

MEDIATION NEWSLETTER

NEWSLETTER OF THE DELHI MEDIATION CENTRE

Volume 2

(September, 2008)

Number 9



03.09.2008 : - Visit of Doctors and Officers of different departments of the Delhi Government undergoing training at the Directorate of Training, NCT of Delhi along with their Joint Director to the Karkardooma Mediation Centre where they were briefed about the process and utilities of Mediation by Mr. M. L. Mehta, Judge-in-Charge, Karkardooma Mediation Centre.

(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

Mediation as an effective Additional Dispute Resolution mechanism is gradually changing the dynamics of the justice delivery system whilst expanding the horizons of justice to encompass administration of substantial justice, expeditiously.

On 03.09.2008, on the occasion of the inauguration of the National Law School at Delhi, the Hon'ble President of India, Her Excellency, Smt. Pratibha Devi Singh Patil, exhorted the budding generation of students joining the National Law School to effectively acquaint themselves with the alternate dispute resolution mechanisms, with specific reference to mediation, in order to be able to aid in the reduction of arrears of pending cases in Courts, so that amicable settlements wherever possible, could be arrived at, if those settlements were within the contours of law.

The importance and necessity of mediation as being an effective tool of Additional Dispute Resolution was also recognized by Hon'ble Mr. Ajit Prakash Shah, the Hon'ble the Chief Justice of the High Court of Delhi on 06.09.2008, on the occasion of the inauguration of the Dwarka Courts Complex, New Delhi, where His Lordship acclaimed the success of mediation and of the legal services in the form of Lok Adalats in the District Courts in Delhi.

The Delhi Mediation Centre through its panel of in-house Resource Persons has been consistently contributing to taking the benefits of mediation by imparting training in mediation across the country. From 03.09.2008 to 07.09.2008, a foundation training programme on the 'Techniques of Mediation' was conducted by the State Legal Services Authority, Madhya Pradesh at Jabalpur for the Judicial Officers and Advocates practicing at the Jabalpur High Court and its Benches situated at Gwalior and Indore. The Resource Persons here were:- Hon'ble Mr. Justice R.S. Jha, Judge, High Court of Madhya Pradesh, Dr. Sudhir Kumar Jain ADJ/Master Trainer of the Delhi Mediation Centre, Sh. Braja Bihari Das, Communicator / Mediator and Sh. Firdosh Karachiwala, Advocate, both renowned International Mediators and Sh. R.R. Prasad, Management Expert, Ranchi. The curriculum for this foundation training programme included the specific dimensions of a dispute and conflict management, mediation - its benefits and stages, modes of communication, bargaining, negotiations, impasses and techniques to break them, and qualities of a good mediator and communicator with specific reference to Professional Ethics. The methodology used for this training programme comprised of group discussions, lectures with interactive sessions, Role Plays, Mock exercises and Power Point presentation.

The report of Dr. Sudhir Kumar Jain, ADJ/Master Trainer, Delhi Mediation Centre on this Foundation training programme on the techniques of mediation set forth herein below reflects the enthusiasm evoked amongst the participants who expressed their readiness to function as mediators immediately on realizing the importance of mediation as an effective tool of disputes resolution.

"..... **DAY 1:-** The foundation training programme was inaugurated by Hon'ble Mr. Justice Dipak Misra, Executive Chairman, State Legal Services Authority, Madhya Pradesh who gave an introduction regarding ADR and its relevance. His Lordship guided the participants about the global acceptance of mediation as a tool for earlier resolution of disputes and for reduction of arrears and delays in the disposal of the cases and guided the participants that the Constitution has cast a duty to implement Section 89 of the Code of Civil Procedure, 1908 providing mediation as one of the tools for resolution of the disputes. His Lordship also observed that with the statutory mandate, it is the duty of the judiciary to implement Section 89 of the Code of Civil Procedure, 1908 in spirit. His Lordship further expressed that needy litigants immediately require timely justice with minimum cost.

The participants were guided by the Resource Persons, Sh. Firdosh Karachiwala, Dr. Sudhir Kumar Jain and Sh. Braja Bihari Das. Sh. Firdosh Karachiwala apprised the participants about ADR and its relevance with special reference to Section 89 of the Code of Civil Procedure, 1908. He discussed the definition and components of mediation. He highlighted the different techniques used in the mediation proceedings. He demonstrated the techniques of mediation by conducting a role play. He also highlighted the difference between Mediation, Arbitration, Lok Adalat and Conciliation and the benefits of Mediation.

Dr. Sudhir Kumar Jain guided the participants about the concept and definition of mediation. He guided the participants that mediation is a voluntary process in which a third neutral party i.e. the Mediator facilitates the communication and negotiations between disputants so that the participants can reach an amicable settlement. He also highlighted the basic components of mediation being the Right to Self Determination, Quality of the Process, Confidentiality. Dr. Jain also apprised the participants about the various stages of mediation such as introduction, joint session, single session and how to reduce the settlement into a workable agreement.

