



# Mediation NEWSLETTER

ISSUE : I

MEDIATION & CONCILIATION COMMITTEE  
HIGH COURT, CALCUTTA



**MEDIATION & CONCILIATION COMMITTEE,  
HIGH COURT, CALCUTTA**

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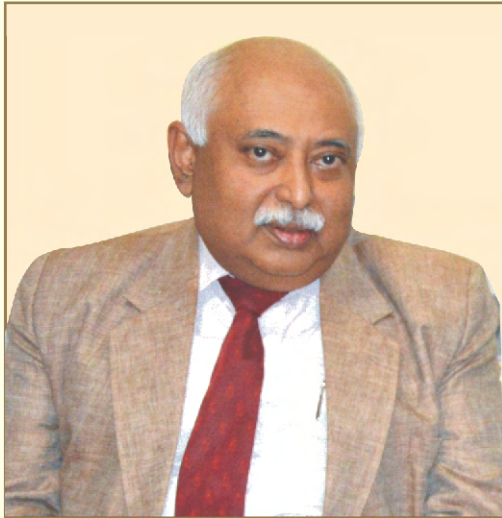
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Hon'ble Mr. Justice Biswanath Somadder,  
Judge, High Court, Calcutta  
and Chairperson, Mediation & Conciliation Committee



Hon'ble Mr. Justice I.P. Mukerji,  
Judge, High Court, Calcutta  
Erstwhile Member, Mediation & Conciliation Committee

**MEDIATION & CONCILIATION COMMITTEE  
HIGH COURT AT CALCUTTA**

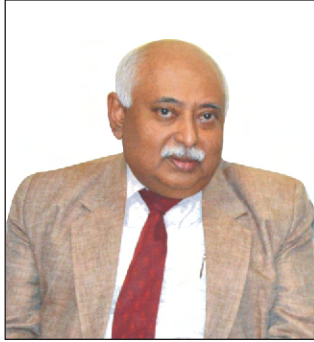


Hon'ble Mr. Justice Sahidullah Munshi,  
Judge, High Court, Calcutta  
and Member, Mediation & Conciliation Committee



Hon'ble Mr. Justice Soumen Sen,  
Judge, High Court, Calcutta  
and Member, Mediation & Conciliation Committee





*From the desk of the Hon'ble Chairperson*

**Greetings !**

This note coincides with the release of our first newsletter. Thanks to the success of holding of "mediation week" on a regular basis - which was conceptualized by our entire team - we have been able to reach the message that mediation can be most affective alternative mechanism for dispute resolution to the entire judicial fraternity of the State of West Bengal. However, I must hasten to add that although we have held "mediation week" on a regular basis, the very concept of mediation, sadly, has still not reached our primary target group - i.e. the litigants - who are facing enormous hardship resulting from unending delays in disposal of their long pending litigations through our present overloaded Court system.

We all know that high costs and long delays - often associated with matters which are pending in our Courts - often make litigation an impracticable method of resolving long standing disputes. The aim of our Committee is to bring about a change of mindset by sensitizing all stakeholders - particularly, the litigants - in order to efface the dormancy of our present status of dispute resolution in the State of West Bengal through the alternative dispute resolution mechanism of mediation, thereby reducing pendency.

Training programmes for fresh mediators and refresher training programmes for existing mediators are being held with greater frequency than ever before. This has given impetus to advocates as well as judicial officers to learn and acclimatize with this fairly new concept, which is now paying dividends. It has also given rise to heightened awareness and sensitization.

Our team believes that this has to be a continuing process and can be a success story only when we are able to carry the concept of its next level and that is, having litigations disposed of quickly, effectively and successfully through the process of Court annexed mediation. The sincerity and dedication shown by our entire team as well as judicial officers, advocates and various authorities of the State and the cooperation extended by the State Legal Services Authority, West Bengal, at the district/sub-division level has gone a long way towards making our movement to popularize mediation in the State of West Bengal as an effective alternative mechanism for dispute resolution, achieve momentum.

I am extremely grateful to the State Government for having extended its full support by providing funds and other assistance whenever required. However, we still have a long way to go before our endeavours translate our dreams into reality by successfully reducing pendency of litigation in the State of West Bengal. As mediators, judicial officers, lawyers and the litigants get more experience with the process, the range of disputes amenable to the process of mediation will increase manifold.

Our team has conceived this newsletter as a tool to disseminate information and create awareness and also for the purpose of highlighting activities which have been undertaken by us so far.

Best wishes,

**Biswanath Somadder**



*From the desk of the Hon'ble Member*

### **Mediation - A Few Words**

It gives me great pleasure to write a few words on mediation and the Mediation Committee of the High Court at Calcutta.

