

Alternative Dispute Resolution System and Legal Aid A way to Speedy Disposal

On 28th July, 2018 the Chief Justice of India Hon'ble Sri. Dipak Misra said that “ The issues of pendency and delays in the justice delivery system need to be tackled with judges taking up the burden of judicial leadership and managerial skills.” While delivering the valedictory address at the National conference on initiative to reduce pendency and delays in judicial system.

He further said “ The court congestion and delays do require a modern and progressive approach where every judge takes the burden of judicial leadership and managerial skills of his court and the cases before him. He further noted that the discussions witnessed an emphasis on technological aspects and introduction of best practices in the ADR system and elaborated on the deliberations.”

The above valedictory remarks of the Hon'ble Chief Justice of India show the importance of speedy trial and disposal against the pendency of the cases. In order to have speedy disposal of the cases we have at least two mechanisms to adopt. One is Alternative Dispute Resolution System for procedural aspect and providing legal aid for rendering of justice for the needy.

Experts Committees or ADRS:

In order to meet the demand for speedy and substantive justice to all, the Government of India constituted Justice Sudhi Ranjan Das Committee in 1949 to look into the problem of delays in disposal of cases. The committee recommended the curtailment of appeals and revisions to reduce the backlog of cases in the High Courts. In 1951, Justice Das Committee made recommendations to unify and consolidate the legal profession. Again in 1972 Justice Shaw committee was constituted to report on the arrears in the High Court. In addition, the Law Commission of India has also considered the questions of delay and arrears in courts from time to time and has given 12 reports conferring various aspects of the problems. In 1989 the Government of India on the advice of the Chief Justice of India, constituted a committee under the chairmanship of Justice Malimath. The committee submitted its comprehensive report in August 1990. It identified the causes of accumulation of arrears and made a large number of useful recommendations. The report of Malimath Committee became the basis of finding a solution to the problem of arrears during the Law Ministers meetings which took place in 1992-93. Thereafter, a joint conference of chief Ministers of the states and chief justices of all High Courts was held in 1993. In the said conference, the following resolution was adopted.

“The chief Ministers and the chief justices were of the opinion that the courts were not in a position to bear the entire burden of the justice system and that the number of disputes lend themselves to resolution by alternative modes, such as arbitration mediation and negotiation. They emphasized the desirability of disputants

taking advantage of the ADR, which provided procedural flexibility, saving valuable time and money and to avoid stress of a conventional trial.”

The Apex Court in “ Food corporation of India Vs. JOGINDER PAL (1989) also laid down the emphasis on ADR system of adjudication through arbitration, mediation and conciliation is a modern innovation into the area of the legal system and it has brought revolutionary changes in the administration of justice. It can provide a better solution to a dispute more expeditiously and at a lesser cost than in regular litigation.

The law commission of India in its report No. 222 in 2009 stated “Need for justice-dispensation through ADR etc”, recommended that **“We are aware that there is an urgent need for justice dispensation through ADR mechanism. The ADR movement needs to be carried forward with greater speed.”**

Legislative Potentiality:-

The settlement of disputes by way of ADR was inherent in some enactments dealing with matrimonial disputes. The first comprehensive Legislation named as the HINDU MARRIAGE ACT 1955.

It has provided constitution mechanism under certain provisions. The main provisions engrafted under section 23 of the Act, which speaks that in any proceedings before granting any relief it is mandatory duty on the part of the court in first instance, if it is possible so to do consistently with the nature and circumstances of the case to make every endeavor to bring out conciliation between the parties. Further sub-section (3) of section 23 is clearly manifest to bring about the settlement outside the court between the parties.

Similarly Family Court Act, 1984 in its preambular commitment provides the establishment of family court with a view to promote conciliation and to secure speedy settlement of disputes relating to matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, of declaration as to the validity of marriage or as to the matrimonial status of any person and for matters concerned therewith.

Procedural Laws:

Procedural laws such as Civil Procedure code 1908, doesn't incorporate any provision relating to the ADR mechanism in any Civil Suit. However, it was only by the CPC (Amended) Act, 1976, which encapsulate as a procedural device in matter concerning the family disputes Under Order 32-A, Rule-3.

It imposes a kind of mandatory duty on the court to make every effort for the settlement of disputes outside the court by means of ADR.

Further dwelling upon the scope of ADR in every civil suit of proceedings the CPC (Amend) Act, 2002, which came it force on 01.07.2002 has again made a

provision, the section 89, which is designed to enable the courts to bring about or settlement of disputes outside the courts by means of ADR mechanism. This is a special provision for settlement of disputes outside the court by a simple and quicker method. Besides there has also been insertion of a new provisions Under Order X, Rule – 1A, 1B, 1C which have opened new way expanding the frontiers of settlement of disputes by way of ADR mechanism.

