

Creating Awareness about ADR among Consumers in India: Role of Consumer Organisations

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Abstract

Modern markets and technological developments have largely contributed to the betterment of consumers with ease of access to quality and safe goods and services. But, the fact of life is that consumers are still victims of unscrupulous and exploitative trade practices. While consumer fora are there for effective redressal, the fora are burdened with heavy backlog of cases and poor administration that the consumer has to wait for years to get the relief. This is proved by the verdict of the Supreme Court very recently wherein it constituted¹ a Committee to examine the working of consumer fora in India. The finding of the committee² pointed towards a dismal picture and show how the redressal system at the District, State and National level has been losing sheen over the years. In its report, the committee observed that the fora constituted under the Consumer Protection Act, 1986 do not function as effectively as expected due to a poor organisational set-up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. The committee had also pointed to red-tapeism and corruption in the system that is leading to increasing inefficiency in the timely disposal of cases. Thus, a tool that was meant to empower the consumers against any kind of exploitation to this date remains toothless. Also, as per the National Consumer Disputes Redressal Commission (NCDRC) statistics³, there are 4,19,894 cases pending across national, state and district fora out of which 3,00,087 cases are pending in district fora

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1 On 14 January 2016 SC constituted a three member Committee presided by Justice Arijit Pasayat, a former Supreme Court judge.

2 State of U.P v. All U.P. Consumer Protection Bar Association, Writ Petition (C) No. 164 OF 2002 (Supreme Court of India).

3 As on 15 May 2017.

alone. In the light of this data and issues by the dispute settlement mechanism, this paper presents the various advantages and solutions rendered by alternate dispute mechanisms in the interface of consumer law. This paper looks into the need of consumer organisations in terms of creating awareness about various alternate dispute mechanisms that consumers can avail of and the benefits it can yield and why they are necessary in the present context.

Introduction

Urgency to sensitise consumers to exhaust alternative remedies to settle their grievances before reaching a consumer forum is becoming vital and imminent due to the reasons mentioned above, which is where Alternative Dispute Resolution (ADR) could be brought in. ADR means resolving a dispute outside of the courtroom and usually comprises early neutral evaluation, negotiation, conciliation, mediation, and arbitration. It may or may not involve a neutral third party who assists both the parties to a dispute to arrive at a mutually agreeable solution to the problem between them. The entire process is more flexible compared to court procedure as, it allows parties to be actively involved in settling their own dispute. More importantly, it is often easier to carry forward the relationship between the two parties if one uses ADR, as it is a far less adversarial approach when compared to the usual court system.

However, resolving disputes always through ADR is never a solution. At times, court adjudication would be the better solution as some grievances, due to various reasons, cannot be settled. For instance, there may be situations where the consumer may face the problem of power imbalances particularly when the affected party is an individual consumer and the other side is a large multinational company. Also, when the consumer is less informed and not skilled enough to estimate his actual loss and negotiate effectively for suitable compensations, judicial intervention is warranted. So, ADR offers the consumer just another alternative and it never intends to keep the court away from the dispute scene.

While a range of different ADR bodies have been set up over the years. However, important gaps remain, particularly, in terms of consumer awareness of such different bodies. More importantly, consumers should realise that ADR attempts to promote a more harmonious solution in which there are no winners and losers. The Working Group Report on Consumer Protection⁴ had also underlined its importance, wherein

⁴ Report of the Working Group on Consumer Protection, (Vol. II, Subgroup Report, Planning Commission, Government of India, 2012-17).

it stated that ADR, and particularly mediation, is the most suitable method for a country like India.

An increase in awareness of ADR bodies among consumers can thus, largely ease the otherwise growing pressure on consumer fora. For this to achieve, efforts should be taken to propagate its existence vigorously among consumers across states.

ADR in India

The Supreme Court of India has, in many cases,⁵ encouraged the settlement of disputes through an institutionalised ADR mechanism. However, it was in *Afcons Infrastructure Ltd.* case⁶ the Supreme Court held that all consumer disputes including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity; disputes between suppliers and customers; disputes between bankers and customers; disputes between developers/builders and customers are suitable for ADR processes.

The recent launch of the Integrated Grievance Redress Mechanism (INGRAM) portal and Online Consumer Mediation Centre (OCMC) aids consumers to this existing system. The INGRAM portal is a one stop initiative where a consumer can browse through existing grievance redressal mechanisms available across various sectors and choose the appropriate mechanism to lodge his grievance online. It acts as a central registry for lodging consumer complaints. The portal also provides complainant the facility to track the status of the case. In case the consumer is not satisfied with this approach, he can approach the appropriate Consumer Forum. The National Consumer Helpline is also accessible through this portal, wherein a consumer can call to seek information, advice or guidance for his queries, complaints and guidance. The OCMC aims to resolve consumer disputes both through physical as well as online mediation through its platform. It is an innovative tool as it offers consumers better access to justice through quick and easy redressal mechanism.

The Consumer Protection Bill, 2015 also proposes mediation as an ADR mechanism. The mediation will be under the protection of consumer fora and a mediator is appointed by the National Commission or a State Commission or a District Commission, as the case may be. The mediator will mediate the dispute between the parties to the complaint by facilitating discussion between parties directly or by communicating with each other individually.

5 Salem Advocate Bar Assn. (II) v. Union of India (2005) 6 SCC 344; K. Srinivas Rao vs. D.A (2013) 5 SCC 226 (Supreme Court of India).

6 *Afcons Infrastructure Ltd. vs. CherianVarkey Construction Co. (P) Ltd.*(2010) 8 SCC 24.

In spite of these initiatives, many consumers do not know whom to approach in case of dispute. Significant number of medical negligence and malpractices that occur in rural areas go unchallenged as consumers are ignorant and hardly aware of redressal mechanisms.

