



Hon'ble Shri Justice Sanjay Kumar Seth
Chief Justice, High Court Of Madhya Pradesh, Jabalpur &
Patron-in-Chief, M.P. State Legal Services Authority, Jabalpur, M.P.

Main Mediation Monitoring Committee

Main Mediation Centre, M.P. High Court, Jabalpur



Hon'ble Shri Justice Huluvadi G. Ramesh
Administrative Judge, High Court of Madhya Pradesh, Jabalpur &
Executive Chairman, M.P. State Legal Services Authority



**Hon'ble
Shri Justice Sanjay Yadav**
Chairman



**Hon'ble
Sushri Justice Vandana Kasrekar**
Member



**Hon'ble
Shri Justice Sujoy Paul**
Member

Preface

Justice S.K. Seth
CHIEF JUSTICE



Bungalow No. A-4
New Judges Bungalows,
South Civil Lines,
JABALPUR (M.P.) 482 001
Tel. : 0761-2678318 (O)
: 0761-2671101 (R)

M.P. State Legal Service Authority is entrusted with the establishment of Mediation Centers and ADR Centers in the State of M.P. The Mediation and Conciliation Project Committee of the Hon'ble Supreme Court of India is formulating norms and standards in the matter of policies, conducting training and maintaining quality control for the ADR techniques of mediation envisaged under Section 89 of the Civil Procedure Code, 1908.

It is well recognized that Mediation is a much faster process of resolving disputes between the parties than ordinary civil litigation. In Mediation, the parties have full participation and can express their own opinions and concern in the matter. Mediation allows an opportunity for parties to work out together and reach an amicable settlement.

I have no doubt that this revised edition of the Mediation Hand book will be handy and update the schemes, rules and circulars of mediation as well as useful for the all duty holders, stake holders and members of legal aid fraternity.

I am sure that this revised Handbook will be well received by Judicial Officers, Lawyers, Law Students and all concerned who are actively associated in the process of Mediation.

I wish that this endeavor of Main Mediation Monitoring Committee and M.P. State Legal Service Authority will be a great success.


(Justice S.K. Seth)

Preface

Justice Hulvadi G. Ramesh

Administrative Judge,
High Court of Madhya Pradesh
Executive Chairman,
M.P. State Legal Service Authority



Bungalow No. A-1
Opp. Raja Maihar Kothi,
South Civil Lines,
JABALPUR 482 001 (M.P.)
Tel. : 0761-2600894 (R)
: 0761-2626983 (O)

An ounce of mediation is worth a pound of arbitration and a ton of litigation. Mediation is a dynamic, structured, interactive process where a neutral third party assists parties in resolving their conflicts through the use of specialized communication and negotiation techniques. Mediation is a voluntary process in which parties to a dispute attempt to resolve disagreements between them through discussion, clarification and orderly negotiation assisted by a neutral mediator. Each side comes to the negotiating table with a serious commitment to attempt in good faith to work out these problems. Mediation can be used to resolve disputes of any magnitude.

Mediation is intended to bring two parties together to clear up misunderstandings, find out concerns, and reach a resolution. The Mediation works like a bridge between the parties in resolving the disputes.

Mediation gives liberty to either side to withdraw, if the negotiating team members are convinced that an equitable settlement cannot be reached and that too without any ill-will or bad feeling either amongst the parties or the Mediator.

The first handbook on mediation was published in the year 2014 by the Madhya Pradesh State Legal Services Authority. This edition of the 'Handbook of Mediation' consist of three Chapters, i.e. (i) Constitution of Committees & Mediation Scheme; (ii) Relevant Legal Provisions; and (iii) Important Judicial Pronouncements.

I hope that this edition of handbook would be liked and useful by the Bench, Bar and the Student fraternity alike to understand working of the process of Mediation.


(Justice Hulvadi G. Ramesh)

प्राक्कथन

Justice Sanjay Yadav
Administrative Judge
M.P. High Court, Bench Gwalior
& Chairperson, MMMC



Phone : 0751-2402252

आज के सामाजिक, आर्थिक परिवेश में विषमताओं की अंतहीन श्रृंखला में समाज के हर वर्ग एवं स्तर पर असंतोष का उद्भव विवादों का जनक है। इस दिशा में सिविल प्रक्रिया संहिता की धारा 89 अंतर्गत विवादों के वैकल्पिक निराकरण की प्रमुख पद्धति के रूप में मध्यस्थता पद्धति की संपूर्ण विश्व में अपनी एक पहचान स्थापित हुई है।

पिछले दशक के दौरान मध्यप्रदेश में मध्यस्थता पद्धति द्वारा पारस्परिक व सौहार्द्रपूर्ण वातावरण में विवादों के निराकरण में न केवल न्यायाधीशों, अधिवक्ताओं वरन् पक्षकारों की जागरूकता में भी तेजी से वृद्धि हुई है। आज मध्यस्थता मध्यप्रदेश की न्यायिक व्यवसायिक में एक सुपरिचित पद्धति हो चुकी है। माननीय मुख्य न्यायाधीश महोदय के मार्गदर्शन में इस पद्धति को सुनियोजित व सुदृढ़ रूप देने का अभिनव प्रयास किया जा रहा है। इस दिशा में प्रकाशित हो रही यह हेण्डबुक मध्यस्थता से संबंधित समस्त क्रियाकलापों जिसमें उच्च न्यायालय स्तर से तहसील स्तर तक मुख्य मध्यस्थता केन्द्र, मीडिएशन मॉनीटरिंग कमेटी, सब-कमेटी, की संरचना, गठन, कार्य मासिक बैठकों व कार्ययोजना 2017-18 हेतु कैलेंडर के साथ ही मध्यस्थता जागरूकता कार्यक्रम के आयोजन हेतु दिशा-निर्देश के अतिरिक्त मध्यस्थता पद्धति से संबंधित महत्वपूर्ण निर्णयों, मध्यस्थता नियम 2015-2017 व प्रशिक्षित मीडिएटर्स का विवरण समेकित किया गया है।

मैं इस हैण्डबुक के प्रकाशन में सहयोग एवं मार्गदर्शन हेतु माननीय कार्यपालक अध्यक्ष, मध्यप्रदेश राज्य विधिक सेवा प्राधिकरण का हृदय से आभारी हूँ साथ ही, इस हैण्डबुक के प्रकाशन से जुड़े समस्त लोगों का भी आभार प्रदर्शित करता हूँ।

मैं न्यायिक व्यवस्था के सभी सहयोगियों, अधिवक्ताओं, सामाजिक कार्यकर्ताओं से अपील करता हूँ इस अभियान को सफल बनाने में अपनी सक्रिय भूमिका अदा करें, साथ ही यह आशा करता हूँ कि निकट भविष्य में विवादों के निराकरण की यह सौहार्द्रपूर्ण पद्धति अपने चरम को प्राप्त होगी। इस हेतु मैं अपनी शुभेच्छा प्रेषित करता हूँ।

(Justice Sanjay Yadav)

Introduction

In the complexities of modern life style and multiplicity of litigation, the litigants want a decision as quickly as possible. Courts and Tribunals are over burdened in spite of formation of adjudicatory Tribunals, Family Courts, Human Rights Commission, Women Commission and other institutions. The problem of delay in Courts still persists defeating the cause of justice.

The Legislature, consummating the aforesaid problems amended Section 89 of the Code of Civil Procedure w.e.f. 01.07.2002 inserting mediation as one of the alternative modes of disposing cases. The object of mediation is to propose the litigants to arrive at a solution by their own means, willingness and volition ensuring them a speedy and satisfactory alternative dispute resolution process.

The advantages of a negotiated settlement is that at the end of the day, there are no losers and the result is acceptable to all. The adjudicatory process terminates relationship and creates permanent enemies whereas negotiated settlement creates friends.

Mediation has global acceptance not only as a positive and effective tool of the ADR method but also as a pervasive and realistic alternative. The rigidity of an adversary litigation is replaced by an atmosphere for an amicable solution acceptable to both. Mediation, therefore, not only solve a problem, it eradicates the problem for all times to come. The question of resurfacing in one form or the other does not arise.

As a facilitative mechanism to produce an acceptable result in the shortest possible time and with the least possible expense, there is an imminent need to disseminate the settlement culture for success of the ADR mechanism. The real challenge is to provide a solution which would be better than what one could get when a case is filed and disposed off by a regular trial mechanism. It will definitely save time and money of the litigants.

The first handbook on mediation was published by MPSLSA in the year 2014.

The object of publishing the handbook was to promote mediation activities and process in the State as one of the mode of alternative dispute resolution. After passage of about three years, we have been successful in introducing mediation as an affective mode for disposal of cases. In the year the total no. of pending cases successfully disposed of through mediation were 12,691 with 34.39 percentage of success ratio and in the year 33794 with 46.85 percentage of success rate.

For effective implementation of Mediation Activities across the State, the M.P. High Court, Jabalpur has constituted a Mediation Monitoring Committee (Main Mediation Centre) at the State Level, Monitoring Sub Committees at the three Benches and District Committees and Tehsil Committees for each district and Tehsil respectively. Accordingly, the mediation monitoring committee have been constituted at High Court, District Court and Tehsil Court levels in the State. The Committees are consisting of the Hon'ble Judges of High Court, Judicial officers of respective District & Taluka Courts, representatives of State Bar Councils & Local Bar Associations and Government Pleaders/Public Prosecutors to represent the Government.

The Main Mediation Monitoring Committee (Main Mediation Centre) has prepared an organizational structure for facilitating implementation of the Mediation Activities for the State. The hand book contains Scheme/Guidelines for organizing mediation awareness programme. The awareness programme are mostly conducted in the court premises. In the state of M.P. we have been successful in organization 1565 number of awareness programs in the year 2016. The awareness programme have helped us in publicity and popularization of mediation process. It has been institutionalized as Lok Adalat.

The Main Mediation Monitoring Committee, (Main Mediation Centre) (MMMC) High Court of MP in coordination with MPSLSA is holding 40 Hours intensive Mediation Training Programs to train Mediators throughout the State.

The MMMC has been successful in imparting 40 hours training to all judicial officers/(Judges of the state) apart from this, advocates and social workers have also been imparted training. At present there are 1641 trained mediators available in the state. Efforts have also been made to conduct refresher courses of these advocates and 11 number of refresher programs have been conducted benefitting 200 number of mediators.

In order to sensitize the duty holders and litigants under the directions of Main Mediation Monitoring Committee, High Court, Regional Conference were conducted in the state within the period of 2 years. The purpose of these conferences was to sensatize the duty holder, publicity and facilitation of mediator judges, Mediator advocates and referral judges performing excellently in mediation activities.

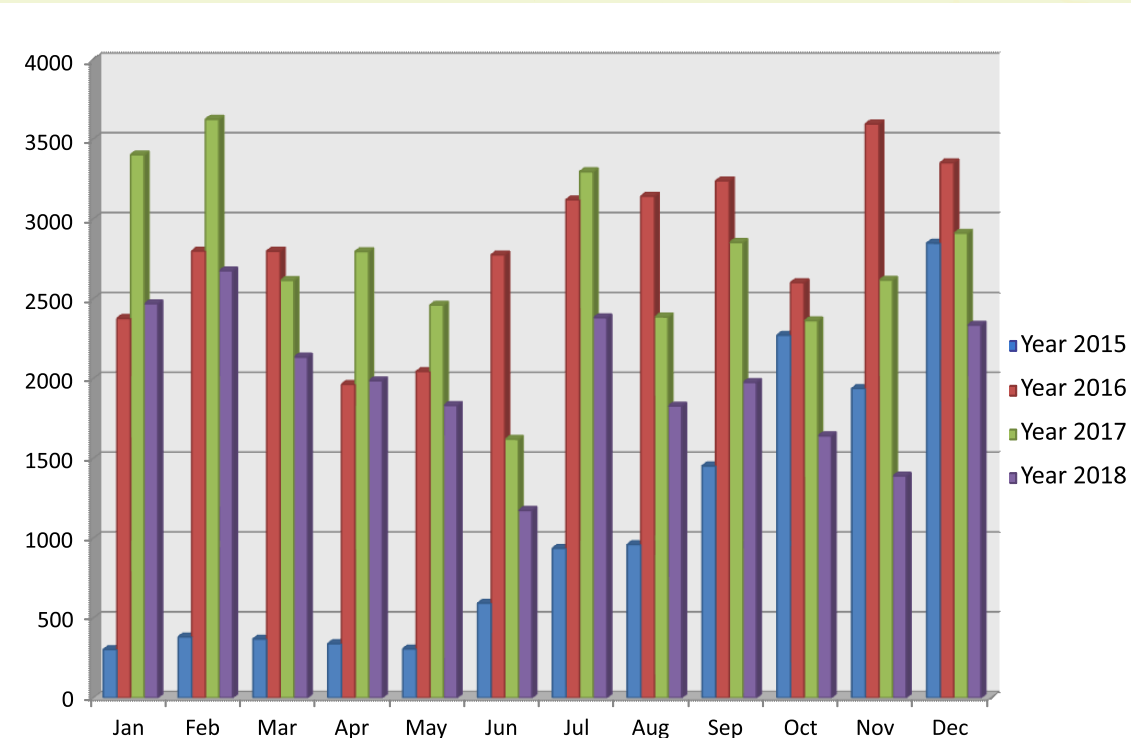
The MMMC has introduced a new scheme in the year 2016, for identification of cases pending in courts to be referred for mediation.

To supervise and to monitor the Mediation activities at Taluka, District and High Court, the Main Mediation Centre has prepared a calendar to review the activities by the Mediation Monitoring Committees at their respective levels. As per calendar, the Taluka Mediation Monitoring Sub-Committee, District Mediation Monitoring Committee, The High Court Mediation Monitoring Sub-Committee, and the Mediation Monitoring Committee, High Court of Madhya Pradesh (Main Mediation Center) Court Annexed Mediation Organizing Committees and Committee for selecting Advocates for Mediators Training, are to hold a meeting every month.

With the vision of Hon'ble the Chief Justice and the guidance of the Honorable Committee, it is hoped that mediation will serve as an effective means for expeditious and inexpensive Justice in the State of M.P. overcoming the situation which Oliver Wendell Holmes, Jr. expressed that if people do not have access to Justice not because of non-availability of forums but because of ineffective utilization thereof, then there is possibility of missing voices and problems.

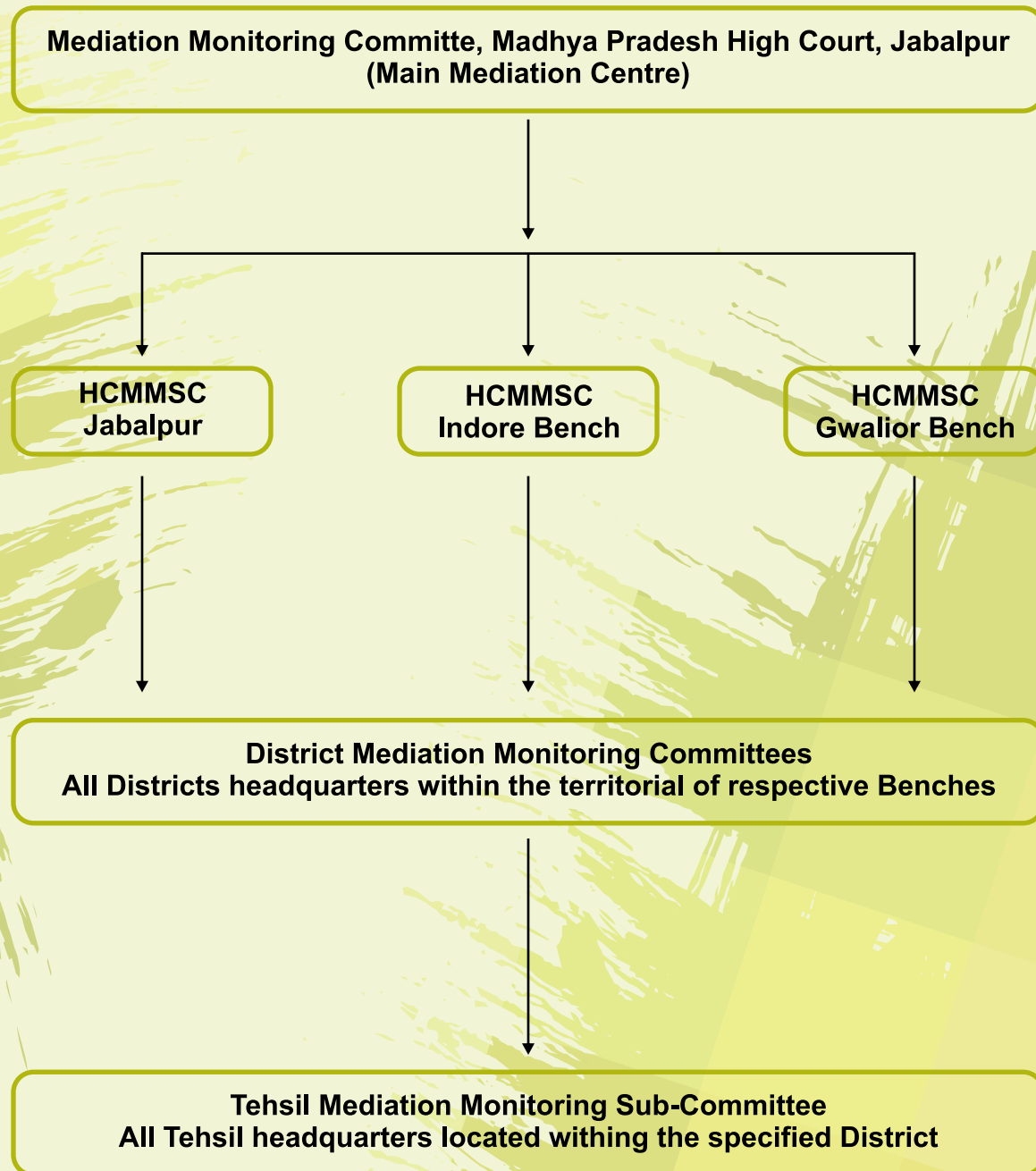
Vijay Chandra
Member Secretary
MPSLSA

Successfully Settled Cases In Mediation



Months	Year 2015	Year 2016	Year 2017	Year 2018
Jan	302	2376	3401	2468
Feb	381	2798	3623	2674
Mar	368	2797	2614	2134
Apr	339	1963	2795	1986
May	306	2044	2459	1831
Jun	592	2774	1619	1174
Jul	936	3119	3295	2381
Aug	960	3141	2385	1828
Sep	1452	3237	2852	1975
Oct	2271	2600	2362	1641
Nov	1937	3594	2616	1389
Dec	2847	3351	2910	2334

