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A Modernized Pathway to Institutionalization and Privatization of Mediation in India

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Abstract: "*JUSTICE DELAYED IS JUSTICE DENIED*" can be completely related to the current situation in India. As of September 15, 2021, over 45 million cases were pending across all courts in India. It is high time for India to adopt an improvised solution to tackle the issue. Considering the ongoing endemic of pendency of cases in Indian courts, there is an urgency that, 'Alternative Dispute Resolution' mechanisms to no longer remain 'alternative' but become 'primary' and the most preferred modes of dispute resolution. Mediation is one such mode of dispute resolution which, if implemented efficiently has the potential to revolutionize the entire legal system and solve the issue of pendency in India. To mainstream mediation in Indian society the author proposes for Institutionalization and Privatization of mediation following the 'Early mediation' and 'Opt-Out Model'.

Keywords*:* Pendency. ADR. Mediation. Institutionalization. Privatization. Early mediation.

Summary: **I** Introduction – **II** Characters of Indian Mediation programs – **III** Proposed Models of Institutionalization – **IV** Conclusion – References

I Introduction

Justice is an evolving concept and hence there cannot be a universal definition or a universal idea of Justice.[1] At the present juncture wherein, courts in India are flooded with cases and Indian Judiciary is perceived as a paralysed institution

[1] Laila T. Ollapally, Integrating Mediation: A Holistic to Administration of Justice, International Journal on Consumer Law And Practice, 5 Nat'l L. School of India U. 25, 27-43 (2017); Michael Anderson, Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs, Paper for discussion at WDR meeting, 16, 17 (1996) (available at http://www.worldbank.org/poverty/wdrpverty/dfid/anderson.pdf (last visited on Aug. 29, 2022)).

due to the huge pendency and backlog of cases.[2] Thus, modern-day problems require modern day solutions,[3] and it can be said that that the traditional system of justice delivery is not enough to cater the needs of present therefore, we require an improvised version of justice.[4]

It is high time for 'Alternative Dispute Resolution' mechanisms to no longer remain 'alternative' but become 'primary' and the most preferred modes of dispute resolution. Mediation is one such mode of dispute resolution which, if implemented efficiently has the potential to revolutionize the entire legal system[5] and solve the issue of pendency in India.[6]

Mediation along with all other modes of ADR are forms of out of court settlement. But induction of mandatory mediation program into the justice delivery system at a premature stage of civil suit could give a taste of mediation to both the parties involved in a suit at an early stage of their dispute. The idea is to introduce mediation as a mandatory session prior to the beginning of proceedings before the judge i.e., an Early Mediation Program. Adoption of Early Mediation Program could lead to Institutionalization of mediation into our justice delivery system and contribute substantially to lessening the burden of the courts.[7]

Secondly, with regards to privatization of mediation[8] wherein, the parties privately appoint mediators in order to resolve their dispute without any interference of the court. The issue that revolves around the functioning of private mediation in India is that, it is highly unregulated. Which means that, there is no requirement of mediators to be trained professional. People acting as mediators without any training or certification has the potential to jeopardize the entire idea of mediation as a whole.

1 Regime and issues of Indian Mediation

When the India Government declared the lockdown in March 2020, already 36.8 million cases are pending in India. Recently a PRS Legislative Research reports 45 million cases is currently pending in India. This is not something new but the ongoing pandemic has escalated the issue.

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2 Moog Robert, Delays in the Indian Courts: Why the Judges Don't Take Control, 16 Just. Sys. J. 19, 22-30 (1992); Upendra Baxi, The Crisis of the Indian Legal System, 393-400 (1982).

3 Parikh Puja Scheinman, Modern Mediation in My Bharat, Disp. Resol. J. 68, 69 (2013).

4 Joseph B. Stulberg, Mediation and Justice: What Standards Govern, 6 Cardozo J. Conflict Resol. 213, 214-15 (2005).

5 Nancy D. Erbe, Appreciating Mediation's Global Role In Promoting Good Governance, 11 Harv. Negot. L. Rev. 350, 355 (2006).

