

# **MEDIATION NEWSLETTER**

NEWSLETTER OF THE DELHI MEDIATION CENTRE

( October, 2007 )



27.10.2007 - Reorientation Session of Referral Judges at the Tis Hazari Courts – Seen is Hon'ble Mr. Justice S.N. Dhingra addressing the Referral Judges with Shri G.P. Mittal, ASJ/Senior Mediator, Shri Sunil Gaur, Judge in charge, Tis Hazari Mediation Centre and Shri Satnam Singh, District & Sessions, Judge, Delhi.

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On 01.10.2007 a Mediation and Conciliation Centre was inaugurated at the District Courts at Rohini by Hon'ble Mr. Justice Ashok Bhan, Judge, Supreme Court of India and Executive Chairman of the National Legal Services Authority. On the said occasion Hon'ble Mr. Justice S. B. Sinha, Judge, Supreme Court of India in his address on **ADR VISION 2005** observed that the formal acceptance of ADR not just as an 'alternative means', but as an additional method utilized by the Courts has never been more apparent than it is, via Section 89 of the CPC w.e.f 01.07.2002. His Lordship also expressed that the purpose of incorporating Section 89 in the CPC as stated in the object clause was to implement the 129<sup>th</sup> Report of the Law Commission of India and to make the Conciliation Scheme effective, and it was proposed to make it obligatory for the Court to refer the disputes after issues are framed, either by way of Arbitration, Conciliation, Mediation, Judicial Settlement or through Lok Adalat. Thus at the very stage of framing of issues, the Judge can use his discretion to find the most appropriate means of resolution of the matter before him and if necessary refer the matter to Arbitration, Conciliation, Judicial Settlement including Lok Adalat, or Mediation. His Lordship also desired that the High Courts and District Courts impart legal education to people in general and to the members of the legal and judicial fraternity in particular so that the judiciary can achieve the optimum needs and benefits of mediation.

The 'ADR VISION 2005' was spelt out by Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India as:

- *Mediation will be digitalised.*
- *The client will see his lawyer through online medium only. The mediation thus would be across a paperless table.*
- *We will have E-Courts. The mediators would advise the disputants online as to which type of ADR shall suit the disputant's case.*

- *Most of the Courts dealing with civil cases would then be empty.*
- *We would have a large number of officers who would do Early Neutral Evaluation (E.N.E)*

To achieve this dream as expressed by His Lordship "There is a need for training both lawyers, members of the legal aid committees and judicial officers in the ADR techniques. Issues regarding determining whether ADR is appropriate in a given case, the timing of an ADR process that should be used needs much attention. Equally important is the need to create adequate awareness of the ADR techniques and system.

Extensive training would also be necessary to be imparted to those persons who intend to act as facilitators, mediators, conciliators. It is also necessary to have trained welfare experts, family counsellors who would not only have fair knowledge in the branches of law they are required to deal but also with psychology, sociology etc. as a fair knowledge of the said subjects have a direct impact on the job. Indisputably, the judges and judicial officers should also be imparted requisite training. We are ill-equipped for this purpose.

Similarly, the matrimonial courts and family courts are unable to effectively settle the dispute as they do not have either the requisite training or the mindset therefor. A qualified mediator must undergo 30 to 40 hours of general mediation training which would include experience in mediation either as an observer or a co-mediator or participant in role-plays or mock practices."

In the on going process of imparting awareness on the benefits of mediation, its advances and techniques, the Delhi Mediation Centre through its Master Trainers - Shri G.P.Mittal, ASJ/former Judge in charge, Tis Hazari Mediation Centre, Shri M. L. Mehta, present Judge in charge, Karkardooma Mediation Centre, Dr. Sudhir Kumar Jain, ADJ/Mediator - has imparted training on the '**Techniques of Mediation**' for 20 hours to 35 advocates at the Mediation and Conciliation Centre at the Rohini Courts Complex from 03.10.07 to 20.10.07.

