

MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

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3.9.2008 to 7.9.2008 - A Foundation Training Programme on the 'Techniques of Mediation' was conducted by the Madhya Pradesh States Legal Services Authority at Jabalpur. - Seen our L to R - Dr.Sudhir Kumar Jain, AD & SJ and Master Trainer Delhi Mediation Centre, Mr. Firdoss Ali Kassam Karachiwala, International Mediator, Hon'ble Mr. Justice Dipak Misra, Judge High Court of Madhya Pradesh and Executive Chairman of the State Legal Services Authority, Madhya Pradesh, Hon'ble Mr. Justice A.K. Patnaik, the Hon'ble the Chief Justice of the Madhya Pradesh High Court, Sh. Braj Bihari Das, International Mediator/Communicator, Mr. R.R. Prasad, Management Consultant and Mr.Sushit Palo, Member Secretary, Madhya Pradesh, Legal Services Authority.

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The basic facets of the process of mediation which consistently continue to draw litigants to the tender care of its wings under the neutral guidance of a mediator, which the Delhi Mediation Centre continues to strive to deliver to the consumers of mediation are:-

- Control of the participant,
- Participation; Feedback,
- Feeling of being heard; Party to party communication,
- Help in communication, i.e. as to mood, tone, reality check, ideas,
- Quick process,
- Unbiased process,
- Low cost,
- Low risk,
- Privacy, confidentiality,
- Fair treatment,
- Broad relevancy, not just narrow application of law to the past acts but also reflecting consideration of the cultures of the parties, their emotions, their goals and aspirations, and an opportunity to address future values and relationships in contrast to looking only to past acts,
- Preservation of relationships which adjudication almost uniformly disrupts, and a chance at a creative win-win solution.

Pursuant to the formulation by the Mediation and Conciliation Project Committee of a Short Term Scheme for the implementation of mediation and for the training of the mediators through programmes of 40 hours duration according to international standards plus 10 actual mediations, the expertise of the in-house Master Trainers of the Delhi Mediation Centre was availed of by the Hon'ble High Court of Punjab and Haryana, when mediation training to 40 judicial officers from the States of Punjab and Haryana was imparted to, by Sh. M.L. Mehta, then Judge Incharge (Karkardooma Mediation Centre) and Master Trainer, (and presently District Judge-II, (North), Tis Hazari Courts, Delhi) and Dr. Sudhir Kumar Jain and Ms. Shailender Kaur, both AD & SJs and Master Trainers of the Delhi Mediation Centre from 11-14, October, 2008 at the Chandigarh Judicial Academy in the training programme on '**Techniques of Mediation**' organised under the aegis of the Mediation and Conciliation Committee of the Punjab and Haryana High Court. The said training programme was inaugurated by Hon'ble Mr. Justice Mahesh Grover, Judge, Punjab and Haryana High Court and Incharge of Mediation there. The valedictory session was addressed by Hon'ble Mr. Justice Nawab Singh, Judge, Punjab & Haryana High Court. The training was imparted in two groups of equal number i.e. one group was imparted training by Sh. M.L. Mehta and the other group by Dr. Sudhir Kumar Jain and Ms. Shailender Kaur. As reported by Sh. M.L. Mehta and Dr. Sudhir Kumar Jain, the methodology adopted was brief lectures followed by group discussion, interactions, exercises, role plays, mock roles, power point presentation, analysis and observation of

the parties themselves. The topics which were presented comprised of Relevance and Objectives of training; Importance of training and Adult learning; ADR and its relevance in Indian context; Characteristics of Mediation and its global acceptance as a tool of early resolution of disputes, and for reduction of arrears and delays in the disposal of cases; Conflict Management; Role of a Mediator; Stages of Mediation; Communication techniques with special emphasis on active listening, empathy; neutral reframing and the approaches and strategies of negotiations; Types of bargains with special emphasis on right based, positional, distributive, integrative and interest based bargains; Impasses; origin of impasses; types of barriers; how to break impasses; Reality testing with special reference to BATNA-WATNA; concept of vindication, self sacrifice, face-saving, use of apology; Logical thinking, lateral thinking, brain storming, etc; Mediation management, Role of parties and lawyers in mediation; Mediation in matrimonial cases; Role of Referral Judges and Relevance of Psychology and Spirituality.

The participants were also apprised about the importance of appropriate referrals being made by the Referral Judge in mediation management and about the effective implementation of mediation and relevance of an appropriate referral order. The participant officers shared their experiences regarding settlement of cases by them in their respective Courts and expressed satisfaction with the training programme, observing that without training they would not have understood the nuances of the process of mediation. Various aspects of governance of Mediation in India were also discussed and deliberated with the participants.

Dr. Sudhir Kumar Jain, AD&SJ and Master Trainer of the Delhi Mediation Centre, also submitted a proposed future action plan for implementation of mediation in the States of Punjab and Haryana for the kind consideration of Hon'ble Mr. Justice T.S. Thakur, Chief Justice, Punjab and Haryana High Court, with specific inputs qua short term plans and long term plans for the establishment of mediation centres both at the High Court and District Court levels, training programmes, budgeting, remunerations for the mediators, awareness programmes, formulation of Mediation and Conciliation Rules as per directions given by the Hon'ble Supreme Court in the Salem Bar Association case with periodic review of the same, appropriate guidelines being formulated for Referral Judges, Ethical code of conduct for mediators, Redressal Committees for regulation and enforcement of ethical rules on mediators, empirical analysis, preparation of user manual for mediators, composition of mediation rules, in flow of cases and management of mediation centres at the institutional level and minimum required ministerial staff.

