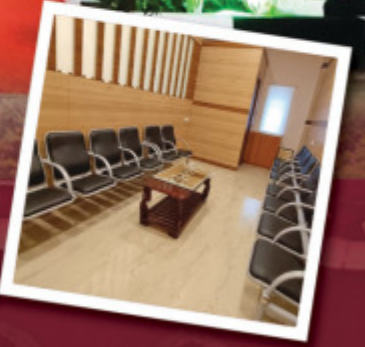




# NEWSLETTER



**TAMIL NADU MEDIATION AND CONCILIATION CENTRE  
HIGH COURT, MADRAS**





**HON'BLE COMMITTEE FOR  
TAMIL NADU MEDIATION AND CONCILIATION CENTRE**

**PATRON-IN-CHIEF**



**Hon'ble MR. JUSTICE  
SANJAY VIJAYKUMAR GANGAPURWALA**  
Chief Justice, High Court, Madras

**CHAIRMAN**



**Hon'ble MR. JUSTICE R. MAHADEVAN**  
Judge, High Court, Madras.

**MEMBERS**



**Hon'ble Dr. Justice  
ANITA SUMANTH**



**Hon'ble Mr. Justice  
G.K. ILANTHIRAIYAN**



**Hon'ble Mr. Justice  
V. SIVAGNAM**



**Hon'ble Mr. Justice  
D. BHARATHA CHAKRAVARTHY**



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**Hon'ble Mr. Justice  
SANJAY V. GANGAPURWALA  
Chief Justice / Hon'ble Patron-in-Chief**

## **MESSAGE**

The words of Joseph Grynbaum "An ounce of Mediation is worth a pound of arbitration and a ton of litigation" encapsulates the importance and significance of Mediation as an Alternate Disputes Resolution Mechanism. Settlement of disputes in an amicable and reciprocal way is the hallmark of civilization.

In recent times, there has been a growing recognition of resolving disputes through mediation and conciliation. Mediation and conciliation are voluntary processes aimed at resolving disputes by means of negotiation and compromise and thereby, leaving a win-win situation for parties to a dispute. Mediation and Conciliation have gained statutory recognition, offering several advantages over the traditional adversarial litigation process. Mediation is less expensive, less time-consuming and allows the parties to have control over the time-span in the outcome of dispute. Mediation thus fosters a more collaborative and cooperative approach to resolve the disputes, leading the parties to sustain cordial relationships.

The Tamil Nadu Mediation and Conciliation Centre (TNMCC) has taken several initiatives to promote and spread the awareness of Mediation and Conciliation as an alternative dispute resolution mechanism. The Centre with its well-trained and dedicated Mediators is committed to sensitize and encourage the litigants to consider mediation and conciliation as a viable alternative option in resolving their disputes. The Centre has come up with the new initiative of conducting 40-hour mediation training programme for Advocates by tapping the knowledge and experience of trained mediators.

1/2



The initiatives taken by the Centre have resulted in steep increase in the referral of cases for settlement through mediation. In the last year, 22861 cases have been referred and 2726 cases have been settled through mediation.

The ninth edition of the TNMCC Newsletter crafted by the Editorial Board showcases the statistics of various activities undertaken and the achievements made by the Centre in the fields of mediation and conciliation. I congratulate the Chairman, Members and the Editorial Board of TNMCC in publishing the Newsletter.

I trust that TNMCC will come up with many more initiatives not only to promote mediation and conciliation as a preferred dispute resolution mechanism in our legal system, but will also create skilful mediators for the future generation.

With Best Wishes,



February 6, 2024

**Justice SANJAY V. GANGAPURWALA**

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**Hon'ble Mr. Justice R. MAHADEVAN**  
**The Hon'ble Chairman**

## **MESSAGE**

Mediation is more than just resolving disputes. It is a profound quest for justice, social transformation, and rediscovering the human spirit, often lost in conflict. Mediation is a non-adversarial process that focuses on collaboration and communication, rather than confrontation. It has its own advantages, including cost and time savings.

Earlier, a court-annexed Mediation Centre was inaugurated in the year 2005 within the precincts of the Madras High Court complex. After a decade, the necessity to have a dedicated and exclusive Mediation Centre was felt, and it snowballed into reality in the year 2023 with the inauguration of an exclusive state-of-the-art Mediation and Conciliation Centre consisting of a three-storeyed building. This is the latest addition among several infrastructural reforms undertaken by the Madras High Court. The Hon'ble Supreme Court has also recognized the benefits of mediation and actively endorsed its widespread use across the nation. Needless to mention that our State is pioneering the establishment of an extensive network of 120 Taluk Mediation Centres as of 08.09.2023. We thus encourage mediation not just as a means to resolve disputes but as a way to build bridges among human relationships, foster better understanding, and nurture cooperation among the wrangling litigants.

Bearing in mind the words of Albert Einstein, "Peace cannot be kept by force; it can only be achieved by understanding," let us choose mediation and build a more peaceful and harmonious future for our community.

A handwritten signature in blue ink, appearing to be 'R. MAHADEVAN'.

**(Justice R.MAHADEVAN)**

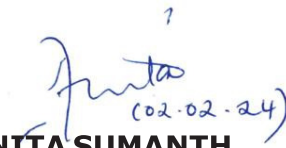


**Hon'be Dr. Justice ANITA SUMANTH**  
**The Hon'ble Member**

### **MESSAGE**

Much water has flown under the bridge since the last time I penned a Message for this Committee. There has been sustained activity throughout the State that is hoped to revitalize and encourage Mediation as an Alternate Dispute Resolution process.

To quote Robert Frost, our efforts continue and '*we have miles to go before we sleep*'. My best wishes to all stakeholders in this journey.

  
**ANITA SUMANTH**



**Hon'ble Mr. Justice G.K. ILANTHIRAIYAN**  
**The Hon'ble Member**

## **MESSAGE**

It gives me great pleasure to write a few words on mediation and the Mediation Committee of the High Court of Madras. The goal of this news letter is to draw attention to the mediation center's operations and get everyone involved in the process aware of them.

Section 89 of the Code of Civil Procedure recognizes mediation as one of the effective methods for resolving disputes in Court. Compared to all other conflict resolution methods, it has intrinsic advantages. In contrast to litigation, mediation involves the parties actively working to resolve their differences. It is among the ways to achieve peace. We want to ensure that everyone has access to justice, and one crucial step toward that goal is alternative dispute resolution.

In today's legal system, mediation has grown in significance within the current legal system and has many advantages over traditional litigation. A mediator, who is an impartial third party, assists parties in resolving their differences through a voluntary and private procedure. Compared to typical litigation, mediation offers a number of benefits, such as reduced expenses, quicker resolution times, and relationship preservation.

The benefits of mediation are not limited to the parties involved in the dispute. The judicial system as a whole gains from the use of mediation. Mediation helps ease the load on the Courts, which are frequently overflowing with cases that could be settled out of Court by lowering the number of cases that must go to trial.

...2



- 2 -

Since ancient times, the idea of mediation has been present in our society. In actuality, mediation is a daily occurrence in society, beginning with the small family unit where the senior member arbitrates disputes between the children in order to smooth out differences of opinion. The long-standing Panchayat and Village Headman systems are another example of mediation.

Compared to all other methods of resolving disagreements, the mediation concept is superior. The mediation process empowers the disputing parties, with the mediator serving simply as a facilitator to help them to a mutually agreeable resolution. The goal and intention of this idea is to bring about social harmony. This goal has not been met via adversarial litigation since the losing party is never satisfied and the process is costly, time-consuming, and laborious.

On the other hand, a settlement reached through mediation is affordable, timely, and, most importantly, provides permanent resolution to the conflict. This is why it is regarded as a win-win scenario that benefits both parties and promotes harmony and peace in the community. The goal of establishing a peaceful, well-ordered society is why it is crucial to promote mediation as a conflict resolution method.

In conclusion, mediation has many advantages over traditional litigation. We do not expect to have explored all the aspects of mediation. However, I hope that our Mediation and Conciliation centre will play prominent role in resolving dispute between the parties. We can enhance the efficiency and effectiveness of the justice system, lessen the load on Courts, and save expenses for clients by adopting mediation and other alternative dispute resolution techniques.

I extend my best wishes to the Director of the Mediation and Conciliation Center, High Court of Madras, the staff members and all those involved in this newsletter publishing, which will showcase the field's illustrious history and mark a significant turning point in mediation. I thank you for providing me the chance to use this newsletter to spread my joy to each and every one of you.



**(Justice G.K.ILANTHIRAIYAN)**



**Hon'ble Mr. Justice V. SIVAGNANAM**

**The Hon'ble Member**

### **MAGIC OF MEDIATION**

British Philosopher Bertrand Russell once quipped: "War does not determine who is right, only who is left". In legal battles today, victories can actually be defeats, when we consider lengthy trials, the rigmarole of appeals, paper orders and awards and onerous execution proceedings. This is precisely where mediation trumps adjudication. Confrontation may give a result but conciliation brings relief.

A simple illustration. The number 9 may appear as 6 to a party seated opposite the table. A common mistake made by disputants is a rigid and recalcitrant stance in mediation proceedings. One-upmanship has no place in amicable settlements. To 'settle' is different from 'scuttle'! The openness to seeing the other side's point of view and meeting them half-way is a sine quo non in such exercises.

The onus is on the Mediator to arrive at a common ground and foster a meeting of minds between the parties. Ferreting out areas of potential confluence and picking up the threads from there to sow the seeds of negotiation is a challenge. The focus must be on things parties agree on, rather than what they disagree over. Seeing eye to eye and not an eye for an eye approach is imperative.

A solution across the table is arguably quicker and more durable than one before the Bench!

**(Justice V.SIVAGNANAM)**



**Hon'ble Mr. Justice D. BHARATHA CHAKRAVARTHY**  
**The Hon'ble Member**

Dear All,

This Newsletter is special as it comes at a time when the Mediation Act is born, though all the provisions are yet to be notified, which is expected sooner.

In our State, this coincides with Mediation Sub-Centers functioning at almost all our Court Complexes. While we await the out turn, we keep focussing on the most important thing, that is, the Mediation Process itself.

I trust this Newsletter would do its bit in our journey. This is also special because the Hon'ble Patron, Chairman and the Committee were kind enough to nominate a new Editorial Team. Our effort primarily, is to increase our readership. That would be tangible only by all your constructive feedback.

Together, let's march on...

Warmly,

**(Justice D. Bharatha Chakravarthy)**



## EDITORIAL BOARD



Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**  
Judge, High Court, Madras & Member, TNMCC



**Dr. P. Vasudevan**  
Advocate / Mediator



**Ms. P. Selvi**  
Advocate / Mediator



**Mrs. T. Rama**  
Deputy Director (TNMCC)

## EDITORS' DESK

Access to justice is the cornerstone of a democracy and the alternate dispute resolution process that includes mediation finally falls within a regulatory framework. The much-awaited legislation was enacted as The Mediation Act, 2023, and came into force on 15 September 2023. The Act aims to promote and facilitate mediation, especially institutional mediation for the resolution of disputes, enforce mediated settlement agreements, and make online mediation a viable option.

The Act is made applicable to parties located in India or when the mediation agreement provides for its applicability, when there is an international mediation, or when one of the parties is the Central or State Government or agencies, public bodies, corporations, local bodies and entities controlled or owned by them. As a welcome initiative, the Act allows for pre-litigation mediation regarding civil or commercial disputes before any party initiates action before a Court or Tribunal. However, pre-litigation becomes mandatory in matters of commercial disputes of Specified Value as provided under Section 12-A of the Commercial Courts Act, 2015 and the rules there under. The Courts and Tribunals are also empowered to refer parties to mediation at any stage of proceeding to mediation and have the power to pass appropriate interim orders in the interregnum, without compromising on the parties' willingness to arrive at a settlement.

Emphasis is made on the neutrality of the mediator, either appointed through a mediation service provider or upon suggestion from the parties to the dispute with the onus on the mediator to disclose circumstances of conflict of interest in order to ensure the mediator's impartiality in the conduct of the mediation process. Provision is also made for the termination of the mediator in the event of the independence or impartiality of the mediator being compromised.

The mediation process has been laid down and the mediator shall facilitate the voluntary resolution of the dispute and is not bound either by the Code of Civil Procedure or the Indian Evidence Act. The mediation process is time-bound to be completed within 120 days from the date fixed for the first appearance before the mediator and could be extended up to 60 days. The outcome of a mediation process would be a mediated settlement agreement drawn between parties with an option to register with the Authority constituted under the Legal Services Authorities Act when the agreement has arrived other than court-annexed mediation or award of the Lok Adalat or final award of the Permanent Lok Adalat.

The mediated settlement agreement is final and binding and is enforceable in the same manner as if it were a judgment or decree passed by a court. However, the agreement is subject to challenge on the grounds of fraud, corruption, impersonation, and if the dispute mediated is specifically excluded under the Act.

A Mediation Council of India is to be established to provide inter alia, the manner of registration of mediators, to lay down guidelines for continuous education, certification, and assessment of mediators, and to recognize mediation institutes and mediation service providers.

A unique aspect of the Act is the community mediation to resolve disputes that are likely to affect peace, harmony, and tranquility amongst residents, and families of a locality. The concerned Authority after the consent of the parties is empowered to constitute a panel of three mediators for conducting the community mediation.

The First and Second Schedules of the Act specifically bar mediation for the listed disputes and disallow mediation for the listed legislations.

*(The above gives an insight into the Act. Subsequent editions will delve deeper into key issues and provide a critical analysis of them.)*

**ACTIVITIES OF THE YEAR, 2023 – A GLIMPSE**  
**MEDIATION AWARENESS WEEK**  
**PRINCIPAL SEAT AND MADURAI BENCH**



Release of Newsletter by Hon'ble Mr. Justice T.Raja, former Acting Chief Justice of Madras High Court and distribution of pamphlets by Hon'ble Mr. Justice R.Mahadevan and Hon'ble Mr. Justice G.K.Ilanthiraiyan, Chairman and Member, Committee for TNMCC and Mr. K.Balasubramanian, Director, TNMCC to the Advocates and Litigants.

In the Principal Seat and Madurai Bench, the awareness week was celebrated by releasing the newsletter and distribution of pamphlets to the public. Hon'ble Mr. Justice T.Raja, former Acting Chief Justice of Madras High Court released the eighth edition of the Newsletter on 13<sup>th</sup> April, 2023 in the presence of Hon'ble Chairman and Members of the Committee for TNMCC. Hon'ble Judges of Madras High Court, Judicial Officers, Registrars, Mediators and Advocates participated in the occasion. After the inauguration, pamphlets were issued to the public and the message of the Hon'ble Committee was that the mediation activity should not be confined to mediation week alone but should be continued throughout, so that litigant becomes aware of the mediation process.



## DISTRICTS



The District Mediation Centres mediation awareness week commenced with the inauguration by the Principal District Judges on 10<sup>th</sup> April, 2023. Every district geared up during this period by arranging meetings with the Secretaries of the District Legal Services Authorities, Judicial Officers, District Collectors, Police Personnel, Bar Members and Mediators. Awareness was created amongst the litigants by distribution of pamphlets, conducting rally, advertisements in media, awareness videos in mobile vans, stage dramas, etc.

## NEW STATE OF THE ART CENTRE AT THE HIGH COURT





A view of the Reception, Mediation Room, Mediators' Lounge and Workstation in the Court-Annexed Mediation Centre

The Tamil Nadu Mediation and Conciliation Centre, which was started with two mediation Halls in the year 2005 was remodeled with additional 9 mediation Halls, reception, mediators' lounge, etc., in 2012. The new Mediation Centre is now built in an area of 6000 sq ft. to facilitate better modes of mediation i.e. both physical as well as online mediation. The salient features of the new building are as follows:

- (a) An impressive reception for receiving and guiding the parties to mediation
- (b) Parties waiting hall where movies and visuals on mediation are displayed
- (c) Awareness Boards explaining the process of mediation, its benefits, principles and its importance have been displayed in mediation halls and waiting area
- (d) 15 well furnished Sound Proof Mediation Rooms
- (e) Special Lighting and Centralized Air-conditioning
- (f) Facilities for conducting online mediation
- (g) Mediators' lounge –a little space for the mediators to interact and freshen up
- (h) Mother-feeding room
- (i) Modern work station





Inauguration of the newly constructed building of the High Court Mediation Centre by Hon'ble Mr. Justice Sanjay Kishan Kaul, Former Judge, Supreme Court of India, New Delhi



The newly constructed building of the Court-Annexed Mediation Centre at High Court was inaugurated on 8<sup>th</sup> September, 2023. Hon'ble Mr. Justice Sanjay Kishan Kaul, Hon'ble Mr. Justice M.M.Sundresh, Judges, Supreme Court of India and Hon'ble Mr. Justice Sanjay V. Gangapurwala, Chief Justice of Madras High Court graced the occasion. In the inaugural address delivered by Hon'ble Mr. Justice Sanjay Kishan Kaul, His Lordship said: "Mediation system is a better system than the court addressed solution because the parties who are really aggrieved have a say in the solution and mediation provides superior solution to a problem". Hon'ble Mr. Justice M.M.Sundresh, in His Lordship's special address said : "The court of law is driven by a 1908 vintage "Rolls Royce" while the mediation is driven by a fast, higher quality and lesser cost "Maruti". The Hon'ble Chief Justice of Madras High Court in His Lordship's presidential address said : "The Madras High Court holds the pride of being a pioneer and a trendsetter in mediation and the seed that was sown in 2005 has now grown in to a large banyan tree". Hon'ble Mr. Justice R.Mahadevan, Chairman of the Mediation Committee welcomed the dignitaries and the gathering. His Lordship in his address said "Mediation is a profound quest for justice and social transformation. The Courts are deeply conscious of the gravity of the problems created by the increased volume of litigation and are determined to tackle them effectively using the tool of mediation." Hon'ble Mr. Justice D.Krishnakumar, Chairman, Building Committee delivered the vote of thanks and expressed His Lordship's gratitude to all those who have contributed to this achievement. The Hon'ble Judges of the Madras High Court, Retired Hon'ble Judges, Judicial Officers, Registrars, Mediators, Advocates and staffs participated in the said programme.

