



SAMADHAN

Delhi High Court Mediation and Conciliation Centre



R E F L E C T I O N S
2006-2010



Samadhan

Reflections





Reflections

of Samadhan, the Delhi High Court
Mediation and Conciliation Centre, 2006-10



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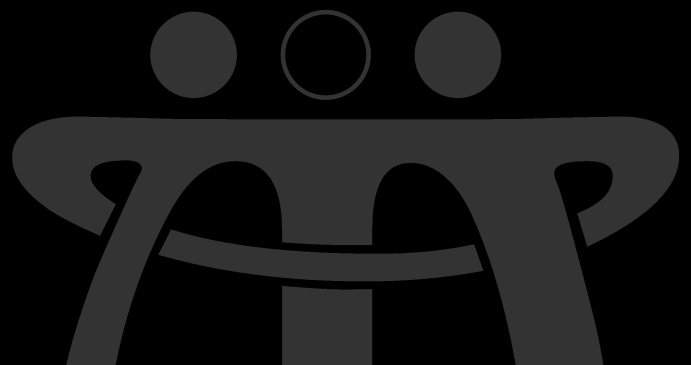
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“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul”.

MOHANDAS KARAMCHAND GANDHI



DIPAK MISRA
CHIEF JUSTICE



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30th June, 2010

MESSAGE

Mediation, as one of the modes of settlement, has gained ground in a convincing manner as a consequence of which starting from the smallest grievances to the largest issues are debated, discussed, negotiated and eventually finalized in most of the cases, and 'Delhi High Court Mediation and Conciliation Centre' has not only taken the keenest interest but also by constant industry and commitment concretised a quantum leap that has been able to make it a cult in the Alternative Dispute Resolution system as envisioned by the Legislature. That apart, the Centre has spearheaded the popularity of mediation in its essential conceptuality by imparting the requisite training necessitous for the aspirant trainers, and also equipping the Judges with the ability and further transforming them to become good referral Judges.

The activities undertaken and the fruits generated thereof are extremely well reflected in 'SAMADHAN'. It deserves well earned accolade for more than one reason, the principal one being the ostracisation of initial inhibition and establishing the idea like the fixed star in the northern sky. And, the second, proving the point that it has the determined effect potentiality to usher in homogeneity between social harmony and the good governance, may be to a limited extent, in a democratic body polity.

I, being one with the Centre, express my heartiest appreciation for the deeds done and am sure the future is bright – a well structured pyramid of lights – to pave the path with angelic force having immense intensity of purpose and unimpeachable purity. I have deliberately not mentioned name of any of the protagonists as I am the humble view that those who stand and watch also serve.

I am certain the publication shall meet the needs of the yearning souls who are dedicated to sub-serve the cause of justice as she does not desire tears to be shed because of any Ivory Tower approach or a 'City Hall' attitude.

Dipak Misra
JUSTICE DIPAK MISRA



Chief Justice of Delhi High Court, Justice Dipak Misra, with Justice Sanjay Kishan Kaul, Chairman, Overseeing Committee, Mr. A.S. Chandhiok, ASG, President of the Delhi High Court Bar Association, Mr. Kirti Uppal, Vice President Delhi High Court Bar Association, Members of the Overseeing Committee, and mediators

Prologue

Sanjay Kishan Kaul, J.

Chairman, Overseeing Committee,
Delhi High Court Mediation
and Conciliation Centre

Justice – without litigation

Essence of Samadhan

*“Out beyond ideas of right-doing and wrong-doing,
there is a field. I will meet you there.” – Rumi*

The quality of our lives depends not on whether there are conflicts or not, but how we respond to them. The word ‘Samadhan’ appropriately reflects the objective of the Delhi High Court Mediation and Conciliation Centre as a catalyst in providing a healing touch to the litigating public in amicably resolving their disputes. To build a wall or a bridge is in our hands and it is a matter of pride that advocates, who are experts in adversarial litigation, have helped to build bridges through Samadhan. The apprehensions and reservations harboured earlier have been washed away by the strides made by Samadhan.

The initiative of Justice Markandey Katju and the co-operation lent by the Bar headed by Mr. A.S. Chandhok resulted in the setting up of Samadhan which has come to occupy pride of place in the dispute resolution mechanism under the auspices of this High Court. The endeavour is unique as the members of the litigating Bar agreed to wear the cap of mediators, and successfully at that, in a path-breaking effort to encourage mediation as an Alternative Dispute Resolution process.

It has not been an easy path to tread and the journey from its inception till today has thrown a number of challenges. But Samadhan has been able to overcome these challenges and reach its eminence by dint of hard work of a number of people. Mr. J. P. Singh as the first Organizing Secretary and

Ms. Sadhana Ramachandran as the present one have provided the right impetus for advancement of the mediation movement. The Centre has had blessings of the successive Chief Justices and the Chairmen and Overseeing Committee Members of the Delhi High Court, all of whom have enthusiastically participated as equals to encourage mediation. The result is a strong force of more than 200 empanelled mediators with some of them now even playing the role of trainers not only in Delhi but in other States. Samadhan also takes pride in its state-of-the-art infrastructure, where the right ambience is created for the parties. The role of the Government of the National Capital Territory of Delhi has also been praiseworthy in providing necessary financial support.

As a joint venture between the Bench and the Bar, primarily run by lawyers and overseen by Judges, the Centre has been conceptualized to both build and diversify the capacity for resolving conflicts in society. It is an endeavour to build trust and understanding. Both lawyers and Judges, in their collective effort, while playing the role of catalysts in the healing process, act as vehicles leading the way for litigants. Stress is laid on consensual dispute resolution techniques which are private, informal, collaborative, facilitative, future-looking and interest-based. This approach leads to a calibrated, multi-dimensional, win-win remedy that is more durable because the parties find their own resolution to their disputes.

The success of the Centre is not only reflected in the cases resolved through mediation but also in encouraging parties to come for pre-litigative mediation. The ultimate goal of dispute resolution should be

to treat litigation as its last resort. Samadhan has built bridges of new trust by understanding and resolving conflict and persuading the parties to work hand-in-hand in furtherance of a common goal.

The success of mediation depends on the right case being referred at the right time. For this purpose, it is necessary to create awareness among the legal fraternity and the public at large. In furtherance of the same, the Centre regularly organizes awareness programmes followed by preliminary and advanced training programmes. Since mediation is all about dealing with relationships, the local language, cultural preferences and social attitudes are given their due importance while imparting such training.

Mediation has significant potential, fundamentally for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of disputes. The temples of justice should not just be places where the resolution of disputes begin, but instead places where disputes are brought to an end after alternative methods of resolving disputes are tried as a first option. Samadhan believes that resolving of disputes through mediation brightens the hope for peace and harmony; for, as Abraham Lincoln said, "Behind every cloud the sun is still shining".



Smt. Sheila Dikshit, Chief Minister, Delhi

SHEILA DIKSHIT
CHIEF MINISTER



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D.O.NO.: 02 DCM/280
Dated : 07.07.2010

MESSAGE

I am glad to know that **SAMADHAN** is bringing out REFLECTIONS to map its journey from its inception in 2006 till date.

The Government of Delhi feels proud to be associated with the endeavours of the Delhi High Court Meditation and Conciliation Centre to remove conflict from society which in turn reduces the burden on the Courts. In keeping with its commitments to the people of Delhi, the Delhi Government has always taken a lead in extending a helping hand to strengthen and empower institutions which provide relief to them.

I do feel that mediation is the need of the hour. I wish **SAMADHAN** well for its progress and programs in future including Peer Mediation in schools and strengthening Community Mediation which has already been launched by the Government in Delhi.

Sheila Dikshit

(SHEILA DIKSHIT)

Markandey Katju
Judge
Supreme Court of India



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28th June, 2010

MESSAGE

I am very happy to know that the Delhi High Court Mediation and Conciliation Centre 'SAMADHAN' is bringing out a comprehensive report about its activities from the time of its creation till date. 'SAMADHAN' has done excellent work in this connection and deserves all praise. The litigant public in Delhi has greatly benefitted from its activities, since mediation can quickly resolve disputes which would otherwise have taken a long time in ordinary litigation. In particular, the first Organizing Secretary Mr. J.P. Sengh and the present Organizing Secretary Mrs. Sadhana Ramachandran deserve full praise for all the efforts they put in for making this Centre a great success. The others associated with this scheme also deserve full praise. I am sure that 'SAMADHAN' will keep going forward and continue serving the public at large.

With best wishes,

Markandey Katju
(Markandey Katju)

DR. MUKUNDAKAM SHARMA
JUDGE
SUPREME COURT OF INDIA



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July 4, 2010

MESSAGE

The Delhi High Court Mediation and Conciliation Centre, also known as *Samadhan*, has completed four years of functioning and deserves special praise for its initiative in leading the way for Alternative Dispute Resolution in the country. Since its inception, the Centre has grown steadily in public stature, and the increasing volume of case references stands testimony to its efficiency. At a time when Courts are overburdened with a backlog of cases, litigants are finding the avenues of mediation and conciliation to be convenient, fast and satisfactory. By tapping this potential for ADR, the Delhi High Court Mediation and Conciliation Centre has blazed a trail that is now being followed by similar institutions across India. I am happy to have been involved with the Centre in its evolutionary stages as a Judge, and later, as the Chief Justice of the Delhi High Court. The glowing tributes to the Centre are a matter of pride for me and other members of the Delhi Bar and Bench who have worked tirelessly to ensure its success. The Centre is sure to earn several more plaudits, and I wish it the very best for all future endeavours.

A handwritten signature in blue ink, appearing to read 'Dr. Mukundakam Sharma', written over a horizontal line.

[DR. MUKUNDAKAM SHARMA]

JUSTICE MANMOHAN SARIN

Former Chief Justice - Jammu & Kashmir High Court

LOKAYUKTA

NCT of Delhi



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MESSAGE

It was in early 2006, when the indefatigable Justice Markaney Katju mooted the idea of setting up a Mediation Centre in Delhi High Court to be run by members of the Bar. He asked me to be the Chairman of the Overseeing Committee, comprising my colleagues Justice Sikri, Justice Kaul, Justice Ms. Manju Goel, the President, Vice President of the Bar Association, the Additional Solicitor General and some lawyers as Members.

At that time lawyers generally and those from the District Bar Association in particular, were vehemently opposed to mediation. Amarjit Singh Chandhok as President of the Bar and J.P.Sengh as the Organizing Secretary played a crucial role in dispelling these misgivings and paving the way for the Committee to bring mediation run by lawyers to the Delhi High Court. The rest is a saga of cooperation and hard work of the members of the Committee.

Well planned and structured training programmes with mediation experts from all over the country including experts in communication skills and in-house talent, were conducted. These programmes prepared lawyers to become familiar with fundamentals of mediation, its technique and skills with emphasis on the special features of commercial, industrial, labour and matrimonial disputes. Lawyers successful as mediators, are essentially not those who win laurels in court. They are lawyers who possess the virtues of patience, perseverance, persuasion and the ingenuity in finding creative solutions. The introduction of the practice of daily visits to the Centre by the Judge and lawyer member of the Overseeing Committee, gave the necessary impetus and proved to be very effective for the mediation process.

The Chief Justice of India and the Higher Judiciary were highly supportive of the Centre. The Govt. of NCT of Delhi was liberal in sanctioning funds and there were no bottlenecks on account of lack of funds either by training programmes or in payment of honorarium and fees to the mediators.

for

I enjoyed every bit of my role as a Chairman. My worthy successor Justice Mukul Mudgal took over the baton and after him Justice Sikri and Justice Kaul have very ably administered SAMADHAN as its Chairmen. The zeal, personal commitment, determination and hard work of members of the Committee and support from the Bench and the Bar ensured successful running of the Mediation Centre.

determining The essence of mediation lies in the parties themselves finding a lasting solution to resolve and end their conflict rather than determination who is at fault. As Gandhiji said "It is a great service to join the hearts of those riven asunder".

I wish the President of the Bar and those managing SAMADHAN all the best.


(Justice Manmohan Sarin)
26-07-2010

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Justice Ajit Prakash Shah
Former Chief Justice
High Court of Delhi

MESSAGE

I heartily congratulate the Delhi High Court Mediation and Conciliation Centre on completion of its 4th year. The Centre during this short period has successfully concluded large number of matters. What is more significant is that the Centre has succeeded in establishing 'mediation culture' in the capital city of Delhi. This achievement was possible only due to public spirited lawyers who worked with missionary zeal helping to create a truly effective and efficient ADR system and making life easier for citizens who would otherwise suffer in court. The Delhi High Court Mediation Centre could work as a role model in establishing such centres all over the country.

Experience the world over tells us that adversarial litigation is not the only means of resolving disputes. The inevitable result of channeling all disputes through the adversarial system is to accumulate huge arrears. The search for a simple, quick, flexible and accessible dispute resolution system has resulted in adoption of ADR mechanism especially the mediation. Today the mediation is seen as most promising mechanism for the resolution of both simple and complex disputes.

Victor Hugo, the great thinker, said "There is one thing stronger than that of the armies of the world and that is an idea whose time has come." It is my firm belief that the mediation movement has come to spread its wings all over the country. I am sure that our society will also slowly move from the times of adversarial litigation towards the era of negotiated settlements.

AjShah

Justice Ajit Prakash Shah

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Justice Mukul Mudgal

Chief Justice, Punjab & Haryana High Court
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MESSAGE

Date: 24.06.2010

I congratulate the Delhi High Court Mediation and Conciliation Centre - SAMADHAN - on completing four defining years of its existence. In this short span of time, it has not just established mediation as a vital dispute resolution process for the people of Delhi, but has emerged as a leader in showing the way for mediation centres in other parts of the country.

space

I have had the privilege of being a part of its evolution when I was a judge of the Delhi High Court and Chairman of the Overseeing Committee of judges and lawyers that administers SAMADHAN. In that capacity I have seen the remarkable commitment of the bench and the bar that has made SAMADHAN a reality. At SAMADHAN mediation has empowered disputants by putting them in control of their dispute resolution. It has enabled them to communicate with each other in a manner they could never have in a court. They have realized how much time, money and energy is saved by opting for mediation as a forum for resolving their disputes. Mediation has helped hundreds of litigants to look at their long-term interests and improve their future, not dissect the past. It has helped them realistically examine the strengths and weaknesses of their cases, restore their broken relationships and actually opt for more than they had ever imagined. Litigants of Delhi have realized that in mediation no party loses, everyone wins.

The ever growing daily list of cases listed at SAMADHAN bears witness to how well trained and experienced mediators of the Delhi High Court have selflessly helped in building bridges of new faith and trust between warring parties. And that this exemplary commitment of the bar is fully supported by equally committed judges of the Delhi High Court who have consistently shown by their own proactivity that the success of mediation depends on the right case being referred at the right time.

I am very happy and proud to see mediators of the Delhi High Court becoming trainers for other courts in the country and creating awareness through programmes in the law schools.

My best wishes to the entire team at SAMADHAN. May it grow from strength to strength in your unique and special contribution to peace and to the triumph of the human spirit.

MUKUL MUDGAL
Chief Justice
Punjab and Haryana High Court



JUSTICE A.K. SIKRI
HIGH COURT OF DELHI

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June 29, 2010

M E S S A G E

Ah! finally, a pleasant occasion for the Delhi High Court Mediation and Conciliation Centre to convey to the world at large as to what it has achieved. It is, no by standards, a mean achievement. Good thing is that before the Centre could blow its trumpet, recognition and accolades have started pouring in from all quarters. A full one page coverage highlighting its achievements, appearing in a leading national newspaper the Hindustan Times in the last month and a Cover Story about the Centre in the magazine 'Civil Society' in recent past, bear testimony to the credibility of the Centre and the distinguished work it has done and continues to do so.

I become somewhat nostalgic and emotional at this moment and am privileged to be associated with the Centre right from its establishment, nay, even before the Centre was set up. Justice Katju, a strong protagonist of the mediation movement, had set up such Mediation Centre in the High Court of Madras at Chennai, as a Chief Justice of that Court, before coming to Delhi. I and Justice Sarin were deputed to visit Chennai to study and learn the nuances and working of that Centre, so that similar Centre could come up in Delhi as well. On the setting up of the Centre in Delhi I became a part of the Committee from its very beginning. I have seen the Centre growing leaps and bounds.

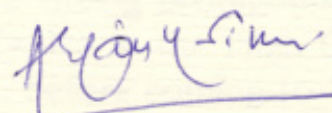
Not only I feel delighted and happy, I am a satisfied person when I look back and find our dream coming true. Our team of dedicated and committed workers had cherished the dream of making the Mediation Centre as one of the best in the country. With that aspiration in mind and to achieve that goal, entire team worked with passion, commitment and loyalty, motivating each other. Each individual's commitment to the group effort – that is what makes a team work – with a common vision has made what Mediation Centre is today. Every member of the dedicated team keeps reminding himself/herself about the following words of Sandra Swinney:-

"It is amazing how much people can get done if they do not worry about who gets the credit."

In a team-oriented environment, where everybody contributed to the overall success of the Centre, today this Centre can take pride in the fact, firmly established and conclusively proved, that it is the best in the country. So, the dream is realized. However, we cannot lax. We have to ensure that we remain on the top. I am hopeful that the present team would continue to strive hard for maintaining this position. My best wishes for this!

While the Centre would continue to achieve greater heights, fond memories of my association with the Centre will never fade away. I would keep remembering the pleasant mediation stories; I will keep narrating those fascinating mediation stories; I would keep writing about those heart-warming mediation stories.

On this occasion, I congratulate all the members of the team, who need no inspiration as they are self-motivated and committed to the cause.



(A.K. Sikri)

Samadhan attempts a happy inclusion. Not only does it build bridges between disputants, but also – in a first of its kind – cements a collaboration between the Bar and the Bench to create justice through mediation. A sensitized and proactive Bar raises the edifice of faith and trust on foundations provided by the Bench. Together they empower disputants, and inspire them to find peace and harmony in their lives.



*Mr. Amarjit Singh Chandhiok, Sr. Advocate,
President of the Delhi High Court Bar Association,
Additional Solicitor General and senior mediator,
with Justice Sanjay Kishan Kaul, Chairman of the
Overseeing Committee of Samadhan*



Patron

JUSTICE DIPAK MISRA
Chief Justice, Delhi High Court

Overseeing Committee of Samadhan 2010

JUSTICE SANJAY KISHAN KAUL
Chairman

JUSTICE REVA KHETRAPAL

JUSTICE HIMA KOHLI

MR. A.S. CHANDHIOK, SENIOR ADVOCATE
President, Delhi High Court Bar Association and
Additional Solicitor General of India

MR. J.P. SENGH
Senior Advocate, Former Organising Secretary

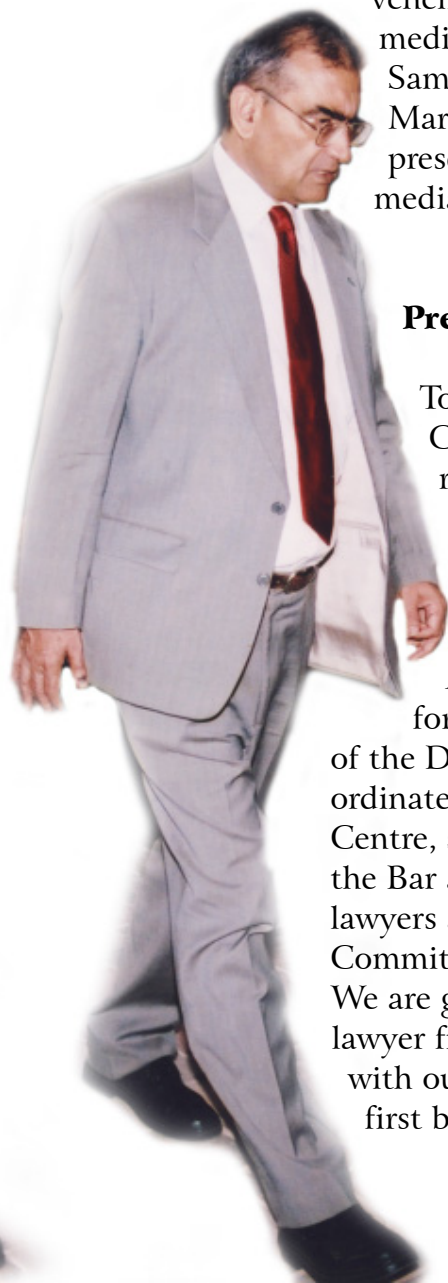
MR. KIRTI UPPAL
Vice President, Delhi High Court Bar Association

MS. SADHANA RAMACHANDRAN
Organizing Secretary

MS. MALDEEP SIDHU
Advocate

The Journey

*Justice Markandey Katju
with Mr. A.S. Chandhiok.*



Conception

It was in May, 2006, that the journey of the Delhi High Court Mediation and Conciliation Centre (also referred to as the Centre), began. The idea to start such a centre in the Delhi High Court to be run by members of the Bar was mooted by the then Chief Justice of the Delhi High Court, Justice Markandey Katju (now a judge of the Supreme Court), which became the first step towards its conception. This first step was a courageous one, especially in an environment of stiff opposition from the lawyers (practising in the District Courts), who had vehemently opposed the setting up of mediation centres in District Courts. Samadhan is deeply indebted to Justice Markandey Katju for its existence and present position as a leader of the mediation movement in the country.

Preparation

To prepare for the functioning of the Centre, trained mediators were required. For this purpose, the first training workshop was held from 17th March to 19th March, 2006, to train the first batch of lawyers of the Delhi High Court as mediators. An Overseeing Committee was formed comprising judges and lawyers of the Delhi High Court to continuously coordinate and monitor the activities of the Centre, symbolizing the joint commitment of the Bar and the Bench to mediation. 35 lawyers and all the judges of the Overseeing Committee attended this training workshop. We are grateful to Mr. Niranjana Bhatt, senior lawyer from Ahmedabad, whose association with our Centre began as a trainer for the first batch of mediators. He continues to

train and guide us ever since. We are also grateful to Mr. Sriram Panchu, Senior Advocate, Chennai, for his invaluable role in conducting the Centre's training programmes.

Inauguration

Following this training, the Delhi High Court Mediation and Conciliation Centre was formally inaugurated on 26th May, 2006. The Bench and the Bar together rose to the occasion and welcomed the idea of mediation whole-heartedly. The Centre started functioning from two small rooms on the ground floor. There was a small reception area between these two rooms with hardly any place for advocates and parties to stand. Within a short period of time, small queues of parties and advocates started forming, waiting for their turn to avail of the mediation rooms.

*Justice Markandey Katju
inaugurating the Centre, with
Justice Vijender Jain.*




Naming Ceremony

The Delhi High Court Mediation Centre was aptly named *Samadhan*, meaning 'resolution'. From a humble beginning, where Samadhan worked from two small rooms, it has travelled a long way. On 7th January, 2008, the then Chief Justice of India, Justice K. G. Balakrishnan launched its name and logo. He also released, for the public and the Bar, awareness material highlighting the advantages of mediation, the Delhi High Court Rules governing mediation, and the functioning of the Centre.



Former Chief Justice of India K.G. Balakrishnan, Justices of the Supreme Court Arijit Pasayat and M.K. Sharma, former Chief Justice of Delhi High Court A.P. Shah, Chief Justice of Punjab and Haryana High Court Mukul Mudgal and Mr. A.S. Chandhiok, Additional Solicitor General of India and President of the Delhi High Court Bar Association, at the release of the Samadhan logo, training manuals and awareness material.



First Expansion

Seeing the response of the litigants and the lawyers as they gradually started accepting mediation as an effective mode of dispute resolution, the need was felt to expand the existing Centre. On 7th January, 2008, the Chief Justice of India, Justice K.G. Balakrishnan inaugurated the expanded Centre on the ground floor. Samadhan now had a bright and colourful reception along with six mediation rooms and a staff room to accommodate advocates and parties more comfortably. On this occasion, Samadhan's website was also launched.

Second Expansion

As mediation gathered momentum, the Centre grew, the number of referred cases increased, as did the number of trained mediators. Samadhan soon needed further expansion. As a result of the unstinting support of our then Chief Justice, A.P. Shah, seven state-of-the-art mediation rooms, including a multipurpose conference room, were added on the first floor. The existing Centre on the ground floor was also renovated. This made Samadhan far more functional and spacious with a better reception and waiting area for the litigants and a total of 13 mediation rooms where mediations are now being conducted throughout the day from 10 am to 9 pm.



People Behind

The Chief Minister of Delhi, **Smt. Sheila Dixit** and the Government of the National Capital Territory of Delhi have believed in the mediation movement from its inception and continuously supported it financially with generous grants for the last four years. It is because of this financial support that, in a very short period, Samadhan has been able to have state-of-the-art infrastructure and train its mediators to be amongst the best in the country.

Samadhan owes its existence and growth to all members of the **Bar** and **Bench**. We wish to thank all those whose passion and commitment made it possible to sustain a

movement that builds bridges and reposes new trust and faith by understanding and addressing conflict with its myriad emotions. Samadhan also owes to civil society, its growing acceptance as a catalyst in finding lasting solutions to disputes.

Dr. Justice **Arijit Pasayat**, Judge, Supreme Court of India, initiated our participation in the Lok Adalat movement in the Supreme Court. He involved our mediators in assisting the Supreme Court of India in its Lok Adalats as *amicus curiae*. Samadhan has hosted outstation litigants in Delhi, conducted mediation sessions two days before every Lok Adalat and finalized settlements over six Lok Adalats in Justice Pasayat's tenure in the Supreme Court.



