use of a neutral negotiator helps parties to debate on issues. The mediator will not impose himself but he will assist parties to reach an amicable settlement that is satisfactory to all parties. This kind of arrangement is a Gandhian underlining of conversation, compassion and moral cajoling.¹⁶

His ethics are rather non-violent than violent. Mediation puts parties in a position to listen to the other and form grounds. Mediation seeks emotional, social and relational aspects of argument and rather than being obsessed with legal rights. It is this broad approach that indicates that Gandhi perceived justice to be a remedy to the relations and not a rule on claims.

Another manifestation of Ahimsa is mediation as it does not involve violent approaches to legal action and mental harm is minimized. It promotes veracity in Satya and developing outcomes that will maximize benefits to all people in Sarvodaya. The practice of disputes resolution is turned into an ethic process through mediation; it promotes cooperation and good obedience. In a word, mediation is not only a procedural one; this is an extremely practical application of the Gandhian philosophy within the modern legal system.

¹⁴Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24 (India).

¹⁵ Salem Advocate Bar Association v. Union of India, (2003) 1 SCC 49 (India).

¹⁶ Frank E.A. Sander & Stephen B. Goldberg, Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure, 10 Negotiation J. 49 (1994).

5.2 Conciliation in an Ethical Persuasive Means.

Other ADR mechanism is referred to as conciliation which is rather a friend at the background than an uglier judge. Mediator helps people to filter through their aversions and offers settlement conditions and facilitates the dialogs. In arbitration, there is a fight to secure a decision, however, in conciliation, it is just that of the parties who are actually willing to accept what is put across the table.

Gandhi sees moral persuasion as a way of gaining people and not making them do anything which is precisely where conciliation falls. One is expected to change people into reevaluating their firm stances and come to decent resolutions. The conciliator is not a decree-maker but a prodding peacemaker, who is prodding everybody towards reconciliation and goodwill.

This style is sunny when the sides are engaged in future relationship like family or workmates or business associates. By making the discussions constructive it makes sure that negotiations do not go out of hand and no one loses face in their discussions. The first rule is co-operation and the free will that correlates to the rules of self-control and non-violence by Gandhi. The values that are central to the Gandhian thought and success hinges on are trust, sincerity and openness. In fact, conciliation is one such modern example of a legal use of the philosophy of ethical dispute-resolution by Gandhi.

5.3 Negotiations as the Principle of Truth.

Negotiation is the most loosely run ADR. It is not one being between, it is non-dramatic face-to-face communication between the parties. It is the expression of the principle of Satya, or truth, of Gandhi, who requests us to tell the truth and to be worthy in our bargains. Gandhi believed that truths of non-violence would help to bring constant peace and justice.

It can be anticipated that the party who is negotiating spill the beans of interests, restrictions and expectations during the negotiation process. It is this candor which helps us find solutions and get past suspicion. Negotiation recognizes us when we are out in the open, unlike in litigation where people hide their faces on the side, as it is an eye-to-eye game. This stands on the ground of the Gandhian philosophy according to which truth is a sort of a moral ladder and a practical tool.

Negotiation also contributes to autonomy and self-determination. The parties will also lead the whole process and this fits in well with Gandhi who had a belief in the individual responsibility. Conducted properly, negotiation will bring long-term and beneficial settlements to all parties concerned. This is how even without a given institution, the Gandhian principles can come into play which justifies the existence of the morality of ADR.

5.4 Lok Adalat as A Gandhian organization.

Another of these institutions is the Lok Adalats which are not only unique to India but also it was the institution that saw the ideas of Gandhi come into action. They are expected to offer cheap, quick and friendly justice according to the legal services authorities act of 1987 especially to the needy. They are rather on settlement than judgment.¹⁷

All the ambiance of Lok Adalats is Sarvodaya- taking care of well being of everyone and making justice available. The judicial system is casual, participatory and is not full of any legal jargons and this has enabled common citizens to seek justice. A reflection of Ahimsa and moral persuasion gives compromised and concurred points.

Gandhi supported bottom up, humane and people oriented justice. Lok Adalats rise up to that by eradicating court dependency and also offers people with ways of resolving disputes without accessing court. Their success is the pointer to the fact that the Gandhian philosophy does not turn outdated in the modern institutional ADR.