Organisational Structure of Mediation Monitoring Sub-Committees, District Committees, Tehsil Sub-Committees in the State of Madhya Pradesh



Index

CHAPTER - I CONSTITUTION OF COMMITTEES	1-14
1. Mediation Monitoring Committees - Structure & Functions	2-14
CHAPTER - II MEDIATION SCHEMES	15-44
1 (a) Scheme for Court Annexed Mediation Organizing Committee	16
2 (b) Scheme for Selecting Advocates for Mediators Training	18
3 (c) Scheme for 'Mediation Judge'	20, 22
4 (d) Scheme for Felicitation of Judge/Advocate Mediators and Referral Judges	24
5 (e) Guidelines for Organizing of Mediation Awareness Programme	26
6 (f) Guidelines for "Mediators' Training Scheme" for Advocates	28, 30
7 (g) Scheme for Identification of Cases for Mediation Reference	32
8 (h) Mediation Clinic Scheme with Forms	34, 36
मध्यस्थता योजनाएं (हिन्दी अनुवाद)	
1 (अ) न्यायालय उपाबद्ध मध्यस्थता आयोजन समिति हेतु योजना	17
2 (ब) मध्यस्थ प्रशिक्षण योजनाओं हेतु अधिवक्ताओं का चयन	19
3 (स) "मध्यस्थता न्यायाधीश" के लिये योजना	21-23
4 (द) न्यायाधीशों/अधिवक्ता मध्यस्थों तथा निर्देशिनी न्यायाधीशों के अभिनन्दन हेतु योजना	25
5 (इ) मध्यस्थता जागरूकता कार्यक्रम के आयोजन हेतु दिशा-निर्देश	27
6 (फ) अधिवक्ताओं के लिए "मध्यस्थ प्रशिक्षण योजना" हेतु दिशा-निर्देश	29, 31
7 (ग) मध्यस्थता निर्देशन हेतु प्रकरणों की पहचान के लिए योजना	33
8 (घ) मध्यस्थता क्लीनिक योजना प्रारूप के साथ	35, 37
CHAPTER - III RELEVANT LEGAL PROVISIONS	45-58
1. Mediation Rules	46-53
2. Sec. 89, Civil Procedure Code	54-55
3. Scheme For Training Under Mediation and Conciliation Project Committee	56-57
CHAPTER -IV IMPORTANT JUDICIAL PRONOUNCEMENTS	59-75
1. Afcons Case	60-65
2. Salem Bar I (Extract)	66
3. Salem Bar II (Extract)	67-69
4. K. Srinivas Rao vs D.A. Deepa	70
5. Vikram Bakshi Case	71-72
6. Suresh Narayan Case	73
7. Statistical Formats	74-75

CHAPTER - I

Constitution of Committees



Mediation Monitoring Committee, State of Madhya Pradesh
(Main Mediation Centre)

- | | | |
|----|---|--------------------------|
| 1) | Hon'ble Shri Justice Sanjay Yadav | - Chairman |
| 2) | Hon'ble Shri Justice Sujoy Paul | - Member |
| 3) | Hon'ble Sushri Justice Vandana Kasrekar | - Member |
| 4) | Member Secretary, SLSA | - Ex-Officio Coordinator |

Functions of Mediation Monitoring Committee
(Main Mediation Centre)

- To lay down the policies and principles to facilitate the court-annexed mediation as contemplated u/s.89 of CPC.
- To frame more effective and economical schemes for the purpose of making available court annexed mediation in the State of M.P.
- To utilize the funds available at its disposal.
- To organize Mediation Awareness Programme as well Mediation Training Programmes to enhance the mediation activities by increasing the strength of panel of mediators and of Referral Judges.
- To facilitate smooth functioning of the Mediation centres and to encourage settlement of disputes amicably through mediation.
- To endeavor for disseminating awareness of the concept of Mediation and to arrange for production of publicity material, literature, publication, pamphlets, hand-books, brochures, etc relating to Mediation Activities.
- To identify the potential Districts where there is large number of pending cases and to provide adequate facilities for success of mediation programme.
- To ensure that there are sufficient number of trained mediators at each mediation centre.
- To perform such of the functions as may be assigned for smooth administration of Mediation Centre.

मीडिएशन मॉनीटरिंग समिति, मध्यप्रदेश
(मुख्य मीडिएशन केन्द्र)

- | | | | |
|----|---|---|--------------|
| 1. | माननीय श्री न्यायमूर्ति संजय यादव | — | अध्यक्ष |
| 2. | माननीय श्री न्यायमूर्ति सुजॉय पॉल | — | सदस्य |
| 3. | माननीय सुश्री न्यायमूर्ति वंदना कारसेकर | — | सदस्य |
| 4. | सदस्य सचिव, म.प्र. राज्य विधिक सेवा प्राधिकरण | — | पदेन समन्वयक |

मीडिएशन मॉनीटरिंग समिति के कार्य
(मुख्य मीडिएशन केन्द्र)

- धारा 89 सिविल प्रक्रिया संहिता में वर्णित अनुसार न्यायालय उपाबद्ध मीडिएशन को सुगम बनाने के लिए नीतियां एवं सिद्धांतों को निर्धारित करना।
- मध्यप्रदेश राज्य में न्यायालय उपाबद्ध मीडिएशन को उपलब्ध कराने के उद्देश्य से अधिक प्रभावी एवं कम खर्चीली योजना निर्मित करना।
- इसके निपटारे पर उपलब्ध धनराशि का उपयोग करना।
- मीडिएटर्स एवं रैफरल न्यायाधीशों के पैनल की संख्या में वृद्धि के द्वारा मीडिएशन क्रियाकलापों को बढ़ाने के लिए मीडिएशन जागरूकता कार्यक्रम के साथ ही मीडिएशन प्रशिक्षण कार्यक्रम को आयोजित करना।
- मध्यस्थता केन्द्रों के कार्यकलापों को आसान बनाने एवं मीडिएशन द्वारा परस्पर सौहार्द्रपूर्ण तरीके से विवादों के निराकरण को प्रोत्साहित करना।
- मीडिएशन की अवधारणा की जागरूकता के प्रसार का प्रयास करना एवं मीडिएशन क्रियाकलापों से संबंधित प्रचार सामग्री, साहित्य, प्रकाशन, पेम्पलेट, हैंडबुक, ब्रोशर्स इत्यादि की प्रस्तुति/निर्माण का प्रबंध करना।
- ऐसे संभावित जिलों की पहचान करना जहां अत्यधिक संख्या में लंबित प्रकरण हों एवं मीडिएशन कार्यक्रम की सफलता के लिए समुचित सुविधायें प्रदान करना।
- यह सुनिश्चित करना कि प्रत्येक मीडिएशन केन्द्र पर प्रशिक्षित मीडिएटर्स की पर्याप्त संख्या हो।
- ऐसे कार्यों का संपादन करना जैसा कि मीडिएशन केन्द्र के सहज प्रशासन के लिए निर्धारित किया जाए।

High Court Mediation Monitoring Sub-Committee
Jabalpur

- | | | |
|----|---|---------------------------|
| 1) | Hon'ble Shri Justice Sujoy Paul | - Chairman |
| 2) | Representative of Bar Council of M.P. | - Ex-Officio Member |
| 3) | Advocate General or Representative | - Ex-Officio Member |
| 4) | President, Jabalpur High Court Bar Association | - Ex-Officio Member |
| 5) | President, Jabalpur Advocate Bar Association | - Ex-Officio Member |
| 6) | Registrar cum Secretary,
High Court Legal Services Committee, Jabalpur | - Ex-Officio Co-ordinator |

High Court Mediation Monitoring Sub-Committee
Bench at Gwalior

- | | | |
|----|--|---------------------------|
| 1) | Hon'ble Shri Justice Sanjay Yadav | - Chairman |
| 2) | Representative of Bar Council of M.P. | - Ex-Officio Member |
| 3) | Additional Advocate General, Bench Gwalior | - Ex-Officio Member |
| 4) | President, Gwalior High Court Bar Association | - Ex-Officio Member |
| 5) | The Principal Registrar/Secretary
High Court Bench at Gwalior | - Ex-Officio Co-ordinator |

High Court Mediation Monitoring Sub-Committee
Bench at Indore

- | | | |
|----|--|---------------------------|
| 1) | Hon'ble Shri Justice Satish Sharma | - Chairman |
| 2) | Representative of Bar Council of M.P. Bench-Indore | - Ex-Officio Member |
| 3) | Additional Advocate General, Bench Indore | - Ex-Officio Member |
| 4) | President, Indore High Court Bar Association | - Ex-Officio Member |
| 5) | Principal Registrar, High Court Bench at Indore | - Ex-Officio Co-ordinator |

उच्च न्यायालय मीडिएशन मॉनीटरिंग उपसमिति, जबलपुर

- | | | |
|----|---|-----------------|
| 1. | माननीय श्री न्यायमूर्ति सुजॉय पॉल | — अध्यक्ष |
| 2. | अधिवक्ता परिषद जबलपुर (म.प्र.) के प्रतिनिधि | — पदेन, सदस्य |
| 3. | महाधिवक्ता या उनके प्रतिनिधि, उच्च न्यायालय जबलपुर | — पदेन, सदस्य |
| 4. | अध्यक्ष, उच्च न्यायालय अधिवक्ता संघ, जबलपुर | — पदेन, सदस्य |
| 5. | अध्यक्ष, जबलपुर एडवोकेट बार एसोसिएशन | — पदेन, सदस्य |
| 6. | रजिस्ट्रार/सचिव, उच्च न्यायालय विधिक सेवा समिति, जबलपुर | — पदेन, समन्वयक |

उच्च न्यायालय मीडिएशन मॉनीटरिंग उपसमिति, खण्डपीठ ग्वालियर

- | | | |
|----|---|-----------------|
| 1. | माननीय न्यायमूर्ति श्री संजय यादव | — अध्यक्ष |
| 2. | म.प्र. अधिवक्ता परिषद के प्रतिनिधि | — पदेन, सदस्य |
| 3. | अतिरिक्त महाधिवक्ता, उच्च न्यायालय खण्डपीठ ग्वालियर | — पदेन, सदस्य |
| 4. | अध्यक्ष, उच्च न्यायालय अधिवक्ता संघ, ग्वालियर | — पदेन, सदस्य |
| 5. | प्रिंसिपल रजिस्ट्रार/सचिव, उच्च न्यायालय खण्डपीठ ग्वालियर | — पदेन, समन्वयक |

उच्च न्यायालय मीडिएशन मॉनीटरिंग उपसमिति, खण्डपीठ इन्दौर

- | | | |
|----|---|-----------------|
| 1. | माननीय श्री न्यायमूर्ति सतीश शर्मा | — अध्यक्ष |
| 2. | म.प्र. अधिवक्ता परिषद के प्रतिनिधि | — पदेन, सदस्य |
| 3. | अतिरिक्त महाधिवक्ता, उच्च न्यायालय खण्डपीठ इन्दौर | — पदेन, सदस्य |
| 4. | अध्यक्ष, उच्च न्यायालय अधिवक्ता संघ, इन्दौर | — पदेन, सदस्य |
| 5. | प्रिंसिपल रजिस्ट्रार/सचिव, उच्च न्यायालय खण्डपीठ इन्दौर | — पदेन, समन्वयक |

District Mediation Monitoring Committee,
State of M.P.
(At every District Headquarter)

- | | | |
|----|--|----------------|
| 1) | The Hon'ble Portfolio Judge of concerned District | - Chairman |
| 2) | The District Judge | - Member |
| 3) | The representative of Bar Council of M.P.
(if available, or any of them if there are more than one) | - Member |
| 4) | The District Government Pleader of concerned District | - Member |
| 5) | The President, Advocate Bar Association of Concerned district | - Member |
| 6) | The Secretary, DLSA of the concerned District | - Co-ordinator |

Functions of District Mediation Monitoring Committee

- To give effect to the policies and directions of the Mediation Monitoring committees (Main Mediation Centre) Jabalpur, under supervision and guidance of High Court Mediation Monitoring Sub Committee of its region.
- To perform all such functions to make available court annexed mediation and to organize Mediation Awareness and Training Programmes in co-ordination with the High Court Mediation Monitoring Sub-Committees.
- To supervise and monitor the activities and performance of Tehsil Mediation Monitoring Sub-Committee located within its territorial limits.
- To utilize the funds received from the main mediation centre Jabalpur and make appropriate allocation of part of the funds to the court annexed mediation centre of Tehsil Courts located within the particular district.
- To take review and remedial steps pertaining to the functions and activities of the Taluka Mediation Monitoring Sub-Committee located within its territorial limits.
- To make recommendations or give suggestions to the High Court Mediation Monitoring Sub-Committees to ensure effective implementation of various schemes in the District.

जिला मीडिएशन मॉनीटरिंग समिति, मध्यप्रदेश
(प्रत्येक जिला मुख्यालय पर स्थापित)

- | | | |
|----|--|-----------|
| 1. | संबंधित जिले के माननीय पोर्टफोलियो जज | — अध्यक्ष |
| 2. | जिला न्यायाधीश | — सदस्य |
| 3. | मध्यप्रदेश अधिवक्ता संघ के प्रतिनिधि
(यदि उपलब्ध हों, अथवा यदि एक से अधिक हों तो उनमें से कोई एक) | — सदस्य |
| 4. | संबंधित जिले के शासकीय अधिवक्ता | — सदस्य |
| 5. | संबंधित जिले के अधिवक्ता संघ के अध्यक्ष | — सदस्य |
| 6. | संबंधित जिले के जिला विधिक सेवा प्राधिकरण के सचिव | — समन्वयक |

जिला मीडिएशन मॉनीटरिंग समिति के कार्य
(प्रत्येक जिला मुख्यालय पर)

- मीडिएशन मानीटरिंग कमेटी (प्रधान मीडिएशन केन्द्र), जबलपुर एवं क्षेत्र की उच्च न्यायालय की मीडिएशन मानीटरिंग उपसमिति के पर्यवेक्षण व मार्गदर्शन अंतर्गत नीतियों एवं निर्देशों को क्रियान्वित करना।
- ऐसे समस्त कार्य जो न्यायालय उपाबद्ध मीडिएशन से संबंधित हो, को क्रियान्वित करना और उच्च न्यायालय मीडिएशन मानीटरिंग उपसमिति के समन्वय से मीडिएशन जागरूकता एवं प्रशिक्षण कार्यक्रम आयोजित करना।
- अपने क्षेत्राधिकार अंतर्गत स्थापित तहसील मीडिएशन मानीटरिंग उपसमिति के क्रियाकलापों एवं निष्पादन का पर्यवेक्षण एवं मानीटरिंग करना।
- मुख्य मीडिएशन केन्द्र जबलपुर द्वारा प्राप्त धनराशि का उपयोग करने एवं किसी जिला विशेष में स्थापित तहसील न्यायालयों से उपाबद्ध मीडिएशन केन्द्र को धनराशि के भाग का उचित बंटवारा करना।
- अपने क्षेत्राधिकार अंतर्गत तहसील मीडिएशन मानीटरिंग उप समिति से संबंधित कार्य एवं क्रियाकलापों का पुनर्विलोकन करना एवं सुधारात्मक कदम उठाना।
- जिले में विभिन्न योजनाओं के प्रभावी क्रियान्वयन को निश्चित करने हेतु उच्च न्यायालय मीडिएशन मानीटरिंग उप समितियों को अनुशंसा या सुझाव देना।

Tehsil Mediation Monitoring Sub-Committee
(At every Tehsil Headquarter)

- | | | |
|----|--|----------------|
| 1) | The District Judge of the concerned District | - Chairman |
| 2) | The Senior most Judge of the concerned Station | - Member |
| 3) | The representative of Bar Council of M.P. (if any) | - Member |
| 4) | The Government Pleader/Public Prosecutor of concerned Tehsil Court | - Member |
| 5) | The President, Advocate Bar Association of Concerned Place | - Member |
| 6) | The Secretary, DLSA of the concerned District | - Co-ordinator |

Functions of Tehsil Mediation Monitoring sub-Committee

- To perform such of the functions to make available court annexed mediation at the concerned station in co-ordination with the District Mediation Monitoring committee.
- To supervise and monitor the functions, activities of the court annexed mediation centre of the concerned station.
- To organize mediation awareness and training programme in co-ordination with the District Mediation Monitoring Committee.
- To make recommendations or give suggestions to the District Mediation Monitoring committee to ensure effective monitoring and implementation of the various mediation schemes in the Tehsil.
- To perform such of the functions as may be assigned by the District Mediation Monitoring or the function as may be expedient for smooth administration of the mediation centres.



तहसील मीडिएशन मॉनीटरिंग समिति
(प्रत्येक तहसील मुख्यालय पर स्थापित)

- | | | |
|----|--|-----------|
| 1. | संबंधित जिले के जिला न्यायाधीश | — अध्यक्ष |
| 2. | संबंधित जिले के वरिष्ठतम न्यायाधीश | — सदस्य |
| 3. | मध्यप्रदेश अधिवक्ता संघ के प्रतिनिधि (यदि कोई हो) | — सदस्य |
| 4. | संबंधित तहसील के शासकीय अधिवक्ता/तहसील न्यायालय के लोक अभियोजक | — सदस्य |
| 5. | संबंधित स्थान के अधिवक्ता संघ के अध्यक्ष | — सदस्य |
| 6. | संबंधित जिले के जिला विधिक सेवा प्राधिकरण के सचिव | — समन्वयक |

तहसील मीडिएशन मॉनीटरिंग उप समिति के कार्य

- जिला मीडिएशन मानीटरिंग कमेटी के समन्वय से संबंधित स्थानों पर ऐसे कार्यों को करना जो न्यायालय उपाबद्ध मीडिएशन से संबंधित हों।
- संबंधित स्थानों पर न्यायालय उपाबद्ध मीडिएशन केन्द्र के कार्यों व क्रियाकलापों का पर्यवेक्षण एवं मानीटरिंग करना।
- जिला मीडिएशन मानीटरिंग समिति के समन्वय से मीडिएशन जागरूकता एवं प्रशिक्षण कार्यक्रम आयोजित करना।
- तहसील में विभिन्न मीडिएशन योजनाओं के प्रभावी मानीटरिंग व क्रियान्वयन को सुनिश्चित करने हेतु जिला मीडिएशन मानीटरिंग समिति को अनुशंसा या सुझाव देना।
- जिला मीडिएशन मानीटरिंग समिति के द्वारा दिये गये कार्यों का निष्पादन करने या मीडिएशन केन्द्रों के प्रशासन को सुचारु रूप से चलाने हेतु किये जाने वाले कार्य।



Functions of High Court Mediation Monitoring Sub-Committees, Jabalpur, Indore & Gwalior

- To give effect to the policies and directions of the Mediation Monitoring Committee (Main Mediation Centre), *Jabalpur*.
- To supervise and monitor the activities and performance of Districts Mediation Monitoring Committee located within its territorial limits.
- To perform all such functions and to organize Mediation Awareness and Training Programmes in co-ordination with the Mediation Monitoring Committee (Main Mediation Centre), *Jabalpur*.
- To liaison with the District Mediation Monitoring Committee for effective and efficient functioning of the Mediation Centre located within its limit.
- To take review and remedial steps pertaining to the functions and activities of the District Mediation Monitoring Committee located within its territorial limits.
- To make recommendations or give suggestions to the Mediation Monitoring committee (Main Mediation Centre), *Jabalpur* to ensure effective implementation of various schemes in the State of Madhya Pradesh.



