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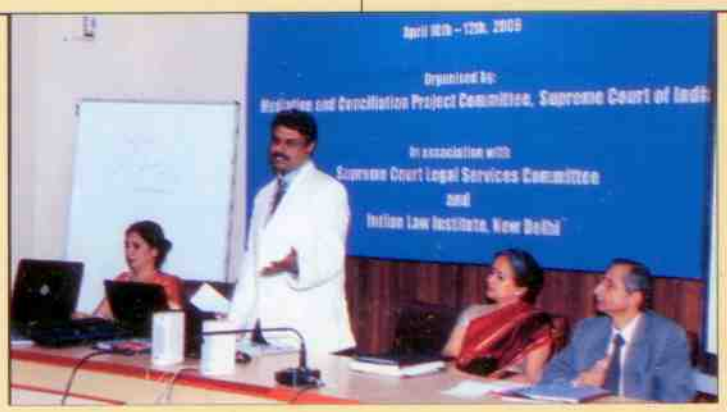
MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

Volume 3 (April, 2009) Number 4

10.4.2009 – On the occasion of Inauguration of the intensive 40 hours mediation training being imparted to Supreme Court Advocates under the aegis of the MCPC in association with the Supreme Court Legal Services Committee and the Indian Law Institute, New Delhi. Seen on the occasion of Lighting the Lamp are – Ms. Susheela Sarathi, Advocate Mediator Trainer of the Bangalore Mediation Centre, Hon'ble Mr. Justice R..V. Raeendran, Judge, Supreme Court of India and Member of the MCPC, Hon'ble Mr. Justice S.B. Sinha, Judge Supreme Court of India and Chairperson of the MCPC, Hon'ble Dr. Justice M.K. Sharma, Judge Supreme Court of India, Ms. Laila Olapalli, Advocate Mediator Trainer of the Bangalore Mediation Centre and Prof. S. Siva Kumar, Officiating Director, Indian Law Institute, New Delhi.

3.4.2009 – On the occasion of the inauguration of the intensive Mediation (40 hours) training being imparted at Nagpur under the aegis of the MCPC – Seen addressing the participants is – Mr. Suresh Shah, Registrar Administration and Secretary Legal Services Sub-Committee of the Nagpur Bench of the Hon'ble High Court of Bombay. Seen seated L to R are – Mr. Ajay Mehta Advocate Trainer Mediator of the Delhi Mediation Centre, Hon'ble Mr. Justice D.D. Sinha, Judge of the Hon'ble Nagpur Bench of the High Court of Bombay and Ms,. Poonam Mendiratta, Advocate Mediator Trainer of the Delhi Mediation Centre.



10.4.2009 – 40 hours intensive mediation training imparted to the Supreme Court Advocates at the Indian Law Institute. Seen are L to R – Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India and the Resource Persons of this Training Programme Ms. Laila Olapalli, Mr. B.C. Thiruvangadam and Ms. Susheela Sarathi all, Advocate Mediator Trainers of the Bangalore Mediation Centre.

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Mediation, which is gradually but consistently revolutionizing the dynamics of the justice delivery system is like a temple. As said by Evan Ash, a mediator with the Domestic Services, 10th Judicial District State of Kansas, ***"We as mediators are the high priests of hope: our practice is the temple that brings that grace to the world. May we humbly honour the work we have been given to do"***. It is said that the floor of this temple is confidentiality, from where the disputants freely engage each other in a discussion which is unique to their issues, concerns and relationships without external interpretation or inference. This basic essence of mediation that is confidentiality enables disputants to ventilate the underlying causes of the dispute without fear of communication of their needs and weaknesses of their case, to the other side, which enables them to reach an amicable solution through a neutral third party, the mediator, without loss of dignity. Yet, it cannot be overlooked that the mediators are governed by ethical standards and the Canons of Ethics for Mediators proposed by the Hon'ble Mediation and Conciliation Project Committee at Bangalore based on experience and inputs taken from the Model Standards of Conduct for Mediators approved by the American Arbitration Association, American Bar Association and the Society of Professionals in Dispute Resolution (USA) and the Ethical Standards from Mediators developed by the Law Council of Australia, subsequently re-worked by Members of the Alternative Dispute Resolution Committee of the Law Council of Australia, which prescribe as follows:-

Confidentiality:

A Mediator shall

a. be faithful to the relationship of trust and confidentiality imposed in him as a Mediator; and

b. maintain the reasonable expectations of the parties with regard to confidentiality.

