Chapter – 5

Challenges and Obstacles in Mediation Implementation and Need for Enhancement of Standard of Mediation Practices

[5.1] INTRODUCTION

Mediation is a most advanced and civilized form of dispute resolution mechanism. Now, it is accepted by all that mediation facilitates conflicting sides to open and improve dialogue between themselves and gives an opportunity of self-analysis of their claims. The mediation is being accepted as a mode of dispute resolution. Now, it is resulting in a quicker disposal of cases and is being to bring amicable solutions of disputes through a dialogue between the parties to a dispute with assistance of neutral Mediator, who creates a soothing atmosphere for the disputant parties to work towards a positive solution of their choice. Mediation is a tool for personal empowerment for self-determination.140

Though, it is felt that the process of mediation is growing rapidly. Still, it is experienced that the use of the mediation for settlement of disputes is very much limited for expected growth. In using the techniques of mediation for settlement of disputes there are challenges and obstacles are found in the mediation implementation.

140 Key note address by Hon’ble Mr. Justice Altamas Kabir, The Chief Justice, Supreme Court of India and Executive Chairman, NALSA report of the Third National Conference on Mediation held at Vigyan Bhavan, New Delhi, page 2
Moreover, the importance of mediator in the entire process cannot be overlooked. The techniques or standards of mediation practice adopted by the mediators for negotiation between the parties and for settlement of dispute has a pivotal role to play.

It is said that mediation is the best way of imparting justice through the self determination of the parties.

In this chapter the challenges and obstacles in the mediation implementation and the need of enhancements of standards of mediation practices are being dealt with hereunder: -

[5.2] CHALLENGES AND OBSTACLES IN MEDIATION IMPLEMENTATION: -

The challenges and obstacles in the mediation implementation may be classified as follows: -

1 Lack of trained mediators
2 Lack of trainers
3 Lack of referrals
4 Lack of infrastructure
5 Absence of suitable legislation
6 Resistance amongst basic actors i.e. Judges, Lawyers and Litigants
7 Lack of mediation management
8 Lack of adequate funds
9 Mediation process itself
   a. Selection of Mediator
   b. Misunderstanding
c. Mediator’s intuitive behavior
d. Power imbalance
e. Neutrality
f. Commitment to resolve dispute

10 Lack of awareness

[5.2.1] LACK OF TRAINED MEDIATORS:-

The essence of mediation lies in the role of the mediator as a facilitator. The role of the mediator is to create an environment in which parties before him are facilitated towards resolving the dispute in a purely voluntary settlement of agreement. As a facilitator, the mediator has to understand the underline issues between the parties. In order to do so, the mediator has to open up communication between the parties and between the parties and himself.\footnote{Dr. Justice Dhananjaya Y. Chandrachud, Mediation – Realizing the potential and designing implementation strategies, page No.6-7 sourced from the website of the Law Commission of India.}

Considering the techniques of mediation, imparting formal training for mediators is a necessary. Now, it is accepted and put into practice by the various legal systems in the world that training is being imparted to the persons for becoming mediators to mediate between the parties. So far as India is concerned, the Mediation and Conciliation Project Committee, Supreme Court of India is conducting the training programme. However, it has been experienced in the India overall that there is shortage of trained mediators in the country. In the 3\textsuperscript{rd} National Conference on
Mediation held at New Delhi on 8th July, 2012, Hon’ble Mr. Justice Siri Jagan, Judge, High Court of Kerala has expressed his concern regarding lack of trained mediators.  

[5.2.2] LACK OF TRAINERS: -

This point is co-related with the point regarding lack of trained mediators. The training for mediation is being imparted by the trained persons who have got Training for Trainers (TOT). The numbers of persons who are expertized in providing trainings of mediation are not enough in number. The MCPC has prepared the training manual and the period of training is described for 40 hours. As there is lack of adequate numbers of trainers, it hampers the training programme of mediation and ultimately creates obstacles in the implementation of the mediation.

Hon’ble Mr. Justice Sunil Ambawani, has pointed out certain challenges in implementation of mediation. One of which is regarding non availability of adequate numbers of trainers.

