



## Mediation as an Alternative Dispute Resolution System: Analysis of mediation centers in the state of Punjab

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“तमसोमाज्योतिर्गमय”

“From darkness lead me to light”

**ABSTRACT:** India's Legislation is evolving with the transitional exigencies of the modern era. To save over-burdened judiciary from number of pending cases, new concepts like Arbitration, Conciliation, Lok Adalats etc. were adopted. Mediation is one of the effective methods which was introduced to overcome the shortcomings of the above mentioned redressal methods. The process of mediation was really felt necessary to create the all over win-win situation and to settle the disputes amicably. Like other High Courts, Punjab and Haryana High Court also gave a special place to the concept of mediation by enacting rules and establishing the mediation centers at district levels. This research paper summarised the legislative and factual position of the concept of mediation in the state of Punjab.

**Keywords:** Alternative Dispute Resolution System, Arbitration, Conciliation, Legislation, Mediation.

### 1. Introduction

Legal profession fascinates everyone including its own law students. New lawyers enter in the field with new zeal. Many of them want to show the power of their knowledge to arrange the justice to the needy. But sometimes they forget the basic notions about the law which they used to read in the class of jurisprudence like “Justice is a child of poor<sup>1</sup>” and “Justice is the interest of stronger<sup>2</sup>”. Nobody is above the law and the system is providing the justice through the heaven falls, even then litigants are unsatisfied and not prefer to knock the doors of the courts for proper execution of their rights. The negative notions lead us to the path of darkness in the profession. Many a times, a victim comes in the court to seek justice with a ray of hope but after years of battle he leaves the corridors with an oath not to come again. Sometimes the black coats become the butt of jokes. The reason might be due to some of the reasons like:

- (a) Costly and slow process of litigation
- (b) Winning the case is more important than the win-win situation.
- (c) Sometimes some black sheep adopt the malpractices which shaken the belief of the litigant.

The darkness of this side of profession increases with the increase of the hierarchy of the courts. Lengthy and non-ending litigation system frustrates a genuine litigant which causes him loss of the time and money. The time consuming, rather we may

<sup>1</sup> R.M Bhagat, *Political Thoughts Plato to Marx* 54 (New Academic Publishing Co., Jalandhar, 2001)

<sup>2</sup>*Ibid.*

say the time wasting lengthy process also causes the loss of resources to the nation. 'Time is money'. When a busy businessman or a professional loses his valuable time to wait for his turn in the court of law, he loose much more along with it. The process of Alternative Dispute Resolution (hereinafter 'ADR') suggests the alternative means of resolving the conflicts through reliable, efficient and judicious methods like mediation. The quest of justice opens the door of mediation through which litigants can resolve their dispute by consensus in an organized manner. The objective of the present research paper is to analyse the emergence of the concept of mediation in the field of ADR system and the working of mediation centers established in the state of Punjab under the stewardship of Punjab and Haryana High Court.

## 2. Defining Mediation

Mediation is a branch of ADR system which becomes popular with the span of time. In fact, the need of ADR Mechanism in the over burdened judicial system has been extensively perceived to offload some cases from the records of the judicial courts. The mediation like a tool of ADR system has been very successful since immemorial times. Mediation process can be traced back in ancient culture. Cases related to mediation can be found in Phoenician and Babylonian Commerce.<sup>3</sup> Romans also recognized Mediation in Justinian Digest in 530-33 BC<sup>4</sup>. Now days in some countries, especially in USA, wherein the bulk of litigation is settled through one of the mediation processes before the cases goes for trial. From the practical experience as an Advocate and a mediation trainee, it was observed by the researcher that the mediation institutions bears a striking resemblance, to some extent, to the ancient dispute resolution system where the mediator, an expert, used to control the process such like Salus in ordinary dispute settlements in old Indian society and Panches in Indian Panchayati Raj system. But unlike the old system, the mediation is sanctioned and backed up by the law of the land.

