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Modernizing Indian Civil Justice: A Comparative Study of United States Procedural Models with ADR and Case Management

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ABSTRACT

The Indian judicial system especially, the civil litigation continues with the significant delays, backlogs of cases and procedural inefficiencies. In the light of these challenges, this study explores the American legal system approach towards the civil case management and ADR mechanism. This paper examines the court management, case scheduling, and early mediation process and settlement judges of Unites states of America. This study mainly focuses upon the process of mediation for the identification of adaptable strategies for reforming Indian legal system.

In order to determine if comparable changes may be integrated, it also examines the Indian legal system, namely Section 89 of the Civil Procedure Code and pertinent sections of the Arbitration and Conciliation Act, 1996. India's increasing trend towards institutionalized mediation under judicial supervision is demonstrated by case studies such as the Ahmedabad Mediation Centre's success and the founding of AMLEAD.

The results support gradual changes starting with the freshly created cases, creation of court annexed mediation facilities, law education, and ongoing Indo- US cooperation. Such reforms will play a pivotal role in greater efficiency which will reduce pendency and increase confidence in Indian Civil Justice System.

Keywords: *ADR, mediation, India, United States, civil justice system, legal practice*

I. INTRODUCTION

The use of mediation process in United States legal system is cynical in the following aspects such as Firstly, the word mediation and modernization hardly match and belong to each other. This process is one of the oldest form of the ADR mechanism. Secondly, the country like United States has failed to recognize the potential of this process but the other countries have used this method to resolve disputes between the parties.

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Lately after recognizing the benefits and use of the mediation process of the ADR mechanism, United States has made this process as one of the critical and important part to resolve serious disputes, congestion and backlogs. Now in most of the part of USA, this process is offered as the alternatives to the traditional legal process. This process has become one of the most popular methods of ADR in USA.

Mediation has become the most suitable and leading method to resolve disputes without going before the bench where it can settle disagreements peacefully and effectively. Mediation process play a pivotal role in resolving the disputes between the parties where they come on a mutual agreement not taking the trail further in the court.

II. WHAT IS MEDIATION PROCESS?

The word mediation play an important role in the ADR mechanism. This concept has become very popular in the present state. It is highly effective and most convenient for all the parties to dispute. Earlier it was just a tool, but now it has been rooted as a culture in ADR.

When we discuss about the process and procedure of mediation, here the mediator is appointed to resolve the disputes. The mediator who is appointed acts in a very friendly manner without any power of to give decision on any of the dispute allotted to him. Even tough, he does not have such power, he brings both the parties together and helps them to find out a resolution which is manually acceptable.

The mediators appointed can be lawyers, retired judges, or technical experts who have undergone the mediation and ADR skills. However, when we talk about the advantage of the mediation-

1. It saves time.
2. It expertise mediators.
3. It is private and highly confidential process.
4. It is mutually acceptable resolution.
5. It is a process where disputed parties need to participate to find solutions.

A mediation process is said to be completed when both the parties come to a mutual agreement to resolve disputes. This procedure of mediation is usually confused with procedure of arbitration, where both are actually different in nature. In arbitration, the decision is based upon the evidence given by the parties to dispute whereas in mediation the decision is based upon the mutual agreement of parties dependent upon the skill of the mediator. Here in mediation, it depends upon the consent of the parties for the completion but in arbitration it is

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not required.

III. Mediation and United States of America

Mediation has now become a specialized subject across all the countries. Various law schools have introduced courses on mediation and now it has become a post-graduation specialization subject. Every mediator has to undergo training to resolve disputes because they need to follow the process given under the law. All the mediators have been successful in settling civil disputes and it has very rare that, parties go to trail in the court of law.

The state of California has the highest success rate, in comparison to other jurisdiction. And 90% of the cases do not go to trial. From the date of institution of suit or we can say from the date of filing of a suit, highly contested cases go through mediation process within 5-6 months.

