

# ***MEDIATION NEWSLETTER***

NEWSLETTER OF THE DELHI MEDIATION CENTRE

Volume 2

( July, 2008 )

Number 7



07.07.2008 - Visit of Hon'ble Mr. Justice Dipak Misra, Judge High Court of Madhya Pradesh to the Tis Hazari Mediation Centre - Seen are L to R Dr. Sudhir Kumar Jain, AD & SJ/ Master Trainer Delhi Mediation Centre, Ms. Mamta Sehgal, District & Sessions Judge Delhi, Hon'ble Mr. Justice Dipak Misra, Judge High Court of Madhya Pradesh and Mr. Rakesh Kapoor, Judge-in-charge, Tis Hazari Mediation Centre.

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The Delhi Mediation Centre proudly announces the completion of three successful Mediation Years from 01.08.2005 till 31.07.2008. Since 01.08.2005 till 31.07.2008, the Delhi Mediation Centre has amicably settled 9193 cases signifying a quantum leap in the settlement of the cases.

The success story of the Delhi Mediation Centre is reflected through the factum of 238 very old cases pending for a decade having been settled amicably finally at the Tis Hazari Mediation Centre and, 163 very old cases also pending for a decade having been settled at the Karkardooma Mediation Centre. Section 89 of the CPC enacted with a view to implement the 129<sup>th</sup> Report of the Law Commission of India, and to make effective the conciliation scheme and to make it obligatory for the Court to refer the dispute after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalats, embodies in it the underlying object stated in the OBJECT CLAUSE itself that it is only after the parties fail to get their disputes settled through any one of the alternative dispute resolution methods that the suit shall proceed further in the Court in which it was filed.

*As observed by Hon'ble Mr. Justice R.C. Lahoti, the former Chief Justice of India in his key note address "ENVISIONING ADR IN 21<sup>st</sup> CENTURY" at the Conference on 'ADR - Conciliation and Mediation' at Mumbai on 20.11.2004 - "the statutory carpet thus has been laid for introduction of Mediation and Conciliation as cost and time effective means of non-judicial settlement of disputes, either as a part of the judicial process or away from it". We at the Delhi Mediation Centre, under the guiding vision of the Mediation & Conciliation Project Committee continue to strive to fulfill the hopes and faith with which litigants are increasingly resorting to mediation - to gracefully resolve disputes amicably and harmoniously, expeditiously. The soothing tenacity of mediated settlements at the Delhi Mediation Centre is helping litigants cultivate a thought process, that disputes are problems to be solved together and not battles to be won. Boulders of litigative barriers are soon becoming pebbles through the process of mediation.*

A conference on Mediation was organized by the Maharashtra State Legal Services Authorities under the aegis of the High Court of Bombay on 5<sup>th</sup> and 6<sup>th</sup> July, 2008. Hon'ble Mr. Justice S.B. Sinha, Judge Supreme Court of India and Chairman of the Mediation & Conciliation Project Committee, inaugurated a Mediation Centre at the High Court of Bombay, and the Conference, and deliberated on the importance of mediation as an Alternative Dispute Resolution mechanism and on its effectiveness. Hon'ble Mr. Justice Swatanter Kumar, Chief Justice

High Court of Bombay, Hon'ble Mr. Justice H.B. Mhase, Judge High Court of Bombay and Chairman of the ADR Committee, Hon'ble Mr. Justice F.I. Rebello, Hon'ble Mr. Justice Khanwilkar, Dr. Justice D.Y. Chandrachud, Hon'ble Judges of the High Court of Bombay, Hon'ble Mr. Justice Mohit Shah, Acting Chief Justice, High Court of Gujarat, Hon'ble Ms. Justice Prabha Sridevan, Judge High Court of Chennai, Hon'ble Mr. Justice Madan B. Lokur, Hon'ble Mr. Justice Sanjay Kishan Kaul, Judges of the High Court of Delhi and Hon'ble Mr. Justice Y. V. Chandrachud, the former Chief Justice of India graced the occasion. Members of the Higher Judicial Services and subordinate Judicial Services from the States of Maharashtra, Madhya Pradesh, Uttar Pradesh, Delhi and lawyers and mediators and law students also attended the said conference. Ms. Poonam A. Bamba, ADJ & Mediator, Delhi Mediation Centre and Mr. Dharmesh Sharma, ADJ & Mediator, and presently Secretary, Delhi High Court Legal Services Committee were the participants from the Delhi Higher Judicial Services.

Ms. Poonam A. Bamba, ADJ & Mediator at the Delhi Mediation Centre in her report brings forth the enthusiasm that the Conference evoked on Mediation being an effective and innovative mode of Alternate Dispute Resolution. Hon'ble Mr. Justice F.I. Rebello suggested the initiation of a pilot project to study the areas in which mediation was more effective in India and to use it, in those types of cases, and emphasized on the role of a Judge as being an activator and facilitator for settlement of disputes through mediation.

Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India emphasized upon the creation of a conducive atmosphere of mediation, selection of the right kind of judicial officers for mediation on the basis of their skills and not necessarily on the basis of their seniority. Hon'ble Mr. Justice, Madan B. Lokur emphasized the necessity of having a full time coordinator, in-charge of Mediation Cells and recommended:-

- the continuous training and education of mediators as well as referral judges;
- proper supervision of mediators qua maintenance of ethical standards and quality amongst mediators;
- publicizing the concept of mediation by different means including sending brochures with summons, inclusion of mediation / ADR in curriculum of law students.