Comment:

(i) A Mediator should not disclose any matter that a party requires to be kept confidential unless:

(a) A Mediator is specifically given permission to do so by the parties at the mediation with an interest in the preservation of the confidence; or

(b) A Mediator is required by law to do so.

(ii) It is good practice for a Mediator to inform the parties that all communications to him/her are privileged and cannot be disclosed by him/her to anybody, unless specifically permitted to do so by the party disclosing the privileged information.

Rule 27 (i) of the Mediation & Conciliation Rules, 2004 framed by the Hon'ble High Court of Delhi lays down that the mediator shall conduct all proceedings related to the resolution of a dispute, in accordance with the applicable law. Rule 27(b) thereof ordains that the mediator shall not carry on any activity which would reasonably be considered as a conduct unbecoming of a mediator. Thus the mediator whilst ensuring that the proceedings are conducted in conformity with the essence of confidentiality, has to ensure transparency of the application of law to the facts of a given dispute. Section 39 of the Code Criminal Procedure, 1973 which prescribes, that every person aware of the commission of, or of the intention of any other person to commit any offence punishable under the sections of the Indian Penal Code, prescribed therein, shall 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. Thus settlements arrived at through mediation though confidential proceedings; have to essentially be within the contours of law. Mediation which has now taken roots across the length and breadth of the country under the visionary guidance of the Hon'ble MCPC thus requires to be statutorily regulated. A National Mediation Council and State Mediation Councils for ensuring governance of mediation in the country are urgently and imminently required.

The Delhi Mediation Centre which commenced functioning on 2nd August, 2005 has had the proud privilege of cases having been referred to it by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi. As of date, of the 199 cases referred by the Hon'ble Supreme Court to the Delhi Mediation Centre, 61 of the same have been settled amicably. Of the 142 cases referred by the Hon'ble High Court of Delhi to the Delhi Mediation Centre, 48 cases have been settled amicably.

Recognition to the benefits of Mediation has been given a greater impetus now, under the aegis of the Hon'ble Mediation and Conciliation Project Committee, taking the techniques of mediation to the very portals of the Hon'ble Apex Court. Pursuant thereto, an intensive 40 hour mediation training programme on the Techniques and Concepts of Mediation was conducted in two phases from 10th to 12th April, 2009 and 17th to 19th April, 2009 at the Indian Law Institute, New Delhi in collaboration with the Supreme Court Legal Services Authority. The said training was imparted to 21 advocates practicing in the Supreme Court. The training was inaugurated by Hon'ble Mr. Justice S.B. Sinha, Hon'ble Judge of the Supreme Court of India and the Chairperson of the Mediation and Conciliation Project Committee, where Hon'ble Mr. Justice R.V. Raveendran, Hon'ble Judge of the Supreme Court of India and Hon'ble Mr. Justice Madan B. Lokur, Hon'ble Judge of the High Court of Delhi, both Members of the MCPC gave their valuable insight to the august gathering. ***Hon'ble Mr. Justice S.B. Sinha in his Lordship's inaugural address emphasized that it was the fundamental right of every litigant to have access to justice and to self- determination and to approach a forum of his own choice. His Lordship urged the august audience present to awaken to the need to resort to mediation effectively so that 'docket exclusion' which has started affecting the legal system in the country is expeditiously and sensitively halted. Hon'ble Mr. Justice S.B. Sinha also expressed that Mediation was a process of bringing about amicable and synergistic solutions to a conflict arrived at through a structured optimistic process leading to a 'win - win' solution with satisfying results.***