In the USA, many lawyers took the initiative or the establishment of mediation centers. Basically, these are done both in private as well as by the reference of the court. Judicial Arbitration and mediation services, popularly known as, JAMS is one of the largest private providers of ADR services and this was founded in 1979. It consists of full time mediators with a proper infrastructure facilities to hold a large number of mediation. Both the government and judiciary has realized the importance of the mediation. The fees for the first four hours are borne by the state through court and further by the parties to dispute. Most of the cases get settled in less than four hours of the mediation.

IV. Case management in USA courts: balancing speed, fairness, and justice

Case management means the judges takes the charge of the case in a court for smooth and efficient functioning instead of lawyers control the pace of the dispute. In USA, the parties have realized that ADR mechanism or the mediation process will not work until both the parties do not understand that if they don't settle the dispute, they have to face trail in the court of law with all risk and already fixed date given by the judges. *Efficient case management involves wise time allocation and making sure the appropriate cases are handled by the appropriate channels, not hurrying justice. In this tactic, mediation is essential.*[3]Here, the judges should properly guide the parties, to choose the appropriate ADR mechanism to resolve disputes. *ADR initiatives, especially mediation, demonstrate the courts' dedication to helping individuals rather than just handling cases. Case management guarantees that justice*

[3] Judge Fern Smith, Director, FJC 2003

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is served promptly[4].The process of mediation and case management are considered as complementary and indispensable for each other.

A. Architect of the court: leadership of the Chief Justice in the U.S. judiciary

The Chief Justice reigns during arguments in person, conducts the debate in meeting, and has a major role in defining the mood and course for the federal government bureaucracy.

The Chief justice or the judge of San Diego Court which is the superior court in the California consists of 128 judges, 40 commissioners and 1600 staff members. The CJ mainly gives the time for the court management and judicial work. He monitors each court and gives solution to all the problems. He acts like a support system to all the courts as he has to see all the courts works efficiently. However, he is, supported by professionals and consultants who are highly paid.

Being the head of all the courts, he has to implement reforms, policies, gives tasks to all the judges guiding them and instructing them because if the administration becomes weak, all the judges will suffer. Thus he manages, the entire court system so that the 128 judges can work prominently without any disturbances. He also considers suggestions given by all the judges and senior lawyers whenever required, where they meet once in a month and discuss the problems faced by the litigants, lawyers and judges during the court hours or in practice.

B. Case allocation in courts: principles, practices, and judicial discretion

For each and every case the trail judges are appointed right from the beginning till the disposal of the trail. The time from filing the plaint and to the appearance of the parties, judges are actively involved at every stage of trail and gives the expert opinion and suggestions at the hearing of the trail. There are some early settlements as well as disagreements which are properly handled and tackled by the judges. The judges play a significant role during the trail. They judges follow the principles and practices to give the outcome on any trail i.e the judicial discretion. The judicial pronouncement of the trail marks as a precedent for any of the similar cases.

C. Scheduling mediation: a key to efficient dispute resolution

Judges are involved in every case from the very beginning. Along with the summons, they give the defendant a brief pamphlet explaining the mediation procedure. Attorneys discuss mediation and its results once the defendant shows there. In the event that things don't work out and the trail starts, the date is also set. After the trial starts, the judges decide what the

[4] Justice Sandra Day O'Connor, U.S. Supreme Court

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conflicts are about, make sure everything is ready, and gauge how long the trial will take.

D. Pre-trial settlements and judicial economy: a win-win solution

Parties have the chance to present their claims before a settlement judge, who is not the same as the trial judges, prior to the trial commencing. These judges are adept at resolving conflicts between parties. It has consistently been seen that cases that have been pending for a week are settled in an hour. These judges can resolve six cases in a single day, saving other judges six weeks. The pre-trial settlement option allows the parties to resolve their problems among themselves via mutual agreement in order to avoid a trial in court.

The concept that ordinary people choose black-robed judges, well-dressed attorneys, and elegant courtrooms to resolve their conflicts is incorrect. Those with issues, like those in pain, seek treatment as soon and cheaply as possible[5].