Justice **Mukundakam Sharma** as Chief Justice of Delhi High Court gave a fillip to the mediation movement by increasing referrals to the Centre because of which mediators gained valuable experience and confidence, and enhanced their abilities. He created further infrastructure in the Centre for the ever-increasing number of cases.

Justice **Vijender Jain** fully supported the mediation movement in the Delhi High Court throughout his tenure as acting Chief Justice and carried forward the initiative to the Punjab and Haryana High Court where he set up court-annexed mediation. Justice Vijender Jain gave the first opportunity to mediators from Samadhan to be trainers for

the first batch of mediators in the Punjab and Haryana High Court.

The first Chairman of the Overseeing Committee, Justice **Manmohan Sarin**, who later took over as the Chief Justice of the High Court of Jammu and Kashmir, and is now Lokayukta, Delhi, pro-actively guided the growth of the Centre in its formative years.

Justice **A. P. Shah**, Chief Justice of the Delhi High Court, was our visionary and motivator and has been a great source of support and strength. Justice Shah encouraged the Overseeing Committee and all the mediators of the Samadhan



throughout his tenure as Chief Justice. Justice Shah

was instrumental in Samadhan having state-of-the-art infrastructure and facilities. In his tenure the strength of empanelled mediators crossed the 200 mark. It was under his leadership that workshops to sensitize all the members of the Delhi Higher Judicial Service as referral judges were held.

Justice **Mukul Mudgal**, the second Chairman of our Overseeing Committee, continuously encouraged and supported Samadhan in every endeavor. Justice Mudgal as Chief Justice, High Court of Punjab and Haryana invited trainers from Samadhan to conduct introductory and advanced training for lawyers from districts of Punjab and Haryana and for the mediators of the Punjab and Haryana High Court.

Justice **A. K. Sikri**, Judge, Delhi High Court, the third Chairman of our Overseeing Committee has been associated with the Centre from the beginning and continues to help us innovate and Indianise mediation to make our approach more dynamic in facing both 'global' and 'local' challenges effectively.

Samadhan is grateful to them all.

Overseeing Committees

Since the inception of Samadhan, judges and lawyers of the Delhi High Court became catalysts in a healing process where parties in conflict, often over a long period of time, began to agree to mutually acceptable solutions. The joint committee of lawyers and judges, called the Overseeing Committee, has been smoothly coordinating and supervising all the activities of Samadhan. The members of the Overseeing Committee over the last four years include the first Chairman, Justice Manmohan Sarin, Chief Justice (retd.) of Jammu and Kashmir, now Lokayukta of Delhi, the second Chairman Justice Mukul Mudgal, now Chief Justice of Punjab and Haryana High Court, the third Chairman Justice A.K. Sikri, Judge, Delhi High Court, and the present Chairman Justice Sanjay Kishan Kaul, Judge, Delhi High Court. The other judges of the Overseeing Committee since 2006 include Justice Manju Goel (retd.), Justice S. Ravindra Bhat, Justice Reva Khetrapal, Justice P. K. Bhasin, Justice S. Muralidhar, Justice Hima Kohli and Justice Vipin Sanghi.

Mr. A. S. Chandhiok, Sr. Advocate, President, Delhi High Court Bar Association and presently also Additional Solicitor General of India, has been a pillar of strength for the mediation movement. Mr. Chandhiok accepted the challenge of establishing a mediation centre in the Delhi High Court against all odds on the request of Justice Markandey Katju. Mr. J. P. Sengh, Sr. Advocate and first Organizing Secretary of Samadhan has nurtured the Centre from its inception through its continuous evolution over the last four years very ably and with great distinction. Ms. Sadhana Ramachandran, the present Organising Secretary, has been an outstanding mediator

and has borne the responsibility of bringing out all the training manuals and awareness materials. Mr. Kirti Uppal, Vice President of the Delhi High Court Bar Association has strengthened the committee by his active participation. Ms. Maldeep Sidhu, Advocate has been a member of the Overseeing Committee since its inception and has been an invaluable resource.



Nature of cases

The nature of cases handled successfully by Samadhan include business contracts, transactions, real estate and construction, consumer issues, employment and service issues, industrial disputes, banking and insurance cases, trade mark disputes, family and matrimonial disputes, disputes of child custody and rights, issues arising out of habeas corpus petition that need verification and company disputes including winding up petitions. Public sector undertakings and various government departments and institutions have also been participating in mediation. They also send their legal officers and lawyers for training in mediation. Banks have responded very positively to settling their disputes through mediation. Wherever necessary and appropriate, Samadhan has been making available the services of appropriate professional or welfare experts to assist the mediation process along with the mediators to ensure that every dispute gets the best possible professional assistance.

Samadhan also continues to handle cases referred by the Hon'ble Supreme Court of India as well as the District Courts in Delhi in addition to its cases pending on reference by the High Court of Delhi.



New initiatives

Samadhan has started conducting mediations at a pre-litigation stage which is gradually becoming very popular, and several matters are being referred either by lawyers or are being brought by the parties themselves everyday to the Centre. This initiative will help people in 'nipping their disputes in the bud' and will discourage frivolous, casual or protracted litigation. In 2010 Samadhan will start preparing school children in Peer



Mediation to enable them to equip themselves to handle and resolve their own disputes from a young age. This will be Samadhan's contribution towards fulfilling its social responsibility in equipping future generations for peace harmony and universal brotherhood.

Above: An overflowing mediation centre often forces mediators to conduct sessions in the waiting hall itself to save the disputants' time.

Left: Ms. Reema Dewan, Principal, Delhi Public School, Chandigarh, discussing the Peer Mediation Programme with Samadhan mediators.

Training

Samadhan's Training Programmes

At Samadhan we believe that training must have the right physical environment and participants should absorb the wonderful subject that mediation is in a relaxed manner. Therefore, all training workshops at Samadhan are usually residential workshops where the trainers and trainees come out of their daily professional environment and stay together for three days. This immediately creates a warm and informal environment needed for training. Participants are free from professional commitments, phone calls and court routine. They enjoy the group outing immensely. They love the formal programme because it is so interactive. The bonding between participants is evident when even after the

*Below: A role play in progress.
Opposite : A question-answer session.*



formal programme is over every day they can be seen in deep discussion on the nuances of mediation after dinner and late into the night. At any given point of time, there are hundreds of lawyers of the Delhi High Court in the waiting list for training.

Role Plays form an integral and essential part of every training programme. They are also very popular with the participants who eagerly look forward to them. Here, participants simulate an actual mediation session through different dispute situations which they enact in a role play, thus learning the finer nuances of mediation techniques. They also learn how to overcome impasse and dead-lock situations through brainstorming exercises and other techniques.

The subjects that are taken up in training are: The Legislative History of Mediation in India; the Law on Mediation; Frequently Asked Questions on Mediation; the Importance of Training in Mediation; Understanding and Transforming Conflict; Comparative study of other modes of Dispute Resolution and Mediation; Negotiation and Bargaining; the Mediation Process and its Stages; the Role of the Mediator, the Role of Lawyers in Mediation; Communication Techniques; how to handle Impasse; Closing and Wrapping up the mediation sessions; Drafting the Settlement Agreement, Ethics and Confidentiality; Co-mediation; Special Features of different types of cases that come to mediation including family and matrimonial cases, industrial disputes, accident claims, money claims, commercial disputes and others.

All workshops are attended by senior and middle level advocates with over 10 years of experience at the Bar as well as young advocates with experience of over five years at the Bar.



Introductory Training Programmes

The following introductory workshops have been conducted:

- **17th – 19th March 2006:** The First Introductory Training Workshop was held at Heritage Village, Gurgaon to train lawyers as mediators in which judges of the Overseeing Committee and 33 lawyers participated.
- **26th – 28th May 2006:** The Second Introductory Training Workshop was held at Delhi High Court premises to train the lawyers as mediators in which judges of the Overseeing Committee and 31 lawyers participated.
- **22nd – 24th September 2006:** The Third Introductory Training Workshop was held at ASSOCHAM, New Delhi, to train 30 lawyers as mediators.
- **23rd – 25th January 2009:** The Fourth Introductory Mediation Training Workshop for training 80 lawyers was held at Heritage Village, Manesar, Gurgaon.



Communication; Use of Language; Confidentiality; Closing the Mediation; Agreement Writing; Co-Mediation; Advocacy in Mediation; and The Importance of Training in Mediation.

Advanced Training Programmes

Advanced training programmes are also regularly held to fine tune skills of mediators who have received introductory training. In these workshops, mediators go deep into the following areas:

Legislative History of Mediation in India; The Law on Mediation; Frequently Asked Questions on Mediation; Understanding and Transforming Conflict; Dispute Resolution and Mediation; Negotiation and Bargaining; The Mediation Process; Role of the Mediator; Impasse; Ethics in Mediation; Directing and Controlling

Communication; Use of Language; Confidentiality; Closing the Mediation; Agreement Writing; Co-Mediation; Advocacy in Mediation; and The Importance of Training in Mediation.



• **22nd – 24th September 2006:** The First Advanced Training Workshop was held at ASSOCHAM, New Delhi and was attended by 30 lawyers.

• **7th – 9th December 2007:** The Second Advanced Training Workshop was held at Manesar with the theme ‘Transforming Conflict’ and was attended by 32 lawyers.

• **11th – 13th February 2010:** The Third Advanced Training Programme was held at Manesar. It was attended by 80 lawyers.

Samadhan Steps Out

2008: On the occasion of the inauguration of the mediation centre at Mumbai High Court, Mr. J.P. Sengh, Sr. Advocate and the then Organising Secretary of Samadhan, was invited to address the gathering and share his experiences of mediation in Delhi.

• **Chandigarh, 2008:** The mediators of Samadhan first stepped out as trainers and resource persons for two Mediation Skills Workshops organized by Punjab and Haryana High Court at Chandigarh. These were held over a period of two weeks i.e.

from 18th to 20th July 2008 and 25th to 27th July 2008. In record time, two training manuals were prepared by Samadhan and were named *The Mediator’s Tool Box*. It was an honour for mediators from Samadhan to train along with Mr. Niranjn Bhatt, senior lawyer from Ahmedabad and Mr. Sriram Panchu, Senior Advocate from Chennai, who continue to be our inspiration. The resource persons from Samadhan who trained the advocates at Chandigarh workshop included Justice Manju Goel (retd.), Mr. A.S. Chandhiok, Mr. J.P. Sengh, and Ms. Sadhana Ramachandran.

• **Chandigarh, 23rd – 25th April, 2010:** The first phase of an Introductory Training Workshop for mediators, held in Chandigarh from 23rd–25th April, 2010, was organized by Punjab and Haryana High Court at Chandigarh. This workshop trained 125 lawyers from 18 districts of Punjab and Haryana. The team from Samadhan comprised Justices A. K. Sikri and Hima Kohli (who chaired the sessions), and Mr. A.S. Chandhiok, Mr. J.P. Sengh, Ms. Sadhana Ramachandran, Ms. Maldeep Sidhu, Ms. Veena Ralli, Mr. Kewal Singh Ahuja, and Ms. Amita Sehgal Mathur, who conducted the sessions.



Mr. A.S. Chandhiok with Justices Permod Kohli, Cyriac Joseph, M.M. Kumar and Mahesh Grover at the inaugural of the Chandigarh training programme for Punjab and Haryana district lawyers.

Right : Justices A.K. Sikri, Sanjay Kishan Kaul, Rewa Khetrapal and Hima Kohli of the Delhi High Court, with Justice M.M. Kumar of Punjab and Haryana High Court at the Chandigarh training.

Below : Mr. J.P. Sengh, Sr. Advocate and Member Overseeing Committee of Samadhan, at the Gujarat National Law University training.

Opposite right : Ms. Sadhana Ramachandran, Organising Secretary of Samadhan at Institute of Law, Nirma University and at GNLU, with Mr. Niranjan Bhatt, senior mediator from Ahmedabad.



• **30th April – 2nd May, 2010:** The second phase included Introductory and Advanced Training for mediators and was held in Chandigarh from 30th April to 2nd May, 2010. This workshop completed the training that Samadhan had initiated for 125 lawyers from 18 districts of Punjab and Haryana. The Samadhan team in the second phase comprised of Justices Sanjay Kishan Kaul, and Reva Khetrapal (who chaired the sessions), and Mr. J. P. Sengh, Ms. Sadhana Ramachandran, Ms. Maldeep Sidhu, Mr. Kewal Singh Ahuja and Ms. Amita Sehgal Mathur, who conducted the sessions.

• **Allahabad High Court:** From 27th September to 28th September, 2008, a Training Workshop was held by the Allahabad High Court Mediation Centre. This workshop addressed the issues arising out of proceedings under Sections 498 A and 406 of the Indian Penal Code and the Delhi High Court Team was requested to conduct the workshop. It was conducted by Justice Manju Goel (retd.), Mr. A.S. Chandhiok, Mr. J.P. Sengh, Ms. Sadhana Ramachandran. Hon'ble Mr. Justice Markandeya Katju, Judge, Supreme Court of India welcomed the Delhi team and attended the training



programme as an observer. Hon'ble Mr. Justice Sunil Ambwani, Judge, Allahabad High Court and chairperson of the Allahabad Mediation Overseeing Committee was also present through the workshop.

• **Lucknow Bench of Allahabad High Court:** From 17th July to 19th July 2009, a Training Workshop was organized at Lucknow by Samadhan. This was conducted by Ms. Sadhana Ramachandran, Advocate along with Mr. Niranjan Bhatt, Advocate. The participants in the said workshop included 30 senior lawyers of Lucknow, 10 trained lawyer mediators, 35 law students of Ram Manohar Lohia National Law University, Lucknow and office bearers of the Lucknow Mediation Centre. Hon'ble Mr. Justice Pradeep Kant, Senior. Judge of the Lucknow Bench inaugurated the workshop and Hon'ble Mr. Justice Chandramouli Kumar Prasad, the then Chief Justice of the Allahabad High Court gave the valedictory address. The workshop was attended by Judges of the Lucknow Bench each day.

• **Gujarat National Law University (GNLU), September 2009:** A Workshop for trial court lawyers of the Ahmedabad District Courts was held at GNLU. Mr. J. P. Singh, Sr. Advocate and Ms. Sadhana Ramachandran, Advocate were invited by the Vice Chancellor of GNLU along with Mr. Niranjan Bhatt, Advocate to conduct the said workshop over 4 weekends in September, 2009. This was a 32-hour intensive training programme, the most intensive to be held in

the country so far. Samadhan mediators, along with Mr. Niranjan Bhatt, Advocate, covered 24 hours of the 32-hour training period.

• **Institute of Law, Nirma University, Ahmedabad:** A Clinical Workshop on mediation was held at the Institute of Law, Nirma University for over 2 weekends for the senior most students i.e. those entering 4th year. This Workshop was specially designed for young students and it was an honour for Mr. J. P. Singh, Sr. Advocate and Ms. Sadhana Ramachandran, Advocate to be invited by the Director of Institute of Law, Nirma University, Ahmedabad, for conducting this workshop along with Mr. Niranjan Bhatt, Advocate.



• **Lecture on Mediation at Minerals and Metals Trading Corporation of India Ltd. (MMTC), Delhi:** On 30th January 2010 a lecture series on mediation was conducted by the MMTC, Delhi and a team of Samadhan was invited to sensitise the Senior Executives of MMTC. Mr. J.P. Singh, Sr. Advocate and Mr. Sudhanshu Batra, Advocate both Mediators of Samadhan spoke on 'Techniques of Mediation'. Their respective discussion/ talks were followed by a very participative interactive session.



Right and below : Mr. J.P. Sengh and Ms. Sadhana Ramachandran, mediators from Samadhan, at the Qinney College of Law, Utah.

Bottom : Ms. Niti Sheth, Justice Manju Goel, Justice A.K. Sikri, Justice Manmohan Sarin, Justice Sanjay Kishan Kaul, Mr. Niranjn Bhatt and Mr. Braja Behari Das at the training for representatives of government, public sector undertakings and their legal advisors.



• **Visit of Samadhan mediators to the S.J. Quinney College of Law, Salt Lake City, University of Utah, USA:** On the invitation of Dean Hiram Chodosh two mediators from Samadhan, Mr. J. P. Sengh and Ms. Sadhana Ramachandran, along with Mr. Niranjn Bhatt were invited to the S.J. Quinney College of Law, Utah from May 28 to June 4, 2010 for a mediation training programme. This training was part of a larger initiative – the Global Mediation Project – launched by Dean Chodosh. The purpose of this project is to build a worldwide capacity to resolve legal conflicts through mediation by customising mediation concepts and skills to the specific needs and traditions of a particular country. To achieve this, the Utah experts collaborate



with local mediators across countries to create appropriate training materials, assisting with the train-the-trainers program, to help promote indigenised methods.

The Indian team benefited greatly from the rich experience of the professors, trainers and mediators at Utah. We are grateful to Dean Chodosh, Professor James Holbrook and the videography team of the College of Law, comprising Aaron Dewald, Aaron Herd and Mark Beekhuizen, who spared no effort in enriching the joint project. We look forward to such future collaborations that are of mutual benefit to mediators of Samadhan and Utah.

Training Programme for Chief Executives, Heads of Administrative Organizations and their Law Officers

- **15th – 17th February 2007:** A training workshop was held for the law officers, chief executives and heads of the administrative organizations at the Heritage Village, Manesar, Gurgaon. The workshop was

conducted by Samadhan. The main object of this workshop was to sensitise advocates, legal advisers and executives of statutory bodies and public sector undertakings of the efficacy of mediation as an Appropriate Dispute Resolution mechanism and to bring litigations of these undertakings within the purview of mediation, as far as possible.

Orientation Programme for Members of the District Judiciary, Delhi

- **7th – 9th August 2009:** An orientation course was conducted for the members of the district judiciary on “Principles of Mediation, Importance and Role of Referral Judges and Case Management” jointly by Samadhan and Delhi Judicial Academy for about 100 Judicial Officers from both DHJS and DJS. The course was aimed at sensitizing the judicial officers to the process of mediation and its effectiveness in resolving disputes. Justice Manju Goel (Retd.), Mr. Niranjana Bhatt, Advocate, Mr. A.S. Chandhok, Mr. J.P. Sengh, Mr. M.L. Mehta, Principal Secretary (Law, Justice & LA), Govt. of NCT of Delhi, Ms. Anu Malhotra, Director, Delhi Judicial Academy



and Ms Aparna Vasu conducted sessions which were presided over by the judges of the Delhi High Court. A session was conducted on 'Referral Order and its Importance' by Justice A.K. Sikri. Sessions on 'Case Management', 'Application of ICT in Court and Judicial Process' were conducted by Justice Madan B. Lokur, Justice Pradeep Nandrajog and Justice Dr. S. Muralidhar.

- **13th – 15th November 2009:** An Orientation Course was conducted for the members of the District Judiciary on “Principles of Mediation, Importance and Role of Referral Judges and Case Management” jointly by Samadhan and Delhi Judicial Academy for about 108

Refresher Workshop for mediators at Manesar.



Judicial Officers from both Delhi Higher Judicial Service (DHJS) and Delhi Judicial Service(DJS). Resource persons from Samadhan conducted the training. The course was aimed at sensitizing judicial officers to the concept and process of mediation and its effectiveness in resolving disputes.

- **8th – 10th January 2010:** An advanced orientation course was conducted at Manesar on ‘Principles of Mediation’, ‘Importance and Role of Referral Judges’ and ‘Case Management’ jointly by Samadhan and Delhi Judicial Academy for about 100 judicial officers from both DHJS and DJS.



Refresher Workshop to upgrade Mediator Skills as a Continuing Education Programme

- **28th – 29th March 2009:** A Refresher Programme was organized by Samadhan to upgrade the skills of empanelled mediators. Samadhan also acknowledged the mediators who have been performing well and appreciated their efforts in making Samadhan one of the finest mediation centres in the country. The mediators, all advocates of the Delhi High Court, who need special mention are: Ms. Harkiran Kalra, Ms. Veena Ralli, Mr. M.N. Dudeja Mr. Kewal Singh Ahuja, Ms. Amrit Kaur Oberoi, Mr. Mohit Gupta, Ms. Anita Sahani, Mr. Raghuvinder Verma, Mr. Dalip Mehta, Mr. K. Venkatraman, Ms. Sujata Kashyap, Mr. Rajiv Agarwal, Mr. Sudhanshu Batra, Mr. Puneet Aggarwal and Mr. Ashwani Kumar Sood.



Trainers who helped Samadhan

During all the workshops, Samadhan had the privilege of having professional trainers like Mr. Niranjan Bhatt, senior lawyer and mediator from Gujarat and Mr. Sriram Panchu, Sr. Advocate and mediator from Chennai, both of whom have been pioneers of the mediation movement in India, Ms. Gita Ravindra, lawyer and mediator trainer from Virginia, USA, Mr. Braja Behari, coordinator of Iskon Resolve and internationally renowned mediator, Ms. Aparna Vasu, Advocate and mediator from Chennai and Mr. Firdaus Karachiwala, Advocate and mediator from Mumbai.

MEDIATION
TRAINERS

Samadhan's Own Trainers

Today Samadhan is known not only for excellence in its mediation skills but also for its first class trainers who are also regularly invited to conduct training programmes in other states. The training faculty are:

- Mr. A.S. Chandhiok, Sr. Advocate
- Mr. J.P. Sengh, Sr. Advocate
- Ms. Sadhana Ramachandran, Advocate
- Ms. Maldeep Sidhu, Advocate
- Mr. Rajiv Agarwal, Advocate
- Mr. Sudhanshu Batra, Sr. Advocate
- Mr. M.S. Oberoi, Advocate
- Mr. Kewal Singh Ahuja, Advocate
- Ms. Veena Ralli, Advocate
- Ms. Amita Sehgal Mathur, Advocate



Kabir, Justice Raveendran, Justice Dalveer Bhandari and Justice Swatanter Kumar. Justice Markandey Katju, and Dr. Justice M.K. Sharma have graced and inaugurated our training workshops.

All the judges of the Overseeing Committee of Samadhan have led from the front in every workshop that has been conducted, by chairing sessions and personally interacting with the participants.

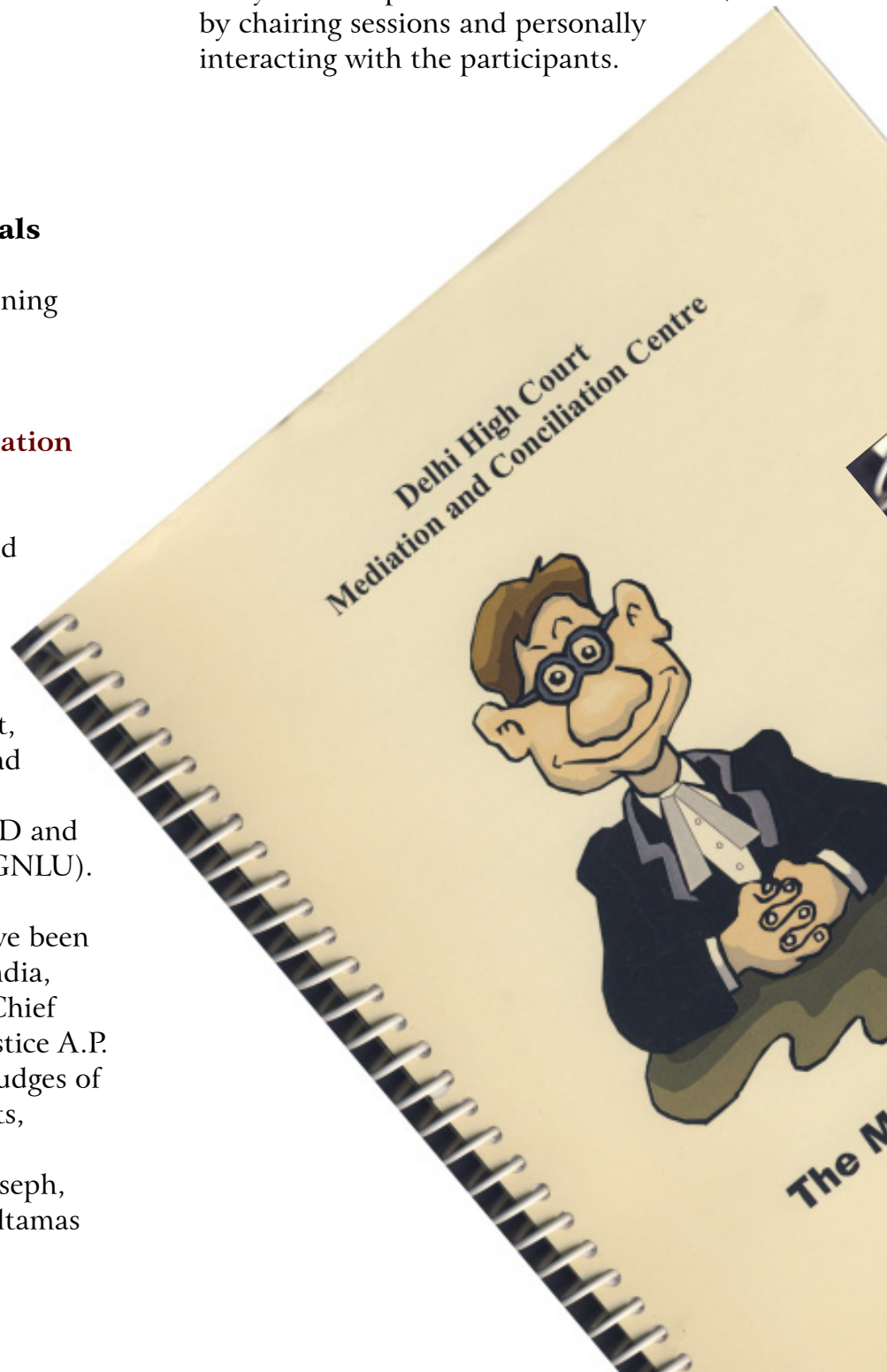
Publication of Training Manuals

Samadhan has brought out two training manuals on mediation

- 1. The Mediator's Tools Box**
- 2. Family and Matrimonial Mediation Manual**

This year the manual on 'Family and Matrimonial Mediation' has been updated for various training programmes that have been conducted by mediators of Samadhan at Allahabad High Court, the Lucknow Bench of the Allahabad High Court and for programmes at Gandhinagar organized by AMLEAD and Gujarat National Law University (GNLU).

