

# MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

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20-05-2009 – On the conclusion of the Mediation Training imparted to 4 Sr. Judicial Officers and 8 Advocates of the District Courts of Gangtok :- Seen - Sitting (L to R) Hon'ble Mr. Justice A.B. Subba, Judge of the Hon'ble High Court of Sikkim and Chairman of the State Legal Services Authority, Sikkim, Hon'ble the Chief Justice of the High Court of Sikkim Hon'ble Mr. Justice Aftab Hussain Saikia with Hon'ble Mrs. Saikia, along with the participants and Ms. Meenakshi, Registrar General, High Court of Sikkim, Ms. Matilda, Secretary State Legal Services Authority and the Resource Persons of the Delhi Mediation Centre Mr. Ajay Mehta, Ms. Anuja Saxena and Ms. Poonam Mendiratta, all Advocates/Mediator Trainers of the Delhi Mediation Centre, adorned with traditional scarves by the participants.



10-05-2009 – On the conclusion of 40 hours intensive Mediation Training Programme conducted at Jam Nagar, Gujarat. Seen are the participants i.e., Judicial Officers and Advocates of District Jam Nagar along with their Resource Persons Dr. Sudhir Kumar Jain, AD&SJ and Master Trainer and Mr. Sunil Kumar Aggarwal, AD&SJ and Master Trainer, both of the Delhi Mediation Centre.

## TIS HAZARI MEDIATION CENTRE

3<sup>rd</sup> Floor, Tis Hazari,  
District Courts, Delhi.  
Telephone No. 23961909  
Extn. 479

Judge in Charge

Telephone No. : 23975030 Extn. 303

## ROHINI MEDIATION CENTRE

3<sup>rd</sup> Floor, Rohini,  
District Courts, Delhi.  
Telephone No. 27555536  
Room No.306

Judge in Charge

Telephone No. : 27554459

FAX No. 27555536

## KARKARDOOMA MEDIATION CENTRE

Ground Floor, B Block,  
Karkardooma, Delhi.  
Telephone No. 22309085

Judge in Charge

Telephone No. 22309086

FAX No. 23961909

E-mail : delhimediationcentre@nic.in

Website : www.delhimediationcentre.gov.in

*"The legislative policy in India is to cast a duty upon the Court to make efforts and to assist the parties in arriving at a settlement in litigation by or against the Government or public officers in their official capacity, litigation relating to matters concerning the family such as suits/proceedings for matrimonial relief, guardianship and custody, maintenance, adoption, succession etc".*

These observations of Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India and Chairperson of the Mediation and Conciliation Project Committee in His Lordship's article "Courts And Alternatives" depicts the latent spirit behind conceptualization of Section 89 onto the statute i.e., the Code of Civil Procedure, 1908. *Mediation, as one of the modes of Alternative Dispute Resolution (ADR) is recognized by the Code of Civil Procedure (Amendment) Act, 1999 by the enactment of Section 89 which came into force from 01.07.2002.* Section 89 of the CPC reads as follows:-  
"Settlement of disputes outside the Court - (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for .....

(a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; (d) for mediation.

(2) Where a dispute has been referred -

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Though the section provides for formulation of the terms of settlement by the Court and reformulating the same, if necessary, where it appears to the Court that there exists an element of a settlement, which may be acceptable to the parties and then a reference by the Court, inter alia, to mediation, it is essential that the intent of the legislature in enacting Section 89 of the C.P.C., be given effect to and that the spirit of Section 89 of the C.P.C. which innovatively provides for "a Multi-Door Courthouse System" virtually on the lines proposed by Professor Frank E.A.Sander, is made vibrant. We may thus soon envision not just a Court House but a Dispute Resolution Centre where the grievant would first be channeled through the legally skilled personnel who would be able to direct the grievant to the process (or sequence of processes) most appropriate to his type of case. This theory of Professor Sander has been tested in different States of the United States of

America, such as Columbia, New Jersey, Houston and Philadelphia and a number of American cities or countries now offer multi-door programmes. The programmes enable a member of the public to contact the Court in person or by telephone, with a complaint or dispute. A preliminary analysis is then made of the case in order to be able to recommend which dispute resolution process is most suitable to resolve it. Various criteria are applied including, i.e

- (i) The kind of issues involved,
- (ii) What kind of compensation is likely to be awarded, if successful;
- (iii) Whether witnesses or other evidence will be needed;
- (iv) Whether rights need to be protected;
- (v) What services are available.

The inquiring party is then advised about the processes that might be most appropriate to the case and is given relevant referral details, which may be to departments within the Court, or may perhaps be to outside agencies.

