KNOWING & ENCOURAGING MEDIATION

Mediation
Simple Procedure
Titanic but Unsinkable Solutions

MEDIATION & CONCILIATION COMMITTEE,
PUNJAB & HARYANA HIGH COURT,
CHANDIGARH
Hon'ble Mediation & Conciliation Committee,
Punjab & Haryana High Court, Chandigarh.

Hon'ble Mr. Justice Sanjay Kishan Kaul,
Chief Justice,
Punjab & Haryana High Court,
Chandigarh.

Hon'ble Mr. Justice Mahesh Grover,
Chairman,

Hon'ble Mr. Justice K. Kannan, Member

Hon'ble Mr. Justice G. S. Sandhawalia, Member
...both were happy with the result, and both rose in public estimation. I realized that 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 out private compromises of hundred of cases. I lost nothing thereby not even money; certainly not my soul.

Mahatma Gandhi

“The entire legal profession, lawyers, judges, law school teachers, has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we should be healers of conflicts.

For some disputes, trials will be the only means, but for many claims... our system is too costly, too painful, too destructive, too inefficient for a truly civilized people. To rely on the adversarial process as the principal means of resolving conflicting claims is a mistake that must be corrected.”

Chief Justice Warren E. Burger

“Discourage litigation. Persuade your neighbors 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
**What is mediation**

Mediation is the process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and aim to reach a consensual agreement that will accommodate their needs. It is a confidential, voluntary and participatory process. The parties to the dispute have an opportunity to ventilate their grievances and feelings through the process of mediation and thereafter tailor the solution to their unique circumstances and demands. The Mediator does not impose any solution but creates a favourable environment to enable the parties to resolve their dispute themselves amicably.

**Growth & History**

The concept of Mediation is ancient and deep rooted in our country. In olden days disputes used to resolve at the community level. Punches used to be called Panch Permeshwar.

Now we have grown into a country of 1.25 crore people and with liberalization and globalization, there is tremendous growth. All this has led to explosion of litigation in our country. Though our judicial system is one of the best in the world and highly respected but there is a lot of criticism on account of long delays in the resolution of disputes in the Court of law. The litigant is vary of approaching the Court for a decision of his dispute. Hence we have turned to ADR mechanism.

**How is mediation different**

- Mediation is an informal process.
- There are no strict or binding rules of procedure.
- Mediation is completely confidential process.
- Mediation enables disputing parties to interact even on a one-to-one basis.
- Mediation is completely voluntary process.

- Mediation enables the parties to be the key players in the dispute settlement process.
- It is an inexpensive and speedy mode of dispute resolution.
- Mediation is interests based rather than rights based.
- Mediation enables parties to settle their own terms of agreement.

**What are the benefits of mediation**

Mediation is:

- Quick and responsive
- Economical. There is no extra cost
- Harmonious settlement
- Creating solutions and remedies
- Confidential and informal
- Parties controlling the proceedings
- The plaintiff is entitled to refund of full court fees as per Section 16 of the Court Fees Act, 1870, if the dispute is settled through the process of mediation.

**Who can mediate**

Any person who undergoes the required 40 hours training as stipulated by the Mediation & Conciliation Project Committee of the Supreme Court can be a mediator. He also needs to have at least ten actual mediations before he can be accepted as a qualified mediator.

**Mediation versus litigation**

There is:

- No loss of time in mediation.
- No financial investment is required in mediation.
- Mediation preserves ongoing business or personal relationships.
- Mediation allows flexibility, control and participation of the disputing parties.

Mediation is far more satisfactory way of resolving disputes as compared to litigation. There is no appeal or revision in a mediated case and all disputes get finally settled.
**Impact of mediation**
- There is no doubt that Mediation has had a significant impact on dispute resolution all over the world.
- In Bangladesh, mediation has been extremely successful in delivering justice to the poorer sections of society.
- In America, mediation is the norm of dispute resolution and litigation is the exception.
- In England, the courts do not award costs if a litigant unreasonably rejects mediation as an alternative dispute resolution mechanism.

