

# ADR: LEARNING PROBLEM -SOLVING TECHNIQUES WITH A NON-ADVERSARIAL SEARCH ENGINE

**operating Justice Delivery systems**

.**Adversarial** - Court –oriented or Positional

**Inquisitorial**- includes ADR systems –

Negotiation, Mediation, Conciliation, Arbitration, out of court settlements, LokAdalat settlements

- **Section 89 C.P.C**
- **Legal Services Authorities Act,1997**
- **Sec.4(f)-Encourage the settlement of disputes by way of negotiation , arbitration and conciliation**
- **Organization of Lok Adalats-secs.18-21-to be guided by the principles of justice ,equity , fair play and other legal principles(Divorce and non-compoundable matters excluded),members to act as statutory conciliators under the Arbitration and Conciliation Act,1997(The J&K Legal Services Authority (Lok Adalats)Regulations,2010**
- **The J&k Legal services Clinic Rules,2010**
- **The J&K Civil Procedure Mediation Rules,2009**
- **The J&K Arbitration and Conciliation Act,1997**

## Adversarial v. Mediatory-Dispute Resolution: A century and odd old Lesson from The Valley of Kashmir

**“Since 1890 all suits connected with land, saving land situated in Srinagar and a few adjoining villages, have been removed from the ordinary courts and have been made over to me for decision. My procedure has been to hear and decide such suits in the village where the claim has arisen. Under a chinar tree in the presence of the assembled villagers, the claimant prefers his suit and the defendant makes his reply (contd..)**

Then the old men of the village and the headmen of the neighbourhood give their opinion on the case, and a brief entry is made by me which finally settles the claim. This may seem a very rough and ready way of disposing of land suits, but so far no one has ever appealed against my decision. If a claimant went to the courts in Srinagar, the dark side of his character would appear. Pleaders and court attendants would adulterate his simple claim, and in the same way the defendant would throw off the candour and truthfulness inspired by the presence of his neighbours in the village, and would lie in the most ingenious and surprising manner."

**The valley of Kashmir by Walter R Lawrence, 2<sup>nd</sup> ed.2005 Gulshan Books –Srinagar atp.p.5-6**

**For five years this procedure has gone on, and I attribute much of the quiet prosperity which is now growing in the villages, to the fact that money is not spent and bad blood is not engendered by litigation. My system is the old system of the village panchayat. The commonest intellect can tell from the faces of the villagers whether the claim is just, and the genius loci seems to keep both claimant and defendant to the point and to the truth. The system is easy and possible in Kashmir, for one can reach any village in the valley in a days ride (contd..)**

**My object in alluding to this procedure is to add further testimony to the fact that Kashmiri peasants are not dishonest. If they had been the hopeless liars they are reputed to be .I could never have disposed of the many suits which have arisen. A Kashmiri will rarely lie when he is confronted in his village by his fellow villagers ;he will invariably lie when he enters the murky atmosphere of the law courts".**

# ADR Systems: Designing and Building Blocks

- While developing ADR programs, the following background conditions need to be given full consideration
- Political Support
- Institutional and Cultural fit
- Human and Financial Resources
- Power parity among potential users

# Adversarial v. Mediatorial strategies

- Adversarial Strategies
- A high initial demand
- Limited disclosure of information about facts
- Threats and arguments, and
- Apparent Commitment to positions



# Mediatorial negotiating strategies

- Separate the people from the problem
- Focus on interests , not positions
- Invent options for mutual gain, and
- Insist on objective criteria

# Problem Solution

Which Game should you play?/Change the game-

- **Soft** Negotiate on **Hard** **Principled**
- Participants are friends      Adversaries      Problem- solvers
- Goal is agreement      Victory      The goal is a wise ,efficient ,amicable outcome
- Make concessions      Demand concessions      Separate the people from the problem
- Be soft on the people & the problem **Be hard**      Be soft on the people, hard on problem
- Trust others      Distrust others      Proceed independent of trust
- Change your position easily **Dig into your position**      Focus on Interests ,not position
- Make offers      Make threats      Explore interests
- Disclose your bottom line **Mislead as to your bottom-line**      Avoid having bottom-line

# Negotiate on Merits-continued

Soft	Hard	Principled
Accept one sided losses to reach agreement	Demand one sided gains	Invent options for mutual gain
Insist on agreement	Insist on your position	Insist on using objective criteria
Search for the single answer, they accept.	the one you accept	Develop multiple option, choose later
Try to avoid a contest of will	Try to win a contest of will	Try to reach a result based on standards independent of will
Yield to pressure	Apply pressure	Reason and be open to reason, yield to principle, not pressure

# Therapeutic Jurisprudence -TJ

- Way of thinking about and analyzing law and a guide to formulating solutions
- Seeks to apply social science to examine laws impact on the mental and physical health of the people it affects
- Legal procedures constitute social forces-often produce therapeutic (Positive or Ant- therapeutic (Negative) results
- TJ Positive are desirable and should be the proper aim of the law so long as other values like justice and due process can be fully respected .TJ is interdisciplinary and seeks to be empirical (contd..)