Mediation is a non-binding dispute resolution method which involves a neutral third party who amicably settle the disputes of parties to reach a mutually agreeable solution<sup>5</sup>. Apart from this, 'Mediation' has been defined as a form of decision-making in which the parties are assisted by someone external to the conflict called the mediator, who assist the parties in their decision making in various ways. It has the disparity with those forms of dispute resolution in which the third person is the decision-maker for the parties, such as arbitration, adjudication, expert determination and court proceeding<sup>6</sup>. In simple words the institution of Mediation is a forum which encourages a problem solving approach and has received the judicial sanction with the span of time. It is a structural negotiation administered by a facilitator who is skilled, trained and necessary experienced to help the parties to reach a solution to their dispute. The concept of mediation has the important characteristics which makes it successful like confidential, direct role of parties. The mechanism of mediation is very

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<sup>3</sup> Cyril Chern, *The Commercial Mediator's Handbook 16* (Informa Law from Roulledge, Abingdon & NY, 2015)

<sup>4</sup> *Ibid.*

<sup>5</sup> Bryan A. Garner, *A Dictionary of Modern Legal Usage* 1003 (St. Paul, Minn., West Publishing Co., 2004).

<sup>6</sup> L. Boulle and M. Nestic, *Mediation skills and techniques: Triangle of Influence* 58 (Bloomsbury Professional, Heywards Heath, 2010).

effective and flexible. The sessions can be designed in a way that parties may believe the process and each party may submit a brief statement to the mediator.<sup>7</sup>

### 3. Emergence of the concept of mediation

To promote mediation and to ensure that parties may have the recourse to mediation, The Uniform Mediation Act, 2003 (hereinafter 'the act of 2003') passed by USA which provides the court annexed mediation. It also provides administrative agency and arbitrator reoffered mediation. To benchmark the standard of the mediation process and mediation, the model of American Arbitration Association (AAA) was adopted in 2009 and there is no need of written record to be kept.

In 2007, mediation rules were also adopted by the World Intellectual Property Organisation and provisioned that where a mediation agreement provides for mediation under the WIPO Mediation Rules, the prevalent rules of mediation shall apply as these Rules shall be deemed to be the part of that Mediation agreement."<sup>8</sup>

United Nations department of political Affairs also recognized the Mediation as a preventive diplomacy<sup>9</sup> and a peace making way to solve intra-state and inter-state disputes<sup>10</sup>. In 2006, the mediation support Unit was established to expand the resolution system<sup>11</sup>. It dealt about thirty cases all over the continents between the three years i.e.2008-11<sup>12</sup>.

As India always remains a good receptor of International treaties and conventions, her mediation Rules and procedures are also based on UNCITRAL models. U.N. parliament and the Council of the European Union set objectives in its Directives to maintain and develop an environment of justice Previously European Council in Tampere gave its preferences to Alternative and extra Judicial procedures to facilitate the better access to justice<sup>13</sup>. In 2000, it advocated for the alternative methods to resolve the civil and commercial disputes<sup>14</sup>. Further in an historic move, a green paper on ADR in civil and commercial matter was presented<sup>15</sup>.

With the span of time, Mediation was seen as an effective alternative for settling the disputes amicably. Due to its merits and characteristics like voluntariness, cost effective and quick resolution it was found to be itself an alternative to the other alternative dispute resolution methods. A legal frame work was made out and directives were adopted. Resultantly, on 21<sup>st</sup> May, 2008, the European Union mediation directives were passed with the set goals to facilitate access to ADR system and to encourage the use of mediation by resolving the disputes through mediation while maintaining the equilibrium between mediation and litigation<sup>16</sup>.

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<sup>7</sup>Mediation: An Overview of Alternative Dispute Resolution, available at:[http://lawcommissionofindia.nic.in/adr\\_conf/Mediation%20Goodin8.pdf](http://lawcommissionofindia.nic.in/adr_conf/Mediation%20Goodin8.pdf) (last visited on March 16, 2015).

