



Solve it yourself

Mediation: Decision can be enforced and challenged, too

By P. Sridevi

Imagine a scenario where you can settle a dispute without going to court. You can sit with your adversary, discuss the issue over a cup of coffee and come to a legally valid agreement in two or three days. Mediation can make this possible.

Mediation—conciliation in legalese—as a method of resolving disputes is not new to India; in the traditional panchayat system, village elders helped settle disputes in the community. Today, arbitration is a more popular method of alternative dispute resolution and mediation is limited to disputes between governmental agencies and undertakings and to labour disputes.

Mediation makes news now as the country's first batch of mediators—14 professionals who trained at the UK-based Civil Mediation Council, an accrediting body for mediators, and nine advocates who did a certificate course of Hamline University of Law, Minnesota, USA—launch the Mediation Council of India.

Mediation presupposes the willingness of the two sides to resolve the issue. "Mediation can be used to settle cases from boundary dis-

putes to company matters," said Anil Xavier, advocate and secretary general, Mediation Council of India. "But it may not work in cases that involve issues of moral turpitude and invoke the criminal law where state is a party. It can be applied in family cases, though in the west mediation is finding use in criminal matters as well."

After choosing a mediator from the list that will be posted on the Net, the parties sit with the mediator and discuss the issue among themselves. "It is a very private affair," said Kurian Mathew, mechanical engineer and accredited mediator based in Kochi. "The role of the mediator is only to help the two sides to arrive at a mutually acceptable solution." Said Xavier: "The mediator should never become an adviser."

According to section 35 of the Arbitration and Conciliation Act, 1996, the decision becomes "final and binding" when both sides and the mediator sign the agreement. It can be enforced under the Civil Procedure Code as if it were a decree of the court, and challenged, too.

Mediation has many advantages: it is informal and, unlike in the courts, the parties do most of the talking and

it may not take more than three days to resolve the dispute. The two sides can even bring their advocates along to do the talking. Of course, mediators come for a price—Rs 5,000 to Rs 10,000 a day, while international rates are to the tune of lakhs.

Despite the Act, the legal fraternity hardly resorts to the alternative methods. Mediation as a method of dispute resolution is popular in the US, the UK and Australia where most of the mediators are professionals from fields other than law.

"Parties to the dispute usually prefer mediators with a background of their field," said Mathew. "For instance, software companies would prefer a mediator with a software background. The professional background helps in the better understanding of the issues of the sector concerned." The Indian Institute of Arbitration and Mediation, Bangalore, which has the recognition of the Civil Mediation Council, provides alternative dispute resolution facilities and training in mediation.

Even the judiciary has given the go-ahead for mediation. In *Salem Bar Association v. Union of India*, the Supreme Court, in August last year, ruled that "reference to mediation, conciliation and arbitration are mandatory for court matters".

With around 23 million litigations pending in India, mediation as an alternative to court is probably here to stay. ■