

## Literature Paving the Way for Law: ADR as an Idea in Munshi Premchand's Panch Parmeshwar

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### Abstract:

Literature has always been a pioneer of ideas and it toys and tests the endurance and situation of the social fabric at any point of time. The role of the artist is to engage with its citizens at various levels. In that essence, Munshi Premchand is firmly rooted to the ground and ethos of the Indian culture. His story Panch Parmeshwar is a harbinger of many legal ideas and it's acceptance and requirement at the village level. Amongst many ideas that replicate into law post- independence, ADR as an idea is mooted through the Panchayat at a time before India became a sovereign nation to settle matters with mutual consent and without involvement of the courts. Thus, even before a formal system of ADR is set up, Jumman and Khala agree to resolve their property matter at such as platform. It is consequent to this that an important analysis can be made. The impartial nature of the Panch and the institution of the Panchayat not yet formalized is a quality worthy of emulation considering the plethora of Lok Adalat kind of institutions in place today that remain embroiled in inter institutional confusions and lethargy. Thus, our paper aims to show that even though we inscribed the Positive Law on Panchayats under the 76<sup>th</sup> Constitutional Amendment Act, we have begun to forget the underlying spirit of Natural Law that informs any legal formulation. Through the literary fictional world of Panch Parmeshwar, we aim to establish that ADR system was very much present in literature and ethos of Indian Community well before it's establishment in the real world today through study of various techniques of ADR system and that literature helps in making this idea acceptable through its nature of mass circulation and impact. Besides, we will also look at how several judges have directly and indirectly quoted Premchand's PanchParmeshwar as a route to envisioning the idea of Arbitration in its novice and infant stage.

**Key words:** ADR, Panch Parmeshwar, Arbitration, Literature

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### Law and Literature: A Relation Re-Imagined

Francois Ost and Thomas Schultz in their working research paper—"Literary Inspirations for International Adjudications" state that 'putting yourself in someone else's shoes is a highly evolved cognitive activity'<sup>3</sup> and this task is one of the most important ones. Literature and in fact, many liberal arts domains have always depicted this and helped bring across the experience of many not so mainstream people and ideas to the fore. Then why should we not consider the 'centrality of texts(literary) to the form and substance of a community's moral and social life' (West 1988, 131) even though debates about how looking outside of the legal ontology will undermine the autonomy of law is an ongoing one. Literary works even help provide context through thought experiments: they help re-center international adjudication as a human activity, above and beyond the humdrum of the technicalities of the applicable rules, to give dispute settlement a human context, to 'de-expertify'<sup>4</sup> it. In that spirit, this paper aims to depict that before and after the institutionalisation of Law, literature and community life has suggested various ways of settling disputes and that too with a larger objective in mind. It is the vision of political thinkers propagated by artists and their rhetoric that enables the conception and sustainability of the postulates of Arbitration, Mediation and Reconciliation with or without the Law but mostly in a dialogue with it.

In the first part of the paper, we will lay down the association that Arbitration has with Panchayat from yesteryears and the various provisions of Alternate Dispute Resolutions or as some may call it Appropriate Dispute Resolutions in context with Munshi Premchand's story Panch Parmeshwar. In the second part of the paper, we discuss how literature and literary scholarship has been more fascinated with the idea of the judge

rather than with ADR and explorations of this space has been fairly recent especially in India and then devour ourselves in the question of whether ADR which has preceded the formal structuring of Legal systems has any impetus to continue or it is an exhausted system.

### Alternate Dispute Resolution Mechanisms in Literary Narratives apropos Munshi Premchand's Panch Parmeshwar

In the research paper cum project that was titled "Alternate Dispute Resolution Based on Storytelling Technique", the authors lay down some interesting ideas about how storytelling can be at the forefront of determining ADR principles implemented in the process to arrive at a decisive end. According to them, storytelling permits unstructured and incomplete narrations by the untrained teller from which a temporal chronology can emerge with the help of trained ADR representatives. Storytelling according to them allows for an improved 'knowledge recall' which in the overall framework of facts and figures deduced provides a richer information of the past and synergy of events.<sup>5</sup> It also ensures that arguments can be derived and provided by both parties. Thus, what this is suggested here is that at a point when both factions are not comfortable in participating in any worthwhile interchange, storytelling can act as a cathartic point of communication and this is a possible part of affirmation that can be made by either side. The framework within which this mediation, generally speaking can be made are many, one of them being the Panchayat. Thus, a convenient and informal method of re-establishing the broken channel of communication among disputing sides is an outside the Court Settlement that accomplishes multiple objectives of sustaining healthy bonds, application of principles of legal justice, and restoration of concordance whenever it appears to be impaired. This becomes possible under the conversational medium and manner of storytelling where the reader can learn and realize the capacity of both the conflicting parties both of whom use the skill of self-organization and normative societal rules to depict their 'story