<sup>8</sup> WIPO Mediation Rules, available at <http://www.wipo.int/amc/en/mediation/rules/> (visited on August 9, 2017)

<sup>9</sup> Prevention and Mediaion, available at <http://www.un.org/undpa/en/diplomacy-meditation> (last visited on Oct.08,2017)

<sup>10</sup> Mediation Fundamental, available at <http://peacemaker.un.org/mediationapp#MediationOverview> (last visited on Oct.08,2017)

<sup>11</sup> Mediation Support Unit, available at [https://en.wikipedia.org/wiki/Mediation\\_Support\\_Unit](https://en.wikipedia.org/wiki/Mediation_Support_Unit) (last visited on Oct.08,2017)

<sup>12</sup>*Ibid.*

<sup>13</sup>Tampere European Council 15 and 16 October, 1999 Presidency Conclusions, available at: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm) (last visited on Oct.13,2017)

<sup>14</sup>2266th Council meeting- JUSTICE AND HOME AFFAIRS -Brussels, 29 May 2000, available at: [http://europa.eu/rapid/press-release\\_PRES-00-183\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-00-183_en.htm?locale=en) (last visited on Oct.13,2017)

<sup>15</sup>GREEN PAPER on alternative dispute resolution in civil and commercial law, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0196&from=EN> (last visited on Oct.13,2017)

<sup>16</sup>Directive 2008/52/EC of The European Parliament And Of The Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, available at <http://eur-lex.europa.eu/eli/dir/2008/52/oj> (last visited on Oct.13,2017)

Proceeding with the international developments and changing trends law commission of India(hereinafter called ‘the commission’) in its report<sup>17</sup>suggested conciliation courts on the pattern of Himachal model. Conciliation courts were established in Himachal to resolve all type of the disputes after the pleadings filed by the parties. These courts were usually presided over by judge who does not have jurisdiction over the matter<sup>18</sup>. These courts were gained the popularity and success with the span of time. The concept of conciliation courts was discussed by the commission and it was further suggested that the hardships faced by these courts can be removed by an Amendment in order X of code of civil procedure, 1908 (hereinafter called ‘the Code of 1908’)which exhort that if a party without any lawful excuse does not appear before the appointed forum then the dealing court can give any suitable decision against the defaulting party.<sup>19</sup>

After the opinion was putforth in various fields and conferences, it was found not practical as it was against the spirit of the Alternative adjudicatory process. Further the changes in Arbitration and conciliation Act may have become a necessity which was considered not possible at that time and the matter was left for further considerations<sup>20</sup>.

Further, the process of mediation in India took off when the resolution passed in the conference comprising of the chief ministers and the chief Justices held in New Delhi on 4<sup>th</sup> December, 1993 under the chairmanship of the then Prime Minister of India and presided over by the chief Justice of India<sup>21</sup>. It was resolved that the courts are overburdened and that a number of disputes must be resolved by alternative modes such as arbitration, mediation and negotiation. It was emphasized that the desirability of disputants taking advantage of alternative dispute resolution mechanism, providesthe procedural flexibility, saved valuable time and money and avoid the stress of a conventional trial<sup>22</sup>. The fruitful result of the conference was the new era of ADR system along with the mediation as an integral part of it. The Arbitration and Conciliation Act, 1996 (hereinafter called ‘the Act of 1996’) was drafted and enacted to coalesce the arbitration and conciliation laws in one code and to toe the domestic laws in line with the foreign arbitral awards.<sup>23</sup>

### 3.1 Arbitration and Conciliation Act, 1996

The mediation has its roots in the Act of 1996,which was enacted to enforce the foreign arbitral awards and to encourage the domestic arbitration. The said Act also defines the law relating to Arbitration, conciliation and matters connected therewith. The General Assembly of United Nations has recommended that all countries should give priority to the UNCITRAL model law and rules to establish a unified legal framework for the fair and efficient settlement of disputes arising in International Commercial relation.<sup>24</sup>Section 30 of the Act of 1996 also carries the provision on the

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<sup>17</sup> Law Commission of India, 129<sup>th</sup> Report on Urban Litigation Mediation As Alternative to Adjudication, 1988

<sup>18</sup> *Id.* at 46.

