Chapter VII

Findings, Conclusion and Recommendations
Conclusion

Disputes are an inevitable part of social life. As society becomes more complex, disputes are bound to increase in number and variety. It is not possible to achieve a fully harmonious order devoid of all conflicts. But every society requires an adequate or acceptable means of dispute resolution for its survival. Such dispute resolution systems reflect one way or the other the socio-cultural features of the society in question and the world view its members uphold.

More recently, there has been a realisation that dispute resolution processes popular in Western societies cannot be replicated straightaway in non-western societies. This is because of the collectivistic (high context) nature of such societies as opposed to the individualistic (low-context) nature of Western societies. Colonialism destroyed the traditional dispute resolution mechanisms and replaced them with modern courts. The court procedure that most citizens were forced to adopt for justice and dispute resolution was found to be adversarial, costly and long-drawn out. Gandhi was in the forefront of the movement for alternative dispute resolution in that he had advised lawyers to mediate the cases that came to their attention rather than encourage them to litigate in the court. Modern ADR that originated in the west with the need to ensure quicker justice has now become a part and parcel of the social order, and has addressed the problem of case overload in the courts. In India too, several Chief Justices of the Supreme Court as well as the High Courts have been calling for mediation, either court-annexed or otherwise. Bush and Folger advocate that mediation is a means of making society less individualistic and more relational and it has the capacity to transform the character of both individual
disputants and society as a whole (Bush and Folger, 1994). For Asian societies, mediation by community elders was one of the traditional ways of processing disputes. In the absence of elders in the conventional sense, in places like Kerala, their role has come to be partly occupied by the members of village Panchayats. The fact that the profile of the village Panchayats in the state has increased considerably after the 73rd amendment to the constitution and the introduction of participatory planning also may be noted in this connection.

In many parts of India, local leaders settled disputes arising at the level of the community. Among the lower classes, caste panchayats retain coercive powers of adjudication and punishment, especially in family matters. Although the gram panchayats promoted as institutions of local self government have no judicial authority in dispute resolution, the 73rd Amendment elevated the status of these panchayats. Although not mentioned in the Panchayati Raj Act, panchayat members cannot but intervene in local disputes of various kinds. A decentralised and participatory administration of justice is an urgent need of our country.

The study explored the potential for meeting that need in a rural setting in the state of Kerala by mapping the alternative dispute resolution practices at the local level with particular focus on the role of members of village panchayats. Most people prefer informal dispute resolution practices (panchayat members, political party leaders and caste organisations) than formal dispute resolution institutions like court, police etc to solve local disputes. The study investigated the nature of local conflicts subjected to alternative dispute resolution. Main of them are boundary disputes, family disputes, development-related disputes, disputes about commons etc. Chapter VI provides a local dispute resolution model with various steps or processes. This model is derived from the experiences of local dispute resolution practices of panchayat members.
It is important to mention the three main hypotheses that this study started out with. These have been mentioned in the introductory chapter. The detailed analysis and testing the validity of these are carried out in chapter VI.

   a. People mostly prefer Alternative Dispute Resolution (ADR) practices (especially using informal dispute resolution (IDR) mechanisms) rather than formal dispute resolution legal institutions like court, police to resolve local disputes.

The first hypothesis has been tested with the help of the data collected from both members of village panchayats and people. Analysis of the data shows that people mostly prefer Alternative Dispute Resolution (ADR) practices [especially using informal dispute resolution (IDR) mechanisms] rather than formal dispute resolution legal institutions like court, police to resolve local disputes.

   b. There is a high degree of receptivity of people towards local level dispute resolution by Gram Panchayat/Members compared to other means given its advantages.

The study found that most of the people see panchayat member as a person capable of solving local disputes. But significant proportion of the people included in this study still believes in the appropriateness of court procedures in some cases. People are generally aware of the advantages of local mediation by the panchayat member compared to other means.

   c. The relationship between disputants is found be less acerbic in cases where Informal Dispute Resolution was adopted.

The study finds that dispute resolution achieved through the mediation of the panchayat member was sustainable and had greater space for addressing relationship issues. Most of the
panchayat members gave stress to both settlement and personal relations between the disputants.

