INTRODUCTION, UNDERSTANDING CONFLICT, CONCEPT OF MEDIATION

On 28th July, 2018 the Chief Justice of India Hon'ble Sri. Depak 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 congrestion 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 true 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 on 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 then 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 resolutions were 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."**

Understanding Conflict:

The conflict is the basic difference which grows in the parties that leads to disagreement. Unless resolved, these conflicts will expand to become several disputes which will further be difficult to resolve. Now we know how conflicts escalate:

1. The first stage starts with a disagreement.
2. Moves on to personalization of disagreement, i.e, we identify ourselves or other party with the disagreement.
3. Due to this the problem expands.
4. The communications between the parties cases i.e. there is an abandonment of dialogue.
5. There is an enemy image that develops in the minds of the parties towards each other.
6. The parties become openly hostile in the presence of each other.
7. This would ultimately result in permanent polarization i.e. they would completely cut off their ties and would not communicate at all unless in hostility towards each other.

There are generally four sources of conflict:

1. Information – either the lack of it or its misinterpretation
2. Relationships – poor communication, distrust, negative behaviour etc.,
3. Structural Conflicts.
4. Values – Different beliefs, ideologies, goals, aim etc.

The conflict has different styles and there are different strategies for resolving it, such as:

1. Avoidance i.e., denying, withdrawing or ignoring a small difference this would be helpful in situations when the differences are unimportant and are not a frequently occurring phenomenon.

2. Then there is accommodating behaviour such as when someone aggress out of habit, or for flattery in such cases the accommodating behaviour may lead to resentment in future. In some relationships, a sense of competition overwhelms the relation itself.
3. Compromise which can be seen when there is bargaining, decreased expectations, in this case compromise is only good when the person who compromises can continue without expectations, otherwise the situation will gradually lead to difference of opinion and further to dispute.
4. Lastly, the Colloboration i.e. thinking of strategies and techniques through which one can solve their problems mutually, this can be done by gathering information, looking for alternatives, dialogue, by welcoming disagreement. Colloboration can be termed appropriate when the issues and relationships are both significant, cooperation is important and there is reasonable hope to address all concerns, but it would not work in cases where there is a shortage of time and the issues are not that important. The discussion moved forward to the question of how a mediator should handle conflicts. A mediator should always believe that all conflicts are born with solutions. The duty of a mediator would be to find out where the solution lies and so as to arrive at a solution, the mediator has to objectively analyze the conflict. On identifying the conflict, the mediator has to separate the people and their problems, to do this one has to change the position of the party from the past to the future, this can be done by posing open ended questions. Open ended questions make the person share their concerns, underlying issues and further information on the conflict. This gives the categories of satisfaction the parties would get out of a settlement:

(i) First would be substantive satisfaction, the parties must get the relief they want.

(ii) Second is procedural satisfaction that is a substantive satisfaction through a fair procedure.

(iii) Lastly, emotional satisfaction, during the whole process the parties must be allowed to freely vent their emotions.

Therefore, once the conflict is identified. Using the appropriate strategy, the parties themselves collaborate and give solutions for their problems and if they come up with the solution, it would not just be a solution that is mutually acceptable, but will also result in them respecting the demands and giving effect at the solutions they themselves came up with. This wold ultimately result in a win-win situation. Since the records are never sent to a mediator, a legal solution is not arrived at, the solution is more of a practical, party centered one, which does not dwell on the legal aspects. A conflict emerges when parties have differences. In contractual or other differences, it gets aggravated and becomes conflict. Generally all conflicts cannot be resolved but all conflicts can be

managed. Value based conflicts are informal kind of conflicts, they can only be resolved when there are open discussions and there is a venting of emotions.

CONCEPT OF MEDIATION:

The mediation process starts with an opening statement wherein the mediator briefs the parties about the purpose and benefits of mediation, the role of the mediation and the general details about the mediation process. It is a sort of an introduction or a prologue to the mediation process. The opening statement therefore sets the tone for mediation. The mediator gives an overview to the parties as to how mediation and the mediation process function, emphasizing the voluntary fabric of mediation and explaining that the parties in mediation not only control the process but of the process.