Samadhan's training workshops have been graced by former Chief Justice of India, Justice K.G. Balakrishnan, former Chief Justice of the Delhi High Court, Justice A.P. Shah as well as former and sitting judges of the Supreme Court and High Courts, including Justice S.B. Sinha, Justice Markandey Katju, Justice Cyriac Joseph, Dr. Justice Arijit Pasatyat, Justice Altamas



Mediator's Tool Box

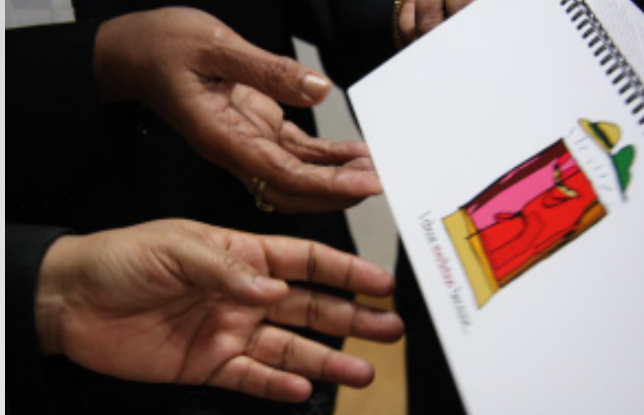
VOLUME - 1

Compiled by
 Ms. Justice Manju Goel (Retd.), New Delhi
 Mr. Niranjan Bhatt, Senior Advocate, Ahmedabad
 Mr. A.S. Chandhiok, Senior Advocate, New Delhi
 Mr. J.P. Singh, Senior Advocate, New Delhi
 Ms. Sadhana Ramachandran, Advocate, Vrindavan
 Mr. Braja Bihari Das, Advocate, Chennai
 Ms. Aparna Vasu, Advocate, Chennai



Family and Matrimonial Mediation

2009
 Presented by Justice Manju Goel (Retd.), A.S. Chandhiok, Senior Advocate,
 J.P. Singh, Senior Advocate, Sadhana Ramachandran, Advocate, Veena Rathi, Advocate
 Delhi High Court Mediation and Conciliation Centre, New Delhi



Awareness Material

Samadhan brought out the following printed material for spreading awareness about mediation:

1. The 2008, 2009 and 2010 **Calendars** in English which illustrate the advantages of mediation through visual depiction.
2. A **handout** in both English and Hindi with basic information about mediation as an intervention of Alternative Dispute Resolution and the advantages of mediation. This is given to the parties who come before the courts as litigants. It is also sent out with every summons sent to parties by the High Court of Delhi.
3. **Pamphlets/Flyers** both in English and Hindi giving detailed information about the Centre, outlining frequently asked questions on mediation, the law on mediation under the Civil Procedure Code and the Court Fees Act, the Delhi High Court Mediation and Conciliation Rules. The application for mediation required to be signed and submitted by parties and their respective counsels is also attached with both the pamphlets.
4. **Posters**, in English and Hindi, depicting the process and advantages of mediation, which have been displayed at the Mediation Centre and other venues.



... क्योंकि ...

“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realized the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing private compromises of hundreds of cases. I lost nothing thereby – not even my soul.”

“It is easy enough to be friendly towards one’s friends. But to befriend the one who regards himself as your enemy is the quintessence of true religion. The other is mere business.”

SAMADHAN
Delhi High Court Mediation and Conciliation Centre
2010

मध्यस्थता

समाधान

AMADHAN

दिल्ली उच्च न्यायालय मध्यस्थता केन्द्र
DELHI HIGH COURT
MEDICATION AND CONCILIATION CENTRE



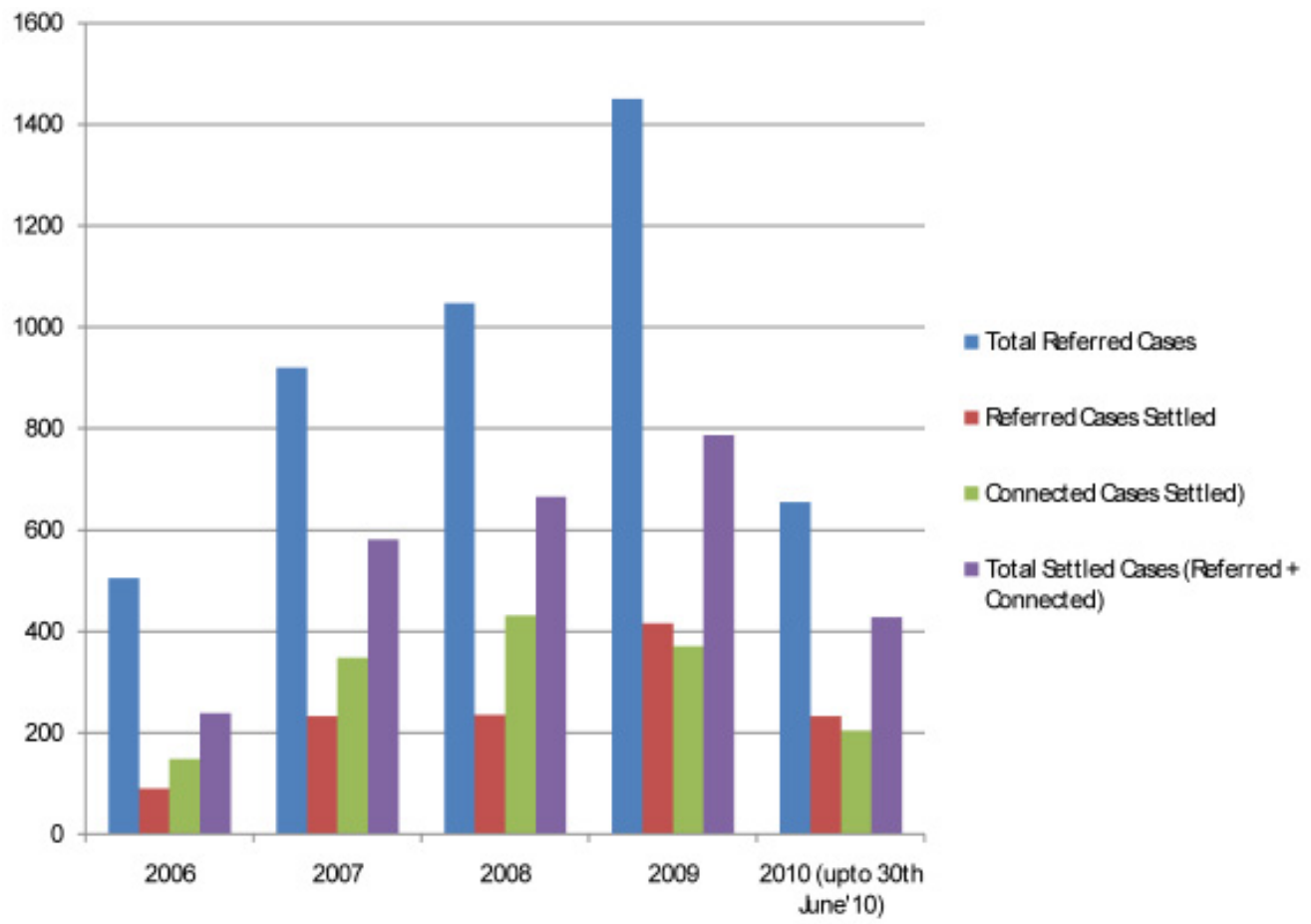
मध्यस्थता चुनिये

समाधान
दिल्ली उच्च न्यायालय
मध्यस्थता केन्द्र



Statistics

Referral and Disposal in Mediation Cases

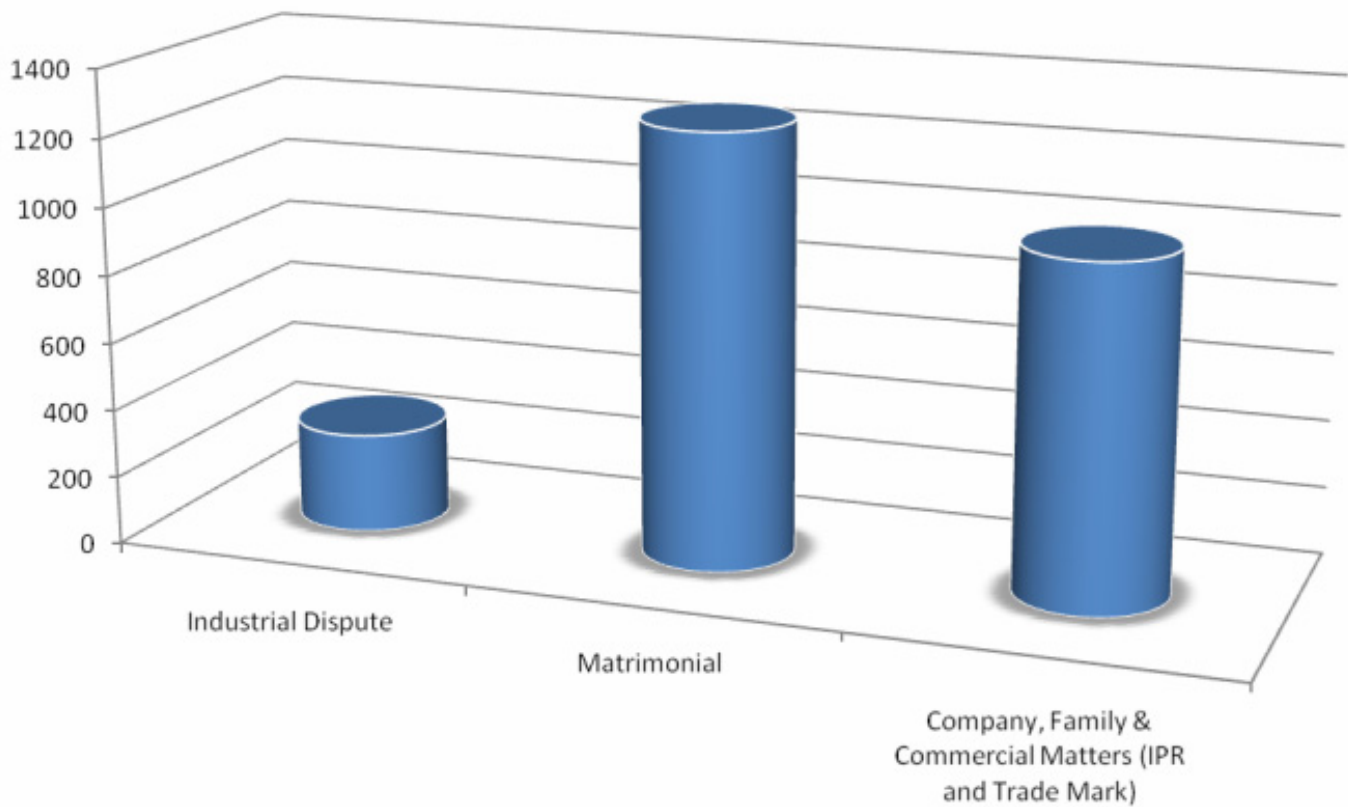


Total Referred Cases : 4435
 Total Referred Cases Settled : 1143
 Total Connected Cases Settled : 3077
 Total Cases Settled : 4220

Data upto June, 2010



Types of Settled Cases



Supreme Court Lok Adalats

September 2008, December 4-6, 2008,
February 5-7, 2009, April 4-7, 2009 and
January 15, 2010



12 teams from Samadhan comprising two members each have been assisting the Supreme Court of India as *amicus curiae* in mediating matrimonial cases pending before it as Transfer Petitions and Special Leave Petitions which are referred to its Lok Adalats. Upon the invitation of Justice Arijit Pasayat as judge of the Supreme Court, Samadhan mediators have already assisted the Supreme Court in five Lok Adalats.

Samadhan undertook to host outstation litigants before the Lok Adalats and accordingly looked after the boarding and lodging of many who could not make their own arrangements. Parties were sent to Samadhan two days prior to the Lok Adalat hearing and the mediators worked with the disputants effectively in mediating and settling their disputes. Settlements arrived at in Samadhan were then presented before the Lok Adalats. In this manner, our mediators have reported 80% success rate in settling matters where both disputing parties were present.

Several warring couples and their families have gone back content with their settlements as a result of the mediation intervention of Samadhan. At the stage of a Transfer Petition where usually the trial has not yet started or has barely started, disputants soon realize the value of settling early. At the stage of a Special Leave Petition, after years of litigation, disputants greatly appreciate the value of the opportunity given to them by the Supreme Court to settle their disputes amicably. Mediation has worked well in both situations.

Teams that participated in Lok Adalats

Team No. 1:

Mr. A.S. Chandhiok, Sr. Adv.
Ms. Maldeep Sidhu, Adv.

Team No. 2:

Mr. J.P. Sengh
Ms. Sadhana Ramachandran, Adv.

Team No. 2A:

Ms. Sadhana Ramachandran, Adv.
Mr. Kewal Singh Ahuja, Adv.

Team No. 3:

Ms. Urmil Sharma, Adv.
Mr. Suryakant Singla, Adv.

Team No. 4:

Mr. Rajiv Aggarwal, Adv.
Ms. Anita Sahini, Adv.

Team No. 5:

Mr. M.S. Oberoi, Adv.
Ms. Harkiran Kalra, Adv.

Team No. 6:

Mr. Mohit Gupta, Adv.
Ms. Veena Ralli, Adv.

Team No. 7:

Mr. Sudhanshu Batra, Sr. Adv.
Ms. Lalit Mohini Bhat, Adv.

Team No. 8:

Mr. J.S. Bhasin, Adv.
Ms. Sujata Kashyap, Adv.

Team No. 9:

Mr. Sunil Mittal, Adv.
Ms. Rekha Aggarwal, Adv.

Team No. 10:

Mr. Inderbir Singh Alag, Adv.
Ms. Kamlesh Mahajan, Adv.

Team No. 11:

Mr. K. Venkataraman, Adv.
Ms. Amita Sehgal Mathur, Adv.

Team No. 12:

Mr. Anil Gautam, Adv.
Ms. Neelam Rathore, Adv.



List of Mediators

Samadhan is very proud to have its panel of 201 trained and experienced mediators. These mediators, who are all members of the bar, have been empanelled after undergoing intensive basic and advanced training in mediation. Our mediators have accepted and taken the concept of mediation ahead with lot of enthusiasm and have been devoting their precious time to it.

- Mr. A. S. Chandhiok, Sr. Advocate
- Mr. Vinay Bhasin, Sr. Advocate
- Mr. Adarsh Dial, Sr. Advocate
- Mr. H. L. Tikku, Sr. Advocate
- Mr. A. K. Mata, Sr. Advocate

Lecture Series

Prof. Hiram Chodosh who is Dean of S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah, USA inaugurated the lecture series in the Mediation Center on 06.10.2009. He spoke on “Internalising Mediation and Externalising Justice” to a packed hall of mediators from the Delhi High Court Mediation Centre. Prof. Hiram Chodosh is an international expert on comparative law and author of “Global Justice Reform: A Comparative Methodology.” He is currently studying comparative mediation and the limits of the basic principle of self-determination in the context of more communitarian social relationships. He is interested in desegregating western mediation concepts and skills, and finding local analogues. This, he believes, will go a long way in leveraging both traditional as well as emerging values, customs and practices in mediation.

Dean Chodosh is keen to have an ongoing collaboration between S.J. Quinney College of Law and Samadhan.



- Mr. Rajiv Shakhder, Sr. Advocate (now Hon'ble Judge of Delhi High Court)
- Mr. Parag P. Tripathi, Sr. Advocate
- Mr. J. K. Seth, Sr. Advocate
- Mr. Rakesh Munjal, Sr. Advocate
- Mr. Jayant Nath, Sr. Advocate
- Mr. Keshav Dayal, Sr. Advocate
- Mr. Sanjay Jain, Sr. Advocate
- Mr. Amarjit Singh, Advocate
- Ms. Sadhana Ramachandran, Advocate
- Mr. Rajiv Agarwal, Advocate
- Mr. Inderbir Singh Alag, Advocate
- Ms. Kajal Chandra, Advocate
- Mr. Pradeep Bakshi, Advocate
- Mr. Sushil Salwan, Advocate
- Mr. Rajeev Virmani, Sr. Advocate
- Mr. Dalip Mehra, Advocate
- Ms. Maldeep Sidhu, Advocate
- Ms. Kamlesh Mahajan
- Mr. Rajeev Mehra, Sr. Advocate
- Mr. Mohit Gupta, Advocate

- Mr. Anil Gautam, Advocate
- Mr. D. R. Nigam, Advocate
- Mr. Ashwani Sood, Advocate
- Mr. Ashish Aggarwal, Advocate
- Mr. Saundarya Singh, Advocate
- Ms. Manisha Tyagi, Advocate
- Ms. Sujata Kashyap, Advocate
- Mr. Kewal Singh Ahuja, Advocate
- Mr. Kirti Uppal, Advocate
- Mr. J. P. Sengh, Sr. Advocate
- Mr. Ajay Goswami, Advocate
- Dr. Vijay Kumar Aggarwal, Advocate
- Dr. Aman Hingorani, Advocate
- Ms. Neelam Grover, Advocate
- Ms. Urmil Sharma, Advocate
- Ms. Reeta Kaul, Advocate
- Mr. M. S. Oberoi, Advocate
- Mr. Suryakant Singla, Advocate
- Ms. Mamta Mehra, Advocate
- Mr. Ajay Verma, Advocate
- Mr. Puneet Agrawal, Advocate





- Mr. Pramod Gupta, Advocate
- Mr. Sukumar Pattjoshi, Advocate
- Mr. Raghuvinder Verma, Advocate
- Ms. Swaty Singh, Advocate
- Ms. Neelam Rathore, Advocate
- Mr. M. I. Chaudhary, Advocate
- Mr. Shyam Sunder, Advocate
- Mr. Tarun Diwan, Advocate
- Ms. Shalini Kapoor, Advocate
- Ms. Veena Ralli, Advocate
- Mr. Rajiv Aneja, Advocate
- Mr. K. Venkatraman, Advocate
- Ms. Kimmi Brara, Advocate
- Ms. Anjali Vohra, Advocate
- Ms. Sarika Gandhi, Advocate
- Mr. Raman Sahney, Advocate
- Ms. Rekha Aggarwal, Advocate
- Mr. Rajesh Arya, Advocate
- Ms. Avnish Ahlawat, Advocate
- Ms. Meera Bhatia, Advocate



- Mr. M. N. Dudeja, Advocate
- Ms. Gurkamal Hora, Advocate
- Ms. Lalit Mohini Bhat, Advocate
- Ms. Anita Sahani, Advocate
- Ms. Harkiran Kalra, Advocate
- Mr. Ravinder Singh, Advocate
- Ms. Aruna Tiku, Advocate
- Ms. Amita Sehgal Mathur, Advocate
- Mr. Sudhanshu Batra, Sr. Advocate
- Mr. Pavan Narang, Advocate
- Mr. Sanjeev Tyagi, Advocate
- Mr. Atul Batra, Advocate
- Mr. Sunil Mittal, Advocate
- Mr. Subhash Sharma, Advocate
- Ms. Indira Marla, Advocate
- Mr. Amiet Andlay, Advocate
- Ms. Amrit Kaur Oberoi, Advocate
- Mr. J. S. Bhasin, Advocate
- Ms. Anusuya Salwan, Advocate
- Mr. Pradeep Dewan, Advocate

- Ms. Rajni Anand, Advocate
- Ms. Reena Jain Malhotra, Advocate
- Mr. Hanu Bhaskar, Advocate
- Mr. Pankaj Seth, Advocate
- Mr. Arun Birbal, Advocate
- Mr. Jagdeep Sharma, Advocate
- Mr. Naveen Kumar Nayyar, Advocate
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- Ms. Monica Kapoor, Advocate
- Mr. K. K. Aggarwal, Advocate
- Ms. Gita Dhingra, Advocate
- Mr. Vishwa Bhushan Arya, Advocate
- Mr. Kamal Deep, Advocate
- Mr. Bhupesh Narula, Advocate
- Mr. Neeraj Choudhary, Advocate
- Mr. Anish Dhingra, Advocate
- Ms. Isha Khanna, Advocate
- Ms. Manjusha Wadhwa, Advocate
- Ms. Deepali Gupta, Advocate
- Ms. Jyotika Kalra, Advocate
- Mr. Arjun Pant, Advocate
- Mr. Kuldeep Parihar, Advocate
- Late Mr. Pavan Chaudhary, Advocate
- Ms. Sudha Varshney, Advocate
- Mr. J. N. Aggarwal, Advocate
- Mr. Sanjeev Sabharwal, Advocate
- Mr. Mohd. Anis Ur Rehman, Advocate
- Mr. Atul Kumar, Advocate
- Mr. Amit Chaddha, Advocate
- Mr. S. M. Chopra, Advocate
- Mr. Yudhvir Singh Chauhan, Advocate
- Ms. Vandana Khurana, Advocate
- Mr. R. S. Dalal, Advocate
- Mr. Indu Shekhar, Advocate
- Mr. Neeraj Kumar Nishchal, Advocate
- Mr. M. Tarique Siddiqui, Advocate
- Mr. Hari, Advocate
- Mr. Iqbal Ashraj Rahmani, Advocate
- Ms. Jasbir Kaur, Advocate
- Ms. Purnima Sethi, Advocate
- Ms. Sapna Chauhan, Advocate
- Mr. Arun Rathi, Advocate
- Mr. Ajayinder Sangwan, Advocate
- Mr. Pawan Mathur, Advocate

- Mr. Shyam S. Sharma, Advocate
- Mr. Arun Kumar Sharma, Advocate
- Mr. Nishit Kush, Advocate
- Ms. Meenakshi Lekhi, Advocate
- Mr. J. P. Singh, Advocate
- Mr. Dharmender Priani, Advocate
- Mr. Manoj Ohri, Advocate
- Mr. Raj Singh Malik, Advocate
- Mr. S. K. Gulati, Advocate
- Mr. M. K. Anand, Advocate
- Ms. Anisha Gupta, Advocate
- Mr. Raj Malhotra, Advocate
- Mr. Atul Bhuchar, Advocate
- Mr. Paras Chaudhry, Advocate
- Ms. Prema Priyadarshini, Advocate



- Ms. Sonia Sharma, Advocate
- Mr. Manoj Ranjan Singh, Advocate
- Mr. T. Mahipal, Advocate
- Mr. Onkar Prasad, Advocate
- Ms. Geeta Luthra, Sr. Advocate
- Mr. Rakesh Sachdeva, Advocate
- Mr. Raj Kumar Sharma, Advocate
- Mr. Puneet Taneja, Advocate
- Mr. Maneesh Goyal, Advocate
- Mr. Paramjit Singh Lamba, Advocate
- Mr. Preetjit Singh Rajpal, Advocate
- Mr. Krishan Kumar Bhati, Advocate
- Mr. Atul Bandhu, Advocate
- Mr. Naresh Kumar Thanai, Advocate
- Mr. A. P. S. Ahluwalia, Advocate



- Mr. Ashok Sethi, Advocate
- Mr. Amit Saxena, Advocate
- Mr. Somdutt Kaushik, Advocate
- Ms. Shubhangi Tuli, Advocate
- Ms. Urmila Lanba, Advocate
- Mr. Jagdeep Singh Lamba, Advocate
- Mr. Sanjeev Sachdeva, Advocate
- Mr. Ajay Kumar Tandon, Advocate
- Mr. Sanjay Dewan, Advocate
- Ms. Garima Kapoor, Advocate
- Mr. S. K. Bhaduri, Advocate
- Mr. Satinder Singh Bawa, Advocate
- Mr. Anshu Mahajan, Advocate
- Mr. Vikas Aggarwal, Advocate
- Mr. V. P. Sharma, Advocate
- Mr. Baljit Singh Dhir, Advocate
- Mr. Saiyad Uruj Abbas, Advocate
- Mr. R. K. Bali, Advocate
- Mr. L. K. Giri, Advocate
- Mr. Arun Kumar Rathi, Advocate
- Mr. Jaideep Malik, Advocate
- Mr. Sanjeev K. Baliyan, Advocate
- Mr. Gaurav Sarin, Advocate
- Mr. Ravi Sikri, Advocate
- Mr. Satinder Singh Mathur, Advocate
- Mr. Mayank Goel, Advocate
- Ms. Maneesha Dhir, Advocate
- Ms. Ritu Bhalla, Advocate
- Mr. Deepak Chopra, Advocate
- Ms. Neelima Tripathi, Advocate
- Mr. Dev Prakash Bhardwaj, Advocate
- Mr. Vijay Kumar Sondhi, Advocate
- Mr. Sachin Chopra, Advocate
- Ms. Arunima Dwivedi, Advocate
- Mr. Harkirat Sahney, Advocate
- Ms. Sweta Kakkad, Advocate
- Ms. Preeti Dalal, Advocate
- Ms. Vibha Dhawan, Advocate
- Ms. Iram Majid, Advocate
- Mr. Amarjit Singh Bedi, Advocate





SAMADHAN

Administrative Staff

Samadhan is very proud to have an extremely dedicated and proactive administrative staff without whom it would not be possible to conduct an average of 70 mediations every day or to conduct training workshop for our mediators. They are:



- Ms. Veena Kumar, SJA
- Ms. Ashok Kumar, SJA
- Mr. Sumit Ghai, PA
- Mr. Kuldeep Singh, JA
- Mr. Saurabh Pahuja, JJA
- Ms. Hetal Dabas, JJA
- Ms. Stella Kujur, JJA
- Mr. Roop Chand, CA
- Mr. Vijay Thakur, CA
- Mr. Vijay Pal, CA
- Mr. Amit Kumar, CA
- Ms. Manjeet Kaur, CA
- Ms. Rekha, CA

Some Success Stories



Background

A long drawn out family feud was referred to Mediation. The mediator settled disputes and restored dignity and respect between two warring factions of a family. In this case, several schools were being run by a family where the members of the managing committee were all members of one family. The chairman had appointed one of his sons as manager and his daughter-in-law as principal of one school. Similarly, another school was managed by another son of the chairman. The dispute arose when one son and daughter-in-law attempted to take control of the entire management by ousting the chairman. The chairman filed a suit for injunction against his son and daughter-in-law.