<sup>19</sup> *Id.* at 50

<sup>20</sup> *Ibid.*

<sup>21</sup> Government of India, *Joint conference of the Chief Ministers of the states and Chief Justices of the High Courts* (Department of Justice, Ministry of Law and Justice, 1993)

<sup>22</sup> *Ibid.*

<sup>23</sup> Long Title, The Arbitration and Conciliation Act, 1996, available at: <http://lawmin.nic.in/ld/P-ACT/1996/The%20Arbitration%20and%20Conciliation%20Act,%201996.pdf> (last visited on Oct.13,2017)

<sup>24</sup> *id.* at 1

similar pattern which deals with the process of mediation and acclaims it as one of the ADR mechanism.<sup>25</sup>

### 3.2 The Code of Civil Procedure

Law commission again gave its stress over the Alternative dispute resolution mechanism in its another report<sup>26</sup> and suggested an important amendment in the Code of 1908. Apropos to the above discussed report of the commission it was suggested that the court must ensure the ADR methods to be accessed by the parties in appropriate forums of arbitration, conciliation, mediation etc. and in case of zero output from the above sessions the parties may return to the court to proceed with their litigation process.

The process of Mediation then got its authenticity in civil disputes with the Amendment<sup>27</sup> in the Code of 1908. Section 89 was re-added in the said code which empowers the courts to refer the litigants to any appropriate forum of arbitration, conciliation, lokadalat or mediation to settle their disputes according to the terms agreeable between them.

The above said amendment<sup>28</sup> further amended Order X of the Code of 1908 which empowers the court to direct the parties to the suit to opt for one of alternative dispute resolution system mention in section 89 and to appear before it.

Further, the Honorable Supreme Court of India<sup>29</sup> instructed all subordinate courts to direct parties to alternative dispute resolution methods. The draft of rules<sup>30</sup> was prepared and considered by the Supreme Court, for enactment by High Courts. Directions were issued by Supreme Court to all High Courts, Central Government and State Governments to expedite the procedure to adopt and frame the mediation rules. To ensure effective and result in quicker dispensation of justice a Committee headed by Justice JagannathRao, a former Judge of the Supreme Court and Chairman, Law Commission of India, was constituted. The Committee considered a model case management formula which could be followed while taking recourse to the ADR. Further, it was directed that in case of any difficulties while working on the amendments, the same reconsidered by the committee. Accordingly, the committee prepared and submitted its report dealing with model ADR and Mediation Rules.

The intention of the legislature was that where it appears to the Court that there exists an element of settlement the parties may asked to opt for any ADR methods. The Court should fix a date for a report on the ADR forum opted within two months from the date of reference.<sup>2</sup>

The law commission of India also showed its concern regarding the vagueness of mediation in the country and proposed the amendment in section 89 of the code of 1908.<sup>31</sup> The commission recommended to refer the case to the ADR forum before

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<sup>25</sup> *Id.* at 17.

<sup>26</sup> Law Commission of India, 163<sup>rd</sup> report on The Code of Civil Procedure (Amendment) Bill, 1997.

<sup>27</sup> The Code of Civil Procedure (Amendment) Act, 2002 (Act 46 of 1999), section 7 (w.e.f. 1-7-2002)

<sup>28</sup> *Ibid.*

<sup>29</sup> *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, AIR 2005 SC 3353.

