

MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

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5.12.2009: Felicitation of Hon'ble Mr. Justice S.B. Sinha, Former Judge, Supreme Court of India / Former, Chairman Mediation & Conciliation Project Committee, Supreme Court of India at the Conference Room, Tis Hazari Courts, Delhi



20.12.2009: At the Mediation Centre Gujarat High Court on the conclusion of Training Programme – (L-R) are Ms. Poonam Mendiratta, Advocate/ Trainer, Ms. Anju Bajaj Chandna, AD&SJ/ Trainer, Delhi Mediation Centre, Hon'ble Mr. Justice Mohit S. Shah, Judge, High Court of Gujrat, Ms. Kalpana Vin, Principal Judge, Family Court, Ahmedabad, Sh. Sudhir Shah, Secretary, Gujarat State Legal Services Authority along with the participants of the training programme.



19.12.2009: On the occasion of Awareness Programme for Referral Judges of the District Courts, Faridabad. (L-R) are Sh. V.K. Khanna, AD&SJ/ Trainer, Delhi Mediation Centre and participant Referral Judges.

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Mediation is a voluntary, informal, structured process whereby a neutral third party, mediator by facilitating negotiation and communication assists the parties to a dispute to arrive at an amicable settlement. Courtesy, respect, good-listening, trustworthiness, energy, perseverance, patience, neutrality, impartiality are the basic requirements of a mediator. ***Confidentiality is the essence of mediation. Confidentiality in mediation is to be transparent in accordance with the Mediation and Conciliation Rules, 2004, as applicable in Delhi. Efficiency of mediation requires the fullest candour on the part of disputing parties. It becomes implicit that the mediator would abide with the postulates of confidentiality and would respect the element of good faith in which the parties make disclosures. Mediators just as doctors who cure the root causes of agony are placed under fiduciary position. The position of the mediator who is neutral between at least two contesting parties to dispute is coveted.***

Rule 20 of the Mediation and Conciliation Rules, 2004, as applicable to Delhi specifically ordains upon mediator to keep confidential such information given by a party to mediator in the implicit faith that he would not disclose it to the other party. Rule also requires that the records, reports or other documents received or perused during mediation proceedings are not to be divulged. The parties to mediation are required to maintain confidentiality in respect of events that transpire during mediation including views expressed by a party in the course of mediation, proposals made or views expressed by the mediator, at times made by a party, the fact that a party had or had not expressed willingness to accept the proposal. Audio and Video recording of mediation proceedings and recording of evidence of the parties or witnesses are also barred by the Rule. Mediator to preserve the confidence of the parties and neutrality is to limit his/her communication to the Court to the extent of the failure of the parties to attend the mediation or the arrival of settlement between the parties or an assessment made by mediator that a case not suited for settlement through mediation. The settlement agreement signed by the parties to mediation is also to be forwarded to the Court in which the suit or proceeding is pending. Rule 27(8) imposes on mediator a duty to be faithful to the relationship of trust and confidentiality imposed in the office of a mediator. Yet coupled with this bounden duty of maintaining confidentiality is the duty imposed on the mediator in terms of Rule 27 (9) to conduct all proceedings related to the resolution of dispute in accordance with the applicable law and in terms of Rule 27(3) to uphold the integrity and fairness of the process of mediation. A duty is also cast on the mediator to disclose any interest or relationship likely to affect impartiality. Yet upholding fairness of the process of mediation and conducting of proceedings in accordance with the applicable law, cast a dual duty of transparency in confidentiality. Section 39(1) of the Cr.P.C. cast a duty on every person, aware of the crime of, or of the intention of any

other person to commit any offence punishable under stipulated sections therein in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police Officer of such commission or intention. Whilst mediator in terms of Rule 22 of the Mediation and Conciliation Rules, 2004 is immune for anything done or omitted to be done by him or her bonafidely, a mediator cannot illegally under the garb of confidentiality allow parties to a dispute to mediation to agree to an undisclosed agreement to commit an offence. Where one party to dispute is not adequately legally represented, unaware of the process and procedures of law and merits and demerits of his claim it would be the bounden duty of the mediator to request the said disputant party to seek legal advice before arriving at any settlement. The mediators thus who are placed in such powerful fiduciary positions in whom complete faith and trust is reposed are thus expected to commit no breach of faith whatsoever.

