

**Legal Aid and Advice Scheme with reference to
the Legal Services Authority Act, 1987 and the Code of Civil Procedure**

Legal Aid and Advice Scheme with reference to Legal Services Authority Act, 1987 and importance of Lok Adalat and Salient features of Arbitration and Conciliation Act 1996, Sec. 89 r/w Rule 1-A and 1-B of Order X Rule 5 (B) of Order XXVII of C.P.C. And Role of Courts in Achieving its Objects

1. Pendency of dockets in different courts in India is huge. Since three of Civil Procedure decades Indian judiciary is trying to innovate the modes to reduce pendency. Piling up dockets can be reduced in two ways. One mode is to dispose of the pending cases expeditiously and the other mode is to reduce the input of dockets. Recent amendments of the Code of Civil Procedure made a revolutionary change in justice delivery system by introducing all the aspects of Alternative Dispute Resolution mechanization in the Civil Procedure Code itself. Similarly, a complete face-lift is given to the law of Arbitration by the Arbitration and Conciliation Act of 1996, which repeals the earlier Arbitration Act. Legal Services Authorities Act 1996 carved out specific role of a Judge in the process of negotiation, mediation and conciliation. Let us first consider salient features of the statutory provisions.

Salient features of Section 89, rule 1 (a) and 1 (b) of Order X and Rule 5 (b) of Order. XXVII of the Code of Civil Procedure.

2. Section 89 of the Code of Civil Procedure casts a duty upon the Court to consider the cases in his Court to find out whether there exist elements of settlement, which may be acceptable to parties. If the Court finds existence of such elements in a matter the Court is duty bound to formulate terms of settlement and hand over the terms of settlement to the parties for their observation. After this stage, the Court has to consider views of the parties and reformulate the terms of a possible settlement if he desires it necessary and refer the matter for (1) arbitration (2) conciliation (3) judicial settlement including settlement by Lok Adalat and (4) mediation. The provisions under Order X Rule 1A, 1B and 1C implement Alternative Dispute Resolution Mechanism in more concentrated sense. Rule 1A requires that after recording admissions and denials the Court shall direct the parties to the suit to opt any of the above-mentioned modes of settlement outside the Court. After these directions the parties have to give option as to which of the four modes of settlement outside the Court their dispute be settled. After receiving this option the Court shall fix the date of appearance of parties before Forum or Authority for settlement of dispute by the mode opted by the parties. Rule 1 B of Order X provides a mandate for the parties to appear before such Forum for settlement of their dispute. Provisions under Rule 1C of Order X require that if the Authority to which the dispute was sent for settlement is satisfied that it would not be proper in the interest of justice to proceed with the matter further, it shall refer the matter again to the Court directing the parties to appear before the Court. Provisions under rule 5 B of Order XXVII impose duty on the Court in suits against Government or Public Officer to assist in arriving a settlement. The provisions require that the Court should make, in the first instance, every endeavor in such suits to assist the parties in arriving at a settlement in respect of subject matter of the suit. When the Court finds that in a particular suit there is reasonable possibility of settlement between the parties the Court may provide time to the parties to make attempts to effect such settlement.

Salient features of Arbitration and Conciliation Act, 1996.

3. Salient features of the Arbitration and Conciliation Act 1996 are as under;
i. Clear provisions are made to indicate commencement of the arbitral proceedings;

- ii. The requirement of giving reasons in the arbitral award to provide for transparency in the decision-making, unless parties have agreed that no reasons are to be given;
- iii. The provision for time limit for making an arbitral award and seeking extension of time, which led to considerable litigation, is done away. Undue delay on the part of an arbitrator is made ground for termination of the mandate of the arbitrator;
- iv. The supervisory role of the Court is reduced to a minimum and intervention of the Court can be only after the award is made;
- v. It is left to the arbitrator to decide the question of his jurisdiction and the existence and validity of the arbitration agreement;
- vi. The arbitrators are empowered to order interim measures in respect of the subject matter of the dispute;
- vii. International commercial arbitrations are to be decided in accordance with the rules of law designated by the parties as applicable to the substance of the dispute. In absence of such designation, the arbitrator is at liberty to apply the rules of law, which he considers to be appropriate;
- viii. The award is to become final and can be enforceable as if it is a decree of the Court if it is not challenged within the prescribed limitation or the challenge has been rejected.
- ix. The Act settled the controversy about domestic award and foreign awards by giving definition of both these terms;
- x. The Act recognises conciliation as one of the mode of resolution of dispute.

Salient features of the Legal Services Authorities Act, 1996.

