

‘NATIONAL CONFERENCE ON MEDIATION’

Mediation & Conciliation Project Committee
'Second National Conference on Mediation'
'Mediation-Yesterday, Today and Tomorrow'
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The 'mediation' is the most effective method of Alternative (Appropriate) Dispute Resolution, by negotiated settlement, referred to in Section 89 of the Code of Civil Procedure (after its amendment w.e.f. 1.7.2002). It could not be implemented for many years, for absence of the rules, infrastructure and imperfect drafting of Section 89 of the Code. The model mediation rules suggested by the Supreme Court in Salem Advocates Bar Association (II) vs. Union of India in 2005, were adopted by almost all the High Courts. In the State of Uttar Pradesh, the U.P. Civil Procedure Mediation Rules, 2009, and U.P. Civil Procedure Alternative Dispute Resolution Rules, 2009, under Part-X of the Code of Civil Procedure, prepared in 2007, following the model rules proposed in Salem Advocates Bar Association Cases(II), were notified on 13.8.2009.

The process of mediation was first introduced in India by experts from U.S., in district courts in Delhi. It received huge success, mostly on account of the fact that the mediation process is conducted by the Judicial Officers. The success, however, could not be translated in equal measure in the High Courts, and in other district courts in the country for lack of awareness, infrastructure, training to mediators/referral Judges, understanding of Section 89 CPC, and funds.

The Chennai Model of Mediation Centre in the High Courts, working under a Charter approved by the Chief Justice succeeded in the

High Courts. The experiment in Chennai was taken to Delhi, and Allahabad High Courts. It also succeeded in Karnataka, Punjab & Haryana and in some other States. The ironing of imperfection in drafting of Section 89 CPC, with recommendations for legislative intervention in *Afcons Infrastructure Limited and another vs. Cherian Varkay Construction Company Pvt Limited and others* (2010) 8 SCC 24, did not come in the way of references and process of mediation in the district courts in Delhi and High Courts, on account of the training, commitment and innovation. It, however, affected the district courts in other States, and specially in Uttar Pradesh where the Judicial Officers were baffled with the drafting of Section 89 CPC, and lack of training and infrastructure. They were not prepared to take risks in making references.

The 'mediation' succeeded in settlement of thousand of cases in Allahabad High Court and at Lucknow on account of innovative methods. The experience gained by the Mediation Centres in District Courts in Delhi and the High Courts at Chennai, New Delhi, Allahabad, Bangalore, and Punjab & Haryana, should be shared by all the States to make the mediation movement successful.

The success of 'mediation' in the High Court at Allahabad and Lucknow, reflected in the number of cases referred and settled has been circulated. These figures will reflect the great efforts put in by the referral Judges and trained lawyer mediators. With more than 12000 references and 3000 settlement at Allahabad High Court and about 1000 references and 350 settlement at Lucknow upto August, 2011, the mediation process is now firmly established in High Courts in Uttar Pradesh.

In the District Courts of Uttar Pradesh 62 Mediation Centres have been set up with 99 trained lawyer mediators, who have undergone 40 hours of training from Trainers of Delhi, and 526 others. Out of 4997 referred cases, 1436 were settled in District Courts, with Aligarh and Kanpur taking the lead. The SLSA and Allahabad High Court Mediation Centre, have also achieved success in conducting mediation awareness programme and training programme of lawyers and referral Judges. More

than 6000 participants and 222 Judicial Officers have benefited from 60 awareness programmes for lawyers and 18 for referral Judges. The progress made in the last two years is modest. We are looking forward for more awareness programmes and training camps.

The experience in working with mediation process in the State of Uttar Pradesh, has thrown open many challenges for institutionalising mediation in the State, and strengthening the working of the mediation centres. Some suggestions to meet these challenges are:-

The mediation as a process of ADR can be used in the court annexed mediation centres, by taking care of five requirements, namely; (i) awareness; (ii) infrastructure; (iii) references; (iv) trained- lawyer mediators and referral judges and, (v) funds.

AWARENESS

1. The mediation awareness programmes should be organized in District Courts, Law Schools, Taluka Courts, Labour Courts, Consumer Courts, Family Courts and on Tehsil Diwas by organising lectures, seminars, promotional documentaries, puppet shows and nukkad natak. These programmes should be held in the language of the State, and should highlight the success achieved by the local mediation centres.