Delhi Mediation Centre which effectively started functioning from 02.08.2005 under the inspiring guidance of Hon'ble Mr. Justice S.B. Sinha, Former Judge, Supreme Court of India/ Former Chairman, Mediation & Conciliation Project Committee, Supreme Court of India on 9.12.2009 had the privilege of felicitating His Lordship. Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India/ Chairman, Mediation & Conciliation Project Committee, Supreme Court of India, Hon'ble Mr. Justice A.P. Shah, the Chief Justice, High Court of Delhi, Hon'ble Mr. Justice Madan B. Lokur, Judge High Court of Delhi/Member, Mediation & Conciliation Project Committee, Supreme Court of India, Hon'ble Mr. Justice Sanjiv Khanna, Judge, High Court of Delhi/ Chairman, Mediation Monitoring Committee, High Court of Delhi, Hon'ble Mr. Justice S.N. Dhingra and Hon'ble Mr. Justice M.C. Garg, Judges, High Court of Delhi/ Members of the Mediation Monitoring Committee, High Court of Delhi also graced the occasion. Certificates were distributed to the trained mediators who had completed 40-hours training at the Delhi Mediation Centre. About 150 trained mediators of the Delhi Mediation Centres were present to pay regards to Hon'ble Mr. Justice S.B. Sinha who has laid the foundation of mediation in the country. Hon'ble Mr. Justice S.B. Sinha, Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A.P. Shah, expressed the necessity to resort to mediation in cases where complicated issues of law and fact were not required to be determined. Their Lordship's highlighted the benefits of mediation whereby all parties to dispute a result as winners unlike adversarial litigation.

The efficacy and efficiency of mediation has been highlighted through the following words of Ms. Shail Jain, AD&SJ, Delhi, who participated in the Orientation Course on '*Principles of Mediation, Importance and Role of Referral Judges and Case Management*' conducted by the Delhi Judicial Academy for the 100 officers of the District

Judiciary, at The Bristol Hotel, Gurgaon from 13th -15th November, 2009 :-

न्याय की बदलती परिभाषा

- समाज की मुश्किलें समझने का वक्त है,
न्याय की परिभाषा बदलने का वक्त है।
1. मेरे दर पे आँसू न गिरने पाये किसी का,
हर हृदय में फूल खिलाने का वक्त है।
 2. सिर्फ फैसले के कागज से कुछ नहीं होता,
हर चेहरे से ख़ौफ़ मिटाने का वक्त है।
 3. नयी अदालतें, नये मंच खोलना काफी नहीं होगा,
हर मज़लूम को भरोसा दिलाने का वक्त है।
 4. भाषण देने और सभा करने से कुछ नहीं होगा,
एक दूसरे का हाथ पकड़कर साथ चलने का वक्त है।
 5. हकों की लड़ाई अन्जाम तक तो पहुँच ही जायेगी,
पर अन्जाम को समय से लाने का वक्त है।

शैल जैन

अति. जिला न्यायाधीश

Mediation looks to the future, focuses on relationship, seeks restructured relationship results in accommodative resolution and custom made solution through the process where every individual in the process feels that he has been given adequate hearing. It is essential to mention that a case in which parties have an ongoing relationship - be it matrimonial, contractual or social are comparatively more appropriate for referral to mediation. An inherent characteristic of the process of mediation is its ability to re-orient the relationship of the parties. Mediation is a temple of hope where disputants with the assistance of a neutral mediator are able to move into the other parties shoes, admit and realize the fruitlessness of litigation which often is based only due to unstated desires, greed and egos which are subtly turn down through the process of mediation. This is encapsulated in the words of an Advocate/Mediator Ms. Sunita Rani whilst she was undergoing mediation training in December, 2007:-

आओ आस जगाएँ

आओ-

मिल कर बैठें,
हाथ बढ़ाएँ - सोचें
जाने अनजाने, खींचा-तानी में
कितने व्यर्थ विवाद हैं पाले
मतभेदों, अभिमानों में
कितने जीवन स्वाह कर डाले ?

