

**BROCHURE  
ON  
ALTERNATIVE DISPUTE RESOLUTION  
MECHANISM  
IN  
MODERN INDIAN SOCIETY**

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## **Dispute Resolution Process**

Dispute Resolution Process may broadly be grouped under two heads:-

1. Adversarial (Adjudicatory)
2. Non-Adversarial (Non-Adjudicatory)

Trial and Arbitration are the adversarial system of dispute resolution. This is formal in nature.

Avoidance, Negotiation, Mediation, Conciliation and Lok-Adalat etc. are the Non-Adversarial mechanism for conflict resolution. These are informal in nature.

<b>Adversarial (Adjudicatory)</b>	<b>Non-Adversarial (Non-Adjudicatory)</b>
It is an adjudicatory system	It is non-adjudicatory
Due process is involved	No Due process
Coercive system	Non-coercive
Evaluative	This system is rather facilitative and non-evaluative
Controlled by the third party	Controlled by parties themselves
Looks at the past	Looks at the future
Focus is on fact	Focus is on relationship
Establishes liability and guilt	Seeks to reconstruct or maintain relationship
Winner and Looser	Parties are accommodated (win-win situation)
Lawyers play dominant role	Parties play a vital role

*“Discourage litigation. Persuade your neighbours to compromise wherever you can. Point out to them how the nominal winner is often a loser – in fee, expenses and waste of time.”-Abraham Lincoln*

## I. Introduction

It is impossible to eliminate contradictions, conflicts and disputes in any society, and the human society develops in contradictions. It is these contradictions and conflicts which tell us the importance of peace. Peace is, therefore, a *sine qua non* for development and one of the most important facts which help maintain peace in any society is people’s faith in the justice delivery system. Trust of the people in the system that they will get justice, if and when required, keeps the system peaceful, smooth and comfortable. There are many stake-holders of justice delivery system. The most important is the consumer of justice who is a litigant. The seekers of justice come to the courts with pain and anguish in their hearts because they have faced legal problems and suffered physically and psychologically. They have a trust in the courts and believe that they would get justice from the courts, so they do not take the law into their own hands.

The truth is that an effective judicial system requires not only that just results be reached but they be reached swiftly. However, the reality is that it takes a very long time to get justice through the established court system. In spite of the continuous efforts, sometimes the litigation continues for the life time of the litigant and sometimes it carries on even to the next generation. In this state of uncertainty and unending long process, the disputant or litigant may exhaust his resources besides physical and mental sufferings. Thus, there is a chain reaction of litigation process and, at times, civil cases may even give rise to criminal cases.

In our country the justice delivery system through courts has given rise to certain grave problems like inordinate delays, huge pendency of cases and expensive litigation. Thus, it has become very difficult for the poor and marginalized people to have access to justice. In these circumstances, it becomes significantly necessary for

all the stake-holders of the judicial system to find out some mechanism where such grey areas can be effectively and adequately taken care of. Alternative Dispute Resolution (ADR) contains the effective mechanism to provide speedy and cost effective justice, it also has the potential to trim the huge arrears of cases to size. Parliament brought about a legislation and introduced section 89 and Rules 1-A, 1-B and 1-C to Order X in the Code of Civil Procedure, 1908, so as to make effective use of ADR process.

## **II. Constitutional Provisions**

Article 39-A of the Constitution of India provides that the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislations or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 14 also makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. Thus, access to justice, provision of legal aid for poor and needy and dissemination of equal and speedy justice are the cherished goals of our Constitutional Republic.

## **III. Historical Background**

The history of ADR can be traced to our historical path. The concept of Lok Adalats (People's Court) is an innovative contribution of India to the World Jurisprudence. India has a long tradition and history of ADR process like Mediation and Lok Adalat being practiced in the society at the grass root level, these are called Panchayats. The ancient concept of settlement of dispute through Arbitration, Conciliation, Mediation or Negotiation known as the verdict or decision of 'Nyaya-Panchayat' is conceptualized and institutionalized in the philosophy of Lok Adalat. Concept of mediation has been practiced with great frequency in the last quarter of the 20<sup>th</sup> Century. After the emergence of 21<sup>st</sup> Century this practice has been developed with more frequency in the Western countries. Its roots can be traced in USA, notably at the Pound Conference in 1976. It was followed by two legislations – The Civil Justice Reforms Act, 1990 and The Administrative Dispute Resolution Act, 1996.

There are many Statutes in America which make the mediation mandatory for dispute resolution. The State Bar Associations have set up mediation centers and the American Bar Association has its intensive section for dispute resolution. Other countries like United Kingdom has also introduced mediation system as an alternate for dispute resolution mechanism. In United Kingdom, besides, Civil Procedures Reforms of 1999, Lord Chancellor's Department announced in 2001 that all government disputes should be resolved through settlement procedures. Likewise, ADR mechanism was encouraged and implemented in Australia, South Africa and Sri Lanka.

**Justice Warren Burger the former Chief Justice of the American Supreme Court while discussing the importance of ADR, had observed:**

*“The harsh truth is that we may be on our way to a society over run by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black robed judges, well-dressed lawyers, fine panelled court rooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible.”*

*“The obligation of the legal profession is to serve as healers of human conflict and we should provide mechanism that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”*

#### **IV. Provisions Relating to ADR**

**Section 89, CPC** and other provisions – Prior to the existence of S. 89, CPC there were various provisions that gave the power to the Courts to refer disputes to mediation. Such provisions are in the **Industrial Disputes Act, 1947, Section 23(2) of the Hindu Marriage Act, 1955 and Section 9 of the Family Courts Act, 1984**. We can also find and infer such provisions in **Section 80, Order XXIII, Rule 3, Order XXVII, Rule 5-B, Order XXXII-A & Order XXXVI of the Code of Civil Procedure, 1908**.

As regards the Industrial Disputes Act, the Supreme Court observed, “the policy of law emerging from Industrial Disputes Act, 1947 and its sister enactments is to provide an Alternative Dispute Resolution mechanisms to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil court<sup>1</sup>.

**S. 9 of the Family Courts Act, 1984** mandates the family court to assist and persuade the parties at the first instance, to arrive at a settlement.

**S. 107(2) of the Code of Civil Procedure** provides that subject to such conditions and limitations as may be prescribed, “..... The appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein.” Thus, it is inferred that the provisions regarding Alternative Disputes Resolutions are applicable to appellate courts also.

**Order 23, Rule 3, Code of Civil Procedure** mandates the courts to record a full adjustment or compromise and pass a decree in terms of such compromise or adjustment. But the compromise decree has to be recorded as a whole so as to gather the intention of the parties<sup>2</sup>.

The court must apply its judicial mind while examining the terms of settlement. The compromise shall not be recorded in a casual manner. The court is under the responsibility to satisfy itself about the lawfulness and genuineness of the compromise<sup>3</sup>.

Government of India and State Governments are the largest litigants in India. The government or statutory authorities are defendants in a large number of suits pending in various courts in the country. **Section 80, CPC** and some other statutes require service of notice as a condition precedent for filing of a suit or other proceedings against the government or authority. It is observed that in a large number of cases where government is a defendant either the required notice is not replied or in

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<sup>1</sup> Rajasthan State Road Transport Corporation v. Krishna Kant, AIR 1995 SC 1715

<sup>2</sup> Manjulata Sharma v. Vinay Kumar Dubey, AIR 2004 All 92 (94) DB

<sup>3</sup> Banwarilal v. Chano Devi, AIR 1993 SC 1139

a few cases where a reply is sent, it is generally vague and evasive. Thus, the object of **S. 80, CPC** and similar provisions get defeated. It not only gives rise to avoidable litigation but also results in heavy expenses and costs to the government exchequer.

