Gandhian Perspective on Alternative Dispute Resolution

Resolution represented a failure on our part as conscious beings with a "sharing the joy and sorrow" civilization. The modern West had no pact to deal with it. The prevalent judicial system apart from being an expensive instrument creates a gulf and, at times, develops further antagonism between contesting parties. It is in this light that the world is moving towards Alternative Dispute Resolution (ADR) processes and ways of dispute settlement, in short, practices that lie outside the prevalent judicial structure. These practices invoking informal mechanisms to settle disputes, including court annexed dispute resolutions and amicable settlements. In many countries Courts prefer ADR methods, through mediation, before moving on to the formal procedures like cross-examination, etc. The ADR has gathered popularity for it helps unload the traditional courts. A great advantage in ADR adoption is that it is less expensive than filing litigation, maintains a level of confidentiality, and addresses the need to have greater control over the selection of the persons who will resolve their dispute, which helps in maintaining the relations, respect and does not disturb the social environment.

Gandhi advocated ADR after his successful experiments with resolution of conflicts/disputes without a recourse to court proceedings. As a lawyer, Gandhi had a preference for out of court settlement of disputes.

Hind Swaraj (1909) raised strong criticism against the erstwhile British legal system that prevailed in India. Gandhi analysed the impact of British judicial system on the Indian social system and felt that the British courts in India are a part of the mechanism to maintain imperialist political control. Gandhi did not trust the British judicial system to be helpful in resolving disputes among people. He differentiated between pure or ancient justice and western or modern justice. According to him pure justice is inspired by fellow feeling, compassion and empathy. This system was governed by a sharing the joys and sorrows and was primarily based on mutual respect, regard, discipline, courtesy and affection. He argued that a totally different way of life prevailed in the modern West. The modern West had no place for feelings in public activities.

Gandhi often used to say that approaching a court by a client for dispute resolution represented a failure on our part as conscious beings with a conscience to address the conflict in its environment of genesis. The formal procedures of courts do not necessarily but often require the hiring of a lawyer, therefore litigation deprives the affected party of control over the conflict. It also by default provide the rich or the ruling classes and their advocates the advantage of being repeat players; they have more experience and knowledge due to their frequent dealing with legal matters. In most conflicts, there is an emotional side, which the legal process fails to take cognisance of. Lawyers see conflicts as representing a zero sum game. The object of going to court is to win a case for the client. A judicial fiat often may not provide justice to an aggrieved party and may amount to some sort of coercion.

Many analysts of Gandhian thought explored satyagraha as a Gandhian method of conflict resolution. Gandhi’s own statements readily reflect and lead to these principles: ‘A satyagrahi’, he says, ‘must never forget the distinction between evil and the evil-doer;’ ‘the essence of nonviolent technique is that it seeks to liquidate antagonism but not antagonists themselves;’ ‘it is often forgotten that it is never the intention of a satyagrahi to embarrass the wrong doer’; ‘The satyagrahi’s object is to convert, not to coerce, the wrong doer;’ ‘It is the acid test of non-violence that, in a non-violent conflict, there is no rancour left behind and in the end the enemies are converted into friends.

Objective of the seminar
The primary objective of this two-day seminar is to bring together scholars from diverse disciplines and backgrounds for constructive dialogue and deliberation on some of the broader themes that include:

- Modernity and Conflict Resolution
- Theory of ADR
- Gandhi’s Experiment with ADR
- ADR and Human Rights
- Alternative Conception of Justice
- Any other theme related to ADR

The seminar will be a two-day event held at Department of Philosophy, Aligarh Muslim University, Aligarh.

Format, Outcome and Participants
A limited number of participants will be invited for the seminar. Participants are required to send their abstracts (500 words) by 20th October, 2018 on any of the above themes and a short CV and full paper by 27th October, 2018 on chairperson.sp@amu.ac.in

The proceedings will consist of opening and closing remarks by prominent figures, presentations by esteemed panellists and a question and answer session at the end of each session. A summary of the seminar will be published on Indialogue Foundation & Department of Philosophy official websites.

Event Details:
When: 30th-31st October, 2018
Where: Department of Philosophy, AMU, Aligarh

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