<sup>3</sup>Ost, François and Schultz, Thomas, Literary Inspirations for International Adjudication (November 23, 2020). King'sCollegeLondon, Law School Research Paper No. 2021/4, Available at SSRN: <https://ssrn.com/abstract=3736124> or <http://dx.doi.org/10.2139/ssrn.3736124>, viewed on 15<sup>th</sup> March, 2021

<sup>4</sup>ibid

<sup>5</sup> Antunes, Pedro & Relvas, Sara & Borges, Marcos. (2007). Alternative Dispute Resolution Based on the Storytelling Technique. 4715. 15-31. 10.1007/978-3-540-74812-0\_2.

argument'<sup>6</sup> so that the third party can then objectively and in context of that, decide the 'story-legal'<sup>7</sup>. This is very much in display in the story Panch Parmeshwar and has a desired end/

### **Panch Parmeshwar by Munshi Premchand: A Short Summary**

Panch Parmeshwar is a story of two friends Algu Chaudhary and Jumman Sheikh who come at odds on a property matter brought to the Panchayat by Jumman's Aunt called Khala in the story. At this point Jumman's Aunt is asked to appoint a Sarpanch and she chooses her adversary Jumman's best friend Algu. Algu who at the very outset was unwilling to attend the Panchayat states his hesitation to take up this position. On this Khala states, "kya dosti ke naam pe imaan bechoge?" (will you rescind the principles of integrity for the sake of friendship?). At this juncture, Khala brings to attention a central question of village life community- of the Supremacy of the Significance of Dharma over any familial or brotherly relationship. The Panchayat proceeds with Algu as the headman but before taking up this position he clearly states to Jumman that although we have been the best of friends and you have been my keeper in case of any need, today I look upon both Khala and you in similar light and in context of the matter of adjudication. He then goes on to deliver the verdict in favour of Khala which shocks Jumman but for everyone else present there, a discussion and praise of 'dharma' and its centrality ensues. Jumman now deeply hurt at his friend's deceit is vindictive of Algu and soon gets an occasion for retribution. In this Panchayat, Algu is the complainant and Jumman is selected to be the Sarpanch. However, surprisingly after all the time looking for an opportunity to seek revenge, Jumman adjudicates in favour of Algu and fairplay wins at the end of the day.

### **Application of ADR Principles and Sections upon the Incidents in the story Panch Parmeshwar**

<sup>6</sup> Both the claimant and defendant argue their case with specificities and logic and deliver their argument.

<sup>7</sup> The adjudicating third party decides and offers negotiations on the basis of applicable legal provisions and moral principles as what appears to be correct, hence 'story legal'.

Arbitration is defined as a process to resolve conflicts between parties by a person appointed or chosen by them (arbiter). It is an informal method of dispute resolution with flexibility in procedures and rules. As a method of dispensing justice, arbitration is not a modern phenomenon.<sup>8</sup>

In India, panchayats (both village and the notorious 'khap' caste panchayats) have been arbitrating on several matters especially family feuds and that too related to property disputes something akin to the prominent issue in Panch Parmeshwar apart from even heinous offences such as murder and rape. The Panchayat in India constitutes five men and in modern times is also inclusive of women who are believed to be imbued with sagacious wisdom and maturity to be able to entertain the provincial problems without favouring any particular side without merit and that is possible also because of its structure of being a representative body of the members of different castes and villages headed by the most revered and elder most person. There are many functions that a decentralized Constitutional body of the Panchayat now has and even in retrospect had but the most significant form of work they employ themselves in is the dispensation of justice.