One of the schools closed because of sealing of properties in Delhi and the chairman had made a request to transfer the students of that school which was closed to the other school which was run by the son and daughter-in-law of the chairman. But this request was declined.

Mediator's Role

The matter was referred to mediation for settlement. The mediator impressed upon the parties the futility of litigation which would take several years and a lot of expense towards lawyers' fees. The mediator further emphasised that, in the event of litigation continuing for a number of years, the parties were likely to lose the management of all the schools and government was likely to appoint another managing committee. Both parties would thus suffer by losing control of the management and also losing money.

Settlement

The parties settled the matter amicably. Under the terms of the settlement, the chairman continued as before. The exclusive control of school and management was given to one son and daughter-in-law. It was agreed that the chairman and other members of the managing committee would not interfere in the day-to-day working of the school. The chairman was given the discretion to nominate other members of his choice, to the managing committee. The settlement also satisfactorily addressed the rights of children whose school was closed due to sealing: they were admitted to the other school.

The son and daughter-in-law apologized to the father who in turn blessed them. Parties agreed to withdraw the suit and counter suit which they had filed against each other.

Background

This complicated family dispute between three brothers and three sisters was basically to distribute properties/assets amongst the brothers and sisters by virtue of an Arbitration Award, the Will of the deceased father and the distribution made by the mother of the parties. The Award was made Rule of Court, but a Review Petition was filed against it, which was pending. There were two probate petitions with regard to the Will of the father and contempt petitions filed by the parties against each other which were pending in the Courts.

In the Review Petition the Judge tried to mediate between the parties, which failed. The parties themselves tried to arrive at a settlement which also failed. The matter was very intricate and the related issues were interwoven. The properties involved were numerous, some owned by the company, some owned individually and some rented. Therefore for dividing the properties and assets, transfer of shares and other modalities had to be arrived at between the brothers who were the shareholders. The issues of paying outstanding taxes, filing of income tax returns from properties jointly owned, etc. were also to be sorted. The modalities to satisfy the claims of the sisters, were also to be decided.

Mediator's Role

Though the litigants were siblings, they were very hostile and were not on talking terms with each other. It was the general impression of the brothers and sisters that the eldest brother had usurped majority of the assets and deprived the others of their rightful shares. The eldest brother on the other hand was very pained and hurt by the attitude of the other siblings because according to him he had devoted all his life to building all the business and assets alongwith his father and had always looked after the interests of the younger brothers and sisters.

All the parties had adopted certain rigid positions and were not willing to soften their stands. The mediators had to address the parties individually and touch their emotional chords. In the process it was revealed that there were certain misunderstandings between the parties due to which they had formed certain impressions about each other. The mediators encouraged the parties to interact with each other, which in itself was a herculean task. Eventually, with a lot of cajoling from the mediators the parties spoke to each other which helped dispel their misunderstandings. The younger brothers appealed to the elder brother to be magnanimous and the elder brother relented. The parties mellowed down and decided to find an amicable solution so that good relations could be restored between them and a protracted litigation avoided.

On the day all the parties finally arrived at a

consensus, the mediation session continued late into the night. Even after the draft Settlement was drawn up as per desire of the parties some issues cropped up and the Settlement was on the verge of being abandoned. The Mediators had to show exemplary patience and appease and pacify the parties. The Counsel for the parties played a very positive role and were instrumental in recasting and finalizing the modalities of the Settlement. At 11.30 pm finally all the parties agreed to the terms of the Settlement.

Settlement

The eldest brother agreed to pay certain amounts to the other brothers and sisters. One property was agreed to be given to one sister. It was agreed that the Review Petition

and one Probate Petition and the Objections to the other Probate Petition would be withdrawn. The Contempt Petitions would also be withdrawn. The cheques for payment to the parties were deposited with the Mediators, to be handed over to the respective parties on the orders of withdrawal being passed by the Courts. A separate Memorandum of Understanding was entered into by the parties including the modalities for sorting out the issues inter-se relating to the payment of taxes, filing income tax returns etc. These modalities were to be carried out as per the M.O.U. between the parties. The process of mediation not only ended the litigation, hatred and acrimony between the siblings, it united the family and restored the severed bond between the brothers and sisters.



Background

The case involved a property in a posh South Delhi locality, left behind by the man for his widow and two sons, the younger one located in India and the elder one in the United States. The sons had relinquished their shares in favour of the mother. Fearing the loss of his share, the elder son appointed a Power of Attorney holder for him in India and put him in possession of his share of the property. This angered the mother and the younger brother. The mother entered into an agreement to sell with a builder and this gave rise to suits for injunctions, partition, recovery of possession, and criminal complaints to the police. Even the Attorney holder filed some cases against the NRI son of the old lady who was the owner of the property.

Before all these cases had been filed, the mother had visited the son in the US and he had also been sending money to her and regularly talking to her. The grand daughter from US was very anxious to see the grand mother and wondered why the uncle was not allowing them to see the old lady. To stop the NRI brother from entering the country, there were complaints with the Police and the Economic Offence Wing. The NRI son was arrested by the police at the airport when he arrived in Delhi. At the police station he suffered a heart attack. The young daughter and the father were at the mercy of their lawyers. After recovering he was made to report to the police station every day. He wanted his share in the property and the grand daughter was desperate to see the

grandmother once. While all the cases were pending, in a suit for specific performance by the builder, the matter was referred for mediation by the High Court. The litigation had been pending for about 5-6 years. The younger brother however kept the mother away from meeting her elder son and would not allow the NRI brother and his daughter to see the old lady.

Mediator's role

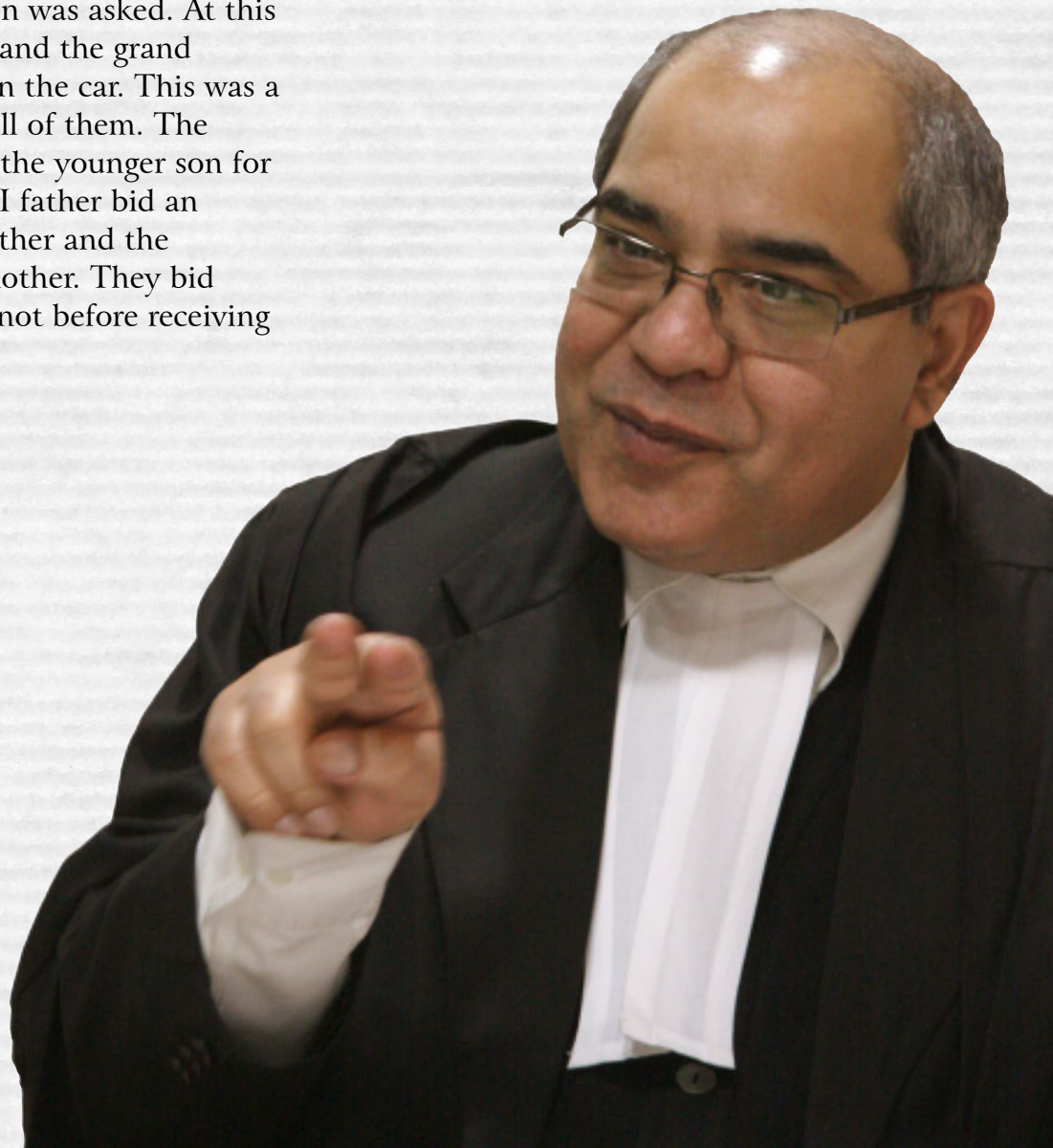
The Mediator was faced with the NRI father and daughter who kept crying and wondering what was their fault and why they could not see their mother and grandmother respectively. The NRI son had the confidence that the matter would end if he was allowed to see his mother once. On the other hand the builder was interested in getting the building as fast as possible as he had made payments to all in Delhi.

Negotiating the money to be paid to the NRI and his meeting his mother were two difficult tasks at hand of the mediator.

Settlement

After negotiations, an amount was agreed upon between the NRI brother and the builder. The amount agreed upon was to be paid to the NRI brother only after the settlement was signed by all the parties. In the settlement, 8 connected cases between the son, brother, mother, friend and the builder came to an end. Police complaints, Economic Offence Wing complaint was agreed to be quashed/compounded, the builder got the property and the owners got

their respective moneys. Yet, the younger brother was not keen to bring the mother for signing. However upon persuasion, he agreed to bring her and parked the car in which she was sitting outside the High Court. The settlement was ready before the mother arrived outside the High Court. The mediator walked with the crying grand daughter to the car. After getting the signatures on the settlement, the mediator inquired from the lady if it was alright with her to meet her son and grand daughter. She was more than willing to meet them saying they are her own flesh and blood and wondered why such a question was asked. At this juncture the mother and son and the grand daughter hugged each other in the car. This was a very emotional moment for all of them. The mediator personally thanked the younger son for bringing the mother. The NRI father bid an emotional goodbye to his mother and the granddaughter to her grandmother. They bid farewell to their country but not before receiving the blessings of their elder.



Background

An industrial dispute was referred to mediation wherein the mediators facilitated reinstatement of 47 workmen back to their employment in a phased manner through an amicable settlement. 87 workmen had been removed from service in a charitable hospital. The Industrial Tribunal decided in favour of the workmen and by its award directed the management to reinstate all 75 workers along with payment of back wages, medical benefits and continuity of service. The management of the charitable hospital challenged the award passed by the Industrial Tribunal vide a writ petition in the High Court. The matter was referred to mediation.

Mediator's Role

Fifteen sessions were held during the process of mediation from September 2007 to September 2008. It is important to mention why mediation took a year to complete. The mediators had to seek time on several occasions in the early months because though the workmen and their representatives appeared at every session fixed by the mediators, no authorized representatives of the management were present. The mediators had to repeatedly impress upon the counsel for the management that for a comprehensive mediation intervention, it was vital that the representative of the management authorized to participate in the mediation process and negotiate with the workmen, be present.

Following notices from the mediation centre, the representatives of the management started appearing. But it was clear that no settlement was possible with continuous resistance from

the management which created a continuing impasse for the mediators. The mediators realized the need for the crucial participation of the chairman who was known for his humane approach towards his employees. The participation of the chairman was also being resisted by his representatives and lawyers. Finally the mediators succeeded in holding a comprehensive mediation session exclusively with the chairman alone in his office. Since, the chairman was 85 years old, the mediators offered to go to him instead of calling him to the mediation centre. At a crucial turn in the proceedings, the chairman called the workmen representatives into his office and blessed them. The workmen's representatives touched his feet and showing great enthusiasm, sincerity and dedication towards their employment, promised to give their best to him.

Settlement

The result was an amicable settlement between the parties wherein 47 workmen were reinstated in a phased manner with back wages and continuity of service. 23 workmen who were parties before the Industrial Tribunal had not contacted their representatives to contest their case and 5 others, after joining, had left the mediation.



Background

In a matrimonial matter, the mediators held twenty five sessions (each session ranging from 1½ to 3 hours), spread over a period of six months and brought about a settlement wherein the parties amicably resolved to jointly move for dissolution of their marriage by mutual consent to resolve their differences. Both boy and girl belong to well to do business families. Serious allegations were leveled against each other which included dowry demands, allegations under Section 327 of the IPC and proceedings lodged under Section 498A read with section 406, section 377 read with section 34 of the IPC against the boy and his family. There were proceedings to quash the FIR under section 482 Cr.P.C. and as well as under the Domestic Violence Act.

Earlier a memorandum of understanding had been signed in court, setting out the terms of settlement and the first motion for a mutual consent divorce had been filed. At that stage, for some reason, the girl backed out of the settlement. Criminal cases were filed by the boy and his family against the girl's father and brothers for criminal trespass etc. At this stage, the lawyer representing the boy and his family also got involved and cross FIRs were registered by the girl and lawyer against each other in Delhi. A bail application was filed in the High Court wherein the matter was referred to mediation.

Mediator's role

The mediators had a difficult role in the matter where there was intense acrimony

between the parties and they could keep the proceedings going only by using caucus or private sessions. There were many stages when the mediation proceedings came to a breaking point. Progress in one session was undone in the next one because of extraneous reasons or the role of third parties. The lawyer who was personally affected as a party also did not want the matter to be settled qua him. This became the biggest stumbling block. However, the other lawyer was extremely positive. The mediators had to constantly show the parties the consequences of not arriving at a negotiated settlement.

Settlement

The matter was finally settled. Parties withdrew all civil and criminal proceedings against each other. The husband agreed to pay to the wife an amount of Rs. 40 lakhs as full and final settlement of her claims before the court. Both parties agreed to dissolve their marriage by mutual consent and the families realized the futility of litigation.



Background

In this mediation, the mediator had to deal with special circumstances during the mediation proceedings. The fathers of both the parties and their lawyers appeared before the mediator and not the parties themselves. Though these cases primarily related to a matrimonial dispute, 24 different counter cases had been filed by the boy, girl, father of the boy and father of the girl in their individual capacities in various courts, i.e. Noida District Court, Allahabad High Court, Delhi Tis Hazari Courts and the Supreme of India. These cases were filed under Dowry Prohibition Act, Hindu Marriage Act, Domestic Violence Act and Indian Penal Code. They were in the nature of civil suits, suit for damages, criminal revision, special leave petition (criminal), contempt in special leave petition, bigamy, quashing of non-bailable warrants (NBW) proceedings, release of passport etc.

Both parties were not present as they were in jobs outside India. In the event of the mediator insisting on personal appearance of parties, the mediation would have failed due to their non-availability. Seeing the gravity and quantum of the cases, the mediator decided to proceed after requesting the parties to produce powers of attorney authorizing their respective fathers to represent them in mediation. In addition, the mediator also asked the parties to send affidavits undertaking that they would abide by the final decision taken by their fathers in mediation.

Mediator's Role

The mediator's role entailed resolving the emotional issues first. This involved

understanding the perception of parties and respecting their emotions, especially since the disputes were so grave that even the fathers of both the boy and girl had filed separate cases against each other. Several times, the mediator saw failure ahead. There were occasions when the atmosphere became so heated that one counsel left the mediation proceedings. The mediator pacified the counsel to smoothen the progress. It was not possible for the mediator to follow fixed rules of mediation in this matter and mostly used sound common sense. 18 sessions were held over two months. Time was the healing factor. Even when the settlement was finalized, just before signing, one of the parties became rigid again and insisted that unless the other party agreed to mutual consent divorce petition as a first priority, other cases shall not be withdrawn. This was not acceptable to the other party. Finally, in the settlement, the mediator incorporated such a condition that both parties felt secured.

Settlement

In the settlement, the parties agreed to dissolve their marriage by way of a mutual consent divorce petition which would be jointly filed by them. The first and second motions in mutual consent divorce petition would be signed and filed simultaneously with other petitions/applications for withdrawal/quashing of all other pending civil/criminal proceedings. Parties agreed that if any impediment arose, whereby the case could not be withdrawn as per legal procedure, both parties would jointly file for quashing of the said cases to avoid further delay.



Background

This was a challenging mediation for the mediator. The dispute between the parties was regarding payments made by the Plaintiff to the Defendant and issuance of cheques for the amount by the plaintiff which had been dishonored. The plaintiff had filed an appeal challenging the genuineness of the cheques and the matter was hotly disputed amongst the parties. The relations between the parties were strained to such an extent that they were not ready to sit in the same room.

Mediator's Role

Numerous mediation sessions were held with the parties and the challenge for the mediator was to collectively and separately help build up a level of confidence and trust in the process of mediation which would enable communication to be established between the parties. The mediator explained to the parties that both were losing out financially and in terms of loss of piece of mind. The animosity between them further aggravated the problem. The respective strengths and weaknesses from the legal aspect were also explored by the mediator. Counsel for the parties were taken into confidence by the mediator and their valuable inputs were taken.

Settlement

The greatest challenge in this case was not the amount of money involved but re-establishing communication between the parties. After various options were examined by the parties and their counsel, a settlement was arrived at, whereby the plaintiff/

appellant agreed to pay a sum of Rs.7.30 lakhs to the defendant/ respondent and all pending litigations were agreed to be withdrawn by the defendant/ respondent upon receipt of the payment. The entire process was made time bound and provision was made in the settlement agreement for the eventuality of default also. It was agreed that in case of any default, parties would be at liberty to revive the litigation and proceed in accordance with law. Parties honoured the terms of the settlement and all their disputes were finally resolved.



Background

The dispute in this mediation pertained to a trademark and copyright matter. Three to four mediation sessions were held (each session ranging from one hour to 2½ hours) and brought about a settlement wherein the parties amicably resolved all the disputes and differences pertaining to the impugned trademark including infringement of copyright in the artistic work. Interestingly both the parties were based in the same physical territory and were selling the similar products and both were doing well for themselves.

Mediator's role

Since both parties were able to sell their respective products under the trademarks adopted by them and both were doing well, there was resistance by the party who had allegedly infringed the trademark and copyright of the plaintiff and there was initial reluctance in changing the packaging, colour scheme and also some change in the trade names for the products. Private sessions were held to show the parties the consequences of not arriving at a negotiated settlement. The lawyers played a positive role in persuading their respective clients to resolve their matters amicably. Lengthy discussions took place on the possible new names which could be used by the defendant without really having to give up completely the earlier names and yet satisfying the plaintiff that there will not be further infringement of their trademark/ trade name as well as the copyright in the artistic work.

Settlement

The matter was finally settled and the defendants furnished changed samples of the disputed materials to the satisfaction of the plaintiff and the suit was agreed to be withdrawn by the plaintiff. As a result of the fact that the defendant had agreed to change the colour scheme and also the trade name of the various products, monetary compensation was not insisted upon by the Plaintiff.



Background

A matter relating to intellectual property rights was referred to mediation wherein the business was started by one brother in India while staying abroad and this business was being looked after by another brother and his sons living in India. The brother living in India started using the name and style of the said business for his own benefit.

A suit for injunction and damages for Rs. 1 crore was filed by the brother staying abroad through his attorney against the brother living in India. The matter was referred to the Mediation Centre by the Delhi High Court. This was a case where there was no scope of any face to face communication of the Mediator as well as with the brother living in India with the brother staying abroad except through their attorneys. When the mediator contacted the brother staying abroad on telephone, he started off with an extremely non-cooperative attitude and unequivocally declared his desire to teach a lesson to the brother living in India by rigorously engaging in the legal battle. It was very difficult for the mediator to address the intense acrimony in the mind of the brother staying abroad.

Mediator's role

This mediation required long telephonic calls of the mediator with the brother staying abroad and then communicating his response to the brother living in India through various mediation sessions. There were many stages when the mediator was asked to close the proceedings and refer the matter back to the Court. The challenge for the mediator was to

open a direct communication channel between the parties inter se who were living in two different countries. Eventually, the mediator was able to reduce the acrimony especially in the brother staying abroad and bring the mediation proceedings to a stage where options for settlement could be discussed.

Settlement

The matter was finally settled. The brother living in India agreed to pay Rs. 65 lakhs to the brother staying abroad in installments by taking care of all his statutory obligations and also agreed to give a new name to his own business which was not similar to the earlier one. All the pending litigations between the parties were also agreed to be withdrawn.



Background

This was a mediation which involved financial disputes between hundreds of investors who had filed numerous complaints with the police against a company and its directors alleging the offences of cheating and fraud etc. Mediators were faced with a challenge whether a settlement could be reached between the parties in a criminal matter where the investors are unsecured creditors., resolving the grievances of more than 1500 investors / complainants.

The FIR had been registered against the accused and matter was under investigation by the Crime Branch.

In the bail application, the complainants opposed the bail, pleading that they had been cheated by the accused of their hard earned money and had been lured and induced to invest in their business venture promising large returns on their investment in a short span of time. A large number of investors came from lower rung of society. The bank accounts of the accused company had been attached by the police. The mediators came to be appointed to explore a possibility of settlement between the parties.

Mediator's Role

The temper of the investors ran high. They thronged the corridors of the Mediation Centre in hundreds. The investors included senior citizens, widows, persons from educated and average class families, and further even the like of maid servants and rickshaw pullers etc. The complainants came as individuals and in small groups on their

own. The others, in groups, were represented through their authorized representative / counsel. The complainants demanded immediate payment of their deposits / investments made with the accused company. The mediators could perceive a possibility of commotion and even a threat of injury to the person of the accused company director who was present for settlement.

The mediators first addressed the investors in groups and explained their role as mediators by way of opening statement. This inspired faith and confidence in general. Some detractors were interested only in prosecution of the accused, and the settlement through mediation did not evince interest in them.

The mediators impressed upon the complainants the ordeal of criminal trial and the long years it generally takes. Further, the securities tended to shrink in realizable value, considering the costs involved. It was explained to them that a voluntary and amicable settlement reached between the parties in the present would be a solace for the poor and the needy and be of some tangible benefit for the old. Continuous mediation proceedings were held even through winter holidays.

Settlement

1759 investors settled their claims with the company. 72 settlement agreements were reached and executed separately with individuals, groups of individuals, groups through authorized representatives and also through their respective counsel. The counsel in general played a positive role.



The terms of settlement included filing of individual claims giving necessary details and evidence of their balance dues and agreed amount for settlement for each claimant, and the settled amount to be paid as per the modalities and date to be decided by the Hon'ble court.

While the mediation proceedings were inching to close, a public notice was published by the crime branch advising the investors / complainant in general in the given FIR to approach the Mediation Centre for settlement of their dues, opening up yet another round of mediation proceedings flowing into the year 2010. The process of mediation continues and a time frame is required to be evolved to complete the process.