When Chief Justice Mohit Shah was in-charge of this Court, he was kind enough to ask me if I was interested in being a member of the mediation committee of this Court, to be constituted for the first time here, at the instance of the Supreme Court. With all humility, I agreed. I became part of the mediation committee, then comprising of amongst others Mr. Justice Pinaki Chandra Ghose and Mr. Justice Pranab Kumar Chattopadhyay.

It took the mediation committee quite some time to make a headway into mediation. For the first few years, the number of cases resolved by mediation was very low. Equally low was the number of referrals to mediation by the Courts. There was apprehension amongst the judges and the lawyers. The lawyers thought that the rising wind of mediation would blow away their practice. The judges did not always know what to refer to mediation and at what stage. There was not enough number of trained mediators to undertake mediation. In those circumstances, starting from the Chairpersonship of Mr. Justice Ghose and then, Mr. Justice Chattopadhyay, a massive effort was made to popularise mediation. Meetings, symposiums and programmes were arranged in each and every district to make everyone aware of this process. The lawyers were made convinced that mediation would enhance their practice and not lesson it. The Judges were made aware of Section 89 of the Code of Civil Procedure and the rulings of the Supreme Court and other Courts on the subject. First of all, a Judge had to form the view that the disputes between the parties were capable of settlement and that some signs of their settlement were visible. In those circumstances, the disputes could be referred to mediation by a referral court. The mediator after the Mediation process was over, had only to declare that the mediation had

succeeded or it had failed. There was no scope of any reasons, if it succeeded. The terms of settlement were filed in court by the parties. If it failed, the case went back to the court to be heard.

Then there was some confusion about the type of disputes that could be resolved by mediation. From time to time, the Supreme Court has made pronouncements to clear the issue. What I understand is that apart from proceedings in rem, all proceedings i.e. in personem can be resolved through mediation. For Example, a mediator cannot grant a decree of divorce as it is a decree in a proceeding in rem but can cause settlement of the amount of alimony to be paid in a matrimonial suit. Where an offence is compoundable mediation, works very efficiently in resolving the underlying disputes between the parties (example dishonour of cheques) that lead to the dispute.

Mr. Justice Somadder, the present Chairperson has carried forward the work further by systematically organising programmes district by district to sensitise lawyers, judges and the ordinary people about mediation.

We have received invaluable assistance from the Secretary and Deputy Secretary of the State Legal Services Authority, the registry officers of the court attached to the committee but particularly Dr. Moumita Bhattacharya and Mr. Sourav Bhattacharya.

I also know that the number of trained mediators has increased. Many ex-judges and lawyers have undergone 40 hours of training as prescribed by MCPC to become trained mediators.

I hope that with the passage of time we will become the leading state in the mediation movement.

**I. P. Mukerji, J**



*From the desk of the Hon'ble Member*

**Mediation Message - A New Look Forward**

Mediation is a party-centered negotiation process. It is a voluntary mechanism where a neutral third party assists the parties in amicably resolving their disputes by using specialized skills and negotiation techniques. But by taking disputes out of the traditional realms of the adversarial system, an attempt has been made to ensure that the dispute resolution process is not a zero sum game. Mediation is not process-heavy and its informal nature is tailor made for parties to work directly towards repairing frailties in their relationship. Rather than the parties being bound by a decision in the adversarial system, a mediator encourages the disputants to suggest their own solution to the dispute at hand. This is crucial since it gives the parties a sense of control over the outcome and a chance to be involved in the decision making process.

In the commercial context, mediation as a precursor to any form of dispute resolution has numerous advantages. A lot of arbitration clauses today have now incorporated a multi-tiered dispute resolution process that starts with a mediation or negotiation, where an arbitration is resorted to only in the event where everything else fails. If the mediation does not by itself resolve all disputes, the parties may still be able to sit together and narrow down the 'terms of reference' for the tribunal or the principle points of dispute to be presented to the Court. Italy has issues of pendency similar to India and this motivated them to pass a law mandating parties to sit for mediation with a neutral third party, with the option of opting out of the process even after a session and approaching the courts. Evidence suggests that all it took was just one session to convince parties to continue with the mediation process and this has shown to be a roaring success. The amendment to our Commercial Courts Act has now brought in a provision for pre-institution mediation, along with the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018; and it is hoped that this will help us deal with issues of pendency and docket explosion, amongst others.