The object of notice under section 80, CPC is to give the government sufficient warning of the case which is going to be filed against it and an opportunity to it to settle the claim without litigation.<sup>4</sup> It gives the government an opportunity to consider its legal position and accordingly settle the claim out of court.<sup>5</sup> The notice under section 80, CPC intends to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsiders why the claim is being resisted.<sup>6</sup> The underlying object of section 80, CPC and other similar provisions is to curtail litigation and area of dispute.

**The Supreme Court of India in *Geeta Iron and Brass Works Ltd. case* has emphasised that governments must be made accountable by Parliamentary social audit for wasteful litigation expenditure inflicted on the community through its inaction.**

The Apex Court has directed that all governments, central or state or other concerned authorities to nominate within a period of three month, an officer who shall be made to ensure that replies to notice under section 80, CPC or similar provisions are sent within the stipulated period and the replies shall be sent after due application of mind. This direction of Supreme Court shall put the government authorities in a conciliation mode and promote early settlement of disputes.<sup>7</sup>

Section 89 has been inserted in the Code of Civil Procedure by the CPC (Amendment) Act, 1999. It became effective from 01.07.2002. Section 89 CPC reads as follows:-

**“89. Settlement of disputes outside the court.-**(1) *Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their*

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4 Ghanshyam Das v. Domination of India; AIR 1984 SC 1004

5 Raghunath Das v. Union of India; AIR 1969 SC 674

<sup>6</sup> State of Punjab v. Geeta Iron and Brass Works Ltd.; AIR 1978 SC 1608

<sup>7</sup> Salem Advocate Bar Association, Tamil Nadu v. Union of India; AIR 2005 SC 3353



observations and after receiving the observations of the parties, the court may *reformulate the terms of a possible settlement* and refer the same for-

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred –

- (a) **for *arbitration or conciliation***, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
- (b) **to *Lok Adalat***, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
- (c) **for *judicial settlement***, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
- (d) **for *mediation***, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.”

The Supreme Court, in order to correct the draftsman’s error, has held that the definitions of “judicial settlement” and “mediation” in clauses (c) & (d) of Sec. 89(2), CPC shall have to be interchanged as follows:-

- (c) for “mediation”, the court shall refer the same to a suitable institution or person and such institution or person shall be

deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

- (d) for “judicial settlement”, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.<sup>8</sup>

**Order 10 Rule 1-A:**

**“1-A. Direction of the court to opt for any one mode of alternative dispute resolution.-** After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of Section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.”

**Order 10 Rule 1-B:**

**“1-B. Appearance before the conciliatory forum or authority.-** Where a suit is referred under Rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.”

**Order 10 Rule 1-C:**

**“1-C. Appearance before the court consequent to the failure of efforts of conciliation.-** Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.”

Section 89, CPC confers the jurisdiction on the court to refer a dispute to an ADR process whereas Rules 1-A to 1-C of Order X lays down the manner in which the jurisdiction is to be exercised by the Court. The scheme is that the court explains

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<sup>8</sup> Afcons Infrastructure and others v. Cherian Verkay Construction Company Pvt. Ltd. and others, (2010) 8 SCC 24

the choices available regarding ADR process to the parties, permit them to opt for a process by consensus, and if there is no consensus, proceeds to choose the process.

#### **V. Cases “Unsuitable” & “Suitable” for ADR Processes**

In Afcon’s case (supra), Supreme Court of India has observed that the following categories of cases, having regard to their nature, are normally considered to be not suitable or suitable for ADR Processes :-

##### **Cases “unsuitable” for ADR Processes (Excluded category of cases)**

1. Representative suits under order 1 Rule 8 CPC
2. Dispute relating to Election to Public Offices (excluding disputes between two groups regarding management of Societies, Clubs, Association etc.)
3. Cases involving grant of authority by the Court after enquiry for example, suits for grant of probate or letter of administration.
4. Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.
5. Cases requiring protection of courts for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.
6. Cases involving prosecution for criminal offences.

#### **VI. Cases “suitable” for ADR Processes**

Except the excluded category of cases (as mentioned above), all other suits and cases of civil matters in particular, the following cases are normally considered to be suitable for A.D.R. processes:

*(i) All cases relating to trade, commerce and contracts (including all money cases)*

- disputes arising out of contracts (including all money claims);
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers/builders and customers;

- disputes between landlords and tenants/licensors and licensees;
  - disputes between insurer and insured;
- (ii) *All cases arising from strained or soured relationships, including*
- disputes relating to matrimonial causes, maintenance, custody of children;
  - disputes relating to partition/division among family members/coparceners/co-owners; and
  - disputes relating to partnership among partners
- (iii) *All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including*
- disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);
  - disputes between employers and employees;
  - disputes among members of societies/associations/apartment owners' associations;
- (iv) *All cases relating to tortious liability, including claims for compensation in motor accidents/other accidents.*
- (v) *All consumer disputes, including where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.*

The Supreme Court has further observed that the above lists of “suitable” and “unsuitable” categorization of cases are illustrative and not exhaustive.

## **VII. Appropriate Stage for Reference to ADR Process**

The appropriate stage for considering reference to ADR processes is after the pleadings are complete and before framing the issues. But nothing prevents the court from resorting to S. 89 even after framing issues. But once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes because if the reference is made at the stage when the evidence has started, it may become a tool for protracting the trial.

In family disputes or matrimonial matters, the ideal stage for mediation will be immediately after service of notice on respondent and before the respondent files objections/written statement because in such cases the relationship becomes hostile on account of various allegations in the petition and the hostility will be further aggravated by the counter allegations made in the objections/written statement.

### **VIII. Consent of Parties for referring the matter to ADR Processes**

The consent of all the parties to the suit is necessary for referring the case for arbitration under section 89, CPC. The court exercising power under section 89, CPC cannot refer a suit to arbitration unless all the parties to the suit agree to such reference.

The Supreme Court has observed that where there is no pre-existing arbitration agreement, the parties to the suit can agree for arbitration by means of a joint application or joint affidavit before the court or by record of the agreement by the court in the order sheet signed by the parties<sup>9</sup>.

Similarly, the consent of all the parties to the suit is necessary for referring the case for conciliation under section 89, CPC (if the parties are not agreeable for arbitration).

If the parties are not agreeable for either arbitration or conciliation, the court has to consider which of the three other ADR Processes (Lok Adalat, Mediation and Judicial Settlement) is suitable for reference. In Afcon's case (supra) the Supreme Court has observed that three ADR Processes – Lok Adalat, Mediation and Judicial Settlement do not require the consent of parties for reference but the court has to use its discretion in choosing the ADR Process judiciously, keeping in view the nature of disputes, interests of parties and expedition in dispute resolution. However absence of consent for reference does not affect the voluntary nature of the mechanism of mediation as the parties still retain the freedom to agree or not to agree for the mediation settlement.

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<sup>9</sup> Ibid.