This the nation's judiciary shouldn't serve as the first stop for dispute settlement. They ought to constitute the sites where disagreements are resolved after other means of dispute resolution have been studied and tried[6].

Pre-trial settlement is more than a procedure; it is an approach of establishing peace in the hostile justice system[7].

Resolving without trials is an extremely civilized way to administer justice; it does not constitute an informal arrangement of justice[8].

E. Fixed dates in case management

It took more than a decade for the American judicial system to make this kind of breakthrough. In their discussions with California's top justice, they acknowledged that they are enacting these measures for freshly filed cases after a certain date and for much older cases, grouping them and exchanging case disposal figures among judges to promote speedy decisions.

V. MEDIATION IN THE INDIAN LEGAL SYSTEM

1. The Indian Parliament has also recognized the importance of ADR, which can be seen in the section 89 of Civil Procedure Code 1908, added by the 1999 amendment which

[5] Justice Warren E. Burger (Former Chief Justice of the U.S. Supreme Court) 2006
[6] Justice Sandra Day O'Connor (U.S. Supreme Court) 2009
[7] Justice D.M. Dharmadhikari (Former Judge, Supreme Court of India) 2012
[8] Chief Justice BN Kirpal (India)

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clearly states that the court should refer to the methods like arbitration, conciliation, mediation, or Lok Adalat to speed up the civil cases[9].

2. The section 61-81 of the Arbitration and Conciliation Act 1996 explain how the conciliation works and is similar to mediation. Section 64(2) and Section 68 states about setting up private institutions to help parties and to choose conciliators. The process of conciliation and mediation are sides of the same coin.
3. Indian trained mediators take up highly contested cases, which may be numerically small but can take a lot of quality time in the court.
4. In the year 2002 July, Justice BN Kripal established Ahmedabad Mediation Center. The Sr. Advocate Niranjan Bhatt explained in one of his articles the benefits of the ADR mechanisms especially court annexed mediation. He stated-

"*This is only a component of the legal system. Here, the parties involved have a chance to play a significant part in settling their own conflicts. Such a process will be accepted by the public due to its impartiality and honesty. ADR will function more easily and with greater authenticity if the court provides direction and assistance. Additionally, this will boost the courts' trust in handling matters quickly. This will ensure that the court operates effectively and that the parties reach a resolution more quickly. Additionally, this will demonstrate that mediation complements the legal system rather than takes its place*.".

VI. CROSS-BORDER SYNERGY: EXPANDING ADR AND MEDIATION THROUGH INDO–US LEGAL EXCHANGE

The ADR mechanism especially, mediation can be adopted in most of the different legal system. Mr Stepehn Malo who is the executive director of Institute for the study and development of legal studies which is known as ISDLS and others visited Indian courts and they thought the city of Ahmedabad in the state of Gujarat will be a good starting point. They started organizing seminars, conferences, and workshops with Ahmedabad Bar Association for judges and lawyers. A major conference on ***Delays in Civil Litigation*** led to the creation of institute for Arbitration, Mediation, Legal education & development a charitable trust founded by the senior lawyers of the bar in the year 1998.

[9] If it seems that there is a possibility of a settlement, civil courts may submit conflicts for Alternative Dispute Resolution (ADR), which includes arbitration, conciliation, judicial settlement (including Lok Adalat), or mediation, according to Section 89 of the Civil Procedure Code, which was added by the 1999 Amendment.It seeks to encourage speedier, out-of-court settlement and lessen the backlog of cases in Salem Advocates Bar Association v. Union of India (2003).

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VII. RESPONSIBLE USE GLOBAL COLLABORATION FOR JUDICIAL REFORM

Justice Wallance (US Court of Appeals) and Mr Mayo met the chief justice of Ahmedabad High Court in December 2000, and discussed about the reforming the judicial system with the help of ADR mechanism to offload the courts. The CJ of Ahmedabad High Court was impressed by the idea and thought of Justice Wallance and Mr Mayo.

