

*Mediation  
Training Manual  
for Capsule Course*

**Mediation and Conciliation Project Committee  
Supreme Court of India, Delhi**



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**Mediation and Conciliation Project Committee  
Supreme Court of India, Delhi**



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## CHAPTER - I

# INTRODUCTION

Buddha said “Mediation bring wisdom, lack of mediation leaves ignorance. Know well what leads you forward and what holds you back; choose that which leads to wisdom.”

Mediation originated in the United States and turning point occurred in 1976 at a Nationwide Conference of Lawyers, Jurists and Educators, popularly known as Pound Conference. The Court annexed mediation remained at the experimental stage in the 1970's and 1980's and expanded significantly in 1990's.

In India, the dramatic expansion of commerce, trade and industry, liberalization of economic policies and the inadequate infrastructural facilities to meet the challenge, exposed the inability of the existing judicial system to handle the caseloads efficiently and effectively. A need was felt to evolve mechanisms which may supplement the judicial system.

Towards that end, section 89 was inserted in the Code of Civil Procedure 1908, through the CPC (Amendment) Act 1999, brought into force with effect from 1st July 2002. Section 89 paved way for compulsory resort to the ADR mechanisms.

The Constitutional validity of section 89 CPC has been upheld by the Supreme Court in Salem Bar Association, Tamil Nadu v. Union of India (2003) 1 SCC 49.

Mediation and Conciliation Project Committee (MCPC) was constituted by the Supreme Court on 09th April, 2005 to evolve policy guidelines relating to the mediation. The Committee has undertaken mediation training programme, referral judges training programme, awareness programme and training of trainers programme throughout the country. Under the aegis of the Mediation and Conciliation Project Committee of the Supreme Court, mediation training has been imparted to the Judicial Officers, Advocates, Bureaucrats and Senior Officers of the Government, Chartered Accountants, Doctors and others. Training for trainers has also been imparted to the Judicial Officers and Advocates of various States so that they may conduct mediation trainings in their States in their local language.

All the High Courts in India have also constituted Mediation Committees or the Board of Governors for supervising the mediation in their respective states and all the mediation related activities are conducted in those States under the guidance and supervision of these Committees or Board.

Mediation is a voluntary process where the parties to mediation arrive at acceptable settlement for themselves with the help of trained mediators, who take the parties through process to settlement. It saves time, money and has procedural flexibility. The parties to the dispute identify their needs and the solution to it.

Mediation has an edge over the other ADR mechanisms mentioned in Section 89 CPC as it has various fundamental advantages which the other ADR mechanisms do not have. Some of the advantages of Mediation are:

- Speedy – time bound
- Economical
- no additional cost
- Simple and flexible
- flexibility of time
- flexibility of procedure
- Informal environment
- Maximum participation of parties
- presenting their case in their own words
- determining the scope of mediation
- bringing out an outcome
- Confidentiality
- non disclosure of the proceedings
- non disclosure of the confidential information given by the parties without the consent of the party
- Creative solutions
- Non traditional remedies on the basis of underline interest.
- Non determination of guilt or fault.
- Settlement of other connected cases.
- Finality
- Refund of court fee
- Enhancement of substantial peace and harmony.

The Supreme Court in *Vikram Bakshi & Ors. v. Sonia Khosla* (2014) 2015 SCC 80 has numerated the nature and benefits of Mediation.

Mediation however requires maintaining the purity of process, impartiality, confidentiality to achieve greater heights and to establish itself independent of the courts.

## CHAPTER - II

# PERCEPTIONS

### **Assumptions, Perceptions and Expectations**

Assumptions, Perceptions and Expectations are important in mediation. They have an impact on the dispute. They shape the responses to a conflicting situation. They define how we perceive a conflict.

#### **How Conflict is addressed?**

##### **A conflict is addressed by:**

- examining our own and the other persons assumptions, perceptions and expectations
- by assessing as to how they affect the working relationship.

##### **Assumption**

- a thing that is assumed to be true.
- may not be individual to the person concerned.

##### **Perception**

- a way of regarding, understanding or interpreting something.
- fundamentally individual to each person.
- may be divergent based on
  - assumptions
  - expectations
  - experiences
  - history

##### **Expectations**

- belief that something will happen or to be the case.
- normal to have expectations.
- based on life experiences.
  - general
  - specific to a particular situation.
- when expectations are not met they
  - may cause a sense of frustration
  - give a feeling of disregard/disrespect.

##### **In conflicts**

- significant misunderstanding of each others
  - perceptions
  - needs
  - feelings



**Factors that influence responses to the situation/conflict management**

- 1. Culture, race and ethnicity**
  - provide rules for appropriate and acceptable/ desirable behaviour
  - in the form of values, beliefs, norms.
  - hold certain beliefs about social structure.
  - value substantive procedural and psychological needs, differently.
- 2. Gender and sexuality**
  - Men and women perceive situation differently.
  - based on their
    - experiences
    - socialization pattern
    - different mindsets.
- 3. Knowledge**
  - knowledge about the issue
    - may be general
    - may be situation specific
- 4. Impression of the messenger**
  - influence how the messenger is perceived.
  - a powerful - threat.
  - Credibility and integrity
    - if lacking- no respect
    - if credible – listen with respect.
- 5. Previous experiences**
  - play an important role.
  - life experiences
    - fearful - lacking trust and reluctant to take risk
    - confident - take chances and experience the unknown.

**Biases in Perceptions**

- confirmation bias
  - favour information that confirms your hypothesis what we are looking for.
- overvalues personality based explanation of observed behaviour.
- undervalues situational explanation to that behaviour.

**Individuals use**

- Different strategies.
- To handle conflict.
- Depending on the perception of the situation.

## CHAPTER - III

# CONFLICT MANAGEMENT

### NATURE OF CONFLICT

It is appropriate to begin the study of mediation with an examination of the nature of conflict and the principles of conflict resolution which underlie the mediation process. We will first attempt to understand conflict, and then examine the need to manage conflict through negotiation and finally study mediation as assisted negotiation to resolve conflict effectively. This becomes necessary because how we understand conflict determines the way we will mediate.

Life comprises of several differences between and among people, groups and nations. There are cultural differences, personality differences, differences of opinion, situational differences. Unresolved differences lead to disagreements. Disagreements cause problem. Disagreement unresolved becomes dispute. Unresolved disputes become conflicts. Unresolved conflicts can lead to violence and even war. This is called the continuum of tension and is often illustrated by the following chart:

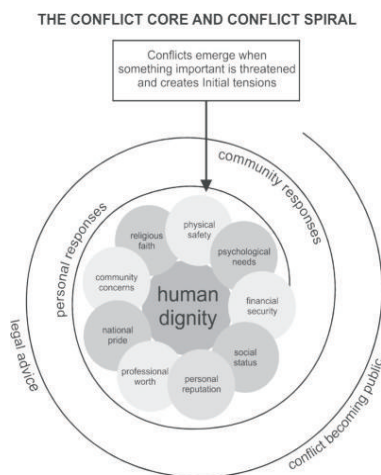
### CONTINUUM OF TENSION

We will study the nature of Conflict in three broad dimensions. (1) The sense of threat which drives it (the Conflict Core). (2) What happens when it escalates (the Conflict Spiral). (3) The three primary aspects of conflict that mediation needs to address (the Conflict Triangle). Understanding these dimensions will help us understand our own approaches to conflict as well as those of the parties we deal with.

### DIMENSIONS OF CONFLICT

#### 1) THE CONFLICT CORE

The Conflict Core diagram shows how at the very core of any conflict, there lies a sense of threat concerning individuals, groups, communities or nations. This sense of threat emerges when any disagreement, annoyance, competition or human dignity, personal psychological needs, professional security, community concerns, pride. This list is not exhaustive threat. By the time parties get to the they are threatened both by the themselves! There is fear, frustration, embarrassment, anger, desperation, vengeance and a host addressed. Failure to address these from resolving their dispute.



inequity threatens any aspect of reputation, physical safety, worth, social status, financial religious membership or national and only indicates broad areas of negotiating or mediation table, opposite side and within suspicion, helplessness, hurt, humiliation, distrust, of mixed emotions that need to be emotions will prevent the parties

## 2) THE CONFLICT SPIRAL

When a given conflict intensifies, the initial tensions start spiraling outwards, affecting individuals, relationships, tasks, decisions, organizations and communities. This outward manifestation of the conflict is called the Conflict Spiral.

**Personal responses.** The stress of conflict provokes strong feelings of anxiety, anger, hostility, depression, and even vengeance in relationships. Every action or in-action of the other side becomes suspect. People become increasingly rigid in how they see the problem and in the solutions they demand. It can be difficult for them to think clearly. Hence what the parties really need is a forum which will understand and address their emotions and not just their dispute. Without emotions being addressed it is difficult to find real solutions.

**Community responses.** Emotions have a vital community and cultural context, even though individual responses may not always be the same for all members of the same culture or community. Any dispute takes colour from its community and cultural context. When the dispute begins to affect those around it, people may take sides or leave. Communities and families get polarized when the dispute involves a family or community member. However, a solution for a family dispute in one part of the country may not necessarily be perceived to be the solution in another part of the country. Similarly, a solution in the context of a metropolitan urban city may not be the same as for a rural area. A solution for a voluntary organization working with education may not be the solution for an information technology firm.

**Legal advice.** Legal advice often becomes important in a conflict. This may add to the increasing tensions and inability of parties to control the situation themselves. Through process of interaction between the parties, assisted by a neutral person, a possible solution acceptable to all can be evolved.

### **Conflict becoming public**

Sometimes the conflict becomes public. Each side develops rigid positions and gathers allies for the cause. The conflict may spread beyond the original protagonists' control. It may also attract public and media attention. The relationships of the old and new protagonists become more complicated. Resolving the original conflict therefore becomes more difficult.

## 3) THE CONFLICT TRIANGLE\*

The Conflict Triangle arranges the three primary aspects of Conflict namely: the People, the Process and the Problem into three sides of the triangle. This Conflict Triangle becomes the Acknowledgement of concepts and ideas of the Conflict Core, Spiral and Triangle: 'The Mediator's Handbook' by Jennifer E. Beer with Eileen Stief developed by Friends Conflict resolution programs, revised and expanded 3rd.Edition, New Society publishers basic framework to understand and address conflict. Elements of each side of this Conflict Triangle differ from person to person, situation to situation and problem to problem requiring different solutions.

1. **People.** Dealing with any conflict involves dealing with people. People come from different personal, social, cultural and religious backgrounds. They have their own individual personalities, relationships, perceptions, approaches and emotional equipment to deal with varying situations.