In India, mediation has shown significant results in dispute settlement in Bengaluru and in Chennai, both of which have very vibrant mediation centres running successfully for a long time. The district courts of Delhi are presently running three mediation centres in different parts of the city and have resolved more than 12,000 cases so far.

**Some do's for effective mediation**
- Believe in the process and believe in the people.
- Be familiar with the facts and the issues.
- Develop a suitable opening that covers the role of the mediator, the principles of mediation.
- Be brief, confident, positive and flexible.
- Show empathy, build rapport, reinforce neutrality, and do so equally with the parties.
- Encourage parties to make an effective opening statement.
- Spend time clarifying the issues in dispute.
- Acknowledge emotions and allow feelings to be vented.
- Encourage all to contribute to the proceedings.
- Check if there have been previous settlement offers.
- Have patience, let the parties own the problem and the solution.
- Listen a lot.

**Some don'ts for effective mediation**
- Don't be fazed, and if you are don't let it show.
- Don't get swamped by detail.
- Don't appear to be a judge or arbitrator.
- Don't suggest.
- Don't impose your solution.
- Don't take lots of notes.
- Don't make assumptions about parties, causes, merits or fairness.
- Don't criticize poor preparation, presentation or negotiation by parties.
- Don't interrupt.
- Don't play devil's advocate.
- Don't put a party into a corner with no exit.
- Don't give up.
- Don't press for settlement at any cost.
- Don't be too hard on yourself if the mediation does not settle.

**Role of lawyers in mediation**
The role of lawyers in mediation has become increasingly important as society views mediation as an effective alternative dispute resolution mechanism to litigation. The lawyer is a well informed champion of the client, advising on the law and procedure, articulating the clients' views to others, and above all, pursuing the clients' best interests at all times. It is a common belief that in mediation, the participation of advocates is optional and/or that they have no role to play. The advocates play an
active role during the entire mediation process. Mediation cannot be successful without active participation of the advocates. The parties going into the mediation process both need and expect, their lawyers to understand the dynamics of conflict and the process itself. The lawyers have a central role in making mediation work for their client in a constructive, creative and productive way.

The participation of a lawyer is required in mediation in following ways :-

1) Client preparation and participation.
A lawyer should prepare his client for participation in mediation. A well prepared client can participate in mediation effectively.

2) Interests and positions.
A mediation session is not a trial based on legal and factual positions. It is facilitated negotiation. A lawyer should use active listening skills; pay attention to body language; use information divulged by other party to assist his client. A lawyer should act as a problem solver. A lawyer should move the parties from positions to interests.

3) Reality Test
A lawyer should know the BATNA and WATNA of the client. It will help the client to decide about the proposed parameters of a negotiated settlement.

4) Prepare the Case
A lawyer should explain the mediation process including stages of mediation to the client. A lawyer should prepare client for participation in the mediation process. He should talk about possible settlement options before the mediation.

5) Plan the Strategy
A lawyer should devise a strategy regarding what client want to achieve by way of settlement and how it is to be achieved.

6) Opening statement is important.
A lawyer should understand the practice and dynamics of negotiations and use every opportunity to promote resolution. A lawyer should be firm but not inflexible.

7) Use private session effectively
A lawyer should work with the mediator in private session to explore possible options for settlement and to divulge confidential information for settlement of dispute.

8) Be part of the solution and part of the problem
A lawyer should translate clients' position into interests so as to generate novel options to settlement. A lawyer can work to build consensus around an option which best addresses the goals and interests of a client or the involved participants.

Questions most commonly asked about mediation by advocates.

Question 1. If both the lawyers are settlement minded then why the case should be sent to another professional i.e. mediator for settlement?
If the parties or lawyers can work together and settle the case quickly, amicably and inexpensively in that case, the mediation is not required. It may be difficult for an advocate being adversary professional to play mediative role accurately. The parties may not experience direct communication with each other to arrive at their own agreement.