### **FIRST SETTLEMENT IN THE NEW MEDIATION CENTRE**



It is gratifying to note that after the inauguration, the first mediation case that was held in the Centre, ended with a settlement agreement between the parties and a part of the settlement amount was handed over to the respondent (wife) by Hon'ble Mr. Justice Sanjay Kishan Kaul, Former Judge, Supreme Court of India on the said day.

## ESTABLISHMENT OF 120 TALUK MEDIATION SUB-CENTERS



Unveiling the plaques of the newly constructed mediation centre as well as 120 Taluk Mediation Sub-Centres by Hon'ble Mr. Justice Sanjay Kishan Kaul, Former Judge, Supreme Court of India. Hon'ble Mr. Justice M.M.Sundresh, Judge, Supreme Court of India, Hon'ble Mr. Justice Sanjay V. Gangapurwala, Chief Justice of Madras High Court, Hon'ble Mr. Justice R.Mahadevan, Chairman of the Mediation Committee and Hon'ble Mr. Justice D.Krishnakumar, Chairman of the Building Committee are on the dais.

Yet another endeavour by the Hon'ble Mediation and Conciliation Committee, High Court, Madras is establishment of Mediation Sub-Centre in 120 Taluks covering all the districts and Union Territory of Puducherry. On 8<sup>th</sup> September, 2023, Hon'ble Mr. Justice Sanjay Kishan Kaul, Former Judge, Supreme Court of India inaugurated the Taluk Centres virtually. Hon'ble Mr. Justice M.M.Sundresh, Judge, Supreme Court of India and Hon'ble Mr. Justice Sanjay V. Gangapurwala, Chief Justice of Madras High Court also graced the occasion. Hon'ble Chairman and Members of the Mediation Committee, Hon'ble Judges of Madras High Court, Retired Hon'ble Judges, Registrars, Mediators and Bar Members participated in the occasion. The mediation sub-centres were started not only to facilitate the Parties, Advocates and Mediators but also with a fond hope to enhance referral of cases to mediation in the districts.



TNMCC Team was appreciated for the efforts and hard work by the Chairman Hon'ble Mr. Justice R.Mahadevan, Judge, High Court, Madras



## PROJECT "SAMARASAM SEYA VIRUMBU"



**TAMIL NADU MEDIATION AND CONCILIATION CENTRE, CHENNAI**  
**& DISTRICT MEDIATION AND CONCILIATION CENTRE, COIMBATORE**  
 SAMARASAM SEYA VIRUMBU / சமரசம் செய் விரும்பு  
**TRIPARTITE MEETING / INTERACTION**  
 at Tamil Nadu State Judicial Academy, Coimbatore  
 on 5<sup>th</sup> day of August 2023, Saturday at 04.30 P.M

Hon'ble Thiru. Justice **D.KRISHNAKUMAR**  
 Judge, Madras High Court  
 ( Portfolio Judge for Coimbatore District )

Hon'ble Thiru. Justice **D.BHARATHA CHAKRAVARTHY**  
 Judge, Madras High Court  
 ( Portfolio Judge for Coimbatore District )

Thiru. **M.N.SENTHIL KUMAR**  
 Principal District Judge (FAC),  
 Coimbatore

Thiru. **S.KUMARAGURU**  
 Chairman, Permanent Lok Adalat &  
 District Mediation and Conciliation Centre, Coimbatore

Thiru. **K.S.S.SIVA**  
 Co-Ordinator  
 District Mediation and Conciliation Centre, Coimbatore



Glimpses of Tripartite meetings at the districts

In order to usher in fresh energy and time bound progress, this project titled "Samarasam Seya Virumbu" was conceived by one of the Members and was adopted by the Hon'ble Committee and is being implemented. The goal of this project is to enhance the quality of mediation thereby maximizing referral of appropriate cases and to cultivate greater outcomes from the process. The methodology is to hold district-wise tripartite meetings; conduct district-wise audit; categorize the Centres and push them to the next levels periodically. There are five stages in this process and based on the categorization, the level improves from "Red to Purple" (RED, ORANGE, YELLOW, GREEN AND PURPLE). To find out the present stage at which the district mediation centres are now functioning, a detailed questionnaire containing 50 questions was circulated throughout the State and

based on their answers, 29 districts were categorized as "RED" and 5 districts were categorized as "ORANGE". Based on the feedback, district-wise Tripartite Meetings/Interaction between the Members of the Bar, Mediators and the Presiding Officers were held throughout the State and a Senior Mediation Trainer was deputed to each district to moderate the meeting. As an encouragement to this move, in most of the districts, Hon'ble Committee Judges/Portfolio Judges participated in the tripartite meetings. A Sub-Committee has now been constituted to analyze the reports received from the Mediation Trainers and to formulate suggestions for further course of action to move each district to the next level.

### **MEDIATION ADVOCACY PROGRAMMES**



In association with the various Bar Associations of the Madurai Bench of the Madras High Court, 2.30 Hour programmes on Mediation Advocacy-Awareness was conducted. Hon'ble Mr. Justice D. Bharatha Chakravarthy, Member, Committee for TNMCC conducted the classes on 23.08.2023 & 30.08.2023. A total number of 124 Advocates participated in the Programme.

### **MEDIATORS MONTHLY MEETINGS AT MADURAI BENCH**



Mediators' monthly meetings were conducted at the Madurai Bench on 16.08.2023 and 07.09.2023. The Mediators shared their experiences and also put forth requests from their end. The meetings were presided by the Member of the Committee Hon'ble Mr. Justice D. Bharatha Chakravarthy. Steps to improve the quality of mediation in Madurai Bench was discussed at length.



## **TWO-DAY TRAINING PROGRAMME ON MEDIATION AND ARBITRATION**



Dr. Ambedkar Government Law College, Puducherry in collaboration with the High Court of Madras organized “Two-day training programme on Mediation and Arbitration” for the Administrative Officers of the Government of Puducherry on 22<sup>nd</sup> and 23<sup>rd</sup> December, 2023 at Conference Hall, Dr.Ambedkar Government Law College, Puducherry. Ms.R. Rathna Thara, Ms.P.Selvi, Mr. P.S. Kothandaraman & Ms. Adhilakshmi Logamurthy, Mediators of TNMCC are nominated by the committee to conduct the Mediation Training. Hon’ble Mrs. Justice R. Kalaimathi, Judge, High Court of Madras participated in the said programme and handed over the certificates to the participants. 36 Government officials participated in the said programme.

## **MEDIATION MONITORING SUB-COMMITTEE MEETINGS IN DISTRICTS**

The quarterly meetings of the Mediation Monitoring Sub-Committee were held in the districts of Chennai, Dharmapuri, Thanjavur, Pudukottai, Tiruchirappalli, Dindigul, Cuddalore, Perambalur, Nagapattinam and Ramanathapuram. The Chairman and Members of the Mediation Monitoring Sub-Committee, Nodal Officers and Mediators of the respective districts took part in the said meeting. Discussions were held regarding the ways and means for increasing the referral of cases to mediation as well as provision of basic amenities in the centres. The mediators were also advised to strictly adhere to the time limit of conducting mediation and requested to send back the cases to court.

# POEMS

## Requiescat in pace....

Litigation knows no sin,  
*Etiam* a shameful act, covers the skin.  
Beneath the hearts' poison trees,  
The ego seduces him to freeze.

Sniping Tit for tat, with nail'n tooth,  
Judges bear the brunt, to till the truth.  
'Overflowing cases', synonymous to felony,  
Yet, every court's a bee's colony.

The '*Afcons*' obiter is stare decisis,  
A revolution *omnibus et singulis* court premises.  
Honour that diplomat, throning with endurance,  
Success, is the fruit of his perseverance.

Transition from a '*posse ad esse*',  
There's no veto, '*ab imo pectore*'.  
Neither *ab invito*, nor *void ab initio*,  
Mark, the agreement is a *bonafide probando*.

For, the clauses of '*The Agreement*',  
Is that tenet of the Judgment.  
Grunting under burdening court fees amidst tears,  
On *consensus*, t'will be *in toto* refund, no fears!

*Sans* litigation, simple mediation,  
Is the formula for the next generation!

**Litigation...*Requiescat in Pace.***

**V. Sree Vidya**  
Special Sub Judge, Erode



**C. Eswaramoorthy**  
Advocate/Mediator, Erode

"In a decision, based  
on Compromise, none  
of the Parties is a  
Loser..."

"...Memorandum of  
Co-operation will Strengthen bilateral  
security relations  
between Plaintiff and Defendant"

Rivals twisted in a legal glance,  
A chance to resolve, to find a common stance.  
No court room echoes, No gavel's roar,  
Just voices seeking harmony's shore.  
In judiciary's embrace,  
Contestants find peaceful grace.  
Mediation, the art of tempered words,  
Where disputes flutter like birds.  
No trial thunder, No parties suffer,  
But a shared path towards Unity.



**S. Shanmathi**  
District Munsif-cum-Judicial  
Magistrate  
Vazhapadi, Salem

## SOLEMNLY SETTLED

A case is appropriate for mediation  
when the situation be a mess as of Mexican standoff  
For which there's a third person to dispute intervene  
Is the mediator, settles it through negotiation!

Each party to be open and candid  
The mediators are neutral; the sessions are confidential  
Assists the party with alternative options  
To explore a variety of solutions

The mediators will be behind every step of the way,  
Let it be one step at a time.  
The parties to be brace themselves:  
After the sessions, let the chips fall where they may!

The alternative dispute resolution is favorable  
Try not to beat a dead horse as in the trial  
Rather strike while the iron is hot  
'Mediation' – a force to be reckoned with!

**J. AMEER NISAA**  
Student, Govt. Law College  
Salem

## சமரச முனைவுகளும் ஏற்புகளும்

சூல் கொண்ட மேகங்களாய்  
உறவுகளின் உணர்வுகளில்  
உள் கிடக்கும் உள் கிடக்கை  
சொற்களால்..  
வார்த்தைகளால்..  
வசைகளால் வரிசைகட்ட

கிஞ்சித்தும் ஏதுமறியா சுற்றம்  
உயிர் சுடும் வார்த்தைகளால்  
உய்விக்கும் பூசல்கள்.

அணுஉலையின் கொதிநிலையில்  
கொதித்தெழுந்து  
வினைமுறிய..  
மணமுறிவாய்..  
மனுக்கள்.

சமரச அழைப்பாணைகள்  
சமர் இன்றி இசைவாய்  
முன்னெடுக்கும்  
முயற்சியில்..  
நேர்வுகளின் தொடரலில்..  
அமர்வுகள்.

உரையாடலின் பரிமாற்றங்களில்  
உடைந்தெழுதின்றது  
புரிதல்களும் - தவறுகளும்.

ஓர் மனதாய் முனைவுகள்  
இறுதி பெற  
பூசல்கள் தீர்ப்பதில்  
சமரசம் என்றுமே - ஓர்  
நல் - வரமாய்..  
நல் - அறமாய்.



**S. தங்கராஜ்**  
சார்பு நீதிபதி, சேலம்.

## காக்கும் கரம்

இன்னும் எத்தனை நாட்கள் தான்  
இப்படிச் செல்ல,  
இன்னும் எத்தனை பேர் தான் வருவர்  
கருத்துச் சொல்ல,  
நாட்கள் மாதங்களாய்  
மாதங்கள் வருடங்களாய்  
சீரியல் எபிசோடாய்  
செல்லும் அர்த்தமில்லா வாழ்க்கை!



**M. சாவித்திரி**  
வழக்கறிஞர் / சமரசர்  
கோவை

நிதம் ஒரு சண்டை,  
கண்ணீரில் முடிய  
தடித்த வார்த்தைகள் குத்தின,  
வாளை விட கூராய் !  
தேனை விட இனித்த காதல்  
தொலைந்து எங்கோ செல்ல  
காதல் போயின் சாதல்  
என உணர்ச்சியற்று நின்றது இருமனமும்!

'குழந்தைக்காக' என கூறும் போதும்  
அப்பிஞ்சே உணர்ச்சிப் போரின் சாட்சியானது.  
அச்சம், குற்றுணர்வு, இயலாமை  
கூட்டாய் உளைச்சலை கூட்ட,  
இருண்ட மனது விழித்தது

நீதிமன்றம் சமரச மையத்திற்குப் போ என்றது

பேசலாம் வாங்க எனவும்,  
பேசி தீர்த்துவிட்டு போங்க எனவும்  
கைபிடித்துச் சென்றனர் வார்த்தைகளால்!

வாழ்ந்த வாழ்க்கையையும்  
வாழும் நெறிகளையும் கூறிவிட்டு  
ஒருவர் மீதே போடும் பழிகளையும்  
மனதில் உள்ள காயங்களுக்கும்  
தீர்வே நன்கு கிடைத்தது.

கேட்க ஒரு காது கிடைக்காதா என்ற ஏக்கத்திற்கு  
ஆதரவாய் கிடைத்தன தோள்கள்!!

நல்ல முடிவை சரியாக எடுக்க  
சமரச மையம் தவிர  
வேறு யார் உண்டு!  
எல்லாம் நல்லபடியாக முடிய,  
வழிந்தோடியது கண்ணீர்,  
இம்முறை நிம்மதி கலந்த மகிழ்ச்சியில்.  
எந்த முடிவுமே முடிவல்ல  
அடுத்த அத்தியாயத்திற்கான தொடக்கமே  
என புரிய,  
அழகானது வாழ்க்கை.

“தீர்ப்பு இருவரின் முன்னிலையில் தரப்படுகிறது  
இசைவுத் தீர்ப்பு இருவரின் ஒத்துழைப்பால் தரப்படுகிறது...”

**T. நந்தினி**, மாணவி, அரசு சட்ட கல்லூரி, சேலம்.

1. உன் விழிகள் அருகில் பேசியதால் என் மொழிகள் மௌனமானது, சமரச மையத்தில்.
2. அறிவாளியாக இருக்க வேண்டும் என்ற நோக்கத்தைவிட யாரையும் அறியாமல் காயப்படுத்திவிட கூடாது என்ற நோக்கமே சமரச மையத்தின் நோக்கம்.
3. வானத்தில் இடி முழக்கம் நிலா பெண்ணுக்கு கல்யாணமா? மேகம் கண்ணீர் சிந்துகிறதே, அங்கேயும் வரதட்சணை கொடுமையா? வாருங்கள் சமரச மையத்திற்கு.
4. மறப்பதில்லை சூரியன் அதன் கடமையை செய்ய ஓய்ந்துவிடுவதில்லை பூமி அதன் திசையில் சுற்ற மறுப்பதில்லை காலம் தகுந்த பாடம் புகட்ட அதுபோல சமரச மையமும் அதன் வெற்றியை தர மறப்பதில்லை.
5. படகு கரை சேர்வதற்கு துடுப்பு மட்டுமே உதவும். அதுபோல் நம் வழக்கில் கரை சேர்வதற்கு 'சமரசம்' மட்டுமே வாழ்க்கை என்னும் படகின் துடுப்பாகும்.
6. சமரச மையத்திற்கு வர தயங்காத வரையிலும் நம் வாழ்வில் தடங்கல் இருக்காது.
7. நீ தேர்ந்தெடுக்கும் பாதை கரடு முரடாக இருந்தாலும் அதை கடந்து விடலாம் 'வாருங்கள் சமரச மையத்திற்கு'
8. இருளில் இருந்த வாழ்க்கையை வெளிச்சத்திற்கு கொண்டு வருவது சமரச மையம்.
9. சமரசமாக போனால் சந்தோசமாக வாழலாம்.
10. உங்களுக்காகவே சமரச தீர்வு மையம், உங்களுக்காகவே நாங்கள்.
11. நீங்கள் எங்களை நாடுங்கள், நாங்கள் உங்களுக்கு உதவுகிறோம்.



**K. முனிராஜா**  
சார்பு நீதிபதி  
பவானி, ஈரோடு

## சமரசம் நாடுவோம்

அடிவானம் வரை நீண்டுசெல்லும் நெடுஞ்சாலையைப்போல் நம்வாழ்வு பல சுவாரசியங்களை தன்னுள் புதைத்துள்ளது. வண்ணத்துப்பூச்சியை இறுகப்பிடித்தால் அதன் வண்ணங்களும், இறகுகளும் சிதையும், அனைவரும் அறிவோம்.. உயிருள்ள பாம்பை அதன் போக்கில் இலாவகமாக கையாள வேண்டும் என்பது அனுபவம் உள்ளோர்க்கே புரியும்... எதிர் காற்றில் கைகளுக்கு கட்டுப்படாத குடையைப் போல் நம் உடலும் சில நேரங்களில் நம் மனதின் கட்டளைக்கு அப்பாற்பட்டிருக்கும்.. அத்தகைய பொழுதுகளில் மூன்றாம் கையாக, ஏழாம் அறிவாக, நம் சுற்றத்தாரைத் தாண்டி சலனப்படாத அனுபவ அறிவு தேவைப்படுகிறது.. வாழ்க்கை எனும் சோலையிலே.. மனிதன் கொண்ட மன வேற்றுமையிலே... வழக்குகள் அதிகமாக நிரம்பி வழியவே... வழக்காடிகளின் நலனில் அக்கரை கொண்டு, உருப்பெற்ற சமரசம் மையம் என்ற இறுதியான சட்ட தீர்வாகும்... விட்டுக் கொடுப்பவர்கள் கெட்டு போவதும் இல்லை, கெட்டுப் போனவர்கள் விட்டுக் கொடுப்பதும் இல்லை... மனித பிறப்பு இறைவன் கொடுத்த பொக்கிஷம்... அதனை அன்புடன் விட்டுக் கொடுத்தால் நாமும் வாழலாம், நம்மை சேர்ந்தவர்களும் நலமுடன் சேர்ந்து நமது இரத்த சொந்தங்கள் தலை நிமிர்ந்து வாழ வைக்க, உருப்பெற்ற சமரச மையத்தை நாடுவோம் !!! வளம் பெறுவோம் !!!