After the discussion, four US trained mediators took workshops for city civil and small causes courts judges under the guidance of the Gujarat State Judicial Academy in February 2001. The judges were trained in a way that, they started adopting the new methods of ADR for the resolution of the disputes among the parties.

Top judges and officials from United States of America, discussed about the mediation, court case management with Indian Judges and legal experts in Ahmedabad on 13th September 2001.

CJI B N Kripal visited US courts and mediation centers in October 2002. Their Findings were reflected in a landmark case stating that- "*The constitutionality of Section 89 of the Code of Civil Procedure (CPC), which requires courts to submit matters to ADR, including mediation, was maintained in this historic decision. The Supreme Court underlined the importance of ADR procedures like mediation in ensuring prompt and efficient justice. A group, known as the Justice M. J Rao group, was established by the court to develop policies and procedures for conciliation and mediation. The establishment of court-annexed mediation institutes was made possible by this case, which also acted as a stimulus for institutionalized mediation in India*[10]*."* They appreciated the working system in Mediation centers and case management.

The Supreme Court stated that- "*Judges are expected to look into mediation or other ADR processes prior to a trial. The Court determined which subjects are suitable for mediation and set guidelines for judges to refer cases to other forms of dispute resolution (ADR), particularly mediation, early on. By emphasizing the need of pre-trial referral in order to avoid unnecessary delays, the ruling encouraged a compromise environment beyond conventional litigation. It also distinguished "court-annexed" mediation from "court-referred" mediation*[11]*". The court said that it was crucial to implement Section 89 of CPC 1908.*

"The Supreme Court recognized that courts had the power to refer parties to mediation, including at the appeal level. The Court underlined that mediation is effective in resolving

[10] Salem Advocate Bar Association v. Union of India (2003) 1 SCC 49.
[11] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010) 8 SCC 24.

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both trial-stage problems and lengthy difficulties in higher courts. The Court advised courts and parties to embrace mediation for the purpose of judicial economy and social harmony, ruling that it may be used to resolve even complex civil disputes[12]".

"In this judgement, the Supreme Court reaffirmed the need for courts to try their best to mediate conflicts, especially those affecting family and personal connections. The ruling highlighted how mediation may result in more effective, long-lasting, and compassionate solutions and how the adversarial process frequently exacerbates conflict. It maintained that mediation is a crucial instrument for maintaining relationships and lessening the load on the legal system[13]".

"This instance served as more evidence that mediation is an effective means of resolving organizational and economic conflicts. During a hearing on a dispute involving an education trust, the Supreme Court advocated for mediation and said that courts should be willing to submit even seemingly difficult cases to mediation[14]".

VIII. CONCLUSION

The process of mediation into the Indian judicial system framework has shown tremendous change on offloading the burden of the Indian courts. This inclusion of Section 89 CPC 1908, and the adoption of Arbitration and Conciliation Act 1996 demonstrates how the Indian legislature is committed to include ADR mechanism in Indian Courts.

A solid basis for importing best practices from the American legal system was established by the Indo-US exchange programs and cooperative initiatives, especially through organizations like the Institute for the Study and Development of Legal Systems (ISDLS). These consist of formalized pre-trial settlement procedures, mediation center's attached to the court, active judicial involvement in case management, and mediation and judicial officer training. An important turning point in public-private partnerships for the delivery of justice has been reached with the development of court-annexed mediation centers, like the one in Ahmedabad.

To sum it up , India's continuous judicial reforms, which are based on both domestic demands and international cooperation, demonstrate a progressive approach to civil justice. ADR and mediation are becoming essential components of a responsive, easily accessible, and effective legal system rather than being auxiliary instruments. To achieve prompt and comprehensive

[12] Moti Ram (D) Tr. LRs. v. Ashok Kumar (2011) 1 SCC 466.
[13] B.S. Krishnamurthy v. B.S. Nagaraj (2010) 1 SCC 689.
[14] Shikshan Prasarak Mandal v. Shriniwas Shikshan Prasarak Mandal (2020) 13 SCC 773.

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justice, they must continue to grow and integrate, bolstered by community involvement, judicial activity, and clear legislation.

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