## IX. General Guidelines

In **Afcon's case** (supra), Supreme Court has given general guidelines regarding the following issues relating to settlement by ADR methods :-

**(A) Procedure to be adopted by a court under Sec. 89, CPC:**

(1) When the pleadings are complete and before framing the issues, the court shall fix a date for preliminary hearing and appearance of parties, to know about facts of the case and nature of the dispute between the parties.

(2) The court should first consider whether the case falls within the excluded category of cases which are unsuitable for ADR processes. If the court finds that the case falls under any excluded category, it should record a brief order mentioning the nature of the case and why it is not fit for reference to ADR Processes. In such cases, the court will proceed with framing of issues and trial.

(3) In other cases (which can be referred to ADR Process) the court will explain the choice of five ADR Mechanisms to the parties to enable them to exercise their option.

(4) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that:-

(a) Arbitration is an adjudicatory process by a chosen forum and reference to arbitration will permanently take the suit outside the ambit of the court.

(b) The cost of arbitration will have to be borne by the parties.

It is significant to note that matter should be referred to the arbitration only if both the parties agree for arbitration.

(5) If the parties do not agree for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation. If the parties agree, the court can refer the matter to conciliation in accordance with S. 64 of the Arbitration and Conciliation Act, 1996.

(6) The matters referred to arbitration or conciliation will be governed by the provisions of the Arbitration and Conciliation Act.

(7) If the parties do not agree for arbitration or conciliation, the court should consider the preferences/options of the parties and refer the matter to any of the other ADR Processes; i.e.-

- (a) Lok Adalat
- (b) Mediation, and
- (c) Judicial Settlement.

(8) In simple cases relating to the matters where legal principles are clearly settled and there is no personal animosity between the parties, (as in the case of motor accident claims) the court may refer the matter to Lok Adalat.

(9) Complicated cases which may require several rounds of negotiations, may be referred to mediation. Where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(10) If the reference to the ADR Process fails, the court shall proceed with the hearing of the suit.

(11) If there is a settlement, the court shall examine settlement and make a decree in terms of it, keeping in view the principles of Order 23, Rule 3, CPC.

(12) If the settlement includes disputes which are not subject matter of the suit, the court may direct that the same will be governed by:-

- (a) S. 74 of the Arbitration and Conciliation Act, if it is a conciliation settlement, or
- (b) S. 21 of the Legal Services Authority Act, 1987 (if it is a settlement by a Lok Adalat or by Mediation)

**(B) Consequential aspects:**

(1) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent and nothing further is required to be mentioned in the order sheet.

(2) If the reference is to any other ADR Process, the court should briefly record that having regard to the nature of the dispute, the case deserves to be referred to Lok Adalat, or Mediation or Judicial Settlement.

**(C) Keeping track of the matter:**

(1) In order to avoid delay of trial as also to prevent any misuse of the provisions for reference to ADR, the courts should keep track of the matter. If the court refers the matter to ADR processes, other than arbitration, it should keep track of the matter by fixing the date of hearing for ADR report. The date for a week or so may be fixed. Normally, the period allotted for the ADR Processes should not exceed two months, but the same may be extended in exceptional cases depending upon the availability of the alternative forum and the nature of the case etc.

(2) Normally the court should not send the original record of the case when referring the matter to an ADR forum (for this purpose, when pleadings are filed, the court may insist upon filing of an extra copy).

(3) Regarding the time limit for completion of mediation, rule 19 of the Uttar Pradesh Civil Procedure Mediation Rules, 2009 provides as under:-

“on the expiry of 60 days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the court, which referred the matter, either *suo moto* or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful, but such extension, shall not be beyond a further period of 30 days.

**X. Appropriate ADR Process, How to select?**

Sec. 89, CPC refers to five types of ADR Mechanisms:-

- (1) Arbitration
- (2) Conciliation
- (3) Mediation
- (4) Judicial Settlement, and
- (5) Lok Adalat



**Arbitration:**

Arbitration is an adjudicatory process and remaining four ADR processes are negotiable in nature (non-adjudicatory processes). Arbitration is governed by the provisions of the Arbitration and Conciliation Act. For a reference to arbitration under sec. 89, CPC, there must be the consent of all the parties to the suit. The parties to the suit can agree for arbitration by means of a joint memo, joint application or joint affidavits before court or the court may record such agreement in the order sheet signed by the parties. On a reference to the arbitration the case will go outside the stream of the court permanently and will not come back to the court.

Parties to the suit may agree for one arbitrator or each side may select its arbitrator and then two arbitrators select the third one. The award of the arbitrators is binding on the parties and is enforceable as a decree of the court in view of section 36 of the Arbitration and Conciliation Act, 1996. If any settlement is arrived at in the arbitration proceedings then the award passed on the basis of such settlement will have the same status and effect as any other arbitral award as per section 30 of the Arbitration and Conciliation Act.

**Conciliation:**

For a reference to conciliation also the consent of the parties to the dispute is a must. If both the parties do not agree for conciliation, there can be no conciliation. As a consequence the court cannot refer the parties to the conciliation u/s. 89, CPC in the absence of consent by all the parties. When a matter is referred to conciliation, it does not go outside the stream of the court and if the conciliation fails, the matter is returned to court for hearing of the case. The ADR Process of Conciliation is also governed by the Arbitration and Conciliation Act.

If a matter is settled through conciliation, then according to S. 74 of the Arbitration and Conciliation Act, such settlement will have the same status and effect as an arbitral award. Thus, such settlement is enforceable as a decree of the court as per section 36 of the Arbitration and Conciliation Act.

## **XI. Mediation, Judicial Settlement and Lok Adalat**

For a reference to arbitration or conciliation, consent of all the parties are required but if the parties do not agree for either arbitration or conciliation, then court has to consider which of the remaining three ADR Process (Mediation, Judicial Settlement and Lok Adalat) is suitable. It has been observed in **Afcon's** case (supra) by the Supreme Court that these three ADR Processes do not require the consent of the parties for reference and if the suit is complicated and lengthy, mediation will be the recognized choice and if the disputes are easily sortable with clear-cut legal principles, Lok Adalat will be the preferred choice. The Supreme Court further observed that the court has to use its discretion in choosing the ADR Processes judiciously, keeping in view the nature of disputes, interest of parties and expedition in dispute resolution.

### **Mediation:**

Mediation is a voluntary party centered and structured negotiation process which is conducted by neutral third party with his specialized communication skills and negotiation techniques.

Per **Christopher W. Moore**, “Mediation is essentially a negotiation that includes a third party who is knowledgeable in effective negotiation procedures and can help people in conflict to coordinate their activities and to be more effective in their bargaining. Mediation is an extension of the negotiation process in that it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the interaction of the disputant.”

Why do we say that mediation is voluntary? The process of mediation is voluntary because the parties have the final say regarding the option as to whether to get their dispute settled through mediation. They also retain the right to decide the terms of settlement of dispute. Even if the dispute is required to be settled through mediation under the contract or statute or if the court has referred a case for mediation, the parties have the right to decide as to whether to settle the dispute and the term of settlement. Thus the settlement through mediation process results in a settlement created by the parties themselves and it is therefore acceptable to them. Any party is at

liberty to withdraw from the mediation proceedings, at any stage and without assigning any reason, before its termination.

Parties have direct and active participation in the process of mediation for resolution of their dispute. They play the key role and are actively encouraged to explain the background of the dispute, identify issues and underlying interests, provide options for agreement and make a final decision regarding the settlement. Thus the mediation is a party centered negotiation process.

