

**THE MEDIATION COMMITTEE**  
**HIGH COURT, CALCUTTA**



# **THE MEDIATION COMMITTEE, HIGH COURT, CALCUTTA**

## **MEDIATION**

*"The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." .* - Sandra Day O'Connor

### **WHAT IS MEDIATION ?**

Mediation is an effective way of resolving disputes outside the courtrooms. It involves an independent third party - a mediator - who helps both sides come to an agreement. Mediation is a flexible process that can be used to settle disputes in a whole range of situations such as consumer disputes, contract disputes, family disputes, neighbourhood disputes, etc.

### **MEDIATION AND CONCILIATION PROJECT COMMITTEE**

The Hon'ble, The Chief Justice of India, had set up a Mediation and Conciliation Project Committee (MCPC) in 2005 for encouraging amicable resolution of disputes pending in the courts in accordance with section 89 of the Code of Civil Procedure. This Committee had initiated a court integrated mediation process which has proved to be very successful. It had also conducted a 40 hours Mediation training programme upon the said subject to create widespread awareness.

### **THE MEDIATION COMMITTEE, HIGH COURT, CALCUTTA**

The High Court Mediation Committee had been set up to suggest expeditious adoption and implementation of the National Plan for Mediation.

## WHO CAN MEDIATE

Any person who:

- Is impartial and neutral
- Facilitates communication between the parties
- Identifies barriers to an agreement
- Identifies interests of the parties
- Develops terms of agreement

and undergoes the required 40 hours of training as stipulated by the MCPC, Supreme Court, can be a mediator. At present there are at least two trained mediators in each district of West Bengal.

## PROCESS OF MEDIATION

Mediation is an informal process having no strict or binding rules of procedure. It goes through four definite effective steps :

(i) Introduction - A mediator introduces himself to the parties, explains the mediation process and establishes his neutrality. He explains the ground rules and initiates the confidential process of dispute resolution

(ii) Joint Session - A Mediator gathers information about the factual background and interests of the parties, establishes interaction between them and creates a suitable environment for an amicable settlement.

(iii) Individual (Separate) Sessions - When it becomes necessary, a mediator allows the disputing parties to further explain their grievances, continues to gather information, persuades individual parties to share confidential information and helps them to create options for an amicable settlement.

(iv) Agreement - A mediator confirms and clarifies the terms of settlement and reduces the settlement into a clear, complete, concise and binding agreement.

## **MEDIATION VIS-A-VIS LITIGATION**

- No loss of time in mediation
- Mediation preserves ongoing business or personal relationships
- Mediation allows flexibility, control and participation of the Disputing parties.

*Mediation is however not to be characterized as 'better' than adjudication by courts. It is only a different process which is suitable and appropriate for resolving certain types of disputes considered fit for negotiated settlements.*

## **RULES OF MEDIATION**

The Hon'ble High Court, Calcutta had formulated the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006 which presents a comprehensive guideline about the procedure of mediation, the qualifications/disqualifications of Mediators, the venue of mediation, the principles to be followed for mediation and other relevant aspects.

## **WHERE IS MEDIATION HELD ?**

Mediation activities are held in the 18 ADR (Alternative Dispute Resolution) Centres established throughout the State. The Secretary, District Legal Services Authority working under the aegis of the State Legal Service Authority co-ordinates the process of mediation under the guidance of the District Judge of the respective District who is the Chairman of the District Legal Services Authority. The High Court Mediation Centre takes care of the mediation activities in the High Court.

## **RECOGNITION OF MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM**

The Supreme Court in its judgment in *Afcons Infrastructure Ltd. & Anr. V. Cherian Varkey Construction Co.(P) Ltd. & Ors. [Civil Appeal No.6000 of 2010]* had recognized the concept of mediation and given due predominance to the same.