It is thus essential that the legal fraternity without entering into the nitty gritty of the wording of Section 89 of the CPC qua the aspect of formulation of the terms of settlement by the Court and re-formulating the same, if necessary, where it appears to the Court that there exists an element of a settlement, which may be acceptable to the parties, the Courts should refer the matter to one of the Alternative Dispute Resolution Mechanism (including mediation) prescribed, as mandated by the Hon'ble Supreme Court of India in Salem Bar Association T.N. Vs. Union of India, 2005 (6) SCC 344, which cannot be overlooked.

It is time that "the four 'Es' - Expertise, Equality, Expedition and Economy" which Hon'ble Mr. Justice Lightman underlined in his lecture on "Civil Litigation in the 21<sup>st</sup> Century" to the Chancery Bar Association in spring 1998 are brought into operation effectively in full swing in the legal system through Alternative Dispute Resolution Mechanism.

*The Four 'E's symbolize :-*

*Expertise - means the best of Judges and lawyers to meet the demand of the complicated system of laws.*

*Equality - means the equality of opportunity so that doors of Law Courts are open for all including those who have limited resources.*

*Expedition - means that the trials and appeals must be disposed of expeditiously. Uncertainty and delays amount to denial of justice when it is due.*

*Economy - means that the costs of litigation are within affordable limits from the stand point of a common man.*

Emphasis must be laid to the need of establishing a culture of amicable solutions of dispute whether at a post-litigation or pre-litigation stage. The philosophy of ADR is to motivate people to resolve their disputes amicably and for this purpose it is necessary to examine ADR's main trends and underlying objectives. One of the motivations of ADR is the principle of "Cooperative problem solving" which brings within its fold theories and strategies of negotiations, including in particular problem - solving theories of negotiation. Another benefit of ADR is reduction of costs apart from avoidance of delay in litigation. In short, it allows the parties greater control over resolving the issues between them, encourage problem solving approaches and provides for more effective settlements covering substance and nuance. It also tends to enhance cooperation and preservation of relationship.

Under the guidance of the Hon'ble Mediation and Conciliation Project Committee of the Hon'ble Supreme Court of India, the Delhi Mediation Centre continues to strive in its efforts of institutionalization of mediation across the length and breadth of the country, thereby serving as healers of human conflicts and providing a mechanism that can produce acceptable results with the least possible expenditure with minimum stress to the participants.

The following training programmes conducted in which the expertise of the Trainers of the Delhi Mediation Centre has been utilized, are indicators of the same:-

**Gujarat - 25<sup>th</sup> & 26<sup>th</sup> April, 2009 at Rajkot & 2<sup>nd</sup> & 3<sup>rd</sup> May, 2009 & 9<sup>th</sup> & 10<sup>th</sup> May, 2009 at Jam Nagar, Gujarat :-** An intensive Mediation Training Programme for Judicial Officers & Advocates was conducted. The training was conducted in 3 phases. The training for the first phase was conducted at Rajkot for 2 batches and training for the 2<sup>nd</sup> and 3<sup>rd</sup> phases was conducted at Rajkot for participants from the District of Rajkot and at Jam Nagar for the participants from the area of District Jam Nagar. The Resource Persons were Dr. Sudhir Kumar Jain & Ms. Neena Bansal Krishna both AD&SJ's and Master Trainers of the Delhi Mediation Centre. Mr. Sunil Kumar Aggarwal - AD&SJ, Mediator Trainer of the Delhi Mediation Centre for the group comprising of 20 Judicial Officers and Advocates from the area of District Jam Nagar. The Resource Persons for the group from District Rajkot were Hon'ble Mr. Justice (Retd.) R.A.Mehta, Mr. Harish Dudani, AD&SJ and Mediator/Trainer of the Delhi Mediation Centre, Mr. Niranjana Bhatt, Advocate/Mediator and founder of AMLEAD and Sh. Parkash Jani - Advocate/Mediator. The programme was inaugurated by Hon'ble Mr. Justice K.S.Radhakrishnan, Chief Justice, High Court of Gujarat and Patron-in-Chief, Gujarat High Court Mediation Centre on 09-05-2009 Hon'ble Mr. Justice Mohit S. Shah, Judge High Court of Gujarat & Chairperson, Supervisory Committee, Gujarat High Court Mediation Centre and Sh. Yogesh Thakker Trained Mediator and an advocate practicing at the Gujarat High Court graced the occasion. The participants here were initiated into the 'Techniques of Mediation - Consequence of ADR in India'. As reported by Dr. Sudhir Kumar Jain, AD&SJ, and Master Trainer, after the training in the 'Techniques of Mediation', after the training there was an impressive change in the perception of participants about mediation. As reported by Mr. Harish Dudani, AD&SJ and OSD Delhi Legal Services Authority and Master Trainer, the participants on conclusion of the training expressed that they enjoyed the training programme and had greatly been benefited by the same.