Recognition and impetus to the work done by the Delhi Mediation Centre and recognition for its training skills and abilities has also been given by the National Judicial Academy, Bhopal. From 17.10.2008 -19.10.2008, a **National**

Judicial Workshop on Judging Skills for Effective Use of ADR, (Mediation and Lok Adalat) and Plea - bargaining, was organised by the National Judicial Academy, Bhopal in order to identify strategies for strengthening the use of ADR and plea bargaining in the administration of justice. Hon'ble Mr. Justice A.K. Sikri, Hon'ble Mr. Justice S.K. Kaul, Judges of the Hon'ble High Court of Delhi, Hon'ble Ms. Justice Manju Goel, (Retired Judge of the Delhi High Court, and presently Judicial Member of the Appellate Tribunal for Electricity), Hon'ble Mr. Justice Kurien Joseph, Judge, Kerala High Court, chaired the sessions in which a large number of senior judges from 23 states of the country participated. Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India, and member of the Mediation and Conciliation Project Committee also guided the participants through a critical evaluation of Section 89 of the CPC and the utilities and relevance of mediation presently. The Delhi Mediation Centre had the proud and privilege of Mr. M.L. Mehta, the then Judge Incharge, Mediation Centre at Karkardooma being invited as a Resource Person along with Mr. Braj Bihari, an international communicator/ mediator and Ms. Suman Hegde, Advocate Mediator of the Bangalore Mediation Centre. The report of District Judge-II, (North), Delhi sets forth here in below the immense implications of the effective use of ADR including mediation as an effective judging skill.....

"Report on visit to National Judicial Academy at Bhopal

National Judicial Academy, Bhopal organized a workshop on Effective Use of ADR and Plea Bargaining from 17th to 19th October, 2008.

The overall objective of this workshop was to identify strategies for strengthening the use of ADR and Plea Bargaining in the administration of Justice.

The workshop was attended by a large number of senior judges from twenty three States of the country. The topics spread in different sessions were (i) use of Mediation, Lok Adalat & Plea Bargaining, (ii) Section 89 CPC: Current issues and Challenges, (iii) Role of ADR in the Administration of Justice, (iv) ADR Modes: Critical Evaluation, (v) Judging Skills for Effective Use of ADR in the Administration of Justice, (vi) How to use ADR effectively, (vii) Objectives of the Court to use ADR in Matrimonial Cases and (viii) The Way Forward.

The sessions were chaired by Hon'ble Mr. Justice A.K. Sikri, Hon'ble Mr. Justice S.K. Kaul, Hon'ble Ms. Justice Manju Goel and Hon'ble Mr. Kurien Joseph. Mr. Braj Bihari (Vrindavan), Ms. Suman Hegde (Banglore) and myself were invited as resource persons.

The discussions in all sessions were interactive. The participants were greatly involved. The methodology of the workshop was lectures, discussions, interactions and power point presentations followed by documentary and other films.

Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India was also kind enough to chair one session and share his views on critical evaluation of section 89 PC and the utilities and relevance of Mediation in the present scenario. Overall the programme was able to achieve its objectives and motivate the participants to use ADR, particularly Mediation, as a mechanism of resolving disputes."

The Delhi Mediation Centre in its attempt to ensure that the guidelines as laid down by the Mediation and Conciliation Committee on 17.7.2008 by its Hon'ble Members-Hon'ble Mr. Justice S.B. Sinha, Judge Supreme Court of India and Chairman of the Mediation and Conciliation 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, that an endeavour be made to arrange at least one awareness programme on mediation every month at the district/Taluka level where the participants ought to be manageable and comprising of a small group of judicial officers and advocates, so that they are sensitized towards the benefits of mediation, apart from having conducted Refresher courses and Advance training programmes on mediation in September, 2008, also conducted awareness programmes on 4.10.2008, 18.10.2008 and 25.10.2008 at the Tis Hazari Mediation Centre where the participant Advocates were guided about the benefits of mediation by Sh. Rakesh Kapoor, then Judge Incharge, Tis Hazari Mediation Centre, and presently District Judge III, Tis Hazari, Delhi, Dr. Sudhir Kumar Jain AD& SJ and Mr. Dinesh Kumar Sharma AD & SJ and Judicial Mediator, Delhi Mediation Centre.

The success of the process of mediation and its resultant amicable final settlements arrived at the Delhi Mediation Centre, continues to draw distinguished visitors from different parts of the country. On 1.10.2008, Ms. Geeta Verma, Member Secretary of the Bihar State Legal Services Authority and Sh. Rajinder Kumar Mishra Law Secretary, Government of Bihar, Patna visited the Karkardooma Mediation Centre and expressed as follows:-

'Very impressive, high standard, useful need of the day are mediation centres....'

Ms. Geeta Verma (Member Secretary) Bihar States Legal Authority

'Contruccion of Mediation centre is very impressive where parties have full opportunity to disclose the grievances for settlement by the mediator'- Rajinder Kumar Mishra, Law Secretary Government of Bihar, Patna'

Comments of consumers of the process of mediation at the Delhi Mediation Centre continue to inspire the Mediators:-

'I would like to compliment the Indian judiciary for such an extension of humanity by instituting a mediation cell whereby we (the citizens) complainant, respondent are heard enough to straighten matters if not to reach a settlement but to be able to get a RESOLUTION' Ms. Shipra Sharan Srivastava.