2. Process. Every conflict has its own pattern of communication and interaction between and among all the parties. Conflicts differ in the way each one intensifies, spreads and gets defused or resolved.

3. Problem. Every conflict has its own content. This comprises of all the issues and interests of different parties involved, positions taken by them and their perceptions of the conflict. **GOING BEYOND MERE**



### PROBLEM-SOLVING

If the parties are able to address each side of the conflict triangle, easing their emotional state, changing their ways of interacting and addressing the problems which threatened their core interests, then the conflict is not merely resolved, but mindsets and hearts change. It is in this sense that mediation at its best goes beyond mere problem-solving or managing a conflict.

### CAUSES OF CONFLICT AND ADDRESSING THEM

The first step in resolving conflict is identifying its cause. Once the cause has been identified, the next step is to evolve a strategy to address it. The following are some examples of causes of conflict and strategies to address them.

<b>CAUSES Information</b>	<b>STRATEGY</b>
---------------------------	-----------------

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• Lack of information</li><li>• Misinformation</li><li>• Different interpretations of</li></ul> | <ul style="list-style-type: none"><li>• Agree on what data are important</li><li>• Agree on process to collect data</li><li>• Agree on considering all interpretations</li></ul> |
|---|--|

informationInterests and Expectations of information

- Goals, needs
- Perceptions Relationships
- Find creative solutions
- Poor communication
- Repetitive negative behaviour
- Misconceptions, stereotypes
- Distrust
- History of conflictStructural Conflicts
- Focus on improving the future, not dissecting the past
- Resources
- Power
- Time constraintsValues decision-making process
- Clearly define, change roles
- Search for super-ordinate goals
- Allow parties to agree and to disagree
- Religion
- Shift focus from positions to interests
- Expand options
- Clarify perceptions
- Establish ground rules
- Clarify misconceptions
- Improve communication
- Agree on processes and procedures
- Keep your word
- Reallocate ownership and control
- Establish fair, mutually acceptable
- Different criteria for evaluating ideas
- Different ways of life, ideology and
- Build common loyalty

## CHAPTER - IV

# MEDIATION - DEFINITION & CONCEPT

1. Mediation is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques. In mediation, the parties retain the right to decide for themselves whether to settle a dispute and the terms of any settlement. Even though the mediator facilitates their communications and negotiations, the parties always retain control over the outcome of the dispute.
  - 1.1 Mediation is voluntary. The parties retain the right to decide for themselves whether to settle a dispute and the terms of settlement of the dispute. Even if the court has referred the case for the mediation or if mediation is required under a contract or a statute, the decision to settle and the terms of settlement always rest with the parties. This right of self-determination is an essential element of the mediation process. It results in a settlement created by the parties themselves and is therefore acceptable to them. The parties have ultimate control over the outcome of mediation. Any party may withdraw from the mediation proceedings at any stage before its termination and without assigning any reason.
  - 1.2 Mediation is a party-centered negotiation process. The parties and not the neutral mediator are the focal point of the mediation process. Mediation encourages the active and direct participation of the parties in the resolution of their dispute. Though the mediator, advocates, and other participants also have active roles in mediation, the parties play the key role in the mediation process. They are actively encouraged to explain the factual background of the dispute, identify issues and underlying interests, generate options for agreement and make a final decision regarding settlement.
  - 1.3 Though the mediation process is informal, which means that it is not governed by the rules of evidence and formal rules of procedure it is not an extemporaneous or casual process. The mediation process itself is structured and formalized, with clearly identifiable stages. However, there is a degree of flexibility in following these stages.
  - 1.4 Mediation in essence is an assisted negotiation process. Mediation addresses both the factual/ legal issues and the underlying causes of a dispute. Thus, mediation is broadly focused on the facts, law, and underlying interests of the parties, such as personal, business/commercial, family, social and community interests. The goal of mediation is to find a mutually acceptable solution that adequately and legitimately satisfies the needs, desires and interests of the parties.
  - 1.5 Mediation provides an efficient, effective, speedy, convenient and less expensive process to resolve a dispute with dignity, mutual respect and civility.
  - 1.6 Mediation is conducted by a neutral third party- the mediator. The mediator remains impartial, independent, detached and objective throughout the mediation process. In mediation, the mediator assists the parties in resolving their dispute. The mediator is a guide who helps the parties to find their own solution to the dispute. The mediator's personal preferences or perceptions do not have any bearing on the dispute resolution process.
  - 1.7 In Mediation the mediator works together with parties to facilitate the dispute resolution process and does not adjudicate a dispute by imposing a decision upon the parties. A mediator's role is both

facilitative and evaluative. A mediator facilitates when he manages the interaction between the parties, encourages and promotes communication between them and manages interruptions and outbursts by them and motivates them to arrive at an amicable settlement. A mediator evaluates when he assists each party to analyze the merits of a claim/defence, and to assess the possible outcome at trial.

- 1.8 The mediator employs certain specialized communication skills and negotiation techniques to facilitate a productive interaction between the parties so that they are able to overcome negotiation impasses and find mutually acceptable solutions.
- 1.9 Mediation is a private process, which is not open to the public. Mediation is also confidential in nature, which means that statements made during mediation cannot be disclosed in civil proceedings or elsewhere without the written consent of all parties. Any statement made or information furnished by either of the parties, and any document produced or prepared for / during mediation is inadmissible and non-discoverable in any proceeding. Any concession or admission made during mediation cannot be used in any proceeding. Further, any information given by a party to the mediator during mediation process is not disclosed to the other party, unless specifically permitted by the first party. No record of what transpired during mediation is prepared.
- 1.10 Any settlement reached in a case that is referred for mediation during the course of litigation is required to be reduced to writing, signed by the concerned parties and filed in Court for the passing of an appropriate order. A settlement reached at a pre-litigation stage is a contract, which is binding and enforceable between the parties.
- 1.11 In the event of failure to settle the dispute, the report of the mediator does not mention the reason for the failure. The report will only say "not settled".
- 1.12 The mediator cannot be called upon to testify in any proceeding or to disclose to the court as to what transpired during the mediation.

### Chapter - III

- 1.13 Parties to the mediation proceedings are free to agree for an amicable settlement, even ignoring their legal entitlement or liabilities.
- 1.14 Mediation in a particular case need not be confined to the dispute referred, but can go beyond and proceed to resolve all other connected or related disputes also.

### **ADVANTAGES OF MEDIATION**

1. The parties have CONTROL over the mediation in terms of 1) its scope (i.e., the terms of reference or issues can be limited or expanded during the course of the proceedings) and 2) its outcome ( i.e., the right to decide whether to settle or not and the terms of settlement.)
  - 1.1. Mediation is PARTICIPATIVE. Parties get an opportunity to present their case in their own words and to directly participate in the negotiation.
  - 1.2. The process is VOLUNTARY and any party can opt out of it at any stage if he feels that it is not helping

- him. The self-determining nature of mediation ensures compliance with the settlement reached.
- 1.3. The procedure is SPEEDY, EFFICIENT and ECONOMICAL.
  - 1.4. The procedure is SIMPLE and FLEXIBLE. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day-to-day activities.
  - 1.5. The process is conducted in an INFORMAL, CORDIAL and CONDUCIVE environment.
  - 1.6. Mediation is a FAIR PROCESS. The mediator is impartial, neutral and independent. The mediator ensures that pre-existing unequal relationships, if any, between the parties, do not affect the negotiation.
  - 1.7. The process is CONFIDENTIAL.
  - 1.8. The process facilitates better and effective COMMUNICATION between the parties which is crucial for a creative and meaningful negotiation.
  - 1.9. Mediation helps to maintain/ improve/ restore relationships between the parties.
  - 1.10. Mediation always takes into account the LONG TERM AND UNDERLYING INTERESTS OF THE PARTIES at each stage of the dispute resolution process - in examining alternatives, in generating and evaluating options and finally, in settling the dispute with focus on the present and the future and not on the past. This provides an opportunity to the parties to comprehensively resolve all their differences.
  - 1.11. In mediation the focus is on resolving the dispute in a MUTUALLY BENEFICIAL SETTLEMENT.
  - 1.12. A mediation settlement often leads to the SETTLING OF RELATED/ CONNECTED CASES between the parties.
  - 1.13. Mediation allows CREATIVITY in dispute resolution. Parties can accept creative and non conventional remedies which satisfy their underlying and long term interests, even ignoring their legal entitlements or liabilities.
  - 1.14. When the parties themselves sign the terms of settlement, satisfying their underlying needs and interests, there will be compliance.
  - 1.15. Mediation PROMOTES FINALITY. The disputes are put to rest fully and finally, as there is no scope for any appeal or revision and further litigation.
  - 1.16. REFUND OF COURT FEES is permitted as per rules in the case of settlement in a court referred mediation.





## CHAPTER - V

# ROLE OF MEDIATORS

Mediation is a process in which an impartial and neutral third person, the mediator, facilitates the resolution of a dispute without suggesting what should be the solution. It is an informal and non-adversarial process intended to help disputing parties to reach a mutually acceptable solution. The role of the mediator is to remove obstacles in communication, assist in the identification of issues and the exploration of options and facilitate mutually acceptable agreements to resolve the dispute. However, the ultimate decision rests solely with the parties. A mediator cannot force or compel a party to make a particular decision or in any other way impair or interfere with the party's right of self-determination.

### **(A) FUNCTIONS OF A MEDIATOR**

**The functions of a mediator are to :-**

- (i) facilitate the process of mediation; and
- (ii) assist the parties to evaluate the case to arrive at a settlement

#### **(i) FACILITATIVE ROLE**

A mediator facilitates the process of mediation by-

- creating a conducive environment for the mediation process.
- explaining the process and its ground rules.
- facilitating communication between the parties using the various communication techniques.
- identifying the obstacles to communication between the parties and removing them.
- gathering information about the dispute.
- identifying the underlying interests.
- maintaining control over the process and guiding focused discussion.
- managing the interaction between parties.
- assisting the parties to generate options.
- motivating the parties to agree on mutually acceptable settlement.
- assisting parties to reduce the agreement into writing.

#### **(ii) EVALUATIVE ROLE**

A mediator performs an evaluative role by-

- helping and guiding the parties to evaluate their case through reality - testing.
- assisting the parties to evaluate the options for settlement.

### **(B) MEDIATOR AS DISTINGUISHED FROM CONCILIATOR AND ADJUDICATOR**

#### **(I) Mediator and Conciliator**

The facilitative and evaluative roles of the mediator have been already explained. The evaluative role of mediator is limited to the function of helping and guiding the parties to evaluate their case through reality

testing and assisting the parties to evaluate the options for settlement. But in the process of a conciliation, the conciliator himself can evaluate the cases of the parties and the options for settlement for the purpose of suggesting the terms of settlement.