[5.2.3] LACK OF REFERRALS: -

Section 89 of the Code of Civil Procedure provides for reference of cases to one of the mode of alternative dispute resolution. It is obligatory on the part of the Judge to refer the case to any one mode of alternative dispute resolution. However, experiences shows that the Judges are not

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143 Judge, High Court of Allahabad, report of the Third National Conference on Mediation held at New Delhi on 8th July, 2012 page 9.
referring cases to the techniques of alternative dispute resolution. The figures reflected from the Mediation Newsletter published by the Gujarat State Legal Services Authority are just an instance to show that there is less number of references of cases to the mediation.144

[5.2.4] **LACK OF INFRASTRUCTURE:**

Mediation being a process wherein there is need of focused attention for resolution of disputes. It is being so there is need of a space required to run the mediation centre. Not only that, but, it also requires sufficient space for accommodating mediators and the space for separate as well as joint meetings of the parties. Further, there is need for space for waiting room, and other infrastructure facilities such as sufficient staff, computers, facilities for water, toilet facilities. The atmosphere of the mediation centre needs to be informal and it should be situated within Court premises or near the Court premises.

During the 3rd National Conference on Mediation held at New Delhi, Hon'ble Mr. Justice Sunil Ambawani145, and Dr. Sudhir Kumar Jain146, Judge, In-charge Delhi Mediation Centre at 3rd National Conference on Mediation, has also highlighted the need of adequate space for a mediation centre.

[5.2.5] **ABSENCE OF SUITABLE LEGISLATION**

At present the legal provisions for referring the case for mediation is under Section 89 of the Code of Civil Procedure. Now, so far as the
Lok Adalats are concerned, there is legal provision available in the Legal Services Authorities Act, 1987. The Arbitration and Conciliation Act, 1986 deals with the Arbitration and Conciliation. But, so far as the mediation is concerned, there is no separate legislation in existence. The entire process of mediation is being carried out in the country is through the Mediation and Conciliation Project Committee constituted by the Supreme Court of India. But, it has no statutory or legal sanctity. Being a committee appointed by the Supreme Court of India it's directions are being followed in the country, but, for the purpose of proper implementation of the mediation process at every level, it is necessary that some legislation on mediation is required.

[5.2.6] RESISTANCE AMONGST BASIC ACTORS i.e. JUDGES, LAWYERS AND LITIGANTS: -

a) Judges: -

Judges may see mediation as potentially undermining their authority to make public judgments and normative pronouncements. Also, professional incentives may discourage judicial support for mediation, which may lead to the courts recommending mediation in fewer cases than it actually should.\(^{147}\)

b) Lawyers: -

Lawyers may be understandably concerned that mediation threatens their livelihood by reducing the number of matters they handle

\(^{147}\) Hiram E. Chodosh, Mediating Mediation in India sourced from the website of the Law Commission of India.
or fees they charge. If more disputes are to be mediated, lawyers might view ADR as nothing more than an "alarming drop in revenues". They may encounter pricing problems in how to charge for their role in a mediation. Additionally, they may wonder about the value of their own role in a party-dominated process and how they will act as zealous advocates when their parties do not want to settle and engage in a process that calls for cooperation.148

c) **Litigants:**

It is also seen that litigants may harbour anxiety about mediation as an alternative to the court system. This is because they are fearful or exploitation, distrustful of private proceedings, comforted by the familiarity of the court system, insecure about making decisions of their own interests, or interested in vexatious litigation or in delaying the case for economic reasons and may prefer the lawyer-dominated, public, formal and evaluative judicial process.149

[5.2.7] **LACK OF MEDIATION MANAGEMENT**

As stated earlier, in the country the entire mediation activities are being controlled by the Mediation and Conciliation Project Committee, Supreme Court of India. In all most all High Courts for mediation activities organizing committee of the sitting Judges of the Hon'ble High Court is constituted so also at the District places District Judges and other Judicial Officers are looking after the mediation activities.

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148 Ibid page No.19.
149 Ibid page No.20.
However, considering their duty to perform judicial work first, they are unable to devote enough time. This is also one of the reasons for not rapidly growing up of the mediation activities. For any activity to be developed fully it is utmost necessary to have proper management thereof.