बहुत हुआ अब

खोलें संशय के सब बंद दरवाजे
हटाएँ कड़वाहट वाले जाले
रिश्ते हैं नन्हें-पौधे-
मिलकर सींचें, इनको पालें
शब्दों की मरहम धरे-
उन घावों पर जो
संघर्षों ने दे डाले।

जीवन

क्षणभंगुर है -
सत्य को जाने, मर्म पहचाने
मिलकर खोजें
मंजिल को पाएँ
मध्यस्थता की राह अपनाएँ
मनोभावों के द्वारों पर
आशाओं की बंदनवार सजाएँ
मुस्कानों के फूलों से
मन का हर आँगन महकाएँ
मित्र बने - मैत्री फैलाएँ
विश्वासों की उज्ज्वल जोत जगाएँ
निष्पक्ष रहें - मध्यस्थ कहलाएँ
आओ मध्यस्थता अपनाएँ

सुनीता रानी,
एडवोकेट

Mediation & Conciliation Project Committee, Supreme Court of India in meeting held on 5.11.2009 in the august presence of Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India/ Chairman, Mediation & Conciliation Project Committee, Supreme Court of India, Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India and Hon'ble Mr. Justice Madan B. Lokur, Judge High Court of Delhi/ Members, Mediation & Conciliation Project Committee, Supreme Court of India, have laid down the following guidelines for 'Training of Mediators and Referral Judges and the Awareness Programmes':-

- In every state the Chief Justice of the High Court shall constitute a Monitoring Committee of two or three Judges of the High Court who are interested in mediation activities. The Committee shall monitor the conduct of awareness programmes and the training of mediators and referral Judges and also the functioning of the mediation centres. As far as the Delhi Mediation Centre is concerned, its functioning shall be handed

over to the Monitoring Committee constituted by the Chief Justice of Delhi High Court.

- *There shall be a main mediation centre in a State and it shall be situated preferably at the Principal Seat of the High Court of that State.*
- *Mediation Centres may be started also at such district centres where there are adequate facilities and fair chances for the success of mediation programmes. However, there must be sufficient number of trained mediators, a full time coordinator and trained Referral Judges. Such Mediation Centre shall be under the control of the Monitoring Committee, constituted by the Chief Justice.*
- *As far as possible, training of mediators and judicial officers shall be conducted at the main mediation centre. However, it may be conducted at district centres, only if there are sufficient number of trainees and necessary facilities for imparting training.*
- *Mainly advocates may be trained as mediators, but a few judicial officers who have the potential to be trainers/mediators can also be given training in mediation so that they may be utilized as expert trainers/mediators, and co-ordinators.*
- *All the Judicial Officers in the State shall be given training as Referral Judges.*
- *To begin with Awareness Programmes may be conducted at the state level and at the district level. Taluka level awareness programmes can be considered at a later stage.*
- *The periodicity of awareness programme at each place, shall depend on the availability of identifiable target groups who are likely to be benefited by the awareness programme. Emphasis can be given to groups like NGOs, Chamber of Commerce, Trader's Association, Members of Local Bodies, Advocates (practicing on civil, labour, motor accident claims and family disputes etc.), litigants having large number of cases (like banks etc.) They should be made aware of the process and scope of mediation and its benefits.*
- *MCPC shall endeavour to work in collaboration with NALSA and State Legal Services Authorities. It is desirable that the mediation centres set up with the funds given by NALSA are also guided and monitored by the Monitoring Committee constituted by the Chief Justice of the High Court.*
- *The maximum number of participants for the Awareness Programme and Referral Judges Programme may vary according to the available facilities and the requirements of the place. But in the case of Training in Mediation, it is desirable not to have more than 12 to 15 trainees in a batch."*

A National Mediation Plan was also approved to be implemented.