The role of a mediator is not to give judgment on the merits of the case or to give advice to the parties or to suggest solutions to the parties.

**(ii) Mediator and Adjudicator**

A mediator is not an adjudicator. Adjudicators like judges, arbitrators and presiding officers of tribunals make the decision on the basis of pleadings and evidence. The adjudicator follows the formal and strict rules of substantive and procedural laws. The decision of the adjudicator is binding on the parties subject to appeal or revision. In adjudication, the decision is taken by the adjudicator alone and the parties have no role in it.

In mediation the mediator is only a facilitator and he does not suggest or make any decision. The decision is taken by the parties themselves. The settlement agreement reached in mediation is binding on the parties. In court referred mediation there cannot be any appeal, or revision against the decree passed on the basis of such settlement agreement. In private mediation, the parties can agree to treat such settlement agreement as a conciliation agreement which then will be governed by the provisions of the Arbitration and Conciliation Act, 1996.

© **QUALITIES OF A MEDIATOR**

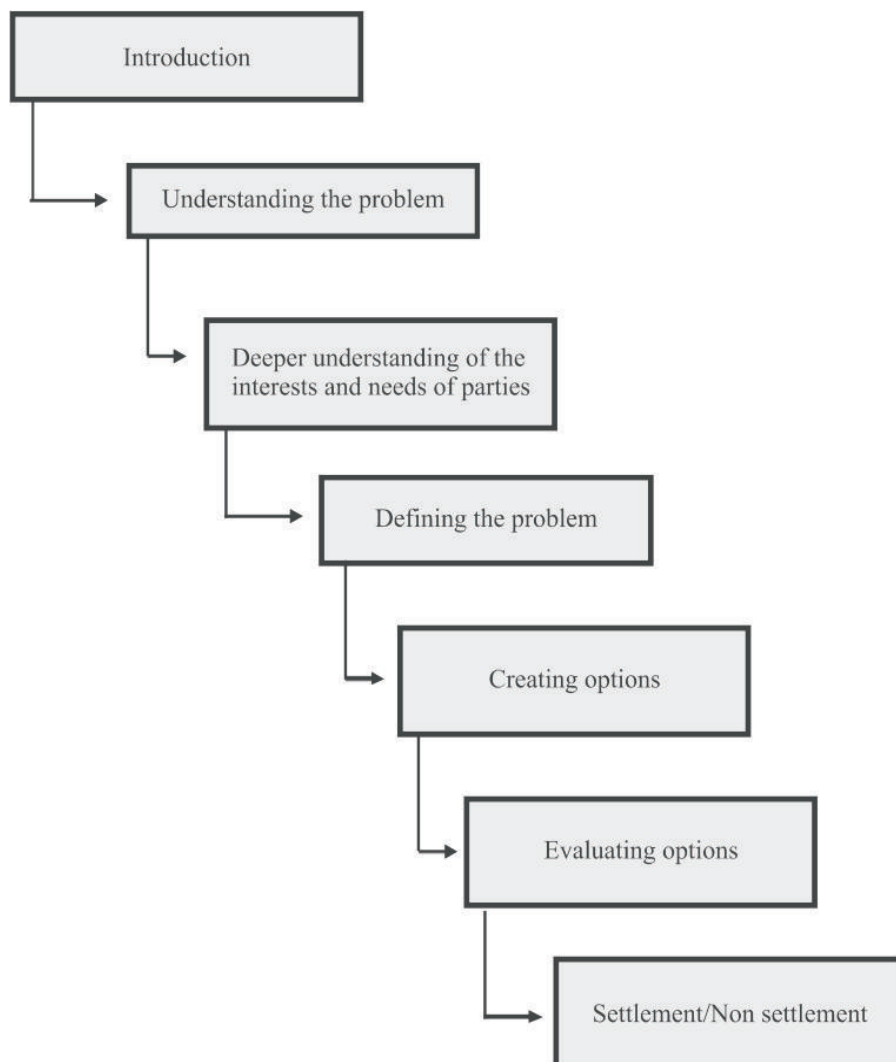
**It is necessary that a mediator must possess certain basic qualities which include:**

- I. complete, genuine and unconditional faith in the process of mediation and its efficacy.
- ii. ability and commitment to strive for excellence in the art of mediation by constantly updating skills and knowledge.
- iii. sensitivity, alertness and ability to perceive, appreciate and respect the needs, interests, aspirations, emotions, sentiments, frame of mind and mindset of the parties to mediation.
- iv. highest standards of honesty and integrity in conduct and behavior.
- v. neutrality, objectivity and non-judgmental.
- vi. ability to be an attentive, active and patient listener.
- vii. a calm, pleasant and cheerful disposition.
- viii. patience, persistence and perseverance.
- ix. good communication skills.
- x. open mindedness and flexibility.
- xi. empathy.
- xii. Creativity.

## CHAPTER - VI

# MEDIATION PROCESS

Mediation is a dynamic process in which the mediator assists the parties to negotiate a settlement for resolving their dispute. In doing so, the mediator uses the four functional stages of mediation, namely, (i) Introduction and Opening Statement (ii) Joint Session (iii) Separate Session and (iv) Closing. These functional stages are used in an informal and flexible manner so that the mediation process gains momentum, following a specific and predictable course as illustrated below.



Each of the above phases reflects an essential pre-requisite in the dynamics of the mediation process which must be accomplished before moving to the next phase.



## CHAPTER - VII

# MEDIATION : THE STAGES

**The functional stages of the mediation process are:**

- 1) Introduction and Opening Statement
- 2) Joint Session
- 3) Separate Session(s)
- 4) Closing

### **STAGE 1: INTRODUCTION AND OPENING STATEMENT**

#### **• OBJECTIVES**

- Establish neutrality
- Create an awareness and understanding of the process
- Develop rapport with the parties
- Gain confidence and trust of the parties
- Establish an environment that is conducive to constructive negotiations
- Motivate the parties for an amicable settlement of the dispute
- Establish control over the process

#### **Seating Arrangement in the Mediation Room**

At the commencement of the mediation process, the mediator shall ensure that the parties and/or their counsel are present and proper/ appropriate seating arrangement is made for them.

#### **Introduction and Opening Statement:**

The mediator commences with the opening statement which must be simple, and in the language the parties can understand.

#### **To Welcome & greet the parties and their representatives.**

- Introduces himself, his standing, training and successful experience as a mediator
- Declares he has no connection with either of parties and has no interest in the dispute
- Asks the parties to introduce themselves and welcomes their lawyers
- Asks parties which language they would prefer to be addressed in

- Enquire about their previous experience in any mediation process
- Discuss impartiality and neutrality by using appropriate words and body language
- Emphasizes the voluntary nature of the process
- Emphasizes on the non – adversarial aspect of the process like absence of recording of evidence or pronouncement of award or order
- Informs he can go beyond pleadings and may cover other disputes
- States the mediation process and possibility of having private sessions
- Explain the procedures where there is settlement or no settlement
- Informs that court fee is refunded on settlement

Finally, the mediator shall confirm that the parties have understood the mediation process and the ground rules and shall give them an opportunity to get their doubts if any, clarified.

## **STAGE 2: JOINT SESSION**

### **OBJECTIVES**

- Gather information
- Provide opportunity to the parties to hear the perspectives of the other parties
- Understand perspectives, relationships and feelings
- Understand facts and the issues
- Understand obstacles and possibilities
- Ensure that each participant feels heard

### **PROCEDURE**

- The mediator should invite parties to narrate their case, explain perspectives, vent emotions and express feelings without interruption or challenge. First, the plaintiff/petitioner should be permitted to explain or state his/her case/claim in his/her own words. Second, counsel would thereafter present the case and state the legal issues involved in the case. Third, defendant/ respondent would thereafter explain his/her case/claim in his/ her own words. Fourth, counsel for defendant/respondent would present the case and state the legal issues involved in the case.
- The mediator should encourage and promote communication, and effectively manage interruptions and outbursts by parties.
- The mediator may ask questions to elicit additional information when he finds that facts of the case and perspectives have not been clearly identified and understood by all present.

- The mediator would then summarize the facts, as understood by him, to each of the parties to demonstrate that the mediator has understood the case of both parties by having actively listened to them.
- Parties may respond to points/positions conveyed by other parties and may, with permission, ask brief questions to the other parties.
- The mediator shall identify the areas of agreement and disagreement between the parties and the issues to be resolved.
- The mediator should be in control of the proceedings and must ensure that parties do not 'take over' the session by aggressive behaviour, interruptions or any other similar conduct.
- During or on completion of the joint session, the mediator may separately meet each party with his counsel, usually starting with the plaintiff/petitioner. The timing of holding the separate session may be decided by the mediator at his discretion having regard to the productivity of the on-going joint session, silence of the parties, loss of control, parties becoming repetitive or request by any of the parties. There can be several separate sessions. The mediator could revert back to a joint session at any stage of the process if he feels the need to do so.

### **STAGE 3: SEPARATE SESSION**

#### **Objectives**

- Understand the dispute at a deeper level
- Provide a forum for parties to further vent their emotions
- Provide a forum for parties to disclose confidential information which they do not wish to share with other parties
- Understand the underlying interests of the parties
- Help parties to realistically understand the case
- Shift parties to a solution-finding mood
- Encourage parties to generate options and find terms that are mutually acceptable

#### **Procedure**

##### **(I) RE - AFFIRMING CONFIDENTIALITY**

During the separate session each of the parties and his counsel would talk to the mediator in confidence. The mediator should begin by re-affirming the confidential nature of the process.



## **(ii) GATHERING FURTHER INFORMATION**

The separate session provides an opportunity for the mediator to gather more specific information and to follow-up the issues which were raised by the parties during the joint session. In this stage of the process:-

- Parties vent personal feelings of pain, hurt, anger etc.,
- The mediator identifies emotional factors and acknowledges them;
- The mediator explores sensitive and embarrassing issues;
- The mediator distinguishes between positions taken by parties and the interests they seek to protect;
- The mediator identifies why these positions are being taken (need, concern, what the parties hope to achieve);
- The mediator identifies areas of dispute between parties and what they have previously agreed upon;
- Common interests are identified;
- The mediator identifies each party's differential priorities on the different aspects of the dispute (priorities and goals) and the possibility of any trade off is ascertained.
- The mediator formulates issues for resolution.