While the government's push for mediation is heartening, the practical challenges involved still remain. Ultimately, mediation as an alternate dispute resolution mechanism would remain a myth unless the public is made aware of the existence and benefit of the resolution of dispute by mediation, Where no separate infrastructure or funds are available, we must seek to find solution and make the best of what is available to us. Our judicial academies and universities ought to train prospective entrants in the legal systems and accreditation of mediations must be pushed for. The general public is required to be made aware that mediation is a cost effective mechanism in dispute resolution. It is a win-win situation for the parties as there are no losers in the process. Fortunately for us, we have been able to generate much enthusiasm amongst students as well as common litigants. We have introduced mediation week in the district and we have been able to successfully solve many disputes in the process. We have maintained a roster of trained mediators after obtaining requisite training from MCPC, Supreme Court of India; and we hope that in the future we would be able to reduce the burden of cases on courts through mediation. We have also been able to generate adequate funds to meet the expenses. The success of mediation largely depends upon the stakeholders and one of the most important stakeholders is lawyers. Many lawyers across districts have participated in training programmes and are now act as skilled mediators. We have requested lawyers to identify cases which may be referred to mediation and we have also trained referral judges to a large extent.

The momentum in favour of mediation has gathered pace in the last few years but the battle has only just begun. Institutional mechanisms are now being put in place; and we must all play our part in ensuring mediation's success story in the near future.

**Soumen Sen, J**



*From the desk of the Hon'ble Member*

### *Mediation*

A new era has been introduced by the Civil Procedure Code Amendment Act, 1999 through its Section 7 (46 of 1999) effective from 1st July, 2002 vide notification no. S.O.603 (E) dated 06.06.2002 for an alternative dispute resolution process by introducing Section 89 in the Code of Civil Procedure. Section 89 expressly provides for the modes of alternative dispute resolution. Mediation is one among those. In respect of the other three modes, namely, arbitration, the provisions of Arbitration and Conciliation Act are applicable; conciliation, the matter shall be referred to Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987; 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 where all the provisions of Legal Services Authorities Act, 1987 shall apply.

Mediation is the only exceptional alternative dispute resolution process where the parties will be at liberty without referring to any enactment to get the matter settled effectively by way of a compromise between the parties and shall follow the procedure as may be prescribed.

Section 23 of Hindu Marriage Act, Section 9 of Family Courts Act, Section 89 and Order 32A of the Code of Civil Procedure make it obligatory for Court to give a fair chance to a consolidated or negotiated settlement before adjudication is made. Matrimonial disputes are no doubt distinct from other types of disputes on account of presence of certain factors which are not ordinarily found in other disputes. The principal role of the Court is to discover a solution instead of breaking family relations. These disputes are now-a-days referred to Mediation. Privacy about the mediation process and the development before the Mediators are kept confidential and are never disclosed so that the parties can, if mediation fails, further proceed with the proceedings initiated earlier. If compromise is materialised then everyone is successful. Therefore, Courts should be emboldened to encourage parties to give out the routine procedural law and to find out a solution without wasting time and public money in all senses to reach a conclusion by making an honourable settlement between the parties.

The impact of the mediation in our present society at large is a great one. By virtue of mediation we can not only save time, but also we can maintain harmonious relationship between the parties. Once a matter is reached at a contested stage in Court the relationship between the parties is bound to be bitter. Therefore, in order to build a strong society, role of mediation cannot be ignored. If the parties think that settlement is possible, civil, criminal, arbitration and other agreement can also be brought within the umbrella of mediation where the parties can sit together and resolve the disputes with the help of trained mediators. In all branches of law mediation can have its hands and successfully come out with a good result giving ultimate relief to the litigating people. We all are concerned about the ultimate result of a litigation but it is not a question how one has been able to fight against the other in order to seek a question of ego fight. The litigants are principally interested to get the relief whether it is by continuous litigation in Court or by resolving the disputes in one or two sittings either between the parties or through the intervention of the mediator. Therefore, the question is when the Courts should refer the matters before the mediators for settlement out of Court. If Courts do not encourage parties to get matters settled out of Court perhaps the object and purpose of the mediation cannot be achieved. Sufficient endeavour has been shown at the Government level to reach mediation and to reap its fruit. People are only to get the benefit out of it and the Judges should show the way of getting final relief within a short span of time where the Lawyers have a role to show the right direction and appreciate the reference made by the Courts. If Courts, Advocates, parties and the Mediators act as a team, positive result always be ensured. Therefore, to implement the object of mediation what is required is to expand the scope by making the people aware of it. Once, this awareness reaches to the beneficiaries I am sure they will come forward and will get encouragement for mediation which will, ultimately, lead to an um-polluted society free of Carbon-di-oxide released from the deep sighs of people out of frustration for the loss of near and dear ones; loss of money, time and prestige.

**Sahidullah Munshi, J**