enter into compromises reluctantly and thereby purchase the peace to avoid unhealthy situations in their life. If the respective Governments provide all necessary infrastructure to the Courts and the Court annexed mediations the disputing parties may make use of the same and would get justice with minimum costs within a reasonable time. Parties should be encouraged to resort to ADR mechanisms as contemplated under Section 89 of Code of Civil Procedure Code so that the Courts can concentrate on the trial of serious nature of cases.

Since mediation is one of the ADR mechanisms, the mediator, who is a third party neutral assists the disputing parties to creatively resolve their disputes without going for trial. A mediator presents a unique opportunity for dispute resolution with the involvement and participation of all the parties and their advocate. The mediator shall use special skills and communication techniques to help the litigant to bridge their differences and find a solution to their dispute. The mediator shall leave the decision making power with the parties. He shall not decide what is fair or apportion blame; but he shall act as a catalyst to bring the two disputing parties together by defining issues and eliminating obstacles for communication and settlement. He must explain the entire process of mediation, procedural guidelines, confidentiality in private session, substantive law in respect of their dispute and the likelihood of the decision of the Court, if they do not choose the ADR methods and facility to go back to the Court, if the dispute is not settled in the mediation process *etc.*, in the brainstorming session regarding the options available to them. It is high time to amend the law relating to mediation as recommended by the Law Commission of India.

For changing the mindset of presiding officers of the Courts, learned Advocates and the parties, who are approaching the temple of justice, the Central Authority, State Authority, District Authority and Mandal level Committee constituted under the provisions of the Legal Services Authorities Act, 1987 shall conduct workshops from time to time and shall give proper training to the mediators who are generally the professional Advocates with the participation of litigant public, who would be benefited more if their disputes are settled outside the Court purview, but, within the Court complex, since the mediation centres are located in the respective Court complexes.

"Hurt nobody by word or deed.

Be true and just in one's dealings"....*William Gilpin*

APPOINTMENT OF JUDGES

By

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Confusion is being created due to long pending non appointments of constitutional Judges to various High Courts and Supreme Court of India in reasonable time. The feelings of the Chief Justice of India of Supreme Court cannot be left in lurch by our law makers. Mutual respect is expected between The Judiciary and Parliament otherwise it leads to constitutional jeopardy, leading to annoy the intention of founding fathers of Constitution of India in this biggest Democratic Country.

It took 15 years time to dispose off Mr. *Salman Khan* case despite the latest technology available in judiciary! It is time to discuss about the causes for delay in Indian Courts. One case can be adjourned to any times and the discretion is with the Court according to law. Granting of time should be limited by incorporating law. Delay in disposal of cases on Courts create confidence to habitual offenders and great disappointment to victims. The crime rate will be deteriorated if cases are disposed in time. Who is responsible is not may assertion in this article but how to solve this problem is the outcome of this article.

The number of Judges has to be increased from trial Court to apex Court. Approximately 2 years time is taken to select a Judge this should be curtailed to fillup exiting vacancies. It is better to constitute a special cell with Judges for recruitments for avoiding delay. The consent of Government is also vital aspect on issuing G.Os., and presidential formalities, as early as possible this executive process has to be cleared it will help to fill up vacancies. There is one Judge for 10 lakhs people in India! So on warfooting basis selections have to be done and new posts have to be created.

The amenities provided in trial Courts are very low they have to be improved. Supplying good quality of computers, printers and staff members are necessary. Except in identified and part heard cases, the call work of unimportant cases, has to be entrusted to the online system for checking of postings and routine steps and through the automatic generated system concerned advocates can get adjournments dates alerts through S.M.S. and emails *etc.*, it will save one hour time in every trial Court.

The software technology has to be utilised for effective representations and to avoid clash of date for hearing in different Courts by same councils. Service of summons *etc.*, can be also done by using the S.M.S. alerts since in every village there are cellphones in India.

Supplying copies of records : Under Section 207 of the Criminal Procedure Code 1973 in any case where the proceedings has been instituted on a police report, the Magistrate shall without delay furnish to the accused free of cost, a copy of each the following :—

(i) The police report;

(ii) The first information record recorded under Section 154;

(iii) The statement recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as it's witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 137;

(iv) The confessions and statements if any recorded under Section 164;

(v) Any other documents or relevant extracts thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173;

Provided that the Magistrate may, after perusing any such part of statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous he shall instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through a pleader in Court.