**P. சுந்தரம்**  
வழக்கறிஞர்/ சமரசர்  
கோபிசெட்டிபாளையம்  
ஈரோடு.



## மாற்று வழி தீர வழிகள்

விவசாய நிலப் பிரச்சனையானாலும்,  
விவகாரப் பிரச்சனையானாலும்,  
விபத்து வழக்கு பிரச்சனையானாலும்,  
விவாகரத்து பிரச்சனையானாலும்,  
விற்கிரைய பிரச்சனையானாலும்,  
விற்பனை ஒப்பந்த பிரச்சனையானாலும்,  
மாற்று முறையாவன பிரச்சனையானாலும்,  
காற்றுக்கு இல்லை வேலிபோல,  
மாற்றுவழி! தீர்வுக்கு இல்லை - மாற்றுவழி!  
மனிதனே, மாற்றி யோசி,  
வழக்கின்றி வாழ்ந்து, மனிதனாக வாழ...  
உன் எதிர்காலத்தினை நேசி....!

ஓ மனிதனே !  
பூமியின் சுழற்சி நின்றுவிட்டதா?  
அலையும் மேகம் தொலைந்துவிட்டதா?  
நகரும் காலம் தேங்கிவிட்டதா?  
கனவுகள் எல்லாம் தூங்கிவிட்டதா?  
விழித்து எழு...!  
நம்பிக்கை கொடி ஏற்ற  
மத்தியஸ்தம் இருக்கிறது.

விழிப்புணர்வு கொடுக்கிறது,  
இந்த சொல்லுக்கு இருக்கிறது - அந்த சக்தி  
இதை சொல்பவர்களுக்கு இருக்கிறது - அனுபவ சக்தி  
சொல்வது யார்? அனுபவமிக்க, பயிற்சி பெற்ற, ஆற்றல் மிக்க  
ஆளுமையாக இருக்கின்ற பலவழக்குகளை  
சந்தித்த மத்தியஸ்தர்கள் கூறுகிறார்கள்.

அவர்கள் அனைவரும் சேவை செய்பவர்கள்  
ஆசீர்வதிக்கப்பட்டவர்கள்.  
எதை செய்தாலும், சிறப்பாக செய்வது  
மத்தியஸ்தர்கள் வேலை.  
தோல்விகளை மிதித்து, வெற்றிகளை எட்டியவர்கள்  
பல புண்ணியங்களை ஏற்றவர்கள் மத்தியஸ்தர்கள்.

வழக்கறிஞராக இருந்து, வழக்காடிகளின்  
கருத்தினை கேட்டு, நீதிமன்றங்களில்  
வழக்குகளை நடத்திக் கொண்டும்,  
ஒரு பகுதியில் மத்தியஸ்தரம் நடத்திக்  
கொண்டு இருப்பது - மிகவும் சிரமம்தான்.

ஆனால், அதனால் வரும் பலன்களை  
எண்ணும்போது தரப்பினர்கள் இணைந்து மனமொத்து  
செல்லும்போது வழக்கறிஞர் ஊதியத்தினை விட  
இதில் அதிகமான நிறைவு அடைகிறது மனது....!  
அன்று இரவு நல்ல மனநிறைவுடனும் தூக்கமும் வருகிறது...!

மத்தியஸ்த கூடத்திற்கு வருபவர்கள்,  
பல மனக் குழப்பங்களில் இருந்து வருகிறார்கள்.  
அவர்களை ஒருமிதப் படுத்தி  
பக்குவப்படுத்துவது சாதாரண விஷயம் அல்ல  
அது பல சங்கடங்களையும், பிரச்சனைகளையும் கடந்தது...

நாம், மருத்துவமனைக்கு சிகிச்சைக்கு  
சென்று வெளிவந்த பின்பு,  
அந்த மருத்துவமனைக்கு மீண்டும் சென்று  
அந்த இருக்கையினையோ,  
அந்த செவிலியரையோ,  
அந்த மருத்துவரையோ,  
திரும்பி பார்ப்பதுகூட கிடையாது.

ஒரு வழக்கிற்கு நீதிமன்றத்திற்கு,  
வந்து சென்ற பிறகு  
திரும்ப அந்த வழக்கறிஞரையோ,  
நீதிபதியையோ திரும்ப  
ஒரு வணக்கம், நன்றி கூட  
சொன்னது கிடையாது.

ஆனால் மத்தியஸ்தம் செய்த பிறகு,  
அவர்களது மனதில், ஆயுள் வரை  
நிற்பவர்கள் - இந்த மத்தியஸ்தர்கள்.  
என்றென்றும் அவர்களது மனதில்  
குடியிருப்பவர்கள்தான் - இந்த மத்தியஸ்தர்கள்.

யோசிப்பதும், உணர்ச்சிப்பூர்வமான விஷயங்களை  
வெளிக்காட்டுவதும், பக்குவப்படுத்தும் இடம்  
மத்தியஸ்தம்தான்... இது ஒரு கோவில்.

அதன் மூலம் கிடைக்கும் சந்தோஷம்,  
நிறைவு, நட்பு, உறவு அனைத்துமே,  
தொடர்கதை போல தொடரும் நம் வாழ்வில்.

ஆயுள் உள்ளவரை, மத்தியஸ்தர்கள் வாழ்வார்கள்  
வழக்காடிகளின் மனதில்...

மத்தியஸ்தர்கள் பாலமாக, பாடமாக இருக்கிறார்கள்  
அனைவரது மனதில்..  
கற்பிக்கும் பாடம்  
சக மனிதனை நேசிக்கும் பக்குவம்  
விட்டுக்கொடுக்கும் அனுபவம்,  
என்றென்றும் நிலைத்திருக்கும் மனதில்...!

மத்தியஸ்தம் அனைவருக்கும்,  
எல்லோருக்கும் போய் சேர வேண்டும்  
மத்தியஸ்தம் திருவிழாவாக மாறும் காலம்  
வெகுதூரம் இல்லை...!

வழக்கு நடத்தி, தீர்ப்பு பெறுவது வேறு..  
மத்தியஸ்தர்கள் மூலம் கிடைக்கும் தீர்வு வேறு..  
இந்த தீர்வு பலமடங்கு பெரியது தீர்ப்பை விட.

“மூராமபிரான் மனதில் பஞ்சு” தூய வெண்மையைபோல,  
என்றென்றும் நிலைத்திருத்திருப்பது மத்தியஸ்தம்.  
மறப்போம், மன்னிப்போம்,  
விட்டுக்கொடுப்போம்  
நாம் அனைவரும்,  
ஒவ்வொருவரும் ‘பரதத்தை ஆளும்  
சக்கரவர்த்தி’ யின் கொள்கையையும்,  
கோட்பாட்டையும் பின்பற்றி  
என்றென்றும் வழிநடப்போம்...!



**T.G. பாலச்சந்திரன்**  
வழக்கறிஞர்/சமரசர்,  
திண்டிவனம்

## சமரசத்தை நாடுவீர்! சமரசத்தை நாடுவீர்!

யுத்தி ஒன்று இருக்குது! யுத்தி ஒன்று இருக்குது!!  
மனசு விட்டு பேசியே வழக்கை முடித்து கொள்ளவே  
யுத்தி ஒன்று இருக்குது! யுத்தி ஒன்று இருக்குது!!  
சமரசமே அந்த யுத்தி! சச்சரவை தீர்க்கும் யுத்தி!!

### சமரசத்தை நாடுவீர்! சமரசத்தை நாடுவீர்!

கோர்ட்டில் வழக்கு இருப்பினும்

பேசி தீர்த்து கொள்ளவே

வாய்ப்பு இதிலே உள்ளது

சிறப்பும் இதிலே உள்ளது

### சமரசத்தை நாடுவீர்! சமரசத்தை நாடுவீர்!

உனக்கும் வெற்றி கிடைத்திடும்

எனக்கும் வெற்றி கிடைத்திடும்

சமரசத்தை நாடினால்...

பகையுணர்வு ஓடிடும் நல்லுறவு மலர்ந்திடும்

### சமரசத்தை நாடுவீர்! சமரசத்தை நாடுவீர்!



**S. ராஜகோபாலன்**  
வழக்கறிஞர்/சமரசர்,  
புதுச்சேரி

நல்ல நேரம் பார்த்து

இருமனமிணைந்து

சான்றோர் கூடி இருமனம்

ஒத்த திருமணம்!

ஒருமனம் கசிந்து

பலமனம் நசிந்து

நீதிமன்ற வாயிலில்

கூடுகையில்!

இருமனம் கலக்க

சமரசம் தேடி ஒன்றிணைந்து

வாழ்வதாலாகும்

நன்மைகளையறிந்து

இருமனம் ஒத்து

கூடிவாழ்வதே சிறப்பென்றெண்ணி

திரும்பகூடுதலே சமரசமாம்!



**C.K. பெஞ்சமின் ஜோஸ்,**  
ஷெரிஸ்டெதார், கன்னியாகுமரி

## பொன் மொழிகள்

சங்கடம் தீர்க்கும் சமரசம் - நீ  
சாமானிய மக்களின் கருவறை!

உண்மை மனசாட்சியின்

உறுதி தீர்வு மையம்! - சமரசம்



**K. வளர்மதி**

மாவட்ட சமரச மையம்  
ஸ்ரீவில்லிப்புத்தூர், விருதுநகர்,

## மத்தியஸ்த செயல்முறை

வீட்டில் பிறந்த கதை, ரோட்டிற்கு வந்த கதை  
கோர்ட்டிற்கு வந்த கதை, பின் இசைவுத் தீர்விற்கு  
சென்ற கதை, தீர்வில் தீர்ப்பு பெற்று  
திருப்பி வீட்டிற்கு அனுப்பிய கதை ...

**P. சந்தியா**

மாணவி,  
அரசு சட்ட கல்லூரி, சேலம்.

## சமரச தீர்வு ஏற்பட ஆத்திகூடி விதிமுறை

- அ . அனைத்து பிரச்சனையையும் பொறுமையாய் கேளுங்கள்
- ஆ . ஆக்கம் தரும் ஆலோசனை கூறுங்கள்
- இ . இழிவான எண்ணத்தை ஏற்படுத்தாது அகற்றுங்கள்
- ஈ . ஈவு இரக்கம் காட்ட தூண்டுங்கள்
- உ . உரிமை கோருமுன் கடமை உணர செய்யுங்கள்
- ஊ . ஊக்குவிப்பதில் முனைப்பு காட்டுங்கள்
- எ . எடுத்து சொல்வதை செவி மடுக்க செய்யுங்கள்
- ஏ . ஏற்கும் பண்பை ஊட்டுங்கள்
- ஐ . ஐயமிருந்தால் கேட்டு தெளிவுபெற உதவுங்கள்
- ஓ . ஒற்றுமையாய் வாழ ஊக்குவியுங்கள்
- ஔ . ஓரவஞ்சனை பேச்சை அகற்றுங்கள்
- ஔ . ஔவ்வாதன களைய ஆலோசனை கூறுங்கள்
- ஐ . இஃது அத்தனையும் சமரச தீர்வுக்கு ஏதுவாக இருக்கும்



**P.R. ஜெயராணி**  
வழக்கறிஞர் / சமரசர்  
நாகர்கோவில்

## JUDICIAL SENSING – AN APPROACH FOR EFFECTIVE REFERRAL FOR MEDIATION

**Dr.R.Malathi**, Sessions Judge,  
Mahila Court, Erode

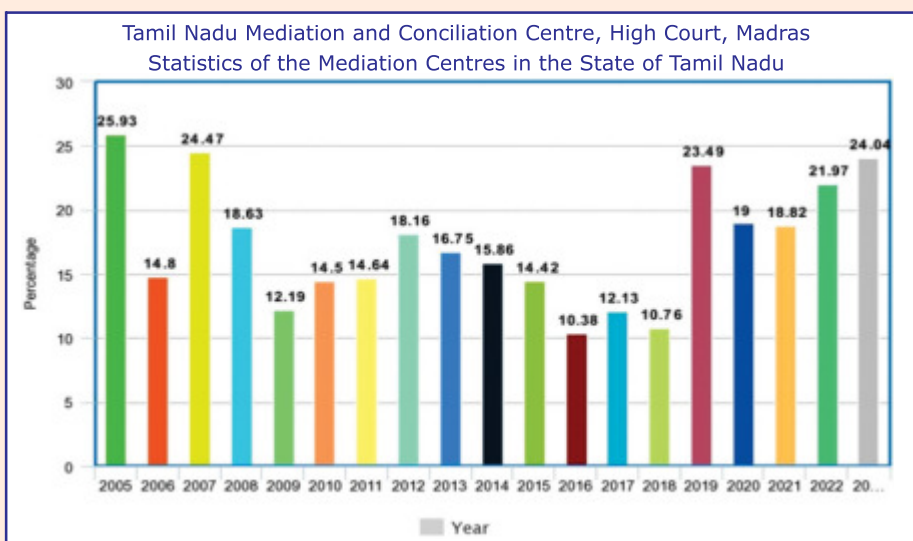


The greatest challenge faced for decades by the Indian Judicial System is the increasing litigations. On one side, suits for the recovery of money, partition, disputes on title are pouring in for obtaining a legal solution, and on the other side, the friction arising out of relationships are at steep increase before family courts. The parties are in great anguish awaiting final Judgments/Orders from the courts.

Whether all the cases instituted before the courts need to be processed through the long trial procedures contemplated under law was the question before the Judiciary years before? The cases pending before the courts are different in nature. Therefore the Judiciary traced a method of multiple approach substituting the main stream of disposal through trial, that is Alternative Dispute Resolution.

Mediation is one among the alternate dispute resolution where the doors are open for parties to come across and speak among themselves with a facilitator in between them. The disputes of monetary claims and the titles can be worked out with brains. But for the never ending war between the relationships need something more than the brain, that is the heart. Therefore the Advocates and Judges are specially trained as facilitators. In addition, the judges are specifically trained as how to identify the cases pending before their court and make due referrals.

The following is the percentage of graphical representation on the cases settled in the mediation against referred cases. The number of the cases settled in the references varies from 10 to 25%.



On a glance of the statistics it is evident that the settled cases in mediation are very less in numbers. It is need of the hour to fix the gear stick to speed up the mechanism of mediation. This requires a holistic approach.

A hopeful beginning is always half work done. The referral of cases is more important in the process than the mediation itself. The core principle behind the mediation is that all the cases need not end with settlement but it is the duty of the court to refer all cases which is fit for mediation. The success of mediation is to make the parties find their lost piece of arc in the round table or at least to find a way to search their piece of arc.

There are five basic principles for efficacious referral.

1. All Fit Cases to be referred to Mediation: Do not leave any stone unturned; the parties may discover their peace undeneath.
2. Today is the best day for Referral: Each day of pendency of litigation from date of filing to Judgment is the best day for referral.
3. Circumstantial changes in a case is always dynamic in nature: Each and every circumstantial change in the pending dispute will pave way to draw the mediation table across the parties.
4. Self-understanding by parties on issue is itself success in mediation process: Settlement is not the goal. The mediation has the purpose of making both parties understand the subjective issue between them. The parties will themselves realize the challenges and the obstacles in their way.
5. Space to evaporate emotions: In disputes between family members the meeting space given to the parties help to identify their actual problems. We Judges are bound to build the space for them for letting over their emotions.

The Judicial officers are the best identifiers as to the mediation referrals. While identifying the cases for referrals the Judicial Officers shall apply sensing methodology. Any Judge will be able to know the density when applying his/her senses on the issue. The Judicial Officer can direct the parties to be present to ascertain settlement possibilities before the court. They can have a look on the parties, need not try to mediate but see them in the court. By visualizing the parties we will be able to assess their present relationship. In the cases relating to the monetary claims or other cases of organization, hearing the parties will help to identify the actual issue which led them to file the suit. In matter relating to the child custody, before we refer the case to mediation it will be effective if we see the child and get the measure of his/her feelings. When we hear the parties the words spoken by them helps us to check out emotional imbalances if any between them. No doubt, when a sensible referral is made it will be very easy for the mediators to approach the problem and arrive at an effective settlement.

Next, is Grouping. Grouping the cases which is pending in the court will save the court's valuable time and will prove to be productive. The perspective of pool referral will prove to be an effective method for referral.

### **Grouping by organizations**

The Judicial Officer who presides the court has to first group the cases under him/her with broad classifications, like suit filed by organizations, companies or individuals.



Grouping on parties to the suit: The suits shall be bifurcated for identical plaintiffs, defendants and issues.

### Grouping on categories of cases

The suit filed by individuals may also be clubbed category wise if relating to matrimonial issues or any other money claims etc.

Further, the referral will be most worthwhile only when it is done after understanding the issue in hand. We need to see whether the whole issue behind the case is active or partly dormant. Certain issue will be active and few dormant and may also have triggering spots. This happens to be varying depending upon the category of cases.

