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ABSTRACT

Dispensation of justice by an independent judiciary within a reasonable time and easy access to justice for all, irrespective of any economic or other disabilities, are the cherished goals of any progressive democracy. Article 39A of the Constitution of India envisages equal, speedy and effective justice to the people. However, the existing judicial system is not able to dispense justice to people due to reasons beyond its control. The major problems are delay in disposal of cases, uncertainty of outcome, inflexibility in the result or solution, escalating costs of litigation and difficulties in enforcement, which, dissuade people from traditional litigation. Over a period, the credibility of the system has considerably eroded because the system is not addressing the issues of the people in the correct perspective. The failure of the existing system to manage the overburdening of cases has led to the development of Alternative Dispute Resolution (ADR) mechanisms, especially mediation so that the judiciary can offload some cases from its dockets.

Compared to the other ADR methods, mediation has certain distinguishing features, which makes it more attractive for resolving disputes. Mediation gives paramount importance to party autonomy, impartiality and confidentiality. Mediation provides long-standing solution that ensures sustainable peace and maintains the future relationship of the disputants. Statutory recognition was given to mediation by the reintroduction of Section 89 into CPC in 1999. Even though mediation was in practice for over a decade, it suffers from various infirmities due to many reasons.

The study expounded problems like anomalies in Section 89, CPC, problems in the Civil Procedure Alternative Dispute Resolution Rules and Civil Procedure Mediation Rules, 2003 (Model Rules), inconsistencies in the Mediation Rules of the High Courts, defects in the practices followed by various Mediation centres and the

problems from various stakeholders resulting in lacunae and shortcomings in the existing procedure.

The findings of the study are that the vagueness in section 89 CPC led to different approaches by the courts in different cases leading to inconsistencies and unsatisfactory results. It is also found that the infirmities in the Model Rules and the High Courts Rules result in lack of uniformity in the process and the procedure followed beyond the rules by the mediation centres in the conduct of criminal cases and Pre litigation Mediation upsets the effective implementation of the process. The study also revealed that the inappropriate reference of cases by the referral judges, lack of expertise of the mediators, defects in the drafting of the agreement, unreasonable withdrawal from the agreement by the parties, lawyers disinterest towards mediation and lack of sensitization of the stakeholders also are adversely affecting the progress of the process.

The study concluded that by introducing proper legislative framework and effective regulation of the conduct of the stakeholders, the majority of the problems encountered could be solved.

The study suggested amendments in Section 89, CPC, and the rules thereon and addition of new provisions in Section 89, CPC, the Model Mediation Rules and the High Court Mediation Rules. It also suggested for amendments in other laws including procedural laws and also general suggestions for improving the effectiveness of the mediation process.

The amendment of the statutes without any flaw may be a tedious task, though not impossible. On the contrary, a comprehensive statute on mediation is to be enacted, incorporating the necessary legal provisions, which may be a more feasible and practical approach. The legislation can regulate the process of mediation and ensure efficiency, transparency and accountability in the process. A draft legislation in this regard is annexed with the thesis.