7.1 Main Findings

The study has found that panchayat members constitute a resource in local level conflict resolution although they are not trained professionals in conflict management. There are good as well as bad practitioners among them based on their personal abilities and experience in handling such situations. Boundary disputes are the major type of dispute handled by panchayat members, and such disputes have been found to be more amenable to alternative dispute resolution. Now the disputes over the canopy of trees over neighbour’s properties are handled exclusively by panchayat as Revenue Divisional Officers are known to transfer such cases that come to them to the panchayat for resolution.

There have been arguments raised by those who have misgivings about the capacity of the panchayats in the performance of judicial functions. The major allegations are panchayats are not suited for the administration of justice, lack of public confidence in the panchayats, Panchayats are often ignorant, usually biased by party factions and frequently corrupt and the dispute resolution role of panchayats is against the spirit of constitution etc. Now Gram Panchayat is acting as a Non State Legal Institution (NSLI) in the local level. Many of the Gram Panchayats has sub committees to deal with local disputes.

Now many of the panchayat members are coming to public field without much political experience and social skills. Many panchayat members from reserved categories are particularly at a disadvantage on this count although caste did not figure as an important factor contributing to mediator effectiveness. Members who had some individual level ineffectiveness in dispute resolution
often tried to overcome them by allowing a subcommittee at the panchayat level to engage in the task.

Mediator-neutrality is not seen as a useful virtue in local level mediation. Some panchayat members affirm that they are not unbiased mediators. They are often required to side with the underprivileged and weak. As ‘insider-partial’, the Panchayat member gets a greater insight into the dispute and the issues than an outsider. S/he is able to identify himself/herself with the disputants more than a professional mediator. The fact that s/he has to meet the disputants as well as those aware of the dispute, all through his/her life or political influences him/her to steer the parties towards agreements that are socially acceptable and also mutually satisfying.

The people approached the members, not because of their qualifications and skills, but their stature as ‘insider-partial’ mediators, persons who are known to everybody and expected to be fair in their dealings with people. Most of the member-mediators are aware that they are under public scrutiny.

Most of the members intervened in disputes only when one of the disputants approached them. They did not wait for other disputants. The panchayat members are confident of persuading the other party as well in such cases. They tend to think that their role is not purely to act as an intermediary but as an active participant in the resolution process.

On the dispute resolution front, face needs are considered to be most crucial, not only for individuals, but also for their families. Face needs are most clearly found in situations where opportunities for others to view the loss of face exist. The member-mediators try to ensure that no one lost out in the conflict or, at least, give an impression to that effect. Often the mediator creates a feeling that one party has climbed down largely because of their influence and not because of lack of resources of the other party.
Most of the Panchayat members said that they take into consideration the ‘face issues’ and use opportunities to sustain the face of the parties involved in the dispute.

Dispute resolution skills and efficiency of a panchayat member are interrelated. Dispute resolution skills also have a bearing on their political career.

Lok Adalats, a court annexed mechanism of ADR is doing relatively well in the state. In many cases, lawyers are reluctant to reach settlement. They persuade their clients to avoid Lok Adalat sessions. The rate of settlement of cases, in which both the parties are present, is high. The unsettled cases are higher than the settled cases due to the lack of cooperation and absence of one of the disputants. A positive attitude of lawyers towards Lok Adalats was found only in Vaikom TLSC.

The main beneficiaries of Lok Adalats are insurance companies, banking institutions and private telecom companies. The insurance companies approached legal service authorities for early settlement of MACT cases. The nationalised banks, new generation banks and private finance companies approached them for the settlement of loan payments. Legal service authorities arranged separate benches for these companies.

Of the court-annexed ADR mechanisms, the informal nature of dispute resolution is more visible at mediation centres, both at the District and state levels. Even in these centres, the presence of lawyers’ is still visible. Mediators try to convince the disputants and their advocates about the desirability of settlement after apprising them about the facts.

Legal validity is there in the Lok Adalat awards; whereas the settlement of local leaders especially panchayat members does not depend upon legal validity, but on the trust that leads to mutual agreement. Most of the panchayat members prefer the informal
nature of dispute resolution at local level. They want to protect the informality of existing practices.