**27<sup>th</sup> May, 2009 to 31<sup>st</sup> May, 2009 - Ranchi :-** An intensive 40 hours training programme was conducted by the Jharkhand Judicial Academy under the aegis of the Hon'ble Mediation & Conciliation Project Committee, Supreme Court of India, where the participants were 8 Judicial Officers and 10 Advocates of the District Jharkhand. The Resource persons were Ms. Nagina Jain, Ms. Jaya Goyal both Advocates/ Mediator/Trainers of the Delhi Mediation Centre and Sh. A.J.Javed Advocate/Trainer/Mediator of the Tamil Nadu Mediation Centre. As reported by Ms. Nagina Jain - Advocate/Trainer/ Mediator of the Delhi Mediation Center on 29<sup>th</sup> & 30<sup>th</sup> May, 2009, live mediation in some pending cases was conducted at the Mediation Centre at the District Courts Ranchi, whereby 3 cases were amicably settled.

**16<sup>th</sup> May, 2009 to 20<sup>th</sup> May, 2009 - Sikkim / Gangtok :-** An intensive 40 hours Mediation Training was imparted from 16<sup>th</sup> May to 20<sup>th</sup> May, 2009 at the Conference Hall, Nepali Sahitya Parishad where the participants were 4 Judicial Officers comprising of the District Judge Gangtok (East and North), for District Judge-I (South and West) and Principal Secretary, Sikkim State Legal Services Authority and Civil and Judicial Magistrate and 8 Advocates practicing in the High Court and District Courts at Gangtok under the aegis of the Hon'ble Mediation & Conciliation Project Committee. The Resource Persons here were Mr. Ajay Mehta, Ms. Poonam Mendiratta, Ms. Anuja Saxena all Advocate/Mediator/Trainers of the Delhi Mediation Centre. As reported by Sh. Ajay Mehta, Advocate Trainer Mediator, and one of the Resource Persons in this Training Programme, on the concluding day of the said training, the participants of the Training Programme conducted mediation in 2 matrimonial cases referred to the Mediation Centre by the District Courts, Gangtok, in the presence of the Resource Persons. Gangtok Mediation Centre has recently been inaugurated on 11-05-2009 by the Hon'ble Chief Justice of the High Court of Sikkim, Hon'ble Mr. Justice Aftab Hussain Sakia. The concluding session on 20-05-2009 was also graced by Hon'ble Mr. Justice A.P.Subba, Executive Chairman of the State Legal Services Authority. The participants in this training Programme are reported to have been involved and participated actively in the facilitative and innovative method of training imparted.

The success of the Delhi Mediation Centre, seen through the functioning of its 3 limbs i.e., Mediation Centers at the District Courts Tis Hazari, Karkardooma and Rohini, whereby 13960 cases (including 3398 connected cases) have amicably been resolved, finally, through the process of mediation is propelling the other States in the country to avail of the expertise even of the Coordinators of the Delhi Mediation Centre for training programmes for Coordinators /Nodal Officers, as visualized by the MCPC. Thus, the Delhi Mediation Centre, had the proud privilege of Mr. A.K.Chawla, Judge Incharge, Mediation Centre, Karkardooma Courts, and Mr. Chander Shekhar, Judge Incharge, Mediation Centre, Rohini, having been invited by the Chandigarh Judicial Academy to conduct a training course for the Co-ordinators/Nodal Officers of the Mediation Centres in the State of Punjab, Haryana and Union Territory, Chandigarh. This training programme was conducted on 30-05-2009 at the Chandigarh Judicial Academy where 19 Judicial Officers participated. The Training Programme was inaugurated by Hon'ble Mr. Justice Mahesh Grover and Hon'ble Mr. Justice Permod Kohli, Hon'ble Judge of High Court of Punjab and Haryana. The report of Mr. A.K.Chawla, Judge Incharge Mediation Centre, Karkardooma Courts, Delhi, depicts here in below the emphasis on the practical nuances for good and effective running of the Mediation Centre and sensitization of Referral Judges for disposal of appropriate cases:-

(i) *Educating on the pro-active role of Co-ordinators in expanding Awareness on the concepts and the benefits of mediation amongst the Lawyers, Litigants and the public at large besides sensitizing the Referral Judges for referral of appropriate cases.*

(ii) Educating on the Practical Aspects of good and effective running of Mediation Centres, with special emphasis on the aspects to be borne in mind at the time of assignment of cases to the mediators.