### Measuring density of the issue in litigation

Nature of Litigation	Active Issues	Triggering Issues	Dormant Issues
Monetary Disputes	More	Less	Less
Title Disputes	More	More	More
Partition Disputes	More	More	More
Commercial Disputes	More	Less	Less
Matrimonial Disputes	Less	More	More
Child Custody Disputes	More	Less	Less
Criminal cases Compoundable in Nature	More	Less	Less
138 Negotiable Instrument Act	More	Less	Less

When a Judge applies his judicial sensibility before referring the cases, he may be able to identify the active issue in the case before him. He will also get to know what was and is the triggering issue, if there are any dormant issues which can be brought out to be addressed specifically. This can be done constructively by a Judge who day to day handles the cases. The Judge also will be able to convey this to the parties who are before him during the conference for referral. The identification of the issue is primary for mediation. When the clear-cut issue is discovered we will be able to easily arrive at a solution for the problem of the litigants.

Our Judiciary has its own code and provisions for appraising the evidence and for rendering Judgment. Many matters need no discussion on evidences but consensus of mind. The heart plays a major role in the family related disputes than the calculative mind. The problem of backlogs and steep increase in cases can be well handled when we know the way to en-route the cases through the channels of the alternative dispute resolution.

# RESTRUCTURING THE PEDAGOGY OF MEDIATION

**Uma Ramanathan**  
Mediator / Senior Trainer



The mind has the potential to shape a man's destiny, helping him to achieve inner peace when it is acknowledged and controlled,....The mind is responsible for processing feelings and emotions, resulting in attitudes and actions- Nicolae Sfetcu

Interactions involve emotions as perspectives and personalities tend to frame the context and context from the lens of conditioning and notions. Emotions push the energy into the triggers that result in actions and the processing of the effect of actions based on one's perception of what is acceptable and not. Affective science today is recognized as having a vital role in processing of information and the consequent action. To move towards a resolution in a conflict-ridden agenda and space, one has to recognize, understand and handle emotions.

Self is the reference point and determines the appraisal and use of information. Schlenker says that relationship satisfaction depends on the validation of each other's desired self. An individual's identity is the image of the self, conveyed and existing as a cognitive structure in the mind and is an entity in outside world. The self-structure is basically:

- ❖ Thoughts, feelings, perceptions
- ❖ Comparisons, reflected appraisal
- ❖ Social environment

Albert Bandura sees the self-system as a cognitive process by which one observes, evaluates and regulates one's behavior. Bandura coined the word self-efficacy to say that people observe, their own behavior and evaluate and this enables judgement of one's effectiveness in dealing with a particular situation. The challenge of the dispute resolution professional is to handle the party's power to self-determine as otherwise, dialogue and power balance will be impacted.

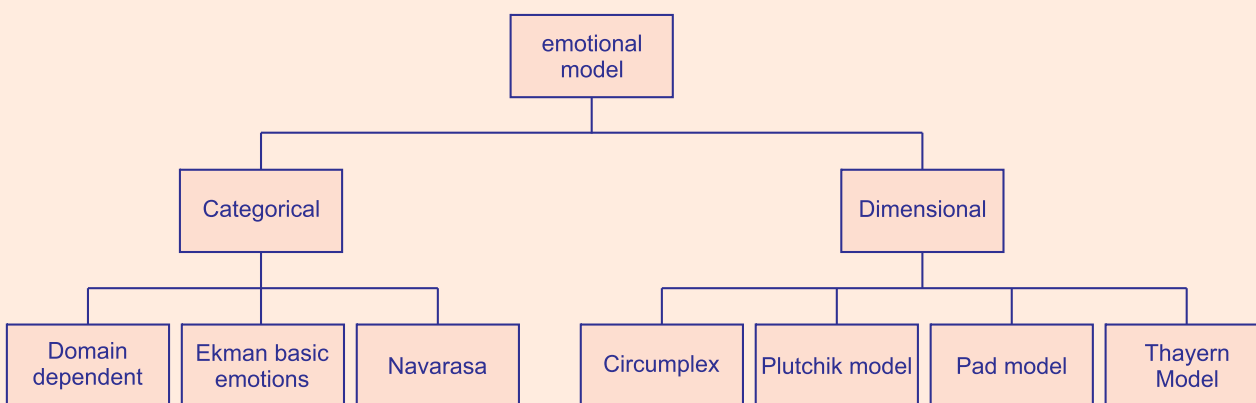
The frame of the self and of the other is more often structured by desire, expectation/attachment which automatically spurs a need to attain a goal what appears to bring a positive effect. Attachment leads to a pervasive desire that in turn invites action/communication. A response or a reaction to a communication or an event is a manifestation of feelings arising out of thought generated by perspectives and attitudes. While emotions are seen as energizing action, often they are a result of affect and cognition. Cognition supported by belief spurs behavior.

It is interesting to note that mediation training while being conscious of different styles has focused on training in identification and handling of causes of conflict, communication and negotiation skills and enablement of agreements. It is unfortunate that we have blindly followed the 40 hr schedule and have failed to recognize that what started as 40 hr training was only due to the offer of space and time on reasonable terms by a hotel. It is time we recognized the need to consider affective, neurolinguistic sciences as part of the curriculum as the mediator mainly facilitates information sharing, shift in perspectives and objective appraisal. At the same time, we should be aware of the need to train lawyers to develop persuasive communication and negotiation skills.

The level of influence of emotions, the energy and power induced by them have come to be recognized as basically energy and stress. This applies equally to the mediator and hence the training has to inclusive of the atleast the navarasas identified by the Sage Bharata as:

- ❖ Shringara (Love),
- ❖ Roudra (Anger),
- ❖ Veera (Courage),
- ❖ Bhayanakam (Fear),
- ❖ Bhibatsa (Hate),
- ❖ Hasya (Joy),
- ❖ Shantha (Peace),
- ❖ Karuna (Sad) and
- ❖ Adbhutha (Surprise)

And the manifestation as archetypes to help disputants to recognize the opportunity to move towards harmony.



● **Sreeja & Mahalakshmi**

Understanding happens when emotions and their impact are addressed. Attentive, ethical and reflective listening is ought to be felt by the speaker from the mediator. The mediator ought to develop skills to be the sakshi-observer and sakhi-friend to help the speaker to feel heard. The skill development is possible only by awareness of emotions and their energy.

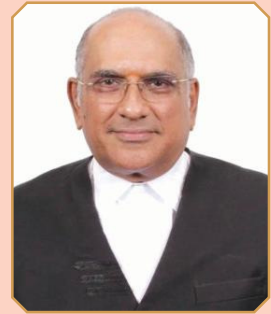
Responsive communication is the key for any progress/development and trust and policy building, sharing knowledge and skills, exploring options, recognizing potential and being open to sustained social change . Holistic approach and practice come from understanding the socio-cultural pressures, information and collaboration. Unless we recognize the need to address cultural responsiveness, content that has meaning and collaboration inquiry to bring about acknowledgment and commitment, consensus will be hollow. Consensus comes from being centered and from ability to respond.

Mediation having gathered moss all these years has now come to be anchored as a profession. It is time we recognized the need for scientific and holistic pedagogy for effective practice.



# SPECIAL ASPECTS OF MEDIATION IN FAMILY DISPUTES

**R. VENKATARAMAN**  
Senior Advocate/Mediator



Let me consider certain common barriers apply breaks while mediating family disputes. It is normal for one party to address the other party as defaulter and possessor of hidden agenda intending to punish the other party. The mediator removes those fear aspects by holding individual sessions so that the parties would not repeat blaming each other. Mediator has to remind the parties (wherever needed) that the process is voluntary, confidential, and self determining in nature and that the agreement amicably arrived at would form the decision of Court with attainment of finality (binding between them).

Reality test, role reversal tests, shower thoughts are handy tools for the mediator to make the parties aware that the clear positive mind would bring them nearer to the solution stage. The past events and looking at the person need to be side lined in order to make them to sit and resolve by direct exchange of communication by focussing the issue on hand and future in mind.

Apology, concept of forget and forgive and empathy and the other encouraging ideas of efficient negotiation. The mediator could also make the parties to know that in the past in similar cases the mediator has taken the parties to attain the solution point by the parties themselves putting an end to the differences. It may be a motivative factor for the parties to proceed with the process. In some matrimonial disputes, the husband may suspect that the wife is aiming to extract money only. The mediator has to clear his doubt informing him in individual session that the wife was not having that motive in her mind. At the same time, he has to hold individual session with the wife to clear the air and bring her back to confidence that the negotiation term was not suggested by the husband to get or extract more benefit to the detriment to the interest of the wife.

In the mediation proceedings, sometimes, the Counsel appearing for either party may start giving advise while the mediator is holding joint session. The mediator has to politely inform them that these advises could be given to the individual in individual sessions held in the mediation process.

Let me add few words before concluding this writing. A case of mutual separation was originally conducted by me in the mediation centre by physical mediation. Subsequently, the hearing was converted into video conferencing at the request of both parties due to their occupation in other States with different status of office. They had stated that they were interested in mutual separation and not for re-union in view of the unsuccessful efforts taken in previous mediation and family meetings accelerating the prospects for separation. I requested them to interact with each other in few sessions. After holding individual sessions, I understood the route cause for their individual differences. The couple had a 4 years male child kept in the custody of the mother. The ego was apparent in the body and spoken language of both the

parties. I also noticed what was not spoken by either party. The process of distillation was resorted to wipe out the differences (as they were repeatedly interpreting service rules rather than finding out way for resolving matrimonial differences). The main reason for the husband to hate his wife was that the wife started making disclosure to her colleagues of the plans made by the husband to overcome the rigour of service rules pertaining to employees. If a couple is employed in the same office with a power imbalance, the wife or husband would plan to retain the posting in the same place by waving transfer by promotion. They realised that the factors of power imbalance and the individual ego were the real issues, withdrew the petition before the court and reunited as evidenced later by the following message sent to me by the party: -

"Sir, this is Ranjani. Hope you remember me. Today we came to court and he signed to withdraw petition. Judge asked about our re-union. We told now we are happily together. Everything got over. Thank you so much Sir, will never forget your guidance".

After reading the above message, I started walking back to the mediation centre to do active listening of other pending matrimonial cases allotted to me for mediation with immense happiness and satisfaction.

## EMOTIONAL INTELLIGENCE IN MEDIATION

**R. Rathna Thara**  
Mediator/Senior Trainer



*Most simply, emotions matter because if we did not have them nothing else would matter. Creatures without emotions would have no reason for living. Emotions are the stuff of life – JOHN ELSTER*

What is Emotional Intelligence, and why it is paramount for Mediators to consciously exercise it while witnessing Parties emotions?

To understand emotional intelligence, it is essential to dwell upon the understanding of empathy, neutrality and impartiality from a mediation context.

Sympathy is described as feeling compassionate or sorrowful for the other, while empathy involves identifying oneself with the situation of the other. Mediators must respond only with empathy when parties express their emotions, and not with sympathy. When parties express their concern, the mediator must not only listen to the words spoken but also to the indirectly conveyed strong emotions behind those words. Thus, empathy in mediation plays a key role in parties knowing that their feelings and emotions have been heard and understood, thereby helping to establish a trustful connection. Mediator's empathy is essential for parties going through a difficult time, when being at conflict with each other. It takes an enormous amount of courage for the parties to express their emotions (fear, insecurity, anger, doubt etc) during the mediation and how the mediator responds to these motions plays an important role in the mediation's success. The extent to which a mediator deals with these emotions is circumstantial, and much depends on their ability to read the emotional needs of the parties. Empathy can become Sympathy when the Mediator's personal values, feelings and sensitiveness are triggered by plight of the parties. Even when the mediator over empathizes

with emotional concerns of just one party, they leave themselves open to allegations of partisan and partiality. On the other hand, if the mediator is unable to identify the emotions being expressed by a party, that party may feel that they have not been heard or understood and this will hinder a productive negotiation. Pent up emotions can also be a roadblock to a successful negotiation. When a party feels that the persons in the mediation have understood their concerns and the emotions attached to them, they will be more likely to abandon their defensive position and work towards resolving the dispute amicably. The parties in a mediation takes a very firm position in their demands only due to their strong self-justifying emotions. When the mediator deals explicitly with the emotional needs of the party, he/she is able to take the "sting" out of the position and encourage them to mediate upon their interest.

How these emotions and empathy affect the neutrality of the mediator?

Though we use the word neutral and impartial interchangeably, the western countries have removed the word neutral and the word impartial alone is used for the mediators during the process of the mediation. According to them the word Neutral refers to the mediators "interest in conflict", and impartial refers to the behavior of the mediator in the process. Impartiality is mostly seen as one of the elements of Neutrality. Neutrality is an umbrella term and in the context of mediation it is referred as to the mediator's interest in the conflict, in the sense that either of the party should not be known to the mediator even before the mediation, the mediator should not be interested in the outcome of the mediation etc., When there is a conflict of interest which will affect the neutrality of the mediator the mediator should recuse themselves from the mediation process. Whereas the term impartial refers to the behavior of the Mediator during the process like being fair to both the parties during the process, giving equal time and opportunity to express themselves in joint and private session, that they are not bias in their words, actions and facial expressions etc.

The same qualities of empathy, neutrality and impartiality which makes them a good mediator will also jeopardize them, when they become more attached with one party during the process in mediation. For a mediator to establish an emotional connection with the parties but at the same time to be perfectly neutral with the person and the process is very difficult. To put yourself in a person's shoe and still not to be touched by their plight and circumstance is a very difficult task indeed. To overcome this many mediators are able to harness the power of emotional intelligence to guide the parties in a conflict. The mediator's ability to access their emotional intelligence to assess what a party in a conflict needs to see, hear and to do during the mediation is very important. Since this emotional intelligence varies significantly, mediators who don't possess them are unable to effectively handle while addressing the emotional needs of the parties. Therefore, emotional Intelligence is the competency of the mediators to deal effectively with the range of emotions expressed by the parties to them at the mediation table. Emotionally intelligent mediators must possess the qualities of strong self-awareness and emotional self-regulation, which helps not to over empathize with one of the party. Emotional self-regulation can prevent partisan expression and behavior that challenges the mediator's impartiality. A mediator must rely upon their own emotional self-awareness and emotional self-regulation to maximize the contribution of the parties to arrive at a solution. Being able to be attached, yet detached in the mediation process is paramount for the mediators when dealing with the emotional needs and concerns expressed by the parties. Emotional environment which is a key element for the mediators to have a successful mediation can be improved. To improve the emotional environment, the mediator has to inspire and develop the confidence and trust in the parties during the mediation. A mediator who behaves in an impartial manner and presents a neutral image will be able to instill the trust and confidence in the parties.

To conclude "indeed, to put oneself in others shoes and yet not to be influenced by their plight and circumstances is a difficult task, but it can be still achieved through conscious practice".



# MEDIATION 2000 YEARS AGO

**S. Thenmozhi**  
Advocate/Mediator



As I read the article of Mr. Sriram Panchu, titled "Was Lord Krishna a good mediator in the Mahabharata war?"<sup>1</sup>, published in The Frontline dated 24.08.2023, I was reminded of the recent discussion I had with my school Tamil teacher. I called him specifically to ask what is the actual term for mediation in Tamil. The Mediation centre in Tamilnadu is called as "Samarasa maiyyam" (சமரச மையம்). The word, "samarasam", however, cannot be equated to mediation. It originates from the word "saman" (சமன்) which means balanced or equal. At best, "samarasam" could mean "impartiality" or "equality" but definitely not "mediation". In the modern usage, said word is equated with "compromise". My teacher said the translation of the word mediation in Tamil would be "sandhuviththal" (சந்துசெய்வித்தல் / சந்துவித்தல்)<sup>2</sup>. He followed it up by narrating a fascinating story of Avvaiyar, a Tamil poet of Sangam era (2000 years ago) who mediated between two kings, Adhiyaman Neduman Anchi of Thagadur (now Dharmapuri) and Thondaiman Ilanthiraiyan of Kanchi (Kanchipuram)<sup>3</sup>.

The story goes thus: The poet is well known for her friendship with Adhiyaman and the respect the latter had for her. In the said era, poets were considered as neutral and were allowed free access across the kingdoms and could travel without restrictions. Poets were allowed to voice their opinions without repercussions. When Avvaiyar became aware that the king of Kanchi, Thondaiman was planning to declare a war on Thagadur, she decided to intervene and travelled to Kanchi to meet king Thondaiman.

Thondaiman, himself a poet<sup>4</sup>, had immense respect for Avvaiyar and was aware of the friendship between the poet and Adhiyaman. In an effort to sway her friendship towards him, he takes her to the weapons room where all his weapons were displayed gloriously, well oiled, sharp and shining in an obvious display of strength and prowess. Avvaiyar describes the display in form of a song (which could be found as song no. 95 of "Purananuru" (புறநானூறு)<sup>5</sup>, a Sangam literature). The song goes thus:

இவ்வே, பீலி அணிந்து, மாலை சூட்டிக்  
கண்திரள் நோன்காழ் திருத்தி, நெய் அணிந்து,  
கடியுடை வியன்நக ரவ்வே: அவ்வே,  
பகைவர்க் குத்திக், கோடுநுதி சிதைந்து,  
கொத்துறைக் குற்றில மாதோ; என்றும்  
உண் டாயின் பதம் கொடுத்து,  
இல் லாயின் உடன் உண்ணும்,  
இல்லோர் ஒக்கல் தலைவன்,  
அண்ணல்எம் கோமான், வைந் நுதி வேலே.