Better Beans and Bacon in peace than Cakes and ale in fear.
-Aesop's Fables

उच्च न्यायालय मीडिएशन मॉनीटरिंग उपसमितियों के कार्य जबलपुर, इन्दौर एवं ग्वालियर

- मीडिएशन मानीटरिंग समिति (मुख्य मीडिएशन केन्द्र) जबलपुर की नीतियों एवं निर्देशों को कार्यान्वित करना।
- अपने क्षेत्र की सीमाओं के भीतर स्थापित जिला मीडिएशन मानीटरिंग समिति के क्रियाकलापों एवं कार्य निष्पादन का पर्यवेक्षण एवं निगरानी करना।
- मीडिएशन मानीटरिंग समिति (मुख्य मीडिएशन केन्द्र) जबलपुर के समन्वय से मीडिएशन जागरूकता एवं प्रशिक्षण कार्यक्रम का आयोजन एवं ऐसे समस्त कार्यों का संपादन करना।
- अपने क्षेत्र के भीतर स्थापित मीडिएशन केन्द्र का प्रभावी एवं कुशल कार्य संचालन जिला मीडिएशन मानीटरिंग समिति के सहकार से करना।
- अपने क्षेत्र की सीमाओं के भीतर स्थापित जिला मीडिएशन मानीटरिंग समिति के कार्यों एवं क्रियाकलापों का पुर्नवलोकन एवं उपचारात्मक कदम उठाना।
- मध्यप्रदेश में विभिन्न योजनाओं का प्रभावी क्रियान्वयन सुनिश्चित करने के लिए मीडिएशन मानीटरिंग समिति (मुख्य मीडिएशन केन्द्र) जबलपुर, को अनुशंसाएं या सुझाव देना।



मध्यस्थता समाज में शांति और स्थायित्व का आधार है.

Role of Co-Ordinator

- To keep continuous supervision on the progress of each case referred for mediation.
- To ensure that mediation is completed in specified time by the mediator as per rules.
- To submit periodical report to Referral Judge before the next date of hearing of the case about the status of mediation proceedings.
- To submit monthly returns in respect of disposal of cases to Mediation Monitoring committee Main Mediation Centre, Jabalpur.
- To maintain updated list of Mediators.
- To ensure that none of the mediator on the panel is over burdened with Mediation work on account of direct appointment by the Court in different cases. The ratio to be maintained shall not exceed ten cases per Mediator at any given point of time. If any discrepancy is noticed in this behalf, it should be forthwith brought to the notice of the concerned court which had appointed that mediator by submitting interim report so that some other mediator can be substituted without any loss of time.
- The co-ordinator shall as far as possible appoint mediator by consent of parties in cases where the court has not appointed mediator while making reference for mediation. *If no trained Mediator is available at that place then to appoint some competent Advocate, NGO or Judicial Officer who can handle the matter.*
- To ensure that feedback is received from the participants in every Mediation Case to analyze the same and take corrective measures where necessary.
- To inspect complaints on regular basis and take follow up action on the complaints or suggestion so received.
- Publish periodical handbills / pamphlets including on local cable TV, Theatre etc. about the concept of Mediation and its benefits.
- Informative pamphlets be displayed at conspicuous places in police station, court premises, Tehsil offices, Village Gram panchayat etc.
- Ensure that informative brochures /pamphlets are circulated with court summons/ notices to litigants and also regularly displayed on the notice board for lawyers /litigants in the court complex.

समन्वयक की भूमिका

- मीडिएशन हेतु प्रेषित किये गये प्रकरण की प्रगति का सतत पर्यवेक्षण करना।
- मीडिएटर के द्वारा मध्यस्थता का कार्य नियमानुसार निश्चित समय के भीतर पूर्ण किया गया है, को सुनिश्चित करना।
- रैफरल न्यायाधीश के समक्ष प्रकरण की सुनवाई की अगली तारीख पर मध्यस्थता प्रक्रिया की स्थिति के संबंध में आवधिक प्रतिवेदन प्रस्तुत करना।
- मीडिएशन मानीटरिंग समिति, प्रधान मीडिएशन केन्द्र, जबलपुर को प्रकरणों के निराकरण के संबंध में माहवार रिपोर्ट प्रेषित करना।
- मीडिएटर्स की अद्यतन सूची संधारित करना।
- यह सुनिश्चित करें कि विभिन्न प्रकरणों में न्यायालय द्वारा सीधी नियुक्ति होने के कारण पैनल का कोई भी मीडिएटर अधिक मीडिएशन कार्य से भारित न हो। यह अनुपात बनाए रखना होगा कि किसी दिये हुये समय पर एक मीडिएटर के पास 10 प्रकरणों से अधिक न हो। यदि इस संबंध में कोई विसंगति ध्यान में आती है तो यह संबंधित न्यायालय को जिसके द्वारा मीडिएटर को नियुक्त किया गया था, के समक्ष अंतरिम रिपोर्ट प्रस्तुत की जानी चाहिए, जिससे कि समय को बिना नष्ट किये किसी अन्य मीडिएटर को प्रतिस्थापित किया जा सके।
- ऐसे प्रकरणों में जहां न्यायालय ने मीडिएशन हेतु निर्दिष्ट (रेफरेंस) करने के दौरान मीडिएटर को नियुक्त नहीं किया है, जहां तक संभव हो प्रकरण में पक्षकारों की सहमति से समन्वयक द्वारा मीडिएटर की नियुक्ति की जायेगी। यदि उस स्थान पर कोई प्रशिक्षित मीडिएटर उपलब्ध नहीं है तो किसी सक्षम अधिवक्ता, एन.जी.ओ. अथवा न्यायिक अधिकारी, जो मामले का संचालन कर सकता हो, की नियुक्ति की जाये।
- यह सुनिश्चित करें कि प्रत्येक मीडिएशन प्रकरण के भागीदारों से प्राप्त फीडबैक का विश्लेषण कर जहां आवश्यक हो वहां सुधारात्मक उपायों को अपनाये।
- नियमित रूप से शिकायतों की जांच करें एवं इस प्रकार प्राप्त हुई शिकायतों अथवा सुझावों पर आवश्यक कार्यवाही करें।
- मीडिएशन की अवधारणा एवं इसके लाभों के संबंध में क्षेत्रीय केबिल टेलीविजन, थियेटर इत्यादि को शामिल करते हुए आवधिक पर्चा/पेम्पलेट्स प्रकाशित करें।
- पुलिस थानों, न्यायालय क्षेत्र, तहसील कार्यालयों, ग्राम पंचायतों इत्यादि विशिष्ट स्थानों जहां पर सबकी दृष्टि पड़े, सूचना प्रदान करने वाले पेम्पलेट्स को प्रदर्शित करें।
- यह निश्चित करें कि वादियों को सूचना प्रदान करने वाली विवरणिका/पेम्पलेट्स, न्यायालय के संमन/नोटिसों के साथ बांटे जायें एवं वकीलों/वादियों के लिए न्यायालय परिसर में नियमित रूप से प्रदर्शित भी किये जायें।

CHAPTER - II

Mediation Schemes



SCHEME FOR COURT ANNEXED MEDIATION ORGANIZING COMMITTEE

1. The “Court Annexed Mediation Organizing Committee” consisting of Senior most Judicial Officer and ten Advocate Trained Mediators at station will have to be constituted. In case, sufficient number of Advocate Trained Mediators are not available, the Advocate-Mediators having 15 years of standing practice be considered.
2. The Senior most Judicial Officer at Station shall be the Chairman of Organizing Committee.
3. The Senior most Judicial Officer in consultation with the President of Local Bar Association and Trained Mediators constitute a Organizing Committee at each Mediation Centre.
4. As far as possible, 50% of the Committee Members be female members.
5. The Organizing Committee should assist the Court Annexed Mediation Monitoring Committee for effective and efficient functioning of mediation activities within the jurisdiction of concerned Committee.
6. Each organizing Committee Member should monitor the Mediation activities of particular court and also progress of cases referred for mediation.
7. The District Judge should allocate the Court to the organizing Committee members which they have to monitor.
8. The organizing Committee should scrutinize and identify the categories of matters which are pending in particular Court, whether those matters are fit for references and report the same to the Concerned Mediation Monitoring Committee.
9. The organizing committee should meet eight days prior to meeting of Mediation Monitoring Committee meeting and submit court wise report regarding mediation activities to the concerned Mediation Centre.
10. The Committee may utilize Mediation Centre for conducting their monthly meetings with permission of Co-ordinator of concerned Mediation Centre.
11. The Committee should perform such other functions as may be assigned by the concerned Mediation Monitoring Committee for smooth administration of Mediation Centre.



न्यायालय उपाबद्ध मध्यस्थता आयोजन समिति हेतु योजना

1. एक 'न्यायालय उपाबद्ध मध्यस्थता आयोजन समिति का गठन करना होगा जिसमें एक वरिष्ठतम न्यायिक अधिकारी तथा 10 प्रशिक्षित अभिभाषक मध्यस्थ हों। यदि पर्याप्त संख्या में अभिभाषक प्रशिक्षित मध्यस्थ उपलब्ध ना हो तो ऐसे अभिभाषक – मध्यस्थों पर विचार किया जाए जिनका 15 वर्षों का स्थायी विधि व्यवसाय हो।
2. उस स्थान के वरिष्ठतम न्यायिक अधिकारी आयोजन समिति के अध्यक्ष होंगे।
3. स्थानीय अधिवक्ता संघ के अध्यक्ष तथा प्रशिक्षित मध्यस्थों के परामर्श से वरिष्ठतम न्यायिक अधिकारी प्रत्येक मध्यस्थता केन्द्र में एक आयोजन समिति का गठन करेगा।
4. जहाँ तक संभव हो समिति के सदस्यों में 50 प्रतिशत महिला सदस्य होंगी।
5. संबंधित समिति के क्षेत्राधिकार में मध्यस्थता गतिविधियों के प्रभावी तथा दक्षतापूर्ण निर्वहन हेतु आयोजन समिति न्यायालय उपाबद्ध मध्यस्थता निगरानी समिति की सहायता करेगी।
6. प्रत्येक आयोजन समिति के सदस्य किसी न्यायालय विशेष की मध्यस्थता गतिविधियों तथा मध्यस्थता हेतु निर्देशित प्रकरणों की प्रगति की निगरानी करेगी।
7. जिला न्यायाधीश आयोजन समिति के सदस्यों को ऐसे न्यायालय आवंटित करेगा जिनकी उन्हे निगरानी करनी हैं।
8. आयोजन समिति किसी न्यायालय विशेष में लंबित मामलों की जाँच करेगी तथा ऐसे मामलों की श्रेणियाँ चिन्हित करेगी जो कि निर्देशों के लिए उपयुक्त हैं तथा संबंधित मध्यस्थता निगरानी समिति को उसका प्रतिवेदन देगी।
9. आयोजन समिति मध्यस्थता निगरानी समिति की बैठक से आठ दिवस पूर्व बैठक करेगी तथा मध्यस्थता गतिविधियों से संबंधित न्यायालयवार प्रतिवेदन संबंधित मध्यस्थता केन्द्र को प्रस्तुत करेगी।
10. समिति अपनी मासिक बैठकों के संचालन हेतु मध्यस्थता केन्द्र का उपयोग संबंधित मध्यस्थता केन्द्र के समन्वयक की अनुमति से कर सकती हैं।
11. समिति को ऐसे अन्य कार्यों का निष्पादन करना चाहिए जो मध्यस्थता केन्द्र के सुचारु प्रशासन हेतु संबंधित मध्यस्थता निगरानी समिति द्वारा सौंपे जाए।

**अगर कहीं शांति नहीं है तो, इसकी वजह ये है कि हम भूल चुके हैं कि हम एक दूसरे के हैं
– मदर टेरेसा**

SELECTING ADVOCATES FOR MEDIATORS TRAINING SCHEMES

1. In High Court, Hon'ble Main Mediation Monitoring committee shall select the Advocates who are desirous to undergo Mediator Training.
2. In District, the “Mediators' Scrutiny Committee” consisting of District & Sessions Judge, President of District Bar Association, *representative of Bar Council of M.P. nominated by Chairman Bar Council, Senior Lady Advocate* & two other members from concerned Bar Association interested in Mediation activities be constituted at each District Mediation Centres.
3. The Principal District Judge shall be the Chairman of the said Committee.
4. As far as possible, 50% of the Committee Members to be female.
5. Applications received from Advocates who are desirous to undergo Mediators' Training shall be placed before the Committee for scrutiny.
6. The Committee should ensure that the names of Advocates who are fulfilling the eligibility criteria to act as Mediator as per rule 5 of Civil Procedure Mediation Rules 2006 be considered.
7. The Committee should call Advocates and ascertain their interest in the subject and explain them the importance and benefits of said training and recommend the name of Advocates only who are willing to undergo for 40 hours Intensive Mediators Training. Moreover, the Advocates who are of high caliber competence and integrity and of good repute in Bar as well in society only be recommended.
8. The Committee while doing scrutiny, should ensure that the services of the Advocates whose names are to be recommended for training be useful for mediation activities/Mediation Centre in future.
9. The Committee should verify, scrutinize and short list the names of trainees for training programme and than, only forward the said list to the *Main* Mediation Monitoring Committee.
10. In case of difference of opinion regarding any name of Advocate, the opinion of District Judge shall be final.
11. After scrutiny, the Committee should forward the names of the Advocates to be considered for Mediators' Training as required by the Main Mediation Monitoring Committee alongwith their note/remarks for recommending the names of Advocate under the signature of the Chairman of Mediators' Scrutiny Committee.

मध्यस्थ प्रशिक्षण योजनाओं हेतु अधिवक्ताओं का चयन

1. उच्च न्यायालय में, माननीय मुख्य मध्यस्थता निगरानी समिति ऐसे अधिवक्ताओं का चयन करेगी जो मध्यस्थता प्रशिक्षण प्राप्त करने हेतु इच्छुक हैं।
2. जिले में, जिला एवं सत्र न्यायाधीश, जिला अधिवक्ता संघ के अध्यक्ष, अधिवक्ता संघ के अध्यक्ष द्वारा नाम निर्दिष्ट मध्यप्रदेश अधिवक्ता संघ के प्रतिनिधि, वरिष्ठ महिला अधिवक्ता तथा मध्यस्थता गतिविधियों में हितबद्ध संबंधित अधिवक्ता संघ के दो अन्य सदस्यों से मिलकर बनी “मध्यस्थ जाँच समिति” प्रत्येक जिला मध्यस्थता केन्द्र पर गठित की जाएगी।
3. प्रधान जिला न्यायाधीश उक्त समिति का अध्यक्ष होगा।
4. यथासंभव, समिति के 50 प्रतिशत सदस्य महिलाएं होगी।
5. मध्यस्थता प्रशिक्षण प्राप्त करने के इच्छुक अधिवक्ताओं से प्राप्त आवेदन पत्रों को जाँच समिति के समक्ष रखा जाएगा।
6. समिति यह सुनिश्चित करेगी कि ऐसे अधिवक्ताओं जो कि सिविल प्रक्रिया मध्यस्थता नियम 2006 के नियम 5 के अनुसार मध्यस्थ के रूप में कार्य करने हेतु योग्यता मापदण्डों को पूर्ण करते हैं के नामों पर विचार किया जाये।
7. समिति अधिवक्ताओं को बुलाएगी, इस विषय पर उनकी रुचि होना सुनिश्चित करेगी तथा उन्हें प्रशिक्षण का महत्व व लाभों को समझाएगी और केवल उन्हीं अधिवक्ताओं के नामों की अनुशंसा करेगी जो कि 40 घण्टें के गहन मध्यस्थ प्रशिक्षण से गुजरने के इच्छुक हैं। इसके सिवाय, केवल वे ही अधिवक्ता अनुशंसित किए जाएंगे जो कि उच्च दक्षता, सत्यनिष्ठता तथा संघ एवं समाज में अच्छी प्रतिष्ठा रखते हैं।
8. जाँच करते समय समिति यह सुनिश्चित करेगी कि ऐसे अधिवक्ताओं की सेवाएं जिनका नाम प्रशिक्षण हेतु सुनिश्चित किया जा रहा है, वे भविष्य में मध्यस्थता गतिविधियों/मध्यस्थ केन्द्र हेतु उपयोगी होंगे।
9. समिति, प्रशिक्षण कार्यक्रम हेतु प्रशिक्षणार्थियों के नामों का सत्यापन, जाँच तथा छंटनी करेगी और केवल तभी उक्त सूची को मुख्य मध्यस्थता निगरानी समिति को अग्रेषित करेगी।
10. किसी अधिवक्ता के नाम पर मतभेद की स्थिति में, जिला न्यायाधीश का मत अंतिम होगा।
11. जाँच के पश्चात्, समिति मुख्य मध्यस्थता निगरानी समिति द्वारा चाहे गए रूप में मध्यस्थ प्रशिक्षण हेतु अनुशंसित अधिवक्ताओं के नामों को अपनी टिप्पणियों के साथ मध्यस्थता जाँच समिति के अध्यक्ष के हस्ताक्षर के अधीन अग्रेषित करेगी।

SCHEME FOR 'MEDIATION JUDGE'

The Hon'ble The Chief Justice, High Court of Madhya Pradesh, has been pleased to formulate a 'Scheme of Judge Mediation for Tehsil and District Courts levels which shall function on the following guidelines: -