Not much study is done to highlight in general the effectiveness of such ADR schemes in India. Consumer Unity and Trust Society (CUTS) in the year 2012 conducted a survey under the study "State of the Indian Consumer 2012". The survey was conducted across 88 districts, spread across 19 states and three union territories of India. One of its findings was 53 percent of consumers surveyed had not heard about redressal mechanism and only 0.3 percent has approached consumer for a grievance redressal. The study also showed that, of the 47 percent of consumers who did know about other redressal mechanisms, only 28 percent believe that it is easily accessible to common people. Besides, only 0.1 percent of those surveyed have approached sector ombudsman for redressal.

Similar is the case with regards to national consumer helpline and banking ombudsman. Though the total number of complaints registered keeps increasing each year, overall the awareness is much lower across various states. (Refer table 1 and 2.)

Table 1: State Wise Calls received at NCH (2015-16)⁷

State	Complaints Received (%)
Haryana	6.59
Uttar Pradesh	14.92
Rajasthan	5.53
J&K	0.71
Punjab	2.51
Himachal Pradesh	0.60
Uttarakhand	1.09
Bihar	5.07

⁷ Annual Report of National Consumer Helpline, 2015-16.

Jharkhand	1.77
Gujarat	4.80
Madhya Pradesh	4.36
Maharashtra	12.13
Chhattisgarh	1.23
Telangana	0.80
Andhra Pradesh	1.92
Goa	0.19
Karnataka	5.07
Tamil Nadu	2.34
Kerala	0.96
Odisha	1.24
Meghalaya	0.05
Arunachal Pradesh	0.03
Nagaland	0.04
Sikkim	0.04
Mizoram	0.01
Tripura	0.12
Assam	0.74
Manipur	0.03
West Bengal	6.62
Andaman & Nicobar Islands	0.02
Lakshadweep Islands	0.00

Table 2: Total Percent of Complaints Received During 2013-16 at Office of Banking Ombudsman⁸

Office of Banking Ombudsman(OBO)	Complaints Received (%) (2013-16)
Ahmedabad	5.74%

⁸ Annual Report on Banking Ombudsman Scheme, 2015-16.

Bengaluru	4.98%
Bhopal	5.59%
Bhubaneswar	2.96%
Chandigarh	4.44%
Chennai	8.40%
Guwahati	1.29%
Hyderabad	5.74%
Jaipur	4.53%
Kanpur	9.35%
Kolkata	4.71%
Mumbai	11.99%
New Delhi	21.92%
Patna	4.86%
Thiruvananthapuram	3.49%

Such low level of awareness about ADR is not just in India but in other parts of the world too. The European Parliament had once recognised that ‘only a small percentage of citizens know how to file a complaint with an ADR entity’.⁹ Retailers’ awareness of ADR procedures is also rather limited in EU, and increased only very slightly between 2012 and 2014.¹⁰ Just above half of all retailers (54 percent) say they know any ADR entity, be it in their own sector or in any other sector.

Thus, lack of consumer awareness of mediation and other means of redressal is a major barrier towards effective consumer protection and this need to be addressed. Complaining and getting effective redress can reduce or even negate consumer detriments and can help reinforce consumers’ confidence in the otherwise complex market environment.

9 Suquet, J, ‘Mobile Technology and Consumer Empowerment: An Application for Online Consumer Mediation in Catalonia (Geoconsum)’ (European Journal for Law and Technology, Vol. III, 2012).

10 The Consumer Conditions Scoreboard: Consumers at Home in the Single Market, 2015 Edition, ISSN 2466-9687. Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf.

ADR and Consumer Organisations

Consumer organisations are the best choice to foster mass awareness about ADR across the country as such organisations are aware of the ground realities and problems faced by consumers. Their research and studies about how markets work and their persuading capacity with the governments can easily help them succeed to convince the consumers about the importance of ADR.

They can enlighten consumers by explaining, in greater detail, the features of ADR and advising when it could be best used to solve disputes.

At the same time, awareness programs about ADR targeted towards urban sector and among educated masses could be focused on online dispute resolution, INGRAM portal and OCMC. But for that, the consumer organisations need to be thoroughly educated about these new initiatives.

Facilitating visits and encouraging discussions with various redressal representatives too, can contribute towards the rise in awareness of the working knowledge of such redressal systems.

A few things that prevent active involvement of such consumer organisations are lack of sufficient resources and inadequate support from the Government. Even if funds are provided, the amount is often very nominal. Another major hurdle is the absence of training, expertise and professionalism within consumer organisations. Most consumer organisations across the country, except for a few reputed ones, lack these basic skills. Hence, their ability to educate and connect with the rural masses on such a crucial topic remains a question.

Conclusion

In this note, we have evaluated the role of consumer organisations in promoting ADR mechanisms and highlighted how a reasonable decision taken by an aggrieved consumer can lessen the burden of existing legal systems. Consumer organisations have always worked for the betterment and empowerment of the consumers and have spread attentiveness to create a healthy society for the sake of every consumer. The recent initiatives taken by the government to vigorously promote ADR in consumer disputes will certainly boost the confidence of the consumer organisations to work towards spreading awareness about the same. This is a beneficial change which can positively affect each and every individual for broader awareness about the consumer rights. Educating more than 134 crores of consumers who are segregated into different categories based on income, domicile, education etc., on

matters of consumer interests is a herculean task but certainly not an impossible one. For that, bringing all consumer organisations together and supporting them with adequate resources is vital. Also encouraging more number of consumer organisations in every possible remote area can aid such sensitisation programmes to penetrate more deeply and effectively among the rural masses.