Gandhiji by whom Munshi Premchand is highly influenced famously said "India lives in its villages" and advocated for a 'village based political formation' i.e. Panchayati Raj (Rule by the Panchayats) and Gram Swarajya. (Independent of justice system in the villages). Article 40 of the Indian Constitution states to this effect that "The State shall take steps to organise village Panchayats and endow them with all such powers and authority which is required to enable them to function as units of self-government." Subsequently, the Balwantrai Mehta Committee (1957) was instrumental in proposing the implementation of a three-tier

<sup>8</sup> Alternate Dispute Resolution in Rural India: A Brief Study about Panchayat system-Hrishikesh Jaiswal, National Law Institute University Bhopal, Jaiswal, Hrishikesh and Mandloi, Pragati, Alternate Dispute Resolution in Rural India: A Brief Study About Panchayat System (August 1, 2020). CB Eduvents-Legal Encyclopedia, 2020 ISBN- 978-81-943164-1-1, Available at SSRN: <https://ssrn.com/abstract=3817307>

Panchayati Raj system in the form of Gram Panchayats (village level), Panchayat Samiti (block level) and Zilla Parishad (district level)<sup>9</sup>.

However, that being said, before India adopted the Court system under British Rule, the Indian rural populace was equipped in discharging just verdicts through the consultation of the 'five wise men' and on the basis of the then prevalent rules which in retrospect look similar to matters being resolved through mediation, today. This mediation was usually headed by a respected and trusted elder who inspired a great deal of faith in the village people and such an organization steered by this man was given the name 'Panchayat'.

The Panch used to be a man of scrupulous character and unquestionable honesty and thus trusted to be fit for the unbiased rule of the jurist in the vicinity and respectfully given the title of the Village headman (Sarpanch). He headed a company of some other men usually four in number of the same moral fibre to address matters consequential to running village life smoothly. If there was any dispute between families in the village or individuals within the same family would approach the Panchayat for a hearing and decision that would be accepted by the disputants. The final aim of bringing the issues to the platform of the Panchayat and dissolving all tensions there was overall welfare of the society without depending on any external authority to do so.

During the course of the narrative of this story then, there are several instances that point to the mechanism of ADR. What is enchanting is that it is not a rulebook from which any character reads their dialogue but ideas spoken as if it were a way of life and reflects how this alternative to law in statute books, fulfils the same human requirement and resolution as Law without the complexities of lengthy, scholarly commentaries of codified rules.

When Jumman asks Khala to choose a Sarpanch, there are few people in attendance who are against Jumman but Khala realises this and makes it a point to choose his closest friend believing that in the process of justice,

there will be no partiality, that God speaks from the mouth of the Panch and in principles of Natural law which in this society meant the adherence to Dharma. She believes that the procedural undertaking must be seen to be just and must be acceptable to both the sides. Even before the Panchayat begins to scrutinize the matter, the acceptability of both parties involved is taken by the Sarpanch and that the decision would not be challenged is shown to be a prerequisite. Khala having already stated that the Courts are beyond her and our analysis that in any case, a colonial ruler bereft of the knowledge of many other wrongs foisted on Indians would be incapable of helping any person with such an internal matter, points at the need for village level self-sufficiency and arbitration apparatus as envisaged and proposed by Mahatma Gandhi as well and provides the impetus that Arbitration serves the purpose to such an extent the Panchayat in the course of this story itself is called twice.

According to Justice M Jaggannath Rao's explanation<sup>10</sup>, under section 65 of the 1996 Arbitration and Conciliation Act, the 'conciliator' may request each party to submit to him a brief written statement describing the "general nature of the dispute and the points at issue"<sup>11</sup>. He can ask for supplementary statements and documents. The duty of a conciliator is described in Section 67, which states that he must act as a conciliator in an independent and impartial manner and shall be guided by principles of objectivity, fairness, and justice, taking into account, among other things, the parties' rights and obligations.<sup>12</sup> Before Algu takes up his position as Sarpanch, it seems that he takes the same oaths almost verbatim when he declares that although Jumman has been the best friend, he will now look upon the matter impartially and each question that he begins to ask as per his inquiry suffers a big blow to Jumman's heart but complies with the provisions of asking ancillary questions under Section 65 and

<sup>9</sup> B.S.Garg, 'Village First Community Empowerment on Health & Development Based on Gandhian Approach – An Experience of Working in few Villages of Wardha District', Maharashtra Indian J Med Res 2019, 149, S1: 63-67a.