A **Foundation Training Programme in Mediation** was also organized at the Delhi High Court, New Delhi by the Delhi High Court Legal Services Committee from 12.10.2007 to 14.10.2007, in which the first phase 20 hours training was imparted to 9 Judicial Officers of the District Courts of Delhi and to 24 Advocates. The said training programme was inaugurated by Hon'ble Mr. Justice S. B. Sinha, Chairman of the Mediation and Conciliation Project Committee in the benign presence of Hon'ble Dr. Justice Mukandakam Sharma, the Chief Justice of the High Court of Delhi and other Companion Judges of the High Court of Delhi. The training sessions were graciously presided over by Hon'ble Mr. Justice S. B. Sinha, Hon'ble Mr. Justice Markandeya Katju, Judges of the Supreme Court of India, Justice Man Mohan Sarin - the Chairman of the Delhi High Court Legal Services Committee, Justice Mukul Mudgal, Justice A. K. Sikri, Justice Gita Mittal, Judges of the High Court of Delhi and Justice Manju Goel, presently Member of the Power Tribunal, New Delhi. The Resource Persons here were expert international trainer mediators Mr. Niranjana. J. Bhatt, a Senior Advocate at Ahmedabad and Founder and Managing Trustee of the Institute for Arbitration, Mediation, Legal Education and Development (AMLEAD) and Convener of the Ahmedabad Mediation Centre and Mr. Brij Bihari Dass @ Sh. Brian Bloch, a confluence of legal and spiritual wisdom and a member of the ISKON. The expertise of the Delhi Mediation Centre during these training sessions through the participation, interactive discussions and observation of the role plays by the Master Trainers of the Delhi Mediation Centre, Mr. G.P.Mittal, ASJ and previously Judge in charge, Tis Hazari Mediation Centre, Mr. M. L. Mehta, present Judge in charge, Karkardooma Mediation Centre, Ms. Anu Malhotra, ASJ / Mediator, Dr. Sudhir Kumar Jain, ADJ / Mediator and Mr. Dharmesh Sharma, ADJ/ Mediator and Secretary, Delhi High Court Legal Services

Committee, who also shared their experiences in dealing in with cases during mediation, was also availed of.

The draft mediation rules framed by the Chairman Law Commission, Justice M. Jagannadha Rao which were accepted by the Hon'ble Supreme Court of India in *Salem Advocate Bar Association, T.N. Vs. Union of India (2005) 6 SCC 3344* clearly suggest that the High Courts and District Courts are required to play a significant role in achieving the optimum benefits of mediation. Pursuant thereto, the High Courts of Allahabad, Andhra Pradesh, Bombay, Delhi, Jharkhand, Karnataka, Madras, Madhya Pradesh have set up Mediation Centres to encourage disputants to arrive at a negotiated understanding with a minimum neutral external assistance with their primary object, being avoidance of vexation, expense and delay, and promotion of the ideal of '**access of justice to all.**'

A recent mediated settlement was arrived at the Tis Hazari Mediation Centre on 23.10.2007 in two complaints under Section 138 of the Negotiable Instruments Act 1881, filed by a lady complainant, who was a resident of the United Kingdom and was of Pakistani origin. She had commercial disputes with the accused who had issued cheques amounting to Rs. 50 Lacs approx. which were dishonoured on presentation, qua which the complainant had also filed a civil suit under Order 37 of CPC before the High Court of Delhi. The Delhi Mediation Centre facilitated a settlement to the effect that all civil and criminal cases would be withdrawn after receipt of the settled amount of Rs. 25,00,000/- by the complainant. Foreigners who are litigating in our courts have also appreciated the benefits of mediation.

In order to ensure that appropriate matters are referred to mediation and so that adequate awareness of the Mediation Techniques and system was provided to the litigants and their counsel, during a reorientation session of Referral Judges

comprising of Civil Judges, held at the Tis Hazari Mediation Centre on 27.10.2007, Justice S.N.Dhingra emphasized that the Referral Judges make the parties and their counsel aware in brief of the mediation process before referring the matters to the mediation centre.

The Delhi Mediation Centre has settled 3907 cases and 1380 connected cases i.e. a total no. of 5287 litigations amicably and finally since August, 2005, when *Judicial Mediation* was first insitutionalized



03.10.2007 to 20.10.2007 - Mediation training in progress at the newly inaugurated Mediation and Conciliation Centre at the Rohini Court Complex. Seen are some of the Advocate Trainee Mediators and Dr. Sudhir Kumar Jain, ADJ / Master Trainer of the Delhi Mediation Centre and Ms. Barkha Gupta, MM and Secretary DLSA, Rohini Courts.

### ACCOMPLISHMENTS TILL 31.10.2007

The Delhi Mediation Centre has till date settled 5287 cases (1380 connected cases) amicably and finally. The statistics this month speak of the continuously increasing expeditious efficacy of the benefits of mediation:-

<b>Tis Hazari Mediation Centre ( 01.10.2007 – 30.10.2007 )</b>	<b>Karkardooma Mediation Centre ( 01.10.2007 – 31.10.2007 )</b>
<b>Cases Referred</b> – 520	<b>Cases Referred</b> – 211
<b>Cases Settled</b> – 199	<b>Cases Settled</b> – 115
(Significantly, these include 25 matrimonial matters, 8 petitions for maintenance u/s 125 Cr. P.C, 6 custody matters, 38 suits for injunction, 68 suits for recovery, and 1 suit for partition)	(Significantly, these include 28 labour management disputes, 14 suits for recovery, 6 matrimonial matters and petitions for divorce, 30 cases under the Negotiable Instruments Act and 19 suits for injunction and 8 Petitions under section 138 of the Cr. P.C)
<b>Connected Cases Settled</b> – 75	<b>Connected Cases Settled</b> – 27

The Delhi Mediation Centre has been consistently settling over 200 cases every month and has now begun settling over 300 cases every month. This has been possible only due to the initiative and dedication of its fully trained mediators!