

MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

Volume 2

(May, 2008)

Number 5



19.05.2008:- On the occasion of distribution of certificates after completion of Mediation Training to Mediators trained in-house by the Delhi Mediation Centre — Seen R to L are Hon'ble Mr. Justice Madan B. Lokur, Judge, High Court of Delhi and Member of the Mediation and Conciliation Project Committee, Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India, Mr. B. S. Mathur, ADJ/ Judge-in-charge, Tis Hazari Mediation Centre, Ms. Mamta Sehgal, District & Sessions Judge, Delhi, Hon'ble Mr. Justice Manmohan Singh, Hon'ble Mr. Justice M.C. Garg and Hon'ble Mr. Justice Sunil Gaur, Judges of the Delhi High Court at the Tis Hazari Mediation Centre, Delhi.

(TIS HAZARI MEDIATION CENTRE)
 3rd Floor, Tis Hazari, District Courts, Delhi.
 Telephone No. 23961909 Extn. 479
 Judge in Charge
 Telephone No. : 23975030
 Extn. 303
 FAX No. 23961909

KARKARDOOMA MEDIATION CENTRE
 Ground Floor, B Block,
 Karkardooma, Delhi.
 Telephone No. 22309085
 Judge in Charge
 Telephone & FAX No. 22309086

E-mail : delhimediationcentre@nic.in
 Website : www.delhimediationcentre.gov.in

The increasing efficacy of Mediation as an effective, cooperative, additional, complementary mode of dispute resolution is continuously being acknowledged. At the **National Meet on Mediation and Conflict Resolution** held on 26th March, 2008 at the Vigyan Bhawan, New Delhi, the Hon'ble, the Chief Justice of India, Hon'ble Mr. Justice K.G. Balakrishnan, observed that there was a necessity to improve the quality and content of conflict resolution in our country where the judge population ratio is comparatively inadequate in contrast to other developed judicial systems.

The address of Hon'ble the Chief Justice of India on this occasion is of great importance and is reproduced herein below :-

"Alternative Disputes Resolution (ADR) has now been considered as a part of our judicial system. Our laws have been suitably amended to incorporate this method as a form of settlement of cases. Our Mediation Centres in Delhi, Bangalore and Chennai are giving excellent results. Every High Court has now come forward to start mediation centres. This would also be extended to District Courts Centres. Previously, we were concentrating our efforts to settle cases by Lok Adalats. But cases of certain types alone could be settled under Lok Adalat. Total discussion of the disputes with the parties and suggestion of any decision would be possible only when some more facilities are available and with the involvement of retired judges.

ADR has now become a world phenomenon whether it is adversarial, inquisitive or other forms of judicial systems. It is now well recognized that ADR has an important role to play within courts and it gives increasing satisfaction to litigants and more positive cooperative culture within courts as well as helping courts to deal with their caseloads. The view that mediation should be used more readily by Courts and tribunals has attracted considerable support within Australia. Recently, Australian courts have indicated that some ADR processes are of central importance in the court function. The Chief Justice of the Supreme Court of New South Wales has noted that "*mediation is an integral part of the Courts adjudicative processes and the 'shadow of the Courts' promotes resolution.*"

The differing relationship between Courts, policy makers and ADR and the variation in the philosophical approach to ADR varies greatly and produces a range of integration strategies in some courts and tribunals, such as

- (1) Pre litigation ADR - either supervised or unsupervised by Courts and Tribunals and falling within the 'shadow of the court' and often involving mandatory strategies;

- (2) Self referred litigation related ADR - where courts and tribunals are not involved and may be unaware that parties are using external ADR processes;
- (3) Court connected ADR - involving referral to ADR processes such processes might be conducted by external or integral practitioners;
- (4) Courts integrated ADR - involving judicial and quasi judicial officers within Courts and Tribunals using ADR processes to resolve and manage disputes (processes may vary from settlement conferences, mediation or concurrent evidence approaches) - this integration may involve facilitative judging.

There are some conflicting views whether judges should actively participate in the mediation and conciliation process. Judicial activism in the settlement process appears to be more acceptable in the United States than in Australia. It is not considered so radically separate from adjudication but as part of the same process. Litigation and negotiation are not viewed as distinct but as continuous processes. It has been said that:

"Most American judges participate to some extent in the settlement of some cases before them. Indeed, this has become a respectable, even esteemed, feature of judicial work."

