

EMPIRICAL RESEARCH ON MEDIATION

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"I realized that the true function of a lawyer was to unite parties...The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about the private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul."

M.K. Gandhi

I. INTRODUCTION

A novel course of action is required to complement the traditional judicial system in order to reduce the heavy burden of litigation without compromising with the standard of equity, justice and good conscience. Alternative Dispute Resolution (ADR) is a tool to achieve the aforementioned goal of speedy, equitable and adequate justice. This becomes pertinent because a traditional approach has not been able to solve the chronic problem of delayed justice. In a welfare state like India, social justice occupies a preeminent position and may be regarded even more important than economic equality. ADR is such a creative approach, which will help in achieving social justice by securing faster and adequate justice for the masses so that the true meaning of Justice is realized.

In India, which is developing, a substantial number of people belong to marginalized, deprived, destitute classes and are not so economically sound to knock the doors of the judiciary as the cost of litigation is huge. Therefore innovative methodology of ADR can help secure justice to the masses. Other advantages like cost minimization and peaceful resolution of the dispute without bitterness can also be achieved which may not be possible in the traditional litigation approach as well as others ADR methods.

'Access to Justice' means an ability to participate in the judicial process. The seeker of justice should not be a passive onlooker but needs to participate actively so that he is a real constituent of the whole process. Spectrum of dispute resolution is very wide; it can include methods with varying degree of sanction. As the society grew and became more complex, informal decision-making process became more difficult on account of the expanse and nittygritty of the whole process, thereby necessitating the designing of a formal judicial system. This became a prerequisite for maintaining order in a growing society thus helping trade and commerce to flourish along with the governance systems

Mediation as a form of alternative dispute resolution is imparting justice in a costeffective manner in the present justice delivery system. Mediation is purely based on amicably settlement of dispute and neutral third person intervenes in the settlement process on the basis of neutrality, confidentiality, flexibility. With respect to the process Mediation is different from adversarial system. In adversarial justice system both the parties try to argue and put evidences against each other whereas in the case of pacific settlement instead of adjudication or deciding right and wrong third-party endeavors to resolve the dispute and resume the cordial relationship between the parties.

II. STATEMENT OF PROBLEMS

- (i) Due to education and increase in the literacy rate the awareness of people for their rights has increased and common people have become more enthusiastic and concerned for their rights and this has resulted into the institution of a large number of cases.
- (ii) We cannot expect expeditious justice from overburdened judiciary.
- (iii) Now in recent years large number of statutes have been enacted and they have provided many rights to the citizen of this country. For example, Right to Information Act 2005has given many rights to the common citizen of this country and it has resulted into institution of a huge number of cases.
- (iv) There is lack of judicial infrastructure in the country. For example, the number of the judges, number of courts, number of judicial staff, etc. in the country.

In its 120thReport in 1988, the Law Commission of India had recommended that "the State should immediately increase the ratio from 10.5 judges per million of Indian population to at least 50 judges per million within the period of next five years." According to the national judicial data grid the High Court had a pendency of around 2.89 lakh cases in 2016, which rose to 3.19 lakhs in 2017. Sources say that because of shortage of judges, the pendency has touched around 3.89 lakh cases at present.

The ratio of the judges in the country is abysmal low and many special courts are not functioning due to lack of judges. Right to get expeditious justice cannot be granted unless and until government ensure there is appointment of judges in effective manner.

III. OBJECTIVES OF THE STUDY

- 1. To study the level of awareness amongst common people regarding mediation.
- 2. To study the effectiveness of Mediation.
- 3. To analyze whether Mediation is successful or not?

Mediation as a form of alternative dispute resolution is playing a proactive role but we have to ponder and introspect how many people know about mediation. In this research paper I am showing how many people know about mediation. It is empirical research based on random sampling method on the basis of questions asked.

IV. RESEARCH METHODOLOGY

Mainly research was doctrinal but for assessing the working of mediation, empirical research is indispensable. In order to make the study broad based, it was found indispensable to conduct field studies.

Mediation is a complicated process and has several inter-linkages in its enforcement. A proper understanding of these interlink ages requires that we have a first-hand insight into the process of enforcement. It is for this purpose that the researcher selected people for his primary empirical research from fields ranging from law students, common people, police officials, lawyers and judges.

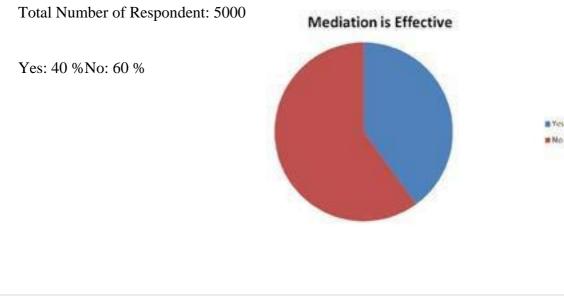
As the information sought was of varied nature, therefore necessary and appropriate research tools were employed. These included interview of the selected respondents, survey of documents in the library and state archives, and non-participant observational method for the collection of relevant data. Internet was very helpful to find new progress in the specified field. The field work was done at a stretch on the basis of samples. Interview schedule scheme was adopted to collect the relevant data. The data so collected was analysed by using social science research technique.