The mediation process is itself an structured and formalised process which has clearly identifiable stages with, of course the degree of flexibility. The mediation process is informal in nature which signifies that this mechanism of dispute resolution is not governed by the rules of evidence and procedure. But at the same time it is not a casual process either, because as mentioned above, it has identifiable stages.

Mediation is broadly focused on the point of facts, law and underlying causes of the dispute which includes underlying interests of the parties. Such interests of parties may be personal, commercial or social and may be related to family or community.

In the process of meditation the mediator assists the parties to bring about a resolution to their dispute. He does not adjudicate a dispute by imposing a decision upon the parties rather he works together with parties to facilitate the dispute resolution. The job of mediator is of a facilitator because he manages the interaction between the parties, encourages and promotes communication between them and manages interruption and outbursts by them so as to facilitate and motivate them to arrive at a settlement which is acceptable to the parties.

Mediation is a negotiatory and voluntary process where a neutral third party assists the parties in bringing about an amicable settlement of their dispute. Parties are the focal point of the mediation process, their active and direct participation is encouraged in resolution of their dispute. The goal of mediation is to find a solution which is acceptable to all the parties and which adequately and legitimately satisfies the needs, desires and interests of the parties. The mediator remaining impartial,

works together with the parties to facilitate the dispute resolution and for this purpose, the mediator uses specialized communication skills and negotiation techniques.

Mediation is a private process which is confidential in nature. The settlement reached out in a case referred for mediation, is required to be reduced in writing and after getting it signed by the parties, it is filed in the court for appropriate order. In case the mediation fails, the report of the mediator does not mention the reason for the failure but it would only say “not settled”.

Keeping in view the scope and significance of mediation and recognizing the immense possibility of the mediation process in the dispute resolution, Hon’ble Allahabad High Court took initiative to inaugurate on October 06, 2006, the Allahabad High Court Mediation & Conciliation Centre (AHCMCC). This centre became functional on October 16, 2006. As a significant step towards mediation movement at District Level, as many as 11 Mediation Centers in the largest Districts of Uttar Pradesh became operational on February 01, 2009 and now Mediation Centers have been established and made functional in all the Sessions Divisions across the State.

### **Judicial Settlement:**

The process of judicial settlement is much in vogue in the U.S. It refers to a settlement of a civil case with the help of a judge who is not assigned the adjudication of such a case.

In Afcon’s case (supra), the Supreme Court in order to correct the draftsman’s error, has held that the definitions of “judicial settlement” and “mediation” in clauses (c) & (d) of Section 89(2), CPC shall have to be interchanged as follows :-

- (c) for “mediation”, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
- (d) for “judicial settlement”, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

## **Lok Adalat:**

The first Lok Adalat was organized on an experimental basis on March 14, 1982 at Junagarh in the State of Gujarat. The Legal Services Authorities Act, 1987 has provided a statutory status to the Lok Adalat for the purpose of facilitating the smooth functioning of the scheme of organizing the Lok Adalat and also for providing legal services and free legal aid to the eligible persons, different legal services institutions have been created and made functional across the country, right from the Taluka to the National level.

Under the provisions of the Legal Services Authorities Act, 1987 and the amendments carried out in the year 2002, the Lok Adalats have been established at three levels, viz. Regular Lok Adalats, Permanent Lok Adalats under Section 19 of the Act and Permanent Lok Adalats for 6 Specific Public Utility Services created under section 22B of the Act of 1987.

Where a case is referred for settlement through Lok Adalat, there are two options available to it :-

- (i) if the compromise/settlement is arrived at, then to make an award in terms of such compromise/settlement; or
- (ii) if there is no compromise/settlement, then to return the record to the court with failure report.

There can be no third hybrid order by the Lok Adalat containing directions to the parties. There cannot be an award when there is no settlement. Nor can there be any directions by the Lok Adalat determining the rights, obligations or title of parties, when there is no settlement. The settlement should precede the award and not vice versa<sup>10</sup>.

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10 B.P. Moideen Sevamandir v. A.M. Kutty Hassan, AIR 2008 SC (Supp) 1123; State of Punjab v. Jalour Singh, (2008) 2 SCC 660

## XII. Comparison of Mediation, Conciliation & Lok Adalat

	<b>Mediation</b>	<b>Conciliation</b>	<b>Lok Adalat</b>
1.	Mediation and Conciliation both are non-adjudicatory processes.		Lok Adalat is non-adjudicatory, if it is established under Section 19 of the Legal Services Authorities Act, 1987.
2.	Mediation is conducted by a neutral third party.	Conciliation is also conducted by a neutral third party.	Presiding Officer is a neutral third party.
3.	Mediation, Conciliation and Lok Adalat are all voluntary processes.		
4.	Service of Lawyer may be available in all the three processes.		
5.	The function of a Mediator is mainly facilitating.	The function of a conciliator is more active than the facilitative function as in the case of mediation.	The function of Presiding Officer is persuasive.
6.	Mediation is a party centered negotiation process.	Conciliation is a party centered negotiation process.	In Lok Adalat the scope of negotiation is limited.
7.	For referring a case to mediation, the consent of the parties is not mandatory.	The consent of the parties is mandatory for referring a case to conciliation.	Parties' consent is not required for referring a case for settlement through Lok Adalat.
8.	Mediation is a structured and formalized process having different stages.	Conciliation is also a structured and formalized process having different stages.	The process of Lok Adalat involves only discussion and persuasion.

9.	Parties have active and direct involvement and participation in Mediation.	In Conciliation also parties are actively and directly involved.	There is not so much active and direct involvement of parties in Lok Adalat.
10.	In Mediation, the focus is on present and future.	In Conciliation also, focus is on present and future.	In Lok Adalat the focus is on the past and present.
11.	For passing decree/order in terms of agreement, the referral court applies the principles of Order 23 Rule 3 of Code of Civil Procedure.	In Conciliation the agreement is enforceable as a decree of the court as per Section 74 of Arbitration and Conciliation Act, 1996.	The award of Lok Adalat is deemed to be decree of the Civil Court and is executable as per Section 21 of the Legal Services Authority Act, 1987.
12.	In Mediation process, confidentiality is the essence.	Confidentiality is the essence of Conciliation process.	In Lok Adalat Confidentiality is not observed.
13.	Decree/order is not appealable.	Decree/order is not appealable.	Award not appealable.

### **XIII. Court to guide parties to exercise their options**

When the Court considers that the case is a suitable one for reference to ADR, the consent and option of the parties is to be obtained. According to The U.P. Civil Procedure Alternative Dispute Resolution Rules, 2009, it is the duty of the court to give proper guidance to the parties so as to facilitate them to exercise their options. While giving such guidance attention of the parties, may be drawn to following factors:-

1. That settlement through ADR mechanism would save time and expenses of the parties and thus it would be to the advantage to the parties to opt for any of the ADR mechanism for the settlement of their disputes rather than to seek a trial.

2. When there is no relationship between the parties which needs to be preserved, than it is in the better interest of the parties to give their consent for arbitration.
3. When there is relationship between the parties which needs to be preserved, than it is in the better interest of the parties to give option to refer their matter for settlement through Conciliation or Mediation.

It is worth mention that disputes arising out of matrimonial, maintenance and child custody matters etc., may be considered as cases where a relationship between the parties requires to be preserved.