## **(iii) REALITY - TESTING**

After gathering information and allowing the parties to vent their emotions, the mediator makes a judgment whether it is necessary to challenge or test the conclusions and perceptions of the parties and to open their minds to different perspectives. The mediator can then, in order to move the process forward, engage in REALITY-TESTING. Reality-testing may involve any or all of the following:

- (a) A detailed examination of specific elements of a claim, defense, or a perspective;
- (b) An identification of the factual and legal basis for a claim, defense, or perspective or issues of proof thereof;
- © Consideration of the positions, expectations and assessments of the parties in the context of the possible outcome of litigation;
- (d) Examination of the monetary and non-monetary costs of litigation and continued conflict;
- (e) Assessment of witness appearance and credibility of parties;
- (f) Inquiry into the chances of winning/losing at trial; and
- (g) Consequences of failure to reach an agreement.

## **Techniques of Reality-Testing**

Reality-Testing is often done in the separate session by:

1. Asking effective questions,
2. Discussing the strengths and weaknesses of the respective cases of the parties, without breach of confidentiality, and/or
3. Considering the consequences of any failure to reach an agreement (BATNA/WATNA / MLATNA analysis).

### **1. ASKING EFFECTIVE QUESTIONS**

Mediator may ask parties questions that can gather information, clarify facts or alter perceptions of the parties with regard to their understanding and assessment of the case and their expectations.

#### **Examples of Effective Questions:**

**OPEN-ENDED QUESTIONS** like 'Tell me more about the circumstances leading up to the signing of the contract'. 'Help me understand your relationship with the other party at the time you entered the business'. 'What were your reasons for including that term in the contract?'

**CLOSED QUESTIONS**, which are specific, concrete and which bring out specific information. For example, 'it is my understanding that the other driver was going at 60 kilometers per hour at the time of the accident, is that right?' 'On which date the contract was signed?' 'Who are the contractors who built this building?'

**QUESTIONS THAT BRING OUT FACTS:** 'Tell me about the background of this matter'. 'What happened next?'

**QUESTIONS THAT BRING OUT POSITIONS:** 'What are your legal claims?' 'What are the damages?' 'What are their defenses?'

**QUESTIONS THAT BRING OUT INTERESTS:** 'What are your concerns under the circumstances?' 'What really matters to you?' 'From a business / personal / family perspective, what is most important to you?' 'Why do you want divorce?' 'What is this case really about?' 'What do you hope to accomplish?' 'What is really driving this case?'

### **(II) DISCUSSING THE STRENGTHS AND WEAKNESSES OF THE RESPECTIVE CASES OF THE PARTIES**

The mediator may ask the parties or counsel for their views about the strengths and weaknesses of their case and the other side's case. The mediator may ask questions such as, 'How do you think your conduct will be viewed by a Judge?' or 'Is it possible that a judge may see the situation differently?' or 'I understand the strengths of your case, what do you think are the weak points in terms of evidence?' or 'How much time will this case take to get

a final decision in court?' Or 'How much money will it take in legal fees and expenses in court?

### **(III) CONSIDERING THE CONSEQUENCES OF ANY FAILURE TO REACH AN AGREEMENT (BATNA/WATNA/MLATNA ANALYSIS)**

BATNA      Best Alternative to Negotiated Agreement

WATNA      Worst Alternative to Negotiated Agreement

MLATNA    Most Likely Alternative to Negotiated Agreement

### **(iv) BRAIN STORMING**

Brain Storming is a technique used to generate options for agreement.

**There are 2 stages to the brain storming process:**

1.      Creating options
2.      Evaluating options

1. **Creating options:-** Parties are encouraged to freely create possible options for agreement. Options that appear to be unworkable and impractical are also included. The mediator reserves judgment on any option that is generated and this allows the parties to break free from a fixed mind set. It encourages creativity in the parties. Mediator refrains from evaluating each option and instead attempts to develop as many ideas for settlement as possible. All ideas are written down so that they can be systematically examined later.

2. **Evaluating options:-** After inventing options the next stage is to evaluate each of the options generated. The objective in this stage is not to criticize any idea but to understand what the parties find acceptable and not acceptable about each option. In this process of examining each option with the parties, more information about the underlying interests of the parties is obtained.

This information further helps to find terms that are mutually acceptable to both parties. Brainstorming requires lateral thinking more than linear thinking.

**Lateral thinking:** Lateral thinking is creative, innovative and intuitive. It is non-linear and non-traditional. Mediators use lateral thinking to generate options for agreement.

**Linear thinking:** Linear thinking is logical, traditional, rational and fact based. Mediators use linear thinking to analyse facts, to do reality testing and to understand the position of parties.

### **(v) SUB-SESSIONS**

The separate session is normally held with all the members of one side to the dispute, including their advocates and other members who come with the party. However, it is

open to the mediator to meet them individually or in groups by holding sub-sessions with only the advocate (s) or the party or any member(s) of the party.

a) Mediator may also hold sub-session(s) only with the advocates of both sides, with the consent of parties. During such sub-session, the advocates can be more open and forthcoming regarding the positions and expectations of the parties.

b) If there is a divergence of interest among the parties on the same side, it may be advantageous for the mediator to hold sub-session(s) with parties having common interest, to facilitate negotiations. This type of sub-session may facilitate the identification of interests and also prevent the possibility of the parties with divergent interests, joining together to resist the settlement.

#### **(vi) EXCHANGE OF OFFERS**

The mediator carries the options/offers generated by the parties from one side to the other. The parties negotiate through the mediator for a mutually acceptable settlement. However, if negotiations fail and settlement cannot be reached the case is sent back to the referral Court.

### **STAGE 4: CLOSING**

#### **(A) Where there is a settlement**

Once the parties have agreed upon the terms of settlement, the parties and their advocates re-assemble and the mediator ensures that the following steps are taken:

1. Mediator orally confirms the terms of settlement
2. Such terms of settlement are reduced to writing;
3. The agreement is signed by all parties to the agreement and the counsel if any representing the parties;
4. Mediator also may affix his signature on the signed agreement, certifying that the agreement was signed in his/her presence;
5. A copy of the signed agreement is furnished to the parties;
6. The original signed agreement sent to the referral Court for passing appropriate order in accordance with the agreement;
7. As far as practicable the parties agree upon a date for appearance in court and such date is intimated to the court by the mediator;
8. The mediator thanks the parties for their participation in the mediation and, congratulates all parties for reaching a settlement.

**THE WRITTEN AGREEMENT SHOULD:**

- 1 clearly specify all material terms agreed to;
- 2 be drafted in plain, precise and unambiguous language;
- 3 be concise;
- 4 use active voice, as far as possible. Should state clearly WHO WILL DO, WHAT, WHEN, WHERE and HOW (passive voice does not clearly identify who has an obligation to perform a task pursuant to the agreement);
- 5 use language and expression which ensure that neither of the parties feels that he or she has 'lost';
- 6 ensure that the terms of the agreement are executable in accordance with law; be complete in its recitation of the terms;
- 7 avoid legal jargon, as far as possible use the words and expressions used by the parties;
- 8 as far as possible state in positive language what each parties agrees to do;
- 9 as far as possible, avoid ambiguous words like reasonable, soon, co-operative, frequent etc;

**(B) Where there is no settlement**

If a settlement between the parties could not be reached, the case would be returned to the referral Court merely reporting "not settled". The report will not assign any reason for non settlement or fix responsibility on any one for the non-settlement. The statements made during the mediation will remain confidential and should not be disclosed by any party or advocate or mediator to the Court or to anybody else.

The mediator should, in a closing statement, thank the parties and their counsel for their participation and efforts for settlement.

## CHAPTER - VIII

# COMMUNICATON IN MEDIATION

### **Communication in Mediation**

1.1 Communication is the core of mediation. Hence, effective communication between all the participants in mediation is necessary for the success of mediation.

1.2 Communication is not just TALKING and LISTENING. Communication is a process of information transmission.

1.3 The intention of communication is to convey a message.

1.4 The purpose of communication could be any or all of the following:

- To express our feelings/thoughts/ideas/emotions/desires to others.
- To make others understand what and how we feel/think.
- To derive a benefit or advantage.
- To express an unmet need or demand.

1.5 Communication is conveying a message to another, in the manner in which you want to convey it. For example, a message of disapproval of something can be conveyed through spoken words or gestures or facial expressions or all of them.

1.6 Communication is also information sent by one to another to be understood by the receiver in the same way as it was intended to be conveyed.

1.7 Communication is initiated by a thought or feeling or idea or emotion which is transformed into words/gestures/acts/expressions. Then, it is converted into a message. This message is transmitted to the receiver. The receiver understands the message by assigning reasons and attributing thoughts, feelings/ideas to the message. It evokes a response in the Receiver who conveys the same to the sender through words/gestures/acts/expressions.

1.8 Consequently, a communication would involve :-

- |            |   |  |
|------------|---|--|
| A Sender   | - | person who sends a message.  |
| A Receiver | - | person who receives the message.   |
| Channel    | - | the medium through which a message is transmitted which could be words or gestures or expressions. |
| Message    | - | thoughts/feelings/ideas/emotions/knowledge/information that is sought to be communicated.          |

## CHAPTER - IX

# COMMUNICATON SKILLS

**Communication skills in mediation include:-**

- (A) Active Listening
- (B) Listening with Empathy
- (C) Body Language
- (D) Asking the Right Questions

**(A) ACTIVE LISTENING:**

Parties participate in mediation with varying degree of optimism, apprehension, distress, anger, confusion, fear etc. If the parties understand that they will be listened to and understood, it will help in trust building and they can share the responsibility to resolve the dispute.

In active listening the listener pays attention to the speaker's words, body language, and the context of the communication.

An active listener listens for both what is said and what is not said.

An active listener tries to understand the speaker's intended message, notwithstanding any mistake, mis-statement or other limitations of the speaker's communication.

An active listener controls his inner voices and judgments which may interfere with his understanding the speaker's message.

Active listening requires listening without unnecessarily interrupting the speaker. Parties must be given uninterrupted time to convey their message. There is a difference between hearing and listening. While hearing, one becomes aware of what has been said. While listening, one also understands the meaning of what has been said. Listening is an active process.

Following are the commonly used techniques of active listening by the mediator:

**1. Summarizing:** This is a communication technique where the mediator outlines the main points made by a speaker. The summary must be accurate, complete and worded neutrally. It must capture the essential points made by the speaker. Parties feel understood and repetition by them is minimized.

**2. Reflecting:** Reflecting is a communication technique used by a mediator to confirm they have heard and understood the feelings and emotions expressed by a speaker. Reflecting is a restatement of feelings and emotions in terms of the speaker's experience, e.g. "So, you are feeling frustrated". Reflecting usually demonstrates empathy.