Background

This matrimonial matter illustrated that a divorce decree obtained through mutual consent is not necessarily a relief for the parties and their children. In this case, referred for mediation in 2008, the couple had already obtained a mutual consent divorce decree under section 13 B of the Hindu Marriage Act. Maintenance of the two children (9 year old daughter and 4 year old son) whose custody was with the mother had not been dealt with under the mutual consent terms. The mother finally filed an application for maintenance of the children. Also the mother filed proceedings for the quashing of criminal actions initiated by her against her husband which action was part of the mutual consent terms. A very sensitive Judge dealing with case was observing the parties during the course of the legal proceedings. The husband was crying and the wife looked helpless. The Judge found it appropriate to refer the parties to the Mediation Centre not confined only to issues of maintenance but to reconsider their relationship.

Mediator's Role

The Mediator found that the parties were very educated couple who knew what they have done and realized the consequences of divorce on themselves and their children but unfortunately they had not realized why they had done what they did. During the course of the mediation proceedings, the husband, a senior officer, revealed that he got scared of the consequences of 498 A proceedings which the wife had filed against him. His family, friends and colleagues strongly advised him that the only solution was mutual consent

divorce or else he would both lose his job and go to jail. The wife, an information technology professional, admitted that she did not know the legal provisions or consequences and had allowed her father, a retired officer, to decide her legal recourse. Her father had not engaged a lawyer for the case and was expecting his daughter to manage the maintenance application on her own. By a stroke of luck, the wife now engaged a sensitive lawyer who handled her case both in court and in mediation.

Settlement

The parties realized that in their battles, the children, whose welfare and interest should have been the priority for their parents, had become helpless victims for no fault of theirs. In addition, the elder daughter needed urgent medical treatment which her father was entitled to get for her in the hospital attached to his service. The lost little boy needed his father's emotional security. The major hurdles on either side were the huge ego of the wife's father who dominated her life and the husband's tightfistedness about money. With the help of the mediator, they decided, for once, to take their lives into their own hands. Both got married again! The husband would maintain his family separately in Delhi to avoid any backlash where he was posted and everyone knew the bitter battle between them. It was decided that the wife would get back to work which she had given up to bring up her children. It was also decided that in the next posting of the husband, his wife and children would join him.





A settlement being finalised

Background

This was a commercial dispute between the manufacturer of watches and its authorized distributor. The manufacturer of watches had filed a suit against the distributor appointed by the manufacturing company for sale of watches in the city of Kolkata. The distributor had been selling watches for the manufacturing company since the past many years. Certain disputes and differences arose between the Company and the distributor as a result of which the distributorship agreement had been terminated and the manufacturing company had sued the distributor for recovery of alleged outstanding amounting of over Rs. 22 lakhs and for return of stocks held by the distributor worth over Rs. 20 lakhs. The distributor had in response to the suit filed a counter claim for recovery of about Rs. 21 lakhs. There were differences in the statement of accounts of both the parties and the Hon'ble Judge thought it appropriate to refer the matter to the Mediation Center to facilitate the parties to reconcile their respective accounts.

Mediator's Role

The distributor was a well educated and professionally qualified man. He contended that the company had played a fraud upon him by terminating the distribution agreement and that according to a document relied upon by him, the company had agreed to pay about Rs. 20 lakhs to him as on a particular date. The manufacturing company was being represented by two or three young management personnel and carried with them a mandate to settle the disputes. In

order to facilitate the parties to arrive at a settlement, the parties were requested to produce their respective statement of accounts to reconcile their differences. However, although the company produced its statement of accounts, the distributor produced only part of the statement of account i.e. from the date of execution of the document relied upon by him, which according to him was indicative of the admission of the liability of the company till that date. About nine sessions, lasting between one to two hours each were held. During the process of the mediation proceedings in both joint and private sessions, it transpired that there were personal differences between the distributor and one of the officers of the company which had manifested in the form of termination of the distribution agreement and consequent differences in the accounting figures. It thus became evident that each of them was justifying their claim in order to settle scores with each other. At this stage the mediator thought it appropriate to request the manufacturing company to seek the participation of the officer with whom differences had arisen with the distributor at the mediation proceedings. Despite assurances, the officer concerned never turned up for any of the mediation sessions. Various options were discussed with the parties. However, in the second last session, there was an impasse in the proceedings and the mediation was on the verge of closure as unsettled. At that stage the mediator felt that the parties should be recalled once more. The suggestion was accepted by the parties.



Settlement

On the final day, once again the interests of the parties were discussed and the parties came to an amicable settlement on realizing that litigation to settle personal scores is against their ultimate interests. The distributor agreed to pay about Rs. 6 lakhs, while the stock of watches in his possession was retained by him as full and final settlement of their disputes and differences. Consequently the suit was agreed to be withdrawn in terms of the settlement duly signed by the parties.



Why Training in Mediation



MS. MANJU GOEL, J. (RETD)

Ms. Justice Manju Goel is a former Judge of Delhi High Court and has been a Judicial Member of the Electricity Appellate Tribunal. She is an accredited Mediator of the CEDR (Centre for Effective Dispute Resolution, United Kingdom). She is a Founder Member of the Overseeing Committee of the Delhi High Court Mediation and Conciliation Centre.

By now mediation has been recognized as a useful tool for resolution of conflicts in general and for reduction of pendency in courts in particular. Mediation is a process by which the parties themselves evolve a lasting settlement which ends their dispute once and for all. The simplest definition of mediation is “assisted negotiation”. If the parties can be objective and wise they can negotiate among themselves without a mediator. However, for various reasons, the process of negotiation does not always yield results. Sometimes the parties are so torn apart that they are unable to enter into a dialogue. Such disputes can be resolved by an efficient mediator. The parties with the help of a mediator may be able to approach the same dispute from a different point of view and may look at different solutions. A trained mediator can help find a solution “out of the box” in which both parties may get much more than what could be achieved through the usual legal process of litigation or arbitration.

There are situations in which the solution offered by law falls short of the need of the parties. Take for example the case of this woman, Kamla, who was persuaded by her husband to agree to his marrying again as she was unable to bear a child. She thought of the offspring who will come from the second alliance and the joy of having a child in the house. She accompanied her husband to the marriage and was a witness to the wedding ceremony. However, she could not bear the sight of her husband being seated next to the new bride in the bus that was to carry them back home. The atmosphere that was created with the arrival of the new bride, who stole all the attention, can be appreciated by anyone and need not be described in detail. Had she gone to an efficient lawyer he would have promptly told

her of the legal remedies, namely (1) a suit for divorce, (2) a petition for maintenance, (3) a complaint to the police/court alleging bigamy and (4) complaint before the government, his employer, for disciplinary action. She was not interested in any of the four actions for good reasons. The new bride delivered a child which gave another angle to the story involving the second woman, innocent in her own way, and the new born, needing the care and the attention of the same man. Unless her advisor or counsel had some idea of the benefits of mediation, he would simply have left her to her fate, expressing his inability to help her in anyway. But fortunately she was taken through the process of mediation. The process helped her in soul-searching which revealed that she was interested foremost in her own security and in a continued relationship with her husband and his family. Through the process of mediation Kamla could get what she needed.

She and her husband arrived at a settlement whereby the husband agreed to buy a house for her in her name. The husband also agreed to supplement the rental income from the property. The family members assured her that they would treat her with the same importance and affection as before. The husband also agreed to visit her at least twice a week. The solution may not be a text book solution. A strictly legal mind may even refuse to see this as a solution. But if solution means peace between the estranged parties, it was a solution – and a creative one at that. None of the legally available solutions could possibly help one woman without offending the other. The possibility that any legal action would have harmed both also cannot be ruled out. Thus the legal action itself was something that was not welcome in the situation.

Hence, there is a need for awareness and training about the process of mediation. Judges and lawyers all over the country should be exposed to the benefits of mediation and should have a basic training in the process. Mediation training has three parts: (a) learning the process, (b) acquiring the skill and (c) ability to deal with the content. The process has been formalised and structured although individual mediators are entitled to bring about flexibility in the structure. However, it is important to master every stage of the structured mediation process. Skills are also needed to be acquired because mediation does not mean only going through the stages. The skill of the mediator helps the parties to think and to think aloud as well as to consider the various possibilities of resolving a dispute. The mediator's skill converts a position-based bargaining into an interest-based bargaining. It is this skill which helps the parties to look at their future interests and concerns rather than complaints about injuries and damages suffered in the past. Content, of course, is the very meat of the matter. The mediator has to be aware of the ground realities, the law on the subject and other factors which go into creating the dispute or in evolving a solution. He/she should know the techniques by which the parties can be brought to an agreement and thereafter to convert the agreement into a legal and binding settlement.

A mediator cannot really perform his/her job unless he/she is trained for it. One has to remember that the mediator does not hand down solutions. The solutions are evolved by the parties themselves. The mediator is not a Judge. He/she cannot say: "take this solution as this is in your best interest". The mediator certainly can help the parties in soul searching so that they really are able to see which way their interest lies. The

mediator must possess the skill to unveil the hidden agendas of the parties, their future interests, the implication of every possible solution etc. so that each party is able to enlarge the horizon of its vision and take a realistic view. Although some people may have natural traits of a mediator, it will be wrong to presume that one can act as a mediator without proper training. He/she needs to be skilled first to bring the parties into a settlement mode, and then to lead the parties to see the various possibilities of a solution.

Mediation as a process is distinct from litigation. The role of a mediator contrasts sharply with the role of a lawyer or a judge. These differences require a mediator to get special training in skills and processes used in mediation. Not every judge who listens for hours is a good mediator. Not every good lawyer who speaks for hours is a good listener. We are told of the story of how an erudite advocate declined to take the offer of judgeship as he could speak nonsense for hours but could not hear nonsense for five minutes! The mediator needs to listen to the parties and although is not supposed to hand down a solution himself/herself, has to ensure that the parties do evolve a solution. Judges and advocates are mostly using their legal learning and are quick to see their solutions, particularly legal solutions. They can quickly identify the points and counter points favouring or harming the two parties. But the mediator needs another kind of skill: the ability to work towards a win-win solution for both parties. Every Judge in a matrimonial case is required to attempt a reconciliation between the parties. Some Judges, while making such efforts, find themselves scolding one party or the other or simply advising them to forgive and forget. If

the Judge is trained in the technique of mediation, he/she would handle things in a manner which can diagnose the true ailment and offer appropriate remedies.

In court the lawyer tries to argue his/her points over and over again waiting for a nod from the Judge indicating acceptance of the arguments. The Judge, on the other hand, tries to cut the lawyer short and arrives at a decision as soon as possible. The mediator is specially trained to not only allow the parties to speak but to extract as much information as possible from each party.

The mediator does not have the authority of a Judge. Nor should he/she be perceived to be a person in that authority. Yet the mediator has to have control over the process. He/she has to develop the skill to handle acrimonious situations and see that the parties maintain the ground rules, the discipline, so to say, of allowing the process without being aggressive, insulting or dominating. He/she has to know how to bring back order if one of the two parties, wittingly or unwittingly, threatens to disrupt the process. Although the outcome rests with the parties, the mediator is in control over the process.

The Mediator has to know how to handle emotional outbursts including anger and grief. This does not mean he/she can snub the man who is angry or the one who is crying. He/she has to be trained to deal with such parties with full empathy respecting their emotions and yet helping them to compose themselves. In fact, emotions like anger and grief are at times important factors constituting the grievance. One dispute between two brothers over ancestral property hinged on one brother offering apologies to the other for in the core of the dispute was

the injured feelings of the other brother. In the court a partition suit appears simple as the suit property can be immediately divided by metes and bounds. However, permanent peace lies in uniting hearts.

A mediator has his/her own rules of ethics, neutrality and confidentiality being two very important ones. The training in mediation includes a complete discussion on the various ethical issues which arise during and after the mediation process.

The best mediator is endowed with experience of life. He/she should have experience of different cultures and the life styles of people in different strata of socio-economic classes. The values and customs followed by one community may be different from the value and customs of another community. Even in trade and commerce the practices differ from market to market. There are unwritten rules which are adhered to more strictly than the laws in the books. A mediator will do well to apprise himself/herself of such cultural backgrounds which influences the behaviour as well as expectation of people in different cultural groups.

The mediator has to know the law relevant to the dispute which he/she is handling. It is true that the solution in mediation has to evolve from the parties, but the mediator is duty bound to see that the solution evolved is legal as well as moral. The settlement has to be reduced to writing. The terms of the settlement should be enforceable in law. Drafting of a settlement needs acumen of another kind. Therefore, training in mediation has also to include training in drafting of settlements.

Is it very easy to be a mediator? The answer cannot immediately be “yes”. It is said knowledge can be imparted but wisdom cannot be. A mediator has to imbibe all the good qualities of a wise old man as well as the romanticism of a youthful dreamer. Is it very difficult to be a good mediator? The answer certainly is “no”. Experience is the best teacher. If a sincere endeavour is added to the experience and training there is no reason why any good lawyer cannot transform into a good mediator.

ADVANTAGES OF MEDIATION - I



Mediation immediately put parties in control of both their dispute and its resolution.

Mediation: Making Life Easier



A.K. SIKRI, J.

Justice A.K. Sikri is a sitting judge of the Delhi High Court and has been Chairman of the Overseeing Committee of the Mediation and Conciliation Centre.

“In three words, I can sum up everything I’ve learned about life: It goes on. In all the confusions of today, with all our troubles, with politicians and people slinging the word “fear” around, all of us become discouraged, tempted to say this is the end, the finish. But life – it goes on. It always has. It always will. Don’t forget that.”

FROSTAT, Robert, Quoted in *A New Treasure of Words to Live By*, edited by William Nichols (New York: Simon and Schuster, Inc. 173.

As a universal phenomenon and as a part of human society, conflict exists in every sphere of human life. Conflicts take place between individuals and organizations or groups, between distinct organizations and groups, between one organization and one or more of its components or between component parts of a single organization or group. In other words, it may arise between spouses, friends, partners, family members, employers/employees, states, nations etc. A conflict emerges whenever two or more persons seek to possess the same object, occupy the same space or same exclusive position, play incompatible roles or undertake mutually incompatible means for achieving their purposes.

On a realistic note, one can say a society can never be free from conflicts and disputes as the same is a by-product of communication between people. However, one can aim at its early resolution. The sooner a dispute is resolved, the better it is for all the parties concerned. For parties, a dispute not only strains the relationship but also destroys it. And so far as society is concerned, any dispute affects its peace. So what is required is resolution of a dispute at the earliest possible opportunity and via such a

mechanism where the relationship between individuals remains healthy. Warren Burger, once said:

“The obligation of the legal profession is... to serve as healers of human conflict... (we) should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”

Recently, the capabilities and methods of functioning of our justice system were under challenge as a feeling of disillusionment and frustration was witnessed among the people of India. People formed a view that our justice system which is an adversarial system is expensive, unpredictable, and coercive in nature. Therefore, deliberations were made by judges and other actors in the system to neutralize the same resulting in the adoption of Social Context Judging. Social Context Judging is a shift from the adversarial system so that the faith of society in the justice delivery system can be maintained whereby bridging the gap between law and life, between law and justice. In a country like ours where people consider judges only second to God, it was realized that efforts need to be made to strengthen the said belief as well as strengthen relations between common people. This shift resulting in Social Context Judging also brought the advent of alternative methods of dispute resolution. Given the import of the amended Section 89 of the Civil Procedure Code, the provisions of the Legal Services Authority Act and the Arbitration and Conciliation Act, an attempt was made to look beyond the confines of conventional procedures and seek settlements which would be fair to both the parties. Mahatma Gandhi, the Father of the Nation, wrote in his autobiography about the Role of Law and Lawyer:

“I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men’s hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that the large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul.”

Mediation is one such mechanism which has recently been brought into our Justice System. It is one of the methods of Alternative Dispute Resolution which resolves disputes in a way that is confidential, fast and economical. It is a process in which a neutral intervener assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. It embraces the philosophy of democratic decision-making [Alfin, et al., Mediation Theory & Practice, (2nd Ed. 2006) Lexis Nexis].

Thus, mediation is a shift from adversarial litigation. When the parties desire an on-going relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation.

There is always a difference between winning a case and seeking a solution. Via mediation,

the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it may bring about a solution which may not only be to the satisfaction of the parties and, therefore, create a win-win situation for both sides, it has an outcome which cannot be achieved by means of judicial adjudication. Thus, life as well as relationship goes on with mediation for all the parties concerned resulting in peace and harmony in society. While providing satisfaction to the litigants, it also solves the problem of delay in our system and further contributes towards economic, commercial and financial growth and development of the country.

Mediation has proved to be effective for disputes that arise within a business, such as employer-employee disputes, commercial/contractual disputes etc. Following are the few illustrations to provide you with an insight into Mediation as a form of dispute resolution. They also illustrate how mediation helps parties in overcoming negative human values and fosters peace and harmony in society, via amicable dispute resolution:

In Before Delhi High Court a dispute arose about immersion of ashes of a well known public figure. He was survived by his widow and a son who was living abroad. Since the son of the deceased was not in a position to go to cremation in India, the cousin brother of the deceased was requested to perform the last rites which he did. Thereafter, the cousin brother claimed that under Hindu Law it is he who had the right to immerse the ashes of the deceased as he had performed the last rites at the time of cremation. On the other hand the widow and son claimed their exclusive right to do

this ceremony on the ground of being the widow and natural son of the deceased. The widow was a Christian and her sentiment was to perform the ceremonies in accordance with Christian rites. The Single Judge of the High Court decided the legal issue and held that as per the Hindu Law, the person who performs the last rites has the right to immerse the ashes also. However, influenced by the fact that on the other hand were the son and widow of the deceased who also could not be deprived of their rights in that capacity, a direction was given that both the parties jointly immerse the ashes of deceased in the Ganges. Not satisfied with the decision, the son filed an appeal before the Division Bench of this Court. The Division Bench referred the matter to the Delhi High Court Mediation and Conciliation Centre. The mediation process was able to persuade the son to travel to India through his counsel who played a very proactive role. During the course of litigation, the widow had also passed away. Before the mediator when the son and his cousin brother appeared who were uncle and nephew and interacted between themselves for some time, the ice melted and there was a thaw in the relationship. After all blood is thicker than water. It was clear that up to now they were fighting against each other only because of lack of communication between them. The opportunity to restore communication was provided by the process of mediation. The strain in their relations vanished. Both uncle and nephew wept and hugged each other and the old affinity in their relationship was restored. They also agreed that the ashes of deceased would be immersed by them together. Before that the uncle agreed to join the son to perform some Christian ceremonies. Thus, virtually the direction given in the judgment of the Single Judge was mutually accepted and parties acted

thereupon. What was achieved was the reunion and restoration of the relationship which the judicial adjudication process could not achieve.

2 Here is another story which demonstrates the beneficial effect of the mediation to the hilt: An industrial establishment was facing some financial crunch and it decided to retrench some of its employees. The axe fell on a manager whom we refer to as 'A'. He challenged his termination as illegal and approached the Court of Law. His contention was that proper notice terminating his services was not given and, therefore, his termination was illegal. The company on the other hand contended that due to depletion in the business activity it had the right to reduce its work force particularly when no requirement of 'A' was necessitated by those compelling circumstances. Parties were referred to mediation. In the mediation proceedings the company even offered to pay some compensation but 'A' refused to agree to this proposal and was adamant that he should be taken back in the job. The mediator was somewhat intrigued by this stubbornness of the terminated employee and tried to reason that even in case termination is held as illegal by the Court, as manager in a private company he had no right to get the reinstatement and could only be given damages/compensation. He thus tried to probe why 'A' was not agreeing for anything but reinstatement. In the private session 'A' revealed that he had no other family members; that he was all alone and after working in the company for number of years he had started treating his colleagues as family members. Therefore, his main concern was not the termination but the fact that because of the termination his links with

ADVANTAGES OF MEDIATION - 2



The law mandates mediation and the courts encourage and endorse it.

his 'family members' would also get snapped. He was feeling depressed and wanted to go back to his family members. After coming to know of these facts the mediator held private sessions with the management and during discussion he was informed that the management was otherwise satisfied with the services of 'A' but termination was only because there was no requirement of a manager in the company. 'A' wanted to come back to the company since it was important for him was to reunite with his 'family,' and he agreed to get the employment even at a lower post which was available. The management also agreed with this solution as it had otherwise no grievance against 'A'. A settlement took place in accordance with which 'A' was taken back in service though on a lower post. Most importantly, 'A's' emotions and sentiments were addressed in mediation. Such a solution could be found only by way of mediation. Even if 'A' had succeeded in the Court and got the compensation/damages it would not have satisfied him. The satisfaction which he got in the aforesaid settlement could not have been achieved by adjudication.

3 The following case exemplifies yet another novel solution to a dispute settled through mediation which course of action was impossible to adopt in a Court of Law. A clothing company with a famous brand filed a suit for infringement of its trademark and passing off. The allegation against the defendant company was that it was producing the garments in his factory and selling the same under the trade name of the plaintiff. Ex-parte injunction was granted as it was a clear case of counterfeiting. After notice the defendant appeared. The scope of the dispute, insofar as decision of the case on the basis of adjudication is concerned, seemed to be only

with reference to damages/compensation. Parties agreed for attempting an amicable solution of the dispute and the case was referred to mediation. Had the case been decided by the Court, it would have resulted in permanent injunction against the defendant and some damages/compensation. But, do you know, even a case like this had a strange and pleasant outcome in mediation ? During mediation proceedings it transpired that the defendant had a state-of-the-art garment manufacturing unit with modern machines and expert manpower. The plaintiff company with a celebrated and highly acknowledged brand was outsourcing the manufacturing of those garments, of course with strict quality control. Lo and Behold! The plaintiff which was otherwise satisfied with the quality product of the defendant agreed to place orders with the defendant company for the same garments to the plaintiff. With this, counterfeiting was given a go-by. At the same time defendant could continue with the manufacturing of the same garments under the same brand name but now duly authorized by the plaintiff. The only change was that the defendant had now started producing these garments on the basis of orders placed by the plaintiff and was delivering to the plaintiff rather than selling in the market on its own. Both were satisfied. There cannot be a better example of a win-win situation. This case also illustrates that even those cases which may be good on merits for one party can be sent for mediation as the ultimate settlement can bring about more pleasant outcomes for both parties.



ADR and its Facets



SANJAY KISHAN KAUL, J.

Justice Sanjay Kishan Kaul is a sitting Judge of the Delhi High Court and presently the Chairman of the Overseeing Committee of the Delhi High Court Mediation and Conciliation Centre.

“Discourage litigation. Persuade your neighbours to compromise whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time”.

– Abraham Lincoln

A difference of views and perception between members of any society is an integral part of not only a modern society, but even ancient civilizations. The principles of law are the norms by which such a society is governed and the institutions of courts are to ensure that there is a peaceful resolution of the various disputes without the parties taking law into their own hand. The increase in numbers and the complexities of the disputes has resulted in a situation where the adjudicatory process of courts is over-burdened and more so in India. The USA also faced a similar situation in the 1980s and thus thought process went into finding methods to reduce the burden of the courts. India has faced a similar situation for decades though not as alarming as on date. It is this situation which has given rise to Alternate Dispute Resolution Mechanism.

The endeavour has been to move away from purely adjudicatory system to a friendly reconciliation of the disputes. The strength of the process of mediation as a mode of resolution of such disputes is that no party goes out with the belief that it has won a battle over the other. The success of mediation arises from the parties themselves being assisted in finding solutions to their problems, thus preventing further acrimony. A failed mediation would only put the parties back to the process of adjudication.

In definition, mediation is a process in which a neutral third-party assists in resolving a dispute between two or more other parties. It

is essentially and in principle, a non-adversarial approach to conflict resolution. The mediator's primary role is to facilitate communication between the parties who are facing a breakdown in the same, assisting them in focusing on the real issues, and then catalyzing options that hopefully meet the interests or needs of all.

However, unlike arbitration where the intermediary listens to formalized arguments of both sides and then makes a decision for the disputants, a mediator assists the parties to reach a consensual final. The mediator is primarily required to help the parties define the agenda, identify and isolate issues, find areas of commonality, negotiate fairly and reasonably and reach an agreement that satisfies all. The best case scenario is that the outcome is accepted and owned by the parties themselves.¹

As for field of operation, mediation has been widely and successfully used in all sorts of disputes, ranging from family and civil law to complex public policy problems to even international conflicts which are seemingly intractable. Even long-running and deep-rooted conflicts have been seen to yield to mediation. Even if the full range of grievances cannot always be resolved, the core issues have still been addressed, paving the way for effective diffusion of volatile and more often than not, destructive exercises.

The key lies in the ability of the mediator to create a more productive environment than the parties could have achieved by themselves. Mediators exercise a fair degree of political skill in getting people to soften hard-line positions. Background knowledge of the issues and type of dispute is also an essential part of their experience. Though many mediators are highly trained and

experienced, not all are professionals, and they come from many different walks of life.

The purpose of mediation is not only rapid and efficient settlement of a particular case, but more to improve relationships among parties who will have to deal with each other again, or even to help them learn how best to handle conflict with other parties in the future. Often, a mediator has to first examine which of these purposes is more important in a particular case, and tailor services to match; or mediators may specialize in one variety of mediation or another for e.g. mediation that focuses on settlement is sometimes termed problem-solving mediation and that which focuses more on relationships is called transformative mediation.