[5.2.8] **LACK OF ADEQUATE FUNDS**

There is need of suitable space for mediation centre as well as sufficient numbers of devoted staff members and proper infrastructure and management thereof. Further, some sort of fees or honorarium is required to be paid to the mediators who are engaged in a mediation process. For all these purposes, there is need of funds available for every mediation centre. In this regard, it is worthwhile to mention here that Hon'ble Shri V. Gopala Gowda\(^{150}\), the Chief Justice, High Court of Orissa in his address at the 3\(^{rd}\) National Conference on Mediation held at New Delhi has also highlighted his concern about adequate funds for mediation centres.

[5.2.9] **MEDIATION PROCESS ITSELF**

One of the challenges and obstacles in the mediation implementation is mediation process itself. There are special points relating to this mediation process which creates hurdles in the mediation process implementation. They can be referred to as follows: -

\(^{150}\) Report of the Third National Conference on Mediation held at New Delhi page No.16.
[5.2.9.1] SELECTION OF MEDIATOR

Selection of an appropriate mediator is also a necessary step for successful mediation. Selecting an appropriate mediator for type of dispute is essential to providing disputants with the highest probability for a successful mediation.

Even though mediation is essentially a disputant driven process, a mediator's knowledge, experience, skill and approach has a significant impact on the outcome of the mediation. If, proper mediator is not selected for the given problem then it might hamper the entire mediation process and may result in unsuccessful mediation.

[5.2.9.2] MISUNDERSTANDING

Parties in conflict often misunderstand each others intentions and make negative assumptions about each other. Consequently a statement that might have seemed innocuous when two parties were friends might seem hostile or threatening when the same parties are in conflict.\textsuperscript{151}

[5.2.9.3] MEDIATOR’S INTUITIVE BEHAVIOR

Instinct helps mediators in their dialogue with parties. It contributes to their daily management of the major steps and transitions in the mediation process; it also guides them in their micro-interactions with parties. It helps each of their steps, sentences or gestures, so to

\textsuperscript{151} Justice Sanjay Kishan Kaul, Souvenir, Third National Conference on Mediation 2012, page No.46 & 47.
speak. At the same time, instinct may lead to entrapment words or behaviors, which can be as many obstacles to the success of a mediation process. If mediators are not aware of how misleading some intuitions can be, they run the risk of loosing their efficiency in the process and of undermining the establishment of a better quality relation between the parties and the search for agreeable solutions.\textsuperscript{152}

[5.2.9.4] POWER IMBALANCE

Free communication and the discussion of the issues at hand is the essence of mediation. If either party appears to be in a dominant intellectual, physical, economic or emotional standpoint, free negotiations at an equal footing would be disrupted and lead to an eventful failure of the mediation.\textsuperscript{153}

[5.2.9.5] NEUTRALITY

The concept of neutrality and impartiality are essential elements of the mediation process and these terms are often used interchangeably in mediation agreements. The conventional ideology about mediation is that the Mediators are expected to be completely neutral despite of the human nature being inherently judgmental. Sometimes, there occurs such instance where the breach of neutrality may arise due to an unconscious bias or unawareness which may lead to "The Flat Earth" syndrome and is

\textsuperscript{152} Ibid page 47
\textsuperscript{153} Ibid page 47
identified when the mediator wanders into the territory of imparting opinions or advice supplemented with lack of skill, inability to reframe, communication deficiencies, unequal opportunities, attitude, temperament, one party focus, complacency factor and preconceived stand, using judgmental language and overtones, cooperating and promoting one party's stand leading to a hijack of the mediation process, the mediator having a tunnel-vision and having their own idea of settlement also known as the "Mediator's Agenda", only focusing on achieving a settlement rather than protecting the interests of both the parties etc. It is also observed that many a times Mediators fail to maintain a neutral stand or to even create a perception of neutrality which may lead to loss of trust by the parties or ultimately in the failure of the mediation process.\textsuperscript{154}

[5.2.9.6] COMMITMENT TO RESOLVE DISPUTE

It is necessary for the successful of the mediation that the disputants must have a commitment to resolve the dispute. If a disputant or Advocate informs the mediator that he or she has no intentions to settle the case, it immediately puts the mediation in jeopardy. Often, disputants and Advocates are frustrated with their prior efforts to settle the matter, or the disputants may be overconfident in his or her likelihood of success in litigation if the matter does not reach settlement.\textsuperscript{155}

\textsuperscript{154} Ibid page 48

\textsuperscript{155} Ibid page 46
[5.2.10] LACK OF AWARENESS

Lack of awareness about mediation amongst the rural people, who mistook mediation as another form of Lok Adalat least realizing that the mediation process involved more participation of the litigants and empowered them to find their own solutions. There is also lack of awareness amongst judges, advocates and litigants regarding the effectiveness and usefulness of the process of mediation.