Question 2. With all the economic pressure on my practice, will the growth of mediation cut into my income?
The quick settlement of dispute in a
mediation can add new clients and help the lawyer to accept new brief. It is noticed that advocates are not paid for approximately 30% of their litigated work. Even the advocates can get fee while working as a negotiator.

Question 3. I know mediator should not give legal advice. How can the parties make a meaningful agreement if they do not know the law?
It is correct that a neutral mediator should not give advice i.e. to tell the client what to do or what decisions to make. Even if a mediator does give legal information, most clients benefit from individual legal information.

Question 4. I just got myself first mediation case. What should I do?
If you had sufficient training and feel comfortable as a mediator then start work for mediation proceedings. You may consult some senior mediator and have practical inputs by sitting with a senior mediator by watching the mediation proceedings.

Mediation & Conciliation Centre
Mediation & Conciliation Centre
Punjab & Haryana High Court, Chandigarh
In order to provide effective, efficient and inexpensive means to manage burgeoning institution of cases, the mechanism of ADR has been introduced into the Indian Legal System. Section 89 is the most significant of such provisions which was inserted in the Code of Civil Procedure by way of Amendment Act, 1999. Since, the Mediation is an important aspect of ADR Mechanism and in order to make mediation as an effective tool of alternative disputes redressal mechanism, the first Mediation & Conciliation Centre at Punjab & Haryana High Court, Chandigarh was set up on 17th March, 2008 and was inaugurated by Hon’ble Mr. Justice S.B. Sinha, the then Chairman, Mediation & Conciliation Project Committee, Judge, Supreme Court of India, having 6 cabins for Mediation proceedings and one big hall for joint sessions. Keeping in view huge references for Mediation from High Court, another Mediation Centre namely Mediation & Conciliation Centre-II has also been set up and the same was inaugurated by Hon’ble Mr. Justice A.K. Sikri, the then Chief Justice of this Court on 21st March 2013. Mediation & Conciliation Centre-II consists of 11 sound proof and centrally air conditioned Cabins, which are fully furnished. Thus, in total, there are 17 cabins for Mediation. In order to create friendly atmosphere and instill confidence with the litigant parties, a Tea/Coffee vending machine has also been installed in the Mediation & Conciliation Centre to serve tea/coffee to the Mediators as well as litigants coming in the Mediation Centre free of cost. Two water dispensers and two fly killers have also been provided in the Mediation Centre to keep the environment of the Mediation Centre neat and clean and facilitate the litigants. One LED has also been installed in the Waiting Hall of the Mediation Centre along with a Dish, for the litigant parties to keep the environment of the Mediation Centre more public friendly. Sufficient staff has also been provided for smooth functioning of the Mediation Centre. The Mediation Centres in the High Court are manned by well qualified 70 Mediators, who have been imparted 40 hours Mediation Training by the Trainers deputed by Hon’ble MCPC, Supreme Court of India.

Mediation
Solutions
Soar on
Cloud 9

Mediators, who have been imparted 40 hours Mediation Training by the Trainers deputed by Hon’ble MCPC, Supreme Court of India.

Mediation & Conciliation Centres, in the States of Punjab, Haryana & UT-Chandigarh
Till now, in the State of Haryana, 16 Mediation Centers (Kurukshetra, Karnal, Sonepat, Gurgaon, Rewari, Jind, Rohtak, Hisar, Faridabad, Narnaul, Fatehabad, Yamunanagar at Jagadhri, Panipat, Panchkula, Ambala and Sirsa) & in the State of Punjab 12 Mediation centers
(Amritsar, Ferozepur, Hoshiarpur, Jalandhar, Ludhiana, Moga, Patiala, Sangrur, Bathinda, Kapurthala, Rupnagar and Fatehgarh Sahib) have been set up. In addition to it, one Mediation Centre at District Courts, Union Territory, Chandigarh has also been set up.