4. When the parties are interested in a final settlement which may lead to a compromise, it will be in the interest of the parties to seek reference of the matter to Lok Adalat or Judicial settlement.

#### **XIV. Whether the reference to ADR Process is Mandatory?**

The plain reading of the words in S. 89, CPC “**where it appears to the court that there exist elements of a settlement**”, clearly shows that the cases which are not suitable for ADR Process should not be referred under section 89. In **Afcons’s Case**<sup>11</sup> the Apex Court has specified an excluded category of cases which are considered not to be suitable for ADR Processes.

Therefore, having a hearing (after completion of pleadings) to consider recourse to ADR Processes under section 89 CPC, is mandatory. But actual reference to an ADR Process in all cases is not mandatory. The court has to consider as to whether the case falls under an excluded category, if yes, then it is not to be referred to ADR Process. In such cases of excluded category, the court should record a brief order referring to the nature of the case and why it is not fit for reference to ADR Processes. It will then proceed with the framing of issue and trial. In all other cases (except excluded category), reference to ADR Process is a must.

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<sup>11</sup> Afcons Infrastructure and others v. Cherian Verkay Construction Company Pvt. Ltd. and others, (2010) 8 SCC 24



## **XV. Advantages of ADR System**

1. Through ADR, reliable informations regarding the case can be gathered and amicable settlement of the case can be arrived at. In judicial system parties are reluctant to part with such inconvenient informations.
2. In Mediation or Conciliation, disputants themselves take the decisions.
3. There are lesser formalities in ADR than the traditional judicial system.
4. Settlement through ADR Process is cost effective and less time consuming.
5. ADR system brings about a win-win situation for the parties whereas in the court procedure there is a win-lose situation.
6. Through ADR system the result is final.
7. Advantages of Mediation.
  - (a) Mediation is participative and the parties directly participate in the negotiation.
  - (b) Parties have control over the mediation. They have the right to decide whether or not to settle the dispute and the terms of settlement.
  - (c) The procedure of mediation is speedy, efficient and cost-effective.
  - (d) The process is conducted in an informal, cordial and conducive environment.
  - (e) Mediation is a confidential process.
  - (f) Mediation process facilitates better and effective communication between the parties.
  - (g) Mediation helps to maintain, improve and restore relationships between the parties.
  - (h) Mediation process is voluntary because the parties are at liberty to opt out of it at any stage. If any party feels that the mediation process is not helping him, he can opt out of it.
  - (i) Mutually beneficial settlement is reached out in mediation.
  - (j) The process of mediation always considers the long term and underlying interests of the parties at each stage of the dispute resolution process.
  - (k) In the case of settlement in court referred mediation, refund of court fees is permitted as per rules.

**Richard Hill**, a lawyer from Switzerland who was highly skilled in arbitration matters, summed up the importance of mediation like this:-

Two persons have a legitimate claim to an orange but neither of them is willing to accept half the orange. If the claim is resolved in accordance with a judicial paradigm, one of them will get some portion (possibly none) of the orange, and the other will get the remaining portion. But then a mediator is called in: who asks each person what they intend to do with the orange. The first person answers that she intends to use the rind to make perfume, while the second answers that she intends to use the pulp to make orange juice. Hence, the mediation process yields solutions that is fair and better satisfies the interests of the parties than could any solution based on adversarial process<sup>12</sup>.

**Pointing out the advantage of mediation, the Supreme Court observed that there is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it ensures a just solution to the satisfaction of parties and acceptable to all the parties to dispute, thereby achieving a win-win situation<sup>13</sup>.**

8. Significance of Lok Adalats.

**The Apex Court, emphasising the importance of Lok Adalats has observed:-<sup>14</sup>**

**“Lok Adalats have been created to restore access to remedies and protections and alleviate the institutional burden of the millions of petty cases clogging the regular courts.**

**Experience has shown that not only huge numbers of cases are settled through Lok Adalats, this system has definite advantages, some of which are listed below:-**

- (a) speedy justice and saving from the lengthy court procedures;**
- (b) justice at no cost;**
- (c) solving problems of back-log cases, and**
- (d) maintenance of cordial relations.”**

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<sup>12</sup> *“The Theoretical Basis of Mediation and Other Forms of ADR: why the work”, published in ‘Arbitration International Volume 14 No. 2 (1998) page 181*

<sup>13</sup> Vikram Bakshi v. Sonia Khosla; 2014 (6) SCALE 514

<sup>14</sup> Madhya Pradesh State Legal Services Authority v. Prateek Jain and Antoher; (2014) 10 SCC 690

## XVI. Concluding Remarks

It is an established fact that the Alternative Dispute Resolution Mechanism (ADR) had done wonders in a number of western countries such as United States, Canada, U.K., Sweden etc. and it has now started becoming an important tool for litigants in our country which is certainly a very positive change over last one decade or so.

Although many lawyers believe that their efforts in settlement of disputes outside the court would adversely affect their material interest but they may be reminded of the personal experience of our father of the nation. While emphasizing the significance of out of court settlement of disputes and based on his own experiences as an Advocate in South Africa, **Mahatma Gandhi** so eloquently remarked, *“both were happy with the result and both rose in public estimation. I realised that true functions of a Lawyer was to unite parties. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money; certainly not my soul”*.

The Constitution of India mandates to ensure speedy justice & equal justice. Further an obligation is also cast on all institutions by the Constitution to ensure that free legal aid is provided to all those who are in need of it. The judiciary under the guidance of Hon’ble Supreme Court of India is making all out efforts to ensure that the citizens of the country particularly those belonging to the deprived sections of the society, are extended the benefits of ADR Processes.

The Alternative Dispute Resolution (ADR) Mechanism is working well in India. Millions of cases had been disposed of through Lok Adalats across the country. The National Lok Adalats had achieved tremendous results in the past and huge money had been realized for public exchequer. Millions of people got relief in these Lok Adalats where their long pending cases were disposed off amicably. Wiping out tears from the eyes of poor litigants, even if it comes after a long time is a great sigh of relief for the litigant who is in search of the most precious virtue, that is – justice.

## **XVII. THE UTTAR PRADESH CIVIL PROCEDURE ALTERNATIVE DISPUTE RESOLUTION RULES, 2009**

In exercise of the rule making power conferred under Part X of the Code of Civil Procedure, 1908 and Cl. (d) of sub section (2) of Sec. 89 of the said Code and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad makes the following Rules:

### **1. Title and commencement:-**

- (i) These rules may be called the Uttar Pradesh Civil Procedure Alternative Dispute Resolution Rules, 2009.
- (ii) They shall come into force from the date of their publication in the official Gazette.

### **2. Definitions:-**

In these Rules, unless the context otherwise requires:

- a) **"Code"** means the Code of Civil Procedure, 1908 as amended from time to time;
- b) **"Court"** means for the purpose of these Rules, the District Court and every Civil Court of a grade inferior to that of a District Court;
- c) **"Settlement by Arbitration"** means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbitration.
- d) **"Settlement by Conciliation"** means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the

suit by the application of the provisions of the Arbitration and Conciliation Act. 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under Secs. 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

- e) **"Settlement by Mediation"** means the process by which a mediator appointed by parties or by the Court, as the case may be. mediates the dispute between the parties to the suit by the application of the provisions of the Uttar Pradesh Civil Procedure Mediation Rules,2009 and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in Identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them.
- f) **"Settlement in Lok Adalat"** means settlement by Lok Adalat as contemplated by the Legal Services Authority Act. 1987.
- g) **"Judicial Settlement"** means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Service Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

**3. Procedure for directing parties to opt for alternative modes of settlement:-**

- a) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Sec. 89, and the parties shall submit to the Court their responses within thirty days of the first hearing.
- b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in Cls.(a) to (d) of sub-section (1) of Sec. 89 read with Rule I A of Order X, in the manner stated hereunder.

