

SPEECH BY HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, CHIEF JUSTICE, HIGH COURT OF HIMACHAL PRADESH, AT PALAMPUR, SCHEDULED ON 13TH SEPTEMBER, 2014.

Hon'ble Mr.Justice Sanjay Karol & Madam Karol,
Hon'ble Mr.Justice Tarlok Singh Chauhan, Hon'ble Mr.Justice Sureshwar Thakur, Judicial Officers, Senior Advocates, Advocates, Authorities of ICAR-IHBT, Mediators, Para Legal Volunteers, Press and Media, distinguished guests on the dais, off the dais:

I feel deeply privileged to inaugurate the State Conference on 'Mediation & State Meet of Para Legal Volunteers', which is aimed at to understand the concept and framework for mediation, process of mediation, techniques of mediation, role and qualities of mediators and the values and culture of individual litigants.

2. If we go back into the history, Mediation is ancient and has deep roots in our country. In old days, people used to resolve their disputes at the community level.

3. Now, the economic growth and globalization has led to explosion of litigation in our country. No doubt, our judicial system is one of the best in the world, but it is also criticized due to long delays in the resolution of the disputes. Hence, the need of Alternative Dispute Resolution mechanisms, like Mediation, is felt.

4. The concept, implementation and successful continuation of the Mediation programme at District Level can be broadly classified into the following seven stages:

- (1) Introduction of the Concept
- (2) Training
- (3) Establishment of Centres
- (4) Referral & Implementation
- (5) Monitoring
- (6) Output Analysis; and
- (7) Continuing Education.

5. Mediation can be characterized as conflict resolution by the involved parties with the help of a neutral agent, who is referred to as the Mediator. This is, in short, the essence of mediation.

6. Mediation has been used in many jurisdictions to facilitate resolution of cases through trained Mediators, who explore, with litigants, the many avenues of settling cases and reaching compromises. In fact, mediation is perceived to be a useful alternative to litigation and is considered to be a model to relieve the workload of the courts. Mediation is an innovative way of dispute resolution and directly connected with the judicial reforms. The basic assumption behind the concept of mediation is that *dispute is healthy; not solving a dispute is dangerous*. The reason for conflicts is very often

not that people do not want to solve their conflicts, but rather that they just do not know how to do that. During the course of mediation, the mediator takes care of the process; the involved parties take care of their topics and contents. The mediator helps the parties to express their feelings, emotions and ideas and takes care of balance between the parties. Settlement through mediation is voluntary, practical, amicable and fair; in mediation parties retain the right to decide for themselves, whether to settle disputes and the terms of any settlement. Tools of negotiation one learns during the mediation process may help in other situations of life too.

7. Mahatma Gandhi in his autobiography, "The Story of My Experiments with Truth", while writing about his experiences in South Africa, said and I quote:

"My joy was boundless. I had learnt the true practice at law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. 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."

8. Mediation attempts to change dispute from “win-lose” to “win-win”. It is a non-adversarial process of helping people to come to an agreement. Mediation is advantageous in numerous ways, such as:

1. The parties have control over the mediation in terms of – firstly its scope i.e. the terms of reference or issues can be limited or expanded during the course of the proceedings; and secondly, its outcome i.e. the right to decide whether to settle or not and the terms of settlement.
2. Mediation is participative, i.e. the parties get an opportunity to present their case in their own words and to directly participate in the negotiation.
3. Mediation is voluntary and any party can opt out of it at any stage if he feels that it is not helping him. The self-determining nature of mediation ensures compliance with the settlement reached.
4. Mediation procedure is speedy, efficient and economical.
5. Mediation procedure is simple and flexible. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day-to-day activities.

6. Mediation process is conducted in an informal, cordial and conducive environment.
7. Mediation is a fair process. The mediator is impartial, neutral and independent. The mediator ensures that pre-existing unequal relationships, if any, between the parties, do not affect the negotiation.
8. The Mediation process is confidential.
9. The Mediation process facilitates better and effective communication between the parties which is crucial for a creative and meaningful negotiation.
10. Mediation helps to maintain/improve/restore relationships between the parties.
11. Mediation always takes into account the long term and underlying interests of the parties at each stage of the dispute resolution process – in examining alternatives, in generating and evaluating options and finally, in settling the dispute with focus on the present and the future and not on the past. This provides an opportunity to the parties to comprehensively resolve all their differences.
12. In mediation the focus is on resolving the dispute in a mutually beneficial settlement.

13. A mediation settlement often leads to the settling of related/connected cases between the parties.
 14. Mediation allows creativity in dispute resolution. Parties can accept creative and non-conventional remedies which satisfy their underlying and long term interests.
 15. When the parties themselves sign the terms of settlement, satisfying their underlying needs and interests, there will be compliance.
 16. Mediation promotes finality. The disputes are put to rest fully and finally, as there is no scope for any appeal or revision and further litigation.
 17. Refund of court fees is permitted as per rules in the case of settlement in a court referred mediation.
9. Any programme for mediation cannot be effectively implemented unless and until there is adequate awareness among the consumer of justice. Thus, it is our bounden duty to create awareness among Advocates, Judges and litigant public by using trained Mediators so as to enable them to understand the intricacies of mediation. Role of the parties, advocates and mediators is vital in resolving the entire conflict between the parties through mediation. Thus, the solution lies not only in the hands of judges and justices but in each and every citizen in order to achieve "Justice for all, and by all".