6 Xavier Anil, Why Mediation Matters, Int'l J. on Consumer L. & Prac. 5, 21-26 (2017).

7 Arnab Hazra & Bibek Debroy Kumar, Judicial Reform in India: Issues and Aspects, 320-325 (1st ed. 2007).

8 Hannah Arendt, Mediation and the Privatization of Conflict (2018) (available at https://medium.com/quote-of-the-week/mediation-and-the-privatization-of-conflict-1fe45d979967 (last visited on June 15, 2022)).

Mediation as a form of ADR falls under the second approach. Thus, adoption and promotion of Mediation Culture in India can be one of the most efficient solutions to the issue of pendency and backlog in India. Despite being one of the most efficient, speedier, cost-effective means of amicable dispute resolution mechanism, the present Mediation framework practiced in India has not been able to achieve its full potential. The major reasons for this are 'lack of uniform legislation' and 'lack of awareness' with regards to mediation in India. Due to the absence of a statute, there is no uniform working structure of mediation in India.[9] Every mediation centre has adopted their own specific set of rules and regulations for their functioning. As every mediation centre works autonomously, the rules of mediation varies according to the jurisdiction, and this leads to several ambiguities in the minds of people which makes them reluctant towards opting for the process.[10]

However, in 2021 India took a step forward to deal with the issue and mainstream mediation within the nation by introducing a draft Mediation Bill, 2021[11] in Rajya Sabha but the Committee on Law and Justice was requested to examine the Bill based on the opposition. The draft bill is nothing but a shallow attempt by the Indian legislature which reflects lack of research before framing a legislation and ignorance of its significance with respect to the ongoing crisis of pendency and backlog of cases in Indian courts.

The Bill emphasizes enforceability of mediation through confidentiality and admissibility and privilege against disclose of sec. 23 and24.[12] However, the Bill might not clearly recognize the Council as mediation service providers and very minimal effort has been made to regulate the mediators as it nowhere mentions the qualifications of a certificated mediator. Therefore, the draft mediation bill is not enough to make mediation, the most preferred mode of dispute resolution and use it as tool to resolve the issue of pendency and backlog of cases in Indian Courts.

II Characters of Indian Mediation programs

1 Mandatory vs. Voluntary Mediation

Considering the idea of Institutionalization and Privatization of Mediation into the Justice delivery system in India, the mediation in India can be bifurcated into

9 Alok Prasanna Kumar, Strengthening Mediation in India, A Report on Court-Connected Mediations, Vidhi Legal Policy (2016). (March 29, 2022, 12:04 AM), https://vidhilegalpolicy.in/reports-1/2016/7/25/strengthening-mediation-in-india-an-interim-report-on-court-annexed-mediations.

10 Rajiv Dutta, Mediation in India -Building on Progress, Int'l Bar Assoc. (March 28, 2022, 11:04 AM), https://www.ibanet.org/Document/Default.aspx?DocumentUid=B705AE33-0AF0-4DA2-9C93-7421D28D2767.

11 The Mediation Bill, 2021.

12 Id.

"Voluntary" and "Mandatory" methods.[13] Parties opting for a private mediator or reaching out to mediation centres by themselves are forms of voluntary means. Conversely, when the parties under section 89 of are sent under Civil Procedure Code or if it is mandated by a statute to opt for mediation before reaching to the court (Mandatory Pre- Litigation Mediation) is said as a form of Mandatory Mediation.

Voluntary Mediation	Mandatory Mediation
Contractual	Reference by Court
Private Mediation	Mandatory Pre-Litigation Mediation

However, this is a general information derived based on the functionality of mediation in India. There can be private mediation which is directly or indirectly mandated by the court. Similarly, there can Pre-Litigation Mediation both voluntarily and mandatory. Therefore, there cannot be a strict compartmentalization of Voluntary and Private mediation, but the author is trying to differentiate and illustrate the most significant and popular modes of mediation in India basing upon this broad distinction.