<sup>30</sup> Consultation Paper on ADR and Mediation Rules, available at: [http://lawcommissionofindia.nic.in/alt\\_dis.pdf](http://lawcommissionofindia.nic.in/alt_dis.pdf) (last visited on Oct.16,2017)

<sup>31</sup> Law Commission of India, 238<sup>th</sup> Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions, (December, 2011).

framing the issues in the case and to adopt the procedure provided in the Act of 1996. There is one more provision regarding the refund of fee of the parties, which the Commission fetches the attention of the government and was inserted by the same Amendment Act<sup>32</sup> under which the court after the successful session of any mediation or conciliation and after the final settlement of dispute may issue a certificate to the party. On the basis of that certificate the concerned party can take the refund of his court fee paid at the time of filling the suit.<sup>33</sup>

Further, coping up with the international and national statutory developments, Punjab and Haryana High Court at Chandigarh also framed the rules while exercising its powers entrusted by the Code of 1908. Mediation (Punjab & Haryana High Court) Rules<sup>34</sup> framed by the Honorable High Court are very exhaustive and covers many spheres of the aspect. The roots of the rules framed are based on the international directives and rules discussed above. Let's have a look on the similarities, dissimilarities and distinguished features it contains in its rules after comparing it with the directives of European Council which are explained at length by the Council:

Table 3.2.1

| Features                                  | European Union Directives <sup>35</sup> | Punjab and Haryana High Court Rules <sup>36</sup> |
|---|---|---|
| Definitions of Mediation and Mediator     | Article 3                               | Not Provided                                      |
| Appointment of mediator                   | Not provided                            | Rule 2  |
| Confidentiality                           | Article 7                               | Rule 19   |
| Enforceability of Agreement               | Article 6                               | Rule 24   |
| Ethics/Code of Conduct                    | Article 4                               | Rule 26   |
| Enforceability to appear before the panel | Not provided                            | Rule 12   |
| Immunity from evidence                    | Not provided                            | Rule 11   |
| Panel of mediator                         | Not provided                            | Rule 3  |
| Procedure of mediation                    | Not provided                            | Rule 10   |
| Responsibility of parties                 | Not provided                            | Rule 16   |
| Role of mediator                          | Not provided                            | Rule 15   |
| Quality of Mediation                      | Art.4                                   | Not provided                                      |

The above table of comparison shows that the rules framed by the Honorable High Court are vaster and it covers many aspects of mediation which are *sine-qua-non* to attain satisfactory results in the domestic scenario.

#### 4. Mediation Process

The process of mediation is three tier systems in which judges, lawyers and litigants are fully involved. As the mediation has become the part of system, the judges feel a systematic process while referring the case to mediation centre. According to Mediation Rules 2003, both the parties can request for mediation. Even one of the

<sup>32</sup>Supra note 27.

<sup>33</sup>S.16, Court fee Act, 1870.

<sup>34</sup>MEDIATION/CONCILIATIONRULES, available at [http://highcourtchd.gov.in/sub\\_pages/left\\_menu/Rules\\_orders/adr\\_rules/mediationrules.pdf](http://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/adr_rules/mediationrules.pdf) (last visited on sept.25,2017)

<sup>35</sup>Supra note 16.

<sup>36</sup>Supra note 34.

parties can request to send the case for mediation and if the court feels that any element of compromise exists, it can refer the case for mediation. The court is supervisory institution under the stewardship of district and session judge who acts as an in charge of mediation centre at district level. This model of mediation centers ensures that the concept of mediation is integral part of the judicial system. The trained lawyer who plays the role of mediator conducts the mediation. Advocates have been called the social engineers thus they are more successful in the mediation process as the litigants do not hesitate to convey their problem to the advocates. Mediators start the process by taking the parties in his confidence. Once the mediator succeeds in building the faith on him, he hunts in search of real dispute between the parties. Mediator assists the parties to find their own solution and settle their disputes. In this way, mediator controls the process and unlike an arbitrator and conciliator, he do not give the parties his own advice. Parties play their active role in the process. But the whole task is not as simple for a dedicated mediator as he has to pass through many difficult situations like impasse during the process and once the mediator cut the ice, he can achieve his goal to mutually settle the dispute of the litigants.