Pursuant thereto, on 8.12.2009, a Monitoring Committee to oversee the functioning of the District Mediation Centres in Delhi has been constituted by Hon'ble the Chief Justice, High Court of Delhi, under the Chairmanship of Hon'ble Mr. Justice Sanjiv Khanna with Hon'ble Mr. Justice S.N. Dhingra and Hon'ble Mr. Justice M.C. Garg as its esteemed Members.

Delhi Mediation Centre continues to strive to take the benefits of mediation across the frontiers of the country through 40-hours intensive mediation Training Programmes, Refresher Courses for trained mediators and referral judges and Awareness Programmes for litigants, advocates and judicial officers.

Ahmedabad (Gujarat): 5-6, 12-13 & 19-20.12.2009: A 40-hour mediation training programme was held at Mediation Centre, Gujrat High Court. The target group was 12 advocates practicing in the High Court of Gujarat and one Principal Judge, Family Court, Ahmedabad. Ms. Anju Bajaj Chandna, AD&SJ/Mediator Trainer was the Resource Person for all phases. Ms. Anuja Saxena, Sh. Ajay Mehta and Ms. Poonam Mendiratta, Advocate Mediator Trainers were the Resource Persons for 1st, 2nd & 3rd phase respectively. The report of Ms. Anju Bajaj Chandna says it all:-

The training programme was inaugurated by Hon'ble Mr. Justice M.S. Shah, Hon'ble Judge of High Court of Gujarat. His Lordship also graced the training programme at the time of conclusion and guided the participants and encouraged them to work towards mediation movement in Gujarat. The group was very receptive and supportive. The techniques of mediation, were learnt and participants took keen interest in the entire programme. They felt that they have immensely benefited by this training programme professionally as well as personally. At the time of conclusion, participants were informed that they would soon be getting cases for mediation. The programme was successful.

Faridabad (Haryana): 19.12.2009: A Mediation Awareness Programme for 12 Referral Judges of District Courts, Faridabad was conducted. Sh. V.K. Khanna, AD&SJ/Trainer of Delhi Mediation Centre was the Resource Person whose report brings forth that at the end of programme, enthusiasm for referral of cases to mediation in terms of Sec. 89 of CPC was effectively generated. The report of Sh. V.K. Khanna is as follows

*Some of the participants pointed out that parties do not appear in the mediation centre after the case was referred. In this regard, it was brought to the notice of referral judges that they can **play their positive role** in ensuring that the parties reach the mediation centre at the*

time of referring the case and referral judge could bring it to the notice of parties about the mediation process as a method of conflict resolution which was less formal and parties can be made aware of **advantage of mediation**.

It was also brought to the notice of the referral judges that they should make enquiries in every case whenever possible and there was a need for remaining alert **in looking for elements of settlement**. It was submitted that 1-2 minutes of enquiry about "elements of settlement" in a case before them was crucial in overcoming any initial barrier or mental block of the litigants/ advocates and that this was possible only if we as Judge were clear about the mediation process.

It was brought to the notice of referral judges that referring the case to the mediation centre should not become a **delaying tactic** and they should not refer the case to the mediation if the parties were **not actually willing to settle**.

Lack of Awareness on the part of Advocates- During interactive session, some of the referral judges pointed out that **more cooperation** from the side of advocates was required and therefore advocates should also be made **aware** about the mediation and there should be some mediation training programmes also for the members of public and advocate. It was informed that **no programme** for the awareness of advocates had been conducted so far there.

Lack of Mediation Pamphlets for distribution- It was found that mediation pamphlets were not available in the courts for circulation to the litigants/ member of public to bring awareness about the programe.

Role of referral judge **as an educator** about the mediation process was specifically emphasized and the referral judges were requested to make available pamphlets about mediation centre for the awareness of the public, litigants and also advocates.