2 Mandatory mediation

Because mandatory mediation means that the judiciary requests the disputing parties to attempt the mediation process before approaching court, parties could not be forced to settle disputes on mediation.[14] The parties have an option to resort to mediation prior to litigation or it can be mandated by a statute. Therefore, mandatory pre-litigation mediation means that the disputing parties should attempt to apply mediation before initiating a suit based on a particular statute.[15]

1) Need of Mandatory Mediation

An ordinary person can get entangled in a lengthy litigation that defeats the very purpose of justice because it is a well-known fact that *"justice delayed is justice denied"*.[16] In India, it is a common practice among the citizens to approach

[13] Hazel Genn, Reinhard Greger, & Carrie Menkel Meadow, Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads, 250-259 (1st ed. 2013).
[14] Hazel, supra note 14, at 260.
[15] Indovina, supra note 16, at 103.
[16] Sarika Mittal, Mandatory Pre-Mediation in Family Disputes, ACADR E-Newsletter 2 (April, 2022). (October 14, 2022, 11:00 PM) https://www.alliance.edu.in/committees/ACADR/assets/publication/ACADR-Newsletter-Vol01-Issue02.pdf.

the Court for the settlement of every kind of dispute, which in turn overburdens the courts and results in the case file simply piling up.[17]

Supreme Court in the case *Hussainara Khatoon v. Home Secretary, the State of Bihar*[18] held that "the right to a speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of Indian Constitution," thereby mediation became the sine qua non in the access of speedy justice.

Therefore, in order to expedite the wheels of justice delivery mechanism and also to resolve the problem of backlog of cases, the mandatory pre-litigation mediation,[19] if implemented sincerely could result into wonders in terms of speedy disposal of disputes and also in lessening the burden of the courts which could contribute to resolving the issue of pendency and backlog of cases in due time.[20]

2) Court referred mediation

CPC was amended in 1999, adding section 89 for ADR programs.[21] It empowers the court to refer parties to different modes of Alternate Dispute Resolution (ADR), which includes mediation as well. By virtue of this provision, if the case is fit for mediation, then the court refers parties to mediation and this process of referral by court is said as court referred mediation. Courts more tend to refer the parties to mediation in cases of Matrimonial disputes, particularly divorce cases.[22] This is a first step taken towards institutionalization of mediation in India through setting up the Court- annexed Mediation centres.

Judiciary plays a significant role in this form of institutionalization as cases reach to Court- annexed Mediation centres only if it is referred by a judge. The judges who refer the cases to ADR mechanisms under CPC are known as referral judges.[23] Not all cases could be referred to mediation, only cases containing element of settlement could be sent for mediation. Thus, the ability to identify such cases does requires, a particular set of skill and training. There exists a strong inter-relationship between the court annexed mediation and judges. The role

[17] Sai Aravind R, Should Mediation be a Prerequisite to Civil Litigation: An Indian Perspective, Ipleaders.
[18] Hussainara Khatoon v. Home Secretary, the State of Bihar, AIR 1369 (1979).
[19] Micevska & Hazra, The Problem of Court Congestion: Evidence from Lower Courts (2004). (Sept. 03, 2022, 03:00 PM), http://ageconsearch.umn.edu/handle/18750; Hazra, supra note 7, at 330-33.
[20] Naval Sharma & Shriya Luke, Mandatory Mediation Prescribed Before Filing of Commercial Suits, Mondaq, (July 15, 2022, 08:00 AM) https://www.mondaq.com/india/arbitration-disputeresolution/729584/mandatorymediation-prescribed-prior-to-filing-of-commercial-suits.
[21] Sec. 89, Code of Civil Procedure, 1908.
[22] Hiram E. Chodosh, The Eighteenth Camel: Mediating Mediation Reform, 9 German L.J., 251, 255 (2008).
[23] Ramanathan Uma, Initiatives and Innovations for Effective Court-Mandated Mediation, Mediation and The Role of Referral Judges (2012), (Sept. 10, 2022, 11:00 AM) http://www.mediate.com/mobile/article.cfm?id=9805.