[5.3] NEED FOR ENHANCEMENT OF STANDARD OF MEDIATION PRACTICES

“Let every man judge according to his own standards, by what he has himself read, not by what others tell him”, said Albert Einstein. These words are perfectly true for any motivated individual or entity. However, setting standards is not as easy as said for a concept like “Mediation” and it is a challenge to review and enhance its standards.

Standards are meant to be state of the art specifications for products, services and good practice, helping to make a person or an entity more efficient and effective. Standards are fixed not to limit one’s performance or skills, but to surpass them. Mediation emerging as a preferred mode of dispute resolution, especially in India thanks to the efforts of the Supreme Court’s Mediation and Conciliation Project

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Committee and several Mediation centres across the country, has made the task of mediators, referral judges, policy makers and administrators of the centres and advocates, more challenging. It is essential that each one of the partners in the Mediation process revisits various aspects of Mediation capabilities, skill and process with an aim to set higher standards.\textsuperscript{158}

The process of mediation has been formulized and structured although individual mediators are entitled to bring about flexibility in the structure. However, it is important to master every stage of the structured mediation process. Skills are also needed to be acquired because mediation does not mean only going through the stages. The skill of the mediator helps the parties to think and to think along as well as to consider the various possibilities of resolving a dispute. The mediator’s skill converts a position-based bargaining into an interest-based bargaining. It is this skill which helps the parties to look at their future interests and concerns rather than complaints about injuries and damages suffered in the past.\textsuperscript{159}

Professor Lala Love and Jonathan M. Hywar\textsuperscript{160}, state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each other goods, they will together reach a fair solution.

\textsuperscript{158} Ibid.
The mediator has to be aware of the grounds realities, the law on the subject and other factors which go into creating the dispute or in evolving a solution. He/She should know the techniques by which the parties can be brought to an agreement and thereafter to convert the agreement into a legal and binding settlement.

The mediator must possess the skill to unveil the hidden agendas of the parties, their future interests, the implication of every possible solution etc, so that each party is able to enlarge the horizon of its vision and take a realistic view. Although some people may have natural traits of a mediator, it will be wrong to presume that one can act as a mediator without proper training. He/She needs to be skilled first to bring the parties into a settlement mode, and then to lead the parties to see the various possibilities of a solution.\textsuperscript{161}

The role of a mediator contrasts sharply with the role of a lawyer or a Judge. These differences require a mediator to get special training in skills and processes used in mediation. Not every judge who listens for hours is a good mediator. Not every good lawyer who speaks for hours is a good listener. The mediator needs to listen to the parties and although is not supposed to hand down a solution himself/herself, has to ensure that the parties to evolve a solution.

Judges and advocates are mostly using their legal learning and are quick to see their solutions, particularly legal solutions. They can quickly identify the points and counter points favoring and harming the two

\textsuperscript{161} Ibid – page. 83 – 84.
parties. But, the mediator needs another kind of skill; the ability to work towards a win-win situation for both parties.

Every Judge in a matrimonial case is required to attempt reconciliation between the parties. Some Judges, while making such efforts, find themselves scolding some party or the other or simply advising them to forgive and forget. But, if the Judge is trained in the technique of mediation, he/she would handle things in a manner in which each diagnose the true ailment and offer appropriate remedies.

The mediator is specially trained to not only allow the parties to speak but to extract as much information as possible from each party. The mediator has to have control over the process. He/She has to develop the skill to handle acrimonious situations and see that the parties maintain the grounds rules, the discipline, so to say, of allowing the process without being aggressive, insulting or dominating. He/She has to know how to bring back order if one of the two parties, willingly or unwillingly, threatens to disrupt the process.