- (i) To begin with at every Mediation Centre, at least one working Judicial Officer shall be posted who is a trained Mediation Judge (out of the available Judges in the District who have already undergone the 40 hours Intensive Training Programme).
- (ii) The said Judicial Officer be designated/known as 'Mediation Judge'.
- (iii) The Judges working in the concerned District may refer the matters for mediation to such Mediation Judge.
- (iv) The Mediation Judge should conduct mediation sessions of the referred matters for mediation as Mediator on every court working Saturday. On such working Saturdays, the Mediation Judge must give preference to the mediation work than the regular judicial work.
- (v) In case, if there are insufficient number of cases for mediation work to remain engaged for the whole working Saturday, he should devote his remaining working hours for regular judicial work.
- (vi) If the Mediation Judge is posted at Tehsil place, and if his services for mediation work are required on any court working Saturday at the District places, in such event, the Principal District Judge may pass orders in that behalf.
- (vii) If there is sufficient mediation work on working Saturdays at Tehsil place for the Mediation Judge, in that case, he should be allowed to do mediation work at Tehsil Place only.
- (viii) If there are more than one working Judicial officers who are trained Mediation Judges in a District or Tehsil Court, as the case may be, in that case the Principal District Judge may fix the roster of those Mediation Judges to do mediation work on any other court working day "in addition to" the working Saturdays keeping in mind the volume of mediation work of the Court.
- [(ix) The Judicial Officer who has discharged his duties as Mediation Judge, will be given weightage of one day for the disposal purpose for each day, if he is required to work as Mediation Judge for the whole day.
- (ix-a) The Mediation Judge will get disposal norms of 1.5 Unit for failed mediation and 3 Unit for successful mediation work on case to case basis.
- (x) It is clarified that only because the Mediation Judge is available in a District or Tehsil place, it does not mean that every matter for mediation should be referred to the

“मध्यस्थता न्यायाधीश” के लिये योजना

माननीय मुख्य न्यायाधीश, म.प्र. उच्च न्यायालय के आदेशानुसार तहसील एवं जिला न्यायालयों के स्तर पर न्यायाधीश मध्यस्थता की योजना प्रतिपादित की गई है, जो कि निम्न दिशा-निर्देशों के अंतर्गत कार्यान्वित की जावेगी:-

- (i) प्रत्येक मध्यस्थता केन्द्र के प्रारंभ होने पर कम से कम एक कार्यरत न्यायिक अधिकारी, जोकि प्रशिक्षित मध्यस्थता न्यायाधीश हो (जिले में उपलब्ध न्यायाधीशों में से जो कि पूर्व में 40 घण्टों के सघन प्रशिक्षण कार्यक्रम से गुजर चुके हों), नियुक्त किया जायेगा।
- (ii) उपरोक्त न्यायिक अधिकारी “मध्यस्थता न्यायाधीश” के रूप में पदाविहित/जाने जायेंगे।
- (iii) संबंधित जिले में कार्यरत न्यायाधीश मध्यस्थता के लिये ऐसे मामले मध्यस्थता न्यायाधीश को निर्देशित कर सकेंगे।
- (iv) प्रत्येक न्यायिक कार्यालयीन शनिवार को मध्यस्थता के लिये निर्देशित मामलों में मध्यस्थता न्यायाधीश द्वारा मध्यस्थ के रूप में मध्यस्थता सत्रों का संचालन किया जाना चाहिये। ऐसे कार्यालयीन शनिवारों को मध्यस्थता न्यायाधीश द्वारा मध्यस्थता कार्य को अन्य नियमित न्यायिक कार्यों की तुलना में प्राथमिकता देनी चाहिये।
- (v) उस दशा में, जबकि मध्यस्थता कार्य के लिये प्रकरणों की संख्या सम्पूर्ण कार्यालयीन शनिवार में व्यस्त रहने के लिये अपर्याप्त हो तब उसके द्वारा शेष कार्यालयीन घंटे नियमित न्यायिक कार्यों को करने में उपयोजित किये जायेंगे।
- (vi) यदि मध्यस्थता न्यायाधीश को तहसील में नियुक्त किया जाता है और यदि मध्यस्थता कार्य के लिये उसकी सेवाओं की आवश्यकता किसी जिले में पड़ती है तो उस दशा में प्रधान जिला न्यायाधीश इस संबंध में आदेश पारित कर सकेगा।
- (vii) यदि कार्यालयीन शनिवार को तहसील में मध्यस्थता न्यायाधीश के लिये पर्याप्त मध्यस्थता कार्य हो, उस दशा में उसे केवल तहसील में मध्यस्थता कार्य करने के लिये अनुमित किया जाना चाहिए।
- (viii) यदि किसी जिला या तहसील न्यायालय में, जैसी भी स्थिति हो, एक से अधिक कार्यरत न्यायिक अधिकारी हो, जो कि प्रशिक्षित मध्यस्थता न्यायाधीश हो, उस स्थिति में प्रधान जिला न्यायाधीश न्यायालय के मध्यस्थता कार्य की मात्रा को ध्यान में रखते हुये कार्यालयीन शनिवार “के अतिरिक्त” किसी अन्य न्यायिक कार्यालयीन दिवस पर मध्यस्थता न्यायाधीश द्वारा मध्यस्थता कार्य करने के लिए रोस्टर बना सकेगा।
- (ix) वे न्यायिक अधिकारी जिन्होंने अपने कर्तव्यों का निर्वहन मध्यस्थता न्यायाधीश के रूप में किया हो, उन्हें प्रत्येक दिन के लिये निराकरण के उद्देश्य के लिये एक दिन का लाभ प्रदान किया जायेगा, यदि मध्यस्थता कार्य के लिये उसकी आवश्यकता संपूर्ण दिवस रही हो।
- (ix-a) मध्यस्थता न्यायाधीश प्रकरणों के आधार पर असफल मध्यस्थता के लिये 1.5 इकाई एवं सफल मध्यस्थता कार्य के लिये 3 इकाई निराकरण मानदंड प्राप्त करेगा।
- (x) यह स्पष्ट किया जाता है कि मध्यस्थता का प्रत्येक मामला मध्यस्थता न्यायाधीश को केवल इस कारण से निर्देशित नहीं होना चाहिए क्योंकि मध्यस्थता न्यायाधीश जिले या तहसील में उपलब्ध है। यदि

Mediation Judge. The Referral Judges are free to refer the matters for mediation to the empanelled Advocate or other mediators, if the parties so desire and are willing to bear the mediation expenses. In other words, if the parties are unwilling to appoint their own mediator or empanelled mediator on payment basis, the Referral Judges may refer such cases to the Mediation Judge (s) of the District.

The Co-ordinator must ensure that as far as possible not more than 15 matters are assigned to any one Mediator at a given point of time. Further, as far as possible, the mediation work be distributed amongst the Mediators in the concerned District or Tehsil equally.

- (xi) The Mediation Judge should not hear the matters, which are assigned to his Court, in which he has acted as a Mediation Judge. Besides, whenever he wants to refer the matter pending in his Court for mediation, he should refer the matter for mediation to any other empanelled Mediator/ Mediation Judge.
- (xii) The Mediation Judge should not accept any kind of fees/consideration from the parties for mediation work.
- (xiii) In District or Tehsil place where no Mediation Judge is available, the Referral Judge should refer the mediation work to the empanelled mediators.
- (xiv) The record of day to day working in respect of matters received including the nature of case for Mediation, matters taken up for mediation, time spent on each matter should be maintained.
- (xv) The Mediation Judge should forward the detail monthly report along with statistical data to the Co-ordinator, District Mediation Monitoring Committee, who in turn will ensure that the consolidated statement is forward to the Main Mediation Centre, High Court of M.P and concerned High Court Mediation Monitoring sub Committee.



पक्षकार ऐसी इच्छा जाहिर करते हैं और मध्यस्थता खर्चों को वहन करने के लिये सहमत हैं तो निर्देशिती न्यायाधीशगण मामले को मध्यस्थता के लिये सूचीबद्ध अधिवक्ता या अन्य मध्यस्थ को निर्देशित करने को स्वतंत्र हैं। अन्य शब्दों में, यदि पक्षकार स्वयं का मध्यस्थ या सूचीबद्ध मध्यस्थ को भुगतान आधार पर नियुक्त करने के अनिच्छुक हो, तो निर्देशिती न्यायाधीशगण ऐसे मामलों को जिले के मध्यस्थता न्यायाधीश (न्यायाधीशों) को निर्देशित कर सकेंगे।

समन्वयक यह सुनिश्चित करेगा कि किसी मध्यस्थ को किसी दिये गये समय पर जहां तक संभव हो 15 मामलों से अधिक मामले समनुदेशित नहीं किये जाने चाहिए। इसके अतिरिक्त, जहां तक संभव हो मध्यस्थता कार्य संबंधित जिले या तहसील के मध्यस्थों के बीच समान रूप से वितरित किये जायें।

- (xi) मध्यस्थता न्यायाधीशों द्वारा वे मामले नहीं सुने जाने चाहिए जो कि उसके न्यायालय को समनुदेशित किये गये हैं एवं उनमें से जिन मामलों में उसने मध्यस्थता न्यायाधीश के रूप में कार्य किया हो। इसके अतिरिक्त, जब भी वह किसी मामले को जो उसके न्यायालय में मध्यस्थता के लिये लंबित हो, निर्देशित करना चाहता हो तब उसे वह मामला मध्यस्थता के लिये किसी अन्य सूचीबद्ध मध्यस्थ/मध्यस्थता न्यायाधीश को निर्देशित करना चाहिए।
- (xii) मध्यस्थता न्यायाधीश द्वारा पक्षकारों से किसी भी प्रकार का शुल्क/प्रतिफल मध्यस्थता कार्य के लिये स्वीकार नहीं किया जाना चाहिए।
- (xiii) जिला या तहसील स्थान जहां पर मध्यस्थता न्यायाधीश उपलब्ध नहीं है, उन स्थानों पर निर्देशित न्यायाधीश द्वारा मध्यस्थता कार्य को सूचीबद्ध मध्यस्थों को निर्देशित किया जाना चाहिये।
- (xiv) मध्यस्थता के लिये प्राप्त मामलों में मामलों को प्रकृति सहित दिन-प्रतिदिन की कार्यवाहियां, मध्यस्थता के लिये चुने गये मामले एवं प्रत्येक मामले में दिया गया समय, का अभिलेख रखा जाना चाहिये।
- (xv) मध्यस्थता न्यायाधीश द्वारा विस्तृत मासिक प्रतिवेदन सांख्यिकीय आकड़ों के साथ समन्वयक, जिला मध्यस्थता निगरानी समिति को अग्रेषित की जाना चाहिए, जो कि क्रमशः यह सुनिश्चित करेगा कि समेकित विवरण मुख्य मध्यस्थता केन्द्र, मध्य प्रदेश उच्च न्यायालय और संबंधित उच्च न्यायालय मध्यस्थता निगरानी उपसमिति को अग्रेषित किया जाये।



हिंसा से शांति नहीं प्राप्त की जा सकती है, यह सिर्फ समझ के माध्यम से मिल सकती है - राल्फ वाल्डो एमर्सन

Scheme for Felicitation of Judge/Advocate Mediators and Referral Judges

1. The object of Scheme for Felicitation is to appreciate Judges and Advocates who have performed best in mediation activities during the year. Also to encourage the other Judicial Officers and Advocates to perform well in mediation.
2. The Main Mediation Monitoring Committee, High Court of M.P. at Jabalpur to analyze the annual performance of Judicial Officers and Mediators.
3. The Judicial Officers who makes maximum references in a year and whose maximum referral cases end up in settlements be felicitated in the Conferences.
4. The trained Judge Mediator who settles maximum number of cases out of cases referred to him in a year be felicitated in the Conferences.
5. The trained Advocate Mediator who settles maximum number of cases referred to him be felicitated in the Conferences.



Attitude is a little thing that makes a big difference
— Martha Washington

न्यायाधीशों / अधिवक्ता मध्यस्थों तथा रेफरल न्यायाधीशों के अभिनन्दन हेतु योजना

1. अभिनन्दन की योजना का उद्देश्य ऐसे न्यायाधीशों व अधिवक्ताओं, जिन्होंने वर्ष के दौरान मध्यस्थता गतिविधियों में सर्वोत्तम प्रदर्शन किया है, की सराहना करना है साथ ही, अन्य न्यायिक अधिकारियों एवं अधिवक्ताओं को मध्यस्थता के क्षेत्र में अच्छे प्रदर्शन हेतु प्रोत्साहित करना है।
2. मुख्य मध्यस्थता निगरानी समिति, म.प्र. उच्च न्यायालय जबलपुर को न्यायिक अधिकारियों तथा मध्यस्थों के वार्षिक प्रदर्शन का विश्लेषण करना है।
3. ऐसे न्यायिक अधिकारी, जिन्होंने एक वर्ष में अधिकतम निर्देश किए हैं तथा जिनके अधिकतम निर्दिष्ट प्रकरण समझौते में परिणामित हुए हैं, का सम्मेलनों में अभिनन्दन होना चाहिए।
4. ऐसा प्रशिक्षित न्यायाधीश मध्यस्थ, जिसने उसे एक वर्ष में निर्दिष्ट प्रकरणों में से अधिकतम में समझौता किया है, का सम्मेलनों में अभिनन्दन होना चाहिए।
5. ऐसा प्रशिक्षित अधिवक्ता मध्यस्थ, जिसने उसे निर्दिष्ट प्रकरणों में से अधिकांश में समझौता करवाया है, का सम्मेलनों में अभिनन्दन होना चाहिए।



मध्यस्थता के लिए बढ़ाओ हाथ, पाओ सुख-शांति का साथ.

Guidelines for organization of Mediation Awareness Programme

Following points should be considered while organizing Mediation Awareness Programme for advocates, litigants and Government officials, etc.

1. At every Tehsil place there should be atleast three mediation awareness programmes in a year on the three dates mentioned in the planner.
2. Lawyers and litigants whose matters are fixed until next Awareness Programme be invited as participants for Awareness Programme.
3. In fresh matters, the information regarding the date of Mediation Awareness Programme be mentioned in the notice/summons in addition to the returnable date before the Court.
4. In pending matters, the Staff of the Court should inform the parties about the date, time and venue of the Mediation Awareness Programmes.
5. Mediation awareness programme should be organized in co-ordination with Local Bar Association.
6. As far as possible, Mediation Awareness Programme be held within the Court Premises.
7. Trained Mediator (either Judicial Officer or Advocate available in District) will be the Resource persons for Mediation Awareness programme.
8. In case, sufficient trained mediators are not available in District then trained mediators from the neighboring District may be invited as Resource Person.
9. It should be borne in mind that expenses for per mediation awareness programme in any case should not exceed Rs.3000/- for the programme at Tehsil level and it should not exceed Rs.5000/- at District Level.(or limit prescribed by Main Mediation Monitoring Committee time to time in this regard.)
10. Requisite funds will be provided through District legal services Authorities to meet the expenses of mediation awareness programmes.
11. Mediation Awareness programmes should be organized and conducted as per the Module given in this book.
12. It is made clear that on the day of organizing awareness programme, if it is working Friday in that case, last court working hour of the day can be utilized for awareness programme and if it is working Saturday, in that case, second session of working hours can be utilize for awareness programme.
13. Wide publicity to Mediation Awareness Programmes be given. For the purpose of such publicity, the Co-ordinator so far as possible display the Notice regarding Awareness Programme at the Notice Board of the Court, Notice Board of Bar Association, Local Police Station, Tehsildar Office. The co-ordinator may avail facility of Local Cable TV network/Press Note in local newspaper for publicity of the Mediation Awareness Programme.

मध्यस्थता जागरूकता कार्यक्रम के आयोजन हेतु दिशा-निर्देश

अधिवक्ताओं, वादियों और शासकीय कर्मचारियों आदि हेतु मध्यस्थता जागरूकता कार्यक्रम का आयोजन करते समय निम्नलिखित बिन्दुओं पर विचार किया जाना चाहिए—

1. प्रत्येक तहसील में एक वर्ष में कम से कम तीन मध्यस्थता जागरूकता कार्यक्रम कार्ययोजना में उल्लेखित तीन दिनांकों पर होने चाहिए।
2. ऐसे अभिभाषक व वादार्थी जिनके मामले अगले जागरूकता कार्यक्रम हेतु नियत किये गये हैं, उन्हें जागरूकता कार्यक्रम में प्रतिभागियों के रूप में आमंत्रित किया जाये।
3. नवीन मामलों में, न्यायालय के समक्ष वापसी दिनांक के अतिरिक्त नोटिस/सम्मनों में मध्यस्थता जागरूकता कार्यक्रम की दिनांक के संबंध में सूचना उल्लेखित की जाये।
4. लंबित मामलों में, न्यायालय के कर्मचारीवृंद पक्षकारों को मध्यस्थता जागरूकता कार्यक्रम के दिनांक, समय एवं स्थान के बारे में सूचित करेंगे।
5. मध्यस्थता जागरूकता कार्यक्रम स्थानीय अधिवक्ता संघ के सहयोग से आयोजित किये जाये।
6. यथासंभव, मध्यस्थता जागरूकता कार्यक्रम न्यायालय परिसर के अंदर ही आयोजित किये जाये।
7. प्रशिक्षित मध्यस्थ (या तो न्यायिक अधिकारी या जिले में उपलब्ध अधिवक्ता) मध्यस्थता जागरूकता कार्यक्रम संचालित करने वाले व्यक्ति होंगे।
8. यदि, जिले में पर्याप्त प्रशिक्षित मध्यस्थ उपलब्ध न हो तो पड़ोसी जिले से प्रशिक्षित मध्यस्थ कार्यक्रम संचालित करने वाले व्यक्ति के रूप में आमंत्रित किये जा सकेंगे।
9. इस बात का ध्यान रखा जाना चाहिए कि प्रति मध्यस्थता जागरूकता कार्यक्रम का व्यय किसी भी स्थिति में तहसील स्तरीय कार्यक्रम हेतु रुपये 3000/- से अधिक नहीं हो तथा जिला स्तर पर रुपये 5000/- से अधिक नहीं हो। (अथवा इस संबंध में समय-समय पर मुख्य निगरानी समिति द्वारा विहित सीमा तक)।
10. मध्यस्थता जागरूकता कार्यक्रमों के व्ययों की पूर्ति हेतु जिला विधिक सेवा प्राधिकरण के माध्यम से आवश्यक निधियां उपलब्ध कराई जायेगी।
11. मध्यस्थता जागरूकता कार्यक्रम इस पुस्तक में दिये गये मापदंड के अनुसार आयोजित व संचालित किये जाने चाहिए।
12. यह स्पष्ट किया जाता है कि जागरूकता कार्यक्रम के आयोजन का दिन यदि कार्यकारी शुक्रवार हो तो उस स्थिति में, उस दिन के अंतिम कार्यशील घंटों का उपयोग जागरूकता कार्यक्रम हेतु किया जा सकता है तथा यदि यह कार्यकारी शनिवार है तो उस स्थिति में कामकाजी घंटों के दूसरे सत्र का उपयोग जागरूकता कार्यक्रम हेतु किया जा सकता है।
13. मध्यस्थता जागरूकता कार्यक्रमों का व्यापक प्रचार किया जाये। ऐसे प्रचार हेतु, समन्वयक जागरूकता कार्यक्रम की सूचना यथासंभव न्यायालय, अधिवक्ता संघ, स्थानीय थाना एवं तहसीलदार कार्यालय के सूचना पटलों पर प्रदर्शित करेगा। समन्वयक मध्यस्थता जागरूकता कार्यक्रम के प्रचार हेतु स्थानीय केबल टी. वी. नेटवर्क/स्थानीय समाचार पत्र में प्रेस विज्ञप्ति की सुविधा का उपयोग कर सकता है।

Guidelines for “Mediators' Training Scheme” for Advocates

1. Primary Training

Primary Training for three days be given to 10 to 15 Advocates from different Districts during weekend i.e. on Friday, Saturday and Sunday for atleast six to seven hours per day.