The greatest advantage of mediation lies in the fact that the responsibility and authority for arriving at an agreement remains with the parties. The dispute is viewed as a problem that is to be solved so as to result in a win-win situation. Like in a courtroom, the parties needn't "take their chances". Understanding your legal rights enables the making of decisions that are in your own best interests. The focus is on needs and feelings and not on the 'me or you' philosophy that causes more problems than it solves. Going to court can divide people and increase hostility in many cases.

Participants in mediation report higher satisfaction rates than people who fight it out in courts. Also, because of their active involvement in the entire process, they have a higher commitment to upholding the settlement than people who have a judge decide for them. As a matter of record, mediation ends in agreement 70 to 80% of the time and has higher rates of compliance.

The informality of procedure, the flexibility and the space to voice your opinions, all lend a more comfortable air to the process of dispute resolution, putting the parties at ease. A mediated agreement thus may be obtained in a couple of hours or fewer sessions. Further, the court process is expensive, and costs can exceed benefits. Mediation services are available at lower costs. If you can't agree, other legal options are available still. Even a partial settlement can lessen later litigation fees. Unlike most court cases, which are matters of public record, mediation is confidential and sensitive to the party's needs.

The advantages as discussed, of mediation makes it very aptly suited to our country and maybe for the same reason, mediation is not something new to India. Centuries before the British and the British legal system arrived, India had utilized a system called the *Panchayat* system, whereby respected village elders assisted in resolving community disputes. Such traditional mediation continues to be utilized even today in rural parts. In pre-British India, mediation was also popular among businessmen. Impartial and respected businessmen called Mahajans were requested by business association members to resolve disputes using an informal procedure, which combined mediation and arbitration.²

Another form of early dispute resolution, used upto to this day is the use of *panchas*, or wise persons to resolve tribal disputes. Here, disputing members of a tribe meet with a *pancha* to present their grievances and to attempt to work out a settlement. If unsuccessful, the dispute is then submitted to a public forum attended by all interested members of the tribe. After considering the respective claims, defenses, and interests of

the tribe in great detail, the *pancha* again attempts to settle the dispute. Even if settlement is not reached, the *pancha* renders a decision on equitable principles that is binding upon the parties. The *pancha's* decision is made in accordance with the tribal law as well as the long-range interests of the tribe in maintaining harmony and prosperity. All proceedings are oral and no record is made of the proceedings or the outcome. Despite the lack of legal authority or sanctions, such mediation processes were and are regularly used and commonly accepted by Indian disputants.

Mediation bears a striking resemblance, in some respects, to such ancient dispute resolution processes. The framework of discussion in mediation consists of both the applicable law as well as the underlying and justified interests of the parties. The mediator, an expert in the process of dispute resolution, controls the proceedings, much like a tribal chief serving in the role of peacemaker. But under the ancient methods if mediation failed, the same person was authorized to render a binding decision, which is not the case with mediation. The purpose of mediation is to allow free will and not to curtail the same.

We cannot, however, rely on these past methodologies and claim that mediation is nothing but one of these modes. The common factor of an endeavour of reconciliation was present in these modes and yet it had an element of an adjudicatory process. This is so as the *panchas* would have the last word. Thus, even if the parties were not satisfied with the solutions, the conclusion of the *panchas* was binding on them. To this extent, it had the enforcement like monarchal system. The process of mediation is a vastly advanced one in

comparison to these modes as it is supposed to be in true nature and spirit only a voluntary process where the parties resolve their disputes, the mediator only providing assistance.

This is perhaps the feature that makes it more advanced than the ancient methods. In our daily lives, we are continuously informed of the rising cases of social conflict because the autocracy of *panchayati raj* has reared its ugly head. The element of authority when removed from an accompanying sense of justice, equity and good sense, can lead to very unwanted and disturbing results. Add to that an uneducated and uninformed public and you have a nightmare. With mediation, discussion becomes central and displaces in entirety, any coercive and corrupt elements, as well as the possibility of consideration of any extraneous factors-social, moral, political or economic. This builds trust and thus results in an environment which is more conducive to compromise.

There are various disturbing examples where *Panchayats* have overstepped their authority and produced catastrophic results: e.g. *social ostracism and public humiliation* – for inter-caste or intra-*gotra* marriages which are branded so far across the line of legality by these authoritative heads, that basic humanity is also forgotten and the boy and girl as well as their families are deprived of basic amenities like clean drinking water from the village well.

A more specific example demonstrating the same is that of the *Rathi khap panchayat* in Asanda village of Jhajjar district which ordered Sonia, who had already been married a year by then, to dissolve her marriage to Ram Pal, abort her unborn child and accept her husband as a brother, if she wanted to

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Through mediation parties can communicate in a real sense with each other, which they had not been able to do since the dispute started.

stay in the village, their fault being that they shared the same gotra, even though the Hindu Marriage Act recognised the union. Sonia and Ram Pal could live together in peace again only after the High Court directed the Haryana government to provide security to them from the those who believed they could over-ride the law.³

In a similar case only recently, a 10-day-old baby was snatched from his parents in *Katlaheri* village of the Karnal district. *Katlaheri panchayat's* head Rajesh Kumar justified the act, saying that the infant was separated from his parents as their marriage was illegal and against tradition.⁴

In some places, the *Panchayat* makes certain rules and regulations in complete and utter disregard of the legal position, and these are mostly chauvanistic, patriarchal, orthodox, illiberal or even bordering on irrational. The enforcement is through force, fear and greed and the result frequently the very anti-thesis of fair. For example, a law made by the *Jati Panchayat* required that 'if a woman dared divorce her husband, she would have to pay a fine of 5000 rupees, no questions asked, and the fine for any alleged charge of infidelity was fixed at 15,000 rupees'.⁵

Another concept that is gaining popularity is that of *Lok Adalats* or people's courts as established by the government to settle disputes through conciliation and compromise. It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations. The first *Lok Adalat* was held in Chennai as far back as 1986. *Lok Adalats* accept even cases pending in the regular courts within their jurisdiction.

ADVANTAGES OF MEDIATION - 4



The mediation process is confidential, the procedure simple, and the atmosphere informal.

The *Lok Adalat* is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee thus making it available to those who are the financially vulnerable section of society. In cases, the fee is already paid the same is refunded if the dispute is settled at the *Lok Adalat*. The *Lok Adalats* are not as strictly bound by rules of procedure like ordinary courts and thus the process is more easily understood even by the uneducated or less educated. The parties to a dispute can interact directly with the presiding officer, which is not possible in the case of a normal court proceeding.

On the flip side, the main condition of the *Lok Adalat* is that both parties in dispute have to be agreeable to a settlement. Also, the decision of the *Lok Adalat* is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the *Lok Adalat* and the sense of finality attached to such a determination is sometimes a retarding factor for approaching the *Lok Adalat*. The award can however be passed by *Lok Adalat*, only after obtaining the assent of all the parties to dispute. In certain situations, permanent *Lok Adalats* can pass an award on merits, even without the consent of parties. Such an award is final and binding. From that no appeal is possible.

This is not to say that *Lok Adalats* don't have many advantages. *Lok Adalats* are especially effective in settlement of money claims. Disputes like partition suits, damages and even matrimonial cases can also be easily settled before a *Lok Adalat* as the scope for compromise is higher in these cases. *Lok Adalat* is a definite boon to the litigant public, where they can get their disputes

settled fast and free of cost. The appearance of lawyers on behalf of the parties, at the *Lok Adalat* is not barred.

Lok Adalats are not necessarily alternatives to the existing courts but rather only supplementary to them. They are essentially win – win systems, an alternative to “Judicial Justice”, where all the parties to the dispute have something to gain.

There are certain hybrids of ADR (Alternative Dispute Resolution) that also deserve a mention. These processes have evolved in combination of various ADR mechanisms with the ultimate objective of achieving a voluntary settlement. The purpose of many of these hybrids is that the principle objective of achieving a settlement is kept in mind and all permutations and combinations should be utilized towards that objective to reduce the burden of the adjudicatory process in courts. The different ADR processes and their hybrids have found solutions to different nature of disputes and thus the knowledge of these processes can be a significant aid.

Non Binding Arbitration⁶

On the face of it, a non-binding arbitration may appear to be quite inefficient. The parties go through the motions of traditional arbitration only to end up with an award that has no binding effect. If the parties do not settle, they may be forced to repeat the entire process at a trial, administrative hearing, or in a binding arbitration.

Yet, if properly implemented, non-binding arbitration can serve several useful purposes. First, it can be a “facilitator for discussion” providing the parties with important information about how a case may be decided. Second, because the award is merely

advisory, there is no basis to argue that the arbitrator failed to follow proper procedure or ignored the essential facts and law of the case. Thus, non-binding arbitration eliminates the possible need to appeal an adverse decision, while being less time consuming and cost effective.

A party who is unhappy with a non-binding award and chooses not to settle then has the option to litigate the dispute in court (or in a binding arbitration, if the parties agree). But because this is a costly decision, the disappointed party is likely to tend towards finding a businesslike solution. In addition, non-binding arbitration has some of the benefits of traditional arbitration – it is more flexible and more private than litigation. Plus the option to appoint an experienced arbitrator with expertise in the field of the dispute is always available to the parties. These advantages, combined with the ability to reject the award and seek a fresh trial or arbitration hearing, make non-binding arbitration a highly practical process, especially for less complex commercial disputes that companies do not wish to mediate for whatever reasons.

In some instances, even courts and administrative agencies prefer a nonbinding arbitration as a first step. The process gives the parties a chance to hear a decision maker's view of the case. The party always has the right to reject the award and have a day in court at a trial on the merits, but this right need not be exercised. The disappointed party can agree to accept the non-binding award as a settlement, or choose to negotiate a different settlement with the adversary.

Med-Arb⁷

Med-Arb is an acronym for mediation-arbitration. Although there are varying methods of med-arb, in its pure form it is conducted by a single individual whom the parties have agreed will first mediate their dispute and then arbitrate, should the mediation fail to fully resolve the matter, by issuing a binding decision on all unresolved issues. The origin of the process was to cure some of the problems associated in both mediation and arbitration, while allowing the parties to benefit from the advantages of both procedures.

Because such a med-arbitrator has more authority than the traditional mediator, the parties are encouraged to be more open with each other during the mediation stage, knowing that the neutral person will resolve all remaining unsettled matters. The final result of med-arb is a binding decision which includes two elements- the agreements achieved during the mediation phase and the arbitration decisions.

Arb-Med⁸

Arb-Med is the complete reverse of Med-Arb. A full arbitration hearing is conducted prior to mediation. The neutral(s) prepares an award (decision), signs it, and places it in a sealed envelope and the award is not thereafter altered. Without revealing his/her sealed decision, the neutral proceeds to function as a mediator, using ordinary mediation procedures, except that there is no need for position papers and presentations during this phase. If the parties reach their agreement, the unopened award is destroyed without being revealed, and the agreement prevails. Arb-Med avoids the principal problem of Med-Arb, that the parties do not speak freely for fear of influencing the possible resolution imposed by the arbitrator

eventually. By the time otherwise confidential or withheld information is disclosed during mediation, the award is already drafted and is not affected. The neutral person must be careful during the mediation phase not to telegraph the nature of his/her sealed award.

At first blush, the logic of this particular process is difficult to comprehend. In med-arb, the parties have the opportunity to avoid the arbitration phase by fully resolving their dispute in the mediation phase. In arb-med not only are the parties deprived of the opportunity to avoid arbitration, but also the arbitration phase is almost certain to be more expensive than it would have been in a med-arb process. Since the arbitration occurs first, it must necessarily consist of a detailed adjudicatory hearing of every issue rather than a summary-type proceeding or an arbitration of only unresolved issues as is possible in med-arb. The impending irrevocability of the process is undeniable as the parties know that they have a last opportunity to reach a negotiated settlement.⁹

Medaloa

MEDALOA stands for Mediation and Last Offer Arbitration. This is a hybrid process very much like med-arb, the difference being in the arbitration stage. If the parties do not reach a voluntary settlement through mediation, each party then submits a “last offer” to the med-arbiter who must choose between one of the two final offers. This process, in concept, limits the discretion of the arbitrator to decide what he or she believes to be the most appropriate solution as the award must be limited to one of the two offers.

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The mediation process is voluntary and parties can opt out of it at any time if it does not help them.

ADVANTAGES OF MEDIATION - 6



Mediation saves precious time and energy.

Mini Trial¹⁰

A mini-trial is not a trial at all. Rather, it is just a settlement process in which the parties present summarized and concise versions of their respective cases to a panel of officials representing each party plus a neutral official who has authority to settle the dispute. The presentation takes place outside of the courtroom. After the parties have presented their best case, the panel convenes and tries to settle the matter.

A mini-trial resembles a mediation hearing in the sense that there is a presentation by each party of a summarized version of his or her case to a panel of persons for the purpose of resolving or settling the dispute. Also, like mediation, the parties are generally not bound to an outcome.

However, there is one important difference between the two. In mediation, the mediator is a neutral third party who does not take the side of either party. Conversely, in a mini-trial, the mediators themselves are agents and advocates for the parties, and they, rather than the parties, work out a settlement after hearing opposing sides to the controversy. The parties present their cases (usually through their attorneys) but do not take active roles in the settlement negotiations nor generally do their attorneys. The neutral member may play the role of an expert, advisor on substantive law or technical person as the case may be.

Early Neutral Evaluation

ENE is a process of alternative dispute resolution, which has been adopted in the United States of America and discussed by the author in detail in *Bawa Masala Co. vs. Bawa Masala Co. Pvt. Ltd. and Anr*; AIR 2007 Delhi 284. In the words of Robert A. Goodin, "Early neutral evaluation is a

technique used in American litigation to provide early focus to complex commercial litigation, and based on that focus, to provide a basis for sensible case management or offer resolution of the entire case, in the very early stages.”

Thus, Early Neutral Evaluation (ENE) is a kind of hybrid process between a non-binding arbitration and mediation. The idea is that parties to a dispute voluntarily sit down with a neutral third party and present their case to the neutral as they would do in arbitration. At the end of the presentation, the neutral will render an advisory decision as an arbitrator which is essentially an outcome the neutral would expect a judge to render on the evidence and arguments presented by the parties.¹¹

During the course of this process, the parties may come close to a negotiated settlement. The neutral may then ask the parties if they would like to try to mediate their dispute. This may happen either before or after the neutral has rendered his/her decision. Of course, all parties would have to agree to the shift in the role of the neutral.

The evaluator thereafter shares his conclusion with the parties either at joint sessions or at private sessions, called caucuses. These caucuses are often useful as they may allow a more frank and free discussion about the strength and weaknesses of the respective parties. If no settlement is possible the matter is referred back to the Court without disclosing the reason for the failure of the process of ENE. Thus, the confidentiality and the principles of mediation are equally applicable to such ENE. It also has other features as a mediation process like being not binding, confidential and participative in nature. ENE

also broadly follows the same process as a mediation, though the concept is not that of a negotiated settlement, but a neutral assessment.

The primary goal of a neutral evaluation is to get the parties to focus on the strength and weaknesses of their case and their opponent’s case early in the litigation process in order to avoid some unnecessary pre-trial expense. Eventually, all disputes are resolved. The issue is whether the dispute is resolved sooner or whether it is resolved later and whether it is resolved by settlement or by trial.

The development of neutral evaluation as an ADR technique came about in response to a reality we have all been confronted with many times: that sometimes one of the parties, sometimes an attorney, or maybe an adjuster misunderstands or misevaluated the case leading to unrealistic ideas about the probable outcome of the case. Some sort of ‘reality check’ earlier on in the litigation will prevent mistaken notions about the value or viability of the case, and there might even be more money available to settle the case, thus less would be required to resolve it.¹²

Until recently, the primary sources of such a reality check were either judicial arbitration or the mandatory settlement conference just before trial. The main problem with those techniques has been that they either come too late in the case, or that they are conducted so haphazardly that it’s all too easy for the participants to shrug off the result as an anomaly as in the case of judicial arbitration.

Mediation and Case Management

Now that law has made ADR methods a part of our legal system it is necessary that while

exercising judicial control a judge at the earliest stage decides if a case has any element of settlement which can be further explored by referring the case, inter alia, to mediation. Therefore it becomes a pre-requisite before referring a case to mediation that a judicial mind must decide whether it is capable of being resolved through any of the ADR mechanisms. A reference of all the cases to mediation without application of mind can become an empty formality.

It is also necessary to fix a time limit for completing the mediation procedures or they may be shelved thus serving no purpose but rather obstructing justice. In appropriate cases the given time may not be sufficient and may be required to be extended further. If the judge is satisfied that the progress towards the settlement is not being made, he may allow no further time to be wasted. A judge may further conclude that certain issues may be settled through mediation and others require a trial. Such an exercise of control by the judge brings in the concept of the answerability by the parties and the mediator. Thus mediation becomes complementary to the courts and actually furthers the court's own interest in reducing its case load.¹³

Rather than presenting a parallel system of justice that is competitive with courts, such a method of ADR can be an additional tool which will inspire confidence and provide continuity of the process. When court considers it appropriate to refer the case to mediation and continues to have its managerial supervision, the court remains a central institution. This will also establish a public-private partnership between the courts and the community thus producing lawful enforceable settlements. Unless both case management techniques and ADR

procedures are properly used as a part of the same system, none of them can be effective. The court will benefit administratively from resolution of many civil disputes through the many modes of ADR while simultaneously retaining its vital role as the final arbiter.

Adjudicatory process of the courts and the ADR system must walk hand in hand to ameliorate the suffering of litigating public and provide an early and easy resolution of the disputes.

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ADVANTAGES OF MEDIATION - 7



Mediation saves costs on what could become a prolonged litigation.

Married to Mediation

Some Thoughts, Some Suggestions



Reva Khetrpal, J.

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It is well known that every long-term relationship is inherently fraught with conflict. More so marriage, which has no bonds of blood or childhood memories to fall back upon. Marriage Mediation, an off-shoot of Divorce Mediation, has therefore, assumed important dimensions though it is relatively new. Both Marriage and Divorce Mediations have much in common. Specific areas of conflict and disagreement need to be identified in both before they are effectively addressed. Both depend upon practicability and are consensus oriented. Quite often, in the course of Divorce Mediation, it is discovered that there is more that binds the couple than separates them. What ensues is a happy reconciliation of the warring spouses with the fine turning of their differing expectations of love, sex, relationships with each other's families, parenting, financial management, career plans and ambitions.

In many cases after enthusiastically embarking upon their matrimonial journey, couples discover to their dismay that with the passage of time, far from being blissful, their life has turned into a stifling one. Time, the age old enemy of youth, vitality and relationships tends to strain the fibre of the matrimonial cord, often to snapping point. A rigid stance is then adopted by the two spouses. The stage of newly married euphoria quickly passes and the couple resort to the use of acerbic and vitriolic barbs, snides and sarcastic remarks, even volatile retorts. Verbal bashing yields to physical assaults, even police complaints. More often than not, the couple sitting on the edge of the volcano are assisted and pushed in reaching its crater by family members and others, sometimes for the personal gains of the latter and sometimes for the sheer joy of it. Insidious remarks of outsiders and devious plans hatched by inmates of the same house turn

the warm fire kindled in the hearth of the home into a conflagration, which threatens to devour the relationship itself.

The parties next turn to the law courts to douse the furious fire. The stalwarts of the legal profession, through their wit and learning, place before the Court a completely marred picture of the relationship replete with the trappings of exaggerations and embellishments. A mirror image of the toxic relationship is presented by the other side. The legal acumen of each side in its attempt to outdo the other creates a further rift in the relationship, which gradually broadens into a chasm of wide dimensions. The Court watches as a helpless spectator at the parties hurling brick bats at each other. In the course of the hurling match, the parties too watch helplessly as sometimes a brick meant to break the head of the other spouse strikes instead the head of their child. Vengeance and fury have a field day and the combat continues unabated. The parties are advised to turn to the mediation process as the last resort and are ushered into its realms.

The intermediary known as the mediator, who has undergone the rigors of training and who emanates and inspires confidence by his demeanour, at the threshold asks the couple to examine its relationship in layers, microscopically, stripping off one layer after another. The couple discovers to their dismay that it was a trifle matter that had turned their happy marriage into a sour and putrid one. What transpired in the first instance could have been easily overlooked by one or both of them. A non-issue had become an issue incapable of being resolved. Further ego clashes had left the marriage stifled and gasping for breath.

The trained mediator, after enabling the

parties to discover for themselves what led to their dispute in the first instance, in the next sitting, implores the parties to talk about each other. Gradually, the couple air their grievances and give vent to their mutual complaints. In the exhausting lull which ensues, the clever mediator tentatively suggests that there may be some positive aspect in the personality and outlook of the blameworthy other spouse. The complaining spouse digs into the folds of matrimonial moments spent together and emerges with instances in which the blameworthy spouse had shown exemplary behaviour or had shown concern for the welfare of the beleaguered spouse. Spurred on by each other, both spouses recall shared moments of joy, concern and even grief. Wonderment follows as to how they, who had enjoyed such a warm relationship, had landed up on the path of matrimonial destruction.

Resolution of the impasse is now in sight. The mediator as a next step motivates the parties to weigh on a fine scale the advantages and disadvantages of their matrimonial strife which may result in the severance of all their ties, end their relationship and impact other family members, especially the children, who would virtually be called upon to suffer single parenthood with all its attendant disadvantages and imbalances. The parties are asked to visualize the future without the love and support of each other.

The iron is now hot and the mediator strikes by throwing suggestions to the parties of the various options available to them, subtly facilitating them to bury the past, seize the present moment and pave the way for the future. The parties are most likely to relent at this juncture. If not, a few more sessions

of introspection and reasoning may be thrown in by the mediator to see the parties home to remain happily married ever after or if not, to agree to turn the clock back to their pre-nuptial days by signing on the dotted line for a mutual consent divorce, preferably one which resolves for good the custody and guardianship rights of the children, makes provision for the destitute wife (assuming her to be the non-earning spouse) and puts an end to all civil and criminal litigation pending between the parties.

It is clear from the above that mediation requires both expertise and time to achieve the laudable object of settlement between the parties. Courts of Law may possess the former, that is the expertise which may be required to settle matrimonial disputes, but are undoubtedly unable to afford the time necessary to enable the parties to unravel their past in order to knit together their future. Mediators, on the other hand, have time on their side to don the mantle sometimes of the onlooker, sometimes of the emphatic counselor and at other times of the sympathetic guide and friend, to enable the parties to lay bare their souls. In that sense, the mediation process requires past regression therapy, frequently used by psychiatrists, where the person is taken to revisit his or her past with a view to pave the way for resolution of problems in the present so as to ensure a brighter future. Mediation thus purports to solve matrimonial strife through the introspective process with a gentle nudge from the mediator in the right direction. A good mediator is, therefore, one who from time to time spurs the parties to think about the “causal aspect”, and to resolve their differences keeping in view the “consequential outcome”.

It is trite that in a matrimonial matter there

can be no winner or loser. In the case of a long drawn out contested divorce with a handful of appeals and counter appeals thrown in, peppered with a fistful of false criminal cases, both parties may unhesitatingly be dubbed as “losers” even though one of them legally speaking is the winner. In a case where the parties eventually decide to patch their differences and bury the hatchet to return to the matrimonial hearth and home, both may appropriately be called “winners”. In a case settled through the mediation process, whether it ends in a divorce or in matrimonial reunion, it may be aptly said of the parties that they have escaped the travails of a bad marriage, if not lightly, at least with a minimal amount of anguish and suffering. Such mediation may be pre-litigative or pending litigation.

All the aforesaid needs to be conveyed by the mediator to the parties subtly, softly and at the opportune moment. The result, in most cases will be a settlement between the parties by adoption of conflict reducing resolutions. A “bitter” marriage may undergo the metamorphosis of a “better” marriage. In the alternative the parties may agree to walk their own path, without crossing paths or creating obstacles and hurdles for each other. Whatever be the outcome, needless to say, the beneficiaries will be the parties, their families, their children and eventually society as a whole, for, happy marriages (not necessarily enduring ones) pave the way for a sound societal system.

Take a classic Indian example crying out for Marriage Mediation. A weary husband after a hard day’s work at his work-place, in the course of which he has withstood barbs and insults from his employer and taunts from his colleagues, looks forward to returning home sustained by the thought that when he

returns to his house he will receive nothing short of a hero's welcome. He visualizes the benign smile of his wife and in anticipation tastes the culinary delights she would lay out for him to sample, while he relaxes near the television set with his favourite channel relaying the football match before eventually yielding to the pleasure of sleep.

The distraught wife after being driven round the bend with monotonous household chores, the pranks of her two tiresome kids and the eternal complaints of her ailing in-laws, looks forward, rather pleasurably, to the time when her husband will return home to take her out for a breath of fresh air and both of them will watch a film together or have dinner at a wayside restaurant. Instead, to her chagrin, the husband returns home in an irate mood. His scowl deepens when he is faced with the job of monitoring the kids while his wife prepares the meal and relentlessly nags him about the poor state of affairs in their shared household.

In the above scenario, the husband, who works at least six days in a week, each day stretching out to at least ten hours of work, deems himself to be a good provider for his family. His young wife cornered by the demands of the children, the in-laws and bored by the routine monotony of her life feels lonesome and neglected. The expectations of the husband and the wife from each other are far from being fulfilled. Their relationship too threatens to die. It is here that the parties would be well advised to resort to mediation at the pre-litigative stage and with the help of the mediator iron out the creases in their matrimonial life in order to make it workable and better.