The mediator has to know how to handle emotional outbursts including anger and grief. This does not mean he/she can snub the man who is angry or the one who is crying. He/She has to be trained to deal with such parties with full empathy respecting their emotions and yet helping them to compose themselves. In fact, emotions like anger and grief are at times important factors constituting the grievance.

The best mediator is endowed with experience of life. He/She should have experience of different culture and the life styles of people in
different strata of socio-economic classes. The values and customs followed by one community may be different from the value and customs of another community. Even in trade and commerce the practices differ from market to market. There are unwritten rules which are adhered to more strictly than the laws in the books. A mediator will do well to apprise himself/herself of such culture backgrounds which influences the behavior as well as expectation of people in different cultural grounds.

The mediator has to know the law relevant to the disputes which he/she is handling. It is true that the solution in mediation has to evolve from the parties, but the mediator is duty bound to see that the solution evolved is legal as well as moral. The settlement has to be reduced to writing. The terms of the settlement should be enforceable in law. Drafting of a settlement needs acumen of another kind.

A mediator has to imbibe all the good qualities of a wise old man as well as the romanticism of a youthful dreamed. Experience is the best teacher. If a sincere endeavor is added to the experience and training is no reason why any good lawyer cannot transform into a good mediator.162

Hon’ble Mr. Justice Ravi Tripathi163, has focused on the need for a regulating the conduct of mediators and expressed that the first task would be to lay down fundamental norms standards and ethical guidelines which a mediator would be required to abide by and the secondly to implement them. His Lordship linked the progress of the mediation

162 Ibid page 84 -85.
movement in the country with the strict implementation of such norms, standards and guidelines and observed that the confidence of the public would depend upon how well such norms, standards and guidelines are implemented and made part of the mediation culture. According to His Lordship the better implementation of such norms, standards and guidelines would strengthen the faith people will have in the mediation process and consequently greater impetus would be provided to the mediation movement in the country.

It is worthwhile to refer portion of the paper submitted by Uma Ramanthan\textsuperscript{164}, in the 3\textsuperscript{rd} National Conference on Mediation, New Delhi on 8\textsuperscript{th} July, 2012. It is as under:

“Mediation has had an unbridled growth and it is time to take stock and change gears to understand the needs of mediation and it’s proper practice. There is a need for change in the facet of practice of mediation. We have to imbibe the words of Albert Einstein” to solve our most difficult problems, we have to radically change our thinking. We are at a transition point and to be involved it is essential that our mental reflexes move from preconceived notions and stereotyping. To maximise benefits we have to use the skills necessary to elevate parties from habitual thinking and biased perceptions.

For mediation to be a tool of personal empowerment to disputants, acceptance and effective use of mediation will depend on an

\textsuperscript{164} Advocate, Mediator and Organizing Secretary of the Tamilnadu Mediation and conciliation centre, High Court Madras.
understanding of the needs of mediation. The Theory of Needs formulated by the renowned psychologist Abraham Maslow states that self actualization occurs only when Biological & Physical, Safety, Esteem, Cognitive, Aesthetic needs are satisfied. So a concerted and progressive effort is necessary for any actualization.

In this context, to address the needs of mediation, we have to understand the psychodynamics of dispute resolution which involves factors such as fear, power, threats, scarcity, influence & social issues, impressions and validation, interests of others, stereotyping and misconceptions, reactive devaluation, likes and dislikes and so on. The trajectory of Mediation based on the theory of needs would then be comfort, esteem, cognition and realization. Therefore, effective mediation practice ought to ensure substantive and procedural satisfaction.
Maslow’s pyramid of needs can be recast with respect to mediation as pictured in below:

The disputants have to be empowered to understand the effect of self-determination and freedom to make their choice. The public and the Bar need to get more information about mediation to enable them to understand the opportunities they have to settle disputes. Mediators have to understand this aspect and if they fail to give importance to building trust, rapport, assist parties to understand the benefit of mediation, or fail to persuade parties to actualize, the faith in the system will be eroded.

The Mediators have to be detached and be an observer in the game of negotiation and allow parties to think by removing their conditioning. Commitment and involvement of the mediators at an interpersonal level
is necessary and providing the right atmosphere for a conducive communication is essential to the conduct of mediation.