2. Advance Training

There shall be Advance Mediation Training for advocates who completed primary training. On completion of primary training, said Advocate Mediators should get associated with the trained mediators in the mediation process in minimum 10 cases. They shall be then called for Advance Training.

The period of Advance training should be for three days during weekends i.e. on Friday, Saturday and Sunday for atleast six to seven hours per day.

3. Refresher's Training

There shall be Refresher Training for advocates who have completed Advance Training. On completion of Advance Training and on having mediated atleast ten cases as a Mediator, the Refresher's Training be given to said Advocate Mediators.

The Refresher Training should be atleast for a period of two days.

4. Places of Training

The Mediators' Training should be organized at three places in M.P. on every weekend on the above days only. It may be either Primary, Advance or Refreshers Training. This schedule of training be organized region-wise.

5. The aforesaid training programmes should be organized by the District Judge and Co-ordinator of the concerned District Mediation Monitoring Committee in the District where the training is to be organized. Said schedule of training shall be conducted under the supervision of Main Mediation Monitoring Committee, High Court, Jabalpur (or concerned High Court Mediation Monitoring sub committee).

6. The aforesaid Training is to be organized preferably in District Court Premises/Hall. Otherwise, the said training should be organized in a suitable Hall of Government organization.

7. The above training is to be conducted by the Mediators nominated by the Mediation Monitoring Committee, Main Mediation Centre, High Court, of M.P, Jabalpur.

8. The participants in the above training programme shall be the Advocates from different Districts and the number of participants per batch be limited to 20/25 Advocates.

9. The District Judge in consultation with the President of concerned District Bar Association shall forward the names of the proposed participants for the aforesaid Mediators' Training Schedule to the Main Mediation Monitoring Committee. While proposing the names of the Advocates, it is necessary to consider that only those who are interested in mediation activities and willing to act as a Mediator shall only, be

अधिवक्ताओं के लिए “मध्यस्थ प्रशिक्षण योजना” हेतु दिशा-निर्देश

1. प्राथमिक प्रशिक्षण

विभिन्न जिलों के 10 से 15 अधिवक्ताओं को तीन दिन का प्राथमिक प्रशिक्षण सप्ताहांत अर्थात् शुक्रवार, शनिवार व रविवार के दौरान प्रतिदिन कम से कम 6 से 7 घण्टे दिया जाए।

2. उच्च प्रशिक्षण

प्राथमिक प्रशिक्षण पूर्ण करने वाले अधिवक्ताओं हेतु उच्च प्रशिक्षण होगा। प्राथमिक प्रशिक्षण की समाप्ति पर, उक्त मध्यस्थ अधिवक्ता न्यूनतम 10 प्रकरणों की मध्यस्थता प्रक्रिया में प्रशिक्षित मध्यस्थों के साथ सहबद्ध किए जाएं तब उन्हें उच्च प्रशिक्षण हेतु बुलाया जाएगा।

उच्च प्रशिक्षण की समय अवधि सप्ताहांत के दौरान तीन दिन अर्थात् शुक्रवार, शनिवार व रविवार होनी चाहिए जो प्रतिदिन कम से कम 6 से 7 घण्टे होनी चाहिए।

3. नवीकरण प्रशिक्षण

उच्च प्रशिक्षण पूर्ण करने वाले अधिवक्ताओं हेतु नवीकरण प्रशिक्षण होगा। उच्च प्रशिक्षण की समाप्ति पर तथा कम से कम 10 प्रकरणों में मध्यस्थता करने के उपरांत, उक्त अधिवक्ता मध्यस्थों को नवीकरण प्रशिक्षण दिया जाएगा।

नवीकरण प्रशिक्षण कम से कम 2 दिन की अवधि हेतु होना चाहिए।

4. प्रशिक्षण के स्थान

मध्यस्थ प्रशिक्षण म0प्र0 के तीन स्थानों पर प्रत्येक सप्ताहांत के केवल उपर्युक्त दिवसों पर होगा। यह प्राथमिक, उच्च या नवीकरण प्रशिक्षण हो सकता है। यह प्रशिक्षण कार्यक्रम क्षेत्रवार आयोजित होना चाहिए।

5. उपरोक्त प्रशिक्षण कार्यक्रम जिला न्यायाधीश एवं संबंधित जिला मध्यस्थता निगरानी समिति के समन्वयक द्वारा उस जिले में आयोजित किया जाना चाहिये, जिस जिले में प्रशिक्षण आयोजित किया जाना है। उपरोक्त प्रशिक्षण का कार्यक्रम मुख्य मध्यस्थता निगरानी समिति, उच्च न्यायालय, जबलपुर (या संबंधित उच्च न्यायालय मध्यस्थता निगरानी उपसमिति) के पर्यवेक्षण के अधीन संचालित किया जायेगा।

6. उपरोक्त प्रशिक्षण अधिमानतः जिला न्यायालय परिसर/सभागृह में आयोजित किया जाना है। अन्यथा उपरोक्त प्रशिक्षण उपयुक्त शासकीय संस्था में आयोजित किया जाना चाहिये।

7. म.प्र. उच्च न्यायालय, जबलपुर के मुख्य मध्यस्थता केन्द्र की मध्यस्थता निगरानी समिति द्वारा नाम निर्देशित मध्यस्थों द्वारा उपरोक्त प्रशिक्षण संचालित किया जाना है।

8. विभिन्न जिलों के अधिवक्तागण उक्त प्रशिक्षण कार्यक्रम में प्रतिभागी होंगे और प्रतिभागियों की संख्या हर समूह में 20 / 25 अधिवक्ताओं तक सीमित होगी।

9. जिला न्यायाधीश संबंधित जिला अधिवक्ता संघ के अध्यक्ष से परामर्श कर प्रस्तावित प्रतिभागियों के नाम उपरोक्त मध्यस्थ प्रशिक्षण कार्यक्रम के लिये मुख्य मध्यस्थता निगरानी समिति को अग्रेषित करेगा। अधिवक्ताओं के नाम प्रस्तावित करते समय इस बात का ध्यान रखना आवश्यक है कि उन्हीं व्यक्तियों का नाम निर्देशित किया जायेगा जिन्हें मध्यस्थता गतिविधियों में रुचि हो एवं जो मध्यस्थ के रूप में

nominated. Main Mediation Monitoring Committee will finalize the proposed names.

10. The honorarium payable to the Trainers and expenses for stay, travel, food of the Trainers and Trainees will be borne by the Main Mediation Monitoring Committee from the funds allocated under 13th Finance Commission.
11. The stay arrangements of the trainers/participants shall be preferably made in Government Guest House. In case of non-availability of Government Guest House, then accommodation be made in Hotels having reasonable charges.
12. All expenses for organizing the training programmes will be borne by the Main Mediation Monitoring Committee from the funds allocated under various Finance Commissions which will be provided by the M.P. State Legal Services Authority to the concerned DLSA from the grants received under.

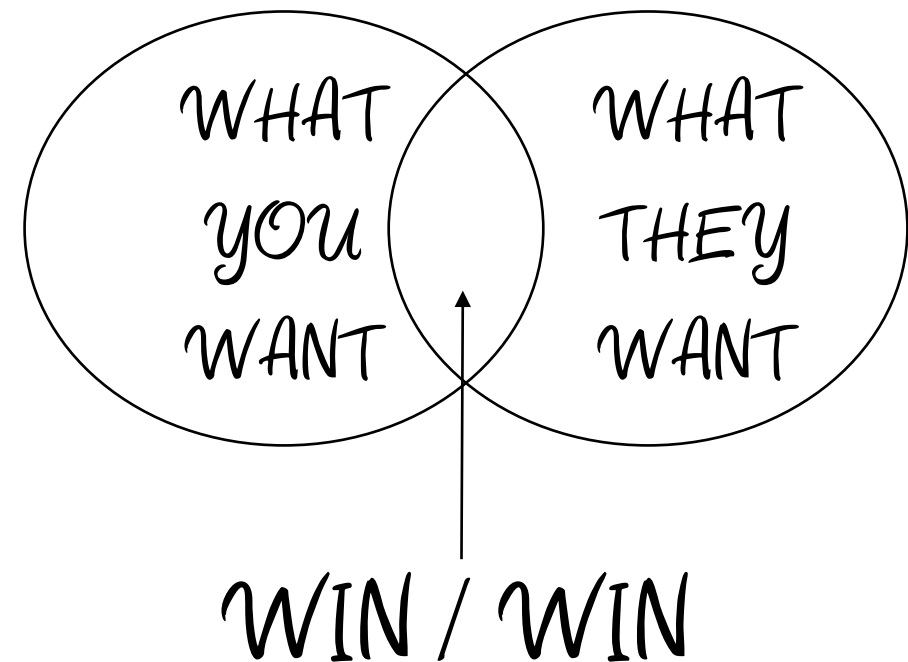


*Compromise, if not the spice of life, is its solidity.
It is what makes nations great and marriages happy.*

-Ralph Waldo Emerson

कार्य करने को इच्छुक हों। मुख्य मध्यस्थता निगरानी समिति प्रस्तावित नामों को अंतिम रूप देगी।

10. प्रशिक्षक को देय मानदेय एवं प्रशिक्षक एवं प्रशिक्षु को ठहरने, यात्रा एवं भोजन के खर्चे मुख्य मध्यस्थता निगरानी समिति द्वारा 13 वें वित्त आयोग के अर्न्तगत आवंटित निधि से वहन किये जायेंगे।
11. प्रशिक्षकों/प्रतिभागियों के ठहरने की व्यवस्था अधिमानतः शासकीय अतिथिगृह में की जायेगी। शासकीय अतिथिगृह की अनुपलब्धता की दशा में ठहरने की व्यवस्था युक्तियुक्त प्रभार वाले होटलों में की जाये।
12. प्रशिक्षण कार्यक्रम आयोजित करने के लिये समस्त व्यय मुख्य मध्यस्थता निगरानी समिति द्वारा विभिन्न वित्त आयोगों के अर्न्तगत आवंटित निधि से वहन किये जायेंगे, जो कि म.प्र. राज्य विधिक सेवा प्राधिकरण द्वारा 13 वें वित्त आयोग के अर्न्तगत प्राप्त अनुदान से संबंधित जिला विधिक सेवा प्राधिकरण को उपलब्ध कराया जायेगा।



सिर्फ शांति के बारे में बात करना पर्याप्त नहीं है। उसमें यकीन भी करना होगा और सिर्फ यकीन करना पर्याप्त नहीं है उसमें काम भी करना होगा।
-एलेनोर रूजवेल्ट

SCHEME FOR IDENTIFICATION OF CASES FOR MEDIATION REFERENCE

- 1 Initially Panel of **15** Mediators amongst the empanelled Mediators of the High Court be constituted to identify cases which are fit for Mediation reference having some element of settlement.
- 2 The above said panel be finalised by the Main Mediation Monitoring Committee on recommendation made by High court Mediation Monitoring Sub Committee.
- 3 The work of identifying suitable cases by the nominated Mediator must be done in the *Board Departments/Sections* at the place where sitting arrangements are made available by the concerned *Departments/Sections*.
- 4 The Registrar (Judicial) to assign not more than 10 cases at a time to the Mediator for examination and shall provide supporting staff working in concerned *Department/section*. That staff should keep cases ready for examination well in advance.
- 5 Each Mediator should identify at least 10 cases per month from pending/admitted matters in the High Court, which are not likely to reach for hearing at least for one year.
- 6 On examination of cases Mediator should submit the list of identified cases to the Co-ordinator High Court Mediation Centre.
- 7 On receipt of list of identified cases, the Co-ordinator shall call the parties to the office and verify if the parties are willing to for mediation process or not?
- 8 If parties are ready for mediation, the co-ordinator shall ensure that the parties agree on the name of same mediator who has identified the case.
- 9 If parties do not agree for mediation or on the name of mediator, then the Co-ordinator shall place the note before the concerned Court for referral order.
- 10 After referral order, the Co-ordinator shall consider the nature of case, area and specialisation of Mediator and appoint appropriate Mediator in that particular matter. As far as possible, Mediator who has examined the case may be appointed as a Mediator in that matter.
- 11 On appointment of Mediator the Co-ordinator shall issue letters to the concerned parties and their Advocates.
- 12 To have control and smooth functioning of said scheme and also considering paucity of space in Board Department the maximum number of Mediators visiting the Board Department on a day, shall not exceed two.
- 13 The Co-ordinator / Registrar (Judicial) shall prepare a Calendar for each month indicating the dates on which particular Mediators would visit the *Departments/Sections*.

मध्यस्थता निर्देशन हेतु प्रकरणों की पहचान के लिए योजना

1. प्रारंभतः ऐसे प्रकरण जिनमें समझौते के कुछ तत्व मौजूद हैं तथा जो मध्यस्थता निर्देशन हेतु उपयुक्त हैं, को चिन्हित करने हेतु उच्च न्यायालय की सूची में सम्मिलित मध्यस्थों में से 15 मध्यस्थों का एक पैनल गठित किया जाए।
2. उपर्युक्त पैनल को उच्च न्यायालय मध्यस्थता निगरानी उप समिति की अनुशंसा पर मुख्य मध्यस्थता निगरानी समिति द्वारा अंतिम रूप दिया जाए।
3. नामनिर्दिष्ट मध्यस्थ द्वारा उपयुक्त प्रकरण की पहचान का कार्य मंडल/विभाग/अनुभाग के उन स्थानों पर किया जाए जहाँ संबंधित विभाग/अनुभाग द्वारा बैठक व्यवस्थाएं की जाए।
4. रजिस्ट्रार (न्यायिक), मध्यस्थ को जाँच हेतु एक समय में 10 प्रकरणों से अधिक समनुदेशित ना करें तथा संबंधित विभाग/अनुभाग में कार्यरत सहायक कर्मचारीवृंद को उपलब्ध करवाएगा। कर्मचारीगण प्रकरणों को अग्रिम रूप से परीक्षण हेतु तैयार रखें।
5. प्रत्येक मध्यस्थ उच्च न्यायालय में लंबित/स्वीकृत ऐसे मामलों, जिनके कम से कम एक वर्ष तक सुने जाने की संभावना नहीं है, में से कम से कम 10 प्रकरणों की पहचान प्रतिमाह करें।
6. प्रकरणों के परीक्षण पर मध्यस्थ उच्च न्यायालय मध्यस्थता केन्द्र के समन्वयक को चिन्हित प्रकरणों की सूची प्रस्तुत करें।
7. चिन्हित प्रकरणों की सूची की प्राप्ति पर, समन्वयक पक्षकारों को कार्यालय में बुलाएगा तथा यह सत्यापित करेगा कि क्या पक्षकार मध्यस्थता प्रक्रिया हेतु इच्छुक हैं या नहीं?
8. यदि पक्षकार मध्यस्थता हेतु सहमत हैं तो समन्वयक यह सुनिश्चित करेगा कि पक्षकार उस मध्यस्थ के नाम पर सहमत हैं जिसने प्रकरण को चिन्हित किया है।
9. यदि पक्षकार मध्यस्थता या मध्यस्थ के नाम पर सहमत नहीं हैं तो समन्वयक संबंधित न्यायालय के समक्ष निर्देशक आदेश (रेफरल आर्डर) हेतु टिप्पण (नोट) प्रस्तुत करेगा।
10. निर्देश आदेश के पश्चात्, समन्वयक प्रकरण की प्रकृति, विषय तथा मध्यस्थ की विशेषज्ञता पर विचार करेगा और उस मामले में मध्यस्थ नियुक्त करेगा। यथासंभव प्रकरण का परीक्षण करने वाले मध्यस्थ को ही उस मामले में मध्यस्थ नियुक्त किया जा सकता है।
11. मध्यस्थ की नियुक्ति पर, समन्वयक संबंधित पक्षकारों और उनके अधिवक्ताओं को पत्र जारी करेगा।
12. उक्त योजना पर नियंत्रण तथा उसके सुचारु रूप से कार्यान्वयन हेतु एवं मंडल विभाग में स्थान की कमी का ध्यान रखते हुए, मण्डल विभाग में एक दिन में आने वाले मध्यस्थों की संख्या दो से अधिक नहीं होनी चाहिए।
13. समन्वयक/रजिस्ट्रार (न्यायिक) प्रत्येक माह का पंचांग उन दिनांकों को प्रदर्शित करते हुए तैयार करेगा जिन पर कोई विशेष मध्यस्थ विभाग/अनुभाग में दौरा कर सकेगा।