- It is a blend of Law & Psychology and Law Social Science
- Adds to legal analysis the dignity and value of individual human being and the community being
- Changes the way in which lawyers and courts practice law
- Aims to reform the law and apply the existing law more therapeutically

# TJ –Three V's

- Voluntary Participation in legal process
- Voice-means participant has had opportunity to tell his/her story to decision makers
- Validation –means voice of participant has been genuinely listened to ,heard and seriously taken


# Negotiation theory-Getting the deal done


- Impact of emotions=Positive or Negative
- 5 Core Concerns Techniques for Negotiation deal with relationship of negotiator with others
- 5CCTs are-
  - Appreciation
  - Affiliation
  - Autonomy
  - Status
  - Role

# Lawyers Standard Philosophical Map

- Mindfulness- Propounded by -Prof Riskin
- Means being aware, moment to moment, without judgment and without commentary, of whatever passes through the sense organs and the mind-
- sounds, sights ,bodily sensations ,odors, thoughts, judgments, images , emotions ..(contd..)



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- Preventive law-Anticipatory creative problem –solving undertaken before a legal issue arises so as to solve it prospectively ,either by eliminating the possibility ,or by arranging how it will be resolved so that its impact is ameliorated- it puts forth measures to prevent future litigation or future legal problems-a process of creative problem solving adopted by attorneys during the course of negotiation.



**THANK YOU , WISH  
YOU BEST  
NEGOTIATORS**

# Climate Change and Human Rights-UNHRC

Climate change is one of the greatest challenges of our generation with consequences that transform life on earth and adversely impact the livelihood of many people. It poses great risks and threats to the environment, human health, accessibility and inclusion, access to water, sanitation and food, security, and economic and social development. These impacts of climate change interfere with the effective enjoyment of human rights. In particular, climate change has a disproportionate effect on many disadvantaged, marginalized, excluded and vulnerable individuals and groups, including those whose ways of life are inextricably linked to the environment

## GLOBAL CLIMATE CHANGE-GHGs

include water vapour, carbon dioxide, CFCs, methane, nitrous oxides and certain gasses  
steeply increasing due to human activities  
,are already loaded into the atmosphere,  
levels now 25% (addition during last 200 years)- above what they had been for the last ten thousand years-IPCC estimates 1.5 to 4.5 degree Celsius increase in global temperature due to doubling of CO<sub>2</sub>

# Public Health Issues in an era of warmer temperature

Effects of water , air pollution in developing countries projected to worsen significantly

More forest fires, new pests

Species and habitats will be more pressured

Risk of insect –carried and other viral diseases

Reduction of GHGs to 1992 levels would mean reduction between 3% to 7% of global GDP

Rise in Sea level

IPCC predicts sea water rise of 30 to 50 centimeters by 2050 and 65 centimeters to one meter by the end of 21<sup>st</sup> century

1/3<sup>rd</sup> global population lives within 40 meters of the sea

Rise of 20 to 30 centimeters would cause considerable dislocation Egypt and Bangladesh vulnerable-salt water intrusion already a problem , loss of farmlands , livelihoods and possibly lives

# Lakes , waterways , rivers

Rising Effects Nepal and Bhutan-44 lakes have become potentially dangerous as glaciers retreat and snowfields of Himalayas melt in view of rise of 1 degree Celsius during last 25 years

2323 glacial lakes in Nepal alone vulnerable and many more in Himalayan ranges and Hindu-Kush

Cost of protection against Inundation from a rise of 1 meter in sea level=0.04 of world GDP

# 1992 United Nations Framework Convention on Climate Change

GHGs mean those gaseous constituents of atmosphere-both natural and anthropogenic that absorb and re-emit infrared radiation

Climate system-totality of the atmosphere, hydrosphere, biosphere and geo-sphere and their interactions



# UNFCCC-Objectives

Stabilize the concentration of GHGs at a level that could prevent dangerous anthropogenic interference with the climate system

Protect climate system for the benefit of present and future generations on the basis of equity and in accordance with common but differentiated responsibility



# UNFCCC

Promote sustainable development , favours an open economic system to achieve economic growth and development.

Parties to adopt precautionary approach to anticipate ,prevent and minimize causes of climate change and mitigate their adverse effects.

# United Nations Conference on the Human Environment held in Stockholm, June, 1972

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations-Principle-1

The UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994 proposed a Declaration of Principles on Human Rights and the Environment

All persons [have the right to] a secure, healthy and ecologically sound environment [and to] an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs

# 1981 African Charter on Human and Peoples' Rights

It protects both  
the right of peoples to the best attainable  
standard of health and their right  
to a  
general satisfactory environment  
favorable to their development

# the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

recognizes that “adequate protection of the environment is essential to human wellbeing and the enjoyment of basic human rights, including the right to life itself

and asserts that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generation

# 1 Effects of Climate Change on Human Rights.

(a) Impacts on Ecosystems and Natural Resources :

- (i) Freshwater Resources
- (ii) Terrestrial Ecosystems
- (iii) Coastal Systems and Low-lying Areas
- (iv) Ocean Systems
- (v) Food Security and Production Systems