His Lordship also reiterated that it was time for mediation jurisprudence to be developed for the governance of mediation and its implementation for which there is no statutory enactment so far, which was required to be urgently addressed. His Lordship also emphasized the need of the canons of the mediation ethics to be enforced through a National Mediation Plan throughout India. It was also expressed by His Lordship that through the process of mediation, hope can be generated in the public that, through the process of amicable negotiation, lawful settlements of disputes can be arrived at expeditiously through a neutral mediator and that thus Law and Hope can co-exist.

Hon'ble Mr. Justice R.V. Raveendran, Judge Supreme Court of India and Member of the MCPC in His Lordship's Presidential Address observed that through the process of mediation which is emerging as an effective mechanism of alternate dispute resolution, disputes which were a consequence of egos, greed, hurt, vengeance, misunderstandings and jealousies could be resolved easily through effective communication and negotiation skills through the flexibility of the informal process of mediation, which gives options to litigants/disputants to formulate solutions according to their choices within the framework of law. Hon'ble Mr. Justice Madan B. Lokur, Judge of the High Court of Delhi and Member of the MCPC apprised the august gathering of the factum that recognition to the efforts made to propagate mediation by the MCPC had gained recognition abroad, in as much as the Delhi Mediation Centre, which was a result of the first Pilot Project of the MCPC, had become a Member of the Asian Mediation Association. His Lordship also highlighted the various activities conducted by the Mediation and Conciliation Committee whereby awareness and referral mediation programmes for litigants, judges and lawyers had been conducted in several States across the country. The efforts of the Hon'ble MCPC to build capacity of the trained mediators and to maintain the quality of the process of mediation were acclaimed by Hon'ble Mr. Justice Madan B.Lokur, Judge High Court of Delhi and Member of the Hon'ble Mediation & Conciliation Project Committee.

The various intensive 40 hours training programmes conducted across the country under the aegis of the Hon'ble Mediation & Conciliation Project Committee were also delineated. The Delhi Mediation Centre had the proud privilege of one of its Master Trainers, Dr. Sudhir Kumar Jain, AD&SJ, Delhi being the Co-ordinator of this 40 hours intensive training programme conducted by the Mediation & Conciliation Project Committee under the aegis of the Supreme Court Legal Services Committee and the Indian Law Institute to Advocates of the Supreme Court. The other Resource Persons were Ms. Laila Olapalli, Ms. Susheela Sarathi and Mr. B.C. Thiruvangadam, Advocate Mediator Trainers of the Bangalore Mediation Centre. Hon'ble Dr. Justice M.K. Sharma, Hon'ble Mr. Justice A.K. Ganguly, Judges of the Hon'ble Supreme Court of India, Hon'ble Mr. Justice Mukul Mudgal, Hon'ble Mr. Justice A.K. Sikri, Hon'ble Mr. Justice S.Ravindra Bhat, Hon'ble Mr. Justice S.K. Kaul, all Judges of the Hon'ble High Court of Delhi, Mr. P.P. Malhotra, Solicitor General of India, Mr. P.P.Rao, Senior Advocate Supreme Court of India and Trained Judicial Mediators of the Delhi Mediation Centre graced the occasion.

