

**Speech on the occasion of
A Review of Samadhar-2009
&
Working of Mediation and Conciliation Centres
Held on 1st August, 2009**

By: Justice M.M. Kumar

Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice H.S. Bedi, Judges of the Supreme Court of India; Hon'ble Mr. Justice T.S. Thakur, Chief Justice of Punjab and Haryana High Court; Brother and Sister Judges of Punjab and Haryana High Court; Director of the Chandigarh Judicial Academy; fellow Judicial Officers from the States of Punjab, Haryana and Union Territory, Chandigarh.

Delay and time consuming processes of the litigation prosecuted in accordance with the detailed procedures has resulted into development of alternative dispute redressal mechanism. Mediation and Conciliation has now been widely known as a potent tool of resolving disputes in the ADR mechanism. It has already achieved a phenomenal success in countries like United Kingdom and United States. Conceptually Mediation and conciliation is different than other ADR

mechanisms. In this process the attitude of the parties is completely transformed with regard to the approach to the problem. After the interaction with trained Mediators, the disputants emerge as reformed persons becoming much more useful member of the society. Even the Mediators start realising transformation in themselves. The experience in the States of Punjab, Haryana and Union Territory, Chandigarh shows that the Judicial Officers who are entrusted with the work of mediation and conciliation begin to perform their day-to-day judicial function in a more effective and better way than before. This has been amply demonstrated by our Nodal Officers working at various centres at Jalandhar, Amritsar, Karnal and Faridabad.

Last year was an epoch making year for mediation and conciliation in Punjab, Haryana and Chandigarh. We acquired necessary infrastructure. To begin with, in March 2008 the Mediation and Conciliation Centre was established at the High Court. It was inaugurated by Hon'ble Mr. Justice S.B. Sinha of the Supreme Court. The mediation at the High Court Centre is conducted by trained Advocate Mediators who had undergone training for a period of 40 hours. Training is compulsory in order

to qualify as a Mediator. In a period of about one year the Centre has been able to save more than fifty broken marriages and a number of other disputes have also been amicably settled. In total, it has settled more than 74 cases. In the High Court 375 cases were referred to Mediation Centre. It has disposed of 224 cases whereas mediation is going on in other cases.

In May 2008, another Centre was inaugurated by the then Chief Justice at the District Courts, Chandigarh. The mediation at that centre is also conducted by trained Advocate Mediators. The total number of cases settled there are about 50 out of 256 cases, which were referred. The mediation still is in progress in over 200 cases.

Another giant leap was taken in November 2008 when 10 Centres were started in the State of Haryana and 8 in the State of Punjab at the district headquarters of the Session Divisions. These centres were also inaugurated by Hon'ble Mr. Justice S.B. Sinha, Judge of the Supreme Court by using the Video Conferencing from the High Court. The mediation at these centres is conducted by our Judicial Officers who have been

imparted 40 hours mediation training. In so far as the State of Punjab is concerned, the total number of cases referred to the Mediation Centres is over 1000 and the number of cases which have been settled is over 250. In the Sessions Division of Ludhiana, about 100 cases were settled whereas the lowest figure is that of Patiala and Ferozepur where 7-8 cases have been settled.

Likewise, in Haryana the total number of cases referred were 2041 and the number of cases settled is 470. The maximum cases settled are 235 at Gurgaon and 115 at Karnal. The aforesaid figures show that in a short span of time the Centres in Punjab, Haryana and at Chandigarh have achieved success but yet we are at the infancy stage. We have miles to go before the working of the Centres is brought to a satisfactory level.

TRAINING TO REFERRAL JUDGES

In order to succeed in mediation, reference of cases by Referral Judges is the first step. Accordingly, we have imparted training to Referral Judges in the States of Punjab and Haryana. A Referral Training Programme was organized on February 7,

2009 in the Forenoon and Afternoon sessions by using the facility of Video Conferencing. The Forenoon session was devoted to the State of Punjab, whereby all the Judicial Officers were benefited by Video Conferencing, sitting at their respective places and the Afternoon session was devoted to Haryana. All the districts in the States of Punjab and Haryana were connected with the High Court Centre by way of Video Conferencing and the trainers, who have come from Delhi, imparted training to the Referral Judges numbering about 600. This training showed encouraging results as the number of cases referred to mediation centres has considerably gone up.

We have also drawn a road map for imparting training to Referral Judges. Our mediators who are members of our teaching faculty of the Chandigarh Judicial Academy visit the district headquarters for imparting referral training. The officers at Amritsar and Ferozpur Centres have already been given referral training. We are also in the process of covering other Centres working at Hoshiarpur, Jalandhar, Ludhiana, Faridkot, Patiala and Sangrur in the State of Punjab by December 2009.

In Haryana also we have already covered two districts Kurukshetra and Karnal where the training is going on today. There are other eight centres where the training would be imparted on various dates at the weekends and all the centres of Punjab and Haryana are proposed to be covered by December 2009. Here I would request all the Referral Judges and also my esteemed Sister and Brother Judges in the High Court to identify more cases and refer to Mediation Centres.

AWARENESS PROGRAMMES

The awareness of mediation is absolutely essential. The role of advocates is very important in making mediation and conciliation easy and successful. Therefore, the Committee took decision to create awareness amongst advocates regarding benefit of mediation and to dispel the doubts from their minds. The legal fraternity had initially thought that mediation and conciliation may hamper their legal profession but in Punjab, Haryana and Union Territory, Chandigarh, these doubts already stand dispelled. It has been realised that if the disputes are settled by mediation and conciliation efficiently and in cost

effective manner then it would increase the faith of people in the system and the people are likely to come to the Court for redressal of their grievances. In that regard the experience in US shows that after success of mediation litigation has decreased.