<sup>10</sup> WOULD CONCILIATION & MEDIATION SUCCEED IN OUR COURTS? By Justice M. Jaggannadha

Rao [https://lawcommissionofindia.nic.in/adr\\_conf/mediation%20succeed%20Rao%20.pdf](https://lawcommissionofindia.nic.in/adr_conf/mediation%20succeed%20Rao%20.pdf)

<sup>11</sup> Section 65, Arbitration and Conciliation Act, 1996

<sup>12</sup> Section 67, Arbitration and Conciliation Act, 1996

Section 67 of Arbitration and Conciliation Act, 1996 in hindsight. Also, "Section 67(4). At any point during the conciliation process, the conciliator may have ideas for resolving the disagreement. Such proposals do not have to be in writing, and they do not have to be backed by justification. "It means a conciliator in conciliation proceedings can take an initiative for compromise at any stage during conciliation." Algu ends the Panchayat with two oral propositions of Jumman agreeing to provide a sustenance allowance to Khala or withdraw from the property given to him completely.

Under Section -30, an arbitral tribunal's use of mediation, conciliation, or other methods to facilitate settlement of the dispute is not contrary to an arbitration agreement, and the arbitral tribunal may utilise them at any point during the arbitral proceedings if the parties agree. A binding arbitral award on agreed terms must be made in line with section 31 and must declare that it is a binding arbitral judgement. It means that an arbitrator can encourage and take initiatives for settlement in arbitration as well. It is commendable on the part of Premchand that he considers the representation of the procedure as pertinent and fair as the result and while difficult to execute, upholds the tougher means as the right one to take. In their celebrated book 'ADR Principles and Practice' by Henry J. Brown and Arthur L. Mariot (1997, 2nd Ed. Sweet & Maxwell, Lord on Chapter 7, p 127), the authors say that 'mediation' is a facilitative process in which "disputing parties engage the assistance of an impartial third party"<sup>13</sup>.

As per Section 12 of the Arbitration and Conciliation Act, 1996, it is the duty of a person who is approached to become an arbitrator in their dispute. It is mandatory for an arbitrator to disclose in writing any direct or indirect, present or past relationship or interest in any party and subject matter, whether it is financial, business, professional, or any other kind, that creates doubt related to his fairness.<sup>14</sup> Thus, when the tryst of words between Chaudharayin and Sahuayin (wives) does not end, it is the village people acting as

mediators who suggest that matters won't be dismissed amicably without the Panchayat and they must take the matter to this third party evaluator. Although, this exhortation of their mediators was not incumbent on the two families involved in the feud, they approach the Panchayat where Jumman is made Sarpanch and personified by the same ideals at the position of the Sarpanch, he delivers a decision that is just.

#### **Literature's Fascination with the Idea of Judge over the Concepts of ADR:**

There is now an extensive catalogue of books that indulge with law as a prop or an important subject and the significant figures advocating for these tend to be lawyers or judges. A look at some of the most recommended literary books to read for a law student include works that are both old classics and modern writings like many works of Shakespeare, Charles Dickens 'Bleak House', Harper Lee's 'To Kill a Mockingbird', Michael Sandel's 'Justice: What is the Right Thing to Do', Dostoevsky's novels or novellas on what is wrong with justice system, etc. Thus, as can be discerned, the engagement and understanding, even the discussion of complex aspects of legal systems across a vast period of time and shifts therein form part of the narrative but the idea of dispute resolution through alternative means, remains an underexplored idea and a less fascinating one as it is considered an integral part of many societies and not an out of the box redressal of issues. However, it is this innate forum that scholars have pointed out that is capable of rebuilding the relations between warring sides and establish a peaceful outcome that is likely to maintain an unchallenged status quo as against a Court System which encounters repetitive appeals. In contrast to the involvement with the judge and lawyer in various fiction, the story in context i.e. 'Panch Parmeshwar' resonates the idea of Alternate Dispute Resolutions.