Now take another classic example, this time a post-litigative one. The wife leaves the

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Mediation shows the parties the strengths and weaknesses of their case, which helps them find realistic solutions.

parental home with the expectation that she will be welcomed in the matrimonial home and made to feel a part and parcel of the family of her husband. The mother of the husband, who has performed the marriage of her son with some enthusiasm, expects the wife to cater to her demands at all hours of the day and night, to remain at her beck and call, to fulfill her every wish like a genie.

The wife tries to toe the line for as long as she possibly can, but finding no modicum of appreciation for her indefatigable efforts, her enthusiasm wanes and she becomes less and less responsive to the demands of the mother-in-law, plugging her ears to the latter's continual whining and complaining.

The husband is sandwiched between the complaints of the mother and the wife alike and finds himself torn asunder by the pulls and pressures applied upon him from both ends. The unhappy triangle, overwhelmed by the differences in personalities, trudges along till the matter reaches a Court of Law. The time is now ripe for post-litigative mediation before the daughter-in-law institutes a criminal proceeding or commits suicide, or the mother-in-law tries to dispose of the daughter-in-law by one means or the other.

There may be many cases where the marriage is irreconcilable either because of the wanton and persistent infidelity of a spouse or because one or the other spouse is an avaricious gold-digger, a habitual drunkard, an inveterate gambler, a drug addict, a criminal offender, a total maniac or a psychopath. Such type of marriages may be irretrievable and in such cases the mediator must use all the tools at his disposal to work out a mutually satisfactory arrangement on the negotiating table to dissolve the marriage in such a manner that the least amount of

stress, time and money are expended by the parties. But in most cases, there is always a glimmer of hope and in all such cases the mediator must persevere to ensure that the parties put some of their rancour, bitterness, anger and hurt on the back-burner and end up recognising each other's strengths and needs, so that ultimately the right solution is arrived at and the marriage is saved.

In both the aforesaid eventualities, the mediator must be regarded as an indispensable clog in the wheel of justice who will eventually manoeuvre, assist and guide the parties in arriving at a complete resolution of their disputes, be it at a pre-litigative stage or a post-litigative stage.

However, a caveat must be entered here. The mediator must be a virtuoso and as an emissary of the justice delivery system even if he does not possess the wisdom of Solomon or the wit and learning of Aristotle, must nevertheless be familiar with the nuances of the law, apart from having in his tool-kit the highly extolled qualities of nobility, astuteness, patience, perseverance, empathy, sympathy and the like in large measure. It must never be lost sight of that the justice delivery system can result in justice alone and that too as envisaged by the Law, but the mediation process can result in a complete settlement of all disputes and differences by consensus between the spouses to the mutual satisfaction of both. Mediation thereby in the long run promotes the welfare of the institution of marriage and eventually of society at large.



A reunited family, after successful mediation.

Role of Referral Judges in Mediation



HIMA KOHLI, J.

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“An ounce of Mediation is worth a pound of Arbitration and ton of Litigation.”

– Joseph Gybaum

The term “Alternate Dispute Resolution” takes in its fold, various modes of settlement including, Lok Adalats, arbitrations, conciliation and mediation. This technique of Alternate Dispute Resolution (ADR) has been used by many countries for effective dispute resolution. The most common type of Alternate Dispute Resolution (ADR) is mediation. In fact, mediation has been described by some as the most Appropriate Dispute Resolution method. Mediation as a tool for dispute resolution is not a new concept. To put it in simple terms, mediation is an amicable settlement of disputes with the involvement of a neutral third party who acts as a facilitator and is called a ‘Mediator’.

Mediation has various advantages. It is cost effective, reliable and confidential in nature. A mediator does not impose a solution upon the parties, but creates a conducive environment in which the disputing parties have the right of self determination which can be exercised to resolve all their disputes. The advantage of court annexed mediation is that the Referral Judge, counsels and litigants become participants therein, thereby giving them a feeling that negotiated settlement is achieved by all the three actors in the justice delivery system.

In court annexed mediation, the fountainhead of mediation is the Referral Judge who initiates the process by passing a referral order in a pending litigation, either with the consent of the parties who are willing to try mediation or in cases where the referral judge considers it fit and appropriate to send parties for mediation after being satisfied that there exist elements of settlement. Hence, “reference” is a pre-requisite to initiate the mediation proceedings. Section 89 read with Order X Rule 1-A, 1-B & 1-C of the Code of Civil Procedure is the source of power of a Referral Judge. Section 89 is the substantive section which empowers the court to refer appropriate cases for settlement outside the court and Order X Rule 1-A, 1-B & 1-C are the procedural provisions. As per the provision of Order X Rule 1-A, after recording admission or denial of documents, the court is under an obligation to direct the parties to the suit to opt for any of the four modes of settlement as specified in sub-section (1) of Section 89 CPC and on the option of the parties, the court fixes the date of appearance before the forum or authority as opted by the parties. This is not to say that the courts cannot permit/call upon parties to undergo mediation at an earlier stage of completion of pleadings and even at a later stage, during the course of evidence. A case may be referred for mediation at any stage of the trial, but courts must ensure that a request for sending the parties to mediation does not become a tool for procrastination in the hands of a party interested in unnecessarily delaying the court proceedings.

Success in mediation depends to a great extent on the Referral Judges referring such cases, which in their opinion, they think are fit for mediation. The responsibility cast on the Judge while making a reference is

therefore onerous and crucial. Proper referrals help reduce the caseload, maximize success of mediation and increase the litigant’s satisfaction with the justice system. While making appropriate referrals reduces the work load of a judge, inappropriate referrals results in waste of precious time and delays the trial. It also damages the perceived effectiveness of the ADR process and results in ending up back in Court with a failed experience.

The role of Referral Judges in the mediation process can be categorized into three stages, i.e., pre-mediation, during mediation and post-mediation.

Pre-Mediation Stage

At the pre-mediation stage, in proceedings in a civil suit, after the pleadings are complete and documents of the parties are put to admission/denial, at the stage of framing of issues, the Referral Judge has the benefit of perusing the pleadings and examining the respective stands of both the parties. At this stage, the Referral Judge is expected to objectively evaluate all the important factors which in his/her discretion will facilitate a successful mediation. Before selecting the cases appropriate for mediation, he/she is expected to take into consideration the following factors:

a) Whether the case is ripe for mediation?

As noted earlier, the stage of the trial is not very material. Statistics reveal that quite a large number of cases which were at the stage of completion of pleadings have been successfully settled through mediation. At the same time, it may be mentioned that a pre-mature reference can be self - defeating as the parties may not be ready for it. Some points that the Referral Judge needs to ascertain at this stage is as to whether the

parties are agreeable to a negotiated settlement of their disputes? Are the parties ready for it? Whether the parties and their advocates have a positive attitude towards mediation? Are there any reservations to mediation and if so, can they be overcome? Have previous attempts to mediate been made and failed and if so, why? Have the parties reached the “Fatigue stage”? Whether the parties want a prompt resolution of their disputes? Whether the parties are inclined to maintain/build upon their relationship in the future?

b) Whether the case in hand has the elements of settlement?

The nature of dispute involved must be assessed by the Referral Judge before selecting cases for mediation. The general rule is that every case can be settled through mediation, exception being such cases where there is some law point to be settled or constitutional issues are involved for decision by the court or the question involved relates to public policy or there are so many parties involved in the case, that mediation is not a viable solution or where parties simply refuse to negotiate a settlement and also where either of the parties have been proceeded against ex-parte. Civil cases including suits for injunction, possession, specific performance, recovery of money, business disputes, labour and service matters, insurance disputes, motor accident claim cases, matrimonial cases including divorce, custody and dowry cases, community disputes and criminal cases including complaints made under Section 406/498-A I.P.C and Section 138 of the Negotiable Instruments Act can be referred for mediation.

Promoting mediation, particularly for resolving family and matrimonial disputes, is

the best option as it helps in healing relationships and minimizing emotional damage. Apart from the abovementioned benefits, it also promotes the interest of the entire family including those of the children and reduces economic and emotional cost associated with the resolution of family disputes. Mediation in the context of matrimonial dispute is different in its form and content from disputes in respect of commercial and property matters on account of presence of certain factors which are unique to such disputes. These factors include the motivation of parties, their emotional quotient and social compulsions and their personal liabilities and responsibilities towards their near and dear ones. The views that two parties may hold regarding their life pattern and the institution of marriage, can be diametrically opposed and so can their perception of security for the future life etc. Thus, in cases of mediation for matrimonial disputes, the elements that weigh with the parties are not purely commercial, logical and cut and dried. Very often irrational and sentimental factors have a pre-dominant role in the eruption of the disputes as well as their resolution. The job of the Referral Court in family and matrimonial disputes is to explore the elements of settlement by calling upon the parties to appear in court, briefly interact with them and open their mind to a lasting solution through an alternative dispute redressal forum of mediation.

c) Whether the Government is a party to the suit ?

If the Government, its agency or a statutory body is one of the litigators, then in such a case, ADR through Lok Adalat is a preferable and more accepted route for exploring settlement. However, there can be no hard and fast rule in this regard, and each case has

to be scrutinized by the Referral Judge in its own context before sending it to mediation.

Once the Referral Judge identifies a case as being fit for mediation, he/she must call the parties and highlight the benefits of settlement of disputes through mediation. This is the time when all misgivings about the process must be dispelled by the Judge. The parties and their advocates must be informed that it is quick and responsive process and that unlike the court process, there are no strict or binding rules of procedure that require to be followed. It is economical and there is no extra cost involved in the proceedings. While explaining the process, the referral judge should clearly indicate to the parties that the counsels would be present before the mediators to assist them and that not only will the entire process be confidential, there will be no compulsion to settle. Parties should be made aware that the court will maintain over all supervision on the process as the matter still remains in court and that, if settled, the court will put its seal on it by passing a final order/judgment. It should be explained to the parties that the mediators would facilitate the parties in examining the best and worst alternatives to settlement (commonly known as BATNA, i.e., Best Alternative to a Negotiated Settlement and WATNA, i.e., Worst Alternative to a Negotiated Settlement), give them the freedom to create options and refine their suggestions to reach a mutually acceptable agreement and once a consensus is reached, the settlement agreement would be signed by the parties, their advocates and the mediator and sent back to the Court. Parties must be told that in such a process, they are the key players and that it would lead to harmonious settlement of the dispute as mediation will enable disputing parties to interact on a one-

ADVANTAGES OF MEDIATION - 9



Mediation focuses on long-term interests and helps the parties create options for settlement.

to-one basis and will enable them to settle their own terms of agreement. The confidentiality of the process must be emphasized and it may be indicated that agreeing to mediation will not be treated as a weakness of a party's case. Also, it should be made clear that if the dispute is successfully settled through mediation, the plaintiff/appellant would additionally stand to gain by being entitled to claim refund of full court fees as per Section 16 of the Court Fees Act, 1870.

The Referral Order

The significance of the referral order cannot be overemphasized. As it sets the tone for mediation, it is essential for a Referral Judge to word the referral order carefully. A mention may be made in the referral order of the relevant provision of law which empowers a Referral Judge to refer the case for mediation. A referral order may indicate in brief the nature of dispute being forwarded to the Mediation Centre, to enable the Centre to have some clue as to the nature of the dispute between the parties to enable it to assign Mediator(s) having adequate expertise in the field, if necessary. A referral order should contain specific directions to parties and advocates to appear before the mediator, on a fixed date and time. It may clarify that parties would be at liberty to submit relevant documents before the mediator to help clarify the issues and facts during mediation. The time frame for undertaking the mediation process ought to be specified in the referral order. At the same time, the next date of hearing before the Court needs also be fixed, so as to make the parties aware of the fact that the Court is not only keeping an overall control on the conduct and conclusion of mediation, but will not permit the parties to delay the proceedings.

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Mediation restores broken relationships and focuses on improving the future, not on dissecting the past.

The consent of the parties to participate in mediation of their own free will must be recorded in the referral order. In case any/ both the litigants are a government body, Corporation or firm, the referral order must mention that an officer authorized and competent to take a decision on behalf of his client in the matter, is present before the Mediator(s) with the counsel on the record.

During Mediation

While the mediation proceedings are taking place, the Referral Judge ought to monitor the process by giving short dates and placing the matter before him/her from time to time. This helps the judge in keeping his hands on the pulse of the case and at the same time, the litigants don't feel abandoned. By doing so, the counsels also take the proceedings seriously as they realize that the judge is constantly monitoring the progress of the case. This sends a message to the parties to take the mediation process seriously and not delay the proceedings unnecessarily. At this stage, absence of the parties or their counsels can be brought to the notice of the court by the other side or even the mediators in their interim report. Any other hurdles faced in the smooth progress of mediation can be pointed out by the parties and redressed by the Court. If mediation is not completed within the time frame mentioned in the referral order, the Referral Judge may extend the time after checking the progress. In other words, the Referral Judge must keep an overall supervision on the progress, as the court is the parental institution for resolution of disputes and mediation under its control, guidance and supervision has more authenticity and smoother acceptance.

In this whole process, the Referral Judge must not call upon the Mediator(s) to appear in Court or the Chambers or have any direct interaction with them. The confidentiality of the process must not be breached at any stage, even while checking the progress of the case.

Post- Mediation Stage

At the post-mediation stage, the following three eventualities can arise:

- (a) Mediation is a “non-starter”
- (b) Mediation is not successful.
- (c) Mediation is successful and a settlement report is filed.

When mediation is a “non-starter” or is not successful, the mediator informs the court by filing a report. No details or reasons are required to be given in the report by the mediator and no blame is apportioned as the proceedings are strictly confidential between the parties and the mediator. The report therefore does not prejudice the court or affects the merits of the case. As per Order X Rule 1-C CPC, when the case referred for mediation, is referred back to the court, the parties are directed to appear before the court on the date fixed by it for taking the case for trial from the point at which it was when forwarded to the Mediation Centre for the parties to explore the possibility of a negotiated settlement. It is to be remembered that there is nothing like “Failure” in mediation, as there is always a likelihood of a breakthrough even after the mediation has not been successful. This is so because by now the initial ice has been broken between the parties. They have interacted freely with each other in an informal atmosphere and have assessed each other's stands and weighed their options. As a result, there is more clarity of thought. The Court/Judge can still

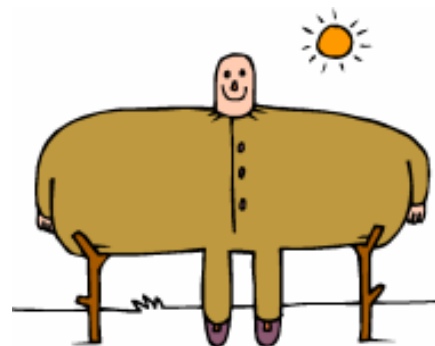
intervene after receiving a 'Non-Starter' Report or a "Non-successful Report" and take the matter further after interacting with the parties and tooling out an acceptable settlement at this stage. In other words, the fruits of mediation can still be reaped in court by some constructive intervention.

Once the parties arrive at a settlement and an agreement is drawn, signed by all the parties and their counsels, as also the Mediator(s), the settlement agreement is then filed in the court for appropriate directions and the Court/Judge then peruses the same carefully before passing an order recording the settlement. At this stage, the judge is expected to examine the settlement agreement carefully to ensure that it is worded clearly and is unambiguous, that all loose ends are tied, specific time frames, if any, are indicated, amounts payable are clear, it is duly signed and dated by all parties and their counsels. The agreement ought to ensure that it can be implemented effectively and smoothly and there is no lingering dispute or foreseeable legal impediment in giving effect to the settlement. As against a formal trial, where while passing a decree, a judge cannot go beyond the prayers made in the plaint, in court annexed mediation, the terms of settlement may travel beyond the scope of pleadings. When signed by the parties, their counsels and the mediator, the presiding judge passes a decree in terms of the settlement. In accordance with Order XXXIII Rule 3 of the Code of Civil Procedure, other civil and criminal cases can also be compromised concurrently which can be recorded in the settlement agreement. Hence, if the parties adhere to the terms of settlement, several pending cases can be finally disposed of at one go and thus reduce the pending list of cases.

The settlement, once accepted by the Court, becomes enforceable under the provisions of the Code of Civil Procedure and the Arbitration and Conciliation Act. The Court enforces the settlement agreement by the legal process of Execution/Contempt. No appeal or revision lies or is entertained in a mediated case as all the disputes get finally settled and the settlement is voluntarily reached after a consensus by both the parties.

To sum up, mediation is a far more satisfactory way of resolving disputes, as compared to regular litigation. In a settlement negotiated through the process of mediation, both sides are in a win-win situation as there is no court verdict in favour of one party and against the other. Instead, the dispute is resolved on mutually acceptable terms and there is no acrimony left. Instead of discord, disharmony and a bitter relationship at the end of an adversarial proceeding, there is peace, accord and re-established relationship between parties at the end of a consensual proceedings. It is therefore apparent that in walking the litigants through this entire process, from the time when a reference order is passed, till the Settlement Agreement is accepted or the matter is returned un-settled, the Referral Judges play a pivotal role. No doubt, the Referral Judges do not conduct mediation, but by exercising their authority to refer a case for mediation, and finally by receiving the case back, they remain the starting point and the ending point of the entire process. Their contribution to establish mediation as a system of dispute resolution is immense. Without their correct assessment of a case before reference of the same for mediation and without their overall supervision of the entire process, till the matter comes back in court, successful mediation is simply not possible.

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Through mediation parties opt for more by signing a settlement that works to benefit both opponents.

Mediation and Transformation – A Perspective



A.S. CHANDHIOK, SR. ADVOCATE

Mr. A.S. Chandhiok is Additional Solicitor General of India, President, Delhi High Court Bar Association and Senior Mediator

Just as basic instincts of greed, courage, humility, pride and ego are universal in nature and content, so is conflict. Conflict, it is often said, is life's constant. It is the variables of life that differ. When the fine alignment of sense and sensibilities with that of the rough and tumble of life is disturbed, disputes and conflicts arise. Those of us who deal with conflict daily know this better. And as lawyers, we know that it is conflict that makes resolution necessary. A 'dispute' is often described as a particular incident or occurrence, or the visible and tangible piece of a larger and continuing hostility, which in fact is the 'conflict'. The dispute is very often the ostensible reason for parties to move the court. But the real conflict is often buried deep within and usually does not surface in the pleadings filed by the disputants in a court of law. As a mediator in the Delhi High Court, I have learnt about aspects of conflict from parties who come to Samadhan, which I would have never known otherwise.

Perception of Conflict

From a neutral outsider's perspective, many conflicts or disputes seem petty and meaningless. Comments like the following are often heard: "Imagine brothers fighting like this for decades!" "I can't understand how employers can behave like this with their workmen!" "The only people they are helping in this pointless litigation are we, the lawyers! When will better sense prevail over them?" Lawyers for sure know that for the disputants such issues are not trivial. They spiral into matters of life and death.

Conflict and relationships

For any permanent resolution, the emotional component of the relationships between people must be understood. When a dispute is brought to a court of law, a judge can merely adjudicate upon its merits based upon the pleadings drafted by lawyers, evidence produced on the positions taken, arguments presented by counsel and legal issues argued. Nowhere in the scheme of adjudication are the emotions and sentiments of parties addressed. It is these emotions and sentiments that usually form 95% of the disputes. For any real justice to be done between the parties, these emotions and sentiments have to be understood and addressed. This can be done only in mediation, irrespective of the relationships involved whether individual, social or commercial.

Understanding conflict

The training that we receive as mediators makes us aware of the circumstances and occasions when we have intentionally or otherwise negotiated a conflict situation in life and in the legal profession. We learn how the smallest problem holds within it a vast potential for conflict. If we analyze some of the heaviest and most complicated legal cases, we would be able to trace their origins to the smallest problems that kept escalating at each stage and finally blew up into mind-boggling questions of law and procedure. However, we have also realized as mediators that this potential of conflict also reveals its other side, which is that just as conflict is normal in human relationships, it can also become a vehicle of change when it is resolved. A conflict that has found its resolution reveals that we have within us as human beings the power to transform the same. But this cannot come on a platter. A combination of human will, human effort and the human heart only can make this happen.

Transforming conflict

As catalysts of positive change in the lives of disputants, we are primarily concerned with the process of transforming conflict. Transformation means bringing a constructive change that includes and also goes beyond mere reconciliation of a particular dispute. It is a scientifically sound process that focuses on building healthy relationships in all aspects. It brings greater understanding and clarity in relationships as compared to a mere problem-solving exercise. It is based on principled negotiation and interest-based bargaining. It is hard on merits and soft on people. It deals with the rights of individuals and entities and at the same time remains decent, gentle, fair and protects exploitation. It balances unequal power equations between parties.

Creativity improves the quality that we can bring to everything we do. As mediators, we approach a dispute or conflict situation with a creative bent of mind, ridding ourselves absolutely of adversarial tendencies. In mediation the race is not for one party to win to alone, but to help the other side also to win. Working together to find a common ground is a learning experience for all involved. Transformation has to be achieved together. This should not be lost sight of. If that is not done, the ultimate solution itself can become a bigger problem.

Transforming conflict through mediation is thus a powerful way of conflict resolution through a legal system that harmonizes the values of law, public need and ethics of legal practice.

When we analyze conflict, we can further categorize the essential components of conflict as:

- 1) The key question.
- 2) Perception of the conflict
- 3) Reason for the conflict
- 4) Focus of the conflict
- 5) Development of the conflict
- 6) Time frame of the conflict

As lawyers participating in mediation and interested in the transformational end of the problem, we help the parties to understand simple truths like the following:

- a) Conflicts are a natural phenomenon.
- b) Conflicts provide great opportunities.
- c) A balanced and calm approach to conflict resolves it.
- d) A reasonable approach is necessary for finding solutions.
- e) Learning comes from listening.
- f) Real interests and not rigid positions resolve conflicts.
- g) Respecting each other is important to resolve conflict.
- h) Understanding common interests is important to conflict resolution.
- i) Creative solutions help resolve conflict.

There are areas where transformation is limited and a quick and direct resolution is more appropriate and end of the problem. For example, a one-time business dispute over a pending payment between two people who hardly know each other and will never have contact again.

But in cases where parties share a lot of experience and have had a good relationship over a period of time and hold the potential for good future relationships, a simple resolution is not the correct answer. If an immediate and quick solution is sought, the potential for a greater change is missed. For example in a matrimonial dispute, a mutual consent divorce may look like a quick

solution. But the welfare and interests of the children could become the casualty with such an approach. So can the emotional bond of the couple. Similarly, in a commercial litigation, the long-term business interests of two parties who have unfortunately got into litigation once in a thirty-year-old relationship have to be understood. Here a mere clinical financial compromise may actually harm the real interests of the parties and their past and future relationships.

In mediation, while dealing with relationships and their emotional component, no point or issue, however small, can be ignored. Mediators have to be very careful while dealing with delicate human emotions and sentiments. Parties should be encouraged to participate from their hearts, not from their minds alone. In this process, the role played by the lawyers for the respective parties is of great significance. They have to understand the conflict very well, and help the parties to understand it in the same context, not in litigative mode. Unlike court proceedings, the lawyer is truly and fully a 'counsel' to the parties. And the mediator even in his or her objective neutral role is the 'counsel' for both sides. Once conflicts are understood correctly and properly, transformation takes place smoothly. Conflicts thus become opportunities for transformation. It is an undisputed fact that human relationships are at the heart of conflict transformation.

The conflict triangle

As mediators and lawyers representing our clients, we have learnt to underline the importance of the Conflict Triangle¹. It arranges the elements of the conflict into three categories: the People, the Process and the Problem. This Conflict Triangle becomes the basic framework for mediators to

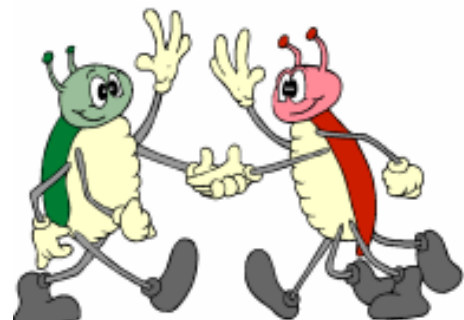
understand and address conflict. When a mediator deals with a conflict, he/she addresses three sides of the Conflict Triangle. Elements of each side of this triangle will naturally differ from person to person, situation to situation, problem to problem and will involve various nuances of a possible solution. Any lasting resolution to a conflict or dispute must recognize all three sides of the conflict. Each side of the conflict triangle demands its own set of mediation skills and its own rationale. This is clear from the diagram that follows.

1. People: The first side of the Conflict Triangle consists of people because dealing with any conflict involves dealing with people. People come from different personal, social, cultural and religious backgrounds. They have their own individual personalities and emotional equipment to deal with varying situations. People in a conflict have a background of relationships, perceptions and approaches.

2. Process: The second side of the conflict triangle shows that every conflict has its own pattern of communication and interaction between and among all the players in it. Conflicts differ in the way each one intensifies, gets diffused, spreads and gets resolved. The process of development of a conflict and its resolution depends upon its players.

3. Problem: Every conflict has its own content. The third side of the Conflict Triangle comprises all the issues and interests of different disputants involved, positions taken by them, their perceptions of the conflict, their reasons for the conflict, the focus of their conflict, how their conflict developed and the time frame of the conflict.