**Training Programmes**

Trained personnel are the backbone of any system. In order to train officers and Advocates in Mediation and Conciliation, various Training Programmes have been undertaken by Punjab & Haryana High Court at three different levels.

1. Awareness Programmes for Advocates.
2. Training Programme for Referral Judges/Co-ordinators

The Mediation & Conciliation Project Committee of Hon'ble Supreme Court of India has been making available the resource persons for conducting the above programmes. The Mediation & Conciliation Committee of Punjab and Haryana High Court is making earnest efforts to spread this concept and has conducted a series of awareness programmes on mediation. On 10.03.2010, a talk show Programme was arranged by Chandigarh Station of All India Radio in which Hon'ble Judges of the Committee participated. Likewise on 22.05.2010 the Hon'ble Judges of the Committee also participated in a TV Programme on the local channel of Punjab & Haryana namely PTC (News). Two Newspapers i.e. 'Amar Ujala' and 'Hindustan Times’ also highlighted the efforts being made by the Mediation & Conciliation Committee and the benefits of Mediation & Conciliation Programmes in their issues dated 20.7.2011 and 1.8.2011

So far Awareness Programmes have also been conducted in the 19 Districts where Mediation & Conciliation Centres have been set up. All the Referral Judges of States of Punjab and Haryana were imparted training meant for referral judges on 7th February 2009. This Training programme was conducted by trainers deputed by Delhi High Court. Highlight of this Programme is that all the judicial officers were imparted training through the medium of video conferencing. All officers were present at their district centres and were uplinked with Punjab and Haryana High Court, Chandigarh through video link. In this manner, about 600 Judicial Officers were imparted training for referral judges in one go. This was the first experiment of its kind in the country. Recently as per decision of Hon’ble Mediation & Conciliation Committee, a list of Zones of the various Districts of Punjab and Haryana was prepared and sent to the State Legal Services Authorities of Punjab and Haryana to organize Referral Judges Training in their respective States by way of Video Conferencing by utilizing the Services of the Trainers of MCPC. The said training has been imparted to the Judicial Officers posted in 8 Districts each of Punjab and Haryana contained in 2 zones by the Trainer Deputed by MCPC Supreme Court of India by way of Video Conferencing. For imparting Referral Judges training to the Judicial Officers falling in remaining 3 Zones by way of Video Conferencing, Mediation & Conciliation Project Committee supreme Court of India has been requested to depute trainers. So far Mediation Training has also been imparted to 70 Advocates of High Court, District Bar Association, Chandigarh and advocates of Different Districts of Punjab and Haryana and U.T., Chandigarh. Besides it, Mediation Training has also been imparted to Judicial Officers of Punjab and Haryana.

**Category of cases suitable/unsuitable for ADR Process**

As per Judgement passed by Hon’ble Mr. Justice R.V.Raveendran, the then Hon'ble Judge, Supreme Court of India in case titled as Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors(2010) 8 SCC 24, the categories of cases, which are normally considered to be not suitable and suitable for ADR process having regard to their nature are as under:

"27. the following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association etc.).

(iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.

(vi) Cases involving prosecution for criminal offences."
28. All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR processes:

(i) All cases relating to trade, commerce and contracts, including
   - disputes arising out of contracts (including all money claims);
   - disputes relating to specific performance;
   - disputes between suppliers and customers;
   - disputes between bankers and customers;
   - disputes between developers/builders and customers;
   - disputes between landlords and tenants/licensor and licensees;
   - disputes between insurer and insured;
(ii) All cases arising from strained or soured relationships, including
   - disputes relating to matrimonial causes, maintenance, custody of children;
   - disputes relating to partition/division among family members/co-parcenrs/co-owners; and
   - disputes relating to partnership among partners.
(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including
   - disputes between neighbours (relating to easemetary rights, encroachments, nuisance etc.);
   - disputes between employers and employees;
   - disputes among members of societies/associations/Apartment owners Associations;
(iv) All cases relating to tortious liability including
   - claims for compensation in motor accidents/other accidents; and
(v) All consumer disputes including
   - disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or 'product popularity.