For a transparent trial this section is incorporated in Cr.P.C. The entire work of defence Counsel or Judge will be based on this record but in many under trial prisoners cases also police are not filing legible number of copies of record with charge-sheets and it

is stalling the procedure of trial. Hence police officers have to cooperate on this aspect for supply of legible records with required number of copies to be give to each accused. Then only the Advocate on record or Free Legal Aid Counsel can do their cross-examination effectively without seeking adjournments. It also removes the prejudice of accused.

Section 309 Cr.PC contemplates that power to postpone or adjourn proceedings :—(1) In every enquiry and trial the proceeding shall be continued from day-to-day until all witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded :

> Provided that when the enquiry or trial relate to an offence under Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code, the enquiry or trial shall, as far as possible be completed with in a period of two months from the date of filing of charge-sheet.

(2) If the Court, after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to postpone, or adjourn, any enquiry or trial, it may from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by warrant remand the accused if in custody :

> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding 15 days at a time.
>
> Provided further that when witnesses are in attendance, no adjournment or post-ponement shall be granted for special reasons to be recorded in writing.
>
> [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show-cause against sentence proposed to be imposed on him].
>
> [Provided also that-
>
> (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of the party;
>
> (b) Provided that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.
>
> (c) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross-examination of the witness, as the case may be].
>
> *Explanation 1* :—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is reasonable cause for a remand.
>
> *Explanation 2* :—The terms on which an adjournment or post-ponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

A close study of this section unfolds that unfettered powers conferred on Courts to check adjournments but it is not being strictly implemented practically. In many cases advocates ask time by representing that they are in other cases. It should be curtailed and junior Counsel should be encouraged to commence trials.

Recently the Supreme Court of India in *AG v. Shiv Kumar Yadav and another*, 2015 (4) Crimes 1 (SC), held that in administration of justice criminal trial should be fair trial as Article 21 of the Constitution of India emphasizes and when statutory laws are silent

Court may evolve a principle to meet situation and statutory provisions should be interpreted keeping the principle of Fair Trial in Mind and trial should be fair not only from the view point of the accused but also from that of the victim and society.

A CRITICAL STUDY – WHETHER *EX PARTE AD INTERIM* INJUNCTION ORDER WITH OUT ASSIGNING ANY REASONS AS CONTEMPLATED UNDER S.39 CPC (3) IS *NON-EST*

By
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It is manifest, even a cursory reading of Order 39(3) CPC makes it clear that Court shall record reasons for its opinion as an when *ex parte ad interim* injunction is granted.

Proviso to Order 39(3) CPC clearly lays down that when it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting injunction would be defeated by delay. The general rule is no injection should be granted without notice to the opposite party. The expectation is that it can be granted without notice where the Court felt the object of granting such injunction would be defeated by delay if notice was issued to the opposite party. To apply exemption the Court shall record its reason for its opinion that the object of granting injunction would be defeated by delay which would arise by ordering notice to the opposite party. Hens such *ex parte* orders without assigning reasons violates the mandatory requirements of Order 39(3) CPC.

However may be due to sheer inadvertence or other wise of oblivious of position, the subordinate judiciary is not following the mandate and granting *ex parte ad interim* injunction without assigning reasons, which renders the *ex parte interim injunction void*, as laid down in 1980 (2) ALT 472, 1985 (2) ALT 339 (DB).

Illustrations of some of the orders of subordinate Judges which do not contain the reasons of dispensing with notice.

> "Heard, perused the documents in view of the contence of petition 1. The prayer of the petitioner is just proper. Issue interim injunction and notice to the other side call on 20.4.1985"

2. Injunction granted restraining the defendants not to alienate the property till further orders. Comply with Order 39(3) posted to 27.4.2016.

Dealing with the aforesaid order mentioned as No.1 it is held

> "The impugned order suffers from the infirmity of want of any reason, making the order illegal and so must be held to be void. The order which lacks reasons which must be assigned as envisaged under Order 39 Rule 3 read with proviso in granting injunction without notice to the opposite party is vitiated and the same cannot seek protection of Section 99 CPC and so the same is held void and unwarranted."

This Division Bench decision is subsequently followed and reaffirmed in 1988 (2) APLJ 113 in yet another Division Bench Decision 1980 (2) ALT 472 = 1981 (1) APLJ 309 = 1980 APHN 247, it was held