The increasingly continuing benefits of mediation are drawing litigants/disputants to the process of mediation subtly. The following programmes are indicators of the same:-

3-5 April, 2009 & 10-12 April, 2009 : Nagpur:- An intensive 40 hours training programme was conducted under the aegis of Hon'ble Mediation & Conciliation Project Committee at the Conference Hall, Judicial Officers' Training Institute, (JOTI), Nagpur, Maharashtra where the target group comprised of 12 Advocates and 2 Chartered Accountants. This was the second 40 hours mediation training programme conducted at Nagpur. The said training programme was inaugurated by Hon'ble Mr. Justice D.D. Sinha, Hon'ble Judge of the Nagpur Bench of the High Court of Judicature at Bombay. His Lordship encouraged and motivated the participants. Mr. Suresh Shah, Registrar (Administration) and Secretary, Legal Services Sub-Committee, Nagpur Bench delivered the welcome speech. The Resource Persons here were Ms. Poonam Mendiratta, Mr. Ajay Mehta, both Advocate Mediator Trainers of the Delhi Mediation Centre in the first phase of the training progrmme from 3-5 April, 2009. Mr. Alok Aggarwal, AD&SJ and Master Trainer and Mr. Ajay Mehta, Advocate Mediator Trainer of the Delhi Mediation Centre were the Resource Persons for the second phase from 10-12 April, 2009.

18.4.2009:- A Seminar on 'Mediation Makes Business Sense' was organized on 18.4.2009 by the Gujarat Chambers of Commerce & Industry, Ahmedabad. The programme was attended by Hon'ble High Court Judges, Judicial Officers from the District Courts, Trained Mediators of Gujarat High Court Mediation Centre, Advocates practicing in the State of Gujarat and people form the business community.

Sh. Kamal Trivedi, Advocate General, Gujarat State delivered the Guest of Honour Address, Hon'ble Mr. Justice Mohit S. Shah, Judge High Court of Gujarat & Chairperson, Supervisory Committee, Gujarat High Court Mediation Centre delivered the Guest of Honour Address, Hon'ble Mr. Justice K.S. Radhakrishnan, Chief Justice,High Court of Gujarat and Patron-in-Chief, Gujarat High Court Mediation Centre delivered the Presidential Address, Hon'ble Mr. Justice R.V. Raveendran Judge Supreme Court of India & Member of the Mediation & Conciliation Project Committee, the Chief Guest delivered the Keynote Address, Mr. Rupesh C.Shah, President G.C.C.I delivered the Welcome Address and Sh. Pranit K. Nanavati, Chairman G.C.C.I. Legal Advisory Committee, delivered Vote of Thanks.

Mr. Harish Dudani, Additional District & Sessions Judge and Master Trainer highlighted the activities of the Delhi Mediation Centre. In order to spread the awareness about the concept of mediation, a role play was performed by

Ms. Nanishal Lav Kumar, Sh. Prakash Jani, Sh. Yogeash Thakker, Sh. Mehul Rathore and Sh. Pitambar Abhichandani (all Advocates practicing at the Gujarat High Court (and Trained Mediators). The role play lucidly explained the concept of mediation and it was highly appreciated by the guests.

19.4.2009:- A Mega Mediation Camp was organized by the Delhi Mediation Centre at the Tis Hazari District Courts of cases filed by ICICI Bank. 10 Judicial Mediators and 10 Advocate Mediators presided over the said mediation proceedings. 52 cases pending in the District Courts filed by the ICICI Bank were taken up in the said camp of which, 46 cases were amicably settled.

25.4.2009:- District Rajkot (Gujarat): This was a landmark day in the legal history of District Rajkot (Gujarat) which witnessed the inauguration of Mediation Centre at Civil Courts, Rajkot, by Hon'ble the Chief Justice Gujarat, Hon'ble Mr. Justice Radhakrishnan. Report of Ms. Neena Bansal Krishna, AD&SJ/Master Trainer of the Delhi Mediation Centre says it all:-

"The programme was well attended not only by the judicial officers but also by advocates, litigants and also by NGOs which reflected that in fact it is the entire society which is willing to experiment with mediation as an ADR mechanism.....