Mediation Clinic Scheme

1. At every District Court Mediation Centre, there should be a Mediation Clinic to cater to the prospective litigants visiting the office of Legal Services Authority for legal assistance.
2. Mediation Clinic should be located in the premises of ADR Centre/DLSA office. The office expenses of the Mediation Clinic will be borne from the funds of Legal Services Authority earmarked for legal awareness and settlement of pre-litigation disputes.
3. The Mediation Clinic shall strictly observe that matters referred by Court for mediation will not be processed in the Mediation Clinic. Those cases must be processed only by the Court Annexed Mediation Centre.
4. The Principal District Judge and Co-ordinator of concerned District Mediation Monitoring Committee shall monitor the work of Mediation Clinic.
5. Principal District Judge should depute one clerk from District Court establishment to look after all the clerical work of Mediation Clinic. The said clerk must work at District Mediation Centre and Mediation Clinic on full time basis.
6. Schedule of visits of Mediator(s) on the panel of District Mediation Centre must be prepared by the Co-ordinator in consultation with the concerned empanelled Mediator who is willing to remain in attendance in the Mediation Clinic during the court working hours to attend to the prospective litigant visiting the Mediation Clinic. The number of Mediators must be commensurate with the average inflow of cases in the Mediation Clinic on a given day. However, at any given point of time, during the working hours of the Mediation Clinic, there must be at least one Mediator in attendance.
7. Records/Registers of Mediation Clinic be maintained separately, in the prescribed format appended hereto.
8. Mediators shall deal with any matters (pre-litigation or pending matters not referred by the Court for mediation) in Mediation Clinic.
9. In case of Court pending matters, if litigants approach Mediation Clinic on their own and the Mediator is of the opinion that the case is fit for mediation, he should advice the party/parties to request the concerned Court to refer their case for mediation. A separate register must be maintained in respect of Court pending matters in Form No.1 appended hereto.
10. In case of pre-litigation matters, the person desirous of taking assistance of the Mediation Clinic must submit information in writing in Form No.2 appended hereto. A separate register of pre-litigation matters must be maintained in Form No.3 appended hereto.
11. On registration of the case under respective category, the Co-ordinator, as far as possible, on the same day, must assign it to the Mediator in attendance and if that is not possible, must record reasons therefor in the register and assign the case to the Mediator in

मध्यस्थता क्लीनिक योजना

1. विधिक सहायता प्राप्त करने के लिए विधिक सेवा प्राधिकरण के कार्यालय में आने वाले भावी वादार्थियों को सहायता प्रदान करने के लिये प्रत्येक जिला न्यायालय मध्यस्थता केन्द्र में एक मध्यस्थता क्लिनिक होना चाहिए।
2. मध्यस्थता क्लीनिक ADR केन्द्र/DLSA कार्यालय के परिसर में स्थापित की जानी चाहिए। मध्यस्थता क्लीनिक के कार्यालयीन व्ययों का वहन विधिक सहायता प्राधिकरण में विधिक जागरूकता तथा वाद पूर्व विवादों के निपटारे हेतु निर्दिष्ट निधियों से किया जायेगा।
3. मध्यस्थता क्लीनिक इसका कड़ाई से पालन करेगी कि मध्यस्थता के लिये न्यायालय द्वारा निर्देशित मामलों पर मध्यस्थता क्लीनिक द्वारा कार्यवाही नहीं की जाएगी। उन मामलों पर कार्यवाही केवल न्यायालय उपाबद्ध मध्यस्थता केन्द्र द्वारा की जावेगी।
4. मध्यस्थता क्लीनिक के कार्यों की निगरानी प्रधान जिला न्यायाधीश तथा संबंधित जिला मध्यस्थता निगरानी समिति के समन्वयक द्वारा की जाएगी।
5. मध्यस्थता क्लिनिक के संपूर्ण लिपिकीय कार्य हेतु प्रधान जिला न्यायाधीश जिला न्यायालय स्थापना से एक लिपिक प्रतिनियुक्त करेगा। उक्त लिपिक जिला मध्यस्थता केन्द्र तथा मध्यस्थता क्लीनिक में पूर्ण कालिक आधार पर कार्य करेगा।
6. ऐसे संबंधित सूचीबद्ध मध्यस्थ जो न्यायालय के कार्य समय के दौरान मध्यस्थता क्लीनिक में आने वाले भावी वादार्थियों को अपनी सेवायें देने के लिए मध्यस्थता क्लिनिक में उपस्थित होने का इच्छुक हो, उसके परामर्श से, समन्वयक, जिला मध्यस्थता केन्द्र के पैनल में शामिल मध्यस्थ के दौरों की सूची तैयार करेगा। मध्यस्थों की संख्या किसी दिवस में मध्यस्थता क्लीनिक में आने वाले प्रकरणों के औसत के अनुरूप होनी चाहिए। तथापि, किसी समय पर, मध्यस्थता क्लीनिक के कार्यसमय के दौरान, कम से कम एक मध्यस्थ उपस्थित होना चाहिए।
7. मध्यस्थता क्लीनिक में अभिलेख/पंजियां इसमें अनुबद्ध विहित प्रारूप में अलग से रखी जाएंगी।
8. मध्यस्थ किन्हीं भी मामलों (न्यायालय द्वारा मध्यस्थता के लिये निर्देशित न किये गये वाद पूर्व अथवा लंबित मामले) पर मध्यस्थता क्लीनिक में विचार करेंगे।
9. न्यायालय में लंबित मामलों में यदि वादार्थी स्वयं मध्यस्थता क्लीनिक पहुंचते हैं तथा मध्यस्थ की यह राय हो कि प्रकरण मध्यस्थता के लिये उपयुक्त है तो वह पक्षकार/पक्षकारों को यह सलाह देगा कि वे संबंधित न्यायालय से अपने मामले को मध्यस्थता के लिये निर्देशित करने का निवेदन करें। न्यायालय में लंबित मामलों के संबंध में इससे अनुबद्ध प्रारूप क्रमांक 1 में एक पृथक पंजी रखी जाएगी।
10. वाद पूर्व मामलों में यदि कोई व्यक्ति मध्यस्थता क्लीनिक से सहायता प्राप्त करने का इच्छुक हो तो वह इससे अनुबद्ध प्रारूप क्रमांक 2 में लिखित में जानकारी अग्रेषित करेगा। वाद पूर्व मामलों के लिये इससे अनुबद्ध प्रारूप क्रमांक 3 में एक पृथक पंजी रखी जायेगी।
11. क्रमिक श्रेणी के अंतर्गत मामला दर्ज होने पर, समन्वयक, जहां तक संभव हो, उसी दिवस में मध्यस्थ को उसकी उपस्थिति में वह मामला सौंपेगा तथा यदि वह संभव न हो तो उसके कारण पंजी में अभिलिखित करेगा तथा आगामी कार्यदिवस पर अथवा पक्षकार की सुविधा के अनुसार किसी अन्य दिवस पर मध्यस्थ को उसकी उपस्थिति में मामला सौंपेगा एवं तिथि, समय और कार्यस्थल नियत

attendance on the following working day or on such other day convenient to the party and fix the date, time and venue and inform the party accordingly. If the request is received through post, the Co-ordinator shall issue notice to the parties not later than three days from the receipt of such request informing the party about the date, time and venue when his meeting with the Mediator in the Mediation Clinic is arranged.

12. On referring pre-litigation matter to the Mediator by the Co-ordinator, Mediator should follow the settled principles of mediation and conduct the mediation process and observe the Code of Conduct for Mediation specified in Mediation Rules, 2006.
 13. On settlement of pre-litigation dispute, settlement be recorded in writing and signatures of the parties concerned be obtained thereon.
 14. Mediator shall then report about settlement to the Co-ordinator and advise the parties to approach the Co-ordinator for further directions.
 15. Copy of settlement be kept at Mediation Clinic.
 16. On receipt of settlement report, Co-ordinator should call the parties and inform them the date on which their matter will be placed before pre-litigation Lok Adalat for recording compromise. The Co-ordinator shall then send the papers to the Secretary, DLSA for keeping the said matter before pre-litigating Lok Adalat on scheduled date.
 17. The Lok Adalat may then record compromise between parties and pass appropriate award contemplated u/s. 21 of Legal Services Authorities Act, 1987 or according to National Legal Services Authority (Lok Adalat) Regulation 2009 by following procedure as per law.
 18. In case of non-settlement of disputes before mediator, mediator should report about failure of Mediation to the Co-ordinator.
 19. Co-ordinator should take endorsement of the same in the register maintained at Mediation clinic.
- [This may be part of declaration in the application to be filled in by the party]**
20. No Mediator shall be held liable for anything done bonafidely or omitted to be done during mediation process.
 21. No Mediator shall be summoned by any party in a court of law to testify in regard to information received by him or action taken by him in respect of drafts or records prepared by him or perused by him during the mediation process.

करेगा तथा तदनुसार पक्षकार को सूचित करेगा। यदि निवेदन डाक द्वारा प्राप्त होता है तो समन्वयक ऐसे निवेदन की प्राप्ति के तीन दिन से अनधिक पक्षकारों को नोटिस जारी करके पक्षकार को मध्यस्थता केन्द्र में मध्यस्थ के साथ उसकी भेंट की जो व्यवस्था की गई है उसके दिनांक, समय तथा कार्यस्थल के बारे में सूचित करेगा।

12. समन्वयक द्वारा मध्यस्थ को वाद पूर्व मामला निर्देशित करने पर, मध्यस्थ मध्यस्थता के स्थापित सिद्धांतों का तथा मध्यस्थता की प्रक्रिया का अनुशरण करना चाहिए तथा मध्यस्थता नियम, 2006 में विनिर्दिष्ट मध्यस्थता की आचार संहिता का पालन करेगा।
13. वाद पूर्व विवादों के समझौते में, समझौता लिखित में अभिलेखित किया जायेगा तथा संबंधित पक्षकारों के हस्ताक्षर उसमें प्राप्त किये जायेंगे।
14. मध्यस्थ इसके पश्चात् समझौते के बारे में समन्वयक को प्रतिवेदन देगा तथा पक्षकारों को सलाह देगा कि वे अतिरिक्त निर्देशों के लिये समन्वयक से संपर्क करें।
15. समझौते की प्रतिलिपि मध्यस्थता क्लिनिक में रखी जाएगी।
16. समझौते का प्रतिवेदन प्राप्त करने पर समन्वयक पक्षकारों को आहूत करेगा तथा उन्हें उस तिथि के बारे में सूचित करेगा जब उनका मामला राजीनामा अभिलेखित करने के लिये वाद पूर्व लोक अदालत के समक्ष प्रस्तुत किया जायेगा। समन्वयक इसके पश्चात् प्रपत्र जिला विधिक सेवा प्राधिकरण के सचिव को उक्त मामला वाद पूर्व लोक अदालत के समक्ष नियत दिनांक को प्रस्तुत करने के लिये प्रेषित करेगा।
17. लोक अदालत फिर पक्षकारों के मध्य राजीनामा अभिलेखित करेगी तथा विधिक सेवा प्राधिकरण अधिनियम 1987 की धारा-21 के अंतर्गत अथवा राष्ट्रीय विधिक सेवा प्राधिकरण (लोक अदालत) विनियम 2009 में वर्णित विधि के अनुसार प्रक्रिया का अनुसरण करते हुये उचित पंचाट पारित करेगी।
18. मध्यस्थ के समक्ष विवादों का समझौता न होने पर, मध्यस्थ द्वारा समन्वयक को मध्यस्थता की असफलता के बारे में प्रतिवेदन देना चाहिए।
19. समन्वयक मध्यस्थता क्लिनिक में रखी गई पंजी में इसका पृष्ठांकन करेगा।

(यह पक्षकार द्वारा भरे जाने वाले आवेदन पत्र की घोषणा का भाग हो सकता है)

20. मध्यस्थता प्रक्रिया के दौरान सद्भावनापूर्वक किये गये किसी भी कार्य अथवा किसी कार्य के लोप के लिये किसी भी मध्यस्थ को उत्तरदायी नहीं ठहराया जायेगा।
21. मध्यस्थता प्रक्रिया के दौरान किसी भी मध्यस्थ को उसके द्वारा प्राप्त की गई जानकारी के संबंध में अथवा उसके द्वारा तैयार किये गये तथा अवलोकित प्रारूप या अभिलेखों के संबंध में जो कार्यवाही की गई उसके लिये उसे किसी भी पक्षकार द्वारा किसी विधि के न्यायालय में साक्ष्य देने के लिये आहूत नहीं किया जायेगा।

APPENDIX
FORM – I

Sr.No. :-

Date :-

Case No. :-

Name of Court :-

Name of Parties :-

Approach to Clinic :-

Name of Mediator in Attendance :-

Remarks :-

परिशिष्ट
प्रारूप-1

क्रमांक :-

दिनांक :-

प्रकरण क्रमांक :-

न्यायालय का नाम :-

पक्षकारों के नाम :-

क्लीनिक में उपस्थिति :-

मध्यस्थ का नाम उपस्थिति में :-

टिप्पणियां :-

FORM II

Name :-

Age :-

Address :-

Contact No. :-

Nature of Dispute :-

Name of Adverse Party :-

Date Signature

Official Use

Name of Mediator in attendance :-

Next date for attendance of Parties :-

Co-ordinator

प्रारूप— 2

नाम :-

आयु :-

पता :-

दूरभाष क्रमांक :-

विवाद की प्रकृति :-

विरोधी पक्षकार का नाम :-

दिनांक हस्ताक्षर

कार्यालयीन उपयोग

मध्यस्थ का नाम उपस्थिति में :-

पक्षकारों की उपस्थिति की आगामी दिनांक :-

समन्वयक

FORM NO. III

Sr.No. :-

Date :-

Name of Parties :-

Approach to Clinic :-

Name of Adverse Party :-

Nature of Dispute :-

Name of Mediator in Attendance :-

Remarks :-

प्रारूप— 3

क्रमांक :-

दिनांक :-

पक्षकारों के नाम :-

क्लीनिक में उपस्थिति :-

विरोधी पक्षकार का नाम :-

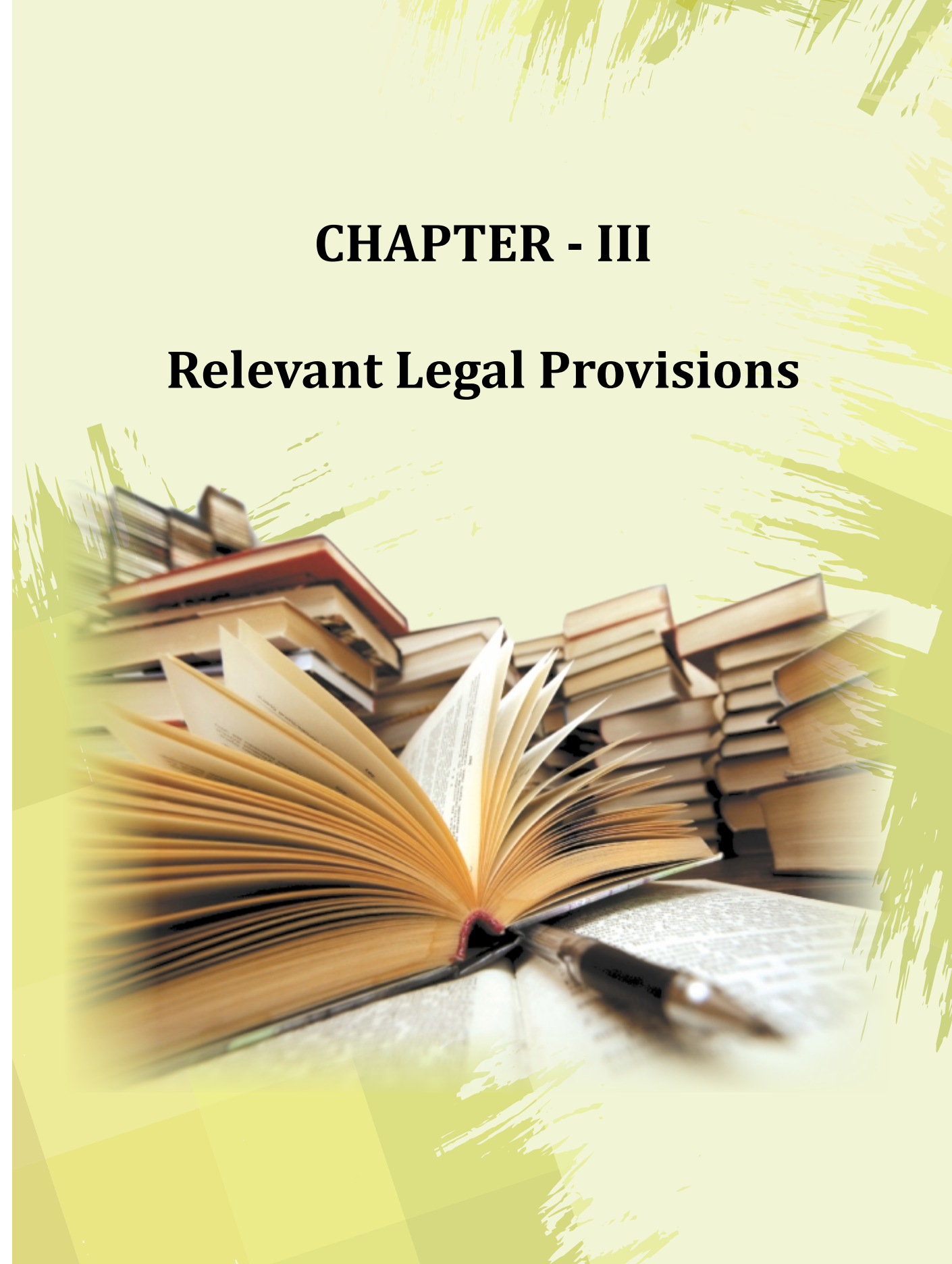
विवाद की प्रकृति :-

मध्यस्थ का नाम उपस्थिति में :-

टिप्पणियां :-

CHAPTER - III

Relevant Legal Provisions



MEDIATION RULES - 2016

1. Short Title and Commencement. -

- (1) These Rules shall be called the Madhya Pradesh Mediation Rules, 2016.
- (2) They shall come into force from the date of their publication in the Madhya Pradesh Gazette.*

2. Definition.- In these rules, unless the context otherwise requires,-

- (a) 'Code' means the Code of Civil Procedure, 1908 (No.5 of 1908);
- (b) Words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Code.

3. Function of the Mediation Centre.- The following shall be the functions of the mediation centre:-

- (1) To maintain a panel of trained Mediators sufficient in number to meet the requirement of the work referred to the Mediation Centre.
- (2) On receipt of the matter by way of referral for mediation, the Coordinator of the Mediation Centre may^ assign the matter to any mediator who is best suited to deal with the matter from the panel of mediators maintained by the Mediation Centre.
- (3) The Mediation shall not be limited only to the issues in the referred dispute and the Mediator may take into account the disputes between the parties to a case which are not the subject of the pending litigation, and may resolve all disputes between the parties.
- (4) During the mediation, counsel for the parties may also participate in the mediation process.
- (5) In appropriate cases, the Mediation Centre may invite any person/persons, other than those who are involved in the pending litigation to join the Mediation for the purpose of finding comprehensive and complete solutions including an expert pertaining to any field.
- (6) If any party to the dispute referred to Mediation has any objection to the mediator assigned to it, the said party shall inform the Mediation Centre and it shall endeavor to appoint a Mediator who may be acceptable to all the parties.

4. Appointment of Mediator.-

- (1) In a Court annexed mediation, the coordinator of the mediation centre shall appoint the mediator as he may deem fit.
- (2) -In exceptional cases, the Court may also appoint a mediator who is not necessarily from the panel of Mediators referred to in Rule 5 nor bear the qualifications referred to in Rule 6 but should not be a person who suffers' from the disqualifications referred to in Rule 7.