5.5 Restorative Justice and the Gandhian thought.

Restorative justice is fully based on the restoration of the damage that a conflict has caused instead of punishing the person who has broken it. It involves reuniting of groups and regaining of community peace. It fits very well in Gandhian teachings that familiarize healing and moral reform with vengeance.

Since Gandhi has left, punishment can never do any justice but a sense of understanding and remorse will bring in real justice. The mechanisms of restorative justice like mediation between victims and offenders accord considerable importance to dialogue, accountability and forgiveness. These are the things that help people to sympathize with each other and be

¹⁷ R.P. Singh, Access to Justice and Role of Lok Adalats in India, 6 Indian J.L. & Just. 88 (2015).

respectful.

Restorative justice is in line with Sarvodaya and Ahimsa because of its approach to conflict which focuses on the emotional and social dimensions of conflict. It turns conflicts into the opportunities of spiritual growth and repentance. The Gandhian ethics are topical to restorative justice used in the form of a side-kick in the ADR as regards the contemporary conflict resolution.

Chapter VI: Constitutional and Judication aspect of Gandhian ADR projects PHILOSOPHY

6.1 Gandhian Ideals in Indian Constitution

The Indian Constitution is an embodiment of a part of the Gandhian idea, especially the Directive Principles of State Policy. The social justice, equality and decentralisation are some of the problems that are in tandem with the just society agenda as espoused by Gandhi. These are not stressed as laws yet they make an impression on policy-making and interpretation of law.

The idea of Gandhian welfare, dignity and participatory justice can be found in constitutional provisions concerning fairness and inclusivity. The ADRs are held to these ideals because they establish a point to justice and mitigate the warfare adversarialism. In a nutshell the Constitution is a good guideline that promotes the use of Gandhian-based dispute resolution.

6.2 Article 39A and Legal Aid

Article 39A cautions the state that it is supposed to give equal access to justice and free legal assistance to every individual. That is all about the sympathetic consideration of Gandhi towards poor and marginalised ones. According to him, this would be justice, not an opulent thing of the rich.

The ADR methods like Lok Adalats and mediation have forcefully driven Article 39A to a greater direction by providing cheap and readily available justice. They eliminated bureaucracy in operations and left the rest of the citizens with power to solve differences amicably. This is the way ADR realizes ideals of constitution with the Gandhian prism.

6.3 The ADR Judicial role in the promotion of ADR.

India Judicial courts have been on the offensive in which they are encouraging ADR in an effort to shorten the backlog of cases in the courts and to increase access to justice. What courts recommend and have seen the effectiveness and morality of these tools is mediation, conciliation, and settlement.

The use of ADR is constitutional due to judicial backing. The courts unconsciously endorse the idea of reconciliation and reconciliation championed by Gandhi when it comes to requirements that people choose to settle instead of fighting the lawn and the lawyer. The above court job justifies the argument that ADR is a different form of justice.

6.4 Court Rulings that favour ADR.

The courts of India have given landmark Judges which have encouraged the use of ADR as a means of attaining real justice. The priority of speed, settlement, and collaboration is highlighted in the settlement, collaboration and speed in such decisions. They manifest a transformation of less adversarial justice to more consensual justice.

Those decisions are in India congruent with the Gandhian philosophy in their identification of social and moral of conflicts. They enhance judicial plausibility of ADR and promote Gandhian ideology of the constitutional adjudication.¹⁸

CHAPTER VII: Comparative Perspective- Gandhian ADR, western models of dispute resolution.

7.1 Adversarial Justice vs Gandhian Consensus Model.

The western justice system is a competitive one. The parties stand against each other and it becomes the role of the judge to act as a neutral party and ensure that all parties follow the rules. It seems fair to the surface but it is likely to blow up conflict situations and send people either a win or loss even though the real issues that hold them together are not being resolved.¹⁹

Gandhi saw it differently. His view was that the divergence was quite about community and

¹⁸ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

¹⁹ Carrie Menkel-Meadow, *Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement*, 83 Geo. L.J. 2663 (2001).

morals but not about legal matters. He encouraged teamwork, negotiating of issues, and tradeoffs. Justice to him, means restoring people in harmony and respect to each other.