**3. Re-framing:** Re-framing is a communication technique used by the mediator to help the parties move from Positions to Interests and thereafter, to problem solving and possible solutions. It involves removal of charged and offensive words of the speaker. It accomplishes five essential tasks:

1. Converts the statement from negative to positive.
2. Converts the statement from the past to the future.
3. Converts the statement from positions to interests.
4. Shifts the focus from the targeted person to the speaker.
5. Reduces intensity of emotions.

**Example:**

Party: "My boss is cruel and indifferent. It is impossible to talk to him. I should be able to meet him at least once a day. He doesn't make any time for me and always ignores me."

Mediator Re-frames: "You want regular access and communication with your boss and you want him to be considerate, is that right?" This re-frame has converted the employee's complaint from negative to positive, past to future, position to interest and shifted the focus back to the employee's needs/interests.

**NOTE:**

Position: A position is a perception ("my boss is cruel and indifferent") or a claim or demand or desired outcome ("I should be able to meet him at least once a day").

Interest: An interest is what lies beneath and drives a person's demands or claims. It is a person's real need, concern, priority, goal etc. It can be tangible (e.g. property, money, shares etc.) and/ or intangible (e.g. communication, consideration, recognition, respect, loyalty etc.).

4. Acknowledging: In acknowledgment the mediator verbally recognizes what the speaker has said without agreeing or disagreeing. Example "I see your point" or "I understand what you are saying. This way mediator assures the speaker that he has been heard and understood.
5. Deferring: A specialized communication technique where the mediator postpones the discussion of a topic until later. While deferring a mediator should write down the topic he has deferred and re-initiate the discussion of the topic at the right time.
6. Encouraging: The mediator can encourage parties when they need reassurance, support or help in communicating. Example: " what you said makes things clear" or "this is useful information"
7. Bridging: A technique used by a mediator to help a party to continue communication. Example: "And----", "And then----", The word "And" encourages communication whereas the word "But" could discourage communication.
8. Restating : In this the mediator restates the statement of the speaker using key or similar words or phrases used by the speaker, to ensure that he has accurately heard and understood the speaker. Example: "My husband does not give me the attention I need." Mediator restates "Your husband does not give you the attention you need."
9. Paraphrasing: Is a communication technique where the mediator states in his own words the statements of the speaker conveying the same meaning?
10. Silence: A very important communication technique. The mediator should feel comfortable with the silence of the parties allowing them to process and understand their thoughts.
11. Apology: It is an acknowledgment of hurt and pain caused to the other party and not necessarily an



admission of guilt. Parties should be carefully and adequately prepared by the mediator when a party chooses to apologize.

Example: "I am sorry that my words/act caused you hurt and pain. It was not my intention to hurt you"

12. Setting an agenda: In order to facilitate better communication between the parties the mediator effectively structures the sequence or order of topics, issues, position, claims, defenses, settlement terms etc. It may be done in consultation with the parties or unilaterally.

For example, when tensions are high it is preferable to select the easy issue to work on first. The mediator may determine what is to be addressed first so as to provide ground work for later decision making.

#### **BARRIERS TO ACTIVE LISTENING:**

- (i) Distractions: -- They may be external or internal. The sources of external distractions are noise, discomfort, interruptions etc. The sources of internal distractions are tiredness, boredom, preoccupation, anxiety, impatience etc.
- (ii) Inadequate time: - There should be sufficient time to facilitate attentive and patient listening.
- (iii) Pre-judging:-- A mediator should not prejudge the parties and their attitude, motive or intention.
- (iv) Blaming: -- A mediator should not assign responsibility to any party for what has happened.
- (v) Absent Mindedness: - The mediator should not be half-listening or inattentive.
- (vi) Role Confusion: -- The mediator should not assume the role of advisor or counselor or adjudicator.
- (vii) He should only facilitate resolution of the dispute.
- (viii) Arguing / imposing own views: -- The mediator should not argue with the parties or try to impose his own views on them.
- (ix) Criticizing
- (x) Counseling
- (xi) Moralizing
- (xii) Analyzing

#### **(B) LISTENING WITH EMPATHY**

In the mediation process, empathy means the ability of the mediator to understand and appreciate the feelings and needs of the parties, and to convey to them such understanding and appreciation without expressing agreement or disagreement with them.

Empathy shown by the mediator helps the speaker to become less emotional and more practical and reasonable. Mediator should understand that Empathy is different from Sympathy. In empathy the focus of attention is on the speaker whereas in sympathy the focus of attention is on the listener.

**Example:**

Wife: "I had such a hard day at work"

Husband: "I am so sorry you had a hard day at work"

(focus is on listener/ husband) - Sympathy

Husband: "You had a hard day at work, mine was worse"-Sympathy

(focus on listener/husband)

Husband: "You feel it was hard for you at work today. Would you like to talk about it?"

(focus on speaker/ wife) - Empathy

Reflecting is a good communication technique used to express empathy.

**(C) BODY LANGUAGE:**

The appropriate body language of the listener indicates to the speaker that the listener is attentive. It conveys to the speaker that the listener is interested in listening and that the listener gives importance to the speaker.

In the case of mediators the following can demonstrate an appropriate body language:-

- (i) Symmetry of posture - It reflects mediator's confidence and interest.
- (ii) Comfortable look - It increases the confidence of the parties.
- (iii) Smiling face - It puts the parties at ease.
- (iv) Leaning gently towards the speaker - It is a sign of attentive listening.
- (v) Proper eye contact with the speaker - It ensures continuing attention.

**(D) ASKING THE RIGHT QUESTIONS**

In mediation questions are asked by the mediator to gather information or to clarify facts, positions and interests or to alter perception of parties. Questions must be relevant and appropriate. However, questioning is a tool which should be used with discretion and sensitivity. Timing and context of the questioning are important. Different types of questions will be appropriate at different times and in different context. Appropriate questioning will also demonstrate that the mediator is listening and is encouraging the parties to talk. However, the style of questioning should not be the style of cross examination. Questions should not indicate bias, partiality, judgment or criticism. The right questions help the parties and the mediators to understand what the issues are.

**TYPES OF QUESTIONS:**

- (a) Open Questions: These are questions which will give a further opportunity to the party to provide more information or to clarify his own position, retaining control of the direction of discussion and maintaining his own perspective. They are broad and general in scope.

**Examples:**

"Can you tell me more about the subject?"

"What happened next?"

"What is your claim?"

"What do you really want to achieve?"

(b) Closed Questions: These questions are limited in scope, specific, direct and focused.

They are fact-based in content and tend to elicit factual information. The response to these questions may be 'Yes' or 'No' or a very short response and may close the discussion on the particular issue.

**Examples:**

"What colour shirt was the man wearing?" "On which date was the contract signed?"

"What is the total amount of your medical bills?"

"Were you present in the market when the event occurred?"

(c) Hypothetical Questions: Hypothetical questions are Questions which allow parties to explore new ideas and options.

**Examples:**

"What if the disputed property is acquired by Government?" "What if your husband offers to move out of the parental house and live separately?"

Other types of questions like Leading Questions and Complex Questions are not ordinarily asked in mediation, as they may not help the mediation process.

## CHAPTER - X

# NEGOTIATION AND BARGAINING MEDIATION

Though the words Negotiation and Bargaining are often used synonymously, in mediation there is a distinction. Negotiation involves bargaining and bargaining is part of negotiation. Negotiation refers to the process of communication that occurs when parties are trying to find a mutually acceptable solution to the dispute. Negotiation may involve different types of bargaining.

### **What is Negotiation?**

Negotiation is an important form of decision making process in human life. Negotiation is communication for the purpose of persuasion. Mediation in essence is an assisted negotiation process. In mediation, negotiation is the process of back and forth communication aimed at reaching an agreement between the parties to the dispute. The purpose of negotiation in mediation is to help the parties to arrive at an agreement which is as satisfactory as possible to both parties. The mediator assists the parties in their negotiation by shifting them from an adversarial approach to a problem solving and interest based approach. The mediator carries the proposals from one party to the other until a mutually acceptable settlement is found. This is called 'Shuttle Diplomacy'. Any negotiation that is based on merits and the interest of both parties is Principled Negotiation and can result in a fair agreement, preserving and enhancing the relationship between the parties. The mediator facilitates negotiation by resorting to reality-testing, brainstorming, exchanging of offers, breaking impasse etc.

### **Why does one negotiate?**

- a. To put across one's view points, claims and interests.
- b. To prevent exploitation/harassment.
- c. To seek cooperation of the other side.
- d. To avoid litigation.
- e. To arrive at mutually acceptable agreement.

### **NEGOTIATION STYLES**

- |                        |   |
|------------------------|---|
| 1) Avoiding Style      | Unassertive and Uncooperative: The participant does not confront the problem or address the issues.   |
| 2) Accommodating Style | Unassertive and Cooperative: He does not insist on his own interests and accommodates the interests of others. There could be an element of sacrifice.  |
| 3) Compromising Style  | Moderate level of Assertiveness and Cooperation: He recognizes that both sides have to give up something to arrive at a settlement. He is willing to reduce his demands. Emphasis will be on apparent equality. |
| 4) Competing Style     | Assertive and Uncooperative: The participant values only his own interests and is not concerned about the interests of others. He is aggressive and insists on his demands.                                     |

- 5) Collaborating Style      Assertive, Cooperative and Constructive: He values not only his own interests but also the interests of others. He actively participates in the negotiation and works towards a deeper level of understanding of the issues and a mutually acceptable solution satisfying the interests of all to the extent possible.

### What is bargaining?

Bargaining is a part of the negotiation process. It is a technique to handle conflicts. It starts when the parties are ready to discuss settlement terms.

### TYPES OF BARGAINING USED IN NEGOTIATION

There are different types of Bargaining. Negotiation may involve one or more of the types of bargaining mentioned below:

- (i)      Distributive Bargaining
- (ii)     Interest based Bargaining.
- (iii)    Integrative Bargaining.

(i)      Distributive Bargaining: is a customary, traditional method of bargaining where the parties are dividing or allocating a fixed resource (i.e., property, money, assets, company holdings, marital estate, probates estate, etc.). In distributive bargaining the parties may not necessarily understand their own or the other's interests and, therefore, often creative solutions for settlement are not explored. It could lead to a win-lose result or a compromise where neither party is particularly satisfied with the outcome. Distributive bargaining is often referred to as "zero sum game", where any gain by one party results in an equivalent loss by the other party. The two forms of distributive bargaining are:

Positional Bargaining: Positional Bargaining is characterized by the primary focus of the parties on their positions (i.e., offers and counter-offers). In this form of bargaining, the parties simply trade positions, without discussing their underlying interests or exploring additional possibilities for trade-offs and terms. This is the most basic form of negotiation and is often the first method people adopt. Each side takes a position and argues for it and may make concessions to reach a compromise. This is a competitive negotiation strategy. In many cases, the parties will never agree and if they agree to compromise, neither of them will be satisfied with the terms of the compromise.