5. Panel of Mediators.-

- (1) The High Court shall empanel only those persons as mediators who have necessary qualifications as indicated in Rule 6 and a list of such mediators empanelled with the mediation centre should be prepared.
- (2) The District Court shall also prepare a panel of qualified Mediators with the approval of the High Court Mediation Committee.
- (3) All the mediators as appointed under sub-rule (1) and (2) of rule 4 shall normally be on the panel for a period of 3 years from the date of appointment and further extension of their tenure shall be at the discretion of High Court Mediation Committee.

6. Qualifications of persons to be empanelled under Rule 5.-

The following persons shall be eligible for training as Mediators, -

- (1)
 - (a) Retired Judges of the Supreme Court of India,
 - (b) Retired Judges of the High Court,
 - (c) Retired and Serving Members of District Judiciary.
- (2) Legal practitioners with at least 10 years' standing at the bar at the level of the Supreme Court or the High Court or the District Court or equivalent status.
- (3) Experts or other professionals with at least fifteen years' standing or retired senior bureaucrats or retired senior executives.

7. Disqualification of persons.-

The following persons shall be deemed to be disqualified for being empanelled as mediators,-

- (i) Any person who has been adjudged as insolvent or is declared of unsound mind;
- (ii) any person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or
- (iii) any person 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 appropriate disciplinary authority which are pending or have resulted in a punishment.
- (v) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (vi) any legal practitioner who has or is appearing for any of the parties in the suit or in other proceedings(s).

8. Addition to or deletion from panel-

There shall be periodical assessment of the performance of the Mediators. The High Court or the District and Sessions Judge with prior approval of the High Court Mediation Committee may in its/his discretion, from time to time, add or delete any person in the panel of mediators.

9. Preference.-

The Coordinator shall, while nominating any person from the panel of mediators referred to in Rule 5, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation:

Provided that nomination to a mediation proceeding shall not be perceived as a right by mediators. Such nomination shall be at the discretion of the Coordinator of the Mediation Centre.

10. Duty of mediator to disclose certain facts.-

- (1) When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- (2) Every Mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in sub-rule (1).

11. Withdrawal of appointment.-

Upon information furnished by the mediator under Rule 9 or upon any other information received from the parties or other persons, if the Court, in which the suit or proceeding is pending or the coordinator of the Mediation Centre, is satisfied, that the said information has raised a reasonable doubt as to the mediator's independence or impartiality, he may withdraw the appointment and appoint another mediator.

12. Mediation process.-

- (1) All civil and criminal compoundable matters, may be referred to mediation during the course of litigation, by the Court.
- (2) The mediation process will comprise of reference as well as the steps taken by the mediator to facilitate the settlement of a referred matter by following the structure usually followed, including but not limited to introduction and opening statement, joint session, separate sessions(s) and closing.
- (3) Failure to arrive at a settlement would not preclude the Court from making fresh reference of the matter for mediation.
- (4) In case of failure of resolution of the referred dispute, the Mediator shall inform the Mediation Centre, by a report and the Co-coordinator of the Mediation Centre shall inform regarding the same to the Court.

13. Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.-

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, 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(s).

14. Presentation of parties.-

The parties shall ordinarily be present personally or through constituted attorney at the sessions notified by the Mediator. They may also be represented by a counsel with permission of the mediator in such sessions.

15. Consequences of non-attendance of parties at sessions on due dates.-

If any party fails to attend a session notified by the mediator on account of deliberate or willful act, the other party or the mediator can apply to the Court in which the suit or | proceeding is pending, in that case the Court may issue the appropriate directions having regard to the facts and circumstances of the case.

16. Administrative assistance.-

In order to facilitate the conduct of mediation proceedings, the parties,' or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

17. Role of Mediator.-

The mediators shall attempt to facilitate voluntary resolution of the dispute(s) by the parties. He shall assist them in understanding the problems, identifying the underlying issues, reducing misunderstandings, generating the options and developing bption which are mutually acceptable to both the parties.

18. Parties alone responsible for taking decision.-

The parties shall be made to understand that the mediator only facilitates in arriving at a decision lo resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

19. Time limit for completion of mediation.-

On the expiry of Ninety days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessaiy or may be useful; but such extension shall not be beyond a further period of thirty days. . .

20. Parties to act in good faith.-

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible.

21. Confidentiality, disclosure and inadmissibility of information.-

- (1) When a mediator receives factual 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 subject to a specific condition that it be kept confidential, the mediator shall not disclose the information to the other party.

- (2) Receipt or perusal of any document by the mediator or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the document or record or oral information nor as to what transpired during the mediation.
- (3) Parties shall maintain confidentiality in respect of events that transpired during the mediation and shall not rely on or introduce the said information in any proceeding as to-
- (i) Views expressed by a party in the course of the mediation proceeding;
 - (ii) documents produced' during the mediation which were expressly required to be treated as confidential or other notes or drafts or information given by the parties to the mediators.
 - (iii) proposal made or views expressed by the mediator,
 - (iv) admission made by a party in the course of mediation proceeding.
 - (v) 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 proceedings.
- (5) A mediator may maintain personal record regarding progress of the mediation for his personal use.

22. Privacy.-

The mediation sessions shall be conducted in complete privacy and only the concerned parties or their counsels or power of attorney holders may attend. Other persons may attend only with the consent of the parties and permission of the mediator.

23. Immunity.-

No mediator shall be held liable for anything bonafidely done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding 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 proceedings.

24. Communication between mediator and the Court-

- (1) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in sub-rule (2) and (3) of this Rule.
- (2) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their constituted attorneys or the counsel.
- (3) All communication between the mediator and the Court shall be made only by the mediator and in respect of the following matters, -
- (a) The failure of a party or parties to attend;
 - (b) The mediator's assessment that the case is not suited for settlement through mediation; or
 - (c) Settlement of dispute or disputes arrived at between parties.

25. Settlement agreement-

- (1) Where an agreement is reached between the parties with regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the mediator may obtain his signature on the settlement agreement.
- (2) The agreement of the parties so signed shall be submitted to the Coordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court in which the suit or proceeding is pending.
- (3) Where no agreement is arrived at between the parties or where the mediator is of the view that no settlement is possible, he shall report the same in writing to the Coordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court in which the suit or proceeding is pending.

26. Court to record settlement and pass decree.-

- (1) On receipt of settlement agreement, if the Court is satisfied that the parties have settled their disputes voluntarily, the Court may pass appropriate order/decreed on the basis of settlement, if the same is not found collusive/illegal/unworkable. However, if the settlement disposed of only certain issues arising in the matter, the Court may record settlement in respect of the issues settled in the mediation and may proceed to decide other issue which are not settled.
- (2) Settlement between the parties shall be final in respect of the proceedings pending before the Court.

27. **Fee of Mediator.-**

(1) The mediator shall be paid honorarium as under:-

S. No.	Nature of case	Honorarium
(1)	(2)	(3)
1.	On settlement through mediation of a matrimonial case (including criminal), custody guardianship, probate, partition and possession.	Rs.3,000/- per case (with two or more connected cases, the maximum would be Rs.4,000/-)
2.	All other matters	Rs.2,000/- per case (with two or more connected cases, the maximum would be Rs.3,000/-)
3.	Connected case	Rs.500/- per case subject to a maximum of Rs. 1,000/-(regardless of the number of connected cases)
4.	In case of no settlement	Rs. 1,000/- honorarium per case, (regardless of the number of connected cases)

It is subject to revision by the Hon'ble Chairman and time to time as deemed fit by Members of MCPC.

(2) However, in exceptional cases the Court may fix consolidated amount as fee of the Court nominated mediator / Mediators.

(3) Each party shall bear the cost of production of their witnesses and experts, as also for production of documents.

28. **Ethics and code of conduct for mediator.-**

The Mediator shall follow and observe these Rules strictly and with due diligence.

- (1) Not indulge in conduct unbecoming of a mediator.
- (2) Up hold the integrity and fairness of the mediation process.
- (3) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process.
- (4) While communicating with the parties avoid any impropriety or appearance of impropriety.

- (5) The mediator must avoid mediating in cases where they have direct personal, professional or financial interest in the outcome of the dispute. If the mediator has any indirect interest, he is bound to disclose to the parties such indirect interest at the earliest opportunity and he shall not mediate in the case unless the parties specifically agree to accept him as mediator, despite such indirect interest.
- (6) Where the mediator is an advocate, he shall not appear for any of the parties in respect of the dispute which he had mediated.
- (7) Mediators have a duty to know the limits of their competence and ability in order to avoid taking on assignments which they are not equipped to handle.
- (8) Mediators have a duty to remain neutral throughout the mediation.
- (9) Mediators must respect the voluntary nature of mediation and must recognize the rights of the parties to withdraw from the mediation at any stage.
- (10) Mediation being confidential in nature, a mediator shall be faithful to the confidentiality reposed in him.
- (11) Mediator has a duty to encourage the parties to make their own decisions both individually and collectively about the resolution of the dispute, rather than imposing his own ideas on the parties. Self determination is the essence of the mediation process.
- (12) Settlement of dispute must be based on informed consent.
- (13) Conduct all proceeding relating to the resolution of dispute in accordance with the law.
- (14) Mediator must refrain from promises or guarantee of results.

29. **Consequences of breach of Rule 28.-**

It shall be open to the Coordinator to take such action with the approval of the High Court Mediation Committee as may be appropriate if the mediator violates any code of conduct expressed in Rule 28 or behaves in a manner not expected of him as a Mediator."

Code of Civil Procedure, 1908

Section 89, C.P.C. - Settlement of disputes outside the Court. –

- (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for –
 - (e) arbitration;
 - (f) conciliation;
 - (g) judicial settlement including settlement through Lok Adalat; or
 - (h) mediation.
- (2) Where a dispute has been referred -
 - (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
 - (b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
 - (c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
 - (d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The Supreme Court of India, in the case of **Afcons Infrastructure Limited and another v. Cherian Varkey Construction Co. Pvt. Ltd. and others**, reported in (2010) 8 SCC 24, has interpreted the section to read as follows:

S. 89 - Settlement of disputes outside the Court. –

- (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court may formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for –
 - (a) arbitration;
 - (b) conciliation;
 - (c) judicial settlement including settlement through Lok Adalat; or
 - (d) mediation.

Provided that it shall not be necessary for the Court, before referring the parties to an ADR

process to formulate or re-formulate the terms of a possible settlement. *It shall be* sufficient if the Court merely describes the nature of dispute (in a sentence or two) and makes the reference.

- (2) Where a dispute has been referred -

- (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

- (b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

- (c) for “mediation”, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute was referred to a Lok Adalat under the provisions of that Act;

- (d) for “judicial settlement”, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Order X C.P.C.

- 1. Ascertainment whether allegations in pleadings are admitted or denied. –** At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

- 1-A. Direction of the Court to opt for any one mode of alternative dispute resolution. –** After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. on the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

- 1-B. Appearance before the conciliatory forum or authority. –** Where a suit is referred under rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.

- 1-C. Appearance before the Court consequent to the failure of efforts of conciliation. –** Where a suit is referred under rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

**SCHEME FOR TRAINING UNDER MEDIATION AND
CONCILIATION PROJECT COMMITTEE**

The Supreme Court of India has constituted Mediation and Conciliation Project Committee (MCPC) to oversee the effective implementation of Mediation and Conciliation in the Country. The Mediation and Conciliation Project Committee (MCPC) was constituted by the then Chief Justice of India Hon'ble Mr. Justice R.C. Lahoti by order dated 9th April, 2005. Hon'ble Mr. Justice N. Santosh Hegde was its first Chairman. It consisted of other Judges of the Supreme Court and High Court, Senior Advocates and Member Secretary of NALSA.

1. COMPOSITION

At present the constitution of MCPC is as under :

- | | | | |
|----|--------------------------------|-----|------------------|
| 1. | Hon'ble Chief Justice of India | ... | Chairman |
| 2. | Hon'ble Nominated Justice | ... | Member |
| 3. | Senior Advocate | ... | Member |
| 4. | Member Secretary NALSA | ... | Member |
| 5. | Nominated Judge | ... | Member Secretary |

2. ELIGIBILITY FOR TRAINING

The following persons are eligible for training as Mediators :

- (a) (i) Retired Judges of the Supreme Court of India
- (ii) Retired Judges of the High Court
- (iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.
- (b) Judicial Officers or legal practitioners with atleast 10 years standing at the bar at the level of the Supreme Court or the High Court or the District Courts of equivalent status;
- (c) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;

3. TRAINING OF MEDIATORS

The Mediators are trained as per the curriculum approved by the MCPC contained in the manual known as Mediation Training Manual of India. The Mediation Training Manual was prepared under the guidance of compulsory 40 hours' mediation training imparted by trainers of MCPC as per the curriculum laid down in Mediation Training Manual. Mediation Training Manual of India can be down loaded from the Supreme Court of India website - sci.nic.in

4. ACCREDITATION

A person must have undergone 40 hours of mediation training programme under the aegis of MCPC as per curriculum approved by MCPC from the trainers of Mediation and Conciliation Project Committee. After having undergone 40 hours training only those mediators

who have completed atleast 10 successful mediation resulting in settlement and atleast 20 mediation in all, are eligible to be accredited as qualified mediator.

The Committee also resolved that the Mediators who have undergone training programme conducted by institution other than MCPC shall not be accredited as Mediator under MCPC.

5. TRAINING OF TRAINERS PROGRAMME

MCPC trainers of Mediation have devised a 20 hour programme for training of trainers and only those mediators accredited by MCPC who have completed atleast 50 mediations resulting in settlement and atleast 60 mediations in all, are eligible to undergo Training of Trainers (ToT) programme. The training of trainers programme is also followed by advanced training programme to further crystallize the concept of mediation and skill development.



CHAPTER - IV

Important Judicial Pronouncements



1. POINT INVOLVED

Scope of Section 89 and Order 10 Rule 1-A of the Civil Procedure Code, 1908

Section 89 of CPC – Interpretation of – To meet with anomalies and draftsman's errors, the Apex Court made changes in Section 89 by interpretation process, which shall remain in force till the legislature corrects the mistake.

ADR process – Object of Section 89 CPC is that settlement should be attempted by adopting an appropriate ADR process – Having a hearing after completion of pleadings, to consider recourse to ADR process, is mandatory – But actual reference to an ADR process in all cases is not mandatory – The Apex Court enumerated illustrative categorization of 'suitable' and 'unsuitable' cases to an ADR process.

ADR process – Proper stage and procedure – The stage at which the Court should explore whether the matter should be referred to ADR process, is after the pleadings are complete, and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of CPC – However, if for any reason, the Court had missed the opportunity to consider and refer the matter to ADR process before framing issues, nothing prevents the Court from resorting to Section 89 even after framing issues – But once evidence is commenced, the Court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial – The procedure to be adopted by a Court under Section 89 CPC has been laid down by the Apex Court.

Parties – **Afcons Infrastructure Limited and another v. Cherian Varkey Construction Company Private Limited and others**

Reported in – (2010) 8 SCC 24

If Section 89 is to be read and required to be implemented in its literal sense, it will be a Trial Judge's nightmare. It puts the cart before the horse and lays down an impractical, if not impossible, procedure in sub-section (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind section 89 is laudable and sound. Resort to alternative disputes resolution (for short 'ADR') processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order X in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

In view of its laudable object, the validity of section 89, with all its imperfections, was upheld in **Salem Advocate Bar Association (I) v. Union of India, (2003) 1 SCC 49** [for short, **Salem Bar (I)**] but referred to a Committee, as it was hoped that section 89 could be implemented by ironing the creases. In **Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344** [for short, **Salem Bar (II)**], this Court applied the principle of purposive construction in an attempt to make it workable.

Proper interpretation of section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or re-formulate the terms of a possible settlement. It is sufficient

if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the

definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of section 89(2) shall have to be interchanged to correct the draftsman's error. Clauses (c) and (d) of section 89(2) of the Code will read as under when the two terms are interchanged:

- (c) for “mediation”, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
- (d) for “judicial settlement”, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that section 89 is not rendered meaningless and infructuous.

Whether the reference to ADR Process is mandatory?

Section 89 starts with the words “where it appears to the court that there exist elements of a settlement”. This clearly shows that cases which are not suited for ADR process should not be referred under section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1A of Order 10 of the Code, the civil court should invariably refer cases to ADR process. Only in certain recognized excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other case reference to ADR process is a must.

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.

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
 - (i) disputes arising out of contracts (including all money claims);
 - (j) disputes relating to specific performance;
 - (k) disputes between suppliers and customers;
 - (l) disputes between bankers and customers;
 - (m) disputes between developers/builders and customers;
 - (n) disputes between landlords and tenants/licensor and licensees;
 - (o) disputes between insurer and insured;
- (ii) All cases arising from strained or soured relationships, including - disputes relating to matrimonial causes, maintenance, custody of children;
- (i) disputes relating to partition/division among family members/co-parceners/co-owners; and
- (ii) 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
- (iv) disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.);
- (v) disputes between employers and employees;
- (vi) disputes among members of societies/associations/Apartment owners' Associations;
- (vii) All cases relating to tortious liability including
- (viii) claims for compensation in motor accidents/other accidents; and
- (ix) All consumer disputes including
- (x) disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

The above enumeration of 'suitable' and 'unsuitable' categorization 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.

How to decide the appropriate ADR process under Section 89?

Section 89 refers to five types of ADR procedures, made up of one adjudicatory process (arbitration) and four negotiatory (non adjudicatory) processes – conciliation, mediation, judicial settlement and Lok Adalat settlement. The object of section 89 of the Code is that settlement should be attempted by adopting an appropriate ADR process before the case proceeds to trial. Neither section 89 nor Rule 1A of Order 10 of the Code is intended to supersede or modify the provisions of the Arbitration and Conciliation Act, 1996 or the Legal Services Authorities Act, 1987. On the other hand, section 89 of the Code makes it clear that two of the ADR processes – Arbitration and Conciliation, will be governed by the provisions of the AC Act and two other ADR Processes - Lok Adalat Settlement and Mediation will be governed by the Legal Services Authorities Act. As for the last of the ADR processes - judicial settlement, section 89 makes it clear that it is not governed by any enactment and the court will follow such procedure as may be prescribed (by appropriate rules).