4. Article 39 of the Constitution provides that State shall secure that the operation of Legal System promotes justice on the basis of equal opportunity and shall provide legal aid to ensure that the opportunities of securing justice are not denied to any citizen by reason of his economic, social or disabilities.

Government of Maharashtra formulated Maharashtra Legal-Aid and Advice Scheme in the year 1979 to discharge the above constitutional duty. The Scheme was brought in force from 10th November 1979. The Legal Services Authorities Act 1987 was implemented on 09/11/1995 and was adopted by State of Maharashtra on 06/02/1998.

Object of the Legal Services Authorities Act 1987 is threefold;

- i. To provide free and competent legal service to the weaker section of the Society;
- ii. To organize Lok-Adalat to secure that the operation of Legal System promotes speedy justice and
- iii. To create legal awareness amongst citizens.

Special feature of Legal Services Authorities Act

- i. It provides for participation of serving or retired Judicial Officer as main constituent of Lok Adalat. The other constituents of Lok-Adalat should be from social workers and lawyers.
- ii. Jurisdiction of Lok Adalat is extended to decide;
 - 1. Any case pending before the Court;
 - 2. Any matter, which is falling within the jurisdiction of Court and is not brought before the court for which Lok Adalat is organized except the cases relating to the non-compoundable offences.
- iii. Lok-Adalat is vested with the Powers of Civil Court. Lok-Adalat is however, empowered to specify procedure for the determination of a dispute coming before it. The Award of Lok-Adalat is provided status of decree and it is made executable and final.
- iv. Legal Services Authorities Act creates permanent Lok-Adalat having jurisdiction in respect of any matter between any party and public utility service in respect of which it is constituted. Permanent Lok-Adalat is vested with the powers to decide the dispute by conciliation proceeding. Permanent Lok-Adalat is guided by the principle of natural justice, objectivity, fair play, equality and other principles of justice but not bound by the procedure

of the Code laid down in the Code of Civil Procedure and the provisions of Indian Evidence Act.

Role of the Courts in achieving objects of Legal aid and Advice Scheme and amended provisions of the Code of Civil Procedure.

Amended provisions of Code of Civil Procedure discussed above require that the Judges have to make conceptual change in the aptitude while dealing with matters. The above-discussed provisions require that the Judges are no more required to silently dispose of the matters after the parties conduct the trial by adducing evidence. The Judges are required to play an active role in identifying the cases in which there is element of settlement by Alternative Dispute Resolution Mode. The Judges have to formulate terms of settlement and have active consultation with the parties to make the terms of settlement functional to achieve settlement by Alternative Dispute Resolution mode. Besides this, the Courts have to route every matter through the conciliators, mediators, arbitrators or negotiators to explore the possibility of disposal of said matter by either of the above modes selected by the party before the matter is tried.

The Judges are required to train themselves in implementation of Dispute Resolution Modes. The Judges have to impress upon themselves that Alternative Dispute Resolution helps them to reduce workload of Courts and thereby help them to focus attention on other cases. As some of the Alternative Dispute Resolution Modes like mediation and negotiation require settlement of dispute by parties themselves the Judge has to establish dialogue directly with the parties. Here it is necessary to refer provisions of section 89(2) (d) of the Code of Civil Procedure, which require that where a dispute has been referred for mediation the Court shall have to affect a compromise between the parties. It is necessary to note that the essential element of mediation is the presence of the third party neutral i.e. Mediator. The mediator is a person who takes entire process to work. The Mediator makes them aware of BATNA (Best available alternative to negotiated settlement) and WATNA(worst available alternative to negotiated settlement). So, while settling the matter by mediation the Judge has to play role of third party neutral.

The Judicial Officer also has to work as constituent in Lok-Adalat. He is also assigned duties to head of consultation proceeding. Conciliator is required to be aware of the circumstances of the case; wishes expressed by the party and need for the speedy settlement. It is pertinent to note that the provisions of S. 89 are somewhat analogues in section 73 (1) and 73 (2) of the Arbitration and Conciliation Act, 1996.

Considering all these facets of the amended provisions of the Procedure Code the Judge is certainly required to shun his traditional attitude and become more participative in the proceeding so as to find out ways and means to settle the matter by one of the Mode of Alternative Dispute Resolution.

While discharging his new role the Judge should be aware of ethic and practical considerations in choosing whether and how to settle the dispute by conciliation, mediation or negotiation. He should make functional use of his power of faculty of knowing things without conscious reasoning, which is known as intuition.

It is the need of time that the Judges should ready themselves to discharge function of an active mediator, sensible conciliator and practical negotiator.