But there has been some discomfort within Australia about the notion of judges acting as mediators and discussion has often focused on this issue. This discomfort may not arise when judges adopt a 'facilitative role'. Now, ADR is a part of our judicial system. But, for the time being, I feel that judges should act more as 'facilitative role' rather than actively participate in the mediation process. If the judges actively participate in the mediation process, problem may arise because the mediator sometimes has to meet privately with the parties in the dispute and this may lead to some controversy. But the judges can still act as "evaluators" or chairing conventional settlement or conciliation conferences. Frank appraisal by a judge can assist to prompt settlement in some disputes. In cases where mediation fails when the judges acted as mediators, it may feel embarrassing for the judges to proceed to hear the cases or related disputes at a later stage. The parties may get attitude bias and the judges should be free from such bias. In considering issues relating to bias, Justice DeBelle recently noted:

".....When a judge acts as a mediator, the judge sheds, as it were, the judicial mantle for the duration of the mediation and acts in a manner inconsistent with the role of a judge by seeing the parties in private. In doing so, the judge acts in a manner contrary to the fundamental principle of natural justice that a judge must not hear representations

from one party in the absence of the other. It is for that reason that the judge will not in any respect adjudicate in that action except with the consent of the parties." He went on to add : "In the result, I believe that what is at stake is the integrity of the Court engaging in two forms of dispute resolution and the public interest in upholding the integrity of the Court and public confidence in the integrity of the mediation process. It is equally important to uphold the public confidence in the integrity of the process of adjudication by the Court. It is important that nothing should occur which would suggest any breach of the obligation of confidence attaching to a mediation. Those who engage in mediation should be entirely confident that in no respect will anything said in confidence be revealed. Secondly, the public should have confidence in its judges knowing that, when they adjudicate issues, they are not influenced by anything which might have occurred in a mediation."

Of course, judges would be good mediators as they have long experience in adjudicating large number of cases. But are our judges matured? And, will it be acceptable to litigants if judges participate in the mediation process? These are the questions which may come up at a later stage. We have to improve our quality and content of mediation and conflict resolution as we are the only country which has got large number of cases but less number of courts."

The Delhi Mediation Centre, which started functioning from August, 2005 which has as its two functional limbs, the Mediation Centres at the Tis Hazari and Karkardooma District Courts is a blend of judicial activism and cooperation of lawyers comprising of 36 judicial mediators (apart from judicial mediators who are either vested with jurisdictions over criminal matters or are presently on deputation), and 57 advocate mediators. At the Delhi Mediation Centre, which has till 31.05.2008 settled 8289 cases (including 2063 connected cases amicably and finally), the Visitor's Books maintained at both these mediation centres reflect the increasing confidence of litigants in the process of mediation and in the mediators, be they judges or advocates. A recent media report in the Hindustan Times dated 07.03.2008 is to the effect "Judiciary experiments with mediation to clear huge backlog of cases. But opinion is divided on way its being done".

With reference to apprehensions that litigants may have qua judges participating in the mediation process, whose competence as being good mediators as they have long experience in adjudicating large number of cases is recognized even by the Hon'ble, the Chief Justice of India, we at the Delhi Mediation

Centre, reemphasize upon our esteemed Readers some of the chief 'good practices' enlisted in the Draft code of the 'Canons of Ethics' qua mediation developed by the MCPC which are religiously followed by the mediators at the Delhi Mediation Centre viz: -

"A mediator shall ensure that where he / she is a judicial officer, he / she does not act as a Mediator in respect of a dispute pending in his/her Court,

And in cases of advocate mediators where he / she is an advocate, he does not appear for any of the parties in respect of the dispute, that he had mediated either successfully or unsuccessfully"

Initially 30 judicial officers of the Delhi Higher Judicial Service were trained in mediation and in view of the increasing referrals of pending cases to the Delhi Mediation Centre, it became necessary to increase the strength of the Mediators of the Delhi Mediation Centre. The Delhi Mediation Centre thus through its in house training imparted by 10 of its experienced mediators, increased its ranks. On the occasion of distribution of certificates, on the successive completion of 40 hours training programme and 10 mediations, to the trained mediators, Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India, Hon'ble Mr. Justice, Madan B. Lokur, Member of the MCPC and Judge, High Court of Delhi, Hon'ble Mr. Justice Manmohan Singh, Hon'ble Mr. Justice Sunil Gaur and Hon'ble Mr. Justice M.C. Garg of the High Court of Delhi graciously visited the Delhi Mediation Centre on 19.05.2008.

Hon'ble Mr. Justice Dalveer Bhandari emphasized the need of mediation for multiple reasons, both qua human and commercial relations. His Lordship also observed that the task of Judges at all levels was to resolve disputes to the satisfaction of all, which resort to mediation was able most satisfactorily to achieve. His Lordship also laid emphasis on the benefits of the mediation process in which the litigant is involved in the entire process in contrast to litigation which lasts for years, completely resolves disputes for ever in weeks and there are no appeals nor revisions. It was also emphasized by His Lordship that it was a social obligation upon lawyers and Judges to resort to the mediation process, as their obligation to society.

The North Zone Mediation and Conciliation Conference held on 17th and 18th of May, 2008 at the Inderdhanush Auditorium, Panchkula under the aegis of the Punjab & Haryana High Court under the guidance of Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India and Chairman of the MCPC,