**PROVIDED THAT** the Court, in the exercise of such power shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

**Explanation:** -For the purpose of this rule the words "terms of settlement" and the words "terms of possible settlement" mean a summary of the dispute or summary of the remaining dispute, respectively.

**4. Persons authorized to take decision for the Union of India, State Governments and others: -**

- i. For the purpose of Rule 3, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group

of persons who are authorized to take a final decision as to the mode of Alternative Dispute Resolution in which it proposes to opt in the event of direction by the Court under Sec. 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate Courts in this behalf as soon as such nomination is received from such Government or authorities.

- ii. Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in Cl. (i) shall, if it is a plaintiff, file along with the plaint or if it is a defendant file, along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorized to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

**5. Court to give guidance to parties while giving direction to opt: -**

- (a) Before directing the parties to exercise option under sub rule (b) of Rule 3, the Court shall give such guidance as it deems fit to the parties by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely-
  - (i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or other of these modes of settlement referred to in Sec. 89 rather than seek a trial on the disputes arising in the suit;
  - (ii) that, where there is no relationship between the parties which

requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of Sec. 89.

- (iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in Cls. (b) or (d) of sub-section (1) of Sec. 89.

**Explanation.**-Disputes arising in Matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

- (iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to Lok Adalat or to judicial settlement as envisaged in Cl. (c) of sub-section (1) of Sec. 89.

#### **6. Procedure for reference by the Court to the different modes of settlement.-**

- (a) Where all parties to the suit except proforma parties that is to say the parties by or against whom no relief has been sought, decide to exercise their option and to agree for settlement by arbitration. they shall apply to the Court, within thirty days of the direction of the Court under sub rule (b) of Rule 3 and the Court shall, within thirty days of the said application, refer the matter to arbitration and hereafter the provisions of the Arbitration and Conciliation Act. 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act;



- (b) Where it is considered desirable to exercise the option for settlement by the Lok Adalat, the procedure envisaged under the Legal Services Authority Act, 1987 and in particular by Sec. 20 of that Act, shall apply.
- (c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under sub-rule (b) of Rule 3 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authority Act. 1987 (39 of 1987) which are applicable after the stage of making of the reference to Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act;
- (d) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration, or Lok Adalat, or to judicial settlement, within thirty days of the direction of the Court under sub-rule (b) of Rule 3, they shall consider if they could agree for reference to conciliation or mediation, within the same period.
- (e)(i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under sub-rule (b) of Rule 3 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act. 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act;

- (e)(ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under sub-rule (b) of Rule 3 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Uttar Pradesh Civil Procedure Mediation Rules, 2009 shall apply.
- (f) Where under Cl. (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under sub-rule (b) of Rule 3, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and
- (i) in case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.
  - (ii) in case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance with the Uttar Pradesh Civil Procedure Mediation Rules, 2009 shall apply.
  - (iii) In case all the parties do not agree and where it appears to the Court that there exist elements of a settlement, which may be acceptable to the parties and that there is a relationship between the parties, which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the: stage of making of the reference to Conciliation under that Act shall and in case the dispute is referred to

mediation, the provisions of the Uttar Pradesh Civil Procedure Mediation Rules, 2009 shall apply.

- (g)(i) Where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under sub-rule (b) of Rule 3, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.
- (g)(ii) After hearing the parties or their representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to Conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Uttar Pradesh Civil Procedure Mediation Rules, 2009, shall apply.
- (h)(i) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for anyone of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.
- (h) (ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by Counselor pleader, the counselor pleader shall

file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

**7. Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation:-**

- (1) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a direction to the parties to appear before the Court on a specific date.
- (2) Upon the reference of the matter back to the Court under sub-rule (1) or under sub-section (5) of Sec. 20 of the Legal Services Authority Act, 1987, the Court shall proceed with the suit in accordance with law.

**8. Training in alternative methods of resolution of disputes, and preparation of manual:-**

- (a) The High Court shall take steps to have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court or the Universities imparting legal education or retired Faculty Members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of dispute, to conduct training courses for lawyers and judicial officers.
- (b)(i) The High Court shall nominate a committee of judges. faculty members including retired persons belonging to the above

categories, senior members of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in Cl. (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliators or mediators.

- (b)(ii) The said manual shall describe the various methods of alternative dispute resolution. the manner in which anyone of the said methods is to be opted for the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.
- (c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to judicial officers and lawyers.
- (d) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment for purposes of conciliation or mediation.

**9. Applicability to other proceedings:-**

The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act, 1984 (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act, 1984 (66 of 1984).

### **XVIII. Basic Guidelines for Mediation Centers**

1. 40 hour training is absolutely necessary + 10 successful meditations.
2. The training should ordinarily be for Mediation Centers in the District Courts.
3. All the participants (maximum of 12) should be either judicial officers or advocates from the District Courts only.
4. Every day two mediators should be available for conducting mediations in the Centre. They should adjust their work in such a manner that they are available on a specific day of every week.
5. There should be a full time coordinator for each Mediation Centre who may be the Member Secretary of the District Legal Services Authority.
6. Awareness and sensitization programmes must be held so that proper cases are referred for mediation.
7. Computer programme should be installed.

In exercise of the rule making power conferred under Part X of the code of Civil Procedure, 1908 and clause (d) of sub section (2) of Section 89 of the said Code, and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad makes the following Rules.

## **XIX. THE UTTAR PRADESH CIVIL PROCEDURE MEDIATION RULES, 2009**

Notification No. 1253VII-Nyaya-2-2009-31 G-08,  
Dated 13th August, 2009.

In exercise of the rule making power conferred under Part X of the Code of Civil Procedure, 1908 and Clause (d) of sub-section (2) of Sec. 89 of the said Code, and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad makes the following Rules:

### **1. Short title and commencement:-**

- (1) These rules may be called the Uttar Pradesh Civil Procedure Mediation Rules, 2009.
- (2) They shall come into force from the date of their publication in the Official Gazette.

### **2. Extent: -**

These Rules shall apply to all Court annexed mediation with regard to any suit or other proceeding filed/pending in any Court subordinate to the High Court of Judicature at Allahabad. The mediation in respect of any suit or other proceeding may be referred to the Mediation and Conciliation Centre set up in the District. Upon such a reference being made to the Mediation and Conciliation Centre, these rules will apply.

### **3. Appointment of mediator from the panel under Rule 4 by agreement of the parties:-**

- (a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.
- (b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.
- (c) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the

said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

**4. Panel of mediators:-**

- (a)(i) The District and Sessions Judge in each District shall, for the purpose of appointing mediator to mediate between parties in suits or other proceedings, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval, of the High Court to the names included in the panel, and shall publish the approved list of mediators on their respective Notice Board with copy of each Bar Association in the District Courts.
- (a)(ii) Copies of the said panels referred to in Clause (a)(i) shall be forwarded to all the outlay Courts subordinate to the District & Sessions Judge concerned and to the Bar Associations attached to each of the outlying Courts.
- (b) The consent of the persons whose names are included in the panel shall be obtained before empanelling them on proforma as set out in Schedule 1.
- (c) The panel of names shall contain detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.
- (d) The panel of mediator appointed under Clause (a) shall normally be for a period of three years from the date of appointment and further extension if the panel of mediators or any mediator shall be at the discretion of the District & Sessions Judge with the prior approval of the High Court.
- (e) The District & Sessions Judge with prior approval of the High Court may in his discretion, from time to time, add or delete any person in the panel of mediator.