To further the point of the said such reformatory legal instruments, it is pertinent to refer to a recent guest lecture delivered by Dr. Anju Vali Tikoo, Professor of Law, University of Delhi on 27th July, 2021 at Galgotias University<sup>15</sup>. Here, she emphasized

<sup>13</sup> ADR Principles and Practice<sup>13</sup> by Henry J. Brown and Arthur L. Mariot (1997, 2nd Ed. Sweet & Maxwell, Lord on Chapter 7, p 127

<sup>14</sup>Section 13, Arbitration and Reconciliation Act, 1996.

<sup>15</sup> Restorative Justice in the Pursuit of Real Justice.mp4 by Professor Anju Vali Tikoo on 27<sup>th</sup> July, 2021 at Galgotias University Zoom Platform.

how traditional indigenous societies around the world have had restorative mediums to address their issues and mentioned Panchayats as one of them. An extremely crucial difference between Retributive justice under which our country functions and Restorative justice which is more than just corrective and is also connective was underlined by her. In the modern age where we are obsessed with the idea that a judicial pronouncement is the ultimate end of the line while approaching a just decision, what is missed is that the Courts promote justice under Article 39A of the Indian Constitution and that verdict itself is not justice, according to Professor G Mohan Gopal, Former Director of National Judicial Academy and Adjunct Professor (Law), Georgetown University, Washington, USA. Prof Gopal has mentioned this in various addresses including the Sociological Research Colloquim organized in 2018 at University of Delhi where he was a keynoter speaker on the subject 'Justice Vs The Judicial System'<sup>16</sup> and emphasized further in the same disquisition that the Constitutional Mandate to promote justice under Article 39A is 'a pledge to the powerless not the powerful' and his study showed that few judicial proclamations support democratic rights while many of these leave barely any scope for considerations of marginalized sections of the society. In that light, Professor Tikoo actually presented a potential resolution to the gap expressed by Professor Gopal in her guest lecture when she said that while in Retributive Justice systems both the parties are represented by lawyers in a process that is professional and means business, in Restorative Justice an interpersonal touch through a hearing of both parties via their storytelling is ensured and reasons behind the offences unearthed along with the fact that the focus in mediums such as Panchayats which focus on solving the problem rather than establishing guilt and where multiple options can be a possibility rather than a single incumbent order. Besides this, Professor Tikoo also expressed that the

stigma attached to the person post the judicial order can be difficult to diminish but restorative justice lies in the arena whilst appropriate action can help heal the wounds and enable possible positive shifts in attitudes in the society altogether. Instead of pushing corrective facilities to the fringes of the society, away from civilization as if they are detached loose ends, we must attempt to bring about justice as a norm which the habitat of the social space. Panch Parmeshwar provides such a space where while scathed by his friend Algu, Jumman initially seeks revenge and wants to impose blame on him, sitting at the position of power and having to adjudge upon a matter with other members as his co-adjudicators, he is unable to defy the confines of values and dharma that binds Indian society and gives a proclamation that works towards a generational precedent rather than an acrimonious tale of recrimination. For this, he is much appreciated and an enthusiasm unseen and unexpected before is seen amongst its people.

This is probably the reason why there is an aspect of sustainability in ADR techniques of decision making wherein lies the power to transform the two parties and their way of thinking. It shows the unique capacity of mediation to "transform the quality of the conflict interaction itself, so that conflicts can actually strengthen both the parties and society"<sup>17</sup> of which they are part. Such an end to the conflict also preserves the friendship or acquaintance between the two parties as the common aim of achieving the good of the society is upheld. Thus, the justice achieved here is co-existential. This also points towards the aspect of private conscience and the factor that villagers believe that God resides or speaks from the lips of the Panch. An element of Natural Law and the retrospectively imbibed constitutional idea of Principles of Natural Justice is inherently apparent in the society of Panch Parmeshwar and this environment is conducive to the effective

<https://drive.google.com/drive/folders/1Y4GQ1W5RzNUUHemZBQgeT-1U3H-Qi1uU>

<sup>16</sup>Justice vs Judicial System, 5<sup>th</sup> April, 2018 at the Sociological Research Colloquim at University of Delhi <http://sociology.du.ac.in/justice-vs-the-judicial-system-by-prof-g-mohan-gopal/> Visited on 18<sup>th</sup> August, 2021.

