

## REFORMS IN JUDICIAL SYSTEM: THE MUCH-NEEDED MAKEOVER

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### INTRODUCTION

“*Taarikh pe Taarikh...*” We all remember this dialogue from Indian cinema and relate to it in some or the other way. It may be that if we do not feel the pain directly, we must have once felt it when we passed through the Courts and witnessed huge crowd, a sea of people waiting; waiting for justice. It is true that justice is given to them, but in a very few cases is it given timely. What good a justice given to a party which is dead will do? Will the bereaving members of family gain anything? A person is ‘innocent’ until he is proved guilty. But the sad truth is that in the society we today live in, a person is labelled as ‘guilty’ unless he is proved otherwise.

### CRORES OF PENDING CASES

Should it go on in the way it is and has been going on till date? Do we need to blow a clarion of reform? The answers are all received in affirmation. The Indian Judicial system has lost its charm because of the several severe lacunae inherent in it, the first and foremost being the sluggish pace of the system of justice. 60,745 pending matters are there in Supreme Court at the end of April, 2017.<sup>1</sup>The pace of judiciary is not very pleasing. An arrangement should be made in order to settle the pending cases. To realise this, many steps could be taken. One of the most important one could be more investment from the side of Government in the judiciary. Creation of *Nyaya Panchayats*, *Gram Panchayats* and *Lok Adalats* could relieve the courts of the load. Arbitration and out of the court settlement is the best method to clear the backlog.

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<sup>1</sup> MONTHLY PENDING CASE (May, 12, 2017) <http://supremecourtfindia.nic.in/pendingstat.htm>.

## ADR AND OUT OF COURT SETTLEMENTS

Everyone is familiar with litigation and its ramifications. Litigation is very costly and financially burdening as well as tiresome and lengthy. Other disadvantage of litigation is it is more benefit to wealthier party. Litigation is not a process of solving problems, but a process of winning arguments. Wealthier party is enable and affordable to hire an experienced and good lawyer to engage in the lawsuit.

Alternative dispute resolution, commonly referred to as ADR, is the collective term for the option that parties can resolve civil disputes, with the help of an independent third party and without the need for a formal court hearing.<sup>2</sup> The independent third party will become the mediator between the complainant and the respondent, that is, the party against whom the complaint is being made. ADR is a fast-growing area within the justice system.

Alternative Dispute Resolution (ADR) Mechanism plays a pivotal role in access to justice to all irrespective of any economic or other disabilities within a reasonable time.<sup>3</sup> Mediation is the most frequently adopted ADR technique. It contemplates the appointment and intervention of neutral third person who helps the parties to reach a negotiated settlement.<sup>4</sup> The consensual nature of the process of mediation provides party autonomy and gives them the choice of selection of the mediator, which ensures greater confidence in the process. Mediation in its plain and simple form is nothing but facilitated negotiation.<sup>5</sup> However, comprehensively mediation may be defined as a voluntary process of dispute resolution where a neutral<sup>6</sup> third party (the mediator) with the use of effective and specialized communication and negotiation techniques<sup>7</sup> aids the parties in arriving at an amicable settlement.<sup>8</sup> Mediation is a procedure

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<sup>2</sup>Alternative Dispute Resolution in Rights-Based Disputes: Mediation In Britain Today (Mar., 20, 2017) [http://www.equineteurope.org/IMG/pdf/Mediation\\_White.pdf](http://www.equineteurope.org/IMG/pdf/Mediation_White.pdf).

<sup>3</sup> K.K.Geetha, *Mandatory Mediation in India* 1(1) GJLS 1(2014).

<sup>4</sup> AVTAR SINGH, LAW OF ARBITRATION & CONCILIATION AND ALTERNATIVE DISPUTE RESOLUTION SYSTEMS 521 (10th ed., 2013).

<sup>5</sup> Tom Arnold, *Mediation Outline: A Practical How-to Guide for Mediators and Attorneys* in ALTERNATIVE DISPUTE RESOLUTION 210 (P.C. Rao and William Sheffield eds., 1997); STEPHEN B. GOLDBERG, FRANK E.A. SANDER et al., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION AND OTHER PROCESSES (3d ed.).

<sup>6</sup> Neutrality of the mediator is considered a necessary condition not only for conducting proper mediation but also for the very existence of the process called mediation. Ronit Zamir, *The Disempowering Relationship between Mediator Neutrality and Judicial Impartiality: Toward a New Mediation Ethic*, 11 PEPPERDINE DISP. RES. L. J. 467 (2011); Christine E. Harrington & Sally Engle Merry, *Ideological Production: The Making of Community Mediation*, 22 LAW AND SOC'Y REV. 709 (1988).

<sup>7</sup> Joanne Goss, *An Introduction to Alternative Dispute Resolution*, 34 (1) ALTA. L. REV. 1 (1995).