*Example: Varun and Vivek are quarrelling in a room. Varun wants window open Vivek wants it shut. They continue to argue about how much to leave open - a crack, halfway, three quarter way.*

Rights-Based Bargaining: This form of bargaining focuses on the rights of parties as the basis for negotiation. The emphasis is on who is right and who is wrong. For example, "Your client was negligent. Therefore, s/he owes my client compensation." "Your client breached the contract. Therefore, my client is entitled to contract damages."

Rights-based bargaining plays an important role in many negotiations as it analyses and defines obligations of the parties. It is often used in combination with Positional Bargaining (e.g., "Your client was negligent, so

she owes my client X amount in compensation. ) Rights-Based Bargaining can lead to an impasse when the parties differ in the interpretation of their respective rights and obligations.

**Negative consequences of Distributive Bargaining are:**

- (a) By taking rigid stands the relationship is often lost.
- (b) Creative solutions are not explored and the interests of both parties are not fully met.
- (c) Time consuming.
- (d) Both parties take extreme positions often resulting in impasse.

Interest-Based Bargaining: A mutually beneficial agreement is developed based on the facts, law and interests of both parties. Interests include needs, desires, goals and priorities. This is a collaborative negotiation strategy that can lead to mutual gain for all parties, viz., "win-win". It has the potential to combine the interests of parties, creating joint value or enlarging the pie. Relief expands in interest based bargaining. It preserves or enhances relationships. It has all the elements of principled negotiation and is advised in cases where the parties have on-going relationships and / or interests they want to preserve.

*Example: The story of two sisters quarrelling over one orange. They decide to cut the orange in half and share it, although both are not happy as it would not adequately satisfy their interest. The mother comes in to enquire what is the real interest of each one. One says that she needs the juice of one orange and the other says that she needs the peel of one orange. The same orange could satisfy the interest of both parties. Both sisters go away happy.*

**There are three essential steps in interest-based bargaining.**

- (a) Identifying the interests of parties.
- (b) Prioritizing the parties' interests.
- (c) Helping the parties develop terms of agreement/settlement that meets their most important interests.

(iii) Integrative Bargaining: Integrative Bargaining is an extension of Interest Based Bargaining. In Integrative Bargaining the parties "expand the pie" by integrating the interests of both parties and exploring additional options and possible terms of settlement. The parties think creatively to figure out ways to "sweeten the pot", by adding to or changing the terms for settlement.

*To continue the earlier example of Varun and Vivek quarrelling in the room. Ashok comes into the room and enquires about the quarrel. Vivek says that the cold air blowing on his face is making him uncomfortable. Varun says that the lack of air circulation is making the room stuffy and he is uncomfortable. Ashok opens the window of the adjoining room and keeps the connecting door open. Both parties are happy. The cold air is not directly blowing into Varun's face and Vivek is comfortable as there is adequate air circulation in the room.*

*As the interests and needs of both parties have been identified, it is easier to integrate the interests of both parties and find a mutually acceptable solution.*

*Another example of integrative bargaining. A car salesman may reach an impasse with a customer on the issue of the price of a new car. Instead of losing the deal, the car salesman will offer to throw in fancy leather seats as part of the deal while maintaining the price on the car. If necessary the salesman may also agree to help the customer to sell his old car at a good price.*

*The fancy leather seats and the offer to help in the sale of the old car are integrative terms because they result from an exploration of whether additional terms or trade-offs could be of interest to the customer. Similarly, the Mediator can help parties avoid or overcome an impasse by actively exploring the possibility and desirability of additional terms and trade-offs.*

**NOTE:**

*Position: A position is a perception ('my boss is cruel and indifferent') or a desired outcome ('My boss should meet with me once a day to talk'). The claim or demand, itself, is a position.*

*Interest: An interest is a person's true need, concern, priority, goal etc.. It can even be intangible (not easily perceivable) e.g. respect, loyalty, dependability, timing, etc. An interest is what lies beneath and drives a person's demands or claims.*

## **BARRIERS TO NEGOTIATION**

- 1) Strategic Barriers.
- 2) Principal and Agent Barriers.
- 3) Cognitive Barriers (Perception Barriers).

### **1) Strategic Barriers:**

A Strategic Barrier is caused by the strategy adopted by a party to achieve his goal. For example with a view to make the husband agree for divorce the wife files a false complaint against her husband and his family members alleging an offence under Section 498 A of the Indian Penal Code.

A mediator helps the parties to overcome strategic barriers by encouraging the parties to reveal information about their underlying interests and understanding the strategy of the party.

### **2) Principal and Agent Barriers:**

The behaviour of an agent negotiating for the principal may fail to serve interests of the principal. There may be conflict of interests between the principal and his agent. An agent may not have full information required for negotiation or necessary authority to make commitments on behalf of the principal. In all such contingencies the mediator helps the parties to overcome the 'Principal and Agent Barrier' by bringing the real decision maker (Principal) to the negotiating table.

### 3) Cognitive Barriers (Perception Barriers)

Parties while negotiating make decisions based on the information they have. But sometimes there could be limitation to the way they process information. There could be perceptual limitations which could occur due to human nature, psychological factors and/or the limits of our senses. These perceptual limitations are called cognitive barriers and can impede negotiation. It is important a mediator to identify Cognitive Barriers and use communication techniques to overcome it.

#### Example of Cognitive Barriers

**Risk Aversion:** People tend to be averse to risk regarding gain and would rather have a certain gain than an uncertain larger gain. They are ready to bear risk with regard to loss. They would avoid a certain loss and take a risk of greater loss. For example, some parties would rather postpone a certain loss through settlement at mediation for an uncertain outcome of the trial in the future. A good mediator will assist the parties in addressing these realities.

**Assimilation bias:** The tendency of negotiators to ignore any unfavorable information. For example, a court decision which could prejudice the case. To counter this, repeat the important information, provide documentary and other tangible evidence and reduce information to writing.

**Inattentional blindness:** Negotiators sometimes fail to focus on the entire picture and instead focus only on specific details. To counter this, the mediator may frequently shift focus from the specific to the larger picture.

**Reactive devaluation:** People in conflict have a tendency to minimize the value of offers from the other side. To counter this, mediator can change the focus from the source of the offer to the terms of the offer. For example, instead of saying "the plaintiff offers 5 lakhs" the mediator may say "will you be satisfied with something like 5 lakhs".

**Endowment effect:** The tendency for people with property or interests in something to over value it. (their house, their land, a lawyer's evaluation of their case etc.) . To counter this, the mediator may enquire about the actual value, use objective criteria like the Sub-registrar's valuation, ask for the latest Court judgment supporting the submission etc.

#### Psychological impediments:

People make unwarranted assumptions about the motives and intentions of the other parties.

#### Anchor Price, Aspiration Price and Reservation Price

To facilitate meaningful and successful negotiation the mediator should be aware of the Anchor Price, the Aspiration Price and the Reservation Price.

Anchor Price is a base number or a set of terms or an opening offer that has to be assessed by the mediator from the information given by the parties. This will serve as a parameter in the negotiation. If the anchor price is defined appropriately, parties tend to treat it as a real and valid bench mark against which subsequent adjustments are made. It must be based on complete information and if not it can be misleading. Mistaken or misguided anchor prices can increase the chance of impasse and can have unintended consequences in a negotiation.



Aspiration Price is the price that a party aspires to obtain from the negotiation.

Reservation Price is the lowest a party may be open to receive.

## ELEMENTS OF PRINCIPLED NEGOTIATION

### (a) Separate the parties from the problem

A mediator should help the parties to separate themselves from the problem.

For example, if Aparna has been consistently late to work for the past 2 weeks, a perception may develop that "The problem is Aparna." Viewed in this manner the only way to get rid of the problem is to get rid of (dismiss, transfer etc.) Aparna. This is an example of merging the people with the problem and illustrates how it limits the range of options that are available for resolving the problem. To separate people from the problem, the key is to focus on the problem itself, independent of the person. In the above example, the employer might frame the problem as lack of punctuality. The employer can ask Aparna about her record of being on time for many years and the reasons for the recent two weeks of late arrival enquiring specifically whether there are circumstances that are resulting in Aparna's late arrivals. She may answer that she was involved in a motor vehicle accident recently and her vehicle repairs will be completed shortly. She might say that she had to change the route to work due to road repair, or she might say that she has to ride in a car pool to work and the driver has a temporary problem that caused the delay. By focusing on the problem itself, the employer has opened the door to understanding the root of the problem, which may lead to various options for handling it.

### (b) Be hard on the issues and soft on the people

In being hard on the issues, the Mediator will request documentation on damages, verify the accuracy of numbers and confirm the evidence provided by both parties. At the same time, the mediator will encourage the parties to be polite and cordial with each other and the mediator will demonstrate the same qualities during mediation.

### © Focus on interests

In negotiation, focus must be on interests rather than on positions. Hence the mediator should help the parties to shift the focus from their positions to their interests.

### (d) Create variety of options

The Mediator is required to facilitate generation of various options and selection of the option most acceptable to the parties.

### (e) Rely on objective criteria

When perceptions of the parties differ, in appropriate cases objective criteria like expert's opinion, scientific data, valuation report, assessor's report etc. can be relied on by the parties to examine the options and arrive at a settlement.

## CHAPTER - XI

# IMPASSE - CONCEPT AND MANAGEMENT

During mediation sometimes parties reach an impasse. In mediation, impasse means and includes a stalemate, standoff, deadlock, bottleneck, hurdle, barrier or hindrance. Impasse may be due to various reasons. It may be due to an overt conflict between the parties. It may also be due to resistance to workable solutions, lack of creativity, exhaustion of creativity etc. Impasse may be used as a tactic to put pressure on the opposite party. There may also be valid or legitimate reasons for the impasse.

### TYPES OF IMPASSE

There are three types of impasse depending on the causes for impasse namely

- (i) Emotional impasse
- (ii) Substantive impasse
- (iii) Procedural impasse

#### **Emotional impasse can be caused by factors like:**

- Personal animosity
- Mistrust
- False pride
- Arrogance
- Ego
- Fear of losing face
- Vengeance

#### **Substantive impasse can be caused by factors like:**

- Lack of knowledge of facts and/or law
- Limited resources, despite willingness to settle
- Incompetence (including legal disability) of the parties
- Interference by third parties who instigate the parties not to settle dispute or obstruct the settlement for extraneous reasons.
- Standing on principles, ignoring the realities
- adamant attitude of the parties

#### **Procedural impasse can be caused by factors like:**

- Lack of authority to negotiate or to settle
- Power imbalance between the parties
- Mistrust of the mediator

### **STAGES WHEN IMPASSE MAY ARISE**

Impasse can arise at any stage of the mediation process namely introduction and opening statement, joint session, separate session and closing.