<sup>17</sup> Access to Justice Literature Review: Alternative Dispute Resolution in Scotland and other jurisdictions Report by Scottish Civil Justice Council <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/literature-review-on-adr-methods.pdf?sfvrsn=2>, viewed on 18<sup>th</sup> March, 2021, PAGE 6

settlement of disputes in any arbitration by a conciliator or mediator.

In Mikhail Bakhtin's book *Rabelais and His World*, Rabelais relates a feat of a kind in Chapter X of *Pantagruel* where the two plaintiffs' facts have become irresolvable despite aid from most eminent personalities. Pantagruel gives judgment 'in conscience to do right to both parties, without varying or accepting of persons.' His decision is as absurd as it is convoluted, giving each of the litigants a different reason. And so, a quite extraordinary thing happens: 'the two parties departed both contented with the decree'. The moral of the story is this: absurd in, absurd out. What Pantagruel had understood was that, far more than the material satisfaction of their grievances, what the parties were seeking was to be heard and acknowledged as plaintiffs.<sup>18</sup> Sometimes, a bad compromise is better than a good lawsuit. This illustration is indicative of the fact that many a times the legitimacy of the claim even if it has not been adjudicated as the right one is important. In Panch Parmeshwar, Khala has tried to address her grievance at different levels, first by speaking to Kariman to treat her well, then to her nephew who laughs it off as a domestic and non-existent matter for him followed by the request to leave her at her own capability albeit with some meagre allowance but it is to no avail. Even when she requests many to attend her Panchayat, her subject becomes a matter of entertainment but in the Panchayat itself, her complaint becomes a matter and mere acknowledgement and later adjudication in her favour suddenly give her credibility and food for thought to everyone else.

Principles of ADR<sup>19</sup> are looked upon as restorative justice rather than distributive justice that shows the provisional pacification which results from an arrangement imposed by law, something that is merely procedural

rather than community based can be interpreted as violent to one's own cause. Jumman is shocked at the betrayal of his friend and seeks revenge after the end of the first Panchayat. To begin with then, for Jumman it is a violent and discordant absorption but for all the village people present there it seems to have filled the void of the 'right'. As Jumman seeks an opportunity to equalize the perfidiousness shown to him by Algu and gets one very soon, sitting at the seat of justice he is unable to inflict the same violence he had awaited desperately. This moment symbolizes the restoration of brotherhood between the two as upon Jumman dawns the same understanding that Algu had as Sarpanch that this forum is an effort to create peace between both the parties and in society and not to create a jarring injunction in the mind of any single party. Such alternate methods of justice imparted then "re-establishes concord and renews cooperation" within the circularity of time something which the court system by its merely dry rules cannot fully reinstitute. Signifying the same idea, Paul Ricouer states that as against the short term end in which judging signifies deciding to end uncertainty, arbitration in its un-instituted form contributes to long term end of achieving public peace.

#### **Contemporaneity of ADR in India:**

Finally, the question that remains to be asked is that as the story is rather old and based from before Independence, should the principles of Alternate Dispute Resolutions continue to exist today as then, despite the robust Court Systems and presence of plethora of alternate justice forums such as tribunals and lok adalats. It is pertinent to comprehend here that the Lok -Adalat also known as the People's Court is actually an ingenious improvisation of the Panchayat system and an Indian contribution to the world Jurisprudence, a wholesome judicial apparatus based on Gandhian principles. In fact, it is interesting to note that the basic tenets of ADR is conceptualized and institutionalized in the philosophy of Lok Adalat whereby settlement of disputes is made through mediation, negotiation or through arbitral process and is understood as the decision of the "Nyaya-Panchayat". It secures justice on the basis of a compromise and settlement and provides equal opportunity and access without creating an economic burden. As per the Legal Service

<sup>18</sup>Mikhail Mikhaïlovich Bakhtin, Mikhail Bakhtin, Mikhail Mikhaïlovich Bakhtin Indiana University Press, 1984 - Literary Criticism -

<sup>19</sup> Access to Justice Literature Review: Alternative Dispute Resolution in Scotland and other jurisdictions Report by Scottish Civil Justice Council

<https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/literature-review-on-adr-methods.pdf?sfvrsn=2>, viewed on 18<sup>th</sup> March, 2021