The above enumerated of "suitable" and "unsuitable" categorisation of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the Court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process.

Mediation removes friction in relationships
PART II
MEDIATION/CONCILIATION RULES

Section 89 was inserted in CPC by the Code of Civil Procedure Amendment Act, 1999 in view of recommendation made by Law Commission of India and Malimath Committee. Law Commission of India has suggested that Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of disputes between the parties and make an attempt to settle the disputes between the parties amicably. Malimath Committee recommended to make it obligatory for the Court to refer the dispute, after issues are framed, for settlement either by way of arbitration, Conciliation, Mediation, Judicial Settlement or through Lok Adalats. It is only when the parties fail to get dispute settled through any of the alternate dispute resolution method that the suit could proceed further.

In order to make the provisions of Section 89 and Order 10 Rule 1-A to 1-C of Code of Civil Procedure, Punjab and Haryana High Court has framed Mediation and Conciliation Rules in 2003. These rules have been incorporated in Punjab and Haryana High Court Rules and Orders as Part O after Part N of Chapter-1 volume-1.

RULE-1:
These Rules shall be called the Mediation and Conciliation Rules.

RULE 2:
Appointment of mediator/conciliator:
(a) The parties to a suit may agree on the name of a sole mediator/conciliator for mediating between them. In that event, he shall be appointed as mediator/conciliator. If the parties fail to agree on the name of a mediator/conciliator, then the Court shall appoint one or more mediator/conciliators out of the panel of mediator/conciliators referred to in Rule 3.
(b) Where the parties are unable to agree on the name of a sole mediator/conciliator, then each set of parties shall nominate a mediator/conciliator.
© Where the parties agree on the name of a sole mediator/conciliator, he need not necessarily be a person from the panel of mediator/conciliators referred to in Rule 3, nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from any of the disqualifications referred to in Rule 5.
(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator/conciliator and failing unanimity in that behalf, the Court shall appoint a sole mediator/conciliator.

RULE 3:
Panel of mediator/conciliators:
(a) The High Court shall, for the purpose of appointing mediator/conciliators in the cases filed on its original side prepare a panel of mediator/conciliators. Such panel shall be published on the notice board of the High Court, within three months of the coming into force of these Rules. A copy of the panel of mediator/conciliators shall be sent to the High Court Bar Association.
(b) (i) The District Judge in each District shall, for the purpose of appointing mediator/conciliators to mediate between parties in the suits filed on the original side, prepare a panel of mediator/conciliators, within a period of three months of the commencement of these Rules. Such panel shall be published on the notice boards of various Courts after obtaining approval of the High Court.
(ii) Copies of the panels referred to in clause (i) shall be forwarded to all
mediator/conciliators:
(i) any person who has been adjudged insolvent;
(ii) any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending; or
(iii) any persons who has been convicted by a criminal court for any offence involving moral turpitude;
(iv) any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings;
(v) Such other categories of persons as may be notified by the High Court.

The Court shall, while nominating any person from the panel of mediator/conciliators referred to in Rule 3, consider his suitability for resolving the nature of dispute involved in the suit and shall give preference to those who have proven record of successful mediation/conciliation or who have special qualification or experience in mediation/conciliation.

(a) When a person is approached in connection with his possible appointment as a mediator/conciliator, he shall disclose in writing to the parties the factors which may give rise to a justifiable doubt as to his independence or impartiality. If any such factor comes into existence after his appointment as Mediator/conciliator; the same shall be disclosed to the parties in writing without delay.