Roughly translated, Avvaiyar while praising the displayed weapons as well-oiled, shining like jewels, having beautiful handle bars and decorated with peacock feathers and garlanded, lying in the palace and well protected, states that her king Adhiyaman's weapons were blunt, broken and could be found lying in the small hut of the blacksmith. She ends the song stating that Adhiyaman was a leader of the poor who always distributed his wealth when he had plenty and shared his food when he didn't have much. Thus, the great poet is said to have prevented war between two powerful kings by using her negotiating tactics by giving a reality check to Thondaiman by indirectly indicating that Adhiyaman was well-experienced in warfare.

This reminded me of the similarities between the stories of Avvaiyar and Lord Krishna. Both went as a messenger for one of the parties involved in the dispute and both their aim was to prevent a war.

Mr.Panchu's satire<sup>6</sup> discusses some of the important aspects of mediation, namely (i) impartiality and neutrality of a mediator; (ii) bias of a mediator; (iii) conflict of interest of a mediator as Lord Krishna considered Dhraupathi as his sister; (iv) agreement of the parties to mediate; (v) voluntariness of the parties involved in the mediation. Finally the article ends with the note of how war could have been prevented if the mediator had done his job properly.

The mediation technique of Avvaiyar was different from that of Lord Krishna. Avvaiyar trumps Lord Krishna in her mediating skills. (i) She was impartial and neutral. (ii) She did not have any personal gain to achieve in mediating the dispute. (iii) Even though she went to meet Thondaiman because of her friendship with Adhiyaman, Avvaiyar's intention was not to secure anything either for herself or for her friend. She merely went as a messenger of peace and with an open mind. Her only goal was to prevent the loss of lives that a war might bring. Hence she did not have any conflict of interest with both the kings. (iv) Furthermore, Thondaiman was well aware of Avvai's friendship with Adhiyaman and yet he trusted Avvaiyar to be neutral and did not question her motive. (v) Any bias she may have had towards Adhiyaman was known to Thondaiman and he still agreed and accepted her intervention. (vi) Avvaiyar was excellent in her negotiating tactics and played to the field. She could have highlighted the strength of Adhiyaman and his warfare techniques and re-cited her earlier songs which are compiled as songs no. 91, 92, 94, 101, 315 in Purananuru. Instead, she was subtle by merely discussing the condition of their weapons rather than praise her king and explain his war experiences. (vii) As any good mediator, Avvaiyar did not give any advice, opinions, suggestions on the dispute but left it to the parties to reach their own resolution. Historically there are no records of a war between Thondaiman and Adhiyaman. However, in view of the existence of the song, we can safely conclude that Avvaiyar is thus said to have prevented a war.

In the present day, the mediation trainings world-over emphasises the following to be a good mediator: (i) That a mediator is a neutral and impartial person; (ii) she/he is not a judge and cannot offer any opinion, suggestion and enforce her/his view; (iii) there is no conflict of interest between the mediator and the parties; (iv) the parties to the dispute are participating in the mediation voluntarily; (v) the mediator shall maintain confidentiality of the disclosure made by the parties, unless given permission (vi) the process of mediation is non-binding and without prejudice unless a settlement is reached.

Thirukkural<sup>7</sup>, 118<sup>th</sup> verse of Chapter 12 titled "Impartiality" (நடுவுநிலைமை) under Heading "Virtues" (அறத்துப்பால்) is extracted as under:

சமன்செய்து சீர்தூக்கும் கோல்போல் அமைந்தொருபால்  
கோடாமை சான்றோர்க் கணி.

The translation of the same as per Rev. G.U.Pope<sup>8</sup> is as under:

**Literal translation:** To stand, like balance-rod that level hangs and rightly weighs, With calm unbiased equity of soul, is sages' praise.

**His meaning:** To incline to neither side, but to rest impartial as the even-fixed scale is the ornament of the wise.

This couplet explains best the qualities of a mediator. Lord Krishna probably would have benefitted as well had he had such access to the teachings of Valluvar.

1. <https://frontline.thehindu.com/society/satire-lord-krishna-as-mediator-in-the-mahabharata-war/article67209377.ece>
2. Word source not known.
3. Dharmapuri and Kanchipuram are Districts in Tamil Nadu.
4. Thondaiman is also a poet and his song on the qualities that a king should possess for good governance can be found as Song No.185 in Purananuru.
5. Song 95 of Purananuru. Purananuru is a collection of 400 poems and sangam literature of period 3rd century BCE and 3rd century CE. The earliest known compilation was done by U.V.Swaminathar in the year 1894.
6. [https://frontline.thehindu.com/society/satire-lord-krishna-as-mediator-in-the-mahabharata-war/article67209377.ece.](https://frontline.thehindu.com/society/satire-lord-krishna-as-mediator-in-the-mahabharata-war/article67209377.ece)
7. Thirukkural is a compilation of 1330 verses in the form of couplets by Sage Thiruvalluvar. It consists of 3 main headings – Virtues, Wealth and Love and Pleasure and 133 chapters, comprising 10 verses each.
8. First known translator of Thirukkural in English and the translations were published by W.H.Allen & Co in 1886. Source: [https://www.projectmadurai.org/pm\\_etexts/pdf/pm0153.pdf](https://www.projectmadurai.org/pm_etexts/pdf/pm0153.pdf)

## MEDIATE FOR A SPEEDY AND A HEALTHY JUSTICE

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Today for a poor man , without money cannot afford to look up to court for justice as to start and finish a legal battle in India as it is a costly affair. For a common man "SUIT" means inordinate delay, cost consuming. This mentality defeats Gandhi's thought of "the poorest man in want of justice"

**ANCIENT DAYS :** In olden days, the village head man who sticks to honesty makes up his mind and delivers a speedy judgment by hearing the complaints and counter complaints of parties by sitting under a tree. As innovation and constitution of courts came in, this type of



complaint solving mechanism (PANCHAYATH) came to a grinding halt or rather the belief of people over the Judiciary started to build up. But by then, with growing population and popping up litigations, time and money became insufficient to cope up with the Justice delivery system in open courts. Principles of "Audi alteram partem" No man should be condemned unheard was taking more time in disposal of cases. Though with the available Justice delivery system there has always been shortages of Judges, Judicial staff members which stood as a stumbling block in rendering speedy Justice also created a huge backlog in the legal system. To cope up with the disposal of piling of cases in the Judiciary, legislators were pushed to think of certain way out to sustain the Judiciary with no exceptions to a fair hearing. There were days when people spent money and had time to watch cricket test matches for 5 days to see the result. As time passed by result were expected in a day called a one-day Match and still later due to paucity of time it became a 20 – 20 over match being hosted at nights in all cities convenient to fans after finishing their duties. Innovations started to aid the fans to watch the game. Likewise in Judiciary we needed a public confidential, speedy, dispassionate, objective, time bound Justice delivery system. A need to explore a new system to sustain the belief and manage to resolve disputes in an expedient and collaborative way. In Tamil there is a saying "தொலைச்ச இடத்துல தான் தேடணும்", necessitated us to go and bring back our traditional pre-existing system of dispute resolution and further more, choosing a neutral who will hear and assist parties to come and get their disputes truly resolved by a new legalized system called the MEDIATION ACT 2023.

**COST EFFECTIVE:** With the changing pattern of life style in our present country and the young generation who are now accustomed with Information technology at their fingertips and who wants a speedy justice efficient system , will be more happy and satisfied with the Present "MEDIATION ACT 2023" which is nothing more different from the previously existed system "the village head man" who sticks to honesty will be the person called the MEDIATOR who shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct to the entrusted case to him and will mediate in-between the parties with all truth and fairness and see to a result which is agreeable to both the parties ( Plaintiff and the Defendant ) thereby putting an end to the litigation between the parties and the parties will have to sign the agreed terms into writing duly authenticated by the mediator which is called the mediated settlement agreement and the parties can execute the same as like a decree of a civil court.

**CONVENIENT AND QUICK :** With Judgement of Supreme court and various High court allowing and recognizing service of summons, notices and pleadings through email and WhatsApp will help in fastening the system There will be no excessive adjournments, no need to worry on the Judicial vacancies and administrative staffs, no waiting inside the crowded court hall. A simple procedure with a fixed timeline and a more convenient process for a resolution of disputes.

**ENCOURAGES THE PARTIES:** It encompasses variety of disputes in addressing and shattering the barriers of disabilities. The results are by MUTUAL between the parties, a process less adversarial and complicated for the parties thereby setting the lis at rest. Will encourage parties to opt to resolve their disputes through such formal means as opposed to not agitating their rights at all.

**HEALTHY RESULTS:** At this stage the coming in of "The Mediation Act 2023" with above discussed challenges will build more public confidential, speedy, dispassionate, objective, time bound Justice delivery system, a reinforcement of our past efforts of access to a speedy justice and will leap towards achieving the ideals as enshrined in our constitution.

# ROLE OF MEDIATION IN INDIAN JUDICIARY<sup>1</sup>



**B. Mathanachandiran**  
Advocate, Tindivanam

## INTRODUCTION

In the last several years, it has been shown that alternative dispute resolution (ADR) techniques are widely acknowledged and accepted worldwide. However, research has shown that mediation tools and strategies may really be a godsend, particularly when handling both family and business disputes. The Indian Apex Court has occasionally approved these tools as well, including the processes and methods of mediation. The mediation process will be cheaper while comparing with the normal court process in the Indian Judiciary. If the problems settled in the mediation process the court fee will be refunded. Also, in the process of Mediation there is win-win situation in the legal progress. Recently, The Mediation act 2023 enacted by our Government of India.

## CONCILIATION AND MEDIATION

It is acknowledged that two significant and successful alternative dispute resolution processes are mediation and conciliation. These are regarded as significant and successful alternatives to courtroom action for the settlement of conflicts with the advice and help of an unbiased third party. That being said, mediation and discussion as a means of resolving disagreements is not new in our nation. There are Nyaya Panchayats and Village Panchayats in the villages, and for a very long time, these Panchayats have been used for the conciliation and settlement of numerous village-level issues. However, since Panchayats are more accessible than courts, which are situated distant from villages, this type of remedy was sought for more out of convenience.

But as time has gone on, there has been an overabundance of litigation. Additionally, there have been delays in the resolution of legal matters due to a number of factors, including a lack of judges and other court officials, inadequate infrastructure and population growth. The public's increased knowledge and comprehension of their rights has also resulted in an increase in the number of court proceedings being filed. Because of the excessive traffic on the main road, it was decided to open a bye pass to relieve some of the strain. As a result, a device for alternative dispute resolution, such as mediation and conciliation, was created. This form or procedure is cost-effective and settlement-oriented. It also helps the parties achieve a "win win" solution by using a problem-solving method. In this procedure of resolving disputes, there is no winner or loser because all parties accept the resolution.

Express provisions under the Code of Civil Procedure, 1908, are found in Order XXXII A, Rule 3, which requires the courts to attempt to settle actions pertaining to family affairs. Similarly, in a lawsuit against the government or a public official, the court is required by Order XXXVII Rule 5B to assist in reaching a settlement.

But it wasn't until the Arbitration and Conciliation Act of 1996 that the two ideas received a thorough statutory acknowledgment. Conciliation is covered in detail in a different chapter of the aforementioned Act. Recently, procedures have been developed for resolving disagreements through the courts even in civil action. The aforementioned approach is typically implemented following the conclusion of the document admission/denial process, as it is, at this point that the issues framed in the lawsuit are brought to the court's attention. Nonetheless, it is noteworthy that even in the absence of an arbitration clause, the court has the authority and competence to send the disagreement or litigation to an arbitrator under section 89 of the Code of Civil Procedure, 1908. Consequently, whether the parties' assent would be required for such a reference is likely a matter of debate that needs to be resolved through a suitable ruling, which would likely result in an arbitration agreement. The Arbitration and Conciliation Act, 1996, has now formally recognized the idea of conciliation. However, it's not entirely clear if the terms "mediation" and "conciliation" refer to the same process or would have different meanings. The majority of authorities claim that they overlap. Nevertheless, the Act does not define the term "conciliation." Only that conciliation could be used in all disputes arising out of legal relationships, not just those involving contracts and business dealings, is stated.

## **MEDIATOR ROLE**

By the voluntary agreement of the parties, mediation is a process of resolving disputes with the help of a mediator in an effort to reach an amicable resolution. Being a good mediator is a skill that calls for a certain set of attributes. A mediator helps the parties reach an amicable agreement by supporting and facilitating the process; they do not resolve disputes on behalf of the parties. The most important thing that people look for in a mediator is trust. The parties to a dispute should be able to trust the mediator, and the mediator shouldn't jeopardize the case's specifics. Good listening skills come next on the list of attributes<sup>2</sup>. It is expected of a competent mediator to fully observe and listen to both parties before attempting to offer observations and recommendations. It is expected of a mediator to continually evaluate the merits and consistency of the claims and allegations made by the parties. It is crucial for a mediator to have a healthy emotional intelligence because mediation, like other forms of ADR, can be used to resolve conflicts of many different kinds, including guardianship, adoption and marriage-related issues. If a mediator is unable to identify the underlying emotions that are present in the dispute and between the disputing parties, they will not be able to guide the parties in the proper direction. The next trait that is anticipated of a mediator is empathy; that is, the mediator should be able to place himself in the shoes of the disputing parties and attempt to feel their anguish and feelings; only then will the mediator be able to guide the parties toward a resolution. Knowledge is yet another attribute of a skilled mediator. There are few disputes that



have legal ramifications and call for in-depth legal knowledge, but there may be some that are straightforward and can be settled with the parties' simple assistance. Being realistic is the next trait that a competent mediator should possess. Mediation is one form of alternative dispute resolution that seeks to resolve disputes out of court. But it's crucial to understand that mediation isn't always successful. It is possible that the parties to the dispute won't be able to find a solution no matter how skilled and informed the mediator is if they are unwilling to work together to find one. Understanding the process is always the first step in any dispute resolution procedure, but a mediator or even a judge in that situation must be able to identify the fundamental problem<sup>3</sup>.

## **E-MEDIATION**

Regardless of our perspective, this is the age of technological advancement and it is here to stay. Nowadays, technology has an impact on everything, mostly for the better, including jobs and schools. These days, the internet is a vital tool for business, as evidenced by the fact that a large number of organizations rely on online resources. Since that most businesses are moving towards digital environments, it would not be incorrect to suggest that this could be an excellent time for mediators to follow suit. To put it succinctly, in the increasingly digital workplace of today, "e-mediation," or online mediation, could be of great assistance to mediators in meeting the evolving needs of their clients. Although the idea of e-mediation, or online mediation, is not particularly new, it has recently gained more significance due to events and global changes. Since the pandemic, a lot of businesses have switched to a work-from-home policy. This has enabled most of the work to be completed online. Conflicts do, however, still arise in this world. A private online mediation is known as an e-Mediation. It is the procedure that litigants employ to help settle e-discovery disputes quickly and affordably. Parties can meet via email or other messaging apps in addition to video conferencing when using e-mediation<sup>4</sup>. Technology may have two drawbacks. While there are some disadvantages, it can also open up new opportunities. The fact is, though, that we are unable to avoid it. Instead of being skeptical of technology, mediators should embrace it and make the most of it. It can aid in making conflict resolution more adaptable and successful. In this more digitally advanced world, e-mediation will assist us in resolving workplace conflicts. We must accept that the internet has permanently altered the way that people do business. Since technology is here to stay, it makes sense to adjust to it and use it to create even better things.

## **E-MEDIATION: A NEW TOOL IN THE DISPUTE RESOLUTION MACHINERY**

Over the past ten years, using Alternative Dispute Resolution (ADR) mechanisms—specifically, mediation—to settle family disputes has grown in popularity. The success rate of settlements reached as a result of the courts' repeated mandates of mediation as a precondition to adjudication has increased. Speedy and effective resolution of disputes gives families a great scope to resolve their disputes, including, inter alia, divorce and separation, matters of custody, maintenance of dependents including aged parents, inheritance, and similar property-related matters. The rise in domestic violence cases has also made room for mediation. This is a result of people's and families' growing awareness. Because of Section 89

of the CPC, the Court frequently, at its discretion, refers cases of this kind to mediation<sup>5</sup>. At this point, it is important to highlight that one of the key factors influencing the outcome of the mediation process is selecting a qualified mediator. This would mean keeping an eye out for attributes like credibility, patience, persistence, impartiality, neutrality, objectivity, and alertness<sup>6</sup>. One excellent trait that a good mediator has is an attentive approach to the nuances of the dispute and the parties involved in it. An additional benefit in this case would be the involvement of an advocate, who would help the parties grasp the legal issues at stake and the ramifications of any decisions they make now or in the near future. This would provide a more complete and all-encompassing picture for them. With the outbreak of the Novel Corona virus Pandemic forcing the entire judicial and administrative systems to shift to an online mode of functioning, a broad way has been paved for e-mediation. This essentially means the shift of mediation proceedings from a physical form, requiring the parties to appear before the mediator in person, to the same being conducted online by means of video conferencing platforms. E-mediation saves enormous sums of money that would otherwise be spent on necessities like rent, electricity, water, stationery and other random costs. It also requires far less office space, if any at all. This translates into a significant decrease in spending, which lowers the procedure's overall cost and creates space for a more reasonable fee schedule. Lack of access to video conferencing and internet resources, particularly in rural and other impoverished areas. In a similar vein, people in less tranquil regions of the world would be prevented from choosing e-mediation due to internet outages. In conclusion, e-mediation as a curtain raiser has become increasingly popular in recent years, particularly in light of the global pandemic that has compelled nearly everyone on the planet to operate online. The pandemic may have caused a downturn, but mediation procedures' effectiveness has not diminished, and they have introduced an easy-to-use and straightforward method into the current legal system.