Authority Act 1987, the award passed by Lok-Adalat is binding and final and non-appealable. This is akin to the ADR structures that focus more on the resolution than argument, more on the parties that is civilians of society than the judicial heads and eases the encumbrance on the government and the people. In such a scenario, we tend to realize the essential goodness in human lives and a spark of divinity appears in the human form so clearly evident in the characters of Panch Parmeshwar. It is not just the Sarpanch or Panch who sit on the seat of justice but Everyman who appreciates their endeavour to rise above ordinary and petty issues of estranged relationships and reach out for justice on the principles and values of fairness and equality in the Rawlsian sense that establishes such set ups as the ultimate confidence building and integrating mechanisms in the country much above the Courts. This is witnessed when inhabitants of the village chant 'Panch Parmeshwar ki jai ho' at the end of the Panchayat meeting. Compared with the common dictum that Justice delayed is Justice denied, these systems also act as speedy methods of absolving disputes.

Thus, the simple answer to whether ADR is contemporaneous to the times is that it is and it does seem reasonably effective, not just in India as discussed with reference to Lok Adalats and primarily Panchayats earlier but around the world as UNICITRAL and arbitration forums in individual countries. ADR and Literature apprehends areas at the 'fringes of justice' where the 'arbitrator' is generally found to be functional and less restricted by strict clauses imposed by law presently enforced, fiction which has acted as exegesis to the advent of the need for third party intervention before its official establishment can act as the continuum to propagate the need of this idea and concept when courts have failed; and participate in its constant renewal on the edges of institutionalized justice.<sup>20</sup> Advocate Abhimanyu Shandilya has written about the shifts in ADR and yet emphasized upon its efficacy and requisition in the current times in his article Journey from Panchayat to ODR in

May,2021<sup>21</sup>. He states that multitudes of Indian citizens living in villages even today have realized that venturing into the Court system is monetarily detrimental and in fact desire to follow the footsteps of Panchayat or Lok Adalat type systems. They seek redress at forums outside of Courts when they reach out to lawyers for legal aid as they wish to resolve the matter within the ambit of the two disputing parties. At the First Anniversary of Bangalore Mediation Centre, Former President Smt Pratibha Patil also expressed while discussing mediation that it is in built in Indian culture and that the civil and voluntary participation of citizens forms the backbone of Indian democracy<sup>22</sup>. She stressed that although there is a robust Court system, due its current timelags, "there is a constant requirement to maintain a balanced relationship between the legal system, deliverability of justice and social needs. An important element of a "friendly legal system" is to offer simplified options to litigants so that justice is neither delayed nor denied to them." Harkening back to yesteryears, it was pointed out by her that Panchayat has been a traditional medium of dispute dissolution where conflicting parties themselves approach the respected village heads to adjudicate upon their matter. She reverberated the point of Premchand's story Panch Parmeshwar when she stated, "this system was so highly respected that the "Panchas" were revered as "Panch Parmeshwar"<sup>23</sup> and concluded that the mediation process is about the similar participation and outcome where the hope is not to create adversaries but repair and preserve communication to reach acceptable terms of settlement.

If despite this discussion by a former Head of the Indian State, legal community and proponents of justice, there is any doubt about the relevance of ADR, then another aspect to be looked at is whether what exists today is appropriate for the issues of this world. One poignant response to this can be seen in a Speech delivered by Hon'ble Mr. Justice Pankaj Mithal on 16.3.2019 at Merchants

<sup>20</sup> ibid

<sup>21</sup> <https://www.linkedin.com/pulse/evolution-adr-journey-from-panchayat-odr-online-shandilya>

<sup>22</sup> <http://pratibhapatil.nic.in/sp010208.html>

<sup>23</sup> ibid



Chamber of Uttar Pradesh, Kanpur,<sup>24</sup> where he pointed out the loophole as- “we are already 130 crores plus and have a parallel artificial population in the shape of variety of institutions which may not be less than the actual human population.” It has to be for masses rather than for classes such as was epitomised he illustrated in his speech in the story Panch Parmeshwar. Thus, ADR needs to grow from strength to strength and address any discrepancies along the way as the value derived far outweighs the demerits of this system.

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<sup>24</sup>[http://221.134.71.211/event/arbitration\\_article .pdf](http://221.134.71.211/event/arbitration_article.pdf) (Pankaj Mithal), viewed on 1<sup>st</sup> March,2021(last)