Some judges in the high court are of the opinion that the attitude of lawyers should change by fixing fees for mediation or appoint paid mediators. Even though the idea of paid mediators is good, utmost care should be taken to legitimise the role of advocates in this process. Otherwise the ‘alternative’ becomes a space for further disputation.

Disputes are an essential part of the society. Hence the declaration of certain panchayats as litigation-free or crime free is baseless. Now KELSA has changed the name of their initiative as litigation-controlled panchayat. No monitoring has been made by KELSA after the declaration.

7.2 Policy Recommendations

The following policy recommendations emerge from the study

1. Government should take the initiative to enhance the avenues for alternative dispute resolution through forums such as Family courts, Lok Adalat, Jagratha Samithis, Janamaithri etc., and reduce the involvement of lawyers as far as possible.

2. Members of Gram Panchayat may be provided training in conflict analysis and mediation. At the moment, such modules are not included in any of the training programmes. But the training needs to be adapted to local conditions. The study recommends that the Kerala Institute of Local Administration should include dispute resolution as a component in their training programme for Gram panchayat members.

3. The decisions reached by the parties through the mediation of the members of Panchayats may be granted some kind of legal status in the court of law.
4. Conflict Resolution skills may be taught either as a separate programme or as part of existing programmes of study such as political science, sociology, psychology, social work, development studies and law. It may also be incorporated as part of soft skills for which training is already provided in different forums.

5. The law enforcing agencies and the courts may be encouraged to insist that informal means of dispute resolution through the intermediation of members of Panchayats is tried before allowing disputes to enter the judicial system.

6. A Panchayat level subcommittee or standing committee for dispute resolution consisting of the more experienced members may be set up to intervene in more intractable conflicts. Also steps may be taken to maintain records of cases and the proceedings.

7. Adequate budgetary support may be provided for alternative dispute resolution agencies and programmes.

8. KELSA should introduce Lok Adalat at panchayat level. The possibility of Lok Adalat-Panchayati Raj collaboration should be determined. Now the only possibility is to invite panchayat member in the role of a social worker. This is not enough.

9. Allocate more resources to legal service authorities at district and taluk level. Adequate funds and infrastructure including permanent staff are necessary for smooth functioning of Lok Adalats.

### 7.3 Prospects of the study

It is significant to examine the two developments, the Gram Nyayalayas and the proposed Nyaya Panchayats with reference to the inferences from the research study. Former is an extension of existing state legal institutions (SLIs) and latter is a people’s forum. Many reformers suggested the necessity of local level dispute
resolution mechanisms. The matter of local justice has been mentioned in the 114th report of Law Commission of India and it recommended for Gram Nyayalayas. Earlier committees recommended for a new pattern of Nyaya Panchayat with a Panchayati raj judge. But the issue of local community justice system had not been a thrust area for the policy makers.

The problem of backlog of cases is not due to the lack of adequate number of courts, but due to the nature of the procedure adopted in them, which is still quite legalistic. So enhancing the number of lower level courts like Gram Nyayalayas is not the right answer. What is necessary is to make them more informal.

Policy makers and government should give more attention to this area and try to map the locally available resources in view of the tabling of the Nyaya Panchayats Bill in the Parliament. Such preliminary studies about the feasibility of panchayat level dispute resolution systems in all states will be useful once the bill becomes a law and individual states try to implement their own versions of it.

There is a trend of increasing conciliatory practices in court annexed ADR mechanisms like Lok Adalat, Family court, Mediation centre etc. Jagratha samithi and Janamaithri are other initiatives in the state. A study which analyse the common features of these and evolve a new alternative of merging the common components is relevant. A more intensive research is significant in this context.

The sociological study of state legal institutions and non-state legal institutions is very relevant as the experience of this study suggests. Code of laws is irrelevant when it is detached by the culture and context of conflict in a society. Also, notion of justice varies according to the culture and context. Further research in local dispute resolution practices is necessary to bring out its intricacies and also to evolve a training content for training such potential mediators.
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