



TRANSFORMING HARYANA - PROGRESSING HARYANA

NEWSLETTER

October & November, 2016



Inside:

DLSA, Mewat adjudged as best in North Zone

Implementation of NALSA Schemes

Awareness through Legal Literacy Vehicles

Training of Panel Lawyers

National Lok Adalat

Article on Mediators for Rural Haryana



AWARENESS ABOUT WELFARE SCHEMES



To empower women and make poor aware about rights and the benefits of various welfare schemes of the Government, District Legal Services Authority, Mewat organized a camp at Village Adber near Nuh. It was organized in collaboration with Sehgal Foundation (NGO). It was attended by around 1570 persons. Out of them, about 650 were females. Gathering was made aware of the various welfare schemes and policies to tackle the poverty. They were also apprised about the Legal Services Authorities and its various functions. Various Departments of Government were requested to put up their stalls at the said camp so that the gathering could take benefit of the various welfare schemes. Various Departments such as Labour Department, Social Welfare Department, Child Care & Protection Department etc. set up their stalls at the said camp. 700 forms related to labour schemes were filled up for registration as registration is the requisite for reaping benefits under various welfare schemes of the Labour Department. 100 forms of Old Age Pension Scheme and other schemes were filled up. The said camp was a huge success. It not only made people aware of the welfare schemes but also connected them to the various welfare schemes.

Mediators for Rural Haryana: Workshops to Develop Best Practices

by Prof. Jane Schukoske' and Navneet Narwal*

The Constitution of India mandates the judiciary to act as the guardian in protecting the fundamental rights of the people. In addition to the formal legal system (courts of law), India enacted the Legal Services Authorities Act in 1987 to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Under this Act, each of India's 29 states and seven union territories has a separate State Legal Services Authority (SLSA) and each district has a District Legal Services Authority (DLSA). In addition to providing advice and court representation for eligible individuals, the DLSA is required to organize legal literacy camps for the community, and to host Lok Adalat ("people's court") and run mediation centers to provide alternative dispute resolution (ADR).

The processes of ADR, including arbitration, conciliation, lok adalat, mediation, and judicial settlement, are crucial in India as they have the potential to secure speedy and inexpensive justice, unlike the formal legal system, which is often slow and costly. A popular mechanism of ADR is mediation, which

can be defined as a structured process of dispute resolution wherein a neutral person (mediator) trained in the process works with the parties of the dispute to bring them to a mutually acceptable agreement. A mediator is only a facilitator who neither decides the dispute nor gives an award.

Mediation is a completely voluntary process; parties participate at their own will and can opt out at any time. The process helps parties focus on reaching a mutual agreement with long-term gains and a win-win result that benefits all involved. Hence, it is particularly effective and recommended in disputes related to property, partition, marriage, custody of children, commerce, labour, banking, insurance, and consumer transactions. Mediation is not recommended when allegations are fallacious and/or there is a serious imbalance between the positions of parties and fair negotiation is not possible.

To function well, a mediation centre requires community awareness, infrastructure, regular training of mediators, appropriate case referral by judges, and case management systems. Villagers should be regularly made aware about the benefits of mediation so that they can develop confidence in the process and the desire to solve their disputes through it, even before litigation. Mediators for villagers in rural Haryana require knowledge of local context and insight into the power imbalances in the community that may interfere with the dispute resolution process. They should be well equipped with skills in conflict resolution and negotiation. The mediator faces a unique challenge when a rural party may feel pressured by the opposing party to settle on unfair terms. This article examines this situation and proposes workshops for mediators to devise best practices to employ.

The Haryana State Legal Services Authority (HSLSA) publication on Alternate Dispute Resolution contains the Mediation Rules 2015¹ including two that focus on the roles of the mediator and of the parties:

Rule 16: Role of Mediator. The mediators shall attempt to facilitate voluntary resolution of the dispute(s) by the parties. He shall assist them in understanding the problems, identifying underlying issues, reducing misunderstandings, generating the options and developing option [sic] which are mutually acceptable to both the parties.