<sup>8</sup> Black's Law Dictionary defines Mediation as a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties to reach a mutually agreeable solution. HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY, 1003 (Bryan A. Garner ed., 7th edn., 1999).; Mediation is therefore a facilitative process in which "disputing parties engage the assistance of an impartial third party, the mediator, who

designed to resolve disputes through agreement, i.e., through the mutual consent of the parties.<sup>9</sup> It differs from arbitration in the sense that arbitration is governed by the arbitration agreement wherein the arbitrator is nominated by disputant parties.<sup>10</sup> The mediator often asks the parties to put forth their views and claims in a joint session before meeting them separately to explore the possibilities of settlement of the dispute. The need of the hour is that for the process of mediation to be Alternative Dispute Resolution Mechanism which will play a pivotal role in access to justice to all irrespective of any economic or other disabilities within a reasonable time, Mediation has to be made the most frequently adopted ADR technique. This will be only possible when set rules, defined notions and pre-determined laws are made on this regard. It is the need of the time that the process should be adopted welcomingly by the Courts and the Judiciary should take a bold step in order to guide the application of such process by the centres of ADR. The nature of litigation and other relevant circumstances in our country may not be the same as they are there but we can certainly borrow their experience which is quite rich by this time and suitably adapt the system to suit our requirements.<sup>11</sup>

## **CORRUPTION AND NEPOTISM**

Furthermore, there should be an even arrangement for the pending cases and new cases. With so much work pending, Government should trim down the number of holidays. Politicians should be strictly restricted from directly or indirectly interfering in judgments. What we need is to recruit experienced, well trained and competent judges and judicial staff. Judges need to be stricter and should ensure that the court time is not wasted.

Late Chief Justice of India, Justice J.S Verma said that he cannot say with full surety that there is no corruption in the judiciary.<sup>12</sup> This shows that corruption in the judiciary has reached at the zenith. Corruption is rampant in India's courts. The "Uncle Judges" syndrome has come up

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helps them to try to arrive at an agreed resolution of their dispute. HENRY J. BROWN & ARTHUR L. MARIOT, ADR PRINCIPLES AND PRACTICE (2d edn., 1997).

<sup>9</sup> *Benefits of Mediation* ( Mar. 29 , 2017) [http://www.sclsc.nic.in/benefits\\_mediation.html](http://www.sclsc.nic.in/benefits_mediation.html).

<sup>10</sup> N.V. PARANJAPPE, LAW RELATING TO ARBITRATION & CONCILIATION IN INDIA 431 (7th ed., 2016).

<sup>11</sup> Justice R.C. Lahoti, Keynote address delivered at the valedictory session of two days Conference on "ADR, Conciliation, Mediation and Case Management" organised by the Law Commission of India (Apr. 12, 2017) [http://lawcommissionofindia.nic.in/adr\\_conf/Justice\\_Lahoti\\_Address](http://lawcommissionofindia.nic.in/adr_conf/Justice_Lahoti_Address); See also R.S. BACHAWAT'S LAW OF ARBITRATION AND CONCILIATION (Anirudh Wadhwa and Anirudh Krishnan eds., 5th ed., 2010).

<sup>12</sup> Removal of Judges, THE HINDU (May. 12, 2017)

<http://www.thehindu.com/thehindu/op/2002/06/11/stories/2002061100010200.htm>.

in limelight. The judges who are related to advocates bring their cases in their courts in order to give judgement on their behalf. The Bar is being held responsible for such arrangements. But the truth is that neither the Bar nor the Government is responsible for this. The Judges ought to realise that they should maintain the sanctity of the profession they are pursuing. They should indeed remember the norms that they had learnt in their law schools. Besides these problems, one major problem in judiciary is that of minimal use of technology. Video conferencing and other modes of technology should be put to use. Although, Supreme Court and High Courts have made their websites which display disposed-off and pending case, but there are still many district courts which need to follow this.

The reforms in Judicial System could be realised only if the judges who are the caretakers of judicial system would take a step forward to imbibe these into the system. The Collegium system is the worst enemy of the system. There is a trend of nepotism growing in the Judicial sector. This has been preserved by the way of Collegium. The Judges Appointment scenario is well known to every person of law. This was an evidence of how hell-bent the judges are to retain the legacy and hierarchy in Judiciary, especially higher Judiciary. To curb this, the Judges themselves have to realise what raw potential they are being deprived of because of the system which does not allow the deserving and highly-potential candidates to enter into the Apex Court. There should be an examination on all-India basis for appointment of Judges in higher Judiciary, Supreme Court and High Court.

## CONCLUSION

When we reform the judicial system, we not only reform the system but we reform the nation. A nation's base is its judiciary. The law is based on precedents. To strengthen the base itself, what we need is to strengthen the Judicial system with more and more diverse potentials and more diverse talents than stuffing it with nepotism. The eyes of every poor man trapped in a case, be it of land dispute or something else, speaks of a story. That story is of a helpless man running from pillar to post; from Court No. X to Court No. Y; from ADJ IV to ADJ VI; for what he was told to be a right guaranteed by the Constitution. Constitution, the highest law of the land which he might not even have gone through promises him something which he practically could not get. For that one piece of land which is encroached upon by the *goondas*, he has to hire a 'costly' *vakil babu* whose fees would cost him his wife's heirloom jewellery or

even his home. At every hearing, the judge is not convinced, at every hearing the advocate asks for a new date and with every new date, the fees increase. He has no other choice than to give the fee as his *vakil babu* had promised him of a win in the next hearing. With all the hope and determination, he gathers money, sells his cattle, mortgages his home and skips meals. Still what he gets in the next hearing is a new date. This is to be curbed and the needy should be given justice at the first go. It is true that Justice hurried is justice buried, but it should not be forgotten that justice delayed is justice denied!