STATUTORY FOUNDATION OF LEGAL AID:

Our constitution guarantees several fundamental rights under Part-III and also imposes several obligations on the state as set out in the Directive Principles of State Policy with the sole object of improving the conditions of living of the people of this country and bring social change in the country.

Article 21 provides for right to life and liberty Article 39-A imposes an obligation on the states to ensure that the operation of the legal system in the country promotes justice, Article 21 will be meaningless, unless appropriate institutions are created and mechanism found out to give legal assistance to the persons, whose right to life and liberty are threatened either on account of the state action or on account of the action of an individual or group of people. Therefore, inspired by the provisions in the constitution and more particularly the obligation U/A 39-A Legal Services Authority Act-1987 was passed by the parliament.

Various strands of statutory law regime extending legal aid comprise code of Criminal Procedure, Civil Procedure Code. Mental Health Act, 2017 etc. Legal Aid acquired prominence in criminal justice system vis-à-vis Civil Justice System where the right is invoked to protect the life and liberty in contradiction to property, every arrested person the right to be defended by a pleader, but the right of an indigent accused to legal representation at State expenses.

Under Civil Justice System, there is a provision by which the indigent person can institute a suit Under Order-33 of Civil Procedure Code without payment of court fee.

Under Mental Case Health Act:2017, Section 27 provides that “a person with with mental illness shall be entitled to receive free legal services to exercise any of his rights given under that Act. It shall be duty of Magistrate, Police officer, person in charge of such custodial institution as may be prescribed to free legal services under Legal Services Authority Act, 1987 or other relevant laws or under any order of the court, if so ordered and provide the contract details of the availability of services.

Legal Aid and Legal Services Authority Act:

Legal Services Authority act provides free and competent legal services to the weaker sections of the solity to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok

Adalats to secure that the operation of legal system promotes justice on a basis of equal opportunity.

S.R of the said Act enumeration the categories of persons, who are entitle to receive free legal aid from the State under sec. 12(a) to 12(h). Section 13 of the Act lays down the persons who satisfy or any of the criteria specified under 12 shall be entitled to receive legal services provided that the authority concerned is satisfied that such person has a prima-facie case to prosecute or to defend.

Moreover chapter XIX of "Civil Rules of Practice and Circular Orders – 1980 provoked various rules from 229 to 306 for the legal aid to indigent persons like, preparation of Panel Advocates, free payable to Advocates assignment of Advocate etc.

Judicial Perception of the right:

During the Pre-Constitutional era despite the absence of strong statutory law regime providing for legal aid, the higher judiciary heralded the cause of right to legal aid and ensured that legal aid be given to the poor, who could not afford to engage a counsel for his defence. The adoption of constitution of India imposed a duty on the states to provide legal aid to the indigent persons.

In Inre: HUSSAINARA KHATOON AND OTHERS Vs HOME SECRETARY, STATE OF BIHAR (1979) it has held that free legal aid to indigent and poor accused is implicit under Article 12 of the constitution. A trial without legal assistance, cannot possibly be regarded as "reasonable, fair and just." If legal services are not provided to such, the trial itself may run the risk of being vitiated as contravening Article 12.

In KHATRI AND OTHERS Vs ST. OF BIHAR (1981)THE Supreme Court held that the right to free legal services is an essential ingredient of reasonable and justice system fair. It is further held that " the Magistrate or the Sessions Judge before whom the accused appears, is under an obligation to inform the accused that if unable to engage the services of a lawyers on account of poverty or indigence, he is entitled to obtain free legal services at the state cost.

In KADRA PAHADIYA AND OTHERS Vs STATE OF BIHAR (1981), Supreme Court held that under trial prisoner should be provided with a fairly competent lawyer at State expense.

In SHEELA BARSE Vs. ST. OF MAHARASTRA (1983) held that the legal assistance to a poor or indigent accused, who is arrested and put in jeopardy of his life or personal liberty is a constitutional and imperative mandate not only by Article 39A, but also by Articles 14 and 21 of the constitution.

Conclusion:-

It is therefore, essential that the people at large and particularly those, who deserve to avail alternate dispute Resolution System and legal aid made aware of the benefit, which are available to them under various enactments and organizing Lok Adalats to settle cases is a very important function and the main sprit behind Lok Adalat and ADR has been to provide speedy and inexpensive justice to the people.

It can be safely stated that in view of the provisions of various enactments, discussed above, every judge is duty bound to at least to guide the weaker section of the society that the aim of the particular enactments at state expenses. This would be in itself "YEOMAN SERVICE to the goal of equal and fair justice to all.

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