of referral judges in strengthening ADR mechanisms has also been recognized by the Supreme Court of India.[24]

Mediation and Conciliation Centre of the Delhi High Court referred total of 14665 cases and disposed through mediation. The number of cases reached merely 2% of all the cases in Delhi High Court from March 2006 to March 2020.[25]

It is quite evident, from the data that the judges are not exercising Section 89 for referring the parties to mediation. This seems to be a problematic situation. Number of cases being referred to the Mediation is inevitably co-related to the how mediation friendly judiciary is.[26]

Thus, it can be said that judges require certain objectivity while engaging in the process of determination element of settlement for cases to be referred to the mediation. Indian Judiciary is accustomed to the traditional adjudicatory process and to shift their attention to an alternate mode, requires certain efforts.[27] There exists a lack of judicial understanding about mediation. Thus, an elaborate training process must be carries out along with massive awareness programme in order to enhance the rate of referral cases.[28]

3) Pre-litigation mediation

Pre-Litigation Mediation simply, means the opportunity to have a formal process of mediation involving several steps prior to litigation. It can be both voluntary and mandatory.

In mandatory pre-litigation mediation**,** another form of institutionalization can be done by statute. The statute might enforce the disputing parties to use mediation prior to institution of proceedings in courts. Because it requires to mandatorily apply for mediation prior to proceeding, it could be a 'mandatory pre-litigation mediation.' Then, it contains two different characteristics of mandatory and prior to proceedings. Some limited numbers of states, such as the EU, US and Italy, applied it.[29] In United States mandatory mediation programs are adopted in many courts and government agencies even though they realised the limited applicability of voluntary programmes due to the no unified policy on mediation.

[24] Salem Advocate vs Union Of India Writ Petition (civil) 496 (2002).
[25] Kumar, supra note 10, at 35.
[26] Id, at 26.
[27] https://www.ielrc.org/content/n0401.pdf (last visited on Sept. 5, 2022)).
[28] Nathan Rehn, Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts in O.P. Jindal Global University, Research Paper No. 4, 33 (2011).
[29] Vittorio, supra note 16, at 30.

4) Mandatory Pre-Litigation Mediation in India

The position in India with regards to mediation has been mainly non-mandatory in nature. Whilst Section 89 of CPC provides for reference of disputes to different ADR procedures including mediation. In India, based on a directory provision, the courts do not necessarily refer their cases to the different forms of ADRs.[30] In addition, the new section does not push the disputing parties to consider mediation. But, considering the issue of pendency in Indian courts, the Indian legislature realised the need to make mediation process as a mandatory approach.[31]

For the first time, the Indian legislators have attempted to establish mandatory mediation as an alternative is seen in the Commercial Courts Act, 2015. It was subsequently amended in 2018, to insert a provision regarding "pre-institution mediation and settlement." Section 12A deals with this aspect and it mandates the disputants to resort to mediation before they would initiate a litigation process.[32] The settlement signed by the disputants "shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996".[33] In *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, the Court emphasizes upon importance of reference toward ADRs for reducing the existing problems in Indian judicial system.[34]

The Parliament amended the Consumer Protection Act in 2019 by adding a provision of mediation. Based on section 37 of the Act, parties can be referred to mediation at the first hearing if recognized possibility of a settlement by the commission. Further, recently the Mediation Bill, 2021 makes participation in pre-litigation mediation mandatory for all such cases fit for mediation.