Rule 1A of Order 10 requires the court to give the option to the parties, to choose any of the ADR processes. This does not mean an individual option, but a joint option or consensus about the choice of the ADR process. On the other hand, section 89 vests the choice of reference to the court. There is of course no inconsistency. Section 89 of the Code gives the jurisdiction to refer to ADR process and Rules 1A to IC of Order 10 lay down the manner in which the said jurisdiction is to be exercised. The scheme is that the court explains the choices available regarding ADR process to the parties, permits them to opt for a process by consensus, and if there is no consensus, proceeds to choose the process.

Having regard to the provisions of Section 89 and Rule 1-A of Order 10, the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of the Code. However, if for any reason, the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court from resorting to Section 89 even after framing issues. But once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial.

Though in civil suits, the appropriate stage for considering reference to ADR processes is after the completion of pleadings, in family disputes or matrimonial cases, the position can be slightly different. In those cases, the relationship becomes hostile on account of the various allegations in the petition against the spouse. The hostility will be further aggravated by the counter-allegations made by the respondent in his or her written statement or objections. Therefore, as far as Family Courts are concerned, the ideal stage for mediation will be immediately after service of respondent and before the respondent files objections/written statements. Be that as it may.

We may summarize the procedure to be adopted by a court under section 89 of the Code as under:

- (a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.
- (b) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds that the case falls under any excluded category, it should record a brief order referring to the

nature of the

case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

(c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

(d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

(e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the AC Act. If all the parties agree for reference to conciliation and agree upon the conciliator/s, the court can refer the matter to conciliation in accordance with section 64 of the AC Act.

(f) If parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three ADR processes: (a) Lok Adalat; (b) mediation by a neutral third party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

(g) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(h) If the reference to the ADR process fails, on receipt of the Report of the ADR Forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.

(i) If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a Conciliation Settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). If the settlement is through mediation and it relates not only to disputes which are the subject-matter of the suit but also other disputes involving persons other than the parties to the suit, the Court may adopt the principle underlying Order 23 Rule 3 of the Code. This will be necessary as many settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

(j) If any term of the settlement is ex facie illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.

The Court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order sheet.

(ii) If the reference is to any other ADR process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

(iii) The requirement in Section 89(1) that the court should formulate or reformulate the terms of settlement would only mean that court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(iv) If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for Judicial Settlement to another Judge.

(v) If the court refers the matter to an ADR process (other than Arbitration), it should keep track of the matter by fixing a hearing date for the ADR Report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

(vi) Normally the court should not send the original record of the case when referring the matter for an ADR forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a Court annexed Mediation Centre which is under the exclusive control and supervision of a Judicial Officer, the original file may be made available wherever necessary.

2. POINT INVOLVED

Section 89 of the Civil Procedure Code, 1908

Object of Section 89 - all the cases which are filed in Court need not necessarily be decided by the Court itself. Keeping in mind the laws delays and the limited number of Judges which are available, it has now become imperative that resort should be had to Alternative Dispute Resolution Mechanism with a view to bring to an end litigation between the parties at an early date.

Parties – **Salem Advocate Bar Association, Tamil Nadu v. Union of India**
Reported in – AIR 2003 SC 189

It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in Court need not necessarily be decided by the Court itself. Keeping in mind the laws delays and the limited number of Judges which are available, it has now become imperative that resort should be had to Alternative Dispute Resolution Mechanism with a view to bring to an end litigation between the parties at an early date. The Alternative Dispute Resolution (ADR) Mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Sub-section (2) of Section 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation Section 89(2)(d) provides that the parties shall follow the procedure as may be prescribed. Section 89(2)(d), therefore, contemplates appropriate rules being framed with regard to mediation.

In certain countries of the world where ADR has been successful to the extent that over 90 per cent of the cases are settled out of Court, there is a requirement that the parties to the suit must indicate the form of ADR which they would like to resort to during the pendency of the trial of the suit. If the parties agree to arbitration, then the provisions of the Arbitration and Conciliation Act, 1996 will apply and that case will go outside the stream of the Court but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made, the case will ultimately go to trial.

3. POINTS INVOLVED

Rules for ADR and Training of Mediators - directions issued by the Apex Court.

Section 89 and Order 10 Rule 1-A of the Civil Procedure Code, 1908

The use of the word 'may' in Section 89 and use of the word 'shall' in Order X, Rule 1A - removal of doubt as to a possible conflict -

Mediation process- when mediation succeeds and parties agree to the terms of settlement, the mediator will report to the court and the court, after giving notice and hearing the parties, 'effect' the compromise and pass a decree in accordance with the terms of settlement accepted by the parties.

Parties – **Salem Advocate Bar Association, Tamil Nadu v. Union of India**
Reported in – (2005) 6 SCC 344

Some doubt as to a possible conflict has been expressed in view of use of the word 'may' in Section 89 when it stipulates that 'the Court may re-formulate the terms of a possible settlement and refer the same for' and use of the word 'shall' in Order X, Rule 1A when it states that 'the Court shall direct the parties to the suit to opt either mode of settlements outside the Court as specified in sub-section (1) of Section 89.'

As can be seen from Section 89, its first part uses the word 'shall' when it stipulates that the 'court shall formulate terms of settlement'. The use of the word 'may' in later part of Section 89 only relates to the aspect of re-formulating the terms of a possible settlement. The intention of the Legislature behind enacting Section 89 is that where it appears to the Court that there exists element of a settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the Section and if the parties do not agree, the court shall refer them to one or other of the said modes. Section 89 uses both the word 'shall' and 'may' whereas Order X, Rule 1A uses the word 'shall' but on harmonious reading of these provisions it becomes clear that the use of the word 'may' in Section 89 only governs the aspect of re-formulation of the terms of a possible settlement and its reference to one of ADR methods. There is no conflict. It is evident that what is referred to one of the ADR modes is the dispute which is summarized in the terms of settlement formulated or re-formulated in terms of Section 89.

One of the modes to which the dispute can be referred is 'Arbitration'. Section 89(2) provides that where a dispute has been referred for Arbitration or Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') shall apply as if the proceedings for Arbitration or Conciliation were referred for settlement under the provisions of 1996 Act. Section 8 of the 1996 Act deals with the power to refer parties to Arbitration where there is arbitration agreement. As held in P. Anand Gajapathi Raju and others v. P.V.G. Raju (Dead) and others (2000) 4 SCC 539, 1996 Act governs a case where arbitration is agreed upon before or pending a suit by all the parties. The 1996 Act, however, does not contemplate a situation as in Section 89 of the Code where the Court asks the parties to choose one or other ADRs including Arbitration and the parties choose Arbitration as their option. Of course, the parties have to agree for Arbitration. Section 82 of the 1996 Act enables the High Court to make Rules consistent with this Act as to all proceedings before the Court under 1996 Act. Section 84 enables the Central Government to make rules for carrying out the provisions of the Act. The procedure for option to

Arbitration among four ADRs is not contemplated by the 1996 Act, and, therefore, Section 82 or 84 has no applicability where parties, agree to go for arbitration under Section 89 of the Code. As already noticed, for the purposes of Section 89 and Order X, Rules 1A, 1B and 1C, the relevant Sections in Part X of the Code enable the High Court to frame rules. If reference is made to Arbitration under Section 89 of the Code, 1996 Act would apply only from the stage after reference and

not before the stage of reference when options under Section 89 are given by the Court and chosen by the parties. On the same analogy, 1996 Act in relation to Conciliation would apply only after the stage of reference to Conciliation. The 1996 Act does not deal with a situation where after suit is filed, the court requires a party to choose one or other ADRs including Conciliation. Thus, for Conciliation also rules can be made under Part X of the Code for purposes of procedure for opting for 'Conciliation' and upto the stage of reference to Conciliation. Thus, there is no impediment in the ADR rules being framed in relation to Civil Court as contemplated in Section 89 upto the stage of reference to ADR. The 1996 Act comes into play only after the stage of reference upto the award. Applying the same analogy, the Legal Services Authority Act, 1987 (for short '1987 Act') or the Rules framed thereunder by the State Governments cannot act as impediment in the High Court making rules under Part X of the Code covering the manner in which option to Lok Adalat can be made being one of the modes provided in Section 89. The 1987 Act also does not deal with the aspect of exercising option to one of four ADR methods mentioned in Section 89. Section 89 makes applicable 1996 Act and 1987 Act from the stage after exercise of options and making of reference.

A doubt has been expressed in relation to clause (d) of Section 89 (2) of the Code on the question as to finalisation of the terms of the compromise. The question is whether the terms of compromise are to be finalised by or before the mediator or by or before the court. It is evident that all the four alternatives, namely, Arbitration, Conciliation, judicial settlement including settlement through Lok Adalat and mediation are meant to be the action of persons or institutions outside the Court and not before the Court. Order X, Rule 1C speaks of the 'Conciliation forum' referring back the dispute to the Court. In fact, the court is now involved in the actual mediation/conciliation. Clause (d) of Section 89(2) only means that when mediation succeeds and parties agree to the terms of settlement, the mediator will report to the court and the court, after giving notice and hearing the parties, 'effect' the compromise and pass a decree in accordance with the terms of settlement accepted by the parties. Further, in this view, there is no question of the Court which refers the matter to mediation/conciliation being debarred from hearing the matter where settlement is not arrived at. The Judge who makes the reference only considers the limited question as to whether there are reasonable grounds to expect that there will be settlement and on that ground he cannot be treated to be disqualified to try the suit afterwards if no settlement is arrived at between the parties.

The question also is about the payment made and expenses to be incurred where the court compulsorily refers a matter for conciliation/mediation. Considering large number of responses received by the Committee to the draft rules it has suggested that in the event of such compulsory reference to conciliation/mediation procedures if expenditure on conciliation/mediation is borne by the Government, it may encourage parties to come forward and make attempts at conciliation/mediation. On the other hand, if the parties feel that they have to incur extra expenditure for resorting to such ADR modes, it is likely to act as a deterrent for adopting these methods. The suggestion is laudable. The Central Government is directed to examine it and if

agreed, it shall request the Planning Commission and Finance Commission to make specific financial allocation for the judiciary for including the expenses involved for mediation/conciliation under Section 89 of the Code. In case, Central Government has any reservations, the same shall be placed before the court within four months. In such event, the Government shall consider provisionally releasing adequate funds for these purposes also having regard to what we have earlier noticed about many statutes that are being administered and litigations pending in the Courts in various States are central legislations concerning the subjects in List I and List III of Schedule VII to the Constitution of India.

With a view to enable the Court to refer the parties to conciliation/mediation, where parties are unable to reach a consensus on an agreed name, there should be a panel of well trained conciliation/mediation to which it may be possible for the Court to make a reference. It would be necessary for the High Courts and District Courts to take appropriate steps in the direction of preparing the requisite panels.

A doubt was expressed about the applicability of ADR rules for dispute arising under the Family Courts Act since that Act also contemplates rules to be made. It is, however, to be borne in mind that the Family Courts Act applies the Code for all proceedings before it. In this view, ADR rules made under the Code can be applied to supplement the rules made under the Family Courts Act and provide for ADR insofar as conciliation/mediation is concerned.

It seems clear from the report that while drafting the model rules, after examining the mediation rules in various countries, a fine distinction is tried to be maintained between conciliation and mediation, accepting the views expressed by British author Mr. Brown in his work on India that in 'conciliation' there is little more latitude and conciliator can suggest some terms of settlements too.

When the parties come to a settlement upon a reference made by the court for mediation, as suggested by the Committee that there has to be some public record of the manner in which the suit is disposed of and, therefore, the Court has to first record the settlement and pass a decree in terms thereof and if necessary proceed to execute it in accordance with law. It cannot be accepted that such a procedure would be unnecessary. If the Settlement is not filed in the Court for the purpose of passing of a decree, there will be no public record of the settlement. It is, however, a different matter if the parties do not want the court to record a settlement and pass a decree and feel that the settlement can be implemented even without decree. In such eventuality, nothing prevents them in informing the Court that the suit may be dismissed as a dispute has been settled between the parties outside the Court.

POINTS INVOLVED

Mediation Mandatory in Matrimonial Disputes

Family and Personal Laws- Divorce-Mediation/Conciliation-"Mediation" as an effective method of alternative dispute resolution in matrimonial matters- Necessity - Expressed - Need for quashment of criminal cases filed by parties against each other for possibility of amicable settlement - Quashment of such cases -When permissible even in cases of non-compoundable offences - Directions issued to courts dealing with matrimonial cases to strive for amicable settlement- Family Courts Act, 1984 -S.g - Penal Code, i860 - S. 498-A - Civil Procedure Code, 1908 - S. 89 (1) (d) - Hindu Marriage Act, 1955 - S. 13-Mediation.

Parties - K. Srinivas Rao vs D.A. Deepa Reported in - (2013) 5 SCC 226

In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the Counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

The criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.

All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.

ADVANTAGE OF MEDIATION PROCESS

Parties - Vikram Bakshi & Ors vs Sonia Khosla[Dead] Reported in - (2014) 15 SCC 80

1. According to us it would have been more appropriate for the parties to atleast agree to resort to mediation as provided under Section 89 if CPC and make an endeavour to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroy it. And, so far as society is concerned it affects its peace. So what is required is resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. 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." MEDIATION is one such mechanism which has been statutorily brought into place in our Justice System. It is one of the methods of Alternative Dispute Resolution and resolves the dispute in a way that is private, 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.

2. Thus, mediation being a form of Alternative Dispute Resolution 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 aproblem 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. Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity between the parties.

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, the 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 and thus resulting into peace and harmony in the 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.

This Bench is of firm opinion that mediation is new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of

party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.

Professor Stulberg, in his masterful comment on the drafting of the Uniform Model Mediation Act, Fairness and Mediation, begins with the understated predicate that "the meaning of fairness is not exhausted by the concept of legal justice." In truth, the more pointed argument advanced in the article is that legal norms often diverge quite dramatically from our notion of fairness and the notion of fairness of many disputants. Legal rules, in Stulberg's vision, are ill-equipped to do justice because of their rigidity and inflexibility. Professors Lela Love and Jonathan M. Hyman argue that mediation is successful because it provides a model for future collaboration. The authors state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each other's goals, they will together reach a fair resolution. They cite Abraham Lincoln's inaugural address which proposed that in a democracy, "'a patient confidence in the ultimate justice of the people' to do justice among themselves ... is a pillar of our social order." Professor Carrie Menkel-Meadow presents a related point of view in making the case that settlement has a political and ethical economy of its own and writes:

"Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late-twentieth century... For many years now, I have suggested that there are other components to the achievement of justice.

Most notably, I refer to the process by which we seek justice (party participation and empowerment, consensus rather than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win-lose solutions, but creative, pie-expanding or even shared solutions)." Justice in mediation also encompasses external developments, beliefs about human nature and legal regulation. Various jurists are drawn to mediation in the belief that litigation and adversarial warring are not the only, or the best ways to approach conflict. And how optimistically and skeptically mediators assess the capabilities of individual parties and institutional actors to construct fair outcomes from the raw material of human conduct.

Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving 'win-win' situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish. It is mediation that saves precious time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It is mediation which focuses on long term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualization of justice.

POINTS INVOLVED

Parties - Suresh Narayan Kadam & Ors vs Central Bank of India & Ors.

Reported in - Special leave to appeal (C) NOS.1878-1879 OF 2009

In his Foreword written on 12th April, 2011 to the first edition of "Mediation Practice & Law the path to successful dispute resolution" written by Mr. Sriram Panchu, Senior Advocate and Mediator, Mr. Fali S. Nariman, a Senior Advocate of this Court and a respected jurist, writes:

The same subject matter of disputation between two parties can be dealt with in two different ways, not necessarily exclusive: first, by attempting to resolve a dispute in such a way that the parties involved win as much as possible and lose as little as possible through the intervention of a third party steeped in the techniques of mediation; and second, (failing this) the dispute would be left to be resolved by each party presenting its case before a disinterested third party with an expectation of a binding decision on the merits of the case: a win-all lose-all, final determination".

The second alternative may not be the best alternative, as already mentioned by us.

The decision rendered by the High Court which is under challenge before us states that efforts were made to have the disputes between the contesting parties settled but it is clear that no institutional mechanism was invited to assist in the settlement process. The proceedings before us also indicate that several efforts were made to encourage the contesting parties to arrive at a settlement, and at one point of time the parties did reach an interim arrangement but that could not fructify into a final settlement only because of the absence of an intervention through an institutional mechanism. Appreciating this, this Court has consistently encouraged the settlement of disputes through an institutionalized alternative dispute resolution mechanism and there are at least three significant decisions rendered by this Court on the subject. They are: (i) **Salem Advocate Bar Assn. (II) v. Union of India**¹ (ii) **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**² (iii) **K. Srinivas Rao v. D.A. Deepa.**³

“ In the middle of every difficulty lies opportunity ”

-Albert Einstein

(A) Format of Mediation Proceeding Register

Med. File No. _____

Name of Parties (a) Petitioner _____ Ph. _____ E-mail: _____ Name of Mediators _____ Ph. _____
(b) Respondent _____ Ph. _____ E-mail: _____

Court Case No. _____

Name of Counsel _____ (a) for Petitioner _____ Ph. _____ Venue of Mediation _____
(b) for Respondent _____ Ph. _____ E-mail: _____

Date of Referral _____

Order _____ Referred by _____ Date of Receipt of Order _____
Proposed date for completion of mediation _____

Date	Description of documents received	Name of person to whom notice to be issued	Details about dispatch and service of Notices	Dates of Mediation Sessions	Stages of Mediation	Progress and particulars of mediation sessions	Details about information Furnished to referral	Details about fees, etc.	Remarks
1	2	3	4	5	6	7	8	9	10

(B) Format of Mediation Feedback Register

Date	Mediation file No.	Name of Party	Name of Mediators	Was Mediation helpful	Would you use mediation again	Was mediator neutral and impartial	Comments if any,	Signature
1	2	3	4	5	6	7	8	9

(C) Format of Inward Register

Date	Office Inward No.	Date	Received From	Senders Outward No.	Subject	Remark
1	2	3	4	5	6	7

(D) Format of Outward Register

Date	Office Inward No.	Date	Send to	Subject	Mode of Dispatch		Remark
					Hand Delivery	By Post & Stamp Amount	
1	2	3	4	5	6	7	8

(E) Format of Register of Panel of Mediators

Sr. No.	Name & Addresses of Mediator	Contact No.	No. of Years of Practice	Date of empanelment	Area of practice	Remark
1	2	3	4	5	6	7

Disclaimer

The images used in various documents of this Handbook have been downloaded from the internet for the purpose of use in the instructional material which is part of this Handbook for private circulation. There is no claim to proprietorship of the download images or use for commercial purpose.



Win - Win

Confession of our faults is the next thing to innocence
-Publius Syrus