As a step towards equipping the stakeholders in the legal system with the knowledge of mediation, the Hon'ble High Court of Gujarat organized two training programmes at Rajkot; one for 16 advocates and 6 judicial officers at Rajkot and the other training for the 16 advocates and 6 judicial officers at Jamnagar. The trainers for the group for Rajkot were Mr. Niranjan Bhatt Advocate/Mediator Trainer, Justice Mehta Retired Judge of Gujarat High Court/Trainer, Mr. Harish Dudani, OSD Delhi Legal Services Authority an also Master Mediation Trainer, Dr. Sudhir Kumar Jain, and Ms. Neena Bansal Krishna, both AD&SJs and also Master Mediation Trainers of the Delhi Mediation Centre were the trainers for Rajkot. The training has been scheduled in three phases on the weekends commencing from 25.4.2009 i.e. on 25th ,26th April, 2nd , 3rd, 9 & 10th May, 2009.

In the first phase of training the participants were made aware of the importance of learning and adult training. It was emphasized that the training was not only to help the adults who already possessed requisite information but refine and organize the same. The importance and relevance of the ADR mechanism with special emphasis of mediation training was highlighted which was followed by an explanation about the process of the mediation which was divided into four stages i.e. Introductory, Joint Session, Separate Session and finally Agreement. That the techniques of communication which, if used effectively can be more effective and powerful than a pleading or arguments of law were explained.

The participants already had some brush with mediation with many of them having already undergone some mediation programme in the year 2005. The curiosity of the participants to acquire the requisite skills to become effective mediators, was immense and they all participated in the first phase of the training with great enthusiasm. At the time of conclusion of the first phase many questions were put by the participants reflecting their enthusiasm and eagerness towards the second phase of the training which is to take place on 2nd and 3rd of May, 2009."

29.4.2009:-Refresher Course on 'Techniques of Mediation: Negotiations/Impasse' for Mediator Judges and Advocates was held at the Karkardooma Mediation Centre from 4.00 p.m. onwards. Dr. Sudhir Kumar Jain, AD&SJ/Master Trainer of the Delhi Mediation Centre, Mr. V.K. Khanna, AD&SJ/Mediation Trainer were the Resource Persons for the same. The course was specially designed for better understanding of negotiation tactics used by the parties and better management of parties expectations by the mediators. The Resource Persons also deliberated on how the situations of impasse during mediation can be avoided and if they arose how the impasses could be resolved. The Mediators who attended the course were enthusiastic and raised several contemplative queries.

ACCOMPLISHMENTS TILL 30.4.2009

The Delhi Mediation Centre has till 30.4.2009 settled 13,315 cases (including 3232 connected cases) amicably and finally. The statistics this month reflect the continuously increasing expeditious efficacy of the benefits of mediation:-

Tis Hazari Mediation Centre (01.4.2009 – 30.4.2009)	Rohini Mediation Centre (01.4.2009 – 30.4.2009)	Karkardooma Mediation Centre (01.4.2009 – 30.4.2009)
Cases Referred - 564 **Cases Disposed of - 338** **Cases Settled - 183** (Significantly, these include 35 matrimonial matters, 8 petitions for maintenance U/s 125 Cr. P.C, 2 custody and guardianship matters, 28 suits for injunction/possession/ damages, 81 suits for recovery, 3 suits for partition and 3 cases u/S 138 of NI Act. **Connected Cases Settled - 56**	Cases Referred - 188 Cases Disposed of - 86 Cases Settled - 61 (Significantly, these include 10 matrimonial matters, 5 petitions for maintenance U/s 125 of the Cr. P.C, 2 MACT matters, 22 suits for Recovery, 4 Criminal Compoundable cases and 5 under Section 138 of NI Act. **Connected Cases Settled - 9**	**Cases Referred - 233** **Cases Disposed of - 167** **Cases Settled - 157** (Significantly, these include 43 labour and management disputes, 33 matrimonial matters, 14 cases under the Negotiable Instruments Act, 16 suits for injunction /possession/ damages, 18 petitions for maintenance U/s 125 of the Cr. P.C and 6 MACT matters, 20 suits for Recovery, and 1 rent matter. **Connected Cases Settled - 53**