It was stated by the participants that there was **no full time mediator** in the mediation centre. There were three judges who are acting as mediator (part-time) but were not sitting in the mediation centre for full day or half day. It was stated that due to pressure of work in the court, they were not in a position to give sufficient time to the mediation.

During interaction, it was also expressed by some participants that the present **"unit system"** for granting lesser unit in cases when the matter was referred to the mediation centre requires to be modified.

At the end of the programme, the participants observed that the number of referrals to the mediation centre would increase. They expressed their satisfaction and appreciated the utility of this Awareness Programme.

Ranchi (Jharkhand): 4-8.12.2009: A 40-hours Mediation Training Programme under the aegis of Mediation & Conciliation Project Committee, Supreme Court of India in association with the Judicial Academy, Jharkhand, Ranchi was conducted at the Judicial Academy, Jharkhand, Ranchi. The target group was 8 Judicial Officers of Higher Judicial Service, 5 of whom were Presiding Officers of the Family Courts and 8 Practising Advocates, 2 from the High Court and other from the District Courts. Mr. Dharmesh Sharma, AD&SJ/Master Trainer, Sh. Dinesh Kumar Sharma, AD&SJ/Secretary, Delhi High Court Legal Services Committee/Trainer and Sh. Sunil Kumar Aggarwal, AD&SJ/ Trainer were the Resource Persons. As reported by Sh. Dharmesh Sharma, the trainers whilst acting as facilitators stressed on participation of the group and 8 Role plays were performed and chances were given to participants to act as mediator. On 5th & 7th December, 2009, the participants along with the Resource Persons visited the Mediation Centre of District Courts, Ranchi. The trainers along with trainees performed live mediation in three cases, each trainer mediator took up a case, each case of which was matrimonial dispute, each of which was settled, resulting into several connected matters pending in the courts being settled. Certain aspects detailed by Sh. Dharmesh Sharma which would enhance the mediation programme in Ranchi are as follows:-

- Though a Judicial Officer has been appointed as co-ordinator in the Ranchi Mediation Centre, no appointment as yet made in other mediation centres such as Dhanbad, Jamshedpur, Bokaro etc.
- Though, there are Eight Trained Mediators available –ten Judicial Officers and ten Advocates who were trained in two batches way back in November 2008 and January 2009, a proper roster regarding allocation of work to the Judicial Officers and Advocate Mediators, is yet to be prepared to streamline the mediation work.
- Equal allocation of work with a transparent policy for assigning work to the advocate mediators be prepared.
- Advocates mediators also lamented about the fact that they are not yet given any fee or honorarium for their services.
- No specific days for mediation are earmarked and when the referred cases pile up, they are taken up in Lok Adalats."

PLAN AFOOT

A new sprawling complex called "Nyaya Sadan" for the Jharkhand Legal Services Authority has been constructed little away from the High Court premises and the District Courts Complex where in a special portion with four Rooms have been earmarked to hold mediation work on regular basis along with separate rooms for organizing continuous Lok Adalat.

Delhi

Tis Hazari Mediation Centre: 2.12.2009: A live show on mediation was telecast on DD-1 to highlight the benefits of mediation and to dispel apprehension about the process of mediation. Hon'ble Mr. Justice Madan B. Lokur, Judge, High Court of Delhi / Member, MCPC, Supreme Court of India and Sh. O.P. Gupta, AD&SJ/Incharge Tis Hazari Mediation Centre were the speakers.

5.12.2009: A Refresher Course for the Referral Judges on the '**Benefits of Mediation, Cases appropriate for Referral (Civil and Criminal)**' was conducted at the Tis Hazari Courts. Sh. O.P. Gupta, AD&SJ/Incharge Tis Hazari Mediation Centre and Ms. Aditi Chaudhary, AD&SJ/Trainer were the Resource Persons.