3 Voluntary mediation

1) Based on contract

The simplest mode to resort to mediation is through contract. When disputing parties faced a dispute, these two parties could reach a settlement, agreeing amongst themselves with third neutral party's assistance.[35] And a clause under a contract is entered in that regard. An effective and efficient ADR clause might produce not only cost and time-saving methods, but also build up better relationship

[30] Roy Nibedita, Mediation: Serving A Hope For Overwhelming Divorce Cases In India, ACADR E-Newsletter, (April, 2022). (October 14, 2022, 11:00 PM) https://www.alliance.edu.in/committees/ACADR/assets/publication/ACADR-Newsletter-Vol01-Issue02.pdf.

[31] As per the data of National Judicial Data Grid, as of November 12, 2020 3,59,08,679 cases are pending across all courts in India.

[32] Section12A, Commercial Courts Act, 2015.

[33] Shantha Chellappa &Tara Ollapally, Mandatory Mediation under Commercial Courts Act – A Boost to Effective and Efficient Dispute Resolution in India, Bar & Bench (Sept. 18, 2022, 10:30 AM).

[34] Salem Advocate Bar Association, Tamil Nadu v. Union of India, AIR SC 189 (2003).

[35] Peter S. Chantilis, Mediation U.S.A., 26 U. Mem. L. Rev. 1031, 1046 (1996).

between two disputing parties.[36] Such clause also provides parties to deal with disputes by themselves with the third neutral party's help as simple tools and provides them with an expedited and less expensive way of resolving a dispute prior to litigation. Therefore, the mediation program might provide a chance to build up constructive tool to disputing parties who already failed to reach an amicable settlement through ineffective negotiations.[37] Generally, such mediations are carried on by hiring a private mediator, without any interference by court. Thus, it is also an antecedent to Private Mediation.

2) Based on the private mediation

This is a form of mediation privately held, without any interference from the court. Where the parties instead of going to court for a dispute, directly go to a third party to resolve the disputes is said as private mediation. Whilst there can be a scenario that a court refers parties to mediation and the parties choose to opt for a private mediation. It can be said that the public functions of imparting justice through dispute resolution have been Privatized. Therefore, we need to address the issues attached to the functioning of this Privatized mode of dispute resolution.

3) Unregulated Private Mediation in India

There are no laws applicable to private mediation in India and the appointment of mediators are made voluntarily by the parties.[38] There is no guidance or obligation put upon the parties while they are making the decision about the appointment of a mediator.[39] Also, there is no such attempt made in the draft of Mediation Bill, 2020 as well. The draft bill does not contain any requisite to be followed while engaging into a private mediation by the parties.

Nevertheless, parties and lawyers need to check nominated or possible mediators' backgrounds, such as certificate and experience in order to appoint a mediator But, without a legal backing, if any and every person are given the power to act as a mediator then this could jeopardise the entire system of mediation. Then, private mediators need not be lawyers they could belong to any job or profession.[40] Even the close family members without any background could act as a private

[36] Robert J. Niemic, Mediation Becoming More Appealing In Federal And State Courts, 5-4 Disp. Resol. Mag. 13, 14 (1999).
[37] Id. at 15.
[38] Kumar, supra note 10, at 30.
[39] Patil B. S., Common Mistakes in Mediation, 5 Int'l J. on Consumer L. & Prac., 25, 85 (2017).
[40] Raj Panchmatia Raj & Jonathan Rodrigues, Legitimacy of Private Mediation in the Pre-Legislation Era: Busting Myths with Facts (2021).

mediator.[41] Thus, this could lead to situations where even the basic integrity and coherence of mediation as a process is completely ignored.

There could be scenarios where parties are threatened or pressurized to sign the settlement agreement. And if such cases reach to a court, it puts a huge responsibility on the shoulders of a judge wherein he will be expected to authenticate the authority of mediator without any statute or code in place.

