

FACULTY OF JURIDICAL SCIENCES

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IV. Promoting use of ADR mechanisms

Promoting the widespread use of alternate dispute resolution (ADR) mechanisms such as mediation, conciliation, arbitration and lok adalats is an effective means of settling disputes without resorting to the formal litigation process. This can help ease the burden of courts, reduce pendency and ensure speedy delivery of justice. The organization of Lok Adalats for the amicable settlement of disputes in a timely and cost effective manner is the responsibility of the National Legal Services Authority and State and District Legal Services Authorities that have been established under the Legal Services Authorities Act, 1987.

The concept of ADR has now become an integral part of the CPC with the insertion of Section 89. In this context, it would be pertinent to refer to the decisions of the Supreme Court in Salem Advocates Bar Association v. Union of India and in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Pvt. Ltd Through these decisions the Court held that after referring a matter to the admissions and denials, courts should direct the parties to opt for one of the modes of ADR specified in Section 89. Courts may mandatorily refer certain categories of matters for resolution through ADR, namely, mediation, judicial settlement and lok adalats.

In October, 2014 the Minister for Law and Justice wrote to the Chief Justices of all High Courts stressing on the need for effective utilization of ADR mechanisms in civil cases. He inter alia suggested that High Courts may consider giving additional credit points to judicial officers/ judges in their performance appraisal for settling disputes through ADR mechanisms.

The Government has by virtue of the Arbitration and Conciliation (Amendment) Act, 2015 (Amendment Act) amended the Arbitration and Conciliation Act, 1996 to streamline the arbitration process and ensure that the arbitration proceedings are completed within a time bound period. Further, it also seeks to reduce the intervention of the courts in the arbitration proceedings by clarifying and reducing the grounds of judicial interference especially in

cases of interim relief as well as in seeking the enforcement of the arbitral award. The scope of judicial interference on the grounds of public policy has been amended to limit it to only (i) only where making of award was induced or affected by fraud or corruption; (ii) where the award is found to be in contravention with the fundamental policy of Indian law; (iii) or basic notions of morality and justice.

As per the Amendment Act, the arbitral award is required to be made within 12 months. The parties may by mutual consent agree to extend the term of the arbitral tribunal, for a term not exceeding 6 months. The Amendment Act further provides the parties the option to have the dispute resolved by fast track procedure.

V. Judicial data and statistics

The lack of comprehensive and accurate data relating to cases from courts across the country poses a hurdle to efficient policymaking. This issue has been noted by the Law Commission of India in its 245th Report as well as in the Action Plan of the National Court Management System set up by the Supreme Court. There is therefore an urgent need to evolve uniform data collection and management methods for our judicial system. Online information about case filings, case status and electronic copies of orders and judgments from courts that have already been computerized is available through the e-Courts portal. However, we are still some way from ensuring online real-time access to complete pendency data and statistics through the National Judicial Data Grid (NJDG). This requires support from the High Courts to complete the data entry of all pending cases of subordinate courts so that information gets updated on the NJDG servers on a regular basis. In order to promote uniformity in judicial data and statistics, it was resolved at the Conference of Chief Justices held in April 2015 that for statistical purposes the High Courts will count the main cases only towards pendency and arrears. Interlocutory applications will continue to be separately numbered in original proceedings before the High Courts exercising original jurisdiction.

While on the one hand judicial statistics are important for policy formulation by the judiciary and the government on the other hand it is equally important to place this information in the public domain so that the key stakeholders like advocates, litigants, researchers and the

public at large can be better informed about the state of the judicial system. The Annual Report of each High Court can play an important role in highlighting the work of judiciary as a public institution.

Adoption of electronic case management systems, automation of court processes and introduction of electronic case filings are important tools for achieving the timely enforcement of contracts. Accordingly, significant efforts are being made towards adoption of information and communication technology in district and subordinate courts under the eCourts Integrated Mission Mode Project.

The successful completion of the ICT initiatives and adoption of uniform data collection practices will facilitate better identification and classification of cases, reduction of paperwork, efficient monitoring and time management and improved tracking of overall pendency trends. It will also relieve judges and other court staff from routine administrative activities and allow them to focus on judicial functions. Real-time online data would enable High Courts to exercise proper supervision and control over subordinate courts.