Hon'ble Mr. Justice A.M. Khanwilkar, Judge, High Court of Bombay suggested that in the Indian context we ought to begin with Court annexed mediation and should simultaneously have a system of management of ADR - failed cases. Hon'ble Mr. Justice Mohit Shah, Acting Chief Justice, High Court of Gujarat, emphasized

the need to convince the judiciary at the outset about the need of ADR and that ADR be described as **'appropriate disputes redressal'** and not as alternate dispute resolution. His Lordship also expressed that there ought to be a proper analysis before referral of the cases to mediation which was also emphasized upon by Mr. R.A. Dada, Senior Advocate, Mumbai and Mr. Firdos S. Karachiwala, an Advocate and a renowned mediator. Hon'ble Dr. Justice D.Y. Chandrachud, Judge, High Court of Bombay also emphasized upon the necessity of training of not only mediator judges but also referral judges to ensure that the right kind of cases are referred for mediation. Hon'ble Ms. Justice Prabha Sridevan called upon the mediators to draw lessons from holy scriptures and emphasized that mediators should act as peace makers and also emphasized that the mediator keeps in mind the cultural background of the litigant parties. Hon'ble Mr. Justice S.B. Sinha, emphasized the need for institutionalization of mediation so that there was a forum for expeditious and effective resolution of commercial disputes required by MNC's / foreign companies, which in turn would result in increase of investments by MNC's and other Foreign Companies and would be in the interest of the nation. **Hon'ble Mr. Justice S.B. Sinha also emphasized the need for the norms for selection of mediators, mediators training in specialized / technical fields of law like IPRs Trade Mark, Copy Right, etc, training of referral judges, refresher courses for mediators, training of bare-foot mediators, norms for payment to lawyer mediators, creation of funds for infrastructure, creation of awareness about mediation process. His Lordship also emphasized the need for setting up of a Redressal Committee at the District Level, High Court and Supreme Court levels to look into complaints against mediators and also that there should be an 'impact analysis' by periodically analyzing the work of mediation and its effectiveness.**

The successful amicable solutions at the Delhi Mediation Centre through mediated settlements, in accordance with procedure continues to draw accolades. Hon'ble Mr. Justice Dipak Misra, Judge, High Court of Madhya Pradesh on his gracious visit on 07.07.2008 to the Tis Hazari Mediation Centre in the Visitor's Book expressed that a visit to the Mediation Centre made one realize that Mediation is faithfully beautiful and beautifully faithful as it both faithful and sensitive. Senior Advocate Mr. K.T.S. Tulsi on his visit on .07.2008 preceding the opening of the Justice Om Kar Singh Trust, Legal Aid Counseling Centre, Delhi expressed "The Mediation Centre is much beyond my expectations. I am very fortunate that I visited the Centre before the opening of the Mediation Centre at the Rakaab Ganj Gurudwara. The rules of procedures

are emulated too. The success rate is very high. All the Mediators are so dedicated and devoted to the concept. I hope we can achieve even a fraction of it" Dr. Sunita Reddy, Professor of Social and Community Health who visited the Karkardooma Mediation Centre on 03.07.2008 remarked that Mediation is an excellent concept and an important and timely intervention and observed that there is a need to improve awareness in the general community and to involve dedicated individuals and NGO's.

In its effort to provide expeditious benefits of Mediation which has taken roots in the legal fraternity in Delhi and is here to stay as one of the most vibrant and peaceful modes of complementary dispute resolution, it is necessary that there is ongoing interaction between all stakeholders in the system of delivering the benefits of Mediation to one and all. It is increasingly essential also that there is a continuous updating and sharing of knowledge and ideas between the mediators manning the Mediation Centre and also between the Referral Judges.

Thus on 22.07.2008, 25.07.2008 and 29.07.2008, there have been interactions between the In-charge of the Tis Hazari Mediation Centre, Mr. Rakesh Kapoor, Master Trainers, Dr. Sudhir Kumar Jain, Ms. Neena Krishna Bansal, Ms. Shailender Kaur, all ADJ's / Mediators and Mr. Dinesh Kumar Sharma, ADJ / Mediator, Delhi Mediation Centre, and Civil Judges, in a continued effort to ensure that appropriate matters are referred to mediation. On 29.07.2008, Hon'ble Mr. Justice Madan B. Lokur, Judge, High Court of Delhi and Member of the Mediation & Conciliation Project Committee also guided the referral judges emphasizing upon them that the key to successful mediation, rests upon the appropriate referral of cases by the Referral Judges.

Under the guidance of Hon'ble the Chief Justice of India, Hon'ble Mr. Justice Mr. K.G. Balakrishnan, the Mediation & Conciliation Project Committee held a meeting on 17.07.2008,, when Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India and Chairman of the Mediation and Conciliation Project Committee, Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India, Hon'ble Mr. Justice Madan B. Lokur, Judge, High Court of Delhi, Mr. P.P. Rao and Mr. Raju Ramchandran, Senior Advocates, all members of the Mediation and Conciliation Project Committee, inter alia resolved to the effect :-

- *that there should be a focus and concentration of all efforts in institutionalizing mediation at two levels;*