### **PRE-LITIGATION IN THE MATRIMONIAL DISPUTES**

India, a pastoral nation, has a rich cultural legacy because norms and values are highly valued<sup>7</sup>. It represents the fundamental ideals and the emotional and emotional union in addition to the physical union. But when two people join together for marriage, conflicts of interest can occur and disagreements can be resolved. In these situations, mediation is a procedure that can preserve the sacredness of the union by using the principle of compromise. Making mediation mandatory is justified by the idea that since family conflicts arise in the heat of the moment, they should be handled gently rather than going straight to court. Instead of going straight to court, all of these marital disputes ought to be referred to mediation, which is a more party-friendly procedure. Simply put, mediation refers to a cooperative process in which a mediator—a neutral third party—assists the parties involved in reaching a mutually agreeable resolution to their disagreement. It is easier to use and more cost- and time-effective.

This documentation praises the introduction of a pre-mediation procedure that is required in family and matrimonial disputes. As the name implies, mediation must be made mandatory as a procedure that the parties resolving family conflicts must adhere to before

going to court. The "opt-out" principle serves as the foundation for this proposal<sup>8</sup>. Encouraging mediation serves the main purpose of fostering amicable cooperation between the involved parties. This idea aims to maintain the cherished qualities and ideals of marriage and the family while lessening the number of family disputes that are pending in the relevant courts. As evidence for the aforementioned assertion, consider the Commercial Courts Act, 2015, which underwent revisions in 2018<sup>9</sup>. This indicated a notable decrease in the length of time that commercial cases were pending and offered reliable solutions. Therefore, if a similar approach is used to resolve family conflicts, the intended outcomes could undoubtedly be achieved. The Indian legal system places emphasis on alternative methods of resolution, such as section 89 of the CPC in conjunction with Order X Rule 1A<sup>10</sup>. For the reasons listed above, it would be very beneficial if we implemented the mandatory mediation approach. First of all, since the court is overworked and overwhelmed with cases, this move could definitely help reduce the backlog of cases. Second, since family and marital disputes are fundamental to Indian culture, they must be handled amicably. A sizable number of situations with compounding factors could lead to improved outcomes. Thirdly, since kids are typically the ones who suffer the most from parental arguments, this would also allow for the preservation of their interests.

Finally, compared to hiring an attorney, this process is far more economical, efficient, and rapid.

### **ROLE OF MEDIATION IN DISPUTE RESOLUTION**

Recently, the Indian courts have seen an increase in the number of divorce and judicial separation petitions. Court proceedings appear to be having a negative impact on families, who might not feel comfortable sharing the ins and outs of their failed marriages with the judges in a nation that regards marriage as a sacrament. The court has a severe backlog of cases, particularly given the sheer volume of these cases.

Finally, compared to hiring an attorney, this process is far more economical, efficient, and rapid. Alternative dispute resolution can come to the rescue in this situation. While things in court tend to get a little defensive when one party speaks negatively about the other in front of the judge, with techniques like mediation or conciliation, parties are much more at ease discussing the details of their current problem and more open to listening to the opposition. The unofficial process of resolving disputes through mediation is led by a trained third person known as a mediator. Through mediation, two parties can resolve their differences, discuss their concerns and come to a mutually agreeable settlement. The process is fully optional. Every party will voice their opinion during the mediation, and the mediator will work with each side to try to reach a resolution. In the last phase, the mediator can present their observations and a better resolution to the problem. This mechanism is ideal for maintaining the integrity of the marriage because alternative dispute resolution frequently results in a settlement that appeases both parties. The mechanism gives the parties an opportunity to work out their differences, particularly in situations where children are involved. The purpose of alternative dispute resolution is to simply lighten the load on the established court system. It is not in any



way undermining the parties' intention to file a lawsuit or the court. The law governing family courts also permits the court to look for alternative peaceful cohabitation strategies between couples, like mediation, which may result in a reconciliation or mutually agreeable separation. In the event that the mediation resolves the couple's contentious issues and six months have elapsed, the family court cannot mandate an additional six months before awarding a divorce through mutual consent<sup>11</sup>.

## **DEVELOPMENT OF ADR AND ADOPTION OF MEDIATION TO RESOLVE FAMILY ISSUES**

A mechanism known as "alternative dispute resolution" refers to approaches that ultimately result in conflict resolution outside of the national court system. One of the accepted methods of resolving disputes outside of court is mediation. It's a process where a conciliator or mediator, who is an impartial third party, seeks to resolve the conflict through mutual agreement. In Indian contexts, mediation has a long history that dates back to the Vedic era. The Bhradarnayaka Upanishad, which describes the first arbitral bodies—the Puga, the Sreni, and the Kula—is the oldest source of discourse in this context. The parties' dispute chooses mediation as a mode of resolution over litigation because of its guiding principles, which include the parties' voluntary participation, a confidentiality clause, the use of a neutral third party as a mediator, settlement through mutual consent and timeliness. In actuality, it's been noted that family and social issues can be very patiently handled. The goal of mediation is to help the parties come to a mutually beneficial agreement, which lessens the burdens on both sides. In Indian contexts, mediation has a long history that dates back to the Vedic era. The Bhradarnayaka Upanishad, which describes the first arbitral bodies—the Puga, the Sreni, and the Kula—is the oldest source of discourse in this context. The parties' dispute chooses mediation as a mode of resolution over litigation because of its guiding principles, which include parties' voluntary participation, a confidentiality clause, the use of a neutral third party as a mediator, settlement through mutual consent, and timeliness. In actuality, it's been noted that family and social issues can be very patiently handled. The goal of mediation is to help the parties come to a mutually beneficial agreement, which lessens the burdens on both sides. When it comes to mediation in India, the practise dates all the way back to the Vedic era. The Bhradarnayaka Upanishad is the oldest source of discourse in this context; it mentions the Puga, Sreni, and Kula, the first arbitral bodies to be formed. The principles of mediation, which include mutual consent settlement, confidentiality clauses, voluntary participation by both parties, and a neutral third party mediating the dispute, encourage parties to choose mediation over litigation as a means of resolving their differences. In actuality, it is noted that family and social issues can be very patiently handled. The goal of mediation is to reach a mutually beneficial agreement for all parties, which lessens the burdens on the parties involved. Mediation is a safe, informal process that preserves the parties' anonymity in a family law dispute. Family law mediation is becoming more and more popular. The parties not only have the choice to attempt resolving their dispute through discussion, but they also receive the advice of a mediator who has experience with these kinds of situations. When mediators hear both parties out and work to find a solution that works for everyone, it also ensures that the

parties are happy. They can get a second opinion from their lawyer. In addition, the parties always have the choice to contact the court if they are unhappy with the mediation's result<sup>12</sup>.

## **LEGAL ASPECTS OF MEDIATION GOVERNING FAMILY DISPUTES**

One form of alternative dispute resolution that helps the disputing parties reach a final settlement in a sustainable and self-determined manner is mediation. The mediation process offers positive outcomes, including the potential for both the parties to the conflict to grow personally and socially. In addition, mediation offers the potential to resolve disputes more quickly and cheaply than other approaches. The best substitute tool for a settlement process in family and other marital disputes is mediation. This method of resolving disagreements between the parties appears to be voluntary and non-coercive. In addition to saving time, using mediation lessens the possibility that the parties' decision to proceed with litigation will leave them feeling hurt or alienated from one another.

Section 5 of the Family Courts Act of 1984 contains legal provisions pertaining to the resolution of family disputes. This section mandates that the Government establish a family court to mediate disputes. In order to facilitate family settlements, counsellors are appointed permanently under Section 6 of the FCA. Furthermore, the court must give a proposed resolution an equal chance to be considered before moving forward with adjudication in accordance with Section 9 of the FCA, Section 89, and Order XXXII-A of the Civil Procedure Code of 1908 (the "CPC"). Furthermore, the Hindu Marriage Act of 1955 (the "HMA") places emphasis on the judge's endeavors to facilitate reconciliation.

In most cases, parties to a family or marital dispute may find it difficult to be open with a mediator because the issues at hand may be very personal to them and they may not feel secure enough to voice their complaints. At this point, the mediator's responsibility is to make sure all sides to the disagreement voice their opinions. In order for the parties to focus on the areas of conflict difficulty rather than just circling the issue, the mediator's job is to extract facts from both opposing parties and reformulate them in a way that makes sense. This allows the parties to come up with innovative solutions that would be unfeasible in a court case that is imposed by a third party. In order for the parties to properly communicate their areas of agreement and disagreement to the mediator, the mediator may also speak with each disputing party in private, away from the other party. The mediator must state unequivocally that he never, ever ignores the emotional components of the arguments that gave rise to the current conflict. He needs to care about the happiness and fulfillment of both partners because issues in marriage are primarily emotional rather than rational or accurate. His objective is very clear: he wants to resolve the dispute(s) at hand with the least amount of harm to the parties involved. In order to help the parties reach a mutually acceptable resolution to the disagreement or disputes and, ideally, long-term peace between them, the mediator must serve as a counselor or conciliator<sup>13</sup>. In order to convince the parties to concentrate on the advantages of a proposed solution, the mediator must offer advice and employ diplomatic techniques. A resolution to the contentious matters will be offered by the mediator or by one of the two parties. The main objective of a mediator would be to consistently close the gaps between the parties' proposed solutions in order to arrive at a compromise that would satisfy each of them.

## CONCLUSION

The purpose of alternative dispute resolution is to simply lighten the load on the established court system. It is not in any way undermining the parties' intention to file a lawsuit or the court. The law governing family courts also permits the court to look for alternative peaceful cohabitation strategies between couples, like mediation, which may result in a reconciliation or mutually agreeable separation. In the event that the mediation resolves the couple's contentious issues and six months have elapsed, the family court cannot mandate an additional six months before awarding a divorce through mutual consent. Technology may have two drawbacks. While there are some disadvantages, it can also open up new opportunities. The fact is, though, that we are unable to avoid it. Instead of being skeptical of technology, mediators should embrace it and make the most of it. It can aid in making conflict resolution more adaptable and successful. In this more digitally advanced world, e-mediation will assist us in resolving workplace conflicts. We must accept that the internet has permanently altered the way that people do business. Technology is here to stay, so it makes sense to adjust and develop even better technology.

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# THE MEDIATION ACT OF 2023



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## Introduction

On September 15<sup>th</sup> 2023 the Central Government notified the Mediation Act 2023 in India. The Act consists of 65 sections and ten schedules. This Act is introduced to promote and facilitate mediation especially institutional mediation as a means of dispute resolution commercial or otherwise.

- The Act recognizes online, community and institutional mediations in India.
- Lays down a time bound procedure for conducting mediations in India.
- Provides for the enforcements and challenges of domestic mediated settlement agreement.
- Establishes a regulator to regulate mediators and mediation institutions (Mediation Council of India) and introduce inter alia, disclosure safeguards for mediators.

## Definition of Mediation

Under the Act, Mediation is defined to include any process where parties request a third person (Mediator) to assist them in reaching an amicable settlement and it includes

- i) Pre – litigation mediation
- ii) Online mediation
- iii) Community mediation
- iv) Conciliation or any other expression having a similar meaning.

## Key Features of the Act

### 1. Applicability of the Act

The Act only applies to mediations conducted in India.

- i) Where all or both, parties reside / are incorporated / have their place of business in India or
- ii) The Mediation agreement provides for the disputes thereunder to be resolved by the Act.
- iii) Where there is an International mediator or
- iv) Commercial disputes where the central / state government is a party or
- v) Any other dispute notified subsequently.

### 2. Disputes not fit for Mediation

The first schedule sets out the list of disputes which are not fit for mediation.

- Disputes involving criminal prosecutions,
- Land acquisitions



- Matters relating to minors, deities and persons with intellectual disabilities
- Disputes involving persons who are not parties to the mediation are not covered by the Act.
- Disputes in regulated subject like competition, telecom, electricity, securities, environment and taxation.
- Non-commercial disputes by or against the government or their agencies.
- This Act does not apply to Lok Adalat and Permanent Lok Adalat proceedings under the legal services Authorities Act 1987.

### **Mediators**

A mediator is a person who is appointed to undertake mediation i) by the parties ii) or by the service provider.

This includes a person registered as Mediator with the Mediation Council of India.

- Mediator must be registered with the Mediation Council of India or be empanelled with (i) a court annexed mediation centre (ii) an authority constituted under the Legal services Authorities Act 1987 (iii) a mediation service provider.
- A mediation service provider may terminate the term of mediator by
  - (1) receipt of an application from either party
  - (2) receipt of information about the mediators conflict of interest.
- The Mediator's withdrawal from the proceedings
- The Mediator may be replaced under the Act.
- No mediator will at any time be permitted or compelled to disclose to any court, tribunal or in any adjudicatory proceedings, about the mediation proceedings.

### **Mediation process & Procedure**

Mediation is a structured process where a neutral person used specialized communication and negotiation techniques.

#### **Pre-litigation Mediation**

- Parties may voluntarily and with mutual consent take steps to settle the disputes by pre-litigation mediation in accordance with the Act.
- Unless agreed otherwise mediation must be undertaken within the territorial jurisdiction of the Court or tribunal.
- The Mediation process is required to be completed within 120 days from the date fixed for first appearance before the mediator (may be extended by 180 days by the parties)
- A party may withdraw from mediation after two sessions.
- Even if they fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage refer to the parties to mediation.
- Costs must be borne equally by the parties.
- Confidentiality is the main feature of mediation.
- The outcome of the mediation is shaped by the parties themselves with the assistance of the mediator.

## **Mediated Settlement Agreement**

Agreements resulting from mediation (Other than community mediation) will be final, binding and enforceable in the same manner as the decree of the court. It may be challenged within 90 days from the date of receipt of mediated settlement agreement. It may be challenged on the grounds of fraud, corruption, impersonation and relating to disputes not fit for mediation. The agreement must be in writing and signed by the parties and authenticated by the mediator. Mediated Settlement Agreement is required to be registered within a period of 180 days from the date of receipt of a copy of the mediated settlement agreement with authority.

## **Mediation Council of India**

The Central Govt. will establish the Mediation Council of India. The Council has been constituted to register, recognize and regulate mediation institutions in India.

The Council will consist of

- i) A chair person
- ii) Two full time members (with experience in mediation or ADR)
- iii) Three ex-officio members including the Law Secretary and the Expenditure Secretary and a part-time member from an industrial body.

Functions of the council include Registration of Mediators and recognizing mediation service providers and mediation institutes.

## **Community Mediation**

Community Mediation may be attempted to resolve disputes likely to affect the peace and harmony among the residents of the locality.

- It will be conducted by a panel of three mediators.

## **India need to promote mediation**

As of May 2022 over 47 crore cases are pending in courts across different levels of the judiciary, Of them 87.4% are pending in subordinate courts 12.4% in High Courts. Thus to reduce the case pendency, the Mediation and conciliation committee the Supreme Court of India describes mediation as a tried and tested alternative for conflict Resolution. Mediation simplifies the delivery of justice through plain language and proves to be a cost-effective time saving alternative to traditional methods. The agreement arrived during mediation secures true justice. Hence we have to promote mediation.

Finally, simple suggestions for promoting Mediation.

- 1) Now we are distributing pamphlets during the mediation week only. Instead of distributing on particular days, we have to give a pamphlet all days whoever comes to the Mediation Centre. It will create awareness to the disputing parties and the general public.
- 2) Now we are having tripartite meetings with Advocates, Mediators and judges. It is very useful. But awareness between the disputing parties is essential. Because disputing parties are the heart of mediation. So, tripartite meetings with the disputing parties, mediators and the coordinator of the mediation centre will be more effective. It will be useful for the parties to realize the benefits of the mediation practically.

Future of India will be resolution not litigation.

## A TALE OF FINDING FAIRNESS - RAJA THE LABOURER



- R. Ananda Theerthan  
Advocate / Mediator, Salem

Once, in the heart of an industrial estate, a tale of adversity and resolution unfolded between a company and a contractual labourer named Raja.

It was the season time when there was competition to hire at its peak with premium wages through big manufacturing giants and Small companies usually ended up with a lack of workers due to their limited budget and unable to pay premiums. Raja was a Daily wager, hired indirectly by a subcontractor to aid a manufacturing Startup. The subcontractor has to hire him on a Contractual basis. Unfortunately, fate dealt him a severe blow when an unforeseen accident left him incapacitated, and unable to work for a period.

The company, citing contractual obligations, distanced itself from any responsibility, maintaining that Raja wasn't their direct employee. With medical bills piling up and no income to sustain himself, Raja was left in a dire predicament. Desperation loomed large as he had no one to turn to for financial support.

News of Raja's plight reached the mediation team dedicated to resolving such conflicts amicably. Sensing an opportunity to bridge the gap between company interests and labour welfare, the mediators sprang into action.

Convening a mediation session, both parties, though initially hesitant, agreed to partake in the dialogue. The company, at first, remained steadfast in its stance, emphasizing its lack of direct liability. Yet, through patient mediation of a total of 28 hours of numerous sessions, the focus shifted from blame to finding a humane solution.

The mediators adeptly highlighted the long-term benefits of extending support to Raja. They emphasized that while the company might not bear direct legal obligations, the gesture of goodwill would not only aid Raj's recovery but also bolster the company's reputation in the community.

Gradually, a consensus emerged. The company agreed to offer a sum to support Raja during his recovery phase, understanding that this act would resonate positively among the workforce and the local community. This agreement, although not an admission of liability, was a demonstration of empathy and responsibility toward the welfare of those indirectly associated with their operations.

For Raja, this mediation brought a glimmer of hope. The financial assistance provided by the company offered him the breathing space he desperately needed. It helped cover medical expenses and daily needs and allowed him time to focus on recuperation without the stress of financial strain.