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At the end of mediation parties actually shake hands with each other and wish each other good health and happiness.

THE CONFLICT TRIANGLE

- Past history
- Values, meanings
- Relationships
- Emotions
- Behavior
- Abilities
- Personalities

- How people communicate issues and feelings
- Structures, systems, procedures
- Norms about how to behave in a conflict
- Decision-making
- Roles, jobs



- | | |
|--------------------------|-------------------------------------|
| ▪ Facts | ▪ Perceptions |
| ▪ Positions | ▪ Interests, Needs |
| ▪ Issues | ▪ Solutions |
| ▪ Consequences of events | ▪ Consequences of possible outcomes |

A mediator must recognize all three sides of the conflict while assisting disputants. It is important for the mediator to understand the people in the mediation room.

Understanding the social, economic and educational backgrounds, the different personalities, abilities and behavior, interpersonal relationships, emotions and sentiments of the actors in the dispute or conflict is the essential first step.

Next in understanding and addressing the conflict is recognition of the processes the parties have been using for dispute resolution so far. Has there been communication of issues and feelings between the warring sides about the dispute? If so, what kind of communication, how have parties behaved while communicating, how have decisions been taken, has there been any attempt to resolve the dispute before litigation, has litigation been initiated without strong reason?

This background of the processes used gives the mediator a better understanding of how to use the process of mediation and explain its advantages as against other processes. It is this understanding of the people and the process that enables the mediator to assist the parties to move from their positions to their interests, from a negative to a positive approach, from dissecting their past to looking at their future and finally to finding creative win-win solutions for both sides that are not available before any other dispute resolution forum.

*Acknowledgement of concepts and ideas of the Conflict Triangle:
‘The Mediator’s Handbook’ by Jennifer E. Beer with Eileen Stief
developed by Friends Conflict Resolution Programs, revised and
expanded 3rd.Edition, New Society publishers*

Press Clippings

Mediation centres set up for speedy justice

Sumit Saxena

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NEW DELHI: "Mediation before litigation" is the motto of the Delhi government's fledgling community mediation project. From parking woes to child custody, district mediation centres across Delhi would settle cases without adjourning matters or filing petitions.

On Tuesday, Delhi government's law and justice department principal secretary M.L. Mehta said, "Rather than wasting time at court rooms, people can now visit the nearest mediation centre and seek quicker solutions for their disputes."

Community mediation is a unique project catering to several issues. Cases of cheque bouncing, which form 50 per cent of pending litigations in

various district courts, will be resolved at the mediation centre. Cases against government bodies can also be taken up at the mediation centres. The litigants will not be required to engage a lawyer and the mediators will offer a mutually agreed settlement free of cost.

About the mediators, Mehta said, "Respectable society members such as social workers, retired judges and even senior citizens can be appointed mediators."

Nine mediation centres have been set-up across the city so far. "We are training our mediators to resolve long-pending consumer disputes within 30 minutes," said Mehta.

For more information on mediation centres litigants can log on to mediation.delhigovt.nic.in.

delhi first

GENTLE JUSTICE

Come, let's sit & talk things out

SOFT TOUCH Delhi High Court's Mediation Centre helps solve disputes without the acrimony of a long-drawn court battle



Mediation persuades disputing parties to look at the future. During the sessions, a mediator does not advise. He just listens and encourages the parties to resolve their differences.

JUSTICE RANJANA KHANNA, mediator



The stiff resolution among bar members has given way to cooperation. There are over 200 lawyers waiting to get trained. Even senior members have undergone the training programme and are mediating cases free of cost.

ANURAG SINGH CHANDRAN, President, Delhi High Court for association



In 2008, the high court advocates were not sure about it. Now, with its success, lawyers are joining it. With law colleges offering courses in mediation, we hope to get trained mediators.

J.P. SENGA, senior bar member



After the success of court-referred mediation, we have now started receiving cases of the pre-litigation stage. This will definitely supplement our judicial system.

KIRAL SINGH AGRAWA, mediator



THE BEGINNING OF A DISPUTE

Some of the most common cases that are referred to the Mediation Centre are those of matrimonial disputes. Advocate Satish Ranjan Khanna remembers one case in which the husband and wife were involved in a bitter battle regarding the custody of their children after their divorce came through. "It was impossible to see the two children suffer due to the parents' separation," Ranjan Khanna recalls.

When lawyers and judges become judicial healers

Shashi Sinha

NEW DELHI: In 5 yrs, there for the Delhi High Court to dial off and litigants to invest. As the court cases pick up, the 10 months in the high court's mediation centre continue to be busy with activity.

Tucked away in the new High Court complex, the mediation and conciliation centre—'Shanti'—is open till 30 yrs. "We don't have any working hours," says advocate and trained mediator Satish Aggarwal who works out of the centre after a successful two-hour mediation session with a couple.

Aggarwal says when he convinced the couple to live together after fighting a seven-month long matrimonial case. They had come here for an amicable solution to the messy matrimonial case pending against the boy. Aggarwal's advice to the girl to teach her father-in-law that broke the ice. "Once her father-in-law begged and begged her things were sorted out and the two went back happily," says Aggarwal.

Four years after 'Shanti' was launched, this alternative dispute resolution forum by the Delhi High Court has reinforced the litigants' hope in the judiciary. Both lawyers and judges have become confident in the budding process where parties in conflict come in search of mutually acceptable solutions.

When the Centre was opened in May 2009 by Justice

BENEFITS OF MEDIATION

- Mediation allows parties to reach their own solutions to disputes.
- Mediation can be less expensive than disputes settled in courts.
- Advocate and mediator Satish Ranjan Sinha says, "Sinha as arbitrator, the mediator does not give his judgment or impose a settlement on the party."
- In a judge's office, Mediation works. "In mediation, there is confidentiality between disputants and mediators which is not there in court hearings."

Manohar Singh, it was an amicable change. Karti Upadhyay, vice-president of the Delhi High Court bar association recalls, "It had a great response. Only five cases were referred to it every week. Lawyers did not fear the system and advised their clients against it," he says.

Felix Upadhyay, a senior mediator and active participant. Ranjan Khanna, managing secretary of Shanti mediation, "We have 70 cases daily. The Centre has so far settled 2,200 cases. In addition, over 500 workmen and over 1,000 transactions have also settled their disputes. Given the High Court case in referring matters to 'Shanti'. Of late, the Centre has also started receiving pre-litigation disputes also.

SOME HOPE LEFT

Though it was a bitter fight, there was some hope. "The judge noticed an unusual warmth between the couple during the court hearings on the custody case. She found that the two used to cry together during the proceedings and all these were chances of rapprochement," Ranjan Khanna says. The judge, Justice Anura Sinha, referred the matter to the mediation centre.

TALKING IT OUT

At the mediation centre, it took six sessions and not more than a few hours to convince the couple to remain. "The girl was under her father's influence. The husband was scared to confront the relationship because of criminal cases initiated by her. The case forced him to seek judicial resolution," Ranjan Khanna adds. She had individual sessions with the two and kept the family out. Her efforts paid off.

Judge's role

An Karti Upadhyay, vice-president of the Delhi High Court bar association, says it is a judge's role to mediate in all serious disputes. "It's the judge who has to decipher whether a case is fit for mediation or not. We, as mediators, come in later. If the case is not sent here for mediation at the right time, the process would not be fruitful," he says.

Ranjan Khanna, managing secretary of Shanti, further adds, "The mediation to be successful, we need to have sensitive judges who should refer the case at the appropriate time."



Mediator's role

Lawyers often become pseudo-judges while hearing cases in the mediation session. "In a property dispute between two brothers, I had to touch the feet of the elder to resolve them. I did it because the younger one was determined not to touch the elder's feet. However, when he did, the elder brother was moved and he agreed to end the litigation," says Advocate Ashwin Bhat.

The Delhi High Court mediation centre has come a long way. So far, the Centre has been following the mediation model as it is practised in the west.

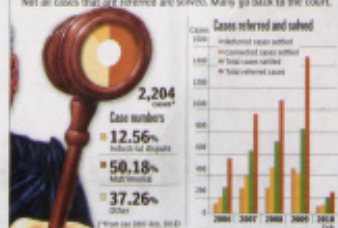
HAPPILY EVER AFTER

Once their issues were sorted out, the couple signed a settlement agreement and it was decided that the husband would maintain his wife by paying her maintenance. "The wife would go back to work. It was also decided that in the next passing of the husband, his wife and children would pay tax.



NUMBER CRUNCHING

Not all cases that are referred are solved. Many go back to the court.



MEDIATION IN OTHER COUNTRIES

From the days of Ancient Greece and Roman Empire, mediation has come a long way and is commonly used in many countries.

Mediation is a form of alternative dispute resolution where an impartial mediator helps disputing parties reach an agreement rather than compelling a decision from a third party like a judge.

The first known cases of mediation can be traced back to Ancient Greece and the Roman Empire.

Mediation is part of the multi-optional system offered to the litigants to resolve their disputes. However, it is up to the disputing parties to opt for mediation or not.

UNITED KINGDOM: In UK, there is a system called Peer Mediation (PM) whereby children and young people, trained in the principles and skills of mediation, help disputing parties of their own age, and younger, to find solutions in a range of conflicts.

The theoretical basis for Peer Mediation is that a mediator approach to deal with conflict can effectively transcend the school environment.

AUSTRALIA: Mediation is commonly used to resolve employee and employer disputes.

In Australia as more companies realise the benefits of settling commercial disputes out of court, many companies now include compulsory mediation

clauses in their contracts. Such benefits include avoiding negative publicity, well-acknowledged and time free spent by management with lawyers.

In Australia, native-style mediation has become a prominent example of cross-cultural dispute resolution.

Mediation is a compulsory process that has to be followed before the disputing parties approach the court for adjudication. If the parties fail to go in for a mediation the court refuses to entertain their dispute.

USA: In US, there is court-annexed and court-referred mediation. In court-annexed mediation, the dispute is sent to a private mediator, while in court-referred mediation, the dispute is resolved by a mediator attached to the court.

While mediation is usually voluntary a judge may order a case to proceed to mediation.

Mediation can be terminated at any time by the involved parties or upon its completion by the mediator.

CEST: Mediation abroad is not free. There are trained mediators like lawyers to conduct the proceedings. Though they charge fees for their professional advice, the cost is far less than what is spent on court litigation.

AN ANSWER OF QUESTIONS

A look at the process and answers to some frequently asked questions on mediation.

- Mediation is used to settle a variety of different disputes including family matters, employment issues and business and consumer disputes.
- It circulates on mediation is sent when a court notice is issued on a fresh matter.
- Parties can approach mediation as soon as they wish or can be referred by court.
- It cannot have a filed by each party and then mediation starts.
- Most cases have to be settled in maximum five sessions. As per the rules, no mediation can take more than 10 days.
- Once parties reach a settlement, it becomes enforceable and the court is bound to enforce by execution of court-leave.

Are the mediators law officers only (judges, advocates etc) or are there any non-lawyers involved in this as well?

Mediators are law officers, that is, advocates in the high court centre and judicial officers in the lower court. However, the Centre does have a panel of court officers whose intervention is allowed only after the consent of both parties and a court order.

Is mediation happening only in Delhi or is it also there in some other cities in India?

Now mediation centres are functioning in Delhi and Chennai. However, the process is finding acceptance in other cities as well and mediators from Delhi are going and training future mediators in those cities. Because of its growing popularity, law colleges are now offering courses in mediation.

What is the cost involved in mediation? Is it cheaper than court hearings?

The process is free for the litigants as the centre does not charge anything from them. Instead, there is an incentive for the litigants. If a case is solved at the mediation centre in a civil dispute, the court fees, deposited as a mandatory provision in civil proceedings, is returned to the parties.

GET HELP

If you are stuck in a dispute and don't have the time or money needed to settle the case, head to the Delhi High Court's Mediation Centre.

Civil Society



STUCK IN COURT? TRY MEDIATION

LAWYERS GET LITIGANTS TALKING



'RIGHT TO FOOD IS ABOUT NUTRITION'

Prof Abhijit Sen on
food security and
the need for a
holistic approach

Pages 6-7

HAWKERS FIGHT FOR SPACE IN DELHI

Pages 8-9

Dr FAESAL MAKES KASHMIR SMILE

Pages 10-11

TUPPERWARE & WOMAN POWER

Pages 23-24

UDAAN LANDS IN CANNES

Pages 29-30

Three-day course on mediation concludes

HT Live Correspondent
 chd@hindustantimes.com

CHANDIGARH: "Mediation is a process where we need to think out of the box and its success lies only in finding unobvious solutions," said Niranjan Bhatt, a senior advocate from Ahmedabad and a mediator.

He was speaking at the concluding day of the five-day basic training course on mediation theory and practice of Punjab and Haryana High Court on Sunday.

The course was organised by the Punjab and Haryana High Court Mediation and Conciliation Committee headed by Justice M.M. Kumar. More than 100 advocates attended the training course.

Justice M.M. Sharma, Justice A.B. Saharya and Justice Mahesh Grover were also present on the concluding session of the training programme.

Over 100 advocates from 18 districts of Punjab and Haryana, where mediation and conciliation centres have been set up, participated in the training programme. Currently eight such centres are functioning in Punjab, 10 in Haryana and two in Union Territory of Chandigarh.

"Mediation is fast emerging as an alternative to litigations, Chandigarh lawyers have an active role in mediation, which is fast emerging as an alternative dispute redressal system to litigations. The advocates can play an active role in mediation. It cannot be successful without their active participation," Justice Kumar said.

Mediation is a process where we need to think out of the box and its success lies only in finding unobvious solutions
NIRANJAN BHATT
 Advocate from Ahmedabad

decide for themselves whether to settle a dispute and at the same time mediators should make such negotiations where interests of both the parties succeed.

Legal experts termed the mediation and conciliation centres as recourse in settling disputes in a speedy and eco-

and confidence and it is unequal to abuse such process."

A team headed by Sadh Ramchandran, a senior advocate from Delhi, played an important part in imparting the mediation-training programme to the advocates. "A third person cannot decide the dispute between the two parties as the best solution lies with the parties only."

This is where the role of a trained mediator becomes important to enable the parties to resolve their issues amicably at the pre-litigation stage, said Ramchandran.

Simran Kaur, an advocate who had come from Ludhiana to attend the course, said that the training would help mediators in finding out a agreeable solution in a number

A three-day mediation training course organised under the aegis of Punjab and Haryana High Court headed by Justice M.M. Kumar concluded at the Judicial Academy, Sector 43, here today.

Legal eagles to be p

Three-day workshop concludes at Se

EXPRESS NEWS SERVICE
 CHANDIGARH, APRIL 25

NEXT time you visit a lawyer, he may not charge you any fees for contesting your case rather may advise you to get the dispute sorted out with the opposite party by acting as a mediator or conciliator.

For, now advocates can act as mediators/conciliators to broker peace between two parties by avoiding unending litigation in the court and getting a compromise reached. Till now, only judges had been deciding cases of mediation and conciliation in districts of Punjab and Haryana. A three-day workshop

AS many as 110 advocates from 18 districts of Punjab and Haryana were imparted training by mediators and conciliators. The course was organised by Mediation and Conciliation Committee headed by Justice M M Kumar

M M Kumar. Highlighting the significant of mediation and conciliation as alternative disputes redressal mechanism, Chief Justice Mukul Mudgal observed that "mediation being

tion and conciliation (High Court and court) has a positive response.

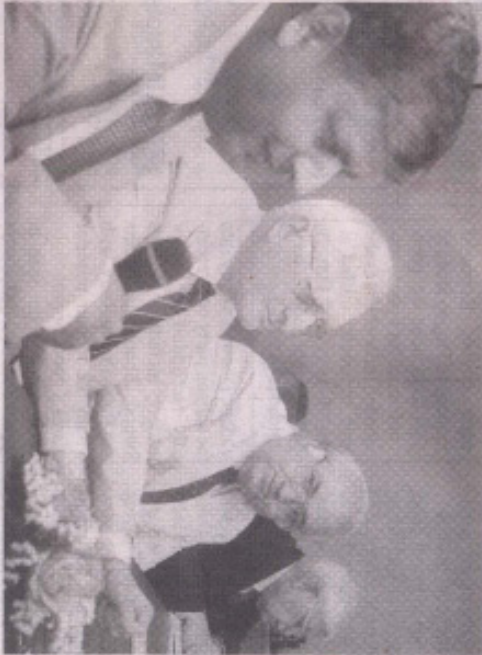
"Lawyers are a vital part of the legal system like Mediation and Conciliation is not only be a success but also trained by Justice M M Kumar to

Justice M M Kumar. On the other hand, Mediation and Conciliation are not only hone the skills but also at the level of an in-house learning this also be able to

Mediation training course concludes

Tribune News Service

CHANDIGARH, April 25



An advocate speaks during the concluding ceremony of the mediation training course at the Judicial Academy in Chandigarh on Sunday.

'More people to be involved in solving cases by mediation'

HT Live Correspondent
 chd@hindustantimes.com

CHANDIGARH: Besides the advocates, acting as mediators for early disposal of litigations, the authorities are now exploring the possibility of including social workers, policemen, counsellor and other experts to work as mediators. This was stated by Punjab and Haryana High Court Chief Justice Mukul Mudgal here on Sunday.

Justice Mudgal said this while interacting with mediators at Judicial Academy after the concluding ceremony of a five-day training programme on mediation, which was attended by a large number of advocates from Punjab and Haryana.

Talking about the role of a mediator, Justice Mudgal said, "Even if you can't bring the people to settlement, you can bring them close to settlement."

"The mediation has multiple advantages for the litigants. Besides less cost on litigation, it also helps to dispose of all sort of litigations in one-go," Justice Mudgal said.

Mediation and Conciliation Committee Chairman Justice M.M. Kumar said that the decision, which through the mediation both parties arrive at, was totally voluntary and not binding.

Unlike the normal litigation, when one of the parties is unhappy for the adverse decision and there are chances of their going in for further litigation through appeal, in case of disposal of case through mediation, both



Punjab and Haryana High Court Chief Justice Mukul Mudgal addresses the media at Chandigarh Judicial Academy, Sector 43, on Sunday.

parties, after agreeing to the decision, go satisfied and then there is no further litigation, Justice M.M. Kumar said.

Justice M.M. Kumar said, "So far, mediation centres have been set up in 18 districts out of the 35 districts of Punjab and Haryana. The committee is now considering to open centres at every district headquarters."

Addressing the delegates, Justice Sanjay Kishen Kaul, chairman, Mediation and Conciliation Committee, Delhi High Court, said, "Initially the main role was played by the judges in setting up the whole system,

but now-a-days the lawyers are coming forward for this purpose." Addressing the delegates, Justice Reva

Khatri, a judge of the Punjab and Haryana High Court, shared her views with the participants regarding mediation in matrimonial cases and pointed out various types of matrimonial problems and the challenges that trained mediators have to face in settling such disputes.

Justice Permod Kohli, who chaired one of the sessions, shared his views on the importance of oral and non-verbal communication in the mediation process.

Among others Anil Lakhani, senior advocate of the high court and coordinator of the mediation and conciliation centre, shared his experiences with the participants and

Presently, 48 advocates of the mediation centres of the Punjab and Haryana High Court and 13 advocates from the district courts in Chandigarh are running such centres

Cyriae Joseph, Supreme Court of India, categorically stated the need of the mediation training for the advocates, who have a central role in making mediation work for their clients in constructive, creative and productive way.

Sudha Ramchandran, senior advocate and organising secretary, Delhi High Court's mediation and conciliation centre, along with her team arrived from Delhi to conduct the training programme. "This alternate system of dispute redressal is gaining popularity in Delhi. We have 70-75 cases listed every day that range from matrimonial and family disputes to industrial disputes, intellectual property rights and trademark disputes. We solve between 45-50 cases each month," she said.

Niranjan Bhatt, senior advocate from Gujarat High Court, said on an average 40 per cent of the total cases referred to the mediation centre in Gujarat were settled and same the success rate in Delhi. "The cases are settled legally and the court issue a decree on the decision. We have

Mediation system best

TRIBUNE NEWS SERVICE

Jan Marg

Ex-IAS officer with assets disproportionate to his known source of income, sent to jail. Does it make him wail?

And those with assets proportionate to their known source of income, fail. Their careers of no avail.

Survival of the thickest.

pushy

CHANDIGARH, MAY 2

The Chief Justice of the Punjab and Haryana High Court Mukul Mudgal says the mediation system is best for both parties involved in litigation. He expressed his views during the concluding session of the second phase of mediation training programme being conducted at the Judicial Academy in Sector 43 here.

During an informal discussion with mediapersons, the Chief Justice said the mediation system is inexpensive and beneficial to both parties involved in litigation. It is a voluntary exercise and both parties, if feel dissatisfied, are at liberty to walk out of this system. "In the conventional system of justice, one party is at a loss when the verdict is given against it, which is not the case in the



Punjab and Haryana High Court Chief Justice Mukul Mudgal, Chandigarh Judicial Academy, Sector 43, on Sunday.

mediation system," the Chief Justice said.

Justice MM Kumar, chairman, Mediation and Conciliation Committee, Punjab

and Haryana High Court, asserted that at present 18 mediation centres have been set up out of 35 districts of Punjab and Haryana. As the

Judges tell lawyers about mediation

TIMES NEWS NETWORK

Chandigarh: During the second phase of mediation and training programme, Punjab and Haryana High Court judges trained advocates to act as mediators. Justice MM Kumar of the high court said 18 mediation centres had been set up in 35 districts of Punjab and Haryana.

"As the demand is increasing, the committee is considering opening more centres at every district headquarters. It has started a project as per which, as and when a case is reported in the Women Cell, the couple would be invited to the mediation centre and before the registration of the FIR, efforts would be made to solve their problems through talks," he added.

He further said that it was pre-litigation mediation which was taking place in the Tricity.

In two to three months' data will be available and on the basis of that,



it would be possible to analyse the programme at mediation centres at dis-

trict as well as sub-division levels. In his address, justice Sanjiv

Kishen Kaul, chairman of over-see committee of Delhi High Court mediation and Conciliation Centre said. "It is only possible to set up mediation centres with the help of lawyers observed that in some of the other places, emphasis was on the judges set up these centres.

Addressing the gathering, justice Reva Kheterpal of Delhi High Court shared her views with the participants regarding matrimonial mediation. She pointed out various types of problems and challenges that the trained mediators had to face in settling such disputes.

One of the sessions was chaired by justice Permod Kohli.

"A mediator should be consistent in his gestures to both parties. He should avoid getting drawn into the emotions of the story he is dealing with," justice Kohli remarked.

Chief justice of Punjab and Haryana High Court Mukul Mudgal was also present.

Epilogue

Amarjit Singh Chandhiok, Sr. Advocate

*President, Delhi High Court Bar Association,
Addl. Solicitor General, and Member,
Overseeing Committee of Samadhan*

The 'Reflections' in your hands is our tribute to mediation, a process which has not just shown us how to transform conflicts but one which has actually revealed a greater potential of our becoming better lawyers, better colleagues, better parents, better friends and better human beings. Mediation for us – the mediators – is today not merely a better mode of dispute resolution, but a mission we have adopted with zest and zeal.

One aspect of conflict resolution we hold as the most powerful tool in our repertoire as mediators is effective communication. In mediation we value communication much beyond what we use in our deliberations before the court or with each other as lawyers. The institutionalization of mediation has taught us what happens when communication is ineffective. In litigation, which is normally prolonged and painful, the real dispute is often hidden in the positions taken by the parties before the court and their real interests go unaddressed. When communication is effective, the perception of justice expands revealing the basic differences between assertion of power, declaration of rights and statement of interests. With effective communication, law becomes a less needed ingredient.

In litigation parties end up wasting precious time, energy and money. They are unable to look at their long term interests or objectively examine the strengths and weaknesses of their cases and realistic solutions thereto. Parties fail to look at creative options which could result in a win-win situation for both sides. Ineffective communication breaks relationships and blinds foresight.

At Samadhan, we have learnt that the only way to resolve a dispute is to look at the

future. Mediation is the most appropriate method that facilitates parties to use hindsight to develop foresight and not *vice versa*. This is the triumph of mediation. Mediation disarms the parties from rigid positions, rids them of their false sense of power and converts assertion of their rights into satisfaction of their real interests. The assertion of power and rights breeds on fear and distrust. Mediation removes these.

From the success of Samadhan, we have imbibed a great sense of commitment to the cause which has made us think about the contribution we can make to society apart from our legal briefs. We are convinced that for the India of tomorrow we must begin today. Therefore, we plan to empower young citizens of India through peer mediation programmes in schools, to augment their capacity to resolve their disputes – in a way, ‘catching them young.’ In this direction, mediators from Samadhan have also conducted clinical workshops in law schools to enthuse future lawyers to take up mediation as an option to adversarial litigation. We also believe that we must help communities reinvent the ability to resolve disputes through community assisted mediation. Samadhan plans to become part of a new international movement which believes that approaches to mediation that are both ‘global’ and ‘local’ in perspective, are required for its real evolution.

On behalf of all the mediators of the Delhi High Court Mediation and Conciliation Centre, it is my promise that we will do our best to empower our fellow citizens to build new bridges of faith, trust and hope, which are not just goals for mediation but are also the basic human values commonly neglected and conveniently forgotten.



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