### **TECHNIQUES TO BREAK IMPASSE**

The mediator shall make use of his/her creativity and try to break impasse by resorting to suitable techniques which may include following techniques:

- (a) Reality Testing
- (b) Brainstorming
- (c) Changing the focus from the source of the offer to the terms of the offer.
- (d) Taking a break or postponing the mediation to defuse a hostile situation, to gather further information, to give further time to the parties to think, to motivate the parties for settlement and for such others purposes.
- (e) Alerting and cautioning the parties against their rigid or adamant stand by conveying that the mediator is left with the only option of closing the mediation.
- (f) Taking assistance of other people like spouses, relatives, common friends, well wishers, experts etc. through their presence, participation or otherwise.
- (g) Careful use of good humour.
- (h) Acknowledging and complementing the parties for the efforts they have already made.
- (I) Ascertaining from the parties the real reason behind the impasse and seeking their suggestions to break the impasse.
- (j) Role-reversal, by asking the party to place himself/ herself in the position of the other party and try to understand the perception and feelings of the other party.
- (k) Allowing the parties to vent their feelings and emotions.
- (l) Shifting gears i.e. shifting from joint session to separate session or vice-versa.
- (m) Focusing on the underlying interest of the parties.
- (n) Starting all over again.
- (o) Revisiting the options.
- (p) Changing the topic to come back later.
- (q) Observing silence.
- (r) Holding hope
- (s) Changing the sitting arrangement.
- (t) Using hypothetical situations or questions to help parties to explore new idea and options.

## Annexure - A

### Role Play - I

#### Robbert v. Arun

#### General Information

Arun has advertised in a newspaper about his intention to sell a car owned by him. Robbert, a good friend of Arun, purchased the said car for a valuable consideration of Rs. 2 Lakhs. Robbert in a short period realized that Exhaust System is defective. Robbert became dissatisfied with the functioning of the car. He asked Arun to take back his car and refund the money of Rs.2 Lakhs. Initially, Arun promised to pay back Rs. 2 Lakhs to Robbert but later on refused to do so. Robbert has filed a suit for recovery of Rs. 2 Lakhs along with interest @ 15% p.a. against Arun. Case is referred for mediation.

#### Confidential facts for Arun

1. Arun is a 25 years old man and is unemployed for the last one year. He is earning about Rs. 5,000/- per month from a petty job which is temporary in nature.
2. Arun decided to dispose of his car. For this purpose, he gave an advertisement in the newspaper. Robbert, one of the close friends agreed to purchase the said car despite the initial reluctance of Arun.
3. Arun did not disclose the faulty exhaust system of the car. Arun sold the car for a price of Rs. 2 Lakhs. It is very difficult for the Arun to pay back the entire money of Rs.2 Lakhs but he may consider to get the faulty exhaust system repaired from a mechanic and to pay repair charges.
4. Arun is also interested to maintain future relations with Robbert.

#### Confidential facts for Robbert

1. Robbert is 25 years old. He recently got a job in a reputed company. Robbert's office is situated about 25 km away from his residence. He needs a car for transportation. Robbert cannot purchase a new car from the market. Robbert thought that the car owned by Arun should be in a good condition. Arun was not inclined to sell the car earlier but due to repeated requests, he sold the car to Robbert for a consideration of Rs.2 Lakhs. Arun also said to one of the common friend that "Well, now all my headaches are gone."
2. Robbert within the short span of time understand the Arun's comments. Robbert began to develop headache and nosia from the fumes which filled the car at the time of driving. Car was examined by a mechanic. After inspection, he suggested that entire exhaust system is required to be replaced which may cost around Rs.50,000/-. Thereafter, the car will be in perfect working condition.
3. Arun did not disclose the said fact to Robbert and only talked about some minor problems in the engine of the car. This type of behaviour was not expected by Robbert from his close friend Arun.
4. Robbert contacted Arun and requested him to pay back his money. Initially, Arun agreed to pay back money but later on he refused. Robbert is only interested in the money. He does not want to have any future relation with Arun.

## **Role Play - II**

### **Mohan v. Soft Drink Limited**

#### **General Information**

Ram is running a restaurant in a posh colony of Delhi. He used to purchase Soft Drinks from a manufacturer Soft Drinks Ltd.

About 6 months back, Mohan visited the restaurant owned by Ram. He ordered for soft drink. Ram supplied the soft drinks prepared by Soft Drinks Ltd. It was supplied in a dark opaque glass bottle. It was opened by Mohan. Mohan found foreign article in the bottle which he could not notice before drinking. He suffered from severe gastric problems and could not attend his office for 10 days. He lost his job. Mohan initiated legal proceedings against Soft Drinks Ltd. and claimed damages of Rs. 5 lakhs due to mental pain, agony, loss of job and illness. Soft Drink Company appeared in the court and expressed willingness to settle disputes through Mediation. Referral Judge referred case for Mediation.

#### **Confidential Information for Mohan**

1. Mohan remained ill due to the gastric problem for a period of 10 days. He was employed as an assistant in a General Merchant Shop. He lost his job due to absence of ten days.
2. Mohan does not want any action against Ram because he thinks that Ram was not at fault.
3. Mohan wants to initiate legal action only against the Soft Drinks Company. He thinks that Soft Drink Company should have proper system to prevent entry of foreign articles into the bottles.
4. When Mohan tried to contact concerned officials of the Soft Drinks Company about the incident, they misbehaved him. This really angered him.
5. Mohan obtained legal advice. As per the legal advice, the litigation in India is costly and time consuming. Mohan may not get the damages within the reasonable time.
6. Mohan needs money to invest in new business. If he gets suitable damages from Soft Drinks Company, he can invest money in new business.
7. Mohan is also interested in the job if offered by the Soft Drinks Company.

#### **Confidential instructions for Soft Drinks Ltd.**

1. Soft Drinks Company is manufacturing soft drinks for the last 15 years. It is a multi-national company and is enjoying global reputation.
2. Soft Drinks is facing competition in Indian Markets from other manufacturers. If case is made public then the Soft Drinks Company Ltd. May lost business in Indian Markets.
3. It was a bonafide mistake. Soft Drinks company is having modern machines for filling the bottles.
4. Law of damages in India is now developing. The Courts are awarding damages in such cases.
5. Soft Drinks company is willing to pay Rs.1 Lakh to Mohan to settle the dispute.
6. Soft Drinks company also received legal advise and as per legal advise, damage shall be payable to Mohan.
7. The forensic report is also against the Soft Drinks Company. The foreign article was found to be decomposed snail.

## Role Play - III

### Ram v. Sunil

#### General Information

Ram and Sunil has been next door neighbour for ten years. Both have children. The families had a friendly relationship in the past. However things have deteriorated when six months ago, Sunil bought a black labrador and kept in courtyard. Dog was large and aggressive. Dog used to bark frequently when people approached either Sunil's home or neighbouring home. Ram has complained to Sunil many time. Two months ago, dog has dug a hole underneath the wooden fence that separated Sunil ad Ram backyard. Dog crawled through the hole into Ram backyard and damaged some of the flowers. Ram called Sunil and complained. Ram was very much concerned about the prize winning roses in the far corner of the yard which the dog did not damage. Sunil filled the hole under the fence. A week later dog once again got into Ram's yard and tore up two of the rose bushes. Ram became hysterical, chased the dog with a broom and hit it. The startled dog barked and bit Ram on the hand. Sunil went to rescue and calm down both the dog and Ram. Sunil took the dog back home. Ram had demanded that Sunil pay Rs.4000/- on doctor's bill for four stitches from the dog bite and Rs.10,000/- for the two rose bushes, which Ram valued at Rs.5,000/- each, Rs.6000/- for nuisance and deprivation of sleep and Rs.30,000/- for shock and pain due to dog bite. Sunil refused. Ram then filed a suit for recovery of Rs.50,000/-.

Referral Judge referred the case to mediation.

#### Confidential facts for Sunil

1. Sunil was sick of being lectured by Ram who is acting completely unreasonably about dog issue.
2. Sunil moved to the suburbs due to have a dog for kids.
3. Sunil bought dog because to have a watchdog and to feel safe.
4. The dog is a good watchdog and only barks when a stranger comes to front porch.
5. Dog does not bark whenever anyone passed by in front of the house or when a person is at a neighbouring house.
6. The dog bite was entirely due to Ram's fault. He should not have beaten the dog with a broom. Sunil is sorry that the dog got into Ram's yard again, but instead of attacking dog, he should have picked up the telephone and called Sunil.
7. Sunil will not pay for the doctor bill since the dog only bit Ram after being hit with a broom.
8. Sunil may buy new rose seeds so Ram can replant the rose bushes. There is no way to pay Rs.5000/- for each bush to Ram. Sunil has seen rose bushes at the nursery for less than Rs.200/-.
9. Privately, Ram is willing to tell the mediator that he feels bad that the dog has got into Ram's yard two times and damaged the roses. Ram seemed really upset about the roses. Sunil is willing to do something to avoid having the dog get into Ram's yard again and may put up a higher fence.

10. Sunil will consider paying all or part of Ram's medical bills if the mediator asks Sunil to reconsider that issue.

**Confidential facts for Ram**

1. Ram is very upset about dog situation. Over the last six months, Ram has asked Sunil to quiet the dog down on numerous occasions, but to no avail.
2. The dog's loud bark and terrifying growl scare your two young children of Ram.
3. The dog goes ballistic every time someone approaches Ram's house and scares the guests.
4. The dog barks intermittently at night and wakes Ram up and due to this Ram has a hard time falling back to sleep.
5. Ram is furious about the damage caused to your prize-winning rose bushes. Ram has already won blue ribbons for first place in the country rose competition for the last two years in a row. Ram desired to be paid back for the damage to the two rose bushes (although no amount of money can repay for the expert care and attention which Ram has given to the rose bushes).
6. Ram is also very fearful that the dog will re-enter your yard and damage the four remaining rose bushes.
7. Ram is also terrified of the dog, since he brutally attacked and bit him. Ram cannot tolerate this dangerous animal around him and his children.
8. Ram has asked Sunil to get rid of the dog and pay Rs.50,000/- which includes medical bills (Rs.4000/-) two rose bushes (Rs.10,000/-) nuisance and deprivation of sleep (Rs.6,000/-) pain and suffering from the dog bite (Rs.30,000/-).