10. Mediation has a great potential for providing satisfying solutions to disputes. In addition, mediation and other forms of Alternate Dispute Resolution ("ADR") mechanisms may provide lawyers and other professionals with a possible avenue for diversification.

11. Development of Para Legal Services is another step towards easy access to justice for all stakeholders. National Legal Services Authority has formulated modalities and has prescribed that the District Legal Services Authority has to identify about 50 volunteers at District Level and about 25 volunteers at Taluk Level and training is to be imparted to such volunteers. Para Legal Volunteers are to be identified from the following target groups:

- i) Advocates, Teachers and Lecturers of Government and Private School & Colleges of all levels.
- ii) Anganwadi Workers.
- iii) Private or Government doctors and other Government employees.
- iv) Field level officers of different departments and agencies of the State and Union Governments.
- v) Students of graduation and Post graduation in Law, Education, Social Services and humanities.
- vi) Members of a political Service oriented Non-Governmental Organizations and Clubs.

vii) Members of Women Neighbourhood Groups,
Maithri Sanghams.

viii) Educated Prisoners serving long term sentences in
Central Prison and District Prison

ix) Social Workers and volunteers, volunteers of
Panchayat Raj and Municipal Institutions.

x) Members of Co-operative Societies.

xi) Members of Trade Unions.

xii) Any other person which the District Legal Services
Authority or Taluk Legal Service Committee deems fit
to be identified as Para Legal Volunteers.

12. During training programmes, exposure is to be
provided to the Para Legal Volunteers for generating legal
awareness in respect of constitutional and statutory rights and
duties, general civil, criminal and procedural laws, as well as
qua the following special issues:

i) Women

ii) Children

iii) Students

iv) Farmers

v) Industrial and Agriculture labour

vi) Prisoners

vii) Victims of natural disaster

- viii) Physically challenged, including persons suffering from Mental disorder and mentally retarded persons.
- ix) Victims of Trafficking i.e. women and children as well as those suffering from HIV/AIDS.
- x) Members of Scheduled Castes and Scheduled Tribes.
- xi) Bonded Labour
- xii) Consumers
- xiii) Senior Citizens.
- xiv) And other beneficiaries under Legal Services Authority Act.

13. While imparting training to the Para Legal Volunteers, following topics are to be covered:

- (i) Hindu Marriage Act, Christian Marriage Act, Muslim Women's Protection Act and Special Marriage Act.
- (ii) Child Marriage Restraint Act, 1929.
- (iii) Family Court Act, 1994.
- (iv) Guardian and Wards Act, 1890
- (v) Hindu Minority and Guardianship Act.
- (vi) Maternity Benefit Act.
- (vii) Medical Termination of Pregnancy Act.
- (viii) Dowry Prohibition Act.
- (ix) Dowry Harassment
- (x) Section 125 Cr.P.C.

- (xi) Harassment of working women.
- (xii) Protection of Women from Domestic Violence Act, 2005.
- (xiii) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.
- (xiv) Consumer Protection Act
- (xv) Labour Welfare Laws
- (xvi) Procedure for claiming compensation under Fatal Accidents Act, Motor Vehicles Act, Workmen's Compensation Act and compensation from Railway Accident Claims Tribunal.
- (xvii) Bonded Labour (Abolition) Act, 1976.
- (xviii) F.I.R.
- (Xix) Arrest – Bail.
- (xx) Rights of Prisoners.
- (xxi) Fundamental Rights of accused including prisoners.
- (xxii) Fundamental Duties of accused including prisoners.
- (xxiii) Registration and Stamp Duty.
- (xxiv) Promissory Notes
- (xxv) Revenue Laws
- (xxvi) *Nyaya Sankalp* programme undertaken by

National Legal Services Authority in collaboration with United Nations Development Programme entitled TAHA (Trafficking and AIDS/HIV).

(xxvii) Entitlements conferred on special groups by Governments under various schemes, orders and legislations.

(xxviii) Public Interest Litigation.

(xxix) Lok Adalats, A.D.R. system, Free Legal Services under Legal Services Authorities Act.

(xxx) Any other topic or Act the District Legal Services Authority and Taluk Legal Services Committee deem it necessary, including those related to local problems.

14. We are also in the process of framing policy as to what procedure has to be adopted for imparting training to the Para Legal Volunteers; moral duties of Para Legal Volunteers and their disqualifications; and also identification of Para Legal Volunteers in Jails.

15. The Para Legal Volunteers can reach the remote areas of the entire State and educate the people. They are the soul and heart of the entire Scheme and they will play an important role for achieving the aim and object enshrined in

the Legal Service Authorities Act, 1987 and the Rules & Regulations framed thereunder.

16. I hope and trust that if a collective effort is made with dedication and humanity, we will certainly achieve the aim, object and purpose of mediation at the earliest.

17. I will conclude with the words of Abraham Lincoln, who once said and I quote:

“Discourage litigation. Persuade your neighbours to compromise whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time.”

18. Thanking you all for being with us in the spirit of court reforms and continuing judicial education.

(Justice Mansoor Ahmad Mir),
Chief Justice.