

SPEECH OF HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE, PUNJAB AND HARYANA HIGH COURT, CHANDIGARH IN A SEMINAR ON MEDIATION AND CONCILIATION ON 17.05.2008

Time has come to think to provide a forum for the poor and needy people who approach the Law Courts to redress their grievance speedily. As we all know the delay in disposal of cases in Law Courts, for whatever reason it may be, has really defeated the purpose for which the people approach the Courts to their redressal. Justice delayed is justice denied and at the same time justice hurried will make the justice buried. So we will have to find out a via media between these two to render social justice to the poor and needy who wants to seek their grievance redressed through Law Court. Considering the delay in resolving the dispute Abraham Lincoln has once said:

“Discourage litigation. Persuade your neighbours to compromise whenever you can point out to them how the nominal winner is

often a real loser, in fees, expenses, and waste of time”.

“In the same vein Judge Learned Hand commented, “I must say that as a litigant, I should dread a law suit beyond almost anything else short of sickness and of death”.

Mediation Centre serves as an inspiration for the legal system at large to promote the rule of law through efficient use of alternate dispute resolution mechanisms, in a manner that the doors of the court are open to one and all, and justice does not remain a “teasing illusion”. Efforts such as these are thus an effective means for the common man to reach the court and get their disputes resolved amicable and swiftly.

People in our country are simply fed up with the long delay in deciding cases. Not only are the litigants facing great hardship due to the massive arrears but even the lawyers and

Judges- the lawyers because there is pressure of the clients on them whose cases are not being taken up for hearing, and Judges because of the huge daily cause lists which are humanly impossible to clear.

In an age when an e-mail reaches America in ten seconds, people are not willing to wait 10 or 20 years for a case to be finally decided. We are blamed by the public for this delay, but people often do not know our difficulties. While most of the Judges are working hard to reduce the backlog, yet, because of the heavy filing and huge pendency it is not humanly possible for the judiciary to carry this massive load of cases alone. After all the Judge has to read the papers, hear the counsel, deliberate over the matter, and only then can he deliver a high quality judgment. All this takes time. Hence alternative dispute resolution mechanisms have urgently to be evolved, and the best method in my opinion is Mediation.

In USA probably, 80 to 90% civil matters and also some criminal matters are resolved by mediation, sometimes during the pendency of the litigation, and sometimes even before going to a Court of Law. Mediation is also practiced in some European countries. In America mediation has been practiced extensively for several decades.

Mediation, in varying forms, existed in India since time immemorial. In ancient times, village headmen or elders assisted in resolving disputes arising in their villages by providing their wise counsel. Often, people also went to the Maharaja to resolve their dispute. The decision of the Maharaja, or the village elder, as the case may be, was usually final. In many parts of India as well as the rest of the world, such informal systems still exist. However, in present times, judicial systems require legal authority and sanction, and it is thus incumbent on the courts to promote mediation enthusiastically. Lawyering and mediation are not diverging concepts, but two

sides of a coin. The coin, in this case, is a representation of the lawyer's knowledge and skill on dispute resolution to the benefit of his client. Moving from legal representation in courts to representation in mediation proceedings requires an enhanced assessment of what their clients are willing to forego and that they are not. A balance between the interests of the client and the goal of resolving the dispute amicably has to be made.

In order to encourage mediation, a committed role is required to be played both by the Bench and the Bar, in order to create awareness and faith in the system, which has evolved in the present form only recently, and improvisations continue. The enactment of the Arbitration & Conciliation Act, 1996, a welcome change from the old legislations that pertained mainly to arbitration, gave statutory recognition to other alternate dispute resolution mechanisms as well. Further, by inserting Section 89 in the Civil Procedure Code, such mechanisms gained greater

appreciation. The efforts of the Supreme Court, through the 2005 case of *Salem Advocates Bar Association, Tamil Nadu v. Union of India* are also laudable and greatly furthered the cause of promoting dispute resolution strategies such as mediation.

The advent of globalization and the growth of science and technology in our everyday lives has given rise to new causes of action, which call for a corresponding change in the way we see disputes today. Moreover, Mediation may be a useful mechanism to reduce the large backlog of cases that congest our legal system.

The availability of organized and well regulated mediation empowers lawyers to provide better service to litigants. It reduces costs, time and stress as compared to court based litigation. Moreover, the latter option is always available as a last recourse to parties who are unable to come to a solution to their dispute. In this manner, lawyers can greatly improve their practice and

efficiency. Mediation thus makes good professional sense.

Of all the factors that lawyers as well as clients need to take notice of, while in their role as mediators, preparation and patience are the most fundamental. Clients too need to have a different mindset while participating in mediation. Mentally, they should also be prepared to often encounter proposals that are wholly unacceptable to them, without exasperation, since such proposals and counter-proposals are common in the parties' search for a compromise acceptable to both.

The mediator must be in a position to be able to evaluate the case in an intelligent manner, by assessing the parties' desire to settle. The desire to reduce costs and time also play their part in this evaluative process.

The goal of the mediator and the parties must be to reach at a fair and mutually acceptable

resolution of the dispute. It is critical to bear in mind that the mediator is not a defender of the clients' cause only, in a manner that he rides forth like a knight in shining armour, to defend his client at all costs. He must instead develop a strategy that suits the convenience of both parties and signals confidence, rather than being offensive or intimidating. Overly strident behavior usually leads to a reciprocal response by the other party, thereby pushing the mediation process into the crevice of failure. Once this adjusted approach is understood, the mediator should exercise flexibility to reach a compromise that both parties agree to.

The courts, while promoting court-assisted mediation should also promote after-dispute discussion and critical analysis. This kind of scrutiny augments raises a mediator's abilities and encourages him to explore other refreshingly creative ideas to make the mediation successful.

It is, thus, the need of the time when the alternative dispute resolution is being developed as complementary means to the judicial process, to train judicial officers and volunteers objectively on the alternative dispute resolution techniques.

Mahatma Gandhi, in his autobiography, "The Story of My Experiments With Truth", while writing about his experiences in South Africa, said:

"My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven as under. The lesson was so indelibly burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby - not even money, certainly not my soul".
