

# **SPEECH At 1<sup>st</sup>. National Mediation Conference** **(March 07, 2015)**

- My Lord Mr. Justice Faisal Arab, Honorable Chief Justice High Court of Sindh, Today's Chief Guest.
- My Lord Mr. Justice (Rtd.) Saeed-uz-zaman Siddiqui, Keynote Speaker.
- My Lord Mr. Sajjad Ali Shah Senior puisine Judge
- My Lord Mr. Justice (R) Khilji Arif
- My Lord Mr. Justice (Rtd.) Muhammad Ather Saeed,
  
- Hon'able Judges of the High Court of Sindh
  
- President High Court Bar Association
- Presidents & Representative of different Associations & Councils
  
- Members of Executive Committee
- Members of the PMA, Distinguished Guests

ASSALAM O ALAIKUM,

I am proud and honored to stand here today as first President of Pakistan Mediators Association in front of this august gathering.

Today's occasion is unique and I find myself overwhelmed because today we are hosting the First National Mediation Conference and Honorable Chief Justice of Sindh High Court is gracing this Conference as Chief Guest.

Today I am addressing an audience, which has a glittering of judicial luminaries, and our guest from Bar Associations, Trade Bodies and our members, which anyone will consider and honor to address.

Thank you My Lord for accepting our request and your presence today strengthen our belief that Bench is supporting the mediation to minimized the undue burden on the Judiciary.

My Lord, it was 2006 & 2007, when the IFC an arm of World Bank approached the Sindh High Court to promote the concept of Mediation in Pakistan to make the business environment more friendly for the prospective businesses in Pakistan, then the Chief Justice of Sindh High Court Mr. Justice (R) Late Sabih Uddin Ahmed, immediately accepted and approved the entire program of IFC. Mr. Justice (R) Saeed-uz-zaman Siddiqui whom we always called "Father of Mediation in Pakistan", lead the program and under his leadership Karachi Centre for Dispute Resolution was established.

My Lord, our Association was established in the year 2013 with the sole motive to promote and regulate the Mediation in Pakistan, we have around 100 members all over Pakistan, we are closely working with the Board of Investment, Govt. of Pakistan, Sindh Investment Board, Government of Punjab and Government of KPK to legislate the Mediation Law in Pakistan. We are also closely working with Karachi Centre for dispute resolution, Lahore Chamber of Commerce Mediation Centre and in process to establish KPK Mediation Centre which will start working shortly.

My Lord, since the day, I started working for Legislation of Mediation Law, few of my lawyers' friends asked me, do you think that the Judicial system is failed, That's why you are looking for alternate remedy but my immediate reply to them is that it is not failed but it is over-burdened and that is the

reason failed to deliver to the expectation of the common Citizens and if we off-load the burden of Judiciary I am sure that it will start delivering the Justice in shortest possible time and the same will enhance the image of Judiciary as well as Lawyers in the Eyes of the common Citizens.

My Lord, enforcing of contracts is a major issue in Pakistan for the Foreign Investors and the Foreign Investors are reluctant to invest in Pakistan because of the time and delay, if any dispute arises it remains in court for years. In all the developed countries, commercial disputes are in first phase, resolved through mediation and in case, it fails, then it goes to the court and if the party go to the Court losses the case, then the court imposes the heavy penalties for mis-using the time of Court.

My Lord, ADR was introduced in Tax Laws, but the mechanism was deliberately set to fail the entire concept because the final decision in the scheme lies with the FBR which is already a party therefore, the entire scheme of ADR in Tax Laws fail to achieve its fruits, we have once again recommending FBR to reactivate ADR Committee and it should be invoked by the Tax Payer before the assessment to minimize the huge demands which ultimately reaches to Court and again over burden the Judicial System. We also recommended the FBR, that the ADR Committee decision should be final.

My Lord, you must aware of the fact that there is no definition of mediation in the dictionary, however center of effective dispute resolution (CEDR) UK, which is world leading center for dispute resolution define mediation as

**Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a**

**negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of the resolution.**

My Lord, we have conducted mediation orientation training of around 300 judges of lower judiciary of Sindh and conducted free mediation course at small and medium cause's court under the banner of KCDR. Our fellow mediators successfully closed old disputes ranges from 1 year to 35 years old. The success rate of mediation is 70%.

My Lord, after the 18<sup>th</sup> amendment the concurrent list was devolved to provinces and the provincial Govts. should understand the importance and urgency to re-legislate CPC, contract act, partnership act, arbitration act, and other minor and major Acts as they are ages old and lose the relevancy and failing to cater the values and business modules of the recent time. In CPC section 89A clearly states that cases can be resolved through mediation, I quote section 89A of CPC

**89A Alternate Dispute Resolution**

The court may, where it consider necessary, having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or on relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation

*Unquote*

Despite this clear provision the judiciary is still reluctant to refer the cases for mediation. The first common reason which come across that section 89 A is limited and does not provide whole mechanism of mediation process,

therefore the bill to amend section 89A was tabled before the Parliament, but due to the political crisis in 2007, it was not passed by the Parliament. Now after the 18<sup>th</sup> amendment as it is the provincial subject, the provincial assemblies have to pass the bill to amend section 89A of the CPC as a immediate course to support the mediation. In view of this we would request your lordship to use your good office in passing the bill for the amendment under section 89 A of the CPC, so the lower judiciary will start referring the cases for mediation, with more legal support, which ultimately lead to minimize the burden of the court.

Today we will also provide you the draft of amendment in Section 89A of CPC for your lord ship review and onward action

My Lord, there is a negative propaganda against the Mediation that it will ruin the work of the lawyers, but I would like to take the benefit of your presence and assure the audience that Lawyers are the part and parcel of Mediation process and without their support this concept will not fly. I am also very clear that it will minimize their work and enhance their revenues, it is the right time to step in the bus, otherwise, they will miss this unique opportunities.

My Lord, taking the benefit of your presence today, I would like to mention that in the region all the High Courts have court annexed Mediation Centre that is the reason Mediation is flourishing very fast in the Regional Countries and they have also amended their CPC by adding detailed procedure of Mediation, how the cases are referred by the Court or the mediation and how it will be conducted. They have penal of Mediators available for the centre and cases are assigned on Rosters.

We request you Lordship that the Mediation Centre should be relocated at court annexed new building which will give the message that the Centre is under the patronage of High Court of Sindh and centers should be established in Larkana, Sukkur & Hyderabad. We would also offer our services if required to setting-up the Court Annexed Mediation Centre. I would like to mention here with sense of satisfaction that this conference is endorsed by International Bar Association.

In the end, I would like to thank to all the delegates for attending this Conference and making this a success. I would like to congratulate to Mr. Isfandyaar Ali Khan, Conference Director Mr. Mustansir Zakir, Co-conference Director Mr. Wasif Iqbal, Conference Secretary our today's host Ayesha Sarfaraz, Jawwad Sarwanah and all the Committee Members for their support and hard work to make this event a mark in the history of Mediation in Pakistan.

I would also like to thank Mr. Justice (Retd.) Saeed-uz-zaman Siddiqui Keynote Speaker for his presence and discourse on the subject

To close my submissions, I would once again like to thank you, My Lord the honorable Chief Justice, my Lord senior puisine judge and lordships the companion judges, distinguished guests and the members of the PMA and all other distinguished delegates

In the end I would like to pray to the Almighty ALLAH to confer His choicest blessings on each and every one of you and your family members and to further enlighten and glorify the image of our Country and safeguard our beloved country from the turmoil facing us today.

PAKISTAN ZINDABAD