**5. Qualifications of persons to be empanelled under Rule 4: -**

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 4, namely:

- (a) Retired on superannuation District and Sessions Judges and retired on superannuation Additional District & Sessions Judges of the Uttar Pradesh Higher Judicial Service.
- (b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts

Experts or other professionals with at least fifteen years standing.

Persons and institutions who/which are themselves experts in the mediation and have been approved & recognized by the High Court.

**6. Disqualifications of persons:-**

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- (i) any person who has been adjudged as insolvent or is declared of unsound mind.
- (ii) or any person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or
- (iii) any person who has been convicted by a criminal court for any offence, involving moral turpitude.
- (iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority, which are pending or have resulted in a punishment.
- (v) any person who is interested or connected with the subject-matter of dispute or is related to anyone of the parties or to

those who represent them, unless such objection is waived by all the parties in writing.

- (vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.
- (vii) such other categories of persons as may be notified by the High Court.

**7. Venue for conducting mediation:-**

The mediator shall conduct the mediation at one or other of the following places:

- (i) Venue of the Lok Adalat or permanent Lok Adalat.
- (i) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.
- (iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.
- (iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

**8. Preference:-**

The Court shall, while nominating any person from the panel of mediators referred to in Rule 4, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

**9. Duty of mediator to disclose certain facts:-**

- (a) When a person is approached in connection with his proposed/possible appointment as a mediator, he shall disclose in writing any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

- (b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in Clause (a).

**10. Cancellation of appointment:-**

Upon information furnished by the mediator under Rule 9 or upon any other information received from the parties or other persons. if the Court, in which the suit or other proceeding is pending is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality. it shall cancel the appointment by a reasoned order and replace him by another mediator subject to approval of the High Court.

**11. Removal or deletion from panel:-**

A person whose name is placed in the panel referred to in Rule 4 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if:

- i. He resigns or withdraws his name from the panel for any reason;
- ii. He is declared insolvent or is declared of unsound mind;
- iii. He is a person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending;
- iv. He is a person who has been convicted by a Criminal Court for any offence; involving moral turpitude;
- v. He is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment;

- vi. He exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator:
- vii. The Court, which empanelled, upon receipt of information, if it is satisfied, that it is not possible or desirable to continue the name of that person in the panel:

**Provided that** before removing or deleting his name, under Clauses (vi) and (vii), the Court concerned shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order which shall be given effect to after its approval by the District & Sessions Judge concerned.

**12. Procedure of mediation:-**

- (a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- (b) Where the parties do not agree on any particular procedure to be followed by the mediator: the mediator shall follow the procedure hereinafter mentioned, namely:
  - i. he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present:
  - ii. he shall hold the mediation conference in accordance with the provisions of Rule 7:
  - iii. he may conduct joint or separate meetings with the parties;
  - iv. each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue: such

memoranda shall also be mutually exchanged between the parties:

- v. each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved :

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.

- (vi) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- (c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

**13. Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908:-**

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

**14. Non-attendance of parties at sessions or meetings on due dates:-**

- (a)(i) The parties residing in India shall be present personally or may be represented by their power of attorney holders at the meetings or sessions notified by the mediator.
- (ii) The parties not resident in India may be represented by their counselor power of attorney holders at the sessions or meetings.

- (b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

**15. Administrative assistance:-**

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

**16. Offer of settlement by parties:-**

- (a) Any party to the suit may, 'without prejudice' offer a settlement to the other party at any stage of the proceedings with notice to the mediator.
- (b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

**17. Role of mediator:-**

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them; he shall not impose any terms of settlement on the parties.

**18. Parties alone responsible for taking decision:-**

The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot

impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

**19. Time limit for completion of mediation:-**

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo mota or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

**20. Parties to act in good faith:-**

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

**21. Confidentiality, disclosure and inadmissibility of Information: -**

- (1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.
- (2) When a party gives information to the mediator subject to a specific condition that it be kept confidential. the mediator shall not disclose that information to the other party. nor shall the mediator voluntarily divulge in any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.
- (3) Receipt or perusal, or preparation of records, reports or other documents by the mediator. or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge in

information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

- (4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:
- i. views expressed by a party in the course of the mediation proceedings;
  - ii. documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
  - iii. proposals made or views expressed by the mediator;
  - iv. admission made by a party in the course of mediation proceedings;
  - v. the fact that a party had or had not indicated willingness to accept a proposal.
- (5) There shall be no stenographic or audio or video recording of the mediation proceedings.

**22. Privacy:-**

Mediation sessions and meetings are private; only the concerned parties or their counselor power of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

**23. Immunity:-**

No mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings for any civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or



action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

**24. Communication between mediator and the Court:-**

- a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in Clauses (b) and (c) of this Rule.
- b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counselor power of attorney.
- c) Communication between the mediator and the Court shall be limited to :
  - i. communication by the mediator with the Court concerned about the failure of party to attend;
  - ii. with the Court concerned with the consent of the parties;
  - iii. regarding his assessment that the case is not suited for settlement through mediation;
  - iv. that the parties:
    - (a) have settled the dispute or disputes; or
    - (b) have failed to arrive at a settlement; or
    - (c) are not willing for a settlement through mediation.

**25. Settlement Agreement:-**

- (1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, they shall attest the signature of their respective clients.

- (2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.
- (3) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.
- (4) The mediator shall fix the date on which the parties to the litigation should appear before the Court concerned and within that period he shall;
  - (a) submit the agreement where an agreement is reached between the parties; or
  - (b) report the result of his efforts in settling the disputes to the Court.

**26. Court to fix a date for recording settlement and passing decree:-**

- (1) On the parties appearing before the Court on the date fixed by the mediator, or such other day, not being beyond seven days from the date fixed by the mediator, the Court concerned shall hear the parties and if it is satisfied that the parties have settled their disputes voluntarily and that the settlement is not collusive, then it shall pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.
- (2)(i) If the settlement disposes of only certain issues arising in the suit or proceeding, the Court shall record the settlement in respect of those issues if they are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, then the court may pass: a decree

straightaway in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled.

(2)(ii) if the issues are not severable, then in that event, the Court shall wait for a decision of the Court on the other issues, which are not settled.

**27. Fee of mediator and costs:-**

1. At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.
2. As far as possible a consolidated sum may be fixed rather than for each session or meeting.
3. Where there are two mediators as in Clause (b) of Rule 3, the Court shall fix the fee payable to the mediators, which shall be shared equally by the two sets of parties.
4. The expense of the mediation including the fee of the mediator, costs of administrative assistance and other ancillary expenses concerned shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.
5. Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.
6. The mediator may before the commencement of mediation, direct the parties to deposit equal sums, tentatively to the extent of 40% of the probable costs of the mediation, as referred to in Clauses (1) (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

7. The expense of mediation including fee, if not paid by the parties, the Court shall on the application of the mediator or parties, direct the concerned parties to pay and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.
8. Where a party is entitled to legal aid under Sec. 12 of the Legal Services Authority Act, 1987, the; concerned Legal Services Authority under that Act shall pay the amount of fee and costs payable to the mediator.