**Annexure B**

## **RULINGS ON MEDIATION**

### **CITATIONS**

1. Abbas v. Kurrippurathodi Mayinkutty, (2012) 3 KLJ 560
2. Abdul Saliq Khan V/s Nahid Khan & Ors. RSA No. 30/2011 decided on 25/02/2011 by Hon'ble Ms. Justice Indermeet Kaur Kochar. (Settlement binding on the parties)
3. Aditya Chandershekhar Pandit & Ors. V/s State of NCT of Delhi & Another W.P. (CrI.) 603/2012 decided on 01/08/2012 by Hon'ble Mr. Justice A.K. Pathak.
4. Afcons Infra Ltd. V/s Cherian V. Cons Co. ... 2010 Rajdhani Law Reporter 555 (SC);: 2010 8 scc CA 6000 of 2010 decided on 26/07/2010 by Hon'ble Mr. R.V. Raveendran, JM Panchal, JJ.
5. Alcove Industries v. Oriental Structural Engineers, 2008 (1) ARBLR 393 Delhi.
6. Ashu Soni -vs - State (Dispute settled by V.P.Johri Mediator, Settlement upheld in 2013(1) JCC101; 2013(1)AD (Delhi) 111 followed in Semant Sinha vs State Crml. WP 1450/2014 decided on 3<sup>rd</sup>, Feb 2015 by Hon'ble Mr J. A.K Pahtak Delhi HC and in Sunil Badolia vs State Crml M.C 1847/2014 decided on 12<sup>th</sup> August 2015 by Hon'ble Mr J Sunil Gaur Delhi HC. ( On parties cannot resile or bounce back from the settlement)
7. Birdha Ram v. Manohar Lal, 2014 (1) RLW 854
8. B.P.Moideen-vs- A.M. Kutty Hassan =(2009) 2SCC 198 by HMJ R.V.Raveendran & HMJ D.K. Jain.
9. B.S. Krishnamurthy v. B.S. Nagaraj, AIR 2011 SC 794 (2011) 15 SCC 464
10. Capt. Mrs. Krishna v. Union of India, W.P. (C) No. 166/2010
11. Gajanan v. Raghurai Thamba, W.P. No. 15/2007
12. Gian Singh v. State of Punjab, (2012) 10 SCC 303
13. Jasbir & Others V/s State & Another = 142 (2007) DLT 141 Delhi High Court (On parties cannot resile or bounce back from the settlement)
14. Jitendra Raghuvanshi v. Babita Raghuvanshi, (2013) 4 SCC 58
15. Khaleek Ahmed V/s Mohd. Naved Ansari & Another CM(M) 291/2011 & CM Nos. 5250/2011 & 6278/2011 decided on 30/01/2012 by Hon'ble Ms. Justice Indermeet Kaur Kochar.
16. K. Prabhavathy v. Director General of Police, ILR 2012 (3) Ker 922
17. K. Srinivas Rao vs D.A. Deepa on 22 February, 2013 Bench: Aftab Alam, Ranjana Prakash Desai CIVIL APPEAL NO. 1794 OF 2013 (Arising out of Special Leave Petition (Civil) No. 4782 of 2007)
18. Marabasappa -vs- Ningappa =(2010) 15 SCC 286 by Hon'ble Mr.Justice G.S.Singhvi & HMJ H.L.Dattu.



19. Mohd. Shamim v. Nahid Begum, (2005) 3 SCC 302
20. Moti Ram -vs- Ashok Kumar= (2011) 1 SCC 466.by HMJ Markandey Katju & HMJ Gyan Sudha Misra (on confidentiality and duties of Mediator)
21. Naresh Chand Jain v. K.M. Tayal (2012) ILR III Del
22. Naveen Kumar v/s Smt. Khilya Devi & Another = CS (OS) No. 2248/2010 decided on 01/09/2011 by Hon'ble Mr. Justice A.K. Pathak.
23. P.T. Thomas- vs- Thomas Job = (2005) 6 SCC 478. By HMJ Ruma Pal & HMJ Dr A.R.Lakshmanan ( on binding nature of settlements in mediation and lok adalats).
24. Rajesh Kumar Bajaj V/s Purshotam Lal Bajaj & Others IA No. 12888/2008 in CS (OS) No. 1495/2005 decided on 06/07/2009 by Hon'ble Mr. Justice Manmohan Singh.(DHC)
25. Ruchi Aggarwal v. Amit Aggarwal= 2015 (1) ALT (Allahabad law Times) 42 (SC) also see JT 2004(10) SC 475
26. Rudraaradya v. Nanjundappa, ILR 2011 Kar 221
27. Salem Advocate Bar Association TN -vs- Union of India (2005) 6 Supreme Court Cases 344. (Validity of Section 89 CPC)
28. Shyamalika Das V/s General Manager, GRIDCO & Another .... STPL (Web) 780 SC, Supreme Court of India.
29. Shyamalika Das v. General Manager, GRIDCO, (2010) 15 SCC 268
30. State of Punjab & Another -vs- Jalour Singh & Others by HMJ K.G.Balkrishnan ; HMJ G.P. Mathur & HMJ R.V. Raveendran (Validity of settlement of Lok Adalat & Mediation)
31. State of M.P. v. Madan Lal (Cr. Appeal no. 231 of 2015)
32. Surinder Kaur & Others V/s Pritam Singh & Others ... 154 (2008) DLT 598.R. Manjula-vs- Raja= (2009)2.SCC 511. By HMJ Arijit Pasayat & HMJ A.K. Ganguly.
33. Vikram Bakshi & Ors vs Sonia Khosla[Dead] By Lrs SLP(C)No. 23796-23798/2010 Contmt. Pet. (Crl.) No. 4/13 In SLP (Crl.) No. 6873 of 2010 decided on 8 May, 2014
34. Vipin Luthra v. Vikram Kumar Jain (2011) 161 PLR 790

**Annexure C**

**REFERENCES**

- Mediation and Conciliation Rules (Rules framed by the High Courts)
- Mediation Training Manual of India – MCPC Supreme Court of India

**Books :**

1. Panchu Sriram – Mediation, Practice and Law The Path to successful Dispute Resolution Ind. Edn. 2015 (Lexi's Nexi's)
2. Rajan, R.D., A primer on Alternative Dispute Resolution, Barathi Law Publications, 2005.

**Articles**

1. F.M. Ibrahim Kalifulla J. - An Endeavour : Mandatory application of mediation by Civil Courts in pending litigations, Paper presented at Tamil Nadu State Judicial Academy on 23.02.2013.
2. S.B. Sinha J. - Legal Framework of ADR : Section 89 and ADR Rules published by Judicial Academy, Jharkhand.
3. S.B. Sinha J. - Mediation : Constituents, Process and Merit, Paper presented at National Conference at Mediation 2012.
4. R.V. Raveendran J. - Section 89 CPC : Need for an urgent re-look, (2007) 4 SCC (J) 23.
5. R.V. Raveendran J. - Mediation-its importance and relevance, 2010 PL October 10.
6. Sanjay Kishan Kaul J. - Challenges, Obstacles and Solution in the implementation of Mediation.
7. F.M. Ibrahim Kalifulla J. - An Endeavour : Mandatory Application of Mediation by Civil Courts in Pending Litigation
8. Panchu, Sriram, Settle for More – The Why, How and When Mediation, East West Books (Madras) Pvt. Ltd. 2007.
9. Rao, Jagannatha J., Concepts of Conciliation and Mediation and their Differences.

**CURRICULUM OF 20 HRS. CAPSULE COURSE**

**Duration : ( 3 Days)**

**Day - 1**

**Suggested Reading : Mediation Training Manual for Capsule Course**

<b>TIME</b>	<b>Sessions</b>	<b>Study Topics</b>
10.00 AM to 11.30 AM	SESSION - I	1. Perceptions 2. Conflict Management  (Chapters: I&II)
11.45 AM to 1.00 PM	SESSION - II	<b>Mediation : Definition &amp; Concept</b>  <ul style="list-style-type: none"> <li>• Advantages of Mediation</li> <li>• Role of Mediators</li> <li>• Mediator Distinguished from Conciliator And Adjudicator</li> <li>• Qualities of a Mediator</li> </ul> (Chapters: IV&V)
1.30 PM to 5.00 PM	SESSION - III	<b>Mediation : Process &amp; Stages</b>  <ul style="list-style-type: none"> <li>• Introduction &amp; Opening Statement</li> <li>• Joint Session</li> <li>• Caucus</li> <li>• Cloisin</li> </ul> a. Settlement b. Non Settlement  <b>ROLEPLAY - I</b>  (Robert V Arun)  (Chapters: VI&VII)

**Note : Tea Breaks : 11.30 AM to 11.45 AM**

**: 03.45 PM to 04.00 PM**

**Lunch Break : 1.15 PM to 02.15 PM**

TIME	Sessions	Study Topics
10.00 AM to 3.00 PM	SESSION - I	<p><b>A. COMMUNICATION IN MEDIATION</b></p> <ol style="list-style-type: none"> <li>1. Definition and Process</li> <li>2. Verbal and Non Verbal Communication</li> <li>3. Barriers to Communication</li> </ol> <p><b>B. COMMUNICATION SKILLS</b></p> <ol style="list-style-type: none"> <li>1. Active Listening</li> <li>2. Listening with Empathy</li> <li>3. Body Language</li> <li>4. Asking the Right Questions</li> </ol> <p><b>ROLE PLAY - II</b> (Mohan Vs. Soft Drinks)</p> <p style="text-align: right;">(Chapters : VIII &amp; IX)</p>
3.00 PM to 5.00 PM	SESSION - II	<p><b>NEGOTIATION AND BARGAINING</b></p> <p>Negotiation</p> <p>Negotiation Styles</p> <p style="text-align: right;">(Chapter : X)</p>

**Note : Tea Breaks : 11.30 AM to 11.45 AM  
: 03.45 PM to 04.00 PM  
Lunch Break : 1.15 PM to 02.15 PM**

TIME	Sessions	Study Topics
10.00 AM to 12.30 PM	<b>SESSION - I</b>	Bargaining Types of Bargaining Barriers to Negotiation Principled Negotiation  <b>ROLEPLAY-III</b> (Ram V Sunil)  (Chapter : X)
12.30 PM to 4.00 PM	<b>SESSION - II</b>	<b>IMPASSE: CONCEPT AND MANAGEMENT</b> Definition Types of Impasse Stages of Impasse Techniques to Break Impasse  (Chapter : XI)

**Note : Tea Breaks : 11.30 AM to 11.45 AM**

**: 03.45 PM to 04.00 PM**

**Lunch Break : 1.15 PM to 02.15 PM**