Rule 17: Parties alone responsible for taking decision. The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

Several situations illustrate the point that mediators must carefully assess understanding and voluntariness in the rural context. Power dynamics within a village or district may place a rural individual at a disadvantage in mediation of a dispute. In this situation, a party may feel compelled to accept an unfavorable resolution. Factors such as caste, religion, age, gender, language, and other cultural differences may interfere with the mediation process, and the mediator should be alert to the need to check on the parties' understanding. In family disputes where there has been domestic violence or divorce issues, the mediator must be aware that there may be danger to a woman, elder, or child, and a threat of violence may interfere with reaching an acceptable voluntary resolution.

A good mediator encourages parties to focus on their long-term interests, brings out underlying issues, and takes the parties out of deadlock if such a situation arises. The mediator helps parties identify key concepts and steps, and organize key information. A mediator must communicate in a way that is clear, user-friendly, and practical. Use of formats such as bullet points, diagrams, and pictures may be helpful.

Chapter VI of the Mediation Training Manual of India² describes the stages of mediation and suggests types of questions that may be used to clarify each party's concerns and possible outcomes. In separate sessions with each party, there is "reality testing" to predict probable success at trial. The mediator assists each party in envisioning the best alternative to a negotiated agreement (BATNA), the worst alternative (WATNA), and the most likely alternative (MLATNA)³.

1 Alternate Dispute Resolution Mechanisms, Mediation Rules 2015, available at <http://hslsa.nic.in/Publications%20PDF/ADR.pdf>

2 *Mediation Training Manual of India*, Chapter VI Stages of Mediation, available at <http://supremecourtindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf>.

3 *Mediation Training Manual of India*, at pp. 31-32.

Special care is needed in the mediation process with parties who have little familiarity with ADR and court proceedings. Rural litigants may be disoriented or afraid. In view of power dynamics that often work to the disadvantage of the rural poor, it may be difficult to build trust among parties to candidly share information during the mediation process. Confidentiality must be explained. Rural litigants may sometimes lack documentation needed to win at trial, but if there is a means of obtaining required documentation, it should be mentioned so they understand that going to trial is still a viable option.

Recommendations for workshops for rural Haryana mediators

Mediators working with HSLSA can strengthen their skills by comparing notes in workshops on effective techniques and mutually beneficial outcomes of typical rural disputes. Workshop exercises raising rural disputes can be developed along the lines of the hypothetical business-to-business dispute included in the Mediation Training Manual of India at pp. 60-61. Mediators can share and learn from peers about the following issues, among others:

- Introduction of mediation: key points that may require special discussion;
- Active listening, to draw out a party's underlying interests;
- Compassionate ways to address difficult communications issues that arise in mediation, such as from humiliation, hurt, fear, and anger;
- Preparation for mediation on a matter outside the mediator's legal expertise;
- Brainstorming techniques to generate multiple options for resolution of particular disputes;
- Community resources which might be part of a resolution, e.g., a shelter, social work or counseling services, involvement of a teacher or other respected third party, NGO services, particular government programs;
- Helping the parties evaluate options;
- Ethical issues for the mediator such as conflict of interests;
- Intervening to diffuse coercion by a dominant party, and
- Documenting agreement.

Mediation in rural Haryana has the potential to benefit disputing parties by working out solutions that may not be available through the court and that may be speedier than court resolution can provide. To help parties reach fair outcomes, mediators require familiarity with the nature of the dispute (family law, consumer, insurance, banking, property, and the like) and DLSAs could create a pool of trained mediators for particular types of cases. Efforts should be made to sensitize lawyers to motivate their clients to opt for mediation as most of them are not in favour of this process and may perceive it as a threat to their profession. Our legal system should develop space to incorporate some incentives or rewards for lawyers who will settle their cases through mediation.

DLSAs should expand steps to familiarize the community about mediation through community media and legal literacy camps. S M Sehgal Foundation in collaboration with DLSA, Nuh has organized legal literacy camps at village level in which Secretary, DLSA and panel lawyers create awareness about their different programs; awareness about mediation can be part of such camps.

To fulfill the goal of access to justice, mediators must be sensitive to the contexts in rural communities. Mediation workshops help lawyers strengthen their skills to help parties see a dispute anew, imagine acceptable compromises, and voluntarily settle free from coercion.

*Prof. Jane Schukoske is an advisor to S M Sehgal Foundation.

Navneet Narwal is program leader, Governance and Policy Advocacy, S M Sehgal Foundation, www.smsfoundation.org.