**28. Ethics to be followed by mediator:**

- (1) Follow and observe these Rules strictly and with due diligence;
- (2) Not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- (3) Uphold the integrity and fairness of the mediation process;
- (4) Ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (5) Satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (6) Disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (7) Avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (8) Be faithful to the relationship of trust and confidentially imposed in the office of mediator;
- (9) Conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

- (10) Recognise that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary undisclosed agreement;
- (11) Maintain the reasonable expectations of the parties as to confidentiality;
- (12) Refrain from promises or guarantees of results.

**29. Transitory provisions:-**

Until a panel of mediator is prepared by the District Court, the Courts referred to in Rule 4. may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 5 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

**XX. SCHEDULES**

**Schedule – 1**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTRE**

**(CONSENT TO BE FURNISHED FOR EMPANELMENT)**

Name :  
Father's Name :  
Address (a) Office :  
(b) Residence :  
Telephone No. (a) Office :  
(b) Residence :  
Academic Qualifications :  
Professional Qualifications and Experience :  
Technical experience, if any :  
Special qualification or experience Mediation :  
Enrolment Number with Date and Bar Council :

I..... do hereby submit that I am willing to be empanelled as a mediator in ..... judgeship and give my consent for my empanelment under Rule 4 of the Uttar Pradesh Civil Procedure Mediation Rule, 2007. I assure that during my term as mediator. I shall follow ethics as prescribed in Rule 28 of the said Rules while performing my duties as mediator.

**Full Signature**

**Date**

**Schedule – 2**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTER**

**(CASE SHEET FURNISHED BY THE COURT TO THE CENTER)**

1. Date of Referral :
2. Name of the presiding office referring the matter :
3. Case Number :
4. Category of Case :
5. Name of Parties :
6. Contact information of Parties :
7. Names and Contact information of Counsel :
8. List of documents Annexed to case sheet :

**(To be prepared and signed by the Reader of the Court Concerned)**

**Schedule – 3**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTER  
(Written Notice to the Parties and Their Counsel)**

1. The referral of the case by the Court for mediation :
2. The date of referral :
3. Information about the process of mediation :
4. Name of the mediator :
5. That the parties may object to the mediator appointed giving their reasons for doing so within a fixed time :
6. Date and time of mediation session :

**To be Prepared, Signed and issued by the senior most clerk in the Center in consultation with the mediator)**



**Schedule – 4**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTER  
(Information Sheet Furnished to the parties)**

**Case Name:**

**Case Number:**

1. This mediation is being conducted with the purpose of arriving at an acceptable resolution by setting the dispute in a co-operative manner. Parties should participate in this in good faith.
2. The Mediator will inform the parties of the time and date of the mediation session.
3. (a) The parties residing in India agree to
  - (i) Attend the mediation session personally or
  - (ii) be represented at the mediation sessions by their constituted attorney with authority to settle the dispute  
(strike off whichever is not applicable)
- (b) The parties not resident in India Agree to be represented at the mediation sessions by their constitute attorney or Counsel with authority to settle the dispute.
4. The mediator shall respect the confidentiality of information that the parties request him/her to keep confidential.
5. The parties shall not rely or introduce as evidence in any proceeding the view suggestions or admissions expressed or made by a party. The proposals made by the Mediator and Indication of acceptance by a party during the course of the mediation proceedings.
6. The parties agree not to call the Mediator as a witness or as an expert in any proceeding relating in any way to the dispute, which is the subject of mediation.
7. If the parties reach a settlement, they shall sign an agreement to that effect and this shall be filled into the Court.
8. The entire process is a voluntary process and until parties reach settlement and sign an agreement, any party is free to opt out of the process.
9. If the parties fail to reach settlement, the matter shall be referred back to the Court.

**(To be signed & dated by each party and the Counsel identifying them)**

**Schedule – 5**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTER  
(Settlement Agreement)**

This settlement agreement entered into on..... between.....  
advocate and ..... Identified by Sri..... Advocate.

1. Disputes and differences had arisen between the parties hereto and.....  
(Case No.) was filed on ..... (date of institution) before .....  
(give particulars of the court concerned)
2. The matter was referred to mediation vide an order dated ..... passed  
by..... (Name and designation of the Presiding Officer concerned)
3. The parties agreed that Sri..... (Name of the Mediator) would act as  
their Mediator)
4. Meetings were held during the process of Mediation from ..... to  
..... and the parties have with the assistance of the mediator voluntarily  
arrived at an amicable solution resolving the above-mentioned dispute and  
differences.
5. The parties hereto confirm and declare that they have voluntarily and of their  
own free will arrived at this Settlement/Agreement in the presence of the  
Mediator.
6. The following settlement has been arrived at between the parties hereto:  
A.....  
B.....  
C.....
7. By signing this agreement the parties hereto state that they have no further  
claims or demands against each other with inspect to (Case No.) and the parties  
hereto through the, process of Mediation in this regard have amicably settled  
all disputes and differences.

**Parties Full signature with date**

**Counsel's Full Signature with date**

**(Additions/alternations in the form as per requirement are permitted)**

**Schedule – 6**

**..... JUDGESHIP MEDIATION AND CONCILIATION CENTER  
REPORT TO COURT**

- 1. Court Case No. :
- 2. Referred by :
- 3. Date of Referral :
- 4. Mediator :
  - (a)
  - (b)
  - (c)
- 5. Date(s) of Mediation Sessions :
  - (i) Mediation completed. Agreement enclosed  
or
  - (ii) Mediation completed, no. agreement  
or
  - (iii) Parties not willing for the mediation.
- 6. The parties have been directed to appear before the Court on.....

**Signed by Mediator (s)**

**Dated**

**References:**

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2. T.K. Tope's, *Constitution Law of India*, Revised by Justice Sujata V. Manohar, Eastern Book Company, Lucknow
3. Justice R.S. Bachawat's *Law of Arbitration & Conciliation*, Edited by Anirudh Wadhwa & Anirudh Krishna, Lexi-Nexis-Butterworths, Wadhwa, Nagpur, Vol. 2, 5<sup>th</sup> Edition, 2010
4. M.P. Jain, *Indian Constitutional Law*, 6<sup>th</sup> Edition Lexis Nexis- Butterworths, Wadhwa, Vol. 1 &2, 2010
5. Ghanshyam Das v. Domination of India; AIR 1984 SC 1004
6. Raghunath Das v. Union of India; AIR 1969 SC 674
7. State of Punjab v. Geeta Iron and Brass Works Ltd.; AIR 1978 SC 1608
8. Salem Advocate Bar Association, Tamil Nadu v. Union of India; AIR 2005 SC 3353
9. Afcons Infrastructure and others v. Cherian Verkay Construction Company Pvt. Ltd. and others; (2010) 8 SCC 24
10. Supra
11. Madhya Pradesh State Legal Services Authority v. Prateek Jain and another; (2014) 10 SCC 690
12. The Uttar Pradesh Civil Procedure Alternative Dispute Resolution Rules, 2009
13. The Uttar Pradesh Civil Procedure Mediation Rules, 2009

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