We have already started awareness programmes for the Advocates and Judicial Officers. The first programme was held on January 31, 2009 at Chandigarh for the advocates of District Court, Chandigarh. The programme was inaugurated by Hon'ble the Chief Justice Mr. Justice T.S. Thakur. It was attended by about one hundred advocates. Likewise, awareness programmes have already been conducted at Narnaul, Amritsar, Faridabad, Gurgaon, Rewari, Ludhiana, Moga and so on and so forth. Such programmes would continue till the end of December when all the Centres of Punjab, Haryana and Chandigarh would have been made aware of our programmes. In the Committee we also took decision to visit the district headquarters in order to impact the awareness amongst advocates and stress upon the Judicial Officers to improve working of mediation centres. On 16th, Justice Mahesh Grover was at Patiala whereas I spent

Sunday with the Advocates and Judicial Officers at Sangrur.

Justice Parmod Kohli would be visiting Jind on 2nd i.e. tomorrow.

SEMINARS, WORKSHOPS ETC.

The Mediation and Conciliation has to reach every nook and corner of the States of Punjab, Haryana and Union Territory, Chandigarh. We can gauge the awareness about mediation from one illustration. At some get together an officer of the State went to a member of Mediation Centre and whispered to him that our High Court has done wonderful job by opening 'Mediation Centres'! Therefore, Mediation Committee has also considered it appropriate to hold seminars, workshops, symposiums etc. in order to bring awareness amongst the disputants. This awareness campaign would attract the lawyers and the judges ensuring their active participation in the mediation process. The legal and judicial fraternity has already accepted ADR mechanism as an additional form for the resolution of the disputes. In order to reach out to the general masses living in every nook and corner of the States of Punjab, Haryana and Union Territory Chandigarh, we are planning to use

the print media and electronic media for spreading the message of mediation and conciliation. While going through an article authored by Justice S.B. Sinha of the Supreme Court, I came across an illustration of awareness quoted by him. Justice Sinha says and I quote – *“Our awareness or lack of it would be tested from the fact that how many of us are aware that in terms of Section 7(hb) of the Notaries Act, 1952 one of the functions of a notary is to act as an arbitrator, conciliator, if so required. How many of us would even think of availing the services of notaries as mediators who are absolutely untrained.”*

It is also pertinent to mention here that training has also been organised for the Judicial Officers who have been appointed as Co-ordinators/Nodal Officers of the mediation centres. The senior-most Additional District Judge at the district headquarters is appointed as Nodal Officer of the Centre. The Nodal Officer manages the working of the mediation centre by monitoring the cases referred to the centre and by making appointment of mediators etc. Co-ordinators/Nodal Officers are also being sent to Delhi to visit mediation centres at Delhi to study the working of mediation centres there.

We are also in the process of developing Pre-action protocols which may help the parties to choose a readymade solution of the problems. In England pre-action protocols are already in operation. The basic object of pre-action protocol is –

- (a) to focus the attention of litigants on the desirability of resolving disputes without litigation;
- (b) to enable them to obtain the information they reasonably need in order to enter into an appropriate settlement;
- or (c) to make an appropriate offer (of a kind which can have costs consequences if litigation ensues);
- and (d) if a pre-action settlement is not achievable, to lay the ground for expeditious conduct of proceedings.

These protocols are already in operation in the areas of personal injury, clinical negligence, construction, defamation, professional negligence, judicial review, disease and illness, housing disrepair and possession claims for rent arrears etc. etc. These protocols have been prepared with the help of experts who provide some readymade solutions for solving the disputes.

At present only pending cases are being referred to mediation but in future, stress will be on pre-litigative mediation

and advocates will be trained in mediation who can settle the disputes of the parties even before they approach the court of law. In this manner, only complicated matters will be coming to the Courts and small matters will be decided by way of mediation even before the parties have approached the court of law. Plans are being made to impart mediation training to the advocates so that progress can be made in this field.

DIFFICULTIES

Some difficulties have been experienced during the working of these Centres. The first difficulty is on financial front. It has been solved to some extent by release of funds to the Legal Services Authorities. However, more funds are required. For example in the High Court Centre there is already demand for adding four more chambers, sitting arrangements for disputants and some facilities for them like newspapers, drinking water and tea etc. In fact, the provision for funds is ought to have been made before bringing in Section 89 of the CPC. There was no assessment carried out as regards financial implications or the

infrastructural requirements to make Section 89 of the CPC effective.

For mediation to commence trained mediators are required and expenses are incurred for their training. Every time we are to train our mediators be it lawyers or the Judicial Officers, we have to borrow the trainer mediators from the Delhi Centre. The Delhi Centre has trained their trainer mediators by having them trained by an establishment based at California whereas such like trainers are not available to us. Therefore, we are thinking of having the assistance of the Institute of Study and Development of Legal Systems based in California, U.S.A., who had provided the services of professionals for training of Judicial Officers to become mediators. Therefore, it is imperative to engage the services of the Californian Institute.

Despite the aforementioned difficulties our results are encouraging. In the first year itself, out of the total number of cases referred, we have been able to dispose of 25%. The highest number of cases are disposed of in Ohio, USA where 90% of the disputes are settled by mediation leaving out the

Courts to concentrate on contentions matters. I would say that a good beginning has been made which is promising. The journey is challenging. We have reached the hill and have seen the promised land.

I am grateful to al concerned for providing me an opportunity to share my views with this august audience.

(Justice M.M. Kumar)