4) Privatization of Mediation: Suggested Reforms

There is a need to have at least some regulation with respect to the functioning of private mediation in India. A legal mandate that, for private mediation that the selection of mediator to be made from the enlisted mediators at court-annexed mediation centres could put this issue at rest. Only professionals who have gained the certification by undergoing 40 hours of training as provided by the court annexed mediation centres must also be implemented for private mediation. There are also issues with regards to fees to be paid to the private mediators, thus, a benchmark for the payment should be set for the private mediators on the basis of their qualifications and training undergone. We need to make the profession of a mediator to be lucrative in order to increase the participation in the field of mediation. Besides, the statutory mandate with respect to the qualification and minimum expertise required for the mediators to undertake mediation, there is need of a singular controlling authority which would be responsible to guide and control the mediators in India.[42]

The Mediation Bill, 2020 which is still pending at the parliament provides for an establishment of Mediation Council. A parliamentary panel has recommended a singular controlling authority for all types of mediation service providers and mediation institutes, instead of multiple authorities proposed in the Mediation bill 2021. Therefore, if the recommendation in the draft bill is accepted there can be a single body set up i.e. Mediation Council of India, which would be responsible for Training, Education and Certifying the mediators. As we have Bar Council of India in order to regulate the legal professionals and legal practise in India. Similarly, Mediation Council of India would be guiding and controlling authority with respect to mediation in India. However, it would take a long time for the Mediation Council to prepare additional training courses; it also needs to test its proper work as a pilot program.

[41] Sriram Panchu, Mediation Practice and Law: The Path to Successful Dispute, 212-213 (3rd ed. 2022).
[42] Recommendation by parliamentary panel.

III Proposed Models of Institutionalization

1 Opt-Out Model

The opt out model has been successfully implemented by countries like, Turkey and Italy.[43] As per this model, the parties mandatorily participate the first meeting date on which the mediator designated. The meeting is made affordable for everyone and thus are inexpensive. If parties refuse to attend the meeting, certain material penalties could be imposed for non-attendance. Therefore, parties have option to move out of the mediation process and back to the litigation after the first mediation meeting. It is very interesting to note that, under this opt-out model, the first mediation meeting could be mandatory and formal process, but the parties are at liberty to either opt in or opt out of the mediation after it.

2 Early Mediation Program

In India, it might usually take 4-6 months for the first court-date. This Early mediation program might dramatically reduce the waiting lines in the civil matters in India. Early Mediation is a process where cases fit for mediation i.e., civil cases, after filing a suit, first enter into mediation and if unsuccessful, then only the matter would reach before the court.[44] In this way, most of the cases will be resolved at the early stage of the suit itself.

In 2004, California conducted a study to understand the feasibility and the benefits of early mediation program.[45] Upon filing a law suit the mediation was conducted between the first 90 to150 days. The court would have a set panel of mediators who would mediate the matter at the early stage of the suit. This resulted in early disposal of cases and very few cases reached before the court. Therefore, the study has been found to be successful for both voluntary and mandatory mediation. It resulted in benefitting both litigants and the courts by reducing the burden of the court and speedy remedy to the litigants.[46]

Adopting these models in Indian scenario, based on the current India's pendency problem, Early mediation might be the best solution. Furthermore, the young lawyers might get benefits to survive in the current tough Indian legal market because they could take a position of mediator. Furthermore, we should consider the legal fee for mediators in proposed program. Furthermore, it requires a training program to produce qualified mediators in private sector of mediation.

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[43] Ruslan Mirzayev, After Italy And Turkey, Azerbaijan Also Follows The Opt-Out Mediation Model, Kluwer Mediation Blog (May, 2019).

[44] Adam Noakes, Mandatory Early Mediation, A Vision For Civil Lawsuits Worldwide, 36 OHIO ST. J. ON DISP. RESOL. 1, 3 (2021).

[45] Available at https://www.courts.ca.gov/documents/empprept.pd (last visited on June 10, 2022).

[46] Noakes, supra note 43, at 8.