INFRASTRUCTURE

2. The ADR centres were earlier planned as centres with an administrative office, cubicles for mediation sessions and waiting halls. These centres are now proposed to be part of ADR centres proposed by NALSA to be established from the 13th Finance Commission grant. An amount of Rs. 1 crore is provided for each of the 600 districts. The NALSA has proposed some portion of the building constructed out of the funds for the purposes of mediation.

The ADR centres proposed by NALSA under one roof, recommend two or three rooms for lok adalats, one room for permanent lok adalat, some portion for mediation, office of the District Legal Service Coordinator, as well as the front office as contemplated under the National Legal Service Authority (Free and Competent Legal Services) Regulations 2010. In my view the ADR centres with all the services under one roof may not allow mediation to develop as an effective ADR method. The Mediation Centres

should be planned to have a separate and exclusive space. These centres should be built with design and space in different categories according to the number of courts in the District and Talukas. A model mediation centre requires at least one administrative office, three cubicles and a waiting hall, in the smallest of the district. In bigger Districts, the number of cubicles should be increased, say five in Districts with more than 25 Courts, and ten for Districts with more than 50 Courts.

TRAINING

3. We do not have sufficient trainers for training mediators. In the last one year only 99 mediators could be trained in about seven districts in Uttar Pradesh. At this rate it will take about ten years to complete training in 71 districts and 69 outlying courts. We need at least 1000 trained mediators in District Courts, and 250 in High Courts. They will need advance training, specialised training, refresher training courses every year.

I propose, setting up a National Mediation Training Centre for training the trainers, and one Mediation Training Centre in each State preferably in the Judicial Training Academy of the State for continuous training programmes for mediators in batches. Until then we need trainers to be prepared in each State, to train in local language.

REFERENCES

4. The referral judges training is most important for the success of court annexed mediation movement. The judges hesitate in referring the matters, for lack of proper training. The judgment in Afcons Infrastructure Limited needs to be explained to all the trial court judges. The referral Judges training should be included as a part of training of all Judicial Officers in National Judicial Academy, Bhopal, and in all State Judicial Training Institutes.

FUNDS

5. The 13th Finance Commission has provided for Rs. One crore for every district for infrastructure. Out of Rs. 750 crores for ADR (Rs. 95.11 crores for U.P.) more than Rs.600 crores will be spent for raising infrastructure in 600 districts. The remaining Rs. 150 crores in five years is proposed for training, with 10% for awareness programmes, for ADR mechanism. For staff, running expenses and mediators fees, the Ministry of Law & Justice has recommended the States to bear expenses. In U.P. State has not responded to the request for funds for mediation centres.

In Allahabad High Court we have provided Rs. 3000/- as fees of mediator including co-mediator and Rs. 1750/-, where at least three mediation sessions are held. At Allahabad we are able to meet the expenses from the accumulated costs awarded by court with each reference. At Lucknow the issues of infrastructure and funds are still to be resolved. Special provision should be made for grant for running mediation centre including the cost of administrative expenses, awareness programme, mediation training programme and mediators fee. Separate grants should be provided by State Government for mediation programmes, with matching grant from Central Government.

LEGISLATION

6. There is an urgent need for legislation on mediation, which may include a National Mediation Council in the Centre, and State Mediation Council at State level for awareness, standardisation of infrastructure, management, training, registration and accreditation of mediators, with powers of disciplinary action to maintain ethics.

The legislation should also look forward and provide for pre-litigation mediation to reduce the burden of avoidable litigation on courts.

The two streams of mediation process namely Delhi Model practised in District Court in Delhi, and Chennai Model, are flowing side by side with equal force. Now it is necessary after more than five years, for both the streams to flow together to provide maximum benefit to the persons in dispute and litigants. The mediation movement has to be made free from divergent views, in the process of mediation.

All the five necessary requirements for running a mediation centre must be standardised giving sufficient rooms for improvement and innovation.

I thank your Lordships on behalf of my team of mediators, Judges and staff for giving me an opportunity to speak in this seminar.