Simultaneously, the company witnessed a shift in public perception. Their willingness to extend support beyond legal bindings earned them admiration and goodwill. Word spread of their compassionate approach, enhancing their reputation as an enterprise that valued human life over strict legal technicalities. No longer the company need to pay a premium to hire as the incident with Raja went viral between the labourers which acted as an indirect advertisement to the company and now it no longer faces any challenges in hiring and needs to compete with the giants.

Through mediation, what began as a deadlock transformed into a win-win situation. Raja found solace and temporary stability, and the company garnered respect and appreciation. This episode stood as a testament to the power of mediation in resolving conflicts while fostering mutual understanding and empathy.

# சமரச ஆத்திகூடி கதைகள் நிஜங்கள் \*

## - தீர்வோடு பிறக்கும் முரண்

- நீதியரசர் தா.பரத சக்கரவர்த்தி



ஒரு ஊரில் ஒரு அரசு ஆரம்பப்பள்ளி இருந்தது. அதனுடைய ஆசிரியர்களின் சீரிய உழைப்பால் நாளுக்கு நாள் அதன் மாணவர்களின் எண்ணிக்கை கூடிக்கொண்டே சென்றது. அரசு அப்பள்ளியை நடுநிலைப் பள்ளியாக அறிவித்தது. பள்ளிக்கு கூடுதல் இடமும், கட்டிடங்களும் தேவைப்பட்டன.

பக்கத்து நிலத்துக்காரரான செல்லம்மா என்பவர் தன் கணவரின் மறைவிற்குப் பிறகு, 40 கி.மீ. தொலைவில் உள்ள நகரத்தில் வசித்து வருகிறார். பள்ளியின் ஆசிரியர்கள் அவரிடம் பள்ளியின் தேவையை பற்றி கூறியவுடன் மனமுவந்து தன்னுடைய 4 ஏக்கர் நிலத்தில், 2 ஏக்கர் 40 சென்ட் நிலத்தை தானமாக அளிக்கின்றார். ஏற்கனவே பள்ளியை ஒட்டியுள்ள பகுதியை தெளிவாக குறிப்பிட்டு தான செட்டில்மெண்ட் பத்திரமும் எழுதி பதிவு செய்யப்படுகிறது.

மேலும் இரண்டே ஆண்டுகளில் ஒரு தனியார் சங்கத்தினர் பள்ளியை தத்தெடுத்து அதன் விரிவாக்கத்திற்கு நிதியும், மாணவர்களுக்கு சீருடை, விளையாட்டு கருவிகள் முதலியனவும் வழங்கி பள்ளி மேலும் சிறப்பாக நடைபெறுகின்றது. பள்ளிக்கு நல்ல கட்டிடமும் கட்டப்படுகிறது.

இந்நிலையில், செல்லம்மா தன்னுடைய மிகுதியான 1 ஏக்கர் 60 சென்ட் நிலத்தில் வீடு கட்டி அங்கேயே வசிக்க முடிவு செய்து நிலத்தை அளவை செய்கிறார். அப்போது தான் பள்ளியின் புதிய கட்டிடம் தாம் மீதம் வைத்திருந்த 1 ஏக்கர் 60 சென்ட் நிலத்தில் சுமார் 40 சென்ட் ஆக்கிரமிப்பு செய்து கட்டப்பட்டிருப்பதை அறிகிறார். இதில் அவர் ஏற்கனவே தானமாக அளித்த நிலத்தில் பெருமளவு இடம் வீணாக விடப்பட்டு, கட்டிடத்தின் பாதிப்பகுதி அவருடைய நிலத்தில் கட்டப்பட்டுள்ளது.

செல்லம்மா மாவட்ட கல்வி அதிகாரியிடமும், மாவட்ட ஆட்சியரிடமும் முறையிடுகிறார். பின்னர் தன்னுடைய நிலத்தை கோரி, உயர் நீதிமன்றத்தில் நீதிப்பேராணை மனு தாக்கல் செய்கிறார்.

மனுவில், அவருக்கு சொந்தமான 40 சென்ட் நிலத்தில் உள்ள கட்டிடத்தை அப்புறப்படுத்தி நிலத்தை செல்லம்மாளிடம் ஒப்படைக்க ஆணை வழங்கப்படுகிறது.

ஆணைக்கு பிறகும் நிலம் ஒப்படைக்கப்படாததால் நீதிமன்ற அவமதிப்பு வழக்கு தாக்கல் செய்யப்படுகிறது. பல நாட்கள் வழக்கு நடந்தும் முடிவு கிட்டாத நிலையில், வழக்கு சமரச மையத்திற்கு அனுப்பப்படுகிறது.

சமரசர் முன் செல்லம்மா, தான் பள்ளிக்கு விருப்பமுடன் ஏற்கனவே 2 ஏக்கர் 40 சென்ட் நிலம் அளித்துவிட்டதாகவும், தற்போது எஞ்சியுள்ள தனது நிலத்திலேயே வீடு கட்டி வசிக்க இருப்பதால் பள்ளிக்கு மேலும் நிலம் வழங்க முடியாத நிலை இருப்பதாக தெரிவிக்கிறார்.

பள்ளி கல்வி துறையோ, தற்போதுள்ள இடம் பிரதான சாலையோரம் இருப்பதால் மாணவர்கள் வந்து செல்ல வசதியான இடம் என்றும், பள்ளிக்கு ஏற்கனவே போதுமான இடம் இருக்கின்றது எனவும், மேலும் நிலத்தை ஆக்கிரமித்து கட்டிடம் கட்ட தேவையில்லை எனவும், புது கட்டிடம் கட்டிய, அப்போது உள்ள

### சமரச ஆத்திகூடி

1. முரண்பாடு இயல்பு
2. தீர்வோடு பிறக்கும் முரண் ✓
3. சமரசம் நாடு
4. நேரடி தொடர்பு கொள்
5. உள்மனம் திற
6. கடுஞ்சொல் தவிர்
7. தேவையறிந்து நிலைகொள்
8. மாற்றான் நிலை மனதில் கொள்
9. இணைந்து செயல்படு
10. வழக்கறுத்து அமைதிகொள்

\* இக்கதை சமரசத்திற்கு அனுப்பப்பட்ட ஒரு வழக்காகும். பிரசுரத்திற்காக பெயர் மற்றும் ஊர் குறிப்பிடாமல் மாற்றங்களுடன் எழுதப்பட்டிருக்கிறது.



பஞ்சாயத்து தலைவரும் ஒப்பந்தக்காரரும் தவறாக கட்டிவிட்டனர் என்றும், தற்போது அக்கட்டிடத்தை இடித்தால் 8 வகுப்பறைகள் இல்லாமல் பள்ளியே இயங்க முடியாமல் மாணவர்கள் பாதிக்கப்படுவார்கள், என தனது நிலைப்பாட்டை தெரிவித்தது.

மாவட்ட ஆட்சியர் சார்பில் பள்ளிக்கு அந்த இடம் அவசியம் தேவை என்றும், கட்டிடம் சரியாக அளவை செய்யப்படாமல் கட்டப்பட்டுவிட்டது என்றும், நிலத்தை கையகப்படுத்த அரசுக்கு கடிதம் எழுதி தற்போது 40 சென்ட் நிலத்தை கையகப்படுத்த நடவடிக்கை எடுக்கப்பட்டு வருவதாகவும் தெரிவிக்கப்படுகிறது.

பஞ்சாயத்து சார்பில், கட்டிடம் கட்ட நிதி ஒதுக்கப்பட்டு ஒப்பந்ததாரர் நியமிக்கப்பட்டுவிட்ட நிலையிலும் நிலம் சரியாக அளந்து காட்டப்படவில்லை எனவும், ஏற்கனவே பள்ளி மாணவர்கள் அந்த இடத்தை விளையாட பயன்படுத்தி வந்து அது தான் பள்ளியின் எல்லை போல் இருந்ததால் ஒப்பந்ததாரருக்கு இடம் காட்டப்பட்டு கட்டிடம் கட்டப்பட்டது என்றும் கூறப்படுகிறது. இப்படி எல்லா தரப்பும் தத்தமது நிலைப்பாட்டை முன்வைக்க, சிக்கலான நிலையில்தான் வழக்கு சமரசத்திற்கு அனுப்பப்படுகிறது.

சமரசர் முன்பும் இதே நிலையில் அனைவரும் இருந்தனர். தீர்வே எட்டப்படாமல் போய்விடுமோ என்ற நிலையில், மீண்டும் மீண்டும் சமரச பேச்சு வார்த்தையில் முன்னேற்றம் ஏதும் இல்லாமல் இழுப்பறி நீடித்துக்கொண்டிருந்தது.

ஒருநாள் சமரச பேச்சு வார்த்தைக்கு மேலதிகாரிகள் எவரும் வராத நிலையில், மாவட்ட கல்வி அலுவலர் அலுவலகத்தில் இருந்து ஒரு எழுத்தரும், பஞ்சாயத்து சார்பில் அதன் செயலாளர் மட்டும் வந்திருந்த நிலையில், சமரசம் நடைபெறுகின்றது.

பஞ்சாயத்து செயலாளர், பள்ளி முன்னேற்றம் அடைவதற்கு செல்லம்மா இடம் அளித்ததே முக்கிய காரணம் என்றும், மேலும் அவரிடமே இடம் கேட்பது முறையல்ல எனவும் தெரிவிக்கிறார். கல்வி அலுவலக எழுத்தர் தன்னுடைய மகளும் அப்பள்ளியிலேயே படிப்பதாகவும், முன்பு தனியார் சங்கத்தினர் பள்ளியை தத்தெடுக்க வந்த பொழுது, அவர்கள் பள்ளியை மாதிரி பள்ளியாக மாற்ற எண்ணம் கொண்டிருந்தனர் என்கிறார்.

சமரசர் தொலைபேசி மூலம், அவர்களை தொடர்பு கொண்ட பொழுது, அவர்களுடைய சங்கத்தில் தென்னிந்தியாவில் சில மாதிரி பள்ளிகளை அமைக்க ஒரு திட்டம் இருந்தது எனவும் இது குறித்து மற்ற தலைவர்களுடன் பேசிவிட்டு பதிலளிப்பதாகவும் கூறுகிறார்.

இரண்டுவாரம் கழித்து, தங்கள் மாதிரி பள்ளி அமைக்க ரூ.25 இலட்சம் வரை நிதி அளிக்க தயார் என பதில் வருகிறது.

பஞ்சாயத்து செயலாளர், பள்ளி தற்போது இயங்கும் இடத்திலிருந்து 300 மீட்டர் தொலைவில் மற்றொருவர் தனது 8 ஏக்கர் நிலத்தை விற்க எத்தனித்து உள்ளதால் அவரிடம் பேசுவதாக கூறுகிறார்.

மேற்படி நபர் பள்ளிக்கு தனது நிலத்தை விற்க ஒப்புக்கொண்டு, 8 ஏக்கர் நிலம் வாங்கி அதில் பள்ளிக்கு தேவையான அனைத்து கட்டிடம், விளையாட்டு மைதானம் முதலியவை அமைக்க ஒப்புக்கொள்ளப்படுகிறது. இறுதியாக, அரசு செயலாளரும் சமரசத்தில் கலந்து கொண்டு, ஆக்கிரமிப்பு செய்து கட்டப்பட்ட கட்டிடம் முழுவதும் அதன் அடிமனையோடு சேர்த்து செல்லம்மாவிடம் ஒப்படைக்க அரசு சார்பில் ஒப்புக்கொள்ளப்படுகிறது. அவர் கட்டிட மற்றும் இட மதிப்பிற்காக ரூ.5 இலட்சம் பள்ளிக்கு அளிக்கவும், பள்ளியின் மீதமுள்ள இடம் மற்றும் பழைய வகுப்பு கட்டிடங்கள் பஞ்சாயத்து மற்றும் சுகாதார துறைகளுக்கு ஒப்படைக்கவும் முடிவாகிறது. புதிய கட்டிடம் கட்டி பள்ளியை மாற்றும் வரை பள்ளி இயங்க அவகாசம் அளிக்கப்படுகிறது.

இப்படி ஒரு சில வழக்குகளில் எல்லா தரப்பும் தத்தமது நிலை நியாயமானது என முடிவெடுக்கும் பொழுதும், நீதிமன்ற உத்தரவு ஏற்பட்ட நிலையில் அவமதிப்பு வழக்கில் சமரசத்திற்கு என்ன வாய்ப்பு என்பது போன்ற கேள்விகள் எழும்போதும், மேலும் பல சிக்கலான சூழல்களிலும், இது என்ன தீர்வே இல்லாத பிரச்சினையாக உள்ளதே?!, என நமக்கு தோன்றினாலும், கண்டிப்பாக, தீர்வோடுதான் பிறக்கும் முரண். இது நம் செறிவார்ந்த நம்பிக்கை. தீர்வு என்ன, எப்படி என்று அறிந்து, ஆக்குவதே நம் கடமை.

**சமரச ஆத்திகூடி கதைகள் தொடரும்...**

## முதியவரின் நேர்மை



K. ரமேஷ்  
வழக்கறிஞர் / சமரசர், ஈரோடு

சமீபத்தில் சமரச மையத்தில் நடந்த சமரசம். பயிர்க் கடனை வசூலிக்கக் கோரி, மாவட்ட உரிமையியல் நீதிமன்றத்தில் சுமார் 82 வயதுள்ள முதியவர் மீது வழக்கு தொடர்ந்தது அரசுடைமை ஆக்கப்பட்ட தேசிய வங்கி. உரிமையியல் நீதிமன்றத்தில் தனக்காக வழக்கறிஞர் யாரையும் வைக்காமல், தானே ஆஜராகி வந்தார் அந்த முதியவர். சமரச மையத்திற்கு அனுப்பப்பட்ட பிறகு, வங்கியின் மேலாளரும், அந்த முதியவரும் ஆஜராகினர். பயிர்க்கடன் ரூ.52,000/- உடன் வட்டியும் சேர்த்து ரூ.96,000/- ஆக கடன் சேர்ந்திருந்தது அந்த முதியவர் கணக்கில். சமரசத்தின் போது, அந்த முதியவர் கூறிய வார்த்தைகள்.....

ஐயா, நான் பயிருக்காக கடன் வாங்கியது உண்மை தான். எனக்கு மகசூலில் நஷ்டம் ஏற்பட்டு விட்டது. இதனிடையில் எனது ஒரே மகன் கொரோனா தொற்று தாக்கி இறந்து விட்டான். அதனால், என்னால் கடனை அடைக்க முடியவில்லை. நான் வாங்கியது மக்கள் காசு. அரசாங்கப் பணம். நான் கட்டியே ஆக வேண்டும்.

எனக்கு ஒரு வாய்தா 10 நாட்கள் கொடுங்கள், வட்டியை ஏதாவது தள்ளுபடி செய்ய முடிந்தால் உதவுங்கள் என வங்கி மேலாளரை வேண்டிக்கொண்டார். அந்த வங்கி மேலாளர் வடமாநிலத்தை சார்ந்தவர். தமிழ் கொஞ்சம் அவருக்கு புரிகிறது. ஐயா, நான் அசலை மட்டும் நீங்கள் கட்ட ஒத்துக் கொள்கிறேன்.

முடிந்தால், அசலில் தள்ளுபடி ஏதாவது முடியுமா? என மண்டல அலுவலக அதிகாரியிடம் கேட்டு உதவி புரிகிறேன் என்றார்.

உடனே அம்முதியவர் மிக்க நன்றி ஐயா, அசலை தள்ளுபடி செய்ய வேண்டாம். நீங்கள் இப்போது தள்ளுபடி செய்தாலும், எனக்கு ஜென்மத்தில் கடன் ஏறிக் கொண்டே இருக்கும். எனவே, நான் அசலை கட்டி விடுகிறேன். எனது மனைவியின் ஒரு தோடு இருக்கிறது. மாடு கன்றுடன் இருக்கிறது. அதை விற்று 10 நாட்களில் உங்களுக்கு பணத்தை கொடுத்து விடுகிறேன் என்றார்.

அதேபோன்று, 10 நாட்களில் பணத்தை வங்கி மேலாளரிடம் சமரச மையத்தில் செலுத்தி விட்டார். அந்த வடமாநில வங்கி மேலாளர் அந்த முதியவரின் நேர்மையையும், கடமை உணர்ச்சியையும் கண்டு கண்கலங்கினார். சமரசம் முடிந்து, சமரசத்தை பதிவு செய்து மையத்தை விட்டு வெளியே வந்தேன். உண்மையில், அப்போது நல்ல மழை பெய்து கொண்டிருந்தது.

## வெற்றி கதை அல்ல, வெற்றியின் ரகசியம்



P.V. முத்துராம்  
சமரசர், திருநெல்வேலி

அருள்மிகு நெல்லையப்பர், காந்திமதி அம்மாள் அருள்பாலித்துக் கொண்டிருக்கும் திருநெல்வேலி சீமையில் நடந்த உண்மை சம்பவம். எந்த ஒரு பிரச்சனையையும் பேசி தீர்த்துவிடலாம் என்பதற்கோர் உதாரணம் இது.