V. FINDINGS OF THE STUDY

India is country with huge number of litigation pendency and country is facing the menace of litigation explosion. Being amongst most populated country it is not expected from the government to popularize the concept of mediation and other alternative dispute resolution very easily although the Supreme Court of India and government is putting a lot of efforts. In India most of the people are unaware about mediation and due to lack of awareness people are more inclined towards adversarial form of justice delivery and not enthusiastic enough to opt mediation as a process for justice delivery system. Whenever we compare with any developed country the result of mediation in India is disappointing, reason behind this is lack of awareness.

This research is based on a survey of common people, Advocates, Law students and judges of Mega-Metropolitan cities (500 each). The data collected to accord the respective questions is based on a questionnaire and telephonic conversations. The results of this survey clearly depict that there is a lack of information among the local population along with the legal fraternity and law practitioners about the mediation techniques, skills required for negotiation as a form of dispute resolution that is available and the benefits it offers.

Question: Do you think mediation is effective for alternative dispute resolution? Advocate/parties: Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore.



Analysis: The above figure tells the story in a way that almost 60% of the advocates are not in favour of settling disputes through mediation process while among the 40% of advocates who are willing to opt this modern means of settling the dispute, are also suspicious about this mode of ADR.

The reasons behind such unwillingness can be summed in a few questions asked:

- 1. Common people are not sure how mediation is effective.
- 2. Litigants are unaware about benefits of mediation.
- 3. One of the party to dispute is so miserable and destitute that he cannot decide about mediation
- 4. One of the parties among the litigants is uncooperative and insensitive.
- 5. Lack of trust between both the parties.
- 6. Perception among the parties is that their case is unsuitable for mediation.
- 7. Perception is that their case is too complex to resolve through mediation.
- 8. Parties are not in favour of compromise.
- 9. If one of the parties suggest or inclined for mediation other will frame his mind that he is weak and coward.
- 10. Remuneration or payment to mediator.
- 11. How the mediator behaves and what are the qualifications of mediator.
- 12. How to choose mediation.
- 13. Communication gap between the parties.
- 14. Issues involve family disputes and domestic violence which are private in nature and third-party intervention is not feasible without their active support.
- 15. Unwillingness of the parties to pay for mediator.
- 16. Negative suggestions of the parties.
- 17. Lawyers are not inclined for mediation.
- 18. If the mediation is not successful then what would be the next approach.
- 19. The conflict of the parties cannot be solved easily and it can go long away.
- 20. Parties say that they have not a good experience with mediations and it is not successful process
- 21. Rigidity among the parties for mediation.

Thus, in the light of the abovementioned questions we see a few important issues which need to be addressed by the Advocates and parties satisfactorily. Thereby, effective mediation process as an ADR does not seem to be successful. At the end of the day, it may be concluded that if these issues are suitably sorted out by taking proper care of the spatial needs and requirements of the Advocates/Parties, then the mediation process is effective in our Nation. Judges: Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore

Total No. of Respondent: 200

Yes: 85 %No: 15 %



Analysis: The above fig. tells the story in a way that almost15% of the Judges are not in favour of settling the disputes through mediation process while among 85% of Judges are willing to opt this modern means of settling the dispute through mediation and as mode of ADR. Concept of referral judges is playing a proactive role in present scenario. In court annexed mediation judges are *sine quo non* and they are skeleton to initiate the process. Reference is pre-requisite to initiate the case. Referral judges refer the case to mediation to settle the case amicably. While referring the case judge can play a very proactive role through communicating benefits of the mediation to the parties and encourage parties to opt for mediation as it is cost effective and effective also. While referring the case judge must take into consideration that all cases relating to life and liberty, against the society at large, having severe punishments are not suitable for mediation.

Whether the case is appropriate to be referred by the judge is primarily based on judge. Judge on the basis of his own experiences and skill can decide whether it ought to be sent to mediation or not. In the case of referral concept there is active participation of all parties and all the stake holders.

Section 89 of the Civil Procedure Code 1908provides that, "Where it appears to the court that there exist elements of settlement" this clearly shows that cases which are not suited for ADR process should not be reoffered to ADR under section 89 of CPC. The court has to use their own judicious mind, whether the case is capable of being referred to and settled through ADR. Where the case is not suitable to refer to an ADR process in that case judge will briefly record the reason for not resorting to any of the settlement procedures prescribed under section 89 of the Civil Procedure Code 1908.

Section 89 of the Civil Procedure Code 1908 was enunciated with the intention that where it appears to the court that there exists an element of settlement which may be acceptable to the parties, they at the instance of the court shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section.

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Now, in the courtroom if the judges counsel both the parties and inform them about the ADR methods, then the parties are willing to settle the matter amicably. Although, in India, more than 3 Crores cases are pending or under trial before the Apex court, different high courts, district courts, CAT, NGT, tribunals, consumer courts etc. Thus, every State govt. and Central govt. may appreciate the judges, to refer the cases to mediation or an ADR for the benefit or interest of the common people. In our constitution, the cardinal aim is "to deliver the justice, to the downtrodden citizen within reasonable time and expenses in a proper manner." Otherwise, delayed justice means denied justice.