

MEDIATION NEWSLETTER

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08.03.2008 to 09.03.2008 - On the occasion of the East India Regional Conference on Mediation organized by the Jharkhand State Legal Services Authority and Judicial Academy, Jharkhand. Seen L to R are Ms. Shailender Kaur, ADJ/Mediator and Trainer, Hon'ble Mr. Justice R.K. Merathia, Judge, High Court of Jharkhand, Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India and Chairman of the MCPC, Mr. M.L. Mehta, Judge in Charge, Karkardooma Mediation Centre and Dr. Sudhir Kumar Jain, ADJ/Mediator and Trainer, Delhi Mediation Centre.

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Mediation, a non-adversarial technique of additional dispute resolution, is a process, in which parties understand their role as active participants and collaborate to resolve the dispute, resulting in a mutually agreeable outcome, through a flexible process suitable to the needs of the participants, where a neutral person, the mediator works with the parties to the dispute to bring them to an agreement that they can all accept. As observed by Hon'ble Mr. Justice S.B.Sinha, Chairman of the Mediation and Conciliation Project Committee in His Lordship's article 'Mediation-Constituents, Process and Merits' - "Mediation is perhaps the fastest growing form of ADR in business today. Lawyers and clients seeking rapid, economical and private dispute resolution are using mediation in Court annexed and private, for - fee sittings. Unlike litigation and arbitration which consists of formal evidentiary hearing, mediation is a semi formal negotiation between the parties without the use of evidence or witnesses". His Lordship's article 'Legal framework of ADR, Section 89 and ADR Rules' observes on mediation as follows "This is a good method of resolving certain kinds of disputes especially those involving relationships. Relationships can be personal, business, contractual or social".

Readers would recall that in order to implement the short term scheme for implementation of mediation as formulated by the Mediation and Conciliation Project Committee, awareness programmes in the form of seminars and colloquiums are being organized to help change the mindset of all stake holders, i.e litigants, lawyers, judges and the public. It has been visualized that the High Courts and District Courts would periodically conduct seminars and workshops on the subject of mediation, as one of the modes of alternative dispute resolution procedure throughout the State or States over which the High Courts have jurisdiction, with a view to bring awareness to such procedures and to impart training to lawyers and Judicial Officers. Pursuant to the South India Regional Conference on Mediation, organized at Bangalore on 19th and 20th January, 2008 in order to develop a national scheme for the use of mediation, as an effective additional and alternative dispute resolution mechanism, and to formulate guidelines to train mediators and ethical guidelines for the mediators, a programme was conducted to develop mediation, relevant to the Indian context from 22.02.2008 to 24.02.2008 at the National Judicial Academy, Bhopal in the 'Education for Educator's Programme'. Hon'ble Mr. Justice S.B. Sinha guided the 22 participants nominated by different High Courts for the implementation of mediation in their respective jurisdictions, in the concluding sessions of the programme in

their deliberations on the manner in which mediation is to be developed in the country, with focus on the ethical norms to be observed by the mediators. The report of Mr. Sunil Gaur, the then Judge in Charge, Tis Hazari Mediation Centre and present Judge in Charge, Karkardooma District Courts, Delhi delineates the suggestions put forth in these deliberations (the objective of which was to enhance delivery of timely justice in the country as observed by Prof. Dr. G. Mohan Gopal, Director of the National Judicial Academy) - as follows:-

- i. The respective High Courts be impressed upon to frame the Rules governing mediation and its different aspects as per the directions given by the Hon'ble Supreme Court of India in the Salem Bar Association case (2005) 6 SCC 344.
- ii. A panel of mediators be prepared in each State both at the High Court and at the District Courts so that cases can be referred to mediation by the referral/trial judges.
- iii. There should be proper awareness among the advocates and litigants about the benefits of mediation.
- iv. Training programmes on the 'Techniques of Mediation' be conducted regularly by the Courts so that a pool of trained mediators can be prepared for effective implementation of mediation.
- v. There should be proper interaction and co-ordination among the different Mediation Centres being run in different States either by the High Court or by the District Courts so that there is uniform application of mediation throughout the country.
- vi. Mediation should be implemented in such a manner which is suitable to the Indian context. It should be established with a spirit to render public service.
- vii. It was suggested that initially mediation be started with the help of judicial mediators, but subsequently advocates can be joined in, qua Court annexed Mediations.
- viii. There should be some appropriate norms regarding the accountability of the mediators so that there should not be misuse or abuse of the mediation process. The participants laid emphasis that an ethical code of conduct for the mediators be prepared.
- ix. The participants suggested that the State Government should provide sufficient funds to develop basic and minimum infrastructure necessary to conduct mediation.