ஆகாதது அருகம்புல்லில் ஆகும் என்பதற்கிணங்க சமரசத்தால் ஆகாதது எதுவும் இல்லை

இது கணவன் மனைவிக்கு இடையே ஏற்பட்ட இல்லற பிரச்சனையைப் பற்றியது. அவளோ, தந்தையை இழந்து தாயுடனும் ஒரு தங்கையுடனும் பிறந்த ஒரு நடுத்தர பெண்மணி, வயதோ 29, அதற்குள் இரு ஆண் மகவுகளை ஈன்றெடுத்திருந்தாள். ஒரு மருத்துவமனையில் செவிலியராக வேலை பார்த்துவருகிறாள். கஷ்டப்பட்டு வாழ்ந்துகொண்டு அடிக்கடி குடித்துவிட்டு கொடுமைப்படுத்தும் கணவனிடமிருந்து விவாகரத்து, ஜீவனாம்சம் கேட்டு வழக்கு தொடுத்துள்ளார். எப்போதும் டார்ச்சர் செய்து வேலை பார்க்கும் நிறுவனம் மற்றும் மற்றவர்களோடு பேசுவது, தனது இரு மகன்கள் முன்பே குடித்துவிட்டு சண்டை போடுவதும், மனைவியை அடிப்பதும், சக நண்பர்களோடு குத்தாட்டம் போடுவதும், மனைவியை மிரட்டி அவருடைய காசோலையை வைத்து கடன் வாங்குவதும், அதனால் அவளுக்கு கடன் தொல்லையை ஏற்படுத்துவதுமாக இருந்துள்ளார். இதனால் மனமுடைந்த அந்த பெண்மணி இவை அனைத்தையும் தாங்கிக்கொண்டு பூமாதேவிபோல் சகித்துக் கொண்டாள். என்ன செய்வது என்று தெரியாது தினமும் செத்து செத்து பிழைத்துவந்தாள். இதனால் தன் கணவனை விட்டு பிரிந்து தன் தாய் வீட்டிற்கு இரு மகன்களுடன் வந்துவிட்டாள். கணவன் அங்கேயும் வந்து டார்ச்சர் கொடுத்துள்ளார். காலங்கள் கடந்தன சமார் மூன்று ஆண்டுகளுக்கு மேலாக தன் கணவனிடமிருந்து பிரிந்து வாழ்ந்துவந்து, பின்னர் குடும்ப நல நீதிமன்றத்தை நாடினார். இதனை கவனித்த நீதிமன்றம் இவ்வழக்கை சமரச மையத்திற்கு அனுப்பிவைத்தது. சமரசர் முன்னிலையில் ஆஜரான தம்பதிகள் இருவரையும் தனித்தனியாகவும், சேர்த்தும் விசாரிக்கப்பட்டு இருவரையும் நேருக்கு நேர் பேச வாய்ப்பு கொடுக்கப்பட்டது. இப்படி பல வாயிதாக்கள் போடப்பட்டு, இறுதியில் அந்த பெண்மணி சில நிபந்தனைகளுடன் உறுதிமொழியின் பேரில் மகன்களின் எதிர்காலத்தை கருத்தில் கொண்டும் சேர்ந்து வாழ சம்மதித்து ஒன்றாக சேர்ந்து வாழ்வது என ஒப்பந்தம் எழுதப்பட்டு மனுதாரரை எதிர்மனுதாரர் சந்தோசமாக அழைத்துச் சென்றார்.

முதலில் பெண்மணி ஏற்கெனவே நீதிமன்றத்தில் கவுன்சிலிங் கொடுத்தார் என்றும் ஏன் கவுன்சிலிங் என்ற பெயரில் வினவினார். அதற்கு சமரசர், அது வேறு இது வேறு, இங்கே நீங்கள் இருவரும் தான் முடிவெடுக்கவேண்டும் நான் எந்த முடிவுக்கும் தூண்டமாட்டேன் என்றும் சமரசத்தின் பலன்களை தெளிவாக எடுத்துக்கூறினார். இதனைக் கேட்ட பெண்மணி அப்படி என்றால் பேசலாமா எனக் கூறினார். எதிர்மனுதாரர் தரப்பில் வழக்கறிஞர் நியமனம் செய்யவில்லை, ஏன் என கேட்டதற்கு எதிர்மனுதாரர், எனக்கு சேர்ந்து வாழத்தான் விருப்பம். எனது மனைவி, மக்கள் எனக்கு முக்கியம். நான் செய்த தவறுகளை திருத்திக் கொள்கிறேன். எனக்கு ஒரு வாய்ப்பு கொடுங்கள் எனக் கேட்டார். மனுதாரரின் வழக்கறிஞர் மிகவும் உறுதுணையாக இருந்தார். சமார் நான்கு வாயிதாக்களில் மேற்படி தம்பதிகள் சேர்ந்து வாழ சம்மதித்துவிட்டனர். அன்றாடவாழ்வில் அனைத்து தரப்பினர்களுக்கும் மறக்கமுடியாத சம்பவங்கள், பிரச்சனைகள் நடந்துகொண்டுதான் இருக்கின்றன அவற்றையெல்லாம் நாம் மனதில் வைத்துக்கொண்டால் வாழ்வை இழப்பதோடு வாழ்க்கையை இழக்க நேரிடும்.

மெய்ப்பொருள் காண்போம்

அன்புடையீர் வணக்கம்.

- ❖ மேலே கூறப்பட்டது கதையல்ல நிஜம். சமரச மையத்தில் தீர்த்து வைக்கப்பட்ட ஒரு வழக்கு
- ❖ மனிதன் ஒரு சமூக விலங்கு. இக்கதையில் பிடிவாதமாக விவாகரத்து கேட்ட மனைவி முடிவில் சமரசத்தால் சேர்த்து வைக்கப்பட்டார்.
- ❖ குற்றம் பார்க்கின் சுற்றம் இல்லை என்பதற்கு இணங்க, உறவுகள் மேம்பட, தரப்பினர்களோடு இணைந்து செயல்பட்டு தீர்வை நாடுவதே ஒரு சமரசத்தின் அடிப்படைக் கொள்கையாகும்.

## சமரசர் பணிகளும் அனுபவங்களும்



மா. மதிவாணன்  
வழக்கறிஞர்/ சமரசர், கோவை

மனிதர்கள் சமரசம் செய்து, அதன் வழியே தங்கள் பிரச்சனைகளை முடித்துக்கொள்ளும் முறை நெடுங்காலமாகவே எல்லா சமூகங்களிலும் இருந்து வந்து உள்ளது. மனிதன் பிறரால் அனுபவிக்கும் துன்பங்களுக்கு நீதிமன்றங்களில் வழக்காடி நீதி பெறுவதே, சட்டம் கூறும் வழிமுறையாகும். மேலும், வாதியும் பிரதிவாதியும் ஒரு முறை அமர்ந்து, அறிந்து, ஆராய்ந்து, தங்கள் பிரச்சனைகளை ஒரு சமரசம் செய்பவரின் மூலம் பேசி தீர்த்து கொள்வதற்காக நீதிமன்றம் வழங்கும் மற்றொரு வாய்ப்பு தான் சமரசம் எனும் மாற்று தீர்வழி ஆகும். இவ்வாறு ஒரு வழக்கின் இரு தரப்பினருக்கு இடையே சமரசம் செய்து அவர்களை ஒத்திசைவான முடிவிற்கு வழி நடத்தி செல்பவர் தான் சமரசம் செய்யும் வழக்கறிஞர்கள் ஆவர். இவர்களது பணி வாதி பிரதிவாதிகள் இடையே கலந்து ஆலோசித்து சமரசம் மேற்கொள்ளும் போது, நடுவுநிலைமை தவறாமல் இரு தரப்பினருக்கும் ஏற்ற ஒரு தீர்வை நோக்கி அழைத்து செல்வது ஆகும். அதுவே சமரச மையத்தின் வழக்கறிஞர்களின் கடமையாகும். இதன் மூலம் வழக்குகளுக்கு எளிமையான, செலவில்லாத, விரைவான, பகையில்லாத, இருதரப்பினருக்கும் வெற்றியை தரக்கூடிய (win win policy) தீர்வு கிடைக்கும்.

### சமரசம் வழக்கறிஞர்களின் முக்கிய பண்புகள்

சமரசம் செய்யும் வழக்கறிஞர்கள், சமரசம் மேற்கொள்ளும் பொழுது கருத்தில் கொண்டு கடைப்பிடிக்க வேண்டிய சில கோட்பாடுகள் உண்டு. அவற்றுள் மிக அவசியமானவை முன்மதிப்பீடு - முன்கருத்தோட்டம் இன்றி (PREJUDICE) சமரசம் மேற்கொள்ளுதல் அவசியமாகும். மேலும், ஒருதலைப்பட்சமாக (Biased) செயல்படாமல், இரு தரப்பினரின் நலன் கருதி நடுவுநிலைமையுடன் செயல்படுதல் வேண்டும் என்பதே சமரசத்தின் அடிப்படை கோட்பாடு ஆகும். இரு தரப்பினர் இடையே சமரசம் மேற்கொள்ளும் வழக்கறிஞர்கள் எந்த முடிவையும் எந்த தரப்பினருக்கும் திணிக்கும் வண்ணம் அமையாமல் பார்த்துக்கொள்ள வேண்டும். அதே போல் எந்த ஒரு சட்டம் சார்ந்த ஆலோசனைகளும் எந்த தரப்பினருக்கும் வழங்கக் கூடாது என்பது மற்றொரு விதி ஆகும். ஏனெனில், அவ்வாறு வழங்கப்படும் சட்டம் சார்ந்த ஆலோசனைகள் மேலும் அந்த வழக்குகளை நீட்டித்துச் செல்ல ஒரு வழிவகையாக அமைந்துவிடும். ஏனெனில் இரு தரப்பினருக்கும் வழக்கறிஞர்கள் சட்டம் சார்ந்த ஆலோசனைகளை அவரவர் தரப்பினர்களுக்கு ஏற்ப அவர்களது வழக்கறிஞர்கள் ஆலோசனைகள் கூறுவார்கள். இதன் மூலம் பிரச்சனைகள் மேலும் அதிகமாகும், எனவே சமரசம் மேற்கொள்வோர் இவற்றை மனதில் ஆழமாக வைத்துக்கொண்டு சமரசத்தை மேற்கொள்ள வேண்டும். சமரச வழக்கறிஞர்கள் எவ்வளவு தான் விழிப்புணர்வுடன் சமரசம் மேற்கொண்டாலும் அவர்களை அறியாமலே ஒருதலை சார்பும் முன்மதிப்பீடுகளும் வந்துவிடும்.

தங்களை அறியாமல் தாங்கள் கண்ணும் கருத்துமாக செயல்படும் பொழுது இவ்வாறு ஏற்படும் முன்மதிப்பீடுகளையும் ஒருதலைசார்பையும் களைந்து கொள்வது சற்று கடினமான ஒன்றாகும். எனவே சமரசம் செய்யும் வழக்கறிஞர்கள் தங்களை தங்களே எச்சரிக்கையுடன் கவனித்துக்கொள்ளும் திறன்களை வளர்த்துக்கொள்ள வேண்டும்.



‘சொற்கோட்டம் இல்லது செப்பம் ஒருதலையா

உட்கோட்டம் இன்மை பெறின்’ - நடுவுநிலைமை - குறள் 119

என்பது வள்ளுவர் வாக்கு.

சமரசம் மேற்கொள்வோர் தங்கள் உள்ளத்தில் தங்களை அறியாமல் ஏற்படும் மனச்சாய்வையும் ஒரு தலைசார்பையும் களைந்தாள் மட்டுமே சமரசத்தை மேற்கொள்ள முடியும். இத்தகைய மனப்பாங்கினை ஆங்கிலத்தில் (self criticism) என்பார்கள். இந்த மனப்பக்குவம் எளிதில் கிடைக்கும் ஒரு திறன் அல்ல, அதை அனுபவத்தில் மட்டுமே கற்றுக்கொள்ள முடியும். எப்பொழுதுமே சமரசம் மேற்கொள்வோர் இரு தரப்பினருக்கும் தெளிவாக தங்கள் நடுவுநிலைமையை உணர்த்தும் வண்ணம் அவ்வப்போது தாங்கள் கூறும் அறிவுரைகளையும் கருத்துக்களையும் கேட்டு கடைப்பிடித்துதான் ஆக வேண்டும் என்ற நிர்நந்தத்தில் இரு தரப்பினரும் இல்லை என்று சுட்டிக்காட்டவேண்டும். மாறாக இரு தரப்பினரும் மேற்கொள்ளும் முடிவுகள் தாங்கள் பேசி கலந்து உரையாடியதால் தங்களுக்குள் உருவானவை என்பதை வழக்கு தரப்பினருக்கு சமரசம் மேற்கொள்வோர் விளக்கி கூற வேண்டும். இவ்வாறு சமரசத்தை மேற்கொள்வோர் தங்கள் நிலைப்பாட்டையும் தங்கள் சார்பின்மையும் எடுத்துக்கூறுவதன் மூலம் வழக்கு தரப்பினர்களுக்கு இடையே ஒரு நம்பிக்கையை ஏற்படுத்த வேண்டும். இது போன்ற புரிதல்களை பல்வேறு வழக்குகளின் மூலமாகவும் பிரச்சனைகளை கையாள்வதன் மூலமாக மட்டுமே அனுபவங்களாக சமரச வழக்கறிஞர்களுக்கு கைவரப்படுகிறது.

சமரசத்தின் இலக்கு சுமுகமான முடிவினை மேற்கொண்டு இரு மனிதரின் வாழ்வில் புதியதொரு பாதையை அவரவர்க்கு அமைத்து தருவதாகும். குறிப்பாக, குடும்ப உறவுகளினால் ஏற்படும் சிக்கல்கள், சொத்து பிரச்சனைகள் போன்ற பிரச்சனைகளுக்கு சமரசம் மூலம் தீர்வு கண்டு அவரவர் வழக்குகளை முடித்து கொள்வது, இந்த அவசரமான காலகட்டத்தில் நீதிமன்றங்களின் நேரத்தையும் வாதி, பிரதிவாதி அவர்களின் நேரத்தையும் சேமிக்கும் வண்ணம் அமையும். இத்தகைய சமாதானத்தின் மூலம் மட்டுமே இரு தரப்பினருக்கும் வெற்றி என்பது சாத்தியமாகும் .

இந்த அனுபவங்களை கடந்த மூன்று ஆண்டுகளாக சமரச பணிகளில் ஈடுபடுகிற பொழுது நான் நேரடியாக அனுபவபூர்வமாக கற்றுக்கொண்டேன் இதன் மூலம் பொறுமையான அணுகுமுறையும் பதட்டம் இல்லாமல் சிந்திக்கும் முறையும் தொலைநோக்கு பார்வையுடன் இரு தரப்பினர்களுடைய நலன்களையும் சமுதாய உறவுகளையும் காப்பாற்றுவதுடன், மேம்படுத்தவும் முடியும் என்பதை நடைமுறை அனுபவங்களின் வாயிலாக கற்றுக்கொள்ள முடிந்தது. பேராசிரியர் யூரி கோல்டுபெர்க் கூற்றுப்படி “ஒருவர் மீது தீர்ப்பு திணிக்கப்படுவதை விட ஒரு நடுநிலைமையாளரின் உதவியுடன் தரப்பினர் தீர்வை தேடும் பொழுது அவர்களால் ஒப்புக்கொள்ள கூடிய பல ஆக்கப்பூர்வமான தீர்வுகள் ஏற்பட வாய்ப்பு உண்டு.”

## STATISTICS - 2023

Sl. No.	Name of the Mediation Centre / District	Referral	Settled	Unsettled	Non - Starters	Connected Cases
1	Tamil Nadu Mediation and Conciliation Centre, High Court, Madras.	993	206	650	137	168
2	District Mediation Centre, City Civil Court - Chennai.	904	167	655	39	42
3	Labour Court Mediation Centre - Chennai.	115	59	96	1	39
4	Family Court Mediation Centre - Chennai.	1427	296	1074	163	155
5	Egmore Mediation Centre, Chennai.	65	13	50	1	1
6	TNMCC, Madurai Bench of Madras High Court, Madurai.	1010	172	183	565	128
7	U.T. Of Puducherry	137	14	70	43	0
8	Coimbatore	839	153	384	308	60
9	Tiruchirapalli	1319	56	264	1069	0
10	Namakkal	457	7	12	416	0
11	Tirunelveli	1089	232	705	96	0
12	Salem	579	61	297	233	0
13	Thanjavur	270	22	76	148	0
14	Chengalpattu	448	27	220	57	7
15	Karur	323	28	150	101	0
16	Krishnagiri	333	51	117	168	0
17	Dharmapuri	381	17	232	29	0
18	Cuddalore	285	40	144	141	11
19	Perambalur	172	21	93	74	7
20	Sivagangai	148	24	150	0	0
21	Tiruvannamalai	583	22	215	174	7
22	Nagapattinam	200	2	39	0	0
23	Villupuram	1044	106	583	204	14
24	Virudhunagar at Srivilliputthur	383	35	93	261	0
25	Ramanathapuram	195	9	70	68	0
26	Pudukkottai	897	16	126	107	13
27	Theni	513	73	224	173	0
28	Erode	1513	223	298	358	19
29	Madurai	1055	141	765	14	29
30	Vellore	1286	62	452	613	0
31	Dindigul	869	38	692	1	0
32	Thoothukudi	223	42	111	77	5
33	Kanniyakumari at Nagercoil	971	84	543	330	0
34	Tiruvallur	792	114	278	188	0
35	The Nilgiris	272	23	210	39	3
36	Tiruppur	304	17	137	119	0
37	Tiruvarur	162	28	123	0	0
38	Ariyalur	305	25	127	128	0
	<b>TOTAL</b>	<b>22861</b>	<b>2726</b>	<b>10708</b>	<b>6643</b>	<b>708</b>



# MEDIATION AWARENESS IN DISTRICTS





## MEDIATION TALUK SUB-CENTRES INAUGURATED ON 8<sup>TH</sup> SEPTEMBER, 2023



*Designed and Published By*

**THE TAMIL NADU MEDIATION AND CONCILIATION CENTRE**

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