1) Necessity of adopting Early Mediation

Even though the India judiciary adopted several different mediation programs, these produced unexpected outcomes; the Indian mediation programs still could not figure out the delay and pendency problems, and the Indian lawyers could not participate in these mediation process based on the complicated process and exclusion of advantage of using mediation, which makes the Indian mediation unpopular. Even though people recognized the delay problem in the India judiciary, they still want to use the litigation.

The mediation programs in India are slightly institutionalized, it is not that popular. Because all participants could not get advantages of using mediation programs, some parties and lawyers might be excluded from it. Especially the Indian lawyers might be excluded to take advantage or could not get enough benefit to persuade their clients to use mediation programs in India.

It can be explained in two examples. Even though the India judiciary has operated the institutionalized mediation program for a long time, it did not efficiently used; because of the delay and pendency, it is currently talking for a while from the filing date and the first hearing date. In the other, the Indian lawyer should spend a major time to prepare the memorandum of complaint and response. After that, the judge might refer his or her case into the mediation program with two parties' consent. At that moment, the lawyer might hesitate to advise the client because this lawyer might lose a chance to make money. Because the Indian lawyers usually charge the legal service fee based on the appearance in the courtroom, they might be unwilling to move toward mediation.

In India, opt-out program with early mediation for civil cases can be revolutionary step in resolving the issue of pendency in Indian courts. There can be a mandatory process substituted under the code of civil procedure, wherein, before the first hearing of the suit, the parties must sit before a mediator with a genuine attempt to mediate. After submission of plaint and written statement by both the parties, during the first appearance, a loop of 15-30 days can be introduced for an Early Mediation.

Here, Judges before whom the case is listed can also act as a mediator or parties can also choose a mediator from the panel of enlisted mediators available at court annexed mediation centres. Only those cases, which fails to reach a mediated agreement would be produced before the court. As a result, many cases will be resolved at an early stage and even cases which do not resolve the parties will get be enlightened towards the process of mediation as an viable option and they might choose to avail this option at a later stage as well. It will not only lead to early disposal of cases but also lessening the burden of the courts.

This process is wasting a time from the filing date to the first court-date until the judge suggests the mediation program and refers his or her case to it. Then, an appointed mediator set up an available time for both parties in or outside of the court mediation center. Instead of waiting for the first court-date, the court releases and refers its cases into the early mediation program.

2) Any possible problems

Regarding to issue of Jurisdiction, while following the Early Mediation program along with opt-out model, there might arise issue with jurisdiction as the case would reach for mediation without actually reaching before a judge in a court. So, to simplify the issue and question as to where the mediation case should be taken up. It is suggested that: 1) The court should release its cases to mediation centre, 2) private professional organizations, 3) private professional organization to be referred by the court, and 4) if it is a private, what about fee for mediator?

Arbitration in India is fully institutionalized by the virtue of Arbitration Act of 1996. Similarly, Meditation also requires addition regulation related with legal perspectives, such as jurisdiction and Statute of Limitation to control privatized mediation programs in India. Current Mediation Bill, 2020 is completely silent regarding application of the Law of Limitation under mediation which provides a loophole in the system and can be abused by the parties opting for mediation.

IV Conclusion

India being a developing country faces several issues with regards to lack of resources, lack of infrastructure and it is difficult to manage the huge inflow of cases in the courts. But India has always been ready to incorporate changes and allocate funds whenever a grave issue is recognized. India in the past had adopted the concept of 'fastrack courts' to expedite the disposal of cases. Similarly, India had also set up 'Lok Adalat' as a unique concept of ADR.

Lok Adalat is a form of civil court known as people's court consisting of retired or currently serving judicial officers. It is a 'system of conciliation or negotiation' for the cases which are pending in a court, or which are at the pre-litigation stage are compromised or settled in an amicable manner.

Therefore, we can say that if India can optimally allocate its available resources and undertake to implement these concepts. Early mediation can also be adopted and implemented in similar fashion, which will not only lead to an easy and fast disposal of cases but lower the courts' burden. In addition, the volume of pendency could assuage in the near future with an effective implementation of the suggested model.

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