The thought process of every individual [including mediators] is influenced by bias and habitual thinking and unless the mediators give importance to self-esteem of the disputants and stress on self-determination, the dialogue could become a monologue and the agreement arrived at will not carry with it the guarantee of workability. The Mediators have to therefore provide for a non-invasive approach to the resolution of the dispute. The standards in mediation have to be more in the nature of a check on ineffective practices.

The Standards prescribed for mediation must ensure that the basic needs of parties, protection of their interests, bridging the gap between relationships and building them, pointing out their responsibility and ability, assisting them to acknowledge and understand, to balance issues while choosing options, are guaranteed. It is essential to understand the criterion that distinguishes mediation.

Flexibility, voluntariness, confidentiality and above all satisfaction of the emotional quotient in mediation defies codification. We therefore need to have a homogenous and systemic approach to mediation which is inclusive of all these factors and more, for rendering value based service.

Quality control and safeguards to avoid pitfalls demands that Mediation standards be based on referrals, infrastructure, administration and practice and end user satisfaction. Consolidation of various styles of
mediation, adapting the justice dispensation system to various modes, taking note of the delay, costs, and rigidity of the present system and evolving a party centered resolution process which enables warring parties to agree to disagree/find solutions, can alone guarantee accountability and protect integrity.

Issues like Process vs practice, Flexibility vs Regulation, Justice Vs end user satisfaction are all global themes that affect standards of practice and accreditation. Commitment, voluntariness, confidentiality and meaningful dialogue are the pillars that support the structure and so the standards have to be stress on implicitly following them. Legal sanctity, competence, and workability have to be necessarily ensured before disputants enter into an agreement.

We need to ensure that there is a system which would provide for observation and assessment of mediations and mediation training and for denying certification when necessary. Many trainees complete the course and get certificates and do not practice mediation in the way it is imparted, either for want of referrals or infrastructure or due to lack of knowledge based skills. This could lead to undermining the credence of this system.

It is imperative that we choose the right people to be mediators, ensure their commitment to the process and appropriate use, or else we will be facilitating domination and coercion and that could erode the faith in the system. Mediators ought to check delay, inappropriate use, domination and be conscious about the use of the process for the benefit
of the disputants. Ensuring comfort level of disputants will empower the parties to come to a suitable agreement, even if it fails in mediation, they settle later, and so mediators have to have the skill to reach out to enable parties to get more. Only when the mediators fail to assist the parties in seeing the larger picture, there will be an impasse and so the mediator has to update skills and practice them to manœuvre the glitches faced in mediation.

Mediators must believe in the process and the rapport and trust that they create will enable parties to look dispassionately at the problem and move from personal altercations with the other party. The most frequently asked question during training is - whether mediators will get protection when things go out of hand? An understanding of the process, commitment and conducting the process with dignity and control will ensure smooth participation, and requirement of some other safeguard, would negate the process.

To get disputants to view mediation as an opportunity that ought not to be missed, we could think of evaluation at the intake point, reasoning out the referral and getting information to decide on the appointment of the right mediator. Once the mediator meets the parties, meticulous following of the process alone will nudge the participants towards a discussion. It is a fact that some mediators do not give importance to the process and jump into the stage of negotiation and this has given rise to heart burn, both for the disputant and to the Mediation Centres. The allegation of bias or high handedness due to this approach results in intractability and this issue needs to be addressed.”
B. C. Thiruvengdam\textsuperscript{165}, has emphasized that the standards which would be laid down for mediation would be required to be constantly reviewed and enhanced, as no strait jacket standard would fit for a long time particularly, when the whole structure of mediation is still in infancy in India. He outlined the following parameters as standard:

(a). Qualitative Standard,
(b). Administrative Standard and
(c). Quantitative Standard

(a) . Qualitative Standard:

The concepts of ‘Qualitative Standards’ were spelt out to be:-

- Knowledge Standard
- Domain Standards
- Communication Standards; and
- Ethical Standards

(b). Administrative Standards:

The Concept of ‘Administrative Standards’ were delineated as:

(i). Selection Standard:

Appropriate selection of trainees who would become mediators needs to be made. He has emphasized that the selection should be on the basis of the following factors of merits, viz:

\textsuperscript{165} Advocate, International Mediator & Master Trainer in Mediation. At third National Conference on Mediation held in New Delhi on 8\textsuperscript{th} July, 2012
a) Conduct of the applicant in the court,
b) Legal knowledge of the person,
c) Communication skills and
d) Willingness to become a trainee

(ii). Training Standards:

There is necessity of high standards of Mediation for the mediators with appropriate skills being imparted with constant updating thereof. Continuing Mediation education programme is strongly recommended for imparting advanced training, exposing to specific domain knowledge, workshops and seminars, where there is level of interaction between mediators, administrators and referral judges etc. Special training should be imparted to the administrative and support staff of a centre in centre management and human relations.

(iii). Referral Process:

Apart from judges being trained in making referrals, they necessarily need to undertake the 40 hours training in mediation, which would assist in motivating them to make referrals and to make the appropriate choice of case to be referred to the Mediation. Mediation training should be made compulsory in all judicial academies.

(iv). Infrastructure Standard:

The trained mediators are competent to mediate anywhere, even under the tree, but for the litigants it is necessary that an appropriate
comfortable infrastructure be created. Adequate dedicated staff for mediation centres is necessary.

(v). Quantitative Standards:

‘Success in Mediation’ does not include ‘a successful mediation’; what is necessary is a change of the mindset of all judges and the litigants in relation to the efficacy of mediation. Quantitative success is by mean of general public awareness of Mediation and Mediation process by display of banners, advertisements, distribution of pamphlets and projection of videos in public, conducting street plays in public like stations, malls etc. The volume of referrals would certainly boost the success rate too as it would create more experience and opportunities for mediators.

Hon’ble Justice A. K. Patnaik\textsuperscript{166} has expressed that people approach the Court because they have faith in the Courts, and that people would also adopt Mediation as method of resolving their disputes if they develop faith in this method of resolving disputes. To develop faith in this method of resolving disputes, it would be necessary that there are standards laid down for the Mediators reacted to their work and their conduct, and so far as role mediator is concerned, the most important virtue which a Mediator should have is the commitment to his work and he should enjoy his work for this in itself would take case of the other qualities, which a Mediator should possess. He further observed that as

\textsuperscript{166} Judge, Supreme Court of India and Chairman, Supreme Court Legal Services Committee. Report of the third National Conference on Mediation at New Delhi on 8\textsuperscript{th} July, 2012, page 25.
there was a change sought thereby in the socio-economic legal set up, an attitudinal change in favor of mediation was required from all concerned, with faith of the public being generated change in the same through effective awareness of mediation being propagated to make people aware of the benefits of mediation.

Thus, the importance of mediation lies in the fact that it has the potential to provide an expeditious, economical and private resolution of the problems that have arisen between the parties. Most importantly, the process emphasises the participatory role of parties. The resolution of the dispute depends upon the parties themselves. Ultimately, each party knows best its needs and interests. Mediation enables each party to give expression to its perceptions and viewpoints in a confidential and private surrounding. Every party is facilitated by a mediator to appreciate the perception of the disputing party to the problem at hand. Parties can explore all the facets of the relationship between them. Some of them cannot be dealt with in a conventional Court setting where reception of evidence is governed by strict rules. In matters relating to business and personal relationships, confidentiality is an important value for disputing parties. The negative publicity attendant upon a Court case can well be obviated when the parties deal with each other in a mediation proceeding which is private and the confidentiality of which is protected by the law. The scheduling of mediation can typically be arranged to suit the convenience of the parties so as to facilitate an early completion.\(^\text{167}\)

\(^{167}\) MED\,I\,A\,T\,I\,O\,N – realizing the potential and designing implementation strategies. By Dr. Justice
Via mediation the parties will become partners in the solution rather than partners in profession. Life as well as relationship goes on with mediation for all the parties concerned resulting in peace and harmony in society. While providing satisfaction to the litigants, mediation also solves the problem of further contribution towards economic, commercial and financial growth and development of the country.

Dhananjaya Y. Chandrachud Judge High Court at Bombay page. 12. Also see:
http://lawcommission
ofindia.nic.in/adr_conf/chandrachud3.pdf