

MIDEATE



A fortnightly newsletter

Mediation in consumer disputes

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The Consumer Protection Act, 1986 deals with establishing forums for redressal of consumer disputes at every district, State and at the Centre at Delhi. Depending on the value of the claim, the initial place of institution will be determined, the smaller to higher sums being its determinant from district up to the apex body. Though the Act contemplated an expeditious summary process, many an enquiry prolong through indefinite adjournments.

Now comes the opportunity for quicker disposals with the Consumer Protection

Act of 2019 making provisions for mediation at all the tiers of adjudication. Section 37enjoins that the District Commission shall at the first hearing of the complaint after its admission, or at any later stage, if it appears that there exists elements of a settlement which may be acceptable to the parties, will direct **within 5 days** consent to have the dispute settled through mediation. The Act contemplates the setting up of a mediation cell to be attached to the National Commission and each of the regional Benches. The cell shall maintain a list of

empanelled mediators and set down the code of conduct as may be laid down in the regulation that is likely to be notified.

A vigilant civil society will demand that it is notified at the earliest.



Mediation under Consumer Protection Act

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What is it to suggest mediation?

Half way down the mediation session, when talks take an acrimonious turn, it is not unusual when parties go to threaten each other that they will not hesitate to go back to court and contest till the last

court to secure the relief now demanded but which the other side is not prepared accede to.

Actually, times have changed from the time when such threats were regarded as assertions

of confidence. Now, to stay in the ring and coming with alternate suggestions and not give vent to temper is the winning strategy. That is the only way to get your things done.



Improving qualities as mediator

Nothing worth knowing can be taught, said Oscar Wilde.

Many of the training schedules that we attend cannot at all times help assimilate all those skills sought to be imparted, unless they become our second nature. For example, active listening, empathy, intuition and resourcefulness are all oft repeated words that it is expected that we imbibe them as mediators. The truth is, these are neither cultivated traits nor innate abilities.

We need to be philosophically tuned to accept that just not to parties but to us, mediators too, conflicts are inevitable. They

Kenneth Clokes suggests that the following values of mediation apply as much to parties as to the mediator herself.



cannot be wished away. Consequently, there is no point in trivialising conflicts as resultant to immature behaviour or acerbic disposition.

Feeling fully confident and righteous in the stand taken by parties are also to be expected. There is no need to make any one feel small or big at her own conduct. Let everyone remain in her own citadel but only see that the person is not perched too high that she cannot be heard. Communication is at all times the only key.

Be a natural listener without a parallel thought running in your mind judging the narration or conduct of party as correct / incorrect or just/ unjust. Stay on level with the parties and never adopt holier than thou attitude. Introspect and realise that every mediation session prepares you better for the next one.



Values that you must cherish

- ✚ Conflicts are natural.
- ✚ Respect diversity and reject stereotypes and assumptions of superiority or inferiority as directly

proportional to the social or economic status.

- ✚ Value openness and empathy in communication and process
- ✚ Cooperation and collaboration are primary; competition and aggression are secondary.
- ✚ Value victory that is without defeat to the other side.
- ✚ Don't leave anyone behind.

“The value of life is not in its duration but in its donation”

Reflective questions that you may ask yourself

How comfortable or uncomfortable that you become when you hear persons in conflict?

Do you narrate your personal experiences during mediation when any of the parties narrates an event similar to the one that you have gone through?

What is the quality that you identify yourself when you are mediating?

– Healer, Listener, Problem solver, Wise counsel or a Buddy?

Will you plan to meet with parties later to enquire if the settlement lasted the way it was perceived at the time when it was put down in writing.

Do not let the mediation session slip by without subjecting yourself to deep analysis about what went right and what did not. Speak to

your peer group and secure feedbacks of how else the matter could have panned out.



Games we played – I. *Mediators' introspect*

The Mediators Beyond Borders International meet at Bali in October 2019 set several interesting games among participants to elicit matter of interest in the world of mediation.

In *Mediators' Introspect*, the participants paired in twos and at step 1, we spoke to each other on 'What personal experiences sparked a desire to create change in specific area? I disclosed that insurance sector will be my area of work, since, as a judge, I noticed to my chagrin that insurers always denied liability. Step 2 an

interpersonal round volleying the same query to the other and eliciting an answer. My partner, who was an attorney from Los Angeles, said gender identities in working environments themselves created conflicts and that was the area that she would work in. Step 3 was to write down how your partner's story inspired or empowered you to share with others.

This was something similar to an exercise at the mediation training in Harvard law school, where Gary Friedman put participants in pairs

of two and urging us to begin a conversation on a matter you have never spoken to anyone and disclosing it only to the partner for the first time. You turn out to be a buddy to the person to whom you opened your chest to confide. At Bali, the conversation made you realise the worth of the person whose story inspired you.



II. *Mind Mapping*

The total of 180 participants were split in half and we discussed independently of what we thought were the global trends – something that is seen as increasing or decreasing (political, social, economic or environment); the bright spots and the dangerous overtones that the trends were emerging.

It was a group brainstorm where any idea expressed will not be subject to evaluation or censorship.



The person airing the view could place it in the map as a separate subject or a subtext of the topic already introduced. The idea expressed was to be concrete, such as speaking in terms of who, where, what, why and when.

The map drawn from other group was compared and areas of congruity and divergence were put up in the board for discussion

III. *Self-management roles*



Around every table, participants were named as discussion leaders, time keepers, data managers and reporters to allocate the type of work to be undertaken by each one

to analyse the trends that are most important, things that already being done and the program of action to promote or arrest the trend.

The point discussed were written on small wooden strips and arranged artistically. All of us went around the hall to see the points discussed at every table, the manner of how the wooden strips were arranged and exhibited.

Social media and its impact, threats to freedom of speech, threats of nuclear weapons, increasing numbers of hate groups, immigration and vulnerability of refugees were some of the topics that found common grounds of discussion.

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End litigation; Embrace mediation

Madhyastham is a conflict resolutions portal, founded by K.Kannan, who was former judge of Punjab and Haryana High Court, later was the Chairman of the Railway Claims Tribunal at Delhi and presently living at Chennai. Mediation is the core activity of Madhyastham with a focused attention to Insurance industry to instill a settlement culture and adopting sound practices at the stage of underwriting policy and assuming risk and taking pro-active initiative to offer settlement terms by optimal collection of data through State agencies. Commercial mediation is also a major slice of activity of Madhyastham.

We're on the Web!

www.madhyastham.com

Reaching us to reaching solutions

Why is mediation the best tool of ADR?

The person in conflict is also the person who judges her own conduct and find her own solutions. After all, who knows the problem best, except the person who experiences the agony of conflict?

How will it work if the person against whom I have a complaint is an influential person and I cannot match the argumentative skills of the other party?

Securing a level playing field is the work of a good mediator. Any deficit arising out of lack of self-confidence or social or

economic disparity will also be evened out by appropriate props and recognising individuals as unique and everyone will have her own time to adjust to the surroundings and feel protected and empowered.

I am interested in mediation but the other side is not.

It is okay. There are only two situations; those who know the efficacy of mediation and those who are ignorant of it. Bring your problem to the mediator. It will be her endeavour to encourage the person who remains in doubt to shed her inhibition and participate in mediation with full confidence.

How long will the sessions last?

A full day's work is sufficient to solve the most complex dispute. Sharing documents, preparing written briefs and pre-mediation dialogues are keys to find solutions that are enduring. Timing could be flexible to depend on the complexity of the issues and time at our disposal.