Note:
While appointing mediator/conciliator the Court concerned shall ensure that the person to be appointed is not interested or connected with the subject matter of the dispute and is not related to any of the parties or to those who represent them. However, the parties shall be free to waive such objection in writing.

(b) Every mediator/conciliator shall, from the time of his appointment and throughout the continuance of the mediation/conciliation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).
RULE 8:
Cancellation of appointment:
Upon information furnished by the mediator/conciliator under Rule 6 or upon any other information received from the parties or any other person, if the Court concerned is satisfied after conducting such inquiry as it deems fit and after giving opportunity of hearing to the mediator/conciliator, that the said information has raised a justifiable doubt as to the mediator/conciliator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator/conciliator.

RULE 9:
Removal or deletion from panel:
The name of a person placed in the panel referred to in Rule 3 may be removed or deleted from the said panel by the Court concerned if:
1. if he incurs any of the disqualifications referred to in Rule 5;
2. he resigns or withdraws his name from the panel for any reason;
3. he exhibits or displays conduct, during the continuance of the mediation/conciliation proceedings, which is unbecoming of a mediator/conciliator;
4. if, upon receipt of an information and after conducting such inquiry as it deems fit, the Court concerned is satisfied that it is not desirable to continue the name of that person in the panel;
Provided that, before removing or deleting his name, under clauses (iii) or (iv), the Court shall hear the mediator/conciliator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

RULE 10:
Procedure of mediation/conciliation:
(a) The parties may agree on the procedure to be followed by the mediator/conciliator in the conduct of the mediation/conciliation proceedings.
(b) Where the parties do not agree on any particular procedure to be followed by the mediator/conciliator, the mediator/conciliator shall follow the procedure hereinafter mentioned, namely:-
he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation/conciliation session, where all the parties have to be present; he shall hold the mediation/conciliation at any convenient location agreeable to him and the parties, as he may determine; he may conduct joint or separate meetings with the parties; each party shall, ten days before a session, provide to the mediator/conciliator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect of those issues and all information reasonably required for the mediator/conciliator to understand the issues such memoranda shall also be mutually exchanged between the parties; each party shall furnish to the mediator/conciliator such other information as may be required by him in connection with the issues to be resolved.
(c) where there is more than one mediator/conciliator, the mediator/conciliator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediator/conciliators, with a view to resolve the disputes.

RULE 11:
Mediator/conciliator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908:-
The mediator/conciliator shall not be bound by the provisions of Evidence Act, 1872 or Code of Civil Procedure 1908, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

RULE 12:
Non-attendance of parties at sessions or meetings on due dates:
The parties shall be present personally or through their counsel or power of attorney holders at the meetings or sessions notified by the mediator/conciliator.
If a party fails to attend a session or a meeting notified by the mediator/conciliator, other parties or the mediator/conciliator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator/conciliator and if the Court finds that such party is absenting himself before the mediator/conciliator without sufficient cause, the Court may take action against the said party by imposition of costs or by taking action for contempt.

RULE 13:
Administrative assistance:
In order to facilitate the conduct of mediation/conciliation proceedings, the parties or the mediator/conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
RULE 14: Offer of settlement by the parties:
Any party to the suit may, without prejudice, to the rights of either party, offer a settlement to the other party at any stage of the proceedings with notice to the mediator/conciliator.

RULE 15: Role of mediator/conciliator:
The mediator/conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them. However, he shall not impose terms of settlement on the parties.

RULE 16: Parties alone responsible for taking decision:
The parties must understand that the mediator/conciliator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator/conciliator give any warranty that the mediation/conciliation will result in a settlement.

RULE 17: Time limit for completion of mediation/conciliation:
On the expiry of ninety days from the date fixed for the first appearance of the parties before the mediator/conciliator, the mediation/conciliation/conciliation shall stand terminated, unless the Court, which referred the matter, either suo motu or upon request by any of the parties and upon hearing all the parties, is of the view that extension of time is necessary or may be useful then he may extend the time but such extension shall not be beyond a further period of thirty days.