The modern instruments of ADR thinking, in the image of Gandhi, are aimed at making everybody to come to a compromise instead of pronouncing a sentence in a court. To this end, such a strategy will lead to win-win situations and people will want to put it through. The adversarial model is effective in ensuring rights but the Gandhi model gives us a less violent and more sustainable model of conflict which is seen to exist in reality.²⁰

7.2 West mediation and Restorative Justice.

During the past few years, the West courts started sowing on mediation as well as restorative justice instead of directly proceeding on to litigation. These methods are based on the principle of letting every one of the people contribute and discuss and find solutions together. The mediation can normally talk about the interests and keep things secret, whereas restorative justice can unite the victims and the offenders to repair the damage.

However, it might appear that they are still the same, but the approach of Gandhi provides this with a moral touch. The western procedures are quick and cost effective; the values of the strategy of Gandhi were founded on the principles such as truth, non-violence and the good of all. He viewed a conflict resolution as a chance of people to be better and improve.

Overall, these two parties are forsaking the pure system of fight-or-flight. The conception that Gandhi by his ideas communicates, helps in giving such newer means a deeper moral sense, rather than efficiency per se, and resulting in reality of social harmony.

7.3 The special contributions of the Gandhian philosophy on the ADR in the world.

Gandhi philosophy gives ADR a huge upperhand in terms of morality. There are moral principles like Ahimsa (non-violence) and Satya (truth) and Sarvodaya (welfare of all), which are offered as a guide to the conduct of individual and organization on how a conflict should be handled. He reasoned through the organization of good will and free agreements rather than rules.

²⁰ C. Menkel-Meadow, *Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (in Some Cases)*, 83 Geo. L.J. 2663 (2001).

This approach demonstrates that peaceful resolution of conflicts is in fact working even on challenging and protracted conflict. Through his teachings, we are able to fill the inequality in the aspects of power through empathy and discourse. The Gandhi package offers a road map to peace in the present world where there is continuous conflict and it looks like that is the case that encompasses everyone.

The fact that he resorts to universal truths implies that his philosophy can be applied to a vast range of different cultures and legal systems that will contribute to the arsenal of global ADR with the powerful ethical consideration.

7.4 International Relevance of Non-Violent Dispute Resolution.

Non violence now becomes the dream of peace-building human rights and transitional justice despite the fact that people had witnessed effects of violence in the world. The ideas of Gandhi inspire leaders and groups that beg to dialogue and reconcile.

Non-violent programs of ADR pursue non-violent approaches to sustainable peace that go down to the root of the conflict. They make sure that enmities are not carried to the extreme and grow up with respect towards one another. The model explained by Gandhi offers directions on how the issues of personal quarrels can be dealt with until the international tensions.

Gandhi and his never-ending obsession with non-violence is an impressive prototype in a world where cultures collide with each other and with the courts, Gandhi has provided through non-violence merit a valid roadmap on how to come out better than the courts, to the diplomacy and even the social movements.

CHAPTER VIII: The objections and criticism of the components of Gandhi ADR mechanisms.

8.1 Prejudice in authority and free will.

The significant issue of ADR is that it can result in the triumph of unequal power. In the case where the bargaining power of one side is higher in comparison to the other, the contract might appear to be more of a coercion than a choice. This dispels the belief that they all should be willing to be included in the process.

Where there are no proper checks in place, less superior parties can find themselves accepting terms that are unfavorable. Gandhi made assumptions that all would be moral but in reality this was not what was always the case specifically in economic or social variations. Apparently, the solution is found in the superior institutions and neutral agents who are funded to establish a level playing field.

8.2 Informality vs Legal Certainty.

The flexibility of ADR is rather large, which, however, can be unpredictable because of its casual nature. Lack of stringent specifics results in things being very different and people may not feel as if they could rely on them.

Gandhi system of moral wisdom does not follow the strict mechanics but the courts demand enforceable ruling that are standardized. There should be a balance between believing people in the process, as well as ensuring that there is also enough legal backing and upholding the Gandhian values are not diluted.

8.3 Settlement are enforceable

Settlement are binding as they are parties agreements not in the case of ambiguity in terms or conditions of settlement. Settlement are binding because it is an agreement between people under the condition that the conditions and terms have been laid and are not disputable. Voluntary deals mean that individuals must be willing to abide by it, but can be dismissed.

This in India is being supported by the law, through official recognition of arbitration and Lok Adalat agreements. However, a simple moral respect might simply not be enough where knotty conflicts are involved and this is the evidence that pure Gandhian persuasion does not exist.

