

MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

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12.04.2008 - At the Western India Regional Conference on Mediation - Seen L to R are the Resource Persons - Dr. Pradeep B. Kakkad, M.D, Consulting Psychiatrist and Management Trainer / Coach, and Mr. Harish Duduani, Dr. Sudhir Kumar Jain, Ms. Neena Krishna Bansal, Ms. Asha Menon - all ADJ's and Master Trainers of the Delhi Mediation Centre.

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The Delhi Mediation Centre has till 30.04.2008 disposed of 7905 cases referred to it for mediation (including 1978 connected cases) within a short span from August 2005 till now. The efficacy and expeditious harmonious amicable relief which the use of mediation has been able to deliver to litigants received recognition from none other than the Hon'ble Prime Minister, Dr. Manmohan Singh in the plenary session of the Conference of Chief Ministers and Chief Justices of the entire nation held on 19.04.2008 at Vigyan Bhawan, New Delhi under the aegis of the Ministry of Law and Justice. The Hon'ble Prime Minister mentioned in his address the initiative taken by the Hon'ble the Chief Justice of India in forming the Mediation and Conciliation Project Committee and the proposed plan of action to impart training in mediation to advocates and judicial officers as a mode of an ADR technique in order to help, in bringing an end to an era of delayed justice. The huge pendency and back log of cases in the country apparently need more steps than those already taken to bring justice to the door step of litigants.

In order to implement the short term scheme for implementation as formulated by the Mediation and Conciliation Project Committee, awareness programmes in the form of seminars and colloquiums are being organized in full swing across the entire nation to help change the mindset of all stakeholders i.e. litigants, lawyers, judges and the public. These include: -

- The South India Regional Conference on Mediation organized at Bangalore on 19th and 20th January 2008,
- A programme conducted to develop mediation relevant to the Indian Context from 22.02.2008 to 24.02.2008 at the National Judicial Academy, Bhopal,
- The East India Regional Conference on Mediation held from 8th to 9th March, 2008 at Ranchi.
- The Western India Regional Conference on mediation which was held at Indore, Madhya Pradesh from 12.04.2008 to 13.04.2008 under the aegis of the M.P. State Legal Services Authority.

The Western India Regional Conference on Mediation was divided into two programmes. In one of the programmes there were Judges from the Hon'ble Supreme Court i.e. Hon'ble Mr. Justice S. B. Sinha Chairman of the MCPC and Hon'ble Mr. Justice R. V. Raveendran, Hon'ble Mr. Justice A.K. Patnaik, Chief Justice of the High Court of Madhya Pradesh, Hon'ble Mr. Justice Swatanter Kumar, Hon'ble the Chief Justice of the High Court of Bombay, Hon'ble Mr. Justice Deepak Misra, Judge High Court of Madhya Pradesh and Hon'ble Mr. Justice S.K. Kulshreshtha, Executive Chairman of the State Legal Services Authority of

Madhya Pradesh. Hon'ble Judges from the High Court of Madhya Pradesh, the Chief Justices from the High Court of Madhya Pradesh and Bombay, Hon'ble Mr. Justice M.S. Shah, Judge, High Court of Gujarat and the Executive Chairmen of the State Legal Services Authorities from the host State of Madhya Pradesh, from the Goa Bench of Maharashtra, from Gujarat and from Rajasthan also participated in the deliberations.

The programme for the Hon'ble Judges of the High Court was an orientation programme to familiarize their Lordships with the concept of mediation, the need for training of mediators, the vision of the MCPC and the documentation of a policy to be adopted and to discuss plans and strategies to ensure the success of mediation, as an appropriate dispute redressal mechanism. The said deliberations included deliberations of mediation ethics and a discussion on evolving a short term plan for the year 2008.

The other programme included participants from the District Judiciary. The programme for the District Judiciary was to acquaint the 30 participants, being District and Principal Judges from Madhya Pradesh, Gujarat and Rajasthan. with the process of mediation, its concept and techniques, and its characteristics vis a vis the adjudicatory system, arbitration, conciliation and Lok Adalat. Some of the participants from Maharashtra and Gujarat had previously participated in the mediation awareness programmes. The object of this programme was also to give adequate inputs of understanding to the participants as to what mediation is, so that they could be more informed as Referral Judges U/s 89 of the CPC as to what mode of ADR was best suited for a particular case.

The Delhi Mediation Centre had the proud privilege of its Master Trainers - Ms. Asha Menon, ADJ / Mediator, Ms. Neena Krishna Bansal, ADJ / Mediator, Mr. Harish Dudani, ADJ / Mediator, Dr. Sudhir Kumar Jain, ADJ / Mediator, having been invited as Resource Persons for the said programme for the District Judicial Officers of the States of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan. Dr. Sudhir Kumar Jain impressed upon the Hon'ble Judges of the High Courts of Madhya Pradesh, Bombay and Gujarat through a visual presentation on the importance of training to be imparted to Referral judges as the Referral Judge is the key to the success of mediation.