#### **5. Genesis of Mediation Centers in Punjab**

Honorable Justice S.B. Sinha, the then Chairman of Mediation and Conciliation Project Committee inaugurated the Mediation and Conciliation Centre at Punjab and Haryana High Court in March 2008. Thereafter, in May 2008 the Mediation Centre was opened at District Courts Chandigarh. Twenty Nine trained mediators were appointed to give their services to the litigants referred there by the court. In November, 2008, Twelve Mediation Centers were opened at the different district courts of Punjab to give their valuable services to the parties advised by the annexed courts to resolve their legal disputes amicably. Nearly after five years later, in March 2013 another mediation centre was inaugurated at Punjab and Haryana High Court by the then Chief Justice of the High Court.<sup>37</sup> At present approximately ninety six trained advocate mediators are providing their services at this centre. With the sincere efforts of the judiciary, now there are twenty two Mediation Centers are working at the district head quarters of Punjab.

Thirteenth finance commission had recommended the grant of Rs.5000 crore in its period 2010-15 to improvise the judicial system by creating more ADR centers. Out of which, Rs.600 crore were granted to the ADR centers and Rs.150 crore was granted for the training of mediators/ conciliators.<sup>38</sup> For the state of Punjab Rs.4.50 crore was release to the state judicial academy for mediator's training out of which Rs.1.51 crore was utilized till December 2014. Apart from that Rs. 11.41 crore was release for ADR centers out of which 9.79 crores were utilized till December 2014.<sup>39</sup> But the output during this time period is very less as the physical activity completed as per the number of ADR centers in the state of Punjab was Zero and cases disposed of in the ADR centers were only 1341 and only 160 mediators were imparted training. This

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<sup>37</sup>Mediation center at Punjab and Haryana High court, Chandigarh, *available at:*<http://mediationcentrepshc.gov.in/main-menu/aboutus/centres/mediationcentres.pdf> (last visited on July 1,2015).

<sup>38</sup> Government of India, *Annual Report 71* (Ministry of Law and Justice, 2014-15)

<sup>39</sup>*Id.* at Annexure X

data shows the increasing priority of the government towards the ADR and mediation centers and the status of progress at the execution level.<sup>40</sup>

#### 6. Functioning of Mediation Centers

The main concentration remains towards the working of mediation centers established across the state of Punjab. A pilot study of the different districts was done. From the data collected, the factual position can be easily assumed. The data is presented under as Table 6.1.

TABLE 6.1 Data representing a pilot study of the working mediation centers in different districts of Punjab

| SERIAL NUMBER | DISTRICT               | NUMBER OF CASES REFERRED | NUMBER OF CASES SETTLED | SUCCESS PERCENTAGE |
|---------------|------------------------|--------------------------|-------------------------|--------------------|
| 1.            | Amritsar               | 7520                     | 1043                    | 14.2               |
| 2.            | Barnala                | 204                      | 55                      | 26.9               |
| 3.            | Bathinda               | 1345                     | 389                     | 28.9               |
| 4.            | Fatehgarh Sahib        | 1162                     | 262                     | 22.5               |
| 5.            | Fazilka                | 201                      | 56                      | 27.8               |
| 6.            | Ferozpur               | 890                      | 299                     | 33.59              |
| 7.            | Faridkot               | 266                      | 18                      | 6.7                |
| <b>8.</b>     | <b>Gurdaspur</b>       | <b>622</b>               | <b>259</b>              | <b>41.6</b>        |
| 9.            | Hoshiarpur             | 2081                     | 578                     | 27.7               |
| 10.           | Jalandhar              | 4421                     | 793                     | 17.9               |
| 11.           | Kapurthala             | 395                      | 66                      | 16.7               |
| 12.           | Ludhiana               | 3690                     | 568                     | 15.3               |
| 13.           | Mansa                  | 365                      | 66                      | 18                 |
| 14.           | Moga                   | 2553                     | 701                     | 27.4               |
| 15.           | Muktsar sahib          | 107                      | 28                      | 22.5               |
| <b>16.</b>    | <b>Pathankot</b>       | <b>188</b>               | <b>28</b>               | <b>14.9</b>        |
| <b>17.</b>    | <b>Patiala</b>         | <b>3521</b>              | <b>863</b>              | <b>24.5</b>        |
| 18.           | Rupnagar               | 1099                     | 280                     | 25.4               |
| 19.           | Sangrur                | 2214                     | 406                     | 18.3               |
| 20.           | SBS Nagar (NawaShahar) | 326                      | 12                      | 3.68               |
| 21.           | SAS Nagar Mohali       | ----                     | ----                    |                    |
| 22.           | Tarn Taran             | 15                       | 01                      | 6.66               |