8.4 Current Day Business Disputes and the Gandhian limitations.

Business battles are stakes and vistas high and strategies are tight, and hence applicability of ethics taught by Gandhi is more complex. Arbitration is a well-known one because it can be enforced and also because it predicts.

The Gandhi ideas though applicable in making more moral negotiations, they cannot always be put on the shelf. This is the reason why it is necessary to make the philosophy accommodate

the situation rather than trying to accommodate all the cases under a single umbrella.²¹

CHAPTER IX: Future Prospects and Reforms.

9.1. Empowering Culture of mediation within India.

Mediation requires us to go the next mile by creating awareness, training and building of good support networks. To boost the level of trust and the effectiveness we possess some Gandhian vibes to the daily mediation will be a benefit.

9.2 Making Gandhian Values Institutional in ADR Training.

It is assumed that the administrators of ADR are aware of social responsibility, empathy, and ethics. The training, as well as the practice itself, can be much more enriched by the way of thinking of Gandhi.

9.3 Legal Education and Awareness.

ADR and ideas of Gandhi need to be incorporated in the teaching of law schools. Information would enable individuals to choose peaceful methods of resolving conflicts.

9.4 Instruction of the Law and Law-awareness.

Gandhi and his ideas should be included in law school teaching based on the ADR. It would be possible to make people adopt peaceful conflict-solving mechanisms.

9.5 Online Dispute Resolution and Gandhian Ethics,Technology .

ADR should be made more accessible to people through the use of technology. The online manifestation of the Gandhian ethics we might still be able to bring online justice to touch and experience.

CHAPTER X: CONCLUSION

Given the Gandhian principles and the ADR, the notions of the ADR being not an alternative to the litigation procedure but a value-based justice system with strong ties to the philosophy

²¹ J.M. Nolan-Haley, *Alternative Dispute Resolution in a Nutshell* (4th ed., West Acad. Publ'g 2012).

of ethics are quite self-evident. Gandhian philosophy makes justice to be a process that is not aimed at winning but is oriented towards reconciliation, moral change and social harmony. Such principles as Ahimsa, Satya, Sarvodaya, and intellectual persuasion constitute a system that appears to be in agreement with the goals of ADR mechanisms, such as mediation, conciliation, negotiation and Lok Adalats. ADR in India has not emerged out of thin air, in terms of proving this form of philosophical overlapping, it is the extension of indigenous/Gandhian of practices surrounding dispute-solving.

The modern ADR mechanisms practically use the Gandhian principles, as the analysis also shows, since they focus on the dialogue, voluntary participation and respect to each other. As an opposed sample to formal litigation that could potentially be used to worsen the tensions, ADR encourages teamwork problem-solving and prevents the breakage of relationships. The mediation and the Lok Adalats reveal the Gandhian philosophy of decentralized people oriented justice, perhaps, through the enhanced access of justice to less represented and less affluent people. Through such, ADR will not only be more efficient to the judicial system, but also helps to achieve substantial justice and social equity.

The fact that the ADR has been adopted constitutionally reflects the Indian legal system and its compliance with Gandhianism in Directive Principles of State Policy, specifically, 39A. The tendency to a courts that values the importance of being accessible, humane and responsive to the social realities is another sign that there is rejection of strict adversarialism in favor of settlements. This constitutional and judicial approval will give ADR a more solid ground as one of the key drivers of justice delivery in India, and not an extension.

However, the study does not disapprove the fact that there are some limitations and problematic aspects of the practice of Gandhian ADR in the modern world. The major challenges are the existence of power imbalances, the absence of clarity in the legal certainty as well as uncertainty about the enforceability. In addition, Gandhian ethics is highly obsolete in complex business or cases of high stakes. Such issues specify the need to have protective measures, moral education of the neutrals, and balanced incorporation of law and morality. The pragmatism is necessary to adjust Gandhian philosophy but it cannot be strictly aligned with the idealistic form and even quite rigid one.

Nonetheless, generally, Gandhian values remain to be used in the establishment of a just, inclusive, and humane system of justice. When Gandhian ethics ensures the ADR, it provides

a practical method of minimizing the court workloads but enhances peace, involvement, and accountability. With India driving towards a more accessible and efficient legal system, the Gandhian values can continue to make justice not only legally acceptable, but also meaningful and ethical, in ADR practice, legal education and policy. The future of dispute resolution is in harmonizing law with conscience - a dream that Gandhi spoke about and ADR is still struggling to make one come true.