The report of Ms. Asha Menon, ADJ / Trainer, Delhi Mediation Centre expresses how effective the conference was when Justice M. S. Shah of the High Court of Gujarat observed that ADR should be Appropriate Dispute Redressal mechanism not Alternative Dispute Redressal mechanism.

Hon'ble Mr. Justice R.V. Raveendran, Judge Supreme Court of India and member of the MCPC underlined the need for every Judge to know what are the different kinds of ADRs prescribed U/s 89 of the CPC, their differences, advantages and disadvantages and that then alone, could judges decide to which mode of ADR, the case was to be referred and could also then effectively sieve cases that require adjudication from the rest. It was observed by His Lordship that mediation manages disputes with humaneness and was a very democratic method of resolution of disputes.

Hon'ble Mr. Justice S. B. Sinha in the joint address to the Hon'ble Judges from the Hon'ble Supreme Court, Hon'ble Chief Justices from the High Court and Judges and participants from the District Judiciary, emphasized that mediation was a part of the judicial reforms which would enhance the glory of the Judiciary and infuse a sense of trust, belief and dependence in the Judiciary. His Lordship also underlined the need for judicial governance and how mediation and mediators form a part of the operational changes that would be necessary for good judicial governance. His Lordship also felt that only when judges and mediators thought differently there could be a successful and implementable policy. In the ongoing process of developing mediation relevant to the Indian context and with a view to bring awareness to the procedures of mediation and its benefits, the MCPC has visualized a three dimensional scheme :-

- Awareness programmes where participants could be members of the District judiciary and lawyers and litigants, i.e the main stakeholders of the justice delivery system, to be held on weekends.
- Programmes for Referral Judges to be held on weekends to sensitize Referral Judges of the District Judiciary of the country to refer appropriate cases to mediation, the key to the success of a mediation being the Referral Judge himself.
- 40 hour training programmes on mediation and its concept to train Judicial officers and advocates so that mediation centres can be set up in States where mediation is yet to make a beginning.

At the East India Regional Conference on Mediation held from 8th to 9th March 2008 at the Indian Institute of Coal Management, Kanke, Ranchi as organized by the Jharkhand State Legal Services Authority and the Judicial Academy Jharkhand, it was visualized that the Mediation Centre at Jharkhand would be set up with the assistance of the Delhi Mediation Centre and would be as ambient and comfortable and litigant friendly as the Karkardooma Mediation Centre

situated at the Karkardooma District Courts Delhi. Sh. Navneet Kumar, Member Secretary, Jharkhand State Legal State Authority, Ranchi was deputed by Jharkhand High Court to visit the Karkardooma Mediation Centre to see the set up and working of the centre.

The success of the Delhi Mediation Centre, continues to travel overseas. Hon'ble Ms. Justice Heike Hummeimeir, Hon'ble Judge from the Federal Court of Caudgetic at Hamburg visited the Delhi Mediation Centre at the Tis Hazari District Courts on 25.04.2008 and took keen interest in its functioning and also in the responsiveness of litigants to mediation. Her Ladyship also took a keen interest in the aspect of the functioning of the mediation centre and expressed that the mediation centre was very well organized. Along with her was Mr. Bharat Jasraj an advocate from Chennai who expressed " It is very encouraging to see this effort and the openness of the centre, I am sure this will be an inspiration to the rest of the country".

That ethical standards have to be followed by mediators as 'good practices' developed on the basis of experience gained by the Delhi Mediation Centre, for which inputs, have been 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 for 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, has been emphasized in all the three Regional Conferences held on mediation and also in the 'Educating the Educator's Programme on Mediation' held at the National Judicial Academy.

Set forth herein are some of the 'good practices' enlisted in the Draft Code of the Canons of Ethics for mediators developed by the Hon'ble MCPC:-

- A Mediator enables communication, promotes understanding, focuses the parties on their interests, and seeks a creative solution to facilitate the parties to a dispute in reaching a mutually satisfactory agreement.
- At the commencement of a mediation, it is a good practice for a Mediator to explain the process to the parties to a dispute and advise them of their need to focus on their real interests and concerns. The parties ought to be advised that the process is entirely confidential and a settlement will be reached only if they voluntarily agree to it.
- A mediation is a structured process but is conducted in an informal manner. A Mediator does not impose his judgment upon the parties to a dispute nor does he advise them on which proposal should be accepted or rejected. He only ensures, to the extent possible, that the parties to a dispute have taken an informed decision while entering

