

## ***Mediation opens a new door for quick settlement of cases***

By Laila T Ollapally

*The Indian judiciary has always been held by the public as a shining exception in an otherwise bleak scenario in the country's governance.*

Of late some doubts are being raised about the ability of our courts to deliver speedy and effective justice. The inordinate delays in settling cases and the consequent financial and emotional burden on the common man seeking redress through the judicial system are major concerns.

A quick look at the statistics will confirm these fears. Our courts are heavily overburdened and at the current rate of disposal even a minor case could take up to 22 years for final closure. A young 30-year-old woman seeking exit from an unhappy marriage could be well into her 50s by the time she gets her freedom, if she has to go through the judicial process.

Families litigating over joint assets could pass on the battle to the next generation before any settlement can be arrived at through the courts. Blaming an ineffective judicial system is not the solution. A typical district court judge handles over 200 cases everyday.

By the time the listing of the cases is done, often it is lunch break. In the post lunch session, cases are posted for evidence, arguments, interim applications, etc. Where is the time for dictating and pronouncing judgments? The situation is no different in the Supreme Court.

This alarming state of judicial backlog can be eased. It happened in the USA in the 70s and 80s. Courts were choked and a major crisis was imminent. The Roscoe Pound Conference of 1976 made a detailed analysis and suggested major changes in the justice delivery system.

As a result today cases that come to trial in American courts are heard and judgment pronounced within months. The key to this success is that only 1.5 per cent of legal disputes filed in the courts actually reach trial. Prior to that 98.5 per cent of these disputes are channelised and settled

out of court through various Alternative Dispute Resolutions Systems, the most popular being mediation.

## **Mediation in India**

Court-annexed mediation began in India about five years ago. Mediation centers have been set up by the high courts in Delhi, Chennai, Bangalore and some other states. Long pending cases from the courts are referred to the mediation centre where trained and certified lawyer-mediators and judge-mediators attempt to find solutions amongst the disputing parties. Matters, where a settlement is arrived at, are recorded in a compromise document which is sent back to the court for a final non-appealable decree. No further appeal is possible.

Over the years the system has been refined and a study of the statistics of the Bangalore mediation centre shows a very optimistic trend in settlement of court cases. The centre has obtained referrals of about 17,000 cases from the courts, including the Supreme Court, and over 62 per cent have been settled. It is heartening to note that matters pending for several years have often been settled within a few days, in the hands of able advocate-mediators.

A visit to the Bangalore Mediation Centre shows a cheerful, efficient organization. The ambience is informal and over 80 dedicated, senior advocates trained and certified as mediators voluntarily give their time to settle disputes. Litigants are all praise for the helpful service of the staff, who are court employees. The atmosphere is conducive to discourage litigation and arrive at a compromise. Mediators cite numerous cases of families torn asunder for years, settling their issues in a few days and leaving completely reconciled. "Why did we not have access to such a facility all these years?" is the common refrain.

As a practicing advocate-mediator I have been referred disputes which, on initial evaluation, are seemingly impossible to settle. However, through the mediation process settlement is achieved, often within a few sittings. Years of anguish, huge expense and years of court time are eliminated.

Two recent mediated settlements may interest the readers. The courts referred a 10-year-old case filed by an internationally known sports person against his sports association. It was a vindictive battle of egos with the individual being stripped of his membership rights and, according to him, humiliated in many ways.

The years of litigation, he said affected his performance at the international level. In mediation, all issues were brought out, informal apologies tendered, monetary claims and counter-claims withdrawn, and all rights restored to the sportsman. The president of the sports body admitted that such an outcome was most unlikely in the court.

The Family Court referred a bitterly fought, long drawn out matrimonial dispute. Both parties refused to budge from their stated positions. Counseling was of no avail. Children were caught in the crossfire. At Mediation, the real deep seated resentments were discussed and resolved. It was an amicable parting of ways with clearly spelt out financial terms and children visitation rights. Instead of a hurtling on mutually destructive path the outcome was freedom for both parties to peacefully lead separate lives. The three-year-old battle was settled within a few days.

Given the increasing referrals from the courts and greater public awareness, mediation in India is just beginning to make a major impact. The advantages of significant drop in pendency, reducing litigant expenses and inconvenience and opening a new vista for legal practice will make mediation the preferred method of dispute resolution in India in the years to come.

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