The benefits of the process of Mediation become visually apparent with litigations almost 2 decades old being amicably settled even at the appellate stage:-

Some land was purchased by a purchaser from the DDA after it had been acquired from its erstwhile owner. However, due to some mistake some portion of the land was not acquired by the DDA and thus the DDA had no right to sell the same to any one. However, due to an error the entire land was sold to a prestigious, religious organization. The erstwhile owner thus demanded that portion of the land from the religious organization but the religious organization refused to part the possession of the same. The erstwhile owner thus filed a Civil Suit in 1990. After about 135 hearings the case was finally decreed by the Civil Judge in 2008 in favour of the petitioner. The religious organization filed an appeal against the same and after 11 hearings the Appellate Court referred the appeal to the Mediation Centre. During the course of Mediation several options were explored including a proposal qua alternative land being given to the erstwhile owner, which was not accepted by the erstwhile owner as the proposed alternative land was on the back side and it had no commercial value in comparison to the un-acquired land belonging to the erstwhile owner which had been sold by the DDA.

The erstwhile owner, sought re-compense as per the market value of the land details as prevalent on the date of the purchase by the religious institution. After much deliberation, through Mediation the matter was ultimately resolved amicably within the stipulated period of 90 days during the process of mediation by payment of adequate recompense to the erstwhile owner.

The words of the consumers of the benefits of the process of Mediation at the Delhi Mediation Centre in the Visitors Books maintained at the Delhi Mediation Centre, spell out succinctly, how the process of mediation continues to heal human conflicts with the least possible expenditure and minimum stress to the participants expeditiously :-

*"Mediation is really doing wonders and I hope that Centres like these increase for fast and time saving settlements"* - Mr. Anuj Marwah

*"Mediation surely is a positive step in the right direction to reduce litigation. We observe very calm and cordial atmosphere here. We heartily thank the Court and the Mediation"*- Mr.. S.C.Mathur

*"I am very grateful to the Mediator who saved my married life"* - Ms.. Praveen Dadi & Ms. P.D.Nargambala

*"Mediation dwara meri jindagi main dubara roshini aa gai"*- Mr. Jitender Singh

*"Madhyasthatha se mera 11 saal se chala vivad sulajh gaya, Vivad suljhaney ka aacha tarika hai"*- Ms. Seema



27<sup>th</sup> to 31<sup>st</sup> May, 2009 - Ranchi - On the occasion of the 40 hours intensive mediation training programme conducted by the Jharkhand Judicial Academy under the aegis of the Hon'ble MCPC. Seen are the Resource Persons Ms. Nagina Jain and Ms. Jaya Goyal both Advocates/Mediator/Trainers of the Delhi Mediation Centre and Sh. A.J.Javed, Advocate/ Trainer/ Mediator of the Tamil Nadu Mediation Centre.

#### ACCOMPLISHMENTS TILL 31.5.2009

The Delhi Mediation Centre has till 30.4.2009 settled 13960 cases (including 3398 connected cases) amicably and finally. The statistics this month reflect the continuously increasing expeditious efficacy of the benefits of mediation:-

Tis Hazari Mediation Centre (01.5.2009 - 31.5.2009)	Rohini Mediation Centre (01.5.2009 - 31.5.2009)	Karkardooma Mediation Centre (01.5.2009 - 31.5.2009)
Cases Referred - 638	Cases Referred - 209	Cases Referred - 271
Cases Disposed of - 356	Cases Disposed of - 98	Cases Disposed of - 213
Cases Settled - 213	Cases Settled - 85	Cases Settled - 181
(Significantly, these include 29 matrimonial matters, 15 petitions for maintenance U/s 125 Cr. P.C., 3 custody and guardianship matters, 37 suits for injunction/possession/ damages, 85 suits for recovery, 7 suits for partition and, 1 Probate case & 2 cases u/S 138 of NI Act.	(Significantly, these include 17 matrimonial matters, 3 petitions for maintenance U/s 125 of the Cr. P.C., 2 MACT matters, 19 suits for Recovery, 12 Criminal Compoundable cases and 18 under Section 138 of NI Act & 5 suits for injunction/possession/damages.	(Significantly, these include 53 labour and management disputes, 40 matrimonial matters, 25 cases under the Negotiable Instruments Act, 9 suits for injunction /possession/ damages, 12 petitions for maintenance U/s 125 of the Cr. P.C and 10 MACT matters, 21 suits for Recovery, 4 rent matter & 1 suit for partition..
Connected Cases Settled - 79	Connected Cases Settled - 47	Connected Cases Settled - 40
Total settled - 292	Total settled - 132	Total settled - 221