

PAPER.28

Informality, an advantage

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A formal legal system is governed by processual norms. Often the substantive claims are at the mercy of the process. Of course the processual safeguards are designed to avoid and avert unfairness, partiality, bias or injustice. But, then, the legal process, while acting as a filter, develops a resistance that decides the measure of response of the legal system. Any unfairness that escapes through the filter of process is sometimes camouflaged by the resistance. This affects the utility of law as a functional process.

Take for example, the framing of issues in a civil case. The processual law insists on it to keep the trial on track, without straying in to irrelevancies. Issues are framed on the briefs in the pleadings by the parties. Various points of variance are culled out in the form of issues so that evidence may be confined to those aspects only. But then, do the issues confine the trial to a unilateral dimension. It has to be remembered how a human problem has many facets, personal, collective, ethical, emotional, cultural, legal, social, psychological, etc. The issues so framed on pleas always miss the multidimensionality of the problem. There by, many avenues of the resolution of the problem are missed by the formal legal system.

Mediation scores an advantage there. It decidedly avoids processual formalities. The operative factors are as many as there are facets to the problem. Any resistance in the process does not weaken the robust approach by the parties. It is upto the disputants to cash in on this advantage and develop the dynamism needed to grasp the solution that often eludes the formal system. The parties will miss the bus here to if they fail to do so. Mediation would readily respond to the demands of the emotional, cultural, psychological and other sensitivities during the resolution of the dispute. May be a key to the resolution lies there. The search for a solution should be in the areas where it is.

This advantage can also be used to craft the solution matching the particular needs of the disputants in that dispute, in short, a tailored solution. This cannot be attempted in the formal system, which works on an assembly line, as it were. Such custom made solutions are likely to afford more satisfaction to parties in contexts where the law of only the stereotyped solution designed for all.