Data Available as on 1<sup>st</sup> December, 2015.

It is interested to note here that the training imparting authority is the same i.e. Punjab and Haryana High Court and all these mediation centers are working under the same High court but there is lots of difference in number of referral cases and the success

<sup>40</sup>Id.at Annexure XI

rate of these mediation centers. Interestingly, Amritsar is at top of the number of referral cases but not in the list of success rate. Similarly, Gurdaspur is referring the cases genuinely and achieving the highest success rate in the settlement of disputes. Therefore, it can be assumed that not the numbers of referral cases are determining the success of mediation centers but the quality of fit cases which are being referred to the mediation centers.

#### 7. Conclusion and Suggestions

The sheen of mediation is increasing with the span of time. The judicial corridors are now more interested in pushing this system forward to lessen the burden of judiciary. The mediation centers are the need of the hour and have to be accepted in its true spirits. The above data shows that court annexed mediation somewhere facing hidden challenges. The output of mediation centers seems to be not up to the mark. The concerned authorities can take following measures:

1. The rules<sup>41</sup> framed by Punjab and Haryana High Court seem to be exhaustive but it would be better if it only dedicated to mediation like the directives of the European Council<sup>42</sup>. By defining the 'Mediation' and 'Mediator' in the rules will also provide the back bone to the process of mediation.
2. The move of lawyers' participation has been proved very beneficial as new concept. It has received the support of bar associations which further made it feasible. The panel of Advocates working as mediators can be given the separate cadre and can be given quasi judicial powers. The agreement finalized by a junior mediator can be finalized and signed after a proper scrutiny by his immediate senior, which should be enforceable as judgment of court. It will lessen the burden of judiciary.
3. More experienced persons like the retired judges may also be given the role of mediators but they should be given the responsibility only after proper training in this regard. Mr. Niranjana Bhatt quotes the wording of Honorable Justice Benjamin F. Overtan, a retired judge of Supreme Court of Florida who observed that Judges should be excellent mediators as they are most experiences neutrals in the justice system but they have to learn when to bite their tongue.<sup>43</sup>
4. The concentration should be on quality of referral cases. Only the fit cases should be marked to the mediation centers.
5. The institutions want to enter in the field of Mediation can be given proper training and license after framing the rules in this regard.
6. Mediators have to play more active role to provide assistance to the litigants to solve the legal disputes.
7. Need of more awareness in General Public especially in illiterate litigants and along with awareness there is equally need to create the trust of litigants over the Mediation centers.

The concept of court annexed mediation has very bright future in India. Ex-President Mrs. PratibhaPatil found it an effective mode of settlement of legal

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<sup>41</sup>Supra note 34.

<sup>42</sup>Supra note 16.

<sup>43</sup>Legislative Initiative for Court Annexed Mediation In India; available at: <http://www.mediate.com/articles/bhattN.cfm?nl=28> (last visited on September 26, 2017)

disputes as it creates the win-win situation and a culture of give and take. It was recognized as a positive outcome.<sup>44</sup>

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