Sh. Braja Bihari Das guided the participants about the relevance of communication in the conduction of mediation. He mainly emphasized on non verbal communication such as Active Listening, Body Language, Questioning and Empathy. He also demonstrated skills of communication by mock exercises.

The participants conducted one role play to have a feel of mediation.

DAY2:- Hon'ble Mr. Justice A.K. Patnaik, the Hon'ble, the Chief Justice of the Madhya Pradesh High Court

graced the occasion by his benign presence. His Lordship released a Booklet on "Techniques of Mediation" prepared by the Madhya Pradesh State Legal Services Authority, Jabalpur. His Lordship apprised the participants how the judicial officers of Madhya Pradesh were delivering timely and speedy justice to the litigants. His Lordship also apprised the participants about the success of Lok Adalats in early disposal of the cases and also guided the participants about the types of cases which are to be referred for mediation.

The Resource Persons guided the participants about Verbal Communication such as Acknowledgment, Re-statement, Neutral Re-framing, Setting an agenda. The participants were apprised that in every mediation, appropriate communication between the disputants is relevant for an amicable settlement of the disputes. The participants were also apprised about the qualities of a good communicator.

The participants were also apprised about the different types of Bargaining such as Right bases Bargaining/ Positional Bargaining, Distributive Bargaining, Integrative Bargaining and Interest Based Bargaining. The Role Plays were also conducted for the benefits of the participants.

In the last session, the participants had visited the office of the State Legal Services Authority to conduct actual mediation in cases which were pending in the different Courts and were referred for mediation. All the participants conducted mediation under the supervision of Expert Mediators/ Resource Persons. The participants dealt with the cases as a Mediator and followed techniques of mediation by facilitating the parties to arrive at amicable settlement of disputes. Six cases along with three connected cases involving property, and matrimonial, and commercial disputes were settled.

DAY 3:- Sh. R.R. Prasad, Management Expert also joined as Resource Person, and guided the participants on **Transactional Analysis and Human Behaviour.**

The participants were apprised about Negotiations and its Definition, Benefits, Approaches to the Negotiations and Barriers to Negotiations. The participants were also taught about what are Impasses, Types of Impasses and Techniques to Break Impasses. The participants were also apprised about these techniques with Role Plays and Mock Exercises. During the course of the day, some Role Plays were conducted in which the participants acted as Mediator/Claimant/ Plaintiff/ respondent/defendant/ their respective counsels and observers.

DAY4:- The day 4 was devoted to different non-technical aspects of mediation such as Barriers to Dispute Resolution, Disputes which may be referred for Mediation, cases which are not fit for mediation, stages of reference of cases. The participants were also guided about the qualities of a good mediator, Effective and ineffective mediator, and use of apology in mediation. The participants were also guided about the importance of Professional Ethics in mediation. **DAY 5** was devoted to another important aspect

of mediation management, i.e. Role and Responsibilities of Referral Judges under Section 89 of the Code of Civil Procedure, 1908 and the importance of passing a referral order. The participants were apprised how appropriate referral of cases is important for an effective implementation of the Mediation. The participants were also apprised about the relevance of the Referral Order and its different components. The entire Foundation Training Programme was interactive. The discussion on various topics was facilitated by the Resource Persons. The participants actively involved in discussion to understand the techniques of mediation. All the queries raised by the participants were duly answered. It was not a lecture type training programme in which the participants were only made to listen. The participants shared their experience regarding the settlement of cases by them. At the end of the training programme, the participants realized the importance of the Training Programme and of mediation as a tool of resolution of disputes. There was a remarkable change in the attitude of the Mediators about mediation. All the participants including advocates also expressed their willingness to function as early as possible as mediators.

During the course of the entire training programme, few suggestions were given which are enlisted as under:-

- ◆ The Training programmes / Advance Course/ Refresher Course on Mediation be held for judicial officers and Advocates periodically.
- ◆ All the trainee officers / advocate mediators should be given immediately the cases for mediation.
- ◆ The Mediation Centres be provided with basic infrastructure and should be established at each District as early as possible.
- ◆ There should be continuous training programme for the referral judges for appropriate referral of cases for mediation.
- ◆ The Mediation and Conciliation Rules enacted by the High Court of Madhya Pradesh, do not prescribe for sitting judicial officers as mediators. It was suggested that appropriate amendment be made in the Rules as early as possible so that the sitting judicial officers who received training on mediation be assigned the work of mediation.

The participants showed their enthusiasm and willingness about learning the technical aspects of mediation. The Training Programme removed the doubts of the participants on the concept of mediation and made the participants understand that mediation is different from Lok Adalat, Arbitration and Conciliation. There was a substantial change in the skills of all the participants in mediation. All the participants were ready to function as a mediator immediately".

The Delhi Mediation Centre in its attempt to ensure that there is a constant improvement and