The legal system rarely takes the psychological or emotional factors of either party into account. Litigation is said to be cold, hard, and uncaring. Both parties are instructed not to talk to each other and neither side gets to voice their concerns. Mediation uses the psychological power of empathy to create mutual understanding between parties to address concerns, promote emotional healing and preserve ongoing relationships. The role of mediation is not confined to bring in social harmony but also communal harmony. In the case of mediation, it is a win-win situation that is involved which benefits both sections.

Mediation is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques. In mediation the parties retain the right to decide for themselves whether to settle a dispute and the terms of any settlement. Even though the mediator facilitates their communications and negotiations, the parties always retain control over the outcome of the dispute.

Though the mediation process is informal which means that it is not governed by the rules of evidence and formal rules of procedure it is not an extemporaneous or casual process. The mediation process itself is structured and formalized, with clearly identifiable stages. However, there is a degree of flexibility in following these stages.

Mediation in essence is an assisted negotiation process. Mediation addresses both the factual/legal issues and the underlying causes of a dispute. Thus, mediation is broadly focused on the facts, law, and underlying interests of the parties, such as personal, business/commercial, family, social and community interests. The goal mediation is to find a mutually acceptable solution that adequately and legitimately satisfies the needs, desires and interests of the parties.

Mediation provides an efficient, effective, speedy, convenient and less expensive process to resolve a dispute with dignity, mutual respect and civility 1.6 Mediation is conducted by a neutral third party – the mediator. The mediator remains impartial,

independent, detached and objective throughout the mediation process. In mediation, the mediator assists the parties in resolving their dispute. The mediator is a guide who helps the parties to find their own solution to the dispute. The mediator's personal preferences or perceptions do not have any bearing on the dispute resolution process.

Any settlement reached in case that is referred for mediation during the course of litigation is required to be reduced to writing, signed by the concerned parties and filed in court for the passing of an appropriate order. A settlement reached a pre-litigation stage is a contract, which is binding and enforceable between the parties.

In the event of failure to settle the dispute, the report of the mediator does not mention the reason for the failure. The report will only say "not settled". The mediator cannot be called upon to testify in any proceeding or to disclose to the court as to what transpired during the mediation.

Advantages of Mediation:

1. Mediation saves precious time, energy and money of parties, adopt from saving them from the harassment and hassles of a prolonged litigation. Its procedure is simle, informed and confidential and reduces worry and tension associated with litigation.

2. By disclosing the strengths and weaknesses of their cases, mediation enables parties to find and formulate realistic solutions to their conflicts.

3. Mediation provides an opportunity to communicate with the opposite party, in a neutral non-hostile atmosphere. It attempt to mend restore strained and broken relationships. If focuses on long term interests and relationships and fosters amity and relationship.

4. As the mutually agreeable solution reached by a negotiated settlement is tailor made for the parties, the solution by mediation can be molded, shaped, adjusted to suit the requirements of the parties. It gives choices and options in the solution to the conflict. It removes uncertainty and inflexibility from the result.

5. A mediation is voluntary, a party can opt out any time. The party is always in control of the dispute and its resolution.

6. The process is simple, flexible and confidential. It enables settlements of disputes which are not the subject matter of the legal proceedings this enables settlement of several connected matters also.

7. An adjudicating dispute resolution by means of litigation invariably leads bitterness, hostility and enmity between the parties to the his as the losing party will continue to nurture a grievance, against the successful party.

HOW TO SPREAD MEDIATION AND MAKE IT SUCCESSFUL:

1. By Drawing up national plan for making mediation a regular recognized alternative dispute resolution process provide for inclusive participation of lawyer, judges, NGOS and workers in the process of mediation.

2. By conducting programmes for increasing the awareness relating to mediation and its advantages.

3. By providing appropriate training.

4. By preparing a user's manual for mediators and an ADR reference Handbook for judges and Manual (1) Training mediators (2) Conducting awareness programmes for building awareness among refusal judges, lawyers and general public.

5. By evolving a scheme for using, the infrastrove and facilities of State Judicial academics and State Legal Services Authorities for mediation related activities.

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 MARRIAAGE 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 incorporates any provision relating to the ADR mechanism in any Civil Suit. However, it was only by the CPC (Amanded) 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 into 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.

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 spirit 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 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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