**Affected rights:** right to water and sanitation, right to health, right to life, right to food, right to an adequate standard of living, right to housing,, right to property, right to self-determination

# (b) Impacts on Physical Infrastructure and Human Settlements

(i) Urban Areas

(ii) Rural Areas

## Key Economic Sectors and Services

**Affected rights: right to life, right to housing, right to health, right to water and sanitation, right to an adequate standard of living, right to property , right to food**



## (c) Impacts on Livelihoods, Health, and Security

(i) Livelihoods and Poverty

(ii) Human Health

(iii) Human Security

### **Affected rights:**

**right to life, right to an adequate standard of living, right to a nationality, right to self determination, right to mobility, right to property.**

# Effects of Mitigation and Adaptation on Human Rights

## Mitigation

### **Hydroelectric projects**

often lead to displacement of local people and the destruction of ecosystems upon which they depend, and can also harm the health and livelihoods of people living downstream from the project by reducing river flows.

### **Bio-fuels**

policies and projects, which can contribute to food shortages and price shocks, additional water stress and scarcity, widespread deforestation, and displacement of indigenous peoples

# Adaptation

Both the failure to adapt and the implementation of adaptation measures can interfere with human rights, particularly for the most vulnerable. One concern is that some adaptation programs, may benefit one group to the detriment of another –as might be the case for coastal fortifications that protect one community while exposing another to greater risk of erosion and/or flooding. There is also the risk that adaptation measures will be undertaken without the necessary public consultation and may result in outcomes that adversely affect the very persons they aim to protect. There is a risk of human rights violations in the context of relocation and resettlement programs, and a corresponding need to ensure that such programs are undertaken with adequate input and consent from those who are relocated. It should be noted that both the Adaptation Fund and the Green Climate Fund have put in place environmental and social safeguards

# Geo-engineering

Geo-engineering refers to the deliberate and large-scale manipulation of natural systems through measures aimed at preventing or mitigating the effects of climate change, such as solar radiation management and ocean iron fertilization. Although there have not yet been any significant field tests of geo-engineering technology, far less any large-scale geo-engineering projects, it is important to note that such projects could seriously interfere with the enjoyment of human rights for millions and perhaps billions of people. For example, one recent study of five potential geo-engineering methods deployed in high GHG emissions scenarios concluded that these methods could severely disrupt oceans the terrestrial ecosystem. These disruptive effects could undermine the provision of ecosystem goods and services, thus interfering with access to food, clean water, and other key resources. Another study found that proposals for solar radiation management would cause widespread regional-scale changes in precipitation.

Such shifts could lead to increases in storms and flooding in some areas and drought in others, with adverse impacts on natural ecosystems and human settlements. In addition, there is at this time no mechanism in place to ensure that governments or private parties carrying out geo-engineering projects coordinate with the international community, or even disclose information to allow for public participation.

# THE OBLIGATIONS OF GOVERNMENTS AND PRIVATE ACTORS TO RESPOND TO THE HUMAN RIGHTS IMPLICATIONS OF CLIMATE CHANGE

The Progressive Recognition of Human Rights  
Obligations Relating to the Environment and  
Climate Change

- (a) Recognition of Human Rights Obligations  
Relating to the Environment
- (b) Recognition of Human Rights Obligations  
Relating to Climate Change

# Governmental Obligations to Address the Human Rights Implications of Climate Change

## (a) Procedural Obligations

(i) Ensuring Access to Information and  
Conducting Environmental Assessments

(ii) Public Participation in Environmental  
Decision-making

(iii) Access to Administrative, Judicial,  
and Other Remedies

## (b) Substantive Obligations


- (i) Adaptation Obligations: Protecting Human Rights From Climate Related Harms
- (ii) Domestic Mitigation Obligations
- (iii) International Cooperation Obligations
- (iv) Obligations to Address Transboundary harm
- (v) Safeguarding Human Rights in Mitigation and Adaptation Activities



## (c) Obligations to Specific Groups

- (i) Women
  - (ii) Children
  - (iii) Indigenous Peoples
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# 3 Private Sector Obligations to Address the Human Rights Implications of Climate Change



# IMPLEMENTATION ASSESSMENT

1. Human Rights and Climate Change in National Communications
2. Mitigation Measures and Commitments
3. Adaptation Measures and Commitments
4. Financial and Technical Assistance to Developing Countries
- 5 .Respect for Procedural Rights in Climate Policies and Planning

# Human Rights Safeguards in International Climate Finance Mechanisms

(a) Clean Development Mechanism

(b) **REDD+** **REDD** refers to reducing emissions from deforestation and forest degradation; **REDD+** refers to conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks.

(c) **Green Climate Fund** *GCF* is a financial mechanism under the UNFCCC which helps fund climate finance investment in low-emission, climate-resilient development

(d) Adaptation Fund

(e) Global Environment Facility



# RECOMMENDATIONS

- 1 International Cooperation
  - 2 National Measures
  - 3 Local Governments and Private Actors
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