RULE 18: Parties to act in good faith:
All the parties shall participate in the mediation/conciliation proceedings in good faith with the intention to settle the dispute.

RULE 19: Confidentiality, disclosure and inadmissibility of information:
(1) When a mediator/conciliator receives information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate;
Provided that, when a party gives information to the mediator/conciliator subject to a specific condition that it be kept confidential, the mediator/conciliator shall not disclose that information to the other party.
(2) Receipt or perusal, preparation of records, reports or other documents by the mediator/conciliator, while serving in that capacity, shall be confidential and the mediator/conciliator shall not be competent to divulage information regarding those documents nor as to what transpired during the mediation/conciliation.
(3) Parties shall maintain confidentiality in respect of events that transpired during mediation/conciliation and shall not rely on or introduce the said information in any other proceedings as to:
(a) views expressed by a party in the course of the mediation/conciliation proceedings;
(b) documents obtained during the mediation/conciliation which were expressly required to be treated as confidential or notes, drafts or information given by parties or mediator/conciliators;
(c) proposals made or views expressed by the mediator/conciliator;
(d) admission made by a party in the course of mediation/conciliation proceedings;
(e) the fact that a party had or had not indicated willingness to accept a proposal.
(4) There shall be no stenographic or audio or video recording of the mediation/conciliation proceedings.

RULE 20: Privacy:
Mediation/conciliation sessions and meetings are private. Only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the
permission of the mediator/conciliator.

**RULE 21:**

**Immunity:**
No mediator/conciliator shall be held liable for anything bona fide done or omitted to be done by him during the mediation/conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation/conciliation proceedings.

**RULE 22:**

**Communication between mediator/conciliator and the Court :**
(a) In order to preserve the confidence of the parties in the Court and neutrality of the mediator/conciliator, there shall be no communication between the mediator/conciliator and the Court, except as stated in clauses (b) and (c) of this Rule.
(b) If any communication between the mediator/conciliator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney holder.
(c) Communication between the mediator/conciliator and the Court shall be limited to communication by the mediator/conciliator:
   (i) with the Court about the failure of party to attend;
   (ii) with the Court with the consent of the parties;
   (iii) regarding his assessment that the case is not suitable for settlement;
   (iv) that the parties have settled the dispute or disputes.

**RULE 23:**

**Settlement agreement :**
Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced into writing and signed by the parties or their power of attorney holders. If any counsel have represented the parties, they shall attest the signatures of their respective clients.
The agreement of the parties so signed and attested shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

Where no agreement is arrived at between the parties, before the time limit specified in rule 17 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.

**RULE 24:**

**Court to fix a date for recording settlement and passing decree ;**
(1) Within seven days of the receipt of a settlement, the Court shall issue notice to the parties fixing a date for their appearance which date shall not be beyond 14 days from the date of receipt of the settlement and the Court shall then take the settlement on record.
(2) Thereafter, the Court shall pass a decree in accordance with the settlement, so taken on record, if the same disposes of all the issues in the suit.
(3) If the settlement disposes of only certain issues arising in the suit, the Court shall take on record the settlement on the date fixed and shall include the terms of the said settlement in the judgment, while deciding the other issues.