Hon'ble Mr. Justice S.B.Sinha, Chairman of the MCPC, guided the participants about the various aspects of mediation including its governance and about the duration and

contents of mediation training programmes. His Lordship further emphasized the need of professionalism in the implementation of mediation and highlighted the future prospects of mediation, such as sufficient work for the mediators, specialized training of the mediators in different subjects, amendments in the Rules framed, and constitution of an appropriate body to monitor the observance of ethics by the mediators, the proposed National Plan for mediation, training of Referral judges and impact of mediation in our legal system".

On 26.2.2008 as approved by the Hon'ble the Chief Justice of the High Court of Delhi, 35 students and some teachers of the Faculty of Law, Law Centre I, University of Delhi, who visited the Karkardooma Mediation Centre, were guided by Mr. M. L. Mehta, Coordinator and Judge in charge, Karkardooma Mediation Centre, through a two and a half hour discourse on mediation. It was also expressed by Dr. Ved Kumari, Professor of the Law Centre I, Faculty of Law, University of Delhi that students of the said centre were desirous to be placed at the Mediation Centre to be provided on hand training on mediation. The students expressed that the visit to the Mediation Centre made them realise that mediation was not existing only as a name sake but in a real sense in the Mediation Centres at Delhi and that it had been a wonderful experience for them to learn that the judicial system was expanding the horizons of justice.

Since 1.3.2008 Mr. M.C.Garg, ADJ has taken over as Judge in charge Mediation Centre, Tis Hazari, District Courts, Delhi.

On 07.03.2008 the Tis Hazari Mediation Centre, District Courts Delhi organized an interaction between mediators of the Tis Hazari

Mediation Centre, i.e. both Judge mediators and Advocate mediators and Judge William Fletcher (U.S. Court of Appeals, 9th Circuit), Judge Richard Seeborg, (U.S. District Courts, San Jose), Mr. Stephen Mayo, Executive Director, Institute for the Study of Development of Legal Systems (USA), Professor George (Rock) Pring, Professor of Law, Colorado, USA, his wife Mrs. Kitty Pring, Mediation Trainer, Mr. Neel Chatterjee, Mr. Paul Grewal, Former President of the South Asian Bar Association, Mr. Hitesh Barot, IPR Counsel and President of the North American South Asian Bar Association Foundation (All three of them being of Indian origin). The deliberations were presided over by Hon'ble Mr. Justice Madan B.Lokur, Judge, High Court of Delhi and member of the MCPC. The participants witnessed an actual mediation in progress and all the esteemed visitors were unanimous in their view that mediation was better than litigation in which *there was one complete winner and one complete loser, but in mediation each party came away with something and felt better, which was visually reflected in their personalities, as if a burden had lifted.* The visitors were extremely impressed by the extraordinary efforts made by the Delhi Mediation Centre where the degree of enthusiasm was more vocal, where in a partition suit, the mediator even impressed upon the parties that their ancestors would be happy, if a settlement took place. It was also expressed by Mrs. Kitty Pring, who trains school children, parents, policemen, neighbourhood leaders to mediate - that environmental issues could easily be mediated in India.



26.02.2008 - Teachers and students of the Campus Law Centre, Faculty of Law, University of Delhi with Mr. M. L. Mehta, Coordinator & Judge in Charge, Karkardooma Mediation Centre. at the Karkardooma Mediation Centre, Delhi.