6.12.2009 & 13.12.2009: The second in-house 'Training of Trainers' programme was conducted at Delhi Mediation Centre for 5 Judicial Mediators, namely, Ms. Sangeeta Dhingra Sehgal, Sh. P.K. Saxena, Sh. Arun Kumar Arya, Sh. V.K. Bansal and Sh. Bharat Parashar, all AD&SJs and 5 Advocate Mediators, namely, Sh. Rajesh Kumar Gupta, Ms. Anupam Dhingra, Dr. Renu Aggarwal, Sh. K.K. Makhija and Sh. Surender Singh who were trained as Trainers to impart mediation skills and enhance mediation awareness in distant parts of the country. Ms. Anu Malhotra, Director, Delhi Judicial Academy, Dr. Sudhir Kumar Jain and Ms. Shalinder Kaur, AD&SJs and Master Trainers of Delhi Mediation Centre were the Resource Persons.

Karkardooma Mediation Centre: 5.12.2009: A Refresher Course for the Judges Posted in East District was conducted at the Conference Hall, Karkardooma Courts. Sh. R.P.S. Teji, AD&SJ/(officiating Incharge, Karkardooma Mediation Centre), Dr. Sudhir Kumar Jain, AD&SJ/Master Trainer, Sh. D.S. Punia, AD&SJ/Mediator Trainer and Sh. Ajay Mehta, Advocate Mediator Trainer were the Resource Persons.

23.12.2009: An Awareness Programme for Lawyers and Litigants on the topic '**Mediation as a Tool for Timely and Responsive Justice**' was conducted at the Conference Hall, Karkardooma Courts. Sh. Vinod Goel, AD&SJ/Incharge Karkardooma Mediation Centre, Sh. Rajiv Mehra, Sh. V.K. Khanna and Sh. Manmohan Sharma, all AD&SJs/Trainer and Ms. Anuja Saxena, Advocate Trainer were the Resource Persons. More than 60 lawyers attended the programme. Queries and doubts on the several aspects were clarified.

Rohini Mediation Centre : 18.12.2009: A Refresher course for the Referral Judges was conducted at conference Hall, Rohini courts Complex. Ms Bimla Maken, District Judge-VIII presides over the programme. Shri Chander Shekhar, Co-ordinator, Mediation Centre and Dr Sudhir Kumar Jain, AD&SJ/Master Trainer were the Resource persons.

ACCOMPLISHMENTS TILL 31.12.2009

Delhi Mediation Centre till 31.12.2009 has settled **17682** cases (including **4375** connected cases) amicably and finally. The statistics of December, 2009 reflect the continuously increasing expeditious efficacy of the benefits of mediation.

Tis Hazari Mediation Centre (01.12.2009 - 31.12.2009)	Rohini Mediation Centre (01.12.2009 - 31.12.2009)	Karkardooma Mediation Centre (01.12.2009 - 31.12.2009)
Cases Referred - 528	Cases Referred - 154	Cases Referred - 263
Cases Disposed of - 307	Cases Disposed of - 115	Cases Disposed of - 164
Cases Settled - 166	Cases Settled - 63	Cases Settled - 148
(Significantly, these include 22 matrimonial matters, 6 petitions for maintenance U/s 125 Cr. P.C., 22 suits for injunction / possession / damages, 71 suits for recovery, 11 other Criminal Matters, 1 suit for Custody & Guardianship, 17 other Civil Suits, 1 Probate Suit and 3 Rent Cases)	(Significantly, these include 14 matrimonial matters, 6 petitions for maintenance U/s 125 Cr. P.C., 12 suits for Recovery, 13 Criminal Compoundable cases, 13 cases under Section 138 of NI Act, 4 suits for Injunction/possession/damages and 1 other civil suit.	(Significantly, these include 16 labour and management disputes, 38 matrimonial matters, 27 cases under the Negotiable Instruments Act, 6 MACT matters, 13 suits for Recovery, 13 suits for Injunction/possession/damages and 1 Probate suit, 19 other civil suits, 3 cases of Custody & Guardianship and 4 Rent matters.
Connected Cases Settled - 52	Connected Cases Settled - 18	Connected Cases Settled - 44
Total settled - 218	Total settled - 81	Total settled - 192