**RULE 25:**

**Fee of mediator/conciliator and costs :**
(1) At the time of referring the dispute to the mediator/conciliator, the Court shall fix his fee, which shall not be “more” than Rs. 4000/- which shall be paid by the parties in equal proportion. In case valuation of the suit property is above Rs. 10 lac, the court may fix higher fee than that prescribed above.
Provided that where in a successful mediation, the Court has not fixed the remuneration to be paid to mediators, the mediator be paid a sum of Rs.3,000/- (Proviso added vide Correction slip No.58 Rules/II.D.4 dated 10.12.2009)
(2) Where there are two mediator/conciliators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediator/conciliators which shall be shared equally by the parties.
(3) Besides, the expenses of the mediation/conciliation/conciliation, costs of administrative assistance and other ancillary expenses concerned shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.
(4) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.
The mediator/conciliator may, before the commencement of mediation/conciliation, direct the parties to deposit equal sums tentatively, to the extent of 50% of the probable costs of mediation/conciliation, as referred to in clause (3), including his fee. The remaining 50% shall be deposited with the mediator/conciliator, after the conclusion of mediation/conciliation. The amount deposited towards costs shall be expended by the mediator/conciliator by obtaining receipts and a statement of account shall be filed, by the mediator/conciliator in the Court.

If any party or parties do not pay the amount referred to in sub-rule (5), the Court shall, on the application of the mediator/conciliator, or any party, issue appropriate directions to the defaulting party. If the defaulting party does not pay the amount of expenses including fee, the Court shall recover the same as if it was a decree for the said amount.

**Rule 25-A:**

**Funds, Audit and Accounts of the Committee.**

(1) The Committee shall maintain a fund to be called the High Court Mediation & Conciliation Committee Fund to which shall be credited:
   (A) Such amount as may be allocated and granted to it by the States/Legal Service Authorities of Punjab, Haryana and Union Territory of Chandigarh.
   (B) All such amounts as received by the Committee by way of donations; costs, charges and expenses recovered from the persons or parties concerned as per orders of the Court concerned.

(2) All the amounts credited to the said Fund shall be deposited in a Nationalized bank.

*Explanation:* In this sub-regulation “Nationalised bank” means corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

(3) For the purpose of meeting incidental minor charges, such as serving of tea, biscuits etc., to the litigants and Mediators, a permanent advance of Rupees Five thousands shall be placed at the disposal of the Nodal Officer.

(4) All expenditure on Mediation & Conciliation Programmes viz Training and awareness Programmes, Workshops & Seminars and various other functions of the committee shall be incurred out of the funds of the Committee with the prior approval of the Chairman.

(5) The funds of the Committee may be utilised for meeting the expenses incurred on or incidental to journeys undertaken by the Chairman or other members of the Committee or the Secretary in connection with Mediation & Conciliation activities. The travelling allowance and dearness allowance payable to the expert trainers or other dignitaries invited for various training programmes and functions organised by the Mediation & Conciliation Committee.

(6) The Secretary of the Committee shall operate the bank account of the Committee in accordance with the directions of the Chairman.

(7) The Cashier of High Court shall maintain regular accounts of receipts and disbursement of income and expenditure, and submit annual returns to the Committee. The account shall be subject to audit.” (Rule 25-A is added as per Correction Slip No.59 Rules/II.D4 dated 29.4.2011)

**Rule 26:**

**Ethics to be followed by mediator/conciliator;**

- The mediator/conciliator shall:
  - follow and observe these Rules strictly and with due diligence;
  - not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator/conciliator;
  - uphold the integrity and fairness of the mediation/conciliation process;
  - ensure that the parties involved in the mediation/conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;
  - satisfy himself/herself that he/she is qualified to undertake the complete the assignment in a professional manner;
  - disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
  - avoid, while communicating with the parties any impropriety or appearance of impropriety;
  - be faithful to the relationship of trust and confidentiality reposed in the office of mediator/conciliator;
  - conduct all proceedings related to the resolution of a dispute, in accordance with the applicable law;
  - recognize that mediation/conciliation is based on principles of self-determination by the parties and that mediation/conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
  - maintain the reasonable expectations of the parties as to confidentiality;
  - refrain from promises or guarantees of results;
RULE 27:

Transitory provisions:

Until a panel of mediator/conciliators is prepared by the High Court or the District Court as provided under Rule 3, the Court concerned may nominate a mediator/conciliator of its choice provided that he is fully qualified and does not suffer from